

2007 LSBC 09

Report issued: February 05, 2007

Oral Reasons:

Citation issued:

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

**John Wilson Dobbin**

Respondent

### **Decision of the Hearing Panel on Penalty**

Hearing date: November 8, 2006

Panel: Joost Blom, Q.C., Chair, Kathryn Berge, Q.C., Robert D. Punnett

Counsel for the Law Society: Brian McKinley

Appearing on his own behalf: John Dobbin

## **Background**

[1] Following a hearing before this Panel on April 5 and 27, 2006, we accepted the Respondent's admission of professional misconduct. We found that he failed on five occasions to perform his undertaking to provide the Practice Standards Committee with monthly Action Plans (count 1 of the Schedule of citation). We also found that he failed to perform a practice condition set by a Discipline Hearing Panel to provide update reports on his treatment by his psychiatrist (count 2). The Agreed Statement of Facts, as well as further evidence submitted to us, are set out in the report of our Decision on Facts and Verdict, 2006 LSBC 28 (June 29, 2006). Essentially, the disciplinary measures were part of the Law Society's response to shortcomings in the Respondent's conduct of his practice, some or all of which were connected to his depression.

[2] At the time of the hearing on facts and verdict last April, Mr. Glen Orris, Q.C., was acting as the Respondent's Practice Supervisor. We were told that the Respondent expected to wind up his practice by the end of June 2006. The files of clients who did not retain another lawyer would be transferred to Mr. Nathan Ganapathi.

[3] At the hearing on penalty we were advised that, since the April 5 and 27, 2006 hearing on facts and verdict, there had been a change in the Respondent's practising status; the Respondent had been suspended from practice by order of the Executive Director of the Law Society, effective June 1, 2006. This suspension had been imposed because the Respondent had failed to deliver a trust report under Rule 3-72 or 3-75(4) or a declaration as required by Rule 3-73(2), for a period of 60 days after it was required. The Law Society subsequently agreed that, during the suspension, Mr. Ganapathi could act as locum for the

Respondent, in lieu of the appointment of a custodian. In letters of June 8 (erroneously dated May 19) and June 20, 2006, confirming this agreement, Mr. Keirstead, a Law Society Staff Lawyer for Custodianships, noted that, since the Respondent's practice was being wound up, the Law Society, under Rule 3-80, would require information relating to the disposition of open files, closed files, corporation records, and certain other matters. On June 16, 2006, Mr. Ganapathi wrote the Law Society that the Respondent had agreed to provide Mr. Ganapathi by June 23, 2006, with all his open files, a list of closed files and their location, a list of all corporations the Respondent had been acting for, the Respondent's Wills Index and all wills in his possession, and certain further matters. The Respondent also agreed to take action to resolve certain outstanding matters relating to a bank account, to three client files, and to a lost discharge of mortgage.

[4] On November 2, 2006, Mr. Ganapathi wrote to Mr. Keirstead that the Respondent had not yet done what he had agreed to do. Mr. Ganapathi said that he was unwilling to continue as locum unless the Respondent resolved all the outstanding matters satisfactorily by November 15. Mr. Ganapathi gave the Respondent the same deadline by letter dated November 7, 2006. We were advised that the Respondent had consented to the appointment of a custodian for his practice if Mr. Ganapathi did not continue as locum after November 15, 2006.

[5] The Respondent, who gave evidence under oath, testified that, except for two matters, he was in possession of all the information that he had promised Mr. Ganapathi; he simply had not yet got around to providing it to him. As for the two outstanding matters, one related to a \$1,400 balance in a trust account on a file in which the Respondent had acted for one of the beneficiaries of an estate. He said that the balance represented his fees and that all that needed to be done was the production of an account for those fees. The other outstanding matter was the removal of a charge on property that a client had bought for cash in 1976 and now wished to sell. The charge was in favour of a lender that no longer existed. A Court Order was needed for the Registrar of Land Titles to accept a discharge from the trust company that had acquired the lender's assets. Mr. Ganapathi would attend to that matter but would need the Respondent's affidavit as to the history of the transactions. The Respondent testified that he had not yet drafted the affidavit.

### **Submissions on penalty**

[6] Mr. McKinley reviewed the Respondent's Professional Conduct Record. It shows a ten-year history of disciplinary action by the Law Society and inaction by the Respondent.

[7] On December 4, 1996, an initial Practice Review of the Respondent's practice took place. The co-reviewers' report of April 2, 1997 identified serious deficiencies in the Respondent's record-keeping and file management, and made a series of recommendations. A follow-up Practice Review was held on October 21, 1997. The staff lawyer's letter of December 8, 1997 to the Respondent made numerous recommendations about office systems, file documentation, client communications, and file handling.

[8] The next event in the record was a citation that was issued against the Respondent on September 4, 1998, for failing to reply to a series of letters and a telephone call from the Law Society. A Hearing Panel decided to refer the citation back to the Discipline Committee with a recommendation that it be rescinded and a Conduct Review be directed. The Discipline Committee sought a review of this decision by the Benchers. The Benchers on Review found ([1999] LSBC 27) the Respondent guilty of professional misconduct, referring to it as "one of the clearest, most extreme cases of failure to respond of which this Quorum of Benchers is aware" (at para. [60]). The Benchers remitted the case to the Hearing Panel, which imposed a penalty of a reprimand and payment of \$2,500 costs.

