THE LAW SOCIETY OF MANITOBA

IN THE MATTER OF:

JAMES GRAEME EARL YOUNG

- and -

IN THE MATTER OF:

THE LEGAL PROFESSION ACT

REASONS FOR DECISION
SEPTEMBER 7, 2017

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1. The Law Society of Manitoba (the "Society") served two Citations on James Graeme Earl Young ("Mr. Young") in 2016, the first dated March 29, 2016 and the second dated October 7, 2016. The two Citations set out 12 separate charges arising out of five different files, some of which involved several clients. A number of the charges allege misappropriation of client funds. Mr. Young admitted liability with respect to a number of the charges, including several of the misappropriations. Mr. Young denied the allegations of misappropriation and of misleading the Society with respect to two of the files.

2. The hearing of the evidence on the Citations began on Monday, January 23, 2017 and proceeded on January 24, 25, 26 and 27 and February 8, 2017. Mr.

Rocky Kravetsky represented the Society. Mr. Gavin Wood represented Mr. Young. The Panel confirmed at the commencement of proceedings that a quorum of the Discipline Committee of the Society was present, Mr. Bedford and Ms. Stewart both being members of the Society and members of the Discipline Committee and Ms. Morrison being a duly appointed Public Representative and also a member of the Discipline Committee. Mr. Wood advised that Mr. Young was not a member of any other Law Society, that he had no objections to the composition of the Panel and that he waived the reading of the charges.

3. In addition to testifying on the two matters that were contested, Mr. Young gave evidence with respect to the matters to which he admitted liability.

4. At the commencement of the hearing, counsel for Mr. Young made a motion for an order prohibiting the Society from tendering any evidence with respect to Counts 6 and 8 of the Citation dated March 29, 2016. That motion was dismissed on January 24, 2017 and written reasons were delivered on March 17, 2017.

5. The submissions of counsel with respect to the evidence tendered were heard on March 17 and 20, 2017.

6. The Panel's findings with respect to the evidence were delivered by way of Resolution dated May 19, 2017. The Panel offered to follow the Resolution with its detailed Reasons before hearing submissions with respect to penalty if the parties so desired. The parties advised that they wished to make submissions regarding penalty before the Reasons were delivered and did so on August 17 and 18, 2017.

7. We set out now our Reasons for our findings on the evidence as summarized in the Resolution dated May 19, 2017 and our decision with respect to penalty and our reasons for concluding that such penalty is the appropriate disposition.

Background of Mr. Young

8. Mr. Young was called to the Bar of the Province of Manitoba in June 2005, having graduated in 2004 from the Faculty of Law of the University of Manitoba.

9. Mr. Young testified at the hearing and gave a summary of his career. For a period of time before completing his law degree, he worked at one of the chartered banks in Manitoba with some success in terms of promotion. Unlike many graduates in law, he was older when he entered law school. At the commencement of the hearing, he was 46 years old.

10. Mr. Young articled at the Winnipeg firm of Taylor McCaffrey. He said he was invited to continue to practice at the firm after he completed his articles. After a few months, he said he accepted an invitation to practice at the firm of Campbell Marr LLP, one of whose lawyers had been impressed with his work on a litigation file.

11. He practiced at Campbell Marr from 2006 through December 2010. He said that he was made a partner of the firm in January 2009. In January 2009 he also enrolled in a Master of Laws program at Osgoode Hall and graduated in 2010. He received a Master of Laws in "civil litigation", his particular study focus being a research paper on the oppression remedy in shareholder disputes.

12. Mr. Young left Campbell Marr at the end of December 2010 and began practicing at the Winnipeg firm of Restall & Restall LLP. According to Mr. Young, he was sought out by a partner at Restall & Restall and recruited to do the civil litigation work at the firm. He said he was promised he would be made a partner in 18 months. That did not happen. He said he found at Restall & Restall LLP that he was "working myself to death." He says his health began to suffer. He put on weight; he could not keep up with the demands of clients on his files; he

received little support from the firm; he postponed holidays; and ultimately left the firm in mid July 2014.

13. He moved to the firm of Boudreau Law where he says his professional life was easier. He had clients he thought were "great". He felt able to turn down some work. He left Boudreau Law in the first week of July 2015 to begin serving an eight month suspension which is described below. He has not returned to practice because he was suspended on an interim basis in February 2016 when the charges that came before this panel were being investigated.

14. Mr. Young pleaded guilty on July 6, 2015 as part of a plea bargain to 19 charges of professional misconduct. The details and decision regarding these charges were provided to us during the "penalty" phase of the present hearing. Prior to that, we were advised of the date Mr. Young was suspended and in his testimony he spoke briefly about the suspension and what led to it. He said the 19 charges were largely based on failures to respond in timely fashion to clients and other counsel and included some instances of misleading other parties and on at least one occasion the Court. He said the charges arose during his time at Restall & Restall LLP and were the result of his inability to keep up with the work load. The decision of the panel which heard the foregoing 19 charges is dated September 23, 2015. The charges include a number of instances of misleading other parties, including the Court, several instances of failures to appear in Court when required, failures to communicate in timely fashion and failures to complete tasks that were his responsibility to complete. The misconduct occurred on various dates beginning in 2012 and carrying on through 2013 with the last being in May 2014. As stated, the charges were disposed of by way of a joint recommendation accepted by the panel that heard it and the disposition was a suspension from practice that commenced on July 6, 2015 which was to end on March 8, 2016.

15. Mr. Young gave an undertaking to the Society on April 24, 2014 pending the hearing of the 19 charges that were disposed of a year later on July 6, 2015.

16. On cross-examination, it was revealed that there were some additional blemishes on Mr. Young's legal career. He admitted that he had been expelled from the University of Calgary Law School for cheating. That Law School has a firm policy of not allowing those convicted of cheating to return, hence Mr. Young completed his degree at the University of Manitoba Faculty of Law whose staff were persuaded that he merited a second chance. When some partners at the Taylor McCaffrey firm learned that Mr. Young had been expelled from the University of Calgary Law School for cheating, they wanted to terminate his employment and that coincided with the move to Campbell Marr LLP. Mr. Young was asked in 2010 to leave Campbell Marr LLP when material of questionable content that violated the firm's policies was discovered on his computer. When the Society arranged for a practice audit of Mr. Young's files at Restall & Restall LLP, he found himself in conflict with the partners there regarding the firm's accounting software and other firm supports. Accordingly, he left to work at Boudreau Law.

The charges regarding CC.I. MB Inc., Mr. H.T. and T. Holdings Ltd.

17. Count 1 of the Citation dated March 29, 2016 alleges that Mr. Young misappropriated a total of $41,936.57 through four separate transfers of money while he was practicing at the firm of Restall & Restall LLP. The transfers took place on July 4, 2011, September 4, 2012, December 31, 2012 and June 28, 2013. At the time of the transfers, the money was invested by Restall & Restall LLP in the name of a Manitoba corporation, CC.I. MB Inc. On each occasion the money was transferred, a statement of account was prepared. Mr. Young admits these allegations. He further admits that the statements of account in question, three of which were made out to one or other of the clients he represented, Mr. H.T. and his corporation T. Holdings Ltd., were never received by his clients. The first of the four accounts was made out to CCI MB Inc. It, too, was never received by Mr. Young's clients.

