

Vancouver, B.C.

Called to the B.C. Bar: November 10, 1995

Called to the Ontario Bar: June 24, 1994

Non-practising membership: January 1 to September 3, 1997; June 29 to December 31, 1998

Voluntarily ceased membership: January 1, 1999

Discipline hearing panel: May 16, 1997

Richard Peck, Q.C., Chair, Robert Diebolt, Q.C. and Emily Reid, Q.C.

Carmel Wiseman, for the Law Society

James Straith, for Mr. Foo

Summary

Mr. Foo allowed a client in a divorce proceeding to swear an affidavit stating that the client's wife had been served with the divorce petition, although this was untrue. Mr. Foo redrafted the affidavit for the client to swear before him, but dated the document six weeks later than it was actually sworn. In a separate estate administration matter, Mr. Foo witnessed a client swearing two affidavits: one of the affidavits stated that a section 135 notice was annexed, although it was not, and the other affidavit stated that a disclosure statement was annexed, although the statement was not even in existence at that time. Mr. Foo's conduct constituted professional misconduct. The panel took into account the seriousness of the conduct as well as Mr. Foo's remorse and the lack of guidance he received from his firm while he was an articling student and a junior lawyer. The panel ordered that he pay a \$2,600 fine, costs and be subject to conditions should he return to practice.

Facts

While acting for Mr. Z in a divorce proceeding, Mr. Foo witnessed the client's affidavit, which stated "my wife, who was served with the petition, has not replied." In fact, at the time the affidavit was sworn and to the knowledge of Mr. Foo, Mr. Z's wife had not been served.

Mr. Foo redrafted Mr. Z's affidavit and had Mr. Z swear it before him. Mr. Foo dated the affidavit April 6, 1996 when this date was, in fact, six weeks later than Mr. Z had actually sworn the document.

On another matter, Mr. Foo prepared an affidavit for a client indicating that the client (as administrator of an estate) had delivered a notice under section 135(6) of the *Estate Administration Act*. Mr. Foo allowed the client to swear before him an affidavit that stated the notice was annexed to the affidavit as an exhibit, although it was not. On the same day, the client swore a separate affidavit deposing that a disclosure statement was annexed. In fact, the disclosure statement was not annexed and was not yet in existence on that date, which Mr. Foo knew.

Decision

Mr. Foo's conduct constituted professional misconduct.

Penalty

The hearing panel observed that knowingly taking a false affidavit is among the most serious breaches of professional conduct for a lawyer.

Had a senior member of the bar taken the same action for the purpose of assisting a client and placing the opposing party at a disadvantage, the panel would seriously have considered disbarment. In this case, there was no actual harm, although Mr. Foo breached one of the most fundamental canons of legal ethics, Canon 1(1), which is the duty to uphold the administration of justice.

Mr. Foo's conduct came to light during a review of the firm that employed him. He was deeply ashamed and showed great remorse for his actions.

The panel noted that Mr. Foo received little, if any, guidance or assistance from his law firm during his articling term and no guidance as a junior lawyer while he was carrying out a variety of legal tasks in a number of areas of law. Mr. Foo had since left the practice of law and had no immediate plans to resume practising, but the panel anticipated that he might do so sometime in the future.

The panel ordered that Mr. Foo:

1. pay a \$2,600 fine by May 15, 1999;
2. pay \$1,200 as costs of the discipline proceedings by May 15, 1999;
3. if and when he returns to practice, must serve the first two years in a law firm and under the supervision of a lawyer of five years standing; and
4. within the first 24 months of a return to practice, must complete four CLE courses, one of which must relate to loss prevention.