

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

**Kenneth Joseph Spears**

Respondent

**Decision of the Hearing Panel**

Hearing date: September 17, 2009

Panel: James Vilvang, QC, Chair, Haydn Acheson, Robert Brun, QC

Counsel for the Law Society: Maureen Boyd

Counsel for the Respondent: James L. Straith

**Background**

[1] On April 21, 2009 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. You gave an undertaking to the Law Society on October 18, 2004, varied by the Law Society at your request by letter dated December 9, 2004, which required you to conclude and/or transfer all outstanding non Department of Justice files by January 15, 2005 and not take on any new files, other than Department of Justice files or Government of Canada files, after January 15, 2005. You breached that undertaking by:
  - a) acting for or on behalf of Q Ltd. in an appeal commenced in or about July 2005 and heard in or about October 2006;
  - b) acting for your client GR from and after January 15, 2005 to at least June 2008;
  - c) acting for your client F Corporation in litigation matters related to the grounding of the vessel [name] from and after January 15, 2005, and/or by failing to advise your client and opposing counsel that you could no longer act, or otherwise failing to arrange to transfer this matter to another lawyer.
2. By a resolution of the Practice Standards Committee made December 2, 2004, you were required to provide a status report to Practice Standards counsel of your "remaining non Department of Justice files by December 15, 2004." When you provided your written status report to the Law Society on December 15, 2004, you failed to include the matter on which you were acting for your client GR.
3. In or about April 2002, on the recommendation of the Practice Standards Committee, you

entered into and were bound by a Practice Supervision Agreement with William Prowse as practice supervisor, by which you were required to provide a written summary of all open files, updated monthly. You failed to include the matter on which you were acting for your client GR and/or the matter on which you were acting for your client F Corporation in the summary of all open files you prepared and provided to your practice supervisor in either or both of March 2005 and October 2005 and/or you failed to include the matter on which you were acting for or on behalf of Q Ltd in the summary of all open files you prepared and provided to your practice supervisor in October 2005.

4. You made statements that were not true to Law Society staff regarding your compliance with your undertaking given to the Law Society on October 18, 2004, and varied by the Law Society at your request by letter dated December 9, 2004, and in particular:

- a) by letter dated February 15, 2007 to Kensi Gounden requesting you be relieved of the undertaking, you wrote that you were "following" the practice restrictions when this statement was not true, as you were then acting for a non-Department of Justice client GR and in 2005 and 2006 had acted for or on behalf of Q Ltd. in an appeal and/or after January 15, 2005 had continued to act on behalf of your client F Corporation;
- b) by letter dated April 6, 2007 to Kensi Gounden, you wrote that you had "restricted [your] practice to work for the Government of Canada" when this statement was not true, as you were acting in a matter for a non-Government of Canada client, GR.

5. On or about December 13, 2007, in the course of an investigation pursuant to an Order issued September 7, 2007 under Rule 4-43, you were asked by Ruth Long, a staff lawyer, whether you had any open or ongoing files other than your work for the federal Department of Justice and Department of Fisheries, to which you responded that you did not, when that answer was not true as you were then acting in a matter for your client GR.

[2] The Respondent admits service of the citation in accordance with Rule 4-15 of the Law Society Rules.

### **Admission and Penalty**

[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 by committing the disciplinary violation set out in the Further Amended Schedule to the citation and consented to the following disciplinary action:

1. A suspension of eight months commencing October 1, 2009.
2. A condition pursuant to s. 38(7) that he practise only as an employee or associate of one or more other lawyer(s), such lawyer(s) to be subject to the approval of the Practice Standards Committee, and such condition to remain in effect unless released from it by that Committee.
3. Costs in the amount of \$3,500, payable by March 30, 2011.

### **Agreed Statement of Facts**

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

1. Kenneth Joseph Spears (the "Respondent") was admitted to the bar of the Province of British

Columbia on September 25, 1987.

2. From his call to August 1, 1998, the Respondent practised law in a number of law firms in Greater Vancouver, and from August 1, 1998 has practised primarily as a sole practitioner under the name K. Joseph Spears Law Corporation in West Vancouver, British Columbia.

