

2009 : No. 3 Fall

Sheldon Goldberg

Vancouver, BC

Called to the bar: January 3, 1973

Ceased membership: August 1, 2009

Discipline hearing : March 26 and 27, 2008

Panel : Bruce LeRose, QC, Chair, Dirk Sigalet, QC and Peter Warner, QC

Report issued : May 29, 2009 (2009 LSBC 18)

Counsel : Jaia Rai for the Law Society and Sheldon Goldberg on his own behalf

Sheldon Goldberg signed an undertaking to resign his membership in the Law Society effective August 1, 2009. He will not apply to be reinstated for five years, nor will he apply for membership in any other jurisdiction without advising the Law Society. He will not allow his name to appear on the letterhead or work in any capacity for any lawyer or law firm in BC without first obtaining written consent from the Law Society.

As a result of this undertaking, the Discipline Committee has withdrawn the citation and placed it in Goldberg's personal file, for consideration by the Credentials Committee if he applies for reinstatement.

Facts

On August 14, 2008 a citation was issued against Sheldon Goldberg for failing to attend a fix date appearance in Provincial Court and for failing to respond to communications from the Law Society in the course of its investigation of complaints against him by the Provincial Court judiciary.

Failing to attend a fix date appearance

Goldberg represented the accused in *R v. P* and appeared at an arraignment hearing on July 17, 2007 at the Vancouver Provincial Courthouse. At that arraignment, the matter was referred to a case manager to fix a three-day trial. Goldberg requested the matter be put over to July 18, where the accused would appear on his own behalf and Goldberg would try to pre-arrange a trial date.

No date was fixed by the July 18 appearance. At that hearing, Crown Counsel advised that Goldberg sent a note requesting the matter be put over to July 20. As a result the matter was adjourned.

When *R v. P* was called at 2:49 pm on July 20 in courtroom 307, Goldberg was not in attendance. He did not speak to his client to explain his non-attendance, nor did he explain why a trial date had not been set.

Crown Counsel for *R v. P* saw Goldberg just outside or inside courtroom 307 immediately prior to the case being called. He said that Goldberg attended briefly and advised he could not get a three-day trial until January and so he had not set a trial date. Counsel advised Goldberg to address the matter on the record, but Goldberg said he wanted the matter to go over to July 23 when he could hopefully attend.

Crown Counsel reported his conversation with Goldberg to the presiding judge, who asked where Goldberg went. Counsel reported and a Sheriff confirmed that Goldberg was before a judge in courtroom 303, just down the hall.

The judge stood down *R v. P* and ordered Goldberg to appear before him when a break occurred. Crown Counsel in courtroom 303 relayed the order to Goldberg. Goldberg responded by saying "No. I am going to Surrey," ran down the stairs and away from the courthouse.

R v. P was recalled at 3:15 pm, at which time counsel from Courtroom 303 reported on what had transpired. *R v. P* was stood down and adjourned to July 23, when Goldberg was ordered to appear and explain his failure to comply with the judge's order.

Goldberg submitted he had a higher purpose in postponing the *R v. P* matter - that he hoped to convince the judge a two-day trial would be better and therefore achieve an earlier trial date for his client. He added that circumstances beyond his control created a dilemma where the least disrespectful choice was to go to the Surrey courthouse and continue a trial there.

The panel found these excuses to be unacceptable. Goldberg allowed himself to be scheduled to appear in courtrooms on five matters in two separate cities in a single day, and so is the author of his own misfortune.

Failure to respond to communications from the Law Society

On the basis of the allegation outlined above, the Law Society launched an investigation into Goldberg's conduct. An outside investigator retained by the Law Society made five separate inquiries with Goldberg, to which he did not respond appropriately.

It took Goldberg six weeks to reply to the first of five letters sent to him by the investigator. Instead of providing a candid and complete response to these inquiries, Goldberg responded by accusing the investigator of bias.

Verdict

As an officer of the court, a lawyer has an absolute obligation to attend, whether for trial or adjournment purposes, to serve the client, respect the court and respect the administration of justice. Failure to fulfill that obligation is conduct deserving of sanction.

The panel found that Goldberg's behaviour collectively trivializes the duty of a lawyer to his client and the courts, and is disrespectful of those who administer the justice system. His behaviour is deliberately disruptive and results in, among other things, dissatisfied clients. Further, his conduct demonstrates gross neglect of his duties as a lawyer and constitutes professional misconduct.

The panel characterized Goldberg's conduct in responding to the Law Society-appointed investigator as delayed, then clever, selective and incomplete. The panel found that Goldberg's responses were a breach of the *Professional Conduct Handbook* and constituted professional misconduct.