

2006 : No. 4 September-October

## **Peter Wallace Hammond**

Abbotsford, BC

Called to the bar: September 14, 1976 (BC) and August 1, 1974 (Alberta)

Ceased membership: December 31, 2002

Disbarred: September 21, 2004

### **Citation 1, issued December 18, 2002**

**Discipline hearing** : May 29-30 and June 27, 2003 and August 21, 2004

**Panel** : Patricia L. Schmit, QC, as a single-Bencher panel by consent

**Reports issued** : October 16, 2003 (indexed as 2003 LSBC 36) and September 23, 2004 (indexed as 2004 LSBC 33)

**Counsel** : Jessica S. Gossen and Maureen E. Baird for the Law Society; Christopher E. Hinkson, QC for Mr. Hammond

## **Facts**

### Failure to remit tax withholdings

Mr. Hammond acknowledged that between April 1997 and December 1998, he failed to hold and remit funds collected for payment of Provincial Sales Tax.

### Breaches of undertakings

In November 2001, Mr. Hammond acted for the purchasers of two separate strata units. He agreed in a letter of undertaking not to use certain Land Title Office forms until he had monies in trust. The strata management company complained to the Law Society on February 28, 2002 when Mr. Hammond failed to pay the sums owed to it.

In 2002, Mr. Hammond acted for the purchasers of a farm property. One of the purchasers was his conveyancing secretary. A term of the interim agreement required the vendors to remove certain machinery prior to closing, and if they did not, Mr. Hammond would retain a \$10,000 holdback. Mr. Hammond returned \$5,000 of the holdback. He maintained he had verbal authorization from his secretary to do that. His secretary claimed Mr. Hammond had told her to say she had given authorization, when she had not.

### Breaches of duties to the Law Society

Between March and September 2002, the Law Society wrote to Mr. Hammond on nine occasions about four separate complaints and did not receive any replies. In October 2002, the Law Society wrote a letter to Mr. Hammond regarding all four complaints and received a reply the following month.

On April 19 and October 9, 2001, the Minister of Finance and Corporate Relations entered monetary judgments against Mr. Hammond, but he failed to notify the Law Society.

### Accounting breaches

Mr. Hammond used his trust account for non-trust transactions and commingled his personal funds.

# Verdict

Mr. Hammond admitted eight of the 14 counts of the citation brought against him. He admitted that between April 1997 and December 1998 he failed to hold and remit funds for payment of Provincial Sales Tax. He admitted he breached Law Society accounting rules by, among other things, using a trust account for non-trust transactions and commingling personal funds contrary to Rule 3-52(4). He admitted that on two occasions he failed to notify the Executive Director of the Law Society of a judgment against him, contrary to Rule 3-44(1). Mr. Hammond also admitted he failed to respond or replied late to correspondence from the Law Society regarding complaints. The panel ruled each of those acts amounted to professional misconduct.

The panel dismissed the three counts relating to Mr. Hammond's work on the farm property for his secretary. The panel rejected her evidence regarding the holdback. It also rejected the notion that Mr. Hammond had asked her to lie.

The hearing panel found Mr. Hammond breached his undertakings in relation to the November 2001 purchase of two separate strata units. The panel noted reliance on undertakings is fundamental to the practice of law.

It also found Mr. Hammond failed to serve his clients in a conscientious, diligent and efficient manner, equal to what would be expected of a competent lawyer, contrary to Chapter 3, Rule 3 of the *Professional Conduct Handbook*. It found evidence of a disintegrating practice, sloppy undertaking letters and difficulties sorting out whether and from whom authorizations to release monies were given. That, coupled with the serious breaches of accounting rules, demonstrated Mr. Hammond's failure to manage client property in a responsible manner. Therefore the hearing panel found Mr. Hammond guilty of professional misconduct.

# Penalty

The hearing panel concluded that, when all of the subject matter of the hearing was considered along with Mr. Hammond's previous conduct reviews in 1998 and 2000, a suspension was necessary to show the public that a disintegrating practice would not be countenanced.

