

2006 LSBC 07

Report issued: February 27, 2006

Citations issued: September 28, 2005 and
December 2, 2005

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

Hugh Braker, Q.C.

Respondent

Decision of the Hearing Panel on Penalty

Hearing date: February 9, 2006

Panel: G. Glen Ridgway, Q.C., Gordon Turriff, Q.C., Robert Brun, Q.C.

Counsel for the Law Society: Brian McKinley

Counsel for the Respondent: Christopher Hinkson, Q.C.

Background

[1] The Panel rendered its decision of Facts and Verdict on January 12, 2006. The Respondent admitted that his conduct amounted to professional misconduct, and the Panel agreed, determining that his conduct in the circumstances set out in the two citations constituted professional misconduct.

[2] In the penalty phase, the Panel reviewed the written submissions of counsel and had the benefit of oral argument. There was evidence before the Panel that the Respondent was under significant stress for a period of time commencing in early 2004 and carrying on through to at least September 2005. This stress was brought about by financial problems for his law firm and also health setbacks involving the Respondent, family members and friends.

[3] As noted in the Panel's decision on Facts and Verdict, the Respondent has taken steps to overcome his problem of delays on files and failure to communicate with the Law Society. Additionally, the Respondent was the subject of a Conduct Review, and it was determined that no further corrective action was required at this time.

[4] At the Hearing on Penalty, and in written submissions, counsel for the Law Society emphasized the need to ensure the public's confidence in the integrity of the profession. It was noted that if members do not respond to the Law Society, they cannot be effectively regulated. The failure of members to respond seriously undermines our ability to self-regulate. The Panel agrees.

[5] It was argued on behalf of the Law Society that a fine in the range of \$5,000 or a short suspension would be the appropriate remedy. It was additionally argued that the Panel should impose a practice condition requiring the Respondent to undertake to respond in writing to all communications from the Law Society within 14 days of receipt.

[6] Counsel for the Law Society advised the Panel that the estimated cost to the Law Society in conducting

both hearings totalled approximately \$3,737.53, and it was argued that the Respondent should be responsible for these costs in total.

[7] Counsel for the Respondent noted that the Respondent had:

- (a) provided an explanation for his failure to respond based upon his personal circumstances;
- (b) cooperated with the Law Society;
- (c) made admissions with respect to the citations against him; and
- (d) a long history of contributions to the public and to the Law Society of British Columbia.

[8] It was argued on behalf of the Respondent that the appropriate penalty would be a reprimand and a contribution towards the costs sought by the Law Society.

Decision

[9] The Panel has noted the various circumstances and the range of penalties imposed in similar cases. The Panel finds that a monetary penalty is appropriate. In the result, the penalty is a fine assessed at \$1,500.

[10] In the circumstances of this case, we do not find it appropriate to order that the Respondent provide a written undertaking in the form suggested by counsel for the Law Society.

Costs

[11] The Law Society filed as Exhibit 2, a draft Bill of Costs for \$3,737.53 relating to both the Fact and Verdict hearing on December 15, 2005 and the Penalty hearing on February 9, 2006.

[12] Rule 5-9 of the Law Society Rules provides for the payment of costs by a Respondent.

[13] In the circumstances of this case, noting the cooperation shown by the Respondent in moving this matter forward and his difficult financial circumstances, we order that costs be fixed in the amount of \$2,237.53.

[14] We further order that the fine and costs aforesaid be paid within 60 days of the date of the decision.