

THE LAW SOCIETY OF MANITOBA

IN THE MATTER OF:

ALASTAIR WINSTON CLARKE

- and -

IN THE MATTER OF:

THE LEGAL PROFESSION ACT

Date of Hearing: January 21, 2016

PANEL:

RICHARD I. GOOD (Chair and Member)
JENNIFER GOLDENBERG (Member)
SUZANNE HRYNYK (Public Representative)

COUNSEL: ROCKY KRAVETSKY for The Law Society of Manitoba ("Society")

COUNSEL: STEVE VINCENT for Alastair Winston Clarke ("Member")

REASONS FOR DECISION OF DISCIPLINE COMMITTEE AT THE HEARING OF
JANUARY 21, 2016

This is the written decision of the Panel respecting our oral acceptance of the joint sentencing recommendation at the conclusion of the hearing on January 21, 2016.

At the hearing Mr. Clarke admitted that he is a member of the Society, that he was validly served with the Citation dated August 20, 2015, ("Citation"), Exhibit 1, and that Mr. Clarke has no objection to any of the Panel members either on the basis of bias or conflict, or otherwise.

Mr. Clarke pleaded guilty to Charges 1, 2, 3 and 5 in the Citation. Upon entry of the guilty plea, the Society withdrew Charges 4 and 6. Charges 1, 2, 3 and 5 assert the following:

"1. You acted contrary to the requirements of Rule 5-43(1) and (2) of the *Rules of the Law Society of Manitoba* made by the Benchers of the Law Society of Manitoba, in that while representing 6 of your clients on 7 separate occasions you received client trust money and failed to deposit, or cause to be deposited, such trust monies into a pooled trust account as soon as practicable after receipt of the money. the particulars of which are as follows:

	Client Name	Amount	Approximate Date Monies Received
a.	P.K./A.H.	\$1,000.00	November 21, 2014
b.	X.Z/S.A.	\$1,000.00	December 8, 2014
c.	J.P.	\$1,000.00	October 8, 2014
d.	I.O.	\$2,000.00	January 13, 2015
e.	A.C.	\$500.00	December 3, 2014
f.	A.C.	\$500.00	December 22, 2014
g.	F.K.	\$2,000.00	December 18, 2014

2. You acted contrary to the requirements of Rules 5-42(1) and 5-42(7) of the *Rules of The Law Society of Manitoba* made by the Benchers of the Law Society of Manitoba, in that while representing 6 of your clients as to 10 separate trust transactions you failed to maintain up-to-date trust records including a book of original entry and a client trust ledger for each client and each client matter and you failed to enter and post records of the said trust transactions so as to be current at all times, the particulars of which transactions are as follows:

	Client Name	Amount	Approximate Date Monies Received	Description of Transaction
a.	P.K./A.H.	\$1,000.00	November 21, 2014	Monies Received
b.	P.K./A.H.	\$1,000.00	January 19, 2015	Monies Paid Out to Client
c.	X.Z./S.A.	\$1,000.00	December 8, 2014	Monies Received
d.	X.Z./S.A.	\$1,000.00	December 19, 2014	Monies Applied to Account
e.	J.P.	\$1,000.00	October 8, 2014	Monies Received
f.	J.P.	\$995.00	December 19, 2014	Monies Applied to Account
g.	I.O.	\$2,000.00	January 13, 2015	Monies Received
h.	A.C.	\$500.00	December 3, 2014	Monies Received
i.	A.C.	\$500.00	December 22, 2014	Monies Received
j.	F.K.	\$2,000.00	December 18, 2014	Monies Received

3. You acted contrary to the requirements of Rule 5-42(2) of the *Rules of The Law Society of Manitoba* made by the Benchers of the Law Society of Manitoba, in that you failed to produce a monthly reconciliation of all trust bank accounts no later than the end of the following month for each of the months of October 2104 through January 2015.

5. In the course of an investigation by The Law Society of Manitoba ("the Society") into your conduct with respect to your representation of your clients P.K./A.H. you acted contrary to your duty to act with integrity pursuant to Rule 2.1-1 of the *Code of Professional Conduct* adopted by the Benchers of the Society, in that you misled the Society by providing information to the Society that was, to your knowledge at the time, not true.

