

Vancouver, B.C.

Called to the Bar: May 14, 1976

Discipline Hearing Committee: December 19, 1988

Gary L.F. Somers, Q.C.

Summary

The member delayed in carrying out client instructions, failed to respond to telephone calls and letters of clients, other lawyers and the Law Society, breached her undertaking, billed for services not yet rendered and intentionally misled the Law Society with respect to her actions on files. The member admitted that she was guilty of professional misconduct, incompetence, breach of the Law Society Rules and conduct unbecoming a member. Her admissions and consent to a proposed disciplinary action were accepted by the Discipline Hearing Committee.

Facts and Discipline Admissions

From 1986 to 1988 the Law Society investigated the member's actions in 16 different matters resulting in complaints against her. The Standing Discipline Committee authorized a citation against the member on July 14, 1986 and the citation was issued on May 31, 1988.

The member made conditional admissions and proposed a specified disciplinary action, which were accepted pursuant to Rule 469 by the one-member Discipline Hearing Committee on December 19, 1988 at the recommendation of the Standing Discipline Committee. The member admitted to professional misconduct, incompetence, breach of Law Society Rules and conduct unbecoming a member of the Society in the following matters:

Corporate Files

Incorporation A — The member billed for services not yet rendered to a client on an incorporation file; two of these services were in fact never performed. She did not maintain a telephone answering service for her practice, making it impossible for this and other clients to communicate with her on the many occasions that she and her secretary were out of the office.

The client's documents were misplaced for two weeks due to the member's lack of a proper filing system. This delayed the incorporation and frustrated the client. When the client asked for an explanation of the delay, the member said that the client had misunderstood her as to the documents' whereabouts. She refused, however, to provide any documentation of their previous conversation.

The member delayed three months in responding to letters from the Law Society about her conduct.

Incorporation B — After telling a client that she would incorporate a company for her within a week, the member delayed a full month before registering the documents. She then failed to return the incorporation documents despite the client's repeated requests, causing the client unnecessary delay and frustration in regulating the company's affairs.

The member delayed two months in responding to Law Society correspondence. When she did write back, she intentionally misled the Law Society by stating that she had sent the incorporation documents to her clients in February, 1986, when she knew that she had not.

Incorporation C — A client retained the member in December, 1985 to incorporate a company for her on the last day of January, 1986. For the entire month the member failed to tell the client that she needed certain signatures to register the incorporation documents. Consequently, the company was not incorporated until the following month.

The client had great difficulty contacting the member and, when she did manage to leave messages, the member did not respond.

On April 14, 1986 the member wrote a letter in which she intentionally misled the Law Society by stating that she had delayed in incorporating the company on her client's instructions. She in fact knew this was untrue. The member also tried to disparage the reputation of her client by stating erroneously and without foundation that the client had made an abusive call to the Registrar of Companies while impersonating the member.

Incorporation D — On May 22, 1986, after delaying on an incorporation file, the member promised the Law Society to repay her client unearned fees and disbursements which had been collected in advance. She did not make this repayment.

Incorporation E — From February to April, 1986 a client made repeated requests for a status report on her incorporation file, but the member did not respond. The client had to telephone the Registrar of Companies to learn that her company had in fact been incorporated. She did not receive a copy of the incorporation documents until a month later, after having discharged the member.

The member misled the Law Society in two letters of explanation by stating that she had already sent a reporting letter and corporate resolutions to the client although she knew those documents were still in her office file.

Corporate Records Transfer — In September, 1986 the solicitor for a former client of the member attempted several times to contact the member to have her transfer the client's corporate records file. The client was put to considerable inconvenience and unnecessary delay and expense in recovering the file, partly from the member's failure to keep her clients apprised of address changes as she had promised the Law Society in July, 1986.

The member delayed six weeks in responding to Society correspondence.

Corporate Name Change — Retained in October, 1985 to change a company's name, the member for five months failed to respond to her client's telephone messages requesting a progress report. Only after the Law Society intervened in June, 1986 did the client become aware that the name change had been registered in April.

Real Estate Files

Conveyance A — From July, 1985 until July, 1986, while representing the vendor in a residential property conveyance, the member failed in her undertaking to clear title by obtaining and registering a mortgage discharge. For six months she did not respond to repeated written requests from the purchaser's solicitor to fulfill the undertaking.

Conveyance B — From February to June, 1986 the member ignored her obligation as solicitor for a vendor to complete the conveyance by filing a required statutory declaration and she breached her undertaking to clear title.

Conveyance C — While acting for a vendor in November, 1985, the member breached her undertaking to discharge an existing mortgage within a reasonable period of time even though she held the requisite payout funds in trust. The member's failure to maintain staff and telephone answering equipment caused a further five-week delay in having the mortgage discharge delivered to her. When she received the discharge in February, 1986, the member did not so advise the purchaser's solicitor and did not send the document to him for four months, despite his repeated requests.

The member intentionally misled the Law Society in her letter of explanation, claiming the delay in discharging the mortgage was caused by a branch of the financial institution misplacing the documents. The member in fact knew that she had received the documents from the institution in February, 1986.

Mortgage Renewal Application — C Bank retained the member in December, 1982 on a mortgage application file. Although she had communicated on various occasions with the mortgagor, the member failed to advise that she was acting solely for C Bank, as required under the Professional Conduct Handbook.

