

Jeremy Stuart Gordon Donaldson

Victoria, BC

Called to the bar: May 17, 1991

Ceased membership: July 30, 2008

Admission accepted by Discipline Committee: April 2, 2009

Counsel : Eric Wredenhagen for the Law Society and Dennis T.R. Murray, QC for Jeremy Donaldson

Facts

Jeremy Stuart Gordon Donaldson practised with a Victoria law firm from 1991 to 1993 and then as a sole practitioner in the areas of family, real estate, civil litigation, motor vehicle and wills and estates law until July 30, 2008. On that date, one day before a scheduled proceeding to consider whether he should be suspended pending the hearing of a citation, he withdrew from practice. That proceeding arose from a citation alleging, among other things, that Donaldson misappropriated client trust funds and filed misleading statutory declarations with the Law Society.

In June 2003, following a previous citation for failure to remit taxes collected from clients, Donaldson admitted professional misconduct for collecting PST and GST from clients for approximately two years and failing to remit the \$26,250 collected. As part of the penalty, the hearing panel ordered that Donaldson deliver quarterly statutory declarations starting with the quarter ending June 30, 2003 setting out the total fees billed and total remittances made for PST and GST.

Late filings and false declarations

Donaldson was frequently late in filing his declarations on GST and PST. In January 2007, a Law Society auditor noted discrepancies in two of Donaldson's 2006 declarations. Following inquiries by the auditor, Donaldson advised that he had not paid PST from April 2006 onward and that the unpaid amount was between \$8,000 and \$10,000. He did not hold the PST monies in trust, and he used the money to pay his employees and meet other practice obligations. He admitted that he swore false statutory declarations on PST remitted.

Donaldson has since entered into a payment plan with the Revenue Collection Branch and, except for a minor amount still owing, the amounts due in respect of PST were remitted by December 2008.

Misappropriation of client funds related to billing and misleading the Law Society and clients

On July 3, 2007 an investigation was ordered into Donaldson's books, records and accounts, which was initially conducted by Law Society staff and subsequently by an external auditor. An investigation was also conducted in which a Law Society investigator interviewed several of Donaldson's clients identified in the Audit Report.

The Audit Report and Investigation Report found numerous breaches of the trust accounting rules, as well as evidence of misrepresentations made to clients and the Law Society about funds held in trust.

The auditor found Donaldson transferred client funds, usually in the form of a retainer, from trust accounts to his general account before the service had been completed and before the invoice had been delivered to the client. When the invoice was delivered to the client, it misrepresented the status of these funds, referring to them "in trust" when they were not.

Donaldson admitted to "pre-taking" fees prior to completing work in 13 separate client matters. He also admitted in one such case that he withdrew funds from trust where no work was ever done in respect of the funds withdrawn.

Donaldson further admitted that he misled his clients and sought to mislead the Law Society by rendering bills to clients that bore a different date from his file copy.

Misappropriation of trust balances

Donaldson admitted that in September 2003 he cleared six client trust balances totalling \$273.63 and transferred the funds to his general account. He advised the Law Society that he will reimburse these clients.

Breach of the Professional Conduct Handbook

Donaldson admitted that he breached Chapter 4, Rule 6 of the *Professional Conduct Handbook* by assisting his client DL in conduct that he knew was dishonest or fraudulent. Donaldson agreed to pay out DL's share of a personal injury settlement in cash, helping her to hide the payment and protect the value of an unspecified pension.

Breaches of Law Society Rules

The Audit Report concluded and Donaldson admitted that between 2002 and 2007, he breached the Law Society accounting rules by:

- failing to carry out his duties and responsibilities under Division 7 (Trust Accounts and Other Client Property);
- depositing client trust funds directly to his general account;
- making payments from trust funds even though his trust accounting records were not current;
- withdrawing or authorizing the withdrawal of trust funds in payment of fees without first preparing a bill for those fees and immediately delivering the bill to the client;
- not keeping file copies of bills delivered to clients that accurately showed the dates charges were made;
- not recording each trust or general transaction promptly;
- following receipt of funds under Rule 3-61(2), not immediately delivering a bill or issuing to the client a receipt containing sufficient particulars to identify the service performed and disbursements incurred;
- not making the required trust reconciliations within 30 days of the effective date of the reconciliation; and
- upon discovering trust shortages, not immediately paying into his account enough funds to eliminate the shortage.

Admission

Donaldson admitted that his conduct constitutes professional misconduct. Under Rule 4-21, the Discipline Committee accepted Donaldson's admission and undertakings:

1. to resign his membership in the Law Society and not to apply for reinstatement for 10 years starting July 30, 2008, the date he withdrew from practice;
2. not to apply for admission to the law society of any other province or territory in Canada without notifying the Law Society of BC; and
3. not to work for any lawyer or law firm or allow his name to appear on the letterhead of any lawyer or

law firm without the consent of the Law Society.