

2016 LSBC 32  
Decision issued: September 23, 2016  
Citation issued: December 22, 2010

**THE LAW SOCIETY OF BRITISH COLUMBIA**

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

**and a Section 47 Review concerning**

**PAMELA SUZANNE BOLES**

**RESPONDENT**

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**DECISION OF THE BENCHERS ON  
AN APPLICATION TO INTRODUCE  
FRESH EVIDENCE**

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Application date: May 4, 2016

Benchers: Gregory Petrisor, Chair  
Jeff Campbell, QC  
Lisa Hamilton  
Dean Lawton  
Sharon Matthews, QC  
Steven McKoen  
Mark Rushton

Discipline Counsel: Mark D. Andrews, QC and Gavin Cameron  
Counsel for the Respondent: Richard C. Gibbs, QC

- [1] A hearing panel found the Respondent had breached Law Society Rules, but had not committed professional misconduct, with regard to the following allegations in an amended citation:

Between 2004 and 2008, the following monetary judgments were entered against you or your law corporation ... which you or your law corporation failed to satisfy within seven days after the date of entry of each judgment. You failed to notify the Executive Director in writing of the circumstances of each judgment and your proposal for satisfying each judgment, contrary to Law Society Rule 3-44(1):

...

- c. Certificate filed in the Federal Court of Canada on March 16, 2005, under [number] against you for \$157,019.45 plus interest.

...

- e. Certificate filed in the Federal Court of Canada on July 27, 2004, under [number] against your law corporation for \$48,005.06 plus interest.

...

- g. Certificate filed in the Federal Court of Canada on February 6, 2004, under [number] against you for \$9,371.91 plus interest.

- h. Certificate filed in British Columbia Supreme Court on September 8, 2005, under Action No. [number] against your law corporation in regard to an obligation in default under the *Social Service Tax Act* in the amount of \$6,528.46.

...

This conduct constitutes one or more of a breach of the *Act* or Rules, professional misconduct, and/or incompetent performance of duties as a lawyer.

- [2] The Law Society seeks a review of that determination by the hearing panel. The Review is scheduled to take place in the near future.
- [3] The Law Society is not pursuing findings in respect of the allegations contained in subparagraphs (a), (b), (d), (f), or (i) of the amended citation.
- [4] The Respondent has applied for:
- an order that the Law Society disclose the documents and information it holds as to what members have been discovered to have failed to report certificates under Rule 3-44, what has been done in respect of those failures to report, and the inclusion of that evidence in the Record of their review.
- [5] The Respondent argues that the information sought is relevant and admissible as evidence of breaches of Rule 3-44 by other lawyers, and evidence of the disposition of those Rule breaches by the Law Society, assists in assessing whether the Respondent's conduct constitutes professional misconduct. The Respondent argues that, without evidence of a normative standard of conduct by lawyers as a whole, any consideration of the Respondent's conduct cannot be objective and would, by its nature, be arbitrary.
- [6] The Respondent argues that the information sought is within the control of the Law Society and the Law Society cannot be allowed to use difficulties in producing the information caused by the Law Society's methods of gathering, storage and retrieval of that information as a reason not to disclose the information.
- [7] The Respondent characterizes her application for disclosure as relatively focused, and not obstructionist, in contrast to the request for disclosure considered in *Law Society of BC v. McLean*, 2016 LSBC 10, which sought information dating from 1884 to the present.
- [8] The Respondent argues that Section 87 of the *Legal Profession Act* does not apply to this Review as proceedings under Part 4 (discipline proceedings) and Part 5 (hearings and reviews) are excluded from the definition of "proceeding" in Section 87.

#### **POSITION OF THE LAW SOCIETY**

- [9] The Law Society argues that the information sought by the Respondent is not relevant or admissible.

- [10] The Law Society argues that Section 87 of the *Legal Profession Act* and Rule 3-3(1) prohibit disclosure of a complaint, or a lawyer's response to a complaint, or any documents created by the Law Society concerning an investigation, audit, inquiry, hearing or review.
- [11] The Law Society produced an affidavit from Jatinder Jaia Rai, Manager of Discipline and Unauthorized Practice, of the Law Society. Ms. Rai was cross-examined by the Respondent's counsel. Ms. Rai's evidence, in part, is:
- (a) breaches of Rule 3-44 may not be indexed as such in the Law Society's information system, because of:
    - i. instances of alleged misconduct having more than one description; or
    - ii. human error in data entry;
  - (b) any key word search broad enough to ensure reliability would result in perhaps millions of documents having to be manually reviewed;
  - (c) the systems in place for entry, storage, and retrieval of data are imperfect, are limited by available resources, and were never designed for as broad an inquiry as that posed by the Respondent's application.

