2005 LSBC 43
Report issued: October 6, 2005
Citation issued: February 18, 2004

The Law Society of British Columbia
In the matter of the *Legal Profession Act*, SBC 1998, c.9
and a hearing concerning

William Frederick McGuire

Respondent

Decision of the Hearing Panel on Facts and Verdict

Hearing date: August 29, 2005

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

Counsel for the Law Society: Todd R. Follett
Counsel for the Respondent: Christopher E. Hinkson, Q.C.

Background

[1] A citation was issued against the Respondent, Mr. William F. McGuire, a member of the Society, on 18 February 2004. Under section 38(4)(b) of the *Legal Profession Act*, S.B.C. 1998, c. 9, a hearing panel must make a determination whether the Respondent has committed one or more of (i) professional misconduct, (ii) conduct unbecoming a lawyer, (iii) a breach of the *Legal Profession Act* or the Law Society Rules, and (iv) incompetent performance of duties undertaken in the capacity of a lawyer. Counsel agreed that the only findings in issue in this case were professional misconduct, or a breach of the Act or the Rules.

[2] The schedule to the citation included eight counts of alleged conduct as follows:

1. That you withdrew client trust funds from your pooled trust account for your personal use through the use of a "personal float" ledger account between July 2002 and September 2003.

2. That you made withdrawals from trust funds belonging to your client S.B. in November and December 2002, and January 2003 to pay fees and disbursements on files other than files of S.B., and for draws, and then replaced these funds belonging to your client S.B. with trust funds belonging to other clients.

3. That you made withdrawals from your pooled trust account on client files 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. Those clients were: S.P., J.V., B.W., T.D., S.N. & L.N., D.M., B.E.S., J.F.J. & V.K., D.B. & S.B., L.C.B., A.V., K.O.N., C.O.B., G.P.P., G.C.P. & J.E.P., P.B., C. Estate, N.P.P. and S.C.B.

4. That you made withdrawals from your pooled trust account for fees before bills were prepared and delivered to the client and without written instructions from the client allowing such withdrawals, contrary to Rule 3-57(2) of the Law Socity Rules. Those clients were: S.P., J.V., B.W., T.D., S.N. & L.N., B.E.S., J.F.J. & V.K., D.B. & S.B., L.C.B., A.V., K.O.N., C.O.B., G.P.P., G.C.P. & J.E.P, C. Estate and N.P.P.

5. That you generated certain billings to clients that were misleading in that the billings were dated prior to the actual date the billings were produced. This occurred on billings to your clients, J.V., L.C.B. and K.O.N.

6. That you made withdrawals from your pooled trust account for fees before rendering the services to the client for which those fees were charged, contrary to Rule 3-56(1) of the Law Society Rules. S.P., J.V., B.S., J.F.J. & V.K., D.B. & S.B., L.C.B., K.O.N., C.O.B., G.P.P., G.C.P. & J.E.P., P.B. and C. Estate.

7. That you failed to keep your books, records and accounts in compliance with the requirements of Part 3, Division 7 of the Law Society Rules from April 2002 to December 2003.

8. That you failed to deposit cash trust funds received from your client M.M. in a trust account as soon as practicable contrary to Rule 3-51 of the Law Society Rules.

[3] On December 19, 2003, a panel of three Benchers heard a s. 39 proceeding to determine whether the Respondent should be subject to an interim suspension pending the hearing of the citation. The panel decided that the Respondent could continue in practice subject to a series of conditions. One condition was that he cease to be a signatory on his trust accounts and another lawyer take over and be sole signatory on those accounts and any new trust account she chose to open in the Respondent's name. Another condition was that he eliminate the shortage on his trust accounts. The shortage as of October 31, 2003, was determined to be $6,674.64, and any additional shortage up to December 19, 2003, was also to be made up. Further conditions obliged him to bring his books and records into compliance with the Law Society accounting rules and to employ an accountant to maintain his books and records in proper order in the future. At the present hearing we were advised by counsel for the Law Society that the Respondent was in compliance with all the conditions imposed by the panel in the s. 39 proceeding. The conditions remain in effect pending disposition of the citation.

[4] The citation was properly served on the Respondent.

