2007 LSBC 40
Report issued: September 7, 2007
Citation issued: March 7, 2006

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

Sheldon Goldberg

Respondent

Decision of the Hearing Panel on Penalty

Hearing date: May 18, 2007

Panel: **Majority decision:** Leon Getz, Q.C., Gavin Hume, Q.C. **Dissent/minority decision:** G. Glen Ridgway, Q.C., Chair,

Counsel for the Law Society: Herman Van Ommen and Judy Walker
Appearing on his own behalf: Sheldon Goldberg

Background

[1] We were empanelled to consider certain alleged conduct of the Respondent, Sheldon Goldberg, outlined in a citation against him issued on March 7, 2006. The citation summarized those matters as follows:

1. You made serious allegations in the BC Court of Appeal about the conduct of a former member, J.B., which allegations had no proper or insufficient evidentiary foundation.

2. In preparing and submitting materials to the Court in your representation of clients A.D., D.P., J.L. and J.K. you failed to demonstrate adequate knowledge of the substantive law, practice and procedures to effectively apply that substantive law, and the skills to represent your clients' interests effectively, contrary to Chapter 3, Rule 1 of the *Professional Conduct Handbook*.

[2] On January 10, 2007, following a hearing that lasted for some seven days over the course of several months in 2006, we issued our decision on Facts and Verdict. Paragraph [26] of that decision succinctly summarizes our conclusions:

> We have concluded, bearing in mind the onus of proof, that the Respondent professionally misconducted himself in making unfounded, but serious, allegations about the conduct of J.B. We have also concluded that he incompetently carried out the duties he undertook in the *Dunbar* Appeal, while acting in his capacity as a member of the Law Society of British Columbia. We reach this conclusion after reviewing his written materials, which demonstrated a serious lack of knowledge and skill.

[3] On May 18, 2007 we convened to receive submissions on penalty.

Framework of Consideration

[4] The conduct of the Respondent, that we judged both to constitute professional misconduct and to demonstrate his incompetence, can fairly be considered to have been unusual in at least one respect: it involved his performance as a barrister in connection with the preparation of materials for consideration by the Court in the *Dunbar* Appeals and in presenting those materials at the hearing. It occurred " in the face of the court" , as it were.

[5] Professional misconduct in Court is not unknown. See, for example, *Law Society of BC v. Botting,* [2001] L.S.D.D. 81 (misrepresentations to a Master). It does, however, seem relatively rare. It was not surprising, therefore, that counsel for the Law Society should say in his written submission that our findings of misconduct and incompetence " arose in circumstances which have not been widely considered previously by disciplinary panels." He did refer us to a number of prior decisions and we shall consider their relevance below.

[6] In *Law Society of BC v. Ogilvie,* [1999] LSBC 17, the hearing panel said (at paragraph 9):

> Given that the primary focus of the *Legal Profession Act* is the protection of the public interest, it follows that the sentencing process must ensure that the public is protected from acts of professional misconduct. Section 38 of the *Act* sets forth the range of penalties, from reprimand to disbarment, from which a panel must choose following a finding of misconduct. In determining an appropriate penalty, the panel must consider what steps might be necessary to ensure that the public is protected, while also taking into account the risk of allowing the respondent to continue in practice.

The panel then set out a list of factors that, in its view - which has been widely accepted since - should be considered in disciplinary dispositions. Not all of them will be relevant in all cases; and in some cases other factors may require consideration. We set out below those factors that we think are relevant to our consideration here:

a) the nature and gravity of the Respondent's conduct;

b) the Respondent's age and experience;

c) the Respondent's discipline record;

d) whether the Respondent has acknowledged the misconduct and taken steps to redress the wrong and the presence or absence of other mitigating circumstances;

e) the possibility of the Respondent's remediation or rehabilitation;

f) the impact of the proposed penalty;

g) the need for specific or general deterrence;

h) the need to ensure the public's confidence in the integrity of the profession; and

i) the range of penalties imposed in similar cases.

Counsel for the Law Society adopted this list as a framework for his submissions concerning disposition. We think that is appropriate, and we too adopt it for our consideration.

[7] The Respondent made both oral and written submissions to us at the penalty phase of the proceedings. We listened to his oral submissions attentively, and we have read his written submissions carefully. Somewhat to our surprise, however, he has put before us virtually nothing relevant to the question before us.