18. Count 2 of the Citation dated March 29, 2016 alleges that Mr. Young failed to honour trust conditions imposed upon him in May 2013. Mr. Young was sent a total of $465,500.00 in May 2013 as part of the resolution of a shareholders' dispute in which Mr. Young was representing Mr. H.T. and T. Holdings Ltd. Mr. Young was under trust conditions not to disburse the funds in question until such time as he had provided to the firm which imposed the trust conditions a cheque payable to it in the amount of $70,627.16 and certain agreed upon settlement documents. Mr. Young proceeded on June 28, 2013 to withdraw from the monies sent to him in May the sum of $16,340.00 for his fees and disbursements without satisfying the trust conditions. Mr. Young admits the allegations.

The Facts Pertinent to Mr. H.T, T. Holdings Ltd. and CC.I. MB Inc.

19. Mr. H.T. of Edmonton and his corporation T. Holdings Ltd. were clients of the Winnipeg firm of Campbell Marr LLP. In and about 2008, they retained Campbell Marr LLP to represent them in a shareholders dispute. T. Holdings Ltd. owned half of the shares of a Manitoba corporation, CC.I. MB Inc. Differences had arisen between T. Holdings Ltd., Mr. H.T. and the owner of the other half of the shares. Mr. Young, then practicing at Campbell Marr LLP, was asked to perform the litigation work for these clients.

20. In December 2009, while the litigation was still in progress, property owned by CC.I. MB Inc. was sold and by agreement between the litigants, the firm of Campbell Marr LLP acted for CC.I. MB Inc. as vendor and received the net sale proceeds which it placed in trust.

21. A year later, at the end of December 2010, Mr. Young left Campbell Marr LLP and joined the firm of Restall & Restall LLP. With the concurrence of Campbell Marr LLP and the clients, the litigation files pertaining to Mr. H.T. and T. Holdings Ltd. were transferred to Restall & Restall LLP. Further, the net sale proceeds received at Campbell Marr LLP on behalf of CC.I. MB Inc., which with interest now amounted to $124,249.93, were sent in trust to Restall & Restall LLP by letter dated January 24, 2011. The trust condition required that the money "be

held by Restall & Restall LLP until such time as the litigation matters between T. Holdings Ltd., Mr. 'B' and 'Mr. B's corporation' have been resolved." (See Exhibit #4, Document 6.)

22. The shareholders dispute continued. On June 29, 2011, during the course of a judicial mediation proceeding, the parties settled the dispute, the key terms of which were that some debts of CC.I. MB Inc. were to be paid out of the funds held for that company in trust by Restall & Restall LLP with the balance to be held for the time being in trust. (See Exhibit #3, Agreed Statement of Facts, paragraph 5.12).

23. On July 4, 2011, Mr. Young transferred from the funds held in trust for CC.I. MB Inc. the sum of $11,061.76 and applied it to a statement of account dated June 30, 2011 in the same amount. This transfer was not part of the settlement. The account was made out to CC.I. MB Inc. which was not Mr. Young's client in the litigation. His clients were Mr. H.T. and T. Holdings Ltd. The latter, to repeat, owned half of the shares of CC.I. MB Inc. and it was the ownership or control of the latter that was an issue in the litigation. The account in question was not received by Mr. Young's clients. (See Exhibit #4, Document 8 and Exhibit #3, paragraph 5.17)

24. The settlement reached on June 29, 2011 was not effectively implemented. Indeed, at the time of the hearing of the Citations in early 2017, the parties had still not completed a resolution of all of their differences.

25. In December 2011, opposing counsel learned that on July 4, 2011 Mr. Young had withdrawn some of the monies that were to have remained in trust and had used them to pay an account at Restall & Restall LLP. He complained and demanded that the amount be deducted "against any monies your client receives pursuant to the Settlement Agreement". He also advanced other concerns regarding Mr. Young's failure to implement the settlement reached on June 29, 2011 in timely fashion. (See Exhibit #4, Document 12).

26. In the summer of 2012, the Society learned of Mr. Young's withdrawal of monies from trust on July 4, 2011 to pay an account. The Society reviewed

whether this amounted to a breach of the trust condition imposed by Campbell Marr LLP when the monies were sent to Mr. Young on January 24, 2011. The Society concluded that there was no breach of trust in light of the fact that the trust condition stipulated only that no use was to be made of the funds "until such time as the litigation matters . . . had been resolved." There was a resolution on June 29, 2011 of those matters and the withdrawal took place thereafter. The Society did not investigate in 2012 whether Mr. Young had sent the account in question to his client or whether he in fact was entitled to withdraw funds owned at the time by CC.I. MB Inc. to pay accounts for services rendered to Mr. H.T. and T. Holdings Ltd. (See Exhibit #4, Document 22)

27. On September 4, 2012, one month after the Society wrote to Mr. Young advising of its decision not to investigate further, Mr. Young transferred the further sum of $5,574.81 from the remaining trust funds to pay an account of Restall & Restall LLP, this account dated August 31, 2012 and addressed to Mr. H.T. Mr. H.T. never received this account. (See Exhibit #4 Document 23 and Exhibit #3 paragraph 5.23)

28. On December 31, 2012, Mr. Young repeated the process, this time transferring the sum of $8,960.00 to pay a Restall & Restall LLP account addressed to T. Holdings Ltd. Again, the account was never received by his clients. (See Exhibit #4 Document 24 and Exhibit #3 paragraph 5.25)

29. In May 2013, as part of the continuing effort to effect a settlement between the parties, opposing counsel sent a total of $467,500.00 in trust to Mr. Young, $72,500.00 being the agreed purchase price of the shares of CC.I. MB Inc. owned or controlled by Mr. Young's clients and the balance of $395,000.00 being the agreed amount owing on a shareholders loan. The trust conditions stipulated that Mr. Young was to deliver a cheque to opposing counsel in the amount of $70,627.16. This was the balance of monies that was supposed to have remained in trust with Restall & Restall LLP to the credit of CC.I. MB Inc. In addition, the trust conditions required the dispatch of an executed release and a filed Notice of Discontinuance of the Claim filed by Mr. H.T. and T. Holdings Ltd. As of May 2013, the balance of funds held at Restall & Restall LLP for CC.I. MB Inc. was only $45,326.22. (See Exhibit #4 Documents 25 and 26).

30. Without complying with the trust conditions, Mr. Young transferred on June 28, 2013 the sum of $16,340.00 from the monies he had received in May 2013 and applied them in payment of a "final account" in that amount dated June 28, 2013 addressed to Mr. HT. Mr. HT never received the account. (See Exhibit #4 Document 27 and Exhibit #3 paragraph 5.33).

31. The settlement was still not completed as of December 2013. Mr. H.T. learned that month of the four transfers of funds and the payment of the four accounts which he had never seen or known about. He terminated Mr. Young's services and instructed that the files be transferred to a different firm.

32. During the course of the hearing, the Panel was advised that a settlement had been concluded between Mr. H.T., the firm of Restall & Restall LLP and Mr. Young regarding the value of the services performed at the firm over the years by Mr. Young for Mr. H.T. and T. Holdings Ltd. Restall & Restall LLP and Mr. Young agreed to "refund" some monies to the former clients. Mr. Young had not as of the date of the hearing paid his portion of the "refund".

The charges regarding the Estates of W.A. and S.A.

