

2004 LSBC 33

Report issued: September 23, 2004

Citation issued: December 18, 2002

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

PETER WALLACE HAMMOND

Respondent

**Decision of the Hearing Panel
on Penalty**

Hearing date: August 21, 2004

Panel: Patricia L. Schmit, Q.C., Single Bench Panel

Counsel for the Law Society: Maureen E. Baird

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

[1] On December 18, 2002, a citation was issued against the Respondent pursuant to the *Legal Profession Act* and Rule 4-13 of the Law Society Rules by the Executive Director of the Law Society of British Columbia, pursuant to a direction of the Chair of the Discipline Committee.

[2] After a three day hearing, this Panel found professional misconduct to have occurred with respect to Counts 1, 2, 6, 7(b), 8(b), 9, 10, 11, 12, 13 and 14. In an Agreed Statement of Facts, the Respondent admitted the facts underlying Counts 2, 9(a), 9(e), 10 and 11. At the commencement of the hearing Respondent's counsel admitted the facts underlying the following counts in the citation:

1. Count 6 in that the Respondent replied late.
2. Count 9 in that the Respondent breached Law Society Accounting Rules.
3. Count 10.
4. Count 11.
5. Count 12 in that the Respondent replied late.
6. Count 13.
7. Count 14 in that the Respondent replied late.

[3] This Panel dismissed Counts 3, 4 and 5.

[4] This Panel rendered a decision regarding Facts and Verdict on October 16, 2003.

[5] The within matter was adjourned to August 21, 2004, a Saturday, due to scheduling difficulties.

Personal and Professional Circumstances

[6] The Respondent's professional and personal circumstances are as follows:

1. The Respondent was called to the Alberta Bar on August 1, 1974.
2. The Respondent moved to Vancouver and articulated with Ferris & Co. and was called to the B.C. Bar on September 14, 1976.
3. The Respondent has practised in firms of several members or more, from 1978 to at least 1992 and then shared space with another member until 1998 when he became a sole practitioner.
4. The Respondent ceased to be a member of the Law Society for non-payment of annual fees on December 31, 2002.
5. On March 21 and April 3, 2003, the Respondent's application to the Benchers for retroactive reinstatement of his membership was heard. The Benchers issued a decision on April 17, 2003 refusing the request.
6. The Respondent has not practised law since some time in January, 2003.
7. The Respondent is in straitened financial circumstances as a result of his inability to practise law.
8. The Respondent's Professional Conduct Record is composed of three Conduct Reviews, as follows:
 - i) April 28, 1998 - involving complaints of breach of undertaking for failure to discharge a mortgage promptly and a failure to respond promptly to communications from the Law Society. The Conduct Review Subcommittee recommended no further action be taken.
 - ii) February 8, 2000 - involving the failure to report a judgment to the Law Society. The Conduct Review Subcommittee noted the Respondent claimed not to have known of the requirement in the Rules, to report judgments to the Law Society. The Conduct Review Subcommittee recommended no further action.
 - iii) June 19, 2000 - involving a breach of undertaking for failure to provide receipts proving payment of various utilities and taxes on a real estate deal. The Conduct Review Subcommittee recommended that the matter be referred back to the Discipline Committee.
9. The Respondent was the subject of another citation issued October 1, 2003, where a decision on Facts and Verdict was rendered on June 2, 2004. Argument on Penalty on that citation was heard August 19, 2004. Counsel for the Respondent is seeking an order that any suspension imposed in the instant case be concurrent to any suspension penalty imposed in relation to the October 1, 2003 citation.

Discussion

[7] The Counts in the instant citation can be broken down into three general categories. They are, firstly, breaches of undertakings/breaches of trust, secondly, breaches of duties to the Law Society designed to protect the public, including failures to respond to the Law Society, and failure to report judgments and thirdly, general substandard practice involving failure to maintain proper office and accounting procedures designed to protect client's monies and interest.

[8] Those Counts falling into the first category are:

1. Count 2 which involves a breach of trust. See *Re: Donaldson*, Discipline Case Digest 03/17.

Members who receive funds for Provincial Sales Tax and Goods and Services Tax remittance are impressed with a statutory trust and failure to remit those funds amounts to a breach of that trust and a breach of duty to client.

