2008 LSBC 14
Report issued: May 12, 2008
Citation issued: May 3, 2007

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

Larry William Goddard

Respondent

Decision of the Hearing Panel on Penalty

Hearing date: February 27, 2008

Panel: Leon Getz, QC, Chair, Kenneth M. Walker, Ralston S. Alexander, QC

Counsel for the Law Society: Maureen S. Boyd
No-one appearing on behalf of the Respondent

Background

[1] The decision on Facts and Verdict was issued following a hearing on September 30, 2007. There was a finding of 14 instances of professional misconduct arising from three breaches of undertaking, three failures to respond to colleagues, one complaint of failing to provide an appropriate quality of service to the Respondent's client, and seven instances of failure to respond to the Law Society. The Respondent did not attend the hearing on September 17, 2007.

[2] The hearing on Penalty was held on February 27, 2008, and again, the Respondent did not attend.

Conduct Record

[3] The Respondent was called the Bar in British Columbia on May 20, 1975 and was a member of the Law Society until he resigned on March 6, 2007. As a result of a finding of professional misconduct in a different matter, the Respondent was suspended from practice from May 15, 2006 to July 15, 2006. He is not a member of the Law Society at this time.

[4] The Professional Conduct Record of the Respondent was marked as an exhibit at the Penalty hearing. His conduct record comprises: a Conduct Review in 1999; a referral to Practice Standards in 2003, which resulted in a requirement that a Practice Supervisor be appointed to assist; and a citation in 2004 for a breach of undertaking, which resulted in the previously mentioned two-month suspension. The 2004 finding of professional misconduct also resulted in the appointment of a further Practice Supervisor to supervise the Respondent in his work.

Respondent's Circumstances

[5] The Respondent did not testify and therefore the Panel had only limited evidence from which to find facts. We refer to the findings of the Panel that adjudicated the 2004 citation (*Law Society of BC v. Goddard*, 2006 LSBC 12). This evidence was heard by that Panel in or about June 2005. Those findings were:

> [4] The Conduct Review in July, 1999 occurred after two difficult years where the Respondent had a great deal of staffing problems and changes. In addition, there was a 1997 reoccurrence of his wife's breast cancer, which had been initially diagnosed and treated 10 years earlier. As a result, in addition to running a solo practice, the Respondent was caring for his wife while she underwent chemotherapy and radiation. She then began a drug treatment that had difficult side effects for her and, as a result, for the family.
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> [5] In 2002, the Respondent was rear-ended in a car accident, which resulted in a soft tissue injury and left him with chronic pain. He testified that he kept working as best he could, although he was never without pain. Then later that year, his wife was found to have further cancer. It was at this point that the delays that led to most of these complaints arose. The Respondent has subsequently had to cope with his wife's further diagnoses of cancer in August, 2004 and again in October 2005.
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> [6] The Respondent testified before the Panel at the citation hearing. He was straightforward in his manner of testimony, which he obviously found very painful and emotional to relate to the Panel. The Panel finds he is an honest and trustworthy person. He is contrite and remorseful about his actions. For example he stated at page 45 of the transcript, at line 18:
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> > " I really have been mortified because of my professional behaviour since I've been getting together the evidence for this hearing. ... there is clearly no excuse for what I did. And I'm terribly ashamed, embarrassed and humiliated by it all."

[6] It appears that the personal circumstances of the Respondent have not improved since that decision on penalty in the earlier citation. This conclusion is supported by the following evidence:

1. On November 14, 2006, the Respondent provided an undertaking to the Law Society to cease practising within 90 days, to wind up his practice, and thereafter to not engage in either full-time or part-time practice without applying to the Practice Standards Committee. (Exhibit 12 Tab 1);

2. On January 2, 2007, in a conversation with staff of the Law Society, the Respondent confirmed he was taking no new files, and was winding up his practice (Exhibit 12 Tab 9);

3. On February 6, 2007, in a conversation with Law Society staff, the Respondent indicated he was ill and just out of the hospital. (Exhibit 12 Tab 12);

4. On March 16, 2007 the Respondent resigned as a member, confirming his telephone conversation of February 15, 2007, indicating that his " health results are now in and, due to the diagnosis and prognosis, I must cease membership." (part of Exhibit 1);

5. On April 30, 2007 the Respondent, in correspondence, wrote that he was " virtually homebound and bedridden due to my health." (part of Exhibit 1);

6. On September 17, 2007 at the hearing on Facts and Verdict in this matter, the Respondent faxed a letter to the Law Society confirming that he would not attend the hearing " due to my health issues." He

added, " Please accept my apologies and relay my apologies to the panel." (Exhibit 1); and

7. On February 26, 2008, the day before the Penalty hearing, the Respondent faxed a letter to the Law Society confirming that he " will not be able to attend the hearing due to my ongoing health issues. I trust you are aware that I retired from practice and am no longer a member." (Exhibit 13).

