

Re: Lawyer 13

Discipline hearing : July 21, 2011

Panel : Leon Getz, QC, Chair, Peter Lloyd and Lee Ongman

Report issued : September 21, 2011 (2011 LSBC 30)

Counsel : Maureen Boyd for the Law Society and Henry Wood, QC for Lawyer 13

FACTS

In January 2010, Lawyer 13 was retained by a client in a family law proceeding against her husband. In a letter to the husband's lawyer, dated February 8, Lawyer 13 used the words "odalisque" and "courtesan" to refer to a woman who was alleged to be living in an adulterous relationship with his client's husband. "Odalisque" and "courtesan" are archaic terms that suggest scandalous or morally reprehensible conduct. Both the husband and his lawyer were offended by this characterization. They viewed this as unnecessarily inflammatory and demanded an immediate apology.

When no apology was received, the husband and his lawyer complained to the Law Society on February 16.

On February 23, Lawyer 13 wrote to the husband's lawyer. He did not apologize; rather, he sought to justify his choice of words and repeated the "insult." On May 12 Lawyer 13 emailed an apology to the Law Society and stated that his words were not intended to be rude or harsh.

DETERMINATION

The panel had to determine whether Lawyer 13's choice of words constituted gross culpable neglect of his duties as a lawyer and a marked departure from conduct the Law Society expects of its members.

The panel considered two possibilities. One was that Lawyer 13 used "odalisque" and "courtesan" with the intention of abusing, insulting and degrading the husband and his lawyer. If that was how the evidence must be understood, it would have been a proper and defensible basis to find that he was guilty of professional misconduct.

The other possibility was that he had no such intention. Lawyer 13 told the panel that he had a long-standing interest in words and language. When composing his February 8 letter to the husband's lawyer, he used an online thesaurus to search for words that were more original and interesting than "mistress." He assumed that, since "odalisque" and "courtesan" were identified as synonyms for "mistress," the three words were perfectly exchangeable.

The panel commented that a lawyer, more than anyone, should be aware of the importance of using words carefully, alive to their nuances. Whether Lawyer 13's failure to do so was the product of naïveté, stupidity or lack of care, it was at least unintelligent and certainly inexcusable. In one sense it might be considered incompetent even if not, perhaps, a form of incompetence that warrants discipline. However, a finding of professional misconduct would be an exercise in prissy censoriousness, and the panel did not believe that the disciplinary powers of the Law Society were conferred upon it for that purpose.

The panel decided that Lawyer 13's conduct did not constitute professional misconduct.

The citation was dismissed. Under Law Society Rule 4-38.1(2), if all counts of a citation are dismissed, the hearing report summary must not identify the respondent without the respondent's consent,