33. Count 3 of the Citation dated March 29, 2016 asserts that Mr. Young misappropriated the sum of $23,000.00 on September 23, 2011 belonging to the Estates of W.A. and S.A. and that he further misappropriated the sum of $15,000.00 on June 21, 2012, also belonging to the Estates of W.A. and S.A. At the time of the misappropriations Mr. Young was practicing at Restall & Restall LLP. The foregoing $23,000.00 was paid out of the Restall & Restall LLP trust account to Mr. Young personally. The foregoing $15,000.00 was paid out of the same trust account to J. Graeme E. Young Law Corporation. No statements of account were prepared with respect to either withdrawal of trust funds. Mr. Young admits the allegations in Count 3 save and except for two particulars which summarize terms of a Court Order regarding a passing of the accounts of the two estates.

34. Count 4 of the Citation dated March 29, 2016 asserts that Mr. Young misled Ms. E.L., the initial executrix of the Estates of W.A. and S.A., and Ms. B.A., the elder daughter of the late W.A. and S.A. and the subsequent executrix of their estates, while he was acting for them. Specifically, Mr. Young persuaded Ms. B.A. to have Ms. E.L. send to him $23,000.00 and $7,500.00 from estate funds in September 2011 and Ms. E.L. and Ms. B.A. to send him the further total of $58,663.23 on the basis that no part of the monies in question would be disbursed until the accounts of the Estates of W.A. and S.A. had been passed by the Court. Contrary to his assurances, Mr. Young removed some of the monies in question on September 23, 2011 and on June 21, 2012 for his own use. The accounts of the Estates of W.A. and S.A. were not passed until April 1, 2016. Mr. Young admits the allegations in Count 4.

35. Count 5 of the Citation dated March 29, 2016 asserts that Mr. Young breached three trust conditions imposed upon him in a letter from Campbell Marr LLP dated January 20, 2011. He did not "proceed with dispatch" to arrange for the passing of the accounts of the Estates of W.A. and S.A. He did not provide a cheque following the passing of accounts to Campbell Marr LLP to pay accounts dated January 20, 2011 which accompanied the letter. He did not confirm to Campbell Marr LLP that he had explained to Ms. B.A. that the $28,000.00 which . had been given to Campbell Marr LLP in December 2010 on the basis that it was to be used to pay costs she had incurred personally at Campbell Marr LLP with respect to a guardianship matter were now going to be treated as a contribution from her to the costs of passing the accounts of the estates. The $28,000.00 was sent to Mr. Young with the foregoing letter of January 20, 2011. Mr. Young admits the allegations in Count 5.

<u>The Facts Pertinent to the Estates of W.A. and S.A.</u>

36. W.A. and S.A. died in an automobile accident on October 12, 2007. They were survived by two daughters, Ms. B.A. and Ms. A.A., who were still children on the date of their parents' deaths. They left estates worth approximately $5.0 Million.

37. Although it was known that W.A. and S.A. had executed wills, they could not be found. Their solicitor had copies. A former sister-in-law, Ms. E..L, was named as executrix and guardian in the copies.

38. The firm of Campbell Marr LLP was retained for the Estates. There were significant legal issues arising out of the deaths of W.A. and S.A. In due course, the wills were submitted for proof in solemn form. The respective mothers of W.A. and S.A. advocated that the estates be administered as intestacies. Guardianship of the daughters was contested. Ms. B.A. reached the age of 18 in December 2008. In 2011 she was appointed executrix of the estates of her parents in place of Ms. E.L. and guardian of her younger sister. In 2013 the Public Trustee was appointed to be the guardian of the younger sister. (See Exhibit #3)

39. Mr. Young did much of the litigation work regarding the estates of W.A. and S.A. and the guardianship applications at Campbell Marr LLP.

40. In December 2010, Mr. Young was in the process of transferring his practice to the firm of Restall & Restall LLP. By this date, the only significant legal work remaining to be done for the Estates of W.A. and S.A. was the passing of accounts. To that date there had been no accounts passed. The firm of Campbell Marr LLP had billed and been paid through withdrawals of estate funds about $230,000.00. The firm that had represented the mothers of W.A. and S.A. had been paid about $33,000.00 through withdrawals of Estate funds. Counsel for the Public Trustee had indicated she had concerns regarding the amount of fees paid to the two law firms.

41. The initial retainer to Campbell Marr LLP for the Estate work had come through Mr. Garth Reimer, a partner. The partnership agreement at Campbell Marr LLP as described by Mr. Young provided that Mr. Reimer was to be allocated 30% of fees billed for the work done by other lawyers at the firm on files that he was responsible for bringing to the firm.

42. Campbell Marr LLP and the clients in the persons of Ms. E.L. and Ms. B.A. were agreeable that the files pertaining to the Estates be transferred to Restall &

Restall LLP where all parties understood that Mr. Young would complete the work of passing the accounts.

43. As part of the process of transferring the files, Mr. Reimer exchanged emails with Mr. Young on December 23, 2010. On that date, the two lawyers discussed the further fees and disbursements to be billed and the allocation of the fees. Mr. Young suggested two further "payments". One, in the amount of $25,000.00 fees plus taxes he indicated could be paid without court approval on the logic that it could be rendered to Ms. B.A. for guardianship work and not work done for the Estates. Mr. Young proposed that out of the $25,000.00, he be allocated $9,488.50 and Mr. Reimer and a junior lawyer at Campbell Marr LLP be allocated the balance. (See Exhibit #35 and #36.) This proposed account was not in fact rendered.

44. In the same series of exchanges, Mr. Young informed Mr. Reimer that the Public Trustee had agreed to a further payment of $20,000.00 for Estate work subject to the approval of the Court. He suggested that out of this sum, he be allocated $15,000.00 for his as yet unbilled work at Campbell Marr LLP.

45. Mr. Reimer questioned the propriety of any interim payment. He agreed to waive his 30% entitlement to allocations to Mr. Young provided he received $11,000.00 which was subsequently reduced to $10,000.00.

46. On January 20, 2011 Mr. Reimer wrote to Mr. Young forwarding the files for the estates and, in accordance with the email exchanges of December 23, 2010, which Mr. Reimer refers to, enclosed three statements of account for disbursements only in modest amounts to the Estates and an account for fees and disbursements, dated January 20, 2011 in the amount of $26,836.87. The latter account explicitly allocated $10,000.00 of the fees to Mr. Reimer and the balance to two junior lawyers and another partner, in accordance with the amounts described in the email exchange of December 23, 2010. In addition, Mr. Reimer forwarded a cheque in the amount of $28,000.00, being funds provided to Campbell Marr LLP by or for Ms. B.A. on the basis that they were to pay for work done for her in the guardianship matter. Mr. Reimer stipulated that the "enclosed documents and funds" are provided in trust that Mr. Young "proceed with dispatch

to finalize the passing of accounts on the two Estates", provide a cheque to pay the enclosed bills of Campbell Marr LLP once the accounts are passed and "forthwith" provide confirmation that Ms. B.A. has been told that the $28,000.00 was to be used as "her contribution to the passing of accounts costs and not for the guardianship". (See Exhibit #37)

47. Mr. Young did not proceed with dispatch to arrange for the passing of accounts. While at Restall & Restall LLP he did engage in discussions with counsel for the Public Trustee regarding the passing of accounts and he did communicate with Ms. B.A. and Ms. E.L., indicating to them in September 2011 that an appearance before the Court was imminent. In the event, the accounts were not passed as of three and a half years later when Mr. Young left Restall & Restall LLP in July 2014 and they were not passed in the ensuing year when he practiced at Boudreau Law. The accounts were passed on April 1, 2016 and Mr. Young did not arrange for that nor appear. Indeed, as described below, while at Restall & Restall LLP Mr. Young withdrew monies invested on behalf of the Estates in September 2011 and in June 2012 and paid them to himself and his law corporation without rendering accounts or apprising his clients that he had done this. The Court Orders pronounced on April 1, 2016 and signed on June 16, 2016 provide that "the passing of accounts as it relates to the legal fees of $23,000.00 and $15,000.00 paid to J. Graeme Young through the firm of Restall & Restall LLP" is adjourned to be heard "if necessary, at a later date."

