

Vancouver, B.C.

Called to the Bar: May 12, 1967

Discipline hearing panel: September 28, 1995

W.M. Trotter, Q.C., Chair, W.T. Wilson, Q.C. and R.S. Margetts

J. Whittow, for the Law Society

R. Sugden, Q.C., for Mr. Ewachniuk

Summary

After having been discharged as counsel for a client in a personal injury litigation, Mr. Ewachniuk improperly disclosed to ICBC confidential information about the terms of his retainer with the client. He also improperly disclosed to ICBC his advice to the client to accept an ICBC settlement offer, even though at the time he made this disclosure he was discharged. Mr. Ewachniuk admitted, and the hearing panel found, that his conduct constituted professional misconduct.

Facts

In May, 1990 Mr. Ewachniuk began civil actions and made a claim for no-fault benefits on behalf of Ms. N for injuries she had sustained in two motor vehicle accidents. Mr. Ewachniuk and Ms. N signed a written retainer agreement in 1988, which he modified in 1989.

On May 18, 1990 Mr. Ewachniuk discussed settlement of both cases with an ICBC adjuster. At that time, the adjuster believed that Mr. Ewachniuk had agreed to settle both claims for \$25,000 plus taxable costs and disbursements.

In June, 1990 Mr. Ewachniuk told Ms. N that ICBC had offered \$25,000 plus disbursements and costs. On July 4 Mr. Ewachniuk told ICBC by telephone that his client had not accepted the settlement offer. ICBC, however, took the position that the case had already been settled.

On July 16 Ms. N notified Mr. Ewachniuk in writing that she was terminating his services and retaining another lawyer. Her new lawyer confirmed the retainer on August 3 in a letter to Mr. Ewachniuk.

On August 16 Mr. Ewachniuk informed the ICBC adjuster by telephone that Ms. N had retained new counsel. That same day Mr. Ewachniuk wrote to Ms. N stating that:

... we are holding you to the solicitor/client agreement that was signed by you on November 22, 1988 ... I feel ICBC's offer of settlement in the amount of \$25,000 is fair and reasonable and we intend to charge the full 33-1/3% of that amount. You cannot avoid the contingency fee by transferring your case to another lawyer.

Mr. Ewachniuk sent a copy of this letter to the ICBC adjuster on the file. He did not enclose copies of his bill for fees and disbursements that he had sent to the client.

On August 27, 1990 the ICBC adjuster wrote to Mr. Ewachniuk to confirm his acceptance of \$25,000 and also wrote to Ms. N's new lawyer. The new lawyer wrote to Mr. Ewachniuk asking that he communicate no further with ICBC on the file.

Mr. Ewachniuk wrote to the new lawyer on September 5 to confirm that he had advised settlement to Ms. N, but had not accepted ICBC's settlement offer on her behalf. He copied this letter to the ICBC adjuster.

On behalf of the defendants, ICBC filed statements of defence on November 30, relying on the alleged settlement. Ms. N, however, ultimately settled her actions for \$40,000 plus costs.

Ms. N and Mr. Ewachniuk disagreed over Mr. Ewachniuk's fees, and Ms. N complained to the Law Society in November, 1992. They resolved their fee dispute in May, 1993.

Decision

Mr. Ewachniuk admitted that, in sending to ICBC copies of his letters to Ms. N's new lawyer, he had improperly disclosed:

- confidential client information about the terms of his retainer with Ms. N;
- his advice to Ms. N to accept the ICBC settlement offer, even though at the time he made this disclosure, Mr. Ewachniuk was discharged as Ms. N's lawyer.

Penalty

The Discipline Committee and the hearing panel accepted Mr. Ewachniuk's admission of professional misconduct and his proposed disciplinary action, and ordered that he pay:

1. a fine of \$2,500; and
2. \$1,000 toward the cost of the discipline proceedings.

Discipline Case Digest — 1995: No. 10 November (Ewachniuk)