

## **Admission to Discipline Committee**

### **JEREMY STUART GORDON DONALDSON**

#### **AGREED STATEMENT OF FACTS**

##### **Member's Background**

1. The Respondent, Jeremy Donaldson was admitted to the bar of the Province of British Columbia on May 17, 1991.
2. From May 17, 1991 to March 5, 1993, the Respondent practised law with the firm Woodward & Company, and thereafter practised as a sole practitioner in Victoria until July 30, 2008.
3. Until his voluntary interim withdrawal from practice on July 30, 2008, the Respondent practiced primarily in the areas of family law and real estate, but also in the areas of civil litigation, motor vehicle cases and wills and estates.
4. The Respondent has had two bankruptcies, the first in 1985 for which he received an absolute discharge, and the second in 2004 for which he received an absolute discharge in 2005.

##### **Background and Previous Citation**

5. The Respondent was previously cited in February 2003 for collecting PST and GST from clients over a period of approximately two years and failing to remit the amounts collected (a total of \$26,250). The Respondent self-reported this period of failing to remit. A hearing was held on June 16, 2003 and the Respondent admitted professional misconduct. As part of the penalty, the hearing panel ordered that the Respondent, until relieved of this condition, deliver quarterly statutory declarations "commencing with the quarter ending June 30, 2003, setting out the total fees he billed for the previous quarter and the total remittances made for Social Service Tax and Goods and Services Tax during that quarter" (the "Statutory Declarations").
6. The Respondent submitted the Statutory Declarations, which were reviewed by a Law Society auditor upon receipt. In January 2007, the auditor noted discrepancies in the 2006 Q3 and Q4 statutory declarations and made inquiries of the Respondent. This led to a professional conduct investigation, and subsequently to an investigation of the Respondent's books, records and accounts pursuant to Rule 4-43, which investigation was initially conducted by the Law Society and subsequently by an external auditor, Murray Wiseman C.A., ("Wiseman"). Wiseman's report (the "Audit Report") was delivered to the Law Society in late May 2008.

##### **Current Citation**

7. On July 23, 2008, the Discipline Committee of the Law Society authorized the issuance of a citation to the Respondent, and resolved that there be a referral, pursuant to section 39 of the *Legal Profession Act*, to three Benchers to consider whether to suspend the Respondent or impose conditions on his practice, pending final disposition of the citation.
8. A section 39 hearing was scheduled for July 31, 2008.

9. On July 30, 2008, the Respondent gave a written undertaking to the Law Society not to engage in the practice of law with or without the expectation of a fee, gain or reward, whether direct or indirect, effective 5:00 p.m. on Thursday, July 31, 2008 until the final disposition of the citation. The section 39 referral was adjourned.

10. The citation was issued on September 24, 2008. The Schedule to citation was amended on November 18, 2008 (the " Amended citation" ) and was served on the Respondent's counsel.

11. A Further Amended Schedule to the citation was prepared on January 7, 2009 (the " Further Amended citation" ) and was served on the Respondent counsel.

12. The Respondent admits that he was served through his counsel with the citation, the Amended citation and the Further Amended citation, and waives the requirements of Rule 4-15 of the Law Society Rules.

### **Late Filings and False Declarations**

13. On June 16, 2003, a Law Society hearing panel ordered as part of a penalty decision arising from a citation for failure to remit collected GST and PST, that the Respondent provide the Executive Director of the Law Society with a statutory declaration by the 15<sup>th</sup> day of each month following each quarter of the year, commencing with the quarter ending June 30, 2003, setting out the total fees billed for the previous quarter and the total remittances made for Social Service Tax and Goods and Services Tax during that quarter (defined above as the " Statutory Declarations" ). This condition was to be continued until the Respondent was relieved of it by the Discipline Committee. The written Hearing Report was issued on June 25, 2003.

14. The Respondent was frequently late with the filing of the Statutory Declarations, as summarized below:

<b>Quarter</b>	<b>Due Date</b>	<b>Date Received</b>	<b>Late</b>
Q2-2003	July 15, 2003	July 16, 2003	1 day
Q1-2004	April 15, 2004	April 16, 2004	1 day
Q2-2004	July 15, 2004	July 21, 2004	6 days
Q3-2004	October 15, 2004	November 4, 2004	20 days
Q4-2004	January 15, 2005	February 7, 2005	23 days
Q1-2005	April 15, 2005	May 10, 2005	25 days
Q3-2005	October 15, 2005	October 28, 2005	13 days
Q4-2005	January 15, 2006	February 14, 2006	30 days
Q1-2006	April 15, 2006	May 23, 2006	38 days
Q2-2006	July 15, 2006	August 18, 2006	34 days

Q3-2006	October 15, 2006	January 3, 2007	80 days
Q1-2007	April 15, 2007	April 25, 2007	10 days
Q2-2007	July 15, 2007	July 25, 2007	10 days
Q3-2007	October 15, 2007	October 18, 2007	3 days

15. Adrienne Fairburn (" Fairburn" ), a Law Society auditor, reviewed the Statutory Declarations as they were received. After her review of the Q3 and Q4 Statutory Declarations for 2006, Fairburn wrote to the Respondent by letter dated January 8, 2007. In her letter, she asked why the Social Service tax (" SST" or " PST" ) remitted by the Respondent during the fourth quarter represented only 2% of fees billed. She also asked whether the Respondent had been remitting SST to the Minister of Finance or whether he had been holding funds in his trust account pursuant to the *Christie* decision.