[8] In the last paragraph of his written submission the Respondent says: " I do wish to appeal the findings of this Panel made January 10, 2007." Much of what he has had to say to us appears to be an attempt to justify or defend the conduct in respect of which we have already made adverse findings - in other words, to protest those findings. Whatever relevance that may have at some other time and place, it has been quite unhelpful to us in determining a fit penalty.

The *Ogilvie* Factors Considered

[9] We now consider the factors catalogued in the *Ogilvie* decision that seem relevant in this case.

The Nature and Gravity of the Respondent's Conduct

[10] The *Dunbar* Appeals involved several distinct grounds of appeal. The Respondent's view, however, was that " the only potentially successful ground ... was counsel inadequacy at trial." (Decision on Facts and Verdict, paragraph [2]).

[11] In its judgment in the *Dunbar* Appeals, the Court of Appeal referred (*R. v. Dunbar,* 2003 BCCA 667, paragraph [22]) to the observations of the Supreme Court of Canada in *R. v. B. (G.D.),* [2000] 1 S.C.R. 520 and adopted by the Court of Appeal in several earlier cases, that " [f]or an appeal [on the ground of counsel incompetence] to succeed, it must be established, first, that counsel's acts or omissions constituted incompetence, and second, that a miscarriage of justice resulted." On the first point, as noted in the judgment in the *Dunbar* Appeals, the Courts have held that a " cautious approach" is appropriate.

[12] By the time the *Dunbar* Appeals came to be heard, therefore, the Courts had clearly and succinctly defined the contours of the argument in an " incompetence appeal" , and the limits of relevance.

[13] In our decision on Facts and Verdict we reviewed at some length the conduct that we judged to justify our finding of professional misconduct. See, in particular, paragraphs [37] to [47]. It is not necessary to repeat that review here. Essentially, they describe a pattern of conduct that reflected a comprehensive and seemingly almost wanton disregard, not only for the established limits of relevance concerning argument and evidence in an incompetence appeal, but also for well-known rules governing the admissibility of evidence in any case. We noted in paragraph [46] of that decision that " on innumerable occasions, [we] invited the Respondent to explain why, if the record showed that J.B. conducted himself incompetently, it was necessary in the appeals to advance any explanation or theory to explain the incompetence [particularly, we add here, explanations or theories quite unsupported by admissible evidence]. He either did not seem to understand the point or failed to respond to it."

[14] Paragraphs [49] to [63] of the decision on Facts and Verdict set out the considerations that led us to conclude that the Respondent was incompetent in the performance of his duties as a lawyer in his conduct of the *Dunbar* Appeals. Once again, it is not necessary to rehearse those considerations here.

[15] In our opinion, three factors make the Respondent's misconduct and incompetence particularly egregious:

(a) He cannot plausibly claim (and to his credit did not try to do so) ignorance of the rules, either about the admissibility of evidence generally, or the issues involved in appeals based on the

ineffectiveness of counsel at trial. He is a senior, seasoned and experienced criminal defence lawyer. There is nothing particularly arcane or obscure about the rules determining the admissibility of evidence that he demonstrably disregarded. They are well known. Moreover, as we noted in our decision on Facts and Verdict (para. [32]), he is, or should be, familiar in particular with the jurisprudence relevant to cases of alleged counsel ineffectiveness, having previously appeared in several such cases. It is difficult to resist the conclusion that he decided that if he could not establish his theories about J.B.'s behaviour by properly admissible evidence, he would simply disregard the rules that prevented him from doing so. His approach in this respect seems to have been calculated and deliberate; at best it was cavalier.

(b) The Respondent has previously been chastised by the Court of Appeal for conduct apparently similar to that which occurred here. We refer to the observations of McEachern, C.J.B.C and Ryan, J.A. in *R. v. Dean,* (1997), 39 BCLR (3d) 287, quoted in paragraphs [33] and [34] of our decision on Facts and Verdict.

(c) The fact that the Respondent's misconduct, and his demonstrable lack of competence, occurred, as we have pointed out, " in the face of the Court" and was of such a degree as to prompt the Court of Appeal in the *Dunbar* Appeals to take the extraordinary step of appending an " Afterword" to their decision on the merits, specifically addressed to his improprieties. We noted in paragraph [7] of our decision on Facts and Verdict that " while the Reasons of the Court could be accepted as *prima facie* evidence of the facts stated" we in fact undertook our own review of the evidence and argument. The strictures of the Court of Appeal were not only well founded but, with respect, were expressed with unusual restraint.