Composition of the Panel

[5] At the commencement of this hearing Mr. Hinkson, for the Respondent, advised that he had, earlier that morning, delivered to the Hearing Administrator the Respondent's written consent to a single-Bencher panel. The letter giving the consent was entered in evidence as Exhibit 2. Mr. Hinkson submitted that under the Law Society Rules the Respondent's consent was determinative and the Respondent was entitled to have the matter heard by a single Bencher. He relied upon Rule 5-2, the material paragraphs of which state:

5-2 (1) A panel must consist of an odd number of persons but, subject to subrule (2), may not consist of one person.

(2) With the written consent of the applicant or the respondent to a citation, a panel may consist of one Bencher who is a lawyer.

[6] Mr. Follett, for the Law Society, neither opposed nor supported the request, noting only that as far as he was aware there was no previous instance in which a Respondent had communicated the consent to a single-Bencher panel on the day of the hearing.

[7] We decided that the written consent of the Respondent did not automatically or of right entitle the Respondent to have the hearing before a single Bencher. Rule 4-28 is the provision that governs the

appointment of the panel. It provides that "the President must establish a panel to conduct a hearing" . Rule 5-2 only sets out the rules for the composition of the panel. The use of the word "may" in paragraph (2) of that rule indicates that it permits, but does not require, the President to appoint a single Bencher panel if the Respondent consents. The use of the word "consent", rather than "election", in relation to the Respondent's wish for a single Bencher panel further supports the interpretation that the decision is the President's, not the Respondent's. As the only panel appointed by the President in this matter was the present one, we were required to continue as a panel of three.

Facts

[8] Counsel for both sides submitted to the panel an agreed statement of facts (ASF), which is appended to these reasons. The panel accepted the ASF as evidence in the matter. Both the Law Society and the Respondent submitted further evidence.

[9] The ASF sets out the history of the Respondent's banking transactions in relation to his pooled trust accounts at the relevant times. The Final Audit Report on Mr. McGuire's trust accounts by Karen Keating, C.A., together with two volumes of exhibits and some supporting financial statements, were filed as exhibits by the Law Society. They document the details of the transactions in question.

[10] The gist of the agreed facts is that the Respondent wrote cheques on his trust account when there were no, or insufficient, funds in the account that could be used for the expenditure in question. (He used two bank accounts at different branches as trust accounts. With one exception, the cheques in question were drawn on the main account.) Sometimes the cheques were allocated to a "personal float" sub-ledger (numbered 302). The Respondent had originally deposited $300 of his own to fund this "personal float", but the withdrawals allocated to this sub-ledger exceeded this amount (ASF paras. 10-15). The impugned transactions on this "personal float" sub-ledger began in July 2002 and the latest of them was in September 2003. At other times the cheques were allocated to sub-ledgers relating to particular files, when the client on the file had not yet provided the funds to cover the expenditure (ASF paras. 16-129). Most of the cheques, whether on sub-ledger #302 or on client file sub-ledgers, were payable to the Respondent himself and the remainder were to third parties as disbursements. The earliest of the impugned transactions on the client file sub-ledgers was in mid-March 2002, and the latest, in November 2003.

[11] The result of these transactions was that trust funds belonging to the Respondent's clients were misappropriated. Their money was used to fund "personal float" withdrawals by the Respondent in excess of the funds he himself had deposited, and withdrawals relating to the files of other clients (whether to pay the Respondent or to pay disbursements) in excess of the funds on deposit relating to those files.

[12] It is also agreed that in many of the instances in which the Respondent made payments allocated to client file sub-ledgers to himself, he had not yet delivered a bill to the client for fees or disbursements (ASF paras. 21, 28, 38, 48, 57, 64, 73, 80, 86, 92, 96, 107, 112). On some occasions services for which fees were withdrawn had not yet been performed (ASF paras. 57, 70, 97, 102). Other infractions of Law Society rules are also admitted. We give the complete list of infractions in our findings of fact and verdict below.

[13] The Respondent testified about his personal circumstances at the time of these events. He is now 54 years old. After his call to the Bar in 1980 he had first a sole practice and then a small firm practice in Burnaby, mainly doing family and criminal law for legal aid clients; he dropped the criminal law side around 1985. In 1990 the members of his firm went their separate ways and he has had a sole practice since then. Since 1991 his practice has been located in Maple Ridge. He does mainly litigation and estate work.

