

Vancouver, B.C.

Called to the Bar October 29, 1954

Discipline Hearing Committee:

March 1, 1989: G.L.F. Somers, Q.C., Chairman, T.A. Davies, and K.F. Nordlinger, Q.C.

April 5, 1989: G.L.F. Somers, Q.C., Chairman, H.J. Grey, Q.C., and J.M. MacIntyre, Q.C.

Summary

While the executor and solicitor for an estate, the member acted against the interests of the legatees, rendered accounts which were at times inappropriate, and threatened criminal proceedings against one of the beneficiaries for intermeddling with the assets and administration of the estate. While a solicitor in a conveyance, the member inadvertently breached his undertaking.

1. The K Estate

While acting as executor and solicitor for the estate of K, the member acted against the interests of the legatees by allowing the two residual beneficiaries to continue to be involved in the family business in a manner detrimental to the estate. When one of these beneficiaries filed a Caveat against the estate, the member wrote a letter threatening to institute criminal and civil proceedings against him for intermeddling with the assets and administration of the estate should he “continue to harrass (sic) the executor with unnecessary proceedings.”

The member rendered accounts which at times were not appropriate. He failed to pass his accounts in a timely manner or to resolve through court action certain difficulties he faced in passing his accounts. The accounts were in fact only passed at the insistence of the Law Society.

The Hearing Committee determined that the member had no improper motive in his handling of the estate. He had erred in judgment, however, due in part to the conflict he had with the two residual beneficiaries, the conflict between his roles as executor and solicitor, and his poor state of health. The Committee agreed with Law Society counsel's position that conflicts between the beneficiaries contributed to the member's “paralysis” in handling the estate.

The Committee found some justification for the member's belief that he might resolve matters to the best interests of all parties, at least up to the point he had agreed to apply to court for directions to sell estate assets, including business assets, so as to pay debts, executor's fees and to pay out the legacies.

The Committee concluded that the member's errors in judgment constituted incompetence amounting to professional misconduct and that, in threatening criminal proceedings against one of the beneficiaries, the member breached Ruling E/5 of the *Professional Conduct Handbook*. That Ruling states in part:

No member shall demand or appear to demand on behalf of a client, a payment of money or any other thing from any person to avoid a prosecution being launched against that person.

The member was:

- (a) reprimanded (for breach of Ruling E/5);
- (b) suspended for one month from April 1 to May 1, 1989 (for his incompetence in handling the estate);
- (c) prohibited from acting as the principal to an articulated student until permitted to do so by the Credentials Committee; and
- (d) ordered to complete a remedial studies program in probate practice.

2. The J Conveyance

While acting as a solicitor in a conveyancing transaction, the member inadvertently breached his -
undertaking to hold an executed transfer document for the vendor.

The Hearing Committee agreed with the submission of Law Society counsel that the member's breach of
undertaking was not planned or deliberate, but stressed that an undertaking is very serious and not to be
considered lightly. The Committee ordered that the member be suspended from April 5 to May 1, 1989, the
suspension to run concurrently with the member's other suspension.

E.D. Crossin, for the Law Society
The member on his own behalf

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