

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

James Neil Rodgers

Respondent

**Decision of the Hearing Panel
on Penalty**

Hearing date: April 28, 2005

Panel: David Zacks, Q.C., Chair, William Jackson, Terence La Liberte, Q.C.

Counsel for the Law Society: Todd Follett

Counsel for the Respondent: Michael Ranspot

Background

[1] On December 5, 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. On September 7, 2003, you pointed a firearm and uttered a threat at J.Q. contrary to the provisions of the *Criminal Code of Canada*.

This conduct is also contrary to Chapter 2, Rule 1 of the Professional Conduct Handbook which provides that a lawyer must not, in private life, extra-professional activities or professional practice, engage in dishonorable or questionable conduct that casts doubt on the lawyer's professional integrity or competence, or reflects adversely on the integrity of the legal profession or the administration of justice.

Agreed Statement of Facts

[2] An Agreed Statement of Facts was filed as Exhibit 2 in these proceedings. The relevant facts are as follows:

1. James Neil Rodgers was born on April 26, 1952 and was called to the Bar in British Columbia on May 14, 1979.

2. By letter dated September 23, 2003, the Law Society received notification from Crown Counsel that Mr. Rodgers had been charged with offences including pointing a firearm, using a firearm in a careless manner, unsafe storage of firearms, possessing a weapon for the purpose of committing an offence and uttering threats to cause death or bodily harm.

3. On September 12, 2003, Mr. Rodgers signed a Recognizance of Bail upon the conditions contained

in the Conditions Attachment. On September 23, 2003, Mr. Rodgers' bail conditions were varied.

4. On October 9, 2003, Mr. Rodgers gave his undertaking to the Law Society not to practice law until he had ". . . successfully completed a course of appropriate treatment satisfactory to the Discipline Committee of the Law Society or until the hearing of the citation."

5. On August 25, 2004 at the Proceedings at Trial (Sentencing), Mr. Rodgers pled guilty and was convicted of pointing a firearm at another person without lawful excuse and uttering a threat, contrary to the *Criminal Code*.

6. Following his plea of guilty, Mr. Rodgers received a conditional sentence of two years less a day to be followed by a period of probation for three years, as well as mandatory firearm prohibition.

[3] At the hearing on Facts and Verdict on February 15, 2002, the Respondent admitted that his conduct, as set out in the Schedule to citation, constituted conduct unbecoming a member of the Law Society of British Columbia and, in a decision of that date, we found the Respondent guilty of conduct unbecoming a member of the Law Society of British Columbia.

[4] By way of further background in this matter, it is important to note that the Respondent was under extreme and significant pressure at the time the conduct in question occurred. The Respondent had agreed to testify against members of a criminal organization. As a result his life, and perhaps the lives of his family, were in peril. He and his family were forced to relocate their home in an attempt to remove them from harm's way. This situation resulted in incredible stress for the Respondent and his family. The Respondent sought relief through the use of alcohol and drugs. He had thoughts of suicide. In the Respondent's criminal proceeding, the trial judge concluded that a non-custodial sentence would not place the public at risk.

Discussion

[5] At the hearing on penalty, a number of exhibits were filed. Exhibit 3 is a booklet of 12 letters from medical doctors and a counsellor. Exhibit 4 is the Respondent's Professional Conduct Record. Exhibits 5 and 6 are letters of support from the Respondent's clergyman and the Lawyers Assistance Program, respectively. In addition, the Respondent called Mr. S to give evidence on the Respondent's progress with Alcoholics Anonymous.

[6] Counsel for the Law Society and for the Respondent approached the question of penalty by reviewing the non-exhaustive considerations set out in *Ogilvie* [1999] LSBC 17. These are, with the Panel's comments on each:

a) The Nature and Gravity of the Conduct

There is no disagreement that the Respondent's conduct was very grave. The criminal charges were very serious and the potential consequences to the individuals involved even more so.

b) The Age and Experience of the Respondent

The Respondent was 52 at the time of the conduct in question. He was called to the bar in 1979. He was very experienced in his particular area of practice.

c) The Previous Character of the Respondent, Including Details of Prior Discipline

There were four unrelated matters from the 1980's. There was no evidence before the Panel that prior to the conduct in question, the Respondent's character was anything but good. The stand that the

