

Admission to Discipline Committee

Arthur Wayne Skagen

AGREED STATEMENT OF FACTS

1. Arthur Skagen was called to the Bar of British Columbia on May 19, 1989.
2. From May 19, 1989, to March 29, 1993, Mr. Skagen practiced with Watchhorn & McLellan. From March 26, 1993 until March 17, 2002, Mr. Skagen was in a partnership with David Greig, which was doing business as Greig Skagen & Wilson; Greig Skagen & Company; and Greig Skagen & Kennedy. On March 17, 2002, Skagen's partnership interest was abruptly terminated without his consent. From March 17, 2002, Mr. Skagen operated a sole general law practice through Arthur W. Skagen Professional Corporation (the "Firm"). He also worked as Associate counsel for Bell Spagnuolo Legal Offices ("Bell Spagnuolo") assisting in real estate transactions.
3. In the fall of 2001, Mr. Skagen consulted a psychologist, provided by the Lawyers Assistance Program, concerning his stresses and anxieties. That psychologist expressed to Mr. Skagen the view that Mr. Skagen was suffering from clinical depression. From time to time thereafter, Mr. Skagen was under medical supervision and receiving medication from his personal physician as well as a psychiatrist. Mr. Skagen continues to be under treatment for clinical depression at this time.

PROCEDURAL BACKGROUND

4. On March 20, 2003, William M. Everett, Q.C. of the Discipline Committee of the Law Society of British Columbia ("LSBC") ordered that "an investigation be made of the books, records and accounts of Arthur W. Skagen, doing business as Arthur W. Skagen Professional Law Corporation, formerly doing business as Greig Skagen & Wilson; Greig Skagen & Company; and Greig Skagen & Kennedy" pursuant to Rule 4-43 of the Law Society Rules.
5. Roseanne Terhart, CA, CFE, was retained by the LSBC to conduct the investigation. She attended the offices of the Firm to conduct the investigation, commencing March 27, 2003.
6. On September 2, 2003, the Chair of the Discipline Committee of the LSBC directed the issuance of a citation to Mr. Skagen, later issued on November 21, 2003. The Discipline Committee referred the matter to three Benchers pursuant to s.39 of the *Legal Profession Act* and Rule 4-17 of the Law Society Rules.
7. On September 8, 2003, Mr. Skagen voluntarily provided an undertaking to refrain from engaging in the practice of law pending disposition of the citation.
8. On September 11, 2003, with the cooperation and consent of Mr. Skagen, a custodian was appointed by Order of the British Columbia Supreme Court.
9. Effective January 1, 2004, Mr. Skagen ceased to be a member of the LSBC.
10. On September 29, 2004, the Chair of the Discipline Committee of the LSBC directed amendments

to the first citation and also directed the issuance of a second citation to Mr. Skagen, which was later issued December 3, 2004.

11. Mr. Skagen admits service of both citations.

12. The allegations contained in both citations will be consolidated into an Amended Citation upon approval of the Agreed Statement of Facts by the LSBC Discipline Committee. A copy of the Schedule is attached as Appendix "A" to this Agreed Statement of Facts.

CITATION PARAGRAPH 1 - 3

13. Ms. Terhart issued her first report concerning her investigation under Rule 4-43 on August 23, 2003 (the "August 23, 2003 Audit Report") (Attachment 1).

14. Mr. Skagen admits that the contents and findings in the August 21, 2003 Audit Report at pages 1 – 11 are true and correct.

15. Mr. Skagen admits that he failed to maintain his books and records in accordance with the Law Society Rules in that he:

(a) failed to record all funds received and disbursed in connection with his law practice, contrary to Rule 3-59(1);

(b) failed to maintain a trust cash book or synoptic journal showing the amounts disbursed and the name of the recipient of trust funds, contrary to Rule 3-60(a)(iv) and (v);

(c) failed to prepare monthly trust reconciliation, contrary to Rule 3-60(b);

(d) failed to maintain a general cash book or synoptic journal, contrary to Rule 3-61(1)(a);

(e) failed to maintain an accounts receivable ledger, contrary to Rule 3-61(1)(b);

(f) failed to keep a file of all billings of fees charged, contrary to Rule 3-62(1);

(g) failed to record trust transactions within seven (7) days of the transaction, contrary to Rule 3-63(1)(a);

(h) failed to record general transactions within thirty (30) days after the general transaction occurred, contrary to Rule 3-63(1)(b);

(i) failed to records transactions in his general books and records, contrary to Rule 3-63(2);

(j) failed to add and balance each trust in general cash book or synoptic journal, contrary to Rule 3-64; and

(k) failed to produce monthly trust reconciliations, contrary to Rule 3-65.

