



DISCIPLINE CASE *DIGEST*

Case 16-09

Member:	John Loring Patrick Sinclair
Jurisdiction:	Winnipeg, Manitoba
Called to the Bar:	June 7, 1965
Particulars of Charges:	Professional Misconduct (11 Counts): <ul style="list-style-type: none">▪ Breach of Rule 5-79 of the <i>Rules</i> and 7.2-11 of the <i>Code</i> [breach of undertaking]▪ Breach of Rule 5-48.1 of the <i>Rules</i> [failure to maintain general accounting records] [x4]▪ Breach of Rule 5-43(1)(c) of the <i>Rules</i> [breach of trust accounting rules]▪ Breach of Rule 3.5 of the <i>Code</i> and Rules 5-42(1) and 5-42(7) of the <i>Rules</i> [failure to properly care for trust monies and to maintain proper trust records]▪ Breach of Rule 3.6-1 of the <i>Code</i> and Rule 5-54 of the <i>Rules</i> [charged fees and disbursements not fair and fully disclosed]▪ Breach of Rule 5-43(1)(a) of the <i>Rules</i> [breach of trust accounting rules]▪ Breach of Rule 5-42(2) of the <i>Rules</i> [failure to complete monthly trust reconciliations within time required]▪ Breach of Rule 5-54 of the <i>Rules</i> [accepting a fee that was not fair and reasonable and disclosed in a timely fashion]
Plea:	Not Guilty
Dates of Hearing:	September 12, 2016, March 7–9, 2017, May 8, 2017 and June 30, 2017
Panel:	<ul style="list-style-type: none">▪ Heather Leonoff, Q.C. (Chair)▪ Jennifer Goldenberg▪ Miriam Browne (Public Representative)
Counsel:	<ul style="list-style-type: none">▪ Rocky Kravetsky for The Law Society of Manitoba▪ Gavin Wood for the Member
Date of Decision:	Written Decision: July 12, 2017
Disposition:	<ul style="list-style-type: none">▪ Guilty on 9 Charges▪ Not Guilty on 2 Charges [Rule 5-42(2) and one charge under Rule 5-54]▪ Suspension (3 months)▪ Costs of \$20,000.00▪ Supervision and Conditions (see below)

Breach of Undertaking / Breach of Accounting Rules

Facts

As a result of irregularities identified in a Law Society audit, Mr. Sinclair entered into an Undertaking dated May 1, 2012 that he would:

1. Cease to maintain manual trust records and use only his electronic accounting system to comply with his trust accounting requirements;
2. Maintain on a current basis a general book of original entry and an accounts receivable record; and
3. Not issue a cheque for fees and disbursements without having first mailed the statement of account to the client, even if the account had been hand delivered to the client.

In follow up audits in 2013 and 2016, it was determined that Mr. Sinclair had not complied with his Undertaking.

In breach of Rule 5-48.1 of the *Rules*, until September 2013, Mr. Sinclair did not maintain any book of entry for his general account. Thereafter, Mr. Sinclair started to maintain a general account ledger but it was not posted on a current basis, he did not enter cash receipts individually and records were made in pencil, rather than in ink, as is required to help maintain the integrity of the record. Also in breach of Rule 5-48.1 of the *Rules*, Mr. Sinclair failed to maintain an accounts receivable record.

On multiple occasions, Mr. Sinclair breached Rule 5-43(1)(c) of the *Rules* by failing to send or deliver a statement of account to the client before transferring funds from trust to pay fees and disbursements.

Mr. Sinclair breached Rule 3.5 of the *Code* and Rules 5-42(1) and (7) of the *Rules* by failing to properly account for client trust monies. He made multiple disbursements from trust on behalf of clients for whom he was attorney, or whom he was otherwise assisting with financial matters without supporting documentation, or without taking care to maintain records in proper fashion.

