

Fort St. John, B.C.

Called to the Bar: June 12, 1987

Discipline hearing:

Dates: July 11, 2001

Panel: Russell S. Tretiak, Q.C., as a single-Bencher panel by consent

Reports issued: October 22 and 29, 2001

Hearing report indexed as [2001] LSBC 26

Counsel:

Jessica S. Gossen, for the Law Society

Jerome D. Ziskrout, for Mr. Strandberg

Summary

After being retained by a client to commence a Small Claims Court action in the fall of 1998, Mr. Strandberg failed to take steps on the client's behalf for at least 11 months. He misled the client by advising the client and the Law Society that he had commenced an action on the client's behalf and he fabricated documents in support of his assertion. He did not in fact commence an action until November, 1999. The hearing panel found, and Mr. Strandberg admitted, that his conduct constituted professional misconduct. In determining penalty, the panel noted the seriousness of the misconduct, but also the strong testimonial letters from lawyers and the public supporting Mr. Strandberg's integrity and honesty and the fact that his behaviour in this matter was uncharacteristic of him. The panel noted that Mr. Strandberg was one of the few lawyers in his small community who regularly took family legal aid referrals and duty counsel referrals, often on an emergency basis, and that a long suspension from practice would leave the poor and disadvantaged without assistance. The panel ordered that Mr. Strandberg be suspended for one month, pay a \$15,000 fine and pay costs of \$2,000.

Facts

In October, 1998 Mr. Strandberg was retained by Mr. K to begin a Small Claims Court action against Mr. K's former employer to recover \$5,700 for loss of tools and damage to a toolbox left in the care of the employer.

Mr. K provided a \$1,500 retainer. He contacted Mr. Strandberg in December, 1998 and in February and April, 1999 respecting the action. During this period, Mr. K believed the matter had been delayed because of a lack of court time to hear the case. In fact, Mr. Strandberg had failed to serve Mr. K in a conscientious, diligent and efficient manner or take any steps on his behalf.

Mr. K complained to the Law Society in July, 1999. In a discussion with a Law Society staff lawyer, Mr. Strandberg said that he had filed an action for Mr. K. This statement was untrue.

The complaint file was closed but later reopened after Mr. K advised the Law Society that on November 2, 1999 he had received a letter from Mr. Strandberg dated September 9. Mr. Strandberg had returned Mr K's retainer funds and original documents and advised he could no longer act as counsel for him. Mr. Strandberg, however, had not enclosed a copy of a filed notice of claim.

The Law Society wrote again to Mr. Strandberg asking the reason for his delay in sending his letter of September 9 and requesting a copy of the Small Claims Court writ. On November 19 Mr. Strandberg sent to Mr. K a letter and copies of a notice of claim, purportedly filed in Small Claims Court on May 13, 1999, and a reply. Mr. Strandberg also sent a copy of this letter to the Law Society.

The Law Society conducted registry searches, which revealed that Mr. Strandberg had not filed a notice of claim on May 13 but had done so on November 5. The Law Society asked for, and Mr. Strandberg provided, copies of the notice of claim and reply. These were dated November 5. When confronted with the discrepancy in dates, Mr. Strandberg said he did not know how Mr. K came into possession of documents bearing any date other than November 5. He did not acknowledge that he had changed the filing date on the documents from November 5 to May 13.

A discipline citation was authorized against Mr. Strandberg in April, 2000.

After consulting with counsel in October, 2000, Mr. Strandberg admitted that he had changed the court documents for the purpose of misleading his client, which was professional misconduct.

Decision

The hearing panel found, and Mr. Strandberg admitted, that his conduct in misleading his client and the Law Society and in failing to serve his client in a diligent manner constituted professional misconduct.

Penalty

In determining penalty, the panel noted that Mr. Strandberg's misconduct was serious and worthy of significant sanction.

The panel noted, however, that character is an important consideration in determining penalty. Mr. Strandberg had been subject to the scrutiny of the Practice Standards Committee as a consequence of the complaint, and this had a beneficial impact on him. The panel was greatly influenced by testimonial letters from lawyers and the public supporting Mr. Strandberg's integrity and honesty and the fact that his behaviour in this situation was uncharacteristic. The panel noted that it would have inclined towards a

significant suspension but for these testimonials, which distinguished the case from others.

The panel noted from the testimonials that Mr. Strandberg was one of the few lawyers in his small community who regularly took family legal aid referrals and duty counsel referrals, often on an emergency basis, and that a long suspension from practice would not only ruin his practice but, more importantly, leave the poor and disadvantaged without assistance.

The panel noted the significant impact on Mr. Strandberg of publication in a small community. The panel considered what would constitute an appropriate sanction and deterrent in the circumstances and accordingly ordered that Mr. Strandberg:

1. be suspended for one month, beginning December 11, 2001, a time when his clients would be minimally affected;
2. pay a \$15,000 fine over the course of 18 months; and
3. pay \$2,000 towards costs of the proceedings.

Discipline Case Digest — 2001: No. 22 December (Strandberg)