16. Ms. Terhart issued a further report on her investigation under Rule 4-43 on May 28, 2004 (the "May 28, 2004 Audit Report") (Attachment 2).

17. Mr. Skagen admits that the contents and findings in the May 28, 2004 Audit Report are true and correct.

18. In accordance with the findings in the May 28, 2004 Audit Report, Mr. Skagen admits that funds held by him in trust for his clients were used by him when he knew that he was doing so without the

knowledge, consent or authorization of the clients on whose behalf funds were held, and thereby misappropriated said funds.

19. In accordance with the findings in the May 28, 2004 Audit Report, Mr. Skagen admits that he committed the following violations of the Law Society Rules:

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

(b) Mr. Skagen withdrew funds from his trust account at times when he knew that the funds

i) were not properly required for payment to or on behalf of a client contrary to Rule 3-56(1)(a);

ii) were not his property and were being held in trust for clients contrary to Rule 3-56(1)(b); and

iii) when he knew that there were not sufficient funds to the credit of the client on whose behalf funds were to be paid, contrary to Rule 3-56(1.2); and

(c) Mr. Skagen failed to immediately eliminate and report trust shortages, contrary to Rule 3-66.

CITATION PARAGRAPH 4

20. In or about 2003, Mr. Skagen was retained to act for [holdings company] concerning the sale of [address] Avenue, Delta, B.C to [investment company].

21. On April 28, 2003, Mr. Skagen received a bank draft payable to Art Skagen in Trust from [investment company] in the amount of \$50,000. Mr. Skagen deposited those funds in his trust account at the [credit union] (the "E Trust Account") on April 29, 2003. On May 1, 2003, Mr. Skagen paid [holdings company] \$25,000 from the E Trust Account.

22. The sale completed on May 8, 2003. On May 7, 2003, Mr. Skagen received a trust cheque from [law firm], solicitors for [investment company] payable to Art Skagen in Trust in the amount of \$798,569.98, being the net sale proceeds, on his undertaking to discharge all encumbrances from title. (See May 28, 2004 Audit Report, Tab 7-3 to 7-5). The encumbrances included mortgages in favour of the [bank] and CCRA.

23. Mr. Skagen deposited those funds in the E Trust Account on May 8, 2003.

24. On May 9, 2003, Mr. Skagen paid the [bank] \$621,404.21 by way of a cheque drawn on the E Trust Account in satisfaction of its mortgage. A discharge was provided and duly filed.

25. On May 12, 2003, Mr. Skagen sent the CCRA a cheque in the sum of \$117,165.77 drawn on the E Trust Account. He also sent a copy of the Order to Pay signed by [holdings company] and a letter requesting that CCRA provide a discharge of mortgage.

26. Upon receiving the cheque, CCRA was unwilling to provide a discharge of mortgage for partial payment and, having cashed the cheque sent by Mr. Skagen, sent Mr. Skagen a cheque in the same amount, being \$117,165.77. On June 3, 2003, Mr. Skagen received the cheque from the CCRA, payable to Art Skagen in Trust, in the amount of \$117,165.77. Mr. Skagen deposited those funds in the E Trust Account on June 10, 2003. Therefore, as of June 10, 2003 the E Trust Account should have had \$202,165.77 to the credit of [holdings company].

27. Ms. Terhart determined and Mr. Skagen admits that in June 2003, funds that should have been

held in trust to the credit of [holdings company] were used, in conjunction with other trust funds in the E Trust Account, to fund unauthorized payments, including payments for clients who did not have sufficient funds in trust. Mr. Skagen admits that, as detailed in the May 28, 2004 Audit Report, he made the following payments using funds which, in part, should have been held in trust to the credit of [holdings company]: \$20,000 paid on June 18, 2003, \$50,000 paid on June 26, 2003, \$193,959.04 paid on June 12, 2003, \$4,205.61 paid on June 12, 2003, \$83,192.50 paid on June 23, 2003, and \$50,000 paid on June 20, 2003.

