

Nanaimo, B.C.

Called to the Bar July 13, 1982

**Discipline hearing panel:** November 16, 1994 and May 22, 1996

W.T. Wilson, Q.C., as a one-Bencher panel

J. Whittow, for the Law Society

Mr. Jones, on his own behalf

### **Summary**

Mr. Jones failed to obtain an order of divorce for his client after he was instructed to do so. He misled his client with assurances that her divorce was final when it was not, and he misled her into believing that he had mailed a copy of the order to her former husband when he had not. Mr. Jones also failed to reply promptly to Law Society correspondence. His conduct constituted professional misconduct.

### **Facts**

Mr. Jones began acting for L on a legal aid retainer in matrimonial proceedings in October, 1987. He obtained an interim custody order and a restraining order for L against her husband. In June, 1988 Mr. Jones filed a divorce petition on her behalf, and L subsequently instructed him to file an order for divorce.

In January, 1990 Mr. Jones filed the order for divorce, but it was rejected by the court registry. He resubmitted the order with revisions, but the registry again rejected it. Mr. Jones subsequently took no steps to correct and resubmit the order.

L called Mr. Jones repeatedly to enquire about the status of her divorce. Each time she called, Mr. Jones assured her that the divorce had been finalized. He did so without checking the file, which he knew was closed and stored in his basement.

By the beginning of 1991, Mr. Jones was aware that his secretary was unreliable in that she kept things from him and gave him incorrect information on his files. Despite Mr. Jones' concern that his secretary was unreliable, he continued to rely on her recklessly and with wilful blindness.

In February, 1991 Mr. Jones intentionally misled L that he had mailed the divorce order to her former husband, although he had not and had no reasonable basis for making such a statement.

In July, 1992 L decided to mortgage her house to finance renovations. She contacted Mr. Jones and he assured her that her divorce was final and that she could obtain a mortgage. She thereafter arranged for a \$25,000 mortgage, which her financial institution approved subject to receiving a copy of the divorce order, among other things. L called Mr. Jones' office on September 1, but he was away. She called the court registry herself and discovered that there was no divorce order. She called Mr. Jones' office again twice in the next two days and was told that Mr. Jones would retrieve and review her file.

L retained a different lawyer who helped her retrieve her file from Mr. Jones and obtain her divorce order.

Because of Mr. Jones' actions, L was unable to secure a mortgage loan, and she had to finance her renovations by cashing in RRSPs.

L complained to the Law Society on September 3, 1992. The Society wrote to Mr. Jones once in September and several times in October. Mr. Jones provided a substantive response on October 23. The Society reported that it planned to close the file, but proceeded with the matter when L complained again in January, 1993.

The Law Society wrote to Mr. Jones in January and February requesting his response.

Mr. Jones misled the Law Society in a letter dated February 19 (faxed February 25) by saying that he was seeking his file from L's new lawyer in order to respond. On February 28 he wrote again to say that he had

not yet received the file. In fact, Mr. Jones did not request the file from L's new lawyer until he encountered her in March, 1993, and he first formally requested the file in June, 1993.

Mr. Jones wrote to the Society on March 29, after which the Society wrote in April and May to request a response. Mr. Jones provided a substantive response on May 11 and answered further correspondence from the Society in June and July.

### **Decision**

Mr. Jones' conduct constituted professional misconduct.

### **Penalty**

The discipline hearing panel stated that it must impose a penalty that reflects the seriousness of the misconduct for there to be some deterrence. The profession must see that the Law Society deals with serious misconduct and the public must recognize that the Law Society fulfils its commitment to the public interest in discipline matters.

The panel said that Mr. Jones must make a commitment to sobriety as he had shown a willingness to do. The panel ordered that Mr. Jones:

1. be suspended for one month beginning July 1, 1996;
2. pay \$2,500 toward the costs of the discipline proceedings by May 31, 1997;
3. undertake to the Law Society that he:
  - (a) will not consume alcohol; and
  - (b) will ask his doctor to report to the Law Society every six months, beginning September 30, 1996, that the doctor has no reason to believe that Mr. Jones' competency to practise law is adversely affected by dependency on alcohol.

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