

Admission to Discipline Committee

AGREED STATEMENT OF FACTS

Shawn Dickson Swail

Called to Bar: May 15, 1992

Ceased membership: November 21, 2009

Admission accepted: October 29, 2009

Counsel: Eric Wredenhagen for the Law Society and Henry Wood, QC for the Respondent

Member's Background

1. The Respondent, Shawn D. Swail, was admitted to the bar of the Province of British Columbia on May 15, 1992.
2. From May 15, 1992 to June 1, 1994 the Respondent practised law with the firm Salloum Doak, and thereafter practised as a sole practitioner in Kelowna under the name Swail & Company.
3. The Respondent practises primarily in the areas of real estate conveyancing and civil litigation.
4. On February 8, 2000, the Respondent gave notice to the Law Society that he had applied for bankruptcy. He was discharged from bankruptcy on November 8, 2000.

Citation

5. On July 3, 2008, the Discipline Committee of the Law Society authorized the issuance of a citation to the Respondent, (the " Citation").
6. The Citation was issued on September 10, 2008 and was served on the Respondent's counsel on September 11, 2008.
7. The schedule to the Citation was amended on February 11, 2009 and was served on the Respondent's counsel on that date (the " Amended Citation").
8. The Respondent admits service of the Citation in accordance with Rule 4-15 of the Law Society Rules. He also admits service of the Amended Citation.

Rule 4-43 Investigation

9. On April 24, 2003, the Law Society ordered an investigation of the Respondent's books, records and accounts pursuant to Rule 4-43 of the Law Society Rules (Rule 4-43 order). The order occurred as a result of a complaint to the Law Society made by the Respondent's former client CB (this matter is discussed further below).
10. William Kinsey (" Kinsey"), C.A. was retained by the Law Society to conduct the 4-43 investigation.
11. On or about June 16, 2003, Kinsey delivered an Interim Audit Report to the Law Society (the " Interim Report").

12. On or about July 18, 2007, Kinsey provided the Law Society with his final Audit Report (the " Audit Report").

13. The following is agreed concerning the Interim Report and Audit Report

a) the copies of records attached to the Interim Report and Audit Report are true copies of the originals and are accepted as proof of the facts contained within them;

b) Kinsey 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.

Professional Misconduct As Alleged In Amended Citation

Allegation 6 - Misappropriation (by pre-taking funds from trust before performance or completion of work)

Introduction

14. On a number of occasions (as outlined below), the Respondent withdrew client funds from trust and paid those funds to his general account for work not yet done at the time of the withdrawal. The Respondent ultimately did provide the services billed for, anywhere from a few days to a few months after withdrawing the funds from trust. In some instances (as described below), he retained a " back-dated" office copy of the account rendered to a client, dated the same date as the withdrawal of funds from trust.

Client EA

15. EA retained the Respondent with respect to a matrimonial matter in or about August 2000. He provided the Respondent with a retainer in the amount of \$8,300, which was deposited into the Respondent's trust account on September 6, 2000.

16. On September 18, 2000, the Respondent transferred \$1,482.00 of funds held in trust for EA from his trust account to his general account. He did not render a bill to EA at that time, nor had he done work sufficient to justify this transfer of funds.

17. On March 6, 2001, over five months after the transfer of funds from the trust to the general account, an Examination for Discovery was held in the EA matter. The Respondent then prepared an invoice for EA dated March 9, 2001, in the amount of \$1,482, representing his fee for the Examination.

18. The Respondent prepared a second copy of the invoice to EA and back-dated it to September 18, 2000, the date he withdrew the amount of \$1,482 from trust.

19. The Respondent's withdrawal of \$1,482 of client trust funds on September 18, 2000 as set out above was a misappropriation.

20. The Respondent breached Rule 3-56(1) and Rule 3-57(2) of the trust accounting rules. He also failed to record these transactions promptly, contrary to Rule 3-63(1).

Clients WM and EM

21. On or about February 7, 2002, WM and EM met with the Respondent in connection with their dispute with a contractor.

22. On March 7, 2002, the Respondent and WM and EM met again. WM and EM provided the Respondent with a \$10,000 retainer, which he deposited to trust that same day.

23. Also on March 7, 2002, the Respondent wrote a cheque from his trust account to his general account for \$3,500. On March 12, 2002, he wrote a further cheque from his trust account to his general account for \$1,000. The Respondent did not issue a bill to WM and EM prior to either of these withdrawals from trust.

