

Vancouver, B.C.

Called to the Bar June 29, 1956

**Discipline Hearing Committee:** December 19, 1988; March 13, 1990  
T.A. Davies, Chairman, K.F. Nordlinger, Q.C. and C.O.D. Branson, Q.C.

**Benchers:** June 27, 1990

### **Summary**

While representing the plaintiff in a civil suit in 1986, the member approached the defendant outside the courtroom and suggested to him certain facts relating to events on which the defendant was to testify. The member also said to the defendant that he should want the plaintiff to have a fair settlement and that this would not cost him anything. The Hearing Committee found that these conversations constituted an attempt to tamper with the defendant as a witness and that they were impulsive, triggered by the emotions and circumstances of the trial. The Committee concluded that, although intended to bring pressure on the defendant as a witness, neither conversation actually interfered with his evidence. The member was determined to have professionally misconducted himself and ordered by the Benchers to pay a \$5,000 fine and \$5,000 in costs.

### **Facts**

In 1986 the member represented a minor plaintiff in a personal action against D, a friend of the plaintiff. The plaintiff had been injured when thrown from the back of a truck driven by D as the truck abruptly made a sharp turn off a highway.

Prior to the accident, the plaintiff and D had attended a high school graduation party and there was evidence that the plaintiff had consumed drugs and alcohol. The degree of his impairment was, to the member's knowledge, relevant to an allegation of contributory negligence against him.

The theory advanced by the member was that, as D made the sharp turn off the highway, the tire of his truck struck a curb, catapulting the plaintiff onto the road.

As a result, the plaintiff was visually impaired and rendered incapable of proper speech or coherent thought. The stress placed on his parents, who were attempting to care for him, was over and above that of a normal trial. In addition, the member felt under intense pressure to perform well in court.

One morning before court the member spoke to D, first stating that the truck had hit the curb during the accident and then saying that the witnesses were making the plaintiff look like a drug dealer, that D would want his friend to get a fair settlement, and that this would not cost D anything. These conversations were impulsive, triggered by the emotions and the circumstances of the trial. They were intended by the member to bring pressure on D as a witness and constituted an attempt to tamper with his evidence. This attempt was unsuccessful as the member's statements did not in fact interfere with D's testimony.

### **Decision**

The member's conduct constitutes professional misconduct.

### **Penalty**

The Hearing Committee ordered the member be suspended for three months and pay costs of the hearing.

The member requested that this penalty be reviewed by the Benchers pursuant to section 47 of the *Legal Profession Act*. After hearing submissions by counsel, the Benchers determined a new penalty and ordered the member to:

1. pay a \$5,000 fine;

2. pay costs of the hearing and the review not to exceed \$5,000.

S.R. Schachter, for the Law Society

W.S. Berardino, for the member

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