

Formerly of Vancouver, B.C.
Called to the Bar: May 14, 1993
Ceased membership: January 1, 1998

Discipline hearing:

Dates: January 8 and 26, 2001

Panel: Richard S. Margetts, Q.C., Chair, Marjorie Martin and Robert Crawford, Q.C.

Reports issued: June 21 and September 27, 2001

Hearing report indexed as [2001] LSBC 01

Counsel:

Todd Follett, for the Law Society
Christopher Hinkson, Q.C., for Ms. Burton

Summary

Ms. Burton received a \$1,000 fee retainer from her client, which she deposited to her personal account rather than to her trust account. She subsequently withdrew the funds in payment of her legal fees, but without first preparing and delivering a bill to the client, which was in breach of the Law Society Rules. On another matter, Ms. Burton failed to respond to communications from the Society respecting a client complaint, which constituted professional misconduct. Taking into account that Ms. Burton had suffered from serious depression at the time of these incidents, that she had since ceased membership and was in a poor financial situation, the panel determined that a reprimand was an adequate penalty.

Facts

In 1997 Ms. Burton was retained by Ms. L to represent her in a criminal matter and she received from the client a \$1,000 cheque to be applied to fees as they became owing. Ms. Burton did not deposit this cheque to either a pooled or separate trust account, but rather to her personal account.

During the course of the retainer, Ms. Burton performed legal services for Ms. L and applied the retainer funds to her personal use for fees. She withdrew the funds without first delivering or preparing a bill for legal services.

On another matter, a client complained to the Law Society about Ms. Burton. After initial correspondence with Ms. Burton respecting the complaint, the Law Society wrote to Ms. Burton on September 17 and December 10, 1998 and on July 5, 1999, requesting specific information and documentation. Ms. Burton did not provide the requested information.

Decision

The hearing panel found, and Ms. Burton admitted, that she breached Law Society Rule 803 (now Rule 3-51) in failing to deposit trust funds from her client to a trust account and breached Rule 835 (now Rule 3-57) in withdrawing client trust funds for fees without first delivering a bill.

The panel further found that Ms. Burton's failure to respond promptly to Law Society communications breached Chapter 13, Rule 3 of the *Professional Conduct Handbook* and constituted professional misconduct.

Penalty

The panel considered evidence that Ms. Burton was suffering from a serious depression at the time of the rule breaches and the misconduct.

The panel noted that, in light of this depression, it might have been necessary to consider ordering a review by a board of examiners or placing conditions on Ms. Burton's practice had she still been a member of the Society. As she had ceased membership, that issue did not need to be addressed.

The panel ordered that Ms. Burton be reprimanded, which was an appropriate penalty in light of her depression, poor financial situation and ceased membership status. The panel further ordered that the parties bear their own costs of the proceeding.

Discipline Case Digest — 2001: No. 21 December (Burton)