

2009 : No. 2

Douglas Hewson Christie

Victoria, BC

Called to the bar: September 15, 1971

Bench Review : December 11, 2008

Benches: Glen Ridgway, QC, Chair, Haydn Acheson, Leon Getz, QC, Thelma O'Grady, David Renwick, QC, Meg Shaw, QC, Ronald Tindale and Dr. Maelor Vallance

Report issued : May 29, 2008 (2008 LSBC 15) and April 30, 2009 (2009 LSBC 13)

Counsel : Jean Whittow, QC and Andrew Buchanan for the Law Society and Douglas Christie on his own behalf

Background

The hearing panel found Douglas Hewson Christie guilty of professional misconduct for causing the preparation and delivery of three documents titled "Subpoena of Documents" purporting to compel the production of documents in a way that was not permitted by BC law. The panel found that Christie knowingly changed Form 21, a subpoena, even though he knew there was no such thing as a "Subpoena for Documents in British Columbia" and had just completed an appropriate Rule 26 application weeks earlier. The panel found that Christie's zeal in pursuing the case on behalf of his clients caused him to overlook his professional responsibilities. They ordered Christie to pay a \$2,500 fine and \$20,000 in costs.

On December 5, 2006 the panel orally rejected Christie's application for a stay of proceedings on the grounds of delay, and followed that decision with written reasons on May 29, 2008. Christie applied for review of the verdict, penalty and delay decisions.

Decision

The Benchers upheld the verdict, penalty and delay decisions. They agreed there was no evidence that Christie suffered prejudice or stigma from an unacceptable delay.

In reviewing the verdict, the Benchers rejected Christie's contention that the hearing panel was wrong on the law of compelling documents in civil litigation. They also rejected his assertion that he was not involved in the preparation of the subpoenas, noting that he had acknowledged his involvement to the judge at the trial of the civil matter involved and in his July 11, 2005 letter to the Law Society. Considering his experience with civil litigation and his recent Rule 26 application, the Benchers found it implausible that Christie did not know the appropriate procedure for obtaining documents, as he contended. They found that, while Christie was clearly suffering from stress during the time the subpoenas were prepared, this does not explain or excuse his misconduct.

In their review of the penalty, the Benchers considered that this was Christie's first misconduct in a 30-year career. They also noted that he did not secure any personal gain from his conduct, was under considerable stress at the time and had many testimonials noting his good character and commitment to his clients. They found that the penalty was appropriate to Christie's serious and deliberate abuse of the rules of court.

The Benchers found no basis for Christie's assertion that, if he had been told the penalty the Law Society was seeking, he would have agreed to settle the citation, thereby eliminating the need for a hearing and avoiding costs from those proceedings. The Benchers agreed with the panel's decision on costs but, considering Christie's financial circumstances, they decided to allow him more time - two years from the date of the review - to pay the \$22,500 due from the fine and costs.

