

2006 LSBC 12

Report issued: April 19, 2006

Oral Reasons: March 29, 2006

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

Larry William Goddard

Respondent

Decision of the Hearing Panel on Penalty

Hearing date: March 29, 2006

Panel: Anne Wallace, Q.C., Single Bencher Panel

Counsel for the Law Society: James A. Doyle

Counsel for the Respondent: Jerome Ziskrout

Background

[1] A hearing of five complaints concerning breaches of undertakings was held on June 8, 2005. The breaches concern the Respondent's failure in conveyancing matters to discharge mortgages promptly, contrary to undertakings he had given. The Respondent admitted that he professionally misconducted himself with respect to four of the allegations and the Panel found him guilty of professional misconduct on those four counts. The Respondent contested and the Panel dismissed the fifth count.

[2] That Panel consisted of myself as a single Bencher, with the consent of the Respondent under the Rules in effect at the time. Although I am no longer a Bencher of the Law Society, the Panel was continued by the President under Rule 5-2(5), and a hearing on penalty was held on March 29, 2006.

Conduct Record

[3] The Respondent was called to the Bar in British Columbia on May 20, 1975 and has been a member of the Law Society since then. He has practised as a sole practitioner since 1987. His Conduct Record consists of a Conduct Review held July 8, 1999. The report from that Review was entered as Exhibit 5 at the penalty phase of the hearing.

Respondent's Circumstances

[4] The Conduct Review in July, 1999 occurred after two difficult years where the Respondent had a great deal of staffing problems and changes. In addition, there was a 1997 reoccurrence of his wife's breast cancer, which had been initially diagnosed and treated 10 years earlier. As a result, in addition to running a solo practice, the Respondent was caring for his wife while she underwent chemotherapy and radiation. She then began a drug treatment that had difficult side effects for her and, as a result, for the

family.

[5] In 2002, the Respondent was rear-ended in a car accident, which resulted in a soft tissue injury and left him with chronic pain. He testified that he kept working as best he could, although he was never without pain. Then later that year, his wife was found to have further cancer. It was at this point that the delays that led to most of these complaints arose. The Respondent has subsequently had to cope with his wife's further diagnoses of cancer in August, 2004 and again in October 2005.

[6] The Respondent testified before the Panel at the citation hearing. He was straightforward in his manner of testimony, which he obviously found very painful and emotional to relate to the Panel. The Panel finds he is an honest and trustworthy person. He is contrite and remorseful about his actions. For example he stated at page 45 of the transcript, at line 18:

" I really have been mortified because of my professional behaviour since I've been getting together the evidence for this hearing. . . there is clearly no excuse for what I did. And I'm terribly ashamed, embarrassed and humiliated by it all."

Decision

[7] The first duty of the Law Society of BC is to protect the public interest in order to maintain public confidence in the legal profession. Part of the fulfillment of this duty is the disciplining of its members when they breach the responsibilities required of them.

[8] In fulfilling this duty, there is an obligation on the Society to consider the facts of each case individually. In doing so, there is a distinction to be made between the causes of professional misconduct. There are those lawyers who professionally misconduct themselves because they are careless by reason of incompetence, laziness or they are just cavalier about the requirements of practice. The other category of cases where misconduct occurs is when a lawyer becomes overwhelmed with personal circumstances beyond his or her control, which then leads to a breach of his or her professional responsibilities. As referred to in the decision on Facts and Verdict, the Panel accepts that the Respondent's actions were a result of stress as opposed to incompetence or laziness.

[9] Lawyers generally have a very high confidence in their ability to handle pressure. They must have this confidence because, as professionals, they are the ones to whom members of the general public turn for help in stressful situations. It seems that the longer a lawyer practises, the more likely it is that he or she will be unable to accept that they need assistance to handle the share of trauma that happens in their own lives. Such was the case with this Respondent. When looking back in retrospect at his situation of July, 1999 the Respondent testified page 43:

" I was just so beleaguered. I think I didn't have the insight to realize I was under stress and distraction. I also think at the time I was in some sort of state of denial."

[10] Balanced against the need to consider the Respondent's personal circumstances is, as stated, the need to show the public that there are consequences when a lawyer breaches his or her responsibility.

[11] The Law Society of BC has recently taken a much sterner approach to breaches of undertaking due to the catastrophic results of the actions of one member who defrauded clients of millions of dollars using undertakings as a tool for his dishonesty. It must be clear to the Law Society's members that if they breach their undertakings, there will be serious consequences. Short of disbarment, the most serious penalty that can be imposed is a suspension from practice. The Panel recognizes that the consequences of

suspension for this Respondent, as a sole practitioner, will be harsher than for a member practising with other lawyers. This Panel orders that there be a suspension from practice for two months commencing on May 15, 2006.

[12] Two reports from the Practice Standards Committee were filed at this hearing. They indicate that the Respondent continues to require a practice supervision arrangement to assist him. Accordingly, this Panel orders that the Respondent shall enter and remain under a Practice Supervision Agreement satisfactory to the Practice Standards Committee for a period of one year, at which time a follow-up Practice Review shall be conducted. The Practice Standards Committee has the authority to make further directions at that time.

Costs

[13] Counsel for the Law Society submitted a Bill of Costs that totals \$15,171.85. He submitted that part of those costs were incurred for the count on the citation that was dismissed by the Panel. Therefore he submits, taking that in to account, the share of the costs which the Respondent should pay is \$8,924.65.

[14] Both Counsel referred to the fact that the case law regarding costs for these hearings varies greatly. In reviewing that law, the Panel finds that it is essentially up to each Panel's discretion to determine on each set of facts what is appropriate.

[15] The facts in this case are that the Respondent admitted professional misconduct on four of the counts and contested only one. On that one count, the Panel dismissed the citation against the Respondent. Accordingly, the Panel orders costs in a rough approximation to what would amount to the costs of preparation for and presentation of a one day penalty hearing in the amount of \$4,500.00.

Summary

[16] The Respondent is suspended from practice for a period of two months, commencing May 15, 2006.

[17] The Respondent shall be under a Practice Supervision Agreement, as set out by the Practice Standards Committee for a period of one year, with a follow-up Practice Review to take place at that time and shall pay the costs of administering the Practice Supervision Agreement.

[18] The Respondent shall pay costs in the amount of \$4,500 and shall have one year from the end of his suspension to pay that amount.