



The Law Society of Alberta Hearing Committee Report

In the matter of the *Legal Profession Act*, and in the matter of a hearing regarding the conduct of Dennis McGechie, a member of the Law Society of Alberta.

Jurisdiction and Preliminary Matters

1. A Hearing Committee of the Law Society of Alberta (“LSA”) conducted a hearing into the conduct of Dennis McGechie (the “Member”) on January 18 & 19, and July 10, 2007. The Committee was comprised of John Prowse, Q.C., chair, Ron Everard, Q.C. and Norma Sieppert. The LSA was represented by Janet Dixon. The Member was represented by William Tatarchuk, Q.C.
2. Exhibits 1, 2, 4 and 5, consisting of the Appointment of the Hearing Committee, the Notice to Attend, the Certificate of Status of the Member, and the Private Hearing Application Notice, establish the jurisdiction of the Committee.
3. The hearing was held in public.

Agreed Statement of Facts

4. The member pled guilty to a number of citations, including failing to follow accounting rules, failing to render accounts prior to releasing funds from trust, breaching an undertaking to the LSA, failing to respond to the LSA in a timely manner, failing to serve a client in a competent manner, failing to respond to a client in a timely manner, breaching a Court Order and failing to comply with trust conditions imposed by the Excise Tax Act. Particulars of the conduct in that regard are set out in the Statement of Facts which was marked as Exhibit # 23 and is reproduced below.
5. The member did not admit one citation, Citation 4, which asserts that he misappropriated or wrongfully converted trust funds in the amount of approximately \$16,085.85. While some admissions were made concerning the facts involving Citation 4 (see the attached Statement of Facts), the hearing proceeded to hear further evidence concerning Citation 4.
6. The Agreed Statement of Facts is set out below (the designation of the paragraphs has been altered to use the alphabet in order to avoid confusion with the numbered paragraphs in this decision):

Matters arising from 2003 Rule 130 follow up audit

CITATION 1

- A. IT IS ALLEGED THAT you failed to follow accounting rules, and that such conduct is conduct deserving of sanction.

Particulars of the foregoing citation are as follows:

- A.01 You failed to follow accounting rules as detailed in the letters from Glen Arnston to Dennis McGechie dated June 2, 2000, July 16, 2003 and the Schedule prepared by Glen Arnston, C.A. [Exhibit 6, Tabs 1, 5 & 6]
- A.02 You failed to render statements of account to clients prior to transferring funds from trust to general as detailed in the Investigation Report dated May 18, 2005. [Exhibit 7]
- B. Mr. McGechie admits Citation 1 and admits the following facts in support of his admission of guilt:
- a. Mr McGechie was audited in an audit that concluded in June 2000. The audit revealed the books and records of Mr. McGechie had numerous exceptions. [Exhibit 6]
 - b. Mr. McGechie received a letter dated June 2, 2000 describing the rule violations identified in the audit. Mr. McGechie read the letter and signed the Compliance Confirmation as requested, returning that document and his comments to the Law Society by letter dated July 14, 2000. [Exhibit 6, Tabs 1 & 2]
 - c. A Rule 130 follow up audit was conducted on the practice of Mr. McGechie in May and June 2003. Mr. Arnston attended the offices of Mr. McGechie on April 29, 2003. At that time the member had not completed trust reconciliations for the months of January, February and March 2003. During the course of the audit other rule violations were noted. In a letter dated July 16, 2003 Mr. Arnston detailed the rule violations. [Exhibit 6, Tab 5]
 - d. A further Rule 130 follow up audit was commenced on the practice of Mr. McGechie in June 2004. At that time Mr. Arnston noted serious breaches of the rules by Mr. McGechie, including the failure to render statements of account prior to transferring funds from trust to general. Mr. McGechie was suspended on July 15, 2004 and a custodian was appointed. The failure of Mr. McGechie to render statements of account created difficulties for some clients during the course of the custodianship. [Exhibit 7]

- e. Mr. McGechie admits that he failed to follow the accounting rules of the Law Society at the time of the June 2000 audit and the July 2003 audit as detailed in the following exhibits:
- Letter from Glen Arnston to Dennis McGechie dated June 2, 2000; [Exhibit 6, Tab 1]
 - Letter from Glen Arnston to Dennis McGechie dated July 16, 2003; [Exhibit 6, Tab 5]
 - Schedule prepared by Glen Arnston, C.A. [Exhibit 6, Tab 6]
 - Failure to render statements of accounts to clients as described in the investigation report dated May 18, 2004. [Exhibit 7]
- f. Mr. McGechie admits that his failure to follow accounting rules of the Law Society is conduct deserving of sanction.

