

THE LAW SOCIETY OF MANITOBA

IN THE MATTER OF:

ROBERT FRANK DOOLAN

and

IN THE MATTER OF:

THE LEGAL PROFESSION ACT

DECISION

Appearances for The Law Society of Manitoba:

Darcia A.C. Senft

Appearances for Robert Frank Doolan:

In person

Discipline Committee Panel:

Richard K. Deeley, Q.C.

Katherine Buetl

Kenneth Molloy

This hearing before a panel of the Discipline Committee of The Law Society of Manitoba, pursuant to the provisions of *The Legal Profession Act*, was conducted in Winnipeg on October 15th, 16th and 17th, 2013. The Discipline Committee panel members consisted of Richard K. Deeley, Q.C., Chairman, Katherine Buetl, and the public representative, Kenneth Molloy. The Law Society was represented by Darcia A.C. Senft. The member, Robert Frank Doolan, appeared on his own behalf, although having been advised of his right to retain legal counsel.

This hearing was required as the result of certain citations which had been issued against Mr. Doolan which set forth various charges or allegations of professional misconduct against him. The first citation was issued on September 16th, 2010. A second citation was issued on May 3rd, 2012. This second citation was amended by way of a revised citation issued July 4th, 2013. The citations in issue set forth a number of allegations, and particulars of same, against Mr. Doolan. Because of the number of charges, and particulars, and various clients and amounts involved, we are attaching hereto the September 16th, 2010 citation as **Schedule 1**, and the amended citation dated July 4th, 2013 as **Schedule 2** to this decision. The various charges and counts and particulars set forth in these schedules are intended to form part of this decision, without the need to repeat and duplicate same herein.

In summary, after an extensive and lengthy investigation, and viewing these attached citations together and as a whole, for convenience purposes only, Mr. Doolan is charged with a number of offences, which fall into three general categories:

1. Between April 10th, 2008 and February 18th, 2010 he misappropriated or converted to his own use the sum of \$10,671.43 involving some 93 clients. This was allegedly accomplished by depositing certain refunds received from the Winnipeg Land Titles Office into either his own personal bank account, or negotiating such refund cheques for cash.
2. Failing to discharge, with integrity, his duty to the profession, contrary to the Code of Professional Conduct, by attempting to mislead The Law Society of Manitoba during the course of an investigation by providing misleading information and deliberately making an overpayment to the Winnipeg Land Titles Office, in an attempt to generate a refund cheque in an amount equivalent to cover up his previous conduct.
3. Failure to discharge with integrity his duty to the profession, contrary to the Code of Professional Conduct, by falsifying bank deposit slips on 12 separate occasions in order to conceal the misappropriation of client monies.

Although we have endeavoured to summarize the aforementioned charges in general terms, we wish to make it clear that we have reviewed each of the allegations and counts set out in the attached citations and considered same as part of this decision.

Summary

In summary form, for the reasons that will be detailed below, this Discipline Panel of The Law Society has made the following findings:

From the citation dated September 16, 2010:

Charge	Client	Finding
Count 1 (misappropriation of funds)	Client 1	Guilty
Count 2 (misappropriation of funds)	Client 2	Guilty
Count 3 (misappropriation of funds)	Client 3	Guilty
Count 4 (misappropriation of funds)	Client 4	Guilty
Count 5 (misappropriation of funds)	Client 5	Guilty
Count 6 (misappropriation of funds)	Client 6	Guilty
Count 7 (misappropriation of funds)	Client 7 Client 8 Client 9 Client 10 Client 11 Client 12 Client 13 Client 14	Guilty
Count 8 (attempting to mislead an investigation)		Guilty
Count 9 (attempting to mislead an investigation)		Guilty
Count 10 (attempting to mislead an investigation)		Guilty
Count 11 (attempting to mislead an investigation)		Guilty
Count 12 (attempting to mislead an investigation)		Guilty
Count 13 (attempting to mislead an investigation)		Guilty

From the amended citation dated July 4, 2013:

Charge	Client	Finding
Count 1 (misappropriation of funds)	Clients 21-93	Guilty, except for in regards to Client #27
Count 2 (attempting to mislead an investigation)		Guilty

Mr. Doolan had entered a guilty plea to all charges related to misleading the investigation:

From the Citation dated September 16, 2010:

Count 8
Count 9
Count 10
Count 11
Count 12
Count 13

From the Amended Citation dated July 4, 2013:

Count 2

In regard to the remaining charges, relating to the misappropriation of funds, to which pleas of not guilty had been entered, one of the key issues is whether the prosecution had met the standard of proof, which in this hearing is the balance of probabilities.

In presenting their case, The Law Society has demonstrated that on the balance of probabilities, with the exception of one client, Mr. Doolan used funds which he knew belonged to his clients, for a purpose other than that for which they were intended, thereby misappropriating funds. The Law Society has also shown to the standard of the balance of probabilities that Mr. Doolan attempted to mislead the investigation by knowingly falsifying records and making false assertions about his use of the funds.

Therefore, Mr. Doolan is found guilty of the charges as indicated.

Decision

At the commencement of this discipline hearing receipt of the Notice of Hearing, and membership in The Law Society of Manitoba was acknowledged by the member. There were no objections raised to the members of the Discipline Panel and the jurisdiction and authority of the panel to proceed was acknowledged and accepted.

After some deliberation and consultation between the member and counsel for The Law Society Mr. Doolan entered a plea of guilty, with an explanation, to the following counts as set forth in the citation attached hereto as **Schedule 1**:

- Count 8 (a) and (b)
- Count 9 (a) and (b)
- Count 10 (a) and (b)
- Count 11 (a) and (b)
- Count 12 (a) and (b)
- Count 13 (a) and (b)

Mr. Doolan entered a plea of not guilty to the remainder of the allegations set forth in the attached citation being **Schedule 1**.

Mr. Doolan entered a plea of guilty, with an explanation, to the attached amended citation which is **Schedule 2** to the following counts:

- Count 2 (a), (b), (c), (d) and (e)

Mr. Doolan entered a plea of not guilty to the remainder of the amended citation attached hereto as **Schedule 2**.

In summary form, Mr. Doolan admitted, with an explanation, to the allegations that he attempted to mislead The Law Society during the course of an investigation into his conduct by making misleading statements and by making deliberate overpayments to the Winnipeg Land Titles Office when registering documents to conceal that he had misappropriated clients' monies. Mr. Doolan denied all of the other allegations against him.

The evidence for the prosecution in this matter was presented by way of the filing of a Book of Documents containing some 7 separate sections of various documents from the Winnipeg Land Titles Office, and copies of same, and some 3 separate sections of various documents from Scotiabank, and copies of same. In addition, an Affidavit dated July 30th, 2013 as attested to by Colleen Debra Malone (formerly Halpenny), the Chief Financial Officer of The Law Society of Manitoba, which contains some 23 paragraphs and attached some 4 Exhibits, each of which contained a number of documents, was filed. In further addition an extensive Affidavit dated July 30th, 2013 as attested to by Leah Christina Kosokowsky, the Director of the Complaints Resolution Department of The Law Society of Manitoba, was filed. This Affidavit consisted of some 147 paragraphs, set out on 51 pages, and contained 90 Exhibits attached thereto. This Affidavit set forth the substance of the allegations made against the member, and the various cancelled cheques, client records, bank records, and correspondence passing between The Law Society of Manitoba, Mr. Doolan, the lawyers representing Mr. Doolan, and communication with various other parties, which set forth the proposed proof of the allegations in issue.

The Law Society also called one additional witness.

The member, Robert Doolan, indicated his desire to cross-examine Colleen Malone on her Affidavit, which shall be referred to later. In addition, Mr. Doolan testified on his own behalf, and called three additional witnesses.

In total, 11 exhibits were filed, but many of these exhibits were extensive in nature and contained numerous copies of various documents.

After careful review and consideration of all of the evidence and argument, and each of the counts referred to in the attached citations, the Discipline Committee Panel has found Robert Frank Doolan to be guilty of 86 instances in which he misappropriated client monies by converting to his own use certain refund cheques from the Winnipeg Land Titles Office, which monies properly belonged to his clients. In addition, on five other occasions Robert Frank Doolan misappropriated client monies by depositing certain refund cheques received from the Winnipeg Land Titles Office into his own personal bank account, which monies rightfully belonged to his clients, and therefore converted same to his own use. In further addition, we have found that on seventeen occasions Robert Frank Doolan misled or attempted to mislead The Law Society of Manitoba during the course of an investigation into his conduct by making misleading statements to The Law Society and deliberate overpayments to the Winnipeg Land Titles Office when registering documents for clients in order to conceal his misappropriation of client monies. In further addition, we have found that on twelve separate occasions Robert Frank Doolan attempted to mislead The Law Society of Manitoba during the course of an investigation into his conduct by deliberately falsifying bank deposit slips to conceal that he had misappropriated client monies. In each and all of these aspects Robert Frank Doolan

has therefore failed to discharge with Integrity his duty to the profession contrary to Chapter 1 of the Code of Professional Conduct as adopted by the Benchers of The Law Society of Manitoba, and has thereby committed professional misconduct.

The panel of the Discipline Committee has acquitted Robert Frank Doolan in regard to the allegation that he misappropriated the sum of \$2,859.00 from client number 27, on or about May 13th, 2008, relating to G H as set out in paragraph 1 of the amended citation dated July 4th, 2013, which is attached as **Schedule 2** to this decision.

The evidence presented and reasons for our decision are as follows.

At the outset of these proceedings counsel for The Law Society of Manitoba made an opening statement which outlined their position. In essence, the matters in issue arose out of a spot audit that had been conducted by The Law Society on Mr. Doolan in January 2010. As a result of the investigation which followed, the allegations of misappropriation of client monies, and the misleading of The Law Society by various knowingly inaccurate statements, and the alteration of accounting records, were made. It was alleged that this was a deliberate pattern of conduct that involved wrongful decisions on several different occasions. Although the amounts involved may have been relatively small in each instance, the deliberate falsification demonstrated a pattern of deceit which is serious in nature. We were reminded that in order to obtain a conviction the prosecution must show by way of clear, convincing and cogent evidence, based upon the civil standard of a balance of probabilities, that the matters alleged did occur. No matter how small the amounts might be, client

monies still belonged to the client, was the assertion made in this opening statement. The prosecution intended to proceed by way of the filing of the Book of Documents and the two Affidavits of Colleen Malone and Leah Kosokowsky, previously referred to. In addition, evidence would be called from the Winnipeg Land Titles Office, and if necessary, the bank officials could be available to testify.

In his opening statement, Mr. Doolan indicated that in his opinion the Book of Documents and the body of each of the two Affidavits were acceptable to him. However, some of the Exhibits attached to the Affidavit of Colleen Malone, in particular, were objectionable and should not be admitted into evidence. He questioned whether all of the information contained therein related to the actual charges that had been laid against him, and since such matters may be irrelevant, whether the admission of same would be prejudicial to him. He argued that it was only the actual charges which were in issue in this proceeding, and alleged that some of the material and information contained in the Exhibits to the Affidavit of Colleen Malone could be considered inflammatory and prejudicial to him.

The Discipline Committee Panel then adjourned in order to consider this preliminary objection. After due consideration, the panel ruled that affidavit evidence is admissible in this type of proceeding, pursuant to Section 71 of *The Legal Profession Act*. It was noted that there was no objection being taken to the substance of the Affidavits, which had been deposed to under oath. It was only some of the Exhibits attached to the Affidavits which were alleged to be irrelevant, and therefore potentially inflammatory. The panel ruled that the Book of Documents, as well as both of the Affidavits of Colleen Malone and Leah Kosokowsky would be admitted into

evidence, and the panel would reserve on the weight, if any, to be given to the Exhibits to the Affidavits, or the Affidavits themselves, until all of the evidence and argument had been heard. It was noted that at the end of the day this panel would be basing its decision upon the civil standards of proof, and not upon any criminal standards. Further, it would be necessary to review the individual documents before any determination could be made in regard to what weight, if any, should be applied to them. Mr. Doolan was encouraged to draw the attention of the panel to any Exhibit or information that he thought to be objectionable as the evidence proceeded. We accepted the submission of The Law Society that the information contained in the Affidavits related to the investigation process, in order that the panel might have the relevant background information before it. Therefore, we were prepared to admit the Affidavits into evidence, subject to any objection that might be raised in regard to any particular document or aspect of such evidence, and what further consideration as to the weight which should be given to same.

