

## **Eric Bernard Heringa**

Abbotsford (formerly of Vancouver), BC  
Called to the Bar: June 26, 1975

**Discipline hearing:** February 13, 2003

**Panel:** Gerald J. Kambeitz, QC, as a one-Bencher panel by consent

**Reports issued:** February 25 and May 13, 2003; indexed as [2003] LSBC 10

**Counsel:** Herman Van Ommen and Jessica S. Gossen, for the Law Society; Mr. Heringa on his own behalf

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### **Summary**

While representing two clients in the mortgaging of their property in 1997, Mr. Heringa breached his undertaking to the solicitor for the mortgage lender by failing to discharge an existing first mortgage from title. The hearing panel found that Mr. Heringa's conduct constituted professional misconduct. The panel observed that a reliance on undertakings is fundamental to the practice of law and that serious and diligent attention by lawyers to fulfilling undertakings is essential for maintaining public trust in the profession. The panel ordered that Mr. Heringa arrange to discharge the mortgage before July 15, 2003, be suspended for one month beginning August 1, 2003, be referred to the Practice Standards Committee and pay costs of the discipline proceedings.

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### **Facts**

Mr. Heringa was the solicitor for the estate of DS who died in 1988. Before her death, DS signed an acknowledgement that she had been paid in full for the mortgage she held on the title of a property owned by BS and RS.

While representing BS and RS in a subsequent mortgaging of that property in May, 1997, Mr. Heringa received in trust proceeds of \$9,875.63 from the lawyer representing the mortgage lender (A Corporation) on Mr. Heringa's undertaking to discharge the DS mortgage from title. Mr. Heringa did not in fact discharge the mortgage and did not return the mortgage funds to A Corporation but paid them out to his clients.

On at least two subsequent occasions, the lawyers for A Corporation contacted Mr. Heringa to enquire about the status of the mortgage discharge. In later foreclosure proceedings against the property in 2001, the lawyers representing the assignee of the A Corporation mortgage again enquired as to the status of the DS mortgage discharge. Those lawyers reported the matter to the Law Society.

### **Verdict**

The hearing panel found that Mr. Heringa breached his undertaking to discharge a mortgage, which constituted professional misconduct.

The panel stated that Mr. Heringa was in error in taking the view that an undertaking is not breached until it is no longer capable of being fulfilled. Undertakings are not a matter of convenience to be fulfilled when the time or circumstances suit the lawyer giving the undertaking. On the contrary, undertakings are the most solemn of promises from one lawyer to another. Reliance on undertakings is fundamental to the practice of law and it follows that serious and diligent efforts to meet all undertakings is essential to maintaining public trust in lawyers.

## **Penalty**

In canvassing the various factors relevant to penalty, the panel noted that Mr. Heringa had not acknowledged his misconduct or taken any steps to attempt to discharge the DS mortgage. While he told the panel he intended to discharge the mortgage once he had completed probate of the DS estate, the panel expressed concern that, despite having conducted the estate file for 12 of the last 15 years, Mr. Heringa had still not obtained a grant of probate.

The panel again stressed that undertakings are fundamental to the practice of law and failure to comply with an undertaking must be censured as serious professional misconduct.

Also of grave concern to the panel was Mr. Heringa's apparent indifference to the proceedings, and the panel stated it intended to send a strong message of condemnation in this regard.

The panel ordered that Mr. Heringa:

1. discharge the DS mortgage by July 15, 2003;
2. be suspended for one month beginning August 1, 2003;
3. be referred to the Practice Standards Committee; and
4. pay costs of the discipline proceedings.