

2006 : No. 4 September-October

Larry William Goddard

Abbotsford, BC

Called to the bar: May 20, 1975

Discipline hearing : June 8, 2005 and March 29, 2006

Panel : Anne K. Wallace, QC, as a single-Bencher panel by consent

Reports issued : June 27, 2005 (indexed as 2005 LSBC 26) and April 19, 2006 (indexed as 2006 LSBC 12)

Counsel : James A. Doyle for the Law Society; Jerome Ziskrout for Mr. Goddard

Facts

Five separate complaints were made to the Law Society concerning Mr. Goddard's failure in conveyancing matters to discharge mortgages promptly, contrary to undertakings he had given.

In the first complaint, Mr. Goddard took 15 months to discharge a mortgage from the time of the undertaking on April 30, 2002. In the second instance, it was 10 months from the undertaking of August 27, 2002. In the third, it took 20 months from the undertakings of May 30 and 31, 2002. And in the fourth, it took five years and four months to discharge the mortgage from the time of the undertaking on November 10, 1997.

Mr. Goddard admitted professional misconduct in the first four cases, but not the fifth. In that instance, Mr. Goddard was acting for GE, who had sold a service station to a client represented by HR. HR's client subsequently sold the station. When GE originally sold it to HR's client, he took back a mortgage. In addition, the shares of the company that held the property were placed in escrow.

When HR's client sold the station to the new purchaser, GE agreed to execute a new mortgage with the original mortgage being discharged and the shares being released from escrow. Ultimately, there was some confusion between HR and Mr. Goddard as to what Mr. Goddard had undertaken to do. Mr. Goddard understood he could not discharge the mortgage until he had confirmation the funds owed to his client had in fact been received. HR understood the mortgage would be discharged and the escrow documents would be released once the replacement mortgage was registered. The mortgage was discharged on November 12, 2003, which was 13 months after the replacement mortgage had been registered.

The panel accepted that Mr. Goddard abided by what he understood the terms of his undertaking to be. It found the undertaking was not clear and was the main reason the situation started going wrong. The hearing panel emphasized the need for undertakings to be worded as clearly as possible to accurately set out the promises given between the parties. This is especially important because it is the system of mutual undertakings that allows real estate practice to operate in the manner it does.

Verdict

The panel found Mr. Goddard was not guilty of professional misconduct in relation to the fifth complaint concerning the service station transaction. It found he had committed professional misconduct in the other four cases.

Penalty

The panel considered the difficult personal circumstances Mr. Goddard was under at the relevant time. In 1997 his wife's cancer reoccurred after having been diagnosed and treated 10 years earlier. As a result, in addition to running a solo practice, Mr. Goddard was caring for his wife while she underwent treatment. In 2002, he was rear-ended in a car accident, which resulted in a soft tissue injury that left him with chronic pain. He testified he kept working as best he could, but was never without pain. Later that year his wife was found to have more cancer. She also had further diagnoses of the disease in August 2004 and in October 2005.

The panel found Mr. Goddard to be an honest and trustworthy person who was remorseful for his actions. It accepted his actions were a result of stress as opposed to incompetence or laziness.

The hearing panel emphasized the need to balance its consideration of the personal circumstances of Mr. Goddard with the need to show the public there are consequences when lawyers breach their responsibilities. It noted the Law Society had recently taken a much sterner approach to breaches of undertaking due to the catastrophic results of the actions of Martin Keith Wirick. Mr. Wirick defrauded clients of millions of dollars by using undertakings as a tool for his dishonesty and was subsequently disbarred.

The hearing panel determined the message to lawyers must be clear: if they breach their undertakings there will be serious consequences. Accordingly the panel ordered that Mr. Goddard:

1. be suspended from practice for a period of two months, commencing May 15, 2006;
2. be under a practice supervision agreement, as set out by the Practice Standards Committee, for a period of one year with a follow- up practice review to take place at that time, and that he pay the costs of administering the practice supervision agreement; and
3. pay costs in the amount of \$4,500 within one year from the end of his suspension.