

RL

99/10

Kelowna, B.C.

Called to the B.C. bar: September 10, 1980

Called to the Manitoba bar: June 25, 1974

Discipline hearing panel: November 17, 1998

Emily Reid, Q.C., Chair, Marjorie Martin and Ross Tunnicliffe

Carmel Wiseman, for the Law Society

Richard Sugden, Q.C., for RL

Summary

RL entered an affidavit of his client in a matrimonial proceeding and, later learning of a material inaccuracy in the affidavit, failed to advise the court or opposing counsel of the inaccuracy. He admitted, and the hearing panel found, that his conduct constituted professional misconduct. The panel accepted RL's admission and his proposed disciplinary action, and ordered that he pay a \$2,500 fine and \$2,500 as costs of the proceeding.

Facts

RL was counsel for Mr. T who was involved in matrimonial proceedings with Ms. M.

Mr. T and Ms. M had entered into a consent order restraining Mr. T from disposing of any assets of his companies and restraining both parties from disposing of or encumbering other assets.

In September, 1992 Mr. T filed an application to sell an aircraft owned by one of the companies and to reduce his monthly maintenance payments to Ms. M. Prior to the hearing of that application, Ms. M's counsel sought information about the source of funds used by a friend of Mr. T (Ms. H) to purchase a house.

In October, 1992 Mr. T gave RL information for an affidavit. RL drafted and had Mr. T swear the affidavit, which stated:

... the house purchased by Ms. H and registered only in the name of Ms. H was purchased by her with funds obtained from her own family sources, particularly an inheritance from her grandmother's estate.

Approximately two weeks after he swore the affidavit, Mr. T told RL that, in fact, he had lent Ms. H money that she used towards the purchase. RL advised Mr. T that this information would have to be disclosed.

Counsel for Ms. M wrote to RL in late October and asked for documentation respecting the purchase and, in particular, documents substantiating that the purchase was made with Mr. H's inheritance funds. In December Ms. M brought an application in the matrimonial proceedings for production of a number of documents, including those relating to the purchase and the inheritance. The order was granted and Mr. T was ordered to produce the documents by December 7. Counsel for Ms. M wrote to RL on December 8 and 11 asking for the documents.

RL sent the documents to Ms. M's counsel on December 11, 1992. In the covering letter, RL stated that "... the inheritance monies are still held in the estate and will be applied by Ms. H to the second and first mortgages upon their receipt." He did not mention the money that Mr. T had provided to Ms. H for the house purchase.

In March, 1993 Mr. T filed a notice of intention to act in person. At no time prior to that date did RL advise the court or counsel for Ms. M that Mr. T had provided funds to Ms. H.

In May, 1993 counsel for Ms. M brought an application to have Mr. T found in contempt of court for breaching the restraining order, alleging that Mr. T had removed money from one of his companies and given some of that money to Ms. H. During these proceedings, Mr. T told the court that RL knew he had put money into the house.

On learning of Mr. T's statements to the court, RL advised the court that, at the time Mr. T's affidavit was sworn, RL's only knowledge was that the funds used for the purchase were as set out in the affidavit. RL stated that he did not learn of Mr. T's gift to Ms. H until some weeks later and he had at the time made Mr. T aware that this fact must be disclosed.

Mr. T, in bankruptcy proceedings, later gave evidence that he had in fact given Ms. H approximately \$43,000 toward the purchase of her house, \$24,000 of which came from one of Mr. T's companies.

In his submissions to the Discipline Committee and the hearing panel, RL explained that his failure to advise opposing counsel of a material inaccuracy in his client's affidavit was inadvertent as a result of the various matters RL was handling on the file.

Admission and disciplinary action

Pursuant to Rule 469 (now Rule 4-22), RL admitted, and the hearing panel found, that his conduct constituted professional misconduct. The panel accepted RL's proposed disciplinary action and ordered that he:

1. pay a \$2,500 fine within one year; and

2. pay \$2,500 as costs of the disciplinary proceedings within one year.

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