

Abbotsford, B.C.

Called to the Bar October 1, 1968

**Discipline Hearing Committee:** October 5-8, and November 23-26, 1987, September 19, 1988.  
R.H. Guile, Q.C., Chairman, D. Tupper, Q.C. and P.A. Murray, Q.C.

### **Summary:**

The member was disbarred for misappropriating trust funds on nine different files between 1982 and 1986.

### **Facts:**

From 1982 to 1986, the member set a pattern of transferring whatever funds were available in his trust account to his general account by way of fictitious interim accounts. These accounts contained no detail of services rendered, had no relationship to services rendered, and generally were not sent to clients.

In these files, there were no real clients to check up on the member's actions, as in two estate files, or the clients did not know that money was owed to them.

In brief:

- the member failed to disclose the existence of estate funds intended for the deceased's incompetent daughter, and then withdrew all but \$345.65 of these funds for his own use. He earlier had told the Public Trustee that \$1,816.01 was available for the beneficiary.
- the member transferred a car from a client estate to his son at a price below the car's appraised value and never made payment, thereby converting an estate asset to his own use. He also made unauthorized withdrawals from estate trust funds, which exceeded the amount of his fees.
- he withdrew \$1,900 from the trust funds of a client estate, although he was not entitled to more than \$50 for acting as the estate solicitor or \$125 for acting as the estate executor.
- on two occasions, he retained Alberta law firms to do agency work, and then went to some trouble to negotiate discounts of their fees on the false pretense that his clients were unhappy. He made these representations without authorization from his clients, without telling his clients, and without disclosing to the Alberta firms that he in fact already had money for their fees in trust and could himself benefit from a discount. The firms did reduce their fees and the member took the amount of the reductions for his own use without the knowledge or consent of his clients.
- in one instance, the member transferred to his general account the amount of a cheque that he had earlier sent to a client but that the client had not received.
- he transferred to his general account \$1,500 of a \$1,5018.80 conveyancing deposit, which should have been returned to a client. He told his secretary he would credit the full deposit to the client's litigation file, but in fact only credited the \$18.80 left in trust. When the member was suspended in November, 1986, he amended bills on the file to credit the \$1,5018.80, backdated the bills to October 31, 1986, and returned the client's \$1,500 to trust.

The member kept the fictional interim accounts he prepared in separate envelopes, or in files, and several were ripped up or thrown away during the Law Society investigation. The interim accounts were not real accounts intended for the clients' attention, but a dishonest attempt by the member to show compliance with Law Society accounting rules on transfers from trust.

### **Verdict:**

The member's conduct constitutes professional misconduct.

### **Penalty:**

The Hearing Committee observed that the member misappropriated funds over several years, from persons who were unlikely to discover their loss because of distance, lack of sophistication, incompetence, or ignorance of the fact that money was owed to them. He also habitually covered up his misappropriations to avoid detection. Evidence of good character and reputation in the community were insufficient mitigating factors against this pattern of conduct.

The Committee accordingly ordered that the member be disbarred.

On December 1, 1988 the Benchers confirmed the disbarment, following a penalty review initiated by the member under Section 47 of the *Legal Profession Act*.

J.D. Ziskrout, for the Law Society

A.E. Vertlieb (as to findings of fact and verdict); A.G. Henderson, (as to penalty), for the member.

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