

Prince George, B.C.

Called to the Bar: June 29, 1972

Discipline hearing panel: January 10, 1994

W.M. Trotter, Q.C., as a one-Bencher panel

J. Whittow, for the Law Society

The member, on his own behalf

Summary

While representing the defendant in a motor vehicle action, the member failed to file a statement of defence and failed to respond to written requests from opposing counsel to do so. When the plaintiff's lawyer later called to enquire about the statement of defence, the member lied by saying that he had dictated the document, when he had not, and that the document would be delivered the following week.

Facts

The member was retained in January, 1992 by the defendant in a motor vehicle action. After making enquiries with ICBC, the member learned that his client had no insurance coverage. Though the member intended to turn this file over to another lawyer with whom he practised in association, he did not do so.

The member failed to file a statement of defence for the client and failed to respond to written requests for the document from the plaintiff's lawyer in August and September, 1992, following examinations for discovery.

When the plaintiff's lawyer telephoned on October 1, 1992, the member said that he had dictated the statement of defence but that the letter was tied up in dictation and would be provided the following week. That statement was untrue; the member had not dictated a statement of defence.

The plaintiff's lawyer wrote again on February 1, 1993, stating he would have no choice but to file for interlocutory judgment unless the member provided the statement of defence within four days. The member took no action.

On February 9, 1993 the plaintiff's counsel called the lawyer who practised with the member to inform him of the situation. That lawyer took over conduct of the file from the member and the client was not harmed.

The member reported his own conduct to the Law Society in March, 1993.

Decision

The member's conduct constitutes professional misconduct.

Penalty

In deciding whether to impose a fine or suspension, the discipline hearing panel took note of the member's previous discipline admission in December 1992, which was for failing to take action on a client file, misleading the client into believing that the matter was in hand and lying to opposing counsel. The member attributed both instances of dishonest conduct to a fragile feeling of self-worth, which prevented him from refusing or referring away work that he was incompetent or too busy to handle. He said he lied to cover up his inability to meet his obligations.

The panel noted that, in this instance, the member made his untrue statement to the plaintiff's lawyer on October 1, 1992, which was within four weeks of being disciplined, fined and charged costs in his previous hearing. He still did not file a statement of defence or transfer the file to another lawyer, though these options were open to him.

After reporting his conduct to the Law Society in March, 1993, the member voluntarily sought psychiatric assistance and also ongoing counselling for his procrastination and self-esteem problems. The psychiatric report found that the member had no major psychiatric disorder or illness, but rather a personality problem that affected his professional functioning.

While acknowledging these steps taken by the member, the panel was still not satisfied that he had achieved a complete break with past behaviour.

The panel said that the significance of a lawyer's honesty in all dealings cannot be over-emphasized. The interest of the profession and the public coincide in requiring that lawyers be able to rely on statements by their colleagues as being nothing but accurate. Lawyers must know that they will not be permitted to practise unless they do so honestly.

The panel concluded that it might be trivializing the member's dishonest conduct to simply impose another fine. The panel instead ordered that the member:

1. be suspended for 30 days beginning March 5, 1994;
2. provide to the Law Society a written undertaking to restrict his practice to real estate law, family law, corporate/commercial law and wills and estates;
3. undergo remedial programs recommended by the Competency Committee to the satisfaction of the Committee;
4. undergo a review of all his open files by a lawyer or lawyers appointed by the Competency Committee;
5. continue in treatment with a counsellor acceptable to the Law Society until relieved of that condition by the Society;
6. provide the Law Society with written authorization to permit the Society to obtain reports from any medical person and any counsellor advising or treating him;
7. provide a letter to the Law Society agreeing to random audits of any or all of his files by the Society until relieved of that condition by the Competency Committee; and
8. pay \$2,250 as costs of the discipline proceedings by June 30, 1994.

The panel decided that, as a condition of resuming practice after suspension, the member must first provide to the Law Society his undertaking to limit his practice and his authorization for medical experts and counsellors to report to the Society, must permit the review of his files and must complete all remedial studies required by the Competency Committee.