

2010 : No. 2 Summer

Marianne Walters

Abbotsford, BC

Called to the bar: August 1, 1985

Discipline hearing : May 18, 2010

Panel : Bruce LeRose, QC, Chair, Joost Blom, QC and David Crossin, QC

Report issued : May 26, 2010 (2010 LSBC 15)

Counsel : Maureen Boyd for the Law Society and Marianne Walters on her own behalf

Facts

In March 2008, Marianne Walters was retained to commence Supreme Court proceedings for divorce, division of assets and debts, child support, and primary or shared residence of a child on behalf of her client, the husband. The client's wife was the registered owner of real property, and Walters filed a certificate of pending litigation (CPL) against this property.

On April 23, 2009, the wife's lawyer requested a payout statement to discharge the CPL for the purpose of refinancing the property. Walters proposed to release the CPL on the conditions that the wife consent to reducing child support payments and sign a passport application for the child.

Following a conversation with opposing counsel, Walters believed it was agreed that she would not release the CPL until she received the completed passport application for the child and the Consent Order had been entered.

Walters received a Consent Order to reduce child support payments and a signed passport application for the child on May 7, 2009, subject to a trust condition. A covering letter from opposing counsel set out that the documents were forwarded on her undertaking that she would forthwith release the CPL that was registered by her client in the Land Title Office.

The refinancing of the property did not proceed, and the client's wife entered into a contract to sell the property, with a completion date of July 15, 2009. Although Walters knew that the refinancing was not proceeding, she was not aware of the pending sale prior to June 12, 2009, when she obtained a release of the CPL.

Walters breached the undertaking when she submitted the Consent Order for filing without having taken any steps to release the CPL. She did not submit for registration a discharge of the CPL until mid-June 2009.

The panel found that the breach of undertaking in this case was a clear, marked departure from conduct the Law Society expects of lawyers and that Walters was culpable. A breach of undertaking is a serious form of misconduct. In this case, there are some mitigating factors.

Walters had previously discussed the terms on which the documents would be sent, and had expected the terms would be different than the terms set out in the letter dated May 7, 2009. She did rectify the breach and comply with the terms of the undertaking when she submitted the discharge of the CPL for filing on June 12, 2009. No harm resulted from the breach.

An aggravating factor, however, is Walter's professional conduct record, which consists of two conduct reviews in 2002 and 2005, and one citation that resulted in a finding of professional misconduct.

Admission and Penalty

Walters admitted that on May 7, 2009 she received an executed Consent Order and a passport application sent to her on an undertaking that she forthwith release a Certificate of Pending Litigation. She further admitted that she breached the undertaking when she used the Consent Order for the benefit of her client but did not take any steps to release the CPL until June 12, 2009.

The panel accepted Walters' admission that her conduct constituted professional misconduct and ordered that she pay:

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