

2013 LSBC 14

Report issued: May 31, 2013

Oral Reasons: May 8, 2013

Citation issued: November 9, 2011

Citation amended: August 28, 2012

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

**JOHN EDWARD ROBERTS**

Respondent

**Decision of the Hearing Panel  
on Disciplinary Action**

Hearing date: May 8, 2013

Panel: David W. Mossop, QC, Chair, Shona A. Moore, QC, Lawyer, Thelma Siglos, Public representative

Counsel for the Law Society: Jaia Rai

Counsel for the Respondent: Albert M. Roos, QC

## Background

[1] In our decision on Facts and Determination issued December 17, 2012, the Panel determined at paragraph [51] that the Respondent committed professional misconduct when he:

- (a) proceeded by default and obtained default judgment against the defendant, when he knew the defendant was represented by another lawyer, without providing to her reasonable notice of his intention to do so; and
- (b) failed to reply reasonably promptly and substantively to communications from another lawyer ... that required a response, and in particular, to ... correspondence dated July 9, July 16, July 22 and 27, 2010.

[2] The Panel found that the Respondent was not motivated by any intention to gain an advantage for his client or to deceive opposing counsel. Nor did the Respondent personally benefit from his misconduct. Rather, the misconduct occurred during a four week period during which the Respondent was absent from his office and failed to ensure adequate coverage for his practice.

### **disciplinary action decision**

[3] During the hearing on disciplinary action, the Panel received evidence concerning the income the Respondent derived from his law practice. Pursuant to Rule 5-6(2)(a), the Panel ordered that the information contained in the financial document marked as Exhibit 8 remain confidential. The Panel is satisfied that the Respondent has modest earnings from his law practice.

[4] The Law Society and the Respondent were agreed on all but one aspect of the proposed disciplinary action. They were agreed that the Respondent should pay a \$3,000 fine, costs in the amount of \$2,000 and be given time to pay until October 30, 2014. They disagreed on whether the Respondent should be referred to the Practice Standards Committee of the Law Society and ordered to comply with any directions or orders made by that Committee.

[5] At the conclusion of the hearing on disciplinary action, the Panel rendered an oral decision that the Respondent pay on or before October 30, 2014:

- (a) a fine in the amount of \$3,000; and
- (b) costs in the amount of \$2,000.

The Panel's decision on disciplinary action reflects the agreement reached by the Law Society and the Respondent on these matters.

[6] The Law Society sought a further order that the Respondent be referred to the Practice Standards Committee. The Panel declined to impose that additional disciplinary action.

[7] What follows are our reasons for this decision.

## reasoning

[8] The Panel considered the submissions of the Law Society and the Respondent with respect to their agreed submission on disciplinary action. The Panel is satisfied that, in the context of this case, a fine in the amount of \$3,000 is an appropriate disciplinary response having regard to the principles set out in the *Law Society of BC v. Hordal*, 2004 LSBC 36 and *Law Society of BC v. Ogilvie*, [1999] LSBC 17.

[9] The Law Society and counsel for the Respondent agree that the seriousness of the Respondent's misconduct is on the low range. The Respondent has practised since 1995 and, until this case, had no prior disciplinary record.

[10] The misconduct occurred during a one-month period where a variety of circumstances converged in the Respondent's personal and professional life, which resulted in the Respondent being away from his office for almost a month with insufficient arrangements being made for the conduct of his practice in his absence. The Panel considered all of the authorities referred to by counsel, and find that the circumstances of this case support a fine in the amount of \$3,000. We are satisfied that a fine in this amount provides sufficient specific and general deterrence to protect the public, maintain high professional standards and preserve public confidence in the legal profession.

[11] The Law Society and the Respondent made submissions concerning their agreement on costs in the amount of \$2,000.

[12] The costs calculated under the Tariff totaled \$7,500 plus disbursements. The Panel has decided to exercise its discretion to reduce the costs on the basis of the Respondent's financial circumstances and ability to pay.

[13] The Respondent has modest earnings from his practice at present. His practice has been adversely affected by the economic downturn. Having regard to the Respondent's financial circumstances, a reduction of costs to the amount of \$2,000 is appropriate in all of the circumstances. Again, in light of the realities of the Respondent's current financial circumstances, we accept the agreement of the Law Society and the Respondent that he be given time to pay the total amount of the fine and costs.

[14] The Law Society sought an additional order pursuant to Section 38(5) or (7) of the *Legal Profession Act* that the Respondent be referred to the Practice Standards Committee and that he be bound by any directions or orders made by that Committee. The Law Society's position is that protection of the public requires proactive steps aimed at minimizing the risk of similar misconduct in the future.

[15] The issue before the Panel is whether a referral to Practice Standards is required to meet the goals of remediation and public protection. A decision to make an order referring a lawyer to the Practice Standards Committee will always turn on the facts of each case.

[16] On the case before us, there is no evidence that the misconduct was habitual or conduct requiring remediation to protect the public. The Respondent has no prior disciplinary record and has practised without further incident since the events of July 2010. The Panel is satisfied that his misconduct arose from a unique series of events rather than from lack of knowledge about the standard of practice expected of him or any ability of the Respondent to maintain the orderly supervision of his practice.

[17] For these reasons we decline the further order sought by the Law Society.

### **order**

[18] Our order issued orally on May 8, 2013 was that the Respondent pay on or before October 30, 2014:

1. a fine in the amount of \$3,000; and
2. costs in the amount of \$2,000.