

## **Admission to Discipline Committee**

### **AGREED STATEMENT OF FACTS**

1. Paul Angelo Winn was called to the bar of British Columbia on February 19, 1999.
2. Mr. Winn subsequently engaged in the practice of law as a sole practitioner in an office located in Burnaby, British Columbia.
3. Prior to his career in law, from 1974 to 1995, Mr. Winn worked as a senior policy advisor to the Federal Minister of Multiculturalism.

### **PROCEEDINGS**

4. On June 10, 2003, an investigation of the books, records and accounts of Mr. Winn was ordered pursuant to Rule 4-43 of the Law Society Rules.
5. Mr. William Kinsey, CA, was retained by the Law Society to conduct the investigation. He attended Mr. Winn's office several times in early July 2003, and rendered a report on July 18, 2003 (Tab 3).
6. Mr. Kinsey's qualifications to give expert evidence on the degree and quality of compliance with the requirements of the Law Society Rules, Division 6 are admitted.
7. Mr. Kinsey attended Mr. Winn's office in August 2003 and prepared a further letter dated August 25, 2003 (Tab 4)
8. A citation was authorized on October 2, 2003. Proceedings were conducted pursuant to S.39 of the Legal Profession Act and Rule 4-17 on October 30, 2003, at which time the three benchers conducting the proceedings imposed conditions upon Mr. Winn's practice pending disposition of the citation. The conditions required Mr. Winn to bring his records up to date and to rectify all trust shortages.
9. Mr. Kinsey attended Mr. Winn's office on November 14, 2003, and prepared a report dated November 14, 2003 (Tab 5).
10. At a continuation of the proceedings on November 18, 2003, Mr. Winn provided an undertaking to refrain from practice pending disposition of the citation or further order. With Mr. Winn's consent, a custodian was appointed over Mr. Winn's practice.

### **CITATION**

11. A copy of the citation issued to Mr. Winn is at Tab 1. A copy of the letter signed by Mr. Winn's counsel acknowledging service of the citations is at Tab 2.
12. The facts admitted below are based upon determinations made by Mr. Kinsey and set out in his report of July 18, 2003.

### **Citation Paragraph 1**

13. Mr. Winn failed to account to clients for all funds received on behalf of the client, contrary to Rule 3-48. More particularly, on real estate files Mr. Winn failed to properly complete transactions by paying out funds in accordance with the Statement of Adjustments:

(a) Client H: Mr. Winn failed to pay a \$50 "move-in fee" set out in the Statement of Adjustments dated June 2002;

(b) Client L: Mr. Winn failed to pay \$245.75 in strata fees set out in the Statement of Adjustments dated July 2002;

(c) Client R: After completion of the sale in about May 2002, the sum of \$1,505.37 remained in trust, instead of being used to pay fees or other disbursements or be refunded to the client; and

(d) Client W: After completion of the sale in about June 2002, the sum of \$1,000 remained in trust.

14. From time to time, Mr. Winn deposited personal funds into his trust account, and failed to remove his own funds from the trust account, contrary to Rule 3-51.

15. With respect to his clients **B, K, M, N, R, S** and **U**, Mr. Winn:

(a) failed to maintain sufficient funds on deposit to meet his obligations with respect to funds held in trust for the clients contrary to Rule 3-55; and

(b) failed to immediately eliminate trust shortages contrary to Rule 3-66(1);

particulars of which are set out below in paragraphs 16 to 23.

#### 16. **Client B**

(a) Mr. Winn acted for Client B on a sale of one property and purchase of a second.

(b) As a result of these transactions and as shown on the Statement of Adjustments, Client B was owed \$138,067.35, to be paid from Mr. Winn's trust account. However, Mr. Winn overpaid Client B by \$7,257.34, on or about June 28, 2002.

(c) This resulted in a trust shortage of \$7,257.33. The trust shortage was reduced to \$5,224.49 in the fall of 2003 and that amount remains outstanding.

(d) In addition to the accounting rule violations set out above in paragraph 15, Mr. Winn failed to report the trust shortage to the Law Society, contrary to Rule 3-66(2).

#### 17. **Client K**

(a) On February 4, 2002, Mr. Winn rendered an account for \$1,000 to Client K concerning an incorporation.

(b) On or before March 31, 2002, Mr. Winn transferred \$1,000 from his trust account to his general account, charged against Client K's file.

(c) No funds were held in trust for Client K and, therefore, a shortage in the trust account of \$1,000 was created.

