

Margot Ellen Guthrie

Vancouver, BC

Called to the Bar: December 19, 1985

Discipline hearing: November 12, 2002

Panel: Ralston S. Alexander, QC, as a one-Bencher panel by consent

Report issued: January 29, 2003; indexed as [2003] LSBC 06

Counsel: Todd R. Follett, for the Law Society; Herman Van Ommen, for Ms. Guthrie

Summary

Ms. Guthrie represented the widow of a deceased lawyer (B) in the administration of B's estate and in the winding up of his law practice. In the course of this work, Ms. Guthrie received a demand from one of B's clients whom B had represented in a litigation appeal matter. As B had died without completing the appeal, the client demanded return of the full retainer. Ms. Guthrie made an offer to settle the client's claim, but negotiations broke down. The client subsequently demanded return of his files. Ms. Guthrie spent three hours retrieving the files from storage and provided them to the client. Eight months later, the bookkeeper for B's law practice advised Ms. Guthrie that \$458.34 remained in trust for the client. Ms. Guthrie prepared a bill for that amount for her file retrieval services to the client, withdrew the funds from B's trust account and deposited them to her general account in payment of the bill. She did not provide a copy of the bill to the client. Under Rule 4-22, the Discipline Committee and the hearing panel accepted Ms. Guthrie's admission of professional misconduct and her proposed disciplinary action. The panel ordered that she be suspended for four weeks beginning December 2, 2002 and pay costs. The panel stressed that, except in extraordinary circumstances, a lawyer's misappropriation of trust funds results in disbarment. In these circumstances, however, Ms. Guthrie had performed services for the client of a value sufficient to justify her bill, and her actions would have been innocent had she provided her bill to the client. The panel noted that Ms. Guthrie was under great personal stress at the time, that this was an isolated incident, that she reported her own conduct to the Law Society when the matter would not otherwise have been discovered and that she repaid the client.

Facts

In 1997 Ms. Guthrie acted for the widow and executor of the estate of a deceased lawyer (B) in the administration of his estate and the winding up of his law practice. Ms. Guthrie had been a colleague and friend of B, having previously practised in his law firm.

B had acted for a client (L) in a lengthy litigation and subsequently agreed to undertake an appeal of an unsuccessful trial decision. L had provided a retainer of \$50,000 US on account of the appeal. After B's death, L sought a full refund of this money on the basis

that the appeal had not been completed as required. Believing there was some merit in L's claim, Ms. Guthrie sought to settle the matter by having B's estate provide a partial refund, but L was not inclined to negotiate on this basis and negotiations broke down.

L demanded the return of all his files. Ms. Guthrie spent three hours retrieving the files from storage, and L picked them up at her office.

In 1999, eight months after Ms. Guthrie's last contact with L, the bookkeeper for B's law practice advised Ms. Guthrie that \$458.34 remained in trust for L. Ms. Guthrie prepared a bill for that amount for her file retrieval services, withdrew from B's trust account the funds on deposit for L and deposited these to her general account in payment of her bill. She did not, however, provide L with a copy of the bill.

During this time, Ms. Guthrie was suffering significant stress in her personal and professional life, having recently lost B and two other friends who died. She took a sabbatical leave from practice and travelled for several months.

In December, 2000, while the Law Society was investigating a claim made by L to the Special Compensation Fund regarding the retainer he had provided to B, Ms. Guthrie was required to review her files relating to L. She came to the conclusion that her conduct with respect to the \$458.34 held in trust for L was inappropriate and she reported that conduct to the Law Society.

Admission and penalty

Pursuant to Rule 4-22, the Discipline Committee and the hearing panel accepted Ms. Guthrie's admission of professional misconduct and her proposed disciplinary action. The panel accordingly ordered that she:

1. be suspended for four weeks beginning December 2, 2002; and
2. pay \$1,500 as costs of the discipline proceedings.

The panel noted that it was comforted by the fact that the Discipline Committee had also approved this disposition and penalty. The panel stressed that it was only in the most extraordinary circumstances that a misappropriation would not result in disbarment.

In these circumstances, Ms. Guthrie had performed services for the client of a value sufficient to justify her bill, and her actions would have been innocent had she provided a copy of the bill to the client. The panel noted that Ms. Guthrie was under great personal stress at the time and that this was an isolated incident in her career. The panel viewed as very significant that Ms. Guthrie reported her own conduct to the Law Society (in that her conduct would not otherwise have come to the Society's attention) and she repaid the client.