

2009 : No. 4

Kenneth Joseph Spears

West Vancouver, BC

Called to the bar: September 25, 1987

Discipline hearing : September 17, 2009

Panel : James Vilvang, QC, Chair, Haydn Acheson and Robert Brun, QC

Oral decision issued : September 17, 2009

Report issued : September 24, 2009 (2009 LSBC 28)

Counsel : Maureen Boyd for the Law Society and James L. Straith for Kenneth Joseph Spears

Facts

In September 2001, Kenneth Joseph Spears was referred to the Practice Standards Committee for a practice review. The review recommended Spears enter into a practice supervision agreement and that he undertake not to practise in the areas of wills and estates, personal injury law and WCB matters.

Subsequent practice reviews occurred in April 2003 and June 2004.

Breaches of undertaking to the Law Society

On October 18, 2004 Spears signed an undertaking with the Law Society to conclude and/or transfer all outstanding non-Department of Justice files by December 5, 2004 (extended to January 15, 2005) and not to take on any new files, other than Department of Justice files or Government of Canada files, after that date. Spears breached this undertaking by acting on behalf of three non-government clients between January 2005 and June 2008.

Failure to include file in summary list

When Spears sought an extension of the effective date of the undertaking, the request was granted on the condition that he provide a status report on any remaining files by December 15, 2004. In that report, Spears excluded one client file.

Failure to include files in lists to practice supervisor

In entering into a practice supervision agreement, Spears was required to provide a written summary of all open files, updated monthly, to his practice supervisor. Spears failed to include information about the three above-mentioned clients in these summaries.

Untrue statements to the Law Society

In correspondence with the Law Society regarding his request to have his practice restrictions removed, Spears made a number of untrue statements to the Law Society. He stated that he was following the practice restrictions and that he had limited his practice to work for the Government of Canada when he knew both statements to be untrue.

The Panel expressed concern that, in the past, Spears demonstrated an unwillingness to comply with conditions imposed upon him by the Law Society. It is a fundamental requirement of anyone who wishes to have the privilege of practising law to accept that their conduct will be governed by the Law Society and that

they must respect and abide by the rules that govern their conduct. If a lawyer consistently demonstrates an unwillingness or inability to fulfill these basic requirements of the privilege to practise, that lawyer can be characterized as "ungovernable" and cannot be permitted to continue to practise. All lawyers are expected to deal with the Law Society in an honest, open and forthright manner at all times.

Admission and Penalty

The hearing panel accepted Spears' admissions of professional misconduct and proposed penalty under Rule 4-22. Accordingly, the panel ordered that Spears:

1. be suspended for eight months commencing October 1, 2009;
2. practise only as an employee or associate of one or more other lawyers who are subject to the approval of the Practice Standards Committee, such condition to remain in effect unless released from it by that Committee; and
3. pay costs of \$3,500 by March 30, 2011.