

Burns Lake, BC

Called to the Bar: September 4, 1997

**Discipline hearing:** February 11, 2003

**Panel:** Ralston S. Alexander, QC, as a one-Bencher panel, by consent

**Report issued:** March 10, 2003; indexed as [2003] LSBC 09

**Counsel:** Herman Van Ommen, for the Law Society; LG, on her own behalf

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### Summary

LG represented a client in a family law matter. The client prepared in pencil a financial statement and delivered that statement to LG's office. As the client needed to return to work immediately and would not wait for the document to be typed up in a more presentable form, LG permitted him to sign an affidavit on a blank form of financial statement. She did so on the basis that the client specifically swore as to the truth of the pencilled version of the financial statement and had authorized LG's staff to type up the blank financial statement in identical form to the pencilled version. Pursuant to Rule 4-22, LG admitted, and the Discipline Committee and discipline hearing panel found, that her conduct in allowing her client to sign an affidavit on an incomplete financial statement constituted professional misconduct. The hearing panel noted that LG's actions approached a technical breach since a pencilled version of the document existed at the time the client swore his affidavit and that pencilled version could have been submitted without being retyped. LG had acted to accommodate her client who was in difficult financial circumstances. The panel noted that, as a result of the discipline proceedings, LG had lost time from her practice and had likely suffered anxiety. Moreover, she had paid out-of-pocket costs that likely exceeded any fine that could reasonably have been ordered against her. In approving LG's proposed penalty, the panel ordered that she be reprimanded and ordered to pay costs of the hearing.

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### Facts

In April, 2000 LG was retained by Mr. F, the defendant in a family law matter. In September, 2000 Mr. F was served with a Notice to File a Property and Financial Statement in BC Supreme Court. Counsel for the plaintiff wrote to LG on May 1, 2001 to request the statement. LG provided Mr. F with a blank form for him to complete in early June and followed up with him later in June, in August and again in September. She asked him to contact her office to make arrangements to complete the financial statement.

On September 17 Mr. F came to LG's office with his Property and Financial Statement completed in pencil. He did not wish to wait for the document to be typed up in a more

presentable form, as he worked in the logging industry on a piecemeal subcontract basis and needed to return to work immediately.

During that appointment, LG reluctantly agreed that Mr. F could sign an affidavit on the first page of a blank form of financial statement. She did so on the basis that Mr. F specifically swore as to the truth of the pencilled version of the financial statement and that he authorized LG's staff to type up the blank financial statement in identical form to the pencilled version.

Mr. F later retained a new lawyer who raised the issue of the affidavit with LG. LG reported her own conduct to the Law Society in November, 2001.

On July 30, 2002 the Discipline Committee resolved to issue a citation against LG.

### **Admissions and penalty**

Pursuant to Rule 4-22, LG admitted professional misconduct in permitting her client to swear an incomplete financial statement and subsequently having her staff type up the statement based on the pencilled version that her client had prepared and had sworn to be true.

The Discipline Committee and the hearing panel accepted LG's admission of professional misconduct and her proposed disciplinary action. The panel accordingly ordered that she:

1. be reprimanded; and
2. pay \$750 as costs of the hearing within three months.

The hearing panel noted two important points. First, the full contents of Mr. F's financial statement were in existence in pencilled form at the time Mr. F had sworn an affidavit before LG as to the truth of the statement. Second, it would have been entirely appropriate for that pencilled form, rather than a typed version, to have been signed and presented.

LG had no devious purpose in mind and did not benefit from her actions. She was merely trying to accommodate a client suffering difficult financial circumstances in a community where service providers must be sensitive to the vagaries of the forest industry. Though not an excuse, these facts helped explain her behaviour.

The panel distinguished this case, which approached a technical breach, from those in which affidavits were sworn in absentia.

The panel also took into account that LG had travelled to Vancouver from Burns Lake, losing several days of productivity and likely experiencing some anxiety as a result of the proceedings. Moreover, her out-of-pocket costs would likely exceed the amount of any fine the panel might reasonably order.

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