

Kamloops, B.C.

Called to the Bar: July 13, 1977

Discipline hearing

Dates: July 18, 2000 and January 3, 2001

Panel: Peter J. Keighley, Q.C., Chair, Ralston S. Alexander, Q.C. and Terence E. La Liberté, Q.C.

Reports: July 24, 2000 (facts and verdict), January 9, 2001 (penalty) and January 16, 2001 (dissent on penalty)

Case indexed as [2000] LSBC 19

Counsel

Todd Follett, for the Law Society

Richard Sugden, Q.C, for Mr. W

Summary

In late 1998 Mr. W pleaded guilty in Provincial Court under the *Controlled Drugs and Substances Act* to possession of cocaine, which he had for personal use. He received a conditional discharge and one year of probation, completed in 1999. Following issuance of a discipline citation against him in 1999, Mr. W admitted to the hearing panel that his conduct amounted to conduct unbecoming a lawyer. The hearing panel took into account that, after his arrest, Mr. W underwent treatment for his addiction and assisted several other lawyers in overcoming addictions as well. The panel accepted evidence in support of Mr. W's good character, his gifts as counsel, his compassion and his moral integrity and strength. The panel noted, however, that with the stature of being a lawyer come significant professional and private responsibilities, and the penalty imposed must reflect the seriousness of the impugned conduct and ensure that the public retains confidence in the Law Society's ability to police the profession. A majority of the panel ordered that Mr. W be reprimanded, pay a \$7,500 fine and pay costs of the hearing.

Facts

In June, 1998 Mr. W purchased 2.9 grams of cocaine for personal use and was later charged with possession of a controlled substance under the *Controlled Drugs and Substances Act*. In December, 1998 Mr. W pleaded guilty in Provincial Court to possession of cocaine. He received a conditional discharge and one year of probation, which he successfully completed in December, 1999.

Mr. W had used cocaine for two years prior to the charge being laid, and had become dependent on it. He subsequently received help and support from the Lawyers Assistance

Program, sought treatment and joined a local support group of professionals. In the course of his rehabilitation, Mr. W began handling his own workload better and was also able to help four or five other lawyers dealing with addiction issues.

He told the panel he was embarrassed and sorry for his conduct.

Decision

Mr. W admitted, and the hearing panel found, that his conduct constitutes conduct unbecoming a lawyer.

Penalty

(Majority) The panel took into account a range of factors in determining penalty and reviewed previous relevant decisions. The panel noted the impressive measures Mr. W had taken to address his addiction, his expedition of the criminal proceeding by making a prompt guilty plea and of his discipline hearing by offering an admission, his efforts to help others, and the evidence of lawyers and judges in support of his good character, his gifts as counsel, his compassion and his moral integrity and strength.

The panel also noted, however, that with the stature of being a lawyer come significant professional and private responsibilities. Mr. W's conduct had damaged, not only his reputation, but that of other lawyers. The penalty imposed must help reflect the seriousness of the impugned conduct and also ensure that the public retains its confidence in the Law Society's ability to police the profession.

The panel accordingly ordered that Mr. W:

1. be reprimanded;
2. pay a fine of \$7,500 on or before December 31, 2001; and
3. pay costs of the hearing.

Dissent

While agreeing with the majority of the panel in its assessment of the facts and the duty of the Law Society to ensure public confidence in the legal profession, Mr. La Liberté disagreed with the majority's decision to impose a \$7,500 fine. He would have imposed the statutorily required reprimand and costs, but no fine.

As acknowledged by the majority, Mr. W did not require specific deterrence. With respect to general deterrence, Mr. La Liberté noted that a fine was not required in these circumstances to deter other lawyers from treating cocaine possession as a serious offence or as unacceptable behaviour for a lawyer.

He noted that, to impose a punishment for behaviour predicated on a complicated,

personal addiction, would deter other lawyers from seeking help and would cause them to continue to hide their problems. Such a behaviour must be treated differently from illegal behaviour predicated on a cavalier disregard for the law or selfish, self-motivated behaviour. This was not a case of a lawyer simply using a drug for recreation and being reckless as to its illegality or his image in the community. In Mr. W's case, his growing substance dependency was not known by others and he did not flaunt his use of cocaine as behaviour that he countenanced or that was representative of him as a lawyer.

In Mr. La Liberté's view, to punish Mr. W after the dramatic turnaround in his life would be a retrograde step. A right-thinking member of the public would support the Law Society protecting the public interest by helping lawyers to be the best they can be, and would not require excessive punishment for the sake of punishment.

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Mr. W has applied to the Benchers for a review of the hearing panel decision on penalty.

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