Mr. Doolan then sought to cross-examine Colleen Malone on the Affidavit which she had made, which was now filed in evidence. During such cross-examination it was acknowledged that Ms Malone had conducted a spot audit of the practice of Mr. Doolan in 2008. A dispute arose between Mr. Doolan and this witness over whether The Law Society, at the time of their previous audit in 2008, had reviewed his general bank account, and therefore had become aware of his existing practice to deposit, or "dump" refund cheques received from the Winnipeg Land Titles Office into his general account. It was alleged by Mr. Doolan that The Law Society was aware of this practice and did not object to same, or alert him to the fact that there was anything improper about such practice. It was alleged that The Law Society had in effect condoned such

practice. Ms Malone, during her cross-examination on her Affidavit, and subsequent re-examination by The Law Society, indicated that she was not aware of this practice, and did not review his general account in any detail. It was not the practice of The Law Society to review the general account of a member, as opposed to his trust account, unless there was a specific reason to do so.

The Law Society then called Irvin Simmons, the Deputy District Registrar of the Winnipeg Land Titles Office, and the Acting Deputy Registrar General, at the time in question, as a witness. Mr. Simmons testified that in an effort to reduce administration costs the Land Titles Office reviewed the number of refund cheques which had been issued to members of The Law Society. As a result of this review it was determined that out of some 500 Registration Detail Application (RDA) forms submitted by Mr. Doolan, 90 of same contained inaccurate calculations as to the appropriate and required registration costs, and therefore refund cheques had been issued to him. This constituted approximately 18% of all registrations filed by this member.

In particular, the attention of the Land Titles staff had been drawn to Mr. Doolan and his practice when on July 20th, 2009, he had paid for a registration for a client with the name of _____, by endorsing and submitting eight different refund cheques from the Land Titles Office, arising out of 8 different prior registrations, along with a personal cheque from Mr. Doolan, to pay for the registration of the documents. Mr. Simmons found this unusual that the refund cheques in issue had not been deposited to the lawyer's trust or general accounts, and were instead used in payment of other, perhaps unrelated, registration costs. He therefore wrote to

The Law Society in this regard. It should be noted that each of the refund cheques issued by the Land Titles Office was made payable to Mr. Doolan personally. It should also be noted that Mr. Doolan is a sole practitioner, and that the normal practice of the Land Titles Office was to issue refund cheques to the law office that had submitted the original registration fees.

The Law Society then requested from the Land Titles Office copies of the refund cheques that had been issued to Mr. Doolan. Contained in the Book of Documents and the Affidavit of Colleen Malone was a list of the extensive information and documentation received by The Law Society from the Land Titles Office.

It would appear that in due course The Law Society wrote to Mr. Doolan to inquire in regard to his use and application of the refund monies in question. Mr. Doolan then wrote to the Land Titles Office and requested copies of all of the cancelled cheques in issue. As the evidence unfolded, it would appear that Mr. Doolan was not aware that The Law Society had already received all of this same information, and documentation, from the Land Titles Office.

Mr. Simmons also testified that at or around this same time, namely March and April 2010, Mr. Doolan made certain overpayments on then current registrations, which resulted in the issuance of a refund cheque in the exact same amount as some of the previous refund cheques that had already been cashed by him.

In cross-examination, Mr. Simmons confirmed that he had not done a comparison between the number of refund cheques issued to Mr. Doolan, and to other lawyers who maintained busy and active real estate practices. However, the witness did

Indicate that the number of refund cheques issued to Mr. Doolan did seem high, and that he found it most unusual to pay for a new registration by the endorsement of eight different Land Titles Office refund cheques.

The material submitted in evidence included copies of correspondence between The Law Society and Mr. Doolan and the two lawyers who had represented him at various times during the investigation, including at the Complaint Investigation meeting, and subsequently leading up to the hearing.

A review of the Affidavit evidence submitted, in summary form, indicates that the following practice is alleged to have occurred:

1. Mr. Doolan would estimate the registration costs to be paid to the Land Titles Office on any real estate transaction, and collect such registration costs from his client.
2. Mr. Doolan would then complete a Registration Detail Application (RDA) form and submit that form, along with the estimated registration costs, and legal documents in issue, to the Land Titles Office.
3. If an excess amount of registration fees had been paid, which resulted in an overpayment, the Land Titles Office would issue a cheque made payable to Mr. Doolan for the excess amount on each individual transaction.

4. The Land Titles Office originally found it unusual that eight such individual refund cheques had been used to pay for most of the costs of the registration of a new registration in the name of a client .
5. The Land Titles Office then reviewed its records and found that on approximately 18% of all registrations made by Mr. Doolan overpayments had been made, which resulted in refund cheques payable to Mr. Doolan.
6. Each of these refund cheques had been subsequently negotiated, and the cancelled cheques were retained by the Land Titles Office.
7. During its 2008 audit The Law Society had become aware that certain Land Titles Office refund cheques were being deposited into the general account of Mr. Doolan.
8. As a result, they advised Mr. Doolan that he should retain and file the RDA forms on each individual client file, in order that any potential refund resulting from that registration could be assigned to a particular file, and paid or credited to that particular client.
9. During the January 2010 spot audit it became apparent that these RDA forms were not being kept and assigned to individual client files. Therefore any refunds on such files were not being credited to each file, and reported to, and paid to the applicable clients.

As indicated in the attached citation dated September 16th, 2010 (marked as **Schedule 1** to this Decision), it was alleged that during the course of its investigation in March and April 2010, the member had in addition to misappropriating or converting to his own use relatively small amounts of money received by way of refunds from the Land Titles Office that belonged to some 14 different clients, Mr. Doolan had also attempted to mislead The Law Society in the following manner:

1. On or about March 22nd, 2010 he advised The Law Society that he had found on file a stale-dated Land Titles Office cheque to the credit of client #1, and that he would request the Land Titles Office to issue a replacement cheque, when in fact he knew that he had cashed the original cheque and converted the funds to his own use in October 2009, and there was therefore no stale-dated cheque on file.
2. On or about March 29th, 2010 he advised The Law Society that the Land Titles Office had issued a replacement cheque for client #1 and provided The Law Society with a copy thereof, when in fact the cheque was for a refund which arose from a deliberate overpayment made by Mr. Doolan on March 17th, 2010 in relation to a Land Titles registration for another client, namely client #15.
3. On March 22nd, 2010 he advised The Law Society that he could not find anything on the file for client #2 which would suggest what had happened to a refund cheque from the Land Titles Office, and he could not remember what had happened to it, when, in fact, he had cashed the refund cheque and converted the funds to his own use in July 2009.

4. On or about March 29th, 2010 he provided The Law Society with a copy of a Land Titles cheque purportedly issued as a replacement for the original refund cheque for client #2, when in fact the cheque was a refund from the Land Titles Office for a deliberate overpayment made by him on March 17th, 2010, in relation to a registration for another client, namely client #16.
5. On or about March 22nd, 2010 he advised The Law Society that he had found on file a stale-dated refund cheque to the credit of client #3, and that he would request the Land Titles Office to issue a replacement cheque, when in fact he had cashed the original refund cheque and converted the funds to his own use in August 2009, and there was no stale-dated refund cheque on file.
6. On or about March 24th, 2010 he made a deliberate overpayment to the Land Titles Office when registering documents for another client, namely client #17, with the intention of forwarding to The Law Society a copy of the associated refund cheque to cover up the fact that the original August 2009 refund cheque for client #3 had been misappropriated by him.
7. On or about March 29th, 2010 he advised The Law Society that he could not find anything on the file which would suggest what had happened to a refund cheque from the Land Titles Office and it was possible that a courier had not delivered it to him, but in fact he had cashed the refund cheque and converted the funds to his own use in February 2009.
8. On or about March 18th, 2010 he deliberately made an overpayment to the Land Titles Office when registering documents for another client, namely client

#18, with the intention of forwarding to The Law Society a copy of the corresponding refund cheque from the Land Titles Office to cover up the fact that the original February 2009 refund cheque for client #4 had been misappropriated by him.

9. On or about March 29th, 2010 he advised The Law Society that he could not find anything on the file which would suggest what had happened to a refund cheque from the Land Titles Office, and it was possible that a courier had not delivered it to him, when in fact he had cashed the refund cheque and converted the funds to his own use in February 2009.
10. On or about March 24th, 2010 he deliberately made an overpayment to the Land Titles Office when registering documents for another client, namely client #19, with the intention of forwarding to The Law Society a copy of the corresponding refund cheque from the Land Titles Office to cover up the fact that the original February 2009 refund cheque for client #5 had been misappropriated by him.
11. On or about March 22nd, 2010 he advised The Law Society that he had found on file a stale-dated refund cheque to the credit of client #6, and that he would request that the Land Titles Office issue a replacement cheque, when in fact he had cashed the original refund cheque and converted the funds to his own use in August 2009, and there was no stale-dated cheque on file.
12. On or about March 17th, 2010 he deliberately made an overpayment to the Land Titles Office when registering documents for another client, namely client

#20, with the intention of forwarding to The Law Society a copy of the corresponding refund cheque from the Land Titles Office to cover up the fact that the original August refund cheque for client #6 had been misappropriated by him.

The investigation into these matters continued for approximately 1½ further years, until May 2012, when a second citation, dated May 3rd, 2012 was issued against Mr. Doolan. In that second citation it was alleged that on 69 separate real estate transactions he had misappropriated client monies by negotiating for cash, or depositing into his personal bank account, and therefore converting to his own use, certain refund cheques received on behalf of clients from the Winnipeg Land Titles Office. It should be noted that this allegation referred specifically to Mr. Doolan either having negotiated such refund cheques for cash, or alternatively, having deposited such refund cheques not into either his office trust account or general account, but rather into his personal bank account. The 69 different transactions and clients were identified and set out in this second citation.

In addition, this citation also alleged that:

1. On or about March 2010 he made a deliberate overpayment to the Winnipeg Land Titles Office when registering documents for client #94, with the intention of forwarding to The Law Society a copy of the associated refund cheque to conceal the fact that the original July 31st, 2009 refund cheque had been misappropriated by him on or before August 27th, 2009.

2. On or about March 2010 he made a deliberate overpayment to the Land Titles Office when registering documents for client #95, with the intention of forwarding to The Law Society a copy of the associated refund cheque to conceal the fact that the original July 22nd, 2009 refund cheque for client #67 had been misappropriated by him on or before July 23rd, 2009.
3. On or about March 2010 he made a deliberate overpayment to the Land Titles Office when registering documents for client #96, with the intention of forwarding to The Law Society a copy of the associated refund cheque to conceal the fact that the original January 9th, 2009 refund cheque for client #54 had been misappropriated by him on or before January 12th, 2009.
4. On or about April 2010 he made a deliberate overpayment to the Winnipeg Land Titles Office when registering documents for client #97, with the intention of forwarding to The Law Society a copy of the associated refund cheque to conceal the fact that the original August 21st, 2009 refund cheque for client #73 had been misappropriated by him on or before August 26th, 2009.
5. On or about April 2010 he made a deliberate overpayment to the Land Titles Office when registering documents for client #98, with the intention of forwarding to The Law Society a copy of the associated refund cheque to conceal the fact that the original refund cheque had been misappropriated by him.

In addition, in this citation, It was alleged that on 12 separate occasions he falsified bank deposit slips dated between May 29th, 2009 to February 12th, 2010 In an attempt

to mislead The Law Society and to conceal the fact that he had misappropriated client monies.

The investigation in regard to the matters in issue continued after this time, and on July 4th, 2013 the May 3rd, 2012 citation was amended to indicate that the 69 allegations of misappropriation had now been expanded to 73 such allegations.

These were the allegations, and the supporting information and documentation as attested to in the Affidavits filed on behalf of The Law Society of Manitoba.

The Law Society of Manitoba then closed its case. In so doing, it indicated that no specific challenge had been taken to the extensive information and allegations contained in the Affidavit of Leah Kosokowsky, and the voluminous exhibits attached thereto, which related to and allegedly supported the allegations being made against Mr. Doolan.

