

THE LAW SOCIETY OF BRITISH COLUMBIA

In the matter of the *Legal Profession Act*, SBC 1998, c. 9

and a hearing concerning

DAVID MASAO SAITO

RESPONDENT

AGREED STATEMENT OF FACTS

Member Background

1. David Masao Saito (the “Respondent”) was called to the bar and admitted as a member of the Law Society of British Columbia on June 12, 1987.
2. After his call to the BC bar, the Respondent was employed by a Vancouver law firm for approximately seven years. In 1994 he became employed by Dale W. Wilcox, A Law Corporation as an associate. The Respondent became an owner of a one-half interest in, and a director, officer and employee/principal of Dale W. Wilcox, A Law Corporation effective June 1, 2000. In January 2003, Dale W. Wilcox, A Law Corporation became Wilcox & Company Law Corporation (the “Firm”) and the Respondent became an officer and employee lawyer of the Firm, but was no longer an owner.

Citation and Service

3. The citation in this matter was authorized by the Discipline Committee on January 29, 2015, and was issued on February 11, 2015 (the “Citation”).
4. The Respondent admits that on February 13, 2015, he was served through his counsel with the Citation and waived the requirements of Rule 4-15 of the Law Society Rules.

Attachments

5. Except where otherwise stated, it is agreed in respect of each document attached to this Agreed Statement of Facts that:
 1. it is a true copy of the original document,
 2. it was written or created on the date on the face of the document,
 3. where by the content or nature of the document it was intended to be sent or delivered, that it was sent or delivered on the date it bears on its face and was subsequently received by the intended recipient,
 4. where on its face the document purports to have been written or created under the instructions of the person who signed it or where on its face the document's creation was authorized by the person who signed it, that it was so written, created or authorized,
 5. where the document purports on its face to have been received on a particular date or time, that it was so received, and
 6. it is admitted into evidence to prove that the statements were made and for the proof of the truth of the matters recorded in it.

Background Facts

6. In June 2000, when the Respondent became an owner of a one-half interest in and a director, officer and employee/principal of Dale W. Wilcox, A Law Corporation, he signed an employment contract. At clause 4, the employment contract included that the Respondent was entitled to a private health services plan whereby he could claim any medical expenses (as defined by the *Income Tax Act*) incurred on behalf of himself and his immediate family members by submitting receipts for the expenses, and Dale W. Wilcox, A Law Corporation would reimburse the Respondent for those expenses. At clauses 5 and 6, the employment contract also included that Dale W. Wilcox, A Law Corporation Inc. would reimburse the Respondent for out-of-pocket expenses, including

automobile expenses, when the expenses were incurred while the Respondent was providing services to Dale W. Wilcox, A Law Corporation.

7. As an employee of the Firm, the Respondent continued to claim reimbursement of expenses from the Firm by submitting a handwritten list of his expenses to the Firm's administrative assistant with receipts attached. The expenses were categorized as medical, internet, promotion or parking. The medical expenses were subcategorized under such headings as prescriptions, dental and glasses. Typically, the Respondent submitted expense claims and the Firm's administrative assistant would issue a cheque to him, reimbursing him for the expenses.
8. In March 2013, Mr. Wilcox examined the Firm's accounting records and discovered the Respondent had submitted significant expense claims to the Firm that were improper, and he terminated the Respondent's employment with the Firm, and encouraged the Respondent to report himself to the Law Society.
9. On April 2, 2013, the Respondent reported himself to the Law Society.
10. On August 27, 2013, the Respondent became a non-practising member of the Law Society and gave an undertaking to the Discipline Committee not to practise law until relieved of the undertaking by the Discipline Committee or the final resolution of the Citation (the "Undertaking").

