

2005 LSBC 26

Report issued: June 27, 2005

Citation issued: April 22, 2004

The Law Society of British Columbia  
In the matter of the *Legal Profession Act*, SBC 1998, c.9  
and a hearing concerning

**Larry William Goddard**

Respondent

### **Decision of the Hearing Panel**

Hearing date: June 8, 2005

Panel: Anne Wallace, Q.C., Single Bencher Panel

Counsel for the Law Society: James Doyle

Counsel for the Respondent: Jerome Ziskrout

## **Background**

[1] The Respondent was called to the Bar in British Columbia on May 20, 1975 and has been a member of the Law Society since then. He articulated and practiced with Campney, Murphy until the fall of 1984 when he joined a firm based in Mission, BC. The Respondent ran their satellite office in Abbotsford. In 1987 when the parent firm decided to close the Abbotsford office, the Respondent took over that office as a sole practitioner, where he has continued to practice. The Respondent practices mainly in the areas of corporate and commercial law, estates, trusts and wills, and real estate including real estate development.

### **Complaint #1**

[2] The Respondent acted for the vendor of a property in Abbotsford. By letter dated April 30, 2002, counsel acting for the purchaser forwarded the sale proceeds to the Respondent on his undertaking to discharge a Mortgage. The undertaking provided:

"These funds are forwarded to you on your undertaking to pay sufficient funds to Fraser Valley Credit Union with respect to (a mortgage)... and to obtain and file a Discharge of the said mortgage and to provide our office with registration particulars in due course. In the event such registerable Discharge document is not received within a reasonable period of time you will take all necessary legal action to discharge such from title."

[3] On April 11, 2003 counsel for the purchaser wrote to the Respondent indicating that the Land Title Office had rejected the Discharge of Mortgage that had been filed on May 31, 2002. On April 29, 2003 counsel for the purchaser reported the Respondent to the Law Society.

[4] The Law Society wrote to the Respondent on May 9, 2003 seeking an explanation concerning the complaint. On June 12, 2003, the Respondent advised the Law Society that the Discharge had been rejected by the Land Title Office because the mortgagee had changed its name. The Respondent advised

that he would send a "fresh" Discharge to the Credit Union and would register it upon it being returned to the Respondent in registerable form. On July 25, 2003, the Respondent wrote to the Law Society confirming that he had filed the Discharge of Mortgage on June 27, 2003. Filing the Discharge of Mortgage took 15 months from the time the undertaking was given.

#### Complaint #2

[5] The Respondent acted for the vendor of a property in Abbotsford. By letter dated August 27, 2002, counsel acting for the purchaser forwarded sale proceeds to the Respondent on his undertaking to discharge a Mortgage. The undertaking provided:

"These funds are forwarded to you on your undertaking to pay sufficient funds to the Bank of Montreal with respect to mortgage number BK406924 and to obtain and file a Discharge of the said mortgage and to provide our office with registration particulars in due course. In the event such registerable Discharge document is not received within a reasonable period of time you will take all necessary legal action to discharge such from title."

[6] On November 6, 2002 counsel for the purchaser sent a letter to the Respondent inquiring about the status of the Discharge and sent a follow-up letter on April 1, 2003 advising that if the undertaking was not satisfied within a two-week period, he would consider the Respondent to be in breach of his undertaking. On April 29, 2003 counsel for the purchaser reported the matter to the Law Society.

[7] The Law Society wrote to the Respondent on May 9, 2003. The Respondent, by reply dated June 12, 2003 indicated that the matter was resolved and that he was enclosing a copy of the Discharge of Mortgage. That letter from the Respondent did not include a Discharge of Mortgage but he did provide the Discharge in a letter dated July 25, 2003. The Discharge had been filed on June 10, 2003, ten months after the transaction completed.

#### Complaint #3

[8] On May 30, 2002, the Respondent had given an undertaking to another member acting for a purchaser as follows:

"Upon receipt of the net sale proceeds, we undertake to:

1. pay forthwith to CIBC Mortgage Corporation and P.D. and M.G., sufficient funds to place it under a legal obligation to provide our office with the registerable release of its charges and to pay these funds on the condition that the CIBC Mortgage Corporation and M.G. and P.D., provides our office with registerable release in a reasonable amount of time;
2. upon receiving the registerable releases, we will file the release in the Land Title Office and will provide your office with registration particulars of that filing in due course.

This undertaking is provided we receive a trust cheque representing the sale proceeds of the above mentioned property."

