



DISCIPLINE CASE *DIGEST*

Case 16-10 (AMENDED)

Member:	James Graeme Earle Young
Jurisdiction:	Winnipeg, Manitoba
Called to the Bar:	June 16, 2005
Particulars of Charges:	Professional Misconduct (11 Counts): <ul style="list-style-type: none">▪ Breach of Rule 2.1-1 of the <i>Code</i> [breach of integrity – misappropriation] [x4]▪ Breach of Rule 2.1-1 of the <i>Code</i> [breach of integrity – misleading the Law Society and misleading client] [x3]▪ Breach of Rule 7.2-11 of the <i>Code</i> [breach of trust conditions] [x2]▪ Breach of Rule 5-79 of the <i>Rules</i> and Rule 7.2-11 of the <i>Code</i> [breach of Law Society undertaking] [x2]
Plea:	Not Guilty
Dates of Hearing:	January 23, 24, 25, 26 & 27, 2017, February 8, 2017, March 17 & 20, 2017 and August 17 & 18, 2017
Dates of Decisions:	Written Decision (Preliminary Motion): March 17, 2017 Written Resolution (Conduct): May 19, 2017 Written Decision (Conduct & Disposition): September 7, 2017
Panel:	<ul style="list-style-type: none">▪ Douglas Bedford (Chair)▪ Wendy Stewart▪ Maureen Morrison (Public Representative)
Counsel:	<ul style="list-style-type: none">▪ Rocky Kravetsky for The Law Society of Manitoba▪ Gavin Wood for the Member
Disposition:	<ul style="list-style-type: none">▪ Guilty on 9 Counts▪ Not Guilty on 2 Counts (1 misappropriation & 1 misleading)▪ Disbarred▪ Costs of \$42,106.11
Appeal:	<ul style="list-style-type: none">▪ Notice of Appeal filed in the Court of Appeal on October 16, 2017▪ Appeal to the Manitoba Court of Appeal dismissed with costs on November 19, 2018 (oral decision) and November 28, 2018 (written reasons)

Misappropriation / Misleading / Breach of Trust Condition / Breach of Undertaking

Facts

Mr. Young misappropriated a total of \$82,436.57 in three client matters on seven separate occasions. He misled his clients, his law firm and the Law Society. He breached trust conditions imposed by lawyers and breached an Undertaking given to the Law Society.

Matter No. 1

In one matter, Mr. Young misappropriated \$41,936.57 and breached a trust condition imposed in respect of a settlement.

Mr. Young acted for T Holdings Ltd., one of the equal shareholders of CCI, in a shareholder dispute. While the dispute was ongoing, some property of CCI was sold and by agreement between the parties, the net proceeds of the sale were being held by Mr. Young in trust pending settlement of the dispute. On June 29, 2011 the parties reached a settlement, pursuant to which some debts of CCI were to be paid immediately out of the sale proceeds and the remaining balance was to stay in trust pending implementation of the settlement agreement. On three occasions thereafter, Mr. Young transferred funds from the remaining sale proceeds to his firm's general account. Each of these transfers was to pay a bill created by Mr. Young, ostensibly for services provided to T Holdings Ltd., his own client. These bills were never received by T Holdings Ltd. and the transfers of funds were not authorized under the settlement agreement or otherwise on behalf of CCI. T Holdings Ltd. was unaware of the transfers. The total amount misappropriated from CCI sale proceeds was \$25,596.57.

In May 2013, Mr. Young received settlement funds from opposing counsel tendered in trust that they not be used until certain tender was received from Mr. Young. Mr. Young did not comply with the trust conditions, but a month later he transferred to his firm's general account \$16,340.00 out of the funds that were subject to the trust condition. This was, again, to pay a bill he created addressed to T Holdings Ltd., which bill was never received by T Holdings Ltd. The transfer was made without the knowledge of opposing counsel or of T Holdings Ltd.

Matter No. 2

In a second matter, Mr. Young misappropriated \$38,000.00. He misled his clients and breached three trust conditions imposed upon him by his former law firm.

Mr. Young acted for the executrix under the wills of the deceased parents of two minor children, and then for the older child, after she came of age, in respect of the guardianship of the younger child. When Mr. Young left the CM law firm at the end of 2010, these matters were mostly completed but accounts had yet to be passed. The matters were transferred with Mr. Young to the RR law firm. Upon transfer of the matters from CM to RR, CM delivered files and certain trust funds to Mr. Young on trust conditions requiring Mr. Young to proceed with dispatch to pass the estate accounts, obtain a certain confirmation from the older child and pay certain agreed bills of CM forthwith upon the bills being approved on passing of accounts. Mr. Young did not proceed

with dispatch, or ever, to pass the accounts such that the CM bills were not approved. He did not obtain the required confirmation from the older child.

In September 2011, Mr. Young requested certain additional funds from his clients. He told them that these funds were required to pay accounts of CM and that he would not release the funds to CM until the accounts had been passed. Pursuant to that request, Mr. Young received \$23,000.00 from his clients on September 23, 2011 and on the same day, he deposited that sum into RR's general account and immediately requisitioned a cheque payable to himself. He had not rendered any account. Mr. Young's general account deposit and cheque requisitions for the funds stated that they were to pay accounts of CM.