### **Background Facts - Practice Supervision and Undertaking to the Law Society**

3. In September 2001, the Respondent was referred to the Practice Standards Committee of the Law Society, which ordered a practice review pursuant to Rule 3-12(d). The practice review occurred on October 26, 2001. The recommendations included that the Respondent enter into a practice supervision agreement and that he undertake not to practise in the areas of wills and estates, personal injury law and WCB matters, with the exception of completing a particular file with the assistance of a senior personal injury lawyer. The Respondent agreed to these recommendations.

4. On March 6, 2002, the Respondent wrote to Jacqueline Morris of the Law Society to propose that William C. Prowse be approved as his practice supervisor and also to ask to exclude federal Department of Justice files from this supervision. The Practice Standards Committee considered these requests on March 7, 2002 and approved Mr. Prowse as practice supervisor but continued to require that the practice supervisor supervise all of the Respondent's practice, including the Federal Department of Justice files. On March 12, 2002, Ms. Morris wrote to the Respondent advising him of this decision.

5. In early April 2002, the Respondent and Mr. Prowse (the " Practice Supervisor" ) entered into a practice supervision agreement (the " Practice Supervision Agreement" ). On April 3, 2002, the Respondent sent a signed copy of the Practice Supervision Agreement to the Law Society.

6. Further follow-up practice reviews occurred in April 2003 and on June 21, 2004. The report from the June 21, 2004 practice review (the " 2004 Report" ) was provided to the Respondent by letter dated August 12, 2004, and included a recommendation to " reduce [his] file load to no private files other than Department of Justice work."

7. On September 10, 2004, the Respondent provided his response to the 2004 Report by letter addressed to Kensi Gouden, Practice Standards Counsel for the Law Society. In this letter the Respondent wrote with respect to the recommendation to reduce his files to only Department of Justice work:

With respect to restricting myself to only the Department of Justice work, this is problematic as I would be restricted to only one client. I should point out in my training course I contract directly with Transport Canada Marine to deliver the level II national investigators course. The work restriction should be expanded to include all government of Canada work, including [sic] the Administrator of the Ship Source Oil Pollution Fund, KM, QC, who I do work for.

Restricting my work solely to the Department of Justice could be severely limiting in that if the work dried up I would not be able to practice and precluded from undertaking other maritime law work [sic]. This could be counter-productive if I had a junior counsel with the firm. Much of maritime law is casualty driven and maritime salvage and other cases occur in real time. I have a proven record in resolving these cases. I would be prevented from work on these cases. With an additional lawyer working with me, we would have the necessary staff to complete work in a timely fashion.

I have spoken to my practice supervisor William Prowse on this point. I have no objection to restricting my practice to maritime law but I would suggest that any new files would be taken with the consent of my practice supervisor.

8. On September 30, 2004, the Practice Standards Committee considered the recommendations in the 2004 Report and the Respondent's letter dated September 10, 2004. It resolved to accept the recommendations in the 2004 Report, including that:

Mr. Spears is to provide his undertaking, by October 18, 2004, to reduce his files to no private files, other than Department of Justice work, or Government of Canada files. His files cannot involve agency work for other lawyers.

9. On October 5, 2004, Kensi Gounden wrote to the Respondent to advise him of the decision of the Practice Standards Committee. Set out at the end of this letter is the following undertaking (the "Undertaking" ):

I, JOSEPH SPEARS, UNDERTAKE TO:

1. Reduce my open files to consist of files where I am retained directly by the Department of Justice or the Government of Canada, within 60 days of October 5, 2004.
2. Not to [sic] take on any new files, other than Department of Justice files or Government of Canada files, after October 5, 2004.

10. On October 12, 2004, the Respondent wrote to Kensi Gounden that:

I note the deadline to forward to the Practice Standards Committee the undertaking.

The undertaking will be delivered to your offices prior to the October 18, 2004 deadline. I will set out in writing, some logistics and procedural issues that would have to be addressed to comply with the out taking non Department of Justice files [sic].

