2005 LSBC 19
Report issued: May 13, 2005
Citations issued: April 19, 2003, July 23, 2003,
March 8, 2004 and amended June 8, 2004

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

Robert Earl Williamson

Respondent

Decision of the Hearing Panel on Penalty

Hearing date: April 4, 2005

Panel: Grant C. Taylor, Q.C., Chair, Gavin Hume, Q.C., Warren Wilson, Q.C.

Counsel for the Law Society: Jean Whittow,Q.C.
Counsel for the Respondent: R. Glen Orris, Q.C.

Background

[1] On January 25, 2005, this Panel found the Respondent guilty of professional misconduct on four out of five counts on the amended citation. The amended schedule of the consolidated citation reads as follows:

> AMENDED SCHEDULE RE: ROBERT EARL WILLIAMSON
>
> Nature of Your Conduct to be Inquired Into:
>
> 1. Your failure to serve your client SM in a conscientious, diligent and efficient manner as required by Chapter 3, Rule 3 of the Professional Conduct Handbook.
>
> 2. Your failure to respond to correspondence which required a response from Mr. Clarke, a member, between June 25, 2002 and February 14, 2003, contrary to Chapter 11, Rule 6 of the Professional Conduct Handbook.
>
> 3. Your failure to respond promptly to correspondence from the Law Society regarding deficiencies in the Form 47 Report you had filed for the year 2000 contrary to Chapter 13, Rule 3 of the Professional Conduct Handbook.
>
> 4. Your failure to deliver to the Executive Director a completed accountant's report in the approved form for the year ending December 31, 2001 by March 31, 2002 as required by Rule 3-72(1).
>
> 5. Commencing in October 2001, your delay in responding to requests made by a member, Dennis J. Daley, for the delivery of several client files and for the resolution of outstanding fee issues respecting client I, contrary to Chapter 11, paragraphs 5 & 6 of the Professional Conduct Handbook.

[2] Count 2 was dismissed.

[3] Facts on which the finding of professional misconduct was founded are set out in the decision on facts and verdict issued by this Panel on January 25, 2005 and will not be repeated in detail here.

[4] The facts can be summarized as disclosing a serious and consistent pattern of failure by the Respondent, attributable to a short period of depressive episodes plus procrastination, in observing his professional duties to a client, another member and to the Law Society.

[5] On Count 1, we found that the Respondent did not advance his client's case in a prompt and diligent manner, nor did he properly communicate with the client concerning progress of the matter. As well, he gave assurances to the client which he did not fulfill. The Respondent was retained by Mr. M concerning a wrongful dismissal claim in December 1997. The file was eventually transferred to another lawyer on October 23, 2001. At the time the decision on facts and verdict was rendered, the action was still not resolved through settlement or litigation, partly as a result of one of the Defendants having filed for bankruptcy. Essentially no steps were taken by the Respondent on the file between the initial meeting with his client in December 1997 and the transfer of the file in October 2001.

[6] On Count 3, we found the member guilty of professional misconduct for not responding to communications from the Law Society for over a period of two years.

[7] In relation to Count 4, we found that the failure to file a Form 47 three years after it was due was professional misconduct.

[8] In regard to Count 5, this Panel found that the Respondent's delay in responding to correspondence from another member from October 2001 to June 2003 constituted professional misconduct.

DISCUSSION

[9] The Respondent gave evidence at the penalty phase about his practice and his depressive episodes.

[10] The Respondent was first called to the Bar of Manitoba in July 1973 where he practiced with a firm of 30 lawyers for three years. In 1976, he moved to British Columbia and was employed as Crown Counsel with the Ministry of Attorney General from November 1976 until the spring of 1980. Thereafter, Mr. Williamson was a partner with the firm Nixon Wenger in Vernon from 1980 to June 1995. Mr. Williamson was out of practice between June 1995 and October 1996 and then re-entered the practice in October 1996 until January 1998 as a part-time sole practitioner. He then began practicing full-time from January 1998 until the present as a sole practitioner.

