

2005 LSBC 30

Report issued: July 18, 2005

Oral Reasons: July 14, 2005

Citation issued: February 8, 2005

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

### **Ian Armstrong Hobbs**

Respondent

### **Decision of the Hearing Panel**

Hearing date: July 14, 2005

Panel: Patricia L. Schmit, Q.C., Single Bencher Panel

Counsel for the Law Society: Brian McKinley

Counsel for the Respondent: Christopher Hinkson, Q.C.

### **Background**

[1] On February 8, 2005, a citation was issued against Ian Armstrong Hobbs ("the Respondent") pursuant to the *Legal Profession Act* and Rule 4-13 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. This citation directed that this Hearing Panel inquire into allegations:

1. That you, contrary to Chapter 13, Ruling 3 of the *Professional Conduct Handbook*, failed to respond promptly, or at all, to the following communications from the Law Society regarding a complaint by E.M.:

(a) letters dated August 20, 2004, September 13, 2004, September 28, 2004, and October 12, 2004.

2. That you, contrary to Chapter 13, Ruling 3 of the *Professional Conduct Handbook*, failed to respond promptly, or at all, to the following communications from the Law Society regarding a complaint by R.R.:

(a) letters dated August 30, 2004, September 13, 2004, September 21, 2004, and October 4, 2004.

3. That you, contrary to Chapter 13, Ruling 3 of the *Professional Conduct Handbook*, failed to respond promptly, or at all, to the following communications from the Law Society regarding findings of an Audit Report dated August 31, 2004:

(a) letters dated September 22, 2004, October 7, 2004, October 19, 2004, and October 27, 2004;  
and

(b) a letter dated October 28, 2004, which also related to the complaint by E.M. and the complaint by R.R.; and

(c) a voicemail left for you on October 22, 2004, which also related to the complaint by E.M. and

the complaint by R.R.

[2] This matter came before this Panel sitting as a single Benchers pursuant to Rule 5-2(2) of the Law Society Rules.

[3] The Respondent was present at the hearing and on his behalf, Mr. Hinkson waived the requirements of Rule 4-15 of the Law Society Rules with respect to formal service of the citation.

[4] The Citation was marked as Exhibit 1.

#### Admissions

[5] Counsel submitted an Agreed Statement of Fact ("ASOF") which was filed as Exhibit 2. The ASOF contained the following admissions:

1. Ian Armstrong Hobbs was called to the Bar in British Columbia on September 11th, 2001.
2. From September 11th, 2001 until December 31st, 2001, Mr. Hobbs practiced law with Kerfoot, Cameron and Company in Vancouver. From January 1, 2002 until December 31st, 2004, Mr. Hobbs practiced law as a sole practitioner in Vancouver. Mr. Hobbs ceased to be a member of The Law Society of British Columbia (the "Law Society") on January 1st, 2005 for non-payment of fees.
3. On August 12th, 2004, the Law Society received a complaint from E.M., another member, by letter dated August 11, 2004. The nature of the complaint was that Mr. Hobbs had breached an undertaking.
4. On August 20th, 2004, Margaret Currie, a staff lawyer with The Law Society, wrote to Mr. Hobbs requesting a response to the complaint letter of Ms. M. Ms. Currie sent letters requesting a response to the letter of August 20th, 2004 on September 13th, September 28th, and October 12th, 2004.
5. By letter dated August 25th, 2004, Dr. R., a consultant psychiatrist, complained to the Law Society that Mr. Hobbs had failed to pay his statement of account dated June 2nd, 2004 for services rendered on one of Mr. Hobbs'files.
6. On August 30th, 2004, Ms. Currie wrote to Mr. Hobbs requesting a response to Dr. R.'s complaint. Ms. Currie sent letters requesting a response to the letter of August 30th, 2004 on September 3rd, September 21st, and October 4th, 2004.
7. On July 13th, 2004, an audit of the books, records and accounts of the law practice of Mr. Hobbs was ordered pursuant to Rule 3-79 of the Law Society Rules.
8. Ms. Currie wrote to Mr. Hobbs on September 22nd, 2004. She forwarded a copy of the Audit Report along with a request for Mr. Hobbs to promptly forward a detailed response to the findings set out on page 3 of the Report. She also asked Mr. Hobbs to address a number of other matters raised in the Report. Ms. Currie again wrote to Mr. Hobbs on October 7th, October 19th and 27th, 2004 requesting a response to her letter of September 22nd, 2004.
9. Ms. Currie tried to contact Mr. Hobbs by telephone. She called his telephone number on October 19th and 21st, 2004 and was advised by a recording that his mailbox was full. She called again on October 22nd, 2004 and left a message that it was urgent that he return her call to discuss the three outstanding matters.
10. On October 28th, 2004, Paul Willms, a Law Society Investigator, personally delivered to Mr. Hobbs a letter from Ms. Currie confirming her attempts by letter and by telephone to obtain his response to each of the three complaints.

