2005 LSBC 10
Report issued: March 14, 2005
Citation issued: May 19, 2004

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

SHELDON GOLDBERG

Respondent

Decision of the Hearing Panel on Facts and Verdict

Hearing date: October 8, 2004 and January 19, 2005

Panel: **Majority Decision**: Patricia Schmit, Q.C., Chair, Glen Ridgway, Q.C., **Dissent/Minority Decision**: Robert McDiarmid, Q.C.

Counsel for the Law Society: Herman Van Ommen and Joelle Walker (student)
Appearing on His Own Behalf: Sheldon Goldberg

Background

[1] On May 19, 2004, a citation was issued to the Respondent pursuant to the *Legal Profession Act* and Rule 4-15 of the Law Society Rules, pursuant to the direction of the Chair of the Discipline Committee. The citation directed that the Hearing Panel inquire into the Respondent's conduct as follows:

> 1. On April 25, 2003, you left your client, Mr. T, unrepresented in mid-trial, contrary to your obligations to your client and the Court.

[2] The citation came before this Panel on October 8, 2004 and for continuation on January 19, 2005.

[3] At the commencement of this Hearing, the Respondent admitted that the requirements of the Rules and the *Legal Profession Act* regarding issuance and service of the citation had been met.

[4] The citation was entered by consent as Exhibit 2.

[5] At the commencement of the Hearing the Respondent consented to Mr. McDiarmid being part of the Panel hearing the within matter, despite Mr. McDiarmid having sat on the Discipline Committee but not having dealt with the instant citation.

Evidence

[6] Counsel for the Law Society filed eleven exhibits, including several transcripts recording events that occurred at the Provincial Court, 222 Main Street, Vancouver, BC ("Main Street") on April 25, 2003, and correspondence between the Law Society and Respondent. Counsel also called three witnesses. Two of the witnesses were Crown Counsel responsible for handling two files at issue in this proceeding, being R. v. T

and R. v. D respectively.

[7] Counsel also called as a witness a sheriff who dealt with Mr. T on April 25, 2003.

[8] The Respondent gave evidence on his own behalf. He filed five exhibits, including a trial scheduling memo, an Information and a Probation Order.

[9] From a perusal of the exhibits and after hearing the evidence of the witnesses, the Panel made the following findings of fact.

[10] On April 25, 2003, the Respondent, representing client Mr. T, attended at the Provincial Court, Courtroom 303, Main Street, for Mr. T's trial.

[11] The Provincial Court at Main Street is a busy place. While efforts are made to schedule matters in particular Courtrooms, it is not uncommon for matters, including trials, to be shuffled from Courtroom to Courtroom as time and Judges become available.

[12] Mr. T's trial, R. v. T was scheduled to consume four hours of Court time. This trial was the only matter the Respondent had scheduled for hearing on April 25, 2003.

[13] Mr. T had been denied bail and remained in custody on the instant charges of attempted break and enter of a residence. Therefore his trial was a priority to proceed.

[14] That morning, scheduling problems occurred in other Courtrooms at Main Street, resulting in the matters that had been scheduled for Courtrooms 306 and 309 being called into Courtroom 303 to be dealt with.

[15] This is not an uncommon situation.

[16] Her Honour Judge Godfrey was presiding in Courtroom 303.

[17] Mr. T's trial was to be heard in Courtroom 303, before Judge Godfrey.

[18] Before Mr. T's trial commenced, Judge Godfrey dealt with several matters including a matter R. v. D which was also set for trial that day.

[19] Ms. D, the accused in R. v. D was facing two charges of breach of probation.

[20] Ms. D was not represented by a lawyer at the time that the matter was called before Judge Godfrey. Crown Counsel, Ms. R indicated to the Court that R. v. D was ready to proceed, Ms. D indicated that she was ready to proceed. The matter was peremptory on Ms. D due to numerous adjournments and the age of the information. Judge Godfrey directed both Crown and Ms. D to stand down to await a decision as to whether the trial of R. v. D would be moved to another Courtroom or whether it would be dealt with by her in Courtroom 303.

[21] Respondent's evidence was that he was unaware of what was happening regarding other cases called in Courtroom 303 as he sat waiting, including anything regarding R. v. D. He was unaware that matters were before Judge Godfrey due to illnesses of other Judges, he was unaware of whether R. v. D would be going into another Courtroom in the afternoon, and he was unaware that that trial had been set "peremptorily" .