Allegation 1

11. In 2011 and 2012, the Respondent submitted medical expense claims to the Firm for reimbursement. During 2011 and 2012, the Respondent was reimbursed \$30,156.31 by the Firm for medical expenses and the expenses and submitted no receipts to substantiate the claims. The expenses were either falsely described on the claim forms or not incurred at all. The Respondent requested the Firm's administrative assistant to issue the reimbursement cheques in respect of these claims, and the Respondent would typically receive the reimbursement cheques hours after submitting the claims. The Respondent told the Firm's administrative assistant that he wanted the cheques so that he could deposit them into the bank on his lunch hour.

12. On January 21, 2011, the Respondent claimed and was paid by the Firm \$2,832.95 for prescriptions and medical expenses. The only receipt he provided with his claim was a receipt for \$10 from Dr. J for a flu vaccine, so the Respondent was paid \$2,822.95 for expenses not incurred.
13. On June 24, 2011, the Respondent claimed and was paid by the Firm \$2,107.80 for dental expenses, \$446.79 for hospital expenses, and \$469.20 for prescriptions, but provided no receipts. The total paid to the Respondent in respect of these expenses not incurred was \$3,023.79.
14. On July 22, 2011, the Respondent claimed and was paid \$7,217.80 by the Firm for medical and dental expenses. He provided the following receipts: Dr. H, \$1,050.00; Dr. L Corp, \$117.80; and Dr. H (diagnostic fee) \$275.00. The Respondent did not incur expenses of \$5,775.00 of the \$7,217.80 claimed.
15. On October 21, 2011, the Respondent claimed and was paid \$1,524.35 by the Firm for prescriptions and dental expenses. The Respondent provided receipts for \$127.00 for Dr. L, and \$27.98 for prescriptions. The Respondent did not incur expenses of \$1,369.37 of the \$1,524.35 claimed.
16. On May 31, 2012, the Respondent claimed and was paid \$4,586.28 by the Firm for dental expenses, glasses and prescriptions. The only receipt the Respondent provided was for \$89.00 for a prescription. The Respondent did not incur expenses of \$4,497.28 of the \$4,586.28 claimed.
17. On June 28, 2012, the Respondent claimed and was paid \$4,540.92 by the Firm for dental expenses, glasses and prescriptions. The Respondent provided the following receipts for prescriptions: \$15.53 (June 24, 2012); \$15.53 (June 11, 2012); \$71.92 (June 11, 2012); \$19.75 (June 11, 2012); \$61.36 (June 11, 2012); \$37.48 (June 11, 2012). The Respondent did not incur expenses of \$4,319.35 of the \$4,540.92 claimed.
18. On July 6, 2012, the Respondent claimed and was paid \$910.00 by the Firm for dental expenses that were not incurred.

19. On July 27, 2012 the Respondent claimed and was paid \$3,288.57 by the Firm for dental expenses, glasses and prescriptions that he did not incur.
20. On August 28, 2012 the Respondent claimed and was paid \$1,650.00 by the Firm for dental expenses he did not incur.
21. On September 20, 2012 the Respondent claimed and was paid \$1, 250.00 by the Firm for dental expenses he did not incur.
22. On November 16, 2012 the Respondent claimed and was paid \$1,250.00 by the Firm for dental expenses he did not incur.

Allegation 1 – Admission of Professional Misconduct

23. The Respondent admits that in 2011 and 2012, he submitted medical expense claims containing false descriptions to, and received payment from the Firm for reimbursement of expenses totalling \$30,156.31 when he ought to have known he was not entitled to reimbursement of the full amount because he had not incurred the expenses, as set out in Schedule “A” to the Citation. The Respondent admits this conduct constitutes professional misconduct, pursuant to section 38(4) of the *Legal Profession Act*.

Allegation 2

24. The Respondent submitted a claim for reimbursement from the Firm for a charge from Dr. H dated June 1, 2011 in the amount of \$275.00. The Respondent submitted this expense to the Firm and was reimbursed for it three times: on July 22, 2011; on August 26, 2011 and on November 4, 2011.
25. The Respondent submitted a claim for reimbursement from the Firm for a charge from Dr. H dated October 27, 2011 in the amount of \$200.00. The Respondent submitted this expense to the Firm and was reimbursed for it twice: on November 25, 2011 and December 16, 2011.
26. The Respondent submitted a claim for reimbursement from the Firm for a charge from Dr. L dated May 25, 2011 in the amount of \$117.80. The Respondent submitted this

expense to the Firm and was reimbursed for it twice: on July 22, 2011 and August 26, 2011.