[14] In 1988 he fell into arrears on his taxes. In 1993 Revenue Canada garnished his practice's general

account. As a consequence he decided to operate his practice from then on without a general account, intending to fund practice debts and other non-trust expenditures out of his trust account using funds he himself would deposit. He testified that an adviser on the staff of the Law Society - he recalled it was Ian Doddington, but was not sure - confirmed this would be in order. He did not at that time set up a sub-ledger for personal expenditures. He began the #302 "personal float" sub-ledger in 2000 or 2001, as a response to a deficit in his pooled trust account attributable to bank errors. He deposited $1,000 in the sub-ledger but withdrew $700 when he was advised by the Law Society that the Rules permitted a deposit of no more than $300 of a lawyer's own funds (Rule 3-52(4)).

[15] The Respondent also testified to the nature of the accounting software he used to track his trust accounts (referred to in ASF paras. 4-5). The Quicken program he used could, when asked, print out a fully itemized report that would include the balance in individual sub-ledgers. It could not produce a summary list of the balances on deposit under all the individual sub-ledgers.

[16] The Respondent told us that in 2002, when he began to overdraw on his trust account, his personal life reached a low ebb. He and his wife, whom he had married in 1986, separated in early 1999 and they were later divorced. They had no children. In early 2000, after a year alone, he began a relationship with another woman. They planned to marry, but, after several breakups and reconciliations, their relationship ended in June 2002. In August 2002 the Respondent's dog, which for many years had been an emotional support that helped him through difficult times, died after an illness that left the Respondent with some $5,800 of veterinary bills, which were paid out of withdrawals from his trust account. When he withdrew the funds to pay these bills the Respondent knew that there were no funds of his own on deposit in the account and he therefore consciously took his clients'trust money to fund his veterinary expenses. The Respondent explained that he was out of cash and had reached the maximum on his credit cards. The Respondent testified that he became depressed. He did not seek medical assistance for his condition.

[17] Since 2002 the Respondent's personal life has taken a turn for the better. He is again in a permanent relationship.

[18] The Respondent tesitified in detail as to the circumstances in which individual transactions identified in the ASF took place. He did not attempt to justify the transactions. With one or two possible exceptions he admitted in relation to each instance that he was aware that he was taking out trust funds in excess of the funds that were in the sub-ledger in question.

[19] He said that when he withdrew funds from client file sub-ledgers for himself, he believed in each instance that the client had agreed to the fee and that he, the Respondent, had done the work to earn the fee, although he admitted his breach of the Law Society rules in failing to render a bill first and, in many cases, withdrawing funds when the client had not yet deposited them. Withdrawals to which these comments applied were those relating to clients S.P. (ASF paras. 18-19); J.V. (para. 24); T.D., S.N. and L.N. (paras. 35-36); B.E.S. (paras. 47(a) and (b) and 48); J.F.J. and V.R. (para. 57); L.C.B. (para. 64); A.V. (para. 73(a)); and K.O.N. (para. 80).

[20] In the case of client A.V., two withdrawals were made after a bill had been delivered but before the necessary funds were deposited (para. 73(b) and (c)).

[21] In the case of client C.O.B., the Respondent testified that he had mailed the client a bill before he withdrew the funds (para. 91) but had not yet received her cheque. He said that she later told him she had not received his bill. When, at her request, he sent her a copy of the bill she paid it promptly (deposit referred to in para. 92).

[22] In the case of clients D.M. (ASF para. 41) and B.E.S. (para. 47(c)), the Respondent paid disbursements

from the sub-ledger knowing that the client had not deposited funds to cover them. The Respondent said he had no other source of funds at that time.

[23] In one instance the Respondent said the withdrawal of funds from a particular sub-ledger was simply a mistake. This applied to the withdrawal from client B.W.'s sub-ledger, which was corrected after the fiscal year-end (ASF paras. 31-32).

[24] In a case where the Respondent admittedly backdated his bills, he said that he did not remember why he did it but perhaps he made the date coincide with the date of payment out of trust to himself (client S.P., para. 29). In another case of a bill backdated by four days he said he could not remember why he did it (client K.O.N., para. 88).

