

## **John Allan Davies**

Salt Spring Island, BC

Called to the Bar: December 10, 1993

**Discipline hearing:** June 4, 2002

**Panel:** Ralston S. Alexander, QC, Chair, Margaret Ostrowski, QC and James D. Vilvang, QC

**Reports issued:** June 4, 2002 (facts and verdict) and September 4, 2002 (penalty); indexed as [2002] LSBC 17

**Counsel:** Jessica Gossen, for the Law Society; Albert Roos, for Mr. Davies

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### **Summary**

Mr. Davies failed to serve clients in a conscientious, diligent or efficient manner, contrary to Chapter 3, Rule 3 of the *Professional Conduct Handbook*. He further breached an undertaking to the Law Society not to engage in real estate conveyancing by representing clients in a real property sale, failed to reply to Law Society correspondence respecting a complaint against him and failed to pay a practice debt that he had guaranteed he would pay. The hearing panel found that Mr. Davies' conduct constituted professional misconduct. The panel noted that the supervision and assistance Mr. Davies had received in his practice represented a turning point for him and that, since October, 2001, he was no longer failing to serve his clients in a conscientious, diligent and efficient manner. The panel ordered that Mr. Davies 1) immediately enter into practice supervision agreements with practice supervisors and maintain those agreements in good standing until relieved of the obligation and 2) provide to the Law Society every six months statutory declarations listing his creditors and the amount he owes each of them. The panel reprimanded Mr. Davies for his failure to reply promptly to Law Society correspondence.

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### **Facts**

#### **Failing to serve clients in a conscientious, diligent and efficient manner**

Mr. Davies underwent Law Society practice reviews in 1997, 1998 and 2000.

The first practice review report, issued in 1997, set out concerns over Mr. Davies' emotional and psychological fitness to practise, his professional responsibility and ethical judgement, his office systems (including lack of a reminder system), his communications with clients and others, his knowledge of substantive law, procedure and practice and his technical skills, in particular his drafting of affidavits and other documents.

The second practice review report, issued in 1999, flagged a number of positive changes in Mr. Davies' practice. The reviewers, however, noted ongoing concerns and

recommended that Mr. Davies not practise as a solicitor in real estate conveyancing or in wills and estates. When the Practice Standards Committee requested that Mr. Davies undertake not to practise in these areas, he initially refused to provide the undertaking. He did so, however, after a new discipline citation was issued against him and a hearing was ordered to consider his interim suspension.

The third practice review report, issued in January, 2001, found that Mr. Davies had implemented some but not all of the recommendations of the first and second practice review reports. The reviewers concluded that Mr. Davies' financial circumstances had deteriorated since his previous review and that his knowledge of law, practice and procedure was poorer. The reviewers recommended that he voluntarily resign his membership or, alternatively, agree to and arrange for a lawyer to supervise his practice.

Mr. Davies took issue with certain aspects of the third practice review report. He admitted, however, that he had failed to properly serve his clients, contrary to Chapter 3, Rule 3 of the *Professional Conduct Handbook*, and that his conduct constituted professional misconduct.

### **Failing to reply promptly to Law Society correspondence**

On May 29, 2000 a lawyer complained to the Law Society about the conduct of Mr. Davies on a litigation file. The Society wrote to Mr. Davies requesting his explanation and followed up with reminder letters on July 17, October 2, October 16, October 30, November 10 and November 28, 2000, a telephone message on December 7, 2000 and a further call on January 19, 2001. Other than requesting a six-week extension in which to respond (in July, 2000) and requesting a short extension until after a particular court date (in November, 2000), Mr. Davies provided no response to the Law Society.

### **Breach of undertaking**

In December, 1999 Mr. Davies represented plaintiffs in a civil litigation involving real property. On December 16 he obtained an order approving sale of the property, with the sale to complete on December 20. At the time, Mr. Davies was on an undertaking to the Law Society not to engage in conveyancing practice.

On December 17 Mr. Davies contacted staff at three law firms on Salt Spring Island to seek assistance with the real estate transaction. The first two firms indicated they could not help at such a late date. Staff at the third firm expressed an interest, but could not commit to taking the file. Mr. Davies sent all the material to the third law firm, but the firm refused the file later that day, which was a Friday. As a result, Mr. Davies completed the transaction himself, in breach of his undertaking to the Law Society.

### **Failing to pay a practice debt**

In August, 2000 another lawyer complained to the Law Society that, despite several reminders, Mr. Davies failed to pay an account for services that the lawyer had provided on one of Mr. Davies' client files. Mr. Davies subsequently paid this account.

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Mr. Davies was cited and ordered to attend an interim suspension hearing. The hearing for an interim suspension was adjourned after Mr. Davies entered into a practice supervision agreement involving two lawyers as supervisors of his practice. Under that agreement, one lawyer would supervise his practice in family and criminal law and the other his civil litigation practice.

The hearing panel noted that this practice supervision arrangement represented a turning point in Mr. Davies' rehabilitation and that, since October, 2001, he no longer failed to serve his clients in a conscientious, diligent and efficient manner.

## **Decision**

Mr. Davies admitted that the conduct alleged in the discipline citation and in an agreed statement of facts constituted professional misconduct.

The panel found that Mr. Davies' conduct constituted professional misconduct in that he:

- failed to serve his clients in a conscientious, diligent and efficient manner, contrary to Chapter 3, Rule 3 of the *Professional Conduct*;
- failed to pay a practice debt, which he had guaranteed he would pay;
- breached an undertaking to the Law Society not to engage in real estate conveyancing by acting for clients in a real property sale;
- failed to reply to Law Society correspondence respecting a complaint.

## **Penalty**

The hearing panel ordered that Mr. Davies:

- immediately enter into practice supervision agreements with two specified lawyers and maintain those agreements in good standing until relieved of the obligation by the Practice Standards Committee; and
- provide to the Law Society every six months statutory declarations listing his creditors and the amount he owes each of them until relieved of this obligation by the Discipline Committee.

The panel also reprimanded Mr. Davies for his failure to reply promptly to Law Society correspondence respecting a complaint against him. In this regard, the panel noted that Mr. Davies' conduct had a direct impact on the ability of the Society to process complaints and that the Society cannot tolerate recalcitrant members who neglect or refuse to provide meaningful responses in complaints investigations.

Rather than breaching his undertaking by carrying out a real estate conveyance, Mr. Davies should have sought the assistance of law firms outside of Salt Spring Island or contacted the Law Society for advice on how to deal with the situation.

The panel noted that Mr. Davies' failure to pay a practice debt was symptomatic of the uneconomic nature of his practice. Mr. Davies was inclined to take retainers for people who could not afford his services. While lauding his goal of making the justice system more accessible, the panel noted that Mr. Davies' conduct was not purely altruistic when he required the services of other people on a file but then failed to pay them. Mr. Davies had an overarching obligation to conduct his practice in an economic matter so that he could in fact afford to offer pro bono services.

Given Mr. Davies' financial circumstances, the panel made no order for costs.

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Mr. Davies expressed an intention to apply to the Benchers for non-publication of this matter, but ultimately did not bring forward an application.

*Discipline Case Digest — 2003: No. 07 April (Davies)*