

Victoria, B.C.

Called to the Bar: September 13, 1977

Discipline hearing panel: November 12, 1993

R.C.C. Peck, Q.C., Chair, S.A. Moore and A. Howard

Benchers: March 4, 1994

P. Abrioux, for the Law Society

D. Cave, for the member

Summary

The member and a client agreed to secure payment of legal fees by the client consenting to a judgment in favour of the member's law firm, for registration against the client's property. As the basis for the consent judgment, the member prepared a statement of claim setting out that the client owed \$30,000 to the member's firm, that the firm had demanded payment and that the client had neglected or refused to pay. At the time the statement of claim was filed, the client did not, in fact, owe the law firm \$30,000; this was the firm's estimate of its anticipated fees and disbursements. A compilation of the firm's accounts rendered to the client at that time totalled \$10,000. The firm had also undertaken to pay the client's previous solicitors for their outstanding accounts for services to her.

The member had earlier obtained independent legal advice for the client before she agreed to provide security for legal fees to the member's firm by way of a mortgage, but that transaction did not proceed. The member did not subsequently ensure that the client had independent legal advice before she consented to the judgment.

Facts

The member was a partner in a law firm that began representing Ms. L in a matrimonial matter after undertaking to pay the accounts of her previous lawyers.

Ms. L was having difficulty paying her legal fees, and the member's firm estimated that it would bill \$30,000 in fees and disbursements on the file. At the member's suggestion and after receiving independent legal advice, Ms. L agreed to grant a mortgage on the former matrimonial home to the law firm as security for fees. Though the house was in Ms. L's name, the land title office refused to register the mortgage without the consent of her spouse who had filed a *lis pendens* and an entry against the property.

Faced with a conundrum in securing his fees, the member asked the client to consent to a judgment in favour of the law firm, which could then be filed against the client's matrimonial home. The client agreed to securing the fees in this way. As the basis for the consent to judgment, the member drafted a statement of claim, which stated that Ms. L was indebted to the law firm for \$30,000, that the firm had demanded payment and that Ms. L had either refused or neglected to pay. At the time the statement of claim was filed, Ms. L did not, in fact, owe the firm \$30,000; this was the firm's estimate of its anticipated fees and disbursements. A compilation of the firm's accounts rendered to Ms. L at that time totalled only \$10,000. The firm had also undertaken to pay the client's previous solicitors for their outstanding accounts for services to her.

The member did not obtain independent legal advice for Ms. L respecting the action and the filing of the judgment.

Ms. L discharged the law firm and retained another lawyer in July, 1991. The accounts from the member's law firm totalled \$30,000 at that time. By agreement, they were later reduced to \$20,000 and paid from the proceeds of sale of the client's matrimonial home.

The complaint in this matter was initiated by Ms. L's spouse, and at no time did the Law Society receive a complaint from the member's client.

Decision

The member's conduct constitutes professional misconduct.

Penalty

The hearing panel found that the member lacked candour in drafting and filing the statement of claim. The panel said he acted recklessly, but that he did not wilfully intend to mislead the court. Rather, he was engaged in a rather narrow focus in securing his law firm's needs in a manner that was acceptable to the client. In doing so, he took considerable licence with the pleadings.

The panel said it was obvious that the member was painfully aware in hindsight of the nature of his misconduct and the problems flowing from it, and recommended that the matter not be published, under Rule 495(2)(a).

The panel ordered that the member pay:

1. a fine of \$2,000; and
2. \$7,000 as costs of the discipline proceedings.

The Discipline Committee appealed this penalty to the Benchers.

On March 4, 1994, the Benchers upheld the fine and costs imposed by the hearing panel, but they rejected a recommendation of the panel that the case not be published.

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