16. In response, the Respondent telephoned Fairburn on or about January 8, 2007, and advised that his SST remittances from April 2006 onward had not been paid to the Minister of Finance, nor had he paid the amount into his trust account. He further advised Fairburn that the amount he owed for SST was approximately \$8,000 and that he did not currently have the funds to pay these taxes.

17. Shortly after speaking with Fairburn, the Respondent telephoned Brian McKinley, then discipline counsel with the Law Society, and advised that he had not paid SST since March 2006 and that the unpaid amount was between \$8,000 and \$10,000.

18. By letter dated January 24, 2007, Shelley Ion (" Ion" ), a staff lawyer in the Professional Conduct Department, wrote to the Respondent care of his then counsel, Michael Ranspot (" Ranspot" ), to seek an explanation for the late filings of the Statutory Declarations. Ion also asked why the Respondent had sworn and submitted Statutory Declarations that appeared to be false; i.e., that showed SST as having been remitted when in fact it had not been remitted.

19. Ranspot wrote to the Law Society on April 5, 2007 and provided a partial response to Ion's inquiries. Ion sent a further letter dated April 10, 2007, seeking an explanation of whether PST was billed during the period between December 2005 and August 2006, and whether the PST monies collected (if any) were held in trust. Ion also asked why the Respondent swore Statutory Declarations stating that the PST had been remitted when it had not been.

20. On April 30, 2007, Ranspot wrote to the Law Society on behalf of the Respondent and advised (in part) that the Respondent " did bill PST for the period of December, 2005 to August, 2006" but that " the PST monies were not held in trust but were used to pay his employees and meet other practice operating commitments."

21. On May 3, 2007, Ion wrote to Ranspot noting the following concerns:

- the fact that the Respondent had not explained why he swore the Statutory Declarations that the amounts had been " remitted" ;
- why there appeared to be discrepancies as to whether the Respondent made payments of PST owing (delayed) or whether he did not remit PST at all;
- why the Respondent had stated in his April 5, 2007 response that the PST monies were being held in light of *Christie*, when Ranspot had advised on the Respondent's behalf that the PST monies that

were collected were not held in trust but used to pay employees and to meet other practice commitments.

22. Ranspot wrote to the Law Society on May 23, 2007 and stated, in part, as follows:

For the 2<sup>nd</sup> quarter of 2004, the 3<sup>rd</sup> quarter of 2004, the 4<sup>th</sup> quarter of 2004, the 4<sup>th</sup> quarter of 2005 and all 4 quarters of 2006, the Respondent did not remit what he swore he remitted. I am instructed by the Respondent that he swore false Statutory Declarations out of fear of the consequences from the Law Society of not remitting the PST.

I am instructed that prior to December, 2005, the Respondent billed PST on his accounts. On many occasions, there were no monies available to pay PST because it had not been collected from the client or, if it had been, it was used to pay other practice obligations.

For the period December, 2005 to August, 2006, I am instructed that the Respondent was advised by Consumer Taxation that it would not press for the filing of returns or payment of remittances until a post-*Christie* policy had been developed. Any accounts that the Respondent did collect and which included " PST monies" were not held in trust but used to pay the Respondent's other practice obligations, including assistants' salaries.

23. Ranspot also noted in his May 23, 2007 letter to the Law Society that Donaldson had entered into a " payment plan" with the Revenue Collections Branch regarding outstanding PST obligations. Except for a minor amount still owing, the amounts due in respect of PST had been repaid by December 2008.

#### **Rule 4-43 Audit**

24. On July 3, 2007, the Law Society ordered an investigation of the Respondent's books, records and accounts pursuant to Rule 4-43 of the Law Society Rules.

25. Andrea Chan (" Chan" ), a Law Society auditor, initially conducted the 4-43 investigation. The investigation was subsequently transferred to an external forensic auditor, Murray Wiseman, C.A.

26. On or about May28, 2008 Wiseman released the Audit Report to the Law Society.

27. The following is agreed concerning the Audit Report:

- a) the copies of records attached to the Audit Report are true copies of the originals and are accepted as proof of the facts contained within them;
- b) Wiseman is qualified to give expert opinion evidence before this tribunal with respect to forensic accounting in general and compliance with Part 3, Division 7 of the Law Society Rules in particular.

In this Statement of Agreed Facts, references to Attachments by tab number are references to the numbered Tabs of the Audit Report.

#### **False and Misleading Information or Explanations re: Rule 4-43 Audit**

28. The Respondent was served with the Rule 4-43 Order on August 8, 2007. Chan commenced field work at the Respondent's home office that same day.

29. On or about September 18, 2007, the continuation of the investigation was transferred to Wiseman.

30. In the period between February and April 2008, Larry Dirk, a Law Society Investigator, conducted interviews of some of the Respondent's clients identified in the Audit Report.

31. The following is agreed concerning the Investigative Report:

- a) the copies of documents and records contained in the Investigative Report are true copies of the originals and are accepted as proof of the facts contained within them;
- b) the transcripts of the interviews contained in the Investigative Report are (1) authentic, and (2) are accepted for the truth of the facts contained within them.

32. On February 21, 2008, the Respondent telephoned Ion with respect to a client whom Dirk had asked to interview. The Respondent expressed concerns regarding the scope and duration of the audit, and stated that his reputation and clients were being affected and said: " I know you didn't find anything in the books, this is just heat."

33. On June 24, 2008, Ion wrote to the Respondent's new counsel, Dennis Murray, Q.C. (" Murray" ), enclosing the Audit Report and Investigative Report. In this letter, Ion noted her concerns and sought an explanation from the Respondent as to:

- his failure to comply with the Trust Accounting Rules in Division 7;
- evidence of misappropriation in the form of pre-taking of client trust funds;
- misleading clients and the Law Society as to when funds had been removed from trust;
- other misappropriations from trust.

