

Burnaby, B.C.

Called to the Bar: May 15, 1974; ceased December 31, 1991

**Discipline hearing panel:** June 23, 1992 and January 27, 1993

K.F. Nordlinger, Q.C., as a one-Bencher panel

J. Whittow, for the Law Society

The member appearing on his own behalf

### **Summary**

While a member of the Law Society, Mr. Gerbrandt professionally misconducted himself by attempting to impose, as a condition of settling a fee dispute with former clients, a requirement that they withdraw complaints made to the Law Society.

### **Facts**

While representing plaintiffs in a motor vehicle action in early 1988, the member negotiated a settlement with ICBC, and the plaintiffs instructed him to settle. A dispute then arose between the member and his clients over what the member had confirmed as the total settlement amount.

The plaintiffs retained a new lawyer in April, 1988. He proposed to resolve the dispute between the member and the plaintiffs by having the member reduce his fee by \$13,000.

The plaintiffs wrote to the Law Society on July 12 complaining of the member's conduct in the settlement with ICBC. The Law Society held the complaint in abeyance pending the resolution of the dispute, and the member was not notified of the complaint until January, 1989.

Between September and December, 1988 the member and the plaintiffs' lawyer discussed resolution of the fee dispute. On December 23 the member agreed to reduce his fee by \$13,000. On January 16, 1989 the Law Society wrote to the member advising him of the plaintiffs' complaint and requesting an explanation. The member sent the settlement proceeds, less his agreed-upon fee, to the plaintiffs' new lawyer on February 6. In his covering letter he stated:

The agreement for reducing our fees included an agreement that there would be no further action, taxation of the solicitor/client account or any complaints concerning my conduct.

That same day he wrote to the Law Society saying the dispute with the plaintiffs would be resolved in the near future and that the plaintiffs would be withdrawing their complaint.

The lawyer for the plaintiffs wrote to the member saying that he could not guarantee that the plaintiffs would withdraw their complaint and that it would ultimately be up to the Law Society on whether to proceed in any event. The member wrote back to say that he looked forward to hearing a response respecting the Law Society and that he considered plaintiffs' lawyer to be on his undertaking to hold the balance of the settlement funds pending resolution of this issue.

On March 10, 1989 the plaintiffs' lawyer said his clients intended to proceed with their complaint. The member released the lawyer from his undertaking and stated that he was prepared to answer the Law Society on the plaintiffs' complaints.

By the time of the hearing, Mr. Gerbrandt had voluntarily ceased membership in the Law Society.

### **Decision**

Mr. Gerbrandt's conduct constitutes professional misconduct. The hearing panel noted that the public must have confidence the Law Society will investigate the integrity and standards of its members, notwithstanding private settlements.

**Penalty**

The hearing panel ordered that Mr. Gerbrandt be reprimanded and pay \$1,200 as costs of the discipline proceeding by February 26, 1993.

*Discipline Case Digest — 1993: No. 15 November (Gerbrandt)*