

2011 : No. 4 Winter

Christopher John Van Twest

Vancouver, BC

Called to the bar: September 14, 1976

**Discipline hearing** : December 21, 2010

**Panel** : *Majority decision*: Glen Ridgway, QC, Chair and Alan M. Ross; *Minority decision*: Kenneth Walker

**Reports issued** : March 10, 2011 (2011 LSBC 09) and July 26, 2011 (2011 LSBC 20)

**Counsel** : Maureen Boyd for the Law Society and Ian Aikenhead, QC for Christopher John Van Twest

## Facts

In March 2008, Christopher John Van Twest represented two clients in the purchase of property. He had acted for these clients in other legal matters since the late 1970s.

The clients gave Van Twest a \$102,000 cheque plus \$9,000 in cash for the purchase of the property. The funds were deposited to a trust account; however, Van Twest did not provide a receipt to the clients for the cash received. The funds were subsequently used to complete the purchase.

Following a compliance audit of Van Twest's practice in October 2008, the Law Society sent a letter to Van Twest on February 9, 2009 regarding the receipt of cash and the failure to maintain a cash receipt book. Van Twest replied on March 20 indicating that he had been under the impression that the limit for cash transactions was \$10,000. He also advised that he would maintain a cash receipt book in future.

On March 27, one week after his letter, Van Twest completed his trust report for 2008 and represented to the Law Society that his practice had not received cash in excess of \$7,500, and that his practice maintained a cash receipt book. He also referred to his March 20 letter, which contained the correct information, in the trust report.

The Law Society issued a citation asserting that Van Twest:

- breached the "no cash" rule (allegation 1);
- provided an incorrect answer on his trust report regarding receipt of cash of \$7,500 or more (allegation 2(a)); and
- provided an incorrect answer on his trust report about maintaining a cash receipt book (allegation 2(b)).

## Determination

The panel accepted Van Twest's admission that his acceptance of cash in excess of \$7,500 constituted a breach of the rules. The panel considered the fact that the clients had been known to him for a long time and there was no suggestion of criminal activity on the part of the clients.

Van Twest also admitted the underlying facts in allegation 2(a) and (b); however he submitted that his conduct constituted a simple negligent, non-culpable mistake and was, at worst, a breach of the rules.

The panel found that, although the importance of the trust report made the error significant, the gravity was

outweighed by the other factors and did not constitute professional misconduct. However, there was disagreement among the panel about whether this error constituted a breach of the rules.

*Majority (Ridgway, Ross)*

The majority found that Van Twest's incorrect answers to questions on the Trust Report were not culpable mistakes; however, his error was not insignificant, and it followed that his conduct constituted a breach of the rules.

*Minority (Walker)*

The minority disagreed that the incorrect answers on the trust report constituted a breach of the rules. Although Van Twest had answered the questions and momentarily erred, he had included the letter that contained the accurate information with the trust report. The minority stated that there was no harm caused to the Law Society or the public by the inconsistency of information in the trust report.

The minority viewed the improperly answered questions as minor mistakes and not a breach of the rules and, therefore, would dismiss allegations 2(a) and (b).

## Disciplinary Action

Van Twest admitted, and the panel agreed, that he had accepted a cash deposit of \$7,500 or more, which constituted a breach of the rules. The panel further found that Van Twest answered two questions incorrectly on his trust report, and the majority concluded that this conduct constituted a breach of the rules.

The panel ordered that Van Twest pay:

1. a \$2,000 fine; and
2. \$1,000 in costs.