

2008 : No. 2 May

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 (Facts and Verdict), May 18, 2007 (Penalty) and February 12, 2008 (Review)

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

Penalty : Majority decision: Leon Getz, QC and Gavin Hume, QC; Minority decision: Glen Ridgway, QC

Review Panel : Gordon Turriff, QC, Chair, Kathryn Berge, QC, Robert Brun, QC, Peter Lloyd, David Mossop, QC, David Renwick, QC, Marguerite Shaw, QC

Report issued : Facts and Verdict, January 10, 2007 (2007 LSBC 03); Penalty, September 7, 2007 (2007 LSBC 40); Review, May 8, 2008 (2008 LSBC 13)

Counsel : Herman Van Ommen, Judy Walker and Brian McKinley for the Law Society before the hearing panel, and Jean Whittow, QC, for the Law Society at the review; Sheldon Goldberg appearing on his own behalf

Facts

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 the trial by JB, the lawyer who had originally represented all four accused.

The Court of Appeal dismissed all four appeals and was highly critical of Goldberg's conduct and competence in its written reasons. It said Goldberg's affidavits were "unworthy of any lawyer" and that his factums and written submissions were "rambling," "repetitive," "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 Goldberg made against JB and found no proper evidence to support the assertions. Further, it found Goldberg failed to demonstrate adequate knowledge of substantive law, practice and procedures needed to effectively represent his clients, contrary to Chapter 3, Rule 1 of the Professional Conduct Handbook. The panel concluded Goldberg did not competently carry out his duties as counsel.

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 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 costs of the hearing.

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

Review

On February 12, 2008, the Benchers heard Goldberg's application for a review of the hearing panel's decision on verdict, penalty and costs.

In a letter to the Law Society dated October 16, 2007 Goldberg listed 11 points that he believed demonstrated errors made by the original panel. The Benchers found one of the points difficult to comprehend and invited Goldberg to argue and explain each of his points at the hearing, but he chose not to do so.

After considering all of the issues raised by Goldberg, the Benchers found no merit in any of them. In their decision, the Benchers reiterated that Goldberg exposed JB to severe criticism and allegations without proper foundation. Further, the Benchers stated that Goldberg had "incompetently tried to build his client's cases on allegations that he knew or should have known were unsubstantiated."

The Benchers noted that, while lawyers must be given latitude in determining what evidence is required for the proper prosecution or defence of their clients' cases, that latitude "is tempered by the responsibility to take care at all times." The Benchers said counsel must "understand ... what facts must be proved and how to prove them, having regard to the rules of evidence" and that "counsel have no right to lead just any evidence or say just anything in court."

The Benchers dismissed the review application with costs payable to the Law Society.