[25] The Respondent evidently did not keep track of the cumulative effect of his trust fund withdrawals. He said he was shocked when a disbursement cheque (#1441) bounced in January 2003 because the trust account as a whole was too depleted to cover it. He said that he had probably taken much more out of the #302 sub-ledger than he realized. In April 2003 he received funds from a settlement and deposited $6,500 to the #302 sub-ledger as the amount by which he thought that the sub-ledger was overdrawn. (This corresponds to the deposit to sub-ledger #302 of April 27, 2003, Audit Report Exhibits (our Exhibit 5), Tab 2-2, and it did cover the deficit in that sub-ledger.) Again he said he was shocked when, later that year, Ms. Keating's audit disclosed a further shortage in the trust account as a whole of some $6,000. He said he had not reckoned with the state of some of the client file sub-ledgers. His recollection was that, when everything had been worked through, roughly half the shortfall was eventually made good by funds subsequently received from clients and half was repaid by him.

[26] He twice borrowed money from his mother that he used to fund the #302 sub-ledger ($2,500 deposited on August 29, 2002 (Exhibit 5, Tab 2-2, line 16), and $1,000 deposited on March 10, 2003 (Tab 2-2, line 33)) (see the Respondent's letter to the Law Society of August 12, 2004 (Tab 2-6)).

[27] The Law Society put in evidence (as Exhibit 7) a table showing the cheques drawn during the relevant period on the client file sub-ledgers. (The table did not include the cheques payable to the Respondent or used for personal expenses that were improper withdrawals allocated to sub-ledger #302.) It identified the cheques that resulted in shortages in the sub-ledger in question. These included 42 cheques to the Respondent himself and 14 cheques to third parties for disbursements, for a total of 56 cheques that resulted in shortages in the client file sub-ledgers. The total of the individual shortages was $14,114.80, but because shortages in individual sub-ledgers were made up from time to time the actual shortage over all client sub-ledgers was always a lower figure. The duration of the deficits in individual client file sub-ledgers, deducible from the monthly bank statements, ranged from one day (client P.B. sub-ledger) to 16 months (client A.V. sub-ledger). Many of the sub-ledger deficits were on the short side of the scale, but a sizable proportion lasted for several months.

[28] Mr. McGuire had earlier acknowledged to Ms. Keating, the auditor, that taking funds out of trust before the funds were received was a serious breach of the Law Society's rules, but he told her he was "short of cash" and "his rent was due" (ASF para. 113). When asked in this hearing about his state of mind when he was overdrawing sub-ledger #302, and whether he realized it was theft from his clients, who were involuntarily funding the deficit, the Respondent said that because he was depressed he did not put his mind to the question of propriety at that time. However, whether or not the Respondent considered the implications of his actions, it was clear from his testimony that when he made the impugned withdrawals of trust funds he was aware in all, or virtually all, instances that they exceeded the Respondent's own funds on deposit (in the case of sub-ledger #302) or client funds on deposit (in the case of client file sub-ledgers). The Respondent told this panel that he now understands his breaches of the trust fund rules were extremely

serious, that he realizes it amounted to theft from his clients, and that there is no way that he would do it again.

[29] Mr. McGuire cooperated fully with the Law Society in its investigation of his trust account transactions.

Legal Analysis and Reasons

[30] Counsel for the Respondent argued that, in giving its verdict, this panel should not follow the counts set out in the schedule to the citation. He argued that the professional misconduct the Respondent has admitted in ASF paras. 130-136 is not properly expressed in eight separate counts because there is overlap between them. More particularly, he suggested that counts 1-3 should be treated as a single species of wrong because they describe different aspects of doing the same thing, namely (in counsel's words) the Respondent's practice of using his trust account as a line of credit. He also suggested that counts 4-6 likewise represented a single type of wrong, namely, taking money in payment of fees before it has been earned and billed for. We should not over-convict, counsel said, on the basis of a single omnibus offence being split into components.

