

Martin David Jones

Vancouver, BC

Called to the Bar: November 15, 1996

Voluntarily ceased membership: January 1, 2003

Discipline hearing: February 26 and August 31, 2004

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

Reports issued: May 10, 2004 (facts and verdict), indexed as 2004 LSBC 10 and October 5, 2004 (penalty) indexed as 2004 LSBC 37

Counsel: Todd R. Follett for the Law Society and Mr. Jones, on his own behalf

Summary

Mr. Jones failed to serve clients in a conscientious, diligent and efficient manner, to account for funds on several client files, to report two unsatisfied judgments against him, to meet certain professional financial obligations incurred in the course of his practice, to protect certain confidential client documents, to reply to Law Society correspondence respecting complaints against him and to produce certain required documents in the course of a Law Society audit. A hearing panel found that this conduct constituted professional misconduct. The panel ordered that Mr. Jones, then a former member of the Law Society, be prohibited from applying for practice for one year (with the terms of his reinstatement falling to the Credentials Committee should he apply) and that he pay costs.

Facts

Failing to serve clients in a conscientious, diligent and efficient manner

Mr. Jones was retained by client A in February, 2001 to make a permanent residence application on his behalf. On enquiries by the client over the next 15 months, Mr. Jones told him the application had been submitted but that processing took time. In fact, Mr. Jones had not filed the application and, when discussing the matter with client A, failed to check his file. When the client followed up on the status of the application in July, 2002, he discovered that Mr. Jones had shut down his office and was no longer in practice.

On a separate matter, Mr. Jones received a retainer and disbursements for filing a permanent residence application for client C in February, 2002. The application was required within 180 days of C being declared a Convention Refugee, but Mr. Jones did not file the application within that period, or at all, and he failed to inform the client.

Mr. Jones admitted that, in these two matters, he had failed to serve his clients in a conscientious, diligent and efficient manner so as to provide the quality of service of a competent lawyer in a similar situation, contrary to Chapter 3, Rule 3 of the *Professional Conduct Handbook*. In particular, he failed to advise them of the status of their applications and did not do the work required in a prompt manner so as to ensure that its value was not diminished or lost. He further admitted that his conduct constituted professional misconduct.

The panel found that, in relation to client A, Mr. Jones was reckless and irresponsible in providing

assurances to A without checking the file. This repeated, irresponsible behaviour on a matter of extreme importance to the client was more than mere negligence. Through his recklessness, Mr. Jones had misled and prejudiced the client, which amounted to professional misconduct in these circumstances.

Failing to account to clients

Mr. Jones failed to account to three clients for money received from them in trust as required by Rule 3-48:

- In June, 2001 he received \$3,990 as a retainer for filing an application for permanent residence, but he did not make this application until May, 2002 and did not account for the funds to the client;
- In January, 2002 he received \$4,000 as a retainer for filing an application to bring a person into Canada on a humanitarian basis, but he failed to make this application or account for the funds;
- In March, 2002 he received \$2,000 as a retainer for filing an application for permanent residence, but he failed to make this application or account for the funds.

Failure to meet professional financial obligations

Mr. Jones failed to meet certain professional financial obligations incurred in the course of his practice. In particular, he failed to pay one doctor for accounts issued with respect to 14 medical-legal reports and another doctor for three accounts. He had, in fact, through a factoring company, received funds for these reports from the Legal Services Society.

Failure to report judgments

In March, 2002 the Canada Customs and Revenue Agency (CCRA) filed against Mr. Jones a certificate for \$25,691.94, plus penalties and interest, under the *Excise Tax Act* for Goods and Services Tax owing, and a certificate for \$24,912.90, plus interest, under the *Income Tax Act* for income tax owing. Mr. Jones did not satisfy these certificates and he failed to notify the Law Society of the circumstances of these certificates or his proposal for satisfying them as required by Law Society Rule 3-44. He admitted that his conduct was a breach of that rule.

Failing to protect confidential client materials

In mid-2002, when he ceased practice and vacated his law office, Mr. Jones left confidential client material on the premises. This material included letters to his clients or former clients, an immigration and refugee board personal information form relating to one client, a refugee claimant form relating to another client and the social insurance numbers of two clients.

He admitted that leaving this material was in breach of his duty to take all reasonable steps to ensure the privacy and safekeeping of confidential client information (Chapter 5, Rule 2 of the *Professional Conduct Handbook*) and his duty to preserve client secrets even after the termination of a retainer (Chapter 5, Rule 4 of the *Handbook*). He further admitted that these breaches constituted professional misconduct.

Failure to reply to the Law Society

In the course of a Law Society complaint investigation, Mr. Jones failed to respond to Law Society communications of November 26 and December 18, 2002 and of January 7, 21 and 22, 2003. On another matter, Mr. Jones failed to reply to correspondence from the Society dated April 16 and 25 and May 12,

2003. Mr. Jones admitted, and the hearing panel found, that his failure to respond promptly or at all to this correspondence was a breach of Chapter 13, Rule 3 of the *Professional Conduct Handbook* and constituted professional misconduct.

Failure to produce documents

The Chair of the Discipline Committee ordered an audit of Mr. Jones' practice on July 18, 2002. Mr. Jones failed to produce all files, vouchers, records and accounts requested by the Law Society for the investigation as he was required to do by Rule 4-43, and he admitted that he had breached that rule.

* * *

Mr. Jones withdrew from the practice of law in July, 2002 and ceased as a member of the Law Society on January 1, 2003.

Decision

The hearing panel found that Mr. Jones' conduct in all these matters constituted professional misconduct.

Admission and penalty

The hearing panel found that the conduct in question was serious. There were numerous incidents of misconduct that involved a number of clients and took place over time. The conduct resulted in harm to clients, both financially and emotionally.

The panel also took into account certain mitigating factors. Mr. Jones was a newly called lawyer at the time of the incidents and did not recognize that he was suffering from depression. His conduct was not premeditated and he did not gain a personal advantage.

The panel found that Mr. Jones, a former member, had not tried to avoid responsibility for the situation and was sincere in expressing deep regret for the harm he had caused his clients.

Taking all these matters into account, the panel ordered that Mr. Jones:

1. not be permitted to apply for practice before September 1, 2005 (with the terms of any reinstatement falling to the Credentials Committee for determination should he apply); and
2. pay \$7,755.23 as costs.