THE LAW SOCIETY OF MANITOBA

IN THE MATTER OF:

ROBERT FRANK DOOLAN

and

IN THE MATTER OF:

THE LEGAL PROFESSION ACT

DISPOSITION

Appearances for The Law Society of Manitoba:

Darcia A.C. Senft

Appearances for Robert Frank Doolan:

Regan Thatcher

Discipline Committee Panel:

Richard K. Deeley, Q.C.
Katherine Bueti
Kenneth Molloy

Subsequent to the issuance of the Decision and reasons for such decision this matter came on for hearing on October 21st, 2014, in Winnipeg, Manitoba, before the previously constituted Discipline Committee Panel in order to hear submissions in regard to disposition. At that time The Law Society of Manitoba continued to be represented by Darcia A.C. Senft. The member, Robert Frank Doolan, was represented by his legal counsel, Regan Thatcher.

Summary

For the reasons detailed below, having found Robert Frank Doolan guilty of the following charges:

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

The Discipline Panel finds that:

1. The member, Robert Frank Doolan, be disbarred and his name struck from the Rolls of The Law Society of Manitoba;
2. The member, Robert Frank Doolan, is to pay the sum of $38,108.23, representing a portion of the costs incurred by The Law Society of Manitoba for the investigation and prosecution of these matters.

Reasons

In summary form, the previous decision of this Discipline Committee Panel was that Robert Frank Doolan was guilty of:

1. Professional misconduct by misappropriating the total sum of $9,096.44 from a total of 86 clients;
2. Failure to discharge with integrity his duty to the profession, contrary to Chapter I of the Code of Professional Conduct, as adopted by The Law Society of Manitoba, on some 17 different occasions when he misled The Law Society during the course of an investigation, as well as on 12 separate occasions on which he altered bank deposit slips with the intention of misleading The Law Society during the course of an investigation.

The purpose of this hearing was to receive submissions in regard to the appropriate disposition based upon such findings.

Counsel for The Law Society of Manitoba commenced her submission by indicating that integrity is considered to be the cornerstone of the legal profession. It is for this reason that the need for integrity is set out as the first rule in the Code of Professional Conduct. It was argued that the allegations in regard to which the member had been convicted were very serious in nature. She reviewed the previous findings of the Panel to the effect that Mr. Doolan had been found guilty of misappropriating the sum of $1,284.01, from 14 different

clients, as set out in the first Citation, and $7,812.43 from 72 clients, as set out in the second Citation. In addition, there had been 17 different examples cited where Mr. Doolan had attempted to mislead The Law Society during the course of an investigation, as set out in both the initial and subsequently amended second Citation. In further addition, there were 12 occasions on which Mr. Doolan had falsified his bank deposit slips in an attempt to further mislead The Law Society during the course of an investigation. It was argued that the integrity of the member was very much at issue, and that these findings reflected deliberate attempts to mislead and a pattern of concealment. This was not simply a panic reaction which occurred on one isolated occasion.

Counsel for The Law Society submitted that in his testimony Mr. Doolan had acknowledged that he had thought about these things for two or three days before acting, and he further testified that he was not sure he would not do such things again in similar circumstances.

It was pointed out that these events took place over an extended period of time. Mr. Doolan had acted dishonestly and had displayed a blatant disregard for not only the rules in regard to how trust monies should be administered, but also the authority of The Law Society of Manitoba as the governing body for the legal profession, and its right and ability to conduct a proper investigation into the alleged misconduct of any member.

It was pointed out that Mr. Doolan was not charged or convicted in regard to Land Titles Office refund cheques that he had deposited into his general account. More precisely, he was convicted of depositing four other Land Titles Office refund cheques, which he acknowledged properly belonged to his clients, directly into his own personal bank account. In addition, Mr. Doolan had negotiated for cash many, many other refund cheques from the Land Titles Office which he knew and acknowledged were due and owing to his clients.

In addition to not properly recording the receipt of such refund cheques, Mr. Doolan acknowledged that he would convert such monies to his own use without any form of reporting to the client, without authorization from the client, and without rendering an account for services for which he alleged such monies were properly owing to him. In fact, he did not even know the identity of some of the clients to whom these monies belonged.

It was alleged that the fact that four refund cheques were deposited directly into his own personal bank account, and numerous refund cheques were negotiated for cash, clearly confirmed that Mr. Doolan did receive a personal gain from his actions. There was therefore a direct and personal benefit to the member from this misappropriation.

In regard to the defence or explanation previously provided by the member, to the effect that he misled The Law Society because he "panicked" when advised by some legal colleagues that his actions constituted serious misconduct that could conceivably lead to disbarment, counsel for The Law Society pointed out that there was no medical evidence submitted which might help the Panel to understand or explain the mental state of the member at the time in question. The misappropriation in issue had occurred long before this time, and it was only when Mr. Doolan recognized that he might get caught that he then panicked. However, such panic was followed by several days of careful consideration and planning as to the steps which he might attempt to take in order to mislead and deceive the governing body from determining what had actually taken place.

Counsel for The Law Society pointed to an alleged contradiction between the member's position that he had an honest belief in his entitlement to the monies in question, and the fact that he subsequently took a number of deliberate steps in an attempt to conceal or cover up his previous actions.

It was further pointed out that in spite of certain admissions made by the member during the course of the investigation, the member still elected to plead not guilty to certain of the charges at the commencement of the hearing.

It was argued on behalf of The Law Society that lawyers must have the complete confidence and respect of the public, and that lawyers must act in utmost good faith and with the highest possible degree of integrity at all times, and without compromise.

It was further argued that in accordance with the language contained in the Professional Code of Conduct a lack of integrity reflects not only on the member, but also on the legal profession and the administration of justice as a whole.