(d) In a letter to the Law Society, prepared by Mr. D.L., CGA, the accountant who prepared Mr. Winn's Accountants Report (Form 47) for the period April 1, 2001 to June 30, 2002, the shortage was noted concerning Client K.

(e) The shortage was eliminated in November, 2003.

**18. Client M**

(a) On July 22, 2002, \$382 was deposited to trust to the credit of Client M.

(b) On September 30, 2002, certain trust funds were transferred to the general account by way of a cheque, in payment of fees. A portion of the cheque was attributed to this file. The attributed portion amounted to \$620.16, creating a trust shortage of \$238.16 with respect to Client M.

(c) The shortage was never eliminated.

**19. Client N**

(a) Mr. Winn held \$1,500 in trust for Client N as of March 31, 2002.

(b) On April 2 and 14, 2002, Mr. Winn transferred \$1,000 and \$500 respectively, from his trust account to his general account in payment of an account for fees.

(c) On September 30, 2002, Mr. Winn again transferred \$1,500 from his trust account to his general account and charged the withdrawal to Client N's account. This withdrawal created a trust shortage of \$1,500.

(d) The trust shortage was eliminated in November 2003.

**20. Client R**

(a) Mr. Winn withdrew \$500 from the trust account concerning Client R, when there were no funds held in trust on R's behalf. This occurred prior to March 31, 2002, although records do not indicate precisely when the withdrawal occurred.

(b) The resulting trust shortage of \$500 was eliminated in 2003.

**21. Client S**

(a) Mr. Winn refunded \$602.77 held in trust for Client S on May 5, 2002.

(b) A further \$602.77 was charged against this account on September 30, 2002 and was recorded as a payment of fees from trust. However, no funds remained in trust for Client S and a shortage was thereby created.

(c) The resulting trust shortage of \$602.77 was eliminated in November 2003.

**22. Client U**

(a) Mr. Winn received \$5000 in settlement funds on April 15, 2003. These funds were deposited in trust (see paragraph 39).

(b) The account reflects the sum of \$270 paid from trust to a third party in August 2002.

(c) The sum of \$270 was removed from trust at a time when there were not sufficient funds to cover this payment.

(d) The resulting shortage was eliminated in November 2003.

## 23. Client J

(a) A cheque was written on the trust account on this file for \$500 payable to the firm, and deposited to the general account in payment of fees.

(b) No funds were held in trust for Client J, who was a legal aid client, and a trust shortage was therefore created.

(c) This trust shortage was never rectified.

24. Mr. Winn withdrew trust funds by way of electronic transfer for a sum less than \$25,000,000, contrary to Rule 3-56(3.1):

(i) by internet banking to make a loan payment of \$1200 on each of April 14 and April 24, 2003;

(ii) by internet banking to make a payment of \$955 on April 21, 2003.

25. Mr. Winn did not maintain the books, records and accounts of his practice in accordance with the Law Society Rules, Rule 3-59.

26. In July 2003, Mr. Kinsey determined that Mr. Winn had failed to record transactions on the trust account in books, records and accounts or recorded such transactions only a piecemeal basis after October 2002, contrary to Rule 3-59(3). In November 2003, Mr. Kinsey determined that Mr. Winn had recorded trust transactions to September 30, 2003.

27. Mr. Winn failed to record transactions on the general account in books, records and accounts after October 2002, contrary to Rule 3-59(3).

28. Mr. Winn failed to maintain a trust cash book or synoptic journal, contrary to Rule 3-60(a).

29. Mr. Winn failed to maintain proper records of transfers between client ledgers, contrary to Rule 3-60(c).

30. Mr. Winn failed to maintain monthly trust reconciliations contrary to Rule 3-60(d).

31. Mr. Winn failed to maintain a general cash book, general accounts receivable ledger or disbursements ledger, contrary to Rule 3-61(1)(a).

32. Mr. Winn failed to maintain an accounts receivable ledger or other suitable system to record all transactions in which a bill has been delivered or disbursement made, contrary to Rule 3-61(1)(b). In particular, Mr. Winn deposited client funds in to the general account, purportedly in payment of fees but without rendering an account, or upon occasions when an account was rendered without recording the account.

33. Mr. Winn failed to record trust transactions promptly and not more than seven days after a transaction, contrary to Rule 3-63(1).

34. Mr. Winn failed to record transactions on his general account promptly and not more than 30 days after a transaction, contrary to Rule 3-63(1).

