

Lawrence Everett Pierce

Vancouver, BC

Called to the Bar: July 10, 1984

Benchers (review of penalty): June 12, 2002

Panel: (*Majority*) William J. Sullivan, QC, Chair, Robert W. McDiarmid, QC, Anita Olsen, Patricia L. Schmit, QC and Grant C. Taylor; (*Dissent*) John J.L. Hunter, QC and David Zacks

Report: August 8, 2002; indexed as 2001 LSBC 16

BC Court of Appeal (application for stay of proceedings): August 29, 2002

Reasons: August 30, 2002; indexed as 2002 BCCA 492

Counsel on Bencher review and before the BC Court of Appeal:

Todd R. Follett, for the Law Society; William B. McAllister, QC, for Mr. Pierce

Summary

Mr. Pierce was involved in an acrimonious matrimonial litigation with his former spouse and law partner. He was, in the same time period, a potential witness for the spouse in a separate personal injury action. Mr. Pierce had three conversations with the lawyer who represented the spouse in her personal injury action. A Law Society discipline hearing panel found that, in those conversations, Mr. Pierce intended to indicate that he would trade favourable evidence in his spouse's personal injury matter for a satisfactory settlement of the matrimonial matter. The hearing panel found that this conduct constituted professional misconduct and conduct unbecoming a member of the Law Society and ordered that Mr. Pierce be suspended for three months and pay costs. The Discipline Committee subsequently resolved to send the issue of penalty to the Benchers for review, and agreed to stay penalty pending an application for judicial review brought by Mr. Pierce. On judicial review in June, 2000, the BC Supreme Court set aside the panel's decision. The BC Court of Appeal reversed that decision and restored the hearing panel's verdict and penalty. Mr. Pierce was accordingly suspended for three months, from June 3, 2002 through September 2, 2002.

On the Benchers' review of penalty, which proceeded in June, 2002, a majority of the Benchers decided that Mr. Pierce should be suspended for six months in addition to the three months ordered by the hearing panel. (*Note: The BC Court of Appeal has ordered that this further six-month suspension be stayed pending Mr. Pierce's application for leave to appeal to the Supreme Court of Canada on the judicial review. Mr. Pierce has also applied for an extension of time for that leave application. The profession will be updated on the outcome of this proceeding.*)

Hearing panel decision

Mr. Pierce was involved in an acrimonious matrimonial litigation with his former spouse and law partner. He was, in the same time period, a potential witness for the spouse in a separate personal injury action. Mr. Pierce had three conversations with the lawyer who represented the spouse in her personal injury action. A Law Society discipline hearing panel found that, in those conversations, Mr. Pierce intended to indicate that he would trade favourable evidence in his spouse's personal injury matter for a satisfactory settlement of the matrimonial matter. The hearing panel found that this conduct constituted professional misconduct and conduct unbecoming a member of the Law Society and ordered that Mr. Pierce be suspended for three months and pay costs: see *Re: A Lawyer 00/12 for a full summary of the hearing panel decision*.

On February 3, 2000 the Discipline Committee resolved to send the decision on penalty to the Benchers for review. The Committee consented to an interim injunction to stay the penalty against Mr. Pierce until after hearing of his application to the BC Supreme Court for judicial review.

BC Supreme Court decision on judicial review

On June 7, 2000 the BC Supreme Court determined that a delay by the Law Society in notifying Mr. Pierce that a complaint had been made against him, and a subsequent delay in disclosing to him one page of telephone conversation notes made by a lawyer representing his spouse, resulted in procedural unfairness. The Court ordered that the verdict be set aside and that the Law Society be prohibited from proceeding further with any part of the citation: *Pierce v. Law Society of BC 2000 BCSC 887*.

BC Court of Appeal decision on judicial review

On an appeal by the Law Society, the Court of Appeal overturned the BC Supreme Court decision on judicial review and reinstated the decision of the discipline hearing panel: 2002 BCCA 251. Mr. Pierce was accordingly suspended for three months from June 3, 2002 through September 2, 2002: see *May 7, 2002 Notice to the Profession*.

The Court noted that the chambers judge essentially re-weighed the evidence and re-analysed the issues before the panel when she was in fact restricted to determining whether the panel's decision was "unreasonable."

