2005 LSBC 04
Report issued: January 25, 2005
Citations issued: April 29, 2003, July 23, 2003,
March 8, 2004; and amended June 8, 2004

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

ROBERT EARL WILLIAMSON

Respondent

Decision of the Hearing Panel on Facts and Verdict

Hearing date: December 14, 2004

Panel: Grant C. Taylor, Q.C., Chair, Gavin Hume, Q.C., Warren Wilson, Q.C.

Counsel for the Law Society: Jean Whittow, Q.C.
Counsel for the Respondent: R. Glen Orris, Q.C.

[1] This is a case about a member who became so busy running not one, but two separate and distinct busy litigation practices in two adjoining provinces, overlaid with depressive episodes as well as other personal matters, that he was unable to keep up with the demands made by his clients for information and correspondence with other members of the legal profession as well as the Law Society. Initially there were three separate citations, however, all three were eventually consolidated into one citation dated July 23, 2003. Service of same is not in issue.

[2] The amended schedule of the consolidated citations reads as follows:

AMENDED SCHEDULE RE: ROBERT EARL WILLIAMSON

Nature of Your Conduct to be Inquired Into:

1. Your failure to serve your client SM in a conscientious, diligent and efficient manner as required by Chapter 3, Rule 3 of the Professional Conduct Handbook

2. Your failure to respond to correspondence which required a response from Mr. Clarke, a member, between June 25, 2002 and February 14, 2003, contrary to Chapter 11, Rule 6 of the Professional Conduct Handbook.

3. Your failure to respond promptly to correspondence from the Law Society regarding deficiencies in the Form 47 Report you had filed for the year 2000 contrary to Chapter 13, Rule 3 of the Professional Conduct Handbook.

4. Your failure to deliver to the Executive Director a completed accountant's report in the approved form for the year ending December 31, 2001 by March 31, 2002 as required by Rule 3-72(1).

5. Commencing in October 2001, your delay in responding to requests made by a member Dennis J. Daley for the delivery of several client files and for the resolution of outstanding fee issues respecting client I, contrary to

Chapter 11, paragraphs 5 & 6 of the Professional Conduct Handbook.

[3] The Law Society called five witnesses and the Respondent gave evidence. There were also 20 exhibits filed. It wasn't until the Respondent's counsel opened that we were told that the Respondent's evidence was intended to explain the various delays, not to excuse them. We were also told that all of the citations were being admitted but for count 2 – the one involving Mr. Clarke.

[4] Accordingly the issues to be determined are whether having admitted counts 1, 3, 4 & 5 of the Amended Schedule of the Citation the Respondent is guilty of professional misconduct or some other form of misconduct including whether or not the Respondent incompetently carried out duties undertaken by him in his capacity as a member of the Law Society. We also have to make a finding of fact in relation to count 2.

[5] Counsel for the Law Society submits that the appropriate verdict for each allegation is that of professional misconduct, while counsel for the Respondent submits that although the Respondent's failures have resulted in breaches of the Rules, the breach of same have not brought the profession into disrepute nor the Law Society, nor have they affected the public adversely and accordingly do not amount to professional misconduct.

[6] Exhibits 2, 5 & 13 are Draft Agreed Statement of Facts. None of the Draft Agreed Statements of Fact were signed by counsel, however, we were told that none of the facts giving rise to any of the counts was in dispute. We will endeavor to summarize as much as possible the facts on each of the counts from the evidence and the Draft Agreed Statements of Fact. We will deal with the evidence on the counts in the order of presentation at the hearing.

Count 5

[7] In regard to Count 5, the facts relate to a failure to respond to Mr. Daley, a member of the Law Society, regarding the transfer of a file or files regarding the representation of Mr. A.I. The cogent facts related to this count are set out below:

1. The Respondent was retained by Mr. I concerning several related matters arising out if a motor vehicle accident which occurred on March 15, 1997. There were four matters, summarized as follows:

    (a) A civil suit against the drivers engaged in the collision (the "MVA Action") ;

    (b) An action against [M Company] and the [IL Association] for disability benefits:

    (c) A wrongful dismissal matter against [D Sawmil]l; and

    (d) An application before the Canada Pension Review Tribunal.

2. Mr. I retained Dennis J. Daley of Kelowna in October, 2001 to act for him instead of the Respondent with respect to the injuries sustained in the accident.

