

2004 LSBC 10

Report issued: May 10, 2004

Citation issued: August 18, 2003

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

## **MARTIN DAVID JONES**

Respondent

### **Decision of the Hearing Panel on Facts and Verdict**

Hearing date: February 26, 2004

Panel: Anne K. Wallace, Q.C., Chair, Grant C. Taylor, G. Ronald Toews, Q.C.

Counsel for the Law Society: Todd R. Follett

Appearing on his own behalf: Martin D. Jones

## **Background**

[1] On August 18, 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, as amended, directed that this Hearing Panel inquire into the Respondent's conduct as follows:

1. That you, having failed to satisfy two judgments entered against you by the Canadian Customs and Revenue Agency within seven days of their entry, failed to notify the Executive Director of the circumstances of the judgments and your proposals for satisfying them contrary to Rule 3-44.
2. That, an investigation having been ordered of your books, records and accounts under Rule 4-43(1), you did not immediately produce all files, records, accounts and books required for the investigation.
3. That you left documents containing confidential client information at an office premise you had vacated, thereby contravening your obligation under Ruling 2, Chapter 5 of the *Professional Conduct Handbook* to take all reasonable steps to ensure the privacy and safekeeping of a client's confidential information, and contravening your obligation under Ruling 4, Chapter 5 of the *Professional Conduct Handbook* to preserve the client's secrets even after termination of the retainer.
4. That you failed to respond to communications from the Law Society regarding your clients, Ms. C.P. and Mr. G.C. and the complaint of Dr. Bruno Milinkovich. These communications consisted of correspondence to you dated November 26, 2002, December 18, 2002, January 7, 2003, January 21, 2003 and January 22, 2003.

5. That you failed to respond to communications from the Law Society regarding your client Mr. A. These communications consisted of correspondence to you dated April 16, 2003, April 25, 2003, and May 12, 2003.

6. That you failed to meet professional financial obligations incurred in the course of your practice when called upon to do so as follows:

(a) that you failed to pay sums owed to Dr. Elaine Wynne for accounts issued relating to 14 medical-legal reports, including 10 accounts for which you or your factoring company had received funds from the Legal Services Society;

(b) that you failed to pay sums owed to Dr. Robert Baker for three accounts, including two accounts for which you or your factoring company had received funds from the Legal Services Society; and

(c) that you failed to pay sums owed to Dr. Bruno Milinkovich for an account for interpreting services for which you had received funds from the Legal Services Society.

7. That you failed to account for all funds received on behalf of a client as required by Rule 3-48 as follows:

(a) you failed to account for \$2,000.00 received from Mr. A.V. on behalf of Mr. M.L.;

(b) you failed to account for \$6,000.00 received from Mr. N.S.; and

(c) you failed to account for \$4,000.00 received from Ms. C.P.

8. That you failed to serve your client Mr. G.C. in a conscientious, diligent and efficient manner as required by Ruling 3, Chapter 3 of the *Professional Conduct Handbook*, in that you did not keep Mr. G.C. reasonably informed regarding his matter, and you did not do the work in hand in a prompt manner so that its value to Mr. G.C. was not diminished or lost.

9. That you failed to serve your client Mr. A. in a conscientious, diligent and efficient manner as required by Ruling 3, Chapter 3 of the *Professional Conduct Handbook*, in that you did not do the work in hand in a prompt manner so that its value to Mr. A. was not diminished or lost.

10. That you misled your client Mr. A. by informing him that his application for permanent residence had been filed when it had not been filed.

[2] The Respondent acknowledged proper service of the citation and waived the requirements of Rule 4-15 of the Law Society Rules.

[3] At the start of the proceedings counsel for the Law Society indicated that he was no longer seeking an adverse finding on Count 6(c).

## **Agreed Facts**

[4] An Agreed Statement of Facts was filed as Exhibit 2 in these proceedings. It provides as follows:

1. Martin Jones was called to the Bar of the Province of British Columbia on November 15, 1996.

2. Mr. Jones operated a practice under the name Martin D. Jones Law Office from March 24, 1997 to July 31, 2002. From March, 1997 to February 1, 2002, his office was at #208, then at #512 - 402 West

Pender Street, Vancouver, British Columbia. On February 1, 2002 Mr. Jones relocated to #103 - 402 West Pender Street, Vancouver, British Columbia. Mr. Jones' clients were primarily seeking advice and services regarding immigration to Canada for themselves or others.

3. On approximately July 31, 2002, Mr. Jones ceased to carry on the practice of law at Martin D. Jones Law Office and his law office vacated the premises.

