

2005 LSBC 47

Report issued: November 8, 2005

Oral Reasons: October 27, 2005

Citation issued: September 1, 2004

The Law Society of British Columbia
In the matter of the *Legal Profession Act*, SBC 1998, c.9
and a hearing concerning

Brian John Kirkhope

Respondent

**Decision of the Hearing Panel
on Penalty**

Hearing date: October 27, 2005

Panel: James Vilvang, Q.C. , Chair, David Zacks, Q.C., Dirk Sigalet, Q.C.

Counsel for the Law Society: Brian McKinley

Counsel for the Respondent: Jerome Ziskrout

[1] The Panel has taken into account the following considerations in reaching a decision on Penalty:

(a) First, the need for individual deterrence. The Panel is satisfied that the Respondent has learned his lessons from this experience and, given his previous unblemished conduct record, we are satisfied that there is no significant danger of recurrence;

(b) Second, the need for general deterrence. The Panel wants it to be clear to all lawyers that they must be careful before proceeding on a course of conduct. They must be sure to inform themselves as to the law and their professional obligations; and

(c) Third, the public confidence in the governance of the legal profession. The Panel regards this as the most significant issue in this case. The Panel is very concerned about the public perception of a lawyer breaching solicitor/client privilege and the fundamental right of privacy. The public must be satisfied that the Law Society takes these breaches seriously.

[2] In consideration of all the submissions of counsel and the letters of reference marked as Exhibit 11, the Panel concludes that a fine of \$10,000 is appropriate in this matter.

[3] The Panel also concludes that costs in the aggregate amount of \$5,000 are appropriate.

[4] The Panel accepts the submission that the Respondent should be permitted to pay the fine and costs in four semi-annual instalments of \$3,750 each. The first payment is to be made by March 1, 2006.

[5] Should the Respondent's financial circumstances change dramatically, he has leave to reapply for an extension of time to pay.