

Atlin, B.C.

Called to the Bar: May 14, 1993

Suspended pending hearing: November 13, 1997

Disbarred: September 16, 1999

Discipline hearing panel: November 20, 1998 and September 9, 1999

Peter J. Keighley, as a one-Bencher panel by consent

Benchers: March 3, 2000

Majority decision: Robert D. Diebolt, Q.C., William M. Everett, Q.C., Richard C. Gibbs, Robert W. Gourlay, Q.C., Terence E. La Liberté, Q.C., Robert W. McDiarmid, Q.C., Marjorie Martin, Anita Olsen, Peter D. Ramsay and G. Ronald Toews

Dissent: Richard S. Margetts, Chair, Howard R. Berge, D. Ian Donaldson, Q.C. and Russell S. Tretiak, Q.C.

Todd R. Follett, for the Law Society

Christopher E. Hinkson, Q.C., for Ms. Peters

Hearing report indexed as 1999 LSBC 38

Summary

Over the course of seven weeks in 1997, Ms. Peters misappropriated a total of \$7,000 that she was holding in trust for the benefit of her client. She tendered to another lawyer a \$7,000 trust cheque on behalf of the client. That cheque was not honoured as there were insufficient funds in the account following the misappropriation. Ms. Peters made notations on the cheques in an attempt to divert suspicion and avoid detection. She failed to comply immediately with an order for production of her records, accounts and books in a Law Society investigation, failed to give the Law Society a substantial explanation on why her trust cheque was dishonoured and failed to reply to Law Society correspondence respecting two complaints against her. The hearing panel found that Ms. Peters' conduct in these matters constituted professional misconduct and ordered that she be disbarred. The disbarment was upheld by a majority of the Benchers on review.

Facts

Misappropriation of trust funds

While representing Mr. B in a divorce in July, 1997, Ms. Peters received \$7,000 in trust from her client to buy out Ms. B's interest in his employment pension plan. Between August and September, 1997, Ms. Peters made seven withdrawals totalling \$7,000 from the money held in trust, most of which was for her own personal use. She withdrew these funds without the knowledge or consent of Mr. B.

On October 15, 1997 Ms. Peters wrote a trust cheque for \$7,000 payable to Ms. B's lawyer in trust, but did not sign the cheque. Ms. Peters subsequently signed it after being asked by Ms. B's lawyer. The trust cheque was not honoured as there were insufficient funds in Ms. Peters' trust account. Ms. B's lawyer advised the Law Society of the trust shortage and, that same day, the Chair of the Discipline Committee ordered an investigation of Ms. Peters' books, records and accounts.

Ms. Peters made arrangements to produce the records required under the *Legal Profession Act*, but produced only a trust account bank deposit book for the period from July to November, 1997 and not the other records required by the order for production.

When asked by the Law Society about the reasons her trust cheque was not honoured, Ms. Peters failed to promptly provide a substantial explanation but rather told the Law Society that she had experienced a \$1,000 shortfall because of an error on another file. She also told the Law Society on October 30 that she had couriered to Ms. B's lawyer a negotiable cheque, but she had not in fact done so.

Ms. B's lawyer later brought a Small Claims Court action against Ms. Peters who entered into a consent judgment under which she agreed to pay \$20 a month into court. Mr. B received compensation for the misappropriation from the Special Compensation Fund, and the Fund took an assignment of the consent judgment against Ms. Peters. As of the date of the hearing, Ms. Peters had not reimbursed the Fund.

Failing to respond to the Law Society

The Law Society wrote to Ms. Peters in early 1997 respecting a complaint against her on a different matter. Ms. Peters breached Chapter 13, Rule 3 of the *Professional Conduct Handbook* by failing to respond to Law Society correspondence of September 18, October 14, October 30 and November 13, 1997 respecting this complaint.

The Society wrote to Ms. Peters on November 5, November 27 and December 4, 1997 respecting a different complaint against her. Ms. Peters failed to respond to this correspondence, in breach of Chapter 13, Rule 3 of the *Handbook*.

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On November 13, 1997 a three-Bencher panel suspended Ms. Peters pending her discipline hearing: see the November-December, 1997 *Bencher's Bulletin*.