A registry search revealed that title to the property was shared jointly between the mortgagor, Mrs. H, and her infant daughter. The member advised the financial institution in July, 1983 of the need for court and

Public Trustee approval of the mortgage. Registration was further delayed for a court order vesting the daughter's share upon her majority. The court order was obtained in January, 1984 and the mortgage registration scheduled for April, 1984. Throughout this period the member kept the mortgage funds in her trust account, deducting the monthly mortgage payments. Since Mrs. H was still unable to discharge her original mortgage, she continued to make payments on it as well.

In May, 1984 the member told Mrs. H that the mortgage was ready for signature. Because of the delays, Mrs. H had already renewed her mortgage with the original mortgagee.

The member returned the mortgage funds to C Bank, holding back \$2,232.27 for fees. C Bank sought to recover \$1,644.27 of this amount and the member agreed to repay it in \$200 monthly instalments. She in fact made only one \$200 payment, in June, 1985.

B.C. Government Second Mortgage Application — The member was retained by Mr. and Mrs. F to apply on their behalf for a B.C. government second mortgage. From January to April, 1986 the member failed to obtain the necessary documents and signatures to perfect the application. She was advised of deficiencies by one of her clients on two occasions when the client was lucky enough to make contact with her.

The member's further delays and negligence in not filing the clients' application with the Ministry of Housing before the end of the one-year deadline cost Mr. and Mrs. F the opportunity of obtaining a B.C. government second mortgage.

In September, 1986, one month before the application deadline, Mrs. F and the member had a heated telephone conversation. The member screamed at Mrs. F and hung up on her twice.

The member intentionally misled the Law Society in a letter dated February 2, 1987 by stating that she had submitted the mortgage documents on June 7, 1986 when in fact the first and second mortgage applications were still in her office file.

Transfer to Joint Tenant — The member took six months from December, 1985 to June, 1986 to transfer title on a joint tenancy property to the surviving joint tenant. The transaction was only completed on intervention of the Law Society.

Lease Assignment — While acting for new tenants to a commercial lease, the member held on to the February, 1986 rent money owed to the landlord lessee for four months without justification.

The member did not acknowledge written and telephone requests made by the lessee's solicitor between February 19 and April 8, 1986 for the member to forward the rent money.

Strata Title Conversion

From October, 1983 to April, 1986 the member failed to complete documentation for a strata title conversion of a 36-apartment building. Her delay caused considerable inconvenience and added expense to her clients, although much of the delay, however, was attributable to the strata corporation itself.

The member's inability to organize her work caused considerable inconvenience to her clients, and reflected poorly on the legal profession.

Despite the urgent need of her client to have the file placed in the hands of an attentive solicitor, and despite specific instructions from her client and the Law Society, the member took more than a month to turn over her files and to give an accounting of funds in trust.

Estate File

Despite repeated requests over a six-year period (1979 - 1985) from her client, a widow, the member failed to transfer a joint tenancy property into the widow's name. Although the service was never performed, the member deducted a fee from funds in trust.

Over the six years the member failed to advise her client of address changes, to respond to telephone messages or to pick up a registered letter she knew contained the client's instructions. In December, 1985

the member admitted to her client that the file was lost. The client was put to the additional expense of hiring a notary to transfer title.

The member did not respond to Law Society correspondence relating to this matter for three months. When appearing before a Conduct Review panel in April, 1986 the member submitted a letter in which she intentionally misled the panel by blaming her client and the client's new husband for the delay in the transfer, when she knew it was not their fault.

The Law Society conducted an investigation of the member in early 1986. The Secretary met with her in May, 1986 to resolve outstanding problems on her files. Rather than face a show-cause hearing, the member agreed to cease practice on May 24, 1986 and refrained from practising until February, 1987. In January, 1987 the Standing Discipline Committee allowed the member to resume practising, under supervision, prior to conclusion of her discipline hearing.

Penalty

On November 10, 1988 the member tendered conditional admissions and consented to a specified disciplinary action under Rule 469 of the Law Society Rules. The Discipline Hearing Committee accepted the proposed disciplinary action and, taking into account the seven months that the member was *de facto* suspended, ordered that:

1. the member be suspended from the practice of law for a period of four months commencing January 1, 1989;
2. if the member remained in control of active files by December 23, 1988 and the Law Society had not been advised in writing that another lawyer has assumed responsibility for those files, the Law Society would apply, with the member's consent, for the appointment of a custodian of the member's practice. Any and all expenses in connection with the application for a custodian and the custodianship would be borne by the member;
3. during the period of suspension, the member must undergo remedial training with the remedial studies officer, Mr. Duncan, as determined by the Law Society and Mr. Duncan. The focus of such training will pertain to the areas in which the member primarily practises (i.e., incorporations, wills and real estate). The member must pay the costs of the remedial training;
4. for a period of 18 months following the member's resumption of practice, she must be employed by or work in association with one or more lawyers in the same physical office and only with a lawyer or lawyers approved by the Standing Discipline Committee;
5. throughout that 18-month period, the member must strictly follow practice guidelines as recommended by Mr. Duncan;
6. the member's practice will be subject to periodic inspections by an individual designated by or acceptable to the Law Society throughout that 18-month period. The costs of such inspections must be borne by the member.

For the Law Society, G.D. McKinnon

For the member, P. Voith