34. Murray replied on July 17, 2008, with instructions from the Respondent that he " wanted to cooperate and deal with the issues in an open, expeditious and straightforward way" . In this letter, the Respondent admits " pre-taking" trust funds and back-dating invoices, and fully accepts his responsibility for the Division 7 issues.

### **Misappropriation of Trust Funds and Misleading of Law Society and Clients**

35. The Respondent withdrew or authorized the withdrawal of trust funds under Rule3-56 in payment of his fees without first preparing a bill for those fees and immediately delivering the bill to the client, contrary to Rule 3-57(2).

36. Murray wrote to the Law Society on July 17, 2008. His letter states, in part:

It appears, properly, that the key (but not only) concern raised in the audit report as to dealings with funds and Division 7, is the concern (3-57) over payment of fees from trust. The auditor describes the main concern this way (Overview Page 7): "The main concern we have based on our audit findings is that the member transferred client funds, usually received as a retainer, from the trust accounts to the general account before the service had been performed and it would appear before the bill (invoice) had been delivered to the client."

This observation is correct and is dealt with, as you requested in your June 24, 2008 letter, on case by case basis in this letter.

37. Particulars of these breaches are set out below. In these cases, the Respondent " took his fees prior to completing the work anywhere from a few days, to over three months, and possibly over a year in the [CM] file."

### ***Client DW (Audit Report - Tab 1)***

38. Client DW retained the Respondent in September 2002 on a matrimonial matter.

39. On or about September 24, 2002, the Respondent received a \$3,000 retainer cheque from DW and deposited it to his trust account on September 30, 2002.

40. The Respondent prepared Invoice No. 1723 for \$3,009.15 dated September 30, 2002 and on September 30, 2002 transferred \$3,000 from the trust account to the general account as partial payment of the invoice.

41. The Respondent subsequently wrote to DW on October 28, 2002 and stated, in part:

You have provided a \$3,000 retainer which has been deposited into my trust account and will be applied to my accounts as rendered. If the retainer is depleted I will require that it be replenished in order that I can continue to act on your behalf.

The Respondent's statement was false: at the time it was written, the Respondent had already transferred the retainer of \$3,000 from the trust account to the general account (see above).

42. The Respondent's time sheets show that most of the work was done after he prepared the September 30, 2002 invoice. DW's \$3,000 retainer was transferred from the Respondent's trust account to his general account approximately 24 days before all the work had been completed.

43. With respect to client DW, the Respondent has admitted as follows through the July 17, 2008 letter from his counsel to the Law Society :

This is acknowledged as a case of pre-taking and back dating. The client was not invoiced at the time of the pre-taking. The work was ultimately done.

### ***Client DC (Audit Report - Tab 2)***

44. Client DC retained the Respondent in or about March 2003 for a matrimonial matter.

45. On March 18, 2003 the Respondent deposited a \$1,500 retainer from DC into his trust account.

46. The Respondent prepared Invoice No. 1820 for \$2,745.54 dated March 18, 2003 and on March 18, 2003 transferred \$1,500 from the trust account to the general account as partial payment of the invoice.

47. The Respondent wrote to DC on April 29, 2003, enclosing Invoice No. 1820. Although the invoice was back-dated to March 18, 2003, it was for work performed between March 17, 2003 and April 28, 2003.

48. The Respondent transferred DC's \$1,500 retainer from his trust account approximately 41 days before completing the work shown and billed on Invoice No. 1820.

49. On January 9, 2006, the Respondent deposited a \$900 retainer from client DC into his trust account.

50. The Respondent then prepared Invoice No. 3046 for \$1,000.34 dated January 14, 2006 and on January 14, 2006 transferred \$900 from the trust account to his general account as partial payment of the invoice.

51. Invoice No. 3046 was back-dated to January 14, 2006. The invoice showed that only one hour of the 3.9 hours of work billed on Invoice No. 3046 had been performed by the invoice date. The remainder of the work was performed between the invoice date and February 23, 2006.

52. The Respondent transferred DC's \$900 retainer from his trust account to his general account in payment of Invoice No. 3046 approximately 40 days before performing the work shown on the invoice.

53. With respect to client DC, the Respondent has admitted as follows through his counsel's letter dated July 17, 2008:

This is acknowledged as a case of pre-taking and back dating. The client was not invoiced at the time of the pre-taking. The work was ultimately done.

***Client MF (File#1707) (Audit Report - Tab 3)***

54. Client MF retained the Respondent in or about July 2003 on a matrimonial matter.

55. On July 23, 2003, the Respondent received a \$1,000 retainer from MF and deposited it to his trust account.

56. The Respondent prepared Invoice No. 1897 for \$2,061 dated July 27, 2003 and on July 27, 2003 transferred \$1,000 from his trust account to his general account as partial payment of the invoice.

57. Invoice No. 1897 billed for 9 hours of work but did not show the dates the work was done. The Respondent's timesheets show that only 1.5 hours of work had actually been completed as of the date of the invoice.

58. On August 7, 2003, the Respondent received a further \$1000 retainer from MT which was deposited to his trust account.

59. On August 18, 2003, the Respondent transferred \$1000 from his trust account to his general account and withdrew it the same day as cash.

60. The August 18, 2003 transfer was referenced to Invoice #1909 on the Respondent's trust ledger. However, Invoice No. 1909 was for a different client. On the accounts receivable ledger, this transfer was referenced to Invoice No. 1897.

