

Kelowna, B.C

Called to the Bar: May 10, 1977

**Discipline hearing panel:** August 19, 1992

W.M. Trotter, Q.C., Chair, R.C.C. Peck, Q.C. and N.A. MacDonald

Counsel for the Law Society: J. Whittow

Counsel for the member: A. Perry

### **Summary**

The member purchased inventory that had been seized from a company for rent distress; he subsequently learned the company had filed an assignment in bankruptcy. He lied to another lawyer who represented the trustee in bankruptcy by saying that he had already resold the inventory, when he had not done so. He repeated the lie the next day to the trustee, but then said he would back out of the resale and make the inventory available to the trustee. The member's conduct in lying about the resale of inventory constitutes conduct unbecoming a barrister and solicitor. His conduct in approaching the trustee in bankruptcy directly when he knew the trustee was represented by another lawyer violates Ruling D/1(a) [now Chapter 8, Rule 11] of the *Professional Conduct Handbook* and constitutes professional misconduct.

### **Facts**

When told by a bailiff in early October, 1987 that a local ski shop inventory might be seized and sold by the landlord for rent distress, the member expressed interest in purchasing the inventory. On October 23, three days after the inventory was seized, the bailiff and the member again discussed the possibility of purchase. The bailiff obtained two appraisals the next day and followed the landlord's instructions to sell the goods. The member purchased the inventory for \$40,000 on the morning of October 26, anticipating that he would resell it.

Meantime, the company owning the ski shop filed an assignment in bankruptcy. The assignment was filed late in the day on October 23 and signs were posted at the ski shop that evening. The trustee in bankruptcy tried to contact the bailiff to inform him of the bankruptcy and demand the return of the distrained inventory. The trustee did not reach the bailiff until the morning of October 26, just following the bailiff's sale of the inventory to the member. The member said that he did not know of the bankruptcy until that afternoon.

When the lawyer for the trustee advised the member of the bankruptcy by telephone on October 26, the member said that he had resold the inventory and no longer had possession of it. He lied to the lawyer because he had not yet sold the inventory, and the bailiff still had possession. The member told this lie out of frustration and to protect his financial interest.

On October 27 the member went to the office of the trustee and repeated the lie by telling the trustee that he had resold the goods for \$50,000. The trustee then brought an action against the member and other parties for return of the goods or the proceeds of sale, and obtained an injunction. The member was served with the pleadings and the injunction. That evening he telephoned the lawyer for the trustee saying he wanted to back out of the resale and would make the goods available for the trustee. He did not say that he had lied about the resale.

On October 28 the member went to the office of the trustee and criticized the way the trustee's lawyer was handling the matter.

### **Decision**

The member's conduct in lying about the resale of inventory constitutes conduct unbecoming a barrister and solicitor. His conduct in approaching the trustee in bankruptcy directly when he knew the trustee was

represented by another lawyer violates Ruling D/1(a) [now Chapter 8, Rule 11] of the *Professional Conduct Handbook* and constitutes professional misconduct.

### **Penalty**

The hearing panel said that lying to another lawyer is a matter of utmost severity. The legal profession is based on mutual trust and confidence so that what lawyers tell each other can be accepted. The member did not act in his professional capacity or represent clients in a legal transaction when he told the lie. Rather, he engaged in personal business where his financial interests were placed at sudden and significant risk, and he lied to protect his interest as a private investor.

Though the member was acting in his private capacity, he told the lie to another lawyer in a legal matter. In the subsequent action for recovery of the goods, parties relied on the member's statements and his lie caused confusion. It was logical for a certain distrust to flow to the legal profession as a result. The panel said it is imperative that lawyers, both in their professional and personal lives, conduct themselves and their dealings with honesty and integrity.

The member was personally stigmatized in the community because of his conduct in this matter. He acknowledged his wrongdoing frankly to a number of lawyers in the community and he experienced considerable shame, including shame before his father who had been a prominent judge in B.C.

With respect to the member lying to the trustee and to the lawyer for the trustee, the hearing panel ordered that the member:

1. pay a fine of \$10,000;
2. pay costs of the discipline proceedings totalling \$5,000; and
3. send letters of apology to the trustee and the lawyer for the trustee.

The panel noted that deciding between a fine and a suspension was a close call, but they imposed a \$10,000 fine which was the maximum permissible under the *Legal Profession Act*.<sup>1</sup>

With respect to the member directly contacting the trustee when the trustee was represented by a lawyer, the panel ordered that the member be reprimanded.

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<sup>1</sup> The maximum fine increased to \$20,000 in September, 1992, following statutory amendments.