

**THE LAW SOCIETY OF MANITOBA**

**IN THE MATTER OF:**

**JOHN LORING PATRICK SINCLAIR**

**- and -**

**IN THE MATTER OF:**

**THE LEGAL PROFESSION ACT**

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**DECISION**

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**THE LEGAL PROFESSION ACT**

**Hearing Dates:** September 12, 2016 March 7-9, 2017 May 8, 2017  
June 30, 2017

**Panel:**

Heather Leonoff, Q.C. – Chair  
Jennifer Goldenberg  
Miriam Browne (Public Representative)

**Counsel:**

R. Kravetsky for the Law Society of Manitoba  
G. Wood for the Member

**DECISION**

**I Introduction**

1. John Loring Patrick Sinclair is a member of The Law Society of Manitoba (the “Society”), having been called to the bar and admitted as a solicitor in 1965. He is charged in an amended citation dated June 20, 2016 with eleven counts of professional misconduct. The charges are attached as an appendix to these reasons. They may be summarized as follows:

- Count 1  
Breach of an undertaking to the Society contrary to Rule 5-79 of the *Rules of the Law Society of Manitoba* and Rule 7.2-11 of the *Code of Professional Conduct*.
- Counts 2 and 2A  
Failing to properly maintain general bank account records contrary to Rule 5-48.1 of the *Rules of the Law Society of Manitoba*.

- Count 2B  
Failure to maintain an accounts receivable ledger contrary to Rule 5-48.1 of the *Rules of the Law Society of Manitoba*.
- Count 3  
Failure to follow rules respecting trust fund reconciliations contrary to Rule 5-42(2) of the *Rules of the Law Society of Manitoba*.
- Count 4  
Failure to follow the rules respecting withdrawal of funds from trust to pay fees contrary to Rule 5-43(1)(c) of the *Rules of the Law Society of Manitoba*.
- Counts 5 and 8  
Failure to disclose fees in a timely fashion contrary to Rule 3.6-1 of the *Code of Professional Conduct* and Rule 5-54 of the *Rules of the Law Society of Manitoba*.
- Count 6  
Failure to maintain up-to-date trust records contrary to Rule 3.5 of the *Code of Professional Conduct* and contrary to Rules 5-42(1) and 5-42(7) of the *Rules of the Law Society of Manitoba*.
- Count 9  
Failure to deposit funds received from a client into a pooled trust account contrary to Rule 5-43(1) (a) of the *Rules of the Law Society of Manitoba*.
- Count 10  
Failure to deposit into a general bank account and maintain proper records respecting money received from a client that was appropriated to fees and disbursements contrary to Rule 5-48.1 of the *Rules of the Law Society of Manitoba*.

2. The Society's case was put in through the affidavits of Deborah Metcalfe who is employed as an auditor with the Society and Lara Badmus who was employed as counsel in the Complaints Resolution Department of the Society during the investigation into these matters. Mr. Sinclair testified on his own behalf and called two additional witnesses; Donald Wood, a Certified Public Accountant and Michael Sinclair, the brother of John and also a member of the Society. While Mr. Sinclair contested the charges, he did so largely to provide context to the panel respecting the appropriate penalty. The Society sought a one year suspension and the member argued that he ought to be able to return to practice under supervision. As will be

explained in detail below, the panel has determined that Mr. Sinclair should be found guilty of nine counts of professional misconduct and that he be suspended from the practice of law for a period of three months.

## II A Preliminary Issue – The Use of Affidavit Evidence

3. The Society chose to put in its evidence through affidavits in accordance with s. 71(1) (5) of *The Legal Profession Act*, CCSM c. L107 which provides that:

The rules of evidence that apply in a civil proceeding in the Court of Queen's Bench apply at the hearing. But an affidavit or statutory declaration is admissible and, in the absence of evidence to the contrary, is proof of the statements in it.

4. The member did not object to the admissibility of the affidavits but questioned the fairness of having a written version of the Society's case available to the panel to review during its deliberations while requiring the panel members to rely on their notes to review the member's case. While the panel appreciates the sincerity of the member's concern, we are of the view that the use of affidavits is both a fair and efficient means of putting evidence before a discipline panel. The evidence in this case was very technical and involved details regarding multiple transactions. This is precisely the type of evidence that lends itself to an agreed statement of facts or an affidavit. It is very helpful to the panel members to have this information in written form. It makes following the evidence much easier and notes from cross-examination can be added to the panel member's copy of the document, allowing for a good record of the evidence to be available during deliberations. Of course, in the interest of fairness, the affidavit should be shared with the other side well in advance of the hearing. We are confident that allowing the Society (or the member) to put its case in through affidavits does not give an unfair advantage. The panel members remain able to evaluate and weigh all of the evidence whether received in written or oral form.

### III The Allegations of Professional Misconduct

#### Introduction

5. The Law Society rules contain detailed requirements respecting accounting practices. Each rule is a building block designed to ensure the integrity of the system. Together the rules create a straightforward and transparent system that allows money received from clients to be tracked and accounted for. The Society conducts regular audits of its members' practices in order to ensure compliance with these rules. The rules, together with the audits, are essential in fulfilling the Society's obligation to protect the public. Members of the public have a right to expect clear and accurate documentation regarding their financial transactions with lawyers, as well as absolute assurance that their money is safe. This will only occur if lawyers faithfully adhere to each and every one of the rules, without exception. While this is obvious, it is made specific in s. 4(6) of *The Legal Profession Act*, which states that the rules are binding on members.

