

[2003] LSBC 41

Report issued: November 14, 2003

Oral Reasons: October 28, 2003

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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 Penalty**

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

[1] This phase of the hearing concerns the imposition of penalty for the conduct that has been described in my reasons on Facts and Verdict, given earlier.

[2] The Panel has been told that the Respondent has social motives and he extends to those who are marginalized amongst his clientele, access to the legal system, to quote the prior Panel " which may otherwise not be available to them" .

[3] The cost of that is that the Respondent has, to follow his motives, found himself in a very restricted and limited income. The income that has been provided to me is one which is, in my experience, amongst the lowest among the practicing bar. The Respondent is to be commended for his social motives. I believe, however, that what has occurred is that these social motives have engendered another phenomenon, that is that the Respondent himself, and his family, live in very modest circumstances and those circumstances render more limited the options available to him as well. They render more acute the day to day exigencies of life.

[4] I am told that a number of reasons exist for his default. By way of example, his accountant was away from her practice for a prolonged period of time and the Respondent, because of loyalty and familiarity with that person, put himself in a situation of not being able to adhere to his undertakings.

[5] I am told that because he practices on Salt Spring Island he has been constrained to obtain supervisors who are off the Island, and that there are communication difficulties which arise from time to time in regard to his ability to speak to those supervisors. I am told also that the Respondent is a single parent to two teenage boys, and I can well imagine the difficulties that those responsibilities create and how they impact upon his practice. As well I am told that as his case load changes and as he acquires more complex litigation - and I am given a specific example of a case which required his attention - that he devoted himself to servicing that client as opposed to servicing his own needs and his professional responsibilities.

[6] I have considered the summation given in the report concerning Charles Ogilvie. The Panel there outlined a number of factors which should be considered by panels in dealing with matters such as the case at bar. These factors appear to be derived from the criminal sentencing process and I have considered each and every one of them, although counsel have concentrated only on those they considered appropriate.

[7] The Respondent says he fell victim to the patterning of the Practice Supervision Agreement, which was a condition imposed by the Panel. That pattern was different than that imposed by the undertaking. The Law Society and the Respondent are now satisfied with the progress that has been made.

[8] Costs have been agreed at \$500 and I order that those costs be payable by February 28, 2004. The issue that remains for the Panel to decide is what is the appropriate penalty, in monetary terms, to be rendered in the circumstances.

[9] Counsel have submitted that any fine would be problematic in the Respondent's limited financial circumstances. I still, however, cannot comprehend how the Respondent, having gone to the edge of the precipice, failed to understand the exigency and danger of his circumstances. I feel unable to assist the Respondent in that, although I dearly wish I could.

[10] I have been provided with a series of authorities, which are of some value, although the fact patterns differ considerably from that at bar. Those decisions, more often than not, show a fine in the range of \$1,000 to \$2,500 would be appropriate. However, both Ms. Gossen and Mr. Clark urge upon me a range between \$1,000 and \$2,000.

[11] Had I been able to understand better the reasons for the Respondent's failings, I would have been inclined towards a fine at the lower end of the scale. But not having that personal ability, I am persuaded that to fine the Respondent \$1,000 would be inappropriate. The question for me, then, is what is the appropriate amount. I take that to be a discretion that must be exercised in accordance with the prior authorities, and I will say that I would be inclined, were it not for the submissions of counsel, to impose a fine probably in excess of \$2,000. However, I give great credit to the submissions of counsel and value extraordinarily the expertise and the knowledge of these facts that they bring to the Panel.

[12] Accordingly, in deference to that, I will stay within the range that they have submitted to me. I am persuaded that considering the Respondent's unusual circumstances that a fine of \$1,500, would be appropriate. Because of his economic circumstances I am going to order that the fine be paid in increments of \$100, commencing with a payment by the end of March, 2004, and going for 15 months after that.

[13] I would say to the Respondent, I am much impressed by your social motives and I think those are most commendable, and those are the kinds of things that good lawyers do. However, a complete lawyer is not just a lawyer who has proper and high-minded social motives; a complete lawyer in British Columbia now has to have economic rationale for a practice, has to have a well balanced regard for professional obligations, and has to be able to complete, within certain reasonable parameters, the duties undertaken for the lawyer's client. I have said that I feel frustration, because I still don't understand the failings that brought you here today. You may not find other panels are quite as agreeable, and I am hoping that the trouble being here today may be of assistance to you in avoiding future lapses.