

Surrey, B.C.

Called to the Bar September 10, 1982

Discipline hearing panel: November 25, 1994

W.T. Wilson, Q.C., Chair, J.M. MacIntyre, Q.C. and K.F. Warner

Benchers: February 3, 1995

S.A. Moore, Chair, H.R. Berge, A. Howard, G.J. Lecovin, N.A. MacDonald, R.S. Margetts, T.M. McEwan, E. Reid, Q.C., J. Shackell, R.S. Tretiak and A.P. Watt

J.P. Whittow, for the Law Society

M.P. Carroll, for Mr. McLeod

Summary

Mr. McLeod accepted from a client a \$1,000 cash payment for legal services. He failed to record the receipt of funds or provide an account to the client, contrary to the Law Society accounting rules, in an attempt to evade paying income tax on the money. When the client complained to the Law Society, Mr. McLeod misled the Society by falsely denying that he had received the cash payment from the client. Mr. McLeod was cited in December, 1993. He did not report the \$1,000 on his 1993 personal income tax return, but in May, 1994, he instructed his accountant to correct the return. In June, 1994 Mr. McLeod admitted that he had in fact received the cash payment and had misled the Law Society.

Facts

In 1990 Mr. McLeod began acting for R on a WCB appeal and also on R's claim for benefits from an insurer. Mr. McLeod appeared before the Workers' Compensation Review Board, rendered an account to his client and continued work on the file.

In June, 1992 Mr. McLeod gave R two cheques from the insurer. In discussing payment of his legal fees, Mr. McLeod noted that, although his time on the file warranted an account for \$1,500, he was prepared to accept \$1,000 in cash. R paid this amount. Despite a request from R and in order to evade income tax on the money, Mr. McLeod did not issue a receipt or render an account. His failure to record receipt of the funds and render an account breached Law Society accounting rules. At the time, Mr. McLeod was under financial pressure following a prolonged leave of absence from practice in 1990. He owed back taxes and had bought a new house without first selling his residence.

After a complaint from R, the Law Society wrote to Mr. McLeod in October, 1992 asking for his explanation. Mr. McLeod sent a letter of reply in November, enclosing extracts from his trust records. He stated that, apart from an initial funds transfer from R's former lawyer, R had given him no money.

During 1993 R maintained that he had made the cash payment; Mr. McLeod denied it. After further investigation by Law Society staff, the Discipline Committee in December directed a citation against Mr. McLeod.

Mr. McLeod did not record the \$1,000 cash payment on his 1993 personal income tax return, but he subsequently instructed his accountant in May, 1994 to correct the return.

In June, 1994, prior to the discipline hearing, Mr. McLeod admitted that he had received the \$1000 cash payment from R, and that he had lied to the Law Society.

Decision

Mr. McLeod's conduct constitutes professional misconduct.

Penalty

Mr. McLeod's actions, particularly in lying to the Law Society, constitute serious professional misconduct.

Mr. McLeod was in financial difficulty when he received the funds from his client, and he failed to report the payment as income. After discussing his actions with another lawyer, Mr. McLeod panicked and denied to the Law Society that he had received the money. He later expressed remorse, and he recognized that his lie made his client appear to be lying. He undertook to apologize to R for causing him distress.

The panel noted that Mr. McLeod had admitted his wrongdoing prior to his hearing, which was a point in his favour. Also, while he was guilty of the one lie, he did not tell a succession of lies. Three members of the profession testified to Mr. McLeod's good character and competence.

The panel ordered that Mr. McLeod:

1. be suspended for 30 days beginning December 3, 1994; and
2. pay \$2,590 as costs of the hearing, no later than May 31, 1995.

The Law Society Discipline Committee, dissatisfied with the penalty imposed on Mr. McLeod by the hearing panel, referred the case for review by the Benchers under section 48 of the *Legal Profession Act*. On February 3, 1995, the Benchers confirmed the decision on penalty.

Discipline Case Digest — 1995: No. 3 February (McLeod)