The age and experience of the respondent

[16] We understand that the Respondent has been practising almost exclusively as a criminal defence lawyer for approximately 35 years, and we have described him as " senior, seasoned and experienced." The public record suggests that he is a fearless, energetic, resourceful and persistent advocate with a passion for justice and single-mindedly devoted to the interests of his clients. His experience, not only generally but also in matters involving claims of ineffective representation by trial counsel, and in particular in the *Dean* case, should have alerted him to the inappropriateness, to put it no higher, of the course of conduct that he decided to pursue in the *Dunbar* Appeals. We remain completely mystified about why it did not.

The Respondent's Discipline Record

[17] The Respondent's first brush with the Law Society's disciplinary process seems to have occurred in May 1996, some 25 years after he started in practice. A Supreme Court judge had reported that the Respondent had made inappropriate and insulting remarks in Court. According to the Report of the Conduct Review Sub-Committee, " Mr. Goldberg became involved in a personal struggle with ... the trial judge" and had forgotten, " we trust momentarily" , that he owed it to the Court and the profession to show the utmost respect to the trial judge. The Subcommittee said that it was satisfied that the Respondent understood its views and recommended that no further action be taken.

[18] On two subsequent occasions - in November, 1997 and again in May, 2002 - the Respondent became the subject of a Conduct Review as the result of reports from judges of his failure to appear in Court to handle matters that he was responsible for and, in a second case, making disparaging comments about

the Courts and the judiciary. In neither case was any further action recommended or taken except that in the later case the Respondent wrote a letter of apology to the judge who had made the report.

[19] In May 2004, following a report by a judge of the Provincial Court, the Respondent was cited for allegedly having left a client unrepresented in mid-trial. The circumstances, which it is not necessary to detail, were somewhat unusual. A majority of the Hearing Panel found that the Respondent " professionally misconducted himself in abandoning his client in mid-trial, and in treating the Provincial Court Judge with disrespect." (*Law Society of BC v. Goldberg*, 2005 LSBC 10, para. [80]). The dissenting member of the Panel, although considering the Respondent's conduct " inappropriate and unfortunate [and] ill-advised and contrary to the provisions of the *Professional Conduct Handbook*," did not think that it rose to the level of professional misconduct. (para. [92]). Following the penalty hearing, the Respondent was ordered suspended for 30 days. (*Law Society of BC v. Goldberg*, 2005 LSBC 22, para. [11]).

[20] The Respondent's formal discipline record does not tell us much that is helpful to our present task, aside perhaps from suggesting that he believes, quite wrongly in our view, that fearless advocacy and vigorous representation of client interests require that the normal rules of civility and of respect for the Courts be disregarded. Counsel for the Law Society suggested that the history shows that the Respondent " refuses or is unable to acknowledge his own misconduct." That may be a fair observation, but it adds little to what is otherwise apparent on the face of the record before us.

[21] Before leaving the subject of the Respondent's professional conduct record, however, there is one further matter that we should deal with briefly. In his written submission to us he referred to the report of a Conduct Review Subcommittee that was apparently convened for the purpose of reviewing with him the conduct that ultimately became the subject of the present citation. In his words, he was " asked, urged, required to write a letter of apology to" JB about whom, as we found, he made " unfounded, but serious, allegations." (Decision on Facts and Verdict, para. [48]). He apparently declined to write the letter of apology.

[22] The Respondent sought to introduce this report of the Conduct Review Subcommittee as part of his argument on penalty. Rule 4-12 of the Law Society Rules precludes this. It declares that such reports are " not admissible at the hearing." The Respondent argued, however, that, since that exclusion was manifestly designed for the protection of the member, he ought to be permitted to waive it. In the end, he did not press the point, counsel for the Law Society having consented to our receiving in evidence two letters written by the Respondent, apparently to the Subcommittee (but this is not entirely clear). Those letters attempt to explain why he declined to write the suggested letter of apology.