24. On or about April 3, 2002, the Respondent prepared and sent WM and EM an invoice for \$4,640.16 for services rendered between February 7, 2002 and April 3, 2002.

25. The Respondent prepared a second copy of this invoice and back-dated it to March 7, 2002, the date of his initial withdrawal of funds from trust. Notwithstanding the date of this invoice, it was stated to be " For services rendered from February 7, 2002 to April 3, 2002.

26. On April 11, 2002 the Respondent transferred \$2,000 from his trust account to his general account.

27. On April 30, 2002, the Respondent transferred \$2,068.20 from his trust account to his general account.

28. On or about April 30, 2002, the Respondent prepared an invoice for WM and EM for \$4,068.20 for services rendered between April 4, 2002 and April 30, 2002. The Respondent sent this invoice on or about May 30, 2002.

29. The Respondent had also prepared two other invoices on WM and Em's account bearing the dates he withdrew funds from trust. The first invoice was dated April 11, 2002 in the amount of \$2,350.70 and the second invoice was dated April 30, 2002 in the amount of \$1,717.50. However, although the Respondent maintained copies of these invoices in his files, he did not send them to WM and EM.

30. In his October 11, 2003 letter to the Law Society the Respondent provided the following explanation with respect to the bills mentioned in the preceding paragraph:

The writer did extensive work on this file. On April 15 the client was billed 2,350.70 and again on April 30 the file was billed 1,717.50. These amounts were billed for services performed and were legitimate billings. These bills were issued shortly apart due again to a need for income and the fact the work had been done. Due to embarrassment of sending out 2 bills in such short time duration, albeit legitimate, the writer forwarded a combined bill to the client on May 30, 2002 for the combined amount of the April 15 and 30th bills.

31. The Respondent admits that he misappropriated client trust funds by the aforementioned withdrawal from trust of \$3,500 on March 7, 2002. As of that date, he had done insufficient work to justify this payment and, moreover, did not render an account to his clients prior to making that withdrawal.

32. The Respondent breached Rules 3-56(1) and 3-57(2) of the trust accounting rules. In particular, he failed to render accounts to his clients prior to the March 7, 2002, March 12, 2002 and April 11, 2002 trust withdrawals.

Client BR

33. BR retained the Respondent in or about 1999 in connection with a personal injury action. The Respondent took the file on a contingent fee basis. The action was settled on the basis of the defendant making monthly payments to the Respondent, in trust for BR. It was agreed that the Respondent would satisfy payment of his fees by billing for and withdrawing from trust his agreed percentage of each monthly

payment as it came in. The balance would accumulate in trust until such time as BR called on the Respondent to remit funds to him, which he did periodically.

34. On February 8, 2001, the Respondent withdrew \$560.60 of the funds held in his trust account for BR by transferring these funds to his general account.

35. On February 8, 2001, the Respondent withdrew a further \$251.40 of the funds held in his trust account for BR by transferring these funds to his general.

36. There was no billing to the client to support either of these withdrawals. The Respondent did not advise BR that he was taking BR's funds from trust, for his own use.

37. On June 1, 2001, the Respondent deposited into his trust account the \$251.40 he withdrew on February 8, 2001. The transaction was recorded on the Respondent's books for the first time on June 1, 2001.

38. On August 24, 2001, the Respondent deposited into his trust account the \$560.60 he withdrew on February 8, 2001.

39. The Respondent's withdrawal of client trust funds on February 8, 2001 as set out above constituted misappropriations.

40. The Respondent breached Rules 3-56(1) and (1.2) and Rule 3-57(2) of the trust accounting rules.

Client DS

41. DS retained the Respondent with respect to a matrimonial matter in or about February 2001. He provided the Respondent with a retainer of \$2,000 on February 27, 2001 and a further retainer of \$5,000 on May 4, 2001.

42. On May 1, 2001, the Respondent withdrew \$4,208 of the funds held in trust for DS by transferring them to his general account.

43. On or about May 4, 2001, the Respondent prepared an invoice for DS for \$4,208, for his services rendered from March 14, 2001 to May 4, 2001.

44. The Respondent transferred the funds from trust approximately three days before all the work had been completed and the bill prepared.

45. The Respondent misappropriated client trust funds by transferring funds from his trust to his general account without having performed or completed the work subsequently billed for.