4. Mr. Jones' membership ceased in the Law Society of British Columbia on December 31, 2002 due to non payment of his membership fees.

### **Section I - Obligation to the Law Society of British Columbia**

5. On March 15, 2002, a Certificate was filed under the *Excise Tax Act* against Mr. Jones in the amount of \$25,691.94, plus penalties and interest. This Certificate was filed for outstanding GST claimed by CCRA against Mr. Jones.

6. Mr. Jones did not satisfy the Certificate referred to in clause 5 of this Agreed Statement of Facts within seven (7) days of entry, and did not notify the Executive Director in writing of:

- (a) the circumstances of the judgment, and
- (b) his proposal for satisfying it.

7. Mr. Jones agrees his conduct as set out in clause 6 to this Agreed Statement of Facts constitutes a breach of Rule 3-44.

8. On March 5, 2002, a Certificate was filed under the *Income Tax Act* against Mr. Jones in the Federal Court, Trial Division for \$24,912.90 plus interest. This Certificate was filed for outstanding income tax claimed by CCRA against Mr. Jones.

9. Mr. Jones did not satisfy the Certificate referred to in clause 8 of the Agreed Statement of Facts within seven (7) days of entry, and did not notify the Executive Director in writing of:

- (a) the circumstances of the judgment, and
- (b) his proposal for satisfying it.

10. Mr. Jones agrees his conduct as set out in clause 9 to this Agreed Statement of Facts constitutes a breach of Rule 3-44.

11. An investigation was conducted by the Law Society into Mr. Jones' conduct regarding his clients, Ms. C.P., his client Mr. G.C., and a claim of an unpaid interpreter's bill by Dr. Bruno Milinkovich.

12. As part of the investigation of the matters indicated in clause 11 to this Agreed Statement of Facts, correspondence calling for a reply was directed to Mr. Jones dated November 26, 2002, December 18, 2002, January 7, 2003, January 21, 2003, and January 22, 2003.

13. Mr. Jones admits that he did not reply to the correspondence listed in clause 12 of this Agreed Statement of Facts. Mr. Jones admits that this conduct constitutes a breach of Chapter 13, Ruling 3 of the *Professional Conduct Handbook*, and constitutes professional misconduct.

14. An investigation was conducted by the Law Society into Mr. Jones conduct regarding his client Mr. A.

15. As part of the investigation of the matter concerning Mr. A., correspondence calling for a reply was directed to Mr. Jones dated April 16, 2003, April 25, 2003, and May 12, 2003.

16. Mr. Jones admits he did not reply promptly or at all to the correspondence listed in clause 15 of this Agreed Statement of Facts. Mr. Jones admits that this conduct constitutes a breach of Chapter 13, Ruling 3 of the *Professional Conduct Handbook*, and constitutes professional misconduct.

17. An audit order regarding Mr. Jones was issued by Mr. Everett, Q.C., Chair of the Discipline Committee, on July 18, 2002.

18. Mr. Jones did not produce all files, vouchers, records, accounts, and books as requested by the Law Society as required by Rule 4-43. Specifically, Mr. Jones did not produce:

- (a) client trust ledgers
- (b) Trust deposit books and bank statements
- (c) General accounting records from January 1, 2002 to July 15, 2002
- (d) monthly bank account reconciliations
- (e) billings and accounts receivable for 2001.

19. Mr. Jones admits that failure to provide the material required under Rule 4-43 as indicated in clause 18 to this Agreed Statement of Facts constitutes a breach of Rule 4-43.

## **Section II - Failure to meet professional obligations incurred in the course of practice**

20. In the course of his practice, Mr. Jones had occasion to obtain expert medical reports for use on his immigration files. His usual practice was that a report would be prepared at Mr. Jones' request, he would be billed for it, and the account would be submitted as a disbursement to the Legal Services Society.

21. Dr. Robert Baker produced three medical legal reports at a fee of \$750.00 per request to Mr. Jones. Dr. Baker remains unpaid for all three of those accounts.

22. Mr. Jones submitted accounts to the Legal Services Society for two of the accounts referred to in clause 21 of this Agreed Statement of Facts. An account from Mr. Jones for \$750.00 was paid to Mr. Jones by the Legal Services Society on February 21, 2002, and an account for \$750.00 dated February 15, 2002 was paid to Mr. Jones by the Legal Services Society on March 14, 2002.