35. Mr. Winn failed to add and balance each trust and general cash book and synoptic journal at least monthly, contrary to Rule 3-64.

36. Mr. Winn failed to prepare a monthly trust reconciliation, contrary to Rule 3-65(1) and failed to prepare the reconciliation within 30 days of its effective date, contrary to Rule 3-65(4).

## Citation Paragraph 2

37. Mr. Winn withdrew funds from his trust account for payment of payroll, office rent, and other office and personal expenses, including loan payments.

38. From time to time, Mr. Winn deposited his personal funds into his trust account. In addition, on occasion, Mr. Winn failed to remove from trust funds to which he was entitled in payment of fees.

39. In July 2003, Mr. Kinsey calculated the shortage attributable to withdrawals made by Mr. Winn for personal and office expenses to be either \$8,147.07 or \$13,147.07. (The difference between the two figures, \$5,000.00, depending upon whether a \$5,000.00 deposit to trust was supposed to have been taken as fees by Mr. Winn, on the U matter. It was subsequently determined during the course of the custodianship that the \$5,000.00 was payable to Mr. Winn and, after allowing for a \$270.00 payment to a third party, Mr. Winn was credited with the sum of \$4,730.00. This is reflected in Attachment H of Mr. Mew's report dated March 17, 2004, which is referred to in paragraph 49 of this Agreed Statement of Facts).

40. Since Mr. Winn's withdrawals for personal and office expenses exceeded Mr. Winn's entitlement to any funds in the trust account, these withdrawals used funds being held in trust for clients.

41. Mr. Kinsey performed a follow-up review and rendered a report dated November 14, 2003 (Tab 5). By the time of this review, trust transactions had been recorded up to September 30, 2003.

42. In November 2003, Mr. Kinsey determined that Mr. Winn's deposits and withdrawals from the trust account for personal and office expenses were recorded to a general ledger account called "PAW in trust" .

43. In November 2003, Mr. Kinsey determined that the trust shortage attributable to Mr. Winn's withdrawals from trust for personal and office expenses had increased to \$37,000 as of September 30, 2003.

44. After receipt of Mr. Kinsey's July 18, 2003 report setting out the shortfall attributable to Mr. Winn's withdrawals from trust for personal and office expenses, Mr. Winn continued to make approximately 15 such withdrawals, in the amount of approximately \$10,000. These are recorded in the general ledger for "PAW in trust", attached as IV.4.b to Mr. Kinsey's November 14, 2003 report (Tab 5).

45. Mr. Winn indicates that he believed that his entitlement to funds in his trust account, by virtue of fees and personal deposits, exceeded his withdrawals. After receipt of the July 18, 2003 report by Mr. Kinsey, Mr. Winn knew that this was not true.

46. In November 2003, after Mr. Winn undertook to refrain from engaging in the practice of law pending disposition of the citation, Mr. Winn deposited the sum of \$33,000 in borrowed funds to his trust account.

47. In the course of the custodianship, the Law Society retained Mr. Richard Mew CA, of Mew & Company, to complete the financial wind up of Mr. Winn's practice. In the course of these duties, Mr. Mew made further entries and also reclassified entries to the accounting records, including the "PAW in trust" account.

48. A copy of Mr. Mew's report of March 17, 2004 regarding Paul A. Winn Law Corporation's "PAW in trust" account as at March 17, 2004 is attached at Tab 6.

49. A copy of Mr. Mew's report of March 17, 2004 regarding Paul A. Winn Law Corporation's trust listing as a March 17, 2004 is at Tab 7.

50. These reports show, and Mr. Winn agrees, that:

(a) the balance in the "PAW in trust" account as of March 17, 2004, was \$23,765.06;

(b) in the absence of the \$33,000 personally contributed by Mr. Winn in November 2003, the trust shortage in the "PAW in trust" account as of March 17, 2004 would be \$9234.94;

(c) regardless of Mr. Winn's personal contribution of \$33,000, as of March 17, 2004, the client trust accounts remained overdrawn by \$9689.76.

51. Mr. Winn admits that he removed funds from his trust account when he did not know the true state of his trust account and that he continued to remove funds from his trust account after he was advised that there was a trust shortage.

Mr. Winn admits that his recklessness in removing funds from trust in such circumstances amounts to misappropriation and professional misconduct.

52. Mr. Winn admits that the conduct above described in paragraph 51 also violates Rule 3-56 of the Law Society Rules.