46. The Respondent breached Rules 3-56(1) and (1.2) and Rule 3-57(2) of the trust accounting rules.

Client SW

47. SW retained the Respondent in December 2001 with respect to a matrimonial matter. She provided a \$15,000 retainer, which was deposited to the Respondent's trust account on December 28, 2001.

48. On or about December 31, 2001, the Respondent prepared an invoice on SW's account in the amount of \$2,335.70, for services rendered from December 19, 2001 to January 2, 2002.

49. On December 31, 2001, the Respondent withdrew \$2,335.70 of the funds held in trust for SW by writing a cheque to his general account.

50. The Respondent withdrew the \$2,335.70 from trust approximately two days before all the work billed for

had been completed.

51. On January 7, 2002, the Respondent transferred a further \$800 of funds held in trust for SW by writing a cheque from his trust account to his general account for \$800.

52. On or about January 7, 2002, the Respondent prepared an invoice in the amount of \$800, for services rendered from December 19, 2001 to February 7, 2002.

53. The Respondent transferred the \$800 from trust approximately one month before all the work billed for was completed.

54. The Respondent misappropriated client trust funds by withdrawing funds held in trust for his client SW without having performed or completed the work subsequently billed for.

55. The Respondent breached Rules 3-56(1) and (1.2) and Rule 3-57(2) of the trust accounting rules.

Admission

56. The Respondent admits that his conduct in misappropriating client trust funds (as described in the paragraphs above) through "pre-taking" such funds, namely, billing for work not yet done and removing funds from trust in respect of work not yet done, constitutes professional misconduct.

Allegation 7 - SW: improper withdrawal of \$1,500 from trust

57. On January 2, 2002, the Respondent withdrew \$1,500 of the funds held in trust for his client SW by transferring these funds to his general account.

58. The Respondent did not prepare or deliver a bill prior to withdrawing the \$1,500 from trust, or at all.

59. The Respondent stated in his letter to the Law Society dated October 11, 2003 that the January 7, 2002 invoice for \$800 was supposed to have been revised by his secretary to include a further \$1,500 for fees and re-dated for February 7, 2002.

60. The Respondent admits that he breached Rules 3-56(1) and (1.2) and Rule 3-57(2) of the trust accounting rules.

Allegation 11 - Misleading the Law Society re: Back-dating

61. As set out above, the Respondent "back-dated" invoices to support a transfer of client trust funds to his general account prior to performance or completion of the work billed for.

62. This back-dating was done with the intention of misleading clients as to the date(s) that their funds were withdrawn from trust, and misleading the Law Society about the dates on which work was performed for a particular client.

63. In his April 29, 2008 letter to Law Society counsel, the Respondent wrote:

During this time [1999 to 2002], as exposed in the Kinsey report, I improperly took money from my trust account from time to time when I was in financial crisis. These monies were taken to cover my immediate needs and my responsibilities to my children. On each occasion that I took money, I rationalized to myself that since I would soon be doing work for the particular client, and/or the client would soon be depositing the money to my trust account, no real harm would result from these improper transfers.

Admission

64. The Respondent admits that his conduct in preparing falsely back-dated and dual-dated client invoices, in an attempt to conceal from clients and from the Law Society his improper withdrawals from trust accounts, constitutes professional misconduct.

Allegation 5 - Misappropriation (withdrawing trust funds where no funds in trust for the client)

Client TO

65. TO retained the Respondent in or about 1999 to represent him in a matrimonial matter.

66. On March 7, 2001, the Respondent transferred \$358.02 from his trust account to his general account in respect of the TO file. At that time, there was only \$35.41 in trust for client TO, creating a trust shortage of \$322.61.

67. On April 17, 2001, at a time when there was a trust shortage of \$322.61 on the TO file, the Respondent transferred further amounts of \$933.80 and \$500 from his trust account to his general account in respect of TO, creating a trust shortage of \$1,756.41.

68. On April 23, 2001, \$1,433.80 was deposited to the trust account, reducing the trust deficit to \$322.61.

69. The transactions on April 17, 2001 were not recorded until after the April 23, 2001 deposit.

70. On May 15, 2001, the Respondent withdrew \$2,080.12 from his pooled trust account and transferred that sum to his general account in respect of the TO file. As there was already a trust shortage of \$322.61 in respect of TO, the May 15, 2001 withdrawal created a trust shortage of \$2,402.73.

