

Ian Douglas MacKinnon

Abbotsford, B.C.

Called to the Bar: August 1, 1986

Discipline hearing: December 14, 2001

Panel: Gerald J. Lecovin, QC, Chair, William J. Sullivan, QC and G. Ronald Toews, QC

Report issued: February 1, 2002; indexed as [2001] LSBC 38

Counsel: Jessica S. Gossen, for the Law Society; William Neen for Mr. MacKinnon

Summary

While representing the defendant in a Supreme Court action, Mr. MacKinnon advised the court registry by telephone that an application he had scheduled for the next day was being adjourned by consent when he did not in fact have the consent of opposing counsel. He subsequently filed a praecipe, which also indicated the adjournment had been by consent. Mr. MacKinnon admitted, and the hearing panel found, that his actions had the effect of misleading the court and constituted professional misconduct. The panel took note of Mr. MacKinnon's unqualified admission and his remorse, the fact that the misconduct in these circumstances was relatively minor and that it was an aberration in a long and otherwise laudable career. The panel ordered that Mr. MacKinnon pay a \$1,500 fine and \$1,000 towards costs of the proceedings.

Facts

While representing the defendant in a motor vehicle action in B.C. Supreme Court in the Fall of 2000, Mr. MacKinnon conducted examinations for discovery of the plaintiff. At the end of discoveries, there remained outstanding requests for clinical records and employment documentation. Mr. MacKinnon wrote four letters to plaintiff's counsel (K) between October, 2000 and January, 2001 to follow up on his requests for the documentation.

In mid-January, 2001 Mr. MacKinnon set down a Chambers application for March 1 for production of information and documents. Two days before the hearing of the application, plaintiff's counsel K filed and delivered affidavits in opposition to the motion.

On February 28, Mr. MacKinnon attempted several times to contact K by telephone and, although K returned the calls, the lawyers were not able to speak directly with each other. Just before 4:00 pm Mr. MacKinnon contacted K's assistant. He told her that he would be adjourning the application and would send a fax to K with his views on how the matters could be resolved. He then called the court registry to advise that the Chambers application was being adjourned by consent.

K called back within the hour, but was advised that Mr. MacKinnon had left for the day. K then faxed a letter to Mr. MacKinnon indicating that he did not consent to the adjournment.

Several days later Mr. MacKinnon filed a praecipe, which also indicated the adjournment had been by consent.

Decision

Mr. MacKinnon admitted, and the hearing panel found, that his actions in failing to ensure that plaintiff's counsel had consented to the adjournment prior to adjourning the matter had the effect of misleading the court and constituted professional misconduct.

Penalty

The hearing panel referred to Chapter 1 of the *Professional Conduct Handbook* (Canons of Legal Ethics) in stating that any misleading of the court by counsel was a serious matter. Lawyers must not make assertions as to another lawyer's consent when there is no such consent.

In these circumstances, it was acknowledged by Law Society counsel that Mr. MacKinnon's conduct was on the minor end of the scale. Furthermore, he had acknowledged his misconduct very early in the proceedings, apologized to other counsel involved and cooperated with the Law Society throughout, allowing the matter to proceed quickly to a hearing.

The panel accepted Mr. MacKinnon's unqualified admission and expressions of remorse, noting that his misconduct was an aberration in a long and otherwise laudable career in the profession and that his professional conduct record had previously been clear.

The hearing panel ordered that Mr. MacKinnon:

1. pay a \$1,500 fine; and
2. pay \$1,000 towards costs of the proceedings, by December 31, 2002.

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