[22] Mr. T's trial commenced before Judge Godfrey.

[23] Over the course of the morning, the Crown completed four of its five witnesses in R. v. T. An interpreter was present to translate evidence for Mr. T. At noon, the Court stood down for lunch and Mr. T was returned

to cells at 222 Main Street.

[24] After the lunch break, the Court session resumed in Courtroom 303 before Judge Godfrey.

[25] Before Mr. T was present in the Courtroom, Crown Counsel, Ms. R, called R. v. D. She advised the Court that she had been informed by the Respondent over the lunch break that he had been retained by Ms. D and the file was being called in Courtroom 308.

[26] The Respondent sought a brief adjournment of Mr. T's matter which Judge Godfrey granted. He left Judge Godfrey's Courtroom. Judge Godfrey stood Court down to await his return.

[27] Ms. R and the Respondent went to Courtroom 308 to deal with the Respondent's adjournment application in R. v. D.

[28] Time passed in Courtroom 303. The few minutes stretched into half an hour. At approximately 3:00 p.m. R. v T was returned to Courtroom 303 without having been spoken to because the Judge in Courtroom 308 was already occupied with matters.

[29] R. v. D was recalled in Courtroom 303. The Respondent made his adjournment application before Judge Godfrey.

[30] Mr. T was not in Courtroom 303 throughout this exchange between the Court, Crown and the Respondent.

[31] The Crown opposed the Respondent's adjournment application on R. v. D on the basis that the charges were old, dating from 2001, that several earlier trial dates had been aborted due to Ms. D's then counsel getting off the record, and that the trial date of April 2, 2003 had been fixed after Crown had determined that Ms. D was not going to have counsel and that this date would be peremptory on Ms. D.

[32] The Respondent argued for the adjournment on the basis that Ms. D should now come to the conclusion that she could not represent herself at trial, that Ms. D was unfamiliar with the Court process, that the Respondent as counsel for Ms. D wanted the opportunity to speak to Crown after which time he might admit evidence of a police officer that would obviate the need to call that officer as a witness, and there was no urgency since there was no suggestion of continued contact between Ms. D and the complainant. The Respondent suggested that a trial date could be set as early as 60 days hence. The Respondent did not indicate at any time that the Crown's case was fatally flawed because it could not prove notice of the terms of the Probation Order had been given to Ms. D.

[33] Judge Godfrey denied the Respondent's adjournment application on R. v. D and directed that the file be taken to another Courtroom for trial.

[34] Judge Godfrey directed that R. v. T proceed.

[35] Judge Godfrey directed that Mr. T be brought down from cells.

[36] The Respondent was unhappy with the ruling.

[37] The Respondent asked Judge Godfrey if he could go to the Courtroom where R. v. D would be tried, to assist Ms. D. Judge Godfrey refused this request and directed that the Respondent continue the trial R. v. T.

[38] The Respondent left Courtroom 303.

[39] Judge Godfrey had Mr. T brought from cells and directed a mistrial of R. v. T.

[40] The Respondent went to Court 305 where Ms. R had taken the R. v. D file to be heard before Judge

Bruce.

[41] The Respondent advised Judge Bruce that he was representing Ms. D and that he wanted the Crown to call its case and then he would be seeking an adjournment.

[42] It then became clear that the Crown had been relying on Ms. D's representation that she was admitting that she was bound by the Probation Order and that the Respondent was withdrawing any such admission.

[43] The Crown proceeded with its first witness in R. v. D at about 3:00 p.m. and the Court was occupied with the leading of the Crown's evidence and the Respondent's cross examination straight through until 4:25 p.m. By the time the Crown's available witnesses'evidence was concluded, it was 4:25 p.m., and there was insufficient time to conclude the case. Ms. D's trial was adjourned to continue on a date to be set.

[44] Mr. T remained in custody from April 25, 2003 until May 28, 2003 when a Supreme Court Judge released him after a bail review. The Respondent was ill on the next trial date of July 28, 2003, so the trial was adjourned. On the trial date of February 13, 2004, Mr. T did not appear and a bench warrant was issued for his arrest.

[45] On April 25, 2003, the Respondent did not speak to Mr. T before agreeing to represent Ms. D.

[46] Accordingly, the Respondent did not obtain instructions from Mr. T to seek an adjournment of his trial, in order that the Respondent could represent Ms. D at her trial.