3. On October 15, 2001, Mr. Daley faxed a letter to the Respondent requesting Mr. I's MVA Action file and setting out a proposed arrangement regarding the payments of the accounts of both counsel.

4. On October 17, 2001, Mr. Daley again wrote to the Respondent by fax requesting his thoughts on the fee proposal in his earlier letter.

5. The Respondent responded on November 2, 2001 and provided the MVA action file, including several binders of material. The Respondent did not address the fee arrangement matter. It was in this letter the Respondent indicated that there were related matters including the claim for wrongful

dismissal, a claim for disability benefits and an application before the Canada Pension Review Tribunal.

6. Mr. Daley wrote a further letter to the Respondent on November 27, 2001 requesting the files for the related matters and seeking a response to his proposal regarding Fee Arrangements. Some of Mr. Daley's letter says:

> "you have not responded to my letter of October 15, 2001, a copy of which is enclosed for easy reference. I prefer to resolve any problems with a division of fees sooner rather than later. Please call or write at your earliest convenience to confirm that you agree with my suggestions about fees.
>
> My Contingency Fee Agreement with the client does not cover the other matters mentioned in your letter of November 2, 2001. Please send me the files with your fee agreement with the client for those files, and your accounts on each file and your proposal about the manner in which the fees will be handled if I agree to take the files."

7. On January 2, 2002, Mr. Daley wrote again to the Respondent requesting his position regarding the division of fees and requesting his account for his services relating to the motor vehicle accident and the files and his accounts for the other matters mentioned in his letter of November 2, 2001 as the client was very anxious to have Mr. Daley's opinion on the other matters.

8. On January 24, 2002, Mr. Daley wrote to the Respondent stating:

> "I have not heard from you in response to my letters requesting the [M Company] file and the other files you have for Mr. I.
>
> I enclose a copy of a letter dated January 11, 2002 from [M Company].
>
> I am trying to re-open Mr. I's claim for benefits from [M Company]. It is imperative that I have your file along with a covering letter outlining your dealings with [M Company], immediately."

9. On December 12, 2002, Mr. Daley wrote to the Respondent:

> "Despite repeated requests you have yet to send me the account or the other files mentioned in your letter of November 2, 2001.
>
> Your failure to deliver the files is problematic because, unless you commenced actions, the claims against ICBC for Part VII benefits, [M Company] for indemnity under the contract, or breach of contract, and [D Sawmill], may be statute barred.
>
> As stated previously, the claims against P were settled for $25,000. My fees based on a 25% contingency are $6250. With tax the total for fees is $7,145 leaving Mr. I with a net of $17,855. I have not billed Mr. I for disbursements, leaving them to be dealt with when the claim against ICBC for the unidentified driver is concluded.
>
> Please contact me immediately about your share, if any, of the fees recovered in the action against P. Provide an itemized bill in accordance with the Legal Professions Act and account for monies paid to you in trust as a retainer by Mr. I.
>
> If you have not already done so, send me the other files, the action against [M Company] and [IL Association], the wrongful dismissal matter against [D Sawmill] and the application before the Canada Pension Review Tribunal immediately."

10. On April 7, 2003, Mr. Daley wrote again to the Respondent:

> "This letter follows our letter to you of December 12, 2002. You have not responded to our request for documents and in particular those pleadings that you stated were filed commencing actions against [M Company] and the [IL Association] for disability benefits, wrongful dismissal against [D Sawmill], and the Application before the Canada Pension Review Tribunal.
>
> We have now searched the Vernon Court Registry and found that you did in fact commence and action against the [IL Association] for disability benefits. However, that action was commenced February 8, 2001 but there has been no Appearance filed on behalf of the Defence. We are extremely concerned that the Defendant was not served with in the 1 year limitation period and that the action is now statute barred. Please address this issue with us in responding correspondence."

11. On May 21, 2003, Mr. Daley wrote to the Law Society concerning the Respondent's lack of reply to his correspondence.

12. The Law Society sent a letter to the Respondent on June 3, 2003 seeking a response to Mr. Daley's complaint.

13. The Respondent wrote to Mr. Daley on June 30, 2003 enclosing his files concerning the [M Company] claim and the [D Sawmill] wrongful dismissal claim.

