

Burnaby, B.C.

Called to the Bar: May 14, 1973

Discipline hearing panel: April 8, 1993

D.A. Silversides, Q.C., Chair, J.M. MacIntyre, Q.C. and W.T. Wilson

G.D. McKinnon, for the Law Society

A.G. Henderson, for the member

Summary

The member signed a mortgage as witness to the signature of a consenting party, thereby purporting that the party had signed and sealed the document in the member's presence when in fact she had not.

Facts

The member acted for Mr. G and his related companies for six years, and had encountered Mrs. G socially on occasion. In July, 1983 Mr. G granted a mortgage over the matrimonial home to a bank as security for outstanding advances to one of his companies. Mrs. G was not a registered owner of the home and not a party to the mortgage.

Mr. G obtained the mortgage and took it home where Mrs. G signed it as a "consenting party." He then asked the member to sign the document as a witness to his signature and that of his wife. The member called Mrs. G and she confirmed that she had signed the mortgage. In the member's affidavit of witness attached to the mortgage, he stated only that he had witnessed the signature of Mr. G. He did, however, sign the mortgage beneath the words "signed, sealed and delivered in the presence of" as a witness to both signatures, even though Mrs. G was not present.

The bank registered the mortgage against the matrimonial home; neither the signature of Mrs. G, nor the witnessing of it, was necessary to register the mortgage or give it legal effect.

The member did not act for either the bank or Mrs. G or give them legal advice. The bank, however, relied on the signature of the member as an indication that Mrs. G had in fact attended before him personally and was aware of the mortgage terms.

On April 30, 1985 the bank began foreclosure proceedings against the matrimonial home and obtained an order for sale on December 6, 1985. A negligence claim brought by Mrs. G against the member for purporting to witness her signature was settled by the professional liability insurers.

The member voluntarily reported his conduct to the Law Society on June 9, 1989.

Decision

The member's conduct constitutes professional misconduct.

Penalty

The hearing panel took into account the position of counsel for the member and the Law Society that this was an isolated incident and not the normal practice of the member. The panel ordered that the member:

1. be reprimanded;
2. pay a fine of \$2,500;
3. pay \$750 as costs of the discipline proceeding by June 8, 1993.