23. Mr. Jones indicates that he sent to a factoring company his Legal Services Society billings for the material time. He indicates his arrangement with the factoring company was that any bill unpaid for 90 days by the Legal Services Society would be deducted from payments he was to receive from the factoring company. He indicates that accordingly, it was not always clear to him which disbursements he was paid for when received funds from the factoring company.

24. Dr. Elaine Wynne provided 14 medical legal reports to Mr. Jones. Dr. Wynne remains unpaid for all 14 of these accounts.

25. Mr. Jones submitted accounts to the Legal Services Society for 10 of the accounts referred to in clause 23 of the Agreed Statement of Facts.

## **Section III - Obligations to clients**

26. Upon vacating the business premise at #103 - 402 West Pender Street, Vancouver, British Columbia, material relating to Mr. Jones' files was left on the premises.

27. These materials included original Social Insurance cards of his clients J.E.R. and M.M.

28. The material relating to Mr. Jones' practice left at #103 - 402 West Pender Street included confidential documents such as:

- (a) a letter from Mr. Jones to his client K.;
- (b) a letter from Mr. Jones to his client A.;
- (c) an Immigration and Refugee Board Personal Information form for his client M.N.;
- (d) a Refugee Claimant form for his client M.N.;
- (e) answer to question 37 of S.N.L.;
- (f) answer to question 37 of I.P.K.; and
- (g) letter - Jones/Dr. Granot re: client J.B. - reconsideration of recommendation to withdraw from graduate program.

Some of the documents left on the premise were from retainers which had ceased by the time Mr. Jones vacated his office premises.

29. Mr. Jones admits that leaving material as indicated in clause 27 breached his duty under Chapter 5, Ruling 2 to take all reasonable steps to ensure the privacy and safekeeping of a client confidential information, and breached his duty under Chapter 5, Ruling 4 to preserve the client's secrets even after termination of a retainer.

30. Mr. Jones admits that the breaches of the *Professional Conduct Handbook* indicated in clause 28 of the Agreed Statement of Facts constitute professional misconduct.

31. On March 7, 2002, Mr. Jones accepted a cheque for \$2,000.00 as a retainer from Mr. A.V. regarding an application to be made for permanent residence by M.L.

32. Although the retainer was to file a permanent resident application for M.L., this was not done.

33. Mr. Jones has not refunded the \$2,000.00 to Mr. A.V., and has not accounted to Mr. A.V., or Mr. M.L. for these funds contrary to Rule 3-48.

34. On June 4, 2001, Serena Chandi, a lawyer working for Mr. Jones, accepted from the firm's client, Mr. N.S., a cheque in the sum of \$3,000.00 and a cheque in the sum of \$990.00 as a retainer from Mr. N.S. The purpose of the retainer was for an application to be made for permanent residence status for M.S., sister of N.S.

35. Although the retainer was to file an application for permanent residence for Ms. M.S., this was not done until May 30, 2002.

36. Mr. Jones has not refunded the retainer of \$3,990.00, and has not accounted to Mr. N.S. or Ms. M.S. for the funds contrary to Rule 3-48.

37. On January 8, 2002, Mr. Jones received a post dated cheque in the amount of \$2,000.00 from his client Ms. C.P.. This cheque subsequently was deposited into Mr. Jones firm accounts.

38. On January 15, 2002, Mr. Jones received a cheque in the amount of \$1,000.00 from his client Ms. C.P. This was deposited into Mr. Jones firm account.

39. On January 25, 2002, Mr. Jones received from his client Ms. C.P. \$1000.00 cash, which was deposited into his firm account.

40. The funds paid to Mr. Jones as indicated in clauses 36, 37, and 38 of this Agreed Statement of Facts were paid as a retainer for an application to bring Mr. R.A.A. into Canada on a humanitarian

basis.

41. Although the purpose of the retainer was to file an application for to bring Mr. R.A.A. into Canada, this was not done.

42. Mr. Jones has not refunded the retainer of \$4,000.00, and has not accounted to Ms. C.P. for the funds, contrary to Rule 3-48.

43. Mr. G.C. consulted Mr. Jones to file a permanent residence application on his behalf, with \$500.00 cash paid to Mr. Jones on February 22, 2002 as the Government of Canada processing fee for this application, and \$200.00 cash apparently as a retainer on February 22, 2002. The application form was completed and signed by Mr. G.C. in approximately February 2002.

44. Mr. G.C.'s application for permanent residence was required to be filed within 180 days of a decision determining Mr. G.C. to be a Convention Refugee. This was not done by Mr. Jones, as Mr. G.C.'s application for permanent residence was not filed at all.

