

[2003] LSBC 34

Report issued: September 30, 2003

Oral reasons: September 25, 2003

Citation issued: June 19, 2003

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
Facts and Verdict**

Hearing date: September 25, 2003

Panel : G. Ronald Toews, Q.C., Chair, Patricia Schmit, Q.C., G. Glen Ridgway, Q.C.

Counsel for the Law Society: Luisa Hlus

No-one Appearing on Behalf of the Respondent

Background

[1] On June 19, 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 inquire into the Respondent's conduct as follows:

1. Your conduct in that you failed to respond to communications from the Law Society, those communications being correspondence from a Professional Conduct Lawyer dated February 5, 2003, March 7, 2003, March 24, 2003 and April 4, 2003, contrary to Rule 3, Chapter 13 of the Professional Conduct Handbook.

[2] At the commencement of the hearing Law Society counsel was present but the Respondent was not. Law Society counsel advised this Panel that the Respondent had contacted the Law Society by fax. Counsel placed the fax before the Panel. In it the Respondent advised:

" I am unable to attend the hearing due to a conflict. I request that the matter be adjourned.

If no adjournment is granted I am prepared to admit to professional misconduct in not responding to enquiries from the Law Society.

I request that the penalty phase of the hearing be set at a later date when I am able to attend.

I trust you will find the above to be in order."

[3] Law Society counsel stated her position that the Law Society wished to proceed with the hearing at the scheduled date and time.

[4] This Panel ruled that the hearing would proceed on September 25, 2003, without further notice to the Respondent.

[5] Law Society counsel entered the citation and an affidavit of service showing that the citation, together with a letter from the Executive Director of the Law Society, setting a hearing date of September 25, 2003, had been served on the Respondent on June 20, 2003. Law Society counsel also submitted a copy of the Respondent's fax, referred to above, together with a cover sheet from the Respondent for that fax, which this Panel admitted as Exhibit 3.

[6] This Panel finds that the Respondent has been properly served and that he was made aware of this hearing date.

[7] The Law Society called two witnesses, both Law Society staff: Howie Caldwell and David McCartney. Through these witnesses, Law Society counsel submitted a Book of Documents which the Panel admitted into evidence. The Book of Documents consisted of copies of five letters from Mr. Caldwell to the Respondent, from February 5, 2003 to April 24, 2003, and the Respondent's responses, by fax on February 24, 2003, and by telephone (as represented by a copy of Mr. Caldwell's note of a telephone conversation he had with the Respondent on April 7, 2003).

[8] The evidence of the witnesses and the documentary evidence may be summarized as follows:

- (a) a complaint was made to the Law Society about the Respondent by another B.C. lawyer;
- (b) in a letter dated February 5, 2003, Law Society staff advised the Respondent of the substance of the complaint and asked if the Respondent could provide any information which would assist the Law Society in responding to the complainant. That letter advised the Respondent that he might wish to consult counsel before responding and that he should report the matter to the Lawyer's Insurance Fund. The letter asked for a response within four weeks of February 5, 2003;
- (c) the Respondent replied with a fax, dated February 24, 2003, to Law Society staff which stated that he would respond to the letter by February 27, 2003;
- (d) Law Society staff did not, in fact, receive any other response to the letter of February 5, 2003, until April 7, 2003, despite reminder letters sent March 7th, March 24th, and April 4th, 2003;
- (e) Mr. Caldwell had a brief telephone conversation with the Respondent on April 7, 2003, during which the Respondent said that he would respond " by Wednesday" , April 9, 2003;
- (f) Law Society staff did not, in fact, receive any further response from the Respondent after April 7, 2003;
- (g) Mr. Caldwell wrote a final letter to the Respondent, dated April 24, 2003, advising him that he was referring the matter to the Discipline Committee. That letter repeats his request for a response to the original complaint and also asks for an explanation for the Respondent's failure to respond. It repeats an earlier recommendation that the Respondent discuss the matter with counsel;
- (h) Mr. Caldwell's letter of April 24, 2003, was personally delivered on the Respondent by Mr. McCartney on April 25, 2003;
- (i) The Respondent has never responded to the substance of the matters raised in Mr. Caldwell's letter of February 5, 2003, regarding the original complaint.

[9] This Panel finds that the allegation in the citation has been made out and that the Respondent is guilty of professional misconduct.

[10] Submissions on penalty and costs will be heard on a date to be fixed by the Hearing Administrator.