11. On or about October 18, 2004, the Respondent signed this Undertaking and returned it to the Law Society along with a covering letter (which is misdated September 30, 2004). In this letter the Respondent wrote:

Please find enclosed a copy of your letter of October 5, 2004 with my undertaking with respect to this matter as requested.

I provide this on the basis that should anything arise prior to the 60 day period I would like to have the right to speak to the Practice Standards Committee should it be required.

12. On November 30, 2004, the Respondent wrote to Kensi Gounden to seek an extension of the period before the Undertaking would take effect to enable him to complete the process of reducing his file load to only Department of Justice files. The Respondent sought the extension, in part to enable him to complete the trial in *C v. Q Ltd.* (the " *Q Ltd.* matter" ), a British Columbia Supreme Court action in which he acted for the defendant. In this letter the Respondent wrote:

I am transferring my files to outside counsel this week and therefore be left [sic] with only likely 3 to 4 non Department of Justice files. I wish for the remaining files to be transferred in an orderly fashion with as little disruption to the client as possible and would ask for further time to complete this process. On the specific non Department of Justice files that would remain, I will provide you with a detailed status of these files by December 15, 2004 if they have not been concluded or transferred.

... I write to request an additional period to January 15, 2005 to conclude all the outstanding non Department of Justice files and/or complete the transfer of these files. This would also allow me to complete the argument in the C [ Q Ltd.] matter. It is envisaged that the argument would be heard in December, 2004 and the trial would then be concluded. My involvement would then be at an end on the C matter.

13. On December 2, 2004, the Practice Standards Committee approved the Respondent's request for an extension to January 15, 2005, subject to a condition. On December 9, 2004, Kensi Gouden advised the Respondent by letter of the Committee's decision to vary the Undertaking by extending the period before it would take effect and wrote that:

1. you will provide me with a status report on your remaining non Department of Justice files by December 15, 2004, and
2. you will conclude and/or transfer all outstanding non Department of Justice files by January 15, 2005.

14. On December 15, 2004, the Respondent wrote to Kensi Gouden. In this letter, the Respondent wrote " I confirm that I will conclude or reduce my non Department of Justice files by January 15, 2005" . The Respondent enclosed a " summary of outstanding files" which listed six files.

15. The Respondent admits that as of December 15, 2004, he understood that he had given an undertaking to the Law Society, and was bound by it, to complete, or transfer to another lawyer, by January 15, 2005 all his non-Department of Justice files.

### **The Rule 4-43 Investigation**

16. On September 7, 2007, the Chair of the Discipline Committee ordered an investigation of the books, records and accounts of the Respondent pursuant to Rule 4-43 (the " 4-43 Investigation" ).

17. The Rule 4-43 Investigation commenced on December 13, 2007 with the attendance of Law Society staff at the Respondent's office. At that time, David McCartney, an investigator employed by the Law Society, obtained from the Respondent's office a " list of active files" dated September 30, 2004. The notation in the lower right hand corner was placed by David McCartney and consists of his initials and other identifying information. Included in this list are the following files: F Ltd. re Marine Insurance Coverage, GR re [vessel name] and S Ltd. re Q Ltd., which are references to the three matters referred to in allegation #1 of the Further Amended Citation.

### **Allegation #1 - Breaches of Undertaking to Law Society**

## Q Ltd. Matter

18. The Undertaking, as varied by the December 9, 2004 letter, permitted the Respondent to complete the Q Ltd. matter. The trial in the Q Ltd. matter was concluded on December 3, 2004. The trial decision was issued on June 13, 2005 in favour of the plaintiff and is cited as *C v. Q Ltd. et al.*

19. In June 2005 and thereafter, the Respondent understood that the Undertaking given to the Law Society precluded him from continuing to provide legal services to or on behalf of Q Ltd. after the completion of the trial, as this matter was not a Department of Justice matter.

20. On July 12, 2005, the Respondent filed a notice of appeal in the Q Ltd. matter in the Vancouver Registry of the British Columbia Court of Appeal (the "Appeal"). The Respondent caused the appeal books to be prepared and filed on November 28, 2005 and prepared the factum and filed it on November 30, 2005. The Respondent attended at the Court of Appeal at the hearing of the appeal on October 2, 2006.