The panel acknowledged Mr. Hammond was in straitened financial circumstances because he had not been able to practise law since January 2003 when he failed to pay his annual fees to the Law Society. It therefore found a fine was not appropriate.

The hearing panel accordingly ordered that Mr. Hammond:

1. be reprimanded;
2. be suspended from the practice of law for a period of four months from the date of the decision, to be concurrent with any other suspension imposed by the Law Society;
3. be subject to eight practice conditions upon return to practice; and
4. pay costs amounting to \$2,969.93 in instalments of \$200 per month, beginning the first day of the third month after he commences practising law.

## Citation 2, issued October 1, 2003

**Discipline hearing (October 1, 2003 citation)** : February 17-18 and August 19, 2004

**Panel** : Ralston S. Alexander, QC, Chair, Margaret Ostrowski, QC and June Preston

**Reports issued** : June 2, 2004 (indexed as 2004 LSBC 18) and September 21, 2004 (indexed as 2004 LSBC 32)

**Counsel** : Jessica S. Gossen and Maureen E. Baird for the Law Society; Christopher E. Hinkson, QC for Mr. Hammond

## Facts

### Breaches of undertakings

Mr. Hammond acted for the vendors in the sale of property in Maple Ridge. In April 2002 he undertook to hold back \$11,000, which represented a builder's lien holdback of 10% of the value of the improvements. None of the holdback monies were held back for the 55-day period mandated by the *Builder's Lien Act*.

D& D provided court and land registry support services to Mr. Hammond. He owed them more than \$50,000. In July 2002, D& D obtained a default judgment against Mr. Hammond, which he did not report to the Law Society. Mr. Hammond provided an undertaking to D& D to make monthly payments in the sum of \$3,500 on account of the judgment. He made the first payment, but thereafter he did not observe the payment schedule provided by the undertaking.

In August 2002, sale proceeds were paid to Mr. Hammond on his undertaking to repay and discharge a mortgage in real estate transaction X. By March 6, 2003, he still had not filed the discharge.

In September 2002, Mr. Hammond provided an undertaking to PW in relation to the discharge of a mortgage in a real estate transaction. In March 2003 PW complained to the Law Society that the discharge of the mortgage was still not registered. Mr. Hammond did not respond to correspondence from the Law Society concerning this matter.

### Breaches of duties to the Law Society

In December 2002, lawyer M complained to the Law Society that Mr. Hammond had not responded to his communications requesting the company records of a client be transferred from Mr. Hammond's office to that of lawyer M. The Law Society wrote to Mr. Hammond regarding this matter but he did not reply.

Lawyer SH complained to the Law Society that Mr. Hammond failed to respond to his communications concerning real estate transaction X. The Law Society wrote to Mr. Hammond about this complaint, but he did not reply.

In March 2003, D& D complained to the Law Society about Mr. Hammond's breach of undertaking. He did not reply to the Law Society's correspondence.

### Failure to remit tax withholdings

Mr. Hammond acknowledged that in the years 2001 and 2002 he withheld approximately \$24,000 in payroll deductions for EI, CPP and income tax from employees of his firm and that he did not remit these monies to the Canada Revenue Agency.

### Misappropriation of client funds

Mr. Hammond represented Mr. S. in a real estate transaction in September 1999. At the conclusion of the transaction, \$2,200 remained in trust. Nearly two years later, Mr. Hammond prepared a statement of

account on the file totalling \$2,200.20. He paid it from his trust account, leaving 20 cents owing on the account. The Law Society asked Mr. Hammond for an explanation for this conduct, but Mr. Hammond did not respond to the correspondence.

In 2001, Mr. Hammond acted for AG in a real estate transaction. Without colour of right or authority, Mr. Hammond took \$2,951.52 of funds belonging to AG from the trust account.

#### Unauthorized practice of law

Mr. Hammond acted in an estate matter in September 2002. There was a deficiency in Mr. Hammond's trust account whereby he owed the estate the sum of at least \$1,280.09. In February 2004, after Mr. Hammond's entitlement to practise law had been suspended, he sent a fax on his law firm fax cover sheet regarding the estate. The Law Society wrote to Mr. Hammond's counsel about this, but received no response.