61. On January 21, 2004, the Respondent prepared Invoice No. 2020 which billed for 18.7 hours of work. However, the fees were only \$2000 (10 hours @ \$200 per hour), leaving 8.7 hours unbilled.

62. On January 28, 2004, a further \$2,000 was received from client MF and deposited to the general account.

63. On January 31, 2004, the Respondent prepared a second version of Invoice No.2020. This version billed for 18.7 hours of work, but had a total of \$3,740. The Invoice showed that \$2000 was transferred from trust as partial payment.

64. Murray wrote to the Law Society on July 18, 2008 regarding client MF. With respect to Invoice Nos. 1897 and 2020, his letter stated, in part:

The Respondent acknowledges that while by January 21, 2004, the 18.7 hours work billed for what had been done, first invoice #2020 was created to attempt to deal with the fact that \$2000 had already been paid from trust to general when invoice #1897 had been created on July 27/03, but not sent to the client.

The Respondent acknowledges that the July 27/03 invoice #1897 and transfer of \$1000 on July 28/03 constituted pre-taking, likely of up to 7.5 hours (9 hours billed minus 1.5 hours as per time

sheets) or perhaps less because his timesheet keeping during this period appears, to him, to be less than fulsome.

65. On June 10, 2004, the Respondent received a \$15,000 retainer from client MF, which was deposited to his general account[1].

66. On June 14, 2004, the Respondent prepared Invoice No. 2088, billing client MF for 62 hours of work. The Respondent's timesheets show that only 18.4 hours of work had actually been completed as of the date of the invoice.

67. The Respondent transferred the \$15,000 from his trust account to his general account by three \$5,000 withdrawals on June 14, June 16 and June 30, 2004. As of June 30, 2004 approximately 40 hours of the 62 hours billed had been performed - the balance was performed in July and August 2004. Invoice No. 2088 was back-dated to June 14, 2004.

68. The Respondent, through his counsel's letter dated July 18, 2008, admitted as follows with respect to client MF:

The Respondent acknowledges that the transfer from trust to general on June 14/04 constitutes pre-taking. The further transfer of \$5000 from trust to general on June 16/04 constitutes pre-taking. The further transfer of \$5000 from trust to general on June 30/04 constitutes pre-taking ... he fully acknowledges that he pre-took in this case...

**Client TM (Audit Report - Tab 5)**

69. Client TM retained the Respondent in early February 2006 on an estate matter.

70. On or about February 16, 2006, the Respondent received \$10,000 from TM which he deposited to his trust account. The \$10,000 was to be used as a retainer and to pay Probate fees.

71. The Respondent prepared Invoice No. 3117 for \$10,216.86 dated February 15, 2006. The invoice showed a number of disbursements including a \$6,552 payment for Probate fees and showed that \$10,000 had been transferred from his trust account in partial payment of the invoice.

72. Invoice No. 3117 also bills for 12.4 hours of time at \$225 per hour for a total of \$2,790 even though the time entries on the invoice show that at most five (5) hours of work had been done as of the invoice date. The Respondent's time sheets also show that most of the work on the file was done after he prepared the invoice.

73. Between February 15, 2006 and March 15, 2006, the Respondent paid out all of the \$10,000 retainer (except \$17 which was paid out on May 1, 2006) to his general account and paid \$208 for filing fees, as follows:

Feb. 15/06	to general account	\$ 3,000.00
Feb. 20/06	to filing fees	\$ 208.00
Mar 3/06	to general account	\$ 3,575.00
Mar 10/06	to general account	\$ 3,000.00
Mar 15/06	to general account	\$ 200.00
May 1/06	to general account	<u>\$ 17.00</u>
<b>Total:</b>		

\$10,000.00.



74. The Probate fees of \$6,552 were invoiced by the Province of British Columbia on March 16, 2006. As the Respondent had already used TM's \$10,000 retainer for other purposes, he was unable to pay the Probate fees out of the retainer. Instead, he paid the Probate fees by using funds from another source deposited to his general account on April 4, 2006 (though the cheque paying the Probate fees was dated March 31, 2006). The retainer for the probate fees was transferred from the Respondent's trust to his general account between 20 and 30 days before he actually paid the fees.

75. The Respondent prepared a second version of Invoice No. 3117 dated May 1, 2006 and sent it to TM on or about that date. The Respondent's file copy of the same invoice was dated February 15, 2006.

76. Until shown the document by a Law Society investigator, TM had not seen the February 15, 2006 version of the invoice.

77. The Respondent, through his counsel's letter date July 17, 2008, admitted as follows with respect to client TM:

This is acknowledged as a case of pre-taking and back dating, including the probate fees. The client was not invoiced at the time of the pre-taking. The work was ultimately done.

### ***Client CM (Audit Report - Tabs 6 & 7)***

78. Client CM retained the Respondent in or about July 2006 on a child custody matter (File #1894), and in August 2006 on a divorce matter (File #1897).

79. On or about July 27, 2006, a \$3,000 retainer from CM was deposited to the Respondent's trust account for File #1894 and File #1897.

### ***File #1894***

80. The Respondent prepared Invoice No. 3321, dated July 30, 2006, in the amount of \$2,061.20. This invoice billed for 8.1 hours worked but did not show the dates the work was done. However, the Respondent's timesheets show that he had done only 3.7 hours of work as of July 30, 2006, the date of the invoice.

81. On July 30, 2006, the Respondent transferred \$3,000 from his trust account to his general account, and \$1,800 was used to partially pay Invoice No.3321 (the balance related to File #1897, below).

