

Richmond, B.C.

Called to the Bar May 12, 1967

Discipline Hearing Committees:

July 18, 1991; January 20, 1992: J.M. MacIntyre, Q.C., as a one-Bencher panel

September 25, 1991: R.C.C. Peck, Q.C., Chair, P.A. Murray, Q.C. and B.J. Wallace, Q.C.

Discipline Committee: September 16, 1992

J. Whittow, for the Law Society

R. Sugden, Q.C., for the member

Summary

The member was disciplined for incompetency in failing to maintain proper office procedures and systems and in neglecting client files, and for professional misconduct in failing to respond promptly to the Law Society. The Hearing Committee ordered that the member, who had voluntarily ceased practising law, comply with certain conditions before returning to practice, including the successful completion of a remedial studies program and a treatment program for alcohol addiction. During the custodianship of the member's practice, the custodian and a Law Society auditor discovered that the member had misappropriated trust funds from clients; that he had rendered accounts and received payment from other clients though he had not performed the services specified in the accounts; and that he had breached Law Society accounting rules. After ceasing as a member of the Society at the end of 1991, Mr. Guthrie admitted to the Discipline Committee that he had professionally misconducted himself.

Neglect of office systems, clients

Discipline Hearing Committee: September 25, 1991

R.C.C. Peck, Q.C., Chair, P.A. Murray, Q.C. and B.J. Wallace, Q.C.

Facts

The member did not maintain proper office procedures or systems, and he neglected client files, as discovered during a Law Society review of his practice in May, 1991.

The member failed to keep notes of client instructions; to respond to correspondence from clients; to respond to correspondence from other solicitors; to report to clients; to pursue litigation or otherwise conduct client matters in a timely fashion; to maintain adequate file organization; or to use adequate systems for opening and closing files, diarization and limitations.

On one estate file the member did not answer correspondence concerning the value of the estate; he inaccurately described in probate documents the value of the estate; he failed to obtain a proper form of consent to the appointment of an administrator; and he failed to complete the application for probate in a timely way. On another estate he did not answer correspondence on the tax liabilities of the deceased and the estate, and he failed to complete transmittal of the deceased's assets.

On a committee application, the member did not prepare adequate materials or complete the application in a timely way.

On corporate files the member failed to respond to client correspondence and he did not file the necessary corporate reports, records and resolutions with the Registrar of Companies or in the records books. On one occasion his failure to file resulted in the dissolution of a company.

The Discipline Committee authorized the issuance of a citation on June 22, 1991. In July, 1991, the member voluntarily ceased practice, and a custodian was appointed. The hearing took place on September 25, 1991.

Decision

The Hearing Committee found that the member had practised incompetently. His practice problems arose from financial difficulties, stress, family problems and an alcohol addiction.

Penalty

The Hearing Committee imposed conditions on the member, and his return to practice, by ordering that he:

1. complete a Law Office Management and Accounting Service (LOMAS) remedial program, comply with any recommendations, and bear the costs of the program before returning to practice;
2. allow the custodianship of his practice to continue until his treating physician states that his fitness to practise is not adversely affected by mental or physical disability, or by alcohol addiction;
3. establish a relationship with a family law mentor satisfactory to the Committee;
4. practise only in the areas of criminal and family law on his return to practice, until relieved of this condition by the Discipline Committee;
5. meet bi-weekly with a Law Society staff lawyer responsible for remedial studies until relieved of this condition by the Discipline Committee;
6. successfully complete remedial programs in family and criminal law at his own cost.

The Committee also encouraged the member to participate in meetings of the Vancouver Criminal Justice and Family sections of the CBA (B.C. Branch).

Failing to respond to Law Society

Discipline Hearing Committee: July 18, 1991; January 20, 1992
J.M. MacIntyre, Q.C., as a one-Bencher panel

Facts

The Law Society wrote to the member on June 14, 1990 asking for his explanation of a complaint. The Society sent follow-up letters on July 5, July 19, August 23 and September 6. On September 14 staff at the Law Society telephoned the member and left a message for him to return the call. The member called on September 25 to say he would provide a response within two weeks. On October 9 the Society left another telephone message and on October 12 again wrote to the member.

The member was cited on January 7, 1991. *[The hearing was adjourned while a practice review was performed, which gave rise to the citation hearing described above in this Case Digest.]*

Verdict

On July 18, 1991 a one-Bencher Hearing Committee found that the member had professionally misconducted himself in failing to respond promptly to the Law Society. Noting that the member had voluntarily ceased practice and a custodian had been appointed, the Committee adjourned the imposition of a penalty for six months, on the member's agreement that he would take treatment for alcoholism and for procrastination, and that he would respond to the complaint.

Penalty

On January 20, 1992 the Hearing Committee took note of separate discipline proceedings relating to the member's competency, and stated that its order did not supercede the prior panel's order in the separate proceedings. For his failure to respond promptly to the Society, the Committee ordered that the member:

1. be reprimanded;
2. pay the costs of the hearing, not exceeding \$1,000 by September 1, 1992, or within two months of his return to practice;
3. continue in treatment until relieved of that condition by the Discipline Committee.

