

West Vancouver, B.C.

Called to the Bar May 15, 1972

Voluntarily ceased as a member December 31, 1994

Discipline hearing panel: May 2, 1995

W.M. Trotter, Q.C., Chair, T.M. McEwan and S.A. Moore

Benchers (Rule 495): March 8, 1996

H.R. Berge, Chair, R.D. Diebolt, Q.C., R.C. Gibbs, A. Howard, K.P. Jensen, P.J. Keighley, R.S. Margetts, M. Martin, E.M. Reid, Q.C., J.S. Shackell, G.R. Toews, R.S. Tretiak and B.D. Woolley

J. Whittow, for the Law Society

Mr. Edwards, on his own behalf

Summary

Mr. Edwards was guilty of professional misconduct in failing to pay practice debts even after he had received funds for this purpose on behalf of his client. Mr. Edwards also breached section 78(4) of the *Legal Profession Act* and Law Society Rule 1050(2) in rendering an account to his client that exceeded the amount provided for in the contingent fee agreement.

Facts

In February, 1989 Mr. Edwards was retained by B on a personal injury claim. They entered into a contingent fee agreement under which Mr. Edwards would be entitled to 25% of any settlement or court award for damages, plus reimbursement for disbursements.

In January, 1991 Mr. Edwards requested a medical legal report from Dr. H, asking to be called once the report was ready so that he could pick it up and pay for it. Dr. H forwarded the report to Mr. Edwards and rendered an account for \$507.

A trial of the personal injury case proceeded in March, 1991. Judgment was rendered in favour of B.

Dr. H had testified at the trial. He subsequently rendered an account for \$558 dated April 5, 1991. From July, 1991 to September, 1992, Dr. H's office sent Mr. Edwards statements of account, including accumulated interest, on eight occasions without response. On September 21, 1992 Dr. H's staff telephoned Mr. Edwards office, but was told that he was no longer at the firm. Dr. H's staff called Mr. Edwards' new telephone number and left a message on his answering machine respecting the accounts.

Dr. H's staff sent monthly statements of account from October, 1992 through to July, 1993. During that time, they also telephoned and left messages on his answering machine, requesting that he return calls. In April, 1993 Mr. Edwards left a message on his answering machine to say he would be away until May 10. Dr. H's staff called again on May 14 and left another message. On May 18 the office sent a final notice to Mr. Edwards.

Mr. Edwards called Dr. H's office on May 27, 1993 and said that he had been away and would pay the accounts within two or three weeks. He did not. Dr. H's staff called Mr. Edwards twice in June and left a message that the office would take collection proceedings if Mr. Edwards did not respond within a week. On July 19, one of Dr. H's staff spoke with Mr. Edwards who said he had been away for three weeks and would try to pay the accounts by the following week.

On August 11, a statement of account from Dr. H's office was returned by the post office. Dr. H's staff found a new telephone number for Mr. Edwards and reached a recorded message that Mr. Edwards would be away until September 1.

Dr. H's office filed a complaint with the Law Society on August 20, 1993.

Earlier, in May, 1991, Mr. Edwards had received in trust \$39,297.57 in full satisfaction of the judgment in favour of B, plus an amount claimed as costs and disbursements pursuant to a bill of costs agreed on by counsel. The bill of costs indicated that Dr. H's accounts for \$507 and \$558 were to be disbursements.

Mr. Edwards rendered an account for services to B, calculated as follows:

25% X \$34,755.57	\$ 8,688.87
(damages plus interest)	
Costs as allowed on the bill of costs	\$ 2,860.00
Disbursements	<u>\$ 1,682.10</u>
Total	<u>\$13,230.97</u>

Mr. Edwards deducted this money from the money he had received in trust, transferred it to himself directly (as he did not operate a general account) and provided B with the balance of the funds. On his account to the client, he indicated that the accounts of Dr. H were "disbursements." Mr. Edwards did not, in fact, pay these accounts and they remained unpaid at the date of his discipline hearing. B did not know that the accounts were unpaid.

Mr. Edwards' account to B exceeded the amount to which he was entitled under his contingent fee agreement and was in breach of section 78(4) of the *Legal Profession Act* and Law Society Rule 1050(2). He was entitled to charge 25% of the damages award, plus disbursements; he in fact charged 25% of the damages award and interest, plus the costs and disbursements set out on the bill of costs.

Throughout these events, Mr. Edwards was in very serious financial difficulty.

He testified before the hearing panel that he had operated a prosperous practice until some business ventures resulted in a high tax assessment and until he experienced marital difficulties. At the time of the hearing, he had debts totalling \$1 million, including \$900,000 owed to Revenue Canada. Despite the size of the debts, he expressed hope that he could conclude his business problems and clear his liabilities without declaring bankruptcy.

Decision

The majority of the hearing panel found that Mr. Edwards was guilty of professional misconduct in failing to pay the accounts of Dr. H. The panel found that there was an element of recklessness in Mr. Edwards promising to pay Dr. H, and that it was unacceptable for Mr. Edwards to prefer to pay for his own needs and other expenses out of money he had received for the purpose of paying Dr. H's bills. Ms. Moore dissented from the finding of professional misconduct. She would have found that Mr. Edwards' conduct constituted a breach of Part G, Rule 1 of the former *Professional Conduct Handbook* (now Chapter 2, Rule 2), but did not amount to professional misconduct.

The panel unanimously decided that Mr. Edwards had breached section 78(4) of the *Legal Profession Act* and Law Society Rule 1050(2) in rendering an account to his client that exceeded the amount provided for in his contingent fee agreement. The panel accepted that Mr. Edwards was mistaken as to his entitlement under the agreement.

Penalty

The panel ordered that Mr. Edwards:

1. be reprimanded; and
2. pay \$1,000 toward the costs of the discipline proceedings.

The majority of the panel, Mr. Trotter dissenting, recommended to the Benchers that there be no publication of a summary of the discipline case, for several reasons. First, Mr. Edwards' breach of the Rules resulted from overwhelming financial difficulties. Second, his failure to pay accounts was not a scheme concocted to deprive a trade creditor of its funds and did not reflect any moral turpitude on his part. Third, his breach of Rule 1050(2) was essentially inadvertent.

On March 8, 1996 the Benchers considered an application by Mr. Edwards and the recommendation of the hearing panel that there be no publication, pursuant to Rule 495(2)(a). The Benchers heard submissions

from Mr. Edwards and from counsel for the Law Society. After determining that the detriment to Mr. Edwards arising out of publication did not outweigh the need for the public and the profession to be aware of the misconduct, the Benchers directed that the case be published in the usual course.

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