6. As part of its audit program, the Society had conducted an audit of Mr. Sinclair's practice in 2011 that had identified accounting irregularities. As a result, Mr. Sinclair entered into an undertaking, dated May 1, 2012 that provided as follows:

1. On or before June 1, 2012 I will:
  - a. cease to maintain manual trust accounting records; and
  - b. commence using only electronic trust records to comply with my daily trust accounting record requirements as well as my monthly trust reconciliation requirements;
2. Effective immediately, I will maintain on a current basis a general book of original entry and an accounts receivable recording system, including all supporting records in accordance with Law Society Rule 5-48.1
3. Effective immediately, I will not issue a cheque on account of legal fees or disbursements unless I have first prepared a statement of account and have mailed the statement of account with a covering letter to the client (regardless of whether or not I have hand delivered a copy of the statement of account to the client).

7. As a follow-up to this undertaking, the Society conducted two further audits of Mr. Sinclair's practice in 2013 and 2016. The problems uncovered during these audits led to the charges that are the subject of this hearing.

### **Count 1**

8. The first clause in the undertaking requiring Mr. Sinclair to cease using a manual trust accounting system in favour of an electronic system arose because of concern that Mr. Sinclair's practice of using a dual system was leading to problems. The 2011 audit showed that Mr. Sinclair was not updating both systems at the same time which meant that the trust balances did not always match. This could have led to the trust account being overdrawn. As a result the Society received Mr. Sinclair's undertaking that he would transfer over to an electronic system. However when the auditor conducted the audits in 2013 and 2016 she determined that the manual system was still being used and that there were discrepancies between the two systems. Mr. Sinclair explained that he continued to use two systems because his office assistant was not fully familiar with how the electronic system worked.

9. The second clause in the undertaking arose because the 2011 audit showed that Mr. Sinclair had not been maintaining an accounts receivable ledger or a general book of original entry. Both such accounting records are required by Rule 5-48.1(1). Instead of a general book of original entry, Mr. Sinclair was relying on bank statements to keep track of his general account and he took the position that he did not have any accounts receivable as he did not bill clients until such time as they brought in the money. Thus, Mr. Sinclair gave an undertaking to begin using both a general book of original entry and an accounts receivable system. However, when the auditor attended in both 2013 and 2016 she determined that the general book of original entry was not up-to-date and did not meet the specific requirements set out in Rule 5-48.1. Further, there was still no accounts receivable system in place.

10. The third clause in the undertaking arose over concerns that money was being taken for fees without proper documentation going to the client. As a result Mr. Sinclair gave an undertaking to prepare and mail a cover letter and statement of account before taking fees. Again when the auditor attended in 2013 and 2016 she found several examples of situations

where this undertaking was not complied with. Of particular concern is the RP file which showed several amounts withdrawn from trust to pay fees during 2012 and 2013 but letters sent to the client at an address he did not move to until 2014. Mr. Sinclair acknowledged in his testimony that he had not always complied with clause three of the undertaking and took responsibility for it.

11. The *Code of Professional Conduct*, Rule 7.2-11 states that a lawyer “must fulfill every undertaking given. . .” Mr. Sinclair’s undertaking came about as a result of irregularities in his accounting practices uncovered during the 2011 audit. By entering into the undertaking, Mr. Sinclair gave his word to improve his accounting practices in the manner set out in the undertaking. The audits of 2013 and 2016 showed that he did not make the changes to his accounting practices that he had promised to make. He treated the undertaking in a cavalier manner. In part, this was because he was loyal to his office assistant (also a family member) and he chose not to insist that an electronic accounting system be used exclusively. He also has financial challenges and has not been able to hire the necessary support or use the electronic system to its full capacity. But an undertaking is sacrosanct and the evidence shows multiple examples of it not being complied with. As such the panel finds Mr. Sinclair guilty of count 1.

### **Counts 2 and 2A**

12. Much of the evidence relied upon by the Society to prove the breach of the undertaking also gave rise to substantive charges regarding breach of the rules. Counts 2 and 2A are examples of this. These counts relate to Mr. Sinclair’s failure to properly maintain a general book of original entry for his general account.

13. The count alleges that Mr. Sinclair had two general bank accounts but was only keeping some records with respect to one of those accounts. The panel accepts that Mr. Sinclair was relying on one of his accounts and the other was no longer in use. As such we will direct our comments only to his one major account.

14. As set out above, Mr. Sinclair used his bank records to keep track of his general account. However, Rule 5-48.1(1) requires an up-to-date recording in chronological order that identifies

full details regarding money received and disbursed. Up until September 2013, Mr. Sinclair maintained no such record and once he started to maintain a general book of entry, he did not keep it current. When the auditor examined the book on February 10, 2016 the last entry was dated December 23, 2015 even though there had been activity on the account subsequent to that date. Further, there were other irregularities including that cash withdrawals were not individually recorded but were aggregated for the month and records were made in pencil contrary to Rule 5-48.1(2). While the use of pencil might be considered a trivial breach, it is important to remember that each rule has a purpose and requiring ink to be used helps to maintain the integrity of the document.

