

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

Raghubir Singh Basi

Respondent

**Decision of the Hearing Panel
on Penalty**

Hearing date: October 6, 2006

Panel: Ralston S. Alexander, Q.C., Chair, Richard S. Margetts, Q.C., Robert C. Brun, Q.C.

Counsel for the Law Society: Brian McKinley

Appearing on his own behalf: Raghubir S. Basi

Introduction

[1] It is appropriate to provide some background before providing a decision with respect to penalty. The history of this matter is convoluted. By way of a decision of this Hearing Panel dated September 8, 2005, the Respondent was found to have professionally misconducted himself as set out in a citation issued June 29, 2005. The citation alleged that the Respondent had professionally misconducted himself by failing to respond to letters from the Law Society. The Schedule to the citation set out, with some particularity, correspondence forwarded to the Respondent between November, 2004, and April, 2005, respecting two client complaints and inquiring into a third matter that had come to the Law Society's attention during the course of its investigation into matters arising out of the Respondent's practice of law.

[2] The matter of penalty in respect of the foregoing was set for hearing June 1, 2006.

[3] Prior to the hearing taking place on June 1, 2006, the Respondent conceded his professional misconduct in respect of citations issued November 22, 2005, and December 20, 2005. The citations provided, in essence, that the Respondent had allowed a client's company to be struck from the Corporate Registry and had failed to respond promptly to the client's request for the corporate records. It further provided that the Respondent had failed to respond to communications dated March 3, 29, April 13 and 28, 2005, from the Law Society. The citation issued December 20, 2005, was similar in substance. It alleged that the Respondent had failed to respond to communications from the Law Society dated September 12, 26 and October 13, 2005.

[4] By an Agreed Statement of Facts dated May 31, 2006, the Respondent acknowledged that his conduct as alleged in the citations of November 22 and December 20, 2005, constituted professional misconduct. That day, the Respondent resigned his membership in the Law Society.

[5] The Panel was accordingly asked to consider a global penalty with respect to the three citations particularized.

The Conduct of the Hearing

[6] As stated, the penalty hearing initially commenced June 1, 2006. The Respondent did not attend on this date. It was understood by the Respondent, consequent upon discussion with Law Society counsel, that Law Society counsel would be seeking a lengthy suspension. Predicated upon the foregoing, the Respondent did not attend the hearing.

[7] At the hearing on June 1, 2006, Law Society counsel submitted that a lengthy period of suspension was appropriate. During the course of the hearing, however, the Panel raised concerns as to whether the Respondent might be considered, in all the circumstances, ungovernable and appropriately disbarred. Given that the Respondent had not been alerted to that possible penalty, Law Society counsel and the Panel were concerned that the Respondent should be given a further opportunity to make submissions if he wished.

[8] The matter was reset for hearing on October 6, 2006. The Respondent attended at that time.

The Issue of Ungovernability

[9] Law Society counsel provided the following authorities for the Panel's consideration; *Law Society of Upper Canada v. Hicks*, [2005] L.S.D.D. No. 6, *Law Society of Manitoba v. Ward*, [1996] L.S.D.D. No. 119, and *Law Society of Upper Canada v. Fenik*, [2005] L.S.D.D. No. 72.

[10] We do not propose to review the law as it was set out in those decisions, save to point out that we adopt the approach of the Hearing Panel in *Hicks* (supra) to the effect that:

[45] There is no fixed definition of ungovernability. The cases which deal with ungovernability make little attempt to define or delineate this aspect of professional misconduct. There is no case that says: " This is where you cross the line into ungovernability" . Instead, a factual analysis is needed on a case-by-case basis. [authorities omitted]

[11] We adopt the approach of the Panel in *Hicks* (supra) as a correct statement of the law and have used it in the following analysis.

[12] The Respondent gave evidence on his own behalf. He acknowledged his professional misconduct and confirmed the Agreed Statement of Facts. He deposed that he had not been at the last hearing due to his inability to pay the travel costs associated with travelling from Victoria to Vancouver.