Robert Doolan then testified on his own behalf. In this regard it should be noted that Mr. Doolan first began by further commenting upon the 2008 audit conducted by Colleen Malone. Counsel for The Law Society objected to same on the basis that these were matters that he could have dealt with during his cross-examination of this witness. However, the panel ruled that it would allow such testimony, and if after the completion of the evidence presented on behalf of the member The Law Society either wished to recall Ms Malone or to adduce other rebuttal evidence we would deal with such a request at that time. However, we wished to give the member the full opportunity to advance his defences to the allegations being made against him.

Mr. Doolan alleged that during the 2008 audit The Law Society had in fact reviewed his general account, going back over the past year, and had been aware that refund cheques from the Land Titles Office were being deposited into that general account. However, the auditor had not indicated that there was anything inappropriate about this. Mr. Doolan also suggested that The Law Society and the Land Titles Office should have compared the number of refund cheques issued to him with other law firms which had active real estate practices.

Mr. Doolan testified that he opened approximately 1,600 files each year. Of this, approximately 1,200 of these were residential real estate transactions. Three hundred of these were commercial real estate transactions, and 100 of such files related to other matters. He indicated that it was only he and one paralegal employed by him who did all of the work in his office. He did, however, have one part-time book-keeper who worked on weekends. He testified that whereas he was able to handle all of these transactions with the assistance of one paralegal, other active real estate lawyers might have as many as five paralegals to do this type of work. He testified that during the busy real estate season, from approximately June to September in each year, he would work from approximately 6:00 a.m. to 6:00 p.m. on all seven days of the week. He prepared all of his Statements of Account and all of the cheques issued by his office, and attended to all of the banking matters and all of the Land Titles Office registrations himself. Due to the amount of work and pressures on him, he acknowledged that he sometimes made mistakes in calculating the Land Titles Office registration fees, and either overpaid, or sometimes underpaid, the required costs.

Mr. Doolan testified that he had approximately 50 major clients, who bought and sold a significant amount of real estate. They would often not even open and read his reports, and therefore would not bother to cash any cheques that he might have enclosed for small refund amounts. However, he often did extra work for these clients, such as attending to and paying for additional searches at the Land Titles Office, for which he would not bill or charge such clients. He did this because these clients would not wish to pay for such small individual amounts, but would expect him to take the money in compensation for same from somewhere. It was his practice to have been retaining Land Titles Office refund cheques, and not crediting same to individual clients, since the 1980s. Instead, he simply "dumped" these refund cheques into his general account. This practice was known to and observed by the auditors sent by The Law Society on every spot audit that had been done on his practice, and no issues were ever raised with him in this regard. It was his practice not to keep the Registration Detail Application forms on each file, and so therefore he would not know who any specific refund should be credited to. He testified that if a refund cheque was for less than \$100.00 he would simply dump same into his general account.

Mr. Doolan testified that it was his practice not to bill his clients for small amounts, such as \$20.00 or \$50.00 for disbursements incurred or services rendered, because his clients did not like to be required to pay such small individual amounts. He was therefore compensated for such small unbilled disbursements and services by retaining any refund cheques received from the Land Titles Office, and using them for his own purposes. He did not consider this to be deceitful, or improper, but instead, just a simple business way of dealing with or handling such matters.

When The Law Society auditor reviewed his general account during her 2008 spot audit she had advised him to keep the RDA forms. This was presumably in order to enable him to know who any refunds should be paid or credited to. It was acknowledged that his paralegal did this for a period of approximately three months, but then stopped doing so, because she said it took too much of her time. Mr. Doolan himself then kept the RDA forms for a couple of additional months during 2008, but then he too ceased this practice because it became too time consuming for him.

When the 2010 spot audit occurred, Colleen Malone, from The Law Society, asked to see the RDA forms so she could check what had happened to the Land Titles Office refunds. Mr. Doolan advised that he did not have such RDA forms and that he was just "dumping" such refund cheques into his general account, or using them to register other documents on behalf of other clients. Mr. Doolan had continued with this practice because he indicated that he did not think that it was wrong.

However, when he received a formal Notice of Complaint Form from The Law Society of Manitoba inquiring in regard to his dealings with these refund cheques, he consulted with two retired lawyers who advised him that, in the absence of any receipts for what he had done with these refund monies, he could be disbarred.

Mr. Doolan testified that he then became very stressed and thought about it for two or three days and decided that if he admitted what he had done, he might be disbarred, and he therefore decided to lie to The Law Society and started to alter his bank records.

Mr. Doolan sought advice from his then legal counsel and was told that if he had cashed these cheques without accounting for same to the individual client, it would constitute misappropriation. Mr. Doolan personally thought that if he had not used such refund monies for his own personal gain, but to simply reimburse himself for costs that had been incurred on behalf of other clients, it would not be considered misappropriation. However, the two legal counsel that he had retained at various times to represent him in regard to these matters advised him differently.

Mr. Doolan testified that he advised the Complaints Investigation Committee during a hearing on August 13, 2010, that he had kept the cash from the Land Titles Office refunds, even though he now claimed that he had not actually kept this cash for his own purposes, but merely thought that he was simply reimbursing himself for the unbilled expenses which he had incurred.

Subsequent to that time, The Law Society continued with its investigation, and continued to ask him about the refund cheques and his use of same. Mr. Doolan testified that The Law Society suggested to his then legal counsel that if he were to agree to disbarment, any potential costs awarded against him would be reduced.

Mr. Doolan consulted with other experienced legal counsel, and with his son-in-law, who is a lawyer, and everyone agreed that it was what he did with the refunds that was important, and not necessarily the fact that he had not kept any receipts.

The member stated that he had been practicing since 1976 and had never had a complaint made or an insurance claim advanced against him. Mr. Doolan also stated that there were never any issues or concerns with his practice until approximately

April 2008 when The Law Society saw he had cashed the refund cheques from the Land Titles Office.

The member claimed that the fact that the number of refund cheques did not increase over the years, and that the amount of such refunds remained small, indicated that he did not intend to steal or misappropriate such monies. He argued that if he really intended to steal such funds the amounts would have been much larger and increased over the years. He even suggested that if he really wanted to obtain money for his own benefit, there were other ways he could have done so, such as the retention of refunds from title insurance registrations and refunds from water bill payments.

According to his calculations, there were a total of seventy-four Land Titles Office refund cheques cashed by him. Forty-seven, or approximately two-thirds of these cheques were for less than \$100.00 in amount. Twenty of these refund cheques were valued between \$100.00 and \$200.00 in amount, and only two cheques were valued over \$200.00 in amount. According to Mr. Doolan, such small amounts were indicative of a lack of intention to steal or misappropriate any monies.

Mr. Doolan further indicated that his previous practice had been to go to the Winnipeg Land Titles Office and return every day. However, once the Land Titles Office had moved to its current location on Portage Avenue, it was now located further away from his office, and therefore he started to only attend at the Land Titles Office approximately once per week. This was because finding a parking place at the new location was difficult, and in the winter it was too far to walk in the cold weather. Before the change in location of the Land Titles Office, if there were rejections or

underpayments, Mr. Doolan would return to his office to make the corrections, and then return to the Land Titles Office to re-register these documents. However, after the change in the location of the Land Titles Office, and his less frequent attendances, he began to bring blank cheques to the Land Titles Office where he would then write cheques for whatever amounts might be required. However, he did not keep proper records of what files such cheques were being written for, and for what reasons and amounts. He would also obtain searches of various titles without charging the client who had requested same. He was therefore using his own money to pay for and to correct such deficiencies, and to conduct such searches, without any means of charging same back to, or being reimbursed by, the individual client involved. Therefore, starting in February or March of 2008, when he received a refund cheque from the Land Titles Office, he simply endorsed the cheque and would use it to pay for various disbursements, and services, either for that particular client if he could identify same, or for other clients. In Mr. Doolan's mind, this would all somehow balance out.

Mr. Doolan also stated that he also took some cash money to the Land Titles Office in an envelope that he kept in his briefcase that he used as a sort of "float". When he used such cash on behalf of a client he would write out a sticky-note with the client's name on it and put it in an envelope. This float money would be used for things such as searches, to obtain copies of documents, and to pay for \$20.00 rejection fees. From week to week, Mr. Doolan testified he would have a personal shortfall of anywhere between \$5.00 and up to a few thousand dollars, in such a cash float. Mr. Doolan therefore considered the refunds which he received from the Land Titles Office and subsequently cashed, to be compensation to him for the amounts

which he was expending on behalf of his clients. He testified that he cashed these cheques because there was always money owing to him for one thing or another, and not because he did not want to refund these monies to the client.

Mr. Doolan testified that he knew the proper way to maintain the appropriate financial and trust records, and that he was aware he was not doing this in the appropriate manner.

Mr. Doolan indicated that he normally billed between \$25,000.00 and \$30,000.00 per month, and therefore he did not need to steal these relatively small amounts of money. He stated that he deals with literally millions of dollars in trust monies each day. He asked the rhetorical question of why he would steal approximately \$300.00 per month in Land Titles Office refunds cheques if he could have increased his income significantly by simply increasing the fees he charged by a relatively small amount on each residential or commercial transaction he did.

Mr. Doolan's position was that he did not steal or misappropriate the clients' Land Titles Office refund cheques by depositing them to his general account, or by cashing same, because he was merely being reimbursed for his unbilled expenses on other client files and because he did not need the money. If he had needed the money, there were other means by which he could obtain same. His biggest mistake, in his opinion, was attempting to conceal what he had done from The Law Society. He did this out of fear and panic because he had been advised by at least two lawyers that he was going to get disbarred.

However, it is significant to note that Mr. Doolan also said that he was not one hundred percent sure that he would not do this again if he was in a similar situation.

Mr. Doolan also made reference to one of the allegations of misappropriation from a L S H client in the amount of \$1,180.00, being a refund cheque from the Land Titles Office that he had cashed. This is client number 23 as set out in count number 1 of the July 4, 2013 amended citation. The member's explanation was that one of the two partners in this enterprise was being audited by Revenue Canada. In this regard, the client had asked Mr. Doolan to search a number of properties that he had bought and sold over the past number of years. Mr. Doolan did so and incurred significant costs in excess of \$600.00 that he paid for out of his personal funds. When the refund cheque from the Land Titles Office in the amount of \$1,180.00 was received by Mr. Doolan, he asked one of the partners if he could keep one half of it. That partner told him to keep all of it. When Mr. Doolan reminded this individual that half of such refund belonged to his other partner, Mr. Doolan testified he was advised that the individual Mr. Doolan was talking to would deal personally with his business partner. However, this individual had now refused to attend at the hearing in support of Mr. Doolan, and Mr. Doolan did not wish to have this individual subpoenaed. Therefore there was no corroboration of Mr. Doolan's explanation available.

Mr. Doolan was then cross-examined by Ms Senft, as counsel for The Law Society of Manitoba. He acknowledged that after he had been audited in 2008, he had been told he should keep the RDA forms. He confirmed that his paralegal did keep such forms for two or three months after this time, and that he then continued to keep such records himself for a subsequent period of one and one half to two months.

However, after that time, the RDA forms were not kept, because both he and his assistant were too busy.

He further acknowledged that he was solely responsible for calculating the amount of Land Transfer Tax to be paid to the Land Titles Office, and that any overpayment would be due to a miscalculation on his part.

He acknowledged that he knew that all monies received from or on behalf of a client, unless received to pay an account already rendered, were to be held in trust on behalf of that client. He acknowledged that the estimated closing costs, including the costs of registration, were discussed with and obtained from the client before closing. It was therefore the client's money that was used to pay the registration costs in the Land Titles Office. Therefore, he agreed that any refund of such registration costs should be credited to that individual client who had advanced such funds, and held on trust on behalf of that particular client.

Mr. Doolan acknowledged that when he appeared before the Complaints Investigation Committee on August 13, 2010, he admitted and acknowledged that by cashing the refund cheques from the Land Titles Office, he had committed theft, and that the amount, no matter how small, did belong to the client.

Counsel for The Law Society reviewed the allegations contained in the first citation, dated September 13, 2010, attached hereto as **Schedule 1**, with Mr. Doolan. He admitted that in each of counts one through six, inclusive, he had received a refund cheque from the Land Titles Office and had cashed same, knowing that these monies belonged to the client and were being held by him in a trust capacity.

Mr. Doolan further admitted that, in regard to count 7 of the September 13, 2010 citation, he had used refund cheques on some eight different client files to pay, in part, for the registration of the documents in the Land Titles Office, and that each of these refund cheques were actually client trust funds.

