

2011 : No. 1 Spring

Randall Keith McRoberts

Invermere, BC

Called to the bar: September 16, 1974

Discipline hearing : November 20, 2009 and February 1, 2010 (facts and verdict) and November 1, 2010 (penalty)

Panel : Richard Stewart, QC, Chair, Kathryn Berge, QC and David Mossop, QC

Report issued : July 27, 2010 (2010 LSBC 17) and February 14, 2011 (2011 LSBC 04)

Counsel : Maureen Boyd for the Law Society and Henry Wood, QC for Randall Keith McRoberts

Facts

In 1994, Randall Keith McRoberts began representing a non-profit service club on a pro bono basis.

The club was given ownership of real property on the condition that it be used for a golf course or some other community purpose. McRoberts represented the club in pursuing an easement from an adjacent property for the purpose of drawing water from a nearby lake.

In August 1995, McRoberts sent a form of easement in favour of his client to the owners of the adjacent property, who were unrepresented by counsel. He requested the return of both executed documents on his undertaking not to use the document or register same unless the golf course development was actually going to proceed and he had the written permission of the owners to register the easement.

In June 1996, McRoberts breached his undertaking when he registered the easement in the Land Title Office without obtaining the written permission of the owners. His explanation for the breach was that he did not remember that he had given the undertaking.

Verdict

McRoberts admitted that he breached the undertaking; however, he did not admit to professional misconduct. The hearing panel considered the proper interpretation of the “marked departure test” for professional misconduct in the context of a lawyer forgetting about an undertaking, and whether, in this case, the exception for honest mistake applied.

The panel found that McRoberts’ conduct was of a serious nature that went to the heart of his obligations as a lawyer. These circumstances were clearly a marked departure from the standard expected of a lawyer, and there was no evidence that would support a defence of innocent mistake. The panel determined that McRoberts had committed professional misconduct.

Penalty

The panel considered a number of factors in determining penalty. The subject matter was a community project, and legal services had been provided on a pro bono basis. McRoberts had registered the easement because his client had indicated that it was permissible to do so, and he did not remember that he had given the undertaking. He admitted to the panel that he had made a mistake.

McRoberts has a conduct record, but no misconduct dealing with undertakings. Numerous letters of support

were submitted by his fellow lawyers stating that he had given many undertakings and fulfilled all of them.

This breach occurred over 14 years ago and the original complaint was made in 2004. Counsel for McRoberts submitted that the panel should look at the lower penalties imposed at that point in time. The panel agreed in these circumstances, but was not prepared to accept this as a general proposition.

The panel ordered McRoberts to pay:

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