2014 LSBC 39
Decision issued: September 3, 2014
Citation issued: October 8, 2013

THE LAW SOCIETY OF BRITISH COLUMBIA

In the matter of the *Legal Profession Act,* SBC 1998, c. 9

and a hearing concerning

RONALD WAYNE PERRICK

RESPONDENT

DECISION OF THE HEARING PANEL
ON FACTS AND DETERMINATION

Hearing date:	June 16, 17 and 18, 2014
Panel:	David Mossop, QC, Chair John M. Hogg, QC, Lawyer Linda Michaluk, Public representative
Counsel for the Law Society:	Kieron Grady
Appearing on his own behalf:	Ronald W. Perrick

BACKGROUND

Introduction

[1] This case raises two separate issues. The first issue is quality of service found in the *Professional Conduct Handbook* of the Law Society and now found under the *Code of Professional Conduct*. Simply put, when does a member's lack of service to the client result in a finding of professional misconduct? This case is marked by the Respondent's failure: to keep his client reasonably informed; to file necessary court documents in a timely manner; and, to advance the client's claim in an efficient and timely manner.

[2] The second issue is the failure of the Respondent to respond reasonably promptly to the correspondence from lawyers on the other side.

Citation

[3] The citation reads as follows:

1. In the course of representing your client, SM, in matters arising from motor vehicle accidents on or about April 9, 2002 and December 2, 2004, you failed to serve her in a conscientious, diligent and efficient manner so as to provide a quality of service at least equal to that which would be expected of a competent lawyer in a similar situation, contrary to Chapter 3, Rules 3 and 5 of the *Professional Conduct Handbook* then in force. In particular, you failed to do some or all of the following:

    (a) keep your client reasonably informed by failing to provide her with copies of material correspondence sent to you about the accidents or inform her of the contents of that correspondence;

    (b) disclose to your client the service of a Demand for Discovery of Documents dated December 14, 2004 and her obligations pursuant to that Demand;

    (c) disclose to your client that opposing counsel had requested Examinations for Discovery be conducted;

    (d) disclose to your client that a mediation had been scheduled for September 19, 2008 until after the date was cancelled;

    (e) provide your client with a copy of the Formal Offer to Settle dated April 3, 2006 and discuss the Offer with your client and explain to her the consequences of rejecting the Offer;

    (f) disclose promptly to your client that opposing counsel was seeking to have the claims dismissed and adequately explain to her the chances of that occurring;

    (g) provide your client with copies of application materials provided by opposing counsel in February 2009 and July 2009 seeking to dismiss her claims;

    (h) promptly file a Statement of Claim in respect of the April 9, 2002 accident as required by the Supreme Court Rules;

(i) promptly file a Statement of Claim in respect of the December 2, 2004 accident as required by the Supreme Court Rules; and

(j) take substantive steps, promptly or at all, to advance your client's claims to settlement or trial.

This conduct constitutes professional misconduct, pursuant to section 38(4) of the *Legal Profession Act*.

2. In the course of representing your client, SM, in matters arising from motor vehicle accidents on or about April 9, 2002 and December 2, 2004, you failed to reply reasonably promptly to some or all of the letters dated December 14, 2004; March 3, 2005; April 4, 2005; May 13, 2005; October 14, 2005; December 8, 2005; September 26, 2006; February 6, 2007; *November 4, 2008* and *April 27, 2009*, from opposing counsel that required a response, contrary to Chapter 11, Rule 6 of the *Professional Conduct Handbook* then in force.

This conduct constitutes professional misconduct, pursuant to s. 38(4) of the *Legal Profession Act*.

Evidence and admission

[4] The following witnesses were called by the Law Society of BC:

(a) SM, the former client;

(b) Fernanda Batista, a staff lawyer with ICBC;

(c) Christopher Doll, a private lawyer representing ICBC;

(d) Brenda Adlem, a staff lawyer with the Law Society of British Columbia; and

(e) the Respondent.

[5] In addition, documentary evidence was also presented to the Hearing Panel.

[6] The Respondent gave evidence in chief on the last day of the hearing. During his evidence, the Respondent indicated that he was prepared to make some admissions in regards to the citation. At that point, the Hearing Panel adjourned for lunch and gave the Respondent and counsel for the Law Society time to see if an agreement could be reached.

[7] After lunch, the parties indicated that an agreement had been reached. The Respondent would admit all of the matters listed in the first allegation other than 1(c) and 1(e); the Law Society counsel agreed to withdraw 1(c) and 1(e).