27. The Respondent submitted a claim for reimbursement from the Firm for a charge from Dr. L dated January 26, 2011 in the amount of \$217.20. The Respondent submitted this expense to the Firm and was reimbursed for it twice: on February 25, 2011 and August 26, 2011.
28. The Respondent submitted a claim for reimbursement from the Firm for a charge from Dr. L dated February 7, 2011 in the amount of \$365.19. The Respondent submitted this expense to the Firm and was reimbursed for it twice: on February 25, 2011 and August 26, 2011.
29. The Respondent submitted a claim for reimbursement from the Firm for a charge from Dr. L dated August 18, 2011 in the amount of \$222.60. The Respondent submitted this expense to the Firm and was reimbursed for it twice: on August 26, 2011, and on September 23, 2011.
30. The Respondent submitted a claim for reimbursement from the Firm for a charge from Dr. L dated August 23, 2011 in the amount of \$127.00. The Respondent submitted this expense to the Firm and was reimbursed for it three times: on August 26, 2011, on September 23, 2011 and on October 21, 2011.
31. The Respondent submitted a claim for reimbursement from the Firm for a charge from Dr. H dated July 7, 2011 in the amount of \$1,050.00. The Respondent submitted this expense to the Firm and was reimbursed for it three times: on July 22, 2011; and on January 23, 2012; and on February 13, 2012.
32. The Respondent submitted a claim for reimbursement from the Firm for a charge for prescription medication dated February 9, 2011 in the amount of \$412.19. The Respondent submitted this expense to the Firm and was reimbursed for it in whole or in part three times: on February 25, 2011, he was reimbursed \$412.19; on August 26, 2011, he was reimbursed \$412.19 by submitting the store visit receipt and he was also reimbursed \$321.45 on August 26, 2011 by submitting the prescription receipts.

33. The Respondent submitted a claim for reimbursement from the Firm for prescription medication dated December 1, 2010 in the amount of \$100.51. The Respondent submitted this expense to the Firm and was reimbursed for it twice: on August 26, 2011 and September 23, 2011.
34. The Respondent submitted claims for reimbursement from the Firm for prescription medications dated June 11, 2012 in the amount of \$206.04. The Respondent submitted these expenses to the Firm and was reimbursed for them twice: on June 28, 2012 (prescription receipts), and July 6, 2012 (cash register receipts).
35. The Respondent submitted a claim for reimbursement from the Firm for prescription medication dated May 14, 2012 in the amount of \$89.00. The Respondent submitted this expense to the Firm and was reimbursed for it twice: on May 31, 2012 (cash register receipt), and on July 6, 2012 (prescription receipts).
36. The Respondent submitted a claim for reimbursement from the Firm for phone hardware dated January 14, 2012 in the amount of \$468.14. The Respondent submitted this expense to the Firm with Visa statements and was reimbursed for it twice: on January 23, 2012 and on February 13, 2012.
37. The Respondent submitted a claim for reimbursement from the Firm for eye glasses dated July 20, 2011 in the amount of \$169.00. The Respondent submitted this expense to the Firm and was reimbursed for it twice: on August 26, 2011 (cash register receipt) and on February 13, 2012 (optical invoice).
38. The Respondent submitted an expense for reimbursement by the Firm for contact lenses dated October 19, 2011 in the amount of \$359.50. The Respondent submitted this expense to the Firm and was reimbursed for it three times: on November 25, 2011 (Visa statement), on December 16, 2011 (Visa statement) and on February 13, 2012 (Clearly Contacts Invoice).
39. The Respondent submitted a claim for reimbursement by the Firm for computer laptop repairs he paid for on July 18, 2011, and July 22, 2011 in the amounts of \$201.60 and \$88.48 respectively. The Respondent submitted these expenses to the Firm and was

