

2007 LSBC 41

Report issued: September 11, 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

Douglas Hewson Christie

Respondent

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

Hearing dates: December 6, 2006, April 12, June 18 and 19, 2007

Panel: Robert M. McDiarmid, Q.C., Chair, Gavin Hume, Q.C., James D. Vilvang, Q.C.

Counsel for the Law Society: Jaia Rai

Appearing on his own behalf: Douglas H. Christie

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 of British Columbia pursuant to the direction of the Chair of the Discipline Committee. The citation directs that this Hearing Panel inquire into the Respondent's conduct as follows:

1. Your conduct in the course of your representation of the plaintiffs in *Ravnyshyn and others v. Drys*, [2005 BCSC 561, [2005] B.C.J. No. 831], and in particular, your conduct in causing the preparation and delivery of a document entitled " Subpoena for Documents" issued to BMO Bank of Montreal, 3481 Cook Street, Victoria British Columbia for purposes of improperly obtaining documents from a third party to the litigation.
2. Your conduct in the course of your representation of the plaintiffs in *Ravnyshyn v. Drys*, ..., and in particular, your conduct in causing the preparation and delivery of a document entitled " Subpoena for Documents" issued to Royal Jubilee Hospital Medical Records Department, 1952 Bay Street, Victoria, British Columbia for purposes of improperly obtaining documents from a third party to the litigation.
3. Your conduct in the course of your representation of the plaintiffs in *Ravnyshyn v. Drys*, ..., and in particular, your conduct in causing the preparation and delivery of a document entitled " Subpoena for Documents" issued to Mr. R.Y. of ..., Los Angeles, California for purposes of improperly obtaining documents from a third party to the litigation.

[2] In that case, the Plaintiffs alleged that G.D., a testator, lacked the requisite capacity when he made his last will and testament, and further alleged that there was undue influence on the part of the

Defendants (the main beneficiaries) in the making of his will.

[3] The Plaintiffs also alleged that the Defendants feloniously caused the death of G.D.

[4] As if that allegation were not unusual enough, it appears that the person responsible for prosecuting the case, an individual named J.K., had no legal interest in the proceedings, although during the course of the proceedings he married P.R., one of the Plaintiffs.

[5] Warren, J. dismissed all of the Plaintiffs' claims. He found that the solicitor that drafted the will did so " within the highest standards of his duties as a drafting solicitor and that he took all appropriate steps to ensure that the will represented the intelligent act of a free and competent person." Dealing with the allegation of feloniously causing death, Warren, J. stated:

I conclude that the evidence falls far short of satisfying the necessary standard of proof for such a serious allegation.

[6] In assessing the evidence of J.K., who was described as a key witness for the Plaintiffs, Warren, J. in his Reasons for Judgment wrote:

[63] ... After meeting with [M.K.] and reviewing certain documents his suspicions turned to conviction: he was and is certain the [Defendants] arranged to have the Testator leave most of his assets to them and then murdered him while he was in a strange land amid people whose language he did not speak.

[64] My view of his evidence is that [J.K.'s] conviction led him to accept all evidence that supports his conclusion and reject all which does not ...

[65] ... [J.K.'s] opinion of his legal acumen far exceeds his reality ...

[67] [J.K.] was so personally involved in this action that he forged a court stamp which he affixed to a form of subpoena for service on an out-of-Province witness, thereby hoping to achieve production of documents for use in the trial.

As is apparent, Warren J. found J.K.'s testimony to be unreliable.

[7] The citation alleges that the Respondent professionally misconducted himself by causing the preparation and delivery of three documents, each entitled " Subpoena for Documents" for the purpose of improperly obtaining documents from non-parties to the litigation. The Schedule to the citation has three counts, one for each document. For convenience, these will be referred to as the " Bank" , " Hospital" and " California" documents.

[8] All three documents contain a style of cause headed by the words " IN THE SUPREME COURT OF BRITISH COLUMBIA" . Under the style of cause are the words " SUBPOENA FOR DOCUMENTS" . The three documents are annexed to these reasons as Appendices.

[9] The California document is dated October 1, 2003 (Exhibit 5, Tab 11, also found at Exhibit 7, Tab B and Exhibit 6, Tab 2). It is directed to an individual at an address in California and contains the following wording:

TAKE NOTICE that you are requested to supply true copies of all American Express Travelers cheques negotiated by Mr. [G.D.] in 1999 which are in your possession or control relating to the matters in question in this proceeding.

