

2015 : No. 1 Spring

Donald Roy McLeod

Victoria, BC

Called to the bar: July 10, 1981

Discipline hearing : February 18, 19 and December 15, 2014

Panel : Jan Lindsay, QC, Chair, Satwinder Bains and Peter Warner, QC

Decision issued : April 19, 2014 (2014 LSBC 16) and January 27, 2015 (2015LSBC 03)

Counsel : Susan Coristine for the Law Society; William G. MacLeod for Donald Roy McLeod

Facts

Donald Roy McLeod was retained to act for the same two clients in two Supreme Court actions, one for personal injuries arising from a motor vehicle accident and the second for damages arising from an alleged misrepresentation concerning their purchase of a house. He had also acted for these clients in two earlier motor vehicle accident claims.

McLeod entered into written retainer agreements with the clients in the personal injury action but did not have a written retainer agreement with them in the misrepresentation action.

The clients ultimately retained new counsel on the personal injury action. McLeod concluded that the clients did not intend to compensate him in accordance with the retainer agreements in the personal injury action and that there would be a dispute over his fees. In addition, they had not paid two accounts that he had issued in the misrepresentation action.

McLeod determined that he could not continue to represent his clients in the misrepresentation action while involved in a dispute with them over compensation in another matter, as it would place him in a conflict of interest. When McLeod informed his clients that he wished to withdraw as counsel in the misrepresentation action, they indicated that they wished him to continue to represent them. He then brought an application to be removed from the record, which disclosed confidential information.

The clients filed a complaint with the Law Society alleging that McLeod had filed an affidavit that they claimed contained confidential and privileged material regarding the personal injury action.

At the hearing of McLeod's application to be removed as solicitor, the clients consented to the relief sought, but complained about the alleged breach of confidentiality and opposed the claim for costs. McLeod told the judge that he had a "written consent to release any information that in my view is necessary for purposes such as this," and both parties submitted that further proceedings arising out of the complaint to the Law Society would take place. The judge granted McLeod his orders plus costs and said nothing about the alleged breach of confidentiality.

Determination

The panel found that McLeod was not legally entitled to disclose the confidential client information, and that this breach of the rules constituted professional misconduct.

McLeod submitted that he was authorized to disclose confidential information by way of a retainer

agreement, although he did not actually have a retainer agreement on the misrepresentation action. He was relying on the retainer agreement executed by the clients in two earlier motor vehicle accident claims. He submitted that he was entitled to disclose the confidential information in support of his application to be removed from the record.

Although McLeod was awarded costs on the application to remove himself from the record, the panel did not agree that the hearing judge was specifically ruling on the propriety of McLeod's affidavit. It was more likely that the hearing judge knew that the Law Society was investigating the disclosures made by McLeod in the affidavit and on the application.

As a practising lawyer since 1981, McLeod should have known about, and used, well-established procedures for bringing applications to get off the record, and for serving applications on parties who are not entitled to disclosure of confidential client information. A lawyer's obligation to preserve client confidentiality is an integral and vital part of our justice system.

McLeod's prior disciplinary record was an aggravating factor. He was the subject of prior conduct reviews on issues including client confidentiality and, more specifically, inappropriately disclosing client information in pursuit of his own fees. He had been directed to take counselling and remedial courses, which should have clarified the importance of client confidentiality for him.

McLeod's clients were affected by his disclosure and they complained of it to the court. At the hearing to determine disciplinary action, McLeod finally apologized to his clients and the profession.

Disciplinary Action

The panel ordered that McLeod:

1. be suspended for one week;
2. pay a \$2,500 fine; and
3. pay \$5,000 in costs.