14. The June 30, 2003 letter from the Respondent to Mr. Daley was the only letter from the Respondent to Mr. Daley since Mr. Daley's letter of November 27, 2001.

[8] The Respondent's letter of June 30, 2003 to Mr. Daley enclosed his files related to the [M Company] and [D Sawmill] matters and went on to say: "My apology for the delay. However all of the documents contained in these two files, I was given to believe were contained in the Documents Binder and Documents Folder I sent you under cover of my letter dated Nov. 2, 2001. My recollection is that any documents and correspondence relevant to [M Company] and [D Sawmill] were in that binder, as they would be discoverable in the motor vehicle action." Mr. Daley gave evidence that these files were not sent with the earlier correspondence and was not challenged on cross-examination. Accordingly, we accept Mr. Daley's version of the events over that of the Respondent.

[9] In regard to Count 5 of the Amended Schedule we find without hesitation that the Respondent's delay in responding to Mr. Daley's correspondence from October, 2001 until June 30, 2003 constitutes professional misconduct.

Count 1

[10] The chronology of events concerning the conduct of the file is largely agreed and set out as follows:

1. In early December, 1997, the Respondent was retained by SM concerning a wrongful dismissal claim after he had been dismissed from his employment with [Auto Dealer], a Chevron dealer in Kelowna, B.C. without notice in September, 1997.

2. SM attended the Respondent's office, along with his father, FM, and, following advice from the Respondent, instructed Mr. Williamson to initiate a claim. Five hundred dollars was provided to the Respondent. It is agreed on the evidence that the Respondent's fee was to be paid by contingency, although no contingency agreement was executed.

3. On December 5, 1997, the Respondent sent a form of demand letter to [Auto Dealer], and to C

Canada Ltd., asserting a claim for wrongful dismissal and offering to resolve the claim upon payment of $10,290.

4. On December 12, 1997, C Canada Ltd. wrote back, through its counsel stating that it was not the employer of SM. On December 19, 1997, [Auto Dealer] responded through its counsel that the employee had been dismissed for cause.

5. Both F and SM gave evidence that they did not receive any of this correspondence.

6. On September 22, 1999, the Respondent filed a Writ of Summons on behalf of SM against C Canada Ltd. and [Auto Dealer]. The M's testified that they did not receive a copy of the Writ during the course of the Respondent's retainer, and FM expressed surprise about the date of the filing of the Writ as he understood that the claim was to be filed shortly after the initial meeting with the Respondent in 1997.

7. In or about September, 2000, the Respondent caused the Writ to be served upon [Auto Dealer] and C Canada Ltd.

8. In August, 2001, SM retained Michael Yawney in place of the Respondent.

9. The file was eventually transferred to Mr. Yawney on October 23, 2001. [Auto Dealer] has since gone bankrupt. The action has still not resolved through settlement or litigation.

10. Apart from the actions referred to above, no steps were taken by the Respondent on the file between the initial meeting with his client of December, 1997, and the transfer of the file in October, 2001.

[11] There is also evidence from FM, who was essentially acting as his son's agent with the Respondent, that he had attempted to contact the Respondent by telephone on numerous occasions. On the occasions that he spoke with the Respondent, he was generally assured that matters were proceeding. On December 5, 2000, FM left a message on the Respondent's answering machine. The call was returned the following day, at which time the Respondent assured Mr. M that he would proceed with the case and schedule Examinations for Discovery. Discoveries were never scheduled.

[12] In submissions, the Respondent admits that his delay in dealing with the M brief is a contravention of Chapter 3, Rule 3 of the *Professional Conduct Handbook.* The question for determination by this Panel is whether that contravention also constitutes professional misconduct.

[13] As already set out, the Respondent submits the public and the Law Society were not adversely affected and therefore he did not commit professional misconduct.

[14] Counsel for the Law Society submits that the facts relating to count 1 constitute "an egregious case of failing to serve the client in a "conscientious, diligent and efficient'manner" and cites *Re Campbell* (Hearing Report October 14, 1997) and *Re Ashton* [2003] LSBC 23 as authorities for the proposition that breach of Chapter 3, Rule 3 of the *Professional Conduct Handbook* is professional misconduct.

[15] Neither matter provides the strongest of authorities in the circumstances since both Mr. Ashton and Mr. Campbell admitted that their failure to do the work in hand for the client in a prompt manner constituted professional misconduct.

