

2012 : No. 3 Fall

Daniel Markovitz

Richmond, BC

Called to the bar: May 14, 1993

Discipline hearing : December 20, 2011 and February 20, 2012

Panel : Leon Getz, QC, Chair, Jennifer Chow and Dan Goodleaf

Report issued : March 7 (2012 LSBC 11) and July 11, 2012 (2012 LSBC 25)

Counsel : Thomas Manson, QC for the Law Society and Daniel Le Dressay for Daniel Markovitz

Facts

On November 30, 2008, Daniel Markovitz was arrested for impaired driving. At the police station he provided two breath samples but refused to provide a third sample. On April 19, 2010, he pleaded guilty to the charge under the Criminal Code for failing to provide a breath sample.

Markovitz reported his arrest to the Law Society and the proposed charges and immediately entered into a monitored recovery program -agreement and a similar undertaking with the Law Society to:

1. remain abstinent from alcohol;
2. attend a minimum of three mutual support meetings per week;
3. join a home group and use a sponsor;
4. enrol in the weekly Professionals Accountability Group at the Lawyers Assistance Program; and
5. provide regular and random urine and/or blood samples for verification of abstinence.

In December 2008, Markovitz began attending mutual support meetings, meeting with an addiction counsellor, and providing urine samples on request. By December 2009, he had ceased attending support meetings and providing urine samples.

On February 1, 2010 Markovitz asked the Practice Standards Committee of the Law Society to remove the requirement for random urine testing due to practical and financial difficulties. His request was refused. By March 2010, Markovitz was failing to provide urine and/or blood verification of abstinence and his addiction counsellor cancelled the monitored recovery agreement.

Markovitz advised the Law Society that he was not attending support groups because they conflicted severely with his work and, in the case of Alcoholics Anonymous, the concept of “higher power” conflicted with his beliefs. He enrolled in the Professionals Accountability Group at the Lawyers Assistance Program. However, his irregular attendance broke the rules, and, in April 2010, he was told he was no longer welcome to attend.

admissions and DISCIPLINARY ACTION

Markovitz admitted that his refusal to provide a breath sample to police amounted to conduct unbecoming a lawyer. He also admitted that his numerous failures to comply with an undertaking and agreements related to the monitoring of his consumption of alcohol and his treatment for alcohol abuse or dependency amounted to professional misconduct.

The Law Society sought an order under section 38(5)(d)(ii) of the Legal Profession Act suspending Markovitz until he satisfied a board of examiners that his competence to practise law was not adversely affected by a physical or mental disability, or dependency on alcohol or drugs. Markovitz was prepared to pay a fine and costs, but resisted any suspension order.

Markovitz testified that, at the time he gave the undertaking, he was unfamiliar with the various alcohol programs but agreed to them because he was concerned that the Law Society might suspend him and that, if that happened, he might lose the custody of his minor child of an earlier marriage. He explained that some of his other defaults were due to the financial burden that compliance entailed and the logistical difficulties of getting to the prescribed locations and times when he had obligations to clients for attendances in court and a driving ban for a period of time.

The panel found it difficult to accept his difficulties as justifications for his defaults. The appropriate response to all of these difficulties and inconveniences was not to simply ignore the undertaking, but rather to seek to have it modified. While Markovitz did approach the Law Society seeking relief from the requirement to undergo random urine tests, the panel noted that he did not raise his concerns about the requirement to attend support meetings.

Markovitz sought to contend that all that he had undertaken to do was be abstemious, not abstinent, and that he had not promised to cease and -desist from all consumption of alcohol but only that he would consume alcohol on rare occasions, and then only in moderation. The panel believed that this indicated a somewhat nonchalant approach to his undertaking to remain abstinent from alcohol.

Two medical practitioners reported that Markovitz met the criteria for alcohol abuse and emphasized the need for complete abstinence. Prior to the February hearing, Markovitz underwent a medical examination and a random urine test. In the panel's view, the results from these more recent tests provided limited and somewhat qualified and inconclusive evidence.

The medical specialists did not imply that, unless Markovitz followed their recommendations, he constituted a present, foreseeable or even remote risk of harm to clients, the public or the legal profession. The panel determined that there was no demonstrable connection between his professional misconduct and alcoholism and therefore declined to make the proposed suspension order.

Markovitz denied that he currently has any problems with alcohol consumption, though the panel understood that denial is one of the symptoms of an untreated alcoholic. The panel found no evidence that his -undertaking defaults were attributable to alcoholism.

The panel stated that Markovitz's breaches of undertaking over several years have been persistent, repetitive and knowing and that he appeared not yet to fully accept the importance, to himself, to the Law Society and to others, of honouring his promises.

The panel accepted Markovitz's admissions and ordered that he pay:

1. a \$6,500 fine; and
2. \$3,500 in costs.