In this particular case, the misappropriation was discovered only when representatives of the Winnipeg Land Titles Office reported certain unusual occurrences to The Law Society. It was suggested that the original conduct of the member, as well as his subsequent conduct once an investigation had commenced, was egregious in nature and should be dealt with most severely.

It was acknowledged by The Law Society that Mr. Doolan had no previous discipline history throughout his long and extensive years of practice.

Nevertheless, it was suggested that the purpose of sentencing in such matters was the need to protect the public, in accordance with the aims and objectives of The Law Society, and that there was a need to maintain public confidence in The Law Society and its ability to govern its own members, as well as to deter other members of the profession from similar types of action, by dealing with this matter in a most severe fashion.

Several previous decisions of both The Law Society of Manitoba, as well as of other jurisdictions and courts, as well as certain articles and textbooks were cited by The Law Society in support of its position.

It was also pointed out that of the ten letters of reference which had been received from other members of the profession, and one supporting letter from a client, only one of such persons had been made aware of the contents of the Citations issued against Mr. Doolan, and the decision rendered by this Panel. Therefore, such character evidence should be considered much less reliable that if a full disclosure of all of the facts had been made.

Some of the cases cited by The Law Society made reference to somewhat similar fact situations in which severe penalties had been imposed upon the member in question. The Law Society also submitted certain cases of misappropriation where a joint submission had been made by both the prosecution and the defence that a disposition other than disbarment should be made.

It was suggested to us that there was ample authority for the principle that in cases involving fraud or theft disbarment is almost always required to be imposed, in order to maintain the public trust, in the absence of any exceptional circumstances.

In this case there was ample evidence to establish that Mr. Doolan had taken active steps, with planning and deliberation on his part, to mislead The Law Society in an attempt to cover up his conduct. This was not an isolated error or a simple lapse of judgment. It was advocated that the Panel must make a clear statement that The Law Society can govern its own members, and that the public must have confidence in the ability and willingness of The Law Society to take the appropriate action, in order to maintain its self-governing status. In this case the numerous actions of Mr. Doolan had clearly demonstrated his lack of integrity, and irreparably damaged his future ability to be trusted to act with integrity. It was suggested that neither this Panel, nor The Law Society of Manitoba, could explain in a rational manner to either the public or other members of the profession if Mr. Doolan was allowed to continue to practice.

The Law Society was therefore seeking, by way of disposition, that Mr. Doolan be disbarred and struck from the rolls of The Law Society of Manitoba, and further that he be ordered to pay the sum of $38,108.23, representing a portion of the costs incurred by The Law Society in its lengthy and extensive investigation of the numerous instances of misappropriation and misleading in this case. It was further submitted that there were no exceptional circumstances in this case that would justify a disposition other than disbarment, and that the costs of such proceedings should be borne by the member responsible for same, and not by the profession as a whole, who have not committed or been responsible for such offences.

Regan Thatcher, as counsel for Robert Doolan, then presented his submission on behalf of the member. It was conceded that misappropriation is one of the most serious offences that a lawyer can commit. However, it was further argued that misappropriation generally requires an intention on the part of a member to steal or misappropriate. In this case, there was no such intention on the part of Mr. Doolan.

It was further submitted that the Discipline Committee Panel had already indicated in its decision that such charges could have been avoided if Mr. Doolan had hired and trained additional staff. This was therefore supportive of a lack of intention on the part of Mr. Doolan.

Counsel for the member then submitted an extensive listing and summary of the past 20 years of misappropriation cases involving The Law Society of Manitoba. It was submitted that out of these 26 misappropriation cases, 22 of same involved outright stealing by the member, with no possible entitlement to the monies in issue. In a few other cases the members did not appear at the hearing or present any evidence or submissions to challenge the allegations made. Therefore, it was submitted that in almost all of the cases involving misappropriation, which resulted in disbarment, an intention to steal was apparent.

However, in Mr. Doolan's case it was submitted that at the time in question Mr. Doolan had an honestly held belief that he was entitled to the relatively small amounts of the refund cheques in question. Therefore, he did not have the necessary intention to steal or misappropriate the monies in issue.

It was emphasized, that since Mr. Doolan had been called to the Bar in 1976, and over the succeeding approximate 37 years of practice, Mr. Doolan had neither been charged nor convicted of any offences against the rules of The Law Society of Manitoba. Therefore, Mr. Doolan had no previous disciplinary history whatsoever.

It was further submitted that the 11 reference letters submitted in support of Mr. Doolan, all but one of which by other practicing lawyers, confirmed that none of these other practitioners had any concerns in regard to the member's integrity or honesty. They all confirmed that Mr. Doolan was regarded as being well versed in the practice of real estate law, and that they often consulted with him as a resource in this regard. All of these colleagues also confirmed the very busy and successful nature of Mr. Doolan's practice.

It was submitted that the actions of Mr. Doolan were more akin to sloppiness, rather than an attempt to steal money or take advantage of his clients.

In regard to the issue of concealment, it was submitted that when Mr. Doolan was suddenly confronted with the possibility that after 35 years of practice he might lose everything, he "panicked". Counsel for the member took issue with the context of the alleged statements made by the member during the course of the hearing to the effect that Mr. Doolan was not certain that he would not do this again. It was suggested that Mr. Doolan's testimony was intended to mean that if he ever again found himself in such a panicked and stressed out state of mind, he was not certain that he might not react in a similar manner in the future. However, since he did not expect that he would ever find himself in such a dire

situation again, the Discipline Committee Panel should have no concern that his conduct in these matters would ever be repeated.

