

2007 LSBC 56

Report issued: December 18, 2007

Citation issued: June 29, 2006

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

Michael Murph Ranspot

Respondent

**Decision of the Hearing Panel
on Penalty**

Hearing date: November 22, 2007

Panel: David Renwick, QC, Chair, Thelma O'Grady, Robert C. Brun, QC

Counsel for the Law Society: Maureen Boyd

Counsel for the Respondent: Terrence L. Robertson, QC

Background

[1] The citation in this matter was heard on March 6, 2007. As set out in our decision on Facts and Verdict (2007 LSBC 32) the Respondent made the following admissions:

1. He failed to provide his client, J.O. & Co., with the quality of service on an estate file at least equal to that which would be expected of a competent lawyer in a similar situation, in that he failed to do the work at hand in a prompt manner, so that the value to the client was diminished. The diminution of the estate is at least \$2,700 as of this date. The Respondent further admits that his failure to provide any service to his client from 2001 onwards was contrary to Chapter 3, Rules 3 and 5 of the *Professional Conduct Handbook* and is professional misconduct.
2. He signed a Practice Supervision Agreement and was bound by that agreement from December 15, 2000 to September 4, 2003. He admits that he was required to provide his practice supervisor with a written summary of all his open files within one month of resuming practice and to thereafter provide monthly written updates of the summary to his practice supervisor. The Respondent admits that he breached the terms of the Practice Supervision Agreement for the entire period of practice supervision by omitting the estate file from his written summary and thereby failed to provide a complete written summary of all open files to his practice supervisor.
3. That he provided a Progress Report to the Law Society on June 21, 2004 that was inaccurate in that he failed to include the estate file in the list of all his open files.
4. That his conduct in omitting the estate file from the File Summary and Progress Report is professional misconduct.

[2] At the conclusion of the March 6, 2007 hearing, this Panel accepted the admission by the Respondent that the conduct described in the citation amounted to professional misconduct.

[3] On November 22, 2007, the Panel reconvened to hear submissions as to penalty.

[4] At the commencement of the hearing we were advised by counsel that the Respondent would be giving *viva voce* evidence.

[5] The focus of the Respondent's evidence was directed to the date upon which he remembered that he had retained custody of the estate file that is the subject of this complaint. While the Respondent was not sure exactly when it was that the estate file came back into his possession following his suspension in 1997, he testified that it was not until he received a phone call from the Office of the Public Guardian and Trustee on June 30, 2004 that he recalled he had custody of the estate file. That date was significant in that, on June 21, 2004, the Respondent had submitted a progress report to the Law Society of British Columbia that listed all of his open files. The estate file was not mentioned in that report. Obviously, if the Respondent had been aware of the existence of the estate file on June 21, 2004, then his progress report made to the Law Society that failed to include the estate file would have been falsely made.

[6] After examination, cross-examination and questions from this Panel, it was the conclusion of this Panel that the Respondent had forgotten about the existence of the estate file during the critical period between December 15, 2000, when he entered into the Practice Supervision Agreement, and June 21, 2004, when the progress report was filed.

Submissions Received

[7] Counsel for the Law Society argued that, if this Panel concluded that the Respondent had knowingly failed to list the estate file, as required under the Practice Supervision Agreement, a period of suspension would be appropriate.

[8] Counsel for the Respondent argued that the omission was not intentional and in those circumstances a fine would be appropriate.

[9] Both counsel agreed that, in any event, the Respondent would be responsible for costs in the amount of \$8,300.

Analysis and Legal Reasoning

[10] If the Panel had concluded that the Respondent had intentionally failed to list the estate file in his progress reports, then we would have agreed with the submission of the Law Society that a period of suspension would be appropriate. As noted above, we have accepted the Respondent's evidence that he had forgotten about the existence of the Estate file during the relevant period.

[11] In reaching this conclusion, we were mindful of the fact that the Respondent had previously been the subject of an 18-month suspension from practice, in part as a consequence of problems resulting from alcohol abuse and depression in the mid-1990s. From 2001 onward, he had been attempting to rebuild his practice, and it simply made no sense to conceal the existence of the estate file, which could have been the subject of legal work that he could have performed for a fee.

[12] It seemed to this Panel that the problems that resulted in the lengthy suspension of 18 months starting in 1997 played a part in the Respondent's current situation in that they provided at least a partial explanation as to why he forgot about the existence of the estate file during all times relevant to these

proceedings.

[13] In the result, we have concluded that a period of suspension is not appropriate, notwithstanding that the Respondent has previously been the subject of a lengthy suspension from practice.

[14] We have concluded that a fine of \$5,000 is appropriate in all of the circumstances.

[15] We note that, during the course of the hearing, the Respondent, through counsel, gave an unconditional undertaking to reimburse the estate in the amount of \$2,700.

[16] The parties agreed that costs should be fixed in the amount of \$8,300. The Respondent requested time to pay any fine and the agreed costs. Counsel for the Law Society indicated that a payment date of December 31, 2008 was agreeable.

[17] We so direct.

Conclusion

[18] This Panel orders that the Respondent pay:

- (a) a fine in the amount of \$5,000; and
- (b) costs in the amount of \$8,300.

[19] The fine and costs must be paid on or before December 31, 2008.