2006 LSBC 50
Report issued: December 13, 2006
Citation issued: July 9, 2002

The Law Society of British Columbia
In the matter of the *Legal Profession Act*, SBC 1998, c.9
and a section 47 Review concerning

Danine Lorraine Geronazzo

Respondent

Decision of the Benchers on Review

Review date: June 26, 2006

Benchers: Gordon Turriff, Q.C., Chair, Ronald Tindale, Robert Punnett, Michael Falkins, Thelma O'Grady, David Renwick, Ken Dobell

Counsel for the Law Society: Gerald Cuttler
Appearing on her own behalf: Danine Geronazzo

[1] This is a Review pursuant to Section 47 of the *Legal Profession Act* concerning Danine Lorraine Geronazzo, a member of the Law Society of British Columbia.

Background

[2] A citation was issued against the Respondent on July 9, 2002 by the Executive Director of the Law Society pursuant to the direction of the Chair of the Discipline Committee, under authority of the *Legal Profession Act* and Rule 4-15 of the Law Society Rules.

[3] The citation was amended on February 12, 2004, directing an inquiry into the nature of the Respondent's conduct as follows:

a) Your conduct in that you attempted to mislead Kelley McCullagh, a partner at your employer law firm, Carfra & Lawton, by representing to Ms. McCullagh that you had prepared and sent a response as requested by a Manitoba client " R" to the client on or about July 15, 1999 when you knew this representation was untrue.

b) Your conduct in that you attempted to mislead Mr. Carfra, Q.C. in relation to client " M.I.A." by asserting to Mr. Carfra that:

i) you had had telephone contact with Mr. Koolman, an employee of the Township of Esquimalt, when you knew you had not done so;

ii) you had prepared and sent an affidavit to Mr. Wotherspoon, an employee of the Township of Esquimalt when you knew you had not done so.

c) Your conduct in that you attempted to misled Kelley McCullagh by representing to Ms. McCullagh that a submission on the " H" file had been sent to Workers' Compensation Board in September 1999 when you knew this representation to be untrue.

d) Your conduct in attempting to mislead the Law Society in the course of responding to its inquiries pursuant to the complaint of James Carfra, Q.C. by:

i) representing to the Law Society that you had prepared and sent a response to client " R" on or about July 15, 1999 when you knew this representation was not true;

ii) representing to the Law Society that, in relation to client " M.I.A." you:

i. had telephone contact with Mr. Koolman when you knew you had not; and

ii. had prepared and sent an affidavit to Mr. Wotherspoon when you knew you had not done so;

iii. representing to the Law Society that you had prepared and sent a submission on the " H" file to the Workers' Compensation Board when you knew this representation was untrue.

e) Your conduct in that you attempted to mislead Nicholas A. Mosky, a partner in your employer law firm, Waddell Raponi, between in or about March and August 2001, by representing to Mr. Mosky that you had filed an appointment to assess the accounts of Waddell Raponi regarding the " R" clients, that you had served the clients by mail with the Appointment, and that the assessment hearing had been adjourned and reset, when you knew that these representations were untrue.

[4] On March 9, 10, and 11, 2004, and January 18, 2005, a hearing was held to inquire into the Respondent's conduct.

[5] On August 12, 2004, written reasons were issued by the Hearing Panel on Facts and Verdict.

[6] The Hearing Panel found that the Respondent had professionally misconducted herself on all five counts in the amended citation, except for 2(b)(i) above.

[7] On April 4, 2005, the Hearing Panel issued written reasons on Penalty.

[8] The Hearing Panel ordered that the Respondent be suspended from the practice of law until both of the following requirements are satisfied:

(a) The Respondent has entered into Practice Supervision Agreement for a period of two years after recommencing practice, as approved and thereafter supervised by the Law Society's Practice Standards Committee;

(b) The Respondent certifies by letter to the Practice Standards Committee that, for the two year period of practice supervision, she will engage in the practice of law only as an employee, associate or

partner, with two or more members of the Law Society who are not related to her by blood or marriage. For clarification, an office sharing practice situation will not satisfy this requirement.

[9] The Hearing Panel also ordered that the Respondent pay the costs of the disciplinary proceeding, excluding Panel fees. The costs itemized by the Law Society were not contested. The total costs payable are therefore $29,283.73.

[10] It is from that decision on Penalty that the Law Society argues the Hearing Panel erred.