2. Counts 7(b) and 8(b) are breaches of undertakings in real estate transactions, the same sorts of issues dealt with in two of the prior Conduct Reviews.

3. Count 9 involves a breach of trust in handling of client's trust funds.

[9] Those Counts falling into the second category are:

1. Counts 6, 9, 10, 11, 12, 13 and 14 which involve duties to the Law Society designed to protect the public.

[10] Those Counts falling squarely into the third category are:

1. Counts 1 and 9.

[11] The obligation of this Panel is to impose a penalty that protects the public and which upholds public confidence in the regulation of this honourable profession, in the public interest. The only interest that must be served is the public interest.

[12] Counsel for the Law Society referred to the Penalty decision in *LSBC v. Ogilvie* [1999] L.S.D.D. No. 45, [1999] LSBC 17, Discipline Case Digest 99/25 as the framework for the sentencing process. *Ogilvie* sets out a list of 13 non-exhaustive factors as being worthy of general consideration in discipline dispositions. She submitted that the most cogent factors were the need for specific and general deterrence, and the need to ensure the public's confidence in the integrity of the legal profession. She sought a penalty involving a four to six month suspension, strict practice conditions and payment of half of the costs of the hearings held on April 29, 30, June 27, 2003 and August 21, 2004.

[13] Counsel for the Respondent submitted that the most important factor was personal and general deterrence. His submission on penalty was in essence that there should be no costs, and that any imposition of suspension, suggesting that three months was appropriate, should take into account time out of practice of 20 months resulting in the right to immediate return to practice. He agreed with the practice conditions being suggested by Counsel for the Law Society.

[14] Both Counsel cited numerous cases as examples of the range of penalties. Some cases involved facts similar to one or other count in the instant citation, some involving a panoply of counts, more illustrative of a crumbling practice spinning out of control, as was found in the instant case.

[15] Both Counsel agreed that the imposition of the types of conditions imposed in *LSBC v. Bridal* [2002] L.S.D.D. No. 32, [2002] LSBC 23, Discipline Case Digest 02/12 should govern the Respondent once he returns to practice.

[16] The Respondent was the subject of a Practice Review in November, 2000. Jackie Morris, who performed the Practice Review, made twenty recommendations involving practice management issues. A second Practice Review was conducted in February, 2002, again by Ms. Morris, who concluded that almost no progress had been made since the November, 2000 Review.

[17] No evidence was led at the Penalty hearing of any efforts by the Respondent to remediate or rehabilitate himself between January, 2003 and this Hearing.

[18] This Panel accepts completely that the Respondent cannot be left safely to practice on his own and

strict conditions are required to protect the public.

[19] The imposition of practice conditions will be sufficient to protect the public from the Respondent's substandard practice.

[20] But the public interest is not satisfied only by restricting the Respondent's practice. The public must have confidence in the ability of the Law Society to regulate and supervise the conduct of its members and it is only by maintaining such confidence in the integrity of the profession that the self regulatory role of the profession can be justified and maintained.

[21] The *Ogilvie* factors provide a non-exhaustive list of the factors and I have considered them all.

[22] In my view, the nature of the conduct involving breach of undertakings in real estate transactions, particularly given that this was the same subject matter of two previous Conduct Reviews, amount to a grave concern. The failures to respond to the Law Society, the breach of Law Society Accounting Rules designed to protect client's monies, the failure to report monetary judgments, especially in the context of the previous Conduct Review on precisely the same behaviour, and the finding that the Respondent failed to serve his clients in a conscientious, diligent and efficient manner, taken together, cry out for a penalty that protects the public.

[23] I agree with both counsel that general and specific deterrence is the most cogent factor.

[24] This Panel finds that general and public deterrence can only be satisfied with a suspension. A suspension is required to bring home to this Respondent, the Bar and the public, that the type of disintegrating practice where a lawyer ignores his (or her) duties to other lawyers and his clients, will not be countenanced.

[25] The question, as Respondent's counsel rightly pointed out, is what is the appropriate length of that suspension, and should there be consideration of the time that the Respondent has been out of practice to reduce that suspension.

[26] The Respondent has been out of practice since January, 2003. Counsel for the Respondent seeks to have this time, some twenty months, credited as a factor against any suspension imposed.