Respondent took against the criminal activities that led to his situation is evidence of his good character. Not many citizens would have had the Respondent's courage.

d) The Impact upon the Victim

The Respondent did not contest that being threatened by a handgun at close range would have been traumatic for the other person.

e) The Advantage Gained, or to be Gained, by the Respondent

There was none.

f) The Number of Times the Offending Conduct Occurred

Once.

g) Whether the Respondent has Acknowledged the Misconduct and Taken Steps to Disclose and Redress the Wrong and the Presence or Absence of other Mitigating Factors

The Respondent pled guilty to the criminal charges and admitted responsibility to this Panel. There are mitigating factors in this matter and they are the subject of separate discussion below.

h) The Possibility of Remediating, or Rehabilitating, the Respondent

There was some disagreement between counsel about the Respondent's rehabilitation process. However, it is apparent that the Respondent is progressing and remediation and rehabilitation are likely to be successful.

i) The Impact on the Respondent of Criminal or Other Sanctions or Penalty

The Respondent was convicted of serious criminal charges for which he received a conditional sentence to which he remains subject and by which he abides.

j) The Impact of the Proposed Penalty on the Respondent

The Respondent allowed his membership with the Law Society to lapse and has been out of practice since September 2003. It is not clear when he intends to apply for reinstatement. When he does, he will need to satisfy the Credentials Committee of his character and fitness.

k) The Need for Specific or General Deterrence

We are satisfied that the Respondent will not repeat the events which lead to this matter so there is no need to consider a penalty for specific deterrence. Clearly, the Respondent's conduct was unacceptable. However, the circumstances of this matter are so unique that we do not believe a penalty designed to discourage this behaviour in other lawyers is necessary.

l) The Need to Ensure the Public's Confidence in the Integrity of the Profession

This is a particularly important factor in all discipline decisions made by the Benchers. This is no less true in this case. We have more to say about this below.

m) The Range of Similar Penalties

Two *Bannister* cases (LSUC 1980 and 1982) were cited that ranged from a reprimand to disbarment for possession of a weapon for a purpose dangerous to the public. They were of assistance only in establishing a range and are distinguishable on their facts.

We were referred to the *Watts* decision, 2001 LSDD No. 45. In that case, the member was convicted of a narcotics offence and was penalized by a Disciplinary Panel of the Law Society, with a reprimand. The Panel considered whether or not the conduct in question created a harm to the public. This is a consideration in the present matter.

[7] The issue between the Law Society and the Respondent was whether the penalty in this matter should carry a suspension in addition to a reprimand.

[8] Indeed, that is the issue between the members of this Panel. There is no doubt among the Panel that, but for the extraordinary circumstances of this matter and the pressure that the Respondent was under (circumstances and pressures that no lawyer or member of the public should ever have to face), we would have determined to disbar the Respondent.

[9] Public confidence in the integrity of the legal profession is of particular importance. It must be kept in mind at all times.

[10] No member of this Panel condones, and no member of this Society would condone, the Respondent's conduct. It is unacceptable. Having said this, we must remember that this is not a situation where the Respondent flagrantly abused his position as a lawyer or intended to deceive the authorities. It started with the Respondent doing his duty as a lawyer and a citizen agreeing to testify against alleged criminals at the risk of his life. For this, the Respondent suffered terribly. Accordingly, Mr. Zacks and Mr. La Liberte believe that:

- (a) the circumstances of this matter are sufficiently exculpatory;
- (b) the Respondent has been punished by society and will still need to satisfy the Credentials Committee as to his character and fitness; and
- (c) given the Respondent's character prior to this incident and his criminal conviction and the fact that he has not practiced law for two years;

the appropriate penalty is a reprimand. Mr. Jackson is of the view that to maintain public confidence in the integrity of the profession, a six month suspension should be ordered. Messrs. La Liberte and Zacks are satisfied that this issue will be addressed by the Credentials Committee when the Respondent makes application for readmission. A reprimand is so ordered.

[11] All of us agree that the Respondent should pay costs as requested by the Law Society except costs related to the Panel fee. Those costs are to be paid to the Law Society, without interest, on or before the first anniversary of the date that the Respondent is reinstated as a member of the Law Society.