Decision

The hearing panel noted that Ms. Peters had suffered from depression and substance abuse. She did, however, know what she was doing and was well aware that her actions were wrong. She made notations such as “fees” on the trust cheques that were used to withdraw the funds in an attempt to divert suspicion should these documents come under scrutiny.

The panel found that Ms. Peters’ conduct constituted professional misconduct.

Penalty

The hearing panel considered various factors on penalty, including the nature and gravity of the conduct, age and experience of the lawyer, previous character of the lawyer, advantage gained by the lawyer, the possibility of remediation or rehabilitation, the need for specific and general deterrence and the need to ensure public confidence in the integrity of the profession.

The panel expressed the view that there are few forms of misconduct more worthy of censure than theft from a client and, in the absence of significant mitigating factors, disbarment is the only suitable penalty for misappropriation. In these circumstances, the misappropriation was for Ms. Peters’ own personal use. While the Special Compensation Fund had compensated the client, Ms. Peters had taken no steps to reimburse the Fund.

The panel had before it evidence from friends, clients and colleagues of Ms. Peters attesting to her good character and their view that she was on the way to recovery from her addictions and depression. The panel noted, however, that there was no expert evidence on which to confidently base a determination that Ms. Peters’ misconduct would not occur again. She did not appear to have continued the recommended course of psychotherapy and there was nothing to suggest she had dealt with the root causes of her depression and addictions.

The panel noted that disbarment is reserved for those instances of misconduct in which prohibition from practice is the only means by which the public can be protected from further misconduct. This was such a case. Maintaining public confidence in the integrity of the profession is the only way the self-regulatory role of the Law Society can be maintained and justified.

The panel ordered that Ms. Peters be disbarred.

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Bencher review

On review of penalty by the Benchers on March 3, 2000, the disbarment was upheld.

Majority decision

The majority of the Benchers noted that, in reviewing a penalty imposed by a hearing panel, it was a question whether to apply a standard of correctness or whether, like an appellate court, to reverse error. Subject to such guidance as may be forthcoming from the court in the future, the appropriate standard was one of correctness. The majority found the decision of the hearing panel was correct.

They noted the seriousness of Ms. Peters' conduct in misappropriating all of a client's funds held in trust through a series of transactions over the course of seven weeks, in making deceptive notations and in lying to avoid detection. Misappropriation always attracts a serious penalty, and the circumstances of each case dictate whether the hearing panel or Benchers may suspend or may disbar a lawyer. The Benchers may without doubt disbar a lawyer, such as Ms. Peters, who steals client money and lies to cover up the misconduct.

The majority also noted that, while they were reasonably assured that Ms. Peters was no longer drinking or taking drugs, they were not confident that this addressed her misconduct, or that the misconduct would not be repeated. They noted that Ms. Peters was not abusing substances at the time she misappropriated funds in 1997. While there was some hope for Ms. Peters' rehabilitation, the majority found she was not suitable to practise law then or in the foreseeable future. They could not find, in the circumstances, that a lengthy suspension with conditions would be adequate. They noted that, if Ms. Peters successfully deals with her many serious problems, she could apply for reinstatement.

Dissents

Three Benchers (*Berge, Tretiak and Margetts*) concurred with the majority decision in upholding Ms. Peters' disbarment, but issued separate dissenting reasons with respect to the standard to be applied on a review.

Mr. Berge stated that the proper approach to be applied in Bencher reviews is the same as that followed by the Court of Appeal, which is: 1) did the panel apply the appropriate considerations and, if so, 2) was the penalty within the appropriate range?

Mr. Tretiak agreed and said he believed the preferential test was that the panel's decision was without error. He believed the issue of "correctness" versus "error" should be presented to the Court of Appeal.

Mr. Margetts agreed with Mr. Berge and Mr. Tretiak respecting the appropriate standard on review. He did not see that the hearing panel had erred or made a decision that was incorrect in all the circumstances. He was satisfied that the panel applied the appropriate considerations and that the penalty was in the appropriate range.

One Bencher (*Donaldson*) dissented with the majority with respect to penalty. He noted that misappropriation of trust funds is likely to result in disbarment, but he had difficulty distinguishing the result in this case from penalties imposed in four previous decisions.

He would have found a lengthy suspension with appropriate conditions a sufficient penalty in this case.

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