[11] The member also practiced law in the Province of Alberta from 1999 until he closed his office on August 30, 2003. He had no staff and no bookkeeper in either his Vernon office or his office in Calgary.

[12] At the height of his practice in both provinces, the Respondent was carrying 150 client files plus 75 native residential school files, although all 75 were part of the same claim.

[13] The Respondent suffered from what he calls a minor depressive episode in August 2000. He suffered from a moderate depressive episode in August 2001.

[14]The Respondent says that from August 30, 2001 until the end of January 2002, he saw Dr. Vic Grossi in Calgary some twelve times. Dr. Grossi told him that his capacity to work was assessed at only 65%.

[15] Within a week of suffering the moderate depressive episode and seeing Dr. Grossi for the first time in Calgary, the member underwent a conduct review in B.C. on September 6, 2001. The conduct review was

as a result of the Respondent's failure to pay a physician's account within a reasonable time and failure to respond to the doctor's inquiries regarding the account. As well, Mr. Williamson also delayed unreasonably in responding to correspondence and telephone calls from Law Society staff assigned to investigate the complaint made by the physician.

[16] Previous to the complaint by Dr. S, which resulted in the conduct review on September 6, 2001, the Respondent had admitted to being guilty of professional misconduct for failing to reasonably reply to letters from the Law Society regarding an unsubstantiated complaint by a physician. That admission was made on December 18, 1985. As documented by the Conduct Review Subcommittee, the Respondent assured the Committee that he understood his conduct with respect to Dr. S's account was not acceptable and was aware of the nature of his obligations in that regard.

[17] Apparently, Dr. S had made five attempts to obtain payment of his account before complaining to the Law Society. Law Society staff made an additional eight attempts to obtain payment.

[18] The Respondent told the Conduct Review Subcommittee that he was a very busy trial lawyer and he was "stretched too thin" to deal with all of the demands on his time including those imposed by newer forms of communication including faxes and email. It was pointed out to him at that time that he had a professional obligation to respond to communications and that he should find ways of responding within a reasonable time or reduce the number of files he was working on or face more serious disciplinary proceedings if the same conduct was to occur again.

[19] The Respondent told the Conduct Review Subcommittee that he was in the process of evaluating his practice to make whatever changes were necessary to ensure that he was able to conduct his practice in a professional manner. He assured the Conduct Review Subcommittee that the conduct complained of by Dr. S would not occur again.

[20] The Respondent underwent a practice review on July 30, 2002. A report following the practice review is dated January 14, 2003. A number of recommendations were made to the Respondent following the practice review and they were sorted out into three headings called First, Second and Third Priorities. Ten first priorities were identified. They are as follows:

> 1. Continue working with a psychiatrist or psychologist on your problems with stress, depression and procrastination, fully informing your doctor of the problems you are having with your practice by providing a copy of this Report.
>
> 2. Take no or very few files for the next 6 months in order to allow yourself to have time to deal with practice and systemic issues.
>
> 3. Prepare an open and active file list for both your Vernon and Calgary practices; note on that list which files are still open but only need to be billed and then closed.
>
> 4. Arrange, for Rees Brock, QC or some other lawyer to spend a couple of days with you at your office, going through all open files, except for those that need to be billed and closed; you should plan to bring into your Vernon office all of your Calgary files.
>
> 5. Consider whether it is viable at this time to be attempting to maintain a practice in both Calgary and in BC, given your health and the serious problems with your BC practice, if not both practices.
>
> 6. Agree to not practice in the areas of real estate, wills and estates and family law unless they are litigation matters.
>
> 7. Determine (with the assistance of the other lawyer, if possible) which files you should withdraw from

for various reasons… The point of this exercise is to reduce the size of your practice…

8. …

9. …

10. Arrange for a part-time secretary to answer phones, type dictation and do filing, at the very least.

[21] The last of all 21 identified priorities was that there should be a follow-up practice review in six months to confirm progress with the recommendations.

