

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

Pamela Suzanne Boles

Respondent

**Decision of the Hearing Panel
on Penalty**

Hearing date: August 21, 2007

Panel: Kathryn A. Berge, Q.C., Chair, Karl Warner, Q.C., Brian Wallace, Q.C.

Counsel for the Law Society: Jaia Rai

Counsel for the Respondent: Jerome Ziskrout

Background

[1] On May 29, 2007, this Panel made its decision on Facts and Verdict, finding that the Respondent had failed to respond to communications from the Law Society in the manner set out in the citation dated August 24, 2005, and that that failure was contrary to Chapter 13, Rule 3 of the *Professional Conduct Handbook*, and was professional misconduct as it was a marked departure from the conduct that the Law Society expects of its members. The Respondent admitted her professional misconduct. This Panel dismissed the other two counts set out on the Schedule to the citation.

[2] The hearing on the citation was reconvened on August 21, 2007, for consideration of the appropriate penalty.

[3] The Respondent's Professional Conduct Record and the Law Society's Bill of Costs were received as evidence.

[4] The Law Society seeks as a penalty:

- (a) a suspension in the range of three to six months;
- (b) a condition that the Respondent provide an undertaking to reply to any future correspondence from the Law Society within 14 days of receipt of the correspondence; and
- (c) costs of the hearing in the amount of \$27,660.69.

[5] The facts underlying the Respondent's conduct commenced with her failure to respond to a Law Society letter sent to her on February 1, 2005. The letter sought the Respondent's explanation for the conduct that was the subject of the other two counts on the Schedule to citation. Reminder letters were sent by the Law Society and phone calls made in March, April and May of 2005. The Respondent did not provide an explanation of her conduct until the eve of the hearing in November, 2006.

[6] The Respondent's Professional Conduct Record contains the report of a Conduct Review in 1994 for a failure to pay professional accounts, a citation authorized in 1999, pursuant to which professional misconduct was admitted for failing to meet financial obligations, failing to serve a client in a conscientious and diligent fashion, misinforming and failing to respond promptly to the Law Society and another lawyer. The Respondent was reprimanded and was ordered to enter into a Practice Supervision Agreement and pay a \$5,000 fine and costs.

[7] There was a further Conduct Review held in 1999, as well as three reports that arose out of a Practice Standards Committee review, all of which underlined the need for the Respondent to improve her office and practice management.

[8] In 2002, a Hearing Panel found the Respondent to have breached Rule 3-44(1) for failing to report an unsatisfied judgment. Once again the Respondent was reprimanded.

[9] Counsel for the Law Society submitted that the 1994 Conduct Review and the 1999 discipline hearing revealed a cavalier attitude towards her (the Respondent's) duty to the Court, other members of the profession and the Law Society, and demonstrated conduct that shares a pattern with the misconduct admitted here and found by this Panel.

[10] The Panel was provided with general information from the Law Society as to its costs for various stages of the proceeding, including estimated costs for preparation for the hearing before and after the Respondent provided an explanation to the Law Society of her actions leading to the complaint that formed the basis for this citation.

Submissions of the Respondent

[11] Counsel for the Respondent noted that, at the time of the incidents that gave rise to the complaint, and during the period when the Respondent failed to respond to the Law Society, she was overwhelmed with work, was hampered by having inexperienced staff and simply became "frozen" in dealing with the Law Society.

[12] Seeking to remedy these problems, in recent months the Respondent has reduced her workload, retained a bookkeeper and retained Mr. Ziskrout to assist her with outstanding complaints. She is also seeking outside assistance with respect to personal stress and practice management.

[13] Counsel for the Respondent minimized the importance of the misconduct as being "only about a failure to respond."

[14] Mr. Ziskrout pointed out that the effect of a suspension would be counterproductive to the remediation the Respondent is undertaking, and would have a negative impact on others, in particular on clients and staff.

[15] The Respondent accepts that she should bear the costs to the Law Society in developing its case with respect to the two counts that were dismissed, up until the time at which she provided the Law Society with the explanation for her conduct. Counsel noted that the Respondent's explanation was ultimately accepted by this Panel.