15. Mr. Sinclair testified that he could not afford to use an electronic system to run his general account and that he is continuing to work with a professional accountant to improve his accounting systems.

16. While the panel recognizes Mr. Sinclair's financial difficulties, this cannot be an excuse for failure to abide by the accounting rules. The privilege of practicing law comes with the responsibility to meet one's professional obligations. If Mr. Sinclair does not have the expertise to maintain his own records then he must hire the staff that can do it. Since there were no records until September, 2013 and the records subsequent to that date were not properly maintained, the panel finds Mr. Sinclair guilty of counts 2 and 2A.

### **Count 2B**

17. Count 2B deals with Mr. Sinclair's failure to maintain an accounts receivable recording system contrary to Rule 4-48.1. Mr. Sinclair's undertaking of May 2012 contained a commitment to begin using an appropriate system forthwith. However, this did not occur. Mr. Sinclair explained that he chooses not to send a formal bill to a client until such time as they have the money to pay. However, Mr. Sinclair did acknowledge that clients do owe him money for work completed. One of the exhibits filed in the proceedings was a letter to a client in which Mr. Sinclair stated "You know you owe me a considerable sum for legal services rendered to you



over the past two years.”<sup>1</sup> However, there was no recording of the amount owed by this client in an accounts receivable record. In fact the record keeping regarding this client was so lax that Mr. Sinclair had to rely on the client’s recollections of what had been paid when a dispute arose over fees. This illustrates the importance that proper accounting records serve in protecting the public and maintaining confidence in the legal profession. Clients should always be able to obtain an accurate statement from their lawyers of what they have paid and what they owe. Mr. Sinclair’s failure to abide by the rules respecting an accounts receivable system did not permit this. Thus the panel finds Mr. Sinclair guilty of count 2B.

### **Count 3**

18. Count 3 relates to Mr. Sinclair’s failure to comply with Rule 5-42(2) which requires monthly three-way trust reconciliations to be done on the member’s trust account no later than the end of the following month. This requirement ensures that the trust account is balanced and that any discrepancies are quickly identified and corrected. The auditor testified that Mr. Sinclair was only doing a two-way reconciliation from May 2012 until July 2013. The 2016 audit showed that the three-way reconciliation was now being completed but on several occasions this was not being completed by the end of the following month.

19. Mr. Sinclair’s accountant testified that he was hired in the spring of 2012 to assist Mr. Sinclair with the monthly trust reconciliations. When the audit was done in 2013 it showed that the accountant was not printing a cover sheet from the electronic accounting system that showed the three-way balance. This led the auditors to believe that only a two-way reconciliation was being completed. When this was pointed out, the accountant changed his practices so that it was clear that the three-way reconciliation was being completed. The accountant also testified that sometimes he finds it necessary to “restate” the reconciliation if there is a need to make changes. This practice of “restating” may have caused confusion for the auditors that led them to conclude that the reconciliations were late. However, the accountant testified that the reconciliations were done on time.

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<sup>1</sup> Letter dated September 19, 2013 to MD from John Sinclair, Exhibit 35 to the affidavit of Lara Badmus.

20. The panel accepts that Mr. Sinclair made an effort to improve his trust accounting by hiring a professional accountant in 2012. His accountant has the requisite skills to complete the monthly reconciliations but was not familiar with the specific rules of the Society. This led to confusion about how the process was to be completed. However, the panel accepts the evidence of the accountant that the three-way reconciliation was being done through the electronic accounting system. Moreover we accept that the accountant did the reconciliations on time but that this was not apparent given his practice of doing “restatements”. We would recommend that the audit staff meet with Mr. Sinclair’s accountant to review the trust reconciliation process but, in the circumstances, we find Mr. Sinclair not guilty of this count.

#### **Counts 4 and 5**

21. Rule 5-43(1)(c) of the *Rules of the Law Society of Manitoba* deals with the withdrawal of money from trust to pay fees and disbursements. The rule requires a statement of account to be prepared and sent or delivered to the client at the time the money is withdrawn. This creates a paper trail to track the money and it keeps clients informed of the transactions respecting their money.

22. The *Code of Professional Conduct*, Chapter 3.6-1 and Rule 5-54 of the *Rules* also speak to the issue of fees. They both provide that fees must be fair and reasonable and must be disclosed in a timely fashion.

23. As a result of irregularities in Mr. Sinclair’s practice that were identified in the 2011 audit, Mr. Sinclair was required to follow a more rigorous practice than that required by the rules. The undertaking entered into by Mr. Sinclair required him to mail his statement of account with a covering letter to the client, regardless of whether a hand delivered copy of the account was provided.

24. Counts 4 and 5 allege that Mr. Sinclair failed to comply with his professional obligations to inform his clients promptly that money was being withdrawn from trust for fees and that in some instances no account was prepared before fees were withdrawn.

25. The evidence called by the Society showed several examples of violations of the rules respecting trust transfers to pay fees. For example, Mr. Sinclair acknowledged that he took \$200 in fees from his client R.B. without preparing a statement of account. He did not send copies of his statements of account to his client F.F. because he said she did not want to receive any billing information. In the matter involving the client R.P., in some instances there is no indication of a copy of the account being provided to the client and in other instances the client's copy appears to have been sent to an address he did not move to until long after the accounts were rendered.