82. The transfer of \$1,800 from the trust to the general account as partial payment of Invoice No.3321 occurred approximately 12 days before the work recorded on the invoice had been performed.

### ***File #1897***

83. The Respondent prepared Invoice No. 3344, dated July 30, 2006, in the amount of \$1,200. The invoice did not detail how many hours were worked or when the work was done.

84. On July 30, 2006, the Respondent transferred \$3,000 from his trust account to his general account, and used \$1,200 of that amount to partially pay Invoice No. 1897 (the rest was applied to File #1894 - see paragraph 81, above).

85. Invoice No. 3344 was back-dated and most or all of the work billed for was performed after the invoice date. The invoice bills for such services as " draft Writ of Summons/Statement of Claim, file Writ/SoC, ...draft 2<sup>nd</sup> stage documents, have client in to sign Affidavits, file documents ...." . As noted in the Audit Report:

While invoice #3344 was dated July 30, 2006 and paid the same day from trust funds, it appears from the client file that most, if not all, of the work was completed long after this date. For example, the Writ of Summons, Statement of Claim and Affidavits appear to have been prepared in February and March of 2007, the Requisition was dated November 7, 2007 and the Order for Divorce was dated December 3, 2007.

86. The Respondent, through his counsel's letter date July 17, 2008, admitted as follows with respect to client CM:

Both [files] are acknowledged as cases of pre-taking and back dating. The client was not invoiced at the time of the pre-taking.

In each case the work was ultimately done, in the case of account #3344, though the auditor describes it as "not finalized" until 16 months later, the Respondent is quite certain that the background work to the final desk decree being sought and issued by the registry was well before that.

### ***Client LM (Audit Report - Tab 8)***

87. Client LM retained the Respondent in or about September 2006 in respect of a child support matter.

88. On November 10, 2006, the Respondent deposited a \$2,000 retainer from LM into his trust account.

89. The Respondent prepared Invoice No. 3473, dated November 15, 2006, in the amount of \$2,619.75 for fees and disbursements. The fee component of the invoice billed the client for 9.3 hours of work for the period from September 25, 2006 to February 1, 2007. As at the invoice date, however, the Respondent had only performed 3.1 hours of work.

90. On November 15, 2006 the Respondent transferred \$2,000 from his trust account to his general account in partial payment of Invoice No. 3473.

91. The Respondent prepared a second copy of Invoice No. 3473 dated February 12, 2007. On or about February 12, 2007, the Respondent wrote to LM and enclosed a copy of this invoice.

92. Client LM only received the invoice dated February 12, 2007; she had never seen the version dated November 15, 2006 before it was shown to her by a Law Society investigator.

93. The Respondent, through his counsel's letter date July 17, 2008, admitted as follows with respect to client LM:

This is acknowledged as a case of pre-taking and back dating. The client was not invoiced at the time of the pre-taking. The work was ultimately done.

### ***Client DT (Audit Report - Tab 9)***

94. Client DT retained the Respondent in or about early November 2006 in respect of a child custody matter. DT provided the Respondent with a retainer cheque dated November 7, 2006 in the amount of \$5,000. The cheque was made out to Jeremy Donaldson "in trust" and the note line read "Donaldson retainer/file 1917" .

95. On November 9, 2006, the Respondent deposited the \$5,000 cheque from DT directly to his general account.
96. The Respondent prepared Invoice No. 3462 for \$7,857.74 dated November 8, 2006, billing the client for 30.6 hours of work, for the period from November 1, 2006 to February 16, 2007.
97. The Respondent's time sheets, and the invoice time entries, show that most of the work was done after the November 8, 2006 invoice date. The Respondent deposited the \$5,000 retainer to his general account approximately 99 days before performing the work for which the invoice was rendered.
98. The Respondent also prepared a second invoice which was identical to Invoice No. 3462, except 3462 had been crossed out and No. 3568 was written on the invoice.
99. On or about January 30, 2007, the Respondent prepared Invoice No. 3568 for \$238.43. This invoice did not have dates and amount of time detailed.
100. On February 23, 2007, the Respondent received a further \$4,000 retainer from DT and deposited that retainer to his trust account. On that same day, he transferred \$2,857.74 to his general account to pay the balance of Invoices No. 3462 and No. 3568.
101. The Respondent prepared Invoice No. 3603 for \$2,568.50 dated February 25, 2007, for the period of February 9 to May 18, 2007. This invoice only showed the amount of time worked, without dates.
102. On February 25, 2007, the Respondent transferred \$1,142.26 from his trust account to his general account as partial payment of Invoice 3603. The Respondent's timesheets indicate that at the time of this transfer, the Respondent had only worked 3.5 hours of the total 10.1 hours billed pursuant to Invoice 3603
103. On or about May 23, 2007, the Respondent prepared Invoice No. 3603T dated May 23, 2007, which was identical to Invoice No. 3603 except for the changed date of the invoice and the addition of the dates on which work was performed.
104. The Respondent, through his counsel's letter dated July 17, 2008, admitted as follows with respect to client LM:

This is acknowledged as a case of pre-taking and back dating. The client was not invoiced at the time of the pre-taking. The work was ultimately done.

***Client M.F. (File#1923) (Audit Report - Tab 11)***

105. Client MF retained the Respondent in early January 2007 and provided him with a retainer cheque dated January 5, 2007 in the amount of \$1,500.
106. On January 11, 2007, the Respondent deposited MF's \$1,500 retainer to his trust account.
107. The Respondent prepared Invoice No. 3547 for \$3,210.37 on January 15, 2007. The invoice showed 11.3 hours worked for the period January 8 to February 25, 2007.
108. On January 15, 2007, the Respondent transferred \$1,500 from his trust account to the general account as partial payment of Invoice No. 3547. The invoice shows that as of January 15, 2007 the Respondent had worked 2.0 hours rather than the 11.3 billed. Further, the disbursements shown on the invoice had not been incurred as of the invoice date.
109. MF received a different version of Invoice No. 3547 dated March 1, 2007, which showed that \$1,500 had been paid from trust and \$1710.37 remained outstanding.