[23] For the most part, we did not find the correspondence helpful. There is, however, a revealing passage in one of his letters (dated June 1, 2005): " In retrospect I can only apologize for not having better proof. I cannot apologize for what in substance was true." But, absent any legally admissible evidence, " what in substance was true" is, in fact, nothing more than the Respondent's inexpert personal belief or opinion, inappropriate to be put forward as evidence or argument in a court of law. [1]

Acknowledgment of Misconduct, Redress of Wrong and Other Mitigating Circumstances; Need for Deterrence

[24] The Respondent has clearly convinced himself that his opinion about the causes of J.B.'s alleged incompetence is well founded and that it was proper for him to make assertions about what he considered to be " in substance ... true" even though he did not have any legally admissible evidence to substantiate his belief. Taken as a whole, almost everything that he has said - to us and in his letters to the Conduct Review Subcommittee - indicates unmistakably that he does not acknowledge our conclusions or, indeed, those of

the Subcommittee or the Court of Appeal.

[25] Except to the extent of his purported acknowledgment that he ought to have had " better proof" , the Respondent has resolutely maintained that there was neither professional misconduct nor incompetence. If there has been any, he says in his written submission, an apology is a sufficient sanction. We reject this proposition.

[26] In our decision on Facts and Verdict (at paragraph [25]) we expressed our opinion that the Respondent's defence amounted to the proposition that there is among the Courts, the Law Society and " the elite of the legal profession" a conspiracy to protect lawyers. He has taken exception to our use of the word " conspiracy" . His preference, it seems, is to describe the relationship among the Law Society, the legal profession and the Courts as being that of a " Mutual Admiration Society" . So be it. He complains that " the Law Society is dominated by considerations of professional courtesy and collegiality," [2] and he says that these considerations " ultimately inhibits their truth seeking function."

[27] It is not easy to unravel the meaning of the Respondent's observations in this connection. If intended to convey his belief that " the truth" must trump " considerations of professional courtesy and collegiality" , he offers nothing in the way of argument to support it. It is equally difficult to discern its relevance to the conduct of which a complaint has been made and that we have found to be deserving of discipline.

[28] As we have said, the Respondent has not to date acknowledged any misconduct in connection with his conduct of the Dunbar Appeals. His general approach to the matters that we have had to consider here suggests that it is improbable that he will ever voluntarily do so.

[29] The case for what was described in *Ogilvie* as " specific deterrence" is thus, having regard to all of the circumstances, clear and beyond argument. Responsible counsel cannot properly make or persist in assertions or allegations that are unsupported by admissible evidence; and responsible counsel do not in fact do so. They accept that, as it was put by Lord Hobhouse of Woodborough in *Medcalf v. Weatherill*, [2003] 1 A.C. 120, at paragraph 54:

> The professional advocate is in a privileged position. He is granted rights of audience. He enjoys certain immunities. In return he owes certain duties to the court and is bound by certain standards of professional conduct in accordance with the code of conduct of his profession. ... The advocate must respect and uphold the authority of the court. He must not be a knowing party to an abuse of process or a deceit of the court. He must conduct himself with reasonable competence. He must take reasonable and practicable steps to avoid unnecessary expense or waste of the court's time. ... [B]arristers [are precluded] from making allegations, whether orally or in writing, of fraud or criminal guilt unless he has a proper basis for so doing.

These remarks were made, of course, with reference to the position of an English barrister. While there are differences between the regulatory and professional conduct structure for English barristers and those applicable to lawyers in British Columbia, we believe those differences to be irrelevant. Lord Hobhouse's distillation of the professional conduct obligations of an English barrister does not differ significantly from the substance of what is required under The Law Society's Canon's of Legal Ethics.

[30] The Respondent's conduct represented a marked departure, not merely from the way in which counsel are expected to conduct themselves, but also from the way in which, we believe, responsible counsel do in fact conduct themselves. This, taken together with the fact that the *Dunbar* Appeals marked the second occasion in which his conduct became the subject of judicial criticism, makes the case for

specific deterrence overwhelming. Most lawyers do not need to be reminded of these things. The Respondent, it seems, must be.

What is an Appropriate Sanction?

[31] We have found this a difficult question.

[32] The Law Society contends that the appropriate penalty in the circumstances consists of the following elements:

> (a) a suspension from the practice of law for a period of six to twelve months commencing July 1, 2007;
>
> (b) the attachment of conditions to the Respondent's practice, to remain in force until varied or removed, that:
>
> > i) he must not represent any person, or appear as counsel, in the British Columbia Court of Appeal;
> >
> > ii) he must not present any oral or written arguments in any Court based on an allegation of the ineffective assistance of previous counsel, and in circumstances where an argument based on the ineffective assistance of counsel should be made, the Respondent must refer the matter to another member of the Law Society;
> >
> > iii) the Respondent must enter into a Practice Supervision Agreement, (a draft of which was put before us) with a Practice Advisor approved by the Discipline Committee, and must comply with all of its terms; and
> >
> > iv) the Respondent pay costs of these proceedings in the amount of $59,901.07, payment to be made on or before a date to be fixed by this Panel.