In June 2012, Mr. Young requested that his clients pay to him certain additional funds. He said these funds were required for payment of executor fees and would be held until those fees were approved on passing of accounts. At the time, Mr. Young held other funds in trust, being an amount previously paid in by his clients on the basis that it was required for the anticipated fees of the Public Trustee and would be held until those fees were approved on the passing of accounts and funds received from CM, held pursuant to trust conditions. On June 20, 2012, Mr. Young received the requested additional funds and on June 21, 2012, contrary to the expressed purpose for which funds were held, he had a cheque drawn to his personal law corporation for \$15,000.00. Mr. Young had not issued a bill and was not authorized by his clients or by CM to encroach on the funds provided to him for other express purposes.

Matter No. 3

In March 2015, while associated with the BL firm, Mr. Young met with a client. He asked the client for a retainer of \$4,000.00. He drove the client to a branch of her bank so that she could withdraw the requested retainer funds in cash. Mr. Young then had a receipt and retainer documents drawn indicating that only \$1,500.00 was paid. He kept \$2,500.00 in cash on the basis that this amount would be kept unrecorded and would stretch the retainer. When Mr. Young was subsequently suspended from practice, he failed to account to the client or to the firm for the \$2,500.00 in cash.

After being charged with this misappropriation, Mr. Young and a friend entered into a scheme to attempt to have the client withdraw her complaint and then, when she refused to do so, they provided false information to the Law Society claiming that the client had told the friend that she had made up her complaint.

Undertaking

In April 2014, Mr. Young gave an Undertaking to the Law Society that effective May 5, 2014, he would document time spent on client matters and communications with clients. In three separate matters, contrary to the Undertaking, he failed after May 5, 2014 to create or maintain such documentation.

Matter No. 4

In another matter, Mr. Young received electronic funds transfers from clients on three occasions totaling \$4,500.00. He caused these funds to be deposited to his personal bank account and not to the account of the BL Firm where he was then practising. The clients initially complained that these were retainer funds for which they were not provided an accounting. They later purported to withdraw the complaint. Mr. Young explained that the transfers were for repayment of a personal loan made a number of years earlier to one of the clients and said that he had agreed not to charge them for his services.

Plea

Mr. Young entered a guilty plea as to Matter Nos. 1 and 2 and as to the breach of the Undertaking. Mr. Young entered a not guilty plea as to Matter Nos. 3 and 4.

Decision and Comments

The Panel found Mr. Young guilty of the charges relating to Matter No. 3 and not guilty as to Matter No. 4. The Panel accepted Mr. Young's guilty plea and admissions as to Matter Nos. 1 and 2 and as to the breaches of his Undertaking to the Law Society.

Mr. Young testified that while he had misappropriated funds in Matter Nos. 1 and 2, he felt that he was entitled to the monies but had taken the funds by the wrong route through oversight, incompetence or carelessness. Having regard to the timing of the misappropriations and the evidence as a whole, the Panel rejected these explanations. The Panel found that the taking of the money in each case was deliberate and for the benefit of Mr. Young.

In Matter No. 3 the Panel believed the evidence of the client and did not believe the evidence of Mr. Young and the friend. The Panel observed that Mr. Young and his friend had, in effect, conspired to attempt to have the complainant withdraw her complaint and then to mislead the Law Society and the Panel.

Mr. Young did not contest the charges regarding the breaches of his Undertaking.

As to Matter No. 4, the clients refused to testify despite being subpoenaed. In their absence, the Panel concluded that the Law Society had not proved its case on a balance of probabilities.

Penalty

The Panel ordered that Mr. Young be disbarred and that he pay \$42,106.11 in costs to the Law Society.

The Panel took into account the deliberate nature of the misconduct, the impact of it, Mr. Young's prior discipline record and that at the time of Matter No. 3, he was practising under an Undertaking that required supervision, including requirements for oversight of his trust transactions. The Panel took into account the totality of the misconduct and concluded that disbarment is the only penalty sufficient to protect the public, the reputation of the profession and the public's confidence in the profession's ability to govern its members.

There was no reason to depart from the usual rule that the costs of the investigation and prosecution of misconduct should be borne by the lawyer who is guilty of the misconduct and not by the innocent other members of the profession.

Preliminary Motion

At the outset of the hearing, Mr. Young made a motion that the Law Society be prohibited from tendering evidence as to Matter No. 4 on the basis that in the absence of the complainants, it would be a breach of natural justice to allow the Law Society to proceed on those charges. It was asserted on his behalf that the Law Society would have to rely on hearsay evidence while counsel for the Law Society asserted that hearsay evidence would not be relied upon.

The Panel dismissed the motion. They accepted the general proposition that all persons material to a complaint should be present to give evidence, but noted that in this case, the Law Society

had served subpoenas on the complainants. Having regard to the onus, the Panel was not persuaded that the Law Society was proceeding unfairly or unreasonably in prosecuting the charges as to Matter No. 4.

Appeal

Mr. Young appealed both the findings of professional misconduct and the penalty to the Manitoba Court of Appeal. A Notice of Appeal was filed in the Court of Appeal on October 16, 2017. The appeal was dismissed with costs on November 19, 2018 (oral decision) and November 28, 2018 (written reasons).