

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 Penalty**

Hearing date: August 31, 2004

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

Counsel for the Law Society: Todd Follett

Appearing on his own behalf: Martin D. Jones

[1] The verdict of this Panel, a finding of professional misconduct on the part of the Respondent, was delivered on May 10, 2004.

[2] At the commencement of this penalty hearing, counsel for the Law Society submitted a Bill of Costs in the amount of \$7,755.23, which was filed as Exhibit #1. The Respondent took no issue with that Bill of Costs.

[3] Counsel for the Law Society submitted that all the counts on the citation be dealt with globally. The Respondent agreed and the Panel accepts that submission.

[4] At this hearing, the Respondent provided information to the Panel about himself. He is currently 33 years old. He received his LLB in 1995 and was in private practice from 1996, when he was called, until he withdrew as a member of the Law Society in 2002. The Respondent is currently an undischarged bankrupt and resides in Toronto, where he has been working on completing his LLM in refugee law. In the near future he plans to move to Washington, D.C. for a period of approximately one year and thereafter intends to pursue a doctoral program in law in England. He has no intention to return to the practice of law in the foreseeable future.

[5] When he was practicing in BC, the Respondent practiced primarily in the area of immigration and refugee law, with a few criminal files as well. When he ceased practicing, he was working with one associate and one student. In addition to his practice, the Respondent was also an active volunteer within the immigrant community, running an Hispanic Community Center, volunteering at the Collingwood Neighbourhood House for Refugees and working at the Iranian Newcomers Clinic.

[6] Counsel for the Law Society, quite properly, pointed out that it is difficult to craft a meaningful sentence for a lawyer who has voluntarily ceased membership in the Law Society and who, as in this case, has no intention of recommencing practice. It makes the issue of specific deterrence somewhat irrelevant.

[7] In any event the Respondent himself indicated he did not need any action taken to deter him from this type of behaviour in the future. He stated that the complainants in these matters were people for whom he

had cared very much and had desired to serve. He stated that he still suffers a very deep regret for the harm caused to these clients from his actions. As stated in our reasons in the verdict stage, the Panel found the Respondent to be sincere and forthright in his statements.

[8] Counsel for the Law Society referred the panel to the decision of *Law Society of BC v Ogilvie*, [1999]LSBC 17 which sets out factors to be considered in reaching a penalty decision in a case of professional misconduct. With reference to those factors, the Panel finds that the nature and gravity of the conduct proven was serious. It involved funds held in trust by the Respondent as well as numerous failures to respond to the Law Society. This was not just a single action nor did it involve only one client. There were numerous incidents of misconduct involving several clients over numerous months. The misconduct resulted in both financial and emotional harm to the Respondent's clients.

[9] In mitigation, the Respondent was relatively recently called when these incidents took place. Furthermore, the Respondent did not recognize that he was suffering from depression at the time and accordingly, this was not premeditated behaviour and no advantage was gained by the Respondent from the acts for which he was cited.

[10] Also in mitigation it should be noted that this hearing was originally scheduled to be lengthy and complex, and would have required Law Society counsel to call several witnesses, including two doctors and a witness who would have had to have flown in from Los Angeles, USA. Due to the cooperation of the Respondent and an Agreed Statement of Facts, the hearing was greatly simplified and only one local witness was required to testify.

[11] The Respondent showed he was of previous good character in that he has provided a great deal of pro bono services to the community he also served as lawyer. It was also to the Respondent's credit that he has admitted his misconduct and apologized to the clients he hurt. He stated " that the public should feel that every member can be trusted to the ends of the earth" and recognized that his conduct meant that the complainants would have trouble trusting lawyers again.

[12] As stated by by Mary Southin, Q.C., as she then was, in the Advocate (1977) 37 Advocate 129 " " good character" means having . . . the moral fibre to do that which is right, no matter how uncomfortable the doing may be and not to do that which is wrong no matter what the consequences may be to oneself" .

[13] In these respects Mr. Jones, in admitting for the most part his culpability and the effect of his behaviour, did not try to avoid responsibility for this situation and showed good character in being accountable for his actions. For that he is to be commended.

Decision

[14] Taking all these matters into account, it is the decision of this Panel that the Respondent be suspended from practicing or being able to apply to practice for a period of one year, commencing September 1, 2004. The terms for re-entry into the profession shall be left to the Credentials Committee for determination at the time he reapplies.

[15] The Respondent shall pay costs to the Law Society in the amount of \$7,755.23.