[8] With respect to the second allegation in the citation, the parties agreed that the Respondent would admit to allegation 2 in regards to all matters other than the letters dated November 4, 2008 and April 27, 2009. The Law Society agreed to withdraw those matters from the allegation 2.

[9] For clarity then, matters that that have been withdrawn are highlighted in italics in the citation reproduced above. We refer to this as the amended citation.

[10] Even though the parties have reached an agreement that professional misconduct took place, this Panel still has to satisfy itself that professional misconduct happened. In most cases, the parties present a statement of agreed facts. However, in this case, the admission took place during the proceedings.

[11] This Panel is satisfied that professional misconduct took place in respect of the amended citation.

ISSUES

[12] Did the Respondent engage in professional misconduct in the quality of service provided to SM as set out in the amended citation?

[13] Did the Respondent engage in professional misconduct in failing to respond reasonably promptly to correspondence from the other side's lawyers?

FACTS

The lawyer and the client

[14] The Respondent obtained an undergraduate BA in commerce in 1969. He subsequently went to the University of Saskatchewan law school for his first year law. He then transferred to UBC law school. He graduated from UBC with a law degree and articled.

[15] He became of partner of a firm in Richmond for the most part of the 1970s.

[16] He left the firm in 1979 on good terms. He set up his own practice as a sole practitioner in North Vancouver on May 31, 1979. He has been practising as a sole practitioner since that date in that city.

[17] This practice in North Vancouver suited his lifestyle. The Respondent is married and has six children. Five of these children are adopted. There are also grandchildren. This extended family lives mostly in the North Vancouver area.

[18] The Respondent's law office is just a few minutes away from his home. The Respondent had set up a good work-life balance. His family thrived. He is also proud of the fact that he handled close to 10,000 files during his legal career.

[19] SM is the wife of a friend and business associate of the Respondent. That friend first referred SM to the Respondent in 1996 in regards to a motor vehicle accident. At that time, the Respondent provided SM with unbundled legal services. However, at that time we did not call such services unbundled legal services. What the Respondent did for SM was to advise her on the settling of the motor vehicle accident with ICBC. The client, SM, dealt directly with ICBC and directly negotiated the settlement. This worked to her advantage. The initial offer of settlement made by ICBC was $3,500. She ultimately was able to get $10,000. The Respondent charged SM around $1,000. SM's evidence before the tribunal was that she was satisfied with the legal services provided by the Respondent in regards to this matter. The evidence also was that there was no written retainer agreement between the Respondent and SM.

The April 9, 2002 accident (accident number one)

[20] SM was driving a Ford Escape with her daughter as a passenger. The car was rear-ended, and an airbag was deployed. SM complained of left buttock and low back pain and neck pain. She was taken to UBC hospital. As time went on she complained of other symptoms common with rear-end collisions. She was given medication to control the pain and saw a physiotherapist and a massage therapist. She missed some work. The symptoms continued for some time.

[21] SM dealt directly with ICBC in an attempt to negotiate a settlement. This was not the first motor vehicle accident that SM had been involved in, and therefore she had some experience in dealing with adjusters. Although not a novice in this area, she certainly did not have the experience or the skills of an experienced personal injury lawyer.

[22] ICBC made an offer directly to her of $25,000.

[23] In the fall of 2003, SM contacted the Respondent to see if he could assist her in settling the matter.

[24] There was no written retainer between the parties. There is no agreement as to how the legal fees were to be calculated. Was it going to be on an hourly basis or on a contingency basis? The evidence of SM and the Respondent about the exact nature of the retainer left a great deal to be desired. However, after the initial contact SM continued to deal with the adjusters at ICBC. At the same time, the Respondent did provide some classic legal services to SM, namely the issuance of the Writ of Summons on March 31, 2004, just ten days before the expiration of the two-year limitation period. The best way to describe the implied retainer agreement between the parties is that SM would continue to negotiate with the adjustor while the Respondent would handle legal matters. However, in 2005, ICBC demanded SM deal through her lawyer, the Respondent.

[25] The retainer lasted from the fall of 2003 until June of 2011 when SM finally obtained her money ($20,000) from the Respondent. In the Panel's view, this is a very long time for a very simple case.

