

## Frederick Anthony Lloyd

Penticton, BC

Called to the Bar: May 17, 1955

**Discipline hearing:** July 4, 2001 (facts and verdict); November 1, 2002 (penalty)

**Panel:** Richard S. Margetts, QC, as a one-Bencher panel by consent

**Report issued:** March 25, 2003; indexed as [2002] LSBC 14

**Counsel:** Kim Campbell, for the Law Society; Dana Prince, for Mr. Lloyd

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### Summary

Mr. Lloyd failed to ensure that a client received independent legal advice prior to executing a codicil that named Mr. Lloyd as beneficiary of one half of the client's residual estate. The client instructed Mr. Lloyd to draft the codicil in this fashion as he wished to give Mr. Lloyd the discretion to choose the ultimate charitable disposition of the funds. After his client's death, Mr. Lloyd received \$300,000 from the estate. He later paid \$250,000 of the funds as a gift to a school as a trust to fund capital projects in the client's memory and paid \$50,000 to settle a claim against the estate. The hearing panel found that Mr. Lloyd acted as a lawyer in preparing and overseeing execution of the codicil for the client. His conduct in failing to ensure the client received independent legal advice in these circumstances was contrary to Chapter 7, Rule 1 of the *Professional Conduct Handbook* and constituted professional misconduct. While Mr. Lloyd acted in accordance with his client's wishes and did not benefit directly from the estate residue, he did derive an indirect benefit since his charitable gift resulted in a substantial income tax benefit and since he was able to use the funds for a period of time on his personal line of credit. The hearing panel took into account that Mr. Lloyd had an otherwise unblemished conduct record and that he readily acknowledged the impropriety of his conduct. The panel ordered that he pay a \$10,000 fine and costs of \$2,500.

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### Facts

Mr. Lloyd acted as a lawyer for HL and later for his son, AL.

In 1969 HL executed a will, appointing Mr. Lloyd as executor. HL made trust provisions in his will to ensure that AL, who had special needs, would receive proper care. In his will, HL instructed Mr. Lloyd, as executor, to hold the balance of the estate residue in trust, to be distributed as AL would later direct in his own will.

After the death of his father, AL instructed Mr. Lloyd to draft a codicil to his will. At AL's request, Mr. Lloyd suggested some charities that AL might consider when directing disposition of the estate residue. AL asked Mr. Lloyd to "sort it out." When Mr. Lloyd said he needed specific instructions, AL said that, because Mr. Lloyd was like his own

father, he would leave money to Mr. Lloyd to determine its ultimate disposition. On AL's instructions, Mr. Lloyd drafted and allowed his client to execute a codicil providing, among other things, that Mr. Lloyd would receive half of the client's residual estate.

After AL died, Mr. Lloyd received \$300,000 in accordance with the codicil. He later paid \$250,000 of these funds as a gift in AL's name to a school to establish a trust for capital projects dedicated to AL's memory. Mr. Lloyd paid the remaining \$50,000 to settle a claim against the estate brought by one of AL's relatives. While he derived no direct personal benefit from the estate funds, Mr. Lloyd received a substantial income tax benefit as a result of making his gift to the school and he also had interim use of the estate funds, which he paid on his personal line of credit.

## **Decision**

The hearing panel found that Mr. Lloyd clearly acted as a lawyer for AL and that, in failing to ensure that his client received independent legal advice in these circumstances, his conduct was contrary to Chapter 7, Rule 1 of the *Professional Conduct Handbook* and constituted professional misconduct.

## **Penalty**

The hearing panel noted that Mr. Lloyd appeared to have acted in accordance with his client's wishes and did not benefit directly from the share of the estate residue he received, which distinguished these circumstances from several other discipline decisions. Mr. Lloyd did, however, derive an indirect financial benefit, and his actions also created difficulties for one of AL's relatives who took steps to bring a claim against the estate.

The hearing panel took into account a number of mitigating factors, including the fact that Mr. Lloyd had an otherwise unblemished conduct record and that he readily acknowledged the impropriety of his conduct.

While concluding that a suspension was not appropriate in the circumstances, the panel noted that Mr. Lloyd's conduct was a serious contravention of the rules. Whenever a lawyer is to obtain a benefit, direct or indirect, the lawyer's conduct must be beyond reproach and incapable of question. The panel accordingly ordered that Mr. Lloyd pay:

1. a \$10,000 fine; and
2. \$2,500 as costs of the discipline proceedings.