2008 LSBC 05
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The Law Society of British Columbia
In the matter of the *Legal Profession Act*, SBC 1998, c.9
and a hearing concerning

John Owen Richardson

Respondent

Decision of the Hearing Panel on Penalty

Hearing date: December 17, 2007

Panel: David A. Zacks, QC, Chair, Thelma J. O'Grady, David M. Renwick, QC

Counsel for the Law Society: Maureen S. Boyd
Counsel for the Respondent: Terrence L. Robertson, QC

Background

[1] On March 2, 2007, the Panel held that the Respondent was guilty of professional misconduct for breaching an undertaking. The facts are set out in our Decision on Facts and Verdict (2007 LSBC 11).

[2] The Respondent was called to the Bar on May 15, 1972, and he has practised for more than 35 years, primarily in civil litigation, criminal law and family law.

[3] This is the first discipline hearing involving the Respondent. More importantly, there is no suggestion that the Respondent has in the past ever breached any undertakings, and he confirmed that in his oral evidence.

[4] The Respondent testified that he has always been " true to his word" and appreciated the importance of trust and confidence that lawyers need to have in one another. It is " sacrosanct" to observe an undertaking. He also indicated that the Panel's finding that he had breached an undertaking had a psychological impact upon him, and he was having difficulties with his emotional issues.

[5] A number of written references were provided by the Respondent. They all attested to his high ethical standards and found the circumstances to be out of character.

[6] The Law Society's position was that a fine in the amount of $5,000 was the appropriate penalty, plus full indemnity for costs.

[7] The Respondent's position was that a reprimand was the appropriate penalty and that there be a reduction in costs.

Analysis and Discussion

[8] In *Law Society of BC v. Ogilvie*, [1999] LSBC 17, a non-exhaustive list of factors are set out, which may be considered by a Panel on penalty.

[9] Law Society counsel submitted that the nature of the misconduct, a breach of undertaking, should be regarded as serious and that there was a need for general deterrence and a need to ensure the public's confidence and integrity of the profession.

[10] A number of cases were cited by counsel for the Law Society; all of which were for breach of an undertaking. In those cases, fines of between $2,000 and $7,500 were imposed, and in one instance, a one-month suspension was given. These cases were *Law Society of BC v. Clendening*, 2007 LSBC 10, *Law Society of BC v. Epp*, 2006 LSBC 21, *Law Society of BC v. Hall*, 2004 LSBC 34 and 2004 LSBC 41, *Law Society of BC v. Heringa*, [2003] LSBC 10, *Law Society of BC v. Hill*, 2007 LSBC 02, *Law Society of BC v. Jeletzky*, 2004 LSBC 17 and 2005 LSBC 02, *Law Society of BC v. McLellan*, 2003 LSBC 40, *Law Society of BC v. Price*, [1998] L.S.D.D. No. 121, *Law Society of BC v. Shojania*, 2004 LSBC 25 and *Law Society of BC v. Virk*, 2006 LSBC 26.

[11] Counsel for the Respondent also provided a number of cases that were quite dated, with penalties ranging from a reprimand to a range of fines of $1,000 to $5,000. These cases were *Law Society of BC v. Berna*, [1993] L.S.D.D. No. 191, *Law Society of BC v. Goeujon*, [2001] LSBC 28, *Law Society of BC v. Lee*, [2002] LSBC 29, *Law Society of BC v. Martin*, [1999] LSBC 34, *Law Society of BC v. Morrison*, [2000] LSBC 15 and *Law Society of BC v. Simpson*, [1992] L.S.D.D. No. 11.

[12] The recent decisions suggest that a fine is the more appropriate penalty, rather than a reprimand. It is the Panel's view that the public interest is best served by imposing a penalty similar to those imposed in other cases. As noted in *Epp* (*supra*), the Panel concluded at paragraph [13]:

> ... The public interest is served by the penalty, as pronounced below, being in keeping with penalties imposed in similar situations. The effect of this penalty, with respect to this Respondent, is it safeguards the fundamental nature of undertakings to the practice of law and preserves the requirement of all lawyers to make certain that serious and diligent efforts are made to meet all undertakings. Undertaking compliance is an essential ingredient in maintaining the public credibility and trust in lawyers.

[13] In this case, the Panel was of the view that there was no real victim. The Respondent's conduct was " not cavalier" , but was " misguided at best" . There was no element of dishonesty. Although the Respondent acted intentionally, he was of the view that the trust conditions imposed were unreasonable and outside the terms of the settlement in the Separation Agreement. Nevertheless, the Respondent did not attempt to modify or change the terms of the undertaking, nor return the funds when he was unable to abide by the conditions. No matter how unreasonable the conduct of opposing counsel may have been, it does not allow the Respondent to justify the position taken by him.

[14] After considering the submissions of counsel and cases, the Panel is of the view that the appropriate penalty is a fine in the amount of $2,500.

Costs

[15] The Law Society seeks full indemnification for its costs, which total $9,999.69.

[16] Law Society counsel notes that payment of costs is best summarized in *Law Society of BC v. Edwards*, 2007 LCBC 4 at paragraph [33]:

> [33] In this connection, the following propositions are now well established:
>
> (a) the successful party, in this case the Law Society, is entitled to a full indemnity for

its costs (*Law Society of BC v. McNabb,* [1999] LSBC 02); and

(b) the costs ordered must, as a whole, be reasonable (*Law Society of BC v. Basi*, 2005 LSBC 01).

[17] However, in *Law Society of BC v. Racette*, 2006 LSBC 29 at paragraphs [13] and [14], the Panel held that a full indemnity is not automatic:

> [13] This Panel has previously held that any order for costs should be based on a careful consideration of all relevant factors including:
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> (a) the seriousness of the offence;
>
> (b) the financial circumstances of the Respondent;
>
> (c) the total effect of the Penalty, including possible fines and/or suspensions;
>
> (d) the extent to which the conduct of each of the parties has resulted in costs accumulating, or conversely, being saved.
>
> [14] Full indemnity for costs should never become " automatic" . In every case the total penalty, including costs, should " fit the crime" .

[18] The Respondent has cut back his practice substantially. He is currently concentrating on legal aid/criminal defence work and expects that a difficult criminal case, set for the Fall of 2008, will likely be his last case.

[19] After considering these factors, we order costs to be fixed in the amount of $4,500.

Conclusion

[20] This Panel orders that the Respondent pay:

(a) a fine in the amount of $2,500; and

(b) costs in the amount of $4,500.

[21] The fine and the costs must be paid on or before March 31, 2008.