

2013 : No. 3

Malcolm Zoraik

Victoria, BC

Called to the bar: November 16, 2001

Non-practising member : June 2010 to May 2013

Summary Proceeding under Rule 4-40 (conviction) : January 25, 2013

Benchers : Leon Getz, QC, Chair, David Crossin, QC, Lynam Doerksen, Miriam Kresivo, QC, Benjamin Meisner, Nancy Merrill, Gregory Petrisor, David Renwick, QC and Tony Wilson

Report issued : May 30, 2013 (2013 LSBC 13)

Counsel : Jaia Rai for the Law Society; Russell Tretiak, QC for Malcolm Hassan Zoraik

Facts

In April 2009, Malcolm Hassan Zoraik acted as counsel for the plaintiff in an action for damages arising from an automobile accident. The case was heard by a judge and jury. After deliberating for 20 minutes, the jury delivered a verdict of no liability on the part of the defendant. Zoraik immediately applied to the judge to decline to enter judgment because of the brevity of the jury's deliberations.

On May 6, 2009, before that application was heard, an envelope containing a letter was found on a counter in a small, publicly accessible alcove used for searching court files, located beside the court registry. The letter purported to be from the husband of an unidentified juror in a civil action and alleged that his wife had been offered money for her vote in the court. The case described in the letter matched that on which Zoraik had acted as plaintiff's counsel.

The allegation was untrue, but the letter triggered an investigation. Zoraik was subsequently convicted of creating and depositing the letter in the courthouse in a way that contravened the Criminal Code. The Provincial Court judge in his case said, "... Zoraik manufactured a letter which he knew was likely to become evidence before a court, and indeed sought to have a court rely upon that manufactured evidence."

On June 14, 2010 Zoraik was convicted of public mischief and of fabricating evidence. Zoraik appealed his convictions, but in June 2012 the BC Court of Appeal dismissed his appeal.

Rather than issuing a citation alleging that Zoraik had engaged in offensive conduct, the Discipline Committee made the highly unusual choice to refer the matter to Benchers, under Rule 4-40 (Conviction), to decide whether to summarily suspend or disbar Zoraik. Although Rule 4-40 in one form or another had been part of the discipline regime for at least 25 years, neither counsel was able to point to any other instance of its use.

Determination

Zoraik asked the Benchers to refer the matter back to the Discipline Committee for a citation to be issued and a normal hearing that would allow for a range of dispositions not provided by the Rule 4-40 process. Under Rule 4-40, Benchers are permitted to select one of only two possible disciplinary responses – suspension or disbarment – rather than choose from the full range available to a panel following a hearing on a citation. Zoraik contended that this precluded the Benchers from considering mitigating circumstances and "palliative conditions" and that "to summarily strip" him of his licence to practise law violated his

Charter rights.

The Benchers were not persuaded that Zoraik had been exposed to any real prejudice as a result of the Discipline Committee's decision to refer the matter to the Benchers under Rule 4-40, or of the Benchers exercising their jurisdiction.

Counsel found only a handful of cases in Canada involving lawyers who attempted to pervert the administration of justice in ways even remotely comparable to what Zoraik did. The Benchers found the fact that there were so few cases was eloquent testimony to the widespread recognition among lawyers of the critical role that they play in the administration of justice and the importance of public confidence in the legal system and profession.

Zoraik brought forward several factors as having a mitigating or "palliative" significance, including that:

- he had practised for a mere seven years when he committed the offences;
- aside from the convictions, he had an unblemished professional conduct record;
- his misconduct was an isolated act;
- he and his family have suffered sustained humiliation and economic devastation; and
- the criminal penalty imposed upon him had achieved all that is required in terms of specific and general deterrence.

What was conspicuously absent from the list, however, was anything that explained or justified the misconduct itself, and the Benchers could think of none. The Benchers noted that there was no acknowledgment of wrongdoing or remorse by Zoraik.

Disciplinary Action

The Benchers ordered that Zoraik be disbarred.

Zoraik has appealed the decision of the Benchers to the Court of Appeal.