From all of the above evidence, it seems clear that the Respondent continues to suffer from on-going personal and family health issues that have resulted in his becoming disengaged from practice. This situation is commonly referred to as the " crumbling" lawyer. The Respondent is an example of such a lawyer.

[7] The factors to be considered in assessing penalty are set out in *Law Society of BC v. Ogilvie*, [1999] LSBC 17:

(a) the nature and gravity of the conduct proven;

(b) the age and experience of the respondent;

(c) the previous character of the respondent, including details of prior discipline;

(d) the impact upon the victim;

(e) the advantage gained, or to be gained, by the respondent;

(f) the number of times the offending conduct occurred;

(g) whether the respondent has acknowledged the misconduct and taken steps to disclose and redress the wrong and the presence or absence of other mitigating circumstances;

(h) the possibility of remediating or rehabilitating the respondent;

(i) the impact on the respondent of criminal or other sanctions or penalties;

(j) the impact of the proposed penalty on the respondent;

(k) the need for specific and general deterrence;

(l) the need to ensure the public's confidence in the integrity of the profession; and

(m) the range of penalties imposed in similar cases.

[8] The Panel has considered all of these characteristics in determining the appropriate penalty. In this case, the misconduct is aggravated by its continuing nature. The conduct is not dishonest and did not result in personal gain for the Respondent. It is apparent from his resignation and from his testimony in 2005, that the Respondent acknowledges his misconduct. The breaches of undertaking have been resolved by the Law Society custodian.

[9] How do we assess the need for specific or general deterrence? It appears the Respondent practised for 23 years without a reported problem. During that time he served his clients, colleagues and the profession. Yet his performance in the last 10 years has been poor. He has demonstrated an inability to manage his practice, even with the assistance of a Practice Supervisor. As a sole practitioner, he likely felt alone and overwhelmed. His resignation is an acknowledgement of his inability to continue his practice in these circumstances.

[10] It is clear that the Respondent cannot return to practice without proof that the underlying conditions

have been resolved. His recent letters suggest his health remains poor.

[11] The crumbling nature of this conduct is troubling. The 14 new instances of misconduct are similar to the instances alleged in the 2004 citation. Some of the existing instances of misconduct occurred prior to, and some during, the hearings on the 2004 citation. The Respondent is not able to fix the problems in his practice, even with the help of Practice Supervisors.

[12] Even the efforts of the Law Society to assist the Respondent were in vain. And in these circumstances, the responsibility lies first and always with the Respondent - he owes a duty to his clients and to his colleagues at the Bar. If he was ill to an extent that was affecting his ability to practise, he should have recognized that fact and called for help. Many sources of assistance are available to lawyers in such circumstances, from formal counselling by Interlock to the friendly counsel of a colleague. Regrettably, the Respondent did not reach out in any way for needed assistance.

[13] The Respondent resigned on March 6, 2007. He, in effect, has served a voluntary suspension this past year. Counsel for the Law Society submits that an 18-month suspension is the appropriate penalty. We would not give the maximum length of suspension in the circumstances in this case. There was no dishonest conduct or personal gain in this case. We are of the view that the proper period of suspension is six months, to commence with the date of the issuance of this decision.

[14] Having regard to the Respondent's history, we think that it is reasonable to impose a requirement that, if he applies for reinstatement, the Respondent provide a satisfactory medical opinion from a physician or physicians acceptable to the Credentials Committee that verifies his mental and physical fitness to practise law.

Costs

[15] Counsel for the Law Society has submitted an estimated Bill of Costs (Exhibit 16) totalling $16,500. There was a great deal of effort put into this matter by counsel. Much of the evidence was by affidavit, which shortened the hearing but required additional preparation. In all the circumstances, reasonable costs are assessed at $12,000.

Penalty

[16] For these reasons, the Panel makes the following order:

1. The Respondent is suspended for six months commencing immediately;

2. Upon making any application for reinstatement, the Respondent must provide a medical opinion from a physician or physicians acceptable to the Credentials Committee that verifies the mental and physical fitness of the Respondent to practise law; and

3. The Respondent must pay a contribution to the costs of these proceedings in the amount of $12,000.