

Member resigns for professional misconduct

**Breaches of trust accounting rules**

**GARY JOHN HAWKINS**

Richmond, B.C.

Called to the Bar: May 14, 1973

Prior to selling his law firm in 1994 and becoming a non-practising member in 1995, Mr. Hawkins was a sole practitioner in conveyancing, wills and estates.

In November, 1997, Mr. Hawkins admitted professional misconduct to the Discipline Committee for various breaches of Law Society trust accounting rules between 1990 and 1994 resulting from his negligence in failing to maintain his books and accounts and failing to fulfil his professional obligations.

**Failure to maintain proper books and accounts**

Mr. Hawkins failed to maintain proper books and accounts for trust and non-trust transactions. In particular, he failed to record in his general account or cash books routine monthly transactions, substantial deposits and payments to the firm, monthly service charges and accrued interest or sufficient detail concerning some transactions. Some transactions were recorded in monthly summaries, but these were incomplete. Mr. Hawkins failed to maintain any accounts receivable ledger, an accurate record of disbursements or a list or general file of billings.

Mr. Hawkins admitted that his books and accounts were completely inadequate and his negligence in failing to maintain proper books and accounts contravened Rules 840 to 845 and 860.

He noted that he was not sufficiently organized to properly manage the volume of his practice; the pressure and stress completely overwhelmed him during his last years of practice.

**Failing to maintain records of all separate trust accounts**

Mr. Hawkins failed to maintain a record of the separate trust accounts he opened for clients, contrary to Rule 805. He admitted this failure was incompetent and negligent.

**Failing to disclose all accounts in Form 47**

In filing his Form 47 Accountant's Report with the Law Society for years 1990 through 1993, Mr. Hawkins failed to disclose one pooled trust account and 40 separate trust accounts.

When the Law Society first questioned Mr. Hawkins concerning his failure to disclose all of his trust accounts, he said that the pooled trust account was dormant, other than an occasional entry. In fact, the account was active and had received substantial deposits.

Mr. Hawkins also said the separate trust accounts were short-term accounts to generate interest for clients and that these were returned to the regular trust account usually within two weeks to two months. In fact, the separate trust accounts existed for a period ranging from several days to several years, and several had substantial balances.

Mr. Hawkins failed to keep proper records on these accounts or to appreciate the volume of transactions. He admitted that he was reckless in failing to verify the accuracy of his statements to the Law Society and this amounted to professional misconduct.

He also admitted that, in failing to disclose all trust accounts in the Form 47 reports, he was incompetent and negligent and had breached Rule 842.

**Improperly transferring trust funds to general account**

On eight different client files, Mr. Hawkins improperly transferred funds totalling \$3,674.20 from trust into his firm's general account without the transfers being supported by any billings. The money in these instances was left over from transactions and remained in trust for extended periods through Mr. Hawkins'

gross inadvertence. When brought to his attention, Mr. Hawkins assumed the funds were for payment of fees and disbursements already billed. When he transferred the funds to his general account, Mr. Hawkins planned to review the files at a later date, but did not do so for some time.

On seven of the eight files, Mr. Hawkins returned the funds to the clients; on the eighth file, the money was properly owing to the firm.

Mr. Hawkins admitted that, in transferring the trust funds into his general account, he negligently committed breach of trust.

#### **Improperly retaining interest on trust accounts**

Mr. Hawkins paid money into trust on behalf of two clients on a short-term basis and transferred the accrued interest to his firm's general account. In one case, he transferred \$30.12. and in the other \$121.48 (all but \$10.34 of which was used to cover money owing to the firm).

Mr. Hawkins admitted that he was not entitled to transfer the interest from his trust to his general account and that he was negligent and failed to appreciate his professional obligations.

#### **Depositing retainers into general account**

On 10 client files, Mr. Hawkins deposited funds described as retainers directly into his firm's general account, with billings being issued after the fact and, in some cases, without billings on the file. These deposits totalled \$5,200.

Mr. Hawkins arranged for certain clients to pay him an initial retainer and obtain permission to pay the money into the general account. Once the file was complete, he rendered a final account showing the retainer as a credit. However, on occasion he failed to issue an account to reflect the arrangement prior to transferring the funds to his general account.

Mr. Hawkins admitted breach of the Law Society Rules and professional misconduct.

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Under Law Society Rule 468, the Discipline Committee accepted Mr. Hawkins' admission, his resignation, his undertaking not to apply for reinstatement in the Law Society for three years and his proposal for payment towards the costs of the discipline proceeding.

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