Misappropriating client funds

Discipline Committee: September 16, 1992

Facts

During the custodianship of the member's practice in September, 1991, the custodian and a Law Society auditor discovered that the member had misappropriated trust funds from four different clients earlier that year by depositing the clients' fee retainers directly into his personal bank account without the clients' knowledge, authorization or consent, and without rendering accounts:

- In March, 1991 the member agreed to represent P on a criminal charge for a fee of \$875. The member deposited to his personal account a cheque for \$250 on March 27, a retainer provided by P. The client gave the member a cheque for \$625, which the member deposited to his personal account on June 12. The member did not represent the client at his criminal trial, nor did he provide any accounting or return the client's money.
- On April 9, 1991, the member agreed to obtain a final divorce decree for H, and he accepted a cheque for \$525, which was to cover all legal fees and disbursements. He deposited the cheque to his personal account the same day. He did not obtain the divorce decree for the client, nor did he provide any accounting or return the client's money.
- The member provided advice to F on structuring and incorporating a new company. On June 10, 1991 he accepted from F a retainer cheque for \$500 to incorporate the company, and he deposited the cheque to his personal account the same day. The member rendered an account on October 2, 1991 by which time the incorporation was complete.
- The member agreed to act for C on a criminal charge for a fee of \$500 if a guilty plea were entered, or \$1,500 if the case went to trial. On June 3, 1991 the member accepted a retainer cheque of \$500, which he deposited to his personal account. Another lawyer later took over representation of the client and no services were performed by the member. No funds were returned to the client.

Three other earlier instances of misappropriation were subsequently discovered by the custodian:

- In June, 1990, P paid \$400 to the member as a retainer for services to be performed in removing a charge from title. The member deposited the retainer into his personal account. No legal services were performed by the member.
- In July, 1988, V paid \$450 to the member as a retainer for services to be performed in handling a wrongful dismissal suit. After filing the writ, the member took no further steps. The funds were deposited into the member's personal bank account. No monies were returned to the client.
- In the Spring of 1990, D provided the member with a retainer of \$225 to take action to recover goods. The member deposited the funds in his personal bank account. No services were performed and no account ever rendered. The funds were not returned to the client.

On each occasion, funds were provided to the member as a retainer and in no instance was it agreed that the member could treat the funds as his own.

The member breached Law Society accounting rules in relation to these client files by failing to deposit the retainers in trust and by failing to properly maintain a trust cash book, a trust ledger for each client on whose behalf trust funds had been received, copies of billings to clients, an accounts receivable ledger, a non-trust cash book, and copies of receipts issued to clients for retainers.

The member rendered accounts and accepted payment from corporate clients for the filing of their annual reports when he had not in fact performed all the services or incurred the disbursements set out in his accounts:

- Between 1987 and 1990 the principal of K Ltd. signed annual reports for filing, and the member received a total of \$1,201 to cover his fees and disbursements. The member did not in fact file any of

the annual reports or pay filing fees to the Registrar of Companies. The last report was filed in 1986, and the company was dissolved in 1989. The client did not learn of the dissolution until advised by the custodian of the member's practice in 1991.

- The member also failed to file annual reports for I Ltd. for years 1987 through 1990. He rendered accounts in each of those years for a total of \$649, and the client made payments totalling \$629 on these accounts. Though the principal of I Ltd. signed the requisite documents each year, the member did not file the annual reports. The company was dissolved in 1989, and the client learned of the dissolution from the custodian of the member's practice in 1991.
- The member rendered accounts totalling \$572 for filing the annual reports of D Ltd. for 1986 through 1989, and he received payments totalling \$294 from the company, although he filed none of the reports. The company was dissolved in 1989, and the client learned of the dissolution from the custodian.
- The member failed to file 1987 and 1988 annual reports for B Ltd., and the company was dissolved in 1989 for the failure to file. In this case, the member's account was not paid.

In these cases, the member prepared the documents but never forwarded the documents or the files to the Registrar of Companies.

Admissions

Mr. Guthrie ceased membership in the Law Society on December 31, 1991. He admitted to the Discipline Committee on July 30, 1992 that he had professionally misconducted himself in misappropriating client trust funds, in breaching Law Society accounting rules, and in billing clients and taking payment from clients without having performed the legal services or incurred the disbursements set out in his accounts.

The Discipline Committee accepted these admissions, on Mr. Guthrie's undertaking:

1. not to apply for reinstatement before January 1, 1994;
2. to notify the Law Society in writing before applying for membership in any other law society;
3. to obtain the written consent of the Law Society before working for a lawyer or a law firm in B.C.;
4. not to allow his name to be used on the letterhead of any law firm or lawyer without the written consent of the Law Society.

Discipline Case Digest — 1992: No. 9 December (Guthrie)