48. In addition, Mr. Young did not provide a cheque to Campbell Marr LLP in payment of its accounts dated January 20, 2011 nor did he confirm "forthwith" that Ms. B.A. was advised of the change in the intended application of the $28,000.00.

49. A billing statement dated January 18, 2011 produced by Campbell Marr LLP shows that as of that date, the value of Mr. Young's time, as yet unbilled, for work on various files at Campbell Marr LLP for the two estates totaled $34,256.00. This total does not reflect Mr. Reimer's entitlement to 30% of whatever is billed to the client. Were all of the time in question billed, Mr. Young's entitlement would be $23,971.20 if one allocated the 30% entitlement of Mr. Reimer to Mr. Reimer. (See Exhibit #4 Document 30)

50. On September 19, 2011, Mr. Young, by email, provided an "update" to Ms. B.A. He asks her in the email to provide him with $23,000.00 after observing that he has not charged any fees since joining Restall & Restall LLP and reminding her that "you were prepared to pay $20,000.00 plus GST ($23,000) from your own funds." He finishes the email by stating: "I will not release the funds to Campbell, Marr until the accounts have been passed." In an email the following day to Ms. B.A. Mr. Young clarifies his request: "The $28,000.00 was from your money alone, and the $23,000 and the $7,500 should come from the Estate as you discussed with me yesterday". The $7,500.00 was the amount requested by counsel for the Public Trustee for her fees. (See Exhibit #4 Document 31)

51. Mr. Young received from Ms. E.L. a cheque in the amount of $23,000.00 and a cheque in the amount of $7,500.00 both payable to Restall & Restall and both dated September 23, 2011. Ms. B.A. with whom Mr. Young had communicated apparently asked Ms. E.L. to provide the cheques. The cheque in the amount of $23,000.00 includes the words "legal fees 'B.A.'". The cheque in the amount of $7,500.00 includes the words "public trustee accts". Mr. Young deposited the cheques into trust and on the same day requisitioned by way of a cheque payable to himself personally the sum of $23,000.00. The Restall & Restall LLP deposit slip for the cheque in the amount of $23,000.00 includes the words "Campbell Marr billings". No account was rendered by Mr. Young for this or any amount. (See Exhibit #4 Documents 32, 33, 34 and 40)

52. On June 20, 2012, Mr. Young received a further $58,663.20 from the Estates of W.A. and S.A. These funds were to be used to pay the compensation for the executrix and the fees of Campbell Marr LLP upon the passing of accounts. Mr. Young still retained in trust at Restall & Restall the $28,000.00 sent to him in trust a year and a half earlier by Campbell Marr LLP and the $7,500.00 sent to him nine months earlier by Ms. E.L. On June 20, 2012, Mr. Young in an email advised counsel for the Public Trustee that "none of the monies referred to above will be disbursed until such time as the Court has granted an Order for the Passing of the Accounts". (See Exhibit #4 Document 41)

53. On June 21, 2012, Mr. Young withdrew from the monies held in trust for the Estates of W.A. and S.A. the sum of $15,000.00 and had it paid to J. Graeme E.

Young Law Corporation. No statement of account was prepared for this amount and no advice was provided to Mr. Young's clients that this was being done. (See Exhibit #4 Document 43).

54. The passing of accounts of the Estates of W.A. and S.A. came before the Court in December 2015 and on April 1, 2016 the accounts were passed. No accounts were passed for work done by Mr. Young at Restall & Restall LLP. The firm of Campbell Marr LLP agreed to waive payment of its accounts dated January 20, 2011 and, further, it agreed to refund to the two Estates almost $11,000.00 out of what it had billed and been paid in earlier years. (See Exhibit #3 paragraphs 6.25 and 6.31 and Exhibit #4 Documents 37 and 38).

The charges regarding a Breach of Undertaking to the Society Given April 24, 2014

55. On April 24, 2014, as noted above, Mr. Young gave an Undertaking to the Society that from and after May 5, 2014 he would document on each file all communications with his clients and third parties and that he would record all of his time. This Undertaking was given pending the disposition of the 19 charges laid against Mr. Young by the Society in 2014. Count 7 in the Citation before this Panel dated March 29, 2016 alleges that Mr. Young did not comply with the Undertaking during his representation of Mr. S.D. and Ms. S.C. Mr. Young admits that he did not document communications with these clients regarding financial aspects of his retainer and except for four events did not record his time spent on Mr. S.D.'s domestic matter and did not record any of the time spent on the file opened with respect to Mr. S.D. and Ms. S.C.'s litigation arising out of their purchase of a lodge business. Mr. Young admits these allegations.

56. Count 10 of the Citation dated March 29, 2016 alleges that Mr. Young did not comply with the Undertaking during his representation of Ms. L.Y. Mr. Young admits that he did not document all of his communications with Ms. L.Y. and others.

57. Count 1 of the Citation dated October 7, 2016 alleges that Mr. Young failed to comply with the Undertaking during his representation of his client Mr. T.S. Mr. Young admits that he acted for Mr. T.S. from November 2014 to July 5, 2015 and that he failed to document meetings and telephone conversations with his client from and after January 19, 2015.

The charges regarding Mr. S.D and Ms. S.C.

58. Count 6 of the Citation dated March 29, 2016 alleges that Mr. Young misappropriated trust funds from his clients Mr. S.D. and his spouse Ms. S.C. on three occasions in 2014. The Law Society asserts that Mr. Young received $1,500.00 on June 21, 2014, $2,000.00 on August 1, 2014 and $1,000.00 on December 3, 2014 from his clients which sums were not placed into the trust accounts of either of the firms where he was employed during the period in question.

59. Mr. Young admits to having received the sums in question. He says they were repayments of monies he loaned to Ms. S.C. some years earlier. He says further that the legal work he was performing for Mr. S.D. and Ms. S.C. was being done on a pro bono basis.

60. Count 8 of the Citation dated March 29, 2016 alleges that Mr. Young provided false information to the Law Society in the responses he made to the Law Society's enquiries regarding the monies he received from Mr. S.D. and Ms. S.C., particularly statements that these monies were given to him to repay loans and that he was performing legal work for these clients on a pro bono basis.

The Evidence Relied Upon by the Society with respect to the Mr. S.D. and Ms. S.C.

61. The Law Society served subpoenas on Mr. S.D. and Ms. S.C. They did not appear at the hearing.

62. Sometime in the spring of 2014, no later than June 2014, while at the firm of Restall & Restall, Mr. Young agreed to assist Mr. S.D. with respect to a matter involving Ms. L.G. Apparently Mr. S.D. and Ms. L.G. had once lived together and there was a child of the relationship. Mr. S.D. had entered into an agreement to sell his home in western Manitoba. Immediately prior to the sale, Ms. L.G. filed a caveat on the title claiming a homestead interest in the property. The filing of the caveat was holding up the closing of the sale.

63. On June 21, 2014, through an electronic transfer, Ms. S.C. sent to Mr. Young the sum of $1,500.00 which was deposited into a personal account in Mr. Young's name. (Exhibit #19 and Exhibit #17).

