

SUMMARY: The member Q acted for R & M Ltd. whose account with the member's firm had fallen in arrears. Upon learning that R & M Ltd. might go into bankruptcy, the member Q and two of his partners (B and P) purchased from an R & M Ltd. outlet retail merchandise equal in value to the company's outstanding debt. The members stopped payment on the cheque that they had tendered and they retained possession of the goods. The Hearing Committee found that the members' conduct constituted conduct unbecoming a member of the Society.

FINDLAY JOHN FRANCIS QUINN
DAVID JAMES EDWARDS BILKEY
KENNETH HARRY PATRICK

85/6

Kamloops, B.C.

Called to the Bar:

Quinn – July 10, 1981

Bilkey – July 13, 1977

Patrick – May 15, 1974

Discipline Hearing Committee: March 29, 1985

R.H. Guile, Q.C., Chairman, H.A.D. Oliver, Q.C. and M.F. Hermann

FACTS:

The member Q's law firm was retained in October 1982 to defend R & M Ltd. in a civil action. The company was sent interim billings throughout the following year but its account fell into arrears.

In August 1983 the member Q telephoned G, President and Director of R & M Ltd., to request full payment of the \$3,200 outstanding. G informed Q that while R & M Ltd. was attempting to resolve its financial difficulties, it might be assigned into bankruptcy or forced into receivership by secured creditors.

Q and his partners B and P decided to offset their account by obtaining possession of company assets. On August 22, 1983 the 3 members and 2 of their support staff purchased a retail outlet of R & M Ltd. A day later the members stopped payment on the cheque but retained possession of the merchandise. R & M Ltd. went into bankruptcy and receivership on August 24, 1983.

In January 1984 an agent of R & M Ltd. wrote to the Law Society complaining that the members had collected their debts in an unethical manner. The members sought legal advice from senior counsel and subsequently paid the amount of the dishonoured cheque to the trustee in bankruptcy of R & M Ltd.

A citation was issued against Q in October 1984 and against B and P in February, 1985. Q submitted that the members had an honest belief in the propriety of their actions but that they lacked experience and judgment. His request to plead guilty pursuant to Chapter 7, Article 2.12 was denied by the Discipline Committee.

DECISION:

The members conceded and the Hearing Committee found as a fact that the members' conduct constituted conduct unbecoming a member of the Society.

REASONS:

The members created a situation involving a conflict of interest and a highly questionable act which they themselves admit was improper.

PENALTY:

Evidence indicated that the three members were well respected and active in their community, that their firm was in good financial condition, and that they had already suffered considerable embarrassment over the incident. The Hearing Committee regarded their problem as one of competence and considered that no useful purpose would be served by suspension or disbarment.

The Committee would have required the members to take the Professional Responsibility course but this was not practicable since the course had to be taken over a period of time and was only offered in Vancouver.

The Committee therefore ordered that the members pay by December 31, 1985:

- a) a fine of \$2,500 each; and
- b) the costs of the hearing.

J.D. Ziskrout, for the Law Society

L.T. Doust, for the member