

2013 : No. 02 Summer

Roger Dwight Batchelor

Victoria, BC

Called to the bar: September 21, 2005

Discipline hearing : February 15, 2013

Panel : David Mossop, QC, Chair, Satwinder Bains and James E. Dorsey, QC

Report issued : March 18, 2013 (2013 LSBC 09)

Counsel : Alison Kirby for the Law Society; Roger Dwight Batchelor -appearing on his own behalf

Facts

In May 2009, Roger Dwight Batchelor was retained by a client in -regards to a family law matter. In March 2011, the Law Society received a -complaint from the client about the fees charged by Batchelor and the quality of service provided. The Law Society exchanged correspondence with Batchelor regarding the complaint.

In December 2011, Batchelor and his client entered into a written agreement. Under the terms, he would provide approximately \$11,000 to his client and, in exchange, she would withdraw the complaint against him with the Law Society and provide a release of all claims.

Batchelor issued the first cheque to his client in the amount of \$2,000. He then informed the Law Society that he had reached a settlement with his client and that she was going to withdraw her complaint.

On January 18, 2012, the Law Society wrote to Batchelor's client to ask whether she wished to withdraw or pursue her complaint. In the absence of receiving any further information from the client to support her allegations, the Law Society did not have sufficient evidence to support disciplinary action against Batchelor.

The client, however, informed the Law Society about the conditions in the agreement with Batchelor, which raised a new professional misconduct concern. It is improper for a lawyer to make it a requirement of a civil settlement that a person refrain from making or proceeding with a complaint to the Law Society. The Law Society asked the client for a copy of the agreement.

After being notified by his client that the Law Society requested a copy of the agreement, Batchelor forwarded a revised agreement to his client for execution and removed the reference to the complaint. He subsequently provided his client with cheques for the balance owing.

Admission and disciplinary action

Batchelor admitted that he attempted to resolve the complaint made by his client to the Law Society by preparing and entering into a written agreement with her. The terms of this agreement included that he would pay her \$11,000 and she would withdraw the complaint. He admitted that his conduct constituted professional misconduct.

The investigation and proper treatment of complaints are at the core of the Law Society's work in the fulfillment of its regulatory function. The panel recognized the need for a clear message to be sent to the

legal profession that there will be no tolerance of lawyers attempting to undermine the Law Society's investigation of complaints by negotiating a withdrawal of the complaint.

Batchelor's prior disciplinary record was an aggravating factor. His professional conduct history consists of a conduct review for failure to comply with accounting rules and provide accurate responses in two trust reports, as well as practice standards referrals for failure to clarify service expectations to clients, failure in duties to clients and opposing counsel, excessive delegation to staff and poor file documentation.

Batchelor considered two points to be mitigating factors: he was cleared of the original complaint, and he does a great deal of pro bono work. In the panel's opinion, Batchelor knew of these factors before he entered into the proposed disciplinary action and, even if they accepted the points he raised, the proposed disciplinary action was still fair and reasonable.

The panel noted, however, that Batchelor acknowledged his misconduct and took immediate steps to amend the agreement to remove the requirement that his client withdraw the complaint. These actions demonstrated Batchelor's new understanding of his regulatory compliance obligations to the Law Society and a willingness to rehabilitate.

The panel accepted Batchelor's admission of professional misconduct and ordered that he pay:

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