We consider each of these elements below.

Suspension

[33] In our view, having regard to all of the circumstances, the Law Society is fully justified in seeking the Respondent's suspension. Although the history is not encouraging, we think that a suspension should achieve our objective of bringing to his attention the fact that, as we have put it earlier, his conduct represented a marked departure, not merely from the way in which counsel are expected to conduct themselves, but also from the way in which responsible counsel do in fact conduct themselves.

[34] Counsel for the Law Society drew our attention to a number of decisions of other hearing panels, both in British Columbia and other Provinces. They reveal a wide variety of transgressions committed by lawyers, and the imposition upon those lawyers of an equally wide variety of sanctions: suspensions ranging from 90 days to one year, sometimes combined with other conditions, such as a requirement to satisfy an examining committee of competence in a particular field (e.g. *Law Society of BC v. Cunliffe,* [1993] L.S.D.D. No. 207), or a restriction on the scope of practice (e.g. *Law Society of BC v. Legge,* 2004 LSBC 02 and *Law Society of Upper Canada v. Ward,* [1995] L.S.D.D. No. 6), or a requirement to practise

for a period only in association with another lawyer (*Law Society of Upper Canada v. Batchelar,* [1996] L.S.D.D. No. 40). The sort of conduct that gave rise to these sanctions, although generically described as " professional misconduct" or " incompetence" , varied from lying and displaying " a casual disregard for the truth" (*Law Society of BC v. Botting*, [2001] L.S.D.D. No. 21), committing breaches of trust and of applicable trust accounting rules (*Legge, supra),* to appearing in Court " totally unprepared" (*Law Society of Alberta v. Backhaus*, [1994] L.S.D.D No. 210), and failing to disclose conflicts of interest (*Law Society of Upper Canada v. Batchelar*, *supra*). Some of the lawyers sanctioned had a disciplinary record; others had none. Some of those suspended or otherwise sanctioned had been practising for many years, others for a relatively short period of time.

[35] It is trite to say that each case depends upon its own facts, and because comparisons are difficult, their value as guides is extremely limited. We do not think there is anything to be gained from a detailed review of these cases (and others to which we were referred). We must do what we think is right in the public interest in the circumstances of this case, and this requires that the Respondent be forcefully reminded that his conduct in the *Dunbar* Appeal - conduct markedly similar to that in which he had engaged before - is simply unacceptable and must not be repeated.

[36] A suspension for 90 days should achieve that objective by providing the Respondent with the opportunity, freed for a time from the demands of a busy criminal defence practice, to reflect upon his behaviour, upon the privileged position that lawyers enjoy in our society and upon the obligations that flow from that position.

[37] Why 90 days rather than, say, 120 or 180? It is difficult to provide a reasoned response except to say that our purpose is disciplinary and not punitive and that we fear that a longer suspension could have results that will cross that line.

[38] The Respondent advised us that if we concluded that a suspension of any duration should be ordered, it would cause the least disruption to clients to whose representation on serious criminal charges he is already committed, if the suspension were to come into effect as of January 1, 2008. That is a reasonable request, and we so order.

Limitations on Scope of Practice

[39] As we have noted, counsel for the Law Society asked us to impose certain limitations upon the Respondent's right to practise upon his reinstatement. Among these were that he must not represent any person, or appear as counsel, in the British Columbia Court of Appeal; or present any arguments in any Court based on an allegation of the ineffective assistance of previous counsel, and in circumstances where an argument based on the ineffective assistance of counsel should be made, he must refer the matter to another member of the Law Society.

[40] In our view these particular limitations go far beyond what is necessary, and we do not therefore accede to this request. We do, however, think that the Respondent's conduct of any appeal involving an argument based on the ineffective assistance of counsel at trial should be made subject to the limitation that all written materials relating to that argument should be subject to review prior to filing. A somewhat broader provision than this is contemplated by one of the clauses in the draft Practice Supervision Agreement proposed by the Law Society and that we consider below. Although, as will be seen, we do not favour an agreement having the scope proposed by the Law Society, we do think that a more limited agreement, addressed to this one issue, is appropriate.

