

2008 LSBC 28

Report issued: September 12, 2008

Citation issued: June 13, 2007

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

Edward George Jackson

Respondent

Decision of the Hearing Panel

Hearing date: April 15, 2008

Panel: Joost Blom, QC, Chair, Richard N. Stewart, QC, Ronald S. Tindale

Counsel for the Law Society: Maureen Boyd and Eric Wredenhagen

No-one appearing on behalf of the Respondent

Background

[1] On June 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 of British Columbia on the direction of the Chair of the Discipline Committee.

[2] The citation, as amended on January 30, 2008 and on March 26, 2008, directed that this Panel inquire into the Respondent's conduct as follows:

1. Your failure to meet your professional financial obligations incurred or assumed in the course of your practice, contrary to Chapter 2, Rule 2, of the *Professional Conduct Handbook*, and in particular your failure to pay the account of Glen Paruk dated December 15, 2004, before April 29, 2007.

2. Your failure to reply promptly or at all to the communications from the Law Society, contrary to Chapter 13, Rule 3, of the *Professional Conduct Handbook*, and in particular your failure to respond to:

(a) Letters from a Law Society staff lawyer dated May 12, 2006, May 29, 2006, July 10, 2006, August 16, 2006, and September 27, 2006;

(b) [Deleted]

(c) [Deleted]

3. Your conduct on or about November 1, 2006, in leaving client materials containing confidential information in your residence when you were evicted from the residence without

making arrangements for suitable storage of the materials.

[3] The requirements for service of the citation upon the Respondent, pursuant to Rule 4-15, were admitted by the Respondent in the Statement of Agreed Facts.

[4] Neither the Respondent nor anyone on his behalf attended at this hearing.

Statement of Agreed Facts

[5] Counsel for the Law Society submitted a Statement of Agreed Facts, which was filed as an Exhibit in the proceedings. This Statement of Agreed Facts was also signed by the Respondent. The Statement of Agreed Facts can be summarized as follows:

1. On May 15, 1992, Edward G. Jackson was admitted to the Bar of British Columbia.
2. The Respondent was employed by Lang Michener from May 15, 1992 to December 27, 1994, following which he has practised as a sole practitioner. The Respondent practises primarily in the area of criminal defence.
3. The Respondent was a non-practising member from January 1, 1997 to July 7, 1997. He became a former member on January 1, 2006 and was reinstated April 10, 2006. He became a non-practising member on January 1, 2007 and to the date of this Statement continues to be a non-practising member.

Allegation #1 – Failure to Meet Professional Financial Obligations

4. In or about early December 2004, the Respondent contacted a member, Glen Paruk, and asked Mr. Paruk if he would be willing to attend in place of the Respondent as In-Custody Duty Counsel in North Vancouver Provincial Court on December 15, 2004. Mr. Paruk agreed to do so, on the understanding that the Respondent would pay him the amount payable by the Legal Services Society in respect of such attendance.

5. On December 15, 2004, Mr. Paruk attended as In-Custody Duty Counsel in North Vancouver Provincial Court in place of the Respondent (the "Attendance").

6. On December 15, 2004, Mr. Paruk issued to the Respondent a bill in the total amount of \$269.64 in respect of this Attendance. Mr. Paruk also sent the Respondent a completed Criminal Duty Counsel Billing Form in respect of his Attendance, which form is required by the Legal Services Society.

7. In or about early 2005, the Respondent received full payment from the Legal Services Society in respect of the Attendance.

8. In or about the spring of 2005, the Respondent and Mr. Paruk spoke at the North Vancouver Provincial Court, during which conversation the Respondent advised Mr. Paruk that he intended to pay his account for the Attendance.

9. In or about April 2005, the Respondent's wife died from illness, as a result of which he was working very little and had little income. The Respondent advised Mr. Paruk of these circumstances, and Mr. Paruk did not object to a delay of some months for payment by the Respondent.