Address: Douglas H. Christie, 810 Courtney Street, Victoria BC, V8W 1C4

Dated at Victoria, British Columbia, on October 1, 2003.

The document is signed by the Respondent.

[10] The Bank document is dated December 16, 2003 (Exhibit 5, Tab 10, also found at Exhibit 7, Tab B and Exhibit 6, Tab 3). It is directed to the Bank, C/O S.B., with the Bank's address. It contains the words:

TAKE NOTICE that you are required to supply true copies of all bank statements relating to all accounts of the late Mr. [G.D.] from January 01, 1996 to the closing dates of his accounts.

PLEASE CONTACT MR [J.K.] FOR PICK-UP OF DOCUMENTS AT . . .

and then J.K.'s telephone number and a number for a message were given. The first page of the Bank document is signed by the Respondent, with his name typed underneath identifying him as solicitor for the Plaintiffs.

[11] The second page of the Bank document contains extracts from Rules 2(5) and 56(4) of the Supreme Court Rules, in a manner that is identical to the wording of a subpoena in Form 21. Those extracts include some of the wording from Rules 2(5) and 56(4) as follows:

2(5) Where a person, contrary to these rules and without lawful excuse,

(a) refuses or neglects to obey a subpoena ...

56(4) A person who is guilty of an act or omission described in Rule 2(5) or 40(19), in addition to being subject to any consequences prescribed by those rules, is guilty of contempt of court and subject to the court's power to punish contempt of court.

[12] The Hospital document is dated December 18, 2003 (Exhibit 5, Tab 13, also found at Exhibit 7, Tab B and Exhibit 6, Tab 4). Under the words " SUBPOENA FOR DOCUMENTS" it is directed to the Hospital Medical Records Department with the hospital's address, and then states:

TAKE NOTICE that pursuant to Rule 40(39) of the Rules of Court you are required to supply true copies of the following documents from the medical file of Mr. [G.D.], date of birth ... and date of death

Twenty-two documents are itemized. As with the Bank document, the same direction to contact J.K. for pick-up is given: "PLEASE CONTACT MR [J.K.] FOR PICK-UP OF DOCUMENTS AT..." The document was signed by the Respondent. The extracts from Rules 2(5) and 56(4), which formed part of the Bank document, do not form part of the Hospital document.

[13] The Respondent gave all three of these documents to J.K. for delivery to the Bank, the Hospital and the individual in California. As noted by Warren, J. in his Reasons for Judgment, J.K. was somehow able to convince Custom Stamp and Engraving Ltd. of Victoria, B.C. to make and provide him with a stamp that said on it " IN THE SUPREME COURT OF BRITISH COLUMBIA" around the circumference, and the word " Victoria" in the middle. The stamp's imprint was placed on the California document by J.K.

[14] The evidence before the Panel confirms that the Law Society conducted an investigation into the Respondent's knowledge of obtaining and using this forged stamp and was satisfied that he had no part of

it. The citation does not relate to the fraudulent use of the stamp, which was entirely a frolic of J.K..

[15] The Law Society called two witnesses, the complainant D. Lawrence Armstrong, a lawyer, who represented the Defendants in the litigation, and James P. Taylor, Q.C., who was tendered as an expert able to give opinion evidence on civil procedure in British Columbia and was also tendered to give opinion evidence on the level of knowledge an experienced litigator would have in the area of document discovery from non-parties.

[16] Mr. Armstrong testified as to the nature of the litigation. He also identified certain documents including, in particular, the circumstances giving rise to his becoming aware of the Bank, Hospital and California documents "purporting to be subpoenas for documents." He testified that he had waited until after Warren J. had issued Reasons for Judgment before making a complaint to the Law Society.

[17] Mr. Taylor prepared a report, which was admitted into the proceedings as Exhibit 6. Mr. Taylor is without question an expert on the conduct of civil litigation in this Province. He, along with the Chief Justice of Canada, has written one of the leading texts on procedure in B.C. Courts. In Exhibit 6, he writes:

We are entitled to subpoena any potential witness for trial. That witness is obliged to bring to the trial any documents the witness has relating to the trial. Other than that we are entitled neither to compel testimony from a third party prior to trial *without a court order* nor to compel the production of documents from a third party prior to trial or from a third party not called on a trial without a court order. [emphasis in original]

[18] This is a succinct and helpful summary of the law.

