

2014 : No. 02 Summer

Thomas Paul Harding

Surrey, BC

Called to the bar: August 31, 1990

Discipline hearing : December 11-12, 2012 and April 29, 2013 (facts and determination) and December 19, 2013 (disciplinary action)

Panel : Bruce LeRose, QC, Chair, William Everett, QC and June Preston, MSW

Decision issued : August 30, 2013 (2013 LSBC 25) and February 17, 2014 (2014 LSBC 06)

Counsel : Kieron Grady for the Law Society; Gerald Cuttler for Thomas Paul Harding

Facts

In November 2009, Thomas Paul Harding was retained by a client in a family law action. Harding requested a copy of the client's file from the client's previous lawyer. In response, he received a letter, enclosing accounts totalling \$3,072.56 and advising that the file would be provided once the client paid the accounts.

There was an exchange of correspondence between Harding and the other lawyer on the appropriateness of the accounts. On February 17, 2010, the other lawyer wrote to Harding and enclosed the client's file on the undertaking that the outstanding accounts would be paid out, as solicitor of first charge, upon receipt of any future settlement paid to the client in this matter. Further, if Harding was unwilling or unable to accept the undertaking, he would return the file uncopied.

On March 15, 2010, Harding contacted a Law Society practice advisor about the undertaking imposed by the other lawyer. Harding was advised that all undertakings must be complied with, regardless of merit.

That same day, Harding wrote a letter to his client's former lawyer and three other lawyers at the law firm. The letter included rude and discourteous remarks, such as "any stupid, dishonest lawyer can purport to impose a stupid undertaking, and the receiving lawyer is stuck with it."

The other lawyer objected to the tone of Harding's letter on the basis that it was damaging to his reputation and brought the practice of law into disrepute. He demanded an immediate retraction and apology. Harding followed up with a second letter that continued to demean the lawyer and to belittle his English skills. Its context and tone were not consistent with that of an apology.

In a second family law matter, Harding wrote an email, dated September 9, 2010, to counsel for the opposing party that contained rude and discourteous remarks directed to opposing counsel. The impugned remarks implied that opposing counsel was not meeting his ethical duty to the children and appeared to tie that alleged failure to his grooming habits.

Harding's remarks were made because of his concern for the best interests of the children and where they would be located during his client's access to them. His letter achieved its purpose and advanced his client's case, as opposing counsel provided a substantive response by letter the next morning.

Determination

The panel found that Harding's conduct in writing two letters to his client's former lawyer that contained

rude and discourteous remarks constituted professional misconduct.

The *BC Code* and recent decisions of the Supreme Court of Canada make it clear that incivility in a lawyer's conduct toward another lawyer impedes the proper functioning of the administration of justice and undermines public confidence.

Harding did not acknowledge his misconduct, nor did he retract his remarks or apologize to the complainant.

The panel was particularly concerned that Harding's professional conduct record includes a prior citation and two conduct reviews that involve an uncivil manner in his dealings with other counsel. Therefore, the two letters could not be viewed as an isolated incident.

Notwithstanding that Harding recently began undergoing psychological counselling and treatment, he had opportunities to change his behaviour in the past and chose not to. However, the panel did see Harding's current attempt to change his behaviour as a positive step and considered this as a mitigating factor.

In the second matter, Harding acknowledged that his remarks in the email to opposing counsel were sharp and sarcastic. The panel was of the view that the remarks constituted discordant communication to a degree that did not go beyond mere rudeness and discourtesy. The panel found the impugned remarks were not a marked departure from the conduct expected of lawyers and did not constitute professional misconduct.

Disciplinary Action

The panel ordered that Harding:

1. pay a \$2,500 fine; and
2. continue counselling and treatment with a psychologist.