

2008 LSBC 25

Report issued: August 14, 2008

Citation issued: March 8, 2006

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

Raymond William Barton

Respondent

**Decision of the Hearing Panel
on Penalty**

Hearing date: July 3, 2008

Panel: G. Glen Ridgway, QC, Chair, Ralston S. Alexander, QC, Robert C. Brun, QC

Counsel for the Law Society: Jaia Rai

No-one appearing on behalf of the Respondent

Background

[1] The hearing on facts and verdict was held on September 28, 2006, and February 12, 2007. This Panel held that the Respondent had engaged in the unauthorized practice of law, contrary to s. 15 of the *Legal Profession Act*, for conduct particularized in the March 8, 2006, citation, which provided:

While you were a non-practising member of the Law Society, you engaged in the unauthorized practice of law contrary to the *Legal Profession Act* when you performed legal services or offered to perform legal services for WF and MF in the expectation of a fee, gain or reward from WF and MF.

[2] The applicable provision respecting penalties is the *Legal Profession Act*, s. 38(5). The range of penalty is a reprimand to disbarment.

[3] The Respondent, although not present, applied for an adjournment of the proceedings by way of an email transmission, sent at 6:10 p.m. on July 2, 2008. The Law Society opposed that application.

[4] The Panel was satisfied that the Respondent was aware of the July 3, 2008 hearing date and had been since late October of 2007. The Panel denied the Respondent's application for an adjournment for reasons given orally at the commencement of this hearing.

[5] The Law Society had provided the Respondent with its position on penalty. The Respondent's email of July 2, 2008 contained submissions with respect to that position, and in particular, addressed the issue of costs and also the Respondent's inability to pay a fine and his inability to pay costs.

[6] The position taken by the Law Society on that submission and before the Panel was that the appropriate disposition of this matter is a fine in the amount of \$1,500 and an award of costs between \$5,000 and \$10,000.

[7] As is usual in these determinations, the Law Society provided this Panel with the determination in *Law Society of BC v. Ogilvie*, [1999] LSBC 17, which provides the following criteria to consider in disciplinary dispositions:

- (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 Law Society emphasized the seriousness of the unauthorized practice of law and the Respondent's experience in that he was called to the Bar of British Columbia in 1983, having previously been called in Manitoba.

[9] Reference was made by the Law Society to the Respondent's record in practice, and his Professional Conduct Record was filed as an Exhibit. The Respondent has been subject to two Practice Standards referrals, a conduct review, and two citation hearings resulting in disciplinary action. The Respondent has been subjected to restrictions on his practice status. On January 1, 2006, the Respondent's membership ceased for non-payment of fees, and the fine and costs ordered on January 21, 2003, as a result of citation proceedings remain outstanding.

[10] In these circumstances, the clients paid fees to the Respondent for services that were not clear to the clients, and the Respondent has not provided an accounting of his fees and services, although such was requested by the clients. There appears to be no acknowledgment of his misconduct, and the Respondent has taken no steps to redress the impropriety.

[11] There does not appear to be any British Columbia authority respecting the appropriate disposition with respect to the breach of the Act by the unauthorized practice of law. Authorities from Ontario, Alberta, and Saskatchewan provide for a fine, together with costs.

[12] There are authorities in British Columbia relating to the breach of Law Society Rules. Those provided by the Law Society, namely, *Law Society of BC v. Murray*, 2006 LSBC 47; *Law Society of BC v. MacDonald*, 2006 LSBC 01; *Law Society of BC v. Smith*, 2004 LSBC 29; and *Re: Lawyer 5*, 2005 LSBC 11, provide for fines ranging from \$1,500 to \$3,500, together with costs up to \$7,500.

[13] In *Law Society of BC v. Greig*, 2005 LSBC 20, the panel imposed a reprimand, a fine of \$7,500, and costs in the amount of \$30,399 for a breach of the Law Society Rules.

[14] With respect to costs, the Law Society entered as an Exhibit a draft Bill of Costs in the amount of \$27,351.79 as representing their actual costs relative to these proceedings.

Decision

[15] After consideration, this Panel finds that the appropriate disposition of this matter is a fine in the amount of \$1,500, together with costs of \$7,500, and such is so ordered.

Correction

[16] In our decision on Facts and Verdict, issued on April 27, 2007, we described the witness, TM, as the Respondent's common-law spouse. That was in error. TM is in fact married to the Respondent, but they are separated.