

2014 : No. 01 Spring

Philip Richard Derksen

Abbotsford, BC

Called to the bar: May 20, 1988

Discipline hearing : June 20, 2013

Panel : Greg Petrisor, Chair, John Ferguson and Shona Moore, QC

Decision issued : November 27, 2013 (2013 LSBC 33)

Counsel : Carolyn Gulabsingh for the Law Society; Philip Richard Derksen on his own behalf

Facts

Between September 2012 and March 2013, the Law Society wrote several letters and left a voicemail message for Philip Richard Derksen, while investigating allegations of an unreported judgment against Derksen. Further, between December 2012 and March 2013, the Law Society wrote several letters and left a voicemail message for Derksen, while investigating concerns arising from a compliance audit of his practice. Derksen failed to provide a prompt or substantive response to these communications.

Derksen did provide a letter to the Law Society dated May 15, 2013, but his response to requests for information and documents was incomplete. He provided further material to the Law Society on the date of his hearing, but without time to review that material, it could not be determined if the material answered all of the requests for information.

Admission and disciplinary action

Derksen acknowledged that he had not, prior to the hearing, provided a full response to the Law Society's requests for information and admitted that his conduct constituted professional misconduct.

Derksen took issue with the allegation that he failed to respond substantively to three specific Law Society letters. However, he admitted that, in a global sense, he failed to provide prompt or adequate responses to Law Society communications regarding both investigations. He characterized his efforts as imperfect and ongoing rather than a refusal to respond.

Derksen argued that the current Code requirement that a lawyer reply promptly and completely to any communication from the Law Society only came into effect on January 1, 2013, after the date of the initial correspondence. The panel rejected his argument. The former Handbook, in addition to requiring a prompt response to any communication from the Law Society, also required Derksen to provide documents, not improperly obstruct or delay an investigation, cooperate with an investigation, and otherwise comply with the Law Society's regulation of his practice. Derksen did not meet those obligations. Further, his failure to respond continued after January 1, 2013, when the current Code came into force.

The panel considered a number of aggravating factors including that Derksen was a senior lawyer, had an extensive professional conduct record, and his misconduct was persistent over an extended time period.

Derksen's effort to comply with the requests for information made of him, albeit late, was viewed as a mitigating factor.

Failure by a lawyer to respond to communication from the Law Society is serious. Complete and timely cooperation from lawyers is necessary for the Law Society to regulate the profession effectively.

The panel accepted Derksen's admission and ordered that he:

1. provide a complete and substantive response to the inquiries made in the Law Society's letters;
2. be suspended from practising law for one month; and
3. pay \$2,000 in costs.

The panel also ordered that three affidavits be sealed to protect confidential information contained in those documents.

Review