

Lawyer P

99/11

Vancouver, B.C.

Called to the Bar: July 10, 1984

Discipline hearing panel: October 6, 1997 and June 6 and December 8, 1998

Emily Reid, Q.C., Chair, Kristian Jensen and William Sullivan

Todd Follett, for the Law Society

Mr. P, appearing on his own behalf

Summary

Mr. P failed to meet professional financial obligations incurred in the course of his practice by not paying the overdue accounts of several of his creditors when called upon to do so. His conduct constituted conduct unbecoming a member of the Society, and he was reprimanded and ordered to pay costs.

Facts

Hearing and transcript fees

Mr. P owed \$4,550 to the Ministry of Attorney General for hearing fees and transcript fees on behalf of a client. Staff at the Court Services Branch sent to Mr. P's office an invoice for \$3,050 on February 9, 1996 and an invoice for \$1,500 on April 30, 1996.

On July 16 the Branch wrote to ask for payment within 10 days, noting that the two invoices had not been paid despite "numerous telephone calls and collection letters." The Branch noted that, if no payment were made in 10 days, the matter would be sent for collection. The Law Society was copied with that letter.

Mr. P paid the invoices more than a year after they had been sent to him.

Expert witness fees

A physician prepared a medical-legal opinion for Mr. P in October and November of 1995 with respect to a client file, and she appeared as an expert witness in court on the matter on January 30, 1996.

On March 25, 1996 the physician sent an account for \$3,000 to Mr. P's office. At Mr. P's request, she agreed on April 19 to reduce the account to \$2,500.

On May 25 the physician wrote again to Mr. P's office asking for immediate payment, noting that she would contact the Law Society if the bill was not paid by June 10. She wrote to the Law Society about the unpaid account on July 20, 1996 and commenced a Small Claims Court action on April 8, 1997.

On May 12, 1997 the physician received payment of \$2,665 from Mr. P.

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On another matter, Mr. P contracted with an expert to do a future care assessment. The expert sent an invoice for her services on August 9, 1995. About a year later, Mr. P began making payments of \$500: on August 2 and September 30, 1996 and April 8, 1997.

After having written to Mr. P's office twice seeking payment, the expert made a complaint to the Law Society.

Mr. P paid the balance of \$943.75 to the expert on May 8, 1997.

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Mr. P was facing serious financial difficulties at the time of these incidents, as he carried the cost of financing disbursements in his plaintiff personal injury practice, as his law firm was breaking up and as he was facing extensive matrimonial litigation.

Decision

The hearing panel considered Chapter 2, Rule 2 of the *Professional Conduct Handbook*, which reads:

The lawyer has a professional duty, quite apart from any legal liability, to meet professional financial obligations incurred or assumed in the course of practice, such as agency accounts, obligations to members of the profession, fees or charges of witnesses, sheriffs, special examiners, registrars, reporters and public officials when called upon to do so.

The panel rejected Mr. P's submission that Chapter 2, Rule 2 must be interpreted subjectively so as to take into account a lawyer's ability to make payments. The panel noted it was fortunate the bills were eventually paid, but it was not reasonable for lawyers' creditors to wait a year or two or to have to go to such lengths as making repeated requests for payment, complaining to the Law Society or suing in Small Claims Court.

The panel noted that there are lawyers who take cases that may not result in compensation or for which the reimbursement for disbursements depends on clients' ability to pay. Those lawyers are likely to charge contingency fees that reflect these realities.

The panel also rejected Mr. P's argument that Chapter 2, Rule 2 did not apply because his creditors contacted his staff for payment, rather than calling on him personally to pay. The professional duty referred to in the Rule is triggered when accounts are sent to a law firm in the usual course of business. To find otherwise would mean there is a different duty for a lawyer who takes a "hands on" approach to office management than for a lawyer who cannot easily be contacted by creditors.

Lawyers depend on access to a wide variety of products and services and often require these on credit. If that credit is impaired, the lawyers, the creditors and the clients may all suffer.

After considering previous court and hearing panel decisions, the panel determined that a breach of duty to pay professional financial obligations arising from practice will not automatically give rise to disciplinary consequences, but will depend on the circumstances. In all of these circumstances, the panel found that Mr. P's delay was contrary to the best interests of the public and constituted conduct unbecoming a member of the Law Society.

Penalty

The hearing panel ordered that Mr. P:

1. be reprimanded; and
2. pay \$5,000 as costs of the hearing on or before June 8, 1999.

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