[19] The Respondent called three witnesses and also testified on his own behalf. He called one of the Plaintiffs, P.R. She testified as to some of the background relating to the litigation. She also testified that she arrived in Canada on June 28, 2001 and married J.K. on May 25, 2002, which was the same year that she came to see the Respondent. She talked about some of the difficulties with the trial, including in particular, the problem that arose as a consequence of an interpreter "switching sides" and assisting the Defendants.

[20] The Respondent's spouse, K.Z. testified. She described the Respondent as a sole practitioner, confirmed that she had been his secretary for 25 years and testified that he often took cases on a pro bono basis. She explained various health problems that had afflicted members of her family. In particular, she confirmed that the Respondent had been diagnosed with pertussis (whooping cough) in early 2003, and that that lasted several months. She then testified how, in May of 2003, she had been diagnosed with breast cancer and underwent several surgeries and in September of 2003 commenced chemotherapy. She explained that she was unable to carry on doing secretarial work. She testified that J.K. took over doing some of the secretarial work.

[21] The import of her testimony, which the Panel accepts, was that, in the latter part of 2003 she was gravely ill with cancer, that the Respondent was recovering but remained affected by whooping cough, and that the stresses of his practice in the Fall of 2003 (when the documents that form the basis of the three counts of the citation were produced) in conjunction with the issues facing both the Respondent and his family made it a very difficult time for the Respondent.

[22] J.K. testified that he had made inquiries of individuals at American Express in Los Angeles who indicated that they were prepared to provide copies of traveller's cheques issued to G.D. and subsequently negotiated by the Defendants (presumably in their capacity as executors of his estate, although the Plaintiffs and J.K. alleged that the Defendants had forged G.D.'s signature). In the statement J.K. gave to a Law

Society investigator, J.K., in response to the question about whether there was any type of arrangement made or requirement by the U.S. American Express people to have before they would send up documents responded:

Well what the people at American Express in Los Angeles told me was, I asked them what they needed, and they said they needed a " Subpoena For Documents" and I knew we had a Subpoena For Documents.

[23] J.K. was then asked whether he discussed this with the Respondent. He advised that he mentioned that the people at American Express would accept the subpoena for documents. He advised that he prepared the subpoena document (here referring to the California document) and took it to the Respondent for his review and signature. In his testimony, J.K. stated that he typed the California document, took it to the Respondent, and had a discussion in which the Respondent told J.K. to change the word " required" to " requested" , giving the reason that because the document was going out of the country, the use of the word " required" was somehow inappropriate.

[24] Then he testified that he had been given instructions by the Respondent to prepare subpoenas in the standard format, following Form 21 of the forms to the Supreme Court Rules, which he knew about from the library. He testified that he had a discussion with an individual at American Express and that the individual would agree to provide copies of traveller's cheques that J.K. said contained G.D.'s forged signature (alleged to be forged by the Defendants) but that, in order to disclose them, the individual required a Court Order.

[25] J.K. testified that, during this time in the Fall of 2003, the Respondent was always very busy.

[26] In cross-examination J.K. confirmed that the Respondent was the Plaintiff's lawyer and that he, J.K., was assisting the Respondent. He confirmed that he, J.K., had no training to interpret the Supreme Court Rules. He confirmed that the Respondent gave J.K. instructions to prepare a subpoena to get documents, saying " check in the library and use the Form in the Rules." He confirmed that the Respondent had no other secretarial support at the time. He confirmed that the California employee of American Express needed something official from the Court, which was why he went to the stamp company to obtain a stamp, which he put on the California document without the knowledge of the Respondent.