110. MF had not seen the January 15, 2007 version of the invoice and was unaware of its existence.

111. The Respondent, through his counsel's letter date July 17, 2008, admitted as follows with respect to client MF:

This is acknowledged as a case of pre-taking and back dating. The client was not invoiced at the time of the pre-taking. The work was ultimately done.

***Client RH (Audit Report - Tab 12)***

112. Client RH retained the Respondent in or about September 2007 on an estate matter. On September 28, 2007, the Respondent deposited a \$12,000 retainer from RH to his trust account.

113. The Respondent prepared Invoice No. 3989 for \$1,200 dated September 28, 2007 and on that date transferred that amount from trust to the general account. The invoice does not show the dates on which work was performed or the amount of time spent on each task.

114. Invoice No. 3989 including a filing fee of \$208. The registry company billed the Respondent \$208 on October 3, 2007, six days after the client had been invoiced for it.

115. Wiseman notes that a review of the file appears to indicate that most of the work was completed after the date of the invoice.

116. The Respondent, through his counsel's letter date July 17, 2008, admitted that billing RH for the \$208 filing fee as a disbursement before the Respondent himself had been billed was an example of "pre-taking"

***Client F.S. (Audit Report - Tab 13)***

117. Client FS retained the Respondent on or about July 24, 2007 on a property dispute matter.

118. On July 27, 2007, the Respondent received a \$10,000 retainer from FS and deposited the retainer to his trust account.

119. The Respondent prepared Invoice No. 3892 for \$4,973.54 dated July 31, 2007 and transferred that amount from trust to the general account on July 31, 2007. The invoice billed for 18.9 hours of work, for the period from July 31 to August 3, 2007. This work had not yet been performed as of the July 31, 2007 invoice date.

120. On August 3, 2007, the Respondent wrote to FS stating that the \$10,000 retainer would be used to pay his accounts as they came due. However, as of that date, the Respondent had already transferred \$4,973.54 of FS's \$10,000 retainer from his trust account to his general account, to fund payment of payroll cheques.

121. The Respondent prepared Invoice No. 3900 for \$2,556.47 dated August 8, 2007, and on August 8, 2007 transferred that amount from his trust account to his general account. The client was billed for 10 hours of work, which had not been performed as of the invoice date.

122. The Respondent used the \$2,556.47 transfer to fund cash withdrawals and a cheque for \$1,087.50 to "cover a trust shortage" .

123. The Respondent prepared Invoice No. 3975 for \$4,870.35 dated September 20, 2007, and transferred \$2,469.99 (the balance of the \$10,000 retainer) from his trust account to his general account on September

20, 2007. The client was billed for 16.6 hours of work.

124. Invoice Nos. 3892, 3900 and 3975 were back-dated as the work billed for had not been completed as at the date of the invoices.

125. On or about October 2, 2007, the Respondent prepared Invoice No. P3982 for \$9,229.13. This invoice covered the same time period as the three invoices previously prepared by the Respondent. Invoice P3982 indicated that \$9,229.13 was paid from the trust account to the general account.

126. Invoice No. P3982 was subsequently reduced by 3 hours and revised to \$8,554.18.

127. The Respondent, through his counsel's letter dated July 17, 2008, admitted and stated as follows with respect to client FS:

This is acknowledged as a case of pre-taking and back dating. The client was not invoiced at the time of the pre-taking. The work was ultimately done. The Respondent maintains that FS was not double billed.

***Misappropriation of Trust Balances in 2003 (Audit Report - Tab 15)***

128. On or about September 15, 2003, the Respondent cleared the following client trust balances:

<b>File#</b>	<b>Amount</b>
1563	23.49
1587	19.00
1399	62.00
040	115.48
008	22.00
005	31.66
<b>Total:</b>	<b>273.63</b>

129. In most of these cases, the Respondent simply closed the account by paying the balance with a cheque to his general account. He did not render an account, nor did he incur a disbursement justifying the transfer of the funds.

130. Murray's letter to the Law Society of July 17, 2008 states as follows with respect to the closing of clients' trust balances in 2003:

The findings in the auditor's report ... are acknowledged as accurate. ... The Respondent will reimburse these clients the relevant sum in a fashion acceptable.

***Professional Conduct Handbook, Chapter 4, Rule 6 (Audit Report - Tab 4)***

131. Client DL retained the Respondent in or about November 2005 on a personal injury matter. A contingency fee agreement (25% of any amount recovered, plus disbursements) was signed by the client on November 22, 2005.

132. On or about December 6, 2006, ICBC made a settlement proposal for \$32,068. The Respondent received instructions from DL to accept the settlement proposal.

133. The Respondent prepared Invoice No. 3505 on December 6, 2006. This invoice included fees of \$7,500 and disbursements of \$8,909.97, with a discount of \$2,778.82.

134. The Respondent prepared a second Invoice No. 3505 on December 6, 2006; this version included fees of \$4,500 (\$3,000 less than the first invoice), and disbursements of \$9,131.15 (\$221.18 more than on the first version).

135. Both versions of the December 6 invoice totaled \$13,631.15.

136. On December 7, 2006, the Respondent emailed DL outlining the terms of the settlement proposal he had received from ICBC.

