

Resignation: for conflict of interest, misleading and breach of court order

CHRISTOPHER MICHAEL TROWER

Toronto, Ontario (formerly of Vancouver, B.C.)
Called to the B.C. Bar September 10, 1980

In 1988 Mr. Trower began representing Ms. Z who, along with Mr. Z, faced a civil proceeding brought by an insurance company. Ms. Z had earlier been convicted of defrauding the insurance company and had been ordered to pay \$302,000 under the compensation provisions of the *Criminal Code*.

In its civil proceeding, the insurance company claimed that Mr. Z was a party to a conspiracy to defraud the company. It sought a tracing order and a declaration that Mr. and Ms. Z held their property in trust for the company to the extent that the company's money had been used to improve the property. The company filed a *lis pendens* against the property, which was then in foreclosure.

Sometime before representing Ms. Z, Mr. Trower had acted for Mr. Z in an unrelated matter. Mr. Z still owed Mr. Trower legal fees for that representation.

On November 14, 1989, during the foreclosure proceedings, the judge ordered sale of Mr. and Ms. Z's property. The proceeds of sale were to be paid out to Mr. Trower in trust for amounts owed for the tax and utility authorities and for discharge of the first and second mortgages. The order did not provide that any funds be used for payment of income tax. The court ordered that the residue of the proceeds be divided into equal shares representing the interests of Mr. and Ms. Z respectively.

Ms. Z's share was to go toward the amount she owed to the insurance company as a result of the criminal proceeding and for her taxable costs and disbursements. Mr. Z's share was to be held in trust pending instructions from him or a further court order.

On November 16 the court varied its order of November 14 (both orders were entered the same day) to provide that the half-share of Mr. Z be paid into court and held pending further order. The insurance company had sought this variation to ensure that Mr. Z's share would be available in the event the company's civil claim against him was successful.

Of Mr. Z's \$72,000 share of the proceeds, Mr. Trower paid \$42,000 into court pursuant to the second court order, but he withheld \$30,000. In the statement of adjustments on the conveyance, which he had provided to the other parties, Mr. Trower stated that \$30,000 was remitted to the Receiver General pursuant to section 116 of the Income Tax Act. In fact, Mr. Trower discovered that only \$8,000 was owing to Revenue Canada. He remitted

that amount to Revenue Canada and he applied the balance of \$22,000 of the funds toward Mr. Z's outstanding debt to him for legal fees.

Counsel for the insurance company questioned Mr. Trower about the \$30,000 and said it would not be proper for Mr. Trower to pay any portion of the money to Revenue Canada or to any other party. Mr. Trower disagreed, stating that this money was owing for income tax.

During a settlement conference in 1994, the judge suggested disclosure of Mr. Trower's disposition of the funds. Mr. Trower at that time disclosed that he had used the money to pay Mr. Z's outstanding legal account. The judge ordered that Mr. Trower contribute personally to the settlement of the action, and Mr. Trower paid \$11,000. In January, 1995 the parties settled all their claims.

In November, 1997 Mr. Trower admitted professional misconduct to the Discipline Committee for:

- acting in a conflict of interest by preferring his own interest to the interest of his client, Ms. Z, (which was to maximize the funds available to reduce her judgment debt to the insurance company);
- misleading the insurance company and other litigants who received the statement of adjustments as to the amount of money required to be held back, or failing to correct the statement of adjustments;
- failing to comply with the terms of the court order that he pay the one-half share of Mr. Z into court.

Pursuant to Law Society Rule 468, the Discipline Committee accepted Mr. Trower's admission and his undertakings:

1. to resign from the Law Society and not to apply for reinstatement;
2. not to apply for membership in any other law society without first advising the Law Society in writing;
3. not to permit his name to appear on the letterhead of any lawyer or law firm without the written consent of the Law Society;
4. not to work for any other lawyer or law firm in B.C. without the written consent of the Law Society.

The Discipline Committee accordingly rescinded the outstanding discipline citation respecting this matter, and directed that Mr. Trower's admission and undertakings be recorded on his professional conduct record.

The Discipline Committee also determined to resolve three other matters outstanding against Mr. Trower, as follows:

- the Committee rescinded a second citation that the Committee had earlier authorized against Mr. Trower;
- the Committee resolved to take no further action in respect of an outstanding complaint against Mr. Trower, in view of Mr. Trower's undertakings;
- the Committee instructed Law Society counsel to seek a verdict of professional misconduct on a third citation against Mr. Trower, but not to seek a penalty, on the basis of Mr. Trower's undertakings: see *Discipline Case Digest* 99/14.

Discipline Digest — 1999: No. 1 April (Trower)