

Endorsement on Professional Conduct Record

WILLIAM MICHAEL TYMCHUK

(Kelowna)

Called to the Bar: May 14, 1976

The vendor of a piece of property was represented by solicitor J. The vendor agreed to transfer the property to the purchaser for the amount outstanding on a first mortgage. A second mortgage was to be assumed by the first mortgagee. In return for transferring the property the vendor was to receive releases of the personal covenants contained in both mortgages.

On April 28, 1982 the vendor executed the Transfer of Estate in Fee Simple and J forwarded it to Mr. Tymchuk (solicitor for the purchaser) with his own letter stating in part:

The enclosed documentation is forwarded to you upon the following trust conditions:

1. That immediately upon receipt of a Release of the Lis Pendens... that you attend to registration of the enclosed Transfer...;
2. That upon receipt of registration particulars... you will provide us with Releases (approved as to form by our office) from [the two mortgagees] of the personal covenants of [the vendor]...

The transfer was registered on May 6, 1982 and on May 25, 1982 J forwarded to Mr. Tymchuk a form of Release for execution by the two mortgagees. Executed releases were never delivered to J.

On May 12, 1983 Mr. Tymchuk advised J that he understood that the property had been sold and that the mortgage was being discharged, and accordingly there would be no further need for the Releases.

On October 21, 1983 the vendor advised J that the mortgagee had issued a foreclosure petition claiming against him pursuant to his personal covenant contained in the mortgage from which he had never been released.

Mr. Tymchuk admitted that his failure to fulfill the second trust condition set out in J's letter of April 2, 1982 constituted professional misconduct.