[22] On September 29, 2003, another practice review was performed with a report dated October 21, 2003, which found that very few of the recommendations from the first practice review had been completed. A second follow-up practice review was conducted on January 19, 2004 with a report dated February 27, 2004. The recommendations from that practice review are as follows:

1. You continue to try and reduce your file load and to ensure that you are proactively working on all your files, including your residential school files. In particular, we recommend that you do the following in connection with all your open files:

(a) Take dated notes or put in the file Memos to file to document all meetings and conversations in connection with the file;

(b) Follow up on receiving outstanding documents such as contingency fee agreements;

(c) utilize the applicable forms described Attachment 1;

(d) Maintain a written plan of action to get each file moving and insert the relevant dates into your diary system

2. You will close those files that are completed.

3. You start optimizing the use of the software and equipment you have purchased.

4. You undergo training in the use of Amicus Attorney and PCLaw (we have emailed you information provided by Mr. Bilinsky setting out where you might be able to get training on Amicus Attorney and PCLaw).

5. You improve the financial management of your practice by:

(a) either leaving more money in your general account or securing a line of credit to ensure that you are able to pay your outstanding practice debts in a timely manner;

(b) ensuring that your trust account and general accounts are reconciled and maintained in accordance with Law Society Rules; and

(c) trying to reduce your accounts receivables.

6. You improve your knowledge of your professional responsibility obligations by downloading from the Law Society website the most current versions of the *Legal Profession Act*, *Law Society Rules* and *Professional Conduct Handbook*, and reading them.

7. You continually update the file management plan provided to us on February 4, 2004 and include in that up to date plan your residential school files.

8. You provide to the Practice Standards Committee by August 10, 2004 a written Progress Report which includes:

(a) your report on compliance with all of the Recommendations set out in paragraphs 1 – 7,

(b) a complete list of all your open files, and

(c) the following information in connection with all your open files (including the residential school files) and all files that have money in trust:

I status as at the date of the report

II what steps you have taken in relation to these files

III what steps are outstanding

IV in relation to each of the outstanding items, your action plan (including timelines and information on whether you have diarized each of the outstanding items)

V if there are any funds in trust, what those funds relate to

[23] On November 22, 2004, a proceeding pursuant to Section 39 of the *Legal Profession Act* and Rule 4-17 of the Law Society Rules was held to determine whether the Respondent should be suspended or have conditions placed on his practice pending final disposition of a citation that was authorized by the Discipline Committee on October 28, 2004. That citation was authorized in respect of the Respondent's alleged conduct in failing to respond promptly to communications from the Law Society, for his breach of the accounting rules for failing to properly render accounts to clients, for preparing back-dated accounts in order to conceal his failure to properly render accounts and for his breach of undertaking to the Practice Standards Committee.

[24] That citation is not the subject of this hearing nor do we make any comment on the merits of that citation. What is of critical importance is that the Section 39 hearing imposed the following conditions upon the practice of the Respondent:

1. On or before December 15, 2004, the Respondent must arrange for a practice supervisor who is a member of the Law Society and who is approved by the Practice Standards Committee of the Law Society and who, in turn, enters into a Practice Supervision Agreement on terms and conditions that are satisfactory to the Practice Standards Committee.

2. On or before December 15, 2004, the Respondent must retain a qualified bookkeeper satisfactory to the Practice Standards Committee.

3. On or before January 31, 2005, the bookkeeper must provide to the Practice Standards Committee evidence satisfactory to that Committee that the books and records of the Respondent are in compliance with Law Society Rules.

[25] The Section 39 Hearing Panel also allowed the Respondent to apply in writing at any time for rescission or variation of the order made on November 22, 2004.

[26] The Respondent told this Panel that he is presently carrying about 37 clients and now has 90 clients regarding the native residential school claim. The Respondent gave evidence that a Practice Supervision Agreement ordered by the Section 39 Hearing Panel was implemented on February 15, 2005. He also gave evidence that he now has hired the services of a CGA firm which produce his month-end reports while the

member continues to prepare his trust and general ledgers during the month which are then delivered to the accountants for reconciliation.

