

Discipline Digest

The Law Society
of British Columbia



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Admission of misconduct and undertaking not to apply for reinstatement for 10 years

Misappropriations, conflicts, breaches of undertaking and false representations

MICHAEL CUSTANCE

Gibsons, B.C.

Called to the Bar: August 31, 1990

Ceased membership: January 1, 2000

While acting for clients in various transactions and other matters in 1998 and 1999, Mr. Custance misappropriated trust funds, in some instances taking funds for his own personal use and in other instances transferring funds to clients or other parties who were not entitled to receive them. On a number of matters, he acted in circumstances that could give rise to divided loyalties between clients or in which he had a personal interest, without the informed consent of clients and without recommending that they obtain independent legal advice.

Mr. Custance made false representations to induce loans, breached undertakings respecting use of trust funds and other professional commitments, breached a court order respecting the use of funds, failed to follow client instructions, failed to protect client interests, allowed shortages in his trust account and failed to report them, failed to pay practice debts, misled creditors

and breached various Law Society accounting rules. [Details below]

Based on two complaints received in the late fall of 1999, the Discipline Committee on November 10 ordered an audit of Mr. Custance's books, records and accounts. Following an interim audit report, the Chair of the Discipline Committee directed a citation against Mr. Custance on November 29. That same day a hearing was held to determine whether to suspend Mr. Custance; the panel made a number of orders respecting Mr. Custance's practice, including that he provide by noon on November 30 an undertaking not to remove any funds from trust. On December 3, 1999 Mr. Custance gave an undertaking not to practise law until relieved of that undertaking by the Law Society.

Mr. Custance did not pay his 2000 practice fees and accordingly ceased membership in the Law Society on January 1, 2000. Discipline citations were issued against him in February, 2000 and March, 2001.

On October 4, 2001 the Discipline Committee accepted an admission of professional misconduct from Mr. Custance (then a former member) on his undertaking:

1. not to apply for reinstatement for 10 years;

Admissions to the Discipline Committee

When a citation has been directed against a lawyer, the lawyer may tender a conditional admission of a discipline violation to the Discipline Committee under Law Society Rule 4-21.

If the admission is accepted by the Discipline Committee, the Committee will rescind any

outstanding citation, direct that the admission be endorsed on the lawyer's professional conduct record and advise the complainant of the disposition.

Rule 4-38 provides for publication of summaries of these cases. □