

2007 : No. 1 March

Howard Raymond Berge, Q.C.

Kelowna, BC

Called to the bar: May 12, 1967

Bench Review: October 12, 2006

Benchers: David Zacks, QC, Chair, Gavin Hume, QC, Bruce LeRose, QC, Barbara Levesque, Thelma O'Grady, Dirk Sigalet, QC and Richard Stewart

Report issued : January 17, 2007 (indexed as 2007 LSBC 07)

Counsel : Herman Van Ommen for the Law Society and Christopher Hinkson, QC for Mr. Berge

Background

The hearing panel (facts and verdict: 2005 LSBC 28; penalty: 2005 LSBC 53) found that Mr. Berge, after consuming a substantial amount of alcohol, drove a car without due care and attention and caused an accident. The panel also found that following the accident and prior to the arrival of the police, Mr. Berge used mouthwash to mask the smell of alcohol on his breath and that he removed an open can of beer from his car to dispose of it or acted in a manner that made it appear that he intended to dispose of it. The panel concluded Mr. Berge's actions were a conscious effort to thwart the police, that the combined effect of his actions were tantamount to dishonest conduct and that his actions constituted conduct unbecoming a lawyer.

The panel ordered that Mr. Berge:

1. be reprimanded;
2. be suspended from the practice of law for one month;
3. pay partial costs of the proceedings.

On review, Mr. Berge argued that a finding of conduct unbecoming only applied to cases of deliberate falsehood or a criminal offence. He also argued the penalty was too severe.

Decision

The Benchers agreed with the findings of fact made by the hearing panel. They also concluded that conduct unbecoming not only includes the obvious examples of criminal conduct and dishonesty, but also "any act of any member that will seriously compromise the body of the profession in the public estimation" (*Hands v. Law Society of Upper Canada* (1889) 16 O.R. 625). The Benchers upheld the hearing panel's decision on penalty, recognizing that a period of suspension is one of the most severe penalties that can be imposed on a lawyer. In upholding the suspension, the Benchers said it was their intention to send a clear message to the public that Mr. Berge's conduct is not to be condoned. The Benchers awarded costs of the review to the Law Society and costs of a previous hearing to determine the scope of the review to Mr. Berge.

Mr. Berge has appealed the review decision to the BC Court of Appeal.