

2010 : No. 1

Michael Curt Scholz

Vancouver, BC

Called to the bar: May 14, 1979

Ceased membership: July 3, 2008

Bench Review : September 9, 2009

Benchers: Bruce LeRose, QC, Chair, Leon Getz, QC, David Mossop, QC, Thelma O'Grady, David Renwick, QC, Meg Shaw, QC, Herman Van Ommen

Report issued : November 24, 2009 (2009 LSBC 33); corrigenda issued: November 26, 2009 (2009 LSBC 34)

Counsel : Henry Wood, QC for the Law Society and George Gregory for Michael Curt Scholz

Background

In the decision of the hearing panel (facts and verdict: 2008 LSBC 02; penalty: 2008 LSBC 16; [Discipline Digest: 2008 No. 3 July](#)), Michael Curt Scholz was found in breach of a court order governing trust funds, in contravention of Law Society Rule 3-51. The panel also found Scholz acted in circumstances that had the potential for divided loyalties and a conflict of interest. The panel found Scholz's conduct in both these circumstances amounted to professional misconduct. The panel ordered that he be suspended for one month and pay costs of \$26,437.50.

Scholz challenged the findings of the hearing panel, the verdicts of professional misconduct and the penalty. He argued that his conduct must be viewed through his eyes, this was not the case of a fully practising lawyer acting in conflict, he was nearing retirement and he had stopped thinking like a lawyer.

Decision

The review panel upheld the findings of the hearing panel.

The panel stated that a lawyer's conduct must be viewed objectively, and a belief to the contrary is irrelevant as to whether the impugned conduct is within the standards that govern lawyers' behaviour. As long as Scholz continued to act as a lawyer, including charging fees for his services, he was obliged to continue to think and act as a lawyer.

The review panel upheld the hearing panel's decision on penalty that a one-month suspension and the payment of costs was an appropriate penalty. The review panel further ordered Scholz to pay the costs of the review.