[16] The Respondent admitted in his evidence that he should have sat down with the client and discussed matters including the amount of cost to pursue the claim but didn't do so. In other words, the Respondent failed completely to manage his client's expectations. This is even more evident when coupled with the explanation that he was pursuing the claim in Supreme Court in order to have Examinations for Discovery, which never occurred.

[17] The Respondent also gave evidence that the delay between 1997 and 1999 was a function of the volume of the work he had. He explained the lateness of the service of the Writ by saying he had been called to the Bar of Alberta in 1999 and that his practice in Alberta had developed more quickly than he had expected. The reason given for setting up a practice in Alberta was as a result of a personal relationship with a woman who was now living in Alberta. He admits that he essentially had two full time practices and that he was spread too thin. On top of all of this, the Respondent traveled extensively as a trial lawyer throughout British Columbia and Alberta and did not have full-time staff in either jurisdiction.

[18] The Respondent did not advance Mr. M's case in a prompt and diligent manner, nor did he properly communicate with the client concerning progress of the matter. He did not properly advise the client about the merits of pursuing the action. This Panel agrees that this is an egregious case of failing to serve the client in a conscientious, diligent and efficient manner and finds that the admitted breach of Chapter 3, Rule 3 of the *Professional Conduct Handbook* in these circumstances constitutes professional misconduct.

Count 2

[19] All of the events concerning Count 2 in the citation took place between June 2002 and early 2003. The draft Agreed Statement of Facts deals with a settlement made by the Respondent on behalf of his clients, A. and D. E, arising out of a claim for injuries suffered in a motor vehicle accident on July 7, 1995 and Mr. Robert Clarke, counsel acting on behalf of the Defendants. The following facts are not in issue:

1. On June 25, 2002, a letter was sent by ICBC to the Respondent confirming that a settlement had been agreed upon in the amount of $5,625.00.

2. On June 28, 2002, defence counsel, Mr. Clarke, sent a Release, a draft Consent Dismissal Order and an ICBC cheque in the amount of $5,625.00 to the Respondent, on "your undertaking not to use or disburse same unless and until A. E. and D. E. have executed the Release, you have endorsed the Consent Dismissal Order and both documents have been returned to us" .

3. On July 24, 2002, Mr. Clarke sent a follow up letter to the Respondent.

4. On September 24, 2002, Mr. Clarke sent a further letter to the Respondent noting that the settlement cheque had been cashed but that the Release and Consent Dismissal Order had not been returned. Mr. Clarke asserted that the Respondent was in breach of the undertakings contained in the letter of June 28, 2002.

5. On October 15, 2002, a further letter was sent by Mr. Clarke to the Respondent.

6. On October 30, 2002, Mr. Clarke sent a letter of complaint to the Law Society concerning the Respondent.

7. On November 12, 2002, the Law Society sent a letter to the Respondent asking for his explanation regarding the breach of undertaking and the failure to reply to Mr. Clarke's correspondence in that regard.

8. On November 14, 2002, Mr. Rees Brock sent a letter to the Law Society indicating that he had the Respondent's authorization to deal with the Law Society, although he was not his counsel.

9. On November 19, 2002, the Law Society wrote to Mr. Brock regarding the outstanding complaint.

10. On November 21, 2002, Mr. Brock advised the Law Society by email that the Respondent would be responding regarding the Clarke complaint.

11. On December 9, 2002, a further letter was sent by the Law Society to Mr. Brock.

12. On December 11, 2002, Mr. Clarke sent a letter to the Law Society concerning his recent communications with the Respondent in which Mr. Williamson advised Mr. Clarke that his clients would be executing the Release shortly and that the funds had remained in his trust account throughout.

13. On December 18, 2002 and January 28, 2003, correspondence was sent to the Respondent from Mr. Clarke's office concerning the Release and Consent Dismissal Order.

14. On February 5, 2003, a further letter was sent to the Respondent from the Law Society.

15. On February 14, 2003, the Respondent responded to the Law Society's correspondence as follows:

> "Regarding Robert Clarke, the Release was sent to my client, D. E. in California and I have yet to receive it back. I will contact my client to determine the delay and ask that he return it to me as soon as possible. I tried to contact Mr. Clarke today to advise him of same."

