

2007 LSBC 23

Report issued: April 23, 2007

Citation issued: December 21, 2004

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

**Shane Sidney Dennison**

Respondent

**Decision of the Hearing Panel  
on Facts and Verdict**

Hearing date: January 15 and 16, 2007

Panel: James Vilvang, Q.C., Chair, Richard Stewart, Robert Brun, Q.C.

Counsel for the Law Society: Jean Whittow, Q.C. and Paula Ramsay

No-one appearing on behalf of the Respondent

[1] We were empanelled to consider a citation against the Respondent that was issued on December 21, 2004 and amended on June 6, 2006. Acknowledgement of service of the citation was made by counsel for the Respondent and filed as an Exhibit herein. This hearing had been set to be heard by the same Panel and at the same time as the Donald Craig King matter. At the commencement of the hearing we were advised by Ms. Whittow that neither the Respondent nor his counsel, Leonard T. Doust, Q.C., would be participating in the proceedings. For reasons set out below, in the circumstances of this case we draw no adverse inference from the Respondent's non-participation.

[2] The Panel determined that it had jurisdiction to proceed with the hearing in the absence of the Respondent and counsel.

[3] At the commencement of the hearing, Ms. Whittow submitted that the citation regarding Mr. Dennison could be heard conveniently with the citation issued on July 28, 2006 in the matter of Donald Craig King. It was pointed out by Ms. Whittow that the conduct to be inquired into in the schedule to the amended Dennison citation was identical to that conduct to be inquired into in the schedule to the King citation, namely:

1. That between September 1, 2002 and November 30, 2003 you altered lawyers' time sheets to indicate that more hours had been worked than had actually been worked, and caused false accounts based on these altered time sheets to be submitted for payment to the Department of Justice.

[4] As regards Mr. King, we were also advised by Ms. Whittow that neither Mr. King, nor his counsel, Jerome Ziskrout, would be participating in the King hearing.

[5] As this Panel was advised that the evidence to be led by the Law Society against the Respondent, Dennison, was inextricably linked to the evidence to be led against the Respondent, King, the Panel determined that it would be just and convenient in the circumstances to hear both citations at the

same time.

[6] In so deciding, the Panel observed that Mr. Doust and Mr. Ziskrout had, with the knowledge of the other party, jointly proffered the same hearing dates; namely January 15 and 16, 2007. The Panel inferred that Mr. Doust and Mr. Ziskrout, on behalf of their clients, had agreed that the citations should be heard at the same time.

[7] This Panel was required to consider whether the Respondent, Dennison:

- (a) professionally misconducted himself;
- (b) conducted himself in a manner unbecoming a member of the Law Society;
- (c) contravened the *Legal Profession Act* or rule made under it; or
- (d) incompetently carried out duties undertaken by him in his capacity as a member of the Society.

## **Introduction and Background**

[8] Mr. Dennison became a member of the Law Society of British Columbia on May 20, 1994. He withdrew as a member on October 6, 2004.

[9] The Panel heard extensive evidence about the evolution of the firm Hunter Garrett Lobay ("HGL") that was formed in 1993. In about 1995 the firm entered into an agreement with the Department of Justice Canada ("DOJ") whereby the firm was appointed as a standing agent to perform legal services on litigation and criminal proceedings.

[10] The DOJ required that each lawyer who performed services under the agreement be approved by the DOJ. Mr. Dennison joined the firm initially as an employee/contractor and later as a partner and, in those capacities, was approved, commencing on May 6, 1997, by the DOJ. HGL was located in Nanaimo but also operated in Courtenay primarily through the services of three lawyers: H.S., S.S. and S.F. (the "Courtenay lawyers") performing work on DOJ files. The arrangement between HGL and the Courtenay lawyers was that they would be paid by HGL at the rate of one-half of the DOJ billable hourly rates. HGL would retain the balance of the fee billed to the DOJ.

[11] In or about the Fall of 2002, HGL ceased to operate as a partnership but continued for a period of time as an "association" of lawyers. In the summer of 2003, a new partnership was formed known as Lobay Dennison Beaubier ("LDB"). At the time, the DOJ terminated the appointment of HGL as standing agent and entered into an agreement to appoint LDB as the new agent on the same terms. The approved lawyers remained the same.

[12] Mr. David Lobay testified that, from November 1, 2002, an arrangement was in place between himself and Mr. Dennison, whereby Mr. Dennison handled the administration and management of the DOJ account. After payment of operating expenses, the profit earned on DOJ matters was split equally between Mr. Lobay and Mr. Dennison.

