

Victoria, B.C.

Called to the bar: January 13, 1981

Ceased membership: December 31, 1992

**Discipline hearing panel:** March 31 and October 3, 1992; June 28 and November 22, 1993

S.F.D. Kelleher, Chair, K.W. Antifaev, Q.C. and B.B. Trevino, Q.C.

J. Whittow and J. Perry, for the Law Society

The member appeared on his own behalf on March 31; though notified, he did not attend the balance of the hearing.

### **Summary**

The member incompetently performed his duties as a lawyer on real estate, corporate and wills and estates files. On one occasion, he also unreasonably refused access to corporate records to the lawyer acting for a director of the company, and he treated that lawyer discourteously. On several different matters, the member failed to reply promptly to Law Society correspondence.

### **Facts**

#### **Incompetent performance of duties**

In March, 1991 a Law Society competency review panel rendered a report on the member's practice, finding that he was practising in an incompetent manner. The discipline hearing panel found incompetency in the following respects:

##### **Wills and estates**

The member generally failed to keep notes on the assets of testators and on the testators' family members. He also failed to adequately draft wills, making errors of a basic and fundamental nature.

##### **Corporate records**

The member failed to maintain corporate records in the manner required by the *Company Act*.

##### **Real estate**

The member failed to write interim reporting letters to clients, to obtain appropriate written consents before acting for two sides in mortgage preparation, to obtain appropriate searches and to prepare the purchaser's statements of adjustments.

##### **Refusing access to corporate records, discourtesy**

On November 27, 1991 the member's brother and the brother's lawyer came to the member's office to search the corporate records of a company of which both the member and the brother were directors. The member's office was the registered and records office of the company.

The member refused to permit his brother's lawyer to review any portion of the company's records, including the public portions, though this refusal was contrary to the provisions of the *Company Act*. The only reason the member gave for this position was that the company was "a family matter."

On this occasion the member acted discourteously toward his brother's lawyer, pushing him on the chest with sufficient force to make him step backward.

#### **Failure to respond to Law Society**

At the direction of a competency review panel, a Law Society staff lawyer wrote to the member on October 3, 1990 and tried to contact him by telephone on October 4, 9, 12 and 15, 1990. Though the staff lawyer left

messages on each occasion, the member did not return the call. The staff lawyer wrote again on October 17 and 29, 1990, April 25, June 21, and July 9, 1991, but the member did not reply.

On a another matter, the Law Society asked the member for his explanation of a complaint in August, 1991. Though he gave an initial response, the member failed to reply to letters from the Society dated October 11, November 20 and December 24, 1991, and he did not respond to further communications from the Society on November 29, December 3, 10, 17 and 19, 1991.

On a different complaint, the member failed to respond to letters from the Society dated December 6, 1991 and January 2 and 16 and March 5, 1992.

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The member voluntarily ceased membership in the Law Society at the end of 1992.

### **Decision**

On wills and estates, corporate and real estate files, the member incompetently performed duties undertaken by him in his professional capacity. He professionally misconducted himself both in failing to reply promptly to Law Society correspondence and in refusing access to corporate records of a company. Further, his discourtesy toward another lawyer constitutes conduct unbecoming a member.

### **Penalty**

The panel ordered that the member:

1. pay a fine of \$3,000 by June 30, 1994;
2. pay \$8,000 as costs of the discipline proceeding by June 30, 1994;
3. not practise wills and estate law, corporate law or real estate law until he satisfies a board of examiners appointed by the Competency Committee that he is competent to practise in those fields.

The hearing panel noted that the member's decision not to attend most of the hearing resulted in higher costs than would otherwise have been the case.

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