

[2003] LSBC 38

Report issued: October 24, 2003

Oral reasons: October 14, 2003

Citation issued: June 20, 2003

The Law Society of British Columbia  
In the matter of the *Legal Profession Act*, SBC 1998, c.9  
and a hearing concerning

## **RUDI GELLERT**

Respondent

### **Decision of the Hearing Panel on Facts and Verdict**

Hearing date: October 14, 2003

Panel: Russell S. Tretiak, Q.C., Single Bencher

Counsel for the Law Society: Jessica Gossen

Appearing on his own behalf: Rudi Gellert

## **Background**

[1] On June 20, 2003, a citation was issued against the Respondent pursuant to the *Legal Profession Act* and Rule 4-15 of the Law Society Rules by the Executive Director of the Law Society of British Columbia, pursuant to the direction of the Chair of the Discipline Committee. The citation directed that this Hearing Panel enquire into the Respondent's conduct as follows:

1. You failed to respond promptly to the written request of Member Services of the Law Society dated September 14, 2001 for an explanation of the exceptions and deficiencies noted in your Accountant's Report (Form 47) for the period ending May 31, 2001, contrary to Chapter 13, Ruling 3 of the *Professional Conduct Handbook*.

2. You failed to respond promptly to the written requests of Member Services of the Law Society dated September 12, October 7, and October 29, 2002 for an explanation to the exceptions noted on your Form 47 for the period ending May 31, 2002, contrary to Chapter 13, Ruling 3 of the *Professional Conduct Handbook*.

[2] Pursuant to Rule 5-2(2), the Respondent agreed to a Panel consisting of a single Bencher.

[3] The Respondent acknowledged proper service of the citation and waived the requirements of Rule 4-15 of the Law Society Rules.

### **Agreed Facts**

[4] The Respondent and Law Society counsel have entered into an Agreed Statement of Facts which gives

the history and the evidence in this matter. It provides as follows:

- (a) Rudi Gellert was called to the Bar in the Province of British Columbia on May 19, 1995.
- (b) Mr. Gellert practiced as a sole practitioner from May 1995 to May 1998. From June 1998 to present he practices as a partner with the firm Gellert & Associates.
- (c) On August 30, 2002, the Member Services department (" MSD" ) at the Law Society received Mr. Gellert's Form 47 - Accountant's Report for the period ending May 31, 2002.
- (d) On September 12, 2002, MSD sent a letter to Mr. Gellert requesting, by October 3, 2002, an explanation to the exceptions noted on his Form 47.
- (e) On October 7, 2002, MSD wrote to Mr. Gellert requesting, by October 28, 2002, a response to the September 12, 2002 letter.
- (f) On October 29, 2002, MSD sent another letter to Mr. Gellert requesting, by November 12, 2002, a response to the September 12, 2002 letter.
- (g) On December 9, 2002, a letter was sent to Mr. Gellert advising that this matter had been referred to the Professional Conduct department (" PCD" ) for failure to respond and requesting a response to the MSD's letters concerning his Form 47 for the period ending May 31, 2002.
- (h) In that same letter, Mr. Gellert was also reminded that he had still not responded to the MSD's letter of September 14, 2001 with respect to outstanding matters from his Form 47 for the previous year, ending May 31, 2001. A response was requested within two weeks.
- (i) On December 24, 2002, Mr. Gellert responded to the Law Society to matters arising from his 2002 Form 47 report but not his 2001 Form 47 report.
- (j) On January 15, 2003, PCD wrote to Mr. Gellert acknowledging his response to the 2002 Form 47 inquiries but reminded Mr. Gellert that the Law Society still required a reply to MSD's letter of September 14, 2001.
- (k) On January 30, 2003, PCD wrote another letter to Mr. Gellert asking him to respond to the letter of January 15, 2003 within ten days.
- (l) On February 11, 2003, PCD sent a letter to Mr. Gellert by courier asking him to respond to the January 15<sup>th</sup> letter within five days.
- (m) On February 20, 2003, seventeen months after the initial request, the Law Society received a letter from Mr. Gellert responding to MSD's inquiries about his 2001 Form 47.
- (n) Mr. Gellert acknowledges that his failure in responding promptly to the written request of Member Services of the Law Society for an explanation of the exceptions and deficiencies noted in his 2001 Form 47 constitutes professional misconduct.
- (o) Mr. Gellert acknowledges that his failure in responding promptly to the written requests of Member Services of the Law Society for an explanation of the exceptions noted in his 2002 Form 47 constitutes professional misconduct.

[5] As set out in paragraphs (n) and (o), the Respondent acknowledges that his conduct in failing to respond promptly to the Law Society on two separate occasions concerning his 2001 and 2002 Form 47's is professional misconduct.

[6] The Panel accepts the Respondent's admission and accordingly, is prepared to find that the Respondent's conduct as set out in the Schedule to citation constitutes professional misconduct.