Counsel for the member referred the Panel to several other cases, as indicated in the Summary which he submitted, in which alleged actions which were much more serious in nature than those at issue, received a disposition or penalty of less than disbarment. Although it was acknowledged that no two cases or fact situations were alike, the attention of the panel was directed to the following matters, which we have identified by the name of the member in issue.

In the 2010 Kohaykewych matter the sum of $52,000.00, being considerably more than the amount in issue here, was involved. In that case there was a clear criminal intention, and a significant amount of inappropriate behaviour. However, a one year suspension was imposed[1].

In the Shawa case which occurred in the year 2000 the sum of $20,000.00 had been loaned from the lawyer's trust account to friends or acquaintances, and on one occasion a cheque was written to a client to whom he personally owed money. In this case the member was suspended for a period of one year[2].

In the 2002 Laxer matter the member misappropriated the sum of approximately $3,000.00 for his own personal use or benefit, and without the authorization of the four clients involved. In this case a three month suspension was imposed[3].

In the 1998 Fisher matter the member put approximately $3,350.00 of retainers directly into his general account before he performed the legal services. He did eventually perform the legal services in issue. The member was suspended for a period of three months[4].

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[1] Discipline Case Digest 10-02, March 5, 2010
[2] Discipline Case Digest 00-03, September 11, 2000
[3] Discipline Case Digest 02-02, April 23, 2002
[4] Discipline Case Digest 98-05, September 9, 1998

In the 1993 Tessler case the member received a suspension of two months for two counts of appropriating trust funds for uses other than had been authorized by his clients, and for misleading the client about the status of a file, and altering a settlement document to mislead the client[5].

The point made on behalf of the member was that the offences committed by Mr. Doolan were far from being the most serious dealt with by The Law Society, and in the cases referred to a penalty less than disbarment was considered to be appropriate.

It was submitted on behalf of the member that his life has been terrible for the past four or five years, while this matter was under review, and that Mr. Doolan is now in dire financial circumstances. He has had an exceptionally difficult time. He never intended to steal monies from his clients, and this is a relevant fact for consideration. Mr. Doolan has expressed his remorse and is prepared to agree to only continuing his practice under supervision. In fact, arrangements had already been made with another member in good standing who would be agreeable to supervise the practice of Mr. Doolan. It was therefore submitted that Mr. Doolan should not be disbarred, but should be allowed to continue to practice under such supervision as might be directed.

In response to questions from the Panel counsel for the member was unable to identify any authority which would support his contention that intention, as in a criminal offence context, was required in order to support the finding of misappropriation in the context of a professional discipline proceeding. It was submitted by defense counsel that the member had accomplished 37 years of practice without any discipline history, before making a series of bad decisions, each one of which built upon the previous bad decision.

In reply to the submissions made by counsel for the member, Ms Senft, on behalf of The Law Society, argued that the events of misappropriation occurred long prior to the

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[5] (1993) L.S.D.D. No. 165

commencement of the investigation by The Law Society. Therefore, at the time in question, when the monies owing to the clients were being misappropriated by Mr. Doolan, there has never been any suggestion that he was under any degree of stress or panic at those times. Such considerations are only alleged to have arisen once the investigation of his previous conduct was underway. Therefore, no consideration should be given to such explanations in regard to the original misappropriation of client trust funds.

Subsequently, Mr. Doolan did not acknowledge what he had done, and why, but instead took deliberate steps in an attempt to cover up his previous actions. This is inconsistent with his alleged honestly held belief that he had a right or entitlement to the monies in issue. Mr. Doolan knew that he had no authority to use such client monies for his own personal benefit, but he took such monies anyway. Yet he still, as of the date of this proceeding, continued to submit that he believed that he was entitled to these monies. It was submitted that this inability to acknowledge and admit his wrongdoing reflected negatively upon the trust and confidence required in a member who would be allowed to continue practicing.

It was further submitted that the deliberate attempts to conceal the misappropriation compounded the seriousness of the offences of which the member had been found to be guilty.

The Discipline Committee Panel then adjourned to consider the matters in issue. Since counsel for the member had not addressed the issue of the costs claimed by The Law Society the hearing was reconvened in order to offer counsel for the member an opportunity to make any submissions which he might wish in this regard. Counsel for Mr. Doolan indicated that they did not question the Bill of Costs provided in support of the requests made for costs in the amount of $38,108.23. However, it was submitted that any order of costs made should not be so restrictive as to prevent the member from returning to active practice.

The Panel then offered Robert Doolan the opportunity to make any additional submission which he might wish prior to the Panel adjourning to reserve its decision in regard to disposition. Mr. Doolan was advised that he was not required to make any additional comments or submissions, and it would not be held against him if he chose not to say anything further, and to simply rely upon the submissions made on his behalf by his legal counsel.

Mr. Doolan then addressed the Panel. He was obviously and understandably in a state of some anxiety. He indicated that when he received the first inquiry from The Law Society of Manitoba in February of 2010 it contained some 18 pages of accusations which required a response within 14 days. He advised that he did not tell either his wife or his sole paralegal about these concerns. He attempted to respond to the questions raised by The Law Society when his paralegal was not present in the office. At the end of the original two week period for the provision of his responses to The Law Society he requested a two week extension of time to reply. However, he only received a one week extension of time to complete his responses.

It was at this time that he talked to two other lawyers, who advised him that in the circumstances described he might well be facing a possible disbarment. The member stated that he thought about it, and thought about it, and it was at this point that he made the decision to conceal what had actually transpired, and to attempt to mislead the investigation being conducted by The Law Society. By this time he had been working on his response to The Law Society for the past approximately three weeks.

Mr. Doolan acknowledged that he made a very bad decision at that time, which was out of character for him. Mr. Doolan acknowledged that this decision to attempt to conceal and mislead was very bad, and he should not have done it. However, he did submit that for the previous 37 years he had been engaged in the practice of real estate law, which was a very difficult area of practice, and the area in which the most complaints to The Law Society

are submitted. However, he had never been the subject of any prior complaints, and his record should speak for itself in this regard.

