

2007 : No. 4 October

## **Marcus O'Sullivan**

Victoria, BC

Called to the bar: May 14, 1976

**Discipline hearing** : December 13, 2006 and August 28, 2007

**Panel** : Gavin Hume, QC, Chair, David Renwick, QC and Dirk Sigalet, QC

**Report issued** : January 24 (2007 LSBC 08) and October 4, 2007 (2007 LSBC 44)

**Counsel** : James Doyle for the Law Society and Dean Lawton for Marcus O'Sullivan

### **Facts**

#### W Estate

Marcus O'Sullivan was retained in December 2002 by two sisters named as executors in their father's will. He did little work on the file and failed to reply to two separate requests for information from his clients. The Law Society, acting on a complaint from the clients, asked O'Sullivan for an explanation in January, February and March 2005, but did not receive a response until March when O'Sullivan admitted he had not responded to his clients. Further correspondence from the Law Society went unanswered until September 2005. The following month, O'Sullivan wrote saying he had suffered health problems and that he would provide a response in November.

#### Motor Vehicle Accident Case

FS retained O'Sullivan in July 2002 to represent her in a motor vehicle accident case. O'Sullivan failed to comply with a master's order for delivery of documents and the case was struck out in December 2002. O'Sullivan did not advise his client of this even though he had been in contact with her.

#### MH Estate

O'Sullivan was appointed executor of MH's will in December 2003. He did little work on the file until May 2005 when one of the beneficiaries asked about its status. In June 2005, 18 months after the death, O'Sullivan applied for probate, but the court registry rejected his application. In response to a Law Society letter, O'Sullivan admitted he had not replied to the beneficiaries. The Law Society contacted him for further details, but received only a voicemail message that he was suffering from health problems.

O'Sullivan subsequently resigned from the profession on December 31, 2006 citing serious health problems including depression and chronic heart disease. The Law Society appointed a custodian of his practice and other lawyers have assumed conduct of his files.

### **Verdict**

The panel concluded that O'Sullivan was guilty of professional misconduct for failing to provide quality service to his clients, failing to respond to his clients and failing to respond to the Law Society. O'Sullivan advised the panel that because of his age and health problems he will not practise law again.

### **Penalty**

The panel ordered that O'Sullivan not reapply for membership for six months, not apply for membership in

any other law society without informing the Law Society of BC, not allow his name to be used on any law firm's letterhead and not work for a BC lawyer in any capacity without the Law Society's consent.

The panel also ordered that O'Sullivan not act as a personal representative or trustee of the estate of a deceased person, as guardian under the *Adult Guardianship Act*, or as a representative under the *Representation Agreement Act*.

In considering costs, the panel noted that O'Sullivan admitted his professional misconduct, cooperated with discipline counsel and consented to the appointment of a custodian. They also considered his significant financial and health challenges, noting that O'Sullivan has filed for bankruptcy, and due to his medical condition it appears unlikely that he will obtain employment in the near future. In light of these circumstances, the panel did not order costs.