26. Having listened closely to Mr. Sinclair's testimony, what became clear to the panel is that Mr. Sinclair's record keeping is abysmal. He had explanations for some of the irregularities but the explanations were largely that items were improperly recorded or receipts were lost. During the course of the hearing Mr. Sinclair found a receipt at the bottom of his briefcase that clarified a particular payment.

27. There is no excuse for Mr. Sinclair's non-compliance with the rules requiring statements of account to be rendered and requiring clients to be notified regarding fees. The rule ensures that there is a transparent audit trail and that clients have information respecting what is happening with their money. If a client indicates that he or she does not require such information, then the lawyer must inform the client that the rules of the governing body demand that a bill be rendered and sent to the client. The lawyer cannot waive the rules regardless of the views of a client. Mr. Sinclair was aware following the 2011 audit that his billing practices were not in compliance with the rules. He should have been extra vigilant in ensuring absolute compliance. Instead his accounting practices were so inadequate that statements of account were not always prepared and copies of accounts were not always provided to clients on a timely basis.

28. The Society has charged Mr. Sinclair under both Rule 5-43(1)(c) and Rule 5-54. Both of these rules speak to billing practices. Rule 5-43(1)(c) is directed at ensuring the correct paperwork is produced at the time a statement of account is rendered in order to establish an audit trail and in order to ensure that clients are kept informed regarding financial transactions. Rule 5-54, which uses the same language as Chapter 3.6-1 of the *Code of Professional Conduct*,

is more clearly directed at ensuring that legal fees are “fair and reasonable” as well as disclosed in a timely fashion.

29. In the circumstances of this case, the panel has concluded that the more appropriate charge is that alleging a violation of Rule 5-43(1)(c). There was no argument by the Society that the fees particularized in these counts were unfair, only that the necessary documentation was lacking. It is the panel’s conclusion that it would be unjust to enter convictions on both charges when they relate to identical conduct. As such, the panel finds Mr. Sinclair guilty of count 4 and not guilty of count 5.

### **Count 6**

30. Mr. Sinclair is charged with a breach of Chapter 3.5 of the *Code of Professional Conduct* for failure to observe all of the relevant rules necessary to preserve a client’s property. More specifically, he is charged with breaches of Rules 5-42(1) and 5-42(7). These rules require the member to maintain up-to-date trust records with supporting documentation.

31. As has already been commented on in these reasons, the evidence in this case clearly established that Mr. Sinclair’s accounting practices fell far below what is expected of lawyers and required by the rules. The auditor faced an uphill battle in trying to piece together financial transactions because receipts and other necessary documentation were often missing from the file. For example, on the R.P. file, the trust ledger showed two withdrawals for rental accommodation with no supporting documentation. Once the Society investigated it was able to confirm that the money had been paid to secure the client rental accommodation. On the F.F. file, there were multiple examples of money being withdrawn from trust without supporting documentation. Mr. Sinclair was able to explain the withdrawals and provide documentation for many. For example, he explained that a \$1300 withdrawal payable to his firm was to cover the cost of a bed. He further explained that other amounts were cash for the client or for prepaid credit cards. He was able to produce several receipts. However, the state of Mr. Sinclair’s file management was made clear when one of these receipts was discovered at the bottom of briefcase near the end of the hearing.

32. The M.D. file was another of the files examined by the Society. In this case the client asserted that he had paid Mr. Sinclair \$13,000 in fees. There were no records whatsoever to account for \$11,000 of this money. There were no receipts, accounts, general ledger or trust ledger entries. Mr. Sinclair had to rely on the client's recollection of what was paid given he had nothing in writing to verify the payments.

33. Chapter 3.5-1 of the *Code*, together with the *Rules*, requires a lawyer to properly account for a client's money. There should never be a dispute between a lawyer and a client as to what money came in and what money went out. Moreover, accurate records allow the Society to fulfill its function to protect the public by ensuring that their money is safe. Mr. Sinclair's record keeping did not allow this to happen. While he was sometimes able to piece together the information after-the-fact, this is not what the rules require. More particularly, Rule 5-42(1) requires that trust records be up-to-date and that supporting documentation be available to explain the transactions. While not specifically stated, it is obvious that the documentation should be in the client file or otherwise easily accessible. Society staff should not have to reach out to landlords to verify payments and auditors should not have wait for receipts to be found at the bottom of a briefcase to explain a transaction. An audit should be a straightforward process that allows the matching of the payment of money to an invoice or receipt. It ought not to be a scavenger hunt. Therefore, the panel finds Mr. Sinclair guilty of count 6.

### **Count 8**

34. Count 8 alleges a violation of Chapter 3.6-1 of the *Code of Professional Conduct* and Rule 5-54 of the *Rules of the Law Society of Manitoba*. This count relates to the M.M. Estate file. The Society alleges that the fee charged was unreasonable, in that it was over the allowable tariff and that this was not disclosed to the executrix and beneficiaries.

35. Mr. Sinclair acknowledged in his testimony that he did charge a fee above tariff. He indicated this fee was discussed with the executrix and beneficiaries and they agreed to it because of the extra work that was required to obtain the estate assets. Mr. Sinclair provided no written documentation to support his hearsay statement that the executrix and beneficiaries agreed to additional fees.