11. By December 2nd, 2004, Mr. Hobbs had not responded at all to any of the letters sent by Ms. Currie or to the voicemail message left for him by her.

12. On December 2nd, 2004, the Discipline Committee resolved to recommend to the Chair of the Committee that there be a direction to issue a citation against Mr. Hobbs for his conduct in failing to respond to Law Society communications, and the Chair so directed. The Discipline Committee also resolved to require Mr. Hobbs to appear before a panel of three Benchers pursuant to section 39 of the *Legal Profession Act* to have the panel determine whether Mr. Hobbs should be suspended or have conditions placed on his practice pending final disposition of the citation. The Citation and Schedule issued on February 8, 2005 was served on Mr. Hobbs by letter to counsel received February 8, 2005.

13. On December 17th, 2004, a panel of three Benchers held a hearing pursuant to s. 39 of the *Legal Profession Act* and Rule 4-17 of the Law Society Rules, and ordered Mr. Hobbs to comply with certain conditions, including *inter alia*, a condition that he provide a substantive response to the Law Society by January 15th, 2005 in respect of all three of the outstanding complaint matters.

14. By letters dated January 17th, 2005, Mr. Hobbs provided substantive responses to Ms. Currie's requests for a response on the three outstanding complaint matters. Attachments 9, 10 and 11 are copies of those letters.

15. Between August 20th, 2004 and January 15th, 2005, Mr. Hobbs failed to respond at all to repeated requests for replies in correspondence from and voicemail messages left for him by staff lawyer Margaret Currie of the Law Society.

16. Mr. Hobbs admits that his failure to respond to the Law Society in these circumstances is professional misconduct.

[6] The Panel accepts the admission by the Respondent that his conduct described in the citation amounted to professional misconduct, and accordingly that finding will be recorded on his professional conduct record.

## **Penalty**

[7] Counsel for the Law Society filed the Respondent's Professional Conduct Record as Exhibit 3. The relevant portion of Exhibit 3 contained the decision of three Benchers in a proceeding pursuant to Section 39 of the *Legal Profession Act* and Rule 4-17 of the Law Society Rules, which is known as a "show cause" hearing where three Benchers may, among other things, suspend a Respondent, or impose conditions on his or her practice as an interim measure prior to hearing of the citation.

[8] In that decision the Respondent was placed on six conditions, including a condition that he provide a report from a medical doctor confirming fitness to practice law, provide ongoing semi-monthly reports concerning ongoing fitness, provide substantive responses to the Law Society regarding outstanding complaint matters, enter into a Practice Supervision Agreement, and deal with trust funds only through the offices of the Practice Supervisor.

[9] On January 1, 2005 the Respondent ceased practising for failure to pay his practice fees.

[10] The Respondent was called to the Bar of British Columbia on September 11, 2001.

[11] After practising briefly in a law firm, from January 1, 2002 to January 1, 2005, he practised as a sole practitioner.

[12] The Respondent is currently not practising and is awaiting the outcome of this Hearing before applying

to the Credentials Committee for readmission.

[13] In assessing penalty in cases of this nature the primary focus is on the protection of the public from acts of professional misconduct. It is impossible for the Law Society to protect the public if its members do not respond to it when they are asked to explain themselves.

[14] The case of *LSBC v. Ogilvie* [1999] LSBC 17, Penalty reasons, sets out a useful, though not exhaustive list of factors that can be taken into account in imposing penalty. The most useful considerations from *Ogilvie* that apply to this case along with this Panel's analysis, with respect to each of them are as follows:

a) nature and gravity of the Respondent's proven conduct: in the scheme of things, failure to respond to the Law Society goes to the very heart of the Law Society's ability to regulate the profession and thus, is very grave.

b) whether the Respondent has acknowledged his misconduct: The Respondent has done so.

c) specific deterrence; the Respondent has acknowledged the error in not responding to the Law Society and this Panel finds there is no need to deter him from such future behaviour. Counsel has advised that the Respondent began suffering from a severe depression in 2004. He has, in effect, not been working since September, 2004. He is the sole support of four children, of whom he has custody. Two of them are minors. He is currently not practising. It is anticipated that upon his return to practice, he will be subjected to various practice restrictions and condition, the terms of which will be imposed by the Credentials Committee. He is facing significant financial hardship as is evidenced from his personal circumstances and from the comments of the three Benchers in the decision at the Section 39 Hearing. His money can better accomplish public interest goals, for example, remediation, than pay fines and costs.