10. On or about August 24, 2006, Mr. Paruk made a complaint to the Law Society. The complaint was assigned to Ruth Long, a lawyer in the Professional Conduct Department for investigation.
11. On or about August 29, 2006, Ruth Long wrote to the Respondent seeking his response to the complaint of Mr. Paruk.
12. On or about September 12, 2006, the Respondent provided to the Law Society his response to the complaint.
13. On or about October 10, 2006, the Respondent wrote to the Law Society to advise that he expected to be able to pay Mr. Paruk by "month end" .
14. In or about April, 2007, the Respondent paid Mr. Paruk by money order the amount of \$269.64. The delay in payment by the Respondent was approximately 28 months.
15. On or about April 30, 2007, the Respondent advised the Law Society of his payment of the account to Mr. Paruk.
16. The Respondent admits that he failed to meet his professional financial obligations incurred in the course of his practice, contrary to Rule 2 of Chapter 2 of the *Professional Conduct Handbook*, by failing to pay the account of Glen Paruk between December 15, 2004 and April 2007. The Respondent further admits that this conduct constitutes professional misconduct.

Allegation #2 – Failure to Respond to the Law Society

17. On or about April 19, 2006, the Law Society received a complaint (the "Complaint") by email from clients of the Respondent, Mr. and Mrs. R (the "Clients") .
18. The Complaint was assigned for investigation to Ruth Long.
19. On or about April 27, 2006, Ms. Long telephoned the Respondent and, as she was unable to speak to him in person, left him a voicemail message advising him of the Complaint. The Respondent received his voicemail.
20. On or about May 8, 2006, the Respondent wrote to the Law Society regarding the Complaint, outlining some personal problems he was having and advising that he had returned the Clients'file materials in late April 2006.
21. On May 12, 2006, Ms. Long wrote to the Respondent, seeking information regarding the scope of his practice and whether he had any arrangements with another lawyer to assist him in the event he was unable to meet his obligations to his clients.
22. On May 29, 2006, Ms. Long wrote a further "follow-up" letter to the Respondent, as she had not received a response to her letter of May 12, 2006.
23. On Thursday, June 8, 2006, the Respondent wrote to Ms. Long, advising her that he would reply by "Monday" . The Respondent did not provide a substantive response to Ms. Long's letter dated May 12, 2006.

24. On Wednesday, June 21, 2006, the Respondent wrote to Ms. Long, advising her that he had been ill and advising he would provide a response "no later than Monday" . He did not provide a substantive response to Ms. Long's letter dated May 12, 2006.
25. On or about July 6, 2006, Ms. Long attempted to contact the Respondent by telephone. As she was unable to speak with him, she left a voicemail message advising that she had called and asking him to return her call, which message the Respondent says he did not receive due to the deletion of his voicemails by his service provider.
26. On July 10, 2006, Ms. Long wrote to the Respondent asking for his response to her letter dated May 12, 2006, as the Respondent had not provided any substantive response to it.
27. On July 28, 2006, Mr. Lane Brownell, Manager of Audit and Investigation for the Law Society, attended at the Respondent's last known address at [address], North Vancouver, for the purpose of personally delivering a letter dated July 26, 2006 from the Law Society to the Respondent. Mr. Brownell was unable to deliver that letter.
28. On August 16, 2006, Ms. Long again wrote the Respondent requesting a substantive response to her letter dated May 12, 2006 regarding the Complaint.
29. On each of the August 29, 2006, August 31, 2006, September 4, 2006 and September 8, 2006, Lane Brownell attended at the Respondent's last known address for the purpose of personally delivering correspondence from the Law Society. On each occasion, there was no response when Mr. Brownell knocked on the door to the residence, or when he attempted to contact the Respondent by telephone. The Respondent says he did not receive any voicemail messages from Mr. Brownell due to the deletion of his voicemail by his service provider.
30. On September 12, 2006, the Respondent wrote to Ms. Long regarding the Complaint by Mr. Paruk, (and in his response to Ms. Long's letter dated August 29, 2006). In that letter he stated that he was "now seeking clients to re-start my practice."
31. On September 25, 2006, as Ms. Long had still received no substantive response from the Respondent to her letter of May 12, 2006 and her subsequent letters to him, she wrote to him.
32. On October 11, 2006, Ms. Long received from the Respondent a letter dated October 10, 2006 in which he advised that he would provide a response to her letter dated September 25, 2006 "by next Monday" . The Respondent did not provide a substantive response to Ms. Long's letter dated September 25, 2006.
33. The Respondent admits that he received and read five letters from Ms. Long, which letters were dated May 12, 2006, May 29, 2006, July 10, 2006, August 16 2006, and September 25, 2006, and that he failed to provide a substantive response to such letters, promptly or at all. The Respondent admits that his failure to respond promptly or at all to these communications is contrary to Chapter 13, Rule 3 of the *Professional Conduct Handbook* and constitutes professional misconduct.

