

SUMMARY: The member's conduct in demanding or appearing to demand property from a person in order to avoid a prosecution being launched against that person constituted professional misconduct.

CHRISTOPHER JAMES WILSON

87/7

Victoria, B.C.

Called to the B.C. Bar July 10, 1980

Discipline Hearing Committee: March 20, 1985

B.I. Cohen, Q.C., Chairman, M.F.M. Hermann, and J.M. Hogg

B.C. Court of Appeal: December 1, 1986

FACTS:

In August 1984 the member acted for M to assist her in recovering a number of personal belongings which she had left in the home of her boyfriend N. M had been living with N but separated from him prior to consulting the member. When she left, M took a car and \$140 belonging to N.

On August 7 N contacted the member as to the whereabouts of M, and his money and car. When N asked the consequences of refusing to return M's personal possessions, the member said it would be effectively equivalent to M keeping the car and money. That same day the member wrote a letter to N asking that he allow M to pick up her belongings. He added that N's failure to comply with this request "could either result in theft charges proceeded with against you or forceable removal of the chattels".

The member was cited for professional misconduct on November 30, 1984.

DECISION:

The Hearing Committee found that the member had violated Rule E/5 of the *Professional Conduct Handbook*, and that his conduct constituted professional misconduct. Rule E/5 of the *Handbook* reads in part:

No member shall demand or appear to demand on behalf of a client, a payment of money or any other thing from any person to avoid a prosecution being launched against that person.

The member appealed the decision of the Hearing Committee to the B.C. Court of Appeal. That appeal was heard on December 1, 1986 and unanimously dismissed on December 22, 1986.

REASONS:

The member had argued before the Hearing Committee and the B.C. Court of Appeal that Rule E/5 of the *Professional Conduct Handbook* does not apply unless an offence has been committed, since the Ruling is directed against compounding a criminal act. He submitted that the Ruling does not apply to a lawyer who merely warns a person that if he acts in a certain way he will commit a criminal offence.

The B.C. Court of Appeal held that the purpose of the Ruling is to prevent the criminal law from being used as a lever to enforce the payment of a civil claim. The Ruling is concerned with professional conduct, and is designed to ensure that members of the profession will not act in a way which is contrary to the best interest of the public or of the legal profession, or in a way which tends to harm the standing of the legal profession in public estimation.

The letter written by the member was open to the interpretation that he was agreeing to compound the offence of theft if he obtained a benefit for his client, or was threatening criminal proceedings with intent to gain a benefit for his client. In either case, the Court was not persuaded that the Hearing Committee had erred in finding that the member had violated Ruling E/5, and that such violation constituted professional misconduct.

The Court stressed that what is or is not professional misconduct is a matter for the Benchers to determine; the Court must be very careful not to interfere with the decision of the Benchers, for that decision is based on a professional standard which only they can properly apply.

PENALTY:

The Hearing Committee ordered that the member:

1. be reprimanded; and
2. pay costs of the hearing totalling \$736.

J.D. Ziskrout, for the Law Society

H. Rubin, for the member