

Vancouver, B.C.

Called to the Bar: May 10, 1983

Discipline hearing panel:

S.A. Moore, Chair, M. McEwan and K.F. Warner (for findings of fact): May 19, 1995

K.F. Warner, Q.C. as a single Bencher panel (for verdict and penalty): January 15, 1998

J. Whittow, for the Law Society

C. Hinkson, Q.C., for Mr. Cruickshank

Summary

Mr. Cruickshank was driving his car, with his client as a passenger, when he was in a collision with another vehicle. Mr. Cruickshank was intoxicated at the time. At the scene of the accident, he allowed his client to tell police that he (the client) was the driver. In allowing his client to mislead police in this way, Mr. Cruickshank intended to exonerate himself, even though his client thereby risked charges under the *Criminal Code* and the *Motor Vehicle Act*. Within two days of the accident and although he appeared to be clear of a threat of prosecution, Mr. Cruickshank took steps to report the true circumstances of the accident to police. He also apologized to his client and the driver of the other vehicle and paid for his client to seek independent legal advice.

Facts

In February, 1992 Mr. Cruickshank was defence counsel for Mr. B, who faced criminal charges. Following Mr. Cruickshank's discussions with the Crown, the charges were stayed. Mr. Cruickshank, Mr. B and a friend of Mr. B celebrated this outcome at a nearby nightclub.

When Mr. Cruickshank decided to leave the club three hours later, he was very intoxicated. While driving his car, with Mr. B and the friend as passengers, he was in a collision with another vehicle.

When police arrived at the scene of the accident, Mr. B told them that he was the driver of the car, although this was untrue. Mr. Cruickshank acquiesced in Mr. B misleading the police in this way to exonerate himself from responsibility for the accident, even though his client was thereby at risk of being charged with obstruction under the *Criminal Code* and charged under the *Motor Vehicle Act*.

The day after the accident, Mr. Cruickshank experienced profound shame at his actions and he sought advice. He learned that police expected to charge Mr. B under the *Motor Vehicle Act*. Although Mr. Cruickshank appeared to be clear of the threat of prosecution, he nevertheless took steps to report the true circumstances of the accident to police, apologize to his client and the driver of the other vehicle and pay for his client to seek independent legal advice.

Mr. Cruickshank acknowledged to the hearing panel that he had struggled with alcohol abuse for some years. Two days after the accident, he joined Alcoholics Anonymous and had since remained sober.

Decision

Mr. Cruickshank admitted, and the hearing panel found, that his conduct constituted professional misconduct.

Penalty

The hearing panel took into account the serious nature of Mr. Cruickshank's interference with the police investigation.

The panel, however, also considered as a mitigating factor that Mr. Cruickshank took prompt and effective action to deal with the potential consequences of his behaviour for his client and for the police. He reported

the true circumstances of the accident, made apologies and paid for his client to receive independent legal advice.

The panel ordered that Mr. Cruickshank pay a \$6,000 fine by December 31, 1998.

Discipline Case Digest — 1998: No. 8 April (Cruickshank)