

Parksville, B.C.

Called to the Bar September 1, 1989

**Discipline hearing panel:** March 6, 1995

W.T. Wilson, Q.C., as a one-Bencher panel

J. Whittow, for the Law Society

J.W. Williams, for Mr. Evans

### **Summary**

Mr. Evans placed his personal financial interests in conflict with those of his clients in a fee arrangement and a loan agreement by failing to ensure that his clients' interests were adequately protected and failing to ensure that his clients received independent legal advice. He further breached a Law Society accounting rule by failing to provide his clients with a reasonably descriptive statement of legal services.

### **Facts**

In January, 1990 Mr. Evans was retained by Mr. B, who was a friend of Mr. Evans, to act for Mr. B's retail furniture company.

Between January, 1990 and October, 1991 the furniture company supplied furniture to Mr. Evans and issued invoices totalling \$15,000. Mr. Evans and Mr. B orally agreed that the furniture would be paid for, in whole or in part, by the performance of legal services so that Mr. Evans' accounts would be set off against accounts from the furniture company.

In 1990 and 1991 Mr. Evans paid money from time to time on account of the invoices from the furniture company. He also performed legal services for the company during this time, but rendered no accounts until November, 1991 when he rendered accounts totalling \$12,000.

Mr. Evans and Mr. B at that point disagreed as to the value of the furniture supplied, the propriety of the legal accounts, whether interest could be charged by either of them, and the amount of money Mr. Evans had paid in partial satisfaction of the furniture company's accounts.

Also, in December, 1990, Mr. Evans borrowed \$5,000 from Mr. B and \$10,000 from Mr. B's furniture company as a down payment on a home. There was no form of written agreement or security for the loan, and Mr. B did not receive any independent legal advice on the loan.

Mr. B had borrowed the \$5,000 from a credit union in order to loan it to Mr. Evans. Mr. Evans repaid the principal to the credit union in May, 1991, but not the interest of \$385.46, which Mr. B subsequently paid.

Mr. Evans and Mr. B disagreed about repayment of the \$10,000 loan from the furniture company, both about timing of repayment and interest payable. By the summer of 1991, Mr. B wanted repayment of the loan with interest. On December 13, 1991 Mr. B and his furniture company issued a writ and statement of claim against Mr. Evans for \$28,212.70 plus interest as payment of the furniture invoices and the loan.

On December 20, 1991 Mr. Evans filed a statement of defence and counterclaim for \$32,209.74, which included a claim for legal fees. Mr. B and the furniture company filed a statement of defence to counterclaim in January, 1992.

In April, 1994 a Supreme Court registrar conducted an accounting of money loaned by Mr. B and the company, an accounting of furniture supplied by the company and a review of accounts for legal services provided by Mr. Evans. Following the registrar's hearing, a master's report recommended that one of Mr. Evans' legal accounts be disallowed entirely. That account did not contain a reasonably descriptive statement of legal services, contrary to Law Society Rule 825(2).

The court found in favour of Mr. B and his furniture company in their claim against Mr. Evans.

## **Decision**

Mr. Evans was guilty of professional misconduct in placing his personal financial interests in conflict with those of his clients, failing to ensure that his clients' interests were adequately protected and failing to ensure that his clients received independent legal advice. He further breached a Law Society accounting rule.

## **Penalty**

The discipline hearing panel found that Mr. Evans began practice on his own soon after his call to the bar, and he rapidly added other lawyers to his office without having a good sense of the administration and direction required to ensure financial success.

After discussing with Mr. B (a friend and client) his financial difficulties in starting a practice, Mr. Evans naively entered into a business arrangement with Mr. B without being alert to his responsibilities as a lawyer. Since then, he had become painfully aware of the importance of not becoming personally involved with a client.

Following the judgment against him, he assigned another debt owing to him to Mr. B.

Mr. Evans admitted professional misconduct, cooperated with the Law Society investigation and showed remorse. Nevertheless, he also tarnished his reputation and caused his client unnecessary hardship.

The panel found that Mr. Evans' breach of the accounting rules warranted a reprimand, while his conflict of interest required a more severe penalty.

The panel ordered that Mr. Evans:

1. be reprimanded;
2. pay a fine of \$3,000;
3. pay \$1,000 toward costs of the discipline proceedings; and
4. submit to a practice review as directed by the Competency Committee.

The panel ordered that half the fine and costs be paid by December 31, 1995 and the balance by December 31, 1996. The panel also recommended that the Competency Committee take into account Mr. Evans' difficult financial circumstances when setting costs for the practice review, and either waive the costs or charge a minimal amount.