

2006 LSBC 11

Report issued: April 10, 2006

Citation issued: July 15, 2005

The Law Society of British Columbia
In the matter of the *Legal Profession Act*, SBC 1998, c.9
and a pre-hearing conference concerning

Michael Lee Seifert

Respondent

Decision of the Pre-Hearing Panel

Pre-hearing date: January 24, 2006

Bencher: Dirk Sigalet, QC

Counsel for the Law Society: Maureen E. Baird

Counsel for the Respondent: Marvni Storrow, QC and David T. Neave

Background

[1] This matter was adjourned to January 24, 2006 for dealing with three administrative issues and one substantive issue.

Administrative Issues

[2] These are set out below together with the progress achieved.

1. Agreed Statement of Facts: in process
2. Penalty assessment: in process
3. Law Society's consideration of an alternate disposition of the citation: in process.

Substantive Issue

[3] During a January 10, 2006 Chambers hearing of this matter it was agreed that the substantive issue to be addressed was this:

Can the Law Society be directed to disclose written communications between its staff lawyers and the Discipline Committee?

[4] To provide better particulars of these written communications, Ms. Baird filed an affidavit of Stuart Cameron, sworn January 18, 2006. On this affidavit's page 2 Mr. Cameron listed three items of written communication. Immediately after this pre-hearing conference it was noted that the third item was incorrectly dated. This has been corrected by a supplemental affidavit of Stuart Cameron, sworn January 30, 2006, which not only corrected the date but also disclosed two more documents consisting of written

communications between the Law Society staff lawyers and the Law Society's Discipline Committee. The result is that the written communications now being considered by me in this application are as follows (the corrections are indicated by italics):

(a) a legal opinion in the form of a Memorandum from Todd Follett, Senior Discipline Counsel, to the Discipline Committee dated February 18, 2005;

(b) a legal opinion in the form of a Memorandum from myself [i.e., Stuart Cameron] to the Discipline Committee dated February 18th, 2005;

(b1) *March 1, 2005 Memorandum from Todd Follett to Discipline Committee;*

(c) a legal opinion in the form of a Memorandum from Todd Follett to the Discipline Committee dated *April 25, 2005;*

(c1) *a legal opinion in the form of a Memorandum from Todd Follett to the Discipline Committee dated May 20, 2005.*

[5] I have now seen all the above documents and am satisfied that they are legal opinions, i.e., prepared by staff lawyers in their respective capacities as legal advisors.

[6] At the start of the hearing Mr. Storrow asked that the above be broadened to include "...the Law Society's investigation file..." and, in support of his extraordinary request referred to various extraordinary facts of this case, including excessive delay; a relatively minor alleged Rule infraction; the obscurity of a yet untried Rule; and undue prejudice to his client. I find that these are not extraordinary facts but, instead, matters of opinion and perception, all or some of which arise in most disputes by one side of the dispute or the other. Accordingly, it is my decision not to broaden this application. Accordingly the reasons below deal with disclosure of the above five items.

[7] The requested disclosure of the above five items requires me to decide to order a waiver of solicitor client privilege. I have considered the authorities submitted and the helpful written and oral submissions of both counsel.

[8] Ms Baird referred to five authorities that, generally, illustrate the settled law that solicitor-client privilege is almost an absolute. The fact the privilege arises in a discipline authority situation through in-house counsel does not depart from this settled law. This is confirmed in *Greene v. Law Society of British Columbia et al.*, 2005 BCSC 390. See paragraph 87 of the reasons. This is further supported by *Pritchard v Ontario Human Rights Commission* 2004 SCC 31. Section VI "Analysis" of the reasons of Major, J. and paragraph 31 are useful.

[9] Mr. Storrow's authorities are interesting but not persuasive as to weakening the almost absolute sanctity of solicitor-client privilege. Accordingly, I have decided that the above communications are subject to solicitor-client privilege, and the Law Society is not required to release these communications. The Respondent's rights are, in any event, protected by:

(a) requesting the Law Society to provide a sworn affidavit listing all relevant documents, even those that will not be produced as part of the Law Society's case; and,

(b) the usual hearing conventions wherein the Law Society may not introduce evidence that it has not previously disclosed to the Respondent.

[10] Mr. Storrow further requested that, if these communications were found to be subject to solicitor-client

privilege, then those portions of the communications that were solely factual could be severed from the legal opinion and disclosed. The legal opinion portions would, accordingly, be redacted. *Blank v Canada* 2005 FC 1551 was proffered as authority. That case is not helpful because it is limited to a specific legislative provision, the *Access to Information Act*. s.25. And, in any event, the substance of the subject communications is the process of assessing evidence to determine if certain facts can be established and, in turn, determining if these facts then meet a burden of proof. This evidence assessment process is an essential aspect of any legal opinion. It is not possible to sever or redact this process without compromising solicitor-client privilege. I have therefore decided to decline Mr. Storrow's request.

Conclusion

[11] The request for disclosure of the above written communications, in whole or in part, is denied. These communications are wholly protected by solicitor-client privilege. Mr. Storrow's point regarding delay is well taken, so it is my encouragement that the parties now set this matter down before a Hearing Panel as to preliminary issue of delay.