

2008 : No. 1 March

## **Douglas Hewson Christie**

Victoria, BC

Called to the bar: September 15, 1971

**Discipline hearing** : December 6, 2006 April 12, June 18-19 (facts and verdict) and December 17, 2007 (penalty)

**Panel** : Robert McDiarmid, QC, Chair, Gavin Hume, QC and James Vilvang, QC

**Report issued** : September 11, 2007 (2007 LSBC 41) and January 15, 2008 (2008 LSBC 01)

**Counsel** : Jaia Rai for the Law Society and Douglas Christie appearing on his own behalf

### **Facts**

Douglas Hewson Christie acted as counsel for the plaintiffs in *R and others v. D*, a case involving a challenge to a will and raising allegations of lack of testamentary capacity, undue influence and feloniously causing death. K was a key witness and provided ongoing assistance to Christie in the conduct of the litigation.

In the course of dismissing all of the plaintiffs' claims, the trial judge commented, "K was so personally involved in this action that he forged a court stamp which he affixed to a form of subpoena for service on an out-of-province witness, thereby hoping to achieve production of documents for use in the trial." Although not a party to the lawsuit, K married one of the plaintiffs in the course of the proceedings.

K testified at the discipline hearing that Christie had instructed him to prepare a subpoena to get documents, telling him to "check in the library and use the form in the Rules." K adapted the Form 21 subpoena in the BC Supreme Court Rules to create three documents titled "Subpoena of Documents." K admitted under cross-examination that he had no training to interpret the Supreme Court Rules. K also testified that Christie was very busy during the fall of 2003 and had no other secretarial support during the time K prepared the three documents.

In June 2006 the Law Society issued a citation charging Christie with three counts of professional misconduct arising from causing the preparation and delivery of three documents titled "Subpoena of Documents," dated October 1, December 16 and December 18, 2003. Christie acknowledged having signed and authorized K to serve the three documents, but denied having directed their preparation.

### **Verdict**

The panel rejected Christie's denial that he had directed or authorized the preparation of the three subpoenas, citing the inconsistency of that denial with statements made by Christie during the trial in *R and others v. D* and in his correspondence to the Law Society.

The panel stated it is common ground that there is no such thing as a "Subpoena for Documents" in British Columbia. Noting Christie's extensive litigation experience, the panel observed that in August 2003 - just a few weeks before signing the first "Subpoena for Documents" - he had shown his command of the applicable Supreme Court Rules by making an appropriate application under Rule 26 for an order directing production of documents.

The panel concluded that having directed the documents' preparation, Christie then signed and gave them up to K for service, seeking to compel the production of documents in a manner he knew was not permitted

by BC law.

The panel noted evidence of severe health difficulties suffered both by Christie and his spouse (his secretary of 25 years) throughout 2003, and pointed out that while such factors might be considered in the context of setting an appropriate penalty, they cannot be used to excuse professional misconduct.

The panel ruled that Christie's actions were dishonourable, were a serious abuse of the BC Supreme Court Rules, and constituted professional misconduct.

## **Penalty**

The panel accepted that Christie's professional misconduct arose from stress and excessive zeal to help his client, rather than from desire for personal gain.

The panel noted that, while in many ways Christie's passion and dedication to his client's cause embody the best qualities of a barrister, that passion can never be allowed to overcome a barrister's duty to practise by the rules. The panel stressed that when members of the public receive a document signed by a lawyer, appearing to be a court document and requiring them to do something, they must be able to trust that the document actually has the authority attributed to it. The panel said that such trust is absolutely fundamental to the functioning of the courts, the practice of law, and the maintenance of public confidence in the integrity of the legal profession.

The panel placed significant weight on the many letters submitted on Christie's behalf, (including 15 letters attesting to his honesty and his contribution to the community), and pointed out that the only incident on Christie's disciplinary record took place over 30 years ago.

Upon noting its satisfaction with the Law Society's draft bill of costs for \$50,000, the panel said it did not want to impose a "de facto disbarment" by making a cost award beyond Christie's ability to pay. The panel described Christie's work as a valuable contribution to our free society, often performed pro bono or for greatly reduced fees, and stated its desire that Christie be able to continue with that work.

The panel ordered that Christie pay a fine of \$2,500 by June 17, 2008, and costs of \$20,000 by January 15, 2010.