



The toll fraud takes

A victim's story

The lawyer profiled in this article was the victim of fraud: His partner, a prominent member of the community, defrauded the law firm's clients of several million dollars, none of which has been recovered. Both the Lawyers' Fund for Client Compensation and LAWPRO were involved in helping settle claims that arose out of this fraud. Like all lawyers in partnership, Bill (a pseudonym used at his request) had \$250,000 Innocent Partner Coverage, much of which was ultimately consumed by legal costs.

No one was more surprised than Bill when the bank refused to let him deposit a client cheque to his firm's trust account.

The same morning, firm employees had been notified of a few "irregularities" by the bank, but had been assured by the guilty partner that everything would be cleared up quickly.

The "irregularities" turned out to be a \$2.2 million kiting scheme that the firm's managing partner had been stickhandling for the better part of two or more years, prompted, suspects Bill, by investment ventures that went bad.

Seven years and many sleepless nights later, Bill is sanguine about the fraud that cost him \$100,000 or more of his own money, forced his wife to put off her retirement for a few years, put an end to family holidays, and deprived his two teenage children of their father's time and the financial security that comes with a successful law practice. "You have no choice but to get on with life, hard as it sometimes is."

But he's still shaken by the death of his other partner, John, at the age of 42 two months after the bad news broke. "He paid the hardest . . ."

His recollection of those first few days are as sharp as if the events had occurred yesterday. "At first, you're absolutely paralyzed – it is so unreal, unbelievable that this can happen without you knowing. But then your sense of obligation takes over, you want to get back on an even keel."

Initially, Bill believed that he and John could cope. "Our game plan was to collect receivables so we could generate cash flow, to open a new bank account and establish new lines of credit – but all that was impossible. We were frozen out of every single bank in town because almost every bank was involved."

Much of their time was spent assembling materials requested by the Law Society (the managing partner himself had called in the Law Society, which promptly locked him out of the law firm offices). The arrival of the police on the scene a few months later really complicated matters: "They want everything but never give you anything back – so that just added to the tons of paperwork we were dealing with."

Bankruptcy at bay

"I'd spend eight to ten hours doing law, then another eight to ten hours cleaning up the bad accounts mess, discharging this, paying that bill, trying to keep the firm open and the staff employed."

He was dealing with about 30 major claimants, and another 60-70 minor claimants who stood to lose less than \$1,000 each. And he was dealing with the inevitable, adverse publicity that a major case like this generates, and the "irrelevant side issues that come with publicity.

"Some people couldn't look you in the face, or did not know what to talk about or how to approach you. Or you'd feel awkward walking into a crowd, or walking on the street because everyone recognizes you, and knows, and wonders . . ."

And he was trying to stave off personal bankruptcy, despite legal advice to the contrary. "The nature of the beast is to put up a good fight and I was determined to do what I thought was right."

The goodwill he enjoys as a long-time practitioner in the community stood Bill in good stead: The local bar rallied to support him, helping him clear up files, stepping into his shoes in awkward or difficult situations such as when he had to register a construction lien or discharge a mortgage, agreeing to continue to take his undertakings, or letting him use their trust account to close transactions in those early days when no bank would deal with him. When he realized he had to dissolve the practice after a few months, he quickly found employment with a local firm that bent over backwards to accommodate his truckload of files and the time it took to work his way through the fraud quagmire.

The fallout from this fraud reverberated in the local legal and financial community. Within weeks, lawyers and lenders were operating under a new set of directives: mortgage proceeds would have to go directly to mortgagee, not to the vendor lawyer trust account; there would be no more undertakings where private mortgages were involved.

"Everything about real estate practice was tightened up and it's stayed that way," says Bill.

His advice to others: "Really know your partner and make sure you really do share goals in common. Also, always get two signatures on every cheque that's drawn on a firm account. And make sure you buy up your Innocent Partner coverage – don't leave yourself vulnerable because that \$250,000 in coverage that LAWPRO provides disappears quickly."

But it was the personal fallout that was the most telling and taxing. For the first four months, Bill took no salary or draws: Every penny in receivables went to settle with clients or accounts payable. He made it a personal commitment to make sure "no one was really hurt, that everyone recovered at a minimum their principal. No one was left hanging."

What was once a burgeoning general practice is now restricted to only real estate work: "I had to leave the fun stuff to focus on my battles; I couldn't afford the time it takes to do litigation." His higher end clients went elsewhere – "they don't like the stigma of being attached to this kind of situation." Some cases he just shied away from, simply because he himself was on the docket defending a specific claim. But worst of all is the disillusionment and despair: "I don't enjoy law practice as much, and I never will.

"Sometimes you come close to losing it – but then reality hits and you keep going. The first four years are the hardest because there are always surprises lurking in your files. But even after that, even after you've been able to finally put those mountains of boxes into storage and try to get on with life, you never sleep well.

"Because you're always going to worry that there is something lingering somewhere that comes back to bite you."



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A discipline counsel perspective

In more than 20 years of representing lawyers at the Law Society, Bill Trudell has heard many tales of woe: But common to them all, he says, is the shame/ego dichotomy that prevents lawyers from being able to admit they've made a mistake – the same shame that then leads to misappropriation and to investigative and disciplinary action by the Law Society.

“Every lawyer who gets called has altruistic ambitions: We all want to change the world. And the world looks at us this way – we're not supposed to make mistakes, we're not supposed to fail,” says the Toronto-based practitioner.

“So when we do make a mistake, shame stands in the way of being able to admit we have erred. We try to ‘fix’ things – but that only compounds the problem because we only dig ourselves in deeper.”

His experience representing both high profile lawyers and those assigned as part of a new duty roster system at the Law Society indicates that very few lawyers set out to deliberately defraud clients. “More than 90 per cent of the time the lawyer has all the right intentions, but makes just one mistake, or has just one bounced cheque. Without anyone to ask, without proper book-keeping (most sole practitioner lawyers do their own books even though we're not all well equipped to run a business), they just get into more and more trouble.

“And then stress takes over: We have to keep going because we cannot admit to anyone – not to our family,

our peers, not even to the person closest to us – that we have failed. So we go into denial: We fail to respond to the Law Society inquiries. We're afraid to call for help. We struggle on – frozen by fear and shame. It's this overblown notion that we cannot admit that we are wrong that gets lawyers into trouble.”

A devastating toll

The toll that disciplinary action by the Law Society takes on lawyers, adds Trudell, is devastating. “The lawyers I see at discipline are truly shell-shocked: they try to slide in and out without being noticed.” And realistically, even a minimal suspension can spell the death of a law practice. “In six months, you can lose all of your clients, contacts, sometimes even your family – everything.”

The solution? Lawyers, he says, need a sounding board, someone to bounce around ideas with, an ombudsman at the Law Society – “a lifeline that they can turn to early on to prevent them from getting into more trouble than they may already be in.” Mentors for young lawyers and sole practitioners can play such a role, he says. It's a role he'd also like to see the Law Society play. “Lawyers should not be afraid to call on the Law Society for help. We need to find creative solutions to this problem – because the more complex law practice becomes, the more complex the problems that we'll see facing lawyers.”