[47] The Crown eventually stayed R. v. D because the Crown was unable to prove an element of the offense, that is, that Ms. D had been made aware of the terms of the Probation Order.

Issue

[48] Did the Respondent's conduct in leaving Courtroom 303 and leaving his client unrepresented in that Courtroom in mid-trial on April 25, 2003 , amount to professional misconduct?

Discussion

[49] If the Respondent's conduct is to be censured, it is as "professional misconduct" rather than "conduct unbecoming a lawyer" because the conduct which is the subject of the citation took place when the Respondent was acting as a lawyer.

[50] "Professional misconduct" is not defined in the *Legal Profession Act*, in the Rules of the Law Society of British Columbia or in the *Professional Conduct Handbook*.

[51] The case *Law Society v. Hops* [1999] LSBC 29 at paragraph 45 states:

> "From the legislative development, the definitions set out above from Oxford and the decisions of the Benchers have recently determined it to be appropriate to broaden the scope of professional misconduct in order to more closely regulate the activities of its members. These developments also allow less draconian punishments from those which were available when the standard of disgraceful or dishonourable conduct was required for a finding of professional misconduct. If the standard of professional misconduct still requires "disgraceful" or "dishonourable" conduct the Benchers have lowered the level of propriety to attract those descriptions, c.f. Prescott quoted in Paragraph 10 hereof. It is clear that conduct matching those descriptive adjectives is no longer required for a finding of professional misconduct."

[52] The Panel must look to its own experience, using the Canons of the *Handbook* as a guide, in order to

determine whether the Respondent's conduct fails to such an extent as to amount to professional misconduct.

[52] The relevant rules from the *Professional Conduct Handbook* are:

a) **Chapter 1**

A lawyer is a minister of justice, an officer of the Courts, a client's advocate, and a member of an ancient, honourable and learned profession.

1(1) A lawyer owes a duty to the state, to maintain its integrity and its law. A lawyer should not aid, counsel or assist any person to act in any way contrary to the law.

2(1) A lawyer's conduct should at all times be characterized by candor and fairness. The lawyer should maintain toward a Court or tribunal a courteous and respectful attitude and insist on similar conduct on the part of clients, at the same time discharging professional duties to clients resolutely and with self-respecting independence.

3(5) A lawyer should endeavor by all fair and honourable means to obtain for a client the benefit of any and every remedy and defence which is authorized by law. The lawyer must, however, steadfastly bear in mind that this great trust is to be performed within and not without the bounds of the law. The office of the lawyer does not permit, much less demand, for any client, violation of law or any manner of fraud or chicanery. No client has a right to demand that the lawyer be illiberal or do anything repugnant to the lawyer's sense of honour and propriety.

5(4) No client is entitled to receive, nor should any lawyer render any service or advice involving disloyalty to the state, or disrespect for the judicial office, or the corruption of any persons exercising a public or private trust, or deception or betrayal of the public.

b) **Chapter 8**

A lawyer shall not:

1(b) knowingly assist the client to do anything or acquiesce in the client doing anything which is dishonest or dishonourable.

c) **Chapter 10**

3. In situations not covered by Rules 1 and 2, a lawyer may sever the solicitor-client relationship or withdraw as counsel only if the severance or withdrawal

(a) will not be unfair to the client, and

(b) is not done for an improper purpose.

4. Unfairness to the client will depend on the circumstances of each case, but will normally include consideration of whether the severance or withdrawal will

(a) occur at a stage in the proceedings where the client will have to retain another lawyer to do the same work, or part of it again,

(b) leave the client with insufficient time to retain another lawyer, and

(c) give the newly retained replacement lawyer sufficient time to prepare to represent the client.

5. Impropriety will depend on the circumstances of each case, but will include severance or withdrawal in order to:

(b) assist the client in effecting an improper purpose.

[54] Counsel for the Law Society submits that the Respondent's departure from the Courtroom in the middle of the trial, leaving his client, Mr. T, unrepresented, and in the manner that he did, amounts to professional misconduct because by doing so:

(a) He breached the obligations placed upon counsel under Chapter 10 of the *Professional Conduct Handbook* respecting withdrawal as counsel.

(b) He breached the provisions of Chapter 1 of the *Professional Conduct Handbook*, in that the Respondent's conduct was not courteous or respectful of Judge Godfrey and her judicial office.

