

Burnaby, B.C.

Called to the bar: August 1, 1985

Non-practising member as of January 1, 1997

Suspended: December 19, 1997 (*see January-February, 1998 Benchers' Bulletin and penalty section below*)

Discipline hearing panel: January 24 and May 26, 1997

H.R. Berge, Chair, K.P. Jensen and G.J. Kambeitz, Q.C.

J.P. Whittow and T.R. Follett, for the Law Society

W.B. Smart, Q.C., for Mr. Wittchen

Summary

Mr. Wittchen failed to respond promptly to Law Society correspondence, to serve clients in a conscientious, diligent and efficient manner and to meet his financial obligation to pay for secretarial services provided to his law practice.

Facts

In 1994 and 1995, the Law Society wrote to Mr. Wittchen about a complaint of an unpaid account from a company supplying services to his firm and about an enquiry from a client who was seeking the return of a retainer.

With respect to the first complaint, the Society wrote to Mr. Wittchen eight times over the course of 10 months (from October, 1994 to August, 1995) but received no response; in the second matter the Society wrote to him three times over the course of four months (from April, 1995 to August, 1995) but did not receive a response.

In August, 1995, when writing to Mr. Wittchen about the two complaints, the Law Society also asked for an explanation of a third complaint that Mr. Wittchen had failed to pay the account of a secretarial service and was not attending to his clients or his practice.

The Society undertook an investigation of Mr. Wittchen's books, records and accounts on August 31, 1995, and the Discipline Committee authorized a citation on September 6. A panel of three Benchers met to determine whether Mr. Wittchen should be suspended on an interim basis pending hearing of his citation; however, the panel adjourned the proceeding on Mr. Wittchen's undertaking to cooperate with the audit and a practice review and to respond to the three outstanding complaints by September 18.

A practice review found that Mr. Wittchen had serious personal problems and had not been properly attending to files and client matters for years. The report also concluded, however, that Mr. Wittchen was apparently willing and able to carry on practice and his problems were remediable.

On September 18 Mr. Wittchen provided a letter of response on the three complaints and his failure to respond. The panel that was to consider an interim suspension adjourned its proceedings generally on Mr. Wittchen providing further undertakings.

The Law Society wrote to Mr. Wittchen twice in November and once in December, 1995 asking for his explanation of a new complaint against him. The Society wrote again in January, 1996 giving a one-week deadline. Mr. Wittchen never responded to the Society on this complaint.

The Discipline Committee authorized an amendment to the outstanding citation against Mr. Wittchen in February. In April the Committee referred the matter to a panel to consider whether there should be an interim suspension. Mr. Wittchen gave his undertaking to the Law Society to refrain from practice and consented to the appointment of a custodian of his practice. He became a non-practising member of the Society at the beginning of 1997.

Decision

At his discipline hearing, Mr. Wittchen admitted and the hearing panel found professional misconduct in Mr. Wittchen:

- not responding promptly to Law Society correspondence;
- failing to serve clients in a conscientious, diligent and efficient manner (in particular, failing to respond to client communications, missing appointments and failing to attend to client matters promptly); and
- failing to meet his financial obligation to pay for secretarial services provided to his law practice.

Penalty

The discipline hearing panel ordered that Mr. Wittchen, then a non-practising member, stand suspended from the practice of law until the Discipline Committee, on application by Mr. Wittchen, determines that his competency to practise is not adversely affected by physical or mental disability.