16. In addition, on February 18, 2003, the Respondent faxed a letter to the Law Society confirming that funds had not been paid from trust.

17. It is agreed that the Respondent delayed between July 2002 and November 2002 in contacting Mr. Clarke, despite Mr. Clarke's repeated requests for information.

[20] According to the Respondent, the main problem he faced was that his client, A. E., left for Europe on September 1, 2002 without telling Mr. Williamson. He gave evidence that he made efforts to locate her at Okanagan College where he had known that she had been a student prior to learning that she had left for Europe. The Respondent also gave evidence that he knew Ms. E.'s father, a retired police officer, and knew that he wintered every year in California.

[21] The Respondent gave evidence that it was October 27, 2002 when he learned Mr. E. had left for California but he could not find him as there was no forwarding address, and apparently, Mr. E. had changed his winter residence. The Respondent gave evidence that he tried to find Mr. E. through various friends of Mr. E. but none of them knew of his new address in California. The Respondent learned that Mr. E. had returned to the Vernon area some time in May of 2003.

[22] During the times in issue and commencing September 23, 2002, the Respondent gave evidence that he was conducting a five-week manslaughter trial in New Westminster and it was not until he returned from New Westminster to his Calgary office and was getting caught up in his correspondence did he see the letter from Mr. Clarke which prompted his call to Mr. Clarke.

[23] The burden of proof is on the Law Society. The standard of proof in disciplinary proceedings is generally described as "clear and convincing" . This standard of proof is higher than a mere balance of probabilities in civil matters but short of proof beyond a reasonable doubt in criminal matters.

[24] While this Panel takes a very dim view of the manner in which the Respondent conducted himself throughout in relation to the Clarke complaint, there does appear to be a series of matters which occurred which created difficulties for the Respondent albeit ones that he could have prevented by having dealt with the matter promptly to begin with. Taking all of the evidence into account in respect of Count 2, this Panel is not satisfied that the evidence in relation to Count 2 is clear and convincing and, accordingly, we dismiss Count 2.

Count 3

[25] In relation to this Count and Count 4, evidence was given by Neil Stajkowski, Chief Financial Officer of the Law Society. The Respondent testified that he did not disagree with any of Mr. Stajkowski's evidence. By way of draft Agreed Statement of Facts summarizing Mr. Stajkowski's evidence, the facts pertaining to Count 3 are as follows:

1. The Respondent's year end for the year 2000 was December 31, 2000. Under Rule 3-72 of the Law Society Rules, the Respondent was required to file his accountant's report (Form 47) by March 31, 2001.

2. The Respondent filed his 2000 Form 47 by fax on January 8, 2002, and by mail on January 28, 2002.

3. On January 18, 2002, the Law Society wrote to the Respondent concerning the deficiencies noted in the 2000 Form 47.

4. On February 1, 2002, Mr. Ross Davidson CA, the accountant who had prepared the 2000 Form 47 provided further information to the Law Society, thus responding to one of the Law Society's requests.

5. On February 14, 2002, March 11, 2002, April 10, 2002 and April 24, 2002, the Law Society wrote to the Respondent requesting a written explanation of the exceptions noted in the 2000 Form 47 along with confirmation as to the steps that have been taken to ensure future compliance with the Law Society Rules.

6. On May 17, 2002, the Respondent delivered two letters to the Law Society, received by the Law Society on May 23, 2002. In the first, he responded in part to the Law Society's letters concerning the exceptions in his 2000 Form 47. In the second, he made a request to the Discipline Committee that the penalties concerning late filing of the 2000 Form 47 be waived or reduced.

7. On May 27, 2002, the Law Society wrote to the Respondent concerning the deficiencies and advising that his request would be referred to the Discipline Committee at its July 2002 meeting.

8. On July 30, 2002, the Discipline Committee considered the matter and made directions. These were communicated to the Respondent by letter of September 13, 2003:

i) The Respondent's outstanding penalties be reduced from $13,696 to $5,564;

ii) The Respondent was to provide a written explanation of the steps which he had taken to ensure future compliance with the Law Society Rules, which letter was to be provided by September 30, 2002;

iii) The Respondent's year 2001 accountant's report was to be submitted along with a late fee of $214 by September 30, 2002.

9. The Respondent did not provide the letter requested by the Law Society concerning steps taken to ensure future compliance with the Rules by September 30, 2002, nor at all.

