

Vancouver, B.C.

Called to the Bar May 10, 1983

Discipline Hearing Committee: August 27, 1990

P.A. Murray, Q.C., Chairperson, S. Moore and S. Hansen

Summary

While representing a client in her purchase of a townhouse, the member was informed that, as a condition of advancing mortgage funds, the mortgagee required a copy of the separation agreement between the client and her husband. The separation agreement had not then been executed and the member became concerned that the funds would not be advanced and the transaction would fall through. On the day before the closing date, he prepared a final draft of the separation agreement and then forged the signatures of the client, her husband and a notary public on four counterparts of the agreement. The forgery was discovered the next day before the separation agreement was sent to the mortgagee. The member was determined to have professionally misconducted himself and he was disbarred.

Facts

In July, 1989 Ms. M retained a Vancouver law firm to settle her matrimonial dispute and prepare a separation agreement.

The member, an associate employed by the firm, was instructed to oversee the sale of the matrimonial home and Ms. M's subsequent purchase of a townhouse. Ms. M told the member and another lawyer in the firm, who was preparing the separation agreement, that the mortgagee would want a copy of the executed agreement for its files.

A mortgage commitment document from the mortgagee, sent to Ms. M and relayed by her to the member, specified as a special condition of the mortgage the receipt of a copy of the divorce/separation agreement "confirming child support payments, and that neither party will have any further interest in or obligation to the other's assets or liabilities." On October 19, 1989 solicitors for the mortgagee sent the member copies of the mortgage documents for execution, requesting that, as a condition of the mortgage funds being advanced, the mortgagee receive a copy of the separation agreement.

On October 26, the day before the closing date for the townhouse purchase, the member had concern that, without the separation agreement, the mortgagee would not forward funds and the transaction would fall through. He had the draft agreement, as yet unseen by the husband, printed out in final form. He then proceeded to forge the signatures of Ms. M, her husband and a notary public on four counterparts of the agreement, copying the signatures from documents on file, and using more than one pen in the process.

The member forged the signatures in order to ensure completion of the transaction. He did not premeditate the forgery and did not follow through with it carefully, as reflected in the fact he left the agreement on file with a conveyancing paralegal.

During a telephone conversation with Ms. M on the morning of October 27, the conveyancing paralegal determined that Ms. M had not signed the separation agreement. The paralegal informed two partners in the firm who, after investigating the matter, terminated the member's employment.

The member advised the Law Society of his actions in letters dated November 1, 1989 and January 2, 1990, and the law firm also made a report on November 2, 1989.

The member expressed embarrassment and remorse at his conduct. At the time he forged the signatures, he was under considerable stress and pressure from financial difficulties, marital problems and an overcharged workload which he had assumed in order to gain the respect of the partners in his firm.

There were no adverse consequences to the client. The mortgagee agreed to late delivery of the separation agreement and the townhouse purchase completed as planned.

Decision

The member's conduct constitutes professional misconduct.

Penalty

The Hearing Committee observed that section 3 of the *Legal Profession Act* obliges the Law Society to protect the public interest by ensuring the independence, integrity and honour of its members.

“The preparation and witnessing of documents is fundamental to the practice of law,” the Committee observed. “Intentionally forging signatures to a document with the intention that the document be relied upon as genuine is a fundamental breach of the member's duty to his client and to the public generally. It is conduct which reflects adversely on the lawyer's honesty, trustworthiness and fitness as a lawyer and, therefore, disbarment is the appropriate remedy unless there are strong mitigating circumstances sufficient to reduce the seriousness of the conduct.”

The Committee accepted that the member did not act for direct financial gain, except for the preservation of his job, and that he was under considerable stress. He had also promptly reported his conduct, facilitated disciplinary proceedings by agreeing to a statement of facts, and voluntarily agreed not to practise law pending the hearing. The Committee further acknowledged the member's expression of shame, embarrassment and remorse.

“However,” the Committee stated, “the trust and privilege that a lawyer enjoys in the eyes of the public, in particular in dealing with documents which are to be relied upon, must be maintained at the highest level. Members of the legal profession must be of sufficient strength of character to overcome stress in the practice of law and not to succumb under any circumstance to dishonest or deceitful conduct.”

The Committee ordered that the member be disbarred.

J.D. Ziskrout, for the Law Society
W.B. Smart, for the member