[31] In support of his argument counsel referred us to *R. v. Kienapple*, [1975] 1 S.C.R. 729. There the court held that the accused should not have been convicted of both rape and having unlawful carnal knowledge of a female under 14 years of age. Although the Crown had proved the elements of each of the two offences, it was improper, having obtained a conviction on one count, to seek conviction on the second count when "the same or substantially the same elements make up the offence charged" in the second count (Laskin J. at p. 13 of the QL printout). The rationale is that of *res judicata*; as Cartwright J. put it in *Cox and Paton v. The Queen*, [1963] S.C.R. 500 at 516 (cited by Laskin J. at p. 10), "[I]t would be contrary to law that the accused should be punished more than once for the same offence" .

[32] We accept counsel's argument that we should apply the *Kienapple* principle to findings of professional misconduct. We think, however, that except for some details, the counts in this case do not offend against the principle.

[33] Professional misconduct is not wholly comparable to crimes because it is not classified into distinct offences. There is, in a sense, only one "crime", that of professional misconduct. An act of professional misconduct can involve the breach of one principle of professional responsibility or several such principles. The *Kienapple* principle is that one wrongful act should not be treated as two crimes, even if the act meets the definition of two distinct crimes under the *Criminal Code*. Transposed into the context of professional discipline, we think this means that one act should not be treated as two instances of professional misconduct even if the act contravenes two principles of professional responsibility.

[34] The counts in a citation itemize the conduct that the member is alleged to have committed and that is subject to discipline. The counts can be organized by the acts of conduct, as where each count refers to one act. If that format is followed, we think it is proper for the count to say that the act broke professional responsibility principles A, B and C, as long as it is clear that the act is being treated as a single item of conduct subject to discipline.

[35] However, in this case the counts were organized, not act by act, but by category of conduct. Each count identifies a type of conduct and, either specifically or by reference to particular client files, the acts that are said to have amounted to that type of conduct. It is certainly open to the Law Society to choose to follow this format, and in this case it made practical sense because there were too many individual acts to itemize each conveniently in the citation. It does mean, though, that the same act must not appear under more than one count. Otherwise, individual wrongful acts are presented as multiple instances of conduct subject to discipline, which in our view contravenes the *Kienapple* principle.

[36] As mentioned in para. [30], counsel for the Respondent urged us to go further and, consolidate counts referring to the breaches of different principles of professional responsibility on the basis that the breaches were only variants of a single wrong. We do not agree. The withdrawals of trust funds here were not a single wrong, like the crime of conspiracy, that was composed of a series of acts. Each withdrawal was a distinct act subject to discipline and could have stood alone in a citation. Some infringed more than one Law Society rule, such as where there were insufficient funds and, moreover, the money was being taken for fees without a bill having been delivered. In such cases, the Law Society is entitled to include them under the count dealing with breaches of Rule 3-56(1.2)(b) (insufficient funds) or the count dealing with breaches of Rule 3-57(2) (taking fees without having delivered a bill). But the Law Society cannot include the same individual act in two or more counts, because that is to present them as two items of conduct subject to discipline when there was in fact only one.

[37] The citation as drawn does have some overlap between the withdrawals identified in different counts. For example, as counsel for the Law Society conceded, many of the withdrawals that constituted a misuse of trust funds belonging to client S.B. (count 2) were, at the same time, withdrawals that overdrew the client file sub-ledgers to which they were allocated (count 3). There were also some overlaps in other counts. Therefore, in these findings we have itemized the withdrawals to which the conduct under each count refers, with the aim that no withdrawal should appear under more than one count.

[38] On count 1, we find that between July 2002 and September 2003 the Respondent withdrew client funds from his pooled trust account for his personal use when he was not entitled to do so, and without the clients'knowledge or consent, through the use of his "personal float" ledger account #302 (ASF paras. 10-13, 131). This finding applies to the following transactions:

Bank date	Cheque #	Amount	Audit Report Exhibit Tab
2 July 02	1157	29.96	2-1 to 2-7
12 July 02	1159	300.00	Ibid.
26 July 02	1165	400.00	Ibid.
26 July 02	1166	200.00	Ibid.
1 Aug. 02	1168	500.00	Ibid.
9 Aug. 02	1171	800.00	Ibid.
13 Aug. 02	1172	300.00	Ibid.
14 Aug. 02	1167	1,500.00	Ibid.
15 Aug. 02	1173	1,500.00	Ibid.
18 Aug. 02	1174	200.00	Ibid.
15 Sept. 02	848	300.00	Ibid.