[9] On May 31, 2002 the member had received a trust cheque from counsel for the purchaser with a letter which provided:

"These funds are provided to you on your undertakings:

1. to pay to CIBC Mortgage Corporation and M.G. and P.D. an amount sufficient to pay off and discharge its mortgage and judgment ,

2. obtain by such legal means as may be necessary a registerable Discharge of Mortgage in favour of CIBC Mortgage Corporation and Judgment in favour of M.G. and P.D.;
3. immediately attend to registration of the Discharge when in receipt of same, and provide this office with registration particulars of the Discharge thereafter.

[10] The Respondent accepted these undertakings following receipt of the May 31, 2002 correspondence. On June 26, 2003 counsel for the purchaser wrote to the Respondent, asking that he provide discharge particulars pursuant to the letters exchanged.

[11] Subsequently, the Law Society wrote letters to the Respondent on September 10, October 2 and October 17, 2003. The Respondent replied on October 23, 2003, advising that the Judgment had been released due to the effluxion of time, and while the Discharge had yet to be received from CIBC, a letter had been obtained from CIBC confirming that no money was owing under the Mortgage the Respondent had undertaken to discharge. On January 14, 2004, the Respondent wrote to the Law Society advising that the CIBC Mortgage had been discharged on January 8, 2004. The Mortgage was discharged 20 months after the undertaking had been accepted by the Respondent.

#### Complaint #4

[12] The Respondent acted for vendors in a real estate transaction. On November 10, 1997, counsel for the purchasers wrote to the Respondent enclosing various purchase documents and the following undertaking:

"Our trust cheque . . . will be made available to you on your undertakings as follows:

1. to forthwith pay out and discharge [a] mortgage in favour of CIBC Mortgage Corporation and [a] mortgage in favour of M.B. and provide us with written confirmation and registration particulars of the said discharges upon your receipt of same;
2. If you are unwilling or unable to comply with these undertakings you will retain the funds received from us in your possession and will contact us immediately to discuss the matter on the understanding that the full amount of the proceeds will be returned to us on demand."

[13] On November 14, 1997, counsel for the purchaser wrote to the Respondent saying, in part:

"... We enclose our trust cheque payable to you, in trust, representing the net proceeds of sale to the vendor in accordance with the Vendor's Statement of Adjustments.

The enclosed funds are forwarded to you on the undertakings set out in our letter to you dated November 10, 1997."

[14] On December 5, 1997, the Respondent wrote to his clients, with copy to the lawyer for the purchaser, indicating the Mortgage Payout Statement prepared on November 12, 1997 was calculated on the basis that a payment due November 5, 1997 had been made. The Respondent's client, the mortgagor, had made the November 5, 1997 payment by cheque but that cheque did not clear the bank due to insufficient funds. As a result, the amount paid to the Bank by the Respondent to discharge the mortgage was short in the amount of the November 5, 1997 payment.

[15] In response to letters written from the Law Society to the Respondent dated March 7, March 21 and April 8, 2003, the Respondent finally replied on April 17, 2003 explaining that the bank would not discharge the Mortgage as one payment remained outstanding. He advised that he had been trying and was continuing to attempt to get the matter resolved but that both parties have been difficult to deal with.

[16] The Respondent sent the Law Society a letter on June 12, 2003 confirming that his clients maintained that they had made all payments required under the Mortgage however the bank insisted there had been one missed payment and therefore refused to provide a Discharge. Because his clients refused to make another payment, the Respondent had decided to resolve this matter by personally paying the funds owing in order to obtain the Release and would later pursue an action against his clients and the Bank.

[17] On September 2, 2003, the Respondent wrote to the Law Society and advised that he had paid the outstanding amount under the Mortgage and asked that the matter be considered resolved. He indicated that a copy of a Discharge Statement concerning payout was enclosed. It was not. On September 15, 2003 the Law Society wrote to the Respondent advising that the matter was not resolved and that confirmation of Discharge of the Mortgage was required.

[18] After further correspondence, on February 6, 2004 the Respondent wrote to the Law Society and advised that the Discharge of the Mortgage was received from the Bank on February 5, 2004 and filed on February 6, 2004. This was five years and four months from the time the Respondent undertook to discharge the Mortgage.

#### Complaint #5

[19] H.R., a member of the Law Society, acted for the vendor of a service station and L.K., a member of the Law Society, represented the purchasers of the station. The Respondent acted for a previous owner of the station, G.E., who had sold the station to H.R.'s client. When G.E. sold the station to H.R.'s client, he took back a Mortgage, and the shares of the company which held the property were placed in escrow.

