

Marlyne Joy O'Dwyer

Port Coquitlam, BC

Called to the Bar: August 27, 1993

Suspended pending hearing: December 15, 2003

Discipline hearing: February 2, 2004 (facts and verdict) and April 7, 2004 (penalty)

Panel: Patricia L. Schmit, QC, Chair, John J.L. Hunter, QC and Gavin H.G. Hume, QC

Reports issued: February 16, 2004 (facts and verdict), indexed as 2004 LSBC 03 and June 9, 2004 (penalty), indexed as 2004 LSBC 13

Counsel: Luisa Hlus, for the Law Society and Michael Ranspot, for Ms. O'Dwyer

Summary

Ms. O'Dwyer failed to respond promptly, or at all, to communications from the Law Society that required her response, failed to report to the Society her failure to satisfy judgments against her and breached practice conditions placed on her by three Benchers. The hearing panel found that Ms. O'Dwyer's conduct constituted professional misconduct. The panel ordered that she be reprimanded, that she practise only as an employee or under a practice supervision agreement and that she meet various conditions of practice. She was ordered to pay \$5,000 as costs of the hearing.

Facts

Failure to report unsatisfied judgments

Revenue Canada registered two certificates, deemed to be judgments, against Ms. O'Dwyer in Federal Court. The first was for \$25,920.67, registered against title to her interest in property in April, 1999 and the second was for \$20,996.09, registered against title to property in February, 2002. Ms. O'Dwyer owed the amount of the first judgment until July, 2003 and the amount of the second judgment until January, 2004.

In September, 2002 the Ministry of Provincial Revenue registered a Crown debt, in the amount of \$4,640, against Ms. O'Dwyer's interest in property. The debt constituted a judgment under the Law Society Rules.

Ms. O'Dwyer failed to report to the Law Society her failure to satisfy these three judgments against her within seven days of entry as required by Law Society Rule 3-44(1).

Failure to respond to Law Society communications

In 2003 the Law Society wrote to Ms. O'Dwyer with respect to her failure to report unsatisfied judgments, a complaint against her and an outstanding Form 47 accountant's report. The Law Society wrote to her on April 8, May 1, May 29, July 3, July 10, July 15, August 5, August 7, August 19, August 25, September 9 and September 15, in each case requiring her explanation by specified dates. Ms. O'Dwyer failed to respond as required by the Society, contrary to Chapter 13, Rule 3 of the *Professional Conduct Handbook*.

On October 10, 2003 three Benchers convened to determine if Ms. O'Dwyer should be suspended or be made subject to conditions on her practice under section 39 of the *Legal Profession Act* and Rule 4-17 of the Law Society Rules. The Benchers imposed nine conditions on her practice. She failed to comply with some of these conditions in that she did not file a final Form 47 accountant's report within 30 days, did not bring her accounting records up to date within 30 days, did not respond to all outstanding matters with the Law Society within 21 days and did not furnish, within 30 days, a letter from a trustee in bankruptcy confirming that she had sought debt counselling. Her trustee in bankruptcy provided such a confirmation to the Society on December 10, 2003.

On December 3, 2003 a citation was directed against Ms. O'Dwyer. On December 15 three Benchers convened in a proceeding under Rule 4-17 and ordered that Ms. O'Dwyer be suspended from practice pending disposition of the citation against her due to her breach of practice conditions. A custodian of her practice was appointed on December 16, 2003.

Verdict

The hearing panel found, and Ms. O'Dwyer admitted, that her conduct in failing to report to the Law Society unsatisfied judgments against her, failing to respond to Law Society communications and breaching conditions of practice constituted professional misconduct.

Penalty

The panel ordered that Ms. O'Dwyer:

be reprimanded;

practise only in one of the following two situations:

a) as an employee of a law firm approved by the Practice Standards Committee, on the condition that she not be responsible for any law office management accounting, that she provide her employer with a list of criminal files brought under her employer's care and those referred to other lawyers, that she provide any reports requested by the Practice Standards Committee and that she direct her employer to cooperate with the Law Society in any enquiries it may make;

b) under a practice supervision agreement approved by the Practice Standards Committee by a supervising lawyer who is approved by the Law Society and who agrees to provide reports requested by the Committee. In this situation, Ms. O'Dwyer must restrict her practice to criminal law, civil litigation and family law;

continue to attend counselling to assist in coping with her personal problems and those issues identified in a practice review report;

review each of her files with her employer or practice supervisor to determine her ability to handle each file and whether it is economically feasible for her to do so and, if a file is not economically feasible, to advise the client to retain another lawyer and to get off the record;

for the files she retains, determine a plan of action and enter bring-forward dates into her system and that of her employer;

take continuing legal education courses in criminal, civil litigation and family law;

attend meetings of CBA sections, the Trial Lawyers Association and/or the Inns of Court;

implement bring-forward systems, as well as conflict systems and documentation required by her employer or practice supervisor; and

pay \$5,000 as costs of the hearing, at the rate of \$300 per month, commencing three months from the day she recommences practice.