Allegation #3 – Failure to Safeguard Confidential Client Materials

34. On November 1, 2006, at approximately 8:42 a.m., Kensi Gounden, Manager, Standards and Professional Development for the Law Society, received a telephone call from

GR, a tenant in the residential apartment building located at [address], North Vancouver. GR advised that the Respondent had been evicted from his apartment and that, in that process, a file cabinet with client files (the "Files") had been removed by the landlord, FF. GR asked if the Files could be thrown away and was advised by Mr. Gounden not to do so and that the Law Society would be in further contact with her shortly regarding the Files.

35. On November 1, 2006, later in the morning, Graeme Keirstead, Manager, Custodianships and Special Fund for the Law Society, spoke by telephone with FF, who advised that he would not be distraining or dealing with the Respondent's property in any way, including the Files, for several days. Shortly after, Mr. Keirstead received a telephone call from RL, who identified himself as a friend of the Respondent. RL advised that he was arranging to have the Respondent's property, including the Files, taken to a secure storage facility to be under the Respondent's care and control. The Respondent was unaware of this communication between RL and Mr. Keirstead.

36. On or about November 8, 2006, as the Files remained unsecured, Law Society staff attended and took into safekeeping seven boxes of materials from the Respondent's apartment, which included files with confidential client information, as follows: the name and address of clients; the nature of the legal work provided to clients by the Respondent; invoices issued to clients; copies of cheques received from clients; correspondence to and on behalf of clients; and legal documents prepared for or signed by clients.

37. The Respondent says that he had arranged for movers to remove and deliver to storage all his possessions, which included possessions in his storage locker. He was not aware that the movers failed to take the contents of the storage locker, which included the Files.

38. On or about November 21, 2006, Graeme Keirstead wrote to the Respondent to advise that the Law Society had taken possession of the Files and asking the Respondent to contact him immediately to discuss arrangements for suitable storage of them. Attempts were made to deliver this letter, but the Law Society was unable to deliver it to the Respondent.

39. On or about December 5, 2006, Graeme Keirstead wrote a further letter to the Respondent. The Law Society gave this letter to the Respondent's former landlord for delivery. The Respondent received this letter and subsequently provided a new address to the Law Society.

40. On or about January 19, 2007, Graeme Keirstead wrote to the Respondent at this new address. The Respondent left voicemail messages for Graeme Keirstead on February 1, 9, 19, and 22, 2007. To date, the Respondent has not come in to the Law Society to view or take possession of the Files.

41. The Respondent admits that he was present on or about October 31, 2006 when the landlord took possession of his residence and that he took inadequate steps to safeguard his client files, which contained confidential client information. He further admits that in or about October 31, 2006 to November 8, 2006, he failed to take adequate steps to ensure they were suitably stored and permitted them to be seized by his landlord. The Respondent admits that his failure to ensure the privacy and safekeeping of client confidential information is contrary to his duty of confidentiality set out in Chapter 5 of the *Professional Conduct Handbook* and constitutes professional misconduct.

Position of the Law Society

[6] Counsel for the Law Society submitted, with regard to allegation #1, that the evidence established that the Respondent engaged Mr. Paruk to attend in his place as In-Custody Duty Counsel at North Vancouver Provincial Court on December 15, 2004. The Respondent agreed to pay Mr. Paruk the amount payable by Legal Services in respect to such attendance. Mr. Paruk did attend and complete the required duty counsel billing form on December 15, 2004, and provided it to the Respondent. The Respondent received payment from the Legal Services Society in early 2005, and did not pay Mr. Paruk until two years later, in late April 2007.