21. The Respondent acted on behalf of his client Q Ltd. throughout the Appeal as counsel of record. The Appeal was heard on October 2, 2006 and dismissed.

22. On or about August 11, 2005, the Respondent, with instructions from his client, sought a second opinion from another lawyer. A second opinion was provided, but this lawyer did not act as counsel in the Appeal.

23. The Respondent issued statements of account in respect of his services on the Appeal on February 20, 2006, June 20, 2006, and October 6, 2006.

24. On December 8, 2006, Ruth Long, a staff lawyer in the Professional Conduct Department of the Law Society, wrote to the Respondent to request his response to the appearance that he had acted in the Appeal in breach of his Undertaking. Ruth Long sent four follow-up letters to the Respondent on each of January 9, 2007, February 28, 2007, March 14, 2007 and April 19, 2007. On April 25, 2007, the Respondent requested and was granted an extension to respond to May 15, 2007 and a further extension thereafter.

25. On September 5, 2007, the Respondent provided his explanation of his conduct in acting for Q Ltd. in the Appeal.

26. The Respondent admits that in acting for his client Q Ltd. in the Appeal he breached the Undertaking he had given to the Law Society and he did so knowing that he was bound by that Undertaking and his actions were a breach of it. The Respondent admits allegation # 1(a) in the Further Amended Schedule to the Citation and that his conduct constitutes professional misconduct.

## GR Matter

27. In or about August 2000, the Respondent was retained by GR to provide advice regarding the potential recovery of his vessel, [vessel name] (the "Vessel"), which had been seized and sold by a bailiff at or about the time GR declared bankruptcy. In 2003, the Respondent obtained instructions from GR to attempt to locate the Vessel.

28. In January 2005 and thereafter, the Respondent understood that the Undertaking given to the Law Society precluded him from continuing to provide legal services to or on behalf of GR, as this matter was not a Department of Justice matter.

29. On January 26, 2005, the Respondent wrote to GR. GR has no recollection of receiving this letter. Although the Respondent wrote in this letter that he was restricting his practice to " public law" and had referred the file to another lawyer, no such referral occurred and the Respondent continued to provide legal advice and services to GR including:

(a) he spoke with GR and other persons on matters related to the file on numerous occasions and made dated handwritten notes of those conversations on November 30, 2005, December 5, 2005, December 16, 2005, January 3, 2006, February 6, 2006, February 22, 2006, February 27, 2006, February 28, 2006, March 1, 2006, March 14, 2006, March 22, 2006, March 29, 2006, April 5, 2006, May 16, 2006, May 18, 2006, May 20, 2006, May 24, 2006, May 25, 2006, May 25, 2006, May 26, 2006, May 30, 2006, June 1, 2006, June 15, 2006, July 28, 2006, September 22, 2006, October 18, 2006, December 6, 2006, July 5, 2007, November 27, 2007, March 4, 2008, July 4, 2008, and September 2, 2008;

(b) he prepared memos to file on each of February 22, 2005, April 22, 2005, May 25, 2005, May 30, 2005, May 26, 2006, May 30, 2006;

(c) he sent an email on behalf of GR to a third party on May 31, 2006.

30. On July 28, 2008, GR made a complaint (the " GR Complaint" ) to the Law Society. By letter dated July 31, 2008, Ruth Long, asked the Respondent to provide a written response to the GR Complaint. Ms. Long sent a follow-up letter on October 20, 2008, in which she requested a response by November 3, 2008. By email sent November 13, 2008, the Respondent sought and was granted an extension of time to reply to November 17, 2008. Ms. Long sent a further follow-up letter on November 27, 2008.

31. On November 30, 2008, the Respondent provided a written response to the GR Complaint. In that letter he wrote:

GR is my client. I had last spoken to him on July 4, 2008 and received your letter at the end of July.

He further wrote on page 5 that:

While in Ottawa in May 2008, I prepared a memorandum which set out the steps to move this forward to conclusion.

