

*A section 47 Bencher review:
see DCD 00/10 for a summary of the hearing panel decision.*

North Vancouver, B.C.

Called to the Bar: May 10, 1977

Bencher review

Date: September 19, 2000

Panel: Richard C. Gibbs, Q.C., Chair, Peter J. Keighley, Q.C., Marjorie Martin, Emily M. Reid, Q.C.,

Patricia L. Schmit, Q.C., G. Ronald Toews, Q.C. and Russell S. Tretiak, Q.C.

Report: February 1, 2001

Discipline hearing report indexed as [2000] LSBC 22

Counsel

Kim S. Campbell, for the Law Society

Barry Promislow, for Mr. Taschuk

Summary

On application by the Discipline Committee, the Benchers reviewed the reprimand imposed on Mr. Taschuk for sharp practice amounting to professional misconduct: *see DCD 00/10*. The finding of sharp practice related to Mr. Taschuk's failure to respond to a letter of an unrepresented shareholder in a transaction even though Mr. Taschuk knew the shareholder would be prejudiced because he had misunderstood certain crucial facts. The Bencher review panel noted the importance of denouncing such sharp practice, in the interests of the public and the profession. The review panel decided that, given the serious nature of the misconduct and the pattern of other similar sharp practice by Mr. Taschuk in previous discipline cases, the reprimand imposed by the hearing panel was inappropriately lenient, notwithstanding the other remedial penalties and conditions that had also been imposed on Mr. Taschuk for his incompetency in the matter. The panel ordered that Mr. Taschuk be suspended for two months, commencing March 1, 2001, and pay a \$10,000 fine.

Review of penalty

The Discipline Committee appealed to the Benchers the penalty of a reprimand that a hearing panel had imposed on Mr. Taschuk for sharp practice amounting to professional misconduct: *see DCD 00/10*. *[The hearing panel had also found Mr. Taschuk had acted incompetently in the matter and ordered that he complete a remedial studies program and submit to conditions on his practice. Those orders were not subject to the Bencher*

review.]

The Bencher review panel noted that Mr. Taschuk's misconduct was very serious. By his failure to respond to the letter of W, an unrepresented shareholder in a transaction, Mr. Taschuk deliberately withheld non-confidential facts that W was entitled to know. He allowed W to labour under an erroneous view of the facts that was prejudicial to W's interests in the transaction. Mr. Taschuk did this to delay the possibility of W taking steps to halt one part of the transaction. Mr. Taschuk's act of nonfeasance amounted to malfeasance and was at odds with the honour and dignity of the legal profession.

The Bencher review panel considered Mr. Taschuk's discipline record, which included other incidents of sharp practice over the same time period. The panel noted that a lengthy suspension would have been warranted had the misconduct in this case followed the earlier disciplinary actions. The review panel decided, however, that those other matters should be considered in assessing penalty as Mr. Taschuk would otherwise reap an insupportable benefit from the separation of the proceedings. The seriousness of the misconduct and his pattern of sharp practice in the other cases made the penalty of a reprimand alone inappropriately lenient in this case.

The review panel noted that, while a reprimand is a "badge of dishonour" that no upstanding lawyer would willingly wear, it is nevertheless the least of all sanctions and is often coupled with, or certainly implied by, the more serious penalties. A reprimand alone connotes that the conduct is at the minor end of the spectrum and that no other corrective action is required to protect the public, denounce the misconduct, deter the lawyer or maintain public confidence in a self-governing legal profession.

Mr. Taschuk did not take steps to acknowledge his wrong or redress it as might serve as a mitigating factor. A majority of the review panel noted that the time and vexation - involved in Mr. Taschuk helping defend an insurance claim after being sued in this matter was not a factor serving to reduce penalty, just as the fact that he "went down swinging" in his discipline hearing could not serve to increase penalty.

The panel ordered that Mr. Taschuk:

1. be suspended for two months, commencing March 1, 2001; and
2. pay a \$10,000 fine by August 30, 2001.

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The issue of rehearing

Majority: The Bencher review panel noted that the hearing panel may have misinterpreted the evidence of two witnesses as being corroborative of statements made by Mr. Taschuk when, in fact, their evidence appeared to contradict Mr. Taschuk's statements. After weighing the potential importance of correcting the finding in relation to the whole of the case, a majority of the review panel could not conclude that this

matter should be re-argued or the findings of fact revisited.

Dissent: In separate reasons on the issue of rehearing, Mr. Gibbs expressed concern that a different interpretation of the evidence could have resulted in more serious findings. He would have ordered that the parties be given an opportunity to re-argue the matter and would have allowed the Benchers to correct the findings as necessary. In light of the majority decision, however, he determined the penalty should be imposed based on the record before the review panel.

Dissent as to certain findings

Mr. Tretiak, while agreeing with the majority in the result, disagreed with a finding that Mr. Taschuk's evidence was "absurd, contrived and untrue" respecting his lack of response to the unrepresented shareholder. In Mr. Tretiak's view, that characterization was too severe as it was possible Mr. Taschuk had blinded himself to the need to respond. Mr. Tretiak further disassociated himself from language of the majority that Mr. Taschuk "went down swinging" because of the possible innuendo that a lawyer ought not to maintain a vigorous defence.

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