71. On August 24, 2001, the Respondent deposited \$358.02 and \$2,080.12 to his trust account, bringing the trust balance for client TO back up to \$35.41.

72. The March 7 and May 15, 2001 transactions were not recorded until after the deposit was made on August 24, 2001.

73. The Respondent misappropriated client trust funds by withdrawing funds from his pooled trust account to pay an invoice or invoices rendered to TO when TO did not have sufficient funds in trust to satisfy payment.

74. The Respondent breached the following trust accounting rules:

- a) he failed to account to his client for funds received on his client's behalf, contrary to Rule 3-48(1);
- b) he failed to maintain sufficient funds on deposit in his trust account to meet his obligations with respect to funds held in trust for his client, contrary to Rule 3-55;
- c) he failed to ensure that there were sufficient funds to the client's credit in trust, contrary to Rule 3-56(1.2);
- d) he failed to record the above transactions in chronological order, contrary to Rule 3-56(3);
- e) he failed to record the transactions promptly, contrary to Rule 3-63(1).

Client EA

75. As stated above (see paragraph 15), EA retained the Respondent in or about August 2000 and provided the Respondent with a retainer of \$8,300.

76. By April 17, 2001, the Respondent had depleted the retainer and EA's trust balance stood at zero. Nonetheless, on that date, the Respondent transferred \$100.21 from his trust account to his general account in respect of the EA file, creating a trust shortage of \$100.21. On April 17, 2001, the Respondent transferred \$100.21 from his trust account to his general account. At that time, there were no funds in trust for client EA, creating a trust shortage of \$100.21.

77. The Respondent repaid the \$100.21 to his trust account on August 24, 2001, and did not record the April 17, 2001 withdrawal until that date.

78. The Respondent misappropriated client trust funds by withdrawing funds in respect of EA from his pooled trust account when that client did not have sufficient funds in trust to satisfy payment.

79. The Respondent breached the following trust accounting rules:

- a) he failed to account to his client for funds received on his client's behalf, contrary to Rule 3-48(1);
- b) he failed to maintain sufficient funds on deposit in his trust account to meet his obligations with respect to funds held in trust for his client, contrary to Rule 3-55;
- c) he failed to ensure that there were sufficient funds to the client's credit in trust, contrary to Rule 3-56(1.2);
- d) he failed to record the above transactions in chronological order, contrary to Rule 3-56(3);
- e) he failed to record the transactions promptly, contrary to Rule 3-63(1).

Client " Miscellaneous"

80. On May 10, 2001, the Respondent transferred \$920 from his trust account to his general account on a matter recorded as " miscellaneous" on the ledger sheet. At that time, there were no funds in trust for this matter, creating a trust shortage of \$920.

81. On August 24, 2001, the Respondent repaid the \$920 to his trust account.

82. The Respondent misappropriated client trust funds by withdrawing funds held in his pooled trust account to pay an invoice or invoices purportedly rendered to a client who did not exist and for whom no funds were held in trust.

83. Swail breached the following trust accounting rules:

- a) he failed to ensure that there were sufficient funds to the client's credit in trust, contrary to Rule 3-56(1.2);
- b) he failed to record the above transactions in chronological order, contrary to Rule 3-56(3); and
- c) he failed to record the transactions promptly, contrary to Rule 3-63(1).

Client DS

84. On May 1, 2001, the Respondent withdrew \$4,208.10 of funds held in his pooled trust account from his trust account and transferred these funds to his general account in respect of the DS matter. At that time,

there were no funds in trust for DS, creating a trust shortage of \$4,208.10.

85. On May 4, 2001, the Respondent deposited \$5,000 to his trust account on behalf of DS.

86. The May 1, 2001 withdrawal was not recorded until after the deposit was made on May 4, 2001.

87. On December 21, 2001, the Respondent withdrew \$500 from his pooled trust account and transferred these funds to his general account in respect of the DS file. At that time, there were no funds in trust for DS, creating a trust shortage of \$500.

88. On January 8, 2002, the Respondent deposited \$3,587.17 to his trust account on behalf of DS.

89. The December 21, 2001 transaction was not recorded until after the deposit was made on January 8, 2002.

90. On January 31, 2002, the Respondent withdrew \$5,023.25 from his pooled trust account and transferred that amount to his general account in respect of the DS file. At that time, there was \$1,587.17 in trust for DS, creating a trust shortage of \$3,436.08.