[27] By virtue of the Practice Supervision Agreement implemented on February 15, 2005, the Respondent commenced meeting with a Mr. Allan Gaudett on February 15, 2005 and meets with him every two weeks. They update a summary report which the Respondent initially provided to the Law Society regarding all of his outstanding files. He is also required to file an update with the Law Society on March 1st which he says he completed and the next one is due April 15th.

[28] The Respondent also indicated that he had written into the Agreement the request that the staff lawyer for the Practice Standards Committee visit his office after six months to review his progress as he says that the process so far has been extremely beneficial to his practice. He insisted as well to show that he is working hard at getting his practice working properly.

[29] The Respondent also gave evidence that he has been seeing Dr. Kevin Stevenson, a psychiatrist in Vernon, whom he saw as recently as March 3, 2005. According to the Respondent, Dr. Stevenson told him that he was in full remission, although he will be on medication for the foreseeable future. As well, the Respondent is seeing Dr. Neilson, a psychologist in Vernon, who helps him with issues of timing. He said that he has visited with Dr. Nielson eight times and pays for it himself at $100.00 per visit.

[30] Counsel for the Law Society argued for a suspension of two to three months, saying that this is probably one of the most egregious cases of failure to respond and failure to properly represent a client.

[31] Counsel for the Respondent argued that Mr. Williamson is now compliant with all of the requests made of him by the Law Society and, accordingly, he should receive only a reprimand.

[32] In the matter of *John Wilson Dobbin* [2002] L.S.B.C. 16, Mr. Dobbin was cited for breach of an undertaking to the Law Society, failing to serve a client in a conscientious manner, failing to provide quality service to his clients and failing to respond to the Law Society.

[33] The Hearing Panel heard psychiatric evidence respecting Mr. Dobbin's personality traits that led to conflict with the Law Society, as well as family crises he encountered that led to him developing a depressive disorder.

[34] As with the Panel in *Dobbin*, we feel that any penalty must take into account the duty to protect the integrity of the governance of the Law Society. As was said by the majority at Mr. Dobbin's review in other matters cited at [1999] L.S.B.C. 27, at paragraph 20:

> "If the Law Society cannot count on prompt, candid and complete replies by members to its communications, it will be unable to uphold and protect the public interests, which is the Law Society's paramount duty. The duty to reply to communications from the Law Society is at the heart of the Law Society's regulation of the practice of law and it is essential to the Law Society's mandate to uphold and protect the interests of its members. If members could ignore communications from the Law Society, the profession would not be governed but would be in a state of anarchy."

And at paragraph 25:

> "Frequently, the member's failure to respond to Law Society communication is a sequel to a prior, frustrating failure to respond to client communications or to other lawyers'communications. Procrastination in responding to the Law Society, or wilful failure to respond to the Law Society, may be symptomatic of other practice problems involving delay on files or other dereliction of professional duty. The Law Society is put in an impossible position in dealing with disgruntled clients, or disgruntled other

> lawyers, by a member's intransigent failure to respond. There is no doubt whatever that a persistent, intransigent failure to respond to Law Society communications brings the legal profession into disrepute. As a result, it is the decision of the Benchers that unexplained persistent failure to respond to Law Society communications will always be prima facie evidence of professional misconduct which throws upon the respondent member persuasive burden to excuse his or her conduct. The circumstances which led the member to fail to respond are peculiarly within his or her means of knowledge. It cannot be a part of the evidentiary burden of the Law Society to show both that the member persistently failed to respond and the reasons for that failure."

And at paragraph 23:

> "...we repeat, responding promptly, candidly and completely to Law Society communications is the cornerstone of our right to self-govern."

[35] In this case, we specifically find that the actions of the Respondent have brought the profession into disrepute and they have affected members of the public adversely.