36. Section 74.14 of *The Court of Queen's Bench Rules*<sup>2</sup> sets a tariff for lawyers' fees in estate matters. Subsection 4 of the rule requires Form 74AA to be served on the personal representative and the beneficiaries no later than 60 days after the lawyer is retained. This form provides information regarding how fees are calculated and the process to be followed by the lawyer to obtain payment. Unless this form is served as required a lawyer is not entitled to fees, absent a court order. Fees in excess of tariff are permitted with consent in writing by the beneficiaries and personal representative. This rule is supplemented by a Practice Notice issued by the Society to the profession.

37. The evidence showed that Mr. Sinclair did not comply with his obligation to serve a copy of Form 74AA on the personal representative and beneficiaries. Further, there was no notice to the beneficiaries that the fees exceeded tariff nor were there consents on the file agreeing to the additional fees.

38. This file is another example of Mr. Sinclair's inability to follow rules. Beneficiaries to estates are often uninformed about what assets are available for distribution. They may be dealing with the distribution of the estate at a time of great stress. For this reason there are strict rules governing fees in order to ensure that the public is protected. Mr. Sinclair offered no explanation as to why he failed to comply with the rules.

39. The *Code of Professional Conduct* requires fees to be "fair and reasonable" and to be "disclosed in a timely fashion." This requirement is repeated in Rule 5-54 of the *Rules of the Law Society of Manitoba*. Queen's Bench Rule 74.14 provides a regulatory regime that defines what is "fair and reasonable" for estates of average complexity and how and when disclosure is to be made by a lawyer acting in an estate matter. Disclosure starts with service of Form 74AA, continues with detailed bills calculated to tariff, requires amounts over tariff to be separately disclosed and requires consents to additional fees. Only when every step of Rule 74.14 is complied with is a fee in an estate matter in compliance with the *Code* and the *Rules*. Since Mr. Sinclair did not follow these steps, the panel finds that Mr. Sinclair breached his duty under Chapter 3.6-1 of the *Code* and under Rule 5-54 and we find him guilty of count 8.

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<sup>2</sup> M.R. 553/88

**Counts 9 and 10**

40. These counts relate to the M.D. file, to which reference has already been made. M. D. complained to the Law Society after a fee dispute arose between him and Mr. Sinclair. M. D. advised the Society that he had paid Mr. Sinclair \$13,000 in cash. Mr. Sinclair was forced to accept M. D.'s assertion after he was unable to provide any documentation regarding monies received and disbursed, other than one trust entry of \$2,000.

41. Mr. Sinclair wrote to the Society on January 26, 2015 to explain the handling of the money at issue.<sup>3</sup> In his letter he indicated that the money received was applied on work already done and that while he had not rendered accounts in writing, he had rendered a "verbal account" to the client on several occasions. He further indicated that he never thought of the money as trust money, since it was for work that had already been completed and that he had put it into his general account.

42. The Society rules require money received from a client to be deposited into trust if the money has been received for services not yet rendered OR if a statement of account has not been issued; see Rule 5-41 and Rule 5-43(1)(a). The Society rules do not permit verbal statements of account. The rules require a statement of account to be prepared and sent or delivered to the client; Rule 5-43(1)(c). If work has been done and money is owed, then the rules require an accounts receivable ledger; Rule 5-48.1(1)(b). If cash money is being deposited into the general account then the rules require a receipt and a recording of the payment into a general book of original entry; Rule 5-48.1(1)(a) and (c).

43. Mr. Sinclair's failure to document the \$11,000 he received from M.D. is a flagrant violation of the rules. His complete lack of understanding of his professional obligations was made clear by his letter to the Society in which he suggested that he could issue verbal statements of account to clients.

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<sup>3</sup> Letter dated January 26, 2015 from John Sinclair to Law Society, Exhibit 37 to the affidavit of Lara Badmus

44. Count nine alleges that Mr. Sinclair violated the trust accounting rules by failing to deposit money from his client into a pooled trust account. The evidence clearly established that Mr. Sinclair breached this obligation as there are no trust records for the \$11,000. It is no answer for Mr. Sinclair to state that the money was for work already done since the rules require the money to go into trust if no statement of account has been rendered.

45. Even if the panel was to accede to Mr. Sinclair's position that the money could have gone directly through his general account, the rules still require a paper trail to be created. More particularly there must be a statement of account and an accounts receivable ledger. On payment of the account, there must be a recording in a general book of original entry that details the amount received, the form in which it is received and necessary supporting documentation. It is totally unacceptable for a lawyer to receive cash from a client and not even issue a receipt.

46. In the circumstances, the panel finds Mr. Sinclair guilty of counts 9 and 10. The total lack of documentation regarding the money received from M.D. falls far below the standard expected of a lawyer practicing in this province.

### **Conclusion**

47. In summary, the panel finds that the Society has proved the allegations contained in counts 1, 2, 2A, 2B, 4, 6, 8, 9 and 10. We further find that the acts proven constitute professional misconduct. We dismiss the allegations contained in counts 3 and 5.

### **IV Penalty**

48. In determining an appropriate penalty it is necessary to consider the member's discipline history as well as the facts and circumstances of the counts of professional misconduct currently at issue.