91. On February 1, 2002, the Respondent deposited \$3,336.08 to his trust account on behalf of DS.

92. The January 31, 2002 transaction was not recorded until after the deposit was made on February 1, 2002.

93. On March 11, 2002, the Respondent withdrew \$1,000 from his pooled trust account and transferred that sum to his general account in respect of the DS file. At that time, there were no funds in trust for DS, creating a trust shortage of \$1,000.

94. On March 18, 2001, the Respondent withdrew a further \$1,000 from his pooled trust account and transferred that amount to his general account in respect of the DS file. At that time, the trust account for DS had a \$1,000 deficit, creating a trust shortage of \$2,000 following the March 18, 2001 trust withdrawal.

95. On April 9, 2002, the Respondent deposited \$3,000 to his trust account on behalf of DS.

96. The March 11 and March 18, 2001 withdrawals were not recorded until after the deposit was made on April 9, 2002.

97. On May 9, 2002, the Respondent withdrew \$500 from his pooled trust account and transferred that amount to his general account in respect of the DS file. At that time, there were no funds in trust for DS, creating a trust shortage of \$500.

98. On May 16, 2002, the Respondent transferred \$1,117 from his trust account to his general account. At that time, the trust account for client DS had a \$500 deficit, creating a trust shortage of \$1,617.

99. On May 17, 2002, the Respondent deposited \$3,500 to his trust account on behalf of client DS.

100. The May 9 and May 16, 2001 transactions were not recorded until after the deposit was made on May 17, 2002.

101. Kinsey's summary of the Respondent's trust account transactions highlights the shortages and shows the transactions in date order.

102. The Respondent misappropriated client trust funds by withdrawing funds from his pooled trust account to pay an invoice or invoices rendered to DS when DS did not have sufficient funds in trust to satisfy payment.

103. The Respondent breached the following accounting rules:

- a) he failed to account to his client for funds received on his client's behalf, contrary to Rule 3-48(1);
- b) he failed to maintain sufficient funds on deposit in his trust account to meet his obligations with respect to funds held in trust for his client, contrary to Rule 3-55;
- c) he failed to ensure that there were sufficient funds to the client's credit in trust, contrary to Rule 3-56(1.2);
- d) he failed to record the above transactions in chronological order, contrary to Rule 3-56(3);
- e) he failed to record the transactions promptly, contrary to Rule 3-63(1).

Client CB

104. CB retained the Respondent in or about October 1996 to represent her in a sexual abuse claim, which settled in August 2001 (this file is also discussed further below in conjunction with a separate allegation in the Amended Citation).

105. On August 14, 2001, the Respondent transferred \$3,586 from his trust account to his general account in respect of the CB file.

106. On August 15, 2001, the Respondent transferred a further \$4,000 from his trust account to his general account in respect of the CB file.

107. At the time of the two transfers referred to above, there were no funds in trust for client CB, creating a trust shortage of \$7,586.

108. On August 17, 2001, the Respondent received settlement funds in trust for CB, in the amount of \$61,480.81.

109. The August 14 and August 15, 2001 trust transactions were not recorded until after the deposit of the settlement funds on August 17, 2001.

110. The Respondent misappropriated client trust funds by withdrawing funds from his pooled trust account to pay an invoice or invoices rendered to CB when CB did not have sufficient funds in trust to satisfy payment.

111. The Respondent breached the following accounting rules:

- a) he failed to account to his client for funds received on his client's behalf, contrary to Rule 3-48(1);
- b) he failed to maintain sufficient funds on deposit in his trust account to meet his obligations with respect to funds held in trust for his client, contrary to Rule 3-55;
- c) he failed to ensure that there were sufficient funds to the client's credit in trust, contrary to Rule 3-56(1.2);
- d) he failed to record the above transactions in chronological order, contrary to Rule 3-56(3);
- e) he failed to record the transactions promptly, contrary to Rule 3-63(1).

Admission

112. With respect to paragraphs 65-111, above, the Respondent admits that he professionally misconducted himself by withdrawing funds from trust in respect of his clients TO, EA, DS and CB (as well as the "miscellaneous" matter referred to above), where those clients did not have any funds in trust, or did not have sufficient funds in trust to cover the withdrawal, constitutes professional misconduct.