32. On December 10, 2008, Ruth Long wrote to the Respondent asking for his explanation for apparently continuing to provide legal services to GR in breach of the Undertaking. The Respondent did not provide any response to this letter.

33. The Respondent admits that in acting for GR, by continuing to provide legal advice and services from and after January 15, 2005, he breached the Undertaking he had given to the Law Society and he did so knowing that he was bound by that Undertaking and his actions were a breach of it. The Respondent admits allegation #1(b) in the Further Amended Schedule and that his conduct constitutes professional misconduct.

# F Corporation

34. In or about July 2001, the Respondent was retained by F Corporation (" F Corp." ) on a marine insurance coverage claim in respect of the grounding of its vessel [vessel name] in the Queen Charlotte Islands. In the course of providing services to and on behalf of F Corp., the Respondent commenced the following matters:

(a) an action in the Federal Court of Canada against various respondents in respect of the marine insurance policy (the " Federal Insurance Action" ), which action was commenced on August 3, 2001 and dismissed for delay on January 9, 2003;

(b) an appeal of the dismissal of the Federal Insurance Action, which was commenced February 7, 2003 (the " Federal Appeal" ) and dismissed on January 13, 2004 for undue delay;

(c) an action in the Federal Court of Canada (the " Bad Faith Action" ), which was commenced on August 9, 2002, against various respondents claiming they acted in bad faith under the insurance policies and seeking general, special, aggravated and punitive damages; and

(d) a petition (the " Petition" ) filed in the Vancouver Registry of the British Columbia Supreme Court on August 3, 2004.

35. In January 2005 and thereafter, the Respondent understood that the Undertaking given to the Law Society precluded him from continuing to provide legal services to or on behalf of F Corp, as this matter was not a Department of Justice matter.

36. On January 5, 2005, the Respondent wrote to the Federal Court Registry to confirm that F Corp. would proceed with the Petition and " prepare the necessary dismissal documentation" in respect of the Bad Faith Action. The Respondents brought an application to recover costs (the " Costs Application" ) in the Bad Faith Action, which was heard on February 17, 2005 and costs were assessed at \$4,789.68. The Respondent did not attend court on February 17, 2005, but on or about February 9, 2005 he arranged for DW to speak to the Costs Application on behalf of F Corp.

37. From and after January 15, 2005, the Respondent continued to be counsel of record and to provide legal services to F Corp., including:

(a) The Respondent prepared the submissions on behalf of F Corp. in respect of the Costs Application and on February 9, 2005 delivered those submissions to SC, counsel for the defendants.

(b) On February 10, 2005, the Respondent prepared a memo to file, in which he wrote " I have provided the motion brief to the BC firm at or before 3:30 and had this filed at the Federal Court with the three copies."

(c) The Respondent continued to communicate with a representative of F Corp. from and after January 15, 2005 on numerous occasions by email, phone and in person until January 2007, at which time the representative made a complaint to the Law Society. At no material time in that period did the Respondent advise any representative of F Corp. that he was bound by the



Undertaking or that he was in any way restricted or limited in his ability to continue to act on behalf of F Corp. in those matters.

(d) After costs of \$4,789.68 were awarded to the respondents in the Bad Faith Action, the Respondent corresponded with SC regarding the payment of those costs, including acknowledging service of a Direction to Attend on April 29, 2005 and paying the costs on May 30, 2005. At no material time from and after January 15, 2005 did the Respondent advise SC that he was bound by the Undertaking or that he was in any way restricted or limited in his entitlement to continue to act on behalf of F Corp. in those matters.

(e) The Respondent admits that in acting for F Corp. by continuing to provide legal advice and services from and after January 15, 2005 and by failing to advise his client and opposing counsel that he could no longer act in the matter, he breached the Undertaking he had given to the Law Society and he did so knowing that he was bound by that Undertaking and his actions were a breach of it. The Respondent admits allegation #1(c) in the Further Amended Schedule and that his conduct constitutes professional misconduct.

