

2008 LSBC 27

Report issued: September 04, 2008

Oral Reasons: July 25, 2008

Citation issued: October 23, 2007

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

Harry Djorgee

Respondent

Decision of the Hearing Panel

Hearing date: July 25, 2008

Panel: G. Glen Ridgway, QC, Chair, Bruce A. LeRose, QC, William Jackson

Counsel for the Law Society: Maureen S. Boyd

Counsel for the Respondent: Peter Firestone

Background

[1] On October 23, 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 on the direction of the Chair of the Discipline Committee. The citation, as amended directed that this panel inquire into the Respondent's conduct as follows:

1. In the course of your representation of SL, you affixed her signature wrongfully and without her authorization on the following documents and caused them to be filed in the court registry knowing they purported to bear the signature of SL when you knew they did not:
 - (a) Writ of Summons dated December 15, 2006 and filed December 22, 2006;
 - (b) Statement of Claim dated December 15, 2006 and filed December 22, 2006;
 - (c) Requisition dated March 16, 2007 and filed March 28, 2007.

2. In the course of your representation of SL, you falsely swore the following affidavits by affixing the signature of the affiant when the affiant was not present before you and did not sign the affidavit in your presence:
 - (a) Affidavit of SL purportedly sworn March 19, 2007 and filed March 28, 2007;
 - (b) Child Support Affidavit of SL purportedly sworn March 17, 2007 and filed March 28, 2007.

3. In the course of your representation of SL, you falsely prepared and swore the Affidavit of Service of GO, purportedly sworn January 14, 2007 and filed January 16, 2007.

4. In the course of your representation of SL, you caused the following affidavits to be filed in court when you knew the affidavits had been falsely sworn:

- (a) Affidavit of SL purportedly sworn March 19, 2007 and filed March 28, 2007;
- (b) Child Support Affidavit of SL purportedly sworn March 17, 2007 and filed March 28, 2007;
- (c) Affidavit of Service of GO purportedly sworn January 14, 2007 and filed January 16, 2007.

[2] The requirements for service of this citation upon the Respondent were admitted.

[3] 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 he had professionally misconducted himself and consented to the following disciplinary action:

- (a) a suspension of six months, of which four months will be deemed to have been served prior to the hearing date and the last two months will be served commencing from the hearing date;
- (b) a condition that he will practise only in a capacity approved by the Practice Standards Committee; and
- (c) costs in the amount of \$1,000.

Statement of Agreed Facts

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

1. On February 21, 2001, the Respondent was called to the Bar of British Columbia.
2. The Respondent is a sole practitioner who practises in Victoria at Hillside Avenue. The Respondent did not practise between October 2002 and May 1, 2005 and previously practised using an address at Quadra Street, Victoria, British Columbia.

Allegation #1: Court Documents

3. In or about July of 2006, SL (the "Client") retained the Respondent to act on her behalf to obtain a divorce from her husband (the "Husband") and custody of her two sons. The Respondent met with the Client in person when he was retained, as well as on other occasions. Both the Respondent and the Client reside in Victoria, British Columbia.

4. At all material times, the Respondent was aware that a document prepared for use in a proceeding must be signed and dated by the party, or by or for the party's solicitor, as required in Rule 4(5) of the *Supreme Court Rules*.

5. In or about December 2006, the Respondent prepared a Writ of Summons and Statement of Claim on behalf of the Client as plaintiff (the "Action") , naming the Husband as defendant. On or about December 22, 2006, the Respondent caused to be filed in the Victoria Registry (the "Registry") of the British Columbia Supreme Court the Writ of Summons and Statement of Claim in the Action.

6. The Writ of Summons and Statement of Claim appear to bear the signature of the Client, but the Client did not sign either of these documents.

7. The Respondent admits that he affixed the Client's signature wrongfully and without her authorization to the Writ and Statement of Claim in the Action and filed those documents in the Registry, knowing they purported to bear the signature of the Client when he knew they did not.