[7] Counsel for the Law Society also drew the Panel's attention to the admission of the Respondent that this conduct constitutes professional misconduct.

[8] Counsel for the Law Society further drew the Panel's attention to Chapter 2, Rule 2, of the *Professional Conduct Handbook*, which states as follows:

The lawyer has a professional duty, quite apart from any legal liability, to meet professional financial obligations incurred or assumed in the course of practice, such as agency accounts, obligations to members of the profession, fees or charges of witnesses, sheriffs, special examiners, registrars, reporters and public officials when called upon to do so.

[9] Counsel for the Law Society referred to the decision of *Law Society of BC v. Evans*, 2000 LSBC 20, as an example where a panel determined that a failure to pay a practice debt constitutes professional misconduct.

[10] With regard to allegation #2, counsel for the Law Society submitted that Chapter 13, Rule 3 of the *Professional Conduct Handbook* sets out the obligation of the lawyer to respond to the Law Society:

A lawyer must reply promptly to any communication from the Law Society.

[11] Further, the Law Society drew our attention to the decision of the Benchers in *Law Society of BC v. Dobbin*, [1999] LSBC 27. In that decision the majority stated at paragraph 20 that:

While it is true that the duty to reply is only found explicitly set out in Chapter 13, Rule 3 of the *Professional Conduct Handbook*, it is a cornerstone of our independent, self-governing profession. If the Law Society cannot count on prompt, candid and complete replies by members to its communications it will be unable to uphold and protect the public interest, which is the Law Society's paramount duty. The duty to reply to communications from the Law Society is at the heart of the Law Society's regulation of the practice of law and it is essential to the Law Society's mandate to uphold and protect the interests of its members. If members could ignore communications from the Law Society, the profession would not be governed but would be in a state of anarchy.

[12] Counsel for the Law Society further argues that the actions of the Respondent demonstrate a prolonged failure to respond.

[13] With regard to allegation #3 counsel for the Law Society submits that Chapter 5, Rule 2 of the *Professional Conduct Handbook* stipulates that:

A lawyer shall take all reasonable steps to ensure the privacy and safekeeping of a client's confidential information.

[14] Counsel for the Law Society argues that the Respondent has admitted that when he left his apartment residence inadequate steps were taken to safeguard files which contained confidential client information.

[15] Counsel for the Law Society draws our attention to the decision of *Law Society of BC v. Jones*, 2004 LSBC10, in which that hearing panel accepted an admission of professional misconduct in circumstances in which the Respondent had vacated his business premises and left confidential client documents at that site, which included documents from retainers which had ceased prior to his departure from the premises.

Decision on Facts and Verdict

[16] Based on the Statement of Agreed Facts, and the arguments put forward by counsel for the Law Society, with which this Panel agrees, the Panel accepts the Respondent's admissions and finds that he is guilty of professional misconduct in respect to allegations 1, 2 and 3 as set out in the amended Schedule to the citation.

Penalty

[17] After the Panel gave oral reasons for its decision on facts and verdict, we proceeded under Rule 4-35(1.1) to hear the Law Society's submissions on penalty.

[18] Counsel for the Law Society conveyed to the Panel that initially the Respondent wanted to attend to deal with the issue of penalty and costs. However, the Respondent left a voice mail message with counsel for the Law Society, which forms Exhibit 2 in these proceedings.

[19] That message transcribed states as follows:

Ah, Ms. Boyd, Edward Jackson calling um, I've been told by my employer that I may be replaced if I don't attend ah at my work on Tuesday. I can't afford to lose my job, ah I got to keep the roof over my head, so unfortunately I'm not able to attend the ah, the hearing. I'm sorry about that. Um respect to costs. I earned last year \$23,000 before taxes, um and I'm asking that the ah the panel consider that I contribute some somewhere in the area of 1,000 towards um the payment of costs and be given 18 to 24 months to pay if that's possible. Um, once the decision has rendered, ah I'd like to make arrangements um to take custody of the files and other papers um that are currently in the custodianship of the Law Society, I can make arrangements once the decision is done if that's appropriate. Ah I'm asking that you pass um this information on to the panel together with my apologies for not being able to attend, and um look forward to um um hearing from ah yourself or the panel in due course. Thank you very much.

