



August 27, 2008

File: 07-81546

Mr. Trevor Holsworth  
203-622 Front Street  
NELSON BC V1L 4B7

Dear Mr. Holsworth:

I am writing in regard to your complaint concerning the Law Society of British Columbia. For the reasons provided in this letter, we will not be proceeding with further investigation of your complaint.

During your initial contact with this Office on October 23, 2007 and during our subsequent discussions, you provided the following background information in regard to your complaint. In summary you said that:

- you complained to the Law Society that a lawyer failed to follow a court order
- your complaint was eventually reviewed by the Law Society's Discipline Committee
- the Discipline Committee decided not to take further action in response to your complaint
- the letter you received from the Law Society advising that no further action would be taken did not include reasons for the Law Society's decision
- when you requested reasons, the Law Society informed you that no reasons were warranted in the circumstances

You disagreed with the Law Society's assessment of your complaint and its refusal to provide reasons for its decision not to take further action. As you are aware, my investigation focused on the adequacy of the reasons provided to you by the Law Society for its decision not to take further action in response to your complaint.

The Law Society initially informed me that the Discipline Committee's discussions are privileged and the Committee's practice was to not provide written reasons for its decisions. Following consultation with this Office, the Law Society has agreed that in future cases it will provide written reasons for the Discipline Committee's decisions not to take further action in response to a complaint.

It would seem that the Law Society's staff would not have attended the Discipline Committee's review of your complaint with any expectation that they would, at some later date, be providing written reasons for the Committee's decision. I was informed that the Committee meetings are not recorded and the minutes are not sufficiently detailed to enable staff to extract reasons for the Committee's decisions. In view of these factors and in view of the fact that almost one year has lapsed since the Discipline Committee reviewed your complaint, we do not believe it would be appropriate for us to propose the Law Society now draft detailed written reasons based on staff members' recollection of the discussion that led to the Committee's decision.

We consider your complaint to be settled in part by the Law Society's commitment to provide written reasons in the circumstances noted above and we will be closing our file under the authority provided in section 13(i) of the *Ombudsman Act*.

At your request, I will respond to the matters raised in a letter we received from you on June 12, 2008.

You stated that the Law Society created rules that directly contradicted the *Legal Professions Act*. You noted that under section 38 of the *Legal Professions Act* a panel must give written reasons for its determination about the conduct or competence of the respondent and any action taken against the respondent. I understand from our discussion that you believed the rule that prevented the Discipline Committee from disclosing information about its deliberations was in conflict with section 38.

The rule that limited the Law Society's ability to provide reasons in your case clearly allows the Law Society to disclose information if disclosure is necessary to comply with the *Legal Professions Act*. Section 4-6 of the *Law Society Rules* begins:

4-6 (1) No one is permitted to disclose any of the following information except for the purpose of complying with the objects of the Act or with these Rules:

Section 38 of the *Legal Professions Act* does not appear to apply in your case as it relates specifically to discipline hearings.

Section 38 states in part:

- 38(1) This section applies to the hearing of a citation.
- (2) A hearing must be conducted before a panel.
- (3) A panel must
  - (a) make a determination and take action according to this section,
  - (b) give written reasons for its determination about the conduct or competence of the respondent and any action taken against the respondent, and
  - (c) record in writing any order for costs.

You will note that section 38(1) specifically states that section 38 applies to the hearing of a citation. I understand that the meeting of the Discipline Committee at which it was decided not to take further action in response to your complaint was not a hearing of a citation.

You were also concerned that the Law Society was not bound by the *Legal Profession Act* or their rules. You noted that section 85(4) of the *Legal Profession Act* states that section 5 of the *Offence Act* does not apply to the *Legal Profession Act* or the rules.

I understand that under section 85 of the *Legal Profession Act*, a person commits an offence if the person contravenes certain sections of the *Legal Profession Act*. The fact that failure to comply with all sections of the *Act* and the rules does not constitute an offence, does not mean that the Law Society does not have to follow the *Act* or the rules. I understand that it simply means that a

person, whether or not the person is a member or staff of the Law Society, will not be subject to prosecution for failing to comply with sections of the *Act* and the Law Society's rules.

If you have any questions regarding this letter, you may reach me toll free by calling Service BC at 1 800 663-7867 and requesting that your call be transferred to my direct line at (250) 356-5723.

Yours sincerely,



Bruce Clarke  
Ombudsman Officer