

Burnaby, B.C.

Called to the Bar: June 20, 1969; ceased membership: June 29, 1990

Discipline hearing panel: June 25 and November 23, 1992; February 24, May 6, May 14, June 29, September 8, October 7 and December 2, 1993.

R.S. Tretiak, Chair, A. Howard and H. Berge

J. Whittow, for the Law Society

The member appeared on his own behalf on February 24, 1993, but otherwise did not appear, though duly notified.

Summary

The member made unauthorized withdrawals amounting to \$15,400 from trust funds held for a client. He forged the client's signature on the back of cheques and misappropriated \$8,800 of the funds. A discipline hearing panel found that the member, who had since ceased membership in the Law Society, was unsuitable for the practice of law and ordered that he be disbarred.

Facts

The member acted for D and a dissolved company for which D was a principal in the distribution of the corporate assets to former shareholders.

On two occasions in 1989, D authorized the member to make loans from money held in trust, which the member did by making out a trust cheque payable to D and having D endorse the cheque.

On June 30, 1989, without D's authorization or knowledge, the member prepared a trust cheque for \$3,600 payable to D, endorsed D's signature on the back of the cheque and withdrew the funds from the trust account. He ultimately re-deposited these funds to trust.

The member made four more withdrawals of the client's funds from trust, without D's authorization or knowledge: on September 8, 1989 he withdrew \$4,000, on September 22, 1989 he withdrew \$3,000, on October 30, 1989 he withdrew \$3,000 and on March 2, 1990 he withdrew \$1,800. In each instance he made the trust cheque payable to D and then endorsed D's signature on the cheque before making the withdrawal.

The member later re-deposited funds to trust. Between the member's withdrawals and subsequent re-deposit of the client's funds in his trust account, there was a shortfall of \$8,800.

D demanded an accounting from the member in September, 1989. None was received. He then complained to the Law Society in June, 1990. On June 29 the member advised the Law Society that he was closing his practice to pursue business interests full time. The Law Society obtained custodianship of his practice and conducted an audit. The series of withdrawals and re-deposits and the trust shortfall was discovered by accountants reviewing the member's accounts.

The member failed to provide an accounting for trust funds to D, to the custodian of the member's practice or to the Law Society's auditors.

The member attended the hearing only once and on that occasion told the panel that he did sign his client's signatures on the cheques. He did not give evidence, call witnesses or cross-examine witnesses at the hearing. The panel heard evidence of a forensic document examiner who concluded that the member had signed D's signature on the back of the cheques of June 30, 1989, September 8, 1989, September 22, 1989, October 30, 1989 and March 2, 1990.

Decision

The member professionally misconducted himself in:

- failing to provide his client with an accounting of money held in trust for him;

- improperly withdrawing from his trust account between June, 1989 and March, 1990 money totalling \$15,400, which was held on behalf of D or the company of which D was a principal;
- forging the endorsements of his client on cheques withdrawn on his trust account; and
- misappropriating \$8,800 of the client's trust funds.

Penalty

The discipline hearing panel stated that forgery and misappropriation, being the gravamen of the offences of which the member was guilty, are such fundamental abrogations of the responsibilities of the legal profession that only the most significant sanction is appropriate.

The panel therefore declared the member unsuitable to engage in the practice of law and ordered that he be disbarred. The panel further ordered that he pay \$21,500 as costs of the discipline proceeding by December 31, 1994.

* * *

Mr. Donald filed notices of appeal in the B.C. Court of Appeal as to verdict and penalty in this case, on November 29, 1993 and January 6, 1994.

Discipline Case Digest — 1994: No. 4 April (Donald)