Mr. Doolan further admitted that on March 15, 2010, he had requested and received from Scotia Bank copies of some 29 cancelled refund cheques payable from the Land Titles Office to himself. Therefore, he already had such cancelled cheques in his possession, and was aware of the status of same, when he subsequently advised The Law Society of Manitoba that he had a stale-dated cheque in his possession, or that he was unaware of the status of the cheque, and what had happened to it.

Mr. Doolan further agreed that he had deliberately created an overpayment of registration fees on certain current client matters, the overpayment being in the same amount as the amount of a refund cheque being investigated by The Law Society, in an attempt to obtain a new refund cheque from the Land Titles Office, which he then intended to pass off to The Law Society as a replacement for the alleged original stale-dated refund cheque, but which original refund cheque he had already cashed some time ago.

In regard to each of counts 8, 9, 10, 11, 12 and 13 of **Schedule 1**, Mr. Doolan admitted that he had previously cashed the refund cheque from the Land Titles Office, and not reported to, or accounted to, the client in regard to same, and subsequently endeavored to deliberately mislead The Law Society into believing that a replacement cheque for the original overpayment to the Land Titles Office had now been received.

Mr. Doolan further admitted to lying to the Complaints Investigation Committee during his appearance on August 13, 2010, in regard to these matters.

In regard to the Amended Citation, dated July 4, 2013, and attached hereto as **Schedule 2**, Mr. Doolan acknowledged that he did make 11 different overpayments to the Land Titles Office in an attempt to cover up his earlier conduct. He further acknowledged that 74 refund cheques from the Land Titles Office were negotiated for cash, and 5 refund cheques from the Land Titles Office were deposited into Mr. Doolan's personal bank account. He also acknowledged that in previous correspondence with The Law Society, he had agreed that the deliberate overpayments were an attempt to cover up his "misappropriation" (emphasis added) of client funds. He further admitted that he had falsified bank deposit slips in an attempt to cover up his conduct.

Mr. Doolan was also questioned in regard to his early assertion to The Law Society that he had paid back all of the Land Titles Office client refunds to the clients affected, and he now acknowledged that approximately one third of such clients were in fact not repaid.

Upon further questioning under cross-examination, Mr. Doolan acknowledged that he was aware that he needs the consent of the client to transfer monies from trust to pay for both legal fees and disbursements, and that he did not have the authorization from the affected clients to retain for himself, or to use for the benefit of other clients, any refund of the money that had originally been paid on behalf of the client to the

Land Titles Office. In fact, the client was never advised or made aware that any refund had ever been received from the Land Titles Office.

Mr. Doolan further acknowledged that he did not report or pay any income tax on the 79 refund cheques that he converted to his own use. The refund cheques that were in effect "dumped" into his general account occurred, in many cases, because Mr. Doolan did not know who these monies actually belonged to, since he had not kept the original registration forms which would have allowed him to determine this.

Mr. Doolan acknowledged, in cross examination, that these refund cheques from the Land Titles Office were client monies that belonged to the client. However, instead of returning these monies to the individual client to whom they belonged, he either deposited such monies into his general account, or into his personal bank account, or negotiated such cheques for cash. The money in his general account he then used to pay for his office rent, and staff salaries, and to pay other general office expenses.

Mr. Doolan testified that he kept only one large brown envelope in his briefcase when he went to the Land Titles Office, and he placed all refund monies into this envelope. When he was aware which client the money belonged to, he would place a sticky note on the refund cheque, or money, to identify it. However, if he felt that this particular client owed him money for some unbilled disbursement or legal service provided, he would simply take that amount from the monies available, and use it for his own personal purposes, without ever reporting to the client or obtaining authorization to do so. He admitted that he did not know who some of the money in the refund

envelope belonged to. He acknowledged that at any one time there may be up to 20 different stacks of money in this brown envelope, with a value of up to \$2,000.00.

Mr. Doolan's rationale for conducting his practice in this fashion was simply that it was inconvenient for him to take the time to file all of the RDA forms, and to deposit all refunds into trust, and then to report to the client on the trust monies received by way of refund from the Land Titles Office, and to bill for any disbursements or expenses incurred.

Mr. Doolan acknowledged that in all of his prior communications with the Law Society throughout the course of this lengthy investigation, and including during his appearance before the Complaints Investigation Committee, he had never previously advised of this large brown envelope, and the use of his personal money, and his sticky note method of record keeping, until he testified at this hearing. His explanation for this conduct was that he believed that if he had previously told The Law Society that he was using the refund money for the actual benefit of the clients, he would not have been believed. Instead he chose to continue to mislead those persons conducting the investigation.

In response to questions from the panel, Mr. Doolan stated that he knew he should not be depositing the refunds into his general account, but he thought that The Law Society, through their previous audit, was aware of it, and therefore condoned this practice. He also felt that if a client owed him money, such refund was not actually client money. However, he never kept an accurate, or any, record of what client owed him money, and for what.

Mr. Doolan stated that although he could afford to hire additional staff, neither he nor his one paralegal assistant really liked working with other people. Therefore, aside from one part-time bookkeeper who worked on weekends, they did everything themselves. The pressure and stress of such a busy real estate practice caused him to make mistakes.

Mr. Doolan confirmed that he never asked, or received, confirmation from his clients that this practice of "dumping" any refund cheques received from the Land Titles Office into his general account, or otherwise cashing or depositing same, was acceptable, and he certainly had no written or recent instructions from clients in this regard.

It was also pointed out to Mr. Doolan that when he wanted to, he could calculate the Land Transfer Tax down to the penny, such as when he deliberately overpaid a subsequent registration fee by \$100.01, in order to obtain this specific refund in an attempt to cover up his previous personal use of a Land Titles Office refund in the identical amount.

Mr. Doolan also acknowledged that he had deliberately lied to the Complaints Investigation Committee in order to avoid an interim suspension, so that he could continue to practice and earn an income.

This completed the evidence of Robert Doolan in his personal capacity.

The next witness called by Mr. Doolan was B. G. . Mr. G. is the President of G. H. . This witness was called in regard to the allegation

referred to as Client No. 27 on the amended Citation dated July 4, 2013 attached hereto as **Schedule 2**.

Mr. G testified that Mr. Doolan had been his lawyer for the past approximately 20 years, and during that time there had been no problems or issues with anything that Mr. Doolan had done. In 2008 G H, had filed certain documentation with the Winnipeg Land Titles Office in regard to a proposed subdivision. This documentation had been rejected, which resulted in a refund from the Land Titles Office of approximately \$2,800.00. Mr. Doolan suggested to this witness that the witness had authorized Mr. Doolan to keep the cheque, to be applied towards future Land Titles Office filings. Mr. G denied any recollection of this particular cheque, or the events surrounding this particular issue.

However, Mr. G did say that his usual instructions would have been to retain the cheque, and to apply same for future registrations, and that he would have no concern that Mr. Doolan would try to take advantage of him.

Mr. Doolan then called David Miles as his next witness. Mr. Miles is a respected senior lawyer with many years of experience. Mr. Miles testified that he has been a friend of Mr. Doolan for some time. Since approximately May 2010 Mr. Miles had agreed to supervise the practice of Mr. Doolan. Mr. Miles testified that in his opinion the fees charged by Mr. Doolan were low, and that he could certainly charge higher fees if he wanted to, without affecting the volume of work available to him.

The next witness called by Mr. Doolan was R G. Ms G has been employed by Mr. Doolan as a real estate paralegal since 1983. She testified that The

Law Society auditor had told them to keep the Registration Detail Application (RDA) forms, which she had done, for a couple of months after the 2008 Law Society audit. However, these forms began piling up on her desk, since she had no time to file them, and therefore she stopped doing this. After that time, Mr. Doolan himself filed these RDA forms for a while, but after a month or two, he also stopped doing this.

Ms G confirmed that they never charged clients for random searches, and that they did at least one such search a day, and sometimes many more. Mr. Doolan did all of the invoices, and he prepared the reports on real estate sales. Ms G prepared the reports on real estate purchases. She also advised that in her opinion Mr. Doolan had trouble adding, and she sometimes would correct his Invoices in this regard.

She testified that several of their large clients would not pay for any small amounts that might be owing. Therefore, they never charged these clients for anything under \$100.00. She stated that some of their clients never even opened their reports, and therefore did not even cash any cheques that might be enclosed. Mr. Doolan would therefore have to re-issue any cheques that might become stale dated.

Ms G testified that there was always a bunch of cheques and cash in Mr. Doolan's briefcase.

On cross-examination, Ms G testified that when she was preparing her reports she only based same on what was actually recorded on the trust and general account ledgers, and did not consider whatever might be in the briefcase of Mr. Doolan.

This completed the evidence called by Robert Doolan. No rebuttal evidence was called on behalf of The Law Society of Manitoba.

Ms Senft proceeded to present her argument on behalf of The Law Society of Manitoba. It was argued that in order to establish the allegations relating to the misappropriation of client funds, it was necessary for The Law Society to establish three things:

1. That the monies belonged to the client;
2. That Mr. Doolan knew that the monies belonged to the client;
3. That Mr. Doolan took or utilized the monies for his own purposes.

It was argued that these fundamental requirements had clearly been satisfied. The refund cheques received from the Winnipeg Land Titles Office clearly represented monies that belonged to the clients who had originally advanced such funds to pay for the registration costs. Mr. Doolan knew where these monies had originally come from, and that any refund of such monies would belong to the client. However, Mr. Doolan has admitted that he took the monies, and used same for his own purposes, without reporting to, or accounting to, the client for such monies.

In regard to those allegations relating to the misleading of The Law Society, Mr. Doolan has acknowledged that he did intend and attempt to mislead The Law Society by making false statements, by deliberately creating overpayments in an attempt to generate a refund from the Land Titles Office which could then be passed off as the reissuing of a refund cheque that he knew that he had already cashed, and that he deliberately altered his bank deposit slips in an effort to mislead The Law Society.

Counsel for The Law Society relied heavily upon the assertions set out in the two Affidavits, and numerous Exhibits thereto, that had been filed in evidence. This material was largely unchallenged by the member during the course of this proceeding.

It was also pointed out, as set out in the Affidavits filed in evidence, and acknowledged in this proceeding, that Mr. Doolan admitted to all of the alleged misconduct when he appeared before the Complaints Investigation Committee of The Law Society in August of 2010, and that this was subsequently confirmed in writing by his then legal counsel during the course of the subsequent and continuing investigation.

Counsel for The Law Society proceeded to review each count, and each individual client and the evidence and exhibits which allegedly established the proof of such allegations. It was pointed out that the allegations relating to the attempts to mislead The Law Society and its investigators were deliberate and well thought out in advance. Mr. Doolan knew what had happened to each of the cheques in issue, and actually had copies of same in his possession, when he advised The Law Society that there were stale dated cheques on his files, or that he was unaware of what had happened to the refunds in question. Similarly, his deliberate overpayments of registration costs on then current client files in an effort to create a refund from the Land Titles Office which would then be passed off as the reissuing of a refund cheque, which he knew he had already cashed and converted to his own use, was a well thought out and deliberate plan which was implemented on not one or two occasions, but over a period of time. Reference was made to the precise nature of such

overpayments, including an overpayment, in one case, of not simply \$100.00 but precisely \$100.01, in an attempt to cover up what he knew was misconduct, and to mislead The Law Society. Had The Law Society not already had in its possession copies of the cancelled cheques in question, it is possible that the well-formulated plan of Mr. Doolan to mislead The Law Society could have been successful.

Counsel for The Law Society spent some time going through the specific details of each allegation, and the alleged proof of same. We shall not repeat those arguments in regard to each of the numerous counts in this decision. However, the panel has considered each individual count, and the evidence and exhibits relating thereto, and the arguments in support of same, in formulating its decision. Suffice it to say that counsel for The Law Society presented a thorough and detailed analysis and argument in support of each of the numerous allegations set out in the citations attached hereto as **Schedule 1** and **Schedule 2**. In the course of such argument, reference was made to correspondence between The Law Society and the two legal counsel who had at various times been retained by Mr. Doolan over the lengthy period of this investigation. Reference was also made to certain admissions contained in that correspondence, as set out in the Affidavits and Exhibits filed. Reference was also made to the intense and detailed investigation which was needed to be done in order to formulate, and substantiate, each of the allegations made.