[27] In his testimony, the Respondent confirmed the testimony of J.K. set out in paragraphs [22] to [23] above. The Respondent testified as follows (here referring to the California document and the copies of the American Express traveller's cheques):

I asked him [J.K.], " Well why do you need these documents?" He explained to me what he's told you, and I consider them important, valuable, relevant documents. I said, " Well, what's his [(the contact at American Express] position?" He says, " well, he wants to give them to us. He just needs something that looks official to deliver them. He wants to give them to us." I said, " Well, I can do a subpoena form but I frankly don't think it's legally compelling outside the country." And he typed one out and put in the form " required" and I said, " No, I can't see how he can be "required' to do anything. At least we can put "requested."" And he changed the word " required" to the word " requested." And in my understanding he was anxious to assist and this was not compelling him to do anything he didn't want to do and I felt that it was vital to the case, and if that is what he wanted for his purposes to justify doing what he wanted for the interest of justice as I saw it, I signed them. And he faxed it to him, and I believed that they faxed the documents back. I do not believe that they were documents to which I was not entitled if he was willing, and I understood he was.

[28] The materials produced in evidence before us, consisting of the fax cover sheet and the California document (Exhibit 5, Tab 11) and then the response from American Express Global Security in Salt Lake City, Utah at Exhibit 5, Tab 12, confirming that American Express Global Security provided the Respondent with copies of eight traveller's cheques. The cover letter with the copies of the traveller's cheques, which were provided (Exhibit 5, Tab 12) states:

Dear Mr. Christie,

In compliance with subject subpoena dated October 1, 2003 enclosed are true microfilm copies of subject American Express Travelers Cheques.

The letter is noted as being copied to the individual with American Express in Los Angeles with whom J.K. was apparently dealing.

[29] Neither the bank employee to whom the Bank document was directed, nor the hospital employee to whom the Hospital document was directed provided any documents in response to the documents served upon them. Extracts from the proceedings at trial (Exhibit 5, Tab 4) relate to the Respondent's submissions to the Court. The Respondent says (p. 873):

... originally I issued the subpoena for the documents for Mr. [P.], who is the social worker, to help with [G.D.] at the time of release.

The Respondent goes on to say:

I believe I have the right to subpoena documents, I initiated a subpoena in Form 21, then the hospital's lawyers said, we're not going to honour it, we're not going to respect it. ... And then they said, well, you can't have the documents without calling the witness. Then I subpoenaed Miss [C.], who I believe is the custodian of the records. I just want copies of the records.

The Respondent goes on to say:

So, all I'm asking is that I be allowed to have copies of [G.D.'s] medical records, which actually I enumerated on an earlier - there's actually been two subpoenas. I can prove service of them both. I can prove exactly what they were. I believe they're in Form 21. Um, and - and I don't usually like to reveal the exact nature of my cross examination, but I have to. Okay. So, um, I'm asking that Your Lordship ask the witness to turn over copies of the documents. And I don't want her to sit around all day. I didn't want her necessarily to be here at all. I just wanted the records. And the only reason I subpoenaed her, was because I was told, if you don't have her, you've got to subpoena the person. And there you go.

[30] The Respondent testified that he knew the correct form for a subpoena. In his testimony in chief, page 9, he stated:

... I would not do something that I knew to be dishonest or try by devious means to get something that I didn't think I was entitled to. And I knew this, that on August 14 when I signed those subpoenas [n.b. this is not referring to the three documents which are the subject matter of this citation] and what I now know and I knew then to be the correct form, I told [J.K.] go to the rules.

[31] With respect to the Bank and Hospital documents, he testified that he wanted to obtain documents to assist a witness, Mr. P., in rebuttal evidence. He conceded at page 23 of his testimony:

I mean I concede I made a mistake in signing these documents in the way they are. I think it was negligence. I don't want to argue the point.

[32] On cross-examination the Respondent, in response to a question put to him that it was on the Respondent's instruction and that he caused the preparation of the documents and gave them to J.K. for delivery, when asked whether he accepted that, stated: " No I wouldn't accept that." He was then asked, " Do you accept that you - it was on your instruction that those documents were prepared?," to which he answered: " No." This testimony is not believable.

[33] Exhibit 7, Tab C (also Exhibit 3, Tab Q) is a letter dated July 11, 2005, written by the Respondent to the Law Society in response to the Law Society's letter of July 5, 2005, which is at Exhibit 3, Tab O. The Respondent's letter states:

In regard to the issue of my allowing [J.K.] to use the subpoenas. I did not allow [J.K.] to use the subpoenas, rather I prepared them and he offered to arrange for their delivery. I think this would be very similar to me hiring Burns Registry Service or any other process server to deliver subpoenas. The pick-up of documents was requested as a courtesy. This was as a convenience to the recipients and myself and was described as a request.

