

No. 05/01

Admission: Misappropriation, breach of undertaking and breach of rules

Arthur Wayne Skagen

Surrey, BC

Called to the bar: May 19, 1989

Voluntarily ceased membership: January 1, 2004

In March, 2003 the Discipline Committee ordered an investigation of the books, records and accounts of Mr. Skagen's law practice. The Law Society auditor who conducted the investigation made her first report on August 21, 2003.

A citation was issued against Mr. Skagen in September, 2003 and the matter referred to three Benchers to determine if he should be suspended from the practice of law pending his discipline hearing. Several days later, Mr. Skagen voluntarily provided an undertaking to refrain from practising law pending disposition of the citation, and he subsequently consented to the appointment of a custodian of his law practice.

Mr. Skagen ceased membership on January 1, 2004 for non-payment of fees.

On May 28, 2004, the Law Society auditor made a further report respecting Mr. Skagen's law practice. In September, 2004 a second citation was issued against him.

Since 2001 and at the time of these events, Mr. Skagen was suffering from clinical depression, for which he was in treatment.

Failing to maintain books and records

The audit of Mr. Skagen's practice revealed, and Mr. Skagen admitted, that he failed to keep his books and records in accordance with the Law Society Rules in that he failed to:

- record all funds received and disbursed in connection with his law practice, contrary to Rule 3-59(1);
- maintain a trust cash book or synoptic journal showing the amounts disbursed and the name of the recipient of trust funds, contrary to Rule 3-60(a)(iv) and (v);
- prepare monthly trust reconciliations, contrary to Rule 3-60(b);
- maintain a general cash book or synoptic journal, contrary to Rule 3-61(1)(a);
- maintain an accounts receivable ledger, contrary to Rule 3-61(1)(b);
- keep a file of all billings of fees charged, contrary to rule 3-62(1);
- record trust transactions within seven days of the transaction, contrary to Rule 3-63(1)(a);
- record general transactions within 30 days after those transactions occurred, contrary to Rule 3-63(1)(b);
- record transactions in his general books and records, contrary to Rule 3-63(2);
- add and balance each trust in a general cash book or synoptic journal, contrary to Rule 3-64; and
- produce monthly trust reconciliations, contrary to Rule 3-65.

Misappropriation of trust funds

The audit of Mr. Skagen's practice also revealed, and Mr. Skagen admitted, that he used funds held by him

in trust for clients without their knowledge, consent or authorization and, in doing so, misappropriated the funds.

In the course of handling client trust funds, Mr. Skagen admitted that, contrary to Rule 3-55, he failed to maintain sufficient funds on deposit to meet his trust obligations to clients. He also admitted that, contrary to Rule 3-56, he withdrew funds from trust when he knew that:

- the funds were not properly required for payment to or on behalf of a client;
- the funds were not his property, but rather were in trust for clients; and
- there were not sufficient funds to the credit of his client on whose behalf the funds were to be paid.

Mr. Skagen also failed to immediately eliminate and report trust shortages, contrary to Rule 3-66.

The Delta real estate transaction

In April, 2003 Mr. Skagen represented a company, which was the vendor in the sale of real property. Mr. Skagen received an initial payment of \$50,000, which he deposited to his trust account, and later paid his client \$25,000 from the account.

On May 7, 2003, the day before completion of the sale, Mr. Skagen received and deposited to his trust account a trust cheque from the purchaser's lawyer for \$798,569.98, representing the net sale proceeds. Mr. Skagen was provided these funds on his undertaking to discharge all encumbrances from title, including a bank mortgage and a mortgage in favour of CCRA.

Mr. Skagen subsequently paid \$621,404.21 to the bank mortgagee to discharge its mortgage. He also sent CCRA a cheque for \$117,165.77, along with a copy of the Order to Pay signed by his client and a request that CCRA provide a mortgage discharge. CCRA cashed the cheque but stated it was unwilling to provide a discharge based on this partial payment. It therefore repaid the \$117,165.77 by cheque, payable to Mr. Skagen in trust.

Mr. Skagen deposited the funds from CCRA to his trust account. In total, he should have held \$202,165.77 to the credit of his vendor client. The Law Society auditor found, and Mr. Skagen admitted, that he had used funds held in trust for the vendor to make unauthorized payments, including payments for other clients who did not have sufficient funds in trust. In June, 2003 he made six such payments (of \$20,000, \$50,000, \$193,959.04, \$4,205.61, \$83,192.50 and \$50,000).

Mr. Skagen recognized that his failure to discharge a mortgage was reportable to the Law Society, and he advised a lawyer in the Department of Justice, who was a solicitor for CCRA, that he would pay the full amount owed to CCRA.

After various discussions on payment, the lawyer for CCRA provided Mr. Skagen with a mortgage discharge on Mr. Skagen's undertaking to provide a trust cheque payable to the Receiver General of Canada for \$168,886.58. Mr. Skagen filed the discharge. He subsequently sent to the CCRA's lawyer a trust cheque for \$168,886.58.

Because Mr. Skagen had misappropriated funds from trust, there were insufficient funds to cover the trust cheque and it was dishonoured.

Mr. Skagen admitted that he had misappropriated trust funds held for his client. He also admitted that he breached his undertaking to the lawyer for CCRA and, by issuing a trust cheque that was dishonoured, breached his undertaking that the cheque would be paid, contrary to Chapter 11, Rule 8 of the *Professional Conduct Handbook*.

The Abbotsford real estate transaction

In 2003, while representing the vendor in a real estate transaction, Mr. Skagen received \$309,011.86 as sale proceeds in trust, on his undertaking to pay out two mortgages on title.

Mr. Skagen paid a sum to discharge one mortgage, but breached his undertaking by failing to pay out the other mortgage or hold the funds in trust to do so. After making one payment to his vendor client, Mr. Skagen used the balance of the funds to make payments to other clients and parties. These payments were not on behalf of the vendor client to whom the funds belonged. As stated in the audit report, Mr. Skagen admitted that he made five payments (of \$237,320.57, \$50,000, \$42,000, \$100,000 and \$24,060.26) from the funds that he should have held in trust for his client.

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On April 6, 2005 Mr. Skagen admitted to the Discipline Committee that his conduct in these matters constituted professional misconduct. On April 7 the Committee accepted Mr. Skagen's admission on his undertaking:

1. never to apply to the Law Society for reinstatement;
2. not to apply for membership in any other law society without first advising the Law Society of BC in writing;
3. not to permit his name to appear on the letterhead of any lawyer or law firm without the written consent of the Law Society; and
4. to obtain the Law Society's written consent before working for any other lawyer or law firm in BC.

For Special Compensation Fund claims respecting Mr. Skagen, please see the Benchers' Bulletin.