Counsel for The Law Society also argued that the new version of events, as submitted by Mr. Doolan for the first time at this Discipline Hearing, relating to putting money into envelopes in his briefcase and using such money for the benefit of other clients, and not for his own personal use, was simply not believable. It was alleged that this

was simply another attempt to mislead the panel. Even as of the date of this hearing, the credibility of the member was still very much in question.

It was argued that the basic facts were that over a period of approximately two years Mr. Doolan negotiated 74 Land Titles Office refund cheques for cash, and deposited five additional cheques into his own personal bank account. He knew that these monies properly belonged to the clients, and should have been returned to them. This was not an isolated incident, but occurred over and over and over again. Throughout this period of time he continued to make errors in the registration fees paid to the Winnipeg Land Titles Office and continued to receive refunds which he used for his own purposes. It was argued that it does not matter that Mr. Doolan may never have intended to make a deliberate overpayment in such registration charges. However, as long as he took advantage of any refunds that were subsequently received, this is sufficient to establish the charges in issue. So long as he knew that the money belonged to his clients, and not to him, and he then took the money without reporting same to the clients or obtaining the proper authorization to the use of same, the allegations of misappropriation have been established. She asked the rhetorical question of why Mr. Doolan would go through all this trouble to mislead The Law Society, and make deliberate over-payments to obtain refund cheques in specific amounts, and to alter the bank deposit slips, unless he knew that what he had done was wrong?

In response to questions from the panel counsel for The Law Society argued that the issue of whether or not there had been personal gain on the part of the member accused was irrelevant. The issue was simply who did the money in question properly

belong to, and did the lawyer knowingly take or use the money contrary to the well-established rules relating to the handling of clients trust funds.

Robert Doolan then presented his argument. He suggested that in his mind the focus of these proceedings should be whether he misappropriated the 68 or 74 cheques in issue. He argued that concealment meant "hiding something". He believed that he is being charged with hiding the fact that he misappropriated the monies in question. Mr. Doolan acknowledged the concealment, and that he tried to hide the fact he had cashed the refund cheques in issue. He said that he had done this because he had been told he would be disbarred if he had no receipts for the monies in issue. He said "I had a decision to make, and I made the wrong decision". Mr. Doolan said he did this because in his mind, if he had admitted the facts initially, he felt that he would be disbarred.

At various times in his argument Mr. Doolan suggested he had told each of his two individual, and experienced, legal counsel who had represented him at certain times throughout this process, what had actually happened, and it was the advice of such legal counsel that he should not make the disclosures that he had now made at this hearing.

Mr. Doolan acknowledged that at the Complaints Investigation Committee meeting he was dishonest and admitted to doing something that he now claims he did not do. He admitted to lying at the August 2010 Complaints Investigation Committee hearing, and to concealing the fact that he had cashed the cheques in issue. Mr. Doolan argued by that time he had given up. The Law Society had worn him down,

and he believed that disbarment was in his future. Mr. Doolan suggested that he made full disclosure to the legal counsel that was then representing him, but that it was upon the advice of such legal counsel that he did not then make the disclosures which he had admitted at this hearing, since this was a tactic suggested by his then legal counsel. Mr. Doolan appeared to suggest that the legal counsel that were representing him at the appropriate times were responsible for his failure to make full disclosure of the true facts to The Law Society at the relevant times.

Mr. Doolan acknowledged that he knew that he should not deposit the Land Titles Office refund cheques into his general account. This had started as a corner-cutting method back in the 1980's. He acknowledged that the correct thing to do was to deposit such refund cheques into trust, and then to write a cheque in such amounts in favour of the client.

However, Mr. Doolan stated that his relationship with his clients was such that he did not bill them for a number of little legal services which he performed for them, since they would not pay him for such services anyway. He then started to believe that it was therefore appropriate for him to retain such refund cheques for his own use, in compensation for the unbilled legal services which he provided for such clients. Mr. Doolan now acknowledges that he knew what he did was wrong. However, he argued that he made no attempt whatsoever to hide what he was doing, over a lengthy period of time.

Mr. Doolan argued that he was always asked about this practice on each of the spot audits that had been done by The Law Society, and he always gave the same

explanation, namely that the client owed him money and would not cash a cheque for such a small amount even if he had sent same. Mr. Doolan argued quite strongly that no one had ever told him that this was a problem, and that he therefore concluded that The Law Society did not care about such practice. He therefore assumed that this method of doing business was acceptable, and now he acknowledges that this was a big mistake on his part.

However, Mr. Doolan quite strenuously said that The Law Society was well aware of this practice when it conducted the 2008 spot audit. At that time The Law Society did in fact review his general account and was well aware that the refund cheques from the Land Titles Office were "dumped" into his general account. Nothing was said at that time in regard to the alleged inappropriateness of this practice.

Mr. Doolan further suggested that any miscalculations of the cost of the Land Transfer Tax at the time of registration were innocent, and perhaps just represent sloppy conduct on his part. There was no deliberate act or intention on his part to try to get money back by way of such Land Titles Office refunds. It was Mr. Doolan's theory that when you intend to steal you start small and you work your way up to a larger amount. However, since this did not happen, and since all of the amounts in issue remained consistently small, this is evidence of the fact that he did not intend to steal or misappropriate such amounts.

Mr. Doolan argued that the definition of misappropriation included the wrongful taking for your own personal use or benefit. In his case Mr. Doolan never intended

that he would obtain any personal use or benefit from such miscalculations in the registration costs and the subsequent refund of such a small amount.

For example, in regard to the [REDACTED] matter where Mr. Doolan used 8 land titles refund cheques to register documents on behalf of [REDACTED], Mr. Doolan did not believe that he had done anything wrong. His actions were not for Mr. Doolan's personal benefit, but instead this was for the benefit of [REDACTED]. What Mr. Doolan did was obvious, with no attempt to hide his actions.

In regard to the five refund cheques that were deposited into his personal bank account Mr. Doolan did not advance any substantive argument. He acknowledged that in those instances it might as well be called misappropriation.

Mr. Doolan argued that many of his long term clients were also his friends. He trusted and relied upon them when they said that they would look after matters or issues with their business partners or associates. Since many of these allegations went back over a long period of time such clients would simply not remember things that were not considered to be big issues to them at the time in question. It is for this reason that Mr. Doolan was unable to call more witnesses to refute the allegations made against him.

In regard to the evidence of B [REDACTED] G [REDACTED] and G [REDACTED] H [REDACTED], it was argued by Mr. Doolan that there was a simple misunderstanding between the accountant for this client and Mr. Doolan. When the accountant advised Mr. Doolan that he should keep the refund cheque from the Land Titles Office, Mr. Doolan assumed that the intention was for him to keep the cheque for the favours and personal services which

he had rendered on behalf of this client over the years. When Mr. Doolan subsequently asked the accountant for a replacement cheque to cover the registration costs, such replacement cheque was provided. Therefore, Mr. Doolan argued that he should not be found guilty of misappropriating money which he honestly believed the client had authorized him to retain for his personal use.

Mr. Doolan argued that it was important to note that he had not been charged with breaching the accounting rules of The Law Society of Manitoba. He acknowledged that he had gotten into a pattern of conduct that might well be in breach of such accounting rules. However, he was instead charged with misappropriation or theft, which is quite distinct and different from a breach of the accounting rules, and that is what he was contesting.

Mr. Doolan reiterated that for approximately 34 years, prior to 2008, he had never cashed any Land Titles Office refund cheques. Instead he dumped them all into his general account, where he acknowledged that he did receive the benefit of same. However, this "dumping" of such refund cheques into his general account was reviewed and approved at each spot audit done by The Law Society during this time period, and that his actions in this regard had never been questioned. It was only when the Land Titles Office moved to its current Portage Avenue location, in approximately 2008, that Mr. Doolan first began to attend at that location only approximately once per week, and that he first began to endorse such refund cheques for cash and to deposit same into his personal bank account. He did this as a convenience for himself. He argued that approximately two-thirds of these cheques were for under \$100.00 in amount. Since he billed between \$25,000.00 and

\$30,000.00 per month, why would he want to steal a \$10.00 or \$20.00 refund cheque? Mr. Doolan argued that the amounts in issue are too small to steal. He maintained a float of approximately \$10,000.00 in his general account at any time. Why would he then knowingly allow himself to be accused of stealing approximately \$300.00 per month?

Mr. Doolan argued that if he needed money he could simply raise his fees. He suggested that he obviously had some kind of principles if he deliberately kept his fees low and below the market value and the amounts charged by his competitors. If he needed money, he could simply achieve this objective in many other ways rather than stealing refund cheques from the Land Titles Office.

As part of his submission, Mr. Doolan acknowledged that he still did not think he was doing anything wrong if he cashed a cheque and used it to pay for other Land Titles Office registration costs for other clients.

Mr. Doolan did acknowledge that he is guilty of lying to the Complaints Investigation Committee in August 2010, and he is guilty of concealing the fact that he did cash the Land Titles Office refund cheques. However, he argued that he should not be found guilty of the misappropriation of client funds since he did not intend to do this and since he believed that his past practice in this regard had been condoned by The Law Society.

Mr. Doolan acknowledged that he should not have tried to conceal the fact that he had cashed the refund cheques. However, in hindsight, he stated that he was not one hundred percent sure that he would not make the same choice again based upon

how he felt at the time in question. He acknowledged that he made the wrong choice in this regard and that it simply made everything worse after that.

Mr. Doolan acknowledged that he had made some bad decisions in how he had dealt with the matters in issue but, at the time in question, felt that he had no choice.

In rebuttal, counsel for The Law Society of Manitoba challenged the allegation that The Law Society had previously reviewed the general account of Mr. Doolan, and was aware of, and in any way condoned the practice of Mr. Doolan in how he dealt with refund cheques from the Land Titles Office.

She reviewed the various admissions made by Mr. Doolan and his legal counsel throughout the course of these proceedings. She argued that whether Mr. Doolan could or should have been charged with these types of offences before this time was irrelevant. He has now been charged and the evidence against him was conclusive.

Counsel for The Law Society also argued that it was irrelevant as to why Mr. Doolan might do what he did. She did not have to prove why he did what he did, only that he did it.

This completed the evidence and argument in regard to this matter.

There are a number of issues for determination in this case. However, it is necessary to again note those charges to which Mr. Doolan originally entered a plea of guilty, with an explanation. These were:

With reference to the September 16, 2010 citation, which is attached hereto as Schedule 1:

1. Charge 8(a) and (b), attempting to mislead The Law Society during the course of an investigation by advising The Law Society that he had found on file, a stale dated cheque from the Land Titles Office, and would request that the Land Titles Office issue a replacement cheque, when in fact he had cashed the original cheque and converted the funds to his own use and there was no stale dated cheque on the file, and subsequently advising The Law Society that the Land Titles Office had in fact issued a replacement cheque and provided The Law Society with a copy thereof, when in fact, the cheque was for a refund which arose from a deliberate overpayment made in relation to a registration for another client;
2. Charge 9(a) and (b), in attempting to mislead The Law Society during the course of an investigation by advising The Law Society that he could not find anything on a specific client's file, which would suggest what had happened to a refund cheque from the Land Titles Office, and he could not remember what had happened to it, when, in fact, he had cashed the refund cheque and converted the funds to his own use, and subsequently providing The Law Society with a copy of a Land Titles Office cheque purportedly issued as a replacement for the original

refund cheque when, in fact, the cheque was a refund from the Land Titles Office for a deliberate overpayment made in relation to a registration for another client;

3. Charge 10(a) and (b), by attempting to mislead The Law Society during the course of an investigation by advising The Law Society that he had found on file a stale dated refund cheque and that he would request the Land Titles Office to issue a replacement cheque, when in fact, he had cashed the original refund cheque and converted the funds to his own use, and there was no stale refund cheque on file, and making a deliberate overpayment to the Land Titles Office when registering documents for another client, with the intention of forwarding to The Law Society a copy of the associated refund cheque to cover up the fact that he had misappropriated the original refund cheque;
4. Charge 11(a) and (b), by attempting to mislead The Law Society during the course of an investigation by advising The Law Society that he could not find anything on the file which would suggest what had happened to a refund cheque from the Land Titles Office, and it was possible that a courier had not delivered it to him, when in fact, he had cashed a refund cheque and converted the funds to his own use, and deliberately making an overpayment to the Land Titles Office when registering documents for another client, with the intention of forwarding to

The Law Society a copy of the corresponding refund cheque to cover up the fact that the original refund cheque had been misappropriated;

5. Charge 12(a) and (b), by attempting to mislead The Law Society during the course of an investigation by advising The Law Society that he could not find anything on the file which would suggest what had happened to a refund cheque from the Land Titles Office, and it was possible that a courier had not delivered it to him, when in fact, he had cashed the refund cheque and converted the funds to his own use, and by deliberately making an overpayment to the Land Titles Office when registering documents for another client, with the intention of forwarding to The Law Society a copy of the corresponding refund cheque to cover up the fact that he had misappropriated the original refund cheque;
6. Charge 13(a) and (b), by attempting to mislead The Law Society during the course of an investigation by advising The Law Society that he had found on the file, a stale dated refund cheque and that he would request the Land Titles Office to reissue a replacement cheque, when in fact, he had cashed the original refund cheque and had converted the funds to his own use, and there was no stale dated cheque on file, and by deliberately making an overpayment to the Land Titles Office when registering

documents for another client, with the intention of forwarding to The Law Society a copy of the corresponding refund cheque to cover up the fact that the original refund cheque had been misappropriated by him.

