

In late May or early June 2011, the female purchaser asked Dent to represent her in a separate matter regarding a mortgage on another property owned by another corporation she owned. She arranged on her own that the mortgage to be taken out on this property would be used for the purchase of the property in question, which Dent had no knowledge of at the time. In early June 2011, the female purchaser said something to Dent's assistant that indicated she believed Dent was her lawyer on the purchase of the property in question. Dent insisted she get her own lawyer and referred her to another lawyer.

There was a mortgage on the property, which had to be removed in order for the sale to proceed. The purchaser's lawyer had put Dent on an undertaking that he would not pay out the existing charge to the holding companies until he had a mortgage discharge. Dent breached the undertaking and paid out the charge holders before he had the discharge in hand. The discharge was eventually provided to Dent within four days.

DETERMINATION

The panel dismissed all allegations except for Dent's failure to advise the unrepresented parties he was not protecting their interest.

No notes were taken of the meeting on February 1, 2011. The female purchaser had suffered a concussion recently and had trouble remembering events that took place during the meeting. The panel determined she was not a reliable witness. Dent believed he told the female purchaser to seek counsel at the meeting, but he did not remember his exact words. The panel considered his subsequent actions to determine if he was acting for the purchaser. The female purchaser's funds were put into his trust account, but if she was unrepresented, the funds would sooner or later end up in Dent's account. Dent prepared an option to purchase for the property, but he did so under the instruction of the vendor, and he did not negotiate the option. He gave no legal advice to the purchaser. Dent drafted three different easements, but on the instructions of the vendor. The panel determined there was not enough convincing evidence to show Dent was acting for the purchaser in this matter.

Although Dent asked the purchasers to get their own lawyer, he did not specifically tell them he was not protecting their interests. The panel also considered other factors that happened following the meeting that may have led the purchasers to believe Dent was protecting their interests. The purchasing money went through Dent's account. He prepared an option document and an extension of the option. He also represented the female purchaser for the mortgage of another property, proceeds of which were going to this property. In considering the cumulative effect of Dent's actions, the panel determined that Dent committed professional misconduct in failing to inform the purchasers he was not protecting their interests.

Dent admits he breached the undertaking to the female purchaser's lawyer because he forgot about the undertaking. He believes there was no professional misconduct because there was no loss as a result of the breach. The panel made it clear that forgetting an undertaking

and no harm resulting is not a defence to a finding of professional misconduct. The panel considered the facts that there was a secondary undertaking as an alternative protection to the purchaser, that no one complained to the Law Society and that no one had learned of the breach until the Law Society reviewed the file. The breach only existed for six days. The panel declared this an exceptional case and dismissed this allegation.

DISCIPLINARY ACTION

While considering Dent's actions, three main factors stood out. First, no harm was done, and the deal went through. Second, Dent did refer the purchaser to retain her own lawyer, though it was four months later. Third, Dent has changed his practice, and he now has written retainers for all his clients and sends out letters of disengagement. The panel also took into account the fact that Dent has a significant professional conduct record.

The panel ordered that Dent pay:

1. a fine of \$5,000; and
2. costs of \$5,000.

MAUREEN JOYCE WESLEY

Burnaby, BC

Called to the bar: July 13, 1982

Discipline hearing: October 28, 2014, July 9, 2015 and January 14, 2016

Panel: Herman Van Ommen, QC, Chair, J.S. (Woody) Hayes and Bruce LeRose, QC

Decisions issued: February 17, 2015 ([2015 LSBC 05](#)) and February 17, 2016 ([2016 LSBC 07](#))

Counsel: Carolyn Gulabsingh for the Law Society; Maureen Joyce Wesley on her own behalf (facts and determination) and Henry C. Wood, QC (disciplinary action and costs)

FACTS

Maureen Joyce Wesley attended a judicial case conference with her client on October 20, 2011. The client and her husband entered into an interim consent order regarding child support, access and custody. Wesley accepted the responsibility for preparing the interim order. In November 2011, her client had complied with the order, and her husband paid child support as required by the order.

