

2012 : No. 2 Summer

Roger Roy Plested

Kamloops, BC

Called to the bar: May 15, 1974

Discipline hearing : November 16, 2011

Panel : Thelma O'Grady, Chair, David Crossin, QC and Nancy Merrill

Report issued : February 23, 2012 (2012 LSBC 10)

Counsel : Carolyn Gulabsingh for the Law Society and Roger Roy Plested on his own behalf

Facts

In February 2009, Roger Roy Plested acted on behalf of the executor of an estate in the sale of property. The property was subject to encumbrances, including a mortgage and a *Strata Property Act* lien.

On February 27, Plested sent executed documents for completion of the sale of the property along with a letter imposing undertakings on the lawyer representing the purchaser. He also gave an undertaking that he would provide clear title to the property on receipt of the sale proceeds.

Beginning in May, the purchaser's lawyer sent several faxes to Plested regarding the discharges of the mortgage and lien. Plested did not respond to these communications.

On July 10, the closing date, the purchaser's lawyer wrote to Plested imposing trust conditions on which the proceeds of sale would be provided to Plested, including obtaining discharges of a mortgage and a lien in a timely manner and payment of outstanding property taxes.

The transfer of the property occurred on July 10. On July 21, Plested received notification that sale proceeds had been deposited into his trust account. On July 24, Plested notified the purchaser's lawyer by phone that he had hand-delivered a cheque for payment of the lien.

On September 25 and October 30, the purchaser's lawyer wrote to Plested to advise that the lien and mortgage still appeared on title and that he had not received confirmation that the mortgage had been discharged. Plested did not reply to these letters.

On November 9, the purchaser's lawyer wrote to Plested advising that his client was selling the property. The closing date was November 20, 2009 and Plested's immediate attention to the outstanding undertakings was required. Plested did not reply to this letter.

Between November 20, 2009 and January 6, 2010, Plested attended to the outstanding undertakings, including discharges of the mortgage and lien. However, he did not provide the purchaser's lawyer with any evidence the mortgage had been paid out or discharged.

The Law Society was appointed as custodian of Plested's practice by order of the Supreme Court on July 9, 2010.

Admission and disciplinary action

Plested admitted that he breached the trust conditions imposed by the purchaser's lawyer in failing to obtain

the discharges of the mortgage and lien. He also admitted that he failed to respond reasonably promptly or at all to communications from the other lawyer. He agreed that such conduct constituted professional misconduct.

Plested stated that he was diagnosed with a major depressive disorder in April 2009 and prescribed ever-increasing doses of anti-depressant -medication.

Plested was referred to the Practice Standards Committee as part of penalty conditions ordered by a hearing panel in 2007. That hearing panel found that Plested repeatedly failed to respond to clients and the Law Society. The committee determined that the state of his practice had worsened, as had his depressive disorder.

Plested is currently on an undertaking not to practise law until his psychiatrist certifies that he is capable of functioning adequately to meet basic competency levels.

Plested advised the panel that he had experienced substantial improvement in his condition. However, he had not yet had the psychiatric assessment completed as he did not feel he was ready to return to the practice of law and also could not afford the cost of the assessment. He stated that he had no income for 2010 and 2011 and no prospects of any income for at least another year.

In making its decision on disciplinary action, the panel considered the seriousness of the offences, including the fact that giving and fulfilling undertakings are the cornerstone of the legal profession and that breach of an undertaking is a very serious matter. The panel also considered Plested's ongoing medical condition, the fact that he gained no advantage by his conduct, his financial circumstances, his age, and his limited professional prospects.

The panel accepted Plested's admissions and ordered that he pay a \$3,500 fine within 18 months of the order.