

Misappropriation of trust funds

DONALD JAMES RUTHERFORD

Calgary, Alberta

Called to the Bar: May 15, 1974

During the early 1980's, while a partner in a Kelowna law firm, Mr. Rutherford acted on behalf of H. Ltd. in the company's development of a residential subdivision. He at the same time represented most of the individual purchasers of the sub-division lots.

Mr. Rutherford owned one of the lots and was building a spec house on it.

In 1982 Mr. Rutherford misappropriated for his own use funds totalling \$16,512.25 from his law firm's trust account. Of those funds, \$10,602.14 were proceeds from the sale of one of the sub-division lots. Mr. Rutherford used this money to:

1. discharge a lien of \$2,202.14 held against H. Ltd. by a heating company;
2. repay H. Ltd. \$6,750 for the down payment on Mr. Rutherford's lot;
3. reimburse H. Ltd. \$2,000 for legal fees which were charged to H. Ltd., and for which H. Ltd. should have been reimbursed *pro rata* by all of the lot purchasers.

The balance of the misappropriated funds were proceeds of a mortgage intended for a client's purchase of one of the lots. Mr. Rutherford used this money to:

1. pay a trust company \$4,291.81 to bring the mortgage on his own lot into good standing;
2. pay a supplier \$1,618.30 for materials used on the construction of Mr. Rutherford's house.

The partners of the firm and Mr. Rutherford subsequently repaid the amount of Mr. Rutherford's defalcation.

Mr. Rutherford admitted that he had professionally misconducted himself. He said that at the time of the misappropriation he was undergoing emotional stress.

Noting that since Mr. Rutherford had ceased as a member in 1985, no penalty could be imposed, the Discipline Committee, on October 19, 1988, agreed to rescind a citation against him on his undertaking to:

1. inform the Law Society in writing prior to any application he may make to practise law in a jurisdiction other than B.C.;
2. not to work for a lawyer or a law firm in B.C. without the consent of the Law Society;
3. not to allow his name to appear on the letterhead of any law firm in B.C. without the consent of the Law Society.

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