[11] A Section 47 Review was held on June 26, 2006, and these are our reasons.

THE STANDARD OF REVIEW

[12] Pursuant to section 47(5) of the *Legal Profession Act*, after the hearing, the Benchers may:

(a) confirm the decision of the Panel; or

(b) substitute a decision that the Panel could have made under the *Act* or Rules.

[13] The test to be applied by the Benchers on a Review under Section 47 is that of " correctness" .

[14] This standard is described in the decisions of the Benchers in the cases of *Law Society of BC v. Dobbin*, [1999] LSBC 27, *Law Society of BC v. McNabb*, [1999] LSBC 2, *Law Society of BC v. Hops*, [1999] LSBC 29 and *Law Society of BC v. Hordal*, 2004 LSBC 36.

[15] The Benchers must determine if the decision of the Hearing Panel was correct, and if it was not, the Benchers must substitute their own judgment.

The Position of the Parties

[16] The Law Society's position on this Review was that the Hearing Panel erred as follows:

(a) the Hearing Panel failed to address the fundamental question of whether a declaration should be made that the Respondent is, in all of the circumstances, unsuitable to practise law;

(b) the Law Society furthers argues, if such a declaration is made, it necessarily follows that the Respondent must be disbarred;

(c) that the Hearing Panel erred because it failed to recognize that, at the time the discipline violations were committed, the Respondent was practising under the supervision of established and responsible law firms, and as such, there was no evidentiary basis upon which it could be found that the Hearing Panel's decision to impose " practice supervision" would protect the public from further attempts by the Respondent to mislead; and

(d) finally, the Hearing Panel erred because its decision would fetter the discretion of the Credentials Committee on a future Panel in the event that the Respondent applies for reinstatement, as she is no longer a member of the Law Society. The Law Society argues that the decision may result in confusion and inconsistency regarding the role of the Credentials Committee or a future Hearing Panel that may be required to inquire into her character and reputation.

[17] The Respondent argues as follows:

(a) that the issue of unsuitability to practise law was considered by the Hearing Panel, as was the issue of disbarment;

(b) that the Law Society's argument was not that the option of a suspension was inappropriate and, therefore, could not be said to be incorrect;

(c) that the Credentials Committee would not be prevented from carrying on its inquiries.

[18] The *Legal Profession Act* provides:

> 3 It is the object and duty of the society
>
> (a) to uphold and protect the public interest in the administration of justice by
>
> (i) preserving and protecting the rights and freedoms of all persons,
>
> (ii) ensuring the independence, integrity and honour of its members, and
>
> (iii) establishing standards for the education, professional responsibility and competence of its members and applicants for membership, and
>
> (b) subject to paragraph (a),
>
> (i) to regulate the practice of law, and
>
> (ii) to uphold and protect the interests of its members.

[19] In *McKee v. College of Psychologists (British Columbia)* (1994), 95 BCLR (2d) 66 (CA), Mr. Justice Finch (as he then was) wrote for the Court:

> In cases of professional discipline there is an aspect of punishment to any penalty which may be imposed and in some ways the proceedings resemble sentencing in a criminal case. However, where the legislature has entrusted the disciplinary process to a self-governing professional body, the legislative purpose is regulation of the profession in the public interest. The emphasis must clearly be upon the protection of the public interest, and to that end, an assessment of the degree of risk, if any, in permitting a practitioner to hold himself out as legally authorized to practise his profession.

[20] The Hearing Panel, in its decision on Penalty (*Law Society of BC v. Geronazzo*, 2005 LSBC 12) at page 3, paragraph 2, found as follows:

> (a) These findings are of significant misconduct. The choice of sentence is stark-suspend for a period of time or disbar.

Further on at paragraph 3 the Panel stated:

> We have considered the evidence in the four days of hearing to see if this evidence suggested any explanation for this behavior, and have found no explanation.

In paragraph 4, the Panel found as follows:

> Ms. Geronazzo's actions, as we have found them to be, were without discernible motive in terms of material advantage. There was no personal monetary benefit and certainly no advancement for her within the firm. Although some of Ms. Geronazzo's statements were made to people outside her law firm, they were not such as to promote the reputations of her respective employer law firms. Her misrepresentations were not, in relative terms, serious. Because of the responsible efforts of the respective law firms, no client suffered.