[55] Much of the Respondent's evidence in response to the position of the Law Society was to complain of his treatment at the hands of Judge Godfrey and Crown Counsel and allege that Crown Counsel was approaching unethical conduct in her prosecution of Ms. D. His position respecting his own conduct was that he should have been accommodated in his attempt to represent two clients, and where that attempt was waylaid by judicial decision, it was not professional misconduct for him to leave his client, Mr. T, unrepresented, and go to represent a new client whom he felt was in danger of being wrongfully convicted. He also denies that he was discourteous or disrespectful of Judge Godfrey when he left her Courtroom in the manner that he did.

[56] Dealing with the first issue of the Respondent's duties to his client, the Panel notes that in his evidence, the Respondent commented, "I should be able to have two trials in that Courtroom on the same day in the same Courtroom." He submitted that a process that denied him such opportunity was unfair, unreasonable, and not in keeping with normal practice, and as such, his conduct in response was justified, and not professional misconduct.

[57] The Respondent admitted in Exhibit 15 (letter S. Goldberg to LSBC July 25, 2003, pg. 2) that "if the "D" matter had been in another courtroom set for trial (which it was not) then I could have hardly taken over her Trial in preference to my client "T" nor would I have done so" .

[58] The Panel finds no evidence that the R. v. D trial would necessarily have proceeded in the same Courtroom as R. v. T. The Panel notes that Exhibit 3, the transcript of the exchange between Judge Godfrey and the Crown and Ms. D in the morning of April 24, 2003 makes it clear that the R. v. D trial would be heard in any Courtroom and before any Judge available.

[59] The Panel finds that the Respondent did not place any restrictions on his retainer by Ms. D, for example by accepting Ms. D's retainer over lunch on the assumption that her trial would either be adjourned or was continued in Courtroom 303 after completion of R. v. T.

[60]The Panel finds on the Respondent's own evidence that he had insufficient knowledge of the circumstances of the R. v. D matter to be able to conclude that it would necessarily proceed to Courtroom 303, before Judge Godfrey. He had a duty to Mr. T to use diligence to determine whether he could in fact be available to represent Ms. D while still fulfilling his obligations to Mr. T. He failed in his duty.

[61] The Panel also notes the Respondent appears to have willingly, without protest, gone from Courtroom

303 to Courtroom 308 to seek the adjournment.

[62] It was unfair to Mr. T for the Respondent to leave him without counsel, in mid-trial, in the circumstances of this trial. By walking out of Court in mid-trial, the Respondent abandoned his client at a stage in the proceedings where Mr. T would have had to face the Crown's case alone, had the Judge proceeded. The Respondent chose to put the interests of his new client before the interests of his existing client. By abandoning Mr. T, the Respondent severed the solicitor client relationship. To do so in these circumstances was to sever the relationship for an improper purpose. It was only because Judge Godfrey declared a mistrial that Mr. T's potentially unfair position of being forced to proceed while unrepresented, was avoided.

[63] The Respondent's primary duty was to the client with whom he was engaged in trial. While it is laudatory to render assistance to unrepresented citizens, it is inappropriate to do that in circumstances where that jeopardizes the position of an existing client on a pre-existing retainer.

[64] The Respondent accepted a "new" client, with only minimal and, clearly, insufficient knowledge of what was facing that client in the Court process and without considering the obligations he had to his existing client. He accepted Ms. D as a client, without any knowledge as to the impact that that would have on his representation of Mr. T, and without any prior consultation with Mr. T, to whom he had a duty nor without considering his obligations to the Court.

[65] The Panel does not accept the Respondent's evidence that he had Mr. T's implied approval for this course of conduct. He admitted, and we find, that he did not consult Mr. T prior to his decision to take on Ms. D as a client. He did not consult Mr. T regarding the wisdom of seeking an adjournment of the R. v. T matter. He told the Panel that he obtained this approval after he had left Mr. T unrepresented, because Mr. T believed he was not getting a fair trial before Judge Godfrey.

[66] We leave that for another day and specifically to not decide whether it would have been proper for the Respondent to have left the trial Courtroom if he had instructions from Mr. T.

[67] The Respondent referred the Panel to *R. v. Rowbotham* for the proposition that an accused person is entitled to be represented by counsel. The Panel is unclear as to how this case assists him in these circumstances. The Panel would have thought that a more appropriate principal of criminal law in these circumstances would be the right of Mr. T to have a trial within a reasonable period of time particularly when he was in custody.

