

Use of documents intended for opposing counsel

PAUL DAYKIN

Vancouver, B.C.

Called to the bar: August 1, 1985

In February, 1993 Mr. Daykin left the law firm in which he practised to join another firm. At the time, Mr. Daykin represented Mr. M in matrimonial proceedings and continued to do so after joining his new firm.

Mr. M and Mrs. M each had one or more files at the former firm, but Mrs. M was separately represented by a different law firm in the matrimonial litigation.

In the fall of 1993, Mr. Daykin was preparing to respond to an information request from Mrs. M's lawyer in the course of pretrial discovery. Mr. Daykin asked his former firm to transfer Mr. M's files. The former firm sent him not only Mr. M's files, but also a file of Mrs. M.

Mr. Daykin did not immediately return Mrs. M's file to his former law firm or to Mrs. M's counsel in the matrimonial litigation, contrary to Chapter 5, Rule 15 of the *Professional Conduct Handbook*. He instead retained the file and disclosed his possession of it by including it in his client's list of documents in the litigation.

Mr. Daykin told the Discipline Committee that he mistakenly but honestly thought his responsibility on receiving a document intended for the opposing party was to promptly disclose to the other side that he had the document, which he did.

Chapter 5, Rule 15 of the *Handbook* provides:

Use of opponent's documents

15. A lawyer who has access to or comes into possession of a document which the lawyer has reasonable grounds to believe belongs to or is intended for an opposing party and was not intended for the lawyer to see, shall:
 - (a) return the document, unread and uncopied, to the party to whom it belongs, or
 - (b) if the lawyer reads part or all of the document before realizing that it was not intended for him or her, cease reading the document and promptly return it, uncopied, to the party to whom it belongs, advising that party:

- (i) of the extent to which the lawyer is aware of the contents,
and
- (ii) what use the lawyer intends to make of the contents of the
document.

Mr. Daykin admitted that his conduct constituted professional misconduct and he expressed regret for his action. The Discipline Committee accepted Mr. Daykin's admission.

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