

2010 : No. 1

## **Eric Kai Chesterley**

Courtenay, BC

Called to the bar: June 30, 1976

**Discipline hearing** : September 30, 2009

**Panel** : James Vilvang, QC, Chair, Haydn Acheson and David Mossop, QC

**Oral decision issued** : September 30, 2009

**Report issued** : October 6, 2009 (2009 LSBC 29)

**Counsel** : Eric Wredenhagen for the Law Society and Gerald Cuttler on behalf of Eric Kai Chesterley

### **Facts**

A client retained Eric Kai Chesterley to claim an interest in land registered in the name of the client's father. Chesterley advised that the client's mother was the proper party to make the claim.

The client told Chesterley that his mother agreed to be a party to the action, but Chesterley did not contact the mother to confirm her consent. He later sought information from the mother but did not inform her that she would be named as a plaintiff in the action.

When the mother learned she had been named as plaintiff, she agreed to let the action stand. Chesterley did not advise her of the risk that she might be required to pay the defendant's costs.

In October 2003, the mother retained Chesterley to defend her in an action started by her daughter against the father. The original client was later added as a plaintiff in that same action, and the father also sued the original client.

Chesterley did not fulfill the requirements for acting for two parties, as outlined in the *Professional Conduct Handbook*. Specifically, he did not explain to the clients the principle of undivided loyalty; advise them that no information received from one client could be treated as confidential as between them; or secure the informed consent of the clients as to the course of action to be followed if a conflict arose between them.

On instructions from the clients, Chesterley filed a Notice of Discontinuance of the Action. Special costs were awarded at \$25,783.05.

### **Admission and Penalty**

Chesterley admitted that he commenced a civil action in the name of the mother before she actually retained him and that he commenced such action without proper instructions, which constitutes professional misconduct.

Chesterley further admitted that, in acting jointly for the clients, he failed to comply with the requirements of the *Professional Conduct Handbook*, which constitutes professional misconduct.

The hearing panel accepted Chesterley's admissions and proposed penalty. The panel ordered that he pay:

1. a \$3,000 fine; and
2. \$1,500 in costs .