

Admission of Misappropriation

PHILIP GORDON NERLAND

Vancouver, B.C.

Called to the Bar: September 10, 1982

Between early 1993 and 1994 Mr. Nerland misappropriated trust funds on eight client files.

On six of the files, he transferred or deposited funds to his general account without the authorization or knowledge of his clients, without providing some or any of the legal services that he had agreed to provide and without delivering bills to the clients. Specifically, he:

- transferred \$9,015 held in trust for client R to his general account in January, 1993;
- deposited \$9,000 of trust funds received from client B between June, 1993 and March, 1994 directly to his general account;
- deposited \$1,710 of trust funds received from client K directly to his general account in November, 1993;
- transferred \$5,700 held in trust for client M to his general account in January, 1994;
- transferred \$1,069 held in trust for client P to his general account in June, 1994; and
- transferred \$213 held in trust for client D to his general account in June, 1994.

On the seventh file, Mr. Nerland misappropriated \$7,574 provided by client PY between late 1993 and early 1994 by depositing the funds to his general account without the authorization or knowledge of the client and without delivering a bill.

On the eighth file, Mr. Nerland misappropriated \$1,790 by receiving this amount in cash from client between April and July, 1994 and without delivering a bill.

Mr. Nerland knew at the time he made all these transfers that they were wrong and that they constituted misappropriations. He said that he had intended to perform the services for which he had received money.

Breach of accounting rules

Mr. Nerland breached various Law Society accounting rules and he maintained completely inadequate office and accounting systems in his practice. He withdrew trust funds without preparing bills, contrary to Rule 835; failed to maintain sufficient funds in trust to meet his obligations on behalf of clients, contrary to Rule 830; failed, on occasion, to record trust transactions within seven days after each transaction, contrary to Rule 844(1); failed to eliminate trust shortages, contrary to Rule 861(1); failed to report trust shortages promptly to the Law Society, contrary to Rule 861(2); failed to deposit client funds forthwith into trust, contrary to Rule 803; and withdrew funds in cash from his trust account, contrary to Rule 836.

On one of the files, Mr. Nerland transferred \$9,331 from trust in satisfaction of an account in March, 1993, when he ought to have known that the account had already been paid in January, 1993. Mr. Nerland said that the transfer was an error, not an attempt to improperly take money belonging to the client, and he subsequently rectified the error by transferring the money back into trust for the client.

Failure to pay GST and PST

Mr. Nerland failed to remit GST of \$23,000 and PST of \$19,895; judgment was later taken against him for the unremitted PST.

Breach of undertaking

In August, 1993 Mr. Nerland breached an undertaking that he had given to the Law Society by failing to deliver to the Society an assignment in a remedial studies program.

On two occasions in 1993 Mr. Nerland issued cheques in payment of professional debts, but the cheques were dishonoured for lack of funds, which constituted a breach of Mr. Nerland's undertaking to pay under Chapter 11, Rule 8 of the *Professional Conduct Handbook*.

Failure to report judgments

In the two instances in which Mr. Nerland failed to pay his professional debts, and in another instance in which a certificate of costs was awarded against him, creditors secured judgment against him for \$12,300, \$2,795 and \$2,825 respectively. Though these judgments remained unsatisfied, Mr. Nerland failed to report them to the Law Society, contrary to Rule 510(2). Mr. Nerland explained that he did not understand his obligation to inform the Society. He has since satisfied the judgments for \$2,795 and \$2,825.

Failure to respond

Between mid-1993 and early 1994, the Law Society wrote numerous times to Mr. Nerland and followed up with telephone calls, to receive his response to four different complaints. Mr. Nerland failed to respond promptly to the Law Society, contrary to Chapter 13, Rule 3.

On one of these complaints, Mr. Nerland also failed to respond promptly to another lawyer, contrary to Chapter 11, Rule 6.

The Law Society issued a citation against Mr. Nerland on April 11, 1994 and another citation on June 30, 1994. Mr. Nerland was suspended on July 21, 1994 pending disposition of the discipline hearing.

On May 9, 1995 Mr. Nerland made an admission of professional misconduct and tendered his resignation to the Discipline Committee.

The Committee accepted the admission and the resignation, on Mr. Nerland's undertaking:

1. not to apply for readmission to the Law Society for three years;
2. not to apply for membership in the law society of any other jurisdiction without notice to the Law Society of B.C.;
3. to obtain the written consent of the Law Society before working for any lawyer or law firm in B.C.;
4. to pay \$10,000 toward the cost of the discipline proceedings; and
5. to repay to the Law Society any claims paid by the Special Fund Committee to former clients of Mr. Nerland, provided that Mr. Nerland is given full opportunity to respond to and have considered by the Committee his position in respect of the value of the services performed.

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