2010 LSBC 08
Report issued: April 21, 2010
Citation issued: June 19, 2007

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

David William Blinkhorn

Respondent

Decision of the Hearing Panel on Penalty

Hearing date: April 12, 2010

Panel: Leon Getz, QC, Chair, Haydn Acheson, Herman Van Ommen

Counsel for the Law Society: Jaia Rai
Appearing on his own behalf: David W. Blinkhorn

Introduction and Background

[1] In a decision on Facts and Verdict issued August 12, 2009 (2009 LSBC 24) we accepted the Respondent's admissions that he had committed professional misconduct in respect of a number of matters set out in two Agreed Statements of Facts based on a citation originally issued on June 19, 2007, and subsequently amended. The amended citation is set out in the decision on Facts and Verdict and we do not repeat it here. Essentially, the Respondent has admitted that:

(a) in a number of instances he misappropriated trust funds;

(b) in several instances he breached undertakings that he had given;

(c) in one case he " misled" a client as to the status of a matter that he was handling on her behalf;

(d) in another case he " misled" the Law Society; and

(e) he committed a variety of breaches of Law Society Rules relating to the keeping of proper trust accounting records.

As to the last-mentioned matter, the Law Society sought only a determination that the Respondent had committed a breach of the Rules and not a finding of professional misconduct, and we made that determination.

[2] A rather long time - some eight months - has elapsed between our decision on Facts and Verdict and the hearing of the sanctioning phase of this matter. Although nobody seems to have been at fault in this connection, the delay is nonetheless regrettable.

[3] The Respondent was a member of the Law Society from his admission to the Bar in 1989 to January 1, 2007 when, having failed to renew his membership, he ceased to be a member. He has not, in fact,

practised as a lawyer since May 2006 when he was administratively suspended for failure to file a completed Trust Report for the period ending November 30, 2005. From late 1991 until his suspension, the Respondent practised as a sole practitioner.

[4] The Law Society seeks an order that the Respondent be disbarred and that he pay $38,500 towards its costs.

Discussion

[5] The Respondent's " transgressions" occurred over a period of about seven years between 1999 and 2006. The use in the citation of decorous language such as " misappropriated" and " misled" , rather than the more plain-speaking " stole" and " lied" , cannot obscure the fact that stealing and lying is exactly what he did, repetitively, for an extended period of time. Nor should the references in the citation to the Respondent's failure, in breach of the Law Society's Rules, to keep proper books and records, obscure the fact that in many respects his failure was to keep any records - he kept none of any kind, proper or otherwise. In giving evidence before us he said that he did not know whether the sums that he agreed in the Agreed Statements of Facts were " misappropriated" were in fact accurate because the only records he had were retrospective reconstructions.

[6] By any objective measure the Respondent's conduct over some seven years was disgraceful and dishonourable. He admitted before us that he knew what he was doing when he did it and he knew that it was wrong.

[7] In these circumstances, it is not surprising that the Law Society seeks disbarment. It referred us, in support of its position, to a number of authorities setting out the applicable principles and holding that disbarment is ordinarily the only appropriate disciplinary response in cases of misappropriation. Those authorities have most recently been reviewed in *Law Society of BC v. Ali,* 2007 LSBC 57. See also *Law Society of BC v. Oldroyd,* 2007 LSBC 36.

[8] The authorities acknowledge, however, that, in a case such as this, disbarment can be avoided if, as it is put in the written submission of counsel for the Law Society, " the respondent presents compelling evidence of extraordinary mitigating circumstances to satisfy the hearing panel that the protection of the public interest and reputation of the profession does not require disbarment."

[9] The Respondent, in addition to making submissions about sanctions, also testified before us. He candidly said, several times, that he is not currently capable of practising. The central theme of his representations, both as a witness and as counsel on his own behalf, was that his conduct was the product of acute depression and melancholy, apparently largely immune to treatment with drugs, brought on by a complex set of inter-related stresses - domestic, family and professional - that had caused him to make what he repeatedly described as " very bad decisions" . Although, as we have said, he acknowledged that these decisions were " wrong" , he said that they seemed to be right, for him, at the time and in all of the circumstances. Given the authorities, however, he seemed resigned to the inevitability of disbarment and did not seriously argue that an order to this effect should not be made.

[10] The Respondent was articulate, eloquent and to a degree moving in his account of the stresses that he says led him to do what he did. It is neither useful nor, in the circumstances, respectful towards him or the others involved in the matters that he referred to, to explore the details of his evidence.

[11] We do not think, however, that the Respondent's explanations for his conduct meet the test of being compelling evidence of extraordinary mitigating circumstances sufficient to satisfy us that the protection of the public interest and reputation of the profession do not require disbarment. In saying this we do not wish

to be understood as saying, or implying, that we do not believe those explanations. Our difficulty is that they amount largely to a self-diagnosis or report of what he believes has ailed him. In the nature of the case, evidence of this kind is bound to be subject to infirmities that we cannot evaluate. The Respondent told us that there is independent professional opinion that supports what he told us and that he has been and continues to be under treatment. For reasons that were not revealed to us, however, he did not choose to proffer any evidence from his professional advisers.

[12] In all of the circumstances, therefore, we are driven to the conclusion that the Respondent must be disbarred and we so order.

Costs

[13] The Law Society presented us with evidence, in the form of a draft Bill of Costs, that it has incurred actual costs in connection with this matter of approximately $146,000. The bulk of these costs were for investigation and counsel fees. It does not, however, seek full indemnification in this amount but only an order that the Respondent pay $38,500 in costs. This represents 30% of the investigation costs and counsel fees plus Panel fees and out of pocket disbursements.

[14] The Respondent contended that this amount should be reduced somewhat, given the fact that the Law Society's bill contemplated a hearing at this stage of the matter of some two days' duration. In fact, the hearing lasted only a morning. Considering all the circumstances, and in particular the matters referred to as relevant in the decision in *Law Society of BC v. Racette,* 2006 LSBC 29 at paragraph [13] we have come to the conclusion that the Respondent should pay the Law Society $37,000 on account of its costs. Payment of this amount must be made on or before September 1, 2010.