This completed the submissions made by the parties in regard to the disposition of the matters in issue.

The Discipline Committee Panel has now had an opportunity to consider the submissions made by all parties, and the authorities cited and relied upon by them. In this regard the Panel wishes to express its appreciation for the thorough and professional presentations made by and on behalf of each party in this rather lengthy and complex and challenging case. In particular, we note that the staff of The Law Society of Manitoba were required to spend a significant amount of time to properly investigate and compile and organize the numerous allegations against the member, and the documentation in support thereof, and to present same in an organized fashion.

As was noted in our Decision, had The Law Society of Manitoba not already been provided with copies of a number of refund cheques that had already been negotiated by Mr. Doolan, his attempts to conceal his misappropriation of client funds might have been successful.

The basic principle pursuant to which lawyers in our system are entitled to continue in the practice of law is the requirement of integrity. This is emphasized by the fact that integrity is identified as the very first rule in the Code of Professional Conduct adopted by The Law Society of Manitoba.

> "The lawyer must discharge with integrity all duties owed to clients, the court, and other members of the profession and the public."

The Code of Professional Conduct sets out certain Guiding Principles in the Commentary relating to this rule.

"1. Integrity is the fundamental quality of any person who seeks to practice as a member of the legal profession. If the client is in any doubt about the lawyer's trustworthiness the essential element in the lawyer-client relationship will be missing. If personal integrity is lacking the lawyer's usefulness to the client and reputation within the profession will be destroyed regardless of how competent the lawyer may be."

"2. The principle of integrity is a key element of each rule of the Code."

"3. Dishonourable or questionable conduct on the part of the lawyer in either private life or professional practice will reflect adversely upon the lawyer, the integrity of the legal profession, and the administration of justice as a whole."

Some of the notes to this commentary state:

"3. Illustrations of conduct that may infringe the Rule (and often other provisions of this Code) include:

(e) misappropriating or dealing dishonestly with the clients' monies

(h) failing to be absolutely frank and candid in all dealing with the Court, fellow lawyers and other parties to proceedings..."

The English case of Bolton v. The Law Society (1993) EWCA Civ32 sets out certain comments that we find to be relevant to the matters in issue.

"13. It is required of lawyers practicing in this country that they should discharge their professional duties with integrity, probity and complete trustworthiness."

"14. Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal. Lapses from the required high standard may, of course, take different forms and be of varying degrees. The most serious involves proven dishonesty, whether or not leading to criminal proceedings and criminal penalties. In such cases the Tribunal has almost invariably, no matter how strong the mitigation advanced by the solicitor, ordered that he be struck off the Roll of Solicitors."

"15. In most cases the order of the Tribunal will be primarily directed to one or other or both of two other purposes... The second purpose is the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth... A profession's most valuable asset is its collective reputation and the confidence which that inspires."

"16. The reputation of the profession is more important than the fortunes of any individual member."

We have previously set out those charges of which this member has been convicted.

In his defence, and in his submission in regard to disposition, Mr. Doolan has argued that he did not have an intention to misappropriate the monies in issue, and that he had an honestly held belief of his entitlement to these monies. It has further been submitted that the comments previously made by the Panel to the effect that the offences in issue could have been avoided if Mr. Doolan had simply hired and trained more additional staff, would support such lack of intention.

We cannot accept these submissions.

It is important to note that Mr. Doolan was not charged, or convicted, of wrongfully depositing the refund cheques from the Land Titles Office into his general account. For whatever reason The Law Society chose not to pursue these types of allegation against this member. Instead, Mr. Doolan was charged and convicted of taking the refund cheques provided to him from the Winnipeg Land Titles Office, which he now acknowledges were trust monies belonging to his various clients, and either negotiating a large volume of such refund cheques for cash, or in four other cases, depositing such refund cheques directly into his personal bank account. These monies were therefore clearly applied for his own direct and personal benefit. It cannot be alleged that the member did not receive such a personal benefit by his actions. Once it has been established, and acknowledged, that the refund cheques in issue belonged to the various clients, and that the member knew and was aware that these were trust monies belonging to such clients, how can it then be claimed that Mr. Doolan did not intend to misappropriate such monies when he converted same for his own personal use.

Mr. Doolan knew these monies were trust funds that rightfully belonged to his clients, but he took and used such money for his own purposes. His only defence is that he thought he was entitled to such monies, from every single one of the 86 clients involved, because some of these clients might owe him money for disbursements and services that he chose not

to bill them for. His other defence is simply that he considered the amounts involved to be too small, and he was too busy, to require him to comply with the well-established rules in regard to monies received in trust.

If we were, for a moment, to accept that the member did not set out on a deliberate premeditated plan to misappropriate these monies, would that then be sufficient to excuse his conduct?

Unfortunately, the answer to that is in the negative. We say this because we believe that any responsible legal professional, upon any degree of thought and reflection, would recognize that such actions were not appropriate. Apparently each of the other lawyers that Mr. Doolan consulted with after The Law Society began its investigation, easily recognized this. Therefore, a failure, or difficulty, in recognizing what is obvious to others as being inappropriate does not provide the public with the protection it deserves. In addition, this failure does not provide the public with confidence that this member would recognize and do the ethical thing when confronted with issues relating to trust funds, or other ethical matters, in the future. Even Mr. Doolan himself appeared to recognize that if the amounts in issue had been larger, he may have treated them differently. This reflects an attitude on the part of the member that it is somehow acceptable to steal, or deal inappropriately, with amounts under, say $100 or $200, but a recognition that any amount over such figures should be properly recorded and reported on. The Code of Professional Conduct and the rules respecting accounts do not make such a distinction. All monies belonging to a client, no matter how large or small, must be reported to the client, and returned to the client, in the absence of specific instructions or authorization from that particular client to the contrary.