64. Mr. Young made some enquiries regarding the problem arising from the caveat. At the end of August 2014, the matter was taken over by the Society through its insurance program, apparently because the lawyer (not Mr. Young) retained by Mr. S.D. on the sale of the property may have been negligent in his handling of the matter.

65. In and about July 2014, Mr. S.D. and Ms. S.C. sought Mr. Young's advice regarding concerns that they had arising from their purchase of a lodge business in western Manitoba. They had concerns regarding the revenues that the business was generating and the assets. Mr. Young opened a file in this matter at the Boudreau Law Firm, which he joined effective July 14, 2014. (See Exhibit #4 Documents 44 and 45)

66. On August 1, 2014, through an electronic transfer, Ms. S.C. sent Mr. Young the sum of $2,000.00 which was deposited into a personal account in Mr. Young's name. (Exhibits #19 and #17).

67. At some point in 2014, Mr. S.D. and Ms. S.C. also consulted Mr. Young regarding Mr. S.D.'s right to visit with the child he shared with Ms. L.G.

68. On November 30, 2014, Mr. S.D. sent an email to Mr. Young. Mr. S.D. wrote that he was not "clear on what is happening" and noted "We sent you $2,000.00 for my personal custody matters". The email in question was tendered for the purpose of showing that there had been a communication between Mr. S.D. and Mr. Young regarding the work Mr. Young was doing and one of the payments sent to him but, as it would amount to hearsay, not for the purpose of proving that the $2,000.00 Mr. Young is alleged to have misappropriated was indeed provided to him by Mr. S.D. (and Ms. S.C.) as a retainer "for my personal custody matters". Mr. Young replied to this email on December 2, 2014. He does not address directly the reference to the $2,000.00. He reminds Mr. S.D. that the Society assumed conduct of the "homestead removal" matter. He observed: "I am trying to complete all of the matters relating to you and to [S.] and the Lodge on a shoe-string, to keep the costs down for you." (Exhibit # 25)

69. On December 3, 2014, through an electronic transfer, Ms. S.C. sent to Mr. Young the sum of $1,000.00 which was deposited into a personal account in Mr. Young's name. (Exhibit #19 and #17).

70. Mr. Young filed a Statement of Claim on behalf of Mr. S.D. and Ms. S.C. in June 2015 regarding the purchase of the lodge business.

71. In early July 2015, as described above, Mr. Young left practice to serve a suspension. In August 2015 Mr. S.D. and Ms. S.C. retained new counsel.

72. On November 18, 2015 Mr. S.D. and Ms. S.C. signed a "Complaint Help Form" and submitted it to the Society. In the form they wrote that they "would like the money back that we transferred into Graeme's personal bank, as he did not accomplish anything for it." As neither Mr. S.D. or Ms. S.C. testified at the hearing, this form was tendered solely to show that they had made a complaint but what they wrote is hearsay and cannot be accepted as proof that the monies they sent to Mr. Young were sent with the intention on their part that he was to "accomplish" or perform legal work for them. (Exhibit # 19)

73. The "Complaint Help Form" was sent by the Society to Mr. Young on November 24, 2015.

74. On November 27, 2015, Mr. S.D. and Ms. S.C. sent an email to the Society in which they advised that they "do not want to proceed with anything in regards to Graeme Young." The Society advised them that it had an obligation to continue to investigate what appeared to the Society to be a misappropriation of money and it continued to investigate and to provide copies of Mr. Young's responses to its enquiries to Mr. S.D. and to Ms. S.C.

75. Subsequent to November 27, 2015, Ms. S.C. and Mr. S.D. sent three short emails to the Society repeating their wish that the Society terminate its investigation of their initial complaint. Each of these communications was tendered solely to show that the communications were made, as opposed to being used to prove the truth of what is said in them. On December 16, 2015, "S &S" wrote: "We have read Mr. Young's response and we agree with what he said. We no longer wish to proceed with this matter or be involved in this process . . ." On January 7, 2016, "S &S" wrote that it was not their intent "to hurt or damage Mr. Young's future" and they "DO NOT wish to proceed". Again, the email is hearsay and not proof of what the intent of Mr. S.D. and Ms. S.C. was when they sent money to Mr. Young or, for that matter, what their intent was when they filed a complaint regarding him with the Society. Finally, on February 8, 2016 Mr. S.D. sent an email to the Society reiterating the request that the investigation be concluded and again stated that he and his spouse did not intend "to damage Mr. Young's career or reputation." (Exhibit #30)

Mr. Young's Evidence with respect to Mr. S.D. and Ms. S.C.

76. Mr. Young testified that he met Ms. S.C. in 2009. At that time he says she was a single mother who was struggling to pay her expenses. She was a close friend of a woman Mr. Young says he was dating. He says that in order to "show off" before his then girlfriend, he gave money to Ms. S.C. to assist her in paying her bills. He says that while he provided the funds confidentially, he had a secret hope that Ms. S.C. would reveal what he was doing to her friend, Mr. Young's then girlfriend, and that the latter would be impressed with his generosity. Mr.

Young says that there was no commitment given to him by Ms. S.C. that the money would be repaid.

77. Mr. Young testified that it was Ms. S.C. who sent him money in 2014 and that she told him she was repaying him for the money that he had lent to her in 2009 and thereafter. He says this is why the money was placed in his personal bank account. He says that the legal work he was doing was pro bono, though disbursements were billed.

78. Mr. Young says that following the receipt of Mr. S.D.'s email to him on November 30, 2014, he surmised that Mr. S.D. might not know about the monies that he had lent four to five years earlier to Ms. S.C. that she was now repaying and in order to clear up an apparent misunderstanding he phoned the couple that night or the next. Mr. Young says that in that telephone conversation, Ms. S.C. confirmed what Mr. Young was saying. This, too, is hearsay as Ms. S.C. did not testify.

79. Mr. Young says that the complaint that was made by his former clients a year later in November 2015 was dishonest. He complains that it should not have been pursued in light of the efforts of his former clients to withdraw the complaint shortly after it was made.

80. Mr. Young admits, after first denying it, that he did try to phone Mr. S.D. and Ms. S.C. in early 2016 during the course of the Society's investigation. He says he was not calling them about their complaint but about a person known to him and Ms. S.C. It is evident from the records tendered for Mr. Young's mobile device that the third and final email sent by Mr. S.D. to the Society on February 8, 2016 was sent within an hour of Mr. Young attempting to phone him and his spouse. (Exhibit #4, Document 46 and Exhibit #30)

<u>Analysis of the Conflicting Evidence with respect to Mr. S.D. and Ms. S.C. and Findings</u>

81. Following the tendering of all evidence, Mr. Young's counsel renewed his motion that counts 6 and 8 in the Citation of March 29, 2016 be dismissed in summary fashion without the Panel reviewing the evidence. This motion was opposed by the Society on the grounds that it was irregular.

82. At best, the motion bears some similarity to a motion for 'non-suit' in a civil suit. However, a motion for non-suit must be brought before a defendant leads evidence. This motion was advanced after Mr. Young finished tendering the evidence he relics upon. We agree with counsel for the Society that the motion ought to be dismissed on the basis that it is irregular. We think it would be artificial to try and analyze the relevant evidence regarding counts 6 and 8 without considering Mr. Young's evidence now that we have heard it. Further, we are satisfied that the Society has made out a primae facie case in this instance. There is no issue that Mr. Young was performing legal work for Mr. S.D. and Ms. S.C. and that he received while he was doing that a total of $4,500.00 from them which was placed directly into a personal account in his name and not into a trust account. At a minimum, these facts warranted an investigation by the Society and required an explanation from Mr. Young. A consideration of Mr. Young's explanation requires that we weigh the evidence he tendered.

