

Shawn Dickson Swail

Kelowna, BC

Called to the bar: May 15, 1992

Ceased membership: November 21, 2009

Admission accepted :October 29, 2009

Counsel : Eric Wredenhagen for the Law Society and Henry Wood, QC for Shawn Dickson Swail

Facts

From May 1992 to June 1994 Shawn Dickson Swail practised law with the firm Salloum Doak, and thereafter practised as a sole practitioner in Kelowna under the name Swail & Company. He practised primarily in the areas of real estate and civil litigation.

On April 24, 2003, the Law Society ordered an investigation of Swail's books, records and accounts as a result of a complaint to the Law Society made by one of his former clients.

Breach of Court Order

In 1999 a Supreme Court Order required that Swail not release funds held in trust in a client's matrimonial matter without a further court order or written agreement. Swail breached the Order by paying himself \$4,809 in fees from trust.

Breach of undertaking

In February 2000 Swail filed for bankruptcy and provided an undertaking to the Law Society that he would appoint a co-signatory on all of his trust accounts. Swail breached the undertaking by transferring funds electronically from his trust account to his general account. Swail stated that he didn't realize the undertaking included Internet transfers.

Breach of trust accounting rules

At various times between 2000 and 2005, Swail breached accounting rules and failed to maintain accounting books and records as required by the *Law Society Rules*.

Misappropriation

In 2001 and 2002, Swail withdrew funds from his pooled trust account where his clients did not have any funds in trust, or did not have sufficient funds in trust to cover the withdrawal. He later deposited funds into client trust accounts to either reduce the trust deficit or bring the trust balance for the client back up to its original amount. The withdrawal transactions were not recorded until after those deposits were made.

Swail also withdrew client funds from trust and paid those funds to his general account before performance or completion of work. In some instances, he retained a "back-dated" office copy of the account rendered to a client, dated the same date as the withdrawal of funds from trust.

Tax evasion and false tax returns

A client retained Swail in a sexual abuse claim. When the matter settled in August 2001, Swail was forwarded the sum of \$61,000 in trust for his client. Swail directed his client to pay a portion of the fees

owed to him to a third party, with the intent of evading tax. The client paid the sum of \$12,800 to a company controlled by Swail and ultimately complained to the Law Society about this billing.

As a result of directing his client to pay \$12,800 in fees to a third party, Swail filed false and misleading GST, PST and income tax returns for 2001.

False and misleading information

In May 2001, Swail transferred \$920 from his trust account to his general account on a "miscellaneous" matter. At that time, there were no funds in trust for this matter. Swail generated a false invoice in the amount of \$920 to mislead the Law Society during its investigation.

Swail also prepared falsely back-dated and dual-dated client invoices in an attempt to conceal from clients and from the Law Society his improper withdrawals from trust accounts.

Admission

Swail admitted to all 11 allegations and agreed that his conduct constitutes professional misconduct. Under Rule 4-21, the Discipline Committee accepted Swail's admission and undertakings:

1. to terminate his membership in the Law Society effective November 21, 2009, and not apply for reinstatement to the Law Society for a period of eight years from that date;
2. not to apply for admission to the law society of any other province or territory in Canada without first providing written notification to the Law Society of BC; and
3. not to permit his name to appear on any letterhead of any lawyer or law firm or otherwise work for any other lawyer or law firm in BC without the written consent of the Law Society.