reimbursed for them multiple times. On July 22, 2011, the Respondent submitted the \$201.60 expense by using his visa statement, and was reimbursed for it. On August 26, 2011, the Respondent submitted both the \$88.48 and the \$201.60 expenses by using his visa statement, and was reimbursed for these amounts. On September 23, 2011, the Respondent claimed \$201.60 using the cash register receipt from Evergreen Computers. On March 9, 2012, the Respondent claimed \$606.68 using various invoices issued from Evergreen Computers dated July 18, 2011. On April 27, 2012, the Respondent claimed \$290.08 (total of both amounts) using an invoice from Evergreen Computers dated July 18, 2012. On June 28, 2012, the Respondent claimed \$201.60 but did not provide a receipt with his claim. In total, the Respondent was paid \$1,792.36 for the laptop repairs.

Allegation 2 – Admission of Professional Misconduct

40. The Respondent admits that during 2011 and 2012 he submitted expense claims totaling \$8,014.40 and received payment from the Firm for reimbursement of the expenses when he had already submitted the claims and received payment from the Firm for the expenses. The Respondent admits this conduct constitutes professional misconduct, pursuant to section 38(4) of the *Legal Profession Act*. The particulars are set out in the preceding paragraphs 24 to 39.

Allegation 3

41. The Respondent was entitled to claim automobile expenses from the Firm if he drove for business purposes.
42. In February 2010, the Respondent suffered a heart attack, which was followed by a stroke. After these incidents, in the autumn of 2010, the Respondent blacked out while driving, and following the black-out, the Respondent mostly used public transportation to commute to work and to attend meetings outside of the Firm's offices. From 2011 onwards, the Respondent did not own a vehicle.
43. In 2011, the Respondent claimed automobile mileage expense reimbursement from the Firm of \$5,352.50.

44. On July 6, 2012, the Respondent claimed automobile mileage expense reimbursement from the Firm of \$2,772.69. On December 14, 2012, the Respondent claimed automobile mileage expense reimbursement from the Firm of \$3,156.50.
45. The Respondent admits that he did not keep a log or track the mileage he travelled on Firm business, but rather he submitted claims that were not reflective of the mileage actually incurred.

Allegation 3 – Admission of Professional Misconduct

46. The Respondent admits that in 2011 and 2012, he submitted automobile and mileage expense claims to, and received payment from, the Firm totalling \$11,281.69, when he knew he had not incurred the expenses or that the amounts he claimed were not based on any reasonable or accurate calculation of the amount of driving he may have done for business purposes. The Respondent admits this constitutes professional misconduct, pursuant to section 38(4) of the *Legal Profession Act*.

Allegation 4

47. On June 19, 2007, the Respondent caused the Firm to pay \$2,061.76 from its general account in respect of the 2007 property taxes owed by the Respondent's grandmother's estate, by posting this disbursement to a miscellaneous file in his name, which was numbered 1397/001 (the "Miscellaneous File").
48. On August 20, 2007, the Respondent caused the Firm to pay \$5,061.08 from its general account in respect of the 2005 taxes assessed owing by his mother's estate, by posting this disbursement to the Miscellaneous File.
49. On October 4, 2007, the Respondent wrote off the disbursements allocated to the Miscellaneous File, which included the disbursements described in paragraphs 47 and 48 above.
50. On February 16, 2009, the Respondent caused the Firm to pay \$1,104.00 from its general account in respect of property insurance owing on the estates of his mother, father or

grandmother, by posting this disbursement to the Miscellaneous File.

