

Lawyer 7

Discipline hearing : November 21, 2007, Benchers on Review: July 25, 2008

Panel : Minority decision: Leon Getz, QC, Chair, Majority decision: Russell Tretiak, QC, Concurring decision: Dr. Maelor Vallance

Counsel : Maureen Boyd for the Law Society and Terrence Robertson, QC for Lawyer 7

Report issued : February 11, 2008 (2008 LSBC 06) and October 06, 2008 (2008 LSBC 33)

Benchers on Review : Majority decision: Robert Brun, QC, Peter Lloyd, David Mossop, QC, Thelma O'Grady, David Renwick, QC, Minority decision: Glen Ridgway, QC, Chair, Joost Blom, QC, William Jackson, Bruce LeRose, QC

Counsel : Herman Van Ommen for the Law Society and Terrence Robertson, QC for Lawyer 7

Facts

The citation against Lawyer 7 was issued on May 20, 2007. It originally covered three distinct allegations, all arising out of the same matter. Subsequently, Lawyer 7 proposed to the Discipline Committee that he would make a Rule 4-22 conditional admission of professional misconduct in respect of one of those allegations. The proposal was accepted, and the Discipline Committee directed counsel not to proceed on the remaining allegations.

The allegation involved Lawyer 7 failing to keep an undertaking given in the course of a personal injury matter in which Lawyer 7 acted for the defendant. The undertaking was to provide plaintiff's counsel with a copy of the reports of a physician who was to conduct an independent medical examination of the plaintiff. The physician was to make an interim report and then, after reviewing the plaintiff's records, a final report. Lawyer 7 received the physician's interim report in February 2004, but did not provide it to plaintiff's counsel until September 2005. In the meantime the physician's final report, which Lawyer 7 received on or about May 16, 2004, had been forwarded to plaintiff's counsel on May 21, 2004.

Admission and Penalty

Lawyer 7 admitted that he had breached the undertaking and that his doing so constituted professional misconduct. The disciplinary action jointly proposed by Lawyer 7 and the Law Society was a fine of \$3,000 and payment of costs of \$3,750.

Application for Anonymous Publication

Lawyer 7 applied for anonymous publication of the hearing panel's decision that is circulated to the profession. Law Society rules require that summaries of discipline decisions be circulated to the profession and that those summaries " must identify the respondent."

The hearing panel noted that this case was particularly difficult because Lawyer 7's misconduct, though significant, cast not the slightest doubt on his integrity or competence. In such a situation, publication of a finding of professional misconduct - no matter how fully the circumstances are explained - may well risk doing damage to the lawyer's reputation that is out of proportion to the gravity of the wrong. The hearing panel referred the decision on anonymous publication for review by the Benchers. Upon review, the Benchers decided the majority of the hearing panel was correct in determining that the grievous harm likely to be suffered outweighed the interest of the public and the Law Society in full publication.