[9] In the meantime, a new citation for failure to respond to communications from the Law Society

had been issued on June 30, 1999. On October 31, 2000, the Hearing Panel found the Respondent guilty of professional misconduct, which he admitted, and on the same day the Panel imposed a penalty of a reprimand and payment of \$1,500 costs ([2000] LSBC 26).

[10] On April 24, 2001, three more citations were issued against the Respondent for breach of an undertaking to respond to correspondence from the Law Society in respect of a certain client matter; for failing to serve a client in a conscientious, diligent and effective manner by not following through on a certain litigation matter; and for failing to provide competent service to clients, as evidenced by a Practice Review report dated November 10, 2000. A fourth citation followed on May 28, 2002, for failing to respond to a series of communications from the Law Society. On the same date as that of the fourth citation, a Panel of Benchers made an order under s. 39 of the *Legal Profession Act* suspending the Respondent from practice in the light of the allegations contained in that citation.

[11] The four citations were considered together by a Hearing Panel. The Respondent admitted that he was guilty of professional misconduct in relation to each citation, and the Panel accepted his admission ([2002] LSBC 16). The Panel ordered (also on December 19, 2002) that the Respondent be suspended for ten months, effective May 28, 2002, the date his suspension had been ordered under s. 39 and a custodian appointed. The Panel also ordered that the Respondent fulfill a number of conditions prior to reinstatement. These included that he continue to see his psychiatrist; that he fulfill all the outstanding recommendations of the 1996 and 1997 Practice Review reports; and that he provide a Practice Supervision Agreement satisfactory to the Practice Standards Committee by March 21, 2003. We were advised that the Respondent met these conditions. The Panel also imposed conditions on the Respondent's practice once it resumed, which it did on March 28, 2003. One of the conditions was that he practise under the supervision of a Practice Supervisor approved by the Practice Standards Committee. A further condition was that he continue to take treatment from his psychiatrist and provide update reports to the Practice Standards Committee on a quarterly basis for the first year after resuming practice and, after that, as directed by the Committee. The Respondent's subsequent failure to provide the required update reports on his psychiatric treatment was the subject of count 2 of the citation in the present proceeding.

[12] Another condition of the Panel's order of December 19, 2002 was that the Respondent undergo a Practice Review in March 2004, to determine whether the other conditions on his practice should be continued. The Practice Review took place on June 15, 2004. Mr. Gounden, Practice Standards counsel, noted the outcome in his letter to the Respondent of July 22, 2004. Many, if not most, of the recommendations of the Practice Reviews in 1996 and 1997 had still not been done. A further follow-up Practice Review was carried out in March 2005. Mr. Gounden's letter to the Respondent of April 5, 2005 set out the results of the review. Few of the matters noted as not done at the time of the previous year's review had been corrected. As a result of its consideration of Mr. Gounden's report, the Practice Standards Committee resolved on May 5, 2005, to ask for an undertaking from the Respondent to provide monthly action plans. The Respondent gave the undertaking in writing on May 20, 2005. The Respondent's failure to submit action plans was the subject of count 1 of the citation in this proceeding.

[13] Regarding penalty, Mr. McKinley submitted that, in imposing a penalty, this Panel should bear in mind the long-standing attempts by the Law Society to induce the Respondent to improve his practice and his file management. The best efforts of the Law Society were not successful in preventing continuing complaints, citations and interventions. Mr. McKinley submitted that the appropriate penalty could include a further lengthy suspension, conditions precedent to a return to practice, including provision of a psychiatrist's certificate of fitness to return to practice, and practice restrictions after an eventual return to practice. He submitted that the following restrictions be considered by the Panel, which would be specified to apply should the Respondent serve out his suspension and satisfy the conditions precedent to a return to

practice:

- (a) the Respondent must practise only as an employee of another lawyer;
- (b) the Respondent must provide an undertaking to take, and then to complete, a course of remedial studies;
- (c) undergo a practice review within three months of resuming practice;
- (d) implement all recommendations coming out of the review; and
- (e) undergo a further course of psychiatric treatment with periodic reports.

Fulfillment of each condition would be subject to the Practice Standards Committee's monitoring and approval.

[14] Mr. McKinley cited a number of disciplinary cases involving breach of practice conditions similar to those in the present case in support of his submission regarding penalty.

