

Vancouver, B.C.

Called to the Bar: May 14, 1979

Voluntarily ceased membership: January 1, 1997

**Discipline hearing panel:** April 15, 1999

Gerald J. Lecovin, as a one-Bencher panel by consent

Todd Follett, for the Law Society

Kim S. Campbell, for Mr. MacDonald

Hearing report indexed as [1999] LSBC 20

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### **Summary**

Mr. MacDonald breached Law Society trust accounting rules by failing to maintain sufficient funds on deposit in trust to meet his obligations, by failing to forthwith eliminate a trust shortage and by failing to maintain trust and general account books and records. He also deposited trust funds to his general account and without rendering a bill to his clients, contrary to the rules. In these circumstances, his handling of the funds was with the knowledge and consent of his clients and did not result in harm to them. Mr. MacDonald failed to reply promptly to Law Society communications requesting an explanation of his accounting and practice irregularities, which constituted professional misconduct. In determining penalty, the hearing panel took into account the fact that Mr. MacDonald was undergoing changes in his practice, experiencing family problems and suffering from clinical depression at the time of these incidents. He was reprimanded and ordered to pay costs of the hearing within four months.

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### **Facts**

In January, 1996 Mr. MacDonald was a sole practitioner with a small practice who devoted most of his time to business projects.

A trust audit of his practice revealed that Mr. MacDonald did not maintain trust or non-trust client cash books and he did not maintain a trust ledger showing separately for each client the trust funds received and disbursed, and any unexpended balance, contrary to Law Society Rules 842 and 843 (now Rules 3-60 and 3-61).

Mr. MacDonald had a shortage of \$551.12 in his pooled trust account from February, 1995 to at least March, 1996, contrary to Rule 830 (now Rule 3-55), and he failed to

deposit cheques to forthwith eliminate the shortfall upon discovery, contrary to Rule 861 (now Rule 3-66).

He deposited client trust cheques to his general bank account, contrary to Rule 803 (now Rule 3-51) without supporting billings, or he took these funds without depositing them into either his general or trust accounts and without supporting billings, as follows:

- Mr. MacDonald received \$974.48 from clients on October 17, 1994, which he deposited directly into his general account. A billing was not prepared until June 12, 1995. The June 12 billing indicated that none of the services billed were performed prior to October 17.
- On October 26, 1994 Mr. MacDonald received from the same clients a further \$4,000.40, depositing \$2,660 of this amount to his general account and receiving \$1,337.46 personally. He did not prepare a billing until December 7, 1994. The billing indicated that, of the 24.8 hours billed, 6.8 hours were for services performed prior to October 28 and 18 hours were performed between that date and December 7.
- Between May and November, 1995, Mr. MacDonald received a total of \$5,000 in trust from one of these clients. He deposited these funds to his general account and, as of January 25, 1996, had not prepared a billing relating to them.

Mr. MacDonald's dealings with these trust funds were with the knowledge and consent of his clients, one of whom was his mother.

In August, 1995 Mr. MacDonald had a nervous breakdown and thereafter suffered from emotional problems that seriously affected his ability to practise. He failed to respond substantively to a request from Law Society staff in April, 1996 for an explanation of his accounting and practice irregularities. He did not respond substantively to telephone reminders from the Society on May 27, May 31 and June 5, 1996 or to letters of June 6 and July 17, 1996, although he told the Society he was preparing a response.

Mr. MacDonald had a more serious breakdown in November, 1996 and was hospitalized until mid-January, 1997. He voluntarily ceased practice in December, 1996.

## **Decision**

Mr. MacDonald admitted, and the hearing panel found, that he breached several Law Society trust accounting rules. The panel found, as requested by the Law Society, that these rule breaches did not amount to misconduct or conduct unbecoming a lawyer.

Mr. MacDonald also admitted, and the panel found, that he failed to reply promptly to Law Society communications, which constituted professional misconduct. While acknowledging the difficulties Mr. MacDonald faced, the panel noted that he was capable of responding to these communications.

## **Penalty**

The hearing panel noted that Mr. MacDonald, in relation to certain of the trust accounting breaches, had the consent of his clients for handling the funds in the way he did. The clients were not harmed by his actions.

At the time of these incidents, Mr. MacDonald was winding down his practice and was unclear on the extent to which he needed a trust account. He had also lost the services of his accountant. The panel was mindful of the fact that, during this period, Mr. MacDonald was clinically depressed, drinking and taking a prescription that exacerbated his condition, although he and his physicians did not know this. He was also experiencing family problems.

The panel ordered that he:

1. be reprimanded; and
2. pay costs of the hearing within four months, unless provided an extension.

*Discipline Case Digest — 1999: No. 19 June (MacDonald)*