10. The Law Society continued to request the "compliance" letter, in correspondence dated December 10, 2002 and March 6, 2003 without response.

[26] Chapter 13, Rule 3 of the *Professional Conduct Handbook* provides "a lawyer must reply promptly to any communication from the Law Society" .

[27] Generally, failure to respond promptly to Law Society correspondence is found to amount to professional misconduct. The rationale is well set out in *Re Dobbin* [1999] LSBC 27 where the Benchers onRreview said at paragraph 20:

> "If the Law Society cannot count on prompt, candid, and complete replies by members to its communications it will be unable to uphold and protect the public interest, which is the Law Society's paramount duty. The duty to reply to communications from the Law Society is at the heart of the Law Society's regulation of the practice of law and it is essential to the Law Society's mandate to uphold and protect the interests of its members. If members could ignore communications from the Law Society, the profession would not be governed but would be in a state of anarchy."

[28] The Benchers in Review went on to quote the case of *Macdonald* [1999] LSBC 20 at page 3 where they said:

> "Failing to respond promptly is a grave matter, and as has been pointed out, our Rules are there to protect the public. We are a self governing society, this is a rare privilege which must be constantly earned. To protect the public requires an investigative process which mandates prompt replies from members to inquiries made by the Law Society. The *Peters* case quoted refers to A*rtinian v. The College of Physicians and Surgeons* (1990) 73 O.R. (2 nd) 204 as authority for the proposition that every professional has an obligation to cooperate with his or her self governing body in an investigation into their affairs."

[29] In reasons given in *Guinn* dated June 16, 1999, at page 11 is the following quote regarding professional misconduct:

> "It is useful to consider that in no less than 45 instances have the Benchers found that failure to respond to either the Law Society, a client or another lawyer has constituted professional misconduct over the period 1983 to date. In addition, there are numerous other decisions finding professional misconduct for failure to communicate has been mixed with other conduct which together constituted professional misconduct."

[30] At paragraph 25 of the *Dobbin* review decision, the Benchers said this:

> "Frequently, the member's failure to respond to Law Society communications is a sequel to a prior, frustrating failure to respond to client communications or to other lawyers'communications. Procrastination in responding to the Law Society, or willful failure to respond to the Law Society, may be symptomatic of other practice problems involving delay on files or other dereliction of professional duty. The Law Society is put in an impossible position in dealing with disgruntled clients or disgruntled other lawyers, by a member's intransigent failure to respond. There is no doubt whatever that a persistent, intransigent failure to respond to Law Society communications brings the legal profession into disrepute. As a result, it is the decision of the Benchers that unexplained persistent failure to respond to Law Society communication will always be prima facie evidence of professional misconduct which throws upon the Respondent member a persuasive burden to excuse his or her conduct."

[31] This Panel finds that the lengthy delay in responding to the Law Society's communication constitutes professional misconduct by the Respondent.

Count 4

[32] The facts presented by the Law Society and accepted by the Respondent are as follows:

[32] The facts presented by the Law Society and accepted by the Respondent are as follows:

1. The Respondent's year end for the year 2001 was December 31, 2001. By operation of the Law Society Rules, the 2001 Accountant's Report ("Form 47") was to be filed by March 31, 2002.

2. The Respondent did not file a 2001 Form 47 in accordance with the Rules. As set out above, on July 30, 2002, the Discipline Committee directed that the Respondent's 2001 Form 47 was to be submitted by September 30, 2002.

3. The Respondent did not file his 2001 Form 47 by September 30, 2002.

4. On December 31, 2002, the Respondent faxed a copy of his year 2001 Form 47. The deficiencies in the 2001 Form 47 indicate that the Accountant was not provided with adequate records in order to conduct a review. In particular, the accountant was not provided with bank statements, cheque stubs, etc.

5. On January 3, 2003, the Law Society wrote to the Respondent advising that the 2001 Form 47 was not accepted as filed. The letter described the deficiencies in the 2001 Form 47 and the steps which must be taken before it could be accepted, including a requirement for a further letter from the Accountant.

6. On January 31, 2003, the Respondent requested a waiver or extension of the time to pay his penalties concerning the 2001 Form 27 and the 2001 Trust Report. The request was granted in part.

