

2012 : No. 1

Lawyer 12

Bencher Review: October 6, 2011

Benchers: Majority decision: Gregory Petrisor, Alan Ross, Catherine Sas, QC and Kenneth Walker;

Concurring decision: Leon Getz, QC; Minority decision: Bruce LeRose, QC, Chair, and Benjimen Meisner

Report issued : December 12, 2011 (2011 LSBC 35)

Counsel : Jaia Rai for the Law Society and David Taylor for Lawyer 12

Background

The Law Society issued a citation to Lawyer 12 for failing to comply with a 2009 hearing panel order to provide a written report prepared by a qualified accountant stating whether the books and records of his practice were maintained in compliance with Law Society rules.

Lawyer 12 failed to communicate directly with the certified general accountant he retained concerning the nature of the report, which resulted in a report being submitted to the Law Society that did not address the requirements of the rules as ordered.

In the decision of the single-Bencher hearing panel (facts and verdict: 2011 LSBC 11; Discipline Digest: 2011 No. 2 Summer), it was found that Lawyer 12's conduct was not a marked departure from the conduct expected by the Law Society of its members. Further, the single-Bencher panel was not persuaded that Lawyer 12's conduct demonstrated gross culpable neglect of his duties as a lawyer and concluded that his conduct did not amount to professional misconduct.

The Law Society sought a review of that decision to determine whether the single-Bencher panel correctly applied the law to the facts when it decided to dismiss the citation.

Decision

Majority (Petrisor, Ross, Sas and Walker)

The majority upheld the dismissal of the citation by the single-Bencher panel.

The majority did not agree with the Law Society's position that it was not reasonable for Lawyer 12 to rely on his bookkeeper to perform the task entrusted to him of advising the certified general accountant what the 2009 order required. In the majority's view, the single-Bencher panel reached the correct conclusion.

In its reasons, the majority disapproved Re: Lawyer 10, (2010 LSBC 02), which found that it is not professional misconduct if the "conduct falls below the norm in a marked way if that occurs because of: a) events beyond one's control; or b) an innocent mistake." The majority preferred to consider the conduct as a whole. If the conduct arose because of: a) events beyond one's control; or b) an innocent mistake, then the conduct cannot be considered conduct that falls below the norm in a marked way.

Concurring (Getz)

The concurring panel member agreed with the majority's conclusion that the single-Bencher panel was correct in dismissing the citation and with its reasons for reaching that conclusion, but did not agree that it was -either necessary or appropriate to express any view about whether Re Lawyer 10 was correctly

decided.

Minority (LeRose and Meisner)

The minority found that Lawyer 12 had once again engaged in professional misconduct and should be dealt with accordingly.

Given the long history of Lawyer 12's transgressions in complying with the trust accounting rules, the minority determined it was not reasonable for Lawyer 12 to rely on his bookkeeper and staff. The minority determined that Lawyer 12's transgression in this case was more than a mere oversight or innocent mistake, but rather a continued pattern of ignoring his responsibilities in this regard.

The minority also concluded that none of the uncontested facts that transpired from the time of the 2009 order to the non-compliance in March 2010 should relieve Lawyer 12 from his duty and obligation to comply strictly with the order of the hearing panel.