[34] The following exchange was put to the Respondent in cross-examination (page 30):

Question: Okay. So in that letter you were telling the Law Society that, yes, you did prepare the subpoenas but then [J.K.] delivered them.

Answer: I was wrong.

Question: You were mistaken when you wrote that letter?

Answer: That's right. July 5, 2005 I didn't remember what happened in October 2003. I hadn't thought about it. I didn't think it was that serious. I answered it the way I did but I was mistaken. I did not prepare those subpoenas, and I did not instruct their preparation.

[35] Not only is the Respondent's testimony inconsistent with his July 11, 2005 response to the Law Society, it is also inconsistent with the position he enunciated at trial as set out in the passage previously referenced in paragraph [29] above and in other passages set out in Exhibit 5, Tab 4, at page 876 where the Respondent, in response to a question from the Court responds:

No they - the subpoena, I think, satisfies the conditions of Rule 40, sub-rule 39. It's in Form 21. It - it articulates twenty-two documents that I wanted to show to [B.P.] Some - they're all basically documents from [B.P.] He's the author of them, but he needs to be able to refer to them. They're actually hospital records, because he's the hospital social worker. Um, I did leave a number for contact to pick up the documents. I asked that - that he, that is [J.K.], be called to pick them up. Ah, it's my understanding that Rule 40, sub-rule 39, allows counsel to issue subpoenas for documents.

In addition, in passages on pages 877 and 878 of the same Tab in Exhibit 5:

The Court: ... as I understand it, Mr. Christie, you told me earlier that she was - or the hospital was directed to deliver the documents to [J.K.]

Mr. Christie: That was what it said in the first subpoena -

The Court: Yes.

Mr. Christie: - subpoena for documents.

The Court: Right.

Mr. Christie: I didn't ask that they be delivered to [J.K.] I asked if they'd call him for - to pick up the documents. How they come to court may be arguable, but they are here, and I have a right to see them because they're relevant to the rebuttal evidence that I anticipate from [B.P.]. ... I've asked in the subpoena for documents to be produced.

[36] The Panel does not accept the Respondent's evidence that it was not on his instruction that the three documents in questions were prepared. The evidence on that point is not believable. In our view, the extracts from the Proceedings at Trial set out in paragraphs 29 and 35, make it clear that the Respondent was involved in the preparation of the documents. During the exchange he spoke in the first person with respect to the preparation of the documents.

[37] The California document was sent because the recipient apparently wanted something that looked official; the Respondent testified (page 68): " he wants to send the documents but he wants something that looks official." The California document was prepared in October and clearly was actively considered by the Respondent in that he changed the wording in the text.

[38] Cross-examination (Transcript, page 52) reinforces the conclusion of the Panel that the Respondent knowingly signed the three documents. The Respondent testified (with respect to the Bank document) there was an element of compulsion to the subpoena form in that he included a penalty provision for non-compliance. He agreed that the Hospital document was also something that purported to compel the recipient to provide the documents and was not simply a request. In addition, the documents in question were all signed on separate days, the first in October and the latter two in December. We do not accept, under the circumstances, that he was not actively involved in the preparation of the documents.

[39] The Respondent is an experienced lawyer. Exhibit 7, Tabs E through M inclusive, set out the Annual Practice Declarations filled in by the Respondent in 1996 to 2006 inclusive, excluding 2003 and 2004. Parenthetically, there was not an explanation as to why those two years were not provided. In those Practice Declarations the Respondent was asked to describe his practice by area of law. When you add the areas that involve utilizing the Supreme Court Rules, for those years prior to 2003, the percentages vary from 30 to over 50 per cent of his practice, depending on the year . It is inconceivable that the Respondent was unaware of the appropriate procedure for obtaining documents.

[40] This conclusion is reinforced by evidence that, on August 28, 2003, shortly before the documents in issue were prepared, the Respondent had made a proper application for documents in the Supreme Court of British Columbia, in accordance with the provisions of the Supreme Court Rules, which require notification of parties adverse in interest in the litigation and also require notification of the non-parties from whom document production is required.

