

Breach of undertaking

SANFORD MICHAEL NEIL BARTLETT

Nanaimo, B.C.

Called to the bar: June 12, 1987

In 1994 Mr. Bartlett represented a company (C Painting) and its principal (Mr. S).

C Painting contracted to do a painting job for another company, V Ltd. Under the terms of the contract, C Painting was obligated to provide a performance bond by lodging securities with Mr. Bartlett to be held in trust.

In June, 1994 C Painting provided Mr. Bartlett with a \$16,000 Province of B.C. bond, which was in Mr. S's name. As part of the agreement between C Painting and V Ltd., Mr. Bartlett provided a letter of undertaking to V Ltd. that he would hold the bond in trust from July 1, 1994 to June 30, 1996 and, if the terms of the contract were not fulfilled, would sell the bonds and deliver the sum required to complete the contract upon receipt of a statutory declaration from V Ltd. confirming non-fulfilment. Alternatively, if V Ltd. provided no claim by June 30, 1996, Mr. Bartlett would release the bond to its owner, Mr. S.

V Ltd. made final payment of \$16,848 on the contract. Mr. Bartlett received the money in trust and disbursed it to C Painting, Mr. S and to himself for fees. V Ltd. later claimed deficiencies in the work done by C Painting and asked for payment from the bond to complete remedial work.

Despite several requests from V Ltd. and its lawyer between July and October, 1996, Mr. S did not execute the bond and Mr. Bartlett did not fulfil his undertaking to pay money from the bond to V Ltd. He withdrew from representing Mr. S in August.

Counsel for V Ltd. complained to the Law Society on October 16, and began legal proceedings against Mr. Bartlett on November 19. On December 6 Mr. Bartlett received instructions from Mr. S to sell the bond and to deliver the funds to V Ltd.'s counsel, which he did. The litigation against Mr. Bartlett was dismissed by consent. Mr. Bartlett paid V Ltd. \$2,652.12 to cover the legal expenses it incurred as a result of the breach of undertaking.

Mr. Bartlett admitted to the Discipline Committee in April, 1998 that his breach of undertaking constituted professional misconduct.