## **DISCUSSION**

[12] The critical determination to be made is whether the information sought by the Respondent is relevant. This Review Board will have to determine whether the Respondent's conduct, in the circumstances, constitutes professional misconduct. That determination will require a full examination and analysis of the material facts. Data of the number of breaches of Rule 3-44 committed by other lawyers over a specific time period, and the outcome of each such breach is not, in and of itself, helpful in that determination. Even if the Law Society were to produce the documents and information it holds as to which lawyers have been discovered to fail to report certificates under Rule 3-44, and what has been done in respect of those failures to report, there is no evidence that such documents and information would allow a meaningful comparison of the material facts surrounding any other breaches to the material facts of this matter. Accordingly, there is no evidence that the documents and information sought are relevant.

[13] A breach of Rule 3-44 (now Rule 3-50) is not necessarily, in and of itself, professional misconduct. A finding of professional misconduct in another instance

of a lawyer breaching Rule 3-44 would not be determinative of this case. Conversely, another instance of a breach of Rule 3-44 by another lawyer that did not lead to a citation, is not determinative of this case. Other instances of breaches of Rule 3-44 that did not result in citations being issued, regardless of the number of those other instances, cannot be determinative of this case. A determination of the Respondent's conduct in this case will require a complete analysis of the circumstances surrounding this Respondent's own conduct.

- [14] Section 87 of the *Legal Profession Act* prohibits disclosure of complaints or lawyers' responses in any circumstance, except with the written consent of the complainant, or the lawyer, respectively. That information is inadmissible in "proceedings", as defined in Section 87(1). Proceedings under Parts 2, 3, 4, and 5 of the *Legal Profession Act*, including discipline hearings and reviews, are excluded from the definition "proceedings" in Section 87(1). As a result, the Law Society cannot be compelled to produce the complaints and responses. Those complaints and responses are not rendered inadmissible by Section 87, but they cannot be compelled to be disclosed, and as we have determined, they are not relevant.
- [15] Rules 3-3(1) and (2) of the Law Society Rules prohibit disclosure of information or records that form part of the investigation of a complaint or the review of a complaint by the Complaints' Review Committee except:
- (a) for the purpose of complying with the objectives of the *Act* or the Rules, as set out in Rule 3-3(1);
  - (b) that the Executive Director of the Law Society may disclose information relating to a complaint with the consent of the lawyer who is the subject of the complaint, as set out in Rule 3-3(2)(a); or
  - (c) that the Executive Director of the Law Society may disclose limited prescribed information regarding a complaint if the complaint has become known to the public, as set out in Rule 3-3(2)(b).
- [16] We are not satisfied that disclosure is required for compliance with the objectives of the *Legal Profession Act* or the Law Society Rules. Protection of the public interest in the administration of justice and effective regulation of the legal profession are not furthered by disclosure of the information and documents sought by the Respondent.
- [17] Disclosure as sought by the Respondent will not, as we have stated, assist us in the determination of the Review concerning the Respondent's conduct. In addition,

complainants and lawyers have a legitimate interest in their privacy and a right to expect that information obtained in the course of an investigation will not be used for purposes other than that for which it was obtained. The public interest is served by respecting those privacy interests and expectations.

- [18] We accept the evidence of Ms. Rai that production of information regarding breaches of Rule 3-44 by other lawyers held by the Law Society may result in unreliable information or, that a search conducted with a scope broad enough to ensure reliable data will require an unreasonable amount of resources.
- [19] Section 47(4) of the *Legal Profession Act* allows a review board to hear new evidence in exceptional circumstances. Before the hearing panel, the Respondent sought to obtain the evidence sought in the present application by issuing summonses to two Law Society employees. Those summonses were quashed on application to the hearing panel. There is now no suggestion by the Respondent that the hearing panel was not able to properly adjudicate the allegations against her with the information the hearing panel had available. In those circumstances, we do not accept that there are special circumstances that compel or allow us to hear evidence that is not part of the record.

## **DECISION**

- [20] For the reasons set out above, we dismiss the Respondent's application. The parties are at liberty to make submissions regarding costs.