[36] On behalf of the Respondent, we were urged to consider Mr. Williamson's medical condition in that he suffered some depressive episodes but now is extremely knowledgeable of his medical condition and the triggers regarding his psychiatric problems. It was noted by Mr. Williamson's counsel that there had been some improvement between the earlier practice reviews but not as much as was hoped. Now with the practice supervisory plan in place and much of the pressures of practice resolved, it was suggested that the Respondent has "turned it around" . We were also urged by Mr. Orris to consider paragraph 23 of the decision of *Peter Wallace Hammond*, [2004] L.S.B.C. 32 which contained a quote from Gavin McKenzie's publication "Lawyers and Ethics: Professional Responsibility and Discipline" (Carswell, 1993), and in particular, the purposes of discipline proceedings from which we now quote:

> "The purposes of Law Society discipline proceedings are not to punish offenders and exact retribution, but rather to protect the public, maintain high professional standards and preserve public confidence in the legal profession. In cases which professional misconduct is either admitted or proven, the penalty should be determined by reference to these purposes. If a lawyer has committed a criminal offence, it is for the criminal courts, not the legal profession, to inflict punishment. All sanctions necessary have punitive effects, which are tolerable results of the protective and deterrent functions of the discipline process. The goals of the process are, nevertheless, nonpunitive.
>
> The seriousness of the misconduct is the prime determinant of the penalty imposed."

[37] Accordingly, it is our role to fashion a disposition that preserves the public's confidence in the legal profession.

[38] In this case, the Respondent has been found guilty of professional misconduct on four out of five counts. Each one is serious in and of itself, however, when coupled with the others shows an ongoing lack of concern, diligence and respect for the rules of the Law Society, the public interest and one's own clients. Accordingly, in these circumstances, we impose a suspension of 45 days upon the Respondent commencing June1, 2005. Upon return to practice, the Respondent may only practice with a supervisor in a practice supervision arrangement until relieved of that obligation.

Costs

[39] The Law Society produced a Bill of Costs in the amount of $42,828.86. Notwithstanding the principle that members of the Law Society should not have to pay for the discipline of its recalcitrant members, this Panel was surprised at the amount of the costs put forward by the Law Society. Accordingly, we asked Ms. Whittow, counsel for the Law Society, to provide a copy of her accounts to the Law Society for the prosecution of this matter. We also requested information from the Respondent that would assist us in determining the Respondent's ability to pay the costs.

[40] From the ten invoices that Ms. Whittow submitted to the Law Society, the first commenced on September 4, 2003. By February 16, 2004, a draft agreed statement of facts had been prepared regarding the daily matter which was Count 5 in the amended and consolidated citation. The first reference to drafting an agreed statement of facts is February 16, 2004 plus others including May 10, May 17, July 18, September 23, September 24, October 6, October 14, October 28 and November 2. By the time this matter proceeded to hearing on December 14, 2004, we were only provided with draft agreed statement of facts, none of which had actually been agreed to by counsel.

[41] The hearing on December 14, 2004 lasted the entire day. Five witnesses were called and 20 exhibits were tendered.

[42] Taking into account all of the matters set out in the Bill of Costs presented, we have determined to reduce the Bill of Costs by 20% since the Law Society was unsuccessful on one of the five counts on the citation. We have also reduced the account by the difference between what Law Society counsel would bill their time at versus what outside counsel are entitled to bill their time, being the difference between $175.00 per hour and $125.00 per hour.

[43] We also feel that the personal service of a subpoena in the *M* citation by a private investigator from the Lower Mainland and the resultant cost of $2,116.30 is inordinately high. Process could have been served on Mr. M in Vernon by a local process server who would receive the subpoena by mail from the Lower Mainland. We estimate this to be no more than $150.00. Accordingly, the account of L.J. Gaudette & Associates in the amount of $2,116.30 is disallowed and the amount of $150.00 is substituted. Therefore, we order the Respondent pay costs in the amount of $24,876.79 on or before 5:00 p.m. on September 30, 2006.

[44] We feel compelled to comment on the apparent inequity of what we believe to be internal decisions made by the Law Society to "farm out" some of its work to the private bar. While we in no way take issue with the decision made to allow members of the private bar to take part in prosecution of members in discipline or credential matters, we feel there should be one billable rate charged to members for counsel whether internal Law Society counsel or outside counsel. We feel all members should be treated the same with respect to costs.