

Vancouver, B.C.

Called to the Bar: September 1, 1995

Discipline hearing:

Date: September 6, 2000

Panel: William M. Everett, Q.C., as a single-Bencher panel by consent

Report: September 7, 2000

Indexed as [2000] LSBC 23

Counsel:

Jessica Gossen, for the Law Society

Herman Van Ommen, for Mr. Waldman

Summary

Mr. Waldman successfully represented his wife on a petition. He rendered a bill and applied for increased costs. At one stage of this legal proceeding, Mr. Waldman was a non-practising member and his representation in expectation of fees was contrary to his undertaking to the Law Society that he would not practise law. He subsequently - represented his wife during a period in which he was a practising member exempt from insurance, contrary to his declaration for exemption from liability insurance that he would practise law only in the course of his employment. After a complaint was made to the Law Society, Mr. Waldman recognized his error and ensured that he charged no fees for services rendered during any period in which he was not entitled to practise law. He admitted that his conduct constituted professional misconduct. The Discipline Committee and hearing panel accepted his admission and proposed penalty, and ordered that he be reprimanded, fined \$2,500 and pay \$1,000 as costs.

Facts

In August, 1995 Mr. Waldman, then an articling student, filed a petition on behalf of his wife, a physician. The petition was heard and judgment awarded to the petitioner in 1997.

In November, 1997 the judge in the case began hearing an application for increased costs brought by Mr. Waldman on behalf of his wife. That hearing continued on December 16, 1997 and January 30, 1998. In April, 1998 the court ordered increased costs in favour of the petitioner as a percentage of special costs.

In support of his costs application, Mr. Waldman filed an affidavit averring that the petitioner had been billed \$141,000 in fees, which included his time and time spent by other lawyers. The amount billed was based on the number of hours worked, the

complexity of the matter and the uncertainty of final payment.

The breakdown of the hours that Mr. Waldman estimated to have worked on the file included 446 hours between September 1, 1995 and April 11, 1996. During this period Mr. Waldman was a non-practising member of the Law Society. He was not entitled to practise law and had given his undertaking to the Law Society not to practise. He also practised law during the period December 6, 1996 through July 1997 when he was a practising lawyer who was exempt from professional liability insurance and had made a declaration to the Law Society that he would not practise law other than in his course of employment.

After another lawyer complained to the Law Society, Mr. Waldman realized he was in error to believe he was not practising law in representing his wife just because there was no insurance coverage for the representation. He reduced the amount payable to ensure he charged no fees for services rendered during any period in which he was not entitled to practise law.

Admission and disciplinary action

Mr. Waldman admitted professional misconduct in that he:

- rendered an account for legal services while a non-practising member, contrary to his undertaking to the Law Society not to practise law; and
- rendered an account for legal services while a practising member exempt from insurance, contrary to the declaration in his application for insurance exemption that he would not practise law other than in the course of his employment.

Pursuant to Rule 4-22, the Discipline Committee and the discipline hearing panel accepted Mr. Waldman's admission and his proposed disciplinary action and ordered that he:

1. be reprimanded;
2. pay a \$2,500 fine; and
3. pay \$1,000 as costs of the proceedings on or before December 31, 2000.