On the issue of procedural fairness, which was to be decided on the standard of correctness, the Court of Appeal noted that delay alone in a disclosure of notes was not sufficient to stay a hearing, and less drastic remedies, such as an adjournment, must be considered. In these circumstances, following the full disclosure, the hearing was adjourned for 10 months. The Court also noted that the comment of the chambers judge that the original disclosure of the telephone conversation notes to Mr. Pierce likely "buried" any recollection he had of the conversation was only speculation and had no foundation in the evidence.

Benchers review of penalty

Majority reasons:

At the beginning of the review, Mr. Pierce sought to challenge the right of Law Society counsel to make submissions on penalty on the basis of institutional bias or, alternatively, reasonable apprehension of bias. The review panel rejected this position and noted it would address the issue in separate reasons.

Following the review before the Benchers, further submissions were made on behalf of Mr. Pierce as to the standard of review. Mr. Pierce's position was that the Benchers should not substitute a decision of the hearing panel unless the panel's decision was unreasonable. The Benchers disagreed, noting that a Bencher review of penalty is on a standard of correctness. In this case there was not controverted sworn evidence or anything markedly different about Mr. Pierce's case that would prompt the Benchers to consider any other standard.

The Benchers noted that the hearing panel had found Mr. Pierce was prepared to blackmail a former client, who was also his ex-wife, and to mislead the court by destroying or twisting evidence for personal gain. Such behaviour is dishonourable and disgraceful and goes to the very root of his obligations as a minister of justice and officer of the courts.

The Benchers noted that any stress and pressure that Mr. Pierce relied on as mitigating his behaviour could not outweigh his obligations as a lawyer. The nature of his conduct was most serious. Furthermore, while Mr. Pierce was mature of age and experience, his professional conduct record disclosed a history of taking advantage of clients and others for monetary gain, as well as sharp practice and failure to honour practice debts. His promises to rectify his behaviour were followed by further conduct that led to conduct reviews and discipline citations.

The Benchers noted that public confidence in the integrity of the profession must be maintained. They expressed hope that the experience of a suspension, which has a punitive element, would encourage Mr. Pierce to mend his ways where lesser penalties of fines had not done so.

The Benchers decided that a three- month suspension was manifestly incorrect. A majority of the Benchers ordered that Mr. Pierce should be suspended for an additional six months. *(Note: On application by Mr. Pierce, the BC Court of Appeal subsequently ordered that this further six-month suspension be stayed pending Mr. Pierce's application for leave to appeal to the Supreme Court of Canada the decision on judicial review: see 2002 BCCA 492 and summary below. Mr. Pierce is also applying to the Supreme Court of Canada for an extension of time to make his application for leave. The profession will be updated on the outcome of this proceeding.)*

Dissenting reasons:

While agreeing with the majority reasons on all but disposition of penalty, a minority of the Benchers (Mr. Hunter and Mr. Zacks) found Mr. Pierce's conduct so egregious and lacking in integrity that they would have disbarred him so as to ensure public confidence in the administration of justice and the integrity of the profession.

BC Court of Appeal decision on stay of penalty

The BC Court of Appeal ordered the stay of the further six-month suspension, noting that Mr. Pierce had satisfied the requirements for a stay. He had raised a serious question to be argued, he would suffer irreparable harm if the stay is not ordered (since the six-month suspension would be over before a decision from the Supreme Court of Canada on his applications was expected) and the balance of convenience was in his favour. In these circumstances, the Court found that the suspension was to punish Mr. Pierce for misconduct, not to prevent him from harming the public, and it would not make much difference if the periods of suspension were served consecutively or separately.

The Court, however, rejected Mr. Pierce's application to stay the costs that had been ordered against him. The Court noted that, at an earlier stage of the judicial review, Mr. Pierce had received costs from the Law Society, which he promised to return if the Society succeeded on appeal. The Court also refused to stay publication of the Benchers' decision respecting penalty. The Court found that publication would not create irreparable harm to Mr. Pierce's reputation, noting that the Benchers' decision was public and that earlier findings of Mr. Pierce's misconduct and the three-month suspension had already been publicized.