

2007 : No. 5 December

## **Nicole Hainer**

White Rock, BC

Called to the bar: May 15, 2002

**Discipline hearings** : February 6 and September 12, 2007

**Panel** : Dirk Sigalet, QC, Chair, Leon Getz, QC and Ross Tunnicliffe

**Reports issued** : March 27 (2007 LSBC 14) and October 31, 2007 (2007 LSBC 48)

**Counsel** : Maureen Boyd for the Law Society; Michael Ranspot for Nicole Hainer at the discipline hearing (no one appearing on her behalf at the penalty hearing)

## **Facts**

Nicole Hainer practised law as an associate of EC & Associates from her call to the bar until February 2006, a period of almost four years. Hainer misappropriated at least \$7,520 — in 10 thefts involving eight different clients — over the last nine months of her employment with the firm. She had no prior discipline history, and no apparent medical or circumstantial explanation for her conduct.

In seven thefts, Hainer sent different versions of a statement of account to the client and to the firm, with a higher fee noted in the client version. Hainer then collected cash paid on the client accounts and remitted funds to the firm on the corresponding firm accounts, pocketing the difference. In some instances, Hainer simply did not account to the firm for cash she received from clients.

In three other thefts, Hainer sent different versions of a retainer letter to the client and to the firm, with a higher fee noted in the client version. Hainer applied the same method for remitting and withholding cash received in these retainer thefts that she used in the account thefts.

## **Verdict**

At the discipline hearing Hainer admitted various acts of misleading the firm, misappropriation of client funds and failure to deposit those funds into a pooled trust account as soon as practicable (in breach of Rule 3-51 of the Law Society Rules). The panel accepted Hainer's admissions and found that her actions constituted professional misconduct.

## **Penalty**

Hainer did not attend the penalty hearing. Mr. Ranspot appeared as a courtesy to the panel to confirm that he had withdrawn as counsel for Hainer following the discipline hearing, and to advise that he had no instructions to explain her absence at the penalty hearing. The panel found that Hainer had misappropriated trust funds on an almost regular basis, without providing any medical or circumstantial evidence to explain or mitigate her professional misconduct.

The panel ordered that Hainer be disbarred and pay costs of \$11,532.