28. On July 9, 2003, approximately 60 days after the closing, recognizing that his failure to discharge to mortgage was reportable to the LSBC, Mr. Skagen advised LW, a lawyer employed by the Department of Justice and the solicitor for CCRA, that the full amount owing to CCRA would be paid.

29. On or about July 9, 2003, Ms. W sent Mr. Skagen a letter stating that the balance owed as of July 9, 2004 was \$168,886.58 and enclosing a registerable form of discharge of the CCRA mortgage on Mr. Skagen's undertaking to provide forthwith the cheque sent to him by CCRA in the amount of \$117,165.77 and to provide an additional cheque drawn on his trust account for the balance owed being \$51,720.81 (May 28, 2004, Audit Report Tab 7-12).

30. On July 11, 2003, Mr. Skagen advised that the \$117,165.77 cheque had been cashed and accordingly Ms. L W revised the undertaking as follows: "...the discharge of Mortgage BT237463 ["the CCRA Mortgage"] has been provided to you on the strict undertaking that you will provide us forthwith a cheque written on your trust account in the amount of \$168,886.58 made out to the Receiver General of Canada" (May 28, 2004, Audit Report, Tab 7-14).

31. On July 11, 2003, Mr. Skagen filed the discharge of the CCRA Mortgage, and advised the solicitor for [investment company] of the discharge of the CCRA Mortgage.

32. On July 31, 2003, Mr. Skagen provided L W a trust cheque made payable to the Receiver General of Canada for \$168,886.58 (the "Trust Cheque") drawn from the E Trust Account (May 28, 2004 Audit Report, Tabs 7-15 and B-160). At the time the Trust Cheque was written, based on prior payments to the credit of [holdings company], there should have been sufficient funds in the trust account to cover the Trust Cheque. However, due to Mr. Skagen's misappropriation, described in paragraph 27 above, there were insufficient funds to cover the Trust Cheque.

33. At the time the Trust Cheque was presented for payment, on August 20, 2003, the [credit union] Trust had \$20,863.82 and the Trust Cheque was therefore dishonoured for insufficient funds.

34. Ms. W filed a complaint to the LSBC and the CCRA has filed a claim to the Special Compensation Fund.

35. Mr. Skagen admits that he breached his undertaking to the solicitor for CCRA.

36. Mr. Skagen admits that he breached his undertaking that trust cheques will be paid, contrary to Chapter 11, Ruling 8 of the *Professional Conduct Handbook*.

37. Mr. Skagen admits that his conduct in withdrawing funds from the Firm's trust account held to the credit of [holdings company] for unauthorized purposes, as described in the May 28, 2004 Audit Report and referred to in paragraph 27 above, constitutes misappropriation.

CITATION PARAGRAPH 5

38. On or about May 2003, Mr. Skagen was retained to act for GM in the sale of [address] Road,

Abbotsford, British Columbia to SN and JW for \$320,000.

39. On June 30, 2003, Michael Kravetz, notary public at Kravetz and Company, provided Mr. Skagen with a cheque for \$309,011.86 representing the sale proceeds of [address] Road, Abbotsford payable to Art Skagen Law Office "In Trust". This cheque was provided to Mr. Skagen on his undertaking that he would:

"...forthwith forward an amount sufficient to legally obligate the [trust company] to provide a registerable discharge of Mortgage BT312031, and to forthwith forward an amount sufficient to legally obligate [H Corporation] to provide a registerable discharge of Mortgage BT312032 & Assignment of Rent No. BT312032A, to register said discharges upon receipt and to advise me in due course as to registration particulars."

40. Mr. Skagen deposited this cheque in the E Trust Account on July 2, 2003. Mr. Skagen subsequently paid \$38,891.60 to M and \$32,299.24 to [H Corporation], which discharged Mortgage BT312032.

