

2008 LSBC 11

Report issued: April 03, 2008

Oral Reasons: March 27, 2008

Citation issued: April 13, 2007

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

Kathryn Jayne Karst

Respondent

Decision of the Hearing Panel

Hearing date: March 27, 2008

Panel: James D. Vilvang, QC, Chair, William Jackson, Robert C. Brun, QC

Counsel for the Law Society: Jaia Rai

Counsel for the Respondent: Jean P. Whittow, QC

Background

[1] On April 13, 2007 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 pursuant to the direction of the Chair of the Discipline Committee. The citation directed that this Panel inquire into the Respondent's conduct as follows:

1. [withdrawn]
2. Your incompetence in carrying out the duties undertaken by you as a solicitor as illustrated by your failure to:
 - a) maintain adequate office and file management systems, including:
 - i. failure to maintain and update master and open file lists;
 - ii. failure to take notes or otherwise document conversations and file preparation;
 - iii. failure to maintain and utilize an adequate bring forward system;
 - iv. failure to adequately organize files;
 - v. failure to send confirming and reporting letters to clients; and
 - vi. failure to reduce backlog of files;
 - b) move files forward in a timely manner; and

c) take Continuing Legal Education courses.

3. [withdrawn]

[2] Law Society counsel advised the Panel that counts 1 and 3 on the schedule to citation were withdrawn.

[3] The Respondent admits service of the citation in accordance with Rule 4-15 of the Law Society Rules.

[4] This citation came before this Panel as a conditional admission of a disciplinary violation and consent to a specific disciplinary action pursuant to Rule 4-22 of the Law Society Rules. The Respondent admitted that she had incompetently carried out duties undertaken by her in her capacity as a member of the Law Society and consented to the following disciplinary action:

1. a reprimand;
2. a condition that she will practise only in the capacity of an employee of one or more lawyers to be approved by the Practice Standards Committee and in accordance with the terms of an employment supervision agreement, to be entered into with the employer in a form satisfactory to the Practice Standards Committee, until such time as relieved of this condition by the Practice Standards Committee; and
3. costs in the amount of \$2,000, payable by December 31, 2008.

Statement of Agreed Facts

[5] A Statement of Agreed Facts was filed in these proceedings. It provided as follows:

1. The Respondent was called to the Bar in British Columbia on August 1, 1986.
2. From August 1, 1986 to January 8, 1987, the Respondent practised as a sole practitioner.
3. On January 8, 1987, the Respondent's membership with the Law Society ceased by reason of her failure to renew her practice certificate.
4. On June 22, 1989, the Respondent resumed practise and, from that date until January 2, 1990, she practised as an associate with the firm Howard, Smith and Company.
5. From January 2, 1990 to March 20, 1996, the Respondent practised as an associate with the law firm Baria & Company.
6. From March 20, 1996 to the present, the Respondent has been self-employed, practising under the firm name of Baria & Company, with Arthur Baria as an associate.
7. On December 2, 2004, the Practice Standards Committee ordered a review of the Respondent's practice pursuant to Law Society Rule 3-12(3)(d).
8. Kensi Gounden, then staff lawyer with the Practice Standards Department, and Paula Kalsi, Barrister and Solicitor, conducted the initial practice review on January 18, 2005. Of seven files reviewed, periods of delay and/or inactivity were noted in six files. The practice review report dated

February 14, 2005 (" First Practice Review Report") contained the following recommendations (the " Recommendations"):

1. Arrange for a Practice Supervisor acceptable to the Law Society to assist you with setting up and maintaining systems, setting appropriate fees for you [sic] work and collecting ahead of time, billing in a timely way and keeping your files on track. The Practice Supervisor is also to assist you with the review of your open files and to prepare an action plan for each open file.
2. File Lists:
 - (a) Continue to maintain an ongoing alphabetical, master file list of all open files.
 - (b) Create an updated open active list, and a closed file list on the computer. Update them regularly.
3. Continue to record time when you bill on a time basis. You electronically record your time. You should keep notes made of fee discussions.
4. Develop a BF reminder system and backup system on your litigation files.
 - (a) Note all BF dates, time-limited matters and limitation dates in your own diary. The BF dates should include limitation dates, other time-limited matters and follow up dates. You may wish to consider purchasing an electronic personal data assistant in which you can enter you [sic] bring forwards and reminders.
 - (b) BF all files at least once a month.
 - (c) Work out a system of how to bring these files forward again after you have been reminded once. For example, put the file away, but BF the file at a series of dates so that you deal with it eventually.
 - (d) Note limitation dates at three or four dates, and note dates on the file to remind you before the ultimate date to give you lots of opportunity to complete the work.
5. Continue to try to keep files organized by:
 - (a) Using a file opening sheet, centralizing client data all in one place at the start of a file;
 - (b) Keeping material chronologically fastened in the file to avoid loss or misfiling;
 - (c) Keeping all entered Orders on the left side of the pleadings folder and eliminating drafts and multiple copies of documents.
6. Continue to make notes of all initial and ongoing client and other party file contacts, including settlement discussions, review of documents, pleadings, correspondence, advice, instructions, file interview sheets, and file opening sheets.