[13] Evidence was led regarding the general procedure for recording time and billing of DOJ matters. The lawyer who performed the legal work involved prepared a daily time sheet recording the hours worked, the type of activity and the file number. Data from the time sheets were entered by firm clerical staff into a computerized billing system. As clerical staff would enter the data from the time sheets, they would highlight the original document to show that the entry had been recorded in the billing system.

[14] Periodically, a form of account called a Request for Payment was prepared and delivered by the firm to the DOJ containing a certification signed on behalf of the firm as to the accuracy of the Request for Payment. The DOJ made payments to the firm based upon the Request for Payment subject to minor adjustments.

[15] Evidence was also led that the Courtenay lawyers prepared time sheets that were delivered to the Nanaimo office of HGL and later, LDB, who then billed the DOJ for the Courtenay lawyers' services. The Courtenay lawyers also sent a monthly invoice for their total hours worked for that month, in accordance with their time sheets, and received payment from HGL and later LDB, in accordance with the time recorded on the time sheets.

[16] In early 2003, Kenneth Paziuk, a junior lawyer then with HGL, in the Nanaimo office, was offered an opportunity to enter into a similar arrangement as the Courtenay lawyers doing DOJ work for the firm. In order to evaluate the volume of work that would become available to him through this offer, Mr. Paziuk obtained and reviewed time sheets and invoices and in so doing, discovered significant irregularities with the time sheets that had been received from the Courtenay lawyers. It was evident that at some point the time sheets that the Courtenay lawyers had submitted had been systematically altered. It was this discovery that led to the complaint to the Law Society.

[17] The Panel heard evidence from Mr. Paziuk that the Courtenay lawyers' time sheets appeared to contain many alterations in handwriting that he recognized to be that of Mr. Dennison and Mr. King, individuals he had worked with for a number of years. Based upon a rough calculation prepared by him, he estimated that the changes in the invoices had a cumulative value of \$258,000 for the year that he had reviewed. It ultimately transpired that this rough estimate turned out to be remarkably accurate.

[18] Mr. Paziuk contacted H.S. and S.S. and ascertained the Courtenay lawyers had been paid only in accordance with their invoices and that they were unaware of any alterations to their time sheets.

[19] This Panel received affidavit evidence from the Courtenay lawyers to this effect.

[20] Mr. Paziuk then confronted Mr. Dennison at a meeting on June 26, 2004 with his concerns. He suggested to Mr. Dennison that what he had uncovered was "effectively fraud". He testified Mr. Dennison responded to this allegation saying "you are effectively right".

[21] Following this meeting, Mr. Paziuk took this information to Mr. Lobay who then reported the matter to the Law Society.

[22] At the request of the Law Society, the altered time sheets received from the Courtenay lawyers were reviewed by Mr. Donald J. Gamble who is a forensic document examiner. Mr. Gamble prepared two reports concerning the authorship of the handwriting. This Panel accepted Mr. Gamble as an expert in the field of forensic document examination. Mr. Dennison's handwriting was identified by Mr. Gamble to have effected alterations to the invoices. Those alterations were always to increase the amount of time recorded on the time sheets and often were to add entries for files that had not been recorded at all on the time sheets as submitted by the Courtenay lawyers. The method of the alterations was crude and in many circumstances involved a cut-and-paste approach whereby portions of the original time sheets were covered over with flaps of paper that recorded increased time. On other occasions, individual time entries were overwritten on correction tape or were simply altered.

[23] The Law Society also retained Mr. William Kinsey to conduct a forensic examination. Mr. Kinsey is a forensic accountant. The Panel accepted Mr. Kinsey as an expert in that field.

[24] In his written opinion Mr. Kinsey observed on page 2:

2.a LDB acted as an " Agent" for the Federal government, operating from offices in Nanaimo and Courtenay. Courtenay's DOJ time charges were recorded on special time sheets and sent to Nanaimo for inputting into the DOJ computer system - the first step toward payment. [The Courtenay lawyers were subcontractors who billed the Nanaimo office based on these same time sheets.]

Nanaimo copies of Courtenay time sheets have been substantially altered, increasing reported hours and thereby leading to substantial overbillings.

Altered time sheets have existed since September 2002\* - and perhaps earlier when the DOJ work was handled via another practice (Hunter Garrett Lobay) involving some of the same individuals. I have not reviewed any of that firm's records. [\*Officially LDB started November 1 but DOJ time from September 1 was considered as LDB's revenue.]