8. On about March 16, 2007, the Respondent affixed the signature of the Client wrongfully, and without her authorization, on a Requisition and on or about March 28, 2007 filed this Requisition in the Registry knowing it purported to bear the signature of his Client when he knew it did not.

Allegation #2: Affidavits of Client

9. In or about March 2007, the Respondent prepared an affidavit ("Client Affidavit 1") of his Client in support of the Action.

10. The Respondent admits that on or about March 19, 2007, he falsely swore the Client Affidavit 1 by affixing the signature of the Client, when she was not physically present before him, did not swear that the contents of that affidavit were true and did not sign Client Affidavit 1.

11. On March 28, 2007, the Respondent filed Client Affidavit 1 in the Action at the Registry, knowing that it was falsely sworn.

12. In or about March 2007, the Respondent prepared a child support affidavit ("Client Affidavit 2") of his Client in support of the Action.

13. The Respondent admits that on or about March 17, 2007, he falsely swore Client Affidavit 2 by affixing the signature of the Client, when she was not physically present before him, did not swear that the contents of that affidavit were true and did not sign Client Affidavit 2.

14. On March 28, 2007, the Respondent filed Client Affidavit 2 in the Action at the Registry, knowing that it was falsely sworn.

Allegation #3: Affidavit of Service

15. In or about January 2007, the Respondent prepared an affidavit of service of GO (the "Service Affidavit") in which it falsely stated that GO had served a copy of the Writ of Summons and Statement of Claim on the Husband at [address] in Victoria, British Columbia. The Respondent knew at the time of preparing and swearing the Service Affidavit that the Writ of Summons and Statement of Claim had not been served on the Husband by GO or by any other

person. GO was not physically present before the Respondent when GO's signature was affixed, GO did not swear that the contents of that affidavit were true, and did not sign the Service Affidavit.

16. On January 16, 2007, the Respondent filed the Service Affidavit in the Action at the Registry, knowing that it was falsely sworn and contained false statements.

17. The Respondent admits that on or about January 14, 2007, he falsely prepared and swore the Affidavit of Service of GO.

Allegation #4: Filing of Falsely Sworn Documents

18. The Respondent admits that he caused to be filed at the Registry the Client Affidavit 1, Client Affidavit 2 and the Service Affidavit, when he knew that these affidavits had been falsely sworn.

19. On or about June 18, 2007, new counsel for the Client made a complaint (the "Complaint") to the Law Society respecting the Respondent.

20. On or about August 3, 2007, the Respondent wrote to the Law Society with his response to the Complaint.

21. The Respondent admits each of the allegations as set out in the Amended Schedule to the citation and further admits that his conduct in respect of each of them is professional misconduct.

[5] 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 professional misconduct.

[6] Although the misconduct was serious, and in normal circumstances would result in disbarment, the Panel finds that the proposed disciplinary action is appropriate in these particular circumstances.

[7] The seriousness of the misconduct is reflected in the suspension of six months. The Panel notes that the Respondent agreed to cease practice on October 11, 2007, and has not practised since that time. Accordingly, the suspension proposed will result in the Respondent being out of practice for approximately eleven months. This provides a specific and general deterrent with respect to this conduct.

[8] The public will be protected in the future by practice conditions requiring approval of the Practice Standards Committee.

[9] It should be noted that the false Affidavits in this matter were, in fact, not used in a court application, the Respondent received no financial benefit from his conduct, and as soon as the matter was detected and called to the attention of the Respondent, he acknowledged his misconduct, ceased practice until this citation was dealt with, and gave a full acknowledgment of his wrongdoing.

[10] It is accordingly ordered that the Respondent:

(a) be suspended for a period terminating on September 24, 2008, of which four months will

be deemed to have been served prior to the hearing date and the last two months will be served commencing from the hearing date;

- (b) only practise in a capacity approved by the Practice Standards Committee; and
- (c) pay costs in the amount of \$1,000, payable on or before March 1, 2010.

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