

Martin Keith Wirick

Vancouver, BC

Called to the Bar: May 14, 1979

Resigned membership: May 23, 2002

Disbarred: December 16, 2002

Discipline hearing: December 16, 2002

Panel: Ralston S. Alexander, QC, Chair, Margaret Ostrowski, QC and David Zacks

Oral reasons: December 16, 2002

Report issued: December 19, 2003; indexed as [2002] LSBC 32

Counsel: Jessica S. Gossen, for the Law Society; Thomas H. Hara, for Mr. Wirick

Summary

Mr. Wirick represented the nominee of his client G as vendor in the sale of a residential property. The solicitor for the purchaser provided \$467,320.13 to Mr. Wirick in trust on his undertaking to use the funds to pay out and discharge all of the encumbrances on title. Contrary to that undertaking, Mr. Wirick used none of the funds to pay out any of the encumbrances, but rather paid the funds out to companies owned by G. At his discipline hearing, Mr. Wirick acknowledged that his payment of funds from trust for purposes other than payment of the encumbrances, which was in breach of his undertaking, constituted professional misconduct. The hearing panel noted that, although just one citation had been brought to hearing for administrative convenience, both counsel acknowledged that there were many other similar matters involving Mr. Wirick. The panel stated that Mr. Wirick's level of misconduct was unprecedented. He had brought much shame upon the legal profession and caused significant hardship and harm to many members of the public and the profession. All lawyers would need to make extraordinary efforts to address the substantial harm he had done to public confidence in the integrity of the legal profession. The panel found Mr. Wirick guilty of professional misconduct and ordered that he be disbarred. He was also prohibited from applying to practise law in any jurisdiction for 20 years.

Facts

In late 1999 one of Mr. Wirick's clients (G), through one of G's companies, purchased a residential property in Vancouver. G's company subdivided the property and replaced the original house with a duplex on two strata lots.

A number of encumbrances (four mortgages and two assignments of rents) were placed on title.

In March, 2001 G's company sold the property to a nominee of G. The nominee held no beneficial interest in the property; rather he held the interest in trust for one of G's companies. Subsequent to the sale, the nominee obtained another mortgage for \$417,450, which was registered against the title.

In August, 2001 the nominee contracted to sell the property to a new purchaser (D). Mr. Wirick represented the nominee as vendor in the sale. On September 11 D's lawyer forwarded \$467,320.13 to Mr. Wirick in trust, on Mr. Wirick's undertaking to use the funds to pay out and discharge all the encumbrances on title. Contrary to his undertaking, Mr. Wirick used none of the funds to pay out any of the encumbrances, but rather paid the funds to two companies owned by his client G.

Mr. Wirick tendered his resignation as a member of the Law Society, citing behaviour inconsistent with his duties as a barrister and solicitor. He resigned effective May 23, 2002. The Law Society began an audit of Mr. Wirick's books, records and accounts.

A citation was issued against Mr. Wirick on August 2, 2002. The counts of the citation, as amended, were as follows:

- You breached an undertaking dated September 11, 2001, which you provided to [the lawyer for the purchaser] to pay out, release and advise his office of discharge particulars of the releases of six encumbrances on the title of the property being purchased by his client D;
- You wrongfully converted funds when you received funds in trust, in your capacity as a barrister and solicitor from [the lawyer for the purchaser] on behalf of his client D on September 11, 2001 on an undertaking to apply the funds to pay out and discharge the four mortgages registered against certain property and you paid those funds out of trust contrary to the undertaking.

Verdict

Mr. Wirick acknowledged that his failure to pay out the encumbrances constituted a breach of undertaking. He also acknowledged that his payment of funds from trust for purposes other than payment of the encumbrances, when such funds were forwarded to him on his undertaking to pay out and discharge the encumbrances, constituted professional misconduct.

The hearing panel accepted Mr. Wirick's admission and found that his conduct constituted professional misconduct.

Penalty

The hearing panel noted that, although just one citation had been brought to hearing for administrative convenience, both counsel acknowledged that there were many other similar matters involving Mr. Wirick. The panel found Mr. Wirick's level of misconduct unprecedented. He had brought much shame upon the legal profession and caused

significant hardship and harm to many members of the public and the profession. All lawyers would need to make extraordinary efforts to address the substantial harm he had done to public confidence in the integrity of the legal profession.

The panel noted that there could be no possible penalty other than disbarment. The panel ordered that Mr. Wirick:

1. be disbarred; and
2. not be permitted to apply to practise law in any jurisdiction for 20 years.

If it had the authority, the panel would have prohibited Mr. Wirick from ever reapplying for membership in the Law Society. While impossible to predict what could occur in 20 years, the panel found it inconceivable that Mr. Wirick would ever be able to establish that he is of good character and repute or fit to become a barrister and solicitor.

* * *

[For summaries of Special Compensation Fund claim payments involving Mr. Wirick, see the Benchers' Bulletin, beginning with the January-February, 2003 issue.]

Discipline Case Digest — 2003: No. 05 February (Wirick)