The December 2, 2004 accident (accident number two)

[26] To complicate matters, SM and her daughter were involved in another motor vehicle accident on December 2, 2004. Again, there was a rear-end collision with soft tissue injuries. There was no issue of liability. This retainer was never completed to settlement or trial by the Respondent. SM became disenchanted with the legal services provided by the Respondent. However, to be fair to the Respondent, SM ultimately settled on terms similar to what the Respondent was able to negotiate with ICBC.

[27] Overall, SM was not satisfied with the legal services provided by the Respondent in regards to accident number one and accident number two. Her dissatisfaction led her to retain other counsel on accident number two and bring a negligence action against the Respondent. This action was ultimately settled out of court.

[28] The Respondent admits he failed to keep SM reasonably informed and to provide her with copies of material correspondence sent to him about the above two accidents, or to reasonably inform her of the content of such correspondence. SM's evidence corroborates this.

[29] The Respondent had been served with a Demand for Discovery of Documents dated December 14, 2004 in regards to accident number one. He failed to inform SM of this promptly. Of more importance, he failed to inform SM of her obligations under the *Rules of Court* in regards to this Demand for Discovery of Documents.

[30] The Respondent admits that he failed to inform SM that mediation had been scheduled for September 19, 2008 until after the date was cancelled.

[31] The Respondent was late in filing a Statement of Claim in regards to accident number one. The original Writ was filed on March 31, 2004. The Statement of Claim was not filed until July 8, 2005, some sixteen months later. Counsel on the other side was constantly asking the Respondent to file and serve a Statement of Claim. He delayed.

[32] This is not the only time he failed to file a Statement of Claim in a timely manner pursuant to the *Rules*. In regards to accident number two, the original Writ was issued on November 29, 2006, but was never served. Nevertheless, an Appearance was filed by counsel for ICBC on October 2, 2008. However, the Respondent did not file a Statement of Claim until August 14, 2009; again well beyond the time limits specified by the *Rules of Court*. This, no doubt, was spurred on by a Notice of Motion (Application) to have the action regarding accident number two dismissed for failure to provide both a Statement of Claim and a List of Documents.

[33] There was also an application brought by opposing counsel in regards to accident number one for failure to provide a List of Documents. This will be discussed below.

[34] The Respondent recommended that SM settle accident number one for the same amount she was offered back in 2003, namely $25,000. This offer had been made directly to her by ICBC. The Respondent had done nothing to increase the amount that SM ultimately settled for some years later. The Respondent failed to respond properly to a number of letters from the lawyers on the other side in regards to accident number one.

[35] These letters were dated December 4, 2004; March 3, 2005; April 4, 2005; May 13, 2005; October 14, 2005; December 8, 2005; September 26, 2006; and February 6, 2007.

[36] These letters demanded a number of things, including service of the Statement of Claim and demands for the List of Documents. Finally, counsel for the other side brought an application to dismiss both actions for failure to provide a List of Documents and failure to provide a Statement of Claim in regards to accident number two.

[37] The Respondent failed to provide copies of these applications to SM or disclose the nature of the application to SM. Finally, he failed to explain to her the chances of both claims being dismissed by the court.

[38] Then there is the issue of the settlement of the claims. In regards to accident number one, a reading of his Statement of Accounts to SM indicates the following:

(a) There is no evidence that he obtained a medical opinion or talked to Dr. G, the family doctor, about accident number one.

(b) There is no indication that he read over the medical records of Dr. G. Instead he relied on an opinion from a specialist, Dr. T. This doctor was paid for by ICBC.

[39] From a common sense point of view, this Panel finds it a marked departure for a lawyer to recommend a settlement when he had not reviewed the medical records of the family doctor. He had not talked to the family doctor about the accident or sought a second medical opinion. Instead he relied on a medical report from a doctor hired by ICBC.

[40] SM responded to the quality of the legal services of the Respondent by the following:

(a) Accident number two was transferred to another lawyer;

(b) SM had the Respondent's account reviewed under the *Legal Profession Act* by a Master of the BC Supreme Court. The Master reduced the Respondent's fee from $3,866.96 to $500.

(c) SM launched a negligence action lawsuit against the Respondent with respect to his handling of both motor vehicle accidents. She settled out of court.

ANALYSIS AND REASONING

[41] Counsel for the Law Society referred to a number of cases dealing with quality of service including:

Law Society of BC v. Tsang, 2005 LSBC 18;

Law Society of BC v. Epstein, 2011 LSBC 12:

Law Society of BC v. McLellan, 2001 LSBC 23;

Law Society of BC v. Wilson, 2012 LSBC 06;

Law Society of BC v. Simons, 2012 LSBC 23;

Law Society of BC v. Johnston, 2013 LSBC 04;

Law Society of BC v. Perrick, 2014 LSBC 03; and

Law Society of BC v. Hart, 2014 LSBC 17.