[41] As well, the Respondent must have been aware of privacy and confidentiality concerns respecting the documents. The Hospital document listed certain patient records of the deceased. The documents sought from the Bank and the California documents were private financial records. Most individuals in British Columbia, quite apart from lawyers, are well aware that such documents cannot easily be lawfully disclosed.

[42] The Panel concludes that American Express, under compulsion of the California document, sent copies of G.D.'s traveller's cheques to the Respondent. The Bank and the Hospital did not comply with the documents initially served upon them, but did attend Court. Both the Bank and the Hospital refused to provide the documents to the Respondent.

[43] The question facing the Panel is whether the Respondent's conduct amounts to professional misconduct. In *Law Society of BC v. Hops* [1999] LSBC 29, the Benchers on Review determined that, while professional misconduct can include dishonourable or disgraceful conduct, it can also include other conduct. In that decision, quoting from Orkin's *Legal Ethics, A Study of Professional Conduct* (Toronto: Cartwright & Sons, 1957) at page 13 of the *Hops* decision, the Benchers cited with approval a 1912 English King's Bench decision as follows:

If ... a solicitor in the pursuit of his profession has done something with regard to it which would reasonably be regarded as disgraceful or dishonourable by his professional brethren of good repute and competency, then it is open to say that he is guilty of professional misconduct.

The Benchers also cited *Pearlman v. Manitoba Law Society Judicial Committee* as follows:

Professional misconduct is a wide and general term. It is conduct which would be reasonably regarded as disgraceful, dishonourable, or unbecoming of a member of the profession by his well respected brethren in the group - persons of integrity and good reputation amongst the membership.

[44] Summarizing *Hops (supra)* professional misconduct is conduct done deliberately (negligence without more will not suffice) that is wrong when applied to the standards of the profession. At the lower end of the scale, professional misconduct can be found where a lawyer violates regulatory requirements and rules.

[45] The Panel needs to decide whether:

- (a) the Respondent knew that the " Subpoena for Documents" forms he signed were not permitted by the Supreme Court Rules and knew that what he was doing in issuing these " forms" was an inappropriate way to obtain documents;
- (b) the Respondent should have known that what he was doing was inappropriate but didn't have actual knowledge; or
- (c) the Respondent's conduct was merely lack of care and was not culpable in these disciplinary proceedings.

[46] In addition to Mr. Taylor's evidence referred to in paragraphs [15], [17] and [18] above, the law on obtaining production of non-party documents has been summarized by Bouck, J. in *Reischer v. Love*, (2005) 10 C.P.C. (6th) 211, [2005] B.C.J. No. 865 (S.C.) where his Lordship states at paragraph 19:

There are at least four ways a defendant may obtain production of third party documents under the common law and the Rules of Court. The first is by interviewing the witness who allegedly has the documents. The second is by obtaining an order to cross-examine or depose the witness under Rule 28. The third is to subpoena the witness to appear at the trial and bring with him or her documents relating to the matters in question under Rule 39. The fourth is a proceeding under Rule 26(11).

[47] It is common ground that, in British Columbia, there is no such thing as a " Subpoena for Documents" . Bouck, J. at paragraph 37 of the *Reischer* case writes:

Before the plaintiff begins presenting his or her evidence, arguably, the rule allows a defendant to subpoena a witness in order to examine the documents in the witness's possession.

[48] This would appear to contradict what Bouck, J. wrote in paragraph 19 of the same decision. However, when placed in the context of the decision, it is clear that the Defendant can subpoena a witness in order to examine documents in the witness's possession, but that only happens once the witness takes the stand and produces the documents. This is clarified in paragraph 76(c) where his Lordship writes:

A defendant may subpoena a third party to produce a documents [sic] at trial under Rule 40(39). The defendant may then review it after a court orders the document be filed as an exhibit for identification.

[49] Mr. Taylor's expertise was of assistance in providing a summary of the ways to obtain documents. The opinions he gave with respect to appropriateness and propriety (and we here refer to the questions and answers on pages 8 and 9 of Exhibit 6 under paragraphs 30.1, 30.2, 30.3 and 30.5) may have been of assistance if the Panel had to decide between " (b)" and " (c)" as set out in paragraph [44] above. The Panel is aware that there is an argument that these opinions go directly to the ultimate issue of professional misconduct and may be inadmissible as opinion evidence. However, the Panel has concluded that the Respondent knew the " Subpoena for Documents" forms were impermissible. The Panel has not utilized those portions of Exhibit 6 in reaching its decision.