CITATION 2

- C. IT IS ALLEGED THAT you breached an undertaking given by you to the Law Society of Alberta and that you failed to respond to the Law Society in a timely manner, and that such conduct is conduct deserving of sanction.

Particulars of the foregoing citation are as follows

- C.01 You breached your written undertaking to the Law Society dated May 29, 2003 to provide certain information to Glen Arnston demanded during the course of his investigations. [Exhibit 7, Tabs 4 & 10]
- C.02 You failed to respond to a letter from Katherine Whitburn dated May 31, 2004 requiring a response by June 15, 2004. [Exhibit 21]
- D. Mr. McGechie admits Citation 2 and admits the following facts related to particular 2.01 in support of his admission of guilt::
- a. Particular C.01 arose during the course of the Rule 130 follow up audit in 2003 described in paragraph B. Mr. Arnston attended the offices of Mr. McGechie on April 29, 2003. At that time the books and records of the member were not maintained in accordance with the rules. In order to conduct his audit, Mr. Arnston required further information from Mr. McGechie.

- b. Mr. Arnston prepared a letter to Mr. McGechie dated May 1, 2003 describing the further information he required. Mr. Arnston sent the letter to Mr. McGechie by fax. In the letter Mr. Arnston confirmed he would be returning to the offices of Mr. McGechie on May 15, 2003 to complete his audit. [Exhibit 6, Tab 7]
- c. Mr. Arnston returned to the office of Mr. McGechie on May 15, 2003. At that time Mr. McGechie advised he had not received the fax letter dated May 1, 2003. Mr. Arnston immediately provided Mr. McGechie with a photocopy. Mr. McGechie advised Mr. Arnston he had not completed his reconciliations and asked for an extension. Mr. Arnston provided an extension to May 29, 2003 to permit Mr. McGechie to provide the information described in the May 1, 2003 letter. [Exhibit 6, Tab 8]
- d. On May 28, 2003 Mr. Arnston and Mr. McGechie again discussed the outstanding information. Mr. McGechie requested a further extension. Mr. Arnston advised Mr. McGechie that any further extension would have to be discussed by Mr. McGechie with Steve Dyer, Director of Audit. [Exhibit 6, Tab 9]
- e. Mr. McGechie made his request for an extension from Mr. Dyer on May 28, 2003. Mr. McGechie agreed to enter into an undertaken to provide the information by June 2, 2003 and was provided an extension to that date. Mr. Arnston provided Mr. McGechie with a form of undertaking for signature. [Exhibit 6, Tab 3]
- f. Mr. McGechie returned the signed undertaking to the Law Society on May 29, 2003. [Exhibit 6, Tab 4]
- g. Mr. McGechie admits that on June 2, 2003 he was in breach of his undertaking as described in the notes of Glen Arnston, and admits his conduct is deserving of sanction. [Exhibit 6, Tab 101]

Matters arising from June 2003 complaint by K.P.

- E. Mr. McGechie admits Citation 2 and admits the following facts related to particular C.02 in support of his admission of guilt:
 - a. In June 2003 K.P., a former client of Mr. McGechie, complained regarding certain matters. Citations 9 and 10 arise from the substance of the complaint.
 - b. In October 2003 the complaint of K.P. entered the formal review process. The chronology of inquiries from the Law Society and response from Mr. McGechie during the formal review process are as follows:

- October 24, 2003 – LSA request for response from Mr. McGechie with no due date specified. [Exhibit 11]
 - November 13, 2003 – response from Mr. McGechie [Exhibit 12]
 - December 1, 2003 – LSA request for further response from Mr. McGechie due by December 23, 2003. Mr. McGechie did not respond. [Exhibit 13]
 - December 20, 2003 – LSA reminder to respond due by January 12, 2004. Mr. McGechie phoned but did not provide written response. [Exhibit 14]
 - January 21, 2004 – LSA reminder to respond due by February 4, 2004. [Exhibit 15]
 - February 3, 2004 – response from Mr. McGechie [Exhibit 16]
 - March 31, 2004 – LSA request for further response from Mr. McGechie due by April 15, 2004 [Exhibit 17]
 - April 20, 2004 – response from Mr. McGechie [Exhibit 18]
 - May 4, 2004 – LSA request for further response from Mr. McGechie with presumptive conclusion if no response by May 21, 2004 [Exhibit 20]
 - May 31, 2004 – LSA request for further response from Mr. McGechie due by June 15, 2004. Mr. McGechie did not respond. [Exhibit 21]
- c. Mr. McGechie admits he failed to respond to a letter from Katherine Whitburn dated May 31, 2004 requiring a response by June 15, 2004, and admits that such conduct is conduct deserving of sanction.