In reference to the amended citation dated July 4, 2013, which is attached hereto as Schedule 2:

1. Charge 2, (a), (b), (c), (d) and (e), by attempting to mislead The Law Society on five separate occasions during the course of an investigation by making deliberate overpayments to the Land Titles Office when registering documents for clients to conceal that he had misappropriated client monies, on each occasion by making deliberate overpayments with an intention of forwarding to The Law Society, a copy of the associated refund cheque to conceal the fact that client monies had been misappropriated.

Mr. Doolan therefore entered a guilty plea to seven separate charges, of failing to discharge with integrity, his duty to the profession, contrary to Chapter One of The Code of Professional Conduct adopted by the Benchers of The Law Society. Included in such charges were 17 different examples of deliberate attempts by Mr. Doolan to mislead The Law Society during the course of an investigation into his conduct by deliberately advising The Law Society of facts which he knew to be untrue, and then by making deliberate overpayments to the Land Titles Office in order to obtain a refund cheque which he intended to provide to The Law Society to cover up the fact

that he had previously misappropriated the amounts in issue. However, this plea of guilty was made somewhat conditional upon the provision of an explanation in regard to what led up to these events.

The first issue for determination is therefore whether the explanation advanced by Mr. Doolan for his conduct changes or affects his plea of guilty to these charges.

Mr. Doolan entered a plea of not guilty to the remaining charges against him. These remaining outstanding charges can be summarized as follows:

1. With reference to the September 16, 2010 citation, seven separate counts of misappropriating the total sum of \$1,284.01 from 14 different clients;
2. With reference to the amended July 4, 2013 citation, one count of misappropriating the total sum of \$10,671.43 from various clients on 73 separate real estate transactions;
3. With reference to the July 4, 2013 amended citation, attempting to mislead The Law Society during the course of an investigation by falsifying bank deposit slips on 12 separate occasions.

It should be noted that the specifics of the individual charges are set out in the citations attached hereto as Schedules 1 and 2, and the foregoing is intended to be in a brief summary form only.

The second issue for determination then becomes whether Mr. Doolan is innocent or guilty of the remaining charges to which he entered a plea of not guilty.

Inherent in this determination is whether in order to be guilty of misappropriation there must be an intention to achieve personal gain or benefit.

Also involved in this determination is whether the member intended to steal or misappropriate the amounts in issue.

Similarly, it must be determined whether or not The Law Society condoned the actions of the member, by being aware of his previous practice, and either doing nothing, or taking insufficient steps to put an end to same, or to advise the member if such actions were considered inappropriate.

Finally, the credibility of the member, and his testimony, might also be relevant to the determination of some or all of the above issues.

In reviewing and considering the matters in issue, the panel has carefully reviewed and taken into consideration, all of the written and verbal evidence provided, as well as the various exhibits and numerous documents provided, along with the argument presented on behalf of each of The Law Society and Mr. Doolan. After careful consideration, our findings are as follows:

Firstly, it is our finding that the explanations advanced by Mr. Doolan in regard to those charges to which he plead guilty do not change or alter the effect of his guilty plea. Such explanations may be relevant to the appropriate disposition or penalty to

be imposed in regard to such charges, at some later time, but do not impact upon the acknowledged guilt of the member in regard to those specific charges and admissions.

We have also determined that in order to constitute misappropriation of client funds it is not necessary that there be an element of personal gain or benefit involved. For example, in what has been referred to herein as the _____ registrations, Mr. Doolan utilized refund cheques issued to certain other clients, which were acknowledged to be monies owing to those other clients, for the benefit of _____ on his registrations. It is acknowledged that Mr. Doolan did not receive any personal benefit in this regard. Nevertheless, the clients to whom such refund cheques were issued, and to whom such refund amounts were owed, never received the monies owing to them. The monies from such clients were therefore misappropriated by Mr. Doolan, even though these monies did not directly or personally benefit Mr. Doolan, but instead benefited another client. Such benefit to another client is small consolation to those clients to whom the monies were properly owing. Therefore, it is our conclusion that there does not have to be a personal gain or benefit to the member charged in order for the member to be guilty of misappropriating, or wrongly applying, monies owing to a specific client.

We have also considered whether or not there needs to be an element of "intention" to misappropriate or steal the monies in issue, before such a charge can be substantiated. In this regard we note that we are not dealing here with a criminal charge or proceeding, which might result in a criminal conviction in the Court of Queen's Bench or Provincial Judges Court, and the statutory sanctions that may flow

therefrom. Instead, we are dealing with the civil standard of proof, which is the balance of probabilities, based upon clear, convincing and cogent evidence, and therefore the criminal standard of proof, which might require an element of intention, may not be applicable. However, in any case, it is our determination that Mr. Doolan did knowingly intend to both misappropriate client monies and to obtain a personal benefit when he deposited Land Titles Office refund cheques owing to his clients into his own personal bank account, and when he negotiated such cheques for their cash value, and also when he deposited such refund cheques into his general account and then utilized such monies for his own benefit.

In his evidence and argument, Mr. Doolan suggested that The Law Society of Manitoba was well aware of his previous conduct, through their previous audits of his general account, and therefore condoned, or at least led him into a false sense of security, by not advising him that his actions were contrary to the rules, or at least inappropriate. In its argument, The Law Society disputed that the general accounts of Mr. Doolan, as opposed to his trust accounts, had ever been the subject of any extensive review.

After due consideration, the panel has concluded that it is not necessary to make a specific finding in regard to whether the general accounts of Mr. Doolan were, or were not, the subject of any such extensive review, such as would have identified the nature of the current charges outstanding. There are certain objective facts which are not in dispute. It is agreed that for a lengthy period of time Mr. Doolan had been "dumping" refund cheques from the Land Titles Office into his general account. During the 2008 audit, the auditor from The Law Society of Manitoba

suggested that Mr. Doolan should retain copies of the RDA forms in order that he could account to the individual clients for any refunds to which they might be entitled. This recommendation was acted upon by Mr. Doolan's paralegal for a period of several months, until it became too burdensome or inconvenient to continue. At that time, Mr. Doolan himself undertook the task of retaining and filing such RDA forms. However, after a few months, Mr. Doolan also abandoned this practice because it became too burdensome and inconvenient for him to continue. Clearly, Mr. Doolan was aware of the concerns expressed in 2008 by The Law Society, and did appear willing to take some corrective action for a period of time after that. However, he subsequently abandoned this practice as a matter of simple convenience.

It is noted that the vast majority of the outstanding charges to which the member has pleaded not guilty specifically refer to an allegation that Mr. Doolan either negotiated for cash, or deposited into his personal bank account, the refund cheques in issue. This is separate and distinct from an allegation that the refund cheques were deposited into his general account, as appeared to be the subject of discussion after the 2008 Law Society audit.

It is also a generally accepted principle that ignorance of the law, including the rules of The Law Society, is not an excuse. During his testimony, Mr. Doolan acknowledged that he was aware that the refund cheques in issue did belong to the clients and should have been properly allocated to each individual client, as opposed to being unilaterally negotiated and retained by him without proper authorization.

Therefore, Mr. Doolan was well aware that his conduct was improper, and cannot claim that The Law Society had condoned such improper conduct.

As indicated above, we believe that the credibility of Robert Doolan is also a legitimate matter for consideration when deliberating upon the explanation and defences advanced by him during the course of this hearing. It was argued by The Law Society that little weight should be placed upon such explanations and defences in view of the previous conduct of the member, and the fact that at least some of the explanations were only advanced at this hearing for the first time. We note that Mr. Doolan did acknowledge at this hearing that he had lied to the Complaints Investigation Committee during his August 2010 appearance with counsel before them. We also note that Mr. Doolan pled guilty to those allegations referring to his deliberate attempts to mislead The Law Society during the course of an investigation into his conduct by making false statements to The Law Society on several occasions and by making deliberate overpayments to the Land Titles Office in an attempt to generate a refund cheque in the exact amount in issue which he then intended to utilize to cover up his previous alleged misdeeds. During the course of this hearing, Mr. Doolan also admitted that he had altered bank deposit slips on 12 separate occasions in an attempt to mislead The Law Society during the course of the investigation of his conduct.

It is against this background that Mr. Doolan now asks us to accept the veracity of his current explanations of his previous conduct. Such explanations would include his allegations that he was acting on the advice and instructions received from his legal

counsel and other lawyers that he had consulted, that he acted out of fear and panic, and that his actions were designed to avoid an interim suspension.

Taking all of these matters into consideration the panel finds that where there is any dispute in the evidence between The Law Society and the member, the evidence of The Law Society is to be preferred, and that although we are inclined to have some sympathy for the situation in which Mr. Doolan found himself, we have reservations in regard to his credibility relating to his rationale for the actions which he took in an attempt to extricate himself from this dilemma.

In the result, it is the finding of the panel that Robert Frank Doolan is guilty of all but one of the remaining allegations against him, for which he entered a plea of not guilty.

We have given Mr. Doolan the benefit of the doubt and acquitted him on the allegation that he misappropriated the sum of \$2,859.00 from G' H as set out as client #27 in paragraph 1 of the Amended Citation dated July 4, 2013.

However, we do find Robert Doolan guilty of the misappropriation of the sum of \$7,812.43 as referred to in the other 72 particulars as set in count #1 of the Amended Citation dated July 4, 2013.

We also find Mr. Doolan to be guilty of count #3 of the July 4, 2013 Amended Citation in that he did on 12 separate occasions attempt to mislead The Law Society during the course of the investigation into his conduct by falsifying bank deposit slips to conceal that he had misappropriated client monies.

We also find Mr. Doolan guilty on counts #1, #2, #3, #4, #5, #6 and #7 of the Citation dated September 16, 2010, which indicate that in regard to fourteen separate clients, Mr. Doolan misappropriated the total sum of \$1,284.01. These charges and amounts are in addition to those charges and amounts referred to in the Amended Citation dated July 4, 2013.

In the result, Mr. Doolan has committed professional misconduct, as well as being guilty of a failure to discharge with integrity his duty to the profession, contrary to Chapter 1 of the Code of Professional Conduct adopted by the Benchers of The Law Society of Manitoba. This is in addition to his previous admission of guilt of failing to discharge with integrity, his duty to the profession, contrary to Chapter 1 of the Code of Professional Conduct adopted by the Benchers of The Law Society of Manitoba in regard to the various charges of misleading The Law Society during the course of an investigation into his conduct.

The reasons for our findings, as admitted and acknowledged by Mr. Doolan during the course of his evidence and argument, are that he was aware that the original costs for the registration of documents in the Winnipeg Land Titles office were paid by an individual client. Therefore any refund of such registration costs were monies which were due and owing to that individual client. The amount of such refund was inconsequential. Mr. Doolan knowingly either negotiated such money for cash, or deposited same into his personal bank account, or deposited same into his general bank account, or utilized such monies for the benefit of other clients. This was all done without advising each individual client of the refund which had been received from the Land Titles Office, and without receiving any proper authorization from the

individual client that the monies could be used by Mr. Doolan in the manner in which he did.

The explanations provided by Mr. Doolan to the effect that at least his large major clients did not wish to receive cheques for small amounts and would not have cashed them anyway, and that Mr. Doolan was simply reimbursing himself for unbilled disbursements and services provided to such clients, do not excuse his failure to follow the well-established rules in regard to the required accounting for monies received on behalf of a client in trust.

