

2004 LSBC 34

Report issued: September 24, 2004

Citation issued: April 21, 2004

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

JAMES DOUGLAS HALL

Respondent

Decision of the Hearing Panel on Facts and Verdict

Hearing date: September 14, 2004

Panel: G. Glen Ridgway, Q.C., Chair, Robert Gourlay, Q.C., Bruce LeRose

Counsel for the Law Society: Todd Follett

Not Appearing: James D. Hall

Background

[1] On the 21st day of April, 2004, a citation was issued against the Respondent pursuant to the *Legal Profession Act*. The citation directed that this hearing panel inquire into the Respondent's conduct respecting the following:

1. In 1998, you represented your client KB and a numbered company in a proposed rezoning and redevelopment of property located at 2800 Bryn Maur Road in the District of Langford, British Columbia. As part of the contemplated rezoning of the subject property, you gave the following undertaking to the District of Langford in a letter dated November 25, 1998:

" Pursuant to your letter to [KB] dated August 27, 1998 we hereby give our undertaking to register the attached restrictive covenant upon rezoning of 2800 Bryn Maur Road."

You breached the undertaking by failing to register the said restrictive covenant upon the rezoning of 2800 Bryn Maur Road being completed, contrary to Chapter 1, subparagraph 4(2) and Chapter 11, paragraph 7 of the *Professional Conduct Handbook*.

[2] The citation was entered as Exhibit 1.

[3] The Affidavit of Service of the citation on the Respondent was entered as Exhibit 2. The Respondent was properly served with the citation.

[4] A letter from the Respondent was entered as Exhibit 3. The letter had been faxed to Counsel for the Law Society at 8:34 a.m. on September 14, 2004, by the Respondent in Victoria. The hearing was to commence at 9:30 a.m. on that day.

[5] The letter from the Respondent stated as follows:

Upon reviewing the materials and reflection of the facts as I recall I now am prepared to admit that I have in fact Breached and [sic] undertaking to the District of Langford. This breach was inadvertent but was a breach nonetheless.

I am unable to attend today hearing but ask that you convey my admission to the panel. As far as the penalty phase is concerned I would prefer to attend at a later date. If that is not possible I rely on the justice of our benchers.

The Evidence

[6] In addition to the Respondent's letter, the Law Society tendered a book of documents as an Exhibit and the evidence of Robert Buchan, the Chief Planner for the District of Langford, and Howie Caldwell, a staff lawyer with the Law Society.

[7] Mr. Buchan testified that a member of his staff had written to the Respondent's client seeking assurance that the terms and conditions of rezoning would be met. That assurance could be provided in one of three methods, namely:

- a) a registered development agreement which prohibits development until the \$40,000.00 is paid to the District and the sidewalk is bonded;
- b) a copy of the development agreement and your solicitor's letter of undertaking (stating that they intend to register the covenant upon final reading of the rezoning bylaw); or
- c) your letter of credit for the contribution to the pedestrian crossing and the cost of the sidewalk.

This was in a letter dated August 27, 1998.

[8] Mr. Buchan indicated that the District of Langford received a letter from the Respondent, dated November 25, 1998, in which the Respondent stated:

We are solicitors for KB and # B.C. Ltd. who have applied on behalf of the owners for rezoning of the above noted property.

Pursuant to your letter to Mr. B dated August 17, 1998 we hereby give our undertaking to register the attached restrictive covenant upon rezoning of 2800 Bryn Maur Road.

[9] Mr. Buchan testified that he wrote to the Respondent on December 3, 1998, stating that rezoning was complete and calling for registration of the covenant.

[10] The District, having received another application respecting the subject property, and having searched the title, wrote to the Respondent on April 23, 2001, noting that the covenant was not registered.

[11] Mr. Buchan had testified that he had considered a lawyer's undertaking to be "as good as gold," but the District had now altered their policy on accepting a lawyer's undertaking.

[12] The District received no response to that letter and referred the matter to Legal Counsel, who wrote to the Respondent respecting this matter on May 9, 2001; June 27, 2001; and August 23, 2001.

[13] The Respondent did not respond to any of these three letters.

[14] Legal Counsel, on behalf of the District of Langford, commenced legal proceedings against the Respondent and advised the Law Society of these proceedings and the breach of undertaking on December 4, 2002.

[15] Mr. Caldwell gave evidence that he was the staff lawyer assigned this complaint. He received a letter from the Respondent, dated November 25, 2003, in which the Respondent stated that he had not been advised of the rezoning, his client had abandoned the project, foreclosure proceedings had been commenced, and as such, he could not register the covenant.

[16] The Respondent subsequently advised Mr. Caldwell that he thought the rezoning had been abandoned, his client had gone to Australia, and his client had declared bankruptcy.

Decision

[17] The Panel finds that the Respondent has breached the undertaking of November 25, 1998, and as such, is guilty of professional misconduct.