

Surrey, B.C.

Called to the bar: December 12, 1997

Became non-practising member: January 1, 2000

Discipline hearing:

Date: May 1, 2000

Panel: Robert W. McDiarmid, Q.C., Chair, John M. Hogg, Q.C. and Patricia L. Schmit

Report: May 26, 2000

Indexed as [2000] LSBC 09

Counsel:

Jessica S. Gossen, for the Law Society

Richard R. Sugden, Q.C., for Ms. Cherney

Summary

Ms. Cherney gave the Law Society her undertaking to provide reports from her debt counsellor to the Society. In fact, at the time she gave this undertaking, Ms. Cherney was no longer participating in the debt counselling program and could not fulfil the undertaking, contrary to Chapter 11, Rule 7(a) of the *Professional Conduct Handbook*. She breached another undertaking given to the Law Society by failing to provide reports on time to confirm her debt payments and outstanding debt balance, and by providing a report that was incomplete. Ms. Cherney's conduct constituted professional misconduct and the panel ordered that she be reprimanded and pay \$1,000 in costs.

Facts

In November, 1997, as a condition of her call to the bar, Ms. Cherney gave certain undertakings to the Law Society. Among other things, she undertook to provide the Society with continuing reports from her debt counsellor to confirm that she had taken steps to satisfy her debts. In fact, Ms. Cherney had not continued in the debt counselling program, and her debt counsellor had closed her file prior to Ms. Cherney giving this undertaking.

In February, 1998, following a resolution of the Credentials Committee, Ms. Cherney provided the Law Society with new undertakings. Among other things, she undertook to provide to the Society quarterly confirmation reports on her monthly payments to creditors and on her outstanding debt balance.

In early April Ms. Cherney provided a report that listed two loans, one to her mother for \$5,500 and her student loan of \$32,000. She did not, however, refer to several other debts that had previously been disclosed to the Law Society. The Law Society wrote to Ms. Cherney asking her to provide documentation to show that she had satisfied those debts. The letter also specified that Ms. Cherney was to provide reports on February 1, May 1, August 1 and November 1 of each year until she became debt free or until the Credentials Committee relieved her of this condition.

The Society wrote to Ms. Cherney on May 21 to remind her of the report due May 1. Ms. Cherney did not provide a report until June 17, and that report was incomplete since it disclosed four debts, but omitted reference to several others which had previously been disclosed that were still outstanding on that date. In her report, Ms. Cherney also implied that money had been advanced by her mother to clear up her debts, when in fact that money was forthcoming but had not yet been advanced. This statement, coupled with the omission of certain previously disclosed debts, was misleading.

Ms. Cherney failed to provide a further report to the Law Society that was due on August 1.

Decision

Ms. Cherney's conduct constituted professional misconduct in that she:

- undertook to provide the Law Society with reports from her debt counsellor in circumstances when she was no longer participating in the debt counselling program and knew she could not fulfil her undertaking, contrary to Chapter 11, Rule 7(a) of the *Professional Conduct Handbook*; and
- breached another undertaking, contrary to Chapter 11, Rule 7(b) of the *Handbook*, by failing to report on time to the Law Society respecting her payments to creditors and her outstanding debt balance, and by providing a report that was incomplete.

Penalty

The panel noted the importance of undertakings in the legal profession. Any breach of undertakings is serious, although Ms. Cherney's breaches were at the lower end of the scale.

During her articles, Ms. Cherney had financial problems resulting from her guaranteeing debts of another person. She also became depressed and required psychiatric care. In considering penalty, the panel took into account that Ms. Cherney had since taken a number of continuing legal education courses, had made arrangements for ongoing medical treatment and was meeting her financial obligations, despite her limited income. The panel was satisfied that the problems that gave rise to the Law Society imposing the undertakings on Ms. Cherney were largely behind her.

The panel ordered that Ms. Cherney:

1. be reprimanded; and
2. pay \$1,000 as costs within 12 months after her return to practice.

The panel noted that the award of costs ought not to be considered in any way an impediment to Ms. Cherney (then a non-practising member) from applying for practising status.

Discipline Case Digest — 2000: No. 17 August (Cherney)