

2009 : No. 1 April

Barry Promislow

Vancouver, BC

Called to the bar: July 7, 1958

Discipline hearing : January 22 (Facts and Verdict) and December 2, 2008 (Penalty)

Panel : Richard Stewart, QC, Chair, Kathryn Berge, QC and Leon Getz, QC

Report issued : March 10, 2008 (2008 LSBC 08) and February 5, 2009 (2009 LSBC 04)

Counsel : Eric Wredenhagen for the Law Society and Barry Promislow on his own behalf

Facts

In October 2006, Barry Promislow was retained by clients RP, EG and GD who had initiated litigation involving the *Strata Property Act* and terminated the engagement of their then counsel, MF. In representing his clients, Promislow reviewed MF's accounts in early December 2006. The Registrar ordered that the fees be reduced, which amounted to a judgment for \$3,675.36 payable by MF's firm to the clients.

On December 28, 2006, Promislow received a cheque for \$3,675.36 from MF's firm. The accompanying letter contained the trust condition that payment was provided on Promislow's undertaking to execute, file and deliver to MF an Acknowledgement of Payment, or return the cheque to MF unprocessed. Promislow deposited the cheque into his trust account but did not comply with all the terms of the undertaking. After an unsuccessful exchange of letters and emails between MF and Promislow, MF filed a complaint with the Law Society.

Promislow responded to the Law Society on January 30, 2007 and, as of that date, he had not disbursed the funds to his clients. The funds were subsequently disbursed.

Verdict

At the time of MF's complaint, Promislow had been practising law for close to 50 years. The panel noted that, as a senior lawyer, Promislow would be well aware of undertakings and their importance.

Between 1985 and 1999, Promislow was the subject of one citation and six Conduct Reviews. Promislow's conduct difficulties have centred around breaches of undertakings and discourteous conduct. The panel treated this discipline record as "an aggravating factor of some significance" and noted that his behaviour in this case, as in the past, had been "deliberately contentious and uncivil."

At the hearing, Promislow essentially conceded that he had been uncivil in this case as well as in the past. While it was noted that he had made similar representations in earlier discipline proceedings, his acknowledgement of his discourtesy was a factor considered by the panel in imposing a fine rather than a period of suspension.

The panel concluded that by deliberately ignoring the trust condition, Promislow had committed professional misconduct.

Penalty

The Law Society was seeking a fine of \$7,500; however, the panel concluded that the appropriate sanction in the circumstances was a fine of \$10,000, which was consistent with the precedents that the panel examined.

The panel ordered that Promislow:

1. pay a fine of \$10,000;
2. pay \$3,500 in costs;
3. complete, to the satisfaction of the Practice Standards Committee, the online "Communications Toolkit" course developed by the Law Society; and
4. if the course is not completed by May 7, 2009, be suspended from that date until the course is so completed.