### **Allegation #2 - Failure to Include File in Summary List dated December 2004**

38. The Respondent admits that in December 2004 he understood that he was required to provide to the Law Society by December 15, 2004 a status report on his remaining non-Department of Justice files, as he had offered to do in his letter to the Law Society dated November 30, 2004.

39. The Respondent admits that he did not include the file in respect of GR on that list. The Respondent admits allegation #2 in the Further Amended Schedule and that his conduct constitutes professional misconduct.

### **Allegation #3 - Failure to Include Files in Lists to Practice Supervisor**

40. The Respondent admits that he was bound by the Practice Supervision Agreement and that it was a term of the agreement that he provide to his Practice Supervisor a written summary of all open files and a monthly written update of that summary. The Respondent further understood that the term "open" included all files that had not been closed, and therefore included both active and inactive matters.

41. In March 2005, the Respondent provided to his Practice Supervisor a list of "active files". The Respondent did not include in this list either of the files related to GR or F Corp., although both files were open and active as he continued to be in communication with the clients on both of those matters.

42. In October 2005, the Respondent provided to his Practice Supervisor a list of "active files". The Respondent did not include in this list the files related to GR, F Corp. or the Appeal in the Q Ltd. matter, although these files were open and active.

43. The Respondent admits that he did not include in the required list of open files the matters on which he was acting for GR and F Corp. The Respondent further admits that he did not include the Appeal on which he was acting on behalf of Q Ltd. in the summary of all open files he prepared and provided to his practice supervisor in October 2005. The Respondent admits that when he prepared and provided these summaries he knew that they did not include all his open files. The Respondent admits allegation #3 of the Further Amended Schedule to the Citation and that his conduct constitutes professional

misconduct.

#### **Allegation #4 - Untrue Statements to Kensi Gounden**

44. In or about early October 2006, the Practice Supervisor advised Mr. Gounden that he was no longer able to provide practice supervision services to the Respondent. On or about October 5, 2006, Mr. Gounden wrote to the Respondent that:

Mr. Prowse recently advised me that he is no longer able to provide practice supervision services to you.

... in order to consider releasing you from the requirements for Practice Supervision, the Practice Standards Committee requires the most current information possible about your practice, and whether you have implemented and are maintaining the recommendations from your practice reviews.

Please call me immediately on receipt of this letter to discuss the matter further.

45. After receipt of Mr. Gounden's October 5, 2006 letter, the Respondent spoke with Kensi Gounden and raised the possibility that he be released from practice supervision and from the Undertaking, or that it be modified. Mr. Gounden told the Respondent that he would have make a submission to the Practice Standards Committee and specifically address how the Respondent had corrected the concerns regarding his private practice and how he would ensure such concerns would not again arise. On October 19, 2006, Mr. Gounden wrote to the Respondent to confirm this advice. On January 29, 2007, Mr. Gounden sent to the Respondent a follow-up letter. In this letter Mr. Gounden set out the restrictions upon the Respondent's practice, including the Undertaking.

46. On February 15, 2007, the Respondent wrote to Kensi Gounden regarding his application to the Practice Standards Committee to release him from his Undertaking. The "re line" on this letter is "Practice Standards - Application for Release of Undertaking". In this letter, the Respondent wrote:

Thank you for reforwarding the practice restrictions which I am following. At the moment, I have not suffered financial hardship as a result of this practice restriction but I would like to have the practice restriction lifted.

The Respondent admits that his reference to "the practice restrictions" included the Undertaking and that the reference to the "practice restriction" which he wished to have lifted included the Undertaking.

47. The Respondent admits that when he wrote this letter dated February 15, 2007 he was aware that he was not "following" the Undertaking because he had acted in the Appeal in the *Q Ltd.* matter in 2005 and 2006, continued to act for GR from and after January 15, 2005 and was continuing to do so at the time of writing, and had acted for F Corp. from and after January 15, 2005 and to at least January 5, 2007. The Respondent admits that he wrote the statement "Thank you for reforwarding the practice restrictions which I am following" knowing it was not true.