d) general deterrence; while there is a great need to convey to the profession the necessity of providing the Law Society with prompt and substantive responses to its inquiries, the facts of this case are not so severe as to require that the Respondent be made an example to the profession and the public generally.

e) need to ensure the public is confident in the integrity of the profession; range of similar penalties; As pointed out in *Re: James Douglas Hall* [2003] LSBC 11 (June 20, 2003 Penalty Decision) "...it is essential for lawyers to respond to Law Society communications, otherwise the Society cannot effectively discharge its responsibilities of protecting the public interest in the administration of justice. It is simple, lawyers neither have the freedom not to respond nor the freedom to respond according to a schedule that suits them." In this case this Panel agrees with Counsel for the Respondent that it serves no purpose to order a severe penalty, a suspension for example, which would, because the Respondent is not presently practising, have to be served upon his return to practice. When he does return to practice the Credentials Committee will impose practice conditions on the Respondent designed to assist him to succeed and thus further the public's protection and ensure the integrity of the profession is maintained.

[15] The difficulty for a Hearing Panel faced with a case of failing to respond is to reconcile the wide range of penalties which have been imposed in the plethora of cases dealing with this issue.

[16] This Panel notes that in the Review decision in the case *LSBC v. Hops* [2000] LSBC 11, the Review Panel had this to say, at paragraph 4:

"It is useful to consider that in no less than 45 instances have the Benchers found that failure to

respond to either the Law Society, a client or another lawyer has constituted professional misconduct over the period 1983 to date" .

[17] A cursory review of some of these cases discloses penalties ranging from indefinite suspension, as in *Re: Wittchen* Discipline Case Digest 98/21, Decision on Penalty 18.12.97, to a combination of fines and costs. In the cases of *Re: Basi*, Discipline Digest 1996 No. 2 August, and *Re: Hart* Discipline Digest 1997 No. 3 October, the members admitted that their conduct in failing to respond constituted professional misconduct and the citations were rescinded.

[18] Sadly, the numbers of "failure to report" cases have continued unabated since *LSBC v. Hops*.

[19] In the more recent case of *LSBC v. Hall* [2003] LSBC 11 that Panel opined that:

"In the past, it has been thought that a reprimand is a sufficient penalty for failing to respond. We believe that a reprimand will not be a sufficient punishment in most cases, given the importance of the obligation to respond and the need to ensure that Law Society resources are not wasted calling on lawyers to do what they know they must do without prompting."

[20] The Panel went on to suspend Mr. Hall for one week.

[21] Mr. Hall provided no explanation for why he had not responded. The facts in that case are somewhat complicated by a second allegation in the citation which was not proven. As to the allegation of "failure to report" the time between Mr. Hall's first notice of the complaint and request for response and the issuance of the citation appears to be approximately six months. While close to the facts of the instant case, *Re: Hall* is slightly more serious.

[22] The facts of two other cases are relatively close to the instant case. In *Re: Ivens* DCD 97/02, the time between Mr. Ivens' first notice of the complaint and request for response and the issuance of the citation was approximately eight months. There was no discussion in the Decision as to the reason for the delay. The Penalty imposed was a reprimand, a practice review and costs of \$500.00.

[23] In *Re: Hart* Discipline Digest 1997 No. 3 October, the time between Mr. Hart's first notice of the complaint and the request for response and the issuance of the citation was approximately six months. Mr. Hart provided a partial explanation concerning the complaint and for the delay. He admitted his behaviour constituted professional misconduct and the penalty imposed was a reprimand.

[24] In the instant case, the delay between the first request for a response and the issuance of the citation was approximately 6 months.

[25] In the result, the Respondent will be reprimanded.

## Costs

[26] The Law Society has filed as Exhibit 4 a draft Bill of Costs for \$5,657.18. Approximately \$1,800.00 of the counsel fees included in Exhibit 4 is related to the Section 39 matter.

[27] Rule 5-9 of the Law Society Rules provides for payment of costs by a Respondent.

[28] *Re: McNabb* [1999] LSBC 02 and *Re: Mah Ming* [1999] LSBC 28 are authority for the proposition that the Law Society is entitled to full indemnity. This Panel approves and endorses that proposition, but has determined that due to the specific facts of this case, the public interest is better served by not awarding any costs against this Respondent. In this case, to assess costs against the Respondent would be harsh given

that he admitted the conduct complained of, he is suffering straitened financial circumstances and that should he return to practice, he will likely be compelled to incur expenses as a condition of practice in order to protect the public. The public will be better served by this latter allocation of the Respondent's resources. Thus, in these particular circumstances, there will be no order as to costs.