137. On December 7, 2006, the Respondent received the settlement cheque for \$32,068 and deposited it to his trust account that same day.

138. The Respondent prepared Invoice No.3507 to himself for fees and taxes totaling \$3,000. He then transferred \$13,631.15 for Invoice No. 3505 and \$3,000 for Invoice No. 3507 from his trust account to his general account.

139. On December 7, 2006, the balance of the settlement funds were paid out for bills incurred in the course of the matter, including \$380.00 paid out from his general account.

140. There is no record in the Respondent's books and records of client DL receiving any settlement proceeds.

141. The Respondent's counsel, Murray, wrote to the Law Society on July 17, 2008. That letter states as follows with respect to DL:

...DL beseeched the Repondent that he discount his fees so she would end up with some cash. He agreed to do so, and at the same time, inherently agreed to have his firm " eat" some of the disbursements which the auditor notes the Respondent never did receive payment for from the client (\$380). The Respondent agreed to DL's request, AND her request that the funds come to her in cash, as he recalls, because she was the ongoing recipient of a pension of some sort (disability he thinks) which would be compromised if the payor could trace a cheque to her from his firm. Once the [L] proceeds were in general, he took at \$3,000 draw into his personal account, and drew \$3,000 in cash from it and gave it to Ms. [L]...

### **Breaches of Law Society Rules**

142. The Audit Report concluded that between 2002 and 2007, the Respondent breached accounting rules and failed to maintain his firm's books and records in accordance with the Law Society Rules. The Audit Report details evidence of client misappropriations and multiple attempts to mislead clients and to mislead the Law Society.

### ***Rule 3-48(3)***

143. The Respondent failed to ensure that his duties and responsibilities under Division 7 of the Law Society Rules (Trust Accounts and Other Client Property) were carried out, contrary to Rule 3-48(3).

144. The Audit Report states at Page 5 that:

The member did not take personal responsibility to ensure all Division 7 rules were complied with. The Trust Reports for the years 2003 to 2007 reported many exceptions. In the Trust Reports for the year ended February 28, 2006, the accountants reported twenty eight exceptions, and for the year ended February 28, 2007 they reported twenty four exceptions.

145. It is agreed that the Trust Reports for the years ending February 28, 2003; February 29, 2004; February 28, 2005; February 28, 2006; and February 28, 2007 - all as set out at Appendix " A" of the Audit Report - fairly and accurately set out the exceptions to the Respondent's compliance with the Law Society's trust accounting rules.

146. Murray's letter to the Law Society of July 17, 2008 confirms the Respondent's acceptance of responsibility for his various breaches of the trust accounting rules set out in Division 7:

Many of these issues, as pointed out by the auditor, have been extant for some time in the Trust Reports to the LSBC over the years have noted a number of exceptions. In a letter to Ms. [Ciolfitto] of your office dated and faxed July 14, 2008, the Respondent deals with the remedial initiatives he has taken to deal with this issue. He also, by reading of this letter, fully accepts without equivocation, his responsibilities for this issue.

### **Rule 3-51(1)**

147. The Respondent deposited client trust funds received as a retainer directly into his general account, when the retainer should have been deposited to trust. Particulars of this breach of Rule 3-51(1) are:

a) On or about November 9, 2006, client DT provided to the Respondent a retainer of \$5,000, which the Respondent deposited to his General Account.

### **Rule 3-56 (1.2(a))**

148. The Respondent made or caused to be made payments from trust funds even though his trust accounting records were not current, contrary to Rule 3-56(1.2(a)). The Audit Report notes that this continued through 2007 as payments were made from the trust funds when the trust account had not been reconciled on a timely basis. (see Audit Report, page 5). Examples of such breaches are found at Appendix A of the Audit Report:

a) 2003 Trust Report: On six separate occasions, the Respondent overdrew six separate trust accounts by writing cheques and not having an accurate accounting of the balance of each account;

b) 2004 Trust Report: On four separate occasions, the Respondent overdrew four separate trust accounts by writing cheques and not having an accurate accounting of the balance of each account;

c) 2005 Trust Report: On several occasions, the Respondent overdrew his trust accounts. All the trust bank accounts between September 2004 and February 2005 were not prepared on a timely basis;

d) 2006 Trust Report: On several occasions, the Respondent overdrew his trust accounts. Trust bank reconciliations were not being prepared on a timely basis; and

e) 2007 Trust Report: On several occasions, the Respondent overdrew his trust accounts. Trust transactions were not posted for five months for the period October 2006 to March 2007 and trust bank reconciliations were not prepared on a timely basis.

**Rule 3-56(1) and Rule 3-57(2)**

149. As detailed above, the Respondent on numerous occasions withdrew client trust funds from his trust account and deposited them to his general account even though (1) the said funds were not a debt owing by the client to the Respondent, for payment of fees or otherwise; and (2) the Respondent did not prepare and immediately deliver to the client a bill for the fees withdrawn from trust, as in most cases the work had not been performed at the time the funds were withdrawn from trust.

**Rule 3-62(1)(a)**

150. The Respondent did not keep file copies of bills delivered to clients that accurately showed the date(s) charges were made, contrary to Rule 3-62(1)(a). Particulars of such breaches of Rule 3-62(1)(a) are:

- a) On July 30, 2006, the Respondent wrote to Client CM in respect of a matrimonial matter, enclosing Invoice No. 3321 dated July 30, 2006 for \$2,061.20. The invoice did not show any dates of when the work were performed;
- b) The Respondent prepared Invoice No. 3344 dated July 30, 2006 for \$1,200 in respect of a divorce matter for Client CM. The invoice did not show any dates of when the work was performed ;
- c) The Respondent prepared Invoice No. 3989 dated September 28, 2007 for \$1,579.90 in respect of an estate matter for Client RH. The invoice did not show any dates of when the work was performed.

