2005 LSBC 39
Report issued: September 16, 2005
Citation issued: March 29, 2005

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

Marianne Walters

Respondent

Decision of the Hearing Panel

Hearing date: July 7, 2005

Panel: Anna Fung, Q.C., Chair, Michael Falkins, G. Glen Ridgway, Q.C.

Counsel for the Law Society: Todd Follett
Counsel for the Respondent: Michael Ranspot

Background

[1] By way of a citation issued by the Law Society of British Columbia on March 29, 2005 against the Respondent, the Respondent was ordered to attend at a Hearing to inquire into the following conduct:

> "That, you administered oaths to your client TJR on an affidavit and Child Support Fact Sheet in 2002, and signed those documents as having been sworn before you as a Commissioner for taking affidavits, while leaving the dates of swearing of the documents uncompleted so that the dates could be inserted later."

[2] Pursuant to agreement of both counsel, the matter proceeded to Hearing by way of an Agreed Statement of Facts, filed jointly by counsel as Exhibit 2 at this Hearing, wherein the Respondent "admits that her conduct in administering an oath to her client, TJR, on the Affidavit… and signing the jurat of the Affidavit as having been sworn before her as a Commissioner for taking Affidavits, while leaving the jurat of the Affidavit undated, constitutes professional misconduct" .

[3] At the outset of this Hearing, counsel for the Law Society advised that he would not be proceeding with the allegation against the Respondent in respect of the Child Support Fact Sheet and the admission of professional misconduct by the Respondent was limited to her actions in respect of the Affidavit only. At the same time, in order to protect the privacy of the personal information relating to the clients in the matrimonial matter covered by the Affidavit, counsel for the Law Society sought an order pursuant to Rule 5(6)(2) that the two attachments to the filed Agreed Statement of Facts (being the Affidavit and the Child Support Fact Sheet), be sealed and kept confidential. The Hearing Panel so ordered.

[4] The Agreed Statement of Facts indicated that on or about January, 2002:

> "4. Ms. Walters left the date in the jurat blank at the time of administering the oath and signing the jurat. Ms. Walters was awaiting an entered copy of the Consent Order referred to as "Exhibit B" in the Affidavit, and expected that a date would be inserted in the jurat of the Affidavit once the Consent Order

had been received.

5. The purpose of leaving the date blank on the jurat of the Affidavit was that a date other than the date it was actually signed could be inserted if necessary when the Consent Order was received, if the Consent Order was filed after the date of swearing of the affidavit.

6. On a date after Ms. Walters signed the jurat of the Affidavit, the date "March 4" was inserted into the jurat. It is not known who inserted this date into the jurat. It is agreed that this date was not inserted by Ms. Walters."

[5] Counsel for the Law Society submitted that in light of the Respondent's own admission of professional misconduct, her relative experience at the Bar (the Respondent has been called since August 1, 1985 and maintained her practicing status until December 31, 2002 when she commenced non-practising status until her return to practice on May 23, 2003), and her previous conduct record which included a conduct review in May, 2002 relating to two separate complaints made against the Respondent involving a conflict of interest and a threat to bring criminal and civil action against a third party in the course of acting for a client, a monetary penalty of $3,000 would be appropriate in addition to the imposition of costs in the amount of $3,500, noting that a substantial amount of those costs were attributable to the inability of counsel to agree on the form of the Agreed Statement of Facts until shortly before the Hearing. In support of these submissions, counsel for the Law Society referred to the following decisions:

Re: *Crispen Henry Lynden Morris*, Disciple Case Digest 98/9: Hearing Panel ordered a $10,000 fine and $2,500 in costs in respect of Mr. Morris'actions in altering an affidavit sworn by his client and filing it in a Supreme Court registry without advising the client or having the client either acknowledge the alteration or swearing an amended affidavit. Counsel for the Law Society candidly acknowledged that this may be considered as being in the upper range of possible penalties.

