

Vancouver, B.C.

Called to the Bar October 29, 1954

Discipline hearing panel: July 20, 1993

D.A. Silversides, Q.C., Chair, S.A. Moore and P.D. Warner

Counsel for the Law Society: E.D. Crossin

The member appearing on his own behalf

Summary

The member incompetently carried out his duties as a lawyer on several real property, wills and estates, corporate records and civil litigation files. He professionally misconducted himself by breaching his undertaking and by sending another lawyer unprofessional correspondence.

Facts

On several real property, wills and estates, corporate records and civil litigation files, the member failed to:

- maintain adequate notes of client instructions;
- obtain retainer letters and provide final reporting letters to clients in certain instances;
- adequately implement a system of recording incoming correspondence or the date of receipt in certain instances;
- prepare and maintain accounts in a timely fashion in certain instances;
- respond to telephone calls and correspondence from other solicitors in certain instances;
- report to clients in certain instances;
- prosecute litigation or otherwise conduct client matters in a timely fashion in certain instances;
- maintain adequate file organization; and
- employ adequate office systems for file opening and closing, as well as bring-forward and limitation systems.

On one real property file, the member failed to comply with his undertaking to the vendor's notary on the amount to be paid on closing. He also failed to:

- prepare a reporting letter to the client following closing;
- prepare or retain documents or copies relating to the transaction, including mortgage terms, interim report, confirmation of the mortgagor's acceptance of terms, property purchase tax forms and trust reconciliations;
- conduct appropriate searches relating to the property including plans and statutory rights of way;
- obtain executed conflict letters from clients and the bank.

The member further represented to the bank in this transaction that the title was free and clear of charges when the bank's previous mortgage was not discharged.

On another real property file the member failed to:

- properly prepare the statement of adjustments, including his fees, several disbursements, property purchase tax and the builders' lien holdback;
- conduct a search of the plans relating to the property;

- prepare or retain documents or copies relating to the transaction, including the mortgage terms, the interim report, property purchase tax forms and trust reconciliations;
- request the appropriate undertakings from the vendor's solicitor; and
- obtain executed conflict letters from the client and the credit union.

On a third real property file, the member inappropriately handled undertakings to the purchaser's solicitor and failed to conduct a tax search.

On several wills and estates files the member failed to adequately draft wills or take adequate instructions relating to wills drafting and failed to adequately prepare estate forms for filing. On two corporate records files, the member failed to properly maintain records and minute books or failed to obtain adequate instructions to do so. On several family litigation files, the member failed to deal with certain matters in a timely fashion.

The member in one instance sent to another lawyer a letter of which the contents were unprofessional.

Decision

The member incompetently carried out his duties as a lawyer on these client files, professionally misconducted himself by breaching his undertaking and professionally misconducted himself by sending an unprofessional letter to another lawyer.

Penalty

The hearing panel ordered that the member:

1. complete a remedial program to the satisfaction of the Competency Committee, including the Professional Legal Training Course (with costs to be paid by the Law Society) and specific remedial studies programs in practice management, real estate, wills and estates, family law, civil law and corporate records;
2. be suspended from the practice of law:
 - (a) from July 31, 1993 until such time as he has consented to the appointment of a custodian of his practice and the court has appointed a custodian; and
 - (b) from the time the custodian is appointed until the member has completed his remedial studies program, except that the member be permitted during that time to prepare powers of attorney in Spanish and witness signatures as a commissioner for taking affidavits or as a notary public, but without giving any legal advice or performing any other legal service.
3. on returning to the practice of law, practise only as an employed lawyer, with his work being supervised by a lawyer approved by the Competency Committee for a period determined by the Committee, or at the Committee's option, by a Law Society staff lawyer.

The panel decided that the Competency Committee would have the right to relieve the member from completing any of the remedial courses on his undertaking not to practise in that area of law until relieved of that undertaking by the Committee.

The panel also decided that the member not be ordered to pay costs of the discipline proceedings.