2.b DOJ time records made available enabled a comparison of:

- time charged to the DOJ regarding the Courtenay lawyers with
- the Courtenay lawyers' billings to LDB (or HGL) for time worked on DOJ files.

Appendix A-1 is my comparison of these two types of records and shows hours having a billing value of \$277,278 were charged to DOJ in excess of what the Courtenay lawyers claimed they worked (and were paid for) regarding the September 2003 [sic] to November 2003 period.

2.c Appendix A-1 also shows that the billable hours were more than doubled: an overall increase of 117%, ranging from 62% to 960% per lawyer. The latter percentage was for Ms. H.S. who worked only occasionally but whose name shows time charged more frequently.

[25] Mr. Kinsey opined that the alterations to the Courtenay lawyers' time sheets were of dramatic effect. For example, in September 2003, the many alterations made by both Mr. Dennison and Mr. King increased the time for payment from 149.5 hours to 328 hours. It is important to note the Courtenay lawyers only received payment from LDB for the 149.5 hours that they had actually worked. LDB, however, billed the DOJ for 328 hours, thereby more than doubling the amount of time purportedly incurred in that month. Based upon his forensic examination, Mr. Kinsey concluded that between September 1, 2002 and November 30, 2003, the sum of \$277,278 was wrongly charged by HGL and later LDB to the DOJ for the work done by the Courtenay lawyers. Overall, the hours claimed by HGL and LDB for work by the Courtenay lawyers were more than twice the number of hours charged by the Courtenay lawyers during that period of time.

[26] Based upon the evidence of Mr. Lobay, Mr. Dennison received half the profits to the firm on the DOJ billings and therefore one-half of the amount incorrectly charged.

## Discussion

### Burden and Standard of Proof

[27] In *Law Society of BC v Martin*, 2005 LSBC 16, paragraph [137] it is observed:

- (a) the onus of proof throughout these proceedings rests on the Law Society to prove the facts necessary to support a finding of professional misconduct;
- (b) the standard of proof is higher than the balance of probabilities but less than reasonable doubt. The standard is a civil standard but rises in direct proportion to the gravity of the allegation and the seriousness of the consequences.

[28] In assessing the evidence this Panel has relied on these principles.

[29] Counsel for the Law Society also directed this Panel to *Cross v Wood* (1993), 92 Man. R. (2d) 94 (C.A.), in which a police disciplinary board had commented on an officer's failure to testify. The Manitoba Court of Appeal found no error in this and observed at paragraph 15:

The Board, in my view, was entitled to comment upon Cross' failure to testify, and in doing so did not place a burden of proof upon him. The words of Arbour J.A. in *R. v. Johnson* (1993), 79 C.C.C. (3d) 42 (Ont. C.A.), at page 50, succinctly describe the rationale:

It is not so much that the failure to testify justifies an inference of guilt; it is rather that it fails to provide any basis to conclude otherwise. ... If the Crown's case cries out for an explanation, an accused must be prepared to accept the adverse consequences of his decision to remain silent ...

[30] On the facts of this case, the Panel has not found it necessary to rely upon the failure of Mr. Dennison to provide an explanation. In the opinion of the Panel, the evidence presented at the hearing establishes that Mr. Dennison altered the time sheets upon which the ultimate requests for payment made by HGL and LDB to the DOJ were based. Mr. Dennison profited directly from the alteration of the time sheets. The Panel found the evidence to be clear and convincing.

[31] In the result, the Panel finds that, between September 1, 2002 and November 30, 2003:

1. Mr. Dennison altered the Courtenay lawyers' time sheets to indicate that more hours had been worked than had actually been worked; and
2. Because he was the person responsible for the administration of the DOJ contract, he caused the false accounts based on these altered time sheets to be submitted to the DOJ.

## Verdict

[32] Counsel for the Law Society properly pointed out that the term " professional misconduct" includes conduct that can be described as " dishonourable or disgraceful" . In addition, " professional misconduct" is generally defined as conduct that is contrary to the best interest of the public or the legal profession or harms the standing of the legal profession.

[33] This Panel has no hesitation in concluding, on the requisite standard as set out in *Law Society of BC v. Martin* [supra] that Mr. Dennison is guilty of professional misconduct. The conduct proven in this case is the falsification of documents for the purpose of defrauding the DOJ and as such, is among the most serious types of breach that can be committed by a lawyer.

