

[2003] LSBC 41

Report issued: November 14, 2003

Oral Reasons: October 28, 2003

Citation issued: July 14, 2003

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

JOHN ALLAN DAVIES

Respondent

**Decision of the Hearing Panel
on Facts and Verdict**

Hearing date: October 28, 2003

Panel: Russell S. Tretiak, Q.C., Single Bencher

Counsel for the Law Society: Jessica Gossen

Counsel for the Respondent: William Clark

Background

[1] On July 14, 2003, a citation was issued against the Respondent pursuant to the *Legal Profession Act* and Rule 4-15 of the Law Society Rules by the Executive Director of the Law Society of British Columbia, pursuant to the direction of the Chair of the Discipline Committee. The citation directed that this Hearing Panel enquire into the Respondent's conduct as follows:

1. You failed to comply with the Practice Supervision Agreement dated June 12, 2002 in that you failed:
 - (a) to provide to the practice supervisor a monthly written summary of all open files as required by paragraph 1;
 - (b) to meet with the practice supervisors on a monthly basis as provided for by paragraph 2;
 - (c) to notify Adam de Turberville each month of any new civil litigation clients with the information set out in paragraph 1.

2. You failed to comply with a term of the Order of the Hearing Panel dated June 4, 2002, and set out in the written Decision of the Hearing Panel dated August 26, 2002, that you provide to the Law Society a Statutory Declaration, listing each of your creditors and the amount due to each commencing August 15, 2002, and every six months thereafter until you are relieved of this obligation by the Discipline Committee. You have not been relieved of this obligation by the Discipline Committee and while you submitted one on June 29, 2002, you have not submitted the Statutory Declaration due February 15, 2003

[2] The Respondent acknowledged proper service of the citation and waived the requirements of Rule 4-15

of the Law Society Rules.

[3] Pursuant to Rule 5-2(2) the Respondent agreed to a Panel consisting of a single Bencher.

Agreed Statement of Facts

[4] An Agreed Statement of Facts was filed as Exhibit 3 in these proceedings. It provides as follows:

1. John Davies was called to the Bar of British Columbia on December 10, 1993.
2. Mr. Davies practiced with the firm Molnar Desjardins & Associates from his time of call until September 26, 1994, when Mr. Davies started the John Allan Davies Law Corporation.
3. On June 21, 2001, a citation was issued against Mr. Davies as a result of his having:
 - a) failed to serve his clients in a conscientious, diligent and effective manner as so as to provide a quality of service at least to that which would be expected of a competent lawyer, contrary to Chapter 3, Rule 3, of the *Professional Conduct Handbook*;
 - b) failed to provide a reply to the written requests of the Law Society;
 - c) breached an undertaking which he had provided to the Law Society that he would not practice in the area of real estate conveyancing; and
 - d) failed to pay an account rendered by Terence Ison, a member, for which account he had guaranteed payment.
4. On June 4, 2002, a Hearing Panel found the counts in the citation to have been proven and found Mr. Davies guilty of professional misconduct.
5. The Hearing Panel ordered that Mr. Davies immediately enter into two Practice Supervision Agreements (" Agreement"), one with Keith Jones and the other with Adam de Turberville and that he maintain those Agreements in good standing until relieved of the obligation to do so by the Practice Standards Committee.
6. Mr. Davies has not been relieved of the obligation to maintain those agreements.
7. Clause 10 of each Agreement requires that the supervisor report in writing to the Law Society if Mr. Davies breaches any of the terms of the Agreement.
8. Mr. de Turberville wrote to the Law Society on February 28, 2003 advising that Mr. Davies was in breach of the Agreement.
9. Paragraph 2 of the Agreement provides that Mr. Davies is to notify Mr. de Turberville each month of any new civil litigation clients and provide information required by paragraph 1 of the Agreement.
10. Paragraph 2 provides discretion to Mr. de Turberville to assess the new file and determine whether or not Mr. Davies should take on new matters.
11. Mr. de Turberville reported that Mr. Davies had not advised him when he had taken on a new client and only became aware of new files when he received the list from Mr. Davies.
12. Mr. de Turberville also reported that the list which was provided to him by Mr. Davies failed to comply with paragraph 1 of the Agreement which provides that the monthly summary to be prepared by Mr. Davies contain a minimum amount of information.

