

2009 LSBC 12

Report issued: April 23, 2009

Citation issued: November 7, 2006

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

Alan James Short

Respondent

**Decision of the Hearing Panel
on Penalty**

Hearing date: Written submissions received January 30, 2009

Panel: David Renwick, QC, Chair, David Mossop, QC, Meg Shaw, QC

Counsel for the Law Society: Maureen Boyd

Counsel for the Respondent: Reginald Harris

Background

[1] In a decision on Facts and Verdict issued July 9, 2008 (2008 LSBC 20), we found that the Respondent's conduct constituted professional misconduct in that the Respondent:

(a) breached his written undertaking to the Law Society dated January 14, 2003, not to consume alcohol; and

(b) the Respondent has, on more than one occasion, appeared in Court while impaired by alcohol.

[2] The background facts are set out in our decision on Facts and Verdict.

[3] The Respondent is 58 years old and was called to the Bar in British Columbia on September 11, 1978.

[4] The Respondent was suspended from practice on September 7, 2006, and prior to that the Respondent was a practising lawyer except for brief periods in 1981 and 1987 when his membership ceased.

[5] The Respondent is an alcoholic and has taken significant steps in his treatment since his suspension in September, 2006:

(a) On September 12, 2006 he undertook an outpatient treatment program;

(b) On September 24, 2007 he undertook voluntary admission to a 1½ month treatment program which included complete abstinence and participation in a monitored recovery agreement; and

(c) On January 23, 2008, the Respondent entered into a Monitored Recovery Agreement with a physician as monitor, with reports from the physician indicating "there has been no evidence of any relapsed behaviour" and an opinion that the Respondent was fit to return to work.

Submissions on Sanction

[6] The Law Society provided a submission on penalty and submits the following disciplinary action is appropriate:

- (a) a reprimand pursuant to s. 38(5)(a) of the *Act*;
- (b) a condition pursuant to s. 38(7) that the Respondent enter into a monitoring agreement, with a physician and on terms both satisfactory to the Law Society, for a period of five years ending January 31, 2014, and comply with the terms of that monitoring agreement;
- (c) an order pursuant to s. 38(7) that any application to vary terms of this condition will be determined by the Discipline Committee; and
- (d) an order that the Respondent pay costs of \$7,000, payable over such reasonable period of time as the Respondent may request.

[7] On January 15, 2009 by letter from his counsel, Reginald P. Harris, the Respondent indicated his agreement that the penalty sought by the Law Society was appropriate.

[8] In addition to the submission by the Law Society, we were provided with a Brief of Authorities of the Law Society, a Book of Documents of the Law Society, and the Respondent's Professional Conduct Record, all of which were submitted to the Panel with the consent of counsel for the Respondent.

[9] The Respondent had no further written submissions, and the Panel was asked to proceed on a "joint submission" .

Decision and Analysis

[10] The primary purpose of disciplinary proceedings is to uphold and protect the public interest in the administration of justice (Section 3 *Legal Profession Act*).

[11] In the decision *Law Society of BC v. Ogilvie*, [1999] LSBC 17, the factors to be considered in assessing penalty are:

- (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.

[12] We have taken these factors into consideration as well as the provisions of the *Professional Conduct Handbook* as set out in paragraph [7] of our decision issued July 9, 2008.

[13] We were further referred to the Respondent's Professional Conduct Record, which shows the Respondent's problems with alcohol addiction are long standing.

[14] We reviewed the substantive steps and actions the Respondent has taken since the Respondent was suspended. The suspension has been in effect for nearly two and a half years.

[15] The Respondent's current successful pattern of rehabilitative behaviour, his determination to get assistance to control and manage the addiction, along with consideration of the applicable factors set out in *Ogilvie* has led the Panel to accept the joint submissions of the Law Society and the Respondent as to penalty.

Conclusion

[16] The Respondent will be subject to:

- (a) a reprimand pursuant to s. 38(5)(a) of the *Legal Profession Act*;
- (b) a condition pursuant to s. 38(7) that the Respondent enter into a monitoring agreement with a physician satisfactory to the Law Society and on terms satisfactory to the Law Society, for a period of five years ending January 31, 2014, and comply with the terms of that monitoring agreement;
- (c) an order pursuant to s. 38(7) that any application to vary terms of this condition will be determined by the Discipline Committee; and
- (d) an order that the Respondent pay costs of \$7,000. The Panel orders that the Respondent be granted time to pay, with a schedule of payment in a minimum amount of \$500 per month for 14 months, if such time is needed.

[17] There will be publication of this decision in accordance with Rule 4-38.