[50] Mr. Taylor's opinion on page 9 of Exhibit 6, paragraph 30.4 is of assistance. Although the question posed is whether a lawyer may " properly" materially alter and cause the service of a Form 21 subpoena, the answer does not deal with propriety, but rather with an interpretation of the Supreme Court Rules, which the Panel finds helpful. Mr. Taylor gives the opinion that no provision in the Supreme Court Rules, including in particular Rule 4(1), would permit a lawyer to vary a form to create a new procedural right.

[51] The Panel concludes that the Respondent, perhaps wrapped up too much in the perceived justice of J.K.'s and the Plaintiffs' cause, directed the preparation of the three documents, signed them and gave them to J.K. for service, with a view to compelling document production in a manner which was impermissible under British Columbia law.

[52] In this case, the conduct of the Respondent was dishonourable. He knowingly changed Form 21, a subpoena, into three documents, each entitled " Subpoena for Documents" intending to compel the recipients to provide documents in a way in which he knew (because he had just a couple of months earlier, embarked on a Rule 26 application) was not provided for in the Supreme Court Rules or otherwise in the laws applicable in this jurisdiction. His zeal in pursuing the case on behalf of J.K. and the Plaintiffs caused him to overlook his professional responsibilities. When the recipient of the California " Subpoena for Documents" was outside of the jurisdiction, the form of document prepared by the Respondent (no doubt assisted by the forged stamp applied by J.K. without the Respondent's knowledge) was successful in compelling production of documents to which the Respondent was not entitled. The Panel notes that, throughout his testimony, the Respondent took the position that he was entitled to these documents -he is wrong in that assertion in the sense that, while he might have been entitled to those documents had he gone through the normal Court process, there was no entitlement other than going through the normal Court processes.

[53] The Panel recognizes that there may have been other factors at work, in particular the stresses placed on the Respondent by his own health issues and, most importantly, by the serious battle with cancer being waged by his spouse. While those are factors that may be considered in regard to penalty, they cannot be used to excuse his unprofessional conduct.

[54] In the circumstances, the Panel finds the citation to be made out and concludes that the Respondent's conduct in causing the preparation and delivery of the Bank, Hospital and California documents each constitutes professional misconduct.

APPENDIX A

Action No. 01/2947
VICTORIA REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

RAVNYSHYN et al

Plaintiffs

AND:

DRYS et al

Defendants

SUBPOENA FOR DOCUMENTS

TO: BMO BANK OF MONTREAL C/O S.B., 3481 Cook Street,
Victoria, British Columbia.

TAKE NOTICE that you are required to supply true copies of all bank statements relating to all accounts of the late Mr. [G.D.] from January 01, 1996 to the closing date of his accounts.

PLEASE CONTACT MR. [J.K.] FOR PICK-UP OF DOCUMENTS AT:

(250) [number] or leave a message at (250) [number].

Dated at Victoria, British Columbia, on December 16, 2003

DOUGLAS H. CHRISTIE
Solicitor for Plaintiffs

Rules 2(5) and 56(4) of the Rules of Court state in part:

" 2(5) Where a person, contrary to these rules and without lawful excuse, (a) refuses or neglects to obey a subpoena or to attend at the time and place appointed for his or her examination for discovery,

then

(f) where the person is the plaintiff, petitioner or a present officer of a corporate plaintiff or petitioner, or a partner in or manager of a partnership plaintiff or petitioner, the court may dismiss the proceeding, and

(g) where the person is the defendant, respondent or a third party or a present officer or a corporate defendant, respondent or third party, or a partner or manager of a partnership defendant, respondent or

third party, the court may order the proceeding to continue as if no appearance had been entered or no defense had been filed."

" 56(4) A person who is guilty of an act or omission described in Rule 2(5) or 40(19), in addition to being subject to any consequences prescribed by those rules, is guilty of contempt of court and subject to the court's power to punish contempt of court."

APPENDIX B

Action No. 01/2947
VICTORIA REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

RAVNYSHYN et al

Plaintiffs

AND:

DRYS et al

Defendants

SUBPOENA FOR DOCUMENTS

TO: ROYAL JUBILEE HOSPITAL MEDICAL RECORDS DEPARTMENT
1952 Bay Street, Victoria, B.C.

