

2007 : No. 4 October

Jonathan Lewis Oldroyd

Salt Spring Island, BC

Called to the bar: July 10, 1980

Resigned: April 14, 2004

Disbarred: July 16, 2007

Discipline hearing : October 3 and 4, 2006 and May 30, 2007

Panel : Glen Ridgway, QC, Chair, Leon Getz, QC and Ronald Tindale

Report issued : January 17 (2007 LSBC 06) and July 16, 2007 (2007 LSBC 36)

Counsel : Brian McKinley for the Law Society; no one appearing on behalf of Jonathan Lewis Oldroyd

Facts

From early 1984 through early 2004, Jonathan Lewis Oldroyd practised law as a general practitioner from his home on Salt Spring Island. Oldroyd resigned his Law Society membership on April 14, 2004, the same day that he consented to the appointment of a custodian for his practice following an investigation of his books, records and accounts under Rule 4-43. That investigation arose from complaints from charitable organizations that were the residual beneficiaries of three estates being administered by Oldroyd.

A citation issued by the Law Society on October 5, 2005 charged Oldroyd with wrongfully converting trust funds totaling \$666,895 from five different clients between 2002 and 2004.

TM and JAM

Oldroyd represented TM and JAM in the 2003 purchase of real estate from a company, TL Corp. On February 28, 2003 Oldroyd issued a trust cheque for \$179,045.83 to the vendor's solicitor. As a result of a dispute over the terms of the sale, the cheque was not cashed and Oldroyd retained the funds in his trust account until October 2003, when he used them to purchase a bank draft for \$133,762.59, payable to "KC, in trust," and to fund a wire transfer of \$48,717.85 to a Florida bank account in the name of "S Consulting Ltd."

The bank draft for \$133,762.59 was used to pay debts owing by a company, CW Corp - of which Oldroyd and his wife were president and secretary, respectively - under mortgages held by KC.

The panel found no evidence connecting CW Corp, TM or S Consulting Ltd. with the purchase by TM and JAM from TL Corp.

The N Estate

Oldroyd was retained by N to obtain the proceeds of two RRSP accounts held in his late wife's name. In December 2003 and January 2004, two payments totaling \$45,283 were deposited into Oldroyd's pooled trust account, recorded under the name of "Mr. N in trust." On the same day that the second trust deposit was made, the RRSP proceeds - together with other funds apparently provided by one of Oldroyd's companies - were wired to a Florida bank account in the name of "S Consulting Ltd."

The panel found no connection between S Consulting Ltd. and N or the N Estate.

HB

Oldroyd acted for B in the sale of her Salt Spring Island property. On October 8, 2003 Oldroyd received a

cheque for \$70,167.65 from the buyer's solicitor as the cash to the deal. That day, Oldroyd issued a cheque for \$48,000 - drawn against B's trust funds - to purchase a bank draft payable for that amount to "DL in trust." Also that day, foreclosure proceedings against a Ucluelet property owned by CW Corp were concluded upon payment of the outstanding balance of \$48,124, by a bank draft for \$48,000 and Oldroyd's trust cheque for the balance.

In February 2004 Oldroyd used some of B's remaining trust funds to purchase a second bank draft for \$21,131, which was deposited to an unknown account at Bank C.

T Estate

Oldroyd was the solicitor and co-executor for the estate of T, who died in 2002. Oldroyd used \$200,000 of the T estate funds held in his trust account to make a payment in that amount to the beneficiaries of an entirely different estate.

W Estate

Oldroyd was the solicitor for the estate of W, who died in 2002. W left an estate with a probate value of about \$300,000, consisting mostly of cash and realizable securities.

In October 2003, Oldroyd used W estate trust funds to make a \$70,000 payment to the executor (and one of the beneficiaries) of an unrelated estate, and to pay \$100,000 to cover a trust shortage in another unrelated estate.

Lawyer E replaced Oldroyd as solicitor for the W estate in March 2004. Lawyer E received Oldroyd's files, but did not receive any of the funds purportedly being held in trust by Oldroyd on behalf of the W estate. Oldroyd did not replace the \$170,000 he had paid out of the W estate trust funds.

Verdict

In addressing the issue of wrongful conversion, the panel determined that the key questions were whether Oldroyd knew the purposes to which his clients' funds were to be applied, and whether he knowingly and without mistake applied the money to different purposes. In all five cases brought before it, the panel concluded Oldroyd had wrongfully converted funds held by him in trust for his clients.

The panel found Oldroyd guilty of three counts of professional misconduct, including wrongful conversion of clients' funds from his pooled trust account, misleading another lawyer with correspondence falsely conveying the impression that certain funds were being held in his trust account, and breaching an undertaking to another lawyer by releasing certain trust funds without that lawyer's permission.

The panel also found that Oldroyd violated the Law Society Rules by failing to produce his trust accounting records for the years 1995 through 1999 to a designated investigator.

Penalty

The panel noted that Oldroyd's financial records had been prepared to conceal the misappropriation of client funds, and that Oldroyd had not replaced those funds.

The panel concluded Oldroyd's conduct clearly justified the penalty of disbarment. The panel also concluded it had no evidence before it to suggest that any other penalty would ensure the public's protection from future acts of misconduct by Oldroyd.

The panel ordered that Oldroyd:

1. be disbarred; and
2. pay costs in the amount of \$124,000.

The panel stressed the appropriateness of having the burden of costs borne by the party at fault rather than the general membership. The panel also stated its willingness to receive a written request for time to pay on behalf of Oldroyd.