41. After these payments, on July 10, 2003, there should have been \$237,320.57 in trust to the credit of M in the E Trust Account. However, after July 10, 2004, no payments were made on behalf of M. Ms. Terhart determined, and Mr. Skagen admits that M's funds were used to fund other payments made to clients and to other parties. Mr. Skagen admits that, as detailed in the May 28, 2004 Audit Report, he made the following payments using funds which, in part, should have been held in trust to the credit of M: \$237,320.57 paid on July 2003, \$50,000 paid on July 3, 2003, \$42,000 paid on July 4, 2003, \$100,000 paid on July 4, 2003, \$24,060.26 paid on July 30, 2003.

42. Mr. Skagen admits that he breached his undertaking to Michael Kravetz by failing to "forward an amount sufficient to legally obligate the [trust company] to provide a registerable discharge of Mortgage BT312031".

43. Mr. Skagen admits that he failed to hold sufficient funds in trust to the credit of M in order to make the payment to [trust company].

44. Mr. Skagen admits that his conduct in withdrawing funds from the Firm's trust account held to the credit of M, as described in the May 28, 2004 Audit Report and referred to in paragraph 41 above, constitutes misappropriation.

APPENDIX A

AMENDED SCHEDULE TO CITATION

ARTHUR WAYNE SKAGEN

Nature of your conduct to be inquired into:

1. You failed to maintain your books and records in accordance with Law Society Rules:

- (a) failed to record all funds received and disbursed in connection with your law practice, contrary to Rule 3-59(1);
- (b) failed to maintain a trust cash book or synoptic journal showing the amounts disbursed and the name of the recipient of trust funds, contrary to Rule 3-60(a)(iv) and (v);
- (c) failed to prepare monthly trust reconciliation, contrary to Rule 3-60(b);
- (d) failed to maintain a general cash book or synoptic journal, contrary to Rule 3-61(1)(a);

- (e) failed to maintain an accounts receivable ledger, contrary to Rule 3-61(1)(b);
- (f) failed to keep a file of all billings of fees charged, contrary to Rule 3-62(1);
- (g) failed to record trust transaction within seven (7) days of the transaction, contrary to Rule 3-63(1)(a);
- (h) failed to record general transactions within thirty (30) days after the general transaction occurred, contrary to Rule 3-63(1)(b);
- (i) failed to records transactions in his general books and records, contrary to Rule 3-63(2);
- (j) failed to add and balance each trust in general cash book or synoptic journal, contrary to Rule 3-64; and
- (k) failed to produce monthly trust reconciliations, contrary to Rule 3-65.

2. You misappropriated funds held by you in trust for your clients by removing funds from your trust account without the knowledge, consent or authorization of the clients on whose behalf funds were held.

3. The misappropriations described in paragraph 2 above also constituted violations of Law Society Rules.

4. In or about July 2003, you acted for [holdings company] concerning a sale of real estate and payment to CCRA (the [holdings company] Sale"). You received the sum of \$798,000 as sale proceeds, which you deposited to your trust account with [credit union] (the "E Trust Account"). On or about July 11, 2003, you were provided a registerable discharge of CCRA's mortgage and placed on your undertaking by the solicitor for CCRA to forthwith pay CCRA the sum of \$168,886.58. You delivered a cheque to the solicitor for CCRA in the correct amount, but the cheque was dishonoured for insufficient funds.

- a) you breached your undertaking to the solicitor for CCRA;
- b) you breached your undertaking that trust cheques will be paid, contrary to Chapter 11, Ruling 8 of the *Professional Conduct Handbook*;
- c) you failed to hold sufficient funds in trust to the credit of [holdings company] to make the payment to CCRA; and
- d) funds paid to you to the credit of [holdings company] were used by you for other purposes without the knowledge, consent or authorization of [holdings company].

5. In or about July 2003, you acted for M concerning a sale of real estate (the "M Sale"). You received the sum of \$309,011.86 as sale proceeds, which you deposited to your E Trust Account. You were placed on your undertaking to make certain payments from the sale proceeds, including payment of the sum of \$237,000 to [trust company], but you failed to make the required payment.

- a) you breached your undertaking to make payment to [trust company];
- b) you failed to hold sufficient funds in trust to the credit of M in order to make the payment to [trust company]; and
- c) funds paid to you to the credit of M were used by you for other purposes without the knowledge, consent or authorization of M.