[16] The information regarding the Law Society's costs of preparation and its allocation of time to various stages of the proceeding was not contested by the Respondent, although her counsel made submissions regarding various factors that should be considered by the Panel in reducing the Respondent's liability for the full costs sought by the Law Society.

[17] Counsel for the Respondent submitted that a fine would be appropriate as a deterrent for others, but that the amount of the fine should consider the amount awarded for costs, and sought a fine in the range of \$7,500 to \$15,000.

[18] Finally, Respondent's counsel submitted that the condition sought by the Law Society regarding the Respondent providing an undertaking to reply to Law Society correspondence within 14 days was fundamentally wrong, although such orders have been made in the past. He further submitted that such an undertaking, if given unconditionally, would be a breach of the *Professional Conduct Handbook* in that it does not take into account circumstances that may arise beyond the Respondent's control.

Conclusion

[19] The Panel considers that the Respondent's conduct in failing to respond to the Law Society is serious. It is fundamental to the self-governance of the profession that its members respond to the Law Society promptly and fully.

[20] In the case of the Respondent, there is a history of poor document and file management and a cavalier, defensive, and self-serving attitude to both timeliness and care in communications with lawyers, the Courts and the Law Society. At the same time, the Respondent has acknowledged her error in this instance and has taken some concrete steps toward rectifying the practice and personal patterns that contributed to the circumstances leading up to this citation.

[21] The Panel considered past decisions for professional misconduct arising out of a failure to respond to the Law Society. The decisions reflect a broad range of penalties, including the imposition of suspensions ranging from one month to 18 months. In all of the cases reviewed in which suspensions were imposed, including *Law Society of BC v. Geronazzo*, 2006 LSBC 37 and *Law Society of BC v. Ashton*, 2004 LSBC 12, the conduct displayed by the lawyer in his or her refusal to reply to the Law Society was persistent, aggravated, and carried with it significant consequences to others. Those factors are not fully present in this situation. That being said, the Respondent's conduct is serious, although not the most serious imaginable.

[22] After taking into account the factors to be considered when assessing an appropriate penalty for professional misconduct, as set out in *Law Society of BC v. Ogilvie*, [1999] LSBC 17, this Panel does not believe that this is a case in which a suspension is appropriate. It is inherent in suspensions that the economic consequences to the lawyer are uncertain and vary with the respondent's circumstances. In this instance, there does not appear to be any remedial benefit to a suspension, and the overall consequences, including the economic consequences, would fall not only on the Respondent but also upon others, in particular, her clients.

[23] We are of the view that, in this instance, deterrence both to the Respondent and the profession generally can be achieved by a substantial fine.

[24] The Panel is of the view that a fine of \$17,500 is appropriate.

[25] With respect to costs, the Panel agrees that the Respondent should pay for all of the Law Society's preparation up to the point that she provided a full explanation to the Law Society, as well as the full costs of the penalty hearing. After taking into account the information provided by the Law Society regarding its costs at various stages, and the submissions of the Respondent's counsel as to a fair allocation of those costs, we are of the view that it is unnecessary to calculate those costs exactly and set the costs to be paid by the Respondent at \$17,000.

[26] The Panel does not believe that the undertaking sought by the Law Society is appropriate on the basis that a lawyer's undertaking is, by its very nature, voluntary rather than imposed and, in any event, the obligation to respond to the Law Society already is an integral part of each member's professional obligation.

[27] At the request of counsel for the Respondent, after the hearing we were provided with the penalty decision in *Law Society of BC v. Braker*, 2007 LSBC 42, issued in September. The conduct in that matter was of a similar nature to the conduct in issue in this hearing with the exception that, as of the date of the hearing, the Respondent still had not provided a substantive explanation to the Law Society. The Panel in *Braker (supra)* imposed a one-month suspension, an order that a response be made to the correspondence, an undertaking to respond within 14 days to future correspondence from the Professional Regulation Department of the Law Society, and payment of \$5,500 in costs. It appears that the Respondent in that case consented to the undertaking. In any event, for the reasons set out above, we are of the view that an undertaking is inappropriate and that, in this case, a substantial fine, rather than a suspension, is merited in these circumstances.

Decision

[28] In conclusion, we order that the Respondent:

- (a) be reprimanded;
- (b) pay a fine in the sum of \$17,500; and
- (c) pay costs of the hearing in the sum of \$17,000.