

2014 : No. 01 Spring

Brian John Kirkhope

Nanaimo, BC

Called to the bar: August 31, 1990

Discipline hearing : December 3, 2012 and October 29, 2013

Panel : Thomas Fellhauer, Chair, Ralston Alexander, QC and Patrick Kelly

Report issued : July 4 (2013 LSBC 18) and December 13, 2013 (2013 LSBC 35)

Counsel : Jaia Rai (facts and determination) and Alison Kirby (disciplinary action) for the Law Society; Henry Wood, QC for Brian John Kirkhope

Facts

Brian John Kirkhope represented a client in a family law proceeding involving spousal support and division of assets. The parties had previously reached an agreement whereby Kirkhope's client would pay \$1,800 per month for interim spousal support.

On January 12, 2010, Kirkhope advised counsel for the former spouse that his client was unable to make the support payments.

On July 12, 2010, an application for interim spousal support was heard in BC Supreme Court. An order was made that required Kirkhope's client to pay monthly interim spousal support payments of \$2,028 commencing on July 15, 2009. Arrears of support were to be dealt with when the assets were divided.

Kirkhope's client made the payments in July and August 2010, in accordance with the terms of the order.

On July 22, 2010, Kirkhope drafted the order and delivered it to opposing counsel. On August 25, Kirkhope was advised that counsel found several omissions in the draft order and was awaiting a copy of the transcript of the reasons for judgment order.

On September 15, Kirkhope accepted instructions from his client to deposit and hold the September payment in his trust account pending final settlement. Kirkhope wrote opposing counsel stating that he was holding funds in trust as his client felt that his former spouse was purposely delaying final settlement to cause him ongoing monthly expense, rather than concluding all issues between them in a timely manner.

When the former spouse did not receive the September payment, she made a complaint to the Law Society. After the Law Society advised Kirkhope of the complaint, he returned the funds to his client who then made the spousal support payment.

Determination

The panel found that Kirkhope's disregard of a court order and his participation in his client's strategy to withhold a spousal support payment in an attempt to motivate a quicker settlement of the division of property issues constituted professional misconduct.

Disciplinary Action

The panel considered a number of aggravating factors. Kirkhope's participation in a strategy that resulted in the breach of a court order is a serious matter and undermines the public's confidence in the integrity of the legal profession.

Kirkhope admitted that he participated in this strategy with the hope that it would motivate the complainant and her legal counsel to speed up the process of a division of property and resolution of the other issues in dispute. While this conduct was to the benefit of Kirkhope and his client, it had a negative impact on the complainant.

Kirkhope had 23 years of experience in family law matters and civil litigation. He had two prior findings of professional misconduct, the most recent of which involved breach of a court order. That complaint was in progress at the time that he participated in this breach of a court order. Kirkhope provided statements that he would change his practice; however, the panel recognized that he had an opportunity to change prior to September 2010 and chose not to.

It appeared to the panel that Kirkhope's two previous penalties for professional misconduct in the nature of fines had not been effective.

After Kirkhope was contacted by the Law Society, he took quick action to redress the wrong and acknowledge his misconduct. The panel considered this as a mitigating factor as well as the negative impact that a suspension would have on his clients and the two employees in his small law office.

On the overall consideration of the aggravating and mitigating factors, the panel found that a significant suspension of 45 days was appropriate in this case.

The panel ordered that Kirkhope:

1. be suspended for 45 days effective February 1, 2014 (varied to February 14, 2014); and
2. pay \$7,725.20 in costs.

The panel further ordered that financial information with respect to Kirkhope's income and law practice not be disclosed or published.