

2013 : No. 3

Robert Mitchell Culos

Vernon, BC

Called to the bar: January 8, 1988

Discipline hearing : May 7, 2013

Panel : Kenneth Walker, QC, Chair, John Lane and Karen Nordlinger, QC

Report issued : July 8, 2013 (2013 LSBC 19)

Counsel : Alison Kirby for the Law Society; Shane Dugas for Robert Mitchell Culos

Facts

In 2008, Culos was retained to administer the estate of a client's deceased mother. During this estate file, Culos transferred estate property to his client.

By 2010, Culos was owed accounts by his client personally and as administrator of the estate.

In 2010, a funeral service company retained Culos to collect a funeral service bill relating to his client's file. Culos accepted this retainer, and acted in a conflict of interest by collecting this account for the funeral company against his client. He also collected his own accounts at this time. Culos used information from his initial client file during the collection of these accounts.

In a second estate matter, in 2009, a third party introduced Culos to an elderly person (Client A) who retained Culos to prepare a power of attorney, an enhanced representation agreement and a will. The third party was the beneficiary in the will and was named in the other documents.

In 2010 the third party became a client (Client B) when he retained Culos to act in the matter of the estate of the daughter of Client A. Client A was the sole beneficiary of this estate. Culos obtained Letters of Administration in favour of Client B in September 2010.

In November 2010 the estate of Client A's daughter received \$145,000 from a pension plan. This sum was placed into the estate trust account of Culos.

Within days of receiving the \$145,000, Client A retained Culos to create a trust of \$100,000 in favour of named charities. Culos transferred the \$100,000 from the estate trust account to a new charity trust account. Culos did not disclose the receipt of the \$145,000 to Client B (the administrator), nor did he disclose the transfer of funds to the new charity trust account. Culos acted against the interest of Client B in favour of Client A when he created this new trust.

Immediately after the creation of the charity trust, Culos knew that he had erred. He sought advice from senior practitioners and Law Society practice advisors, but the conflict had already been created.

Culos believed that it was important to act quickly based on the advice he was receiving from Client A about Client B. Culos believed that Client A was taken advantage of by Client B.

Both Client A and Client B were affected adversely by the actions of Culos. The \$100,000 trust has become the subject of litigation that affects both parties. The trust monies remain protected until court order or until the parties reach an agreement.

Culos sought an order to restrict public access to the Law Society hearing, including the exhibits filed at the hearing.

The panel ordered that the hearing remain open to the public. Client B was free to stay for the hearing of both complaints. Counsel were asked to be mindful of solicitor-client privilege and the privacy interests arising from that privilege.

Both counsel agreed that Client B should not have access to solicitor-client privileged material irrelevant to him. The panel ordered that Client B be permitted to have a copy of material relating to his relationship to Culos and ordered that the exhibits be sealed and not available to the public.

Admission and disciplinary action

Culos admitted professional misconduct in these two separate client matters. In the first matter, he acted against the interest of his client when he accepted a retainer to collect an outstanding debt for a funeral home. In the second, he acted against the interest of Client B when he accepted a retainer to divert funds to a trust in favour of Client A.

Lawyers have a duty of undivided loyalty to each client and are trained to be aware of conflicts of interest. Culos failed to recognize or consider the conflict until it was too late.

The panel considered Culos' professional conduct record, which included a conduct review and a referral to Practice Standards. The panel also noted that he was a contributor to numerous worthwhile community organizations and boards.

The panel accepted Culos' admissions and ordered that he:

1. pay a \$15,000 fine;
2. pay \$6,748 in costs; and
3. obtain the services of a practice supervisor to assist with conflict decisions for one year.