

2011 : No. 4 Winter

Donald Douglas McLellan

New Westminster, BC

Called to the bar: May 17, 1971

Discipline hearing : June 9, 2011

Panel : Kenneth Walker, Chair, Benjimen Meisner and Gordon Turriff, QC

Report issued : August 23, 2011 (2011 LSBC 23)

Counsel : Carolyn Gulabsingh and Maureen Boyd for the Law Society and Richard Fernyhough for Donald Douglas McLellan

Facts

Donald Douglas McLellan was retained to probate an estate in 2000. The estate was efficiently probated and distributed by 2002. During this time, the executrix came to believe that the son (and financial advisor) of the deceased had dissipated the assets of the estate. In particular, she was concerned that the son had sold and purchased stocks without authorization for the purpose of generating commission income. She believed the loss was substantial and instructed McLellan to recover these funds.

McLellan investigated and determined the amount of the loss to be about \$20,000. He filed a claim against the son and his employer investment house in 2002 and renewed the claim in 2003. There were problems locating the defendant son for purposes of service of the claim. When he was eventually found, he notionally responded by filing an Appearance in October 2003.

The client inquired several times about the progress of the case. McLellan failed to respond to his client and failed to advise her that he believed there was no practical reason to pursue the claim or incur further costs.

In 2009, the client complained to the Law Society.

Admission and disciplinary action

McLellan admitted that between 2005 and 2009 he failed to respond to his client's numerous inquiries and that he failed to serve his client in a conscientious, diligent and efficient manner as expected of a competent lawyer. He admitted that his conduct constituted professional -misconduct.

The panel noted that, while the client showed loyalty to McLellan as her lawyer, McLellan failed to reciprocate with the loyalty and service that he owed her.

The panel considered a number of factors in determining disciplinary action. McLellan had been a lawyer for 40 years. He had been disciplined before for two breaches of undertaking (one conduct review and one proven citation) and for acting in a conflict of interest (conduct review).

During the period of time he failed to contact his client, McLellan was suffering from difficult personal circumstances and dealing with staffing problems in his office.

There was no personal gain from McLellan's conduct and, in fact, it appeared to the panel that he was trying to save his client from paying more fees.

McLellan was apologetic and remorseful. Since this complaint, he reviewed his files to ensure all were current and no similar non-responsive correspondence existed in his files. He also took counselling sessions to address personal issues and restricted his practice to areas within his experience.

The panel accepted his admission and ordered that he pay:

1. a \$5,000 fine; and
2. \$3,000 in costs.