83. Mr. Young's counsel then urged that we accept as proven that Mr. S.D. and Ms. S.C. agree that Mr. Young's version of events is accurate and that as a result, we must dismiss counts 6 and 8. He relies specifically on their email communication to the Law Society of December 16, 2015 wherein they wrote: "We have read Mr. Young's response and we agree with what he said". We were invited to apply one of the long-recognized exceptions to the hearsay rule, namely that a statement by a person who does not testify can be accepted as proof of what is said in it if it is against the pecuniary interest of such a person. This is an odd argument for Mr. Young to advance, given his position that his former clients were dishonestly attempting, in November 2015, to advance a false complaint against him for the purpose of defrauding the Society of $4,500.00. This pecuniary interest, accordingly, was a dishonest one, or, arguably, not properly speaking a pecuniary interest at all and certainly not the sort that could be the basis of a statement that most likely is true because most persons would not likely lie about facts that are against their material advantage. Moreover, the exception in question

generally requires that the maker of the statement be dead or otherwise not available to testify in person. We understand that Mr. S.D. and Ms. S.C. are alive and live in Manitoba.

84. We think it more appropriate to consider the emails of Mr. S.D. and Ms. S.C. to the Society, including the one Mr. Young specifically relies upon, by applying the principled exception to the hearsay rule, namely, is it necessary to admit the emails for the truth of what is written in them and are they sufficiently reliable to warrant admission?

85. Mr. S.D. and Ms. S.C. we were told live in western Manitoba and were served with subpoenas. No suggestion was made that they are no longer living, are incapacitated, have moved or the like. Indeed, it appears that they voluntarily ignored the subpoenas. We find that it is not "necessary" to accept their emails for the truth of their contents. Doing so would in a fashion support and encourage witnesses who either cannot be bothered to testify or who on second thought wish they were not "involved" in a matter and therefore ignore subpoenas. We also are not persuaded that what Mr. S.D. and Ms. S.C write in email correspondence is sufficiently reliable. On November 18, 2015, by email, they submit a complaint to the Society about Mr. Young. A month later, they send an email the gist of which is the precise opposite of what they write in their complaint. We conclude that given what we have seen of their emails, the latter are not sufficiently reliable so as to warrant admission as an exception to the hearsay rule.

86. The core evidence submitted by the Society with respect to counts 6 and 8 of the Citation dated March 29, 2016 is that at the time Mr. S.D. and Ms. S.C. were his clients, Mr. Young received $4,500.00 from them which he did not place in a trust account. As we observed earlier, these facts, which Mr. Young does not dispute, raise a primae facie case against him. We accept that it is not "usual" for a lawyer to receive money from clients that is not a retainer or to be used on behalf of the clients. Mr. Young says that the monies constituted a repayment of money he loaned four to five years earlier to Ms. S.C. While his explanation of the loans in question was unusual, we do not find it so implausible as to be unbelievable. His evidence that Ms. S.C. became a friend in and about 2009 was not seriously challenged by the Society. Although his email response of December 2, 2014 to

Mr. S.D. is ambiguous and concerning in that it makes no reference to the telephone conversation Mr. Young says he had with Mr. S.D. and Ms. S.C. on either the evening of November 30, 2014 or the evening of December 1, 2014, it is not entirely inconsistent with facts which are not disputed, namely that the Society did assume conduct of the matter involving the caveat. The fact that Ms. S.C. sent the three payments to Mr. Young is consistent with Mr. Young's evidence that she was insistent on repaying him for his generosity some years earlier. The fact that the third payment of $1,000.00 was made on December 3, 2014, four days after Mr. S.D. queried Mr. Young regarding the payment of $2,000.00 made on August 1, 2014, is consistent with Mr. Young's evidence that he spoke to Mr. S.D. and Ms. S.C. about the payments on November 30 or December 1, 2014 and Ms. S.C. corroborated his understanding.

87. Mr. Young certainly could have and should have documented his understanding of why he was receiving money from Ms. S.C. and he should have confirmed in writing to his clients that he was providing them with legal services on a pro bono basis. The fact that he did neither, although consistent with the Society's position that the whole explanation given by Mr. Young is a fabrication, is also consistent with a disorganized and careless practice and the existence of such a practice is consistent with Mr. Young's admissions on other counts of failing to record time and to communicate in timely fashion with several clients, including Mr. S.D. and Ms. S.C.

88. Although it is open to us to make reasonable inferences of fact from facts proven in evidence, in order to find with respect to counts 6 and 8 that the Society has proven its case and that Mr. Young has lied, we would have to rely necessarily on the absence of any corroborating evidence of Mr. Young's story such as bank statements from 2009, correspondence accompanying the loans he says he made or a third party witness such as the former girlfriend as being so "suspicious" that the story told by Mr. Young cannot be believed. We are not persuaded that where such corroborating evidence was not tendered, the Society's assertions of a fabricated story must carry more weight than Mr. Young's explanation. We acknowledge that with respect to the other contested matter, we conclude that Mr. Young did not tell us the truth under oath. However, we are not persuaded that a

witness who lies about some events must be found unreliable and not credible with respect to his testimony on unrelated matters. The onus carried by the Society to prove, on a balance of probabilities, the facts alleged in counts 6 and 8 has not, we find, been met and accordingly we dismiss the charges in counts 6 and 8.

The charges regarding Ms. L.Y.

89. Count 9 of the Citation dated March 29, 2016 alleges that Mr. Young received $2,500.00 in cash from a client, Ms. L.Y., on March 19, 2015, as part of a retainer for legal services, which money Mr. Young misappropriated. Count 11 of the same citation alleges that Mr. Young provided false information to the Society when he was asked to respond to the allegation that he had misappropriated some of Ms. L.Y.'s money.

90. Mr. Young denies the allegations. He says all he ever received from Ms. L.Y. was the sum of $1,500.00 in cash and that this money was placed in the trust account of the Boudreau Law Firm where he was working. He says Ms. L.Y. is not telling the truth when she says that she provided him with an additional $2,500.00.

The Evidence Relied Upon by the Society with respect to Ms. L.Y.

91. Ms. L.Y. was the respondent in a proceeding commenced in the Manitoba Court of Queen's Bench in April 2014. She was (and it seems remains) a joint owner of a home in Winnipeg in which she resides with her two children and some tenants. The other joint owner applied to the Court for a sale of the property. The property was heavily mortgaged. The other joint owner no longer wished to be liable on the mortgage. There may or may not have been some modest equity in the home. For about a year, Ms. L.Y. tried to refinance the property and did not have legal representation in the suit. Her efforts were unsuccessful. She is employed as a hairdresser.

92. Some months prior to March 18, 2015, Ms. L.Y. encountered Ms. C.C. in a Winnipeg restaurant by chance. The two women had been close friends in high

school in the 1990s but had lost touch after graduation. They renewed their friendship and for the following year "hung out periodically", usually for lunch. Ms. C.C. was sitting with Mr. Young when the two women met by chance in the restaurant. He was introduced to Ms. L.Y. by Ms. C.C.

93. A case conference was scheduled in Ms. L.Y.'s case for March 25, 2015. Ms. L.Y. asked Ms. C.C. at some point after they had become reacquainted whether she thought Mr. Young would be willing to represent her in the foregoing proceeding and Ms. C.C. recommended him.