[20] On the basis of submissions of counsel and the voice mail message, the Panel agreed to deliberate with regard to the issue of penalty.

[21] The Law Society submits that the appropriate penalty should be as follows:

- (a) a suspension of one month, pursuant to Section 38(5)(d)(i) of the *Legal Profession Act*, to commence when the Respondent applies to change his practice status to either full or part-time and has otherwise satisfied all conditions to such change;

- (b) a condition, pursuant to Section 38(5)(c) of the *Legal Profession Act* that he successfully complete the on-line Small Firm Practice Course;
- (c) a condition pursuant to Section 38(7) that upon changing his practice to either full or part-time he be referred to the Practice Standards Committee and that he abide by its directions and orders and remain under its jurisdiction until released by that Committee; and
- (d) that he pay costs of \$3,000, pursuant to Rule 5-9 of the Law Society Rules.

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

- (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 and 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.

[23] The Law Society makes the submission that the most important factors in this case with regard to penalty are items (a), (b), (c) and (d) as set out above.

[24] Finally, the Law Society urges that, in this case, a global penalty should be imposed by this Panel, having regard to all three incidents of professional misconduct, which appear to have a common underlying cause.

[25] The Law Society submits that, in this case, the misconduct is significant as the Respondent did not meet his professional obligations to the Law Society, to another lawyer and to clients whose confidential client information was not adequately protected.

[26] Another factor that the Law Society points to is the fact that the failures occurred over an extended period of time in terms of the failure to pay the practice debt as well as not answering Law

Society correspondence.

[27] It is the Law Society's submission that the nature of the misconduct, coupled with the lengthy period during which it occurred and the potential for real harm if the client files had not been recovered, are factors that require significant penalty for both specific and general deterrence.

[28] The Law Society submits that a mitigating factor for the Respondent would be the fact that the Respondent has acknowledged his misconduct.

[29] The Law Society, however, points to the fact that the Respondent had previously been involved with the Law Society in 1998, which resulted in a conduct review held on April 16th, 1999 and a referral to the Practice Standards Committee in 2000 and recommendations made by the Committee.

[30] Finally, the Law Society submits that a short suspension is the appropriate penalty having regard to all three incidences of misconduct.

[31] The Law Society has cited several cases that indicate that in respect of a first citation for failure to respond to the Law Society the penalty imposed is typically a fine.

[32] The Law Society points to the case of the *Law Society of BC v. Williamson*, 2005, LSBC 19. In that case, there was a determination of professional misconduct on the basis of four allegations: a failure to serve his client in a conscientious, diligent and efficient manner; failure to respond to communications from the Law Society regarding deficiencies in his Form 47 Accountant's Report; failure to deliver a completed accountant's report; and a delay in responding to requests from another lawyer for delivery of client files and for resolution of outstanding fee issues. In that case, the Respondent was given a suspension of 45 days.

Analysis and Decision

[33] In this particular case, the Panel agrees with the submissions of the Law Society that this is a serious matter that requires a significant penalty.

[34] Taking into account the evidence of professional misconduct, the Respondent's Professional Conduct Record, the fact that there are multiple incidents that expand over extended periods of time, this Panel finds that the appropriate penalty, effective immediately upon the Respondent fulfilling the requirements, paying the fees and becoming a practising lawyer, is that the Respondent be:

- (a) suspended for one month; and
- (b) referred to the Practice Standards Committee for that Committee to exercise its powers under Part 3, Division 2 of the Law Society Rules.

[35] The Law Society submission was for an order of payment of costs pursuant to Rule 5-9 in the amount of \$3,000, which approaches full indemnity.

[36] In the circumstances, and as evidenced by Exhibit 2, it is clear that the Respondent has limited financial means and, as such, the Panel orders that the Respondent pay costs in the amount of \$2,000. Further, the Respondent has until August 31, 2010, to pay those costs.