49. Mr. Sinclair has an extremely lengthy discipline history. It begins in 1981 and continues virtually unabated to the present. In total he has been found guilty of 17 counts of professional misconduct. Six of these counts deal with accounting rule violations spanning a period from



1992 - 2003 and two are in respect of fee matters in 1981 and 1998. Mr. Sinclair received a reprimand, caution and fines for these matters. Most recently, he was placed on one year's supervision in 2010 and in 2012 entered into the undertaking discussed above when accounting irregularities were identified. Throughout his discipline history, Mr. Sinclair has been fined a total of seven times, has been placed on supervision and has been required to take a remedial practice management course.

50. Given this history it is difficult to understand how Mr. Sinclair can continue to pay so little attention to his accounting, billing and money handling practices. The evidence called in the current case shows that Mr. Sinclair treats the accounting rules, at best as afterthoughts and often they are ignored. As a result forms are not filled out, consents are not obtained, receipts are lost or not prepared, records are not up-to-date, statements of account are not completed, accounts receivables are not tracked and clients do not receive prompt notification of the state of their accounts.

51. Each and every accounting rule plays a vital role in ensuring a fully transparent system that allows money to be tracked through the law office. By requiring a detailed paper trail and by conducting regular audits the Society can assure the public that their money is safe. Moreover each client can obtain full disclosure regarding their accounts. It is entirely false to speak of the accounting rules as "technical". They are an essential component of the Society's oversight function. As a self-governing profession it is incumbent that these rules are rigorously enforced in order that the legal profession retains the public's trust.

52. The Society sought a one year suspension in this matter and the member sought the right to return to practice under supervision. The panel has determined that allowing Mr. Sinclair to return to practice under supervision is insufficient to impress upon him the gravity of the situation. Mr. Sinclair has amassed a lengthy discipline record but the multiple fines and other sanctions have been insufficient to make him understand that his right to practice law is a privilege that carries with it the duty of faithful adherence to his professional obligations as set out in *The Legal Profession Act*, the *Rules of the Law Society of Manitoba* and the *Code of Professional Conduct*.

53. While the panel has concluded that a period of suspension is required we are of the view that it need not be as long as the one year sought by the Society. We are of the opinion that a shorter period of suspension is sufficient to impress on Mr. Sinclair that he must change his ways. Considering all of the circumstances the panel has determined that the member should be suspended for a period of three months to commence on a date fixed by the Chief Executive Officer of the Society (“CEO”). This penalty serves the goals of both general and specific deterrence. It forces Mr. Sinclair to recognize that his practices must change and it reminds the profession that accounting rules serve an important function and that violations will be treated seriously.

54. In addition, the panel has concluded that if/when Mr. Sinclair returns to practice he must practice under supervision and subject to strict conditions.

55. Section 72(1) of *The Legal Profession Act* provides in part as follows:

72(1) If a panel finds a member guilty of professional misconduct . . . . it may do one or more of the following:

(c) for any period the panel considers appropriate,

(i) confirm, vary or impose restrictions on the member’s practice, or

(ii) suspend the member from practicing law;

(k) make any other order or take any other action the panel thinks is appropriate in the circumstances.

56. These provisions are broadly worded and allow a penalty to be crafted that both denounces the conduct by providing for a suspension and allows for conditions to be put in place that will serve to protect the public once the member returns to the practice of law.

57. In the circumstances of this case, the conditions must address Mr. Sinclair’s money-handling and record keeping practices. Further, there must be regular oversight to ensure that all of the accounting rules and practice conditions are being complied with and that non-compliance is reported to the Society without delay. Mr. Michael Sinclair testified that he would be willing

to serve as a supervisor and the panel accepts that he is well-qualified to undertake this responsibility.

58. The panel has therefore concluded that if/when Mr. Sinclair returns to practice after serving a three month suspension he shall practice under the following conditions:

- a. Mr. John Sinclair's practice shall be supervised by Michael Sinclair or such other member of the Society acceptable to the CEO.
- b. The supervisor shall:
  - i. Meet with John Sinclair at least once per week, or such other period as the CEO shall specify.
  - ii. Review with John Sinclair all files opened since the last supervision.
  - iii. Ascertain what, if any monies have been paid to John Sinclair and what, if any statements of account have been issued.
  - iv. Review all accounting entries, trust and general, since the last supervision to ensure that they are current and that any necessary supporting documentation is on file.
  - v. Review all statements of account and ensure that:
    - they have been entered into the accounts receivable register;
    - no funds are transferred from trust until all relevant rules, conditions and undertakings are complied with;
    - each statement of account is in accord with the retainer agreement, the *Rules*, the *Code* and any relevant Practice Notice provisions, and all applicable undertakings and conditions, including that the statement of account has been sent to the client by mail, together with a covering letter;

- no payments on account of any statement of account has been accepted from the client, except into trust, until the supervisor has approved the account and has determined that it has been mailed with the required covering letter.
  - vi. Ensure that the monthly three-way trust account reconciliations are up-to-date and that any discrepancies are addressed.
  - vii. Immediately report to the Society any occurrence of non-compliance with the *Rules*, the *Code*, Mr. John Sinclair's Undertakings to the Society, the terms and conditions of this order or any other order imposed on John Sinclair respecting the practice of law.
  - viii. Report quarterly to the Society concerning the status of Mr. John Sinclair's accounting and billing practices and upon the matters reviewed during the supervision.
- c. Mr. John Sinclair shall maintain only one general bank account, shall deposit all general funds into his general bank account and shall maintain his general book of original entry using the PC Law system.
- d. Mr. John Sinclair shall use the PC Law General Receipt function for all payments into his general account and issue receipts only using the PC Law General Receipt function.
- e. Mr. John Sinclair shall maintain only one set of trust account records using the PC Law system.
- f. All receipts for money paid into trust shall be issued using the Receipt function on the PC Law system.
- g. All trust and general cheques shall be issued through the PC Law accounting system.