Even though Mr. Doolan, in his own mind, may have felt a sense of entitlement to the monies in question, we cannot accept that this would constitute a reasonably held belief, and instead find that this can only be considered as a form of willful blindness, or a failure to direct one's mind to the matters in issue.

In his original testimony Mr. Doolan had emphasized the volume of work that he did, by himself, with only one paralegal, and the long hours which he spent at the office attending to not only his responsibilities in regard to client files, but also his office administration duties. He also alluded to his financial success and the fact that he did not need the relatively small amount of money in issue.

Simply put, Mr. Doolan acknowledged that he knew what his obligations to his clients were, specifically to properly record, and report on, and refund to clients the trust monies to which they were entitled, but he was too busy, and the amounts involved were too small (by his standards) to follow the well-established rules.

It was implied that being too busy was somehow an excuse, or at least an explanation, for his failure to follow the rules. It was also implied that his failure to hire and train sufficient support staff was somehow an excuse, or at least an explanation, for his failure to follow the rules.

At some point, individuals must accept responsibility for their own actions. These were conscious decisions made by Mr. Doolan, to accept and undertake this volume of work, and to make do, and not retain sufficient support staff to enable not only the required work, but also the required recordkeeping, to be done in an appropriate manner, as required by the Rules of Professional Conduct, and the *Legal Professions Act*.

In the textbook "Lawyers and Ethics" the author, Gavin MacKenzie, at page 26.17 states:

> "Neither the fact that a lawyer has a heavy workload nor the fact that a lawyer relied on employees should be compelling mitigating factors, because both are within the lawyers' control."[6]

[6] Lawyers and Ethics, Professional Responsibility and Discipline, Gavin MacKenzie, Carswell

In fairness, there has been no suggestion that Mr. Doolan did not service his clients in a satisfactory manner. But that is only one part of his requirements. He was also required to maintain proper and adequate trust and accounting records, so that his clients would know what monies or credits they were entitled to, and so that The Law Society could review and verify his compliance with the appropriate rules, either pursuant to a spot audit, or otherwise. Mr. Doolan made a conscious decision to abandon, or not comply, with his obligations in this regard, for his own reasons, and must be held responsible for same.

Although the member was not charged with any such breach of the accounting rules, this was clearly part of the problem leading up to those matters of which he was charged and convicted. Such omission now appears to form part of his explanation for his conduct in regard to such convictions.

It is not sufficient for the member to say "I was too busy to follow the rules". It is not sufficient for the member to say that he honestly felt that these trust monies, as generated by the Land Titles Office refund cheques, belonged to him, because of certain unrecorded and unbilled services provided by him, when he had no idea whether the unbilled services and disbursements incurred were for the particular client to whom the refund cheque belonged, or for any other client. In our respectful opinion, this defies logic, and could not be a reasonably held belief.

At best, it is a form of rationalization to justify a sense or feeling of entitlement. However, it clearly offended the well-established rules, and any legal professional, experienced or not, if they had taken the time to think about this, would have known such a practice to be clearly inappropriate.

Mr. Doolan could not rightly assume that all of his clients would not be interested in receiving refund cheques for relatively small amounts, but some of which exceeded $100.00. How could he know, unless he reported the availability of such refunds to each such client,

and then let the client make such a determination? It may be that some of his clients might have regarded such small refunds as a nuisance, and not bothered to cash same, as the member testified. However, in the absence of proper reporting to each client, as required by the Rules, it was wrong to automatically convert such trust monies to his own use, without even advising each client of their entitlement to such a refund. Instead, Mr. Doolan simply cashed such refund cheques, or deposited them into his own personal bank account. As indicated, the misdealings of which the member has been convicted involved some 86 different clients. How could he rightfully assume that none of these 86 clients would not want the monies properly owing to them? In the absence of a proper accounting and recordkeeping of which clients might conceivably have owed Mr. Doolan monies for services rendered and disbursements incurred on their behalf, even if same were unbilled, it was clearly improper to assume that none of the clients involved would have wanted, or been entitled to, a refund of the monies which were properly owing to them.

In addition to those matters relating to the finding of misappropriation, there is also the serious matters relating to the conviction for 17 counts of misleading The Law Society during the course of an investigation, as well as 12 additional counts relating to the falsification of bank deposit slips. These allegations, now proven, are related, and can generally be broken down into three types of offences:

1. Deliberately providing false and misleading statements to The Law Society, which in less polite circles might more commonly be referred to as lying, in regard to the status of certain refund cheques from the Winnipeg Land Titles Office, which statements the member clearly knew to be wrong;
2. Embarking on a deliberate and premeditated course of conduct by overpaying on certain current registrations in the Winnipeg Land Titles Office, in order to generate a specific refund amount, which he then used, or intended to use, to provide to The Law

Society in an attempt to cover up his previous receipt and improper use of refund cheques in the identical amounts;

3. His deliberate falsification of 12 bank deposit slips in an attempt to conceal his misuse of the refund cheques received from the Winnipeg Land Titles Office, and which were properly owing to clients.

