2006 : No. 05-04

Re: Lawyer 5

Bencher Review: October 21, 2005
Majority: Gavin H.G. Hume, QC, Chair, Robert C. Brun, QC, Carol W. Hickman, Patrick Kelly and Dr. Maelor Vallance
Concurring reasons: Gregory M. Rideout
Seperate dissenting reasons: Bruce A. LeRose and Gordon Turriff, QC
Report issued: November 16, 2005 (indexed as 2005 LSBC 50)
Counsel: Gerald Cuttler, for the Law Society, and Dennis Murray, QC, for the respondent

In the decision of the hearing panel (*Re: A Lawyer* 2005 LSBC 11), the respondent admitted to conduct unbecoming a lawyer in failing to fulfil certain Law Society accounting rules when handling the funds of a person for whom he held a power of attorney. The panel had ordered anonymous publication of the decision on the basis that, if the respondent were named in the publication, he could suffer grievous harm, being loss of reputation and the possible loss of a major client. This would not be a deserving end to his long and respected legal career. Pursuant to section 47 of the *Legal Profession Act*, the Discipline Committee referred the panel's decision on anonymous publication to the Benchers for review.

Majority decision

A majority of the Benchers on the review upheld the decision of the hearing panel to publish this case anonymously. They found that the respondent would risk grievous harm if his name were publicized, specifically the loss of his principal client, a public body. The Benchers noted that the respondent was 67 years old, had practised for 41 years and had no other discipline history. He was the sole source of support to his wife who had medical issues, and he relied on his principal client for almost all his income through a fixed retainer. The panel noted that it was not possible for the respondent to have provided more cogent evidence of the potential risk of losing this client than he had already done.

The risk of grievous harm to the respondent outweighed the interests of the public and the Law Society in publication of his name. The majority of Benchers on the review reiterated points made by the hearing panel, noting that the respondent had previously had an unblemished record. Moreover, the offence in question was a one-time breach of the accounting rules, which did not in any manner benefit the respondent. His client was never at risk, nor was the public. All funds were accounted for. It was also noted that, throughout the Law Society's investigation, the respondent remained cooperative, helpful and open.

The majority of Benchers on the review found there was no ongoing public need to know the name of the respondent, given the nature of the offence, the passage of time and the fact that the respondent's client would receive copies of the decisions. The public would know that a lawyer has been sanctioned for accounting errors some eight years ago, and that the lawyer had since that time practised in an exemplary way. The eight-year period between the offence and the discipline decision was another cogent reason not to publicize the respondent's name.

Mr. Rideout concurred with the majority decision. In separate reasons, he emphasized that this case involved exceptional, unexplained and unreasonable time delays by the Law Society, and that six-and-a-half years had passed from the initial complaint to the citation and another year-and-a- half to the date of hearing.

Dissent

In his dissent, Mr. LeRose noted that the only evidence of grievous harm to the respondent from publication of his name came from the respondent's own affidavit. The respondent had argued that, if his name were published, public scorn would be such that his client, a public body, may be compelled to end its longstanding relationship with him. There was no corroborating evidence on this point. Mr. LeRose noted that a reasonable and well-informed public that reads a published summary of this discipline case is capable of concluding that it was a relatively minor transgression that occurred eight years ago and required no further punishment. To assume otherwise is a great disservice to the public and also an attack on the transparency intended by Rule 4-38.1(3).

In separate dissenting reasons, Mr. Turriff agreed with the reasons of Mr. LeRose. He added that the Benchers had, in an earlier decision in another case, stated that there would be very few instances in which respondents are not identified in discipline decisions. The reason is the same as that given by the Court of Appeal for England, being that " the reputation of the profession is more important than the fortunes of any individual member."