

Re: A Lawyer

Discipline hearing: March 26, 2002

Panel: Robert W. McDiarmid, QC, as a one-Bencher panel by consent

Report issued: May 17, 2002; indexed as 2002 LSBC 11

Counsel: Todd Follett, for the Law Society; Mark Skorah, for the respondent

Summary

The respondent lawyer failed to notify the Law Society of an unsatisfied judgment against her, the circumstances of the judgment or her proposal to satisfy it, within seven days of its entry, and she thereby breached Law Society Rule 3-44(1). The hearing panel noted that the respondent had demonstrated financial responsibility by paying the judgment within a month of its entry, which was prior to the Law Society contacting her on the matter. The panel determined that a reprimand was an appropriate penalty in the circumstances and ordered that the respondent be reprimanded. The panel exercised its discretion under Rule 4-38(2)(b) and ordered that a summary of the case be published without identifying the respondent.

Facts

In a litigation in 1999, the court ordered judgment and interest totalling \$73,881.15 and special costs against the respondent lawyer. The order was entered on December 20, 1999.

The respondent made payments to her lawyer toward the judgment: \$10,000 on December 3, 1999, \$13,000 on December 22, \$48,685 on December 23 and \$19,524 on January 21, 2000. Her lawyer paid the money into court on January 21, 2000.

The Law Society contacted the respondent in February, 2000 regarding her obligation to report the judgment.

Decision

The hearing panel found, and the respondent admitted, that her failure to notify the Law Society in writing of an unsatisfied monetary judgment against her, the circumstances of the judgment and her proposal for satisfying it, within seven days of the judgment being entered, constituted a breach of Law Society Rule 3-44(1).

Penalty

The hearing panel noted that, while more than seven days had passed before the respondent had satisfied the judgment, she did satisfy it within one month, which

demonstrated her financial responsibility. She also did so prior to being contacted by the Law Society. The panel also took account of the fact the respondent had suffered financial loss resulting from her involvement in the litigation.

In all the circumstances, the panel found a reprimand an appropriate penalty and ordered that the respondent be reprimanded.

In considering its discretion under Rule 4-38(2)(b) to order that the discipline summary not identify the respondent, the panel noted the discretion is available when professional misconduct, misappropriation or wrongful conversion of funds or incompetence are not involved. The panel reviewed past decisions with respect to publication and these specific circumstances, noting that it must consider the balance between the interests of the public and the profession in general and the detrimental effect publication would have on the respondent.

In the circumstances, the panel found most persuasive the fact that the respondent satisfied the judgment within one month of its entry, prior to the Law Society's involvement. The respondent had met the public interest in having fiscally responsible behaviour on the part of lawyers.

The panel ordered the summary be published without identifying the respondent.

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