[68] The Respondent's abandonment of Mr. T when the presiding Judge would not grant his adjournment placed Mr. T in a potentially unfair position, which was only avoided by Judge Godfrey's declaration of a mistrial. This conduct resulted in the natural and foreseeable consequences of his withdrawal, that being a delay in Court proceedings, leaving Mr. T to languish in jail.

[69] The Panel finds the Respondent breached the provisions of the *Professional Conduct Handbook*, Chapter 10 in that he breached his duty to his client Mr. T.

[70] The second aspect of this hearing is the Respondent's conduct with respect to Judge Godfrey and her judicial office.

[71] The Respondent precipitously walked out of her Courtroom when his adjournment application failed and R. v. D was taken to another Courtroom for trial, thus abandoning Mr. T and the Court.

[72] This situation arose from the Respondent's own misconduct, when the Respondent took on a new client without knowing the circumstances of what that representation entailed. Although he was waiting in Courtroom 303 for R. v. T to proceed, his evidence was that he was unaware of what was happening in that Courtroom during the morning with respect to his proposed new client. He was unaware that matters were

before Judge Godfrey due to illnesses of other Judges, he was unaware that Judge Godfrey had indicated that R. v. D would be going to another Courtroom in the afternoon, and he was unaware that R. v. D had been set "peremptorily" .

[73] The Respondent alleged that the assignment of matters to particular Courtrooms and the use of the term "peremptory" were both meaningless in terms of the operation of the Provincial Court. The Panel does not accept this submission and finds otherwise on the evidence of the Transcript, Exhibit 3 recording the morning's proceedings when R. v. D was spoken to.

[74] The natural consequence of the Respondent's conduct was to waste Court time, the time of witnesses, and other counsel, and, worst of all, to delay Mr. T's trial.

[75] There is an obligation on counsel in accepting the retainer of a new client, particularly where it may impact on the representation of an existing client, to be aware of the circumstances which may impact the representation of the new client and, in turn, the existing client. When lawyers do not do so, and subsequent Court decisions do not accommodate that lawyer's circumstances, it is inappropriate to leave a Court and the client in the fashion adopted by the Respondent.

[76] The Respondent's conduct towards the Court was discourteous and disrespectful, and amounts to a breach of the *Professional Conduct Handbook* and is professional misconduct.

[77] The Respondent's justification for this conduct, that being the need to assist Ms. D who was most in danger of injustice, is no justification, in these circumstances, for his conduct respecting Judge Godfrey.

[78] The Respondent has complained about judicial conduct.

[79] The Panel notes that the conduct of Judges is not for the Law Society of British Columbia to control. The Law Society's obligation and function is to regulate members, in the public interest. Many of the Law Society's Canons relate to appropriate conduct in stressful situations. It is important that lawyers act in a restrained and appropriate manner. This includes Court settings where lawyers may not agree with judicial decisions. It is wise to remind ourselves that if we don't agree with a particular judicial ruling, we have avenues to challenge and possibly to reverse or rectify that decision, among them, the Supreme Court, Court of Appeal, Judicial Council, and the Law Society/Judiciary complaints process. Walking out of a Courtroom is not one of them.

[80] This Panels finds that the Respondent has professionally misconducted himself in abandoning his client in mid trial, and in treating the Provincial Court Judge with disrespect.

Dissent Decision of Robert McDiarmid, Q.C.

[81] I have read the majority decision and with the greatest respect to the majority Panel members I disagree with their conclusion that the conduct of the Respondent, in the circumstances placed in evidence before the Panel, constitutes professional misconduct.

[82] In order to establish professional misconduct, the Law Society must prove that the Respondent's conduct has a component of blameworthiness which is more than a lack of care or conduct which in hindsight should have been done differently.

[83] If it is shown that a lawyer in the pursuit of his/her profession has done something with regard to it which would be reasonably regarded as disgraceful or dishonourable by the lawyer's colleagues of good repute and competency, then it is open to say that the lawyer is guilty of professional misconduct – see *Orkin, Legal Ethics, Study of Professional Conduct,* as quoted in *LSBC v. Walker* [2001] LSBC 25

confirmed [2002] LSBC 08, paragraph 26.

[84] Furthermore, conduct which though not categorized as "dishonourable or disgraceful" may constitute professional misconduct, *LSBC v. Hops* [1999] LSBC 29.