## Verdict

The hearing panel found Mr. Hammond had professionally misconducted himself in respect of 15 of the 20 counts in the citation brought against him.

The hearing panel ruled Mr. Hammond professionally misconducted himself when he misappropriated \$2,951.52 of AG's money during a real estate transaction. In relation to this same client, Mr. Hammond was also cited for failing to serve AG in a conscientious, diligent and efficient manner, equal to what would be expected of a competent lawyer, contrary to Chapter 3, Rule 3 of the *Professional Conduct Handbook*. As Mr. Hammond had previously been found to have professionally misconducted himself, in an unspecified general sense, by breaching that section of the *Handbook* in the hearing on the December 18, 2002 citation, the panel concluded that attempting to bring a specific allegation under this same section on the same facts amounted to an attempt to obtain multiple convictions and offended the principle set out by the Supreme Court of Canada in *Kineapple v. The Queen*, [1975] 1 S.C.R. 729. This count of the citation was accordingly dismissed.

In relation to real estate transaction X, the panel ruled Mr. Hammond had professionally misconducted himself by breaching his undertaking to provide mortgage discharge particulars within a reasonable period of time. The panel, however, dismissed the count concerning Mr. Hammond's failure to respond to correspondence from lawyer SH in relation to real estate transaction X, because it found the communications were from other members or employees of SH's firm.

The panel found Mr. Hammond repeatedly breached his undertaking to make payments to D& D. He also failed to report the monetary judgment of D& D against him within seven days as required by Rule 3-44. The panel ruled both of those acts amounted to professional misconduct.

In relation to the estate account with a trust deficiency of at least \$1,280.09, the panel was unable to conclude that misappropriation had occurred, and could only be sure there was a breach of accounting rules. That was not the count in the citation so the panel dismissed the count. However, Mr. Hammond was found to have professionally misconducted himself for having sent a fax on law firm stationery in relation to the estate when he was not authorized to practise law.

The hearing panel ruled Mr. Hammond misappropriated \$2,200 from his client, Mr. S, when he billed Mr. S nearly two years after the conclusion of the file and when there had been no further legal work done in the interim.

The hearing panel found Mr. Hammond professionally misconducted himself when he breached an undertaking to PW by failing to file the discharge of mortgage.

The panel found Mr. Hammond acted in utter disregard of his obligations as a solicitor and breached his undertaking when he failed to hold back \$11,000 for the 55-day holdback period mandated by the *Builder's Lien Act*. The panel found Mr. Hammond had professionally misconducted himself.

The panel ruled that Mr. Hammond had professionally misconducted himself when he failed to remit income tax, CPP and EI withholdings to the Canada Revenue Agency.

The panel further found that Mr. Hammond had professionally misconducted himself by failing to respond to multiple inquires from the Law Society in relation to six separate matters.

There were two counts the panel dismissed. In one, Mr. Hammond was alleged to have borrowed \$35,000 from a client. The panel found that was unproven. The hearing panel also dismissed another count which concerned an alleged breach of an undertaking in October 2001 to hold back \$8,500 until a builder's lien was released. The panel found the Law Society failed to allege the breach of undertaking that actually took place.

## Penalty

The panel noted the serious breach of trust when Mr. Hammond used tax withholdings for his own private purposes. In cases involving misappropriation, the panel stated the penalty must be severe unless there are extraordinary extenuating circumstances. It noted there were no mitigating factors in Mr. Hammond's case.

The panel further remarked that Mr. Hammond habitually refused to respond to inquiries from the Law Society. It noted public perception of the Law Society's role as a self-regulating profession can only be preserved when members demonstrate respect for the regulating authority.

The hearing panel ruled that in light of the sheer volume of findings, Mr. Hammond's previous conduct reviews and a cascading accumulation of professional misconduct, the public could only be protected if Mr. Hammond was not allowed to practise law.

The hearing panel accordingly ordered that Mr. Hammond:

1. be disbarred; and
2. pay costs to the Law Society of \$22,429.70.