

Vancouver, B.C.

Called to the Bar: June 13, 1986

Discipline hearing:

Dates: March 23 and 27, 2000

Panel: D. Peter Ramsay, Q.C., a one-Bencher panel by consent

Reports: July 4, 2000

Indexed as [2000] LSBC 03

Counsel:

Jim A. Doyle, for the Law Society

Christopher E. Hinkson, Q.C., for the respondent

Summary

While representing the plaintiff in a matrimonial litigation, the respondent lawyer failed to send certain materials to the defendant within 24 hours of receipt of that material, as required by a court order. The failure to comply with the order was an inadvertent oversight relating to the lawyer's office systems and did not reflect a degree of impropriety that would amount to professional misconduct. The defendant, who was unrepresented, also made numerous requests for information from the respondent lawyer. The lawyer provided some of the information requested, but was on a limited retainer, having been instructed by the client that the client would deal directly with the defendant. The lawyer did not tell the defendant of the limited retainer. This conduct did not amount to professional misconduct. The citation was dismissed on both counts.

Facts

Court order

While representing the plaintiff in a matrimonial litigation in 1997, the respondent lawyer obtained a court order for the production of an RCMP file, including videotapes and interview sheets, and production of hospital medical records. The court order, dated March 3, 1997, provided that, within 24 hours of receipt of the materials, the respondent lawyer was to copy the materials and provide them to the defendant, who was then unrepresented in the litigation.

The RCMP file arrived in the office of the respondent lawyer by May 28, 1997 and the hospital records by June 2, 1997. The lawyer's secretary received this material. At that point the secretary was aware the lawyer did not intend to proceed with the application for which the materials had been requested and the secretary had forgotten about the

terms of the court order. Accordingly, the secretary did not give any priority to dealing with the material and did not advise the respondent lawyer that it had been received.

The defendant complained to the Law Society that he had not received the materials under the court order. The Law Society wrote twice to the respondent lawyer. The lawyer was preoccupied by several trials and then was absent on a short holiday. Before leaving on holiday, the respondent lawyer asked the Society for an extension to reply. Upon returning to the office, the lawyer learned the terms of the court order had not been met and immediately sent the defendant the videotape from the RCMP file. The lawyer was not aware that other material had also been received and did not review the court order. Two years later, the respondent lawyer discovered the other RCMP material and the medical records in a subfile and subsequently sent them to the defendant.

Communications with unrepresented party

Between May and August, 1998 the defendant made numerous requests for information from the respondent lawyer. The lawyer provided some of the information requested and was restrained and polite to the defendant in light of these numerous requests. However, the respondent lawyer was on a limited retainer and was under instructions from the plaintiff that the plaintiff would deal with the defendant on these information requests, out of concern over cost. The respondent lawyer did not tell the unrepresented defendant of the limited retainer.

Decision

The respondent lawyer's failure to comply with a court order was not deliberate, but an inadvertent oversight relating to the lawyer's office systems. Neither this conduct, nor in these circumstances the lawyer's lack of communication with an unrepresented litigant, amounted to professional misconduct.

The citation was dismissed.