

Victoria, B.C.

Called to the Bar September 13, 1977

**Discipline Hearing Committee:** October 5, November 29 and December 6, 1990  
C.O.D. Branson, Q.C., Chair, A. Clarke and J.G. Hardwick

**Benchers:** April 13, 1991

### **Summary**

The member received from a client a \$2,500 cash retainer, which he did not deposit to his trust account in an attempt to avoid payment of income tax on the funds. He refused to provide the client with a receipt or an accounting for the \$2,500, and he falsely denied to the Law Society complaints department, to another lawyer retained by the client, and to a competency review panel that he had received the funds. The member subsequently admitted to the competency review panel that he had misled them respecting the cash retainer, but he later also misled the Discipline Hearing Committee. The Hearing Committee found the member had professionally misconducted himself and ordered his disbarment. In overturning the disbarment, the Benchers considered the member's public service record and psychiatric evidence respecting his behaviour. They ordered that the member instead be suspended for 18 months, continue to receive counselling, submit reports back to the Competency Committee, work under the supervision of a mentor for at least six months on resuming practice, and submit to other conditions set by the competency review panel.

### **Facts**

In May, 1988 the member began representing Ms. G on three different matters: an ICBC claim, a matrimonial file, and a corporate shareholdings claim. On the member's recommendation, Ms. G obtained a legal aid referral for her matrimonial file and retained the member on that referral.

The member requested and received a \$2,500 retainer in cash from Ms. G. He did not deposit this money to his trust account, contrary to Law Society accounting rules, and he provided his client with neither a receipt for the money, nor a bill for fees. The member further breached Ruling G/8 of the *Professional Conduct Handbook* in receiving this money from Ms. G — a legal aid client — without the knowledge, authorization or consent of the Legal Services Society.

The member accepted the retainer in this manner to avoid paying income tax on the funds. He later disbursed \$500 of the funds in respect of Ms. G's matrimonial file. This expense should in fact have been covered by legal aid.

In March, 1989 Ms. G retained a new lawyer who sought return of the \$2,500 from the member, or an accounting for the money. The member first denied accepting the \$2,500 retainer. He then told friends of Ms. G that he would return the \$2,000 retainer balance only if Ms. G signed a retraction of her claim for the money. In doing so he communicated indirectly with Ms. G without the knowledge or consent of her counsel, contrary to Ruling D/1(a) of the *Professional Conduct Handbook*. Ms. G signed the retraction and the member returned the \$2,000.

The Law Society wrote to the member in February, 1990 requesting an explanation of his conduct. The member wrote back denying that he had received \$2,500 in cash from Ms. G. When a competency review panel considered the complaint of Ms. G on June 14, 1990, the member again falsely denied that he had ever received \$2,500 cash from the client. That review was briefly adjourned. On resumption of the proceedings June 23 the member admitted he had misled the panel and that he had in fact received the \$2,500.

A citation was issued against the member on September 10, 1990.

### **Decision**

The member's conduct constitutes professional misconduct and breach of the Law Society rules.

### **Penalty**

In considering penalty, the Hearing Committee noted that the member had improperly received a cash retainer, but also that his conduct extended to a pattern of behaviour both demeaning and dishonest in his treatment of his client. He submitted written falsehoods to the Law Society, repeated those falsehoods to a competency review panel, and made a misleading statement in sworn testimony during his disciplinary hearing.

The Committee pointed to efforts by the member to avoid detection, his disregard for the well-being of the client, his calculated pattern of behaviour to avoid detection which involved and embarrassed other lawyers, and his misleading of the Law Society in its investigation.

The Committee ordered that the member be disbarred. The disbarment was overturned by the Benchers after consideration of the member's public service record and psychiatric evidence.

A psychiatric expert stated that the member's pattern of denial was linked to early trauma he experienced as the child of Holocaust survivors. The expert noted that it was common for the children of Holocaust survivors to deny or compartmentalize threatening thoughts and feelings. The expert found it therefore not surprising that the member, when confronted with a potentially serious problem, denied its existence before finally admitting his misconduct to the competency review committee. After making that admission the member received news that placed him back in a state of denial, which is when he misled the Discipline Hearing Committee.

The Benchers ordered that the member:

1. be suspended for 18 months beginning January 17, 1991;
2. continue to see a psychiatric counsellor approved by the Competency Committee and that this counsellor provide reports to the Competency Committee quarterly, until relieved of the condition by that Committee;
3. not practise law without a mentor residing in the member's community who is approved by the Competency Committee, until relieved of the condition by that Committee;
4. visit the mentor at least every two weeks for the first six months after his suspension and periodically thereafter as directed by the Competency Committee, until relieved of the condition by that Committee;
5. during his suspension go before the competency review panel and comply with whatever recommendations the panel makes during or after the conclusion of its work;
6. not act as a principal for an articling student until relieved of this condition by the Credentials Committee.

J. Ziskrout and N. Henderson, for the Law Society (Hearing Committee); G. Goyer, Q.C., for the Law Society (Benchers)

A.J. Palmer, for the member (Hearing Committee);

T.R. Berger, O.C. and E. Berger, for the member (Benchers)

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