

2005: No. 02 July-August

Sheldon Goldberg

Vancouver, BC

Called to the bar: January 3, 1973

Discipline hearing: October 8, 2004, January 19 and May 26, 2005

Panel: *Majority decision:* Patricia L. Schmit, QC, Chair, and G. Glen Ridgway, QC and (*Minority decision*) Robert W. McDiarmid, QC

Reports issued: March 14, 2005 (indexed as 2005 LSBC 10) and June 1, 2005 (indexed as 2005 LSBC 22)

Counsel: Herman Van Ommen for the Law Society and Mr. Goldberg on his own behalf

Facts

On April 25, 2003 Mr. Goldberg was representing a client, Mr. T, in a criminal trial in Provincial Court. As Mr. T had been denied bail and was in custody, his trial was a priority to proceed.

Another criminal case (R v. D) had been assigned to be heard that day but there were scheduling difficulties. The judge stood R v. D down pending a decision about whether the case would be held later in that same courtroom or transferred to another courtroom. The accused, Ms. D, was representing herself and the trial was peremptory on her because of numerous previous adjournments and the age of the information.

Following the lunch break, Mr. Goldberg advised the judge that he had just been retained by Ms. D to represent her and that the trial was scheduled to start immediately in another courtroom. The judge granted Mr. Goldberg a brief adjournment in Mr. T's case so he could request an adjournment in Ms. D's case.

The judge in the other courtroom was unable to hear the adjournment application, so R. v. D was returned to the first judge who then recalled the case. She refused Mr. Goldberg's application for an adjournment on the grounds that the date was peremptory. She ordered the case be sent to another courtroom for hearing. Without explanation to the court, Mr. Goldberg then left the courtroom and represented Ms. D in her trial in another courtroom. Mr. Goldberg did not advise Mr. T about his intent to represent Ms. D, nor did he seek Mr. T's instructions.

The first judge declared a mistrial in the T case.

Verdict

A majority of the hearing panel determined that Mr. Goldberg was guilty of professional misconduct by improperly withdrawing from a criminal trial and abandoning his client mid-trial, contrary to Chapter 10 of the *Professional Conduct Handbook*, and by being discourteous and disrespectful to the court.

The minority concluded that Mr. Goldberg's conduct was ill-advised and contrary to the provisions of the *Handbook*, but did not amount to professional misconduct.

Penalty

The majority of the hearing panel ordered that Mr. Goldberg:

1. be suspended for 30 days commencing December 5, 2005; and
2. pay costs.

In deciding the length of the suspension, the panel took into account that, although he had chosen the wrong course of conduct, Mr. Goldberg had been motivated to assist someone he believed would otherwise be wrongfully convicted.