[20] When the station was sold to L.K.'s client, G.E. agreed that the purchaser could assume the Mortgage and he subsequently agreed to execute a new Mortgage with the original Mortgage being discharged and the shares being released from escrow. In order to be able to ensure that G.E.'s original Mortgage would be discharged, H.R. wrote to the Respondent on August 30, 2002 confirming his understanding of the transaction, namely that G.E.'s original Mortgage would be replaced with G.E. granting a new Mortgage to L.K.'s client. On September 11, 2002, H.R. wrote to the Respondent confirming these arrangements and asking the Respondent to provide a Discharge of the original Mortgage. The Respondent replied on September 12, 2002 as follows:

"Monies will be released on the basis that the current mortgage registered in favour of G.E. will only be released on the understanding that G.E. duly sign a Discharge which we will forward to you within a reasonable amount of time."

[21] By letter dated October 21, 2002, H.R. wrote to the Respondent confirming that the replacement Mortgage had been registered and requesting a Discharge of the original Mortgage. On December 6, 2002 H.R. wrote to the Respondent asking the Respondent to comply with the undertakings set out in the letter of September 12, 2002.

[22] H.R. again wrote to the Respondent on February 7, 2003 referring him to the letter of December 6, 2002 and indicating;

" I have acted on the undertakings set out in your letter of September 12, 2002. To date your client has not discharged the mortgage or instructed J.R. to release the escrow documents. You have ignored both mine and L.K.'s correspondence with you."

[23] The Respondent did not respond to the letter.

[24] On March 28, 2003, a Discharge of Mortgage was executed by the Respondent's client, some five months after H.R. wrote to the Respondent advising that the replacement Mortgage had been registered. By this time, a Certificate of Pending Litigation had been filed by G.E.'s ex-wife, preventing registration of the Discharge.

[25] A Discharge of the Mortgage was finally registered in the Land Title Office on November 12, 2003. thirteen months after the replacement mortgage had been registered.

## Decision

[26] Taking Complaint #5 first, the Respondent denies breaching an undertaking with respect to this transaction. The Respondent testified before the Panel about this matter. He told the Panel about what was happening in his personal life at the time all of these complaints arose. By way of summary, during this time period the Respondent was under a great deal of stress in trying to care for his wife who had received a particularly frightening cancer diagnosis which required long, harsh and difficult treatment. Most of this testimony is relevant primarily to the penalty phase of this hearing and not to verdict and therefore will be considered in more detail in that portion of the Panel's decision. However, the Panel accepts this evidence as an explanation that the Respondent's actions resulted from stress as opposed to incompetence or laziness.

[27] With respect to the facts of Count #5 of the Citation, the Respondent testified that pursuant to his letter of September 12, 2002, he felt that he could not discharge the mortgage in question until he had either received the funds which permitted him to do so or had confirmation from his client that his client had either received the funds which the Respondent understood were to be paid or was otherwise directed by his client to discharge the original mortgage. He understood that that was what his undertaking of September 12, 2002 set out. Under considerable questioning by counsel for the Law Society, the Respondent was firm that this was his understanding of his responsibilities in this matter. He further pointed to the letter of H.R dated August 30, 2002 which he understood verified his understanding of the situation.

[28] The facts of the complaint center around a poorly worded undertaking. The undertaking in this instance was not clear and was the main reason that things started going wrong in this situation. The Respondent thought one thing but the lawyer on the other side thought another. These facts are a clear illustration of how important it is that undertakings be worded as clearly as possible to accurately set out the promises given between the parties. The system of mutual undertakings is essentially what allows real estate practice to operate in the manner it does and as such, being accurate in their wording and assiduously abiding by them must be rigorously followed.

[29] The Panel does not find that the Respondent consciously attempted to mislead the lawyer on the other side of this transaction or that he purposely breached an undertaking. The Panel accepts that the Respondent abided by what he understood the terms of his undertaking to be. Where the Respondent is at fault is his failure to respond to the lawyer for the other side or to communicate to that lawyer, in any way, his reasons for not doing what that lawyer was asking him to do. As a result, that lawyer could only conclude that he was being ignored, or worse, that something was wrong which could impact on his own client. The Respondent admitted at the Hearing that this lack of response put the other lawyer to needless time and effort to get the matter concluded and caused undue stress to that lawyer. However, that is not what Count #5 of the Citation alleges as professional misconduct. On this basis, the Panel finds that the Respondent is not guilty of professional misconduct with respect to count #5 of the Citation.

[30] The Respondent has admitted that he professionally misconducted himself with respect to Counts #1,

#2, #3 and #4 of the Citation and after reviewing the Agreed Statement of Facts which were filed and summarized in this decision, the Panel finds the Respondent guilty of professional misconduct on those four counts.