In January 2013, the husband stopped making child support payments. Wesley's client contacted the Family Maintenance Enforcement Program for assistance to compel her husband to make child support payments. The program advised her that the order had not yet been entered. Wesley had not explained to her client that the child support term of the order could not be enforced because it was not entered. She did not advise her client of the risks of not entering the order or the reasons why she had not yet entered the order.

Wesley testified that the husband's counsel did not agree with the form of order she had prepared. Wesley did not believe the entry of the order was pressing as her client's husband was paying child support at the time.

The husband refused to resume payments unless Wesley's client consented to a divorce. However, her client would not consent to the divorce until she was paid the child support payments she was owed. Wesley and the other counsel were not able to resolve this impasse, and the husband fired his counsel in February 2013.

The husband retained new counsel, and Wesley said she attempted to have counsel sign the order. He declined as his client now preferred to attempt to settle the whole matter instead of resolving issues with the interim order. Wesley agreed with that approach and began to work on a tentative form of final order.

Wesley attempted to locate the husband's previous counsel and was finally able to make contact in April 2013. Prior counsel insisted on signing her own form of order, and only when that form of order was rejected by the registry did she ultimately agree to sign the order prepared by Wesley. It was entered on June 25, 2013.

DETERMINATION

Wesley failed for a period of approximately 20 months to take the steps required to have the order entered. When the other counsel did not agree with her form of order, she took no steps to resolve the issue. She did not advise her client of the risks she would face because the order was not entered, nor did she advise her of the costs and steps involved in having a registrar settle the form of order.

When she learned from new counsel that the husband was resiling from his agreement to pay child support, she again failed to take steps to have the order settled and failed to advise her client of the risks. Instead of settling the terms of the order in January 2013, Wesley took months to locate prior counsel and then further months to debate over the form of the order. The order was not entered until June 25, 2013.

Her error allowed her client's husband to be able to refuse to pay child support and demand her client's consent to a divorce, which could both have been avoided if the order was filed. The impasse should never have occurred.

The panel concluded that Wesley's conduct was a culpable neglect of her duties and amounted to professional misconduct.

DISCIPLINARY ACTION

The Law Society sought a fine of \$3,000 and costs of \$6,456.25. Wesley pointed to her difficult financial situation and suggested that the total financial penalty, including costs, should be \$5,000.

The panel considered whether to require Wesley to satisfy a board of examiners that she is competent to practise law, and asked the parties to make submissions in this regard. The Law Society submitted that the misconduct included a competency component and that such an

order would both aid in the rehabilitation of Wesley and protection of the public. Counsel for Wesley asserted that this order would be inappropriate, as the misconduct only pertained to one client and one order. He submitted that there must be evidence of incompetence, meaning a pattern of conduct that fails to meet standards, rather than one instance. He noted that Wesley has been practising for more than 33 years without relevant discipline. The panel found insufficient evidence to make the order.

The panel considered the gravity of Wesley's conduct, her experience, her professional conduct record and the impact on the victim. Although Wesley's actions concerned only one order, there were different points in time at which she failed to advise her client adequately of the risks.

The panel ordered that Wesley pay:

1. a fine of \$3,000; and
2. costs of \$6,876.25.

THOMAS PAUL HARDING

Surrey, BC

Called to the bar: August 31, 1990

Discipline hearing: November 26, 2015

Panel: Thomas Fellhauer, Chair, David Layton and Linda Michaluk

Decision issued: February 23, 2016 ([2016 LSBC 09](#))

Counsel: Alison L. Kirby for the Law Society; Gerald A. Cuttler for Thomas Paul Harding

FACTS

In July 2011, Thomas Paul Harding was retained to act for a wife in family law proceedings. A series of his actions resulted in the failure to provide his client with an acceptable quality of service.

On November 16, 2011, Harding, his client, his client's husband and the opposing counsel attended a judicial case conference before a judge. The husband proposed that he receive weekday access to their child every morning. Harding's client objected, and no agreement was reached. The judge made an interim order that allowed the husband access three weekday mornings before school.

Harding and the opposing counsel began working on finalizing the final consent order but their discussions did not include the subject of weekday morning access to the couple's child. Opposing counsel prepared a draft final order that gave the husband weekday morning access five days a week and sent it to Harding for his comments. Harding failed to provide his client with the draft final order and consented to it when he ought to have known his client did not agree to its term regarding child access.

