

North Vancouver, B.C.

Called to the B.C. Bar September 10, 1982

Discipline hearing panel: August 27, 1993

R.C.C. Peck, Q.C. as a one-Bencher panel

Counsel for the Law Society: J. Mackoff

Counsel for the member: C. Hinkson, Q.C.

Summary

The member obtained the signatures of his clients, Mr. and Mrs. T, and of their daughter on a land transfer document to convey a residential property into the daughter's name alone. Mrs. T properly instructed the member to reduce the market value stated on the document. Because Mrs. T wanted a clean copy of the transfer form, the member concluded that he would have to prepare a new form and seek new signatures instead of simply altering the amount and having his clients initial it. Rather than attending on his clients a second time — when Mr. T was very ill and Mrs. T was suffering emotionally in fear that her husband might die — the member copied the signatures on the new land transfer. He then signed the document attesting to the signatures and filed the document in the Land Title Office intending that it be acted on as genuine. The member's conduct constitutes professional misconduct.

Facts

Between 1988 and 1992 the member acted for Mr. and Mrs. T on different occasions and he developed a friendship with them.

In February, 1992, when Mr. T was ill in hospital following surgery, the couple asked the member to prepare Powers of Attorney for them in favour of their daughter. When the member visited the hospital to obtain signatures, he felt compassion for Mr. T because of his illness and for Mrs. T because she was suffering emotionally over her husband's condition in fear that he might die.

Soon afterwards, Mr. and Mrs. T decided they wanted to transfer to their daughter their interest in residential property then jointly held with the daughter. The member prepared a transfer document, obtained the daughter's signature and then went to the couple's residence to witness their signatures. Mr. T was still very ill at that time.

Mrs. T instructed the member to lower the stated market value on the transfer form. This was a legitimate request, as Mrs. T believed the change was an accurate reflection of market value.

The member later concluded that he would need to prepare a new form and seek new signatures instead of simply altering the amount and having his clients initial the change since Mrs. T expressly wanted a clean copy of the form. Rather than attending on his clients a second time when Mr. T was very ill and Mrs. T was suffering emotionally over her husband's condition, the member copied the signatures of Mr. and Mrs. T and their daughter on the new form and filed the document for registration at the Land Title Office on March 10, 1992, intending that the document be acted on as genuine.

Decision

The member's conduct constitutes professional misconduct.

Penalty

In assessing penalty, the hearing panel considered that disbarment would be an appropriate penalty, unless there were strong mitigating circumstances sufficient to reduce the seriousness of the misconduct.

The panel took into account 10 character letter references pointing to the previous good character of the member. These letters and other evidence showed that the member had appropriately discharged his duties

as a lawyer throughout his career and had made a variety of charitable contributions to clients and other people for many years.

It was, in fact, the member's compassion for others that led him to this instance of misconduct where he exercised woefully inadequate judgement.

The panel decided there were mitigating factors that made disbarment unnecessary, specifically:

- the member's previous good record;
- his good character evidenced by his significant contribution of time to clients and of time and money to other people in the community over the years;
- the fact that his lack of judgement in this case was motivated out of a sense of caring for his clients;
- his acknowledgement of the facts that support the discipline citation; and
- the fact that his former clients do not appear to bear any animosity toward him.

The penalty must be punitive, but not ruinous, the panel decided. A substantial fine would be a suitable penalty; a suspension, on the other hand, could mean the member would become unable to pay his fine and could lose his practice. The panel accordingly ordered that the member:

1. pay a fine of \$9,000 in three instalments of \$3,000 each, by February 27, 1994, August 27, 1994 and February 27, 1995; and
2. pay costs of the discipline proceedings, totalling \$6,000, by December 31, 1994.

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