In an estate matter, Mr. Sinclair charged and collected fees in excess of the applicable Queen's Bench Tariff and failed to serve on the personal representative and the beneficiaries, QB Form 74AA. There was no notice to the beneficiaries that the tariff had been exceeded and there were no consents from them. Mr. Sinclair was, therefore, in breach of Rule 3.6-1 of the *Code* and Rule 5-54 of the *Rules* in that the fees charged and collected were neither fair and reasonable nor fully disclosed.

In the case of one client, Mr. Sinclair received payments from the client in cash as payments against fees and disbursements. The client advised that the total of these payments was \$13,000.00. Mr. Sinclair was unable to provide any documentation, except as to \$2,000.00 that was deposited into trust and he was unable to say what the exact total of receipts from the client had been. Mr. Sinclair did not send or deliver any accounts to the client, except as to the \$2,000.00 amount. He asserted that the rest of the money was paid pursuant to a "verbal account" and was due for past services and so he did not consider it trust money. In respect of this matter, Mr. Sinclair breached Rule 5-43(1)(a) of the *Rules* in that the monies received from the client were trust funds and were not paid into Mr. Sinclair's trust account. He also breached Rule 5-48.1 of the *Rules* in that he appropriated the funds to fees and disbursements, but made no record of them in general accounting records and did not deposit them into his general account.

Mr. Sinclair's trust account reconciliations for several months were dated such as to indicate that they were not completed by the end of the following month as required by Rule 5-42(2) of the *Rules*. At the hearing, Mr. Sinclair's accountant explained that it was his practice to "restate" the reconciliations after they had initially been prepared but that they had been initially prepared within the time required.

Plea

Mr. Sinclair entered a not guilty plea to the 11 charges of professional misconduct.

Decision and Comments

Mr. Sinclair was found guilty on 9 charges and not guilty on 2 charges.

The Panel commented that the Rules respecting accounts are essential in fulfilling the Society's mandate to protect the public. They create a straightforward and transparent system that allows money from clients to be tracked and accounted for. Each Rule is a building block to ensure the integrity of the system.

Undertakings are sacrosanct. The specific Undertaking given by Mr. Sinclair was given to improve his accounting practices. He treated his Undertaking in a cavalier manner. It was no excuse for failing to comply, that he was loyal to an office assistant nor that he faced financial challenges.

Mr. Sinclair's record keeping was abysmal. The privilege of practising law comes with the responsibility to meet one's professional obligations. If Mr. Sinclair lacks the expertise to comply with the Rules, he must hire the staff that can do it.

Maintaining an accounts receivable record and general account records as required, allows for clients to always be able to obtain an accurate statement from a lawyer. Similarly, the requirement that a statement of account be issued and delivered or sent ensures that the clients know what is happening to their money in addition to creating a clear audit trail. A client cannot waive the requirements of the Rules. It is the lawyer's duty to comply whatever may be the client's views. The requirements to properly care for and account for client property allows the Society to fulfill its function to protect the client by ensuring their property is safe. Documentation should be in the client file and should be easily accessible. A Society audit should be a straightforward process and not a scavenger hunt.

In estate matters, the Queen's Bench Rules and Tariff define what is "fair and reasonable" and set a standard of disclosure. Since Mr. Sinclair did not comply with those requirements, he breached his duty under the *Code* and the *Rules* that he charge only fees that are fair and reasonable and fully disclosed.

Under the Rules, money received from a client for payment of fees and disbursements is trust money until a statement of account has been rendered. A "verbal account" is not permitted.

Based on his accountant's testimony that monthly trust reconciliations had initially been prepared within the time required, Mr. Sinclair was acquitted of the charge under Rule 5-42(2) of the *Rules*. The Panel recommended, however, that the Society's Audit staff meet with Mr. Sinclair's accountant to review the trust reconciliation process.

Mr. Sinclair was acquitted of the charge under Rule 5-54 of the *Rules* that arose from the same facts as the charge under Rule 5-43(1)(c) of the *Rules*. The essence of the particulars was the failure to send or deliver an account before withdrawing trust funds. In the circumstances, it would be unjust to enter convictions for both charges.

Penalty

- Suspension (3 months commencing August 23, 2017)
- Costs of \$20,000.00
- The panel 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 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.