Allegation 10 - Providing False and Misleading Information to the Law Society in June 22, 2005 letter

113. As noted above, on May 10, 2001, the Respondent transferred \$920 from his trust account to his general account on a "miscellaneous" matter. At that time, there were no funds in trust for this matter, creating a trust shortage of \$920.

114. The Respondent prepared a Statement of Account dated May 10, 2001 for \$920 and addressed it to "PK" who in fact was not a client, but rather a friend of the Respondent's. The account was for work purportedly done between May 1 and May 10, 2001 in respect of a matrimonial matter.

115. During the investigation of the complaints resulting in the Citation herein, the Respondent wrote to the Law Society on June 22, 2005 and stated, in part:

The \$920 was billed to PK, in relation to a matrimonial issue she wanted an opinion on in early May 2001. Research is on the miscellaneous file pertaining to that matter and a \$1,000 retainer had been requested. It is evident that \$920 was removed but the retainer was never provided. The claim was not pursued further. We enclose the account.

116. These statements were false. On April 29, 2008, in a letter from the Respondent to counsel for the Law Society, the Respondent admitted as follows:

PK was never a client. I needed the money at that time and I took it being confident that I could replace it quickly and legitimately balance my trust account from other legitimate revenues. To make matters worse, when questioned by the Law Society through Mr. Kinsey and others, I panicked and was not forthcoming.

Admission

117. In his June 22, 2005 letter, the Respondent provided false and misleading explanations to the Law Society in response to its investigation, including generating and delivering a false invoice to mislead the Law Society. The Respondent admits that his conduct in this regard constitutes professional misconduct.

Allegation 8 - Evading payment of GST, PST and Income Tax and Aiding, counseling and assisting Client to Act in a Manner contrary to Law and contrary to Chapter 1, Rule 1(1) of the *Professional Conduct Handbook*

118. As stated above, CB retained the Respondent in or about October 1996 to represent her in a sexual abuse claim. The Respondent worked on the file with the assistance of another lawyer, Grant Hardwick of the firm Doak Shireff.

119. The Respondent's fees were based on a 30% contingency, plus disbursements. The matter settled in approximately August 2001. Doak Shireff received \$90,000 in settlement funds on behalf of CB, and after deduction of its own fees and disbursements, forwarded the sum of \$61,480.81 to the Respondent in trust for CB.

120. The Respondent issued an account dated August 1, 2001, and subsequently issued a revised and reduced account, also dated August 1, 2001. With respect to the reduction, the Respondent directed CB to pay the sum of \$12,800 directly to a company called R Entertainment which was controlled by the Respondent. The purpose of this arrangement was to avoid the payment of tax on that portion of the fees that was being paid directly to R Entertainment.

121. CB ultimately complained to the Law Society about the Respondent's billing, including the R Entertainment payment.

122. The Respondent responded to that complaint by his letter to the Law Society dated August 20, 2003, and stated as follows with respect to the payment of \$12,800 from CB to R Entertainment.

By agreement, CB and I arranged for payment of \$12,800 to R Entertainment, deliberately bypassing my Swail and Company Law practice and deliberately not following our contractual arrangement for payment of fees outlined in the contingency fee agreement. I acknowledge my wrongdoing in participating in this action and accept full responsibility.

Admission

123. The Respondent admits that he professionally misconducted himself by directing a client (CB) to pay a portion of the fees owed to him to a third party, with the intent of evading tax. The Respondent further admits that he aided and counseled CB to act contrary to the law, contrary to Chapter 1, Ruling 1(1) of the *Professional Conduct Handbook*.

Allegation 9 - Filing False and Misleading GST, PST and Income Tax Returns

124. The Respondent's direction to CB to pay \$12,800 in fees to him indirectly through R Entertainment (as set out above) resulted in his filing false and misleading GST, PST and income tax returns for the year 2001, by having the effect of understating his true income for that year.

125. In his letter to the Law Society of August 20, 2003, the Respondent confirmed that " all PST, GST has been paid out of the \$12,800 and the money has been declared as income for the year 2001, albeit this was only recently done."

126. In a subsequent letter to the Law Society dated October 11, 2003, the Respondent stated as follows with respect to the payment to R Entertainment: " As admitted previously, it was a joint agreement to avoid paying tax."

Admission

127. The Respondent admits that his conduct in intentionally filing false and misleading GST, PST and income tax returns for 2001 constitutes professional misconduct.

