

2007 LSBC 12

Report issued: March 02, 2007

Oral Reasons: February 21, 2007

Citation issued: June 19, 2006

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

Daniel Glen Addison

Respondent

Decision of the Hearing Panel

Hearing date: February 21, 2007

Panel: James Vilvang, Q.C., Chair, Robert McDiarmid, Q.C., William Sullivan, Q.C.

Counsel for the Law Society: Jaia Rai

Counsel for the Respondent: Jerome Ziskrout

Background

[1] On June 19, 2006 a citation was issued against the Respondent pursuant to the *Legal Profession Act* and Rule 4-13 of the Law Society Rules by the Executive Director of the Law Society pursuant to the direction of the Chair of the Discipline Committee. The citation directed that this Panel inquire into the Respondent's conduct as follows:

1. In representing your client R.B., you misled opposing counsel Ms. Atkinson when you advised her in November 2005 that a certain defence witness should be added to the List of Witnesses when you knew at that time that the witness had died.

Agreed Statement of Facts

[2] Counsel provided the Panel with an Agreed Statement of Facts. In summary, the facts are as follows:

1. The Respondent was called to the Bar in British Columbia on May 14, 1993.
2. The Respondent is and was at all material times a practising lawyer.
3. The Respondent was counsel for the defendants in *Steward v. Berezan*, B.C. Supreme Court Action No. S071314, New Westminster Registry (the "Action").
4. F. Andrew Schroeder and Janet E. Atkinson were counsel for the plaintiff in the Action.
5. The Action involved claims for damages as a result of a motor vehicle accident.

6. The trial of the Action was held on December 5 - 9, 2005. At trial, both liability for the accident and quantum of damages were in issue.
7. With respect to the issue of liability, there were four independent witnesses to the accident. Two of the witnesses were favourable to the plaintiff and two were favourable to the defendant.
8. J.F. was one of the two witnesses favourable to the defence. J.F. was also the strongest witness for the defence.
9. On November 2, 2005, Ms. Atkinson wrote to the Respondent enclosing a common List of Witnesses for the Respondent to complete and return to Ms. Atkinson so that the List could be filed with the Registry in accordance with the *Rules of Court*.
10. On November 14, 2005, the Respondent wrote to Ms. Atkinson enclosing the List of Witnesses.
11. The Respondent completed the List of Witnesses by filling in his time estimates for the cross-examination of the plaintiff's witnesses and signing the List. However, he did not enter the names of his defence witnesses on the List of Witnesses but provided that information in the body of his November 14, 2005 letter.
12. The Respondent did not put J.F. on the List of Witnesses as a defence witness when he completed and returned the List to Ms. Atkinson, nor did he advise Ms. Atkinson in his letter of November 14, 2005 that J.F. was a defence witness.
13. On or about November 21, 2005, Ms. Atkinson telephoned the Respondent and asked why J.F. was not on the List of Witnesses, to which the Respondent replied that he was on the List. Ms. Atkinson then read the names from the List to the Respondent that did not include J.F. The Respondent stated to Ms. Atkinson that the omission was simply an oversight by his office. As a result, Ms. Atkinson asked the Respondent if he wanted J.F.'s name added to the List of Witnesses and the Respondent replied "yes". Ms. Atkinson then asked the Respondent if his time estimate for J.F. would be the same as for another witness and the Respondent again replied "yes".
14. On November 22, 2005, Ms. Atkinson wrote to the Respondent confirming his advice to add J.F. to the List of Witnesses.
15. On November 28, 2005, Ms. Atkinson had a discussion with R.W., a private investigator she had retained on behalf of the plaintiff to contact all witnesses to the accident. R.W. advised Ms. Atkinson that he had learned that J.F. was deceased. Subsequently, R.W. advised that he learned from J.F.'s son that J.F. had died in the summer of 2004.
16. At the time of the conversation with Ms. Atkinson referenced in paragraph 13 above, the Respondent was aware that J.F. had died.
17. Upon learning of J.F.'s death on November 29, 2005, Mr. Schroeder immediately called the Respondent. The conversation was short. Mr. Schroeder asked the Respondent if he knew J.F. was dead. The Respondent replied "yes". Mr. Schroeder asked the Respondent when he found out, to

which the Respondent replied, " couple of weeks ago" . The Respondent did not appear to Mr. Schroeder to be startled or upset.

18. The Respondent admits that, at the time of his conversations with Ms. Atkinson and Mr. Schroeder referenced above, J.F. had died in the summer of 2004 and he had learned of J.F.'s death in mid-October.

[3] The Respondent admits that he professionally misconducted himself and the Panel so finds.

Penalty

[4] Counsel made a joint submission to the effect that a 30-day suspension and full indemnity for the Law Society's costs in the amount of \$6,369.00 was an appropriate penalty.

[5] Counsel for the Respondent submitted 15 letters of reference on the Respondent's behalf, which were of assistance to the Panel.

[6] In reaching its decision, the Panel relied on the authorities presented and, in particular, the case of *Law Society of BC v. Johnson*, Hearing Report dated August 19, 1992, in which the Panel stated:

To lie to a fellow member of the legal profession is a matter of the utmost severity. This profession that we practice in is based upon mutual trust and confidence in that what our fellow practitioner tells us can be accepted.

It is imperative that lawyers, both in their professional and personal lives, conduct themselves and their dealings with honesty and integrity. If that is not done, the profession will fall into great disrepute and ultimately lose its self-governing capacity.

[7] The Panel considered the principles set out in the decision on penalty in *Law Society of BC v. Ogilvie* [1999] LSBC 17.

[8] Counsel for the Respondent advised the Panel that the Respondent's conduct arose from a misguided sense of loyalty to the client. Counsel must always be careful to insure that their sense of duty to their client does not overwhelm their duty never to engage in dishonourable or questionable conduct that casts doubt on the lawyer's professional integrity or competence, or reflects adversely on the integrity of the legal profession or the administration of justice (*Professional Conduct Handbook*, Chapter 2, Rule 1).

[9] Also, a lawyer's conduct toward other lawyers should always be characterized by courtesy and good faith (*Canons of Legal Ethics, Professional Conduct Handbook*, Chapter 1).

[10] There was no personal gain for the Respondent. There was, however, potential for harm to the opposing lawyer's client.

[11] The Respondent has a clear disciplinary record. All of the letters filed on his behalf confirm his good reputation. The letters, especially those from opposing counsel, clearly establish that this was out of character for the Respondent.

[12] In consideration of all of the above, the Panel has concluded that an appropriate penalty will be:

- (a) The Respondent will be suspended for a period of 30 days, commencing March 10, 2007;
- (b) The Respondent will pay costs of these proceedings in the amount of \$6,369.00, payable on or

before December 31, 2007.