

Vancouver, B.C.

Called to the Bar June 14, 1985

**Discipline hearing panel:** June 14, 1995

J.M. MacIntyre, Q.C., Chair, K.F. Warner and J. Shackell

J. Whittow, for the Law Society

R. Sugden, Q.C., for Mr. Andison

### **Summary**

While representing the plaintiff in a debt collection action, Mr. Andison failed to carry out the instructions of his client and misled her into believing that he had taken certain steps on the file when he had not.

### **Facts**

In November, 1991 Mr. Andison was retained by Ms. T to represent her in an action to recover money that she had loaned to Mr. H for a townhouse construction project.

At the time she retained Mr. Andison, Ms. T had already filed a writ of summons on her own behalf. Mr. H had filed a statement of defence in which he admitted the debt, but disputed the amount and asserted that the debt was not to be paid until completion of the construction project.

Mr. Andison told Ms. T that Mr. H might declare bankruptcy if faced with a judgment, and Ms. T agreed to delay prosecuting the action until some townhouse units were sold and funds became available. From November, 1991 to October, 1992, Mr. Andison and Ms. T monitored the construction project.

In November, 1992, Mr. H would not return Mr. Andison's telephone calls. Ms. T instructed Mr. Andison to proceed with the action.

After contacting the court registry and learning that a trial date was available in June, 1993, Mr. Andison told Ms. T he had obtained that trial date, though he had not done so. On the day Mr. Andison had said the trial was set, Ms. T went to court. She found that her case was not on the trial list. When she contacted Mr. Andison, he falsely advised her that the trial could not proceed because Mr. H was out of the city.

Mr. Andison agreed with his client to set a summary trial application for July, 1993. He did not do so.

In August and September, 1993 Ms. T and another person on her behalf repeatedly tried to contact Mr. Andison to express their dissatisfaction with the delays. In September, 1993 they instructed Mr. Andison to make a summary judgment application, but he took no steps to do so until March, 1994 at which time he filed an appointment of solicitor and notice of intention to proceed. He also drafted a notice of motion and affidavit.

He instructed a process server to serve Mr. H personally with the notice of intention to proceed, but the process server was unable to effect service.

Mr. Andison told Ms. T the summary judgment application was set for April 13, 1994. When he was unable to serve Mr. H, Mr. Andison then told Ms. T the matter would be reset for April 27, 1994. On that day, Mr. Andison told Ms. T that the matter could not proceed because Mr. H had fired his lawyer the day before and a judge would therefore be reluctant to render judgment against him. Mr. Andison assured Ms. T that he would attend court that day, but he did not do so.

In fact, Mr. Andison had not set down the application, and that was the reason it could not proceed. He lied to his client on these occasions to cover up his procrastination on the file.

After Ms. T complained to the Law Society, Mr. Andison admitted his conduct and expressed remorse.

### **Admission**

Pursuant to Law Society Rule 469, Mr. Andison admitted, and the Discipline Committee and discipline hearing panel found, that Mr. Andison had acted incompetently in failing to carry out the instructions of his client and had professionally misconducted himself in misleading his client.

**Penalty**

The Discipline Committee and the discipline hearing panel ordered that Mr. Andison:

1. be suspended for one month, beginning July 1, 1995;
2. pay up to \$1,000 toward the cost of the discipline proceeding; and
3. undergo a practice review by the Competency Committee, at his own expense.

The hearing panel said that it was a serious matter for a lawyer to lie to a client about having taken steps on a file. A suspension was generally an appropriate penalty for such misconduct, in accordance with other discipline cases.

In determining the length of the suspension, the panel noted as mitigating factors that Mr. Andison had no discipline record. He also admitted his fault when Ms. T made a complaint to the Law Society and before a citation was issued, and he did not claim or receive legal fees from Ms. T.

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