

## Lawyer C

Vancouver, BC

Called to the Bar: June 30, 1967

**Discipline hearing:** July 8, 2002

**Panel:** Gerald J. Kambeitz, QC, Chair, Ralston S. Alexander, QC and David Zacks

**Report issued:** October 4, 2002; indexed as [2002] LSBC 22

**Counsel:** Todd R. Follett, for the Law Society; Richard R. Sugden, QC, for Mr. C

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### Summary

Mr. C admitted to a Law Society hearing panel that he was guilty of conduct unbecoming a lawyer as a result of having committed criminal sexual offences against his 10-year-old and 8-year-old stepdaughters in 1970. Mr. C pleaded guilty to these offences in BC Provincial Court in 2000 and received a conditional sentence of two years less a day of community service. Mr. C also admitted to the Law Society that he had falsely stated on an application for enrolment as an articling student in 1966 that he had never been treated for a mental illness, when this was untrue. He admitted that the false statement amounted to conduct unbecoming a lawyer.

A three-Bencher hearing panel considered disbarring or suspending Mr. C, observing that his criminal sexual crimes were loathsome, especially for a member of the legal profession and especially against young children. The panel did take note, however, that at the time of these incidents, Mr. C suffered from extreme and untreated mental illness. By the time of the hearing, he had long since been successfully treated for that illness, had recovered from alcoholism and drug abuse and did not pose a danger to the public. A key factor for the panel in assessing penalty was that Mr. C had signed a settlement agreement with his victims, agreeing to pay them \$500,000 as compensation in instalments by 2004. In concluding that a disbarment or suspension would effectively prevent Mr. C from paying the compensation to his victims, the panel instead ordered that he pay a fine of \$20,000 (the maximum permitted by the *Legal Profession Act*) and costs — which must be paid after he has made all compensation payments to his victims.

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### Facts

In April, 1970 Mr. C began living with E and her two young daughters, aged 10 and 8. He married E two months later. In the early months of living with E, Mr. C began engaging in inappropriate sexual activities with his stepdaughters.

One of the girls told her mother about the incidents in 1971. This revelation coincided with E's own decision to have her husband committed to a psychiatric institution, which she did as his erratic behaviour had reached crisis proportions.

Mr. C had a long history of mental illness, and had been diagnosed as suffering from bipolar 1 disorder. In addition to a number of outpatient treatments for his disease, he had been hospitalized for two months in 1958, two weeks in 1959, one month in 1961, 1965 and 1971, four months in 1973, two weeks in 1975, one month in 1977, one week in 1979 and two days in 1985. There was also a significant history of mental illness in his family, with both his sisters and possibly his father suffering from the same disease.

Mr. C's disease first manifested itself while he was in his fourth year of a six-year medical school training program in Ontario. As a result of the illness proving serious over the next several years, he was refused admission to his final year of medical school and was to be re-admitted only if he could demonstrate a three-year period free of psychosis. That barrier proved insurmountable. Mr. C subsequently entered law school and completed his law degree in 1966.

Between 1955 and 1977, Mr. C also developed an increasing addiction to alcohol and drugs, which the medical evidence suggested was common for those with his illness. The evidence further suggested that Mr. C's mental illness was a contributing factor to his bizarre sexual behaviours.

Mr. C ceased drinking entirely in 1977 and had been a steadfast adherent to the Alcoholics Anonymous regime since then. As well, advances in the pharmacological treatment of his disease were such that Mr. C had not suffered a manic episode since 1985 and it was not anticipated he would have further episodes, provided he remained on his medications. His treating psychiatrist of many years had concluded that Mr. C had fully recovered from his former alcohol dependency and from the bipolar disorder.

On December 1, 2000 Mr. C pleaded guilty in Provincial Court to having had sexual intercourse in 1970 with one of the stepdaughters then under the age of 14, contrary to section 138(1) of the *Criminal Code*, and to having indecently assaulted the other stepdaughter in 1970, contrary to section 141 of the *Code*.

Mr. C was sentenced to two years less a day, to be served in the community under the terms of a conditional sentence.

He subsequently entered into a civil settlement with his stepdaughters to pay them compensation of \$500,000 in instalments by 2004.

In August, 2001 he was cited by the Law Society for his conduct with respect to these offences.

In October, 2001 he was further cited for having misled the Law Society in 1966 by stating on his application for enrolment as an articled student that he had never been under the care of an institution for nervous or mental illness, when this was untrue. In his correspondence with the Law Society on this matter, Mr. C acknowledged that he had

misled the Society in his application for enrolment. He explained that he had done so because he believed he might be excluded from the legal profession as he had been from the medical profession and that the stigma of manic depressive illness was much greater in 1966. He said that he also felt pressure to support his wife and child at that time.

## **Verdict**

The hearing panel accepted Mr. C' admissions and found that his conduct constituted conduct unbecoming a member of the Law Society in the following respects:

- in violating sections 138(1) and 141 of the *Criminal Code* in 1970, to which criminal sexual offences he pleaded guilty in 2000; and
- in providing a false answer to a question on his application for enrolment, and swearing to the truth of his answers, in 1966.

## **Penalty**

The hearing panel noted that Mr. C' sexual criminal behaviour with respect to his stepdaughters was the most loathsome of crimes, made worse by the fact that the victims were young, defenceless, trusting children.

That the events took place 30 years earlier was not in itself a significant mitigating factor. The panel found, however, that over that period there was a much greater understanding of the nature of bipolar 1 disorder in society. There was no doubt that, at the time of these offences, Mr. C was extremely mentally ill.

Since then, there were two events of significance. First, Mr. C had responded positively to treatment and had recovered from his illness. Second, he had concluded a settlement with the victims of his crimes.

The disbarment of Mr. C, as advocated by Law Society counsel, would send a clear message to the profession. The panel, however, concluded it must resist the compelling inclination to disbar Mr. C as this would render him incapable of meeting his financial obligations to his victims under the settlement. To do so would be to devalue and disrespect the pain and suffering they had endured.

The panel noted that the public interest was not overlooked in this outcome. The public had no particular interest in seeking to destroy the career of a lawyer who was at one time suffering from a very severe mental illness and who had since adopted a durable and effective treatment regime for his illness and had rid himself of the scourge of alcoholism and drug abuse. While allowing Mr. C to remain in practice was not a perfect solution, there was no perfect solution to be found.

As to his false statement on his application for enrolment, the panel accepted Mr. C' explanation of why he was less than candid, acknowledging that his illness then had a significant impact on him, and that his difficulties were exacerbated by alcohol and drugs.

The hearing panel accordingly ordered that Mr. C:

1. pay a \$20,000 fine (the maximum allowable under the *Legal Profession Act*), to be paid without interest within six months of the date he pays the last instalment of his settlement agreement with his victims;
2. pay costs of the discipline proceedings in the same time period.

Given the emphasis the panel placed on Mr. C' continued compliance with the settlement agreement, the panel considered that any breach of that agreement by him in the future would raise a *prima facie* case of conduct unbecoming. The panel directed that its reasons be produced for a panel in any hearing on such a matter.

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