

Salmon Arm, B.C.

Called to the Bar May 15, 1972

Discipline hearing panel: May 23, 1995

R.S. Tretiak, as a one-Bencher panel

J. Whittow, for the Law Society

R. Jackson, for Mr. Wynne

Summary

Mr. Wynne incompetently carried out his duties as a lawyer by delaying on a client's file after having agreed to act expeditiously. Mr. Wynne also misled the client by stating as one reason for the delay that he was awaiting a response from the Public Trustee when, in fact, he had not communicated with the Public Trustee. This conduct constituted professional misconduct.

Facts

In July, 1993 Mr. Wynne began representing A to prove a will made in Germany by A's deceased common law spouse (J) and to obtain an order for committee of J's mother.

A retained Mr. Wynne because he believed that his previous lawyer had not progressed on the file quickly enough. He asked Mr. Wynne to handle matters without delay, which Mr. Wynne agreed to do.

On August 9, 1993 Mr. Wynne received A's file from A's previous lawyer. Mr. Wynne prepared consents to the appointment of A as executor of J's estate and proceeded to have these consents executed. In October, A told Mr. Wynne that he was concerned that, unless he was named Committee of J's mother, her pension payments would cease. Mr. Wynne told A that he would make the committee application in November or December.

Masters chambers, usually scheduled once a month in Salmon Arm, were held on November 25, but were not held again in December.

Mr. Wynne believed that, because there was a lack of kindred relationship between J's mother and A, the committee application would more likely be approved if A were appointed the administrator of J's estate in B.C. Mr. Wynne did not discuss this issue with A, or the problems surrounding probate of the foreign will.

In December, 1993, just before Christmas, A discovered that nothing had been filed in the court registry. He confronted Mr. Wynne. Mr. Wynne said that he could not force the Public Trustee to answer his communications, and he implied that he was awaiting a reply from the Public Trustee's Office in order to proceed.

When A subsequently contacted the Public Trustee's Office, he learned that the Office had received no correspondence from Mr. Wynne. A again contacted Mr. Wynne who said he would clarify things with the Public Trustee on December 28. On December 30 A called the Public Trustee's Office and found that Mr. Wynne had not made contact.

A met with Mr. Wynne on December 31, and Mr. Wynne admitted that he had not sent a letter to the Public Trustee. He next prepared a notice of motion and affidavit for the committee application. He filed the application on January 4, 1994, which was not in time for masters chambers the next day. The application was heard, and granted, on February 9. Coincidentally, J's mother died that morning.

Mr. Wynne charged A only for disbursements on the file.

When the Law Society wrote to Mr. Wynne in April, 1994 respecting his conduct, Mr. Wynne admitted to misleading his client and acknowledged that this was highly unprofessional conduct.

Decision

The hearing panel found that Mr. Wynne had incompetently carried out his duties as a lawyer in delaying on his client's file when he knew the client wished the file handled expeditiously. The panel noted that the delay occurred between October and December, 1993, and that Mr. Wynne proceeded reasonably and with dispatch after that.

The panel further found that Mr. Wynne's conduct in misleading his client constituted professional misconduct.

Penalty

In a letter to clients and other lawyers, Mr. Wynne frankly admitted his misconduct in this matter. The hearing panel considered letters from clients, lawyers, his accountant and others in the community testifying as to Mr. Wynne's integrity and the fact that this misconduct was an anomaly.

The panel observed that members of the public have the right to expect honesty of members of the legal profession, as this is the foundation of the solicitor-client relationship. The panel said that Mr. Wynne had learned this lesson, which would be revisited by publication.

The panel distinguished several other discipline decisions in which lawyers had misled clients, as well as the mitigating factors in the circumstances of this case.

The panel ordered that Mr. Wynne:

1. be reprimanded;
2. pay a \$3,500 fine, payable in two equal instalments on August 1 and October 1, 1995; and
3. pay \$1,640 as costs of the discipline proceedings.

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