TAKE NOTICE that pursuant to Rule 40(39) of the Rules of Court you are required to supply true copies of the following documents from the medical file of Mr. [G.D.], date of birth April 16, 1920 and date of death February 3, 1999.

- (1) Psychasocial Assessment, July 20, 1989, 2 pages, [B.P.] MSW
- (2) Memorandum, July 25, 1989, 2 pages from [B.P.] to [L.I.], Office of the Public Trustee.
- (3) Psychasocial Assessment Update, August 29, 1989, 1 page, [B.P.], MSW.
- (4) Letter to [L.I.], Office of the Public Trustee, December 20, 1989, 2 pages, [B.P.], MSW.
- (5) Professional Services Consultation, Social Work, February 28, 1990 2 pages, [B.P.], MSW.
- (6) Letter to [L.I.], Office of the Public Trustee, March 7, 1990, written by [B.P.], MSW, 2 pages.
- (7) Memorandum, September 10, 1992 to [M.C.], Office of the Public Trustee, [B.P.], 1 page.
- (8) Memorandum, April 3, 1995, to [H.M.], Office of the Public Trustee, by [B.P.], Social Worker, 4 pages.
- (9) Memorandum, June 19, 1995 to [H.M.], Office of the Public Trustee, [B.P.], 2 pages.
- (10) Memorandum, June 28, 1995 to [H.M.], Office of the Public Trustee, [B.P.], Social

Worker, 3 pages.

- (11) Letter to [C.M.], June 30, 1995, from [S.M.], Office of the Public Trustee, 2 pages.
- (12) Memorandum to [H.M.], Office of the Public Trustee, July 5, 1995, from [B.P.] 5 pages.
- (13) Social Work, [G.D.] Discharge Plan, [B.P.], July 5, 1995.
- (14) Memorandum, July 5, 1995, to [C.K.], Long Term Care, from [B.P.], Social Worker.
- (15) July 7, 1995, Memorandum to [H.M.], Office of the Public Trustee from [B.P.], Social Worker, 4 pages.
- (16) July 21, 1995, Social Work consultation Update, [P.C.] MSW.
- (17) Social Work Report, July 31, 1995 to [H.M.], Office of the Public Trustee and Dr. [S.] from [P.C.], MSW, 2 PAGES.
- (18) April 21, 1995 Memorandum to Dr. [S.], [H.M.], 3 ECU Team, [C.K.], Long Term Care from [B.P.] MSW, 3 pages.
- (19) Memorandum, August 21, 1995 to [H.M.], Office of the Public Trustee from [B.P.], Social Worker.
- (20) Memorandum, August 21, 1995 to [G.D.] from [B.P.] Social Worker.
- (21) August 22, 1995 Memorandum to [H.M.] Office of the Public Trustee from [B.P.] Social Worker.
- (22) August 23, 1995 Memorandum to Dr. [S.] and Dr. [P.Y.] for [B.P.], Social Worker.

PLEASE CONTACT MR. J.K. FOR PICK-UP OF DOCUMENTS AT:

(250) [number] or leave message at (250) [number]

Dated at Victoria, British Columbia, on December 18, 2003

DOUGLAS H. CHRISTIE
Solicitor for Plaintiffs

810 Courtney Street
Victoria, B.C., V8W 1C4
Tel: [number]
Fax: [number]
Cell: [number]
Email: [email address]

APPENDIX C

Action No. 01/2947
VICTORIA REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

RAVNYSHYN et al

Plaintiffs

AND:

DRYS et al

Defendants

SUBPOENA FOR DOCUMENTS

TO: MR. [R.Y.] of [address], Los Angeles, California, 90017

TAKE NOTICE that you are requested to supply true copies of all American Express Travelers cheques negotiated by Mr. [G.D.] in 1999 which are in your possession or control relating to the matters in question in this proceeding.

Address: Douglas H. Christie, 810 Courtney Street, Victoria, BC, V8W
1C4

DATED at Victoria, British Columbia, on October 1st, 2003.

DOUGLAS H. CHRISTIE
Solicitor for Plaintiffs

Fax: [number]