

2014 : No. 02 Summer

David Donald Hart

Langley, BC

Called to the bar: May 15, 1961

Discipline hearing : February 25, 2014

Panel : Lynal Doerksen, Chair, Glenys Blackadder and John Hogg, QC

Decision issued : April 9, 2014 (2014 LSBC 17)

Counsel : Carolyn Gulabsingh for the Law Society; Dennis Quinlan, QC for David Donald Hart

Facts

On September 9, 2009, David Donald Hart was retained by a client respecting issues arising from her separation from her husband. Hart filed documents on his client's behalf, seeking a divorce and corollary relief.

On November 18, the client's family residence was sold, and the net sale proceeds of \$45,073.64 were placed in Hart's trust account.

On January 8, 2010, Hart and his client attended a judicial case conference with the husband and his lawyer. Between January and August 2010, there was an exchange of communication at various times between Hart's paralegal, secretary and legal assistant and either his client or the husband's lawyer.

In August, Hart's client expressed her disappointment in the lack of services and professionalism that had been demonstrated by several members of Hart's team. Until August 25, her repeated requests for the court order from the January judicial case conference were ignored. She planned to contest Hart's bill, because she was not much further ahead than a year before.

In December, the client informed Hart's legal assistant that she would respond to her husband's lawyer on her own behalf, as she could no longer afford legal bills. Hart's legal assistant advised her that the opposing lawyer would not be able to deal with her directly until Hart was removed as solicitor of record. Additionally, the client would need to satisfy Hart's final account before acting on her own.

On January 12, 2011, Hart received a letter advising that the lawyer representing the client's husband had been replaced. Hart did not provide a copy of this letter to his client or advise her that a new lawyer had been retained.

On January 19, Hart stopped working on the client's file until the outstanding account in the amount of \$2,500 had been paid.

The client continued to have telephone conversations and exchange emails with Hart's staff regarding her case and her outstanding account. In April, the client requested a meeting with Hart and inquired if the trust funds were being held in an interest-bearing trust account.

Hart met with the client in May and assured her that he would give her a letter outlining her options and provide an update after reviewing his file materials. He did not follow through with this promise.

In August, the client emailed the lawyer representing her husband to express her dissatisfaction with Hart's services. This email prompted Hart to send a letter to the client confirming that he would write off her existing accounts receivable in the amount of \$3,000.97 and provide a refund of an additional \$500.

Hart also enclosed a Notice of Intention to Act in Person for her signature and advised that, once it was filed in the court registry, he would provide the refund cheque and her file materials. The client refused to sign it until her name and address were corrected on the document and the refund was increased to \$1,000 to cover the interest lost from not having her funds in an interest-bearing account.

In March 2012, the client reluctantly signed the Notice of Intention to Act in Person form and filed it in the court registry on Hart's terms.

In May, the funds that Hart held in trust on the client's behalf were placed in an interest-bearing trust account and the client was advised that her file material and refund cheque were ready for pick up.

In July, the client and her husband entered into a separation agreement, resolving all outstanding issues.

Admission and disciplinary action

Hart admitted that his conduct amounted to professional misconduct. Failing to provide a sufficient level of service to one's client is a serious matter. Hart's misconduct impacted his client emotionally and financially.

From the time the client retained Hart until her matter was finally concluded (without the assistance of Hart), almost three years had passed. It appeared to the panel that this matter could have been concluded well within a year.

Hart further failed to put his client's funds in an interest-bearing account, failed to provide an opinion letter when he promised to do so, failed to correct an address on a Notice of Intention to Act in Person, failed to notify his client that her husband's lawyer had been replaced, and failed to inform his client that he would cease work until his account was paid.

Hart is an experienced family law litigator and has been practising law for almost 53 years. He has a lengthy history with the Law Society consisting of three prior citations, three conduct reviews and a referral to the Practice Standards Committee.

The panel considered the fact that Hart wrote off his client's account, reimbursed her \$500, and compensated a partner in his firm for time spent on the file as mitigating circumstances.

The panel accepted Hart's admission and ordered that he pay:

1. a \$7,500 fine; and
2. \$1,000 in costs.