[42] These cases are of limited value. Most of the cases proceeded on the basis of an agreed statement of facts and admission that professional misconduct took place. There is very little legal analysis of what quality of service means.

[43] However, there is one case that is of some assistance to this panel. In *Law Society of BC v Epstein*, 2011 LSBC 12 at paragraphs 15 and 16 the following is stated:

> [15] The test for determining whether professional misconduct has occurred is that set out in *Law Society of BC v. Martin*, 2005 LSBC 16 at paragraph [171], namely, *"whether the facts as made out disclose a marked departure from that conduct the Law Society expects of its members." The panel in Martin also noted (at paragraph [154]) that a lawyer's conduct meets that standard if it "displays culpability which is grounded in a fundamental degree of fault, that is, whether it displays gross culpable neglect of his duties as a lawyer."*
>
> [16] The Law Society's *Professional Conduct Handbook* is one source of information as to the conduct the Law Society expects of its members. Chapter 3, Rule 3, headed "Quality of Service", reads, in part:
>
> > A lawyer shall serve each client in a conscientious, diligent and efficient manner so as to provide a quality of service at least equal to that which would be expected of a competent lawyer in a similar situation. Without limiting the generality of the foregoing, the quality of service provided by a lawyer may be measured by the extent to which the lawyer:
> >
> > (a) keeps the client reasonably informed,
> >
> > (c) responds, when necessary, to the client's telephone calls,
> >
> > (f) answers within a reasonable time a communication that requires a reply,

> (g) does the work in hand in a prompt manner so that its value to the client is not diminished or lost,
>
> (h) prepares documents and performs other legal tasks accurately,
>
> [emphasis added]

[44] What does this quotation mean? This Panel feels the question of quality of service means something beyond pure negligence. This comes from the requirement of a marked departure that is characterized by gross culpable neglect of a lawyer's duties. Although that threshold may be passed in a single incident, it is more likely to happen in multiple occurrences in representing the client. In addition, the quality of service requirement may happen when each of the individual occurrences of themselves are not sufficient to raise concerns about quality of service. However, cumulatively, they may raise issues of quality of service.

[45] Issues of quality of service can be divided into two general categories. One category can be described as the common sense category. An average person can determine this. This category would include such matters as: keeping the client informed, responding to correspondence, and filing court documents on time, to name a few.

[46] The second category is more sophisticated. What is the standard of a competent lawyer in handling the file? How do you gather the facts? What legal research do you do? How do you prepare for settlement, mediation or trial? This *may* require evidence from other lawyers practising in the area. This could be described as the professional category.

[47] This Panel wishes to make it clear that these two categories are not mutually exclusive. They can overlap. For instance, the failure of a lawyer to interview witnesses, to review important documents, to name a few, may be proved by a common sense approach or by professional evidence.

[48] The Respondent did not serve SM in a conscientious, diligent and efficient manner equal to that expected of a competent lawyer in similar circumstances. This Panel recognizes that the relationship between the Respondent and SM was a bit unusual. It was not your traditional lawyer-client relationship as far as a personal injury claim is concerned. The relationship was for the unbundling of legal services. This Panel wishes to make it clear that it makes no finding that lawyers and clients cannot enter into the unbundling arrangements for legal services in regards to

personal injury matters. However, in this case, there was a marked departure in the quality of service provided.

[49] This Panel has no hesitation in accepting the admissions of the Respondent that professional misconduct alleged in the citation took place, as indicated in paragraphs 2 and explained in paragraphs 6 and 7 above.

[50] This Hearing Panel notes the explanation given by the Respondent. He was busy with his own litigation and another complaint against him that was in front of the Law Society. This is no excuse or defence at the liability stage.

RESULT

[51] This Panel finds that the Respondent did not serve his client SM in a conscientious, diligent and efficient manner so as to provide a quality of service at least equal to what would be expected of a competent lawyer in a similar situation.

[52] Allegation 1, as amended, is held to be professional misconduct.

[53] In regards to allegation 2, as amended, this Panel has no difficulty in holding that the Respondent committed professional misconduct in not responding reasonably promptly to the letters mentioned in allegation 2. Again, this is professional misconduct and is a marked departure from what is expected of a lawyer.