

Huntsville, Ontario (formerly of Salmon Arm, B.C.)

Called to the Bar: September 13, 1983

Ceased membership: January 1, 1995

Discipline hearing panel: November 2, 1999

Robert Gourlay, Q.C., as a one-Bencher panel by consent

Geoffrey Gomery and Kevin Loo, for the Law Society

Robin Jackson, for Mr. Payne

Discipline hearing report indexed as [1999] LSBC 44

Summary

While a member of the Law Society, Mr. Payne misappropriated over \$30,000 in client trust funds between 1993 and 1994. Although Mr. Payne felt he was entitled to the funds at the time he prepared accounts or deposited the funds to his general account, he failed to direct his mind sufficiently to his trust obligations, being indifferent to the consequences. Had Mr. Payne reviewed the files or turned his mind sufficiently to these matters, he would have appreciated that the effect of dealing with the funds in the manner he did was to misappropriate client funds to his own benefit. Mr. Payne admitted that his recklessness in this regard constituted dishonesty and professional misconduct. He also admitted that his failure to keep proper trust books and accounts and his failure to record transactions, as well as his failure to properly render accounts on several matters, amounted to gross incompetency. At the time of these events, Mr. Payne was suffering from depression, which subsequently resulted in his hospitalization. He ceased membership in the Law Society at the end of 1994 while under suspension on a separate matter, and he later moved to Ontario. Mr. Payne's admissions were accepted by the Discipline Committee and the discipline hearing panel, and he was accordingly ordered to be suspended for one year and to pay \$1,000 as costs.

Facts

Client TP

While representing TP on an impaired driving charge in 1994, Mr. Payne received a \$1,717 retainer. It was agreed between Mr. Payne and TP that the cost of the representation would be \$1,500 plus tax if the matter proceeded to trial and \$500 plus tax if resolved by way of a guilty plea. If an expert were needed, TP would also pay the expert's fees.

Mr. Payne adjourned the trial to obtain an expert's report. Following a series of appearances, another trial date was set for April, 1995. Mr. Payne arranged for another lawyer to appear for TP at trial and TP later entered a guilty plea. Mr. Payne did not pay the other lawyer's bills as he had promised TP he would.

On November 15, 1994 Mr. Payne drafted a bill for \$1,500 but did not send that bill to TP; he subsequently transferred \$1,500 from his trust account to his general account.

Client W

In 1993 Mr. Payne began representing W concerning a claim for compensation from W's former partner. Mr. Payne received on behalf of W a total retainer of \$5,300 between August, 1993 and November, 1994. He deposited all of these funds to his general account, other than a cheque for \$1,000, which he cashed. Mr. Payne prepared four bills totalling \$3,300; he placed these on his file, but did not send them to W.

Mr. Payne recorded a total of 7.1 billable hours on his timesheets on this file; at the agreed-upon hourly rate of \$150, the value of the billings was \$1,065. He did not commence an action on W's behalf.

Client C

While retained by client C in an estate matter, Mr. Payne received \$4,250 as retainer funds between April, 1990 and November, 1994. He paid \$750 of this amount into his trust account and then transferred it to his general account the same day; the balance of the funds he paid directly to his general account.

Mr. Payne received \$1,000 of the funds as fees in another legal matter relating to C's son.

In respect to the estate file, Mr. Payne prepared one bill for \$1,500 on April 5, 1990. He placed a copy of the bill on his file, but did not send the bill to C.

Client F

In 1993, while acting for F in defending a mortgage foreclosure petition, Mr. Payne received in trust the proceeds for sale of the home in foreclosure and properly paid the mortgagee from the funds. Between July 13, 1993 and July 21, 1994, Mr. Payne prepared 17 bills and subsequently withdrew over \$28,000 from the balance of funds in trust. He failed to account to his client in writing immediately with respect to the disposition of the funds or to obtain the client's express consent entitling him to deal with the funds.

Client JT

While representing JT in a matrimonial dispute and a civil litigation matter, Mr. Payne failed to maintain trust books and accounts or record transactions in accordance with the Law Society Rules.

Client B

While representing B with respect to a demand for payment from a government ministry, Mr. Payne received funds on B's behalf, which he deposited to his general account, rather than his trust account. He failed to properly render and deliver accounts to B.

Client R

While representing R in defending a civil claim, Mr. Payne received approximately \$3,200 as retainer funds on behalf of R. He did not prepare or send any bills with respect to these funds.

* * *

Mr. Payne failed, in relation to all these files, to keep proper trust books and accounts or to record transactions as required by the Law Society Rules.

Mr. Payne was, at the time of these events, suffering from depression for which he was hospitalized in September, 1995. He moved to Ontario at the end of 1995. After moving to Ontario, Mr. Payne continued to seek treatment for depression; his psychiatrist in August, 1997 was of the opinion that Mr. Payne's depression had cleared and his prognosis was good.

The Law Society cited Mr. Payne with respect to these matters on February 20, 1997.

Admissions and disciplinary action

In respect of the money that he had transferred from his trust account to his general account or had deposited directly to his general account while representing TP, W, C and F, Mr. Payne had felt he was entitled to these funds at the time, but he failed to direct his mind sufficiently to his trust obligations, being indifferent to the consequences. Had Mr. Payne reviewed the files or turned his mind sufficiently to these matters, he would have appreciated that the effect of dealing with the funds in the manner he did was to misappropriate client funds to his own benefit.

Pursuant to Law Society Rule 4-22, Mr. Payne admitted that his recklessness in this regard constituted dishonesty and professional misconduct.

Mr. Payne also admitted that he failed to properly maintain trust books and accounts or to record transactions in accordance with the Law Society Rules. In relation to the representation of JT, this failure amounted to gross incompetency. In relation to the representation of B and R, this failure, and his failure to properly deliver accounts to them, amounted to gross incompetency.

Mr. Payne's admissions and his proposed disciplinary action were accepted by the Discipline Committee and by the discipline hearing panel, and accordingly he was ordered:

1. to be suspended for one year, beginning November 2, 1999;
2. to pay \$1,000 as costs of the discipline proceedings.

Discipline Case Digest — 1999: No. 31 September (Payne)