

2011 : No. 4 Winter

Gerhard Ernst Schauble

Kelowna, BC

Called to the bar: July 21, 1989 (BC); June 19, 1981 (Alberta)

Retired membership: April 2011

Discipline hearing : June 27, 2011

Panel : David Renwick, QC, Chair, Nancy Merrill and David Mossop, QC

Report issued : September 7, 2011 (2011 LSBC 27)

Counsel : Gerald Cuttler for the Law Society and Gerhard Ernst Schauble appearing on his own behalf

Facts

In 2005, Gerhard Ernst Schauble jointly represented two clients (Client E and Client K) in the sale of their jointly owned real property. Schauble did not advise each client that no information received from one of them as part of the joint representation could be treated as confidential as between them. Also, he purported to assist them as a mediator to resolve a conflict that had arisen between them without obtaining the informed consent of Client K.

In agreeing to act as a mediator for the clients in their dispute over the division of sale proceeds, Schauble made it difficult to determine whether he was acting as a lawyer or a mediator. He failed to make adequate inquiry to determine whether the dispute was a family law mediation. He knew that he had previously acted for both clients and that they were cohabiting at the time of the sale. He initially received instructions that there would be an equal division of the proceeds of sale, but division of the proceeds became an issue from his first meeting with the clients.

Schauble preferred the interests of Client E over Client K by entering into an agreement with him to reduce the fees payable by him pursuant to a Retainer Agreement for Negotiation of Property Dispute. He agreed to keep the terms of his fee agreement with Client E confidential, contrary to his obligation to disclose all material information to Client K.

When the sale completed on September 30, 2005, Schauble received the sale proceeds of \$451,390.31 in trust. He failed to provide an accurate account in writing to Client K of the disbursement of those funds to her.

Client K made a complaint about Schauble to the Law Society in July 2006. In October 2006, an appointment to review Schauble's account was filed on her behalf.

In November 2009 Schauble sent a without prejudice letter to Client K advising her that a clerical error was made in calculating her account and refund to her the sum of \$15,380.67. In June 2010, he further reduced his fees to \$2,500 plus HST. The assessment of his account was discontinued and he reimbursed the client a further sum of \$8,866.49.

Admission and disciplinary action

Schauble conditionally admitted, and the panel accepted, that his conduct constituted professional misconduct.

The panel determined that the mitigating factor in this case was that Schauble repaid money to his client.

The panel also noted that Schauble was previously cited for knowingly or intentionally misappropriating funds. In October 2009, a panel ordered that he be suspended for three months and pay costs in the amount of \$32,000.

In keeping with the principles of progressive discipline, the panel ordered that Schauble:

1. be suspended for four months, to be served at such time as he becomes a practising lawyer; and
2. pay \$10,000 in costs.