From reviewing the evidence it is clear that between March 17th, 2010 and March 29th, 2010 Mr. Doolan embarked on a series of actions specifically designed to mislead The Law Society. In this regard:

1. On February 22nd, 2010, The Law Society sent to Mr. Doolan a lengthy letter asking for information on 20 client files, and requesting a response within 14 days;
2. On March 15th, 2010, Mr. Doolan received from the Winnipeg Land Titles Office copies of all of the cancelled refund cheques issued to him in 2009;
3. He then deliberately made overpayments to the Winnipeg Land Titles Office on a current file in a specific amount in order to generate a refund cheque in that specific amount;
4. He then advised The Law Society in writing that in regard to certain specific transactions in 2009 he either had a stale-dated cheque on file in that amount, which he would have reissued, or he had no knowledge of what had happened to the refund cheque. These statements were not true;
5. Upon receipt of the refund cheque from the Winnipeg Land Titles Office for the specific amount in issue, based upon his previous deliberate overpayment, he then provided The Law Society with copies of the refund cheque and claimed they were for the original 2009 registration and refund.
6. All of this the member knew to be untrue, because he already had in his possession the cancelled 2009 refund cheques, which he knew he had previously negotiated for his own personal use and benefit.

7. At approximately this same time, in anticipation of a further investigation by The Law Society of Manitoba, Mr. Doolan deliberately falsified 12 bank deposit slips in an attempt to conceal his prior misappropriation of the refund cheques in issue.

Mr. Doolan admitted to his misconduct in these matters. In his testimony during this proceeding, as well as in his previous appearance before the Complaints Investigation Committee of The Law Society, Mr. Doolan acknowledged that he had thought about these matters for two or three days before deciding upon this course of conduct. However, in his personal comments to the Discipline Committee Panel on October 21st, 2014, during his submission in regard to disposition, Mr. Doolan indicated that he thought about this for two or three weeks before initiating such actions. There can therefore be no doubt that this was a well thought out and premeditated and deliberate attempt to mislead the governing body of his profession during the course of its investigation into his conduct. This was not an immediate or knee-jerk reaction to the situation in which he found himself. He embarked on a somewhat elaborate and detailed scheme of attempted deception. It was only because The Law Society was already in possession of copies of the cancelled cheques in issue that this lying and attempts at cover-up became apparent.

We can accept that a potential threat of suspension or disbarment might cause "panic", as described by the member. However, how one responds to such a situation is a relevant factor in assessing the integrity of a member.

A premeditated, well thought out, and sophisticated plan to deceive the governing body of the profession is not, in our respectful opinion, an indication of integrity. It may reflect upon the intelligence and creativity of the member, but does not represent the standard of trustworthiness "to the ends of the earth" as prescribed in the authorities. These were not simply spur of the moment decisions and actions. These actions were taken for the stated purpose of concealing knowingly improper previous misconduct, and to avoid suspension or disbarment. It would appear that for a time these actions were successful, in that Mr. Doolan

avoided suspension and/or disbarment at least up until July 13th, 2013, when we are advised that he was suspended from practice in regard to a matter not related to the charges in issue, and in regard to which this Panel has no knowledge.

We were somewhat surprised that there was no evidence provided which might have indicated some degree of emotional stress or anxiety that the member may have been under prior to and at the time of the events in issue, such as might have possibly affected his judgment. Neither were we provided with any evidence of any treatment or counselling that the member may have received since his suspension from practice, and/or during the course of these proceedings. All that we were advised of by the member and his counsel was that the past period of a year or more have been financially devastating and very difficult emotionally for the member. We accept that this may well be the case. However, in the absence of any expert medical evidence we are unable to conclude that there was any medically recognized reason for the actions taken by the member. It is the opinion of the Panel that the thought of getting caught does not excuse the lack of integrity exhibited by the attempts to mislead which occurred over a considerable period of time, and in a variety of fashions. It must also be remembered that the allegations relating to emotional stress and panic relate only to the charges of misleading, and not to the prior events of misappropriation which had occurred some time before.

The Panel has also taken into consideration the statement made by the member, during the course of his original evidence and argument, that he was not sure that he would not do the same thing again, if he found himself in similar circumstances.

As stated in the MacKenzie text, at page 26-45:

> "The fact that lawyers yield to temptation while under stress may, indeed, be regarded as a sign that they lack the moral strength necessary to be lawyers. As an Ontario Discipline Committee stated in a 1995 case,

> It is exactly when the stresses are greatest, when compliance with our profession's Rules of Conduct are the most difficult, that members must faithfully hew to the line. Those are the times when lawyers must be worthy of being "trusted to the ends of the earth", no matter what difficulties they face."[7]

An additional issue, but one which the member was not charged with, or convicted of, but which we are of the opinion can properly be taken into consideration in regard to the question of integrity, was the member's admission during the course of these proceedings that he had previously lied to the Complaints Investigation Committee of The Law Society of Manitoba during his appearance before them on April 13th, 2010.

In this regard, we note that in our previous decision, and more specifically on pages 25, 30, 32, 39, 42 and 47 of same, we referred to Mr. Doolan's attendance before the Complaints Investigation Committee as having occurred on August 13th, 2010. Upon further review of the evidence we have determined that the proper date of that appearance before the Complaints Investigation Committee was April 13th, 2010. Although the previous indicated date of such appearance was in error, it does not affect the substance or conclusion of this Discipline Committee Panel, reached in regard to such appearance.

All of these facts demonstrate a clear lack of integrity. The explanation of the member that he did this out of a fear that his previous misconduct would be discovered, and could possibly lead to serious consequences, does not excuse either his original misconduct, or his serious compounding of same through further attempts at deceit. It is one thing to make an error, and to accept responsibility for it. It is another thing to embark on a course of manipulation, fraud and deceit in an attempt to cover up that original error. Such actions cannot be ignored or minimized, and must be dealt with appropriately.

