

Admission by former lawyer of inappropriate conduct with client

ANDREW SMAIL

North Vancouver, B.C.

Called to the bar: September 1, 1989

Voluntarily ceased membership: January 1, 1998

In 1995 Mr. Smail represented Ms. S in a family law matter on legal aid. Mr. Smail hugged Ms. S on her arrival at his office for appointments and on her departure. He did not rub or press himself against her in a sexual way. When she was in his office, Mr. Smail also sometimes made remarks such as “You’ve got beautiful lips, you don’t need lipstick” and “Here comes my beautiful blonde.” Ms. S initially felt as if Mr. Smail were trying to boost her self-esteem.

On one occasion, Ms. S made comments to discourage the hugging, although she was concerned that refusing contact might cause Mr. Smail to lose interest in her file. On the last occasion that Ms. S was in Mr. Smail’s office, he took her hands and held them and asked if he could kiss her. She replied that this was not a good idea. Mr. Smail continued to hold her hands but did not attempt to kiss her.

Ms. S considered Mr. Smail’s legal services good, but she became concerned that he wanted a sexual relationship with her. She complained to the Legal Services Society about his actions and was immediately given a change of counsel.

Mr. Smail admitted that hugging and asking to kiss his client was dishonourable or questionable conduct that reflected adversely on the integrity of the legal profession and constituted professional misconduct. The Discipline Committee in July, 1998 accepted his admission and also his undertaking:

- not to apply for reinstatement* in the Law Society for two years;
- not to apply for membership in any other law society without first advising the Law Society;
- not to permit his name to appear on the letterhead of any lawyer or law firm without the written consent of the Law Society;
- to obtain written consent from the Law Society before working for any other lawyer or law firm in B.C.; and
- to pay \$1,000 towards the costs of the discipline proceedings.

* Mr. Smail ceased practising in June, 1997, became a non-practising member in September, 1997 and retired from membership in January, 1998.

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