- h. All monthly trust reconciliations shall be prepared using the Reconciliation function on the PC Law system and have attached a handwritten summary in a form approved by the Society.
- i. All statements of account shall be issued using the billing function on the PC Law system.
- j. All statements of account and payments on account shall be recorded in the PC Law accounts receivable register.
- k. No funds shall be transferred from trust to pay a statement of account until the account has been reviewed by the supervisor for compliance with all rules, conditions and undertakings and the supervisor has authorized the transfer.
- l. No funds shall be received into the general account for payment of a statement of account until the account has been reviewed by the supervisor for compliance with all rules, conditions and undertakings and the supervisor has approved the account.
- m. If the supervisor is not a member of the same firm in which he practices, John Sinclair shall notify all his clients in writing in a form approved by the CEO that he is practicing under supervision, the name of the supervisor and that the supervisor will have access to their confidential information.

59. The purpose of these conditions is to place significant controls on how money is handled by Mr. Sinclair. No conditions can protect against every eventuality. However, the evidence in this case did not establish any illegal behaviour by Mr. Sinclair nor did the Society allege such conduct in the citation. In the circumstances the panel has concluded that these conditions are sufficient to assure the public that their money will be properly tracked through Mr. Sinclair's practice and that they can receive accurate records regarding all transactions respecting their accounts. Further, there were no allegations that Mr. Sinclair did not do competent work for his

clients. The conditions are sufficient to ensure that the financial transactions are properly conducted, regardless of the nature of the file.

60. The conditions also place an onerous responsibility on the supervisor. This is especially true since the period of supervision is not for a fixed period but will operate as long as John Sinclair is in practice or until this order is varied. Mr. Sinclair is very fortunate to have a brother who is willing to take on this obligation. The panel has every faith in the integrity and dedication that Michael Sinclair will bring to this undertaking. However, we further recognize that weekly meetings may sometimes be problematic. Therefore, we have given the CEO the ability to allow some deviation from this schedule at her discretion. Moreover, the CEO may also replace Michael Sinclair as the supervisor either permanently or for a fixed period if circumstances warrant.

## **V. Costs**

61. Rule 5-96(8) gives a discipline panel the authority to impose costs after a finding of professional misconduct to cover all or a portion of the costs incurred by the Society in investigating and proceeding through a hearing. This rule recognizes that the vast majority of lawyers practice without ever committing acts of professional misconduct and these lawyers should not be financially penalized for the misdeeds of others. Those that cause the problems should bear a significant proportion of the cost required to have the matter dealt with.

62. This matter involved considerable time and effort by the Society's audit, investigation and legal staff. As such the estimated costs are significant. An order of costs is not punitive. While the numbers may be onerous it is important that discipline panels heed the direction of the Benchers set out in Rule 5-96(8) and impose costs on those who have violated their professional obligations. This panel therefore directs that John Sinclair pay costs to the Society in the sum of \$20,000.

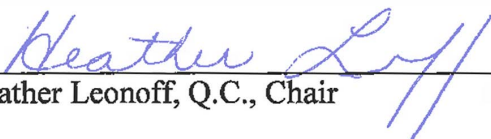
## VI. Disposition

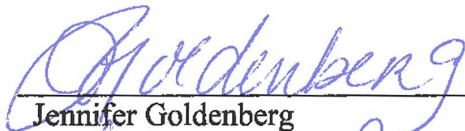
63. For the reasons set out above this panel finds John Sinclair guilty of nine counts of professional misconduct being counts 1, 2, 2A, 2B, 4, 6, 8, 9, and 10. Pursuant to s. 72(1)(c) of *The Legal Profession Act* we direct that he be suspended from the practice of law for a period of three months to commence on a date fixed by the CEO. We note that under Rule 5-100(1) publication of this finding is mandatory.

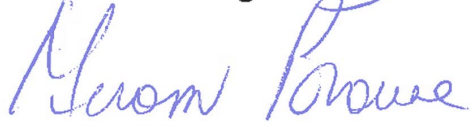
64. We further order under ss. 72(1) (c) and (k) of the *Act* that upon his return to practice, Mr. Sinclair shall practice under the terms and conditions set out in paragraph 58 above. These conditions shall continue in effect for as long as Mr. Sinclair remains in practice, subject to his right to seek rescission or variation under s. 72(1)(j) of the *Act*.