Finally, the Hearing Panel, at paragraph 6 of the decision, stated as follows:

> The above considerations suggest that the penalty should be toward the lower end of the scale. It is true that Ms. Geronazzo continues to maintain that she was telling the truth, which is not a situation conducive to remorse, mitigation or reduced likelihood to re-offend. Nevertheless, a severe penalty will not achieve any epiphany for Ms. Geronazzo, bearing in mind that she has not renewed her membership in the Law Society. As for the remediative aspect and the protection of the public aspect of our sentencing considerations, we think they are best served by imposing extensive period of practice supervision in a setting of two or more members.

[21] Is the Respondent unsuitable to practise law? Being truthful is a basic requirement when considering whether a person is suitable to practise law.

[22] The discipline violations in total and the misleading of the Law Society, coupled with the absence of any rational or reasonable explanation for the conduct, putting it in a context that would enable the Law Society to have some confidence that such conduct would not occur again, is the most troubling aspect of this matter.

[23] This is not to say that her lack of admission should result in a greater penalty than had she admitted her misconduct.[1]

[24] The burden of proof as to all material facts is on the Law Society. In *Law Society of BC v. Hops* (*supra*) the Benchers stated that:

> The standard of proof is higher than a mere balance of probabilities but short of proof beyond a reasonable doubt. The standard must be proportional to the seriousness of the consequences of such findings to the member's professional career and status in the community.

[25] What has not been established by the Law Society is that there is a continuing lack of good character and fitness to practise law. While at present the Respondent should not be practising, the evidence does not establish that this will necessarily be the case in the future.

[26] The Law Society has relied on *McNabb* (*supra*) in which the Hearing Panel found that Mr. McNabb was " fundamentally dishonest" . In *McNabb* each incident of dishonesty was found to be significant on its own and as part of a pattern. The acts were found to have occurred to obtain an advantage for either Mr. McNabb or his client. He was ordered disbarred.

[27] *McNabb* is distinguishable from the case at bar, as Mr. McNabb's actions were much further down the spectrum of dishonesty. Other decisions illustrate the range of misconduct and the resulting penalty imposed.

[28] In *Hordal* (*supra*) the solicitor breached his undertaking and deceived other counsel. The Panel found that the violation of the duty of honesty and a breach of undertaking amounted to grave misconduct. The penalty was increased from the two months imposed by the Hearing Panel to six months.

[29] In *Law Society of BC v. Pierce*, [2001] LSBC 16, the respondent was suspended for nine months for both professional misconduct and conduct unbecoming a member of the Society, where Mr. Pierce was found to have been prepared to, in effect, blackmail a former client for personal gain and to have been prepared to mislead the Court by destroying or twisting evidence to suit his personal gain.

[30] The conduct of the Respondent is of serious concern. This is not a case of a single act of dishonesty. However, it is the view of the Benchers that disbarment is not warranted in this instance. Disbarment is too harsh a punishment for the Respondent. We are not satisfied that disbarment is the only means by which the public can be protected from further acts of misconduct. [2]

[31] Having said that, we add that, ironically, a disbarred lawyer can apply for reinstatement at any time but a suspended lawyer cannot practise again until his or her suspension has been fully served. It follows that a long suspension could, in one way, operate more harshly than a disbarment because it is at least possible, however unlikely, that a disbarred lawyer could prove his or her fitness relatively quickly, faster than a lawyer serving a long suspension could return to practice. Happily, we do not need to try to resolve that conundrum on this Review application.

[32] Mr. Hinkson, counsel for the Respondent at the hearings on Verdict and Penalty, advised the Panel on Verdict that his instructions constrained his submissions due to the Respondent's concerns respecting the disclosure of significant personal information. As a result, he advised that he would not disclose some of what a Panel might otherwise anticipate hearing.

[33] The Respondent is no longer a member of the Law Society, having let her membership lapse. Pursuant to section 19 of the *Legal Profession Act*, she may not be reinstated unless the Benchers are satisfied that she is of good character and repute and is fit to become a barrister and solicitor of the Supreme Court.

[34] The lack of any rational or reasonable explanation for the conduct leads us to the conclusion that we cannot, at this time, be assured that such conduct will not occur again. This does not mean that, in future, the Credentials Committee or another Law Society Panel will not be satisfied that a return to practice by the Respondent will not be contrary to the public interest.