51. On June 6, 2011, the Respondent caused the Firm to pay \$1,988.00 from its general account in respect of probate fees on the Respondent's brother's estate, by posting this disbursement to the Miscellaneous File.
52. On June 25, 2012, the Respondent caused the Firm to pay \$2,437.99 from its general account in respect of property taxes owing on the Respondent's grandmother's estate file by posting this disbursement to the Miscellaneous File.
53. On June 25, 2012, the Respondent also caused the Firm to pay \$1,614.87 from its general account in respect of property taxes owing on his parents' estate file by posting this disbursement to the Miscellaneous File.
54. On June 26, 2012, the Respondent caused the Firm to pay \$450 from its general account to Mr. C in respect of caretaking services for real property in Kamloops that was part of his parents' estates.
55. On September 17, 2012, the Respondent again caused the Firm to pay \$450 from its general account to Mr. C in respect of caretaking services for real property in Kamloops that was part of his parents' estates.
56. On November 26, 2012, the Respondent wrote off the disbursements allocated to the Miscellaneous File, which included the disbursements described in paragraphs 50 to 55 above.

Allegation 4 – Admission of Professional Misconduct

57. The Respondent admits that between 2007 and 2012, he caused the Firm, without its knowledge or consent, to pay for disbursements incurred on files relating to the estates of his family members when the Firm was not obligated to pay the disbursements, by causing cheques to be issued from the Firm's general account as set out in Schedule D totalling \$15,167.70, posting those disbursements to the Miscellaneous File, and subsequently writing off the disbursements on October 4, 2007 and November 26, 2012,

without billing the estate files and reimbursing the Firm. The Respondent admits that this conduct constitutes professional misconduct, pursuant to section 38(4) of the *Legal Profession Act*.

Allegation 5

58. On July 27, 2009, the Respondent caused the Firm to issue a cheque to him in the amount of \$14,165.58 from the trust funds the Firm held on behalf of the Respondent's grandmother's estate. The Respondent sought payment from the Firm of this amount as reimbursement for the disbursement he had purportedly paid on behalf of the estate.
59. The \$14,165.58 paid to the Respondent on July 27, 2009 was purported to include reimbursement to the Respondent for the following disbursements:
- a. \$2,061.76 paid by the Firm from its general account on June 19, 2007 in respect of 2007 property taxes in relation to the Respondent's grandmother, which was posted to the Miscellaneous File and written off on October 4, 2007, as described above in paragraphs 47 and 49; and
 - b. \$5,061.08 paid by the Firm from its general account on August 20, 2007 in respect of the 2005 taxes assessed owing by his mother's estate, which was posted to the Miscellaneous File and written off on October 4, 2007, as described above in paragraphs 48 and 49.

Allegation 5 – Admission of Professional Misconduct

60. The Respondent admits that on or about July 27, 2009, he caused the Firm to reimburse him for disbursements he purportedly incurred on files related to the estates of his family members from client files held in trust on his grandmother's estate, by issuing a trust cheque payable to himself in the amount of \$14,165.48 when he ought to have known he was not entitled to reimbursement of this full amount as \$7,122.84 of these disbursements had been paid from his employer's general account as set out in Schedule D to the Citation, allocated to the Miscellaneous File and written off on October 4, 2007, contrary to Rule 3-56(1) of the Law Society Rules. The Respondent admits his conduct

constitutes professional misconduct, pursuant to section 38(4) of the *Legal Profession Act*.

