

Vancouver, B.C.

Called to the Bar: July 7, 1958

**Discipline hearing panel:** June 19, 1997

R.W. Gourlay, Q.C., as a one-Bencher panel

G.A. Cuttler, for the Law Society

P. Leask, Q.C., for Mr. Promislow

### **Summary**

While representing defendants in a civil action, Mr. Promislow received from the plaintiffs' lawyer draft orders marked "by consent" for Mr. Promislow to endorse. Mr. Promislow and the plaintiffs' lawyer disagreed on whether the orders were, in fact, by consent. Mr. Promislow deleted the words "by consent" on the orders before endorsing and entering them in the court registry. He took this action without having obtained the consent of the plaintiffs' lawyer to make the deletion on the orders and he breached the trust term on which the orders had been delivered to him.

### **Facts**

Mr. Promislow represented the defendants in a civil action involving several parties. The matter had been in litigation for a number of years and was hotly contested. The parties reached a settlement in April, 1995, following which the plaintiffs' lawyer (M) alleged that the defendants had been induced to enter the settlement through fraudulent misrepresentations. At a Chambers hearing, M said that his clients wished to proceed with the settlement but to reserve their right to sue Mr. Promislow and his clients. Mr. Promislow denied any impropriety and M agreed to withdraw the allegations and to provide a release against Mr. Promislow and his clients.

Mr. Promislow received from M draft orders marked "by consent" and "consented to" as well as a release. M provided the draft orders to Mr. Promislow in trust for him to endorse. Mr. Promislow and M disagreed on whether, in fact, the orders were by consent.

Mr. Promislow obtained agreement from another party to the litigation to remove the words "by consent" from the orders, but he did not obtain the agreement of M to do this. Mr. Promislow nevertheless deleted the words "by consent" from the orders and had them entered in the court registry. He informed M of his actions in a letter after the orders were filed.

The settlement successfully concluded and, as a result, it was immaterial whether or not the orders were by consent.

### **Admission**

Mr. Promislow admitted, and the hearing panel found, that his conduct constituted professional misconduct.

### **Penalty**

The hearing panel accepted Mr. Promislow's presupposed disciplinary action, and ordered that he:

1. be reprimanded;
2. pay a \$3,500 fine; and
3. pay \$1,500 as costs toward the hearing.