

2013 : No. 4

Laird Russell Cruickshank

Vancouver, BC

Called to the bar: May 10, 1983

Discipline hearing : April 19, 2012

Oral Reasons : April 30, 2012

Panel : *Majority decision*: Tony Wilson, Chair, and Adam Eneas; *Minority decision*: Carol Hickman, QC

Report issued : August 22, 2012 (2012 LSBC 27)

Counsel : Alison Kirby for the Law Society and Gerald Cuttler for Laird Russell Cruickshank

Facts

Between 2005 and 2008, Laird Russell Cruickshank failed to comply with various accounting rules in multiple instances, breached two undertakings in separate civil litigation matters, failed to enter into written contingent fee agreements with five clients, and failed to remit PST and GST in a timely way. His failures to comply with Law Society rules were uncovered during a compliance audit and a subsequent investigation of his practice.

Cruickshank's annual trust report for the period ending April 30, 2010 revealed his continued failure to remit PST and GST in a timely way, failure to remit employee source deductions, and failure to comply with various accounting rules in several instances in 2009 and 2010.

At the hearing, Cruickshank's lawyer submitted that Cruickshank was a poor administrator of the business side of his practice and was taking steps to remedy that. In May 2011, he hired a bookkeeper experienced in law firm accounting practices.

admissions and DISCIPLINARY ACTION

Cruickshank admitted to a breach of the Law Society accounting rules and also admitted to professional misconduct. Pursuant to Rule 4-22 and subject to the ruling of the panel, both Cruickshank and the Law Society's Discipline Committee agreed to a proposed disciplinary action of a one-month suspension and \$8,500 in costs. The panel could either accept or reject the proposed disciplinary action but could not modify it.

The panel noted that Cruickshank had a prior discipline history with the Law Society, which included a previous conduct review for breach of undertaking.

Majority (Wilson, Eneas)

In the majority's view, Cruickshank was profoundly sloppy in his bookkeeping, accounting and law firm management practices. Although the misconduct amounted to numerous breaches over a period of five years, the misconduct was largely caused by Cruickshank paying little or no attention to the administrative side of his practice. There was no evidence of any harm to clients, and he did not gain any financial advantage from his conduct.

The majority acknowledged that Cruickshank's infractions between 2005 and 2010 were due, in part, to the fact that he relied on office managers who were unfamiliar with Law Society trust accounting practices and

procedures. However, the majority also recognized that this was not an excuse, as lawyers must ensure their professional staff is qualified and capable of performing the duties and responsibilities expected of members of the Law Society.

In addition to admitting to the rules breach and the incidents of professional misconduct, the majority found that Cruickshank had taken steps to alleviate management and accounting deficiencies in the future. In February 2011, Cruickshank completed the Law Society's trust accounting course. He hired an experienced bookkeeper who is familiar with trust accounting for lawyers.

The majority accepted Cruickshank's admission and the proposed disciplinary action and ordered that he:

1. be suspended from the practice of law for one month; and
2. pay \$8,500 in costs.

Minority (Hickman)

The minority did not accept the majority's characterization of Cruickshank's behaviour as simply "profoundly sloppy," since the incidents of misconduct occurred over a period of five years and on a repeated basis. As an example, Cruickshank's failure to prepare monthly trust reconciliations occurred 18 times between 2005 and 2008.

The minority found it even more disturbing that Cruickshank's behaviour continued throughout 2009 and 2010, despite being made aware of the mistakes he was making by 2008 as part of the compliance audit report process. Further, he did not hire a qualified bookkeeper to address his -accounting problems until May 2011.

Given the severity and duration of the breaches and misconduct, the minority did not accept that a one-month suspension was "fair and reasonable" or in the public interest. The minority stated that the public must be confident that lawyers will do everything possible to maintain their trust accounts and fulfill their undertakings.

The minority believed that the suspension should be significantly longer than the one month proposed and, accordingly, rejected the Rule 4-22 conditional admission.