7. On March 6, 2003, the Law Society sent a further letter regarding the 2001 Form 47.

8. In 2003 the Law Society Rules were amended, so that lawyers who had not filed within the time limits would be suspended upon a period of notice (Rule 3-74).

9. On December 16, 2003, the Respondent was informed that, unless he filed the 2001 Form 47, and the Form 27 for the period ending December 31, 2002, he would be suspended on January 28, 2004.

10. By letter of January 12, 2004, the Respondent requested an extension. However, this request was rejected by the Law Society and the Respondent was so informed by a letter dated January 16, 2004.

11. On January 28, 2004, the Law Society received a Supplementary 2001 Report and letter of explanation from the Respondent.

12. By letter dated February 9, 2004, the Respondent was informed that the 2001 Form 47 had now been accepted.

[33] Former Rule 3-72(1) required a lawyer to file a Form 47 within three months of the end of the reporting period (that rule has been amended and is now Rule 3-72(3)). In the Respondent's circumstances, this meant that he had to file his 2001 Form 47 by March 31, 2002. The Discipline Committee granted an "extension" to September 30, 2002. Notwithstanding the extension, the Form 47 was not filed until December 2002/January 2003. The Form 47 was held to be so inadequate as to fail to constitute a proper report. The inadequacies were not addressed until 2004.

[34] The Respondent gave evidence that there was no excuse for not doing the Form 47 within the required time limits. He did offer as an explanation a very busy trial schedule, the fact that he was running two offices, had a large number of clients, was suffering from depressive episodes, and had a very extensive travel schedule related to his trial work in both British Columbia and Alberta.

[35] The Respondent also gave evidence that he closed his Calgary office in August 2003 and as a result of complaints to the Law Society of Alberta, tendered his resignation to the Alberta Law Society.

[36] In the matter of *Kristiansen* [2002] LSBC 06, Mr. Kristiansen had failed to file an Accountant's Report in Form 47 within three months of the conclusion of each reporting period as required by Rule 3-72 for his law practice's year end of September 30, 2002 and as a result of the wind up of his law practice for the period October 1, 2000 to December 31, 2000.

[37] Mr. Kristiansen admitted in an Agreed Statement of Facts and the Panel found that his failure to respond to the Law Society's request for a letter regarding correction of exceptions and his failure to provide the two Form 47s as they came due constituted professional misconduct. In the *Kristiansen* matter, three letters were sent to Mr. Kristiansen between March 1, 2001 and April 12, 2001 and seven telephone calls were made to Mr. Kristiansen's office between March 1, 2001 and June 25, 2001. The filing of Mr. Kristiansen's Form 47 was delayed from September 2000 to March 4, 2002.

[38] In the Respondent's case, while he submitted his Form 47 three months late after receiving an extension of nine months, it was also filled with substantial deficiencies in that his accountant was not provided with bank statements, cheque stubs, etc. The Respondent received an extension of time in order to pay penalties of the late filing of the 2001 Trust Report. It was not until after January 28, 2004 that the Respondent submitted a supplementary 2001 report and a letter of explanation, and subsequently on February 9, 2004 the member was informed by the Law Society that his 2001 Form 47 had been accepted.

[39] In the view of this Panel, the failure to file a Form 47 some three years after it was due is egregious.

[40] At the penalty phase of the *Kristiansen* hearing, the Panel said this in relation to Form 47s and the importance of strict adherence to their requirements:

> "If the public is to have faith in the statutory scheme by which they can pay money to a lawyer for a particular purpose and know it is safe, it is of paramount importance that the rules governing trust monies, including time limits and the filing of Form 47s, are scrupulously observed."

[41] Given the above, this Panel finds that the Respondent is guilty of professional misconduct in relation to Count 4 of the citation.

[42] In summary, the Respondent has been found guilty of professional misconduct in relation to Counts 1, 3, 4 and 5. Count 2 was dismissed.

[43] Substantial evidence was provided to the Panel through the Respondent regarding two depressive episodes and their effect on his ability to practice law. The evidence regarding the depressive episodes and other personal matters was not provided to the Panel as a defence but rather as an explanation for some of what was occurring in the Respondent's life over and above his struggles to keep two full-time practices going in two different provinces. This Panel is not unmindful of those circumstances but thinks it is more appropriately considered on the penalty phase now that the Respondent has been found guilty of four counts of professional misconduct.