

John Allan Davies

Salt Spring Island, BC

Called to the Bar: December 10, 1993

Discipline hearing: October 28, 2003

Panel: Russell S. Tretiak, QC, as a one-Bencher panel by consent

Report issued: November 14, 2003; indexed as [2003] LSBC 41

Counsel: Jessica S. Gossen, for the Law Society and William Clark, for Mr. Davies

Summary

Mr. Davies failed to comply with two practice supervision agreements, contrary to the order of a previous discipline hearing panel. He also failed to file with the Law Society a statutory declaration every six months listing his creditors and the amounts owed to each, contrary to an order of the previous hearing panel. The current hearing panel noted that Mr. Davies had devoted time to serving marginalized clients, rather than seeing to his own needs or fulfilling his professional responsibilities. While Mr. Davies' motives to help clients were commendable, the panel noted that lawyers nevertheless need to maintain an economic rationale for their practices, attend to professional responsibilities and fulfil duties undertaken for clients. The panel found that Mr. Davies' conduct constituted professional misconduct and ordered that he pay a \$1,500 fine, in monthly instalments of \$100, and \$500 as costs.

Facts

In mid-2003 a discipline hearing panel found Mr. Davies guilty of professional misconduct and ordered, among other things, that he immediately enter into practice supervision agreements with two supervising lawyers and maintain those agreements in good standing until relieved of the obligation by the Practice Standards Committee.

One supervisor was to supervise Mr. Davies' civil litigation practice. Under that practice supervision agreement, Mr. Davies was required to provide monthly summaries of all open litigation files and to advise the supervisor of all new civil litigation clients. The other supervisor was to supervise Mr. Davies' practice, other than his civil litigation files. That supervision agreement required that Mr. Davies provide monthly summaries of all open files and advise the supervisor of all new clients. Under the supervision agreements, Mr. Davies was required to meet monthly and communicate regularly with each supervisor.

In February, 2003 the supervisor of Mr. Davies' civil litigation practice notified the Law Society, as required, that Mr. Davies was in breach of the agreement. He reported that Mr. Davies had failed to notify him of new civil litigation clients, which only came to light when the supervisor received a list of open files. Mr. Davies also failed to provide the minimum information necessary when summarizing his open files. Finally, Mr. Davies met with that supervisor on only three occasions between June, 2002 and February, 2003, rather than monthly as required.

In response to enquiries from the Law Society, Mr. Davies' other practice supervisor reported that Mr. Davies had met with him on two occasions, rather than monthly as required, and had failed to report

monthly on all open files. That practice supervisor later stated that he assumed some responsibility for the difficulty in arranging meetings with Mr. Davies.

As a result of the 2002 hearing panel order, Mr. Davies was also obliged to provide to the Law Society every six months statutory declarations listing his creditors and the amount he owes each of them until relieved of the obligation by the Discipline Committee. He provided only one declaration, in June, 2002.

A discipline citation against Mr. Davies was authorized in May, 2003. The Discipline Committee resolved that this matter should be put before three Benchers to determine whether Mr. Davies should be suspended or have conditions placed on his practice pending the outcome of his hearing, pursuant to section 39 of the *Legal Profession Act*. Mr. Davies subsequently complied with the terms of the practice supervision agreements, and the Discipline Committee rescinded its direction for a section 39 proceeding.

Verdict

The hearing panel found, and Mr. Davies acknowledged, that his conduct amounted to professional misconduct in:

- failing to comply with practice supervision agreements, contrary to an order of a discipline hearing panel; and
- failing to file with the Law Society every six months statutory declarations listing his creditors and the amounts owed to each, contrary to an order of a hearing panel.

Penalty

The hearing panel noted that Mr. Davies, in providing his services to very marginalized clients, appeared to have commendable social motives, but in turn found himself with a very restricted income, which rendered his own circumstances very difficult.

The panel noted there was evidence of contributing factors in Mr. Davies' failure to comply with the practice supervision agreements: his accountant was away for a prolonged period, the location of his practice on Salt Spring Island made communications with practice supervisors more difficult, his caseload changed as he acquired more complex cases and he was coping with the demands of being a single parent.

The panel expressed concern about why Mr. Davies had failed to understand the exigency and danger of his circumstances. While his social motives in helping clients were commendable, a complete lawyer needs to have an economic rationale for a practice, a well-balanced regard for professional obligations and an ability to fulfil the duties undertaken for clients. The panel expressed the hope that the proceedings would help Mr. Davies avoid future lapses.

Having considered the various factors affecting penalty, including Mr. Davies' financial circumstances and the submissions of counsel, the panel ordered that Mr. Davies:

1. pay a fine of \$1,500, payable in monthly increments of \$100, beginning the end of March, 2004; and
2. pay \$500 as costs of the discipline proceedings by February 28, 2004.