

Discipline hearing:

Date: July 4, 2001

Panel: Russell S. Tretiak, Q.C., Chair, Anna K. Fung, Q.C. and D. Peter Ramsay, Q.C.

Report issued: November 2, 2001

Hearing report indexed as [2001] LSBC 25

Counsel:

Jessica S. Gossen, for the Law Society

Murray A. Clemens, Q.C., for the respondent

Summary

The respondent lawyer was owed money for legal fees by client M. The respondent proposed that M obtain a loan from a credit union to pay the account. When the credit union refused the loan, the respondent arranged for his wife to provide a guarantee. The credit union subsequently required that the respondent's wife sign a promissory note as a principal borrower, rather than as guarantor. The respondent therefore prepared an agreement that client M would indemnify the respondent's wife. The panel found that, in preparing this indemnity on his wife's behalf, the respondent performed legal services for her when he had a direct or indirect financial interest in the matter and failed to recommend that she obtain independent legal advice, contrary to Chapter 7, Rule 1 of the *Professional Conduct Handbook*. The hearing panel found that the respondent had acted on the spur of the moment to protect his wife's interests, that there was no apparent prejudice to anyone and that this breach of the *Handbook* did not amount to professional misconduct in the circumstances. The hearing panel dismissed the citation.

Facts

In 1994 the respondent lawyer was owed money for legal fees, which his client (M) was slowly paying off. The respondent proposed that M borrow money at a bank to pay off the debt. M and her husband applied for a loan of just over \$8,000 at a credit union, but were refused.

The respondent lawyer then asked his wife if she would guarantee the loan so his account would be paid, and she agreed. The credit union, however, required that the respondent's wife sign a promissory note as a principal borrower, rather than as a guarantor, and she did so.

When he learned that his wife had signed the loan as principal borrower, the respondent lawyer prepared on her behalf an agreement for M to indemnify her. When M and her husband signed the loan documents at the credit union, they also signed the indemnity.

The respondent lawyer did not communicate with M or her husband and it was not alleged that he represented their interests respecting the loan transaction or the indemnity.

The respondent lawyer did, however, represent his wife on the indemnity agreement, a matter in which he had a personal interest, and failed to recommend that she obtain independent legal advice, contrary to Chapter 7, Rule 1 of the *Professional Conduct Handbook*.

Decision

The hearing panel noted that, in the circumstances, the need for the indemnity arose from the credit union unilaterally deciding that the respondent's wife should be a principal borrower on the loan. The respondent had drafted the indemnity on the spur of the moment to protect his wife's interests and there had been no apparent prejudice to anyone. The respondent's breach of the *Professional Conduct Handbook* in these circumstances did not have the requisite degree of disgrace or dishonour, nor was it tantamount to a breach of duty to the public or the state, so as to constitute professional misconduct.

Given that Law Society counsel had requested that the panel find either professional misconduct or dismiss the citation, the citation was dismissed.

** Law Society Rule 4-38(1)(a) requires publication to the profession of summaries of citation dismissals, as well as citations resulting in disciplinary action. Rule 4-38(2)(c) provides that citation dismissals must be published anonymously unless the respondent lawyer consents in writing to being identified.*

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