

2006 : No. 4 September-October

Re: Lawyer* 4

*The lawyer is not identified as the citation was dismissed by the BC Court of Appeal

Vancouver, BC

Called to the bar: May 22, 1998

Discipline hearing : January 14-15, 2003 and November 10, 2004

Panel : Ralston S. Alexander, QC, as a single-Bencher panel by consent

BC Court of Appeal : February 15, 2006 (Rowles, Mackenzie and Levine, JJ. A.), 2006 BCCA 367

Reports issued : April 4, 2003 (indexed as 2003 LSBC 14) and February 3, 2005 (indexed as 2005 LSBC 05)

Counsel : Todd R. Follett for the Law Society; Terence L. Robertson, QC and Rebecca Breder for the respondent

BC Court of Appeal: M.L. Skwarok and M.L. Bromm for the Law Society; P.J. Wilson, QC for the appellant

Facts

The Law Society issued a citation against lawyer K alleging she had attempted to mislead staff at the Provincial Correctional Facility in Vancouver by indicating to them that M, a person accompanying her, was her assistant when, in fact, M was the common-law partner of the inmate the lawyer wished to visit.

K, however, told the hearing panel that she identified M as her client's common-law partner and asked that M be allowed inside the jail because it was very late at night, the surrounding area was unsafe and it was raining. She also said corrections staff made derogatory remarks about her race and refused to believe she was a lawyer because her surname did not match her racial origin.

Verdict

The hearing panel noted that two corrections staff members independently stated K had introduced M as her assistant. The panel said there was "no credible explanation" for this testimony other than that K had, in fact, introduced M as her assistant to corrections staff. As a result, the panel found K guilty of professional misconduct.

Penalty

The hearing panel said incidents of misleading behaviour by lawyers are "deserving of aggressive condemnation" and that misleading behaviour is arguably more significant when it involves an attempt to mislead someone in the justice system.

The panel noted that, while a suspension of six months to one year might be appropriate in the circumstances, it was not supported by historical precedent. As a result, the panel ordered a suspension of three months and costs of the hearings in the amount of \$10,470.

BC Court of Appeal decision

The Court of Appeal said that, while the hearing panel applied the correct standard of proof for a professional misconduct case, it had not applied that standard properly.

The panel had incorrectly treated the case as though it had to choose between two conflicting versions of events - the version of K and that of the corrections staff - when it should have been determining whether there was evidence to establish the allegations in the citation, the court said.

The court also noted there was evidence supporting other explanations for the corrections staff members' belief that K had misrepresented M as her assistant, such as a mistake by the staff members because of their belief K was not a lawyer.

The court concluded that, by limiting possible explanations for the events in question to the version offered by K and that offered by corrections staff, the hearing panel failed to assess the evidence to the requisite standard of proof.

The court set aside the hearing panel's decision and awarded K costs of both the appeal and the Law Society's hearing.