

2011 : No.1 Spring

George Coutlee

Kamloops, BC

Called to the bar: January 10, 1978

Discipline hearing : October 5, 2010

Panel : Bruce LeRose, QC, Chair, Ralston S. Alexander, QC and Leon Getz, QC

Report issued : December 16, 2010 (2010 LSBC 27)

Counsel : Maureen Boyd for the Law Society and George Coutlee on his own behalf

Facts

In July 2006, George Coutlee was retained by a brother and sister to provide legal services with respect to the will and estate of a deceased relative. There was a dispute among the beneficiaries as to the proper administration of the estate and the validity of the will.

Representing these clients in a wills and estates matter, however, was contrary to an order made by a disciplinary hearing panel on January 13, 1997, under which Coutlee was suspended from the practice of law in all fields except for criminal defence and personal injury claims.

When the clients first met with Coutlee, they did not have any money to pay legal fees. Coutlee stated that he did not require payment of a retainer, and this was a factor in the clients' decision to retain him.

In December 2006, at the request of one of the clients, Coutlee prepared a contingency fee agreement made as of September 1, 2006. While one of the clients signed the agreement, the other client refused.

In January 2007, the clients advised Coutlee that they no longer required his help and asked him to forward their file to a new lawyer. Coutlee initially refused to provide his personal notes and memoranda on the basis that this material belonged to him and he had not been paid for it.

One of these former clients subsequently made a complaint about Coutlee to the Law Society.

Admission and disciplinary action

Coutlee admitted that, in 2006 and 2007, he provided legal services in a wills and estates matter and that he knew that he was precluded from practising in such matters by the practice restriction imposed upon him by the 1997 hearing panel. He admitted that his conduct constituted professional misconduct.

In determining the appropriate disciplinary action, the panel took Coutlee's admission into consideration along with a number of other key factors.

The panel noted the continuing nature of the misconduct over a period of approximately five months, but weighed this against the fact that this matter was the only evidence of a breach of the 1997 order.

Coutlee's professional conduct record was reviewed by the panel. In addition to the hearing from which the practice restriction was ordered, there were several other unrelated incidents of misconduct. The earlier discipline outcomes indicated to the panel that the more benign penalties imposed were not sufficient to effect a modification of his behaviour.

It was the view of the panel that, given the significant unpleasantness for Coutlee that accompanied this disciplinary process, there was no likelihood of a recurrence of the offending behaviour.

Regarding the nature and gravity of the conduct, the panel found that the blatant disregard of a restriction on practice imposed by a hearing panel must be regarded as misconduct of a most serious nature. The panel agreed that Coutlee deserved some credit for his cooperation and that a more extensive suspension would have been imposed in the absence of this mitigating factor.

The panel decided it was necessary to communicate a condemnation of Coutlee's behaviour for the benefit of other lawyers who might consider restrictions on practice areas to be more in the nature of guidelines than of prohibitions. It is imperative that the public interest is protected whenever restrictions on practice are imposed, and the panel wanted to ensure lawyers are clear that breaches of those prohibitions will be treated seriously.

The panel ordered that Coutlee:

1. be suspended from practice for one month; and
2. pay \$5,000 in costs.