8 Nov. 02	1426	250.00	Ibid.
17 Dec. 02	1485	200.00	Ibid.
21 Dec. 02	1487	200.00	Ibid.
27 Dec. 02	1489	900.00	Ibid.
2 Jan. 03	1490	400.00	Ibid.
3 Jan. 03	1491	200.00	Ibid.
7 Jan. 03	1494	250.00	Ibid.
9 Jan. 03	1497	500.00	Ibid.
12 Jan. 03	1503	100.00	Ibid.
15 Jan. 03	1505	250.00	Ibid.
23 Jan. 03	1512	50.00	Ibid.
24 Jan. 03	1513	100.00	Ibid.
6 April 03	1600	400.00	Ibid.
16 Sept. 03	Direct	150.00	Ibid.

[39] On count 2, we find that the Respondent made withdrawals from trust of funds belonging to his client S.B. (trust ledger #2691.01) in November and December 2002 and January 2003 to pay fees and disbursements for clients other than S.B., and for draws, and then replaced these funds belonging to his client S.B. with trust funds belonging to other clients (ASF paras. 119-129, 132). The basis on which disbursements and fees on other client file sub-ledgers, as well as personal draws by the Respondent on sub-ledger #302, were identified as coming from the S.B. funds is set out at pp. 7-10 of Ms. Keating's Audit Report (Exhibit 4). The identification of subsequent S.B. expenditures as having been covered by other clients'trust funds to is likewise set out there. The Respondent used S.B.'s funds for other clients'or the Respondent's own purposes, and other clients'funds for S.B.'s purposes. This finding applies to the following transactions:

Bank date	Cheque #	Debited to sub-ledger of client	Amount	Purpose	Audit Report Exhibit Tab
20 Nov. 02	1439	S.P.	200.00	fees	1-6 to 1-10, 3-1 to 3-2
23 Nov. 02	1444	T. Estate	250.00	fees	1-6 to 1-10

26 Nov. 02	1446	J.V.	218.00	disbursement	1-6 to 1-10, 4-1 to 4-2
28 Nov. 02	1448	B.W.	100.00	fees	1-6 to 1-10, 5-2
29 Nov. 02	bank charges		4.50		1-6 to 1-10
3 Dec. 02	1459	L.N.	400.00	fees	1-6 to 1-10, 6-1 to 6-2
4 Dec. 02	1457	D.M.	208.00	disbursement	1-6 to 1-10, 7-1 to 7-2
5 Dec. 02	1460	B.E.S.	300.00	fees	1-6 to 1-10, 8-1 to 8-2
6 Dec. 02	1461	B.E.S.	125.00	fees	1-6 to 1-10, 8-1 to 8-2
6 Dec. 02	1462	B.E.S.	35.00	disbursement	1-6 to 1-10, 8-1 to 8-2
9 Dec. 02	1463	#302	300.00	personal draw	1-6 to 1-10, 2-1 to 2-2
10 Dec. 02	1467	#302	200.00	personal draw	1-6 to 1-10, 2-1 to 2-2

[40] On count 3, we find that the Respondent made withdrawals from his pooled trust account on client files when insufficient funds were held in trust to the credit of the client (ASF para. 130). This finding applies to the following transactions:

Bank date	Cheque #	Debited to sub-ledger of client	Amount	Audit Report Exhibit Tab	ASF para.
15 Mar. 02	1101	A.V.	200.00	12-1 to 12-7	73(a)
19 April 02	1109	G.P.P., G.C.P. & J.E.P.	400.00	15-1 to 15-5	97
12 Nov. 02	1427	J.V.	250.00	13-1 to 13-8	24-26
18 Nov. 02	1430	K.O.N.	75.00	13-1 to 13-8	83

