

Breach of Undertaking

JACK ALEXANDER ADELAAR

Vancouver, B.C.

Called to the bar: June 29, 1972

The member acted as counsel for two defendants in an action in which the plaintiff claimed damages for breaches of mining and option agreements. Following negotiations, the defendants agreed to settle by paying \$13,000 to the plaintiff in exchange for the plaintiff delivering a share certificate to the defendants.

The member delivered a signed Consent to Judgment to counsel for the plaintiff to hold as security for payment on the settlement. In August, 1989, the member wrote to the plaintiff's counsel as follows:

“Upon receipt of a properly executed Share Certificate, I will undertake to give you a trust cheque in the sum of \$13,000.00 in full and final settlement of this action.

The member did not intend to give his unconditional professional undertaking, and failed to appreciate the plain, unequivocal meaning of the words used by him.

When the share certificate was delivered to the member, he refused to pay the agreed sum on the ground that the defendants has not provided him with funds to do so. In December, 1989 the plaintiff filed the Consent to Judgment. Later, in January, 1990, the defendants gave \$2,500 to the member who paid these funds to the plaintiff's counsel in partial satisfaction of the judgment.

In March, 1990 the plaintiff began an action against the member claiming damages for breach of undertaking. The member settled the second action by personally paying the balance of the funds owing on his undertaking.

Following the issuance of a citation on April 19, 1991, the member tendered a conditional admission of a discipline violation to the Standing Discipline Committee.

The member admitted that he had professionally misconducted himself by breaching his undertaking when he failed to make payment on receipt of the share certificate. The Standing Discipline Committee accepted this admission, upon the member undertaking to the Law Society to follow any remedial studies directed by the Competency Committee. The Standing Discipline Committee ordered the admission be recorded on the member's professional conduct record, and that the outstanding citation be rescinded.