94. The Society called Ms. L.Y. to testify.

a) Ms. L.Y. phoned Mr. Young on March 18, 2015, a Wednesday, one week before the scheduled case conference. Mr. Young's notes of the phone call confirm that she described the nature of her case, the value of the home, refinancing of the home, Mr. Young's hourly rate and the provision of a retainer in the amount of $4,000.00.
b) The next day, March 19, 2015, Ms. L.Y. says she drove to Mr. Young's office on Pembina Highway.
c) An email to Mr. Young from his assistant shows that Ms. L.Y. was in his office waiting to meet with him at 11:28 a.m. on March 19. (Exhibit #32)
d) Ms. L.Y. does not remember how long she met with Mr. Young. A record of time recorded by Mr. Young shows a half hour meeting with his client on March 19, 2015. (Exhibit #32)
e) Ms. L.Y. says Mr. Young asked her at the meeting on March 19 for the $4,000.00 retainer which she did not have with her.
f) Ms. L.Y. says that Mr. Young offered to drive her to her bank where she would withdraw $4,000.00. She says he did drive her to a branch of the CIBC that was about 15 minutes from Mr. Young's office. She says Mr. Young drove an "SUV".
g) A CIBC 'Transaction Details Inquiry" shows that at 12:34 pm on March 19, 2015 Ms. L.Y. used a mobile device to transfer $4,000.00 from a line of credit in her name to an account from which she could

withdraw the funds. A CIBC banking record shows that in 2015 Ms. L.Y. had a line of credit at the CIBC with a limit of $10,000.00 and that on March 19 the sum of $4,000.00 was drawn via an internet banking transaction on this line of credit. (Exhibit #5 and #31)

h) Ms. L.Y. says that Mr. Young stayed in the car while she went into the bank to withdraw the $4,000.00. She says she forgot her purse in the car and had to go back to retrieve it as her bank card was in it.

i) The CIBC "Transaction Details Inquiry" shows that at 12:53 pm on March 19, 2015, the sum of $4,000.00 was withdrawn from the account to which it had been deposited some 19 minutes earlier through an internet banking transfer.

j) Ms. L.Y. says she gave Mr. Young in his car an envelope containing the $4,000.00 in cash.

k) Ms. L.Y. says it was all she was prepared to pay for Mr. Young's legal assistance in her case. She says that Mr. Young told her he would write up a retainer agreement for a lesser sum and keep the balance in "cash" and this would "cost her less".

l) Ms. L.Y. says she and Mr. Young returned to his office and spent "20 to 30 minutes" together in signing a retainer agreement and arranging for her attendance at the case conference with Mr. Young the following week.

m) Ms. L.Y. signed a "retainer letter" on March 19, 2015 in Mr. Young's office and a second document entitled "direction to pay out of trust funds". In the "retainer letter" the amount $1,500.00 is typed in two places. There is no reference in any document to the $2,500.00 difference between the $4,000.00 in cash Ms. L.Y. says she gave Mr. Young on March 19 and the $1,500.00 described in the retainer agreement. She says an assistant brought in the retainer letter. She says she was given a receipt made out to her in the amount of $1,500.00. A Boudreau Law 'client inquiry' shows that with respect to the file for Ms. L.Y., the sum of $1,500.00 was deposited in trust on March 19, 2015. The retainer letter states that Mr. Young's hourly rate is $295.00. (Exhibits #6, 7 and 32)

n) Ms. L.Y. says she understood she was saving "taxes" by providing $2,500.00 in cash to Mr. Young which was not being deposited with

the firm. She says she understood that the $2,500.00 would be the further cost of Mr. Young representing her. She says she "trusted" Mr. Young.

o) Ms. L.Y. says that some years prior to 2015, she was represented by another lawyer in Winnipeg with respect to a divorce. She says her parents provided money to pay for the legal services. She says her mother reported to her that the lawyer in question asked for and was paid cash as part of the retainer.

p) Ms. L.Y. admitted that a significant part of her income as a hairdresser is paid in cash and she does not report all of it on her income tax return.

q) At 2:05 pm on March 19, 2015, Mr. Young sent a lengthy email to opposing counsel regarding Ms. L.Y.'s case. He recorded "0.4" units of time, about 24 minutes, in preparing and sending this communication. (Suggesting he began the work on it about 1:40 pm.) (Exhibit #32)

r) Documents produced by the Royal Bank of Canada show that at 2:49 and 2:51 pm on the afternoon of March 19, 2015, Mr. Young deposited $2,300.00 in cash to an account in his name. (Exhibit #16)

s) Mr. Young attended the case conference on March 25, 2015. He rendered an account to Ms. L.Y. dated April 28, 2015 in the amount of $1,143.64. It indicates that fees of $1,032.50 have been "discounted" as a "courtesy". The account was paid through a transfer of most of the $1,500.00 retainer, leaving a balance in trust of $356.36. (Exhibit #8)

t) Effective July 8, 2015 Mr. Young was suspended from practice for a period of eight months as a consequence of the plea bargain described earlier. Ms. L.Y. was advised by email by Mr. Young of his impending suspension and she advised that she was content to have her file remain at Boudreau Law where it was to be handled by an associate lawyer, Mr. Scott Entz.

u) Ms. L.Y. claims that subsequent to learning of Mr. Young's suspension, she spoke to him twice on the phone prior to February 7, 2016.

v) In one phone call, Ms. L.Y. says she asked Mr. Young about the $2,500.00 she had given him and she says Mr. Young told her not to worry about it and that Mr. Entz was "aware" of the money. She thought perhaps this conversation took place about the time, July 2015, that Mr. Young was leaving due to the suspension.

w) Ms. L.Y. says that in another phone call she asked Mr. Young about the $2,500.00 and that he "played stupid" and told her that he did not know what she was talking about. She says she became angry upon hearing this. She thought maybe this phone call took place in August of 2015. At other times she thought it took place after a September 21, 2015 email exchange she had with an assistant at Boudreau Law. She also recalls saying to Mr. Young that she was not prepared to pay the "bill" and his response was that he "would take care of it." At one point, she says this conversation was "six months" before she filed a complaint with the Society. The complaint is dated February 4, 2016. In the complaint, Ms. L.Y. asserts that the phone call was in "August 2015".

x) Ms. L.Y. said she has "a hard time remembering what I did last month".

y) Ms. L.Y. says that sometime in the autumn of 2015 she told her friend Ms. C.C. about Mr. Young and the $2,500.00 cash payment. She says Ms. C.C. told her that she was sure Mr. Young would not "screw her over."

z) On September 21, 2015, in email exchanges with an assistant at Boudreau Law, Ms. L.Y. was told that there was still $356.36 to her credit in the firm's trust account, that unbilled time and disbursements amounted to $701.00 and that she would be billed at the end of September and could expect she would owe on that account a balance of $345.89. Ms. L.Y. responded that "there is absolutely no way $4,000.00 has been eaten up" and that "Something is amiss". The assistant advised her that the firm had no record of her providing a retainer of $4,000.00, only $1,500.00. (Exhibit #31)

aa) On October 21, 2015 Mr. Entz sent a bill to Ms. L.Y. in the amount of $356.36 which was paid through a transfer of the balance of the monies in trust. The bill shows that it was discounted as a "courtesy".

