

2013 : No. 3

Glenn John Niemela

Vancouver, BC

Called to the bar: August 26, 1988

Discipline hearing : February 26, 2013

Panel : Thomas Fellhauer, Chair, Richard Lindsay, QC and Laura Nashman

Report issued : June 13, 2013 (2013 LSBC 15)

Counsel : Alison Kirby for the Law Society; Henry Wood, QC for Glenn John Niemela

Facts

In January 2010, Glenn John Niemela was retained by a client in connection with a claim of builders' lien filed against title to a property. Niemela commenced an action in the Supreme Court of BC between his client and the defendants. He also filed a certificate of pending litigation against title to the property.

On August 16, 2010, opposing counsel made an offer to settle the lien action. Niemela accepted the offer on behalf of his client on the condition that the defendants provide a release to his client.

On August 18, 2010, opposing counsel wrote to Niemela, confirming the terms of the settlement and enclosing settlement documents.

Over the next several months, Niemela did not respond promptly to some or all of the letters from opposing counsel that required a response. On May 24, 2011, opposing counsel made a complaint to the Law Society.

On July 25, 2011, Niemela wrote to opposing counsel inquiring whether he wished to settle the lien action on the terms set out in their August 2010 correspondence. He then sent opposing counsel a draft release to be executed by the defendants.

On August 24, 2011, opposing counsel replied to Niemela's letter and enclosed a signed release and a trust cheque in the amount of \$6,173.34.

Opposing counsel contacted the Law Society again on September 9, 2011 when there was no further response from Niemela.

Niemela and opposing counsel exchanged letters and documents in December 2011 and the original release was eventually forwarded to opposing counsel on January 6, 2012.

In a letter dated December 28, 2011, Niemela apologized to opposing counsel for the delay in concluding the file.

Admissions and DISCIPLINARY ACTION

Niemela admitted that, in the course of representing his client in a builders' lien action, he failed to respond promptly to the letters from opposing counsel. He admitted that his conduct in doing so constituted professional misconduct.

The panel considered Niemela's past professional conduct record, which includes practice restrictions and supervision, a conduct review, and previous findings of professional misconduct for failure to respond to

opposing counsel and to the Law Society. The panel was concerned that Niemela:

- had not responded to the previous disciplinary action and could not adequately explain why he failed to respond to opposing counsel;
- did not pay enough attention to the more routine aspects of his practice;
- did not appear to appreciate the impact that his actions (or his failure to act) had on other persons;
- failed to respond even though opposing counsel was very courteous and tried to make Niemela's remaining tasks as easy to complete as possible; and
- did not appear to delegate tasks to his staff or put systems in place that would prevent such failures.

The panel noted that the Law Society's efforts to assist Niemela and attempt to alter his behaviour over the past 11 years had not been successful. Further, two psychological reports indicated that Niemela was resistant to change and unaware of the effect of his behaviour on others.

However, the panel did consider that, while Niemela's professional misconduct caused great frustration and additional costs for the opposing counsel, his client and the Law Society, the delays did not result in any permanent harm to any person.

While a suspension was warranted, the panel saw a possibility that a large fine together with an extended period of practice supervision — and the certainty that a suspension would result if Niemela delayed in complying — would be more likely to motivate him to alter his behaviour in the future.

Although practice supervision was attempted before and did not adequately change Niemela's behaviour, the panel believed that a focus on Niemela's specific recurring problems by a practice supervisor may result in a positive outcome and a more lasting result.

The panel accepted Niemela's admission and ordered that he:

1. pay a \$15,000 fine;
2. pay \$6,424 in costs;
3. enter into an arrangement to practise under the supervision of a lawyer; and
4. if he does not comply with the order to enter into practice supervision by October 1, 2013, be suspended until he does so.

The panel was quite concerned that it may be wrong in its decision not to suspend Niemela in the first instance and that he may repeat his behaviour in his practice and not change his behaviour in a meaningful way. If that occurs, he will have failed to recognize the remedial intent of the order. If Niemela is cited again for similar misconduct, a future hearing panel should consider a lengthy suspension.