19 Nov. 02	1434	S.P.	300.003-1 to 3-12	18
9 Dec. 02	1464	J.F.J. & V.K.	200.009-1 to 9-8	51, 56
20 Dec. 02	1481	D.M.	64.207-1 to 7-5	41
3 Feb. 03	1524	L.C.B.	250.0011-1 to 11-14	62, 67
13 Feb. 03	1546	C. Estate	225.0017-1 to 17-4	105
28 Feb. 03	1569	N.P.P.	387.5018-1 to 18-7	109-110
6 Mar. 03	1571	N.P.P.	150.00Ibid.	Ibid.
7 Mar. 03	1572	T.D., S.N. & L.N.	300.006-1 to 6-6	36-37
26 Mar. 03	1586	T.D., S.N. & L.N.	500.00Ibid.	Ibid.
26 Mar. 03	1589	T.D., S.N. & L.N.	208.00Ibid.	Ibid.
27 Mar. 03	1591	N.P.P.	31.0418-1 to 18-7	109-110
27 Mar. 03	1592	N.P.P.	18.73Ibid.	Ibid.
7 Apr. 03	1598	T.D., S.N. & L.N.	13.116-1 to 6-6	36-37
9 Apr. 03	6	N.P.P.	500.0018-1 to 18-7	109-110
17 Apr. 03	1601	N.P.P.	300.00Ibid.	Ibid.
5 May 03	1629	N.P.P.	700.00Ibid.	Ibid.
8 May 03	1634	N.P.P.	350.00Ibid.	Ibid.
8 May 03	1633	N.P.P.	26.75Ibid.	Ibid.
21 May 03	1662	K.O.N.	450.0013-1 to 13-8	83
30 May 03	1673	N.P.P.	492.5018-1 to 18-7	109-110
27 June 03	1696	S.C.B.	20.0019-1 to 19-8	116
27 June 03	1697	S.C.B.	600.00Ibid.	Ibid.

8 July 03	1705	N.P.P.	15.50	18-1 to 18-7	109-110
8 Aug. 03	1734	S.C.B.	250.00	19-1 to 19-8	116
4 Sept. 03	1750	N.P.P.	600.00	18-1 to 18-7	109-110
12 Sept. 03	1807	N.P.P.	12.84	Ibid.	Ibid.
16 Sept. 03	Debit memo	N.P.P.	150.00	Ibid.	Ibid.
16 Sept. 03	1753	N.P.P.	200.00	Ibid.	Ibid.
18 Sept. 03	1755	A.V.	437.50	21-1 to 12-7	73
30 Sept. 03	1759	S.C.B.	2,052.00	19-1 to 19-8	116
29 Oct. 03	1783	N.P.P.	125.00	18-1 to 18-7	109-110
5 Nov. 03	1790	S.C.B.	850.00	19-1 to 19-8	116

[41] On count 4, we find that the Respondent made withdrawals from his pooled trust account for fees before bills were prepared and delivered to the client and without written instructions from the client allowing such withdrawals. This finding applies to the following transactions:

Bank date	Cheque #	Debited to sub-ledger of client	Amount	Audit Report Exhibit Tab	ASF para.
7 Oct. 02	1405	L.C.B.	300.00	11-1 to 11-14	64
24 Oct. 02	1413	B.E.S.	200.00	8-1 to 8-11	48
4 Nov. 02	1425	K.O.N.	375.00	13-1 to 13-8	80(a)
25 Nov. 02	1445	J.V.	250.00	4-1 to 4-12	28
13 Dec. 02	1471	T.D., S.N. & L.N.	200.00	6-1 to 6-6	38
17 Dec. 02	1479	J.F.J. & V.K.	150.00	9-1 to 9-8	57
26 Feb. 03	1565	N.P.P.	600.00	18-1 to 18-7	112
31 Mar. 03	1595	C. Estate	400.00	17-1 to 17-4	107
18 July 03	1721	S.P.	1,000.00	3-1 to 3-13	21

25 Sept. 03	1758	C.O.B.	150.00	14-1 to 14-5	92

[42] On count 5, we find that the Respondent generated certain billings to clients that were misleading in that the billings were dated prior to the actual date the billings were produced. This finding applies to the bills presented to client J.V. dated 9 November 2002 but actually produced some time after 18 December 2002 (ASF para. 29); to client L.C.B. dated 4 October 2002 but actually produced some time after 7 January 2003 (ASF para. 63); and to client K.O.N. dated 15 November 2002 but actually produced on 19 November 2002 (ASF para. 88).