CITATION 9

- F. IT IS ALLEGED that you failed to serve your client (K.P) in a competent manner and such conduct is conduct deserving of sanction.

Particulars of the foregoing citation are as follows:

F.01 You delayed over one year in pursuing instructions from your client.

CITATION 10

- G. IT IS ALLEGED that you failed to respond to your client (K.P.) in a timely manner and failed to render an account on a timely basis and such conduct is conduct deserving of sanction.
- H. Mr. McGechie was retained by K.P. in October 1998 to take legal action on his behalf regarding a caveat he had filed against certain property. Mr. McGechie was provided with a retainer of \$750 in October 1998. [Exhibit 9]
- I. Upon being retained, Mr. McGechie immediately began to work on the file, taking the following steps:
- a. On October 22, 1998 Mr. McGechie wrote to opposing counsel proposing the settlement sought by K.P. [Exhibit 12, Tab 1]
 - b. On November 9, 1998 Mr. McGechie wrote to K.P. advising him of the status of matters, including correspondence from opposing counsel. [Exhibit 12, Tabs 1 & 2]
- J. Mr. McGechie admits that he failed to take any steps following the November 9, 1998 reporting letter. Over one year later K.P. provided written instructions to transfer the file and Mr. McGechie did so.
- K. Mr. McGechie admits that he failed to serve K.P. in a competent manner and that such conduct is conduct deserving of sanction.
- L. Mr. McGechie admits that on several occasions from November 9, 1998 to the time he sent the file to new counsel he failed to respond to inquiries from K.P. Mr. McGechie also admits that despite numerous requests from K.P., and despite numerous opportunities provided by the Law Society during the consideration of this complaint he failed to render a statement of account in a timely manner. Mr. McGechie admits citation 10 and admits his conduct is deserving of sanction. [Exhibits 10 through 18]

Matters arising from June 2004 Audit Investigation

- M. On June 23, 2004 Glen Arnston commenced a further follow up audit on the practice of Mr. McGechie. The initial steps in the audit occurred while Mr. McGechie was in practice. On July 15, 2004 Mr. McGechie was suspended through an administrative process for failing to pay his insurance levy. The balance of the audit was completed with the assistance of a court appointed custodian in addition to the direct assistance of Mr. McGechie. The following citations arose from the investigation.

CITATION 6

- N. IT IS ALLEGED that you breached a Court Order in the handling of certain trust funds and such conduct is conduct deserving of sanction.
- O. Mr. McGechie represented R.O. in a matrimonial property proceeding. In the course of that proceeding Mr. McGechie obtained an Order permitting sale of the matrimonial home including the express provision that the net sale proceeds were to be held in trust by Mr. McGechie until further order or agreement. Mr. McGechie drafted and entered the Order and acted on it. [Exhibit 7, Tab 12]
- P. After obtaining the Order Mr. McGechie rendered an account to R.O. who paid the disbursements owing under the account but did not pay the outstanding legal fees.
- Q. Mr. McGechie admits that he breached the Order by transferring the sum of \$10,730.56 from his trust account to his general account, in payment of the outstanding legal fees. Mr. McGechie admits that at the time of the transfer he was aware of the Order and aware his actions were in breach of the Order. Mr. McGechie made the transfer as he concluded his fees would not encroach on the likely settlement amount to be paid to the opposing party.
- R. Mr. McGechie admits this citation and admits his conduct is deserving of sanction.

CITATION 8

- S. IT IS ALLEGED that you failed to comply with the trust conditions imposed upon you by the Excise Tax Act regarding amounts you collected as Goods and Service Tax, and such conduct is conduct deserving of sanction.
- T. Mr. McGechie admits that as a sole proprietor he was legally required to comply with the provisions of the Excise Tax Act since its inception.
- U. Mr. McGechie admits that it was his practice to charge 7% Goods and Service Tax on all accounts he rendered. Upon collecting the account Mr. McGechie deposited his fees, disbursements and GST in his general account.
- V. Mr. McGechie admits that since January 2001 he failed to submit his quarterly reports regarding GST and he failed to submit the net GST owed.
- W. Mr. McGechie admits that he continues to owe GST and personal income taxes, however he is not aware of the total amount now owed due to occasional recoveries obtained by the federal government since the amounts have been outstanding.
- X. Mr. McGechie admits that pursuant to the provisions of s. 222 of the Excise Tax Act he held any collected GST in trust for Her Majesty in right of Canada pursuant to trust

conditions expressed in that section. Mr. McGechie admits that he breached the trust conditions in that he used all monies collected as GST for his own benefit. Mr. McGechie admits this conduct is conduct deserving of sanction.

