

2010 LSBC 01

Report issued: January 5, 2010

Citation issued: January 16, 2006

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

Re: Lawyer 11

Respondent

**Decision of the Hearing Panel
on Penalty**

Hearing date: December 5, 2009

Panel: Gordon Turriff, QC, Chair, David Renwick, QC, Warren Wilson, QC

Counsel for the Law Society: Maureen Baird, David Lunny and Nicole Ladner

Counsel for the Respondent: David S. Mulroney

Background

[1] In our decision issued September 9, 2009, we found that the Respondent had misconducted himself professionally, having misled the Court by not revealing when certain conditions referable to wage claims had been formulated. The claims were germane to a Rowbotham application to which his father was a party. We have not found that the Respondent intentionally misled the Court, but we are satisfied that his conduct was more than negligent. He was reckless. He disregarded his duty to the Court. He ignored the serious consequences for the public at large and for the Court in not having all the information it would need to ensure that the Rowbotham application was justly determined.

Penalty Decision

[2] We have decided that the Respondent should be suspended from the practice of law for a month; that he should have to pay 30 per cent of the costs of his constitutional point; and that otherwise there should be no costs of this hearing or of any of the steps that led up to it.

Reasoning

[3] In making our decision to impose a one month suspension, we have considered the penalty factors set out in *Law Society of BC v. Ogilvie*, [1999] LSBC 17. As we see it, a month's suspension is within the range of reasonable possibilities, considering all of the circumstances, including penalty decisions made in other cases to which we were referred. We are satisfied that a reprimand, for which the Respondent contended, would not sufficiently reflect the gravity of his failure to discharge his duty to the Court, a failure that impaired the capacity of the Court to deal appropriately with the business before it.

[4] Given the ramifications for the administration of justice, it does not help the Respondent to recognize that

his misconduct was a single event. We are not persuaded that the Respondent did what he did for personal gain, although he might have gained from it. It is hard not to think that his recklessness resulted from his inability, likely due to his inexperience at the Bar, to choose his duty to the Court over a duty he believed he owed to family. We think that the Respondent's inexperience at the Bar is, at most, a very minor mitigating factor. One's duty to the Court is fundamental to the practice of law and not simply a secret known only to experienced lawyers.

[5] We were given many testimonials about the Respondent, and we have considered them. All the referees regard the Respondent favourably and, having had the benefit of these assessments from leading members of the Bar and others, we conclude that the Respondent's eyes have been opened very wide by this proceeding. We hope that we are right in saying that he has learned a hard lesson. We note that he acknowledged that his conduct could have misled the Court.

[6] There is a need for general deterrence. The Respondent's conduct fell below the mark. Others, in other circumstances, might be tempted to do as he did. We must ensure that all who might be tempted understand that a serious price will have to be paid if they act on the temptation.

[7] Because the Law Society did not prove several very serious allegations about the Respondent's conduct and, indeed, adduced no evidence at all about one of them, we have decided not to require the Respondent to pay any of the costs of the determination of the substantive allegations, even though one of them was proved. We do allow the Law Society 30 per cent of the claimed costs of the Respondent's failed constitutional point. That issue was interlocutory and discrete. We compute the costs to be paid to be \$2,520.60. Counsel can correct our arithmetic if necessary.

Order

[8] We order that:

- (a) the Respondent is suspended from the practice of law for one month, effective February 15, 2010; and that
- (b) the Respondent pay the Law Society costs of \$2,520.60 within 90 days of January 1, 2010.