Practice Supervision Agreement

[41] The draft Practice Supervision Agreement put before us has some exceedingly far-reaching provisions. It requires the Respondent, among other things, to provide the supervisor with detailed information concerning all open files. This information, which must be updated monthly, includes:

(a) the subject matter of the file including a description of the nature of the legal issues involved and the underlying facts;

(b) the legal arguments that he intends to make concerning the subject matter of the file; and

(c) the time, date and reason for the last communication with the client and with the Crown.

In addition, the supervisor must be allowed to review the Respondent's files on a " regular and ongoing basis" at least monthly. Finally, the Respondent must provide to the supervisor copies of " all written materials" that he intends to submit to or file with any Court so that they can be reviewed by the supervisor before being filed.

The obligations imposed on the supervisor under the draft agreement include:

(a) reviewing the Respondent's chambers and trial preparation work " to ensure that all legal issues have been considered, appropriate evidence obtained, options and strategies for settlement canvassed with the client and all other necessary steps taken in a timely way;

(b) meet monthly with a representative of the Crown, with a representative of the Provincial Court and of the Supreme Court, in each case " to identify any concerns with respect to the conduct of the member in the presentation of cases or his dealings with members of the Bench and Court staff.

Finally, the supervisor and the Respondent must meet at least monthly.

[42] We do not think that the implementation of a Practice Supervision Agreement of this kind is justified. Moreover, in our view it is impractical. First, the financial and administrative burdens that the agreement would impose upon the Respondent verge on the oppressive. It is difficult to imagine how, in the face of these burdens, he could continue to conduct a practice at all. We also think that such an agreement would impose such onerous obligations upon the supervisor as to make it improbable, in our view, that anyone could be found who would be in a position to discharge them or willing to do so. [3] We do not think that any public interest consideration warrants the adoption of such an agreement, nor, in our opinion, will it advance the cause of specifically deterring the Respondent from engaging in a repetition of the conduct that has brought him here.

[43] As indicated above (paragraph [40]) we think that a more limited Practice Supervision Agreement requiring the Respondent to submit to a Practice Supervisor for review before filing any written material relating an argument based on the ineffective assistance of counsel at trial. We assume that the details of an agreement to this end can without difficulty be worked out between the Law Society and the Respondent. We shall, however, retain jurisdiction to deal with any difficulties that may arise in this connection.

Costs

[44] Rule 5-9 of the Law Society Rules provides that " a panel may order that an applicant or respondent pay the costs of a hearing referred to in Rule 5-1, and may set a time for payment." The Law

Society seeks an order under that Rule that the Respondent pay the costs of the hearing and, in that connection, provided us with an estimate of those costs as of the conclusion of the penalty phase of the hearing. That estimate was $59,901.07.

[45] The Respondent made no submissions to us either on the quantum of costs or on the question of time for payment. No reason has been suggested, and none occurs to us, for not acceding to the Law Society's request. On the other hand, we do not think that it is proper to make an order for payment of a specific amount based merely on an estimate. Accordingly, our order is that the Respondent pay, on account of costs, the aggregate amount properly payable under Rule 5-9. We retain jurisdiction for the purpose of resolving any disputes concerning the quantum of costs properly payable.

Summary

[46] In summary, we make the following orders:

(a) that the Respondent be suspended from the practice of law for a period of 90 days, commencing on January 1, 2008;

(b) that the Respondent enter into a Practice Supervision Agreement providing that he must submit to a Practice Supervisor for review before filing any written material relating an argument based on the ineffective assistance of counsel at trial; and

(c) that the Respondent pay the costs of this hearing properly payable pursuant to Rule 5-9.

[47] In respect of the orders set out in (b) and (c) above we will retain jurisdiction to deal with any difficulties that may arise.

Dissent/Minority Decision of G. Glen Ridgway, Q.C.

[48] I have read and agree with the decision of the majority of the Panel, save and except the period of suspension as set out in paragraph [38]. In my view the appropriate suspension is 180 days. In all other respects I agree with the disposition of the majority.

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[1] Cf. Section 2(3) of the Canons of Legal Ethics: " A lawyer should not ... assert a personal belief in the justice or merits of the client's cause or in the evidence tendered before the court." And cf. also Section 3(11).

[2] This is not an original idea. One of the characters in George Bernard Shaw's *Doctor's Dilemma,* Act 1 (1908) complained of what he described as a conspiracy of professionals against the laity.

[3] Cf. *Law Society of Alberta v. Backhaus*, *supra*