

2007 : No. 4 October

Sheldon Goldberg

Vancouver, BC

Called to the bar: January 3, 1973

Discipline hearing : April 10, 11, 12, May 23, July 13, August 31 and September 12, 2006

Penalty hearing : May 18, 2007

Panel : Glen Ridgway, QC, Chair, Leon Getz, QC and Gavin Hume, QC

Decision on penalty : *majority decision*: Leon Getz, QC and Gavin Hume, QC; *minority decision*: Glen Ridgway, QC

Reports issued : facts and verdict January 10, 2007 (2007 LSBC 03), penalty September 7, 2007 (2007 LSBC 40)

Counsel : Herman Van Ommen and Judy Walker for the Law Society; Sheldon Goldberg appearing on his own behalf

Facts

Professional Misconduct

Sheldon Goldberg represented four men on four separate criminal appeals that were heard together. The common ground of appeal was an allegation of inadequate representation at trial by JB, the lawyer who had represented all four accused.

The Court of Appeal dismissed all four appeals and, in its written reasons, was highly critical of Goldberg's conduct and competence. The court said Goldberg's affidavits were "unworthy of any lawyer" and that his factums and written submissions were "rambling, repetitive and disorganized" and "among the poorest examples presented to this court in recent memory."

The court also said Goldberg used his right of audience to make "seriously damaging, but completely unfounded" allegations of misconduct, including drug and alcohol abuse, against JB.

A Law Society hearing panel reviewed extensive materials concerning the allegations made by Goldberg against JB, including: alcohol and drug abuse and psychological problems; that the illness of JB's parents affected his conduct; statements characterizing JB as a "rogue"; statements characterizing JB as dishonest to the courts and to his clients; statements dealing with JB's personal life that were completely irrelevant to the *appeals*; and that JB failed to order preliminary hearing transcripts.

The panel did not find any proper evidence to support any of Goldberg's assertions. The panel further noted that Goldberg should be familiar with appeals based on the ineffectiveness of counsel at trial, as he had previously been involved in at least two cases that raised the same argument.

Competence

The panel found Goldberg failed to demonstrate adequate knowledge of the substantive law, practice and procedures to effectively represent his clients, contrary to Chapter 3, Rule 1 of the *Professional Conduct Handbook*. The panel reviewed several competency issues noted by Court of Appeal, such as affidavits that contained hearsay, lay opinions, irrelevant evidence, and speculation, insinuation and rumour; as well as disorganized factums that lacked proper legal support for the arguments advanced.

The panel found that the affidavits drawn by Goldberg demonstrated a complete lack of knowledge of the law of evidence. The panel further found that Goldberg's written material demonstrated a serious lack of knowledge and skill and the factums did not meet an appropriate standard. The panel concluded that Goldberg did not competently carry out his duties as counsel and determined that he was incompetent in the performance of his duties undertaken in the capacity of a lawyer.

Verdict

The panel found Goldberg guilty of professional misconduct in making unfounded, but serious, allegations about the conduct of JB. They further concluded that he incompetently carried out the duties he undertook in the appeals.

Penalty

A majority of the hearing panel ordered that Goldberg:

1. be suspended from the practice of law for a period of 90 days, starting January 1, 2008;
2. submit any written material relating to an argument based on the ineffective assistance of counsel to a practice supervisor for review before filing; and
3. pay the costs this hearing.

The minority called for a suspension of 180 days, not 90 days. The minority agreed with all other aspects of the panel's penalty decision.