

Swearing False Affidavit and Facilitating Fraudulent Conveyance

WILL WYN GESELBRACHT

(Nanaimo)

Called to the bar: September 11, 1984

Mr. Geselbracht practised law as a member of the Law Society of Alberta from January, 1979 to October, 1984 when he took up practice in British Columbia. While practising in Alberta the member became acquainted with Mr. and Mrs. T and their children, C.T. and R.T.

In October, 1983 C.T. asked that his residential property be transferred to his mother, Mrs. T, in an effort to make it inaccessible to business creditors. The member accordingly prepared a Transfer of Land and swore an Affidavit of Transferee as agent for Mrs. T. In that Affidavit, the member indicated that "... the true consideration paid by the Transferee is... \$15,000.00 cash and assumption of [the] existing mortgage".

Several days later, C.T. realized that Mrs. T had personally guaranteed repayment of a mortgage on his business property, and that the residential premises remained exigible by business creditors. He consequently instructed the member to convey the house from Mrs. T to his sister R.T.

The member prepared a Transfer and purported to swear the Affidavit of Transferee on behalf of R.T. She in fact had no knowledge of the transaction.

The member was fully aware that the purpose of both transfers was to elude creditors, and that no money had passed between the Transferees and the Transferors. Nevertheless, the Benchers of the Law Society of Alberta found that the member, in swearing that the true consideration paid for the property included \$15,000 cash, simply failed to comprehend that he was making a statement as to consideration, and not merely a statement as to the Transferor's equity in land.

The Benchers of the Law Society of Alberta determined that the member's action in swearing the false Affidavits constituted conduct unbecoming a member, and that his participation in the fraudulent conveyance scheme was conduct deserving of sanction by reason of incompetence. The member was fined and reprimanded.

Mr. Geselbracht was not a member of the Law Society of British Columbia in 1983 at the time of the fraudulent conveyance, but he was a member of our Society in 1986 when disciplinary proceedings were conducted by the Law Society of Alberta. When he became a member of the Law Society of British Columbia, no complaint had yet been made to the Law Society of Alberta.

In light of the disciplinary measures already taken in Alberta, the Discipline Committee agreed to rescind its citation and accept the member's admission pursuant to Article 2.12 of Chapter 7 of the Rules of the Law Society that his conduct constituted conduct unbecoming a member of the Society.

Discipline Digest — 1988: No. 1 January (Geselbracht)