On October 20, 2015 Mr. Young advised Mr. Entz that Ms. L.Y. was not going to pay her bill and that he would "take care of the fees you have incurred on this file, as well as the disbursements." He recommended that Mr. Entz "cut her loose" because "she is a pain, and I think rather unstable". (Exhibits #10 and 11)

bb) Ms. L.Y. admits that at some point in 2015 she learned through a friend, who had described her problem with Mr. Young and the $2,500.00 to a lawyer, that she might be able to get her money "back" through a 'reimbursement claim' with the Society.

cc) On Friday, February 5, 2016 Ms. L.Y. filed a written complaint with the Society asserting that she had given Mr. Young $4,000.00 but only $1,500.00 had gone to the firm and she wanted the "remainder of my money back".

dd) On February 5, 2016, in a phone call at 3:24 pm Mr. Young learned from his then counsel that Ms. L.Y. had made a complaint about him to the Society. Before this phone call was over, the record for Mr. Young's mobile device shows he was sending a text message to Ms. C.C. (Exhibit #4 Document 46)

ee) Ms. L.Y. says that on the evening of February 5, 2016 Ms. C.C. was trying to reach her. She says she had as of that date not heard from Ms. C.C. for over a month.

ff) Ms. L.Y. says she agreed on the morning of Sunday, February 7, 2016 to have lunch with Ms. C.C. Ms. C.C. picked her up at about 12:30 pm and they drove to a nearby restaurant where they had lunch and talked for about two hours. (Exhibit #12 "screen shots taken by Ms. L.Y. of her mobile device text messages)

gg) Ms. L.Y. says that during the lunch, Ms. C.C. initiated a discussion about Mr. Young and the complaint that Ms. L.Y. had made to the Society about Mr. Young. Ms. L.Y. says that Ms. C.C. told her that Mr. Young could "lose his job". Ms. L.Y. says she felt "uncomfortable" talking about the subject. She says she left to use the washroom. She says she returned to find that Ms. C.C. was on the phone with Mr. Young. The phone was passed to Ms. L.Y. Ms. L.Y. says Mr. Young insisted that she had to withdraw the complaint. She says she asked him why he had "played dumb" in the conversation in

which she had asked him about the $2,500.00. She says he told her that he said this because he thought she was recording their telephone conversation at the time. Ms. L.Y. says both Mr. Young and Ms. C.C. tried to persuade her to "lie" and tell the Society that she had filed a false complaint against Mr. Young.

hh) The record for Ms. C.C.'s mobile device shows that it was used in a phone call from Mr. Young's mobile device at 2:07 pm on Sunday, February 7, 2016 and that the call lasted for over 19 minutes. (Exhibit #47)

ii) Ms. L.Y. says that Ms. C.C. drove her home. She says that on the drive home there were further phone calls with Mr. Young using a blue tooth in the car. The phone record for Ms. C.C.'s mobile device shows a call at 2:48 pm of some seven minutes and another one at 3:00 pm of some nine minutes to Mr. Young. Ms. L.Y. says as she and Ms. C.C. sat in the latter's car in the driveway to Ms. L.Y.'s home, she was shown a long text message to Ms. C.C.'s mobile device from Mr. Young setting out proposed wording to be used by Ms. L.Y. in a withdrawal of her complaint to the Society. The records show text messages of some length being sent from Mr. Young's mobile device to that of Ms. C.C. at 2:31 pm on Sunday, February 7, 2016. (Exhibit #4 Documents 46 and 47)

jj) Ms. L.Y. says that she received a number of text messages and phone messages from Ms. C.C. later that Sunday and continuing through the following week. She says she did not want to speak to Ms. C.C. She took 'screen shots' of the messages. At 7:35 pm on the evening of Sunday, February 7, 2016, Ms. C.C. asks Ms. L.Y. in a text message, "So what do you think?" Ms. L.Y. replies "I just want him to make this RIGHT". Ms. L.Y. says they are talking about Mr. Young and the request made of her by Ms. C.C. and Mr. Young that she retract the complaint she has made to the Society about Mr. Young. She says she wanted Mr. Young to acknowledge that he took her $2,500.00 and she wanted it back. (Exhibits #12 and 13)

kk) Ms. L.Y. denies that she has made up a story about giving Mr. Young $2,500.00 in cash. She acknowledges that she is aware that Ms. C.C. has given the Society a very different recitation of what took place on

Sunday, February 7, 2016. She says she and Ms. C.C. no longer communicate with one another. She says she did not tell Ms. C.C. from time to time that she had financial problems. She says that Ms. C.C. told her she was involved in an intimate relationship with Mr. Young and told her that she had lent Mr. Young significant sums of money. She denies that she is in the habit of making "quick decisions" that she later regrets. She acknowledges that in January 2016 she terminated a pregnancy but denies that is an example of a "quick decision" she made that she regrets. She admits that when Mr. Young, in the phone conversation at the restaurant on Sunday, February 7, 2016 said to her words to the effect: "You need to do me a favour and retract the complaint to the Law Society", her initial response was "I don't know."

ll) Ms. L.Y. said there has been no further activity with respect to the application filed in 2014 for sale of her home. Her file remains at the Boudreau Law firm though the firm is no longer representing her.

mm) Ms. L.Y. says that she deliberated through the months of October, November and December 2015 and January 2016 about making a complaint to the Society about Mr. Young but considered doing so would be a "hassle". She says that she came to the conclusion that what had happened was "not right" and so made her complaint on February 5, 2016.

95. Ms. L.Y. testified over the course of two days. With one exception, she was at all times calm and direct in her answers. She spoke simply. She did not elaborate in her answers. When she disagreed with propositions put to her in cross-examination, she did so with straightforward denials. The one exception was the suggestion put to her that her decision to terminate a pregnancy in January 2016 was a "quick decision" which she later regretted. She became emotional in denying that this was so and took a short break to compose herself.

<u>The Evidence Relied Upon By Mr. Young with respect to Ms. L.Y.</u>

96. Mr. Young testified.

a) Mr. Young says that all he ever received from Ms. L.Y. was $1,500.00 in cash on March 19, 2015 and that this money was deposited to the trust account of Boudreau Law. He says that the assertion of Ms. L.Y. that she gave him $2,500.00 which he kept is "offensive, balderdash, BS, garbage".

b) Mr. Young says he did not drive Ms. L.Y. to a bank on March 19, 2016. When he was first confronted with Ms. L.Y.'s complaint, Mr. Young wrote on February 16, 2016 to the Law Society that he did "not recall driving Ms. Y to the CIBC branch". Mr. Young testified that he was very upset, "freaked out", when he first received the complaint of Ms. L.Y. and was unable to recall. On the advice of his then counsel, he left "wiggle room" in his written response to the Society. He is now definite that Ms. L.Y. has never been in his vehicle. (Exhibit #32)

c) He confirms that Ms. L.Y. attended at his office on March 19, 2015 at 11:30 am. He says they met for about a half hour. He says she left. He says he does not know where she went.

d) Mr. Young says he recalls that "maybe one hour, an hour and a quarter" later Ms. L.Y. returned to his office. He remembers her saying to him, "I know you said $4,000.00, (are) you okay taking $1,500.00?" He says he agreed to reduce the retainer to $1,500.00. He says Ms. L.Y. took $1,500.00 in one hundred dollar bills from her purse and it was counted out in his presence and that of his assistant. He says his assistant prepared the "retainer letter" that Ms. L.Y. proceeded to sign. He says "like a fool" he agreed to accept a smaller amount as a retainer. He says the entire process took perhaps ten or twelve minutes.

e) Mr. Young says that the $2,300.00 of cash that he deposited to an account in his name at 2:49 and 2:51 pm on March 19, 2015 did not come from Ms. