

Discipline hearing panel: September 15, 2000, January 15 and March 13, 2001
Ian Donaldson, Q.C., as a one-Bencher panel by consent
Discipline hearing report indexed as [2001] LSBC 11

Jessica Gossen, for the Law Society
William B. Smart, Q.C., for the respondent

Summary

The respondent lawyer failed to restore a company to the Register of Companies for a client. The client retained a new lawyer who, in reviewing the file, noted that signatures on the share certificate and on a consent form did not appear to be in the client's handwriting. *[The client at first told the new lawyer that he had not signed the documents, but later changed his statement to the Law Society and confirmed that he remembered signing them.]* The new lawyer thought that the respondent had signed the documents himself to cover up his own prior negligence on the file. When she brought the issue of the signatures to the respondent's attention, he denied having signed the documents.

Over the course of several discussions, the respondent attempted to persuade the client's new lawyer that she should not report him to the Law Society and, in one conversation, offered her \$10,000. The new lawyer interpreted the offer of \$10,000 as a bribe not to make a report to the Law Society. According to the respondent, however, the money was intended as an indemnity for his various delays and failures on the file and to pay for the new lawyer's fees and any necessary searches. He also explained he was hopeful the new lawyer would not to report him to the Law Society. The panel was not satisfied that the respondent's evidence was false and could not conclude, beyond a mere balance of probabilities, that there had been a bribe. The citation was dismissed.

Facts

In 1993 the respondent lawyer acted for a client (G) in his purchase of shares of a company. In 1996 G discovered that the company had been struck from the Register of Companies. He contacted the respondent who said he would rectify the problem. G followed up three times over the next three months to enquire on the status of the company. The respondent failed to have the company restored.

In January, 1997 G retained a new lawyer. In reviewing the file, the new lawyer noticed that signatures on the share certificate and the consent to act as a director did not appear to be in G's handwriting. G told her that the signatures were not his.

[In 1998 G remembered signing the share certificate and advised the Law Society. He said the certificate was in a three-ring binder in the respondent's office and his hand was on the edge, which made signing it difficult. Based on G's evidence, the hearing panel concluded that G's new lawyer was mistaken in her belief that the respondent, rather than G, had signed the documents, although her belief was reasonable at the time it was held.]

G's new lawyer believed that the respondent had signed the documents himself to cover up his own prior negligence on the file. She brought her concerns about the signatures to the respondent's attention. The respondent agreed that the handwritten body text of the share certificate appeared to be in his own writing. He also agreed that the signature did not appear to match G's usual signature. The respondent, however, denied having signed the documents himself, with or without G's authorization.

The respondent and the new lawyer had several conversations respecting the matter. The new lawyer believed that she had a duty to report the respondent to the Law Society. The respondent attempted to convince the new lawyer that he had not signed the corporate documents and that she need not report him.

In one conversation the respondent offered the new lawyer \$10,000, which she interpreted as a bribe not to report him to the Law Society. She wrote to the Law Society outlining her concerns about the respondent's conduct in handling the share purchase and about the signatures. In a later telephone call to the Law Society, she added that the respondent had offered to pay \$10,000 in exchange for her promise not to report the incident.

The respondent explained to the Law Society that he offered the money as an indemnity for his various delays and failures on the file, to cover the cost of the searches and the new lawyer's fees and to demonstrate that he was not running and hiding but was owning up to his shortcomings on the file. He also gave evidence that he was hopeful the new lawyer would not to report him to the Law Society.

Decision

The panel was not satisfied that the respondent's evidence was false and could not conclude from the evidence, beyond a mere balance of probabilities, that the delict of a bribe had been proved. 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.*

The Discipline Committee has referred this decision to the Benchers for a review on the record pursuant to section 47(3).

Discipline Case Digest — 2001: No. 19 October (Re: A Lawyer)