[27] Counsel for the Law Society pointed out that the Respondent's membership ceased for non-payment of fees rather than being any action imposed upon him by the Law Society. A quorum of Benchers declined his application for retroactive reinstatement. There were remedies available to the Respondent if he did not agree with this decision, such as to seek an injunction against the Law Society, or appeal to the Court of Appeal.

[28] This Panel finds that while the argument of Respondent's Counsel is attractive on the surface, it ignores the fact that it was through the Respondent's own failure to pay his practising fees, that he ceased practising. As a non-member, the onus is on him to prove fitness, and the Benchers found that that onus had not been met. Therefore, in these circumstances, this Panel declines to reduce the time of suspension to take into account time out of practice.

[29] In determining the appropriate length of suspension in this case, this Panel has considered all the cases cited by Counsel.

[30] The nature of the conduct is relevant. The Counts reflect deficiencies in a broad cross section of lawyerly responsibilities, including trustworthiness, illustrated by the breaches of undertaking and failure to pay GST/PST, financial responsibility, illustrated by the breaches of Accounting Rules, and failure to report (and pay) judgments and a flagrant disregard for the role of the Law Society in regulation of the profession,

as illustrated by the failure to respond.

[31] The range of penalty can be wide in cases of this nature.

[32] In *LSBC v. Dobbin* [2002] L.S.D.D. No. 39, [2002]LSBC 6, Discipline Case Digest 03/03, the member received a ten month suspension, with "credit" for five months due to an interim suspension imposed by the Law Society. The Panel in *Dobbin* noted that he needed time to ensure that he was emotionally stabilized. This Panel notes that there is no evidence that this Respondent suffers from any such difficulties.

[33] In *Re: James Douglas Hall* [2004] LSBC 01, failure to respond promptly to communications from the Law Society resulted in a one month suspension and a fine.

[34] In *Ogilvie* where the facts involved breaches of undertaking, as well as more serious allegations of fraudulent misstatements as to services, failure to account for trust monies, the member was disbarred.

[35] Respondent's Counsel cited numerous cases where only a reprimand was imposed.

[36] This Panel finds that the instant case involving as it does a wide cross section of transgressions requires a suspension, more in line with that imposed in *Re: Carol Faye Bennett* Discipline Case Digest 89/07 where Ms. Bennett received a four month suspension along with strict practice conditions.

[37] A fine is not appropriate given that the Respondent has not been practising for over twenty months and is in difficult financial circumstances.

[38] Regarding costs, Counsel for the Law Society sought an order requiring the Respondent to pay half of the costs, not including any investigation costs, which this Panel finds to be fair in the circumstances.

[39] I thank both counsel for the thorough submissions and carefully selected case authorities.

Penalty

[40] The penalty which is imposed pursuant to section 38(5) of the *Legal Profession Act* is as follows:

1. There will be a reprimand.
2. The Respondent will be suspended from the practice of law for a period of four months from the date of this decision. The suspension will be concurrent to any other suspension imposed by the Law Society of British Columbia.
3. The Respondent will, upon his return to practice, be subject to the following practice conditions:
 - (a) He must obtain approval in advance of commencement of employment, from the Practice Standards Committee, of any employment situation in which he seeks to become an employee.
 - (b) He must practice law only in the capacity of an employee of a specified lawyer as approved by the Practice Standards Committee.
 - (c) If his employment is terminated, he must immediately notify the Practice Standards Committee and immediately cease practising law until such time as the Practice Standards Committee has authorized him to accept another employment situation.
 - (d) He must not handle any trust transactions or trust money, or in any way be responsible for documenting trust transactions.
 - (e) He must not be responsible for any bookkeeping or financial record keeping in connection with

client files.

(f) He must not be responsible for any clerical duties involved in client file management.

(g) He must not be a signatory to any trust account without the express written approval of the Practice Standards Committee.

(h) He must consent to his employer cooperating fully with the Law Society by providing full responses to any enquiries the Law Society may make with respect to him

[41] There will be an order that the Respondent pay costs amounting to \$2,969.93, to be paid in installments of \$200.00 per month, commencing on the first day of the third month after he commences practising law.

[42] Publication of this finding is to be made to the profession in the normal course.