CITATION 4

- Y. IT IS ALLEGED that you misappropriated or wrongfully converted trust funds in the amount of approximately \$16,085.85 and that such conduct is conduct deserving of sanction.
- Z. Mr. McGechie does not admit this citation, but admits the following facts related to this citation:
- a. From March 2003 Mr. McGechie issued several trust cheques payable to himself which were not drawn from or coded to a client trust balance.
 - b. The list prepared by Glen Arnston and found at Exhibit 7, Tab 22 accurately summarizes the number of uncoded trust cheques payable to Mr. McGechie over the described period. [Exhibit 7, Tab 22]
 - c. Mr. McGechie was not maintaining his books and records on a regular basis during this period. In May of 2004 Mr. McGechie retained an accountant to update his books and records in a new computer accounting software he had purchased. The accountant generated a reconciliation report on May 12, 2004 for the period ended July 31, 2003 which identified the total number of uncoded trust payments to Mr. McGechie to be \$65,393.59. The accountant posted these transactions to a suspense account to balance the reconciliation. [Exhibit 7, Tab 19]
 - d. Mr. McGechie worked with the accountant both before and after his suspension to identify the proper allocation of the trust payments he had taken. By December 22, 2004 Mr. McGechie had completed his review. The ledger at Exhibit 7, Tab 15 details the trust payments taken by Mr. McGechie and his subsequent allocation of those payments to client accounts where he could identify the client file. Mr. McGechie admits that of the total uncoded trust transaction taken by Mr. McGechie he had no entitlement whatsoever to \$13,367.39. [Exhibit 7, Tab 15]
 - e. In addition to the suspense account balance, Mr. McGechie withdrew the sum of \$718.46 from trust which he coded to three client files. Mr. McGechie admits that he had no entitlement to those sums. [Exhibit 7, Tab 4]

- f. Subsequent to his suspension the account rendered by Mr. McGechie to R.O. was taxed by the client. Mr. McGechie resolved that taxation by consent, agreeing to reduce the account by \$2,000. That sum was added to the suspense account as an accounting adjustment. [Exhibit 7, Tab 4]
- g. Mr. McGechie acknowledges that his improper transfers of trust funds resulted in an overall trust shortage in his trust account in the sum of \$16,085.85 and that he has not repaid any of the amounts.

Analysis and decision regarding Citation # 4 - Misappropriation of trust funds

7. The Agreed Statement of Facts, including the referenced exhibits, establishes that the Member withdrew funds from trust on numerous occasions during the period March 2003 to March of 2004. Often no fee account had been rendered, and often the Member did not even record (either on the cheque or on the cheque stub) the file name or number to which particular withdrawals related. Some of the withdrawals were done on-line with no back up record.
8. The Member's testimony disavowing knowledge of the LSA's rules (which require accounts to be rendered prior to funds being moved from trust, and file notations to be made on trust cheques and cheque stubs) is not believable. He had been in a small practice for over 25 years and was familiar with the LSA requirements. The clinical depression from which the Member was suffering may have robbed him of his motivation to take the care necessary to comply with the LSA rules, but it did not remove his knowledge that, when he was removing funds from trust, he was doing so in breach of the rules of the LSA.
9. One example of the foregoing occurred in May of 2003. On May 15th, 2003 the LSA presented the Member with a letter (Ex 6, Tab 7) demanding that the Member provide statements of account to back up withdrawals of funds from trust. Yet between May 23, 2003 and May 30, 2003 the member withdrew funds from trust into his general account on seven separate occasions "on-line" i.e. through computer withdrawals, without any statements of accounts or other documentation to justify such withdrawals.
10. We are dealing with funds withdrawn from trust without complying with the LSA rules (which the Member has conceded). We are also dealing with a situation where the total funds withdrawn exceeded the amount which the Member was entitled to withdraw. As indicated in the Agreed Statement of Facts, when the Member subsequently rendered accounts to deal with the \$65,393.59 which he had withdrawn from trust, he was unable to justify \$13,367.39 of that amount. In other words, he overdrew his trust account with payments to himself. It is this which led to Citation 4 which alleges misappropriation or wrongful conversion.