45. Mr. G.C. received no information from Mr. Jones as to the progress or lack of progress of his application for permanent residence status.

46. Mr. Jones admits that he failed to serve his client Mr. G.C. in a conscientious, diligent and efficient matter so as to provide a quality of service at least equal to that of a competent lawyer in a similar situation as required by Chapter 3, Ruling 3 of the *Professional Conduct Handbook*. In particular, Mr. Jones admits he did not keep Mr. G.C. informed as to the status of his application, and did not do the work in hand in a prompt manner so that its value to the client was not diminished or lost.

47. Mr. Jones admits his violation of Chapter 3, Ruling 3 of the *Professional Conduct Handbook* as indicated in clause 46 of this Agreed Statement of Facts constitutes professional misconduct.

48. In February 2001, Mr. Jones was retained by Mr. A.A. to file a permanent residence application on behalf of Mr. A.A. \$1,5000.00 was paid as a retainer by Mr. A.A. to Mr. Jones in this matter.

49. Mr. A.A. checked with Mr. Jones as to the status of his application, and had been told by May 2001 by Mr. Jones that his permanent residence application had been submitted.

50. Mr. A.A. checked with Mr. Jones on several occasions after May 2001, and was told that no answer had yet been received on the application and that it took a long time to get a response.

51. In approximately July 2002, Mr. A.A. attempted to check on the status of his matter, but found Mr. Jones' office shut down and that Mr. Jones was no longer conducting his law practice.

52. Although the retainer of Mr. Jones by Mr. A.A. was to file a permanent residence application, this application was not filed.

53. Mr. Jones admits that he did not serve Mr. A.A. in a conscientious, diligent and efficient matter so as to provide a quality of service at least equal to that of a competent lawyer in a similar situation as required by Chapter 3, Ruling 3 of the *Professional Conduct Handbook*. In particular, as the application was not filed, Mr. Jones did not do the work in hand in a prompt manner so that its value to Mr. A.A. was not diminished or lost.

54. Mr. Jones admits his failure to serve his client as required by Chapter 3, Ruling 3 as indicated in clause 52 constitutes professional misconduct.

[5] Counsel for the Law Society invited the Panel, on the basis of the Agreed Statement of Facts, to find that

the amount of unaccounted funds in Count 7 (b) is \$3,990.00.

[6] It was the submission of counsel for the Law Society that the Panel could make adverse findings, other than on Count 6 (c) and with the change to Count 7 (b), on all Counts of the citation except count #10, and the Panel so finds.

[7] With respect to Count #10, the Panel heard testimony from Mr. A, a former client of the Respondent. Mr. A testified that he first met with the Respondent on February 13, 2001, when he attended at the Respondent's office with his wife for the purpose of retaining the Respondent to obtain landed immigrant status for him in Canada. At that time, his wife had landed immigrant status and Mr. A was an international student on a student visa from Seattle.

[8] The witness testified that the Respondent told him that the whole application would cost \$3,000 plus processing fees. Mr. A then paid the member a \$1,000.00 retainer and was given a list of information that he was to gather and give to his lawyer.

[9] Mr. A testified that in February 2001 he gave all of the requested information to the Respondent except for some support letters that were required. When he phoned the Respondent in June of 2001 to tell him he had obtained those letters, the Respondent advised him that the application had already been sent to immigration but that the Immigration Department wanted further information. The witness said that he replied that he had not yet paid the processing fee and the Respondent told the witness to bring \$500.00 to the Respondent's office for that fee. The witness testified that he did give the Respondent \$500.00 cash when he met with him and a receipt was filed showing that transaction.

[10] Mr. A testified that when he met with the Respondent later in June 2001, he was asked to sign some further documents and to provide information about his parents. He was questioned as to whether he thought it was odd he was asked to sign further documents after he had been told the application had already been filed. The witness responded that he trusted the Respondent completely and so did not give it any more thought. He stated that he was told at that time that it would take between 7 months to a year for the application to be processed.

[11] Mr. A testified that he phoned the office six months later, then 7 months later and periodically after that until about 15 months had elapsed. He estimated there were about 5 calls when he spoke to the Respondent and on each of those occasions he was told that the Immigration Department was taking a long time to process applications. By the end of the 15 month period, Mr. A became frustrated with waiting and so consulted an immigration consultant. This person advised him that something must be wrong because usually within 6 months at least a letter was issued confirming that the application had been received.