**Rule 3-63(1)(a) and (b)**

151. The Respondent did not record each trust or general transaction promptly, contrary to Rule 3-63(1)(a) and (b). The Audit Report states that trust transactions were not always recorded within seven (7) days, and general transactions were not always recorded within thirty (30) days.

**Rule 3-63(3)**

152. Following his receipt of funds to which Rule 3-63(2) applies, the Respondent did not immediately deliver a bill or issue to the client a receipt for funds received, containing sufficient particulars to identify the services performed and disbursements incurred, contrary to Rule 3-63(3). Particulars of such breaches are summarized above (see Clients DW, DC, MF, TM, CM, LM, DT, MF, FS)

**Rule 3-65(4)**

153. The Respondent did not make the trust reconciliations required by Rule 3-65 within 30 days of the effective date of the reconciliation, contrary to Rule 3-65(4). Wiseman notes in the Audit Report that as of the date of his last attendance at the Respondent's office (January 8, 2008), the Respondent was still not reconciling the trust account within 30 days.

**Rule 3-66(1)**

154. Upon discovering a trust shortage, the Respondent did not immediately pay into his account enough funds to eliminate the shortage, contrary to Rule 3-66(1). Particulars of this breach are:



a) On November 22, 2006, the Respondent issued a trust cheque in the amount of \$591.69, payable to his general account for payment of Invoice #3480 with respect to Client PC. However, no funds had ever been deposited into the trust account for this client. This resulted in a trust shortage of \$591.69. The shortage was not corrected until July 16, 2007.

## Admissions

155. The Respondent admits that at various times between 2003 and 2007, he delivered Statutory Declarations to the Law Society that he knew were false and misleading.

156. The Respondent admits that at various times between 2003 and 2007, he delivered Statutory Declarations to the Law Society that were outside time limits ordered by a Law Society hearing panel on June 16, 2003.

157. The Respondent admits that at various times between 2002 and 2007, he failed to maintain accounting books and records as required by Rule 3-60 and Rule 3-61 of the Law Society Rules.

158. The Respondent admits that at various times between 2002 and 2007, he breached the accounting rules set out in the Law Society Rules, and in particular:

a) failed to ensure that his duties and responsibilities under Division 7 of the Law Society Rules (Trust Accounts and Other Client Property) were carried out, contrary to Rule 3-48(3);

b) deposited client trust funds directly to his general account, contrary to Rule 3-51(1);

c) made or caused to be made payments from trust funds even though his trust accounting records were not current, contrary to Rule 3-56(1.2(a));

d) withdrew or authorized the withdrawal of trust funds under Rule 3-56 in payment of fees without first preparing a bill for those fees and immediately delivering the bill to the client, contrary to Rule 3-57(2);

e) did not keep file copies of bills delivered to clients that accurately showed the date(s) charges were made, contrary to Rule 3-62(1)(a);

f) did not record each trust or general transaction promptly, contrary to Rule 3-63(1)(a) and (b);

g) following his receipt of funds to which Rule 3-61(2) applies, he did not immediately deliver a bill or issue to the client a receipt for funds received, containing sufficient particulars to identify the service performed and disbursements incurred, contrary to Rule 3-61(3);

h) did not make the trust reconciliations required by Rule 3-65 within 30 days of the effective date of the reconciliation, contrary to Rule 3-65(4);

i) upon discovering trust shortages, he did not immediately pay into his account enough funds to eliminate the shortage, contrary to Rule 3-66(1).

159. The Respondent admits that he misappropriated client trust funds by, at various times between 2002 and 2007, billing client and withdrawing funds from trust in respect of such billings for work not yet done or completed.

160. The Respondent admits that he misappropriated client trust funds in September 2003 by withdrawing funds from trust where no work was ever done in respect of the funds withdrawn.

161. The Respondent admits that he misled clients at various times between 2002 and 2007 by advising them that funds provided by such clients had been deposited to and would be held in trust to be applied to accounts rendered by the Respondent, where in fact such funds had already been withdrawn.
162. The Respondent admits that he misled his clients, and sought to mislead the Law Society, by rendering bills to clients that bore a different date from his file copy of the same bill.
163. The Respondent admits that in or about 2006, he breached the *Professional Conduct Handbook* (Chapter 4, Rule 6) by assisting a client to engage in conduct which he knew or ought to have known was dishonest or fraudulent.
164. The Respondent admits that between April 2004 and December 2006, he collected PST from his clients but failed to remit funds due to the provincial government. All PST due from the Respondent's practice had been substantially or entirely remitted by the end of 2008.
165. The Respondent admits that his conduct referred to above constitutes professional misconduct.
166. As a result of these admissions the Respondent undertakes as follows:
1. To resign his membership and not apply for reinstatement to the Law Society of British Columbia for a period of 10 years from July 30, 2008, the date he voluntarily withdrew from practice.
  2. Not apply for admission in any other Law Society without first providing written notification to the Law Society of British Columbia.
  3. Not permit his name to appear on the letterhead of any lawyer or law firm or otherwise work in any capacity for any other lawyer or law firm in British Columbia without the prior written consent of the Law Society of British Columbia.

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[1] The \$15,000 was transferred to the Respondent's trust account on June 11, 2004. It appears the bank made an error with the deposit on June 10, 2004 by depositing the retainer to the general account.