

Improper Withdrawal of Trust Funds

GARY MALIK MCKENZIE

Vancouver, B.C.

Called to the Bar: May 10, 1984

Resigned membership: December 31, 1995

From April, 1991 until he withdrew from practice in April, 1995, Mr. McKenzie acted for Mr. D, the respondent in matrimonial proceedings.

Because of his financial circumstances, Mr. D was unable to pay for Mr. McKenzie's services fully until after sale of the matrimonial home and division of family assets.

On August 6, 1993 a master ordered that the matrimonial home be sold and that the net sale proceeds be paid into a "segregated interest-bearing account by the respondent's solicitor and thereafter be held in trust for the parties pending further court order or agreement between the parties as to how the funds should be distributed."

Sale of the property proceeded in November, 1994 after several court applications. Mr. McKenzie received \$136,377.96 in his trust account, and, after paying out mortgages and making appropriate disbursement, he held \$66,000 in trust.

On December 30, 1994 Mr. McKenzie withdrew \$11,642.50 of these funds by trust cheque payable to himself for "fees and disbursements." There was no court order or agreement between the parties to allow payment of this money to Mr. McKenzie.

Mr. McKenzie prepared an account for \$11,642.50 on December 30, 1994, which he gave to Mr. D on January 5, 1995. He explained to his client that he had removed his fees from the money held in trust.

Mr. D protested the withdrawal of funds because he did not consent to payment and because, under the court order, he was still unable to obtain any funds himself.

Mr. McKenzie then wrote Mr. D a \$500 cheque, posted to his general account. Mr. McKenzie was motivated to provide this money as a loan to Mr. D partly because he knew that his withdrawal of the trust funds was wrong.

Mr. McKenzie reported himself to the Law Society in April, 1995, and the Society subsequently conducted an audit of his practice. He did not renew his practising certificate and ceased as a member of the Society at the end of 1995.

On March 7, 1996, under Rule 468, Mr. McKenzie admitted to the Discipline Committee that he was guilty of professional misconduct. The Committee accepted Mr. McKenzie's admission and his undertaking:

1. not to apply for reinstatement to the Law Society of B.C. for two years;
2. not to apply for membership in any other law society without first advising the Law Society of B.C.;
3. not to permit his name to appear on the letterhead of any lawyer or law firm without the written consent of the Law Society of B.C.; and
4. to obtain written consent from the Law Society of B.C. before working for any other lawyer or law firm in B.C.

The Committee instructed that Mr. McKenzie's admission be endorsed on his professional conduct record pursuant to Law Society Rule 468.

Discipline Digest — 1996: No. 2 August (McKenzie)