

2005 LSBC 12

Report issued: April 4, 2005

Citation issued: July 9, 2002

Citation amended: February 12, 2004

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

Danine Lorraine Geronazzo

Respondent

**Decision of the Hearing Panel
on Penalty**

Hearing date: January 18, 2005

Panel: David Zacks, Q.C., Joost Blom, Q.C., Dirk Sigalet, Q.C.

Counsel for the Law Society: Gerald A. Cuttler

Counsel for the Respondent: Christopher Hinkson, Q.C.

[1] This is a decision as to penalty arising out of an August 12, 2004 panel decision. We found that Ms. Geronazzo had professionally misconducted herself on five counts (with the exception of a portion of each of Count 2 and Count 4). The fundamental element of the impugned misconduct was that certain statements Ms. Geronazzo had made to her employers and to the Law Society were false. The particulars of our findings are best set out by the allegations of each count and these are reproduced below, with our conclusions.

1. Your conduct in that you attempted to mislead Kelley McCullagh, a partner at your employer law firm, Carfra & Lawton, by representing to Ms. McCullagh that you had prepared and sent a response as requested by a Manitoba client "R" to the client on or about July 15, 1999 when you knew this representation was untrue.

We found that the Law Society had met the burden of proving Count 1 and that the Respondent had professionally misconducted herself.

2. Your conduct in that you attempted to mislead Mr. Carfra, Q.C. in relation to client "M.I.A." by asserting to Mr. Carfra that:

a) you had had telephone contact with Mr. Koolman, an employee with the Township of Esquimalt, when you knew you had not done so;

b) you had prepared and sent an affidavit to Mr. Wotherspoon, an employee with the Township of Esquimalt when you knew you had not done so.

We found that the Law Society had not met the onus on it to prove Count 2(a) but had met the onus in respect of Count 2(b), and that the Respondent had professionally misconducted herself in misleading Mr. Carfra by stating that she had sent an affidavit to Mr. Wotherspoon when she knew that she had not done

so.

3. Your conduct in that you attempted to mislead Kelley McCullagh by representing to Ms. McCullagh that a submission on the "H" file had been sent to Workers'Compensation Board in September 1999 when you knew this representation to be untrue.

We found that the Law Society had met the onus on it to prove Count 3 and that the Respondent had professionally misconducted herself.

4. Your conduct in attempting to mislead the Law Society in the course of responding to its inquires pursuant to the complaint of James Carfra, Q.C. by:

a) representing to the Law Society that you had prepared and sent a response to client "R" on or about July 15, 1999 when you knew this representation was not true;

b) representing to the Law Society that, in relation to client "M.I.A." you:

i) had telephone contact with Mr. Koolman when you knew you had not, and;

ii) had prepared and sent an affidavit to Mr. Wotherspoon when you knew you had not done so;

c) representing to the Law Society that you had prepared and sent a submission on the "H" file to the Workers'Compensation Board when you knew this representation was untrue.

We found that the Law Society had met the burden of proof and that the Respondent professionally misconducted herself by attempting to mislead the Law Society in the course of responding to its inquiries in the manner set out in Count 4 other than in respect of the matter set out in Count 4(b)(i).

5. Your conduct in that you attempted to mislead Nicholas A. Mosky, a partner at your employer law firm, Waddell Raponi, between in or about March and August 2001, by representing to Mr. Mosky that you had filed an appointment to assess the accounts of Waddell Raponi regarding the "R" clients, that you had served the clients by mail with the Appointment, and that the assessment hearing had been adjourned and reset, when you knew that these representations were untrue.

We found that the Law Society had met the burden of proving Count 5 and that the Respondent professionally misconducted herself in respect of that matter.

[2] These findings are of significant misconduct. The choice of sentence is stark— suspend for a period of time or disbar. It is trite to say that either choice will have a significant and profound effect on a young member of the Law Society starting a legal career.

[3] We have considered the evidence in the four days of hearing to see if this evidence suggested any explanation for this behavior, and have found no explanation. At the sentencing hearing, counsel for Ms. Geronazzo stated that Ms. Geronazzo continues to maintain that the Panel is mistaken in its finding. Accordingly, Ms. Geronazzo remains steadfast that she was telling the truth to her employers and to the Law Society.

[4] Ms. Geronazzo's actions, as we have found them to be, were without discernible motive in terms of material advantage. There was no personal monetary benefit and certainly no advancement for her within the firm. Although some of Ms. Geronazzo's statements were made to people outside her law firm, they were not such as to promote the reputations of her respective employer law firms. Her misrepresentations

were not, in relative terms, serious. Because of the responsible efforts of the respective law firms, no client suffered.

[5] Ms. Geronazzo's methods achieved two ends: the purchase of some time and some avoidance of responsibility for her inaction. Neither the means nor the ends are justifiable. Now this Panel must decide the price Ms. Geronazzo must pay for her purchase.

[6] The above considerations suggest that the penalty should be toward the lower end of the scale. It is true that Ms. Geronazzo continues to maintain that she was telling the truth, which is not a situation conducive to remorse, mitigation or a reduced likelihood to re-offend. Nevertheless, a severe penalty will not achieve any epiphany for Ms. Geronazzo, bearing in mind that she has not renewed her membership in the Law Society. As for the remediative aspect and the protection of the public aspect of our sentencing considerations, we think they are best served by imposing an extensive period of practice supervision in a setting of two or more members.

[7] Accordingly, this Panel's decision as to penalty is as follows:

1. Ms. Geronazzo be suspended from the practice of law until both of the following requirements are satisfied:
 - (a) Ms. Geronazzo has entered into a Practice Supervision agreement for a period of two years after recommencing practice, as approved and thereafter supervised by the Law Society's Practice Standards Committee;
 - (b) Ms Geronazzo certifies by letter to the Practice Standards Committee that, for the two year period of Practice Supervision, she will engage in the practice of law only as an employee, associate or partner with two or more members of the Law Society who are not related to her by blood or marriage. For clarification, an office sharing practice situation will not satisfy this requirement.
2. Ms Geronazzo pay the costs of the disciplinary proceeding, excluding Panel Fees. The costs itemized by the Law Society were not contested. The total costs payable are therefore \$29,283.75.