

*Misappropriation of trust funds, failure to remit GST / PST on time and breach of accounting rules*

## **Lorne Albert Montaine**

Coquitlam, BC

Called to the Bar: May 15, 1959

Ceased membership (*by failure to file Form 47 and pay late filing penalties*): January 1, 2000

Custodian appointed: January 3, 2001

## **Misappropriations from trust**

### **Client K Ltd.**

In 1998 Mr. Montaine represented K Ltd. in the winding up of the company.

Mr. Montaine received \$186,400 in trust to the credit of K Ltd. The funds were intended to cover the costs of an extraordinary meeting, winding up of the company and redeeming each shareholder's shares in K Ltd. as those shares were received for redemption.

There were 2,000 issued shares and each shareholder was entitled to receive \$50 per share, for a total shareholder payout of \$100,000. The remaining \$86,400 in trust, less expenses, was to be paid to the shareholders as a pro rata dividend.

A Law Society audit of Mr. Montaine's accounts in 2001 revealed that, on different occasions between August, 1998 and June, 1999, Mr. Montaine misappropriated a total of \$112,987.16 held in trust for K Ltd by transferring those funds out of trust without the knowledge or consent of K Ltd. For the most part, Mr. Montaine failed to render statements during this period.

In April, 2000 Mr. Montaine's accountant advised of a shortfall in the trust account. Mr. Montaine deposited \$115,561.42 into the account to the credit of his wife and himself. In June he paid \$29,200 to some of the K Ltd. shareholders. No funds remained in trust to the credit of K Ltd. by January 3, 2001 when a custodian was appointed for Mr. Montaine's practice.

### **Client D**

While representing D on a personal injury claim, Mr. Montaine received a cheque for \$8,850 from ICBC as settlement funds for the client. He received the funds on October 6 and deposited these to his trust account on October 10.

On three occasions in October, Mr. Montaine misappropriated funds held in trust for D by withdrawing these funds by trust cheque payable to himself and subsequently depositing the funds to his firm's general account. Specifically, he withdrew \$4,000, \$1,000 and \$3,000 without rendering statements of account to the client.

In November, 2000 D complained to the Law Society that Mr. Montaine had settled her personal injury claim with ICBC, but had not provided her with an accounting or any of the settlement funds. Having heard of D's complaint, Mr. Montaine met with her on November 23 and provided her with a cheque for \$5,768.42, drawn on his general account, and a document entitled "Statement of Source and Application of Funds."

### **Failing to remit GST and PST in a timely way**

The audit of Mr. Montaine's practice revealed that, while Mr. Montaine collected GST and PST on his accounts, he failed to remit these funds in a timely way.

### **Failing to maintain books and records**

The audit of Mr. Montaine's practice revealed that he failed to comply with Law Society accounting rules. In particular, Mr. Montaine:

- co-mingled his funds with trust funds, contrary to Rule 3-52(4) in that, on many occasions, he had a balance greater than \$300 of his own funds in his trust account;
- failed to prepare trust reconciliations for the bank or client liability accounts, contrary to Rule 3-65;
- failed to accurately record deposits to and payments from trust, contrary to Rule 3-63 in that his accountant updated the books and records only once a year when preparing a Form 47 accountant's report for the practice;
- failed to keep his books and records in a proper manner in written or electronic form in that his records were incomplete and transactions were not easily traceable, contrary to Rule 3-59;
- failed to maintain the minimum requirements for trust and general books, records or accounts, contrary to Rules 3-60 and 3-61;
- failed to keep a file of billings for fees charged or to keep copies of bills on file to support the withdrawal of fees from trust, contrary to Rule 3-62; and
- failed to deliver a final accountant's report after ceasing membership, contrary to Rule 3-78.

\* \* \*

Mr. Montaine ceased membership in the Law Society on January 1, 2000, having failed to file a Form 47 accountant's report or pay Form 47 late filing penalties.

In October, 2002 Mr. Montaine admitted to the Discipline Committee, pursuant to Rule 4-21, that his misappropriation of client trust funds, his failure to remit collected GST and PST and his breach of Law Society accounting rules constituted professional misconduct. The Committee accepted Mr. Montaine's admission and his undertakings:

1. not to apply for reinstatement in the Law Society;
2. not to apply for membership in any other law society without first advising the Law Society in writing;
3. not to permit his name to appear on the letterhead of any lawyer or law firm without the written consent of the Law Society; and
4. to obtain the written consent of the Law Society before working for any lawyer or law firm in BC.

*Discipline Digest — 2003: No. 1 February (Montaine)*