Allegation 6

61. As described above in paragraphs 51 and 56, on June 6, 2011, the Firm paid probate fees of \$1,988.00 from its general account in relation to the Respondent's brother's estate. The Respondent allocated these probate fees to the Miscellaneous File and wrote them off on November 26, 2012.
62. On December 23, 2011, the Respondent issued a cheque to himself from the Firm's general account in the amount of \$2,455.70, purportedly to reimburse himself for probate fees on his brother's estate. This amount was recorded as a disbursement on the file, and as a result the Respondent received \$2,455.70 to which he was not entitled.
63. On November 26, 2012, the Respondent also issued a disbursement account on his brother's estate file on behalf of the Firm, and billed the estate probate fees of \$2,455.70. The beneficiary of the estate (the Respondent's brother's widow) paid the disbursement account on December 3, 2012.
64. The Respondent's brother's estate also suffered a loss, as the Respondent over-charged the estate by \$467.70 for probate fees. The Respondent's brother's estate has been reimbursed by the Firm.
65. The Firm suffered a loss of \$1,988.00 as a result of the Respondent paying the probate fees from the Firm's general account and subsequently writing them off. The Firm was ultimately reimbursed for this loss when its disbursements account as set out in paragraph 63 was paid.
66. When the Respondent gave the Undertaking to the Law Society, his family's estate files were transferred to new counsel. Mr. Wilcox held back \$20,000 from the family estate funds to cover the disbursements he believes the Firm paid on these files.

Allegation 6 – Admission of Professional Misconduct

67. The Respondent admits that on or about December 23, 2011, he caused the Firm to reimburse him \$2,455.70 by issuing a general cheque payable to him in that amount for disbursements he purportedly incurred in relation to probate fees paid for the estate of his late brother when he ought to have known that he was not entitled to reimbursement because:
- a. the probate fees incurred were in the amount of \$1,988.00;
 - b. the probate fees had been paid from the Firm's general account in June 2011; and
 - c. he allocated the probate fees to the Miscellaneous File and wrote them off on or about November 26, 2012.

The Respondent admits that this conduct constitutes professional misconduct, pursuant to section 38(4) of the *Legal Profession Act*.

Allegation 7

68. In July 2009, the Respondent received \$16,000 in relation to a distribution to him from one of his family's estate files.
69. In August 2009, the Respondent issued a bank draft to the Firm and deposited the funds into the Firm's pooled trust account. He opened a file for the sole purpose of holding these funds in trust.
70. In March 2011, the Respondent removed the \$16,000 in personal funds from the Firm's pooled trust account after a Law Society Compliance Auditor advised him to do so, during routine Compliance Audit.
71. The Respondent was unaware of Rule 3-52(3) of the Law Society Rules, which prohibits a lawyer from depositing any funds, other than trust funds into a pooled trust account, until the Law Society Compliance Auditor brought it to his attention.

Allegation 7 – Admission of Professional Misconduct

72. The Respondent admits that in or around August 2009, he deposited \$16,000 of his personal funds into the Firm’s pooled trust account and he maintained those funds in the pooled trust account until approximately March 2011, contrary to Rule 3-52(3) of the Law Society Rules. The Respondent admits that this conduct constitutes professional misconduct, pursuant to section 38(4) of the *Legal Profession Act*.

Investigation of Firm Loss

73. When the Respondent gave the Undertaking to the Law Society, his family’s estate and committee files were transferred to new counsel. In order to mitigate the Firm’s losses regarding the misconduct in Allegation 4 of the Citation (disbursements paid on the Respondent’s family estate files), the Firm held back \$20,000 from the Respondent’s family’s estates’ funds.

74. In order to provide for the Firm to be made whole for all other losses set out in this Citation, the Respondent accepted that the Firm would retain the following:

1. the portion of actual Firm receipts for the Firm fiscal years 2012 and the following in relation to legal work performed by the Respondent, including work in progress, which portion would otherwise have been payable to the Respondent on billing and collection; and
2. the Firm accounts receivable for all fiscal years in relation to legal work performed by the Respondent, a portion of which would otherwise have been payable to the Respondent on collection.

As a result of these admissions the Respondent undertakes for a period of five years, commencing in September 25, 2015, as follows:

1. not to apply for reinstatement to the Law Society of British Columbia (the “Law Society”);
2. not to apply for membership in any other law society (or like governing body regulating the practice of law) without first advising in writing the Law Society; and

3. not to permit his name to appear on the letterhead of, or otherwise work in any capacity whatsoever for, any lawyer or law firm in British Columbia, without obtaining the prior written consent of the Discipline Committee of the Law Society.