[43] On count 6, we find that the Respondent made withdrawals from his pooled trust account for fees before rendering the services to the client for which those fees were charged. This finding applies to the following transactions:

Bank date	Cheque #	Debited to sub-ledger of client	Amount	Audit Report Exhibit Tab	ASF para.
18 Nov. 02	1429	P.B.	295.00	16-1 to 16-7	102
16 Dec. 02	1479	J.F.J. & V.K.	150.00	9-1 to 9-8	57
4 Feb. 03	1526	L.C.B.	200.00	11-1 to 11-14	70

[44] On count 7, we find that the Respondent failed to keep his books, records and accounts in compliance with the requirements of Part 3, Division 7, of the Law Society Rules from April 2002 to December 2003 (ASF para. 136, exhibit 3 to ASF).

[45] On count 8, we find that the Respondent failed to deposit cash trust funds received from his client M.M. in a trust account as soon as practicable.

Verdict

[46] The Respondent's conduct as itemized under counts 1, 2 and 3 was admitted to be professional misconduct (ASF paras. 130-132), and we so find. The conduct under count 3 was, as well, admitted to be a breach of Rule 3-56(1.2)(b) of the Law Society Rules (ASF para. 130), and we so find. By his conduct as described in relation to the first three counts the Respondent misappropriated his clients'trust funds. He made withdrawals for himself, unrelated to particular client files, when he himself had no, or not enough, funds on deposit to cover the withdrawals. He also misappropriated his clients'trust funds by making withdrawals for fees or disbursements on other files when the client in relation to whose file the withdrawal was made had no, or not enough, funds on deposit to cover the withdrawals. As the respondent conceded in testimony, this was theft from his clients.

[47] The conduct under count 4 (withdrawing funds for fees without a bill having been prepared and delivered) was admitted to be in breach of Rule 3-57(2) of the Law Society Rules (ASF para. 133), and we so find.

[48] The conduct under count 5 (backdating statements of account) was admitted to be professional misconduct (ASF para. 135), and we so find.

[49] Under count 6, the withdrawals for fees before performing the services in relation to which the fees were charged was admitted to be in breach of Rule 3-56(1)(b) and (d) of the Law Society Rules (ASF para. 134), and we so find.

[50] The inadequate manner in which the Respondent kept his books, records and accounts, as described in relation to count 7, was admitted to be in breach of the rules in Part 3, Division 7 of the Law Society Rules (ASF para. 136), and we so find.

[51] Lastly, under count 8, the Respondent's failing to deposit cash trust funds as soon as practicable in his trust account was admitted to be in breach of Rule 3-51 of the Law Society Rules (ASF para. 119), and we so find.

Appendix

AGREED STATEMENT OF FACTS

A. The Member

1. Mr. McGuire was called to the Bar of the Province of British Columbia on September 10, 1980. He has been in practice since December 5, 1980 (as a sole practitioner from that date until 1983) and has been in practice as a sole practitioner since October of 1990, practising in Maple Ridge since July of 2001.

2. From April 1, 2002 to December 29, 2003 , Mr. McGuire maintained trust accounts as follows:

Pooled Trust

Scotiabank #30460-01124-10 8691 - Burnaby
Scotiabank #41160-00255-18 Maple Ridge

Segregated Trust

Scotiabank #60830-00066-29 Maple Ridge

3. From December 1993 to December 29, 2003, Mr. McGuire did not maintain a Lawyer's General Account. He did operate a joint personal account at the [bank], Coquitlam, B.C., Account [account number] (the "Personal Account") .

4. From April 1, 2002 to December 29, 2003, Mr. McGuire operated a computer based accounting system for his trust account using software called "Quicken" . This software also kept time records for his various files when the member input time entries into the system.

5. The Quicken system did not provide a running balance of funds on each trust ledger record for each file, but did provide a current balance of money in trust on each file each time the trust ledger record was called up on the system.

C. The Audit

6. An audit of Mr. McGuire's practice was performed by Karen Keating, Chartered Accountant of Law Society staff.

7. Ms. Keating's Final Audit Report regarding William F. McGuire released March 7, 2005 together with Volume 1 and Volume 2 of Exhibits to the Final Audit Report are collectively Exhibit 1 to this Agreed Statement of Facts.

8. The following is agreed concerning the Audit which is Exhibit 1:

a) The copies of records attached to her