[15] Two of the cases involved penalties without a suspension. In *Law Society of BC v. Barton*, [2003] LSBC 04, Discipline Case Digest 03/02, a one-Bencher Panel imposed a \$1,000 fine for failure to provide a medical report to the Law Society. A subsequent decision, *Law Society of BC v. Barton*, 2004 LSBC 20, Discipline Case Digest 04/11, concerned the same lawyer's breach of his undertaking to instruct his physician to submit a medical report. A one-Bencher Panel ordered, *inter alia*, that that Respondent be reprimanded, abstain from all consumption of alcohol and not recommence practice until he provided a report satisfactory to the Law Society, from an addiction physician, setting out that he was fit to practise law and proposing a treatment plan and monitoring regime. In *Law Society of BC v. Kroon*, [2000] LSBC 12, Discipline Case Digest 00/13, the lawyer had undergone several practice reviews and was found guilty of professional misconduct in not carrying out the recommendations from those reviews. A one-Bencher Panel ordered a reprimand, a practice area restriction, a requirement that the Respondent propose within 6 months a course of professional counselling to deal with chronic procrastination problems, completion of such a counseling program, and a further practice review.

[16] *Law Society of BC v. Caplan*, Discipline Case Digest 97/4, was an example of a suspension until fulfillment of a condition. The lawyer had breached an undertaking to pay property taxes with funds received from a purchaser and had failed to respond reasonably promptly to correspondence from another lawyer and from the Law Society. A three-Bencher Panel ordered the lawyer be suspended until he satisfied a board of examiners appointed by the Competency Committee (the predecessor of the Practice Standards Committee) that he was competent to practise law. Another such penalty was imposed in *Law Society of BC v. Hart*, [1999] LSBC 26, Discipline Case Digest 99/24, which concerned a litany of failures to correct practice deficiencies, as well as contempt of a Court Order made against the lawyer personally in a family law matter. A one-Bencher Panel ordered a reprimand and a suspension (the lawyer had not practised for 11 months before the hearing) until he met a number of conditions, including abstaining completely from alcohol, providing and abiding by an alcohol treatment plan, and filing outstanding accountant's reports. The Panel also imposed restrictions on an eventual return to practice: the lawyer to practise only as an employee or associate of another lawyer, as approved by the Practice Standards Committee; not to operate a trust account of his own until permitted to do so by the Committee; and to nominate a mentor acceptable to the Committee who would meet monthly with him to review files and practice administration.

[17] Two further cases involved lawyers who had left practice. Hearing Panels imposed conditions on

their right to resume practice. In *Law Society of BC v. Roberts*, Discipline Case Digest 97/7, a competency case, a single-Bencher Panel imposed, in addition to a \$1,000 fine, a condition that, should the lawyer seek reinstatement and a resumption of practice, he must satisfy a board of examiners appointed by the Competency Committee that he was competent to practise law. In *Law Society of BC v. Uzelac*, [2003] LSBC 35, Discipline Case Digest 03/22, the lawyer had repeatedly breached Law Society accounting rules and had voluntarily ceased practice for nine months rather than face suspension. The three-Bencher Panel ordered that he be allowed to return to practice only under a practice supervision agreement.

[18] The Respondent's comments were a mixture of evidence and submissions. He advised the Panel that he always considered himself a competent lawyer, but had long been in denial about his depression and that, perhaps, he was still in denial to some extent. He had been treated for depression by his psychiatrist, Dr. Levin. At one stage Dr. Levin had regarded the Respondent as being free of depression for enough time that monitoring by his family physician would be adequate. The Practice Standards Committee had been unwilling to relieve the Respondent of the condition that he continue to submit reports about his psychiatric treatment, so he had resumed his visits to Dr. Levin but, as of the time of this penalty hearing, had not seen him for about a year.

[19] The Respondent told us that his goal was to submit a trust report, pay outstanding fees and penalties to the Law Society, and thus end the current suspension of his practice so that he could close his practice career at the end of December, 2006 as a member in good standing. To keep this possibility open, he asked that, if we were to order a further suspension as part of the penalty in this case, we make the suspension effective as of January 1, 2007. As to the other conditions put forward by Mr. McKinley, the Respondent expressed that he was willing to accept the conditions on his return to practice proposed by Mr. McKinley.

[20] Mr. McKinley submitted a table of costs in this proceeding totaling \$6,914.00. The Respondent took no issue with respect to the costs.

## **DECISION ON PENALTY**

[21] We agree with the submissions of the Law Society that the Respondent should not be able to resume practice until he is fit to do so, and that conditions should be imposed on his practice if he does resume it. The Respondent accepts that such an order would be fair, although, in any event, he intends to cease membership in the Law Society at the end of December 2006.

[22] Accordingly, our order is that:

1. The Respondent is suspended from the practice of law from the date of publication of this decision for a minimum of one year, and until he appears before a board of examiners appointed by the Practice Standards Committee and satisfies the board that his competence to practise law is not adversely affected by a mental disability.
2. If Mr. Dobbin resumes the practice of law, he must fulfill the following conditions:
  - (a) He must practise only as an employee of or associate with one or more lawyers in the same office space, as may be approved in writing by the Practice Standards Committee, until the Practice Standards Committee relieves him of this condition; and
  - (b) He must undergo a practice review within three months of resuming practice and give an

undertaking to carry out, to the satisfaction of the Practice Standards Committee, any recommendations made as a consequence of the review.

3. Mr. Dobbin must pay costs to the Law Society of \$6,914.00.

[23] Publication of this decision by the Executive Director under Rule 4-38 will follow in due course.