Re: *Raymond Michael Stunden*, Discipline Digest 94/13: Hearing Panel ordered a $3.000 fine and $1,000 in costs where Mr. Stunden, in the course of representing a client on a child maintenance application, signed the jurat of a financial statement, purportedly on the basis that the client had appeared before him to swear an oath of full disclosure and to sign the document. The client has, in fact, signed the financial statement earlier, before it was finalized. She subsequently discussed the statement with the member and approved the revisions. In the view of counsel for the Law Society, this case is most on point in the sense that it involved no substantive inaccuracy in the sworn document.

[6] Counsel for the Law Society also indicated that he was amenable to the Respondent being given a substantial amount of time to pay the fine and costs and further confirmed that he was not seeking a reprimand in the circumstances.

[7] In contrast, counsel for the Respondent advocated greater leniency and a lesser penalty in light of the difficult family circumstances in which the Respondent found herself in and around the time of the misconduct. It appeared that at the relevant time, the Respondent was heavily embroiled in dealing with her teenage daughter's substance abuse and self-destructive behaviour which eventually led to the Respondent giving up her practice in British Columbia to move to Alberta to be with her daughter for the 1 ½ years that she was enrolled in a rehabilitation program. In his submission, these problems affected the Respondent's judgment and conduct at the time. An appropriate penalty in his submission would be a reprimand or a fine on the low end of the scale.

[8] In support of this, counsel for the Respondent referred to the decision of Re: *Laura Lee Grant*, Discipline Digest 03/09 in which the Panel ordered a reprimand and $750 in costs in a case in which in order to accommodate the desire of logger client who needed to return to work immediately, Ms. Grant agreed that

he could sign an affidavit on the first page of a blank form of financial statement after he had specifically sworn as to the truth of a penciled version of the financial statement and after he had authorized Ms. Grant's staff to type up the blank signed statement in identical form to the penciled version. In the view of counsel for the Respondent this is akin to the present case in that it involved at worst a mere "technical alteration of an affidavit" .

[9] Counsel for the Respondent distinguished the *Stunden* decision on the basis that the conduct was more aggravated as it involved incomplete information on the sworn statement.

[10] Counsel for the Respondent also noted that the Respondent has recently been through a Practice Review which cost her some $3,000 and has recently had to buy a software program, which meant that her financial resources were somewhat strained. Various letters of support and character references were also submitted by counsel on behalf of the Respondent.

[11] While the Panel is sympathetic towards and deeply regrets the difficult personal and family circumstances in which the Respondent found herself at the time that the misconduct occurred, the Panel is nonetheless of the view that the nature of that misconduct is such that it cannot and ought not to be condoned by the profession and is deserving of censure. Those difficult circumstances cannot be used to justify unprofessional conduct by a member. As stated by the Hearing Panel in Re: *Lee Murray Bill Sheddy*, August 23, 2004:

> "[23] Lawyers are put in a special position by virtue of the *Evidence Act* and by virtue of their profession. They are permitted by the Evidence Act to complete jurats to enable documents to be submitted into evidence that have the force of evidence made under oath.
>
> [24] Lawyers have a duty to scrupulously adhere to the formalities of swearing affidavits because to do otherwise will have grave repercussions. Deponents can escape perjury sanctions. Unreliable affidavits may cause judges and masters to worry about admissibility issues instead of dealing with facts which should be properly before them."

[12] This Panel is of the view that the words of the Hearing Panel in *Sheddy* apply equally here:

> "[28] Allowing this conduct to go uncensored would harm the standing of the legal profession. Documentary evidence sworn before lawyers would lose its value if the public and the courts became aware that scrupulous adherence to the rules of swearing such documents was not being practised."

[13] Accordingly, we accept the Respondent's admission of professional misconduct and order that the following penalty be imposed against the Respondent, based on her admission of professional misconduct:

1. A fine in the amount of $3,000 payable within six months; and
2. Costs in the amount of $3,500 payable within a period of one year thereafter.