48. On April 6, 2007, the Respondent by letter to Kensi Gounden provided further submissions to the Practice Standards Committee. In this letter, the Respondent wrote "I have restricted my practice to

work for the Government of Canada." He further wrote:

I have fully cooperated with my practice advisor and the Law Society and should anything else be required I would be pleased to address this.

My practice is presently very restricted. I wish to practice in the maritime and environmental law areas for nongovernmental clients. I have taken steps to set up retainer agreements and follow all the practice directions as set out by the Law Society. I have implemented these within my practice area.

... I don't see myself taking on numerous private sector clients but would like the opportunity should a marine incident arise.

49. The Respondent admits that when he wrote this letter dated April 6, 2007 he was aware that he had breached the Undertaking by acting in the Appeal in the *Q Ltd.* matter in 2005 and 2006, by acting for GR from and after January 15, 2005 and was continuing to do so at the time of writing, and acting for F Corp. from and after January 15, 2005 and to at least January 5, 2007. The Respondent admits that he wrote the statement " I have restricted my practice to work for the Government of Canada" knowing it was not true.

50. On May 3, 2007, the Practice Standards Committee considered the Respondent's request to be relieved of his practice restrictions and the Undertaking, including his letters dated February 15, 2007 and April 6, 2007. It resolved to release the Respondent from the requirement of practice supervision and to close his Practice Standards file, but that he was not released from his Undertaking to only do Federal contract work.

51. The Respondent admits allegation #4(a) and# 4(b) in the Further Amended Schedule to the Citation and admits that his conduct constitutes professional misconduct.

### **Allegation #5 - Untrue Statement to Ruth Long**

52. On December 13, 2007, Ruth Long attended at the office of the Respondent for the purpose of commencing the Rule 4-43 Investigation. While she was there, she asked the Respondent whether he had any open or ongoing files other than his files for the federal Department of Justice and Department of Fisheries. The Respondent responded with words to the effect that he did not.

53. The Respondent admits that he knowingly gave this untrue response to Ms. Long, as he was aware on December 13, 2007 that he had an open or ongoing file for GR.

54. The Respondent admits allegation #5 in the Further Amended Schedule to the Citation and that his conduct constitutes professional misconduct.

[5] The Respondent has admitted the underlying facts and each of the five allegations set out in the Further Amended Schedule, which appears at Tab 2 of Exhibit 1, and he has admitted that his conduct amounts to professional misconduct. The Panel accepts that admission.

[6] The Panel finds the penalty proposed by the Respondent, and recommended by the Discipline Committee, to be appropriate in all of the circumstances, and we order that the Respondent

1. is suspended for a period of eight months, commencing October 1, 2009;

2. practise only as an employee or associate of one or more other lawyers pursuant to s. 38(5)(f) or, alternatively, s. 38(7), such lawyers to be subject to the approval of the Practice Standards Committee;
3. confirm in writing the undertaking that he gave through counsel at the hearing that he would inform any prospective employer of the facts admitted to and the decision of the Panel in this matter;
4. pay costs in the amount of \$3,500 by March 30, 2011.

[7] The Panel is very concerned that the Respondent has in the past demonstrated an unwillingness to comply with conditions imposed upon him by the Law Society. It is a fundamental requirement of anyone who wishes to have the privilege of practising law that that person accept that their conduct will be governed by the Law Society and that they must respect and abide by the rules that govern their conduct. If a lawyer demonstrates that he or she is consistently unwilling or unable to fulfill these basic requirements of the privilege to practise, that lawyer can be characterized as "ungovernable" and cannot be permitted to continue to practise.

[8] The Law Society's mandate to regulate lawyers in the best interests of the public cannot be fulfilled if it permits lawyers who have demonstrated ungovernability to continue to practise.

[9] All lawyers are expected to deal with the Law Society in an honest, open and forthright manner at all times. The Respondent has failed to do that. He has thereby put at serious risk his opportunity to have the privilege of practising.

[10] The Panel recognizes it cannot bind the hands of any future disciplinary panels, but it does wish to convey to the Respondent that this is very likely to be his last opportunity to display the sort of conduct expected of and required of all lawyers.