

Vancouver, B.C.

Called to the Bar July 10, 1984

Discipline Hearing Committee: February 10, 1992

J.M. McIntyre, Q.C., Chair, K. Antifaev, Q.C. and R.T.C. Johnston, Q.C.

Summary

The member professionally misconducted himself by withholding client files after he and the client had settled a fee dispute in relation to those files.

Facts

The member was retained by Ms. H to act for her on four different files beginning in 1987.

In the Spring of 1989 the member made a demand for payment of his law firm's outstanding accounts, and in November he began an action against Ms. H to recover his fees. The client counter-claimed, and demanded an accounting. In March, 1990 she took out an appointment to tax the account.

The member and his client signed a mutual release and ended the litigation in July, 1990. On July 30 Ms. H's new lawyer requested that the member return all original documents in the client's files. The member wrote back on August 1, stating that he was not prepared to release any documents from the files unless he retained photocopies to defend his firm against a number of complaints to the Law Society made by Ms. H. He asked the new lawyer to undertake to pay for the cost of making these photocopies.

On August 2 the new lawyer again requested immediate return of the files, failing which she would make a court application for their delivery. Mr. Pierce replied on August 3 that he was prepared to return any documents requested "on your undertaking to provide us with those documents, or photocopies of them, at any time in the future that we demand them."

Ms. H's new lawyer sent another letter August 7, refusing to provide an undertaking, and again requesting the return of the documents. When the member wrote the next day asking for a list of the documents requested, Ms. H's new lawyer replied that she wanted all original documents on file and any other documents provided by Ms. H. At no time did the new lawyer indicate that the files and documents were required for pending litigation or any other purpose. The member responded that he could not determine exactly what was wanted and pointed out that the client's files "amount to some two feet of paper." He suggested that, rather than photocopying all the documents, he retain them pending resolution of Ms. H's complaint to the Law Society. Alternatively, if the documents were to be delivered up, the member said he would insist on Ms. H's new lawyer giving him an undertaking to return the documents if needed. In September, 1990 the new lawyer complained to the Law Society.

Correspondence between the member and the new lawyer continued. In July, 1991, the new lawyer advised that her client would agree to make the documents available to the member for inspection and copying. Some documents were then sent to the new lawyer in August, 1991.

In September, 1991 the Standing Discipline Committee authorized a citation against the member for professional misconduct in failing to deliver the files to the new lawyer after the settlement of his accounts.

The balance of the files were subsequently delivered to the new lawyer.

Admission and Penalty

The member admitted he had professionally misconducted himself in refusing to return client files once litigation respecting his accounts had been settled. He offered a full apology to the Law Society, stated he understood his duties, and gave assurances such an incident would not reoccur.

The Standing Discipline Committee and the Discipline Hearing Committee accepted the member's admission and proposed disciplinary action pursuant to Rule 469 and ordered that the member be reprimanded, pay the Law Society's costs of the proceedings in an amount not to exceed \$500, payable by March 11, 1992.

J. Whittow, for the Law Society
W. McAllister, Q.C., for the member

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