Harding also failed to pass on a letter from opposing counsel warning his client that she was expected to comply with the final order, and

he did not respond to his client's email asking whether he had heard from opposing counsel about varying the final order. For almost six months, Harding did not admit to his client that he made a mistake when he accepted the draft final order, and he failed to recommend that his client obtain independent legal advice in that regard. He again failed to recommend that she seek independent legal advice in respect of the costs ordered against her in November 2012. Harding stated in an email to his client that the cause of the problem was that opposing counsel had fraudulently altered the term of order after he agreed to it. When his client asked why she should pay court costs for putting the order back the way it should have been, he said he was not responsible for the "fraud" committed against her.

When he wrote to his client about closing the file in July 2013, he failed to remind her that the costs order made against her was still outstanding. He also failed to inform his client in a timely manner about the costs negotiations he engaged in on her behalf with opposing counsel.

Harding did not provide his client with reasonable notice when he withdrew as her lawyer. He could not withdraw prior to the costs hearing because he had not served his client with a notice of intention to withdraw. His only option was to apply to obtain the court's permission to withdraw, but he did not do so.

Harding's client complained to the Law Society and wrote to Harding asking for a refund of all fees, disbursements and compensation for the costs assessed against her. Harding responded that he could not deal with her because she had an outstanding complaint against him with the Law Society. Harding was reminded by the Law Society that he had agreed in an earlier email to pay the costs order made against his client. Harding wrote the wife a cheque on November 20, 2014 for \$3,275, the amount of costs opposing counsel had offered to settle for and not the actual amount his client had to pay.

ADMISSION AND DISCIPLINARY ACTION

Harding admitted professional misconduct in four respects: failure to provide his client with an acceptable quality of service; two instances of failure to recommend his client obtain independent legal advice; and failure to provide his client with reasonable notice of withdrawal.

Harding proposed the disciplinary action of a fine of \$15,000 and costs of \$2,125. The Discipline Committee accepted Harding's admission and proposed disciplinary action and instructed counsel to

recommend them to the hearing panel.

The panel noted that Harding's misconduct was serious, multi-faceted and continued over a lengthy period of time. Harding's initial error in not properly reading the final order or informing his client of its contents demonstrated a markedly deficient quality of service. His reaction upon learning that his client did not agree to the term compounded the seriousness of this initial error.

He did not admit his mistake for almost six months. He failed to advise his client to seek independent legal advice, denying her the ability to obtain an unbiased opinion as to who was at fault and should bear the responsibility for paying the costs order.

Harding's baseless allegations that opposing had committed fraud downplayed his own responsibility for the client's predicament and made it less likely that his client would take action contrary to his interests, such as discharging him, reporting him to the Law Society or seeking compensation by threatening or commencing civil proceedings. The allegations were linked to Harding's failure to recommend independent legal advice.

Harding did not pay the costs order until the Law Society reminded him of his initial promise to do so. He did not pay the full amount owed and insisted on withholding \$75 on the ground that she rejected his initial advice to accept the offer to settle.

The panel considered Harding's professional conduct record, which contains two conduct reviews and four findings of misconduct. Harding's actions in this case bear similarity to previous incidents of incivility directed at lawyers, failure to provide an acceptable quality of service and failure to recommend independent legal advice.

In addition, the panel considered the significant impact on Harding's client, the advantage gained by Harding, the number of times the conduct occurred, and the range of penalties imposed in similar cases.

The panel concluded that the proposed disciplinary action was on the low end of the appropriate range in all the circumstances. However, recognizing that the role of the hearing panel in cases where an admission was made by the respondent and accepted by the Discipline Committee was to ensure that the proposed action fell within the appropriate range, the panel accepted Harding's proposal of disciplinary action and ordered that he pay:

1. a fine of \$15,000; and
2. costs of \$2,125. ♦

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suggestion, the lawyer implemented a conflicts checks process to prevent future conflicts between a client's corporate and personal

interest and sought assistance from a practice advisor. The subcommittee explained to the lawyer the concept of progressive discipline, and advised that a citation may be issued in respect of any further misconduct. (CR 2016-04) ♦

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