

2015 : No. 04

Thomas Paul Harding

Surrey, BC

Called to the bar: August 3, 1990

Discipline hearing : May 15, 2014

Panel : Elizabeth Rowbotham, Chair, Karen Nordlinger, QC and Thelma Siglos

Decision issued : September 29, 2014 (2014 LSBC 45)

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

Facts

Thomas Paul Harding was retained by a plaintiff in a personal injury action arising out of a motor vehicle accident.

On June 25, 2013, the paralegal to counsel for the defendant sent a letter to Harding advising that defence counsel had scheduled an independent medical examination (IME) of his client with an orthopaedic surgeon. The letter further advised that the surgeon's cancellation policy was five working days or \$800.

On June 27 Harding wrote to defence counsel advising that the orthopaedic surgeon had already examined his client and that the defence was not entitled to a second medical examination by the same medical specialist, except in very limited circumstances. He also asked to be informed of the facts that would entitle the defence to a re-examination of his client.

On July 2, the paralegal to defence counsel sent a letter to Harding advising that defence counsel had scheduled an additional IME of Harding's client with a psychiatrist. The letter also advised that the psychiatrist's cancellation policy was 10 working days or \$950.

Also on July 2, the paralegal sent a letter to Harding in response to his June 27 letter to defence counsel. The paralegal set out the position of the defence on the IME by the orthopaedic surgeon and referenced case law in support of that position.

On July 3, Harding wrote two letters to counsel for the defence, one in response to the proposed IME by the orthopaedic surgeon and the second in response to the proposed IME by the psychiatrist. Both letters contained 15 pre-conditions that Harding required be addressed before he would consider any defence medical examination of his client.

In the letters, Harding also set out his views on the propriety of paralegals debating issues of law with opposing counsel. He referred to the paralegal as "an uneducated person" and indicated that only a lawyer should correspond with him in the future. He also used the word "hireling" with respect to the orthopaedic surgeon and the psychiatrist.

In July, 2013, defence counsel filed a complaint with the Law Society in respect of the two letters. On April 17, 2014, Harding wrote a letter of apology to defence counsel and the paralegal.

Determination

The question for determination was whether Harding's statements were a marked departure from the

conduct expected of a lawyer and, therefore, professional misconduct. The panel noted the right of freedom of expression under the *Charter of Rights and Freedoms*.

Harding has strong views on the propriety of paralegals debating issues of law with opposing counsel. He testified that he was “vexed” when he wrote the letters and that he intended the final paragraphs to be a witty admonishment to defence counsel that paralegals should not be debating legal issues with counsel and that those types of discussions should be between counsel. The panel found that Harding’s remarks fell short of the mark of “witty” and were open to misinterpretation. However, his words and the manner in which they were expressed were not a marked departure from the conduct expected of lawyers. If the panel had found otherwise, the fact that Harding was “vexed” and irritated would not justify misconduct.

Harding also had strong views on the impartiality and independence of the orthopaedic surgeon and the psychiatrist. He testified that his use of the term “hireling” was intended to be derogatory and that he has disdain for these practitioners. Harding’s opinion was based, in part, on the billing information that he obtained from ICBC through freedom of information requests. The amount received by each doctor for the period 2009 to 2012 formed a significant part of their professional revenue.

Given Harding’s views that the orthopaedic surgeon and the psychiatrist are neither independent nor impartial, and that the percentage of their medical billings paid by the defence is evidence of this lack of independence, the panel did not find that his use of the term “hireling” was necessarily inapt or offensive.

The panel found that Harding could have expressed his views more elegantly, less abrasively, and more persuasively. However, the panel did not find that the words he used or the manner in which he expressed his views on the two practitioners constituted professional misconduct.

Decision

The panel dismissed the citation and the allegations against Harding.

Review