Particulars

- (a) In an email to the Society dated January 26, 2015 you stated that:
 - (i) You had received a cheque in the amount of \$1,000.00 payable to yourself from P.K. regarding the P.K./A.H. matter;
 - (ii) At the request of P.K. you had not deposited the cheque;

- (iii) You had been instructed by P.K. to return the cheque to him and had done so;

- (b) You solicited from P.K. an email dated January 26, 2015 in which, at your request, he included statements that:
 - (i) He had provided you with the said cheque but asked you to hold on to it until funds were available;

 - (ii) He had requested that the cheque be returned to him;

 - (iii) You had returned the cheque to him and he had destroyed it;

and on January 26, 2015 you provided a copy of the said email from P.K. to the Society;

- (c) To your knowledge the statements you made to the Society on January 26, 2015 and which were contained in the email you had solicited from P.K. and provided to the Society were not true in that:
 - (i) You had received a cheque payable to yourself in the amount of \$1,000.00 from P.K. on or about December 3, 2014;

 - (ii) You had deposited that cheque into your RBC business account on or about that date'

 - (iii) P.K. had not asked you to hold the cheque and did not request that it be returned; and

 - (iv) You did not return the cheque to P.K."

The parties tendered a Statement of Agreed Facts ("Statement"), Exhibit 2. In the Statement Mr. Clarke admits that he has read the Citation and agrees that the

witnesses who could be called and the documentary evidence available to prove the charges would be substantially in accordance with the particulars set out in Charges 1, 2, 3 and 5. Mr. Clarke and the Society both admit all of the facts in the Statement and the authenticity of the documents which are attached. Mr. Clarke admits that the conduct described in the Statement in connection such charges constitutes professional misconduct. The Society makes a similar assertion.

Counsel also made oral submissions both on the allegations of professional misconduct and on the disposition of the guilty pleas. Mr. Clarke made a short statement, during which he expressed remorse, amongst other things. His counsel provided additional information about the counselling currently being undergone by Mr. Clarke and about the written communication of Mr. Clarke to the Society voluntarily disclosing the untruthful information he had imparted to the Society.

Based on the evidence and oral submissions, the Panel finds that all the acts or omissions set forth in Charges 1, 2, 3 and 5 of the Citation have been proved and that those acts and omissions so proved establish that Mr. Clarke is guilty of professional misconduct in all instances referred to in these charges.

Counsel for the parties have made a joint submission on the disposition of the charges as a result of the foregoing guilty pleas. As submitted by two experienced counsel, we find that the joint submission is reasonable and that the proposed sentence falls within an appropriate range of sanctions. There is no clear or cogent reason why the joint recommendation on sentence should be rejected.

Therefore this Panel hereby reprimands Mr. Clarke for his professional misconduct to which he has pleaded guilty. This reprimand is not to be taken lightly and is a significant deterrent to Mr. Clarke and members of the profession from engaging in similar conduct in the future. This Panel further orders that:

- a Mr. Clarke pay the costs of the Society's investigation and of this proceeding in the amount of \$6,000.00, to be paid in instalments of \$250

per month payable on the 1st day of each month beginning on February 1, 2016;

- b. Mr. Clarke's practising certificate be cancelled and a new one issued subject to the following conditions:
- i. He must continue to receive counseling for a period of 2 years or for so long as is recommended by his counselor, whichever is less, and shall comply with any treatment recommended by his counselor;
 - ii. He shall authorize and direct his counselor to provide to the Society a written report confirming that he continues to receive counseling, if that is the case, and has complied and is complying with any recommended treatment:
 1. immediately following the end of July 2016;
 2. immediately following the end of July 2017; andto immediately provide to the Society a written report if it appears that he is not complying with recommendations regarding counseling or treatment or if he is no longer receiving counseling;
 - iii. He shall, within 6 months of it becoming available, take the online trust accounting course that is currently under development by the Society;
 - iv. He shall, once within each of the next 2 years, meet with the Society's Practice Management Advisor or some other lawyer approved by the Society for the purpose of a review of his practice; and
 - v. He shall comply with the recommendations, if any, from such review.

In respect of the publication of this decision and order, we note that under Rule 5-100(2) the Chief Executive Officer of the Society must give notice of our finding that Mr. Clarke has been found guilty of instances of professional misconduct to members of the Society and to any party who is a complainant. Notice to his peers of his professional

humiliation or indignity is sufficient. Therefore, we do not order that there be any additional publication to members of the public about this Panel's findings.

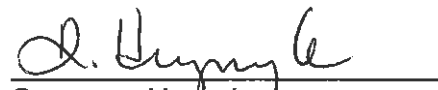
Signed at the City of Winnipeg, in the Province of Manitoba on this 22 day of January, 2016.



Richard I. Good,
Chair and Member of the
Law Society of Manitoba



Jennifer Goldenberg,
Member



Suzanne Hryhyk,
Public Representative