

## **CHARLES OGILVIE**

**99/25**

Burnaby, B.C.

Called to the Bar: September 14, 1972

Voluntarily ceased membership: January 1, 1996

**Discipline hearing panel:** March 3, 1997 and March 30, 1998

Warren Wilson, Q.C., Chair, William Trotter, Q.C. and Peter Keighley

Herman Van Ommen, for the Law Society

Mr. Ogilvie did not appear, although duly notified

Hearing report indexed as [1999] LSBC 17

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### **Summary**

Mr. Ogilvie rendered accounts that contained fraudulent misstatements about the services he had rendered and disbursements he had incurred in relation to four client files. On the basis of these accounts, he transferred to his general account over \$7,000 held in trust for the clients, thereby misappropriating these funds. He also failed to take appropriate steps to account for over \$96,000 in funds that he held in trust in relation to five other client files. After receiving complaints about the conduct of Mr. Ogilvie (who had by then voluntarily ceased membership), the Law Society ordered an audit of his records and subsequently wrote to him requesting a response to the disciplinary issues relating to the audit. Mr. Ogilvie failed to respond. A discipline hearing panel found that Mr. Ogilvie's conduct in rendering fraudulent accounts, failing to account for funds in trust and failing to respond to Law Society correspondence constituted professional misconduct, and ordered that he be disbarred.

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### **Facts**

Between 1993 and 1994 Mr. Ogilvie rendered accounts that contained fraudulent misstatements as to services provided on four different client files, and he subsequently transferred funds totalling over \$7,000 from his trust account to his general account. Mr. Ogilvie had held the funds in trust on each of these files since the early 1980s. He had not provided services to those clients after that time, but rendered the fraudulent accounts to allow him to transfer the trust balances to his general account.

Between 1982 and 1995, Mr. Ogilvie held money in his trust account in relation to five other client files but failed to account to the clients for the funds, which totalled over \$96,000.

After the Law Society received complaints about Mr. Ogilvie's conduct, the chair of the Discipline Committee ordered an audit of his books and records, which was conducted in June, 1995. Mr. Ogilvie suffered a stroke in August, 1995 and did not return to practice. A custodian was appointed in September, 1995 and Mr. Ogilvie did not renew his practising certificate at the end of the year, thereby ceasing membership in the Society.

The Law Society wrote to Mr. Ogilvie in 1996, after his physician indicated he was able to deal with the disciplinary issues relating to the audit. The Society asked for his response to these issues, but Mr. Ogilvie did not respond.

## **Decision**

The hearing panel found that Mr. Ogilvie's conduct constituted professional misconduct in the following respects:

- rendering fraudulent accounts, contrary to Chapter 1, Rule 5(6) of the *Professional Conduct Handbook* (1993) and Part A, Rule 5(6) of the *Handbook* (1970), which was in effect at the time one of these accounts was rendered;
- failing to account to clients for funds held by him in trust, or report the retention of funds held in trust, contrary to Chapter 1, Rule 3(8) of the *Handbook* (1993) (previously Part B, Ruling 11) and Rule 800.1 of the Law Society Rules; and
- failing to respond to correspondence from the Law Society, contrary to Chapter 13, Rule 3 of the *Handbook*.

## **Penalty**

The panel noted that, although every reasonable effort had been made to make Mr. Ogilvie aware of the citation and the hearing date, he did not attend or retain counsel to represent him for any part of the hearing. The panel expressed sympathy for Mr. Ogilvie's medical condition and circumstances, but noted the public interest required that the matter be concluded.

After considering potential aggravating and mitigating factors in determining penalty, the panel noted that it lacked evidence of many of these factors.

The panel found that the ultimate penalty of disbarment is reserved for those instances of misconduct in which prohibition from practice is the only means by which the public can be protected from further acts of misconduct. This was such a case. There was no evidence that any other penalty would suffice or that disbarment was inappropriate.

The public must have confidence in the ability of the Law Society to regulate and supervise the conduct of its members, the panel stated. It is only by the maintenance of such confidence in the integrity of the profession that the self-regulatory role of the Law Society can be justified and maintained.

The panel ordered that Mr. Ogilvie be disbarred. There was no order for costs.

*Discipline Case Digest — 1999: No. 25 September (Ogilvie)*