

Re: Lawyer 5

Discipline hearing: March 9, 2005

Panel: Dirk Sigalet, Q.C., as a single Bencher panel by consent

Report issued: April 4, 2005, indexed as 2005 LSBC 11

Counsel: Gerald Cuttler, for the Law Society, and Dennis Murray, Q.C., for the respondent

Summary

The respondent lawyer was co-executor of the estate of a family friend who died in 1982. The widow later appointed the respondent her attorney under a power of attorney. In the course of assisting the widow to manage her finances, the respondent failed to comply with requirements of the Law Society Rules and *Professional Conduct Handbook* in the manner in which he received gifts from the widow and in failing to meet certain accounting requirements when handling her funds. The respondent admitted that his conduct amounted to conduct unbecoming a member of the Law Society. The Discipline Committee and the discipline hearing panel accepted the respondent's admission and his proposed disciplinary action and ordered that he be reprimanded, pay a \$3,500 fine and pay \$2,500 as costs of the discipline proceedings. The hearing panel ordered that its decision be published without naming the respondent.

Facts

The respondent lawyer was co-executor of the estate of Dr. H who died in 1982. The respondent and his wife had been friends with Dr. H and his wife since the mid-1970s. Following Dr. H's death, the respondent and his wife became closer friends of Mrs. H until her death in 1997. They assumed much responsibility in arranging for her care and assisting with her day-to-day affairs. In February, 1993 Mrs. H. appointed the respondent her attorney under a power of attorney.

Dr. H had granted to Mrs. H a life estate in the residue of his estate, with a power to encroach upon the capital for her benefit. In January 1995, Mrs. H and the respondent transferred \$96,000 from the estate to Mrs. H's personal chequing account. The respondent attempted to convince Mrs. H to transfer the money to an interest-bearing account, but she would not.

Mrs. H wrote a letter to the respondent in which she stated, "*During this year 1996, I confirm my intentions to make a gift to you and your dear wife [name] of \$15,000.*" The respondent in fact received this money through various cheques drawn on Mrs. H's account in 1996.

In 1997 he received a further \$15,000 from Mrs. H through cheques drawn on her account and deposited to his personal account, without written confirmation that the money was a gift.

Mrs. H was fully competent at the time of these events.

The respondent admitted that he:

- accepted gifts totalling \$30,000 from Mrs. H in 1996 and 1997 when he knew that all or part of this money was derived from the funds that he had caused to be removed from the estate for the use of

Mrs. H, contrary to Chapter 2, Rule 1 and Chapter 6, Rules 1 and 2 of the *Professional Conduct Handbook*;

- received \$15,000 of the funds from Mrs. H in 1997 without documentation that these funds were a gift;
- received trust funds from Mrs. H, but did not deposit them forthwith into a pooled or separate trust account, contrary to then Rule 803;
- failed to record each trust transaction within seven days after the transaction, contrary to then Rule 844 and Canon 3(8) of the *Professional Conduct Handbook*;
- failed to record each non-trust transaction regarding Mrs. H within 30 days after the transaction, contrary to then Rules 825, 843 and 844 and Canon 3(8) of the *Professional Conduct Handbook*;
- co-mingled money belonging to Mrs. H with his own money in a bank account, contrary to Canon 3(8) of the *Professional Conduct Handbook*;
- failed to preserve adequately and keep safe valuables belonging to Mrs. H by failing to maintain with his accounting records a complete listing of the valuables he held in custody for her, contrary to Chapter 7.1, Rule 5 of the *Professional Conduct Handbook*; and
- caused funds to be removed from Dr. H's estate for the use of Mrs. H, on the basis that the money would be invested until required by her, but left funds in a non-interest-bearing account instead of investing them.

Admission and penalty

The respondent admitted that his conduct amounted to conduct unbecoming a member of the Law Society.

Pursuant to Law Society Rule 4-22, the Discipline Committee and the discipline hearing panel accepted the respondent's admission and his proposed penalty and ordered that he:

1. be reprimanded;
2. pay a \$3,500 fine; and
3. pay \$2,500 as costs of the discipline proceedings.

The panel ordered that both the fine and costs were payable over 24 months.

The panel further ordered that publication not name the respondent.* In the panel's view, if the respondent were named in the publication, he could suffer grievous harm, being loss of reputation and the possible loss of a major client, which would not be a deserving end to his respected legal career of 41 years.

**The Discipline Committee has applied to the Benchers for a review of the panel's decision on anonymous publication.*