[85] The *Professional Conduct Handbook* serves as an appropriate guide to what may constitute professional misconduct, but not every breach of the *Handbook* will automatically give rise to a finding of professional misconduct. As was stated by the Judicial Committee of Manitoba in *Law Society of Manitoba v. Member A*, cited in *LSBC v. Walker* [2001] LSBC 25, paragraph 25:

> . . . a simple breach of a Rule in The Code of Professional Conduct will not necessarily result in a finding of professional misconduct. To put it another way, a lawyer acting with integrity and honesty, in what he or she perceives to be in the best interests of his or her client, should not necessarily be found guilty of professional misconduct simply because of a failure to follow a Rule of the Code of Professional Conduct. There must be an element of blameworthiness, a transgression involving conduct that is dishonourable or questionable . . . some form of moral turpitude must be found to exist – whether purposeful or merely reckless (as opposed to inadvertence or careless).

[86] The Law Society bears the standard or proving that the Respondent has professionally misconduct himself. The standard of proof in cases such as this is high, and was enunciated by McLachlin, J. (as she then was) in *Jory v. College of Physicians and Surgeons of British Columbia* [1985] B.C.J. 320, paragraph 14:

> The standard of proof required in cases such as this is high. It is not the criminal standard of proof beyond a reasonable doubt. But it is something more than a mere balance of probabilities. The authorities establish that the case against a professional person on a disciplinary hearing must be proved by a fair and reasonable preponderance of credible evidence . . . the evidence must be sufficiently cogent to make it safe to uphold the findings with all the consequences for the professional person's career and status in the community . . .

[87] In this case, there are some additional facts which I find from the evidence:

a) I find that Judge Godfrey was perceived by the Respondent to be unfair and discourteous. See Exhibit 3, Transcript from the proceedings: Her Honour made the comment: "Go get Goldberg." – although Mr. Goldberg was not present when that comment was made, it does give some indication of the sense of communication between the Judge and the Respondent. Then following the proceedings being reconvened, and referring to the same Exhibit 3, Crown Counsel Ms. R made some submissions with respect to Ms. D. At the conclusion of Ms. R's submissions, Mr. Goldberg was making submissions; the following exchange occurred:

Mr. Goldberg: "(Ms. D had) come to the conclusion she ought to have counsel. I have been retained. Now … -"

The Court: "I'm sorry Mr. Goldberg I am not prepared to grant an adjournment."

As is apparent, Judge Godfrey cut the Respondent off and made a decision without hearing submissions from Mr. Goldberg.

b) I find that the Crown would not have been able to obtain a conviction against Ms. D unless Ms. D made an admission which upon a review of the evidence was one which she not only should not have made but which was an admission of a "fact" which did not occur. She had admitted that she was bound by a Probation Order although it was patently obvious that she had not signed the Order nor

were there other circumstances in evidence by which the Crown could have proven that she was "bound" by the Order.

[88] The Respondent, accurately in my view, stated, as part of his submissions to obtain an adjournment of Ms. D's trial: "Is it a fair fight that my friend proceeds with an unrepresented accused? Of course the Crown has every motivation for a mismatch. So I am concerned about that , and the Court should be concerned about it."

[89] During submissions when the Respondent was not present, Ms. R, the prosecutor, stated: "Ms. D had previously made an admission with respect to being bound by the Probation Order and that will – whether or not that admission continues through to today will determine whether or not a third witness is required."

[90] In the circumstances, the Respondent accepted Ms. D's retainer fully expecting that her trial would proceed after Mr. T's trial had concluded. When his request for adjournment was denied, he left Mr. T and the Courtroom in which that trial was proceeding to defend Ms. D, who in my estimation would undoubtedly have been convicted had she not had the benefit of legal representation.

[91] No evidence was called as to why Judge Godfrey felt obliged to declare a mistrial. I note parenthetically that Judge Godfrey was not called to testify, although she initiated the complaint.

[92] I characterize what happened in Judge Godfrey's Court on April 24, 2003 as inappropriate and unfortunate. However, I view it as something which happened in the heat of the moment. I characterize the conduct of the Respondent as ill advised and contrary to provisions of the *Professional Conduct Handbook*, but I do not find that they give rise to a finding of professional misconduct, taking into account the meaning which I ascribe to that term and the onus of proof placed upon the Law Society.