[35] The Law Society also argued that the Panel on Penalty imposed supervisory provisions when the evidence indicated that practice supervision would not protect the public. This submission was based on the fact that the Hearing Panel failed to recognize that, when the discipline violations occurred, the Respondent was in fact under the supervision of others. She misled those individuals, effectively undermining any practical supervision.

[36] It is clear from the evidence that the responsible law firms were able to detect the Respondent's deceptions and correct them. There is, however, no evidence that the law firms were supervising the Respondent with a view to correcting the obvious time management difficulties that she was encountering. If the Respondent was able to enter into a Practice Supervision Agreement, that would provide a safeguard for both the protection of the public and for the Respondent.

[37] The final submission of the Law Society is that the Panel on Verdict fettered the discretion of the Credentials Committee or a future panel should the Respondent apply for reinstatement. The decision suggests that, if the Respondent applies for reinstatement, she could immediately be admitted and then suspended pending satisfying the practice supervision conditions. This implies that an inquiry into her character and reputation would not be required if she met the conditions imposed at that time.

[38] The ordered suspension, subject to conditions, was no effective punishment for the proved misconduct because it would be open to the Respondent to have satisfied the conditions immediately, in which case she would have avoided punishment altogether, or nearly so.

[39] The penalty imposed by the Panel does not address the need to protect the public interest in the administration of justice by ensuring that it is clearly understood that serious consequences will result for lawyers who try to mislead their colleagues in order to avoid detection for not having served clients diligently and then try to mislead the Law Society in the course of its investigation into the alleged misconduct.

[40] The interests of the public are best protected by imposition of a suspension with conditions. The result is reinstatement of the Respondent will only occur if she is found, at the time of reinstatement, to be fit to become a barrister and solicitor of the Supreme Court and meets the conditions imposed.

Decision

[41] We accept that there are degrees of misleading conduct and accept that the Respondent's misconduct was of a lesser degree, although still serious. We are satisfied, in all of the circumstances, that a suspension of six months from the date of issuance of this decision is the appropriate penalty. We choose six months, and not the two years proposed by counsel for the Law Society, if disbarment was to be rejected as inappropriate, for the Respondent's misconduct seems to us to be less serious than the misconduct of Mr. Pierce, as described in *Law Society of BC v. Pierce*, (*supra*). Mr. Pierce was suspended for nine months.

[42] For the purposes of the disposition of this Review application, it is irrelevant that the Respondent will have to apply for reinstatement when her suspension has been served. The requirement that she must apply for reinstatement results from her having decided to relinquish her membership in the Law Society, not from the ordered suspension. As must any applicant, she will have to prove her fitness to the Credentials Committee should she make a reinstatement application. If she makes that application and proves her fitness before the suspension is fully served, she will nonetheless be disqualified from the practice of law until the suspension has run its course. [3] The conditions imposed by the Panel and accepted on this Review are not intended to fetter the discretion of the Credentials Committee on any reinstatement application.

[43] The Respondent had requested that she not be identified in the publication of these reasons. That request is not granted, as we have imposed a penalty that includes a suspension and pursuant to Rule 4-38.1(1), (3) and (7) publication must occur.

[44] We order that:

1. The Respondent be suspended from the practice of law for a period of six months from the date of issuance of this decision.

2. In the event the Respondent is reinstated, prior to returning to the practice of law she:

    a) enter into a Practice Supervision Agreement for a period of two years after recommencing

practice, as approved and thereafter supervised by the Practice Standards Committee;

b) certify by letter to the Practice Standards Committee that, for the two year period of Practice Supervision, she will engage in the practice of law only as an employee, associate or partner with two or more members of the Law Society who are not related to her by blood or marriage. An office sharing practice situation will not satisfy this requirement.

3. The Respondent's request that she not be identified in the publication of these reasons is denied.

4. The Law Society and the Respondent each bear their own costs of this Review.

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[1] *College of* Physicians *and Surgeons of Ontario v Gillen* [1993] O.J. No. 947, 13 O.R. (3d) 385 (CA) and *College of Physicians and Surgeons of Ontario v Boodoosingh*, (1990), 73 O.R. (2d) 478 (HCJ)

[2] *Law Society of BC v. Ogilvie*, [1999] LSBC 17, Discipline Case Digest 99/25

[3] Law Society Rule 1, definition of " suspension" .