The fact that most of the refund cheques involved were for relatively small amounts is irrelevant. Misappropriation of client funds is misappropriation, irrespective of the amount involved. The fact that Mr. Doolan alleged that he did not need the money, and that there were other alternative ways in which he could have increased his income should he have so desired, also has not influenced the panel. The issue is not whether Mr. Doolan could have increased his income by other legitimate or illegitimate means. The question before us is simply whether Mr. Doolan misappropriated client funds in regard to each of the counts and extensive particulars provided, and the answer to that is clearly in the affirmative.

The reasons for such actions on the part of Mr. Doolan appear to be that he believed that the applicable rules should apply to everyone else except himself. His rationale for not following the required rules in regard to the recording, reporting and payment out of trust monies, no matter how small the amount might be, was simply because it was inconvenient for him, and too much trouble.

Mr. Doolan appeared to believe that he had a sense of entitlement to these refund cheques, to compensate himself for the out of pocket expenses which he was incurring on behalf of clients, and for the services which he was providing for various clients, all of which he chose not to specifically bill for, once again because it was inconvenient.

These charges, and the resulting convictions, are the result of the manner in which Mr. Doolan chose to organize and administer his office. They could have been avoided if he was prepared to hire and train additional staff in order to enable him to comply with the standards expected of professionals entrusted with trust monies. We accept that he had a large and busy practice. However, Mr. Doolan knew the rules in regard to the administration of trust monies, and what was expected of him. However, for reasons of convenience and expediency, he chose not to follow and comply with such rules and expectations.

Also of considerable concern to the panel were the rather extensive steps then taken by Mr. Doolan to mislead The Law Society during the course of its investigation and to cover up the actions which he knew to be inappropriate. This included deliberate lying to The Law Society in regard to the existence of stale dated refund cheques on certain files, and his lack of knowledge of the status of certain refund cheques, while having in his possession the cancelled cheques in issue. It also consisted of an elaborate and extensive plan of overpayment on new Land Titles Office registrations in order to deliberately create a refund in the specific amount which was under investigation. There also was actual falsification of bank deposit slips. Combined with this was the acknowledged deceit to the Complaints Investigation Committee.

Such a pattern of a lack, or failure, of integrity is contrary to the required trust which the public places in the legal profession, and which is essential to enable lawyers to represent their clients in a professional manner.

For all of these reasons, we find, with the one exception and acquittal noted above, Robert Frank Doolan to be guilty of the charges as alleged.

Dated this day of August, 2014.



RICHARD K. DEELEY, Q.C.



KATHERINE BUETI



KENNETH MOLLOY

THE LAW SOCIETY OF MANITOBA

IN THE MATTER OF:

ROBERT FRANK DOOLAN

- and -

IN THE MATTER OF:

THE LEGAL PROFESSION ACT

CITATION

The Law Society of Manitoba
219 Kennedy Street
Winnipeg, MB R3C 1S8
Telephone No.: (204) 942-5571
Facsimile No.: (204) 956-0624

Darcia A.C. Senft
File No.: 10-002-DIS

THE LAW SOCIETY OF MANITOBA

IN THE MATTER OF:

ROBERT FRANK DOOLAN

- and -

IN THE MATTER OF:

THE LEGAL PROFESSION ACT

TO: **ROBERT FRANK DOOLAN**, of the City of Winnipeg, in the Province of Manitoba, lawyer, and a member of the Law Society of Manitoba.

TAKE NOTICE that a hearing will be held by a panel of the members of the Discipline Committee established by the Benchers of The Law Society of Manitoba to consider charges laid against you by the Complaints Investigation Committee of The Law Society of Manitoba alleging against you professional misconduct. If you are found guilty of professional misconduct, you may be disbarred and your name struck off the Rolls of the Society or suspended from practicing law, or otherwise dealt with by the discipline panel under the provisions of *The Legal Profession Act* and the *Rules of The Law Society of Manitoba*. A statement of the charges forms part of this notice and is as follows:

THAT YOU, the said ROBERT FRANK DOOLAN, called to the Bar in the Province of Manitoba on the 30th day of June, 1977 and registered 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. While acting for your client ("Client 1") with respect to a real estate matter, you failed in your duty to conduct yourself with integrity, contrary to Chapter 1 of the *Code of Professional Conduct* adopted by the Benchers of The Law Society of Manitoba, in that between October 13, 2009 and October 16, 2009, both dates inclusive, you misappropriated or converted to your own use the sum of \$280.00 from trust funds belonging to Client 1.
2. While acting for your client ("Client 2") with respect to a real estate matter, you failed in your duty to conduct yourself with integrity, contrary to Chapter 1 of the *Code of Professional Conduct* adopted by the Benchers of The Law Society of Manitoba, in that between July 10, 2009 and July 14, 2009, both dates inclusive, you misappropriated or converted to your own use the sum of \$100.01 from trust funds belonging to Client 2.
3. While acting for your clients ("Clients 3") with respect to a real estate matter, you failed in your duty to conduct yourself with integrity, contrary to Chapter 1 of the *Code of Professional Conduct* adopted by the Benchers of The Law Society of Manitoba, in that between August 13, 2009 and August 14, 2009,

both dates inclusive, you misappropriated or converted to your own use the sum of \$207.50 from trust funds belonging to Clients 3.

4. While acting for your client ("Client 4") with respect to a real estate matter, you failed in your duty to conduct yourself with integrity, contrary to Chapter 1 of the *Code of Professional Conduct* adopted by the Benchers of The Law Society of Manitoba, in that between February 24, 2009 and February 25, 2009, you misappropriated or converted to your own use the sum of \$309.00 from trust funds belonging to Client 4.
5. While acting for your client ("Client 5") with respect to a real estate matter, you failed in your duty to conduct yourself with integrity, contrary to Chapter 1 of the *Code of Professional Conduct* adopted by the Benchers of The Law Society of Manitoba, in that between February 10, 2009 and February 13, 2009, both dates inclusive, you misappropriated or converted to your own use the sum of \$150.00 from trust funds belonging to Client 5.
6. While acting for your client ("Client 6") with respect to a real estate matter, you failed in your duty to conduct yourself with integrity, contrary to Chapter 1 of the *Code of Professional Conduct* adopted by the Benchers of The Law Society of Manitoba, in that between August 10, 2009 and August 14, 2009, both dates inclusive, you misappropriated or converted to your own use the sum of \$100.00 from trust funds belonging to Client 6.

7. You failed in your duty to conduct yourself with integrity, contrary to Chapter 1 of the *Code of Professional Conduct* adopted by the Benchers of The Law Society of Manitoba, in that while acting for the following clients on separate real estate matters, you misappropriated or converted to your own use on or about July 20, 2009 the following sums:

Client # 7	\$29.00
Client # 8	\$20.50
Client # 9	\$10.00
Client # 10	\$27.50
Client # 11	\$10.00
Client # 12	\$10.50
Client # 13	\$20.00
Client # 14	\$10.00

8. You failed to discharge with integrity, your duty to the profession, contrary to Chapter 1 of the *Code of Professional Conduct* adopted by the Benchers of The Law Society of Manitoba (the "Society") by attempting to mislead the Society during the course of an investigation into your conduct relating to your representation of a client ("Client 1").

Particulars

- (a) On or about March 22, 2010, you advised the Society that you had found on file a stale-dated Land Titles Office cheque to the credit of Client 1 and that you would request that the Land Titles Office issue a replacement cheque, when in fact, you had cashed the original cheque and converted the funds to your own use in October 2009, and there was no stale-dated cheque on file.

- (b) On or about March 29, 2010, you advised the Society that the Land Titles Office had issued a replacement cheque for Client 1 and provided the Society with a copy thereof, when in fact, the cheque was for a refund which arose from a deliberate overpayment made by you on March 17, 2010 in relation to a Land Titles registration for another client of yours, namely Client 15.
9. You failed to discharge with integrity your duty to the profession, contrary to Chapter 1 of the *Code of Professional Conduct* adopted by the Benchers of The Law Society of Manitoba (the "Society") by attempting to mislead the Society during the course of an investigation into your conduct relating to your representation of a client ("Client 2").

Particulars

- (a) On or about March 22, 2010, you advised the Society that you could not find anything on Client 2's file which would suggest what had happened to a refund cheque from the Land Titles Office and you could not remember what had happened to it when, in fact, you had cashed the refund cheque and converted the funds to your own use in July 2009.
- (b) On or about March 29, 2010, you provided the Society with a copy of a Land Titles cheque purportedly issued as a replacement for the original refund cheque for Client 2, when in fact, the cheque was a refund from the Land Titles Office for a deliberate overpayment made by you on March 17, 2010 in relation to a registration for another client of yours, namely Client 16.

10. You failed to discharge with integrity your duty to the profession, contrary to Chapter 1 of the *Code of Professional Conduct* adopted by the Benchers of The Law Society of Manitoba (the "Society") by attempting to mislead the Society during the course of an investigation into your conduct relating to your representation of clients ("Clients 3").

Particulars

- (a) On or about March 22, 2010, you advised the Society that you had found on file a stale-dated refund cheque to the credit of Clients 3, and that you would request the Land Titles Office to issue a replacement cheque, when in fact, you had cashed the original refund cheque and converted the funds to your own use in August 2009, and there was no stale-dated refund cheque on file.
 - (b) On or about March 24, 2010, you made a deliberate overpayment to the Land Titles Office when registering documents for another client of yours, namely Client 17, with the intention of forwarding to the Law Society a copy of the associated refund cheque to cover up the fact that the original August 2009 refund cheque for Clients 3 had been misappropriated by you.
11. You failed to discharge with integrity your duty to the profession, contrary to Chapter 1 of the *Code of Professional Conduct* adopted by the Benchers of The Law Society of Manitoba (the "Society") by attempting to mislead the Society during the course of an investigation into your conduct relating to your representation of a client ("Client 4").

Particulars

- (a) On or about March 29, 2010, you advised the Society that you could not find anything on the file which would suggest what had happened to a refund cheque from the Land Titles Office and it was possible that a courier had not delivered it to you, when in fact, you had cashed the refund cheque and converted the funds to your own use in February 2009.
 - (b) On or about March 18, 2010, you deliberately made an overpayment to the Land Titles Office when registering documents for another client of yours, namely Client 18, with the intention of forwarding to the Law Society a copy of the corresponding refund cheque from the Land Titles Office to cover up the fact that the original February 2009 refund cheque for Client 4 had been misappropriated by you.
12. You failed to discharge with integrity your duty to the profession, contrary to Chapter 1 of the *Code of Professional Conduct* adopted by the Benchers of The Law Society of Manitoba (the "Society") by attempting to mislead the Society during the course of an investigation into your conduct relating to your representation of a client ("Client 5").

Particulars

- (a) On or about March 29, 2010, you advised the Society that you could not find anything on the file which would suggest what had happened to a refund cheque from the Land Titles Office and it was possible that a courier had not delivered it to you, when in fact, you had cashed the

refund cheque and converted the funds to your own use in February 2009.

- (b) On or about March 24, 2010, you deliberately made an overpayment to the Land Titles Office when registering documents for another client of yours, namely Client 19, with the intention of forwarding to the Law Society a copy of the corresponding refund cheque from the Land Titles Office to cover up the fact that the original February 2009 refund cheque for Client 5 had been misappropriated by you.

- 13. You failed to discharge with integrity your duty to the profession, contrary to Chapter 1 of the *Code of Professional Conduct* adopted by the Benchers of The Law Society of Manitoba (the "Society") by attempting to mislead the Society during the course of an investigation into your conduct relating to your representation of a client ("Client 6").

Particulars

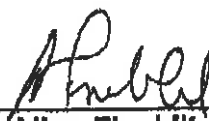
- (a) On or about March 22, 2010, you advised the Society that you had found on file a stale-dated refund cheque to the credit of Client 6, and that you would request that the Land Titles Office issue a replacement cheque, when in fact, you had cashed the original refund cheque and converted the funds to your own use in August 2009, and there was no stale-dated cheque on file.
- (b) On or about March 17, 2010, you deliberately made an overpayment to the Land Titles Office when registering documents for another client of yours, namely Client 20, with the intention of forwarding to the Law Society a copy of the corresponding refund cheque from the Land

Titles Office to cover up the fact that the original August refund cheque for Client 6 had been misappropriated by you.

AND THEREFORE you did commit professional misconduct.