13. Mr. de Turberville and Mr. Davies met on only three occasions, July 11, 2002, October 2, 2002 and December 17, 2002. Paragraph 3 of the Agreement requires Mr. Davies to meet with Mr. de Turberville monthly and paragraph 11 requires Mr. Davies and Mr. de Turberville to communicate on a regular basis.

14. James Dent, Professional Conduct Staff, made inquiries with Mr. Davies' other supervisor, Keith Jones, and Mr. Jones provided a report to the Law Society in his letter dated March 24, 2003.

15. Mr. Jones had a meeting by telephone on March 22, 2003 with Mr. Davies. Prior to that he and Mr. Davies reviewed matters on January 7, 2003.

16. The Agreement requires Mr. Davies to provide the supervisor with a monthly written summary of all open files, that Mr. Davies notify Mr. Jones each month of new clients and to meet monthly. Mr. Davies did not comply with paragraph 1 of the Agreement.

17. Mr. Dent wrote to Mr. Davies on April 2, 2003 and requested that Mr. Davies provide a response to the matter of his failure to comply with the Agreements.

18. Mr. Davies responded to the Law Society in his letter dated April 17, 2003. He did not address the issue of his failure to comply with the terms of the Agreements.

19. In addition to ordering Mr. Davies to enter into the Agreements with Messrs. de Turberville and Jones at the June 4, 2002 hearing, the Panel ordered Mr. Davies to provide a Statutory Declaration to the Law Society, listing his creditors and the amount due to each of them.

20. Mr. Davies has not been relieved of his obligation to provide Statutory Declarations to the Law Society.

21. The first Statutory Declaration was to be provided August 15, 2002, with ones being provided every six months thereafter until Mr. Davies was relieved of his obligation to do so by the Discipline Committee of the Law Society.

22. Mr. Davies provided one Statutory Declaration sworn June 29, 2002. He had not provided any other Statutory Declarations to the Law Society as he was required to do.

23. On May 8, 2003, pursuant to Rule 4-13 of the Law Society Rules, the Discipline Committee resolved to recommend to the Chair of the Discipline Committee that there be a direction to issue a citation against Mr. Davies for his conduct in failing to have maintained the Practice Supervision Agreements in good standing as required by the Hearing Panel and in respect of Mr. Davies' failure to have provided statutory declarations to the Law Society at six month intervals as required by the Hearing Panel, and the Chair so directed.

24. The Discipline Committee further resolved to refer this matter to a Panel of three Benchers, pursuant to s. 39 of the *Legal Profession Act*, to determine whether, pending the disposition of the citation, Mr. Davies ought to be suspended from the practice of law or that conditions be placed on his practice.

25. A copy of the citation dated July 14, 2003, and schedule is attached and was served on Terrence Robertson, Q.C., counsel for Mr. Davies, by way of courier on July 14, 2003.

26. The Law Society received from Mr. Robertson a statutory declaration of Mr. Davies dated June 1, 2003.

27. Mr. Jones indicated in his letter dated June 25, 2003 that he assumes some responsibility for the

difficulty in arranging meetings between Mr. Davies and himself.

28. On September 4, 2003, given that Mr. Davies continued to be subject of the conditions placed on his practice by the Panel in June 2002 and he was now in compliance with the terms of the Practice Supervision Agreements to the satisfaction of the practice supervisors, the Discipline Committee resolved to rescind the direction made May 8, 2003 to refer Mr. Davies to three Benchers, pursuant to s. 39 of the *Legal Profession Act*.

29. Mr. Davies acknowledges that his failure in maintaining his Practice Supervision Agreements in good standing as required by a Hearing Panel constitutes professional misconduct.

30. Mr. Davies acknowledges that his failure to provide statutory declarations to the Law Society at six month intervals as required by a Hearing Panel constitutes professional misconduct.

Decision

[5] The Panel has considered the submissions of counsel and the evidence summarized in the Agreed Statement of Facts. I find that the allegations contained in the Schedule to citation have been proved, and constitute professional misconduct on the part of the Respondent.