

## Lawyer C

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Vancouver, B.C.

Called to the bar: May 10, 1983

### **Discipline hearing:**

**Dates:** September 27, 1999 and June 6, 2000

**Panel:** Bruce D. Woolley, Q.C., Chair, Ralston S. Alexander, Q.C. and D. Peter Ramsay, Q.C.

**Reports:** December 3, 1999 and June 6, 2000

Indexed as [1999] LSBC 39

### **Counsel:**

Jessica S. Gossen, for the Law Society

Richard R. Sugden, Q.C., for Mr. C, as to penalty; Mr. C did not attend and was not represented at the hearing on facts and verdict

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## Summary

Mr. C failed to pay the accounts of another lawyer retained by his firm, contrary to his duty to meet his professional financial obligations. He further failed to notify the Law Society of three unsatisfied judgments filed against him. He misled the Law Society by stating that the reason he had not paid the other lawyer's accounts was because the client for whom services had been rendered had not yet made payment of certain accounts, which was not true. Mr. C failed to respond to the Law Society respecting complaints against him over a significant period. His conduct was disgraceful and dishonourable, a breach of the *Professional Conduct Handbook* and Law Society Rules and amounted to professional misconduct. Mr. C was suspended for one month, ordered to pay \$3,600 as costs and ordered to take several remedial steps.

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## Facts

### ***Failure to meet financial obligations***

Mr. C's law firm retained a lawyer (Mr. F) to act as counsel for two clients of Mr. C's firm. Mr. C and Mr. F agreed that Mr. F would render accounts to the firm for services rendered, and when the two clients paid the firm for a particular account, the firm would pay Mr. F.

Mr. F submitted accounts to the firm in November, 1994 and in May and June, 1995, and he attempted to contact Mr. C several times respecting payment, but the accounts were not paid. In December, 1995 Mr. F's firm began an action against Mr. C's firm for \$15,225.86, which was the amount of his outstanding accounts. In February, 1996 Mr. F

and Mr. C entered into a consent judgment and agreed to a payment schedule and further agreed that the judgment would not be filed if the payment schedule were honoured. Over the course of the payment schedule, Mr. C's firm provided four cheques (in March, July, August and September, 1996) that were returned for insufficient funds.

Mr. F commenced a small claims action to recover the outstanding balance and obtained default judgment for \$8,422.76.

### ***Failure to notify Law Society of unsatisfied judgments***

Mr. C failed to notify the Law Society in writing that three monetary judgments were filed against him that had not been satisfied within seven days, as required by the Law Society Rules:

- the default judgment for \$8,422.76 held by Mr. F and filed on January 17, 1997;
- a consent judgment for \$45,000 held by Ms. S (who was another lawyer retained by Mr. C's firm) and filed on February 27, 1997;
- a consent judgment for \$55,883.53 held by a bank and filed on June 16, 1997.

Mr. C did not notify the Law Society of any of these judgments against him until August 24, 1997.

### ***Misleading the Law Society***

In April, 1997 Mr. C wrote to the Law Society respecting a complaint by Mr. F. Mr. C explained in his letter that the reason he had not paid Mr. F's accounts was because he had not received payment of certain accounts from one of the clients for whom Mr. F had rendered services. In fact this was not true as the client had paid Mr. C's firm for the services.

### ***Failing to respond to the Law Society***

On one complaint matter, Mr. C failed to reply promptly, or at all, to Law Society correspondence dated October 31, November 19 and December 8, 1997 and January 7, 1998 and a telephone call on January 14, 1998.

On another complaint, Mr. C failed to reply promptly, or at all, to Law Society correspondence dated January 15, February 17, March 9, March 19 and April 14, 1999 or to a telephone call on March 26, 1999.

## **Decision**

The hearing panel found that Mr. C had breached the *Professional Conduct Handbook*, in particular Chapter 2, Rule 1 (Dishonourable conduct), Chapter 2, Rule 2 (Duty to meet financial obligations) and Chapter 13, Rule 3 (Responding to Law Society

correspondence). He had also breached Law Society Rule 3-44 (Failure to satisfy judgment).

The hearing panel found that, in all the circumstances, Mr. C's conduct was disgraceful and dishonourable and amounted to professional misconduct.

## **Penalty**

The hearing panel considered a number of factors with respect to penalty. The panel noted that Mr. C did not disclose his difficulties with the Law Society until confronted by another lawyer in his firm; that he had an acknowledged problem with alcohol but had not yet entered treatment; and that his failure to respond to the Law Society involved a number of incidents over a long period of time.

The panel also took into account that Mr. C appeared to be a very talented lawyer and had no discipline record. A medical evaluation concluded that, although Mr. C had avoided difficult problems through alcohol or procrastination, there was a low likelihood of him having further problems with the Law Society.

The panel noted that it had a duty to protect the public, which protection could be accomplished in varying degrees by deterrence, rehabilitation and punishment. While the panel did not think penalty was the means by which to deter Mr. C from further misconduct, it was mindful of the need to send a message to the rest of the profession that such conduct is unacceptable.

The panel expressed sympathy for the difficulties suffered by Mr. C, but stated that he must accept responsibility for his actions. A fine was not a fitting punishment and not in the public interest, given his financial situation and obligations to support his family. In circumstances in which a lawyer has lied, a suspension will follow, except in the most exceptional circumstances.

The panel ordered that Mr. C:

1. be suspended for one month, effective July 12, 2000;
2. pay \$3,600 as costs of the discipline proceedings, payable in monthly instalments of \$300;
3. not practise on his own for two years (unless relieved of this condition by the Discipline Committee) and report any changes in employment to the Law Society;
4. arrange for regular meetings with a partner in the law firm with which he practises and consent to that partner reporting to the Law Society on the meetings and on any relevant changes respecting Mr. C's work and personal situation;
5. complete a residential alcohol treatment program before October 31, 2000, attend any recovery group or counselling suggested by that program, provide the Law

Society with copies of all reports relating to the program and provide a follow-up medical evaluation report in January, 2001.

*Discipline Case Digest — 2000: No. 15 August (C)*