

## Howard Marcel Smith

New Westminster, BC

Called to the Bar: May 10, 1978

**Discipline hearing:** May 6, 2004

**Panel:** Glen Ridgway, QC, as a single-Bencher panel, by consent

**Report issued:** May 7, 2004; indexed as 2004 LSBC 14

**Counsel:** Todd Follett, for the Law Society and Jerome Ziskrout, for Mr. Smith

### Summary

While representing a client in the settlement of a personal injury claim arising from a motor vehicle accident, Mr. Smith participated in a scheme to mislead the Canada Customs and Revenue Agency (CCRA). He did so by having a client sign an irrevocable assignment of \$25,000 from the client to a certain "GF." Mr. Smith believed that "GF" was in fact an alias for his client and that this assignment was for his client's benefit. He understood that the assignment was for the purpose of preserving the proceeds of the litigation settlement against a possible demand for payment from the CCRA. When a person named GF subsequently contacted Mr. Smith to demand payment of the funds, Mr. Smith refused. Mr. Smith admitted and the hearing panel found that his conduct in participating in a scheme designed to mislead the CCRA constituted professional misconduct. The panel ordered that Mr. Smith pay a \$4,000 fine and \$1,000 as costs.

### Facts

In 2000 Mr. Smith began representing Ms. O in a personal injury litigation arising from a motor vehicle accident. He had assumed conduct of the file from another lawyer, Mr. B, and gave an undertaking to protect Mr. B's account of \$25,000.

Mr. Smith entered into a contingency agreement with Ms. O in October, 2000.

During a mediation of Ms. O's claim with ICBC, a notice to pay was produced. This document reflected that Ms. O owed the Canada Customs and Revenue Agency (CCRA) tax arrears.

Ms. O's claim against ICBC was settled and the proceeds paid to Mr. Smith in trust. On December 7, 2000 Mr. Smith rendered his account to Ms. O.

On December 8 Mr. O executed an irrevocable assignment of \$25,000 in trust in favour of "GF." Mr. Smith said that, at all times, he believed "GF" was in fact an alias for Ms. O and that the assignment was for Ms. O's benefit. He understood the purpose of the irrevocable assignment was to preserve the funds against a possible demand for payment from CCRA.

On December 13, 2000 Mr. Smith received a letter from a person named GF demanding payment of the \$25,000 pursuant to the assignment. Mr. Smith refused to make the payment. On January 13, 2001, Mr. Smith paid the \$25,000 account of Ms. O's former lawyer, Mr. B, by trust cheque.

Ms. O retained another lawyer respecting Mr. Smith's account of December 7, 2000. In October, 2001 Ms. O's new lawyer demanded an accounting of the \$25,000 that had been placed in trust. Ms. O stated that,

although she had initially intended the \$25,000 to be paid to the account of her former lawyer (Mr. B), she had a change of mind and viewed the trust as a means of ensuring that CCRA would not be able to demand the money.

In February, 2002 Mr. Smith admitted that he had not properly put his mind to the matter when he agreed to hold the \$25,000 in trust and when he had Ms. O sign an irrevocable assignment in favour of GF. He admitted that he failed to reflect on this plan or realize that the arrangement was not for a legitimate trust.

A citation was issued against Mr. Smith on November 14, 2002.

## **Verdict**

Mr. Smith admitted and the hearing panel found that his participation in a scheme designed to mislead the CCRA as to any interest his client might have in relation to trust funds held by him constituted professional misconduct.

## **Penalty**

The panel ordered that Mr. Smith:

1. pay a \$4,000 fine; and
2. pay \$1,000 as costs of the discipline proceedings.