

Lawyer M

Vancouver, BC

Called to the Bar: September 10, 1981

Discipline hearing: November 2, 1998 and January 18, 2001

Panel: Warren T. Wilson, QC, as a one-Bencher panel by consent

Reports issued: April 5, 2000 (indexed as [2000] LSBC 5); and January 23, 2001 (indexed as [2001] LSBC 5)

Counsel: James Doyle, for the Law Society; Victor A. Stephens, for Mr.M

Summary

Mr.M failed to pay the accounts of another lawyer who provided legal services as an independent contractor on some of Mr.M's litigation files. Mr.M failed to pay these accounts even though he had billed clients for the other lawyer's work and most of those bills had been paid in full. Mr.M accordingly failed to fulfil financial obligations incurred in the course of his practice, contrary to Chapter 2, Rule 2 of the *Professional Conduct Handbook*. In these circumstances, the panel that found his conduct was disgraceful, dishonourable and unbecoming of a member of the Society and amounted to professional misconduct. The panel ordered that Mr.M pay a \$2,500 fine and \$3,000 in costs.

Facts

In May 1993 Mr.M entered into an agreement with another lawyer (D) under which D was to provide legal services as an independent contractor on some of Mr.M's civil litigation files. The financial arrangement was that D would bill Mr.M for his services and Mr.M would be responsible for payment of the accounts. Mr.M, in turn, would independently bill his firm's clients for services provided by D. Mr.M had D's time records entered into his billing system. He added a premium to D's fees for services and billed for D's work as fees, not disbursements.

From 1993 to early 1994, D worked on various files and rendered accounts to Mr.M. As of July, 1994, a number of D's accounts (totalling \$6,803.44) were still outstanding. By this time, Mr.M had already sent clients bills that included D's work on their files and most of those bills had been paid.

Beginning in the Spring of 1993, Mr.M experienced family problems that prevented him from devoting his full attention to his practice. By Fall, revenues had declined and his firm suffered significant cash shortages, which prevented the prompt payment of accounts in a timely way. Unable to reverse these problems, Mr.M ceased operation of his firm on July 31, 1994 to prevent further losses.

When D sought to have his accounts paid, Mr.M took the position that his financial circumstances did not allow him to pay all of his creditors, and that some ranked in priority to D.

Mr.M subsequently became a salaried employee of another law firm (which did not assume the liabilities of his firm). Mr.M continued to collect the outstanding accounts receivable of his firm, but those collections were not sufficient to satisfy all the firm's liabilities. As of August, 1994, Mr.M's personal income also suffered and he had significant personal liabilities.

In September, 1997 D commenced an action to recover his outstanding accounts; that action settled in September, 1998.

Verdict

The hearing panel considered previous discipline decisions, including DCD 99/09, and took note of *Re: Tomporowski and Saskatchewan Association of Architects* (1994) 113 DLR (4th) 793 (Saskatchewan QB), which dealt with a similar situation.

The panel noted that Mr.M's characterization of his billing as fees, both in his accounting system and on his bills to clients, did not in fact make the amounts billed by D any different from disbursements incurred. Mr.M did not put forward assertions about the position of preferred and secured creditors until December, 1994, which was long after he had collected and spent the money realized by him from the work that D had done.

Mr.M did not at any point make a new arrangement with D (such as allowing D to bill clients directly) that would have protected D's interests. Mr.M chose not to do so, but rather he used the money received prior to July 22, 1994 to pay persons other than D.

Mr.M failed to fulfil financial obligations incurred in the course of his practice, contrary to Chapter 2, Rule 2 of the *Professional Conduct Handbook*. In these circumstances, his conduct in failing to pay D when he had received payment from clients for the work of D was disgraceful, dishonourable or unbecoming of a member of the Society and amounted to professional misconduct.

Penalty

The hearing panel noted that members of the legal profession are not immune from suffering financial difficulties. In this case, it was troubling that Mr.M did not simply fail to pay professional debts as they fell due, but rather billed clients for those debts and was paid for them, but then failed to pay them off.

The panel noted that Mr.M's financial circumstances remained difficult and that, while he did not need to be punished to make him aware of his own misconduct, a penalty was needed to send a message to others in the profession that such conduct is not acceptable.

The panel ordered that Mr.M, on or before January 31, 2003:

1. pay a \$2,500 fine; and
2. pay \$3,000 as costs of the hearing.

On application by Mr.M, and at the recommendation of the hearing panel, the Benchers ordered in February, 2001 that publication be delayed until after conclusion of an appeal taken by Mr.M before the BC Court of Appeal. Mr.M subsequently decided against pursuing the appeal. Through new counsel, Mr.M advised the Law Society in early 2002 that he intended to apply to the Benchers for non-publication, but he did not in fact submit an application.

Discipline Case Digest — 2002: No. 17 October (M)