

Comment: bowman v. fels

Law



Case Comment: Bowman V. Fels. The Bowman v. Fel's case involved money laundering disclosure requirements and litigation-related professional privilege. These requirements are outlined in the Proceeds of Crime Act 2002 (POCA) that was fully enforced on the 1st of March 2004. The parts of this act that are significant to this are part 7 that deals with money laundering, and part 8 that deals with investigations. The significance of the Bowman vs. Fel's case is attributed to the issues it raised with regard to the interpretation of the POCA of 2002. This came about due to important issues relating to POCA's interpretation, especially section 328, and its application to the legal profession. According to Bastable and Yeo (27), after the relationship ended between the claimant and the defendant, the claimant insisted that they had a right to a beneficial interest in property they had occupied together. This property was solely registered to the defendant's name, and in preparing for the trial, the claimant's lawyer suspected foul play. The lawyer postulated that the defendant had included the cost of non-business related work carried out at the property in his business accounts. The solicitor's suspicions led to the notification of the National Criminal Intelligence Service (NCIS), which is attributed to the solicitor's perceived obligation under section 328 of the POCA of 2002. This paper seeks to provide a case comment on the Bowman vs. Fel's case by critically considering, identifying and analysing the legal issues raised in the case. The Bowman vs. Fel's case created the need to determine whether section 328 means that as soon as a client's lawyer discovers or suspects discrepancies, they should notify the NCIS. These discrepancies are characterized by anything that might facilitate the acquisition, use or control and retention of criminal property by either the client or the opponent in the case (Ritchie, <https://assignbuster.com/comment-bowman-v-fels/>)

2005 np). This is in light of a solicitor's belief that in doing so they would avoid being guilty of a criminal offence characterized by being involved or concerned in an arrangement they know or suspect facilitates such activity (Speding, 2009 p103). The court of appeals' judgement ruled that that proper interpretation of section 328 meant that it was not envisaged to affect or cover the normal conduct of litigation by legal professionals. This includes any steps taken by legal practitioners in litigation from securing freezing orders or injunctive relief to the issuance of proceedings to its final disposal by judgment (Tapper, 2007 p268). According to Ramage (216), part 7 of the POCA of 2002 in section 327 creates an offence of hiding, disguising, transferring or converting criminal property or taking it out of the United Kingdom (UK). Section 328 creates the offence of entering or being involved in an arrangement with regard to criminal property in respect to solicitors. The appeal court's ruling in the Bowman vs. Fel's concluded that the legislators could not have foreseen that some ordinary activities and/or aspects of the case would amount or qualify to becoming involved in an arrangement that contravenes the law (Brooke, Mance & Dyson, 2005 np). It would thus be permissible to conclude that the issues raised by the Bowman vs. Fel's case served to clear the way forward in legal practice on an issue that could have had far reaching repercussions and consequences in the adjudication of justice. Bibliography Bastable, G. and Yeo, N. Money Laundering Law and Regulation: A Practical Guide. London: Oxford University Press. 2011. Brooke, Mance and Dyson. Bowman v Fels [2005] EWCA Civ 226. Family Law Week. 2005. Web, 10th December 2013. Retrieved From: <http://www.familylawweek.co.uk/site.aspx?i=ed167> Ramage, S. Fraud Investigation: Criminal Procedure and Investigation. London: iUniverse. 2009. <https://assignbuster.com/comment-bowman-v-fels/>

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