

Vancouver, B.C.

Called to the Bar: August 26, 1988

Discipline hearing:

Dates: March 10 and 11, 1999 (first hearing) and April 28, 2000 (new hearing)

Panel: David W. Gibbons, Q.C., Chair, Howard R. Berge and Peter J. Keighley

Reports: May 6, 1999 (first hearing) and June 5, 2000 (new hearing)

Indexed as [1999] LSBC 12

Bencher review:

Date: May 25, 1999

Benchers: (Majority) Warren T. Wilson, Q.C., Chair, Anna K. Fung, Richard C. Gibbs, D. Peter Ramsay, Q.C.,

Robert W. Gourlay, Q.C. and G. Ronald Toews, Q.C.; (Minority) Richard S. Margetts

Report: May 26, 1999

Counsel:

Kim S. Campbell, for the Law Society

F. Andrew Schroeder, for Mr. Moir

Summary

Mr. Moir represented the purchaser in a contract for the purchase of shares and assets of a company. He met with the vendor who executed the closing documents without the vendor's lawyer present, and Mr. Moir did not contact the vendor's lawyer. Mr. Moir later represented his purchaser client in a civil proceeding arising from the same transaction, although Mr. Moir ought to have known that he would likely be a witness in the proceeding. In the course of a discovery of documents in the civil proceeding, Mr. Moir obliterated a portion of a document when there was no proper basis for doing so. Mr. Moir admitted that his conduct constituted professional misconduct and he agreed to complete a professional responsibility course and a loss prevention course at his own expense. The Discipline Committee and discipline hearing panel accepted Mr. Moir's admission and the proposed disciplinary disposition, and the panel noted that Mr. Moir's misconduct arose from his inexperience at the time of these events.

Facts

In October, 1990 Mr. K began negotiating with Mr. W for the purchase of Mr. W's travel company. Mr. K retained Mr. Moir to prepare a share purchase agreement and an asset purchase agreement.

Mr. Moir prepared these documents and met with Mr. K and Mr. W. He advised Mr. W that he didn't act for him and that Mr. W should receive independent legal advice on the transaction. Mr. W retained his own lawyer who discussed changes to the agreements with Mr. Moir.

After further negotiations, Mr. W's lawyer called Mr. Moir to say that Mr. W had not decided whether to close the transaction. The next day, however, Mr. K and Mr. W together went to Mr. Moir's office and signed documents to close the transaction. Mr. W's lawyer was not present at this closing and Mr. Moir did not contact him.

Mr. W later began an action against Mr. K and his company. Mr. K asked Mr. Moir to act for him in the proceeding. Mr. Moir initially declined because he was a potential witness in the proceeding, but then agreed to a limited retainer.

During the discovery of documents, Mr. Moir faxed copies of certain documents to Mr. W's lawyer. He obliterated a portion of one document on the ground that the information was irrelevant and confidential. A Master later ruled the text was relevant, and Mr. Moir delivered a clean copy of the original letter to Mr. W's lawyer.

Mr. Moir ceased acting for Mr. K following examinations for discovery.

* * *

A discipline citation was issued against Mr. Moir and a hearing set for October, 1994. The hearing was adjourned several times because of the unavailability of Mr. Moir's witnesses, the ill health of his counsel, disclosure issues and the replacement of a member of the panel. In 1999 the hearing was held, and the panel dismissed the citation against Mr. Moir after he raised a preliminary objection that full disclosure of relevant materials had not been made by the Law Society.

In May, 1999 the Discipline Committee applied to the Benchers for a review of the citation dismissal. A majority of the Benchers found that Law Society discipline counsel had honestly, but mistakenly, believed that two documents were not subject to disclosure. Although the documents were not disclosed until after the start of the hearing, contrary to the Rules, this disclosure was six months before the intended start date of the evidentiary phase of the hearing (and nine months before the actual start of this phase). Mr. Moir had ample time to prepare. Moreover, substantially the same information in the documents had previously been disclosed to Mr. Moir through transcripts he had received. A majority of the Benchers found that Mr. Moir was not prejudiced by the late disclosure of the two documents and they directed that a hearing of the matter proceed on its merits. Mr. Margetts dissented and would have stayed the proceedings.

The hearing proceeded in March, 1999.

Admission

Pursuant to Law Society Rule 4-22, Mr. Moir admitted that his conduct constituted professional misconduct in that he:

- did not contact Mr. W's lawyer when Mr. W appeared alone to execute closing documents;
- represented Mr. K and his company in the litigation matter when Mr. Moir ought to have known that he would likely be a witness in that proceeding; and
- obliterated a portion of a document in a discovery of documents when there was no proper basis for doing so.

Penalty

The Discipline Committee and the hearing panel accepted Mr. Moir's admission and his proposed disciplinary action, and ordered that he complete at his own expense:

1. a professional responsibility course; and
2. a loss prevention course.

The panel noted that it was satisfied the proposed disposition was appropriate, given Mr. Moir's relative inexperience at the bar at the time of the misconduct and evidence that his conduct was more indicative of inexperience than malfeasance.

Discipline Case Digest — 2000: No. 14 June (Moir)