

William Frederick McGuire

Maple Ridge, BC

Called to the bar: September 10, 1980

Discipline hearing : August 29, 2005

Panel : Joost Blom, Q.C., Chair, Donald A. Silversides, Q.C. and William M. Trotter, Q.C.

Reports issued : October 6, 2005 (indexed as 2005 LSBC 43) and May 12, 2006 (indexed as 2006 LSBC 20)

Counsel : Todd R. Follet and Brian McKinley, for the Law Society, and Christopher E. Hinkson, QC for Mr. McGuire

Facts

In 1988 Mr. McGuire had fallen into arrears on his taxes. In 1993 Revenue Canada garnished his practice's general account. As a consequence he decided to operate without a general account, and instead use his trust account to pay for practice debts with funds he would deposit into the trust account himself.

Mr. McGuire wrote cheques on his trust account for fees and disbursements when there were insufficient funds available to be used for the expenditures in question. The result of the transactions was that trust funds belonging to his clients were misappropriated.

Mr. McGuire said that, when he began to draw on his trust account in excess of the available funds in 2002, his personal life had hit a low. He and his wife had divorced after separating in 1999, and he had another failed relationship. In August 2002 his dog, on which he had relied for many years as a source of emotional support, died and Mr. McGuire was left with veterinary bills of some \$5,800 incurred during the dog's illness. He drew cheques on his trust account to cover these expenses. Mr. McGuire knew he was in effect using his clients' trust money to pay the veterinary bills, but he testified he was out of cash, had no credit and had become depressed.

Between July 2002 and September 2003, Mr. McGuire withdrew client trust funds from his pooled trust account for his personal use through debits to a "personal float" ledger account that were in excess of the \$300 he had deposited as the "float." He did this without his clients' knowledge or consent. Mr. McGuire admitted this occurred between July 12, 2002 and April 25, 2003 and constituted professional misconduct.

In November and December of 2002 and January 2003, Mr. McGuire made withdrawals from trust funds belonging to his client, SB, to pay fees and disbursements on files that were unrelated to SB. He then replaced those funds belonging to SB with trust funds from other clients, without the knowledge or consent of any of the clients. He admitted this was professional misconduct.

In relation to 36 withdrawals, Mr. McGuire took money out of his pooled trust account when insufficient funds were held in trust to the credit of the client, contrary to Rule 3-56(1.2)(b) of the Law Society Rules. Mr. McGuire admitted that his conduct in relation to this rule constituted professional misconduct.

Mr. McGuire made withdrawals from his pooled trust account for fees before bills were prepared and delivered on 10 occasions, and without written instructions from the client allowing such withdrawals. Mr. McGuire admitted this was contrary to Rule 3-57(2) of the Law Society Rules.

In relation to three clients, Mr. McGuire generated certain misleading billings in that they were dated prior to the actual date the billings were produced. He admitted that his behaviour constituted professional misconduct.

Contrary to Law Society Rule 3-56(1), Mr. McGuire made three withdrawals from his pooled trust account for fees before rendering the services to the client for which those fees were charged. Mr. McGuire admitted that his conduct breached that Rule.

From April 2002 to December 2003 he failed to keep his books, records and accounts in compliance with the requirements of Part 3, Division 7 of the Law Society Rules, and he admitted that was a breach of those Rules.

Mr. McGuire admitted he failed to deposit cash trust funds received from one client in a trust account as soon as practicable, contrary to Rule 3-51.

On December 19, 2003 a panel of Benchers heard a s. 39 proceeding on the subject of an interim suspension, pending the hearing of the citation. The panel determined that, for the interim, Mr. McGuire could continue to practise subject to certain conditions. At the time of his discipline hearing, Mr. McGuire was in compliance with all the conditions imposed by the panel.

Verdict

The hearing panel accepted Mr. McGuire's admission and found his conduct amounted to misappropriation of clients' trust funds and breach of Law Society accounting rules.

The hearing panel found Mr. McGuire's previous character was excellent, and there was no suggestion that anything was the matter with his services to his clients. No client ended up losing money as a result of what he did.

Penalty

The hearing panel stated that an ongoing restriction on Mr. McGuire's control of his trust accounts, as he proposed, was not appropriate as a permanent condition of practice. The panel took the view that a lawyer who, in the light of past misconduct, cannot be completely trusted with sole control of his trust accounts should not be practising law. Moreover, the protection of the public was at stake. The public is entitled to expect that the severity of consequences will reflect the gravity of the wrong. The panel determined that, in effect, the profession has to say to its members, "Don't even think about it," and that demands the imposition of severe sanctions for clear, knowing breaches of ethical standards.

The panel stated that in some cases, even in the deliberate taking of trust funds, there may be mitigating factors, but although Mr. McGuire's circumstances elicited compassion, these were not mitigating factors.

Accordingly, the panel ordered that Mr. McGuire:

1. be disbarred; and
2. pay costs in the amount of \$10,000.

Application for stay

Mr. McGuire has filed an appeal of penalty with the BC Court of Appeal and has applied for a stay of penalty pending the appeal. The outcome of the stay application will be noted in the What's New section of the Law Society website at www.lawsociety.bc.ca. The status of all current (not former) members is also reflected on the Lawyer Lookup section of the site.