Allegation 2 - Breach of Court Order dated March 27, 2000

128. TO retained the Respondent in or about 1999 to represent him in a matrimonial matter.

129. On March 27, 2000, Master Bishop made an Order in the Supreme Court of British Columbia (the " Bishop Order") ordering the sale of three pieces of real property belonging to TO and his spouse. The Bishop Order further provided that " ... the net proceeds of sale ... shall be divided equally and paid into trust with counsel for each party ... which net proceeds in trust shall not be paid out to either party without the other party's written consent or by Court Order."

130. On October 27, 2000, following an offer of settlement from opposing counsel and receipt of instructions from his client to accept that offer, but before formally accepting the offer, the Respondent paid himself the amount of \$4,808.90 from trust as fees in the TO matter. At the time, he had obtained neither written consent from the other party, nor a Court Order. Accordingly, the Respondent breached the Bishop Order on October 27, 2000.

Admission

131. The Respondent admits that his breach of the Bishop Order constitutes professional misconduct.

Allegation 1 - Breach of Undertaking given to the Law Society

132. The Respondent filed for bankruptcy on February 7, 2000 and notified the Law Society of his bankruptcy and the appointment of a trustee by letter dated February 8, 2000.

133. On March 14, 2000, the Respondent executed a Declaration to the Law Society in connection with his bankruptcy (the " Declaration"). The Declaration included, as paragraph 11 thereof, the following undertaking:

In the event that I am permitted to operate a trust account, I agree to appoint [Marvin Geekie] as a co-signatory on all of my trust accounts and I undertake not to be the sole signatory on such accounts so long as I remain an insolvent lawyer as defined under the Law Society Rules and to notify the Law Society of the details of such arrangements when completed.

(the " Undertaking")

134. In May 2000 and July 2000, the Respondent breached the Undertaking by unilaterally transferring funds electronically from his trust account to his general account, via Internet banking.

135. In a letter dated October 11, 2003 written by the Respondent to the Law Society, he stated as follows with respect to the Internet transfers from his trust account:

... the internet trust transfers reported in Mr. Kinsey's report were as a result of simple ignorance that internet trust transfers were not acceptable trust transfer practice. This was not an attempt on my part to circumvent bankruptcy rules, in fact that had not even occurred to me...We had only done a few transfers when upon our annual trust review our accountant advised us that we were breaching a law society rule. We immediately ceased this practice upon so being advised.

136. On April 29, 2008, the Respondent wrote to Paula Kalsi, counsel for the Law Society, and advised as follows with respect to the Internet transfers from his trust account in 2000:

Internet transfers - Regrettably I was oblivious to the rule, and/or that it was being infringed by doing the internet transfers. The declaration was in my mind with regard to my bank accounts and signing cheques. The connection to a direct deposit was not in my contemplation.

137. The Respondent breached Law Society Rule 3-56(2) when he withdrew client trust funds in May and July 2000.

Admission

138. The Respondent admits that his breach of undertaking to the Law Society as described above, albeit unintentional, constitutes professional misconduct.

Allegations 3 and 4 of Amended Citation: Breaches of Accounting Rules

Allegation 3

139. The Respondent admits that at various times between 2000 and 2005, he failed to maintain accounting books and records as required by Rule 3-60 and Rule 3-61 of the *Law Society Rules*.

Allegation 4

140. The Respondent admits that at various times between 2000 and 2005, he breached the following accounting rules contained in the Law Society Rules: Rule 3-48(1), Rule 3-55, Rule 3-56(1), (1.2) and (3), Rule 3-57(2), Rule 3-59(3), Rule 3-63(1), Rule 3-65(4), and Rule 3-66(1) and (2).

In addition to the breaches of accounting rules specifically detailed in this Agreed Statement of Facts, the Respondent and the Law Society accept as accurate the summaries of accounting rules breaches by the Respondent set out at Appendix A and Appendix D of the Audit Report.

141. As a result of these admissions the Respondent undertakes as follows:

1. To terminate his membership in the Law Society of British Columbia effective November 21, 2009, at 5 p.m. and not apply for reinstatement to the Law Society for a period of eight (8) years from that date.
2. Not to apply for admission to the law society of any other province or territory in Canada without first providing written notification to the Law Society of British Columbia.
3. Not to permit his name to appear on any letterhead of any lawyer or law firm or otherwise work for any other lawyer or law firm in British Columbia without the written consent of the Law Society of British Columbia