7. Continue to send confirming letters to clients regarding instructions, advice and changes to these.
8. Send interim and final reporting letters to clients from time to time with an analysis of the claim or defence.
9. Plan to attend CLE courses and receive minutes and attend CBA section meetings in the area of family law to update your knowledge of law and practice. Continue to attend civil litigation section meetings. Note that you may qualify for the CLE Bursary program.

9. The Practice Standards Committee accepted these Recommendations.

10. In accordance with Recommendation #1, a Practice Supervisor was obtained and a supervision agreement was entered into and approved by the Practice Standards Committee.

11. Mr. Gounden and Ms. Kalsi conducted a follow-up practice review on June 21, 2006 and rendered a report dated July 6, 2006 (" Follow Up Practice Review Report"). Concerning progress on the Recommendations, they noted that Recommendations 2 through 9 were " Partially Done" or Not Done" . The Reviewers noted delay and/or inactivity in 7 of the 9 files reviewed. The Reviewers adopted the earlier Recommendations, deleting the first Recommendation regarding the practice supervisor, and, in addition, they also recommended that the Respondent:

- (a) close the backlog of 300 files by December 31, 2006;
- (b) provide undertakings to the Law Society to:
 - i. refrain from performing Supreme Court trials or Chambers applications
 - ii. respond to Law Society complaints within 14 days.
- (c) work on five files per day; and,
- (d) seek assistance in evaluating long-term practice goals (hereinafter collectively referred to as the " Revised Recommendations").

12. On September 7, 2006, the Practice Standards Committee determined to accept the Revised Recommendations. Further, in light of the undertaking requested to refrain from performing Supreme Court matters, the Committee determined to release the practice supervisor and the Respondent from the terms of the practice supervision agreement.

13. On October 27, 2006, the Respondent provided a letter setting out her undertaking to " no longer accept or do Supreme Court trials or Chambers applications" and her undertaking to " respond to the Law Society or retain counsel to respond on [her] behalf within 14 days of the Law Society correspondence."

14. Ms. Kalsi conducted a second follow-up practice review on November 1, 2006 and rendered a report dated November 21, 2006 (" Second Follow-Up Practice Review Report"). She noted that Revised Recommendations 2 through 9 (now numbered 1?8) remained " Partially Done" or " Not Done" . She noted periods of inactivity on files as follows:

- (a) File [number] - delays in corresponding with the opposing counsel, in entering custody Orders and in proceeding with an application for support.
- (b) File [number] - delays in proceeding on a criminal defence.
- (c) File [number] - delays in attending to entry of a restraining Order.
- (d) File [number] - delay in securing the release of the client from custody.

15. On December 7, 2006, the Practice Standards Committee considered the Second Follow-up Practice Review Report, the Respondent's undertaking of October 27, 2006 and a letter dated November 30, 2006 and referred the Respondent to the Discipline Committee.

16. The Respondent admits that she failed to:

- a) maintain adequate office and file management systems, including:
 - i. failure to maintain and update master and open file lists;
 - ii. failure to take notes or otherwise document conversations and file preparation;
 - iii. failure to maintain and utilize an adequate bring forward system;
 - iv. failure to adequately organize files;
 - v. failure to send confirming and reporting letters to clients; and
 - vi. failure to reduce backlog of files;
- b) move files forward in a timely manner; and
- c) take Continuing Legal Education courses.

as alleged in count 2 of the schedule to citation.

17. The Respondent further admits that in doing so she incompetently carried out duties undertaken by her in her capacity as a member of the Law Society.

[6] After considering the circumstances set out in the Statement of Agreed Facts and having heard the submissions of counsel, the Panel accepts the admission and finds the Respondent guilty of having incompetently carried out duties undertaken by her in her capacity as a member of the Law Society.

[7] The Panel finds the penalty proposed by the Respondent, and recommended by the Discipline Committee, to be appropriate in all of the circumstances.

[8] It is accordingly ordered that the Respondent:

- 1. be reprimanded;
- 2. be under a condition that she will practise only in the capacity of an employee of one or

more lawyers to be approved by the Practice Standards Committee and in accordance with the terms of an employment supervision agreement, to be entered into with the employer in a form satisfactory to the Practice Standards Committee, until such time as relieved of this condition by the Practice Standards Committee; and

3. pay costs in the amount of \$2,000, payable by December 31, 2008.

[9] The Executive Director is instructed to record the Respondent's admission on the Respondent's Professional Conduct Record.