65. Finally we order that John Sinclair pay costs to the Society in the amount of \$20,000.

Dated this 12 day of July, 2017

  
 \_\_\_\_\_  
 Heather Leonoff, Q.C., Chair

  
 \_\_\_\_\_  
 Jennifer Goldenberg

  
 \_\_\_\_\_  
 Miriam Browne

## APPENDIX

THAT YOU, the said JOHN LORING PATRICK SINCLAIR, called to the Bar in the Province of Manitoba on the 7<sup>th</sup> day of June, 1965, and entered as a lawyer in the Rolls of The Law Society of Manitoba under the provisions of *The Legal Profession Act*, and being a member of The Law Society of Manitoba, by your actions, as particularized herein, did commit professional misconduct in that:

1. You acted contrary to Rule 5-79 of the *Rules of The Law Society of Manitoba* and Rule 7.2-11 of the *Code of Professional Conduct* in that you failed to comply with your undertaking given to The Law Society of Manitoba (“the Society”) on May 1, 2012.
2. You acted contrary to Rule 5-48.1 of the *Rules of The Law Society of Manitoba* in that between June 2005 and September 2013 you maintained general bank accounts but you failed:
  - (a) to maintain any general book of original entry;
  - (b) to record in such general book of original entry in chronological order the full details of all general money received and disbursed.
- 2A. You acted contrary to Rule 5-48.1 of the *Rules of The Law Society of Manitoba* in that between September 2013 and at least February 10, 2016 you maintained two general bank accounts but:
  - (a) you maintained in a general book of original entry records only as to transactions through one of those two bank accounts, but failed to maintain those records on a current basis;
  - (b) you failed to make any entries in your general book of original entry as to transactions through the other of those two bank accounts;



- (c) contrary to rule 5-48.1(2) you made your entries the general book of original entry in pencil and not in ink;
- (d) contrary to rule 5-48.1(1) when recording receipts in your general book of original entry you failed to record the form of receipt;
- (e) you failed to record all cash receipts;
- (f) when recording cash withdrawal you failed to make separate entries as to each such withdrawal and failed to note the date and particulars of each such receipt.

2B. You acted contrary to Rule 5-48.1 of the *Rules of The Law Society of Manitoba* until at least February 10, 2016 you failed to maintain an accounts receivable ledger or other suitable system recording for each client the accounts rendered, payments on account and the balance owing from the client.

3. You acted contrary to Rule 5-42(2) of the *Rules of The Law Society of Manitoba* in that:

- (a) for each month between May 2012 and September 2013 you failed to produce a monthly trust reconciliation for your pooled trust accounts no later than the end of the following month;
- (b) for each of the following months you produced such monthly trust reconciliations but did so later than the end of the following month and particularly:

<u>Month End Reconciliation</u>	<u>Date Produced</u>
<u>June 30, 2014</u>	<u>September 4, 2014</u>
<u>August 31, 2014</u>	<u>October 6, 2014</u>
<u>November 30, 2014</u>	<u>January 13, 2015</u>
<u>December 31, 2014</u>	<u>February 6, 2015</u>
<u>January 31, 2015</u>	<u>March 27, 2015</u>

<u>March 31, 2015</u>	<u>May 7, 2015</u>
<u>October 31, 2015</u>	<u>December 9, 2015</u>
<u>November 30, 2015</u>	<u>January 15, 2016</u>
<u>December 31, 2015</u>	<u>February 3, 2016.</u>

4. You acted contrary to Rule 5-43(1)(c) of the *Rules of The Law Society of Manitoba* in that you withdrew money from your trust bank account for payment of your fees or disbursements, or both, but did not both prepare a statement of account and deliver a statement of account to the client at the time the money was withdrawn on each of the “specified occasions” of such failure particularized under Charge.

5. You acted contrary to Rule 3.6-1 of the *Code of Professional Conduct* and contrary to Rule 5-54 of the *Rules of The Law Society of Manitoba* in that on each of the “specified occasions” set out below you charged and accepted fees and disbursements that were not disclosed in a timely fashion either by delivery of a statement of account to your client or by otherwise disclosing particulars of the amounts so charged.

6. You acted contrary to Rule 3.5 of the Code of Professional Conduct and contrary to Rules 5-42(1) and 5-42(7) of the Rules of The Law Society of Manitoba, in that as to each of the following transactions you failed to:

- (a) observe all relevant rules about preservation of your client’s property entrusted to you;
- (b) maintain such records as are necessary to identify your client’s property that was in your possession;
- (c) maintain up to date trust records, which is to say up to date entries in a book of original entry and the individual client trust ledger;

(d) failed to post your trust records so as to be current at all times.

7. While acting for your client the Estate of M.M. in respect of administration of the said Estate you acted contrary to Rule 3.6-1 of the Code of Professional Conduct and contrary to Rule 5-54 of the Rules of The Law Society of Manitoba in that you charged and accepted fees that were not fair and reasonable and that were not disclosed in a timely fashion.

8. While representing your client M.D. (“your client”) in respect of several matters you acted contrary to Rule 5-43(1)(a) of the *Rules of The Law Society of Manitoba* in that between April 2011 and September 2013 you received trust funds from your client in payments totaling approximately \$13,000.00 but you failed to deposit approximately \$11,000.00 of those trust funds into a pooled trust account.

9. While representing your client M.D. in respect of several matters, you acted contrary to Rule 5-48.1 of the *Rules of The Law Society of Manitoba* in that you received approximately \$11,000.00 that you appropriated to fees and disbursements but failed:

- (a) Upon such appropriation to deposit the money into a general bank account;
- (b) Upon such appropriation to record in a general book of original entry the full details of the receipt of such money;
- (c) Maintain an accounts receivable ledger, and in particular, did not record in any such ledger the accounts rendered, payments made on account, and the balance owing to or from you client.

**AND THEREFORE** you did commit professional misconduct.