

2004 LSBC 13

Report issued: June 9, 2004

Citations issued: October 28, 2003 and
December 18, 2003

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

MARLYNE JOY O'DWYER

Respondent

Decision of the Hearing Panel on Penalty

Hearing date: April 7, 2004

Panel: Patricia Schmit, Q.C., Chair, John Hunter, Q.C., Gavin Hume, Q.C.

Counsel for the Law Society: Luisa Hlus

Counsel for the Respondent: Michael Ranspot

Background

[1] After a hearing held on February 2, 2004, this Panel issued a decision dated February 2, 2004, finding that the Respondent, Marlyne Joy O'Dwyer, had misconducted herself in that she had failed to respond promptly, or at all, to communications from the Law Society, failed to advise the Executive Director of the Law Society of the circumstances of various judgments against her, and that she had breached certain practice conditions imposed by three Benchers on October 10, 2003.

[2] The Respondent became a member of the Law Society of British Columbia in 1993.

[3] The Practice Review Report dated March 18, 2004, authored by Kensi Gounden was filed as Exhibit P-1.

[4] An Independent Medical Examination dated November 18, 2003, authored by Dr. R. Baker, was filed as Exhibit P-2.

[5] The Respondent's Professional Conduct Record was filed as Exhibit P-3.

[6] The Law Society's Bill of Costs was filed as Exhibit P-4.

[7] The Panel was referred to various authorities, including *Re: Pamela Suzanne Boles*, Discipline Case Digest 99/17 [1999] LSBC 14, Hearing Panel Decision dated 28 May 1999, *Re: J.F. (Julian Frederick) Chester Bridal*, Discipline Case Digest 02/12 [2002] LSBC 23, Hearing Panel Decision Facts and Verdict dated 2 August, 2002 and Hearing Panel Decision on Penalty dated 26 August, 2002, and *Re: John Allan Davies*, Discipline Case Digest 03/07 [2002] LSBC Hearing Panel Decision on Facts and Verdict dated 4 June, 2002, and Hearing Panel Decision on Penalty dated 26 August, 2002. These cases were helpful in illustrating for the Panel circumstances where practice conditions, including imposition of a practice supervisor, were found to be appropriate.

[8] Counsel for the Law Society submitted that an appropriate disposition in the instant case would be to require that the Respondent practice as an employee in a situation approved by the Law Society, or as a less favourable alternative, that the Respondent practice in a practice supervision situation with practice restricted to the areas of civil litigation, criminal and family law, that the recommendations set forth in the Practice Review Report be imposed, and that the Respondent pay the costs as presented, in installments.

[9] Counsel for the Respondent submitted that it may be difficult for the Respondent to obtain employment as an employee, and that in order to maintain flexibility, the Respondent should have the option of either practicing as an employee or in her own firm under a practice supervision agreement. Counsel was also generally in agreement with the recommendations in the Practice Review Report.

[10] After considering all the evidence and submissions of Counsel, the Panel ordered that:

1. The Respondent be reprimanded.

2. The Respondent will either:

(a) practice as an employee in a law firm approved by the Practice Standards Committee where she will not be responsible for any law office management accounting, including trust transactions, trust monies, and documentation of trust transactions, bookkeeping and financial record keeping in connection with client files; she will provide her employer with all the information necessary to create a file list both of criminal matters converted to her employer's care as counsel and matters which have been referred out to other lawyers, will provide such reports of her situation as are requested by the Practice Standards Committee and will direct her employer to cooperate with the Law Society in connection with any inquiries the Law Society may have arising therefrom. In these circumstances, the Respondent will not be required to restrict her practice; or

(b) practice under the supervision of a lawyer approved by the Law Society and enter into a practice supervision agreement with that lawyer in a form approved by the Practice Standards Committee, and with the agreement of that supervising lawyer to provide reports as are requested by the Practice Standards Committee; she will restrict her practice to criminal law, civil litigation and family law.

3. The Respondent will continue to attend Interlock or such counselling as is recommended by the Lawyer's Assistance Program, including obtaining counselling to assist in implementing coping mechanisms to deal with the personal problems and issues identified in the Practice Standards Review, Exhibit P-1 in these proceedings.

4. The Respondent will review each of her files with either her employer or her practice supervisor to decide whether she has the knowledge, skills and time to handle that file and whether that file is economically feasible; in the event that each file does not meet these criteria, then the Respondent will advise the client to obtain a different lawyer and get off the record.

5. For the files that she will be keeping, the Respondent will determine a plan of action for each file and enter bring forward dates into her system or that of her employer.

6. The Respondent will take such continuing legal education courses in the areas of criminal law, civil litigation and family law or a combination of courses in both substantive law, and practice and procedures.

7. The Respondent will attend CBA subsection, Trial Lawyers' Association and/or Inns of Court meetings in her areas of practice.

8. The Respondent will implement, for each file that she handles, such documentation, conflict systems, bring forward and reminder systems that may be required by her practice supervisor or employer.

9. The Respondent will pay costs of the hearing in the sum of \$5,000.00, payable at the rate of \$300.00 per month commencing three months from the day that she recommences practice.