[12] Mr. A attempted to phone the Respondent in July 2002 but found the phone was out of service. He went to the office he had attended previously and found that the office had been closed down. He checked the building directory and found another office was listed for the Respondent. He attended that office and found that it too was closed. A maintenance worker directed him to another lawyer in the building where Mr. A spoke to an articulated student at that office who advised that his office had some of the Respondent's files and also were in contact with the Respondent and that everything would be straightened out. The witness testified he phoned this other office many times and was finally told by the student that they had lost contact with the Respondent. The witness was advised to use the *Freedom of Information Act* provisions to obtain access to the file and the witness pursued this option. He then discovered that no application had ever been filed. As a result, Mr. A sought the help of another lawyer.

[13] Mr. A testified that he learned the criteria had changed between the time he had asked the Respondent to prepare the original application and when the new lawyer began to prepare the second set of documents.

He was told that the new criteria made it harder to obtain landed immigrant status. In addition, Mr. A was told that the Immigration authorities would be concerned about why he had not filed the application for such a long time after his original visa had expired and also the new lawyer told him that he was concerned about Mr. A's existing status. All of this caused stress for Mr. A. He confirmed that the \$1,500.00 he had paid to the Respondent has never been returned.

[14] The Respondent testified on his own behalf. He stated that he was not in a position to dispute the facts because his memories of that time period were not clear. He testified he had a huge workload during this time with 400 - 450 new immigration files per year. The Respondent indicated he was having trouble coping with the financial and emotional stress of practice but didn't realize how much of a problem he had until he had an emotional breakdown in June of 2002. Then he realized he could no longer cope. He closed his office, put over 300 files in storage and provided a list of files to another lawyer in the building where he worked. He subsequently sought medical help and was diagnosed with depression and treated for that illness. Six weeks after he closed his office, he moved to Toronto.

[15] While the Respondent had no specific recollection of the file in question, he did testify as to his normal practice at the time. He confirmed that the steps Mr. A had related to the Panel about the two visits to his office were his usual practice. He stated that it was not unusual to have submitted an application without all the information requested when a client's visa had expired and there was otherwise a strong case for granting the application. He also testified that it was not unusual for the Respondent to get further information from clients after the original application was filed and then have them sign a photocopy of the filed application, which the Respondent always kept.

[16] The Respondent testified that with respect to the subsequent telephone calls from Mr. A, the Respondent did not check into the file to confirm the application had been filed so he didn't realize it had not been. He indicated that he received many status of application calls and his practice at the time was to give clients general answers about the process without looking at particular files. The Respondent admitted that he didn't look at Mr. A's file to confirm that the application had been received by the Immigration authorities and that he should have. He could not say that he lied to Mr. A but also stated that his mental state was such that he couldn't be 100% sure he didn't.

[17] There is no issue with the fact that Mr. A was misled by the Respondent. Therefore, the issues that the Panel must decide are as follows:

- a. Was the client misled because the Respondent was deliberately dishonest with him or was he reckless as to the information he was giving his client, which misled him?
- b. If the panel finds on the first question that the Respondent was reckless, then does the recklessness he showed amount to professional misconduct?

## **Decision**

[18] As stated above, the Panel finds that the member was guilty of professional misconduct with respect to the following Counts in the citation: Counts 1 through 5, Counts 6(a) and 6(b), Count 7(a), Count 7(c), Count 8 and 9. With respect to Count 7(b), the Panel finds that the Respondent was guilty of professional misconduct in failing to account for \$3,990.00.

[19] With respect to the remaining Count, the Panel concurs with the statement of counsel for the Law Society that both Mr. A and the Respondent were credible witnesses. They were honest witnesses who gave their evidence in a straightforward manner. The Panel finds that the Respondent was indeed very

honest and forthright in both his dealings with Law Society counsel and the Panel concerning this citation. The Respondent went out of his way to state that Mr. A " was a wonderful fellow" and he apologized to him several times in the course of the hearing for the trouble he had caused him.

[20] The Panel does find that the Respondent was reckless. The testimony reveals he was reckless as to the truth of the information he was giving his client by answering his questions without looking at the file to confirm that the information was true and that he did this not just once, but numerous times over the course of a year.

[21] This leaves the question of whether this reckless behaviour amounted to professional misconduct. The evidence is that over the many months during which the Respondent failed to check on the status of the client's application, he continually assured his anxious client that everything would be okay. This was repeated, irresponsible behaviour on a matter that was extremely important to the client. This was more than mere negligence. The Respondent engaged in a course of conduct that would inevitably cause the client to be misled and caused prejudice to the client.

[22] Therefore with respect to Count 10, the Panel finds that this conduct amounts to professional misconduct.