YOU OR YOUR COUNSEL are required to appear before a panel of the Discipline Committee on **Tuesday, October 5, 2010 at 12:30 p.m.**, at the offices of The Law Society of Manitoba, 219 Kennedy Street, Winnipeg, Manitoba, to set a date for the hearing of the charges against you. If you or your counsel do not attend at the said time and place, the panel of the Discipline Committee, in accordance with the *Rules of The Law Society of Manitoba*, may proceed to set the date for hearing in your absence.

DATED at the City of Winnipeg, in the Province of Manitoba, this 16th day of September, 2010.



Allan Fineblit, Q.C.
Chief Executive Officer of
The Law Society of Manitoba

THE LAW SOCIETY OF MANITOBA

SCHEDULE 2

IN THE MATTER OF:

ROBERT FRANK DOOLAN

- and -

IN THE MATTER OF:

THE LEGAL PROFESSION ACT

AMENDED CITATION

The Law Society of Manitoba
219 Kennedy Street
Winnipeg, MB R3C 1S8
Telephone No.: (204) 942-5571
Facsimile No.: (204) 956-0624

Darcia A.C. Senft
File No.: 11-012-DIS

THE LAW SOCIETY OF MANITOBA

IN THE MATTER OF:

ROBERT FRANK DOOLAN

- and -

IN THE MATTER OF:

THE LEGAL PROFESSION ACT

AMENDED CITATION

TO: ROBERT FRANK DOOLAN, of the City of Winnipeg, in the Province of Manitoba, lawyer, and a member of the Law Society of Manitoba.

TAKE NOTICE that a hearing will be held by a panel of the members of the Discipline Committee established by the Benchers of The Law Society of Manitoba to consider charges laid against you by the Complaints Investigation Committee of The Law Society of Manitoba alleging against you professional misconduct. If you are found guilty of professional misconduct, you may be disbarred and your name struck off the Rolls of the Society or suspended from practicing law, or otherwise dealt with by the discipline panel under the provisions of *The Legal Profession Act* and the *Rules of The Law Society of Manitoba*. A statement of the charges forms part of this notice and is as follows:

THAT YOU, the said **ROBERT FRANK DOOLAN**, called to the Bar in the Province of Manitoba on the 30th day of June, 1977 and registered 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. While acting for your clients on each of the following ~~sixty-nine (69)~~ seventy-three (73) separate real estate transactions, you misappropriated your clients' monies by negotiating for cash or depositing into your personal bank account and thereby converting to your own use, Winnipeg Land Titles Office refund cheques and thus you failed in your duty to conduct yourself with integrity, contrary to Chapter 1 of the *Code of Professional Conduct* adopted by the Benchers of The Law Society of Manitoba.

Particulars

<u>Client</u>	<u>Amount of Misappropriation</u>	<u>Date</u>
21	\$160.00	April 10-11, 2008
22	\$49.00	April 17-21, 2008
23	\$1,180.00	April 22-June 10, 2008
24	\$198.50	April 25-May 1, 2008
25	\$160.00	May 7-9, 2008
26	\$25.00	May 13-21, 2008
27	\$2,859.00	May 13-?, 2008
28	\$29.00	May 23-28, 2008
29	\$95.50	June 3-5, 2008
30	\$29.00	June 5-13, 2008

31	\$11.00	June 6-13, 2008
32	\$98.00	July 17-21, 2008
33	\$69.00	July 21-23, 2008
34	\$99.00	July 24-25, 2008
35	\$69.00	July 29-August 1, 2008
36	\$50.00	August 1-6, 2008
37	\$79.00	August 1-6, 2008
38	\$85.00	August 14-18, 2008
39	\$30.00	September 3-8, 2008
40	\$75.00	September 19-24, 2008
41	\$181.00	September 22-24, 2008
42	\$100.00	September 29-October 1, 2008
43	\$40.00	October 1-2, 2008
44	\$46.50	October 8-9, 2008
45	\$100.00	October 16-21, 2008
46	\$200.00	November 21-26, 2008
47	\$100.00	November 21-26, 2008
48	\$60.00	November 25-27, 2008
49	\$100.00	November 28-December 1, 2008
50	\$79.00	December 1-3, 2008
51	\$200.00	December 8-10, 2008
52	\$510.00	December 9-11, 2008
53	\$111.00	December 31, 2008-January 6, 2009
54	\$80.00	January 9-12, 2009
55	\$30.00	January 30-February 2, 2009
56	\$182.00	March 3-7, 2009
57	\$70.00	March 4-6, 2009
58	\$20.00	April 16-17, 2009
59	\$40.00	May 1-6, 2009
60	\$85.00	May 27-29, 2009
61	\$142.00	May 29-June 2, 2009

62	\$69.00	June 22-25, 2009
63	\$50.00	June 22-25, 2009
64	\$70.00	June 23-25, 2009
65	\$58.00	June 26-30, 2009
66	\$100.00	June 26-30, 2009
67	\$100.00	July 22-23, 2009
68	\$59.00	July 30-August 6, 2009
69	\$30.00	July 31-August 27, 2009
70	\$50.00	July 31-August 6, 2009
71	\$30.00	August 4-27, 2009
72	\$50.00	August 10-14, 2009
73	\$135.50	August 21-26, 2009
74	\$65.00	August 31-September 1, 2009
75	\$28.43	September 3-9, 2009
76	\$70.00	September 10-11, 2009
77	\$100.00	September 11-15, 2009
78	\$70.00	September 14-16, 2009
79	\$170.00	September 15-17, 2009
80	\$29.50	October 9-13, 2009
81	\$70.00	October 21-23, 2009
82	\$144.00	October 22-November 10, 2009
83	\$50.00	November 3, 2009
84	\$70.00	November 6-13, 2009
85	\$372.00	November 17-19, 2009
86	\$40.50	November 26-30, 2009
87	\$71.00	November 26-30, 2009
88	\$70.00	November 30-December 2, 2009
89	\$60.00	January 4-7, 2010
90	\$128.00	January 11-13, 2010
91	\$70.00	January 20-?, 2010

<u>92</u>	<u>\$200.00</u>	<u>January 25-27, 2010</u>
<u>93</u>	<u>\$65.00</u>	<u>February 16-18, 2010</u>
TOTAL:	<u>\$10,208.43</u> <u>\$10,671.43</u>	

2. ~~While acting for your clients on four (4) separate real estate transactions, you misappropriated your clients' monies by depositing into your personal bank account and thereby converting to your own use, Winnipeg Land Titles Office refund cheques and thus you failed in your duty to conduct yourself with integrity, contrary to Chapter 1 of the Code of Professional Conduct adopted by the Benchers of The Law Society of Manitoba.~~

Particulars

<u>Client</u>	<u>Amount of Misappropriation</u>	<u>Date</u>
<u>90</u>	<u>\$128.00</u>	<u>January 11-13, 2010</u>
<u>91</u>	<u>\$70.00</u>	<u>January 20-?, 2010</u>
<u>92</u>	<u>\$200.00</u>	<u>January 25-27, 2010</u>
<u>93</u>	<u>\$65.00</u>	<u>February 16-18, 2010</u>
TOTAL:	<u>\$463.00</u>	

- 2.3. During March and April 2010, on five (5) separate occasions you failed to discharge with integrity your duty to the profession, contrary to Chapter 1 of the *Code of Professional Conduct* adopted by the Benchers of The Law Society of Manitoba (the "Society") in that you attempted to mislead the

Society during the course of an investigation into your conduct relating to your representation of your clients on real estate matters by making deliberate overpayments to the Land Titles Office when registering documents for clients to conceal that you had misappropriated clients' monies.

Particulars

- (a) In or about March 2010, you made a deliberate overpayment in the amount of \$30.00 to the Land Titles Office when registering documents for your client 94, with the intention of forwarding to the Society a copy of the associated refund cheque to conceal the fact that the original July 31, 2009 refund cheque of \$30.00 for your client 69 had been misappropriated by you on or before August 27, 2009.
- (b) In or about March 2010, you made a deliberate overpayment in the amount of \$100.00 to the Land Titles Office when registering documents for your client 95, with the intention of forwarding to the Society a copy of the associated refund cheque to conceal the fact that the original July 22, 2009 refund cheque of \$100.00 for your client 67 had been misappropriated by you on or before July 23, 2009.
- (c) In or about March 2010, you made a deliberate overpayment in the amount of \$80.00 to the Land Titles Office when registering documents for your client 96, with the intention of forwarding to the Society a copy of the associated refund cheque to conceal the fact that the original January 9, 2009 refund cheque for \$80.00 for your

client 54 had been misappropriated by you on or before January 12, 2009.

- (d) In or about April 2010, you made a deliberate overpayment in the amount of \$135.50 to the Land Titles Office when registering documents for your client 97, with the intention of forwarding to the Society a copy of the associated refund cheque to conceal the fact that the original August 21, 2009 refund cheque for \$135.50 for your client 73 had been misappropriated by you on or before August 26, 2009.
- (e) In or about April 2010, you made a deliberate overpayment in the amount of \$69.00 to the Land Titles Office when registering documents for your client 98, with the intention of forwarding to the Society a copy of the associated refund cheque to conceal the fact that the original refund cheque for \$69.00 had been misappropriated by you.

- 3 4. On twelve (12) separate occasions you failed to discharge with integrity your duty to the profession, contrary to Chapter 1 of the *Code of Professional Conduct* adopted by the Benchers of The Law Society of Manitoba (the "Society") in that you attempted to mislead the Society during the course of an investigation into your conduct relating to your representation of your clients on real estate matters by falsifying bank deposit slips to conceal that you had misappropriated clients' monies.

Particulars

- (a) You falsified your May 29, 2009 bank deposit slip to conceal the fact that you had misappropriated the sum of \$85.00 from your client 60.
- (b) You falsified your June 30, 2009 bank deposit slip to conceal the fact that you had misappropriated the sum of \$100.00 from your client 66.
- (c) You falsified your August 18, 2009 bank deposit slip to conceal the fact that you had misappropriated the sum of \$50.00 from your client 70.
- (d) You falsified your September 9, 2009 bank deposit slip to conceal the fact that you had misappropriated the sum of \$135.50 from your client 73.
- (e) You falsified your September 11, 2009 bank deposit slip to conceal the fact that you had misappropriated the sum of \$100.00 from your client 77.
- (f) You falsified your September 15, 2009 bank deposit slip to conceal the fact that you had misappropriated the sum of \$59.00 from your client 68.
- (g) You falsified your September 16, 2009 bank deposit slip to conceal the fact that you had misappropriated the sum of \$70.00 from your client 78.

- (h) You falsified your September 17, 2009 bank deposit slip to conceal the fact that you had misappropriated the sum of \$170.00 from your client 79.
- (i) You falsified your November 23, 2009 bank deposit slip to conceal the fact that you had misappropriated the sums of \$70.00 from your client 81, \$70.00 from your client 84 and \$170.00 from your client 79.
- (j) You falsified your November 30, 2009 bank deposit slip to conceal the fact that you had misappropriated the sums of \$40.50 from your client 86 and \$71.00 from your client 87.
- (k) You falsified your December 3, 2009 bank deposit slip to conceal the fact that you had misappropriated the sum of \$372.00 from your client 85.
- (l) You falsified your February 12, 2010 bank deposit slip to conceal the fact that you had misappropriated the sum of \$200.00 from your client 92.

AND THEREFORE you did commit professional misconduct.

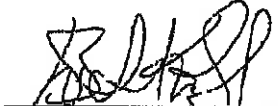
YOU OR YOUR COUNSEL are required to appear before a panel of the Discipline Committee on **Tuesday, May 8, 2012 at 12:30 p.m.**, at the offices of The Law Society of Manitoba, 219 Kennedy Street, Winnipeg, Manitoba, to set a date for the hearing of the charges against you. If you or your counsel do not attend at the said time and place, the panel of the Discipline Committee, in

accordance with the *Rules of The Law Society of Manitoba*, may proceed to set the date for hearing in your absence.

DATED at the City of Winnipeg, in the Province of Manitoba, this 3rd day of May, 2012.

"M. Billinkoff"
Marilyn W. Billinkoff
Deputy Chief Executive Officer of
The Law Society of Manitoba

AMENDED at the City of Winnipeg, in the Province of Manitoba, this 4th day of July, 2013.


Marilyn W. Billinkoff
Deputy Chief Executive Officer of
The Law Society of Manitoba