

Vancouver, B.C.

Called to the Bar: May 23, 1997

Became non-practising member: January 1, 2001

Discipline hearing:

Dates: January 17 and July 5, 2001

Panel: Gerald J. Lecovin, Q.C., as a one-Bencher panel by consent

Reports: April 23 and August 1, 2001; indexed as [2001] LSBC 3

Counsel:

Todd Follett, for the Law Society

Gerald Cuttler, for AN

Summary

AN represented, on a *pro bono* basis, a number of people at the APEC Commission of Inquiry. In February, 1999 the Government of Canada agreed to provide funding for a legal team of three lawyers, including AN, to represent certain persons at the hearing. Payment was to be in accordance with a specific pay scale and was to apply to work done and expenses incurred from December 21, 1998 forward. On April 8, 1999 AN rendered a statement of account for payment. The statement of account was purportedly for work done and expenses incurred between December 21, 1998 and March 31, 1999. In fact, the bill falsely stated the number of hours AN had worked and improperly claimed between \$33,000 and \$40,000 in legal fees. By inflating the account, AN attempted to seek compensation for work he had already done for his clients on a *pro bono* basis. Because he faced a very serious illness, AN had initially taken the case as a means of fast-tracking his career. The stress of the case proved heavier than he could bear in all the circumstances. He became depressed and was under medical care. In the back of his mind was the hope that his false billing might be detected so that he would be taken off the case and relieved of the stress. The hearing panel noted the seriousness of the misconduct and considered a range of factors on penalty. Mitigating factors included his inexperience, his acknowledgement of the misconduct and his decision not to seek the compensation to which he was entitled, as an act of contrition. The panel suspended AN for 18 months, as of January 1, 2001 (the date he ceased practice).

Facts

AN represented, on a *pro bono* basis, a number of people at the APEC Commission of Inquiry. The Commission was appointed in 1998 to inquire into the police response to demonstrations of protesters at the 1997 Asia Pacific Economic Cooperation (APEC) conference at the University of B.C. campus in Vancouver.

In February, 1999 the Government of Canada agreed to provide funding for a legal team of three lawyers (AN and lawyers A and W) to represent certain persons at the hearing. Payment was to be in accordance with a specific pay scale and was to apply for work done and expenses incurred from December 21, 1998 forward.

On April 8, 1999 AN rendered a statement of account for payment from the Government of Canada. The account was purportedly for work done and expenses incurred between December 21, 1998 and March 31, 1999. AN asked that he be remunerated at the highest level for his category on the basis that he had worked many *pro bono* hours for those clients for more than a year and a half.

A lawyer who reviewed these accounts for the Government of Canada wrote to AN to request an affidavit attesting to the time he had spent on the files and to request access to his time docket.

After receiving this letter, AN raised the matter with lawyer W on the legal team. AN said that he had in fact worked part time at a post-secondary institution since 1998, and full time during January and February, 2001 (which was part of the period he claimed to have worked on the APEC files). He admitted that, during that period, he had not actually worked 10 hours a day, six days a week on the APEC inquiry files as indicated on his statement of account.

Soon thereafter, on April 28, AN told lawyer A and lawyer W that, by inflating his account, he had sought to be paid for the many hours of work he had done prior to December 21, 1998. The other lawyers advised AN that this was no excuse for submitting a false account and that he should resign from the APEC legal team, report his conduct to the Law Society and obtain legal advice.

AN sent a letter to his clients in the APEC inquiry indicating that he was resigning as counsel for personal and family reasons. Lawyer A subsequently sent a letter to the clients informing them that AN's withdrawal resulted from a demand from the other lawyers on the legal team. At a subsequent meeting with the clients, AN disclosed that he had submitted a false statement of account and had been asked to resign.

AN wrote to the lawyer representing the Government of Canada to inform him that he would not provide an affidavit verifying his account as he could not swear to its accuracy. He withdrew his account for legal fees and tendered only documentation relating to disbursements. He also advised this lawyer of his resignation from the APEC legal team.

Lawyer A took issue with the accuracy of AN's letter. He advised AN of this and also demanded that AN report himself to the Law Society by May 3, 1999, failing which lawyer A would make the report. Lawyer W endorsed lawyer A's position and urged AN to seek legal advice. Both AN and lawyer A reported the matter to the Law Society on May 4.

In November, 1999 AN admitted to professional misconduct in rendering a statement of account claiming \$73,397.50 in legal fees. In the account he falsely stated the hours worked. Although AN did not keep time records, he wrongfully billed between \$33,000

and \$40,000. He was entitled to bill for the balance of the account (at least \$33,000 based 385 hours at \$85 an hour), but he chose not to resubmit his account for this amount, as an act of contrition.

Decision

By rendering a statement of account that falsely stated the hours worked and the amount he was entitled to bill, AN's conduct constituted professional misconduct.

Penalty

The hearing panel considered the range of issues relevant to penalty. AN's inflation of the amount of time he had spent on the client files, in an attempt to be compensated for previous *pro bono* work, was fraudulent and, had it been successful, would have merited disbarment. The only mitigating factor was that he had done work on a *pro bono* basis, although he had no right to be compensated for it.

AN had no prior discipline offences. His conduct impacted on government, and therefore the public generally, and also on his clients, many of whom already held the justice system in low esteem.

The panel noted that greed was a motive for AN and, had that been the only motive, would have warranted a long period of suspension if not disbarment. In the circumstances, however, AN had been diagnosed with a very serious medical condition. He began work on a *pro bono* basis because he felt the APEC case was high profile and would serve to fast-track his career, which he expected to be shortened. However, the stress of the case became heavier than he could bear and this stress was exacerbated by the difficulties he faced in coping alone with his illness.

AN considered, when putting forward his fraudulent bill, that it was a dangerous thing to do but, at worst, if he were caught, he would be taken off the case and relieved of the stressful situation. In the back of his mind was the hope that he would be caught and relieved of the stress.

AN acknowledged his misconduct and redressed the wrong. While he had initially attempted to mislead the government lawyer respecting his inability to swear an affidavit and to mislead clients as to why he was withdrawing as counsel, he did correct the information when pressed to do so. He then fully acknowledged his misbehaviour to the Law Society and, out of a sense of contrition, did not bill the government the \$33,000 to \$40,000 to which he was entitled.

The panel was of the view that AN knew what he was doing was wrong but, had he first discussed his problems with senior counsel, he would not have acted as he did.

The panel noted the importance of deterring such misconduct. Government provides money so that people without adequate financial resources can receive the legal representation they need and justice can be done. The profession has the same obligation to render fair and honest accounts to government as to any individual client.

The panel noted the penalties in several other discipline cases, ranging from a two-month suspension (for overbilling the Legal Services Society) to disbarment (for outright theft). It took into account those cases and various mitigating factors, such as AN's inexperience, the fact that this was a single instance of misconduct and that part of his motivation was to relieve himself of a major area of stress. In addition, given his shorter practice future, a suspension from practice represented a greater punishment to him than it might to other lawyers.

The panel ordered that AN be suspended for 18 months as of January 1, 2001 (the date on which he ceased practice and became a non-practising member).

While misconduct motivated by financial gain also generally warrants a fine and costs, the panel imposed neither in this case, given the effect of this additional stress on AN's health and the fact he had chosen to forego fees of at least \$33,000 to which he was entitled, as an act of contrition.

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