

2010 : No. 1

Gerhard Ernst Schauble

Kelowna, BC

Called to the bar: July 21, 1989 (BC); June 19, 1981 (Alberta)

Discipline hearing : July 22, 23, 24 and December 10, 2008 (facts and verdict); October 2, 2009 (penalty)

Panel : James D. Vilvang, QC, Chair, William F.M. Jackson and Brian J. Wallace, QC

Report issued : April 16 (2009 LSBC 11) and October 23, 2009 (2009 LSBC 32)

Counsel : Jaia Rai for the Law Society; David W. Donohoe for Gerhard Ernst Schauble

Facts

In June 2001, Gerhard Ernst Schauble moved his practice, Schauble & Company, from Westbank to join a Kelowna firm. Schauble claimed he was assured he would be referred all of the firm's personal injury work and have other lawyers available to provide backup while he was engaged in other activities.

On January 31, 2003, the Kelowna firm partnership was terminated, and effective the next day, Schauble and one of the Kelowna firm partners entered into an agreement in essentially the same terms as in 2001.

While practising with the Kelowna firm, Schauble rendered accounts to three clients for fees and accepted payment of those fees without the knowledge or authority of the firm. If undetected, this misappropriation would have cost the firm approximately \$45,000 in revenue.

On January 8, 2004, the principal of the Kelowna firm commenced an action in the BC Supreme Court against Schauble and also made a complaint to the Law Society.

Schauble's position is that these clients were not clients of the firm, but rather were clients in his separate practice, which was contemplated by the Agreements. He claimed that a former partner of the Kelowna firm confirmed his right to retain the fees in respect of these clients.

The former partner denied this and stated that Schauble was entitled to keep any fees billed on the files he brought with him from Westbank. However, after disbursements were paid, fees would be shared 50/50 for work done on new files or any files that were turned over to Schauble. It was also the former partner's understanding that Schauble was not entitled to carry on a practice outside the firm.

In the alternative, Schauble said that he was entitled to retain the fees in question as a set-off for earnings lost as a result of the Kelowna firm's breach of the Agreements. He claimed the firm's principal breached their Agreements by diverting clients and refusing to refer personal injury files to Schauble. The former partner and the firm's former assistants confirmed this was true.

Verdict

At the hearing, Schauble was asked what he would have done differently. He responded that his biggest mistake was entering a professional association agreement with the Kelowna firm. He added that his second biggest mistake was in not leaving the relationship when he had an earlier opportunity. The panel concluded that Schauble did not acknowledge any misconduct, and stated that he had sufficient experience to realize that what he did was wrong.

The panel determined that Schauble was not entitled to keep the fees from client files for himself rather than split them with the firm, and that he did not honestly believe he was entitled to do so. Rather, he knowingly and intentionally misappropriated the funds. The panel found Schauble guilty of professional misconduct.

Penalty

The panel is satisfied that a period of suspension is the appropriate penalty. The panel considered Schauble's belief that he had been provoked by the actions of the Kelowna firm's principal. While provocation does not justify Schauble's actions, it does mitigate the penalty.

The panel ordered that Schauble:

1. be suspended for three months; and
2. pay \$32,000 in costs.