

2012 : No. 3 Fall

Leonard Thomas Denovan Hill

**Bench review :** March 28, 2012

**Benchers:** *Majority decision:* Thelma O'Grady, Chair, Rita Andreone, QC, David Crossin, QC, Nancy Merrill, Lee Ongman, David Renwick, QC, Catherine Sas, QC and Barry Zacharias; *Minority decision:* Vincent Orchard, QC

**Report issued :** June 1, 2012 (2012 LSBC 20)

**Counsel :** Maureen Boyd for the Law Society and Leonard Thomas Denovan Hill appearing on his own behalf

## Background

The Law Society issued a citation to Leonard Thomas Denovan Hill for disbursing trust funds in breach of the terms of an undertaking.

In the decision of the hearing panel, it was found that Hill had breached the undertaking and the circumstances of the breach amounted to professional misconduct (facts and determination: 2011 LSBC 08, disciplinary action: 2011 LSBC 16 and corrigenda: 2011 LSBC 18; discipline digest: 2011 No. 3 Fall).

Hill sought a review of that decision to determine whether mistakes can be made by a lawyer in complying with undertakings that do not amount to professional misconduct.

## Decision

*Majority (O'Grady, Andreone, Crossin, Merrill, Ongman, Renwick, Sas and Zacharias)*

The majority upheld the panel's decision and concluded that Hill was guilty of professional misconduct. The majority declined to endorse the panel's finding relating to Hill's credibility and made no finding that Hill intentionally breached the undertaking.

In Hill's request for a review, he raised the issue as to whether the panel properly assessed the evidence, including the issue of credibility. The panel had concluded that Hill was not credible in his assertion that he was unaware he was acting in violation of the undertaking. In addition, the panel concluded that, even accepting his evidence, his actions nevertheless amounted to professional misconduct due to his failure to take any steps to ascertain the true state of affairs before releasing the funds.

The majority was concerned that the Law Society's allegation that Hill intentionally breached the undertaking was not fully brought forward at the disciplinary hearing and, therefore, Hill did not have an informed opportunity to fully answer and defend the allegation. It was clear to the majority that the parties litigated this case on a different basis

*Minority (Orchard)*

The minority agreed with the conclusion that the panel correctly found Hill's actions amounted to professional misconduct in breaching an undertaking. However, the minority did not agree with the majority's -comments concerning the factual finding by the panel rejecting Hill's explanation that he was

unaware of the undertaking imposed upon him.

In the minority's view, it was open to the panel to reject Hill's testimony that he was unaware of the undertaking. The panel determined that it was unlikely that Hill was unaware of the undertaking, based on his testimony and admission. The minority believed that the panel did not find Hill's memory and explanation reliable, but they did not find him dishonest.

In conclusion, the minority was not satisfied that the panel's factual finding rejecting Hill's explanation that he was unaware of the undertaking was an obvious and overriding error. Having found that Hill was aware of the undertaking, the panel's conclusion that the applicant knowingly breached the undertaking naturally followed.