

Rosedale, B.C.

Called to the Bar January 8, 1988

Discipline hearing panel: July 15, 1996

E.M. Reid, Q.C., as a one-Bencher panel

H. Van Ommen, for the Law Society

D. Crossin, for Mr. Friesen

Summary

Mr. Friesen provided legal services to a person who was to lend money in a mortgage transaction even though Mr. Friesen's personal interest in the loan conflicted with the interests of his client. Mr. Friesen later informed another person, who ultimately assumed responsibility for paying off the mortgage loan, about the amount outstanding without at the same time disclosing that Mr. Friesen had previously had a personal interest in the loan.

Facts

In March, 1991 Mr. Friesen assisted Mr. G, a personal friend, in finding a loan that would be secured by a mortgage on a house owned by Mr. and Mrs. G. Mr. Friesen introduced Mr. G to another friend, Ms. C, who was seeking an investment.

After looking at the property, Ms. C agreed to advance a \$40,000 mortgage loan and consented to an arrangement whereby:

- \$6,520 would be used to discharge a mortgage held by Mr. Friesen on the property;
- \$10,000 would be loaned by Mr. and Mrs. G to Mr. Friesen; and
- the balance would be used by Mr. and Mrs. G.

Under this arrangement, Mr. Friesen had a personal interest of \$16,520 in the mortgage transaction. He was to have his \$6,520 mortgage discharged from title, ensuring that Ms. C's mortgage was registered as a first charge. He was also to repay his \$10,000 loan, with interest, directly to Ms. C, and these repayments would be credited to Mr. and Mrs. G. The loan would be retired over 12 months.

Mr. Friesen carried out the mortgage transaction, including searches, documentation and registration, on behalf of Ms. C. He disclosed his personal interest in the loan to her, but not in writing. He advised Ms. C to consult another lawyer, but he did not ensure that she did so. Mr. Friesen did not receive legal fees for his services.

Mr. Friesen did not provide any legal services to Mr. and Mrs. G and did not provide any documentation or security to them for the \$10,000 loan. He recommended that they receive independent legal advice, but he knew that they did not. They executed the mortgage before another lawyer who placed a stamp on the mortgage that advice was neither sought nor given.

Over the six months from May to October, 1991, Mr. Friesen made payments directly to Ms. C sufficient to retire his \$10,000 loan to Mr. and Mrs. G; this repayment was credited to Mr. and Mrs. G as mortgage payments to Ms. C.

Without the knowledge of Mr. Friesen or Ms. C, Mr. and Mrs. G transferred the mortgaged property to Mr. G senior. Mr. G senior then transferred the property to another person. Both transfers occurred without the parties seeking legal advice or ensuring the conveyance of clear title.

In February, 1992 Mr. G senior discovered that Ms. C held a mortgage on the property. He asked Mr. Friesen what the mortgage was for, whether payments had been made and how much was owing. Mr. Friesen contacted Ms. C to tell her that Mr. and Mrs. G had sold the property, and that Mr. G senior wished

to pay off and discharge the mortgage. Ms. C told him that \$34,500 remained owing, which she would round off at \$34,000. Mr. Friesen then informed Mr. G senior that, although \$34,500 was owing, Ms. C was prepared to discharge the mortgage for \$34,000. Mr. Friesen did not disclose that he had previously had a personal interest in the mortgage. This information was relevant and important for Mr. G senior to know in determining whether or not to accept Mr. Friesen's statement on the balance owing under the mortgage.

Admissions and Penalty

Mr. Friesen admitted that, in acting for Ms. C when his interests conflicted with hers, he had breached Rules B/9(b) and B/13(b) of the former *Professional Conduct Handbook* (now Chapter 7) and that his conduct constituted professional misconduct. In the circumstances, Mr. Friesen was obliged to notify Ms. C in writing of his interest in the transaction, insist that she obtain independent legal advice and refuse to act for her, but he failed to do so.

Mr. Friesen further admitted that he had conducted himself in a manner unbecoming a member of the Law Society when he advised Mr. G senior of the amount outstanding on the mortgage loan, but without also advising him that Mr. Friesen had previously had a personal interest in the debt.

On July 15, 1996 the Discipline Committee and the hearing panel accepted Mr. Friesen's admissions and his proposed penalty, and ordered that he:

1. be reprimanded;
2. successfully complete, at his own expense, a professional responsibility course when and as directed by the Law Society, and by no later than March 15, 1997; and
3. pay \$2,500 as costs of the discipline proceedings on or before March 15, 1997.

Discipline Case Digest — 1996: No. 9 October (Friesen / Orloski)