

2005: No. 02 July-August

Rudi Gellert

Burnaby, BC (formerly of Surrey, B.C.)

Called to the bar: May 19, 1995

Undertook not to practise law: December 16, 2003

Became a non-practising member: January 1, 2004

Citations of May 8 and October 2, 2002 (Facts and verdict)

Discipline hearing: June 18, 2003

Panel: G. Ronald Toews, QC, Chair, Gordon Turriff, QC and Michael Falkins

Report issued: September 5, 2003 (indexed as 2003 LSBC 32)

Counsel: Jessica Gossen for the Law Society and Mr. Gellert on his own behalf

Citation of June 20, 2003 (Facts and verdict)

Discipline hearing: October 14, 2003

Panel: Russell S. Tretiak, QC, as a single-Bencher panel by consent

Report issued: October 24, 2003 (indexed as 2003 LSBC 38)

Counsel: Jessica Gossen for the Law Society and Mr. Gellert on his own behalf

Citation of January 12, 2004 (Facts and verdict)

Discipline hearing: August 23, 2004

Panel: John Hunter, QC, as a single-Bencher panel, by consent

Report issued: September 15, 2004 (indexed as 2004 LSBC 28)

Counsel: James Doyle for the Law Society and Russell MacKay for Mr. Gellert

All Citations (Penalty)

Discipline hearing: March 29, 2005

Panel: John Hunter, QC, as a single-Bencher panel, by consent

Report issued: May 2, 2005 (indexed as 2005 LSBC 15)

Counsel: James Doyle for the Law Society and Russell MacKay for Mr. Gellert

Facts

In the course of his practice, Mr. Gellert:

- failed to remit to government PST and GST collected in the course of his practice;
- misappropriated \$182.40 of trust funds by billing for disbursements when there were no payments or invoices to support the billings;
- failed to serve two clients in a conscientious, diligent and efficient manner;
- failed to respond to communications from another lawyer, contrary to Chapter 11, Rule 6 of the *Professional Conduct Handbook*;
- breached an undertaking, contrary to Chapter 1, Rule 4(2) and Chapter 11, Rule 7 of the *Handbook*;
- failed to respond to Law Society communications on matters that required his response, contrary to Chapter 13, Rule 3 of the *Handbook*; and
- breached an undertaking in a real estate transaction.

On December 16, 2003 Mr. Gellert voluntarily undertook not to practise law and he became a non-practising member on January 1, 2004.

Verdict

The hearing panels on each of the four citations found, and Mr. Gellert acknowledged, that his conduct constituted professional misconduct.

Penalty

The underlying cause of Mr. Gellert's misconduct was severe depression for which he had since received treatment. The hearing panel concluded that the penalty should reflect the seriousness of the misconduct, but should also recognize Mr. Gellert's underlying medical problem and mitigating factors. The panel ordered that Mr. Gellert:

1. be suspended for 18 months (effective December 16, 2003, the date on which he undertook not to practise);
2. obtain a psychiatric evaluation satisfactory to the Practice Standards Committee prior to resuming practice; and
3. practise only as an employee of one or more lawyers.