[13] The Respondent gave evidence to the effect that he did not blame anyone for his circumstances. He was responsible for the situation in which he found himself.

[14] The Respondent deposed, and there was no evidence to the contrary, that he did not drink, did not partake of drugs and, in fact, rarely took medication.

[15] He stated that he had " become a lawyer for the wrong reasons." He had an honours degree in Criminology and had been accepted to pursue a doctoral program in Philosophy at Simon Fraser University. However, due to family circumstances, he elected to stay in Victoria and attend law school at the local university.

[16] He was initially quite successful in practice. He undertook some " high profile" criminal work. His facility with Punjabi caused him to attract a lot of real estate work and provided a solid client base. However, as his real estate practice developed, he was approached by developers to see if he could assist them by backing their ventures, which he did. Unfortunately, these business opportunities soured, and a significant amount of money was lost.

[17] It seems this was a turning point for the Respondent. He began to develop depression; his practice was neglected. This led to complaints and, as he put it, " the evidence of that is why we are here today."

[18] The Respondent acknowledged that he should have dealt with issues as they arose. He stated that he ought not to have become a lawyer to begin with, but that, since his earlier suspension for similar problems in 2004, he has come to recognize that the decision of the Benchers was appropriate and that being a lawyer was something that he did not wish to do. The Respondent pointed out that, when he was focused, he was a good lawyer. The Respondent acknowledged the responsibility of the Law Society to govern the profession and the necessity for members to respect the authority of the Society in discharging that responsibility.

[19] By contrast, in *Ward* (supra) the lawyer continued, at the time of the hearing, to fail to communicate with the Law Society. Mr. Ward did not provide any explanation or excuse of any kind whatsoever for his activities. The Respondent in this case felt strongly that he had suffered depression for a considerable period of time and that had caused his failure to respond. His failure to communicate was not driven by a defiance of Law Society authority. He pointed out in respect of his own circumstances that he had communicated during the course of the hearing with Law Society counsel, acknowledged the authority of the Law Society and would abide by the Benchers' decision.

[20] The Respondent gave evidence in a forthright and reasonable fashion. While he did not present medical evidence as to his condition, it seemed to the Panel that he had struggled and was continuing to struggle, though hopefully making improvement, in dealing with his psychological circumstances. The Panel encouraged the Respondent to seek treatment.

[21] The Respondent gave evidence to the effect that he would likely not practise law in the future. The Panel was not satisfied that such statement of intention was given objectively, but more as a result of the Respondent's remorse and as a consequence of his fragile psychological condition. The Panel was, and remains, of the view that it is able to adequately protect the public while avoiding the consequences to the Respondent of disbarment in crafting an appropriate penalty in these circumstances.

[22] It is noted that, in the *Fenik* (supra) decision, conduct that constituted ungovernability was of a more serious nature, including a misappropriation of trust funds. The Panel noted in *Fenik* that " although unresponsiveness, rather than dishonesty, is the centerpiece of the member's misconduct here, there were instances where the member was not candid with the Society, clients or fellow solicitors."

[23] This Panel has no evidence of any similar conduct on the part of the Respondent.

Conclusion

[24] Accordingly, and after consideration of all of the circumstances before us, the Panel is not satisfied that the Respondent is ungovernable. The remedy of disbarment is extreme and ought only to be imposed in circumstances where the protection of the public can only be achieved through such a remedy. We are of the view that a suspension and terms upon which the Respondent may apply for reinstatement to the Law Society are appropriate to protect the public in this matter.

[25] Accordingly, the Panel has determined that:

1. The Respondent should be suspended for 18 months.
2. Upon making application for reinstatement, the Respondent must provide appropriate

medical documentation confirming that his psychological condition is stable and that he has addressed the circumstances that have caused him to suffer the Law Society's scrutiny.

3. The Respondent shall pay the costs of these proceedings in the amount of \$5,771.

4. The Respondent shall respond to the Law Society's queries and concerns as they have been particularized in the correspondence forwarded to him by the Law Society as set out in the citations that have been considered by this Panel.