

Vancouver, B.C.

Called to the Bar: May 15, 1964

**Discipline hearing panel:** February 17 and 18 and December 15, 1997

R.S. Margetts, Chair, G.R. Toews and J.S. Shackell

J. S. Mackoff, for the Law Society

T.R. Berger, Q.C. and G.A. Nelson, for Mr. MacLeod

### **Summary**

While representing an infant plaintiff in a medical malpractice case, Mr. MacLeod applied to the court to approve a settlement. The judge hearing the matter would not approve the settlement without also reviewing the reasonableness of Mr. MacLeod's legal fee. Mr. MacLeod took the position that the judge had no jurisdiction to review the fee, but only to review the settlement, net of the fee. The judge adjourned the hearing and later requested more documentation to assist in his review of the fee. Before resumption of the proceedings, Mr. MacLeod applied to another judge to approve the fee, and failed to advise her of the earlier proceedings. The second judge later revoked her order when she discovered that the first judge considered the fee issue was before him.

### **Facts**

From 1988 to 1993, Mr. MacLeod represented an infant plaintiff in medical malpractice litigation. In May, 1993 the parties reached a settlement, which was subject to court approval.

The judge hearing the matter would not approve the settlement without more information about the work done by Mr. MacLeod and the reasonableness of his legal fee. Mr. MacLeod disagreed that the judge had jurisdiction to review the fee, and he took the position that the judge could only consider whether the proceeds of the settlement, net of the fee, were adequate for the infant plaintiff.

The judge adjourned the hearing and stated that his decision would await a more complete hearing. In a memorandum, the judge requested detailed documentation that would allow him to review the reasonableness of the fee. The judge's comments made clear that he intended to enquire into Mr. MacLeod's fee as part of his consideration of the settlement.

Subsequently, and prior to resumption of the proceeding, Mr. MacLeod appeared before another judge to obtain approval of his fee, thereby pre-empting the first judge from doing so. The discipline hearing panel concluded that Mr. MacLeod did not advise the second judge of the proceedings before the first judge because he thought that, if he did so, she might not issue the order. The second judge later revoked her order when she found out that the first judge intended to consider the issue of Mr. MacLeod's fee.

### **Decision**

The hearing panel found that Mr. MacLeod's conduct constituted professional misconduct.

### **Penalty**

The panel reviewed penalties in previous discipline cases, and determined that Mr. MacLeod should be suspended, but that a short-term suspension was appropriate because of mitigating factors in this case.

The panel noted Mr. MacLeod's long and spotless record in the practice of law and his high standing in the legal community, both in terms of his integrity and professional competence. The panel observed that Mr. MacLeod experienced personal problems in mid-1993 that may have been a factor in his misconduct. Also, the panel considered there was some confusion in the law relating to jurisdiction over a review of fees, although that issue was not before the panel. The panel further took into account that the court had awarded

\$24,000 in costs against Mr. MacLeod as censure for his conduct, and that Mr. MacLeod had suffered the impact of publicity surrounding the case at the time.

The panel ordered that Mr. MacLeod:

1. be suspended for 30 days, beginning December 15, 1997; and
2. pay \$5,000 as a contribution to costs of the discipline proceedings, within 30 days.

As the Law Society was unsuccessful in proving a second allegation on the citation, the panel was not prepared to order that Mr. MacLeod pay full costs.

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