11. Counsel for the LSA points to the financial pressure under which the Member was operating as a motivation for his withdrawing funds which he knew did not belong to him.

12. While the Member in his testimony downplayed the financial pressure he was under, it is clear that he was under severe financial pressure. He ceased filing income tax returns in 2000 and ceased remitting GST in January of 2001. As a result the Canada Revenue Agency had, on various occasions, seized his RRSPs and garnisheed his general account. In order to shelter himself from further CRA garnishments the Member directed Legal Aid to pay his fees into his trust account, rather than his general account where they should have gone. Further, the depression from which he was suffering greatly diminished the amount of legal work he could do and thereby diminished his income.

13. The onus of proof is on the LSA to establish misappropriation by "strong, clear, cogent and convincing evidence". Included in that onus is the onus of establishing that the Member knew, when the funds were withdrawn from trust, that he was not entitled to them i.e. that he was depriving his clients of trust funds that belonged to them.

14. In this case the Member asserted that, when he withdrew the subject funds from trust, he honestly believed that they belonged to him.

15. Counsel for the LSA asserted that if the Member withdrew funds from trust in a reckless manner, then the Member cannot shelter behind an "honest belief" defence to misappropriation. The Committee agrees that the Member is not entitled to assert a defence to misappropriation where the alleged honest belief is founded on reckless and careless behaviour.

16. Given the numerous "uncoded" withdrawals made by the Member over a long period of time, and given the Member's own testimony that he was depressed (and thus suffering from confusion) during the subject time period, the Committee is satisfied on the evidence that the Member was aware, when he was withdrawing funds from trust, that he may well have been taking trust funds belonging to his clients. In other words, given the disarray of the Member's books of account he did not know whether or not the funds he was withdrawing from trust had been earned by him (by means of as yet unbilled legal work) or not. As a result it is the Committee's conclusion that Citation 4 has been made out i.e. that the Member is guilty of misappropriation.

Sanction - general considerations

17. The citations made out against the Member are extremely serious. It was conceded that the Member should be subject to a lengthy suspension, but counsel for the Member disputed the appropriateness of the disbarment sought by counsel for the LSA.
18. There is no 'rule' that misappropriation of trust funds must result in disbarment. Each case must be looked at on its own merits and the sanction must be individually crafted to suit the behaviour being sanctioned.
19. Factors pointing to the appropriateness of disbarment in this case are:
 - The taking of trust funds in a dishonest manner
 - The deliberate breach of a court order
 - The repeated failure to comply with LSA accounting rules.
20. Factors pointing to a less serious sanction are:
 - The restitution made by the Member
 - The fact that the failure to keep books of account in proper order was largely due to the serious depression suffered by the Member
 - The fact that the mental element of misappropriation in this case was based on careless behaviour, as opposed to intentional and deliberate behaviour
 - The Member's diligent seeking of treatment for his depression, clearly intended to effect recovery from his illness and not simply a charade to evoke sympathy from the Committee
21. In the end the Committee was satisfied that the necessary denunciation of the Member's conduct could be provided by means of a lengthy suspension of 18 months.
22. The Committee concluded that Member's conduct arose from incompetence so that the full set of sanctions provided under Sections 72 and 73 of the Legal Profession Act are available to the Committee. Consequently the Committee imposes the following conditions to accompany the suspension:
 - (i) Prior to applying for readmission the Member shall appear before a Board of Examiners and satisfy the Board that the Member's competence to

practise as a barrister and solicitor is not adversely affected by mental disability

- (ii) The Member shall not be readmitted to practice until he has given the Executive Director a written undertaking that his practice will be carried on under the direct supervision of another member of the LSA satisfactory to the Executive Director.

- 23. The member is to pay the actual costs of the hearing within 12 months of receiving notification of those actual costs from the LSA.

Concluding Matters

- 24. A notice of these proceedings will be provided to the Attorney-General.
- 25. There will be a mandatory publication of a Notice to the Profession.
- 26. Any transcript of these proceedings or exhibits shall be redacted to remove reference to materials subject to solicitor and client privilege.

DATED the 11th day of July, 2007.

John Prowse, Q.C. - Chair

Ron Everard, Q.C.- member of panel

Norma Sieppert - member of panel