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[7] Ibid

In his text The Regulation of Professions in Canada by James T. Casey, Q.C., he states that the purpose of sentencing is as follows:

> "Given that the primary purpose of the legislation governing professionals is the protection of the public, it follows that the fundamental purpose of sentencing for professional misconduct is also to ensure that the public is protected from acts of professional misconduct."[8]

Similarly, in his text, McKenzie, at page 26-44 states:

> "Two significant objectives of the discipline process are the protection of the public and the protection of the reputation of the profession."[9]

In the case of The Law Society of British Columbia vs. Ogilvie (1999) L.S.D.D. No. 45, at paragraph 19, it was stated:

> "The public must have confidence in the ability of The Law Society to regulate and supervise the conduct of its members. It is only by the maintenance of such confidence in the integrity of the profession that the self-regulatory role of The Law Society can be justified and maintained."

At paragraph 10 of that decision there are listed the following factors worthy of general consideration in disciplinary dispositions:

> "a) the nature and gravity of the conduct proven;
>
> b) the age and experience of the respondent;
>
> c) the previous character of the respondent, including details of prior discipline;
>
> d) the impact upon the victim;
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> e) the advantage gained, or to be gained, by the respondent;
>
> f) the number of times the offending conduct occurred;

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[8] The Regulation of Professions in Canada; James T. Casey, Q.C., Carswell, p. 14-5

[9] Supra, see note 6

g) whether the respondent has acknowledged the misconduct and taken steps to disclose and redress the wrong and the presence or absence of other mitigating circumstances;

h) the possibility of remediating or rehabilitating the respondent;

i) the impact on the respondent of criminal or other sanctions or penalties;

j) the impact of the proposed penalty on the respondent;

k) the need for specific and general deterrence;

l) the need to ensure the public's confidence in the integrity of the profession;

m) the range of penalties imposed in similar cases."

The panel has endeavoured to take all of these matters into consideration, and to give the appropriate weight to same.

However, the disposition for offences in the nature of theft and fraud have been discussed in many of the reported authorities. Gavin McKenzie, in his text, states at page 26-46:

> "In cases involving fraud or theft, in spite of evidence of prior good character and financial or other pressures, lawyers are almost certain to be disbarred... Thus the profession sends an unequivocal message in the interest of maintaining public trust and the reputation of the profession."

At page 26-47 it is stated:

> "Discipline hearing panels have frequently held that acts of misappropriation should result in disbarment unless exceptional extenuating circumstances exist. An order of disbarment in such cases is made to preserve public confidence, to protect the public, and to deter other lawyers from breaching the trust of their clients."[10]

In the Ogilvie case, at paragraph 11, dealing with the penalty to be imposed, it was stated:

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[10] Supra, see note 6

> "As for the nature and gravity of Mr. Ogilvie's conduct, there can be few forms of lawyer misconduct more worthy of censure than theft from the client."[11]

In the Nova Scotia case involving P. Gregory MacIsaac it was stated:

> "As a self-governing profession, we must be prepared to do whatever is necessary to maintain the historic relationship of trust which has epitomized the lawyer-client relationship. Those who abuse such trust and bring our profession into disrepute must understand the severe consequences of such misconduct."

In that case the subcommittee decided to disbar the member, and said:

> "The preservation of the reputation of the legal profession will, in the opinion of this subcommittee, permit no other response."[12]

Counsel for The Law Society of Manitoba directed our attention to a number of other decisions. In the case of James Patrick Kelleher, being a 1994 decision, the accused member had on three instances transferred monies owing to clients after the completion of a real estate transaction into his general bank account, rather than returning such monies to the client. However, in fairness, there were also a number of other counts of misappropriation which involved substantial amounts of money. Other factors in that case included the voluntary disclosure by the member, and the fact that full restitution had been paid by him. In addition, a number of letters of reference were provided on behalf of the member, and it would appear that the conduct in question took place over a relatively short period of time. The Committee was also satisfied that the member did not act with malice. However, on page 2, at line 15, it was stated:

> "That being said, it cannot be avoided, however, that on each of these transactions steps were taken to make the irregular appear to be regular so that there was some element of planning and deliberation, even though not over a lengthy period of time."

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[11] Supra, see page 23 of this decision

[12] Nova Scotia Barrister's Society v. P. Gregory MacIsaac, March 8, 1988

On page 6, at line 1, it was said:

> "Each of the offences is and of itself a breach of trust both to the client and the profession at large. It's crucial in the practice of law that members of the public and other counsel be able to pass money to lawyers and through lawyers for specified purposes, knowing that those funds will be handled appropriately and will not be misappropriated."[13]

Although the Committee had a considerable degree of sympathy for Mr. Kelleher it was able to come to no other conclusion but that the appropriate disposition of that case was that the member be disbarred and struck from the rolls.

In the case of Saul Benjamin Zitzerman, being a 1996 report of the Discipline Committee of The Law Society of Manitoba, it was found that the member had misappropriated $6,500.00 to apply to his own outstanding indebtedness. In that matter he had misled his client, and forged his client's signature on an Order to Pay. The Discipline Committee Panel found that the member lied and cheated and was unworthy to practice law, and was therefore disbarred[14].

In the case of Douglas Melvin Griffin, being a 2005 decision of a Discipline Committee Panel of The Law Society of Manitoba, the member wrote a series of cheques totalling $4,200.00 to himself from his trust account. He had made three repayments totalling $1,200.00. The member attempted to cover up his misappropriation by having the Board of Directors sign certain documents which would characterize this action as a loan to the member. In that case the Panel found that the fact that the member was suffering from Type II Diabetes was not such an exceptional circumstance as to avoid disbarment for the actions in question[15].

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[13] Discipline Case Digest 94-06, June 20, 1994
[14] Discipline Case Digest 96-04, January 26, 1996
[15] Discipline Case Digest 05-03, June 3, 2005

In the case of Donald Joel MacKinnon, being a 2010 decision of the Discipline Committee Panel of The Law Society of Manitoba it was found that the member had fabricated statements of account and reporting letters, that were never sent to the client, in an attempt to mislead both The Law Society and the client. The Panel found that the conduct in issue was reprehensible and showed a pattern of deceit, and ordered that the member be disbarred[16].

In the aforementioned Nova Scotia case involving P. Gregory McIsaac, a member of The Law Society, who was also a member of the Nova Scotia Legislature was convicted in criminal court of 9 counts of fraud for submitting improper expense claims as an MLA, in an amount totalling approximately $7,000.00. The member claimed that he thought that his expense claims were legitimate, and he was simply following the accepted practice of his colleagues, and therefore did not intend to deceive. However, he did acknowledge forging the signature of his landlady on certain receipt forms. It was argued on his behalf that this was an isolated incident that was not related to the practice of law. Therefore, there was no reasonable expectation of repetition of such offences by the member. Several letters of reference were filed, including references from the mayor of his community, and his accountant. In that case the Discipline Panel found that even though the offences in issue occurred outside of the practice of law members of the legal profession must recognize that their conduct, at the very least, will be judged in accordance with the same strict standards of honesty and integrity as is required of them in the practice of law.

> "Simply put, consumers of legal services must be confident in knowing that behind every law office door will be found a lawyer whose trustworthiness and integrity can be accepted without question. If the people of Nova Scotia who seek out the services of a lawyer feel compelled to inquire in advance whether such lawyer has been convicted of such serious indictable offences as we are dealing with here, our Bar will inevitably see a serious erosion of its reputation and the trust upon which the profession is based."[17]

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[16] Discipline Case Digest 10-05, March 15, 2010

[17] Supra, see note 12

As we have previously noted, in his submission, counsel for Mr. Doolan ably submitted that in the summation of Manitoba Law Society cases involving misappropriation of funds there were certainly cases in which disbarment had not been imposed. The Panel has carefully considered such cases.

As was pointed out by counsel for The Law Society of Manitoba, in at least some of these cases there had been a joint recommendation made by both the prosecution and the defence in regard to the disposition in issue, which indicated an acknowledgement by The Law Society of Manitoba that there were exceptional circumstances in such cases.

In this case we do not believe that any exceptional circumstances have been demonstrated. We do accept the fact that Mr. Doolan has been practising without any discipline history for the past approximate 37 years. However, as previously indicated, we do not accept that there was any lack of intention to misappropriate the monies in issue, nor do we accept that there was no attempt to conceal such misconduct. The alleged "panic" in issue, did not occur at the time of the misappropriation, but apparently only arose upon the subsequent threat of discovery. There was no medical evidence to support the alleged mental state of the member at any of the relevant times. The repetitive actions of the member, both in regard to the misappropriation, and subsequently in regard to the attempts to mislead during the course of the investigation conducted by The Law Society, demonstrate that this was not a simple lapse in judgment or an isolated incident.

We have also considered the reference letters filed on behalf of Mr. Doolan. However, this is not a popularity contest, and it was acknowledged that only one of the lawyers providing such support for Mr. Doolan was aware of either the Citations issued against this member, or the findings of this Panel of The Law Society Discipline Committee at the time they wrote such letters. Therefore, although we have considered the reference letters provided in this matter, which recognize the abilities of Mr. Doolan in his chosen area of specialization, namely real

estate law, and their opinion in regard to his honesty, we have placed little weight upon such letters in determining the appropriate disposition on the facts of this case.

As was stated in the text by Gavin McKenzie at page 26-45:

> "Some types of evidence in mitigation of penalty are more reliable indicators of the likelihood of recurrence than are others. Character evidence is common and can be persuasive, but it is much less valuable if the witnesses are not fully informed of the facts. Even then, it is difficult to gauge the extent to which the evidence is effected by factors such as friendship. Virtually all lawyers are responsible for some good deeds, and virtually all are held in high esteem by some other lawyers and clients. The discipline hearing panel must ensure that the process is not transformed from a deliberative process into a referendum among members of the profession."[18]

In regard to the issue of costs, although same appear to be significant, there was clearly a need to properly investigate the numerous instances of possible violation of the rules, and the attempts made to cover up same. We note that counsel for the member did not dispute or challenge the costs claimed by The Law Society of Manitoba. As was stated in the Schmidt case before a Discipline Panel of The Law Society of Manitoba, the costs in such cases should properly be borne by the member responsible, and not by the membership as a whole, who have not committed any such offences[19].

The issue in this case in regard to the issue of disposition or penalty is integrity. The Panel has considered a possible suspension which could be accompanied by an order to practice under supervision for a period of time. However, we have determined that such a disposition would not be sufficient to reflect the seriousness of the offences in this case, and to deter other members from similar actions, and to preserve public confidence in the legal profession and its ability and willingness to govern itself. We have also considered what appears to be the member's continued lack of understanding and/or appreciation of the seriousness of his actions, as reflected in his continued efforts to minimize his conduct and

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[18] Supra, see note 6

[19] Discipline Case Digest 99-03, July 13, 1999

the lack of appropriate remorse shown. In his own closing remarks Mr. Doolan has shown that he still does not fully understand or appreciate the true nature and consequences of his actions.

After carefully considering and weighing all of the facts and submissions in this matter it is the unanimous ruling of this Discipline Panel that:

1. The member, Robert Frank Doolan, be disbarred and his name struck from the Rolls of The Law Society of Manitoba.
2. The member, Robert Frank Doolan, is to pay the sum of $38,108.23, representing a portion of the costs incurred by The Law Society of Manitoba for the investigation and prosecution of these matters.

DATED this 23 day of December, 2014.

RICHARD K. DEELEY, Q.C.

KATHERINE BUETI

KENNETH MOLLOY