

## Robert John Palkowski

Vancouver, BC

Called to the Bar: January 10, 1978

**Discipline hearing:** July 15, 2004

**Panel:** Gordon Turriff, Q.C., as a single Bencher panel by consent

**Report issued:** September 21, 2004

**Counsel:** Jean Whittow, Q.C. for the Law Society and Craig Dennis, for Mr. Palkowski

## Summary

Mr. Palkowski acted against unrepresented parties in certain litigation matters, contrary to an earlier undertaking he had provided to the Law Society, as a condition of practice, not to act against unrepresented parties. Mr. Palkowski admitted that his breach of undertaking constituted professional misconduct. The Discipline Committee and the discipline hearing panel accepted Mr. Palkowski's admission and his proposed disciplinary action and ordered that he pay a \$2,500 fine and \$6,000 as costs.

## Facts

In November, 1992 Mr. Palkowski gave an undertaking to the Law Society, as a condition of practice, that he would not act against an unrepresented party, except in limited circumstances. Mr. Palkowski subsequently acted for clients in certain litigation matters in which there were unrepresented parties, contrary to his undertaking:

- In November, 2001 Mr. Palkowski represented a company that was one of the respondents in a foreclosure. After the foreclosure proceedings began, the court ordered that another company be added as a party. That company was unrepresented in the foreclosure. Mr. Palkowski corresponded with and served documents on the director of the unrepresented party. In light of the fact that all respondent parties opposed the foreclosure, he did not direct his mind to his undertaking.
- The company that Mr. Palkowski represented held a mortgage on the property under foreclosure. In December, 2001 unrepresented litigants brought an action claiming an equitable mortgage ranking in priority to the mortgage of Mr. Palkowski's client. Mr. Palkowski filed documents and represented his client in this action. The plaintiffs' claim was heard in conjunction with the foreclosure and their claim was dismissed.
- In March, 2002, one of the unsuccessful litigants in the claim of equitable mortgage brought a separate action against three defendants founded in debt and based on personal guarantees. The plaintiff was unrepresented and Mr. Palkowski represented all three defendants in the action. He discussed the potential for settlement with the plaintiff and said he would raise this with his clients. The plaintiff discontinued the action. Mr. Palkowski subsequently advised her that his clients had refused to make a settlement proposal.

The plaintiff brought another action for similar relief against the defendants. Mr. Palkowski advised her that

he had no instructions to accept documents on their behalf and that the plaintiff should serve them directly.

### **Admission and penalty**

Mr. Palkowski admitted that he had breached his undertaking to the Law Society not to act against unrepresented parties, except in limited circumstances, and that this breach of undertaking constituted professional misconduct.

Pursuant to Law Society Rule 4-22, the Discipline Committee and the discipline hearing panel accepted Mr. Palkowski's admission and his proposed penalty and ordered that he:

1. pay a \$2,500 fine; and
2. pay \$6,000 as costs of the discipline proceedings.

The panel expressed some concern about how to reconcile the amount of this fine with fines in other classes of cases, notably fines involving lawyers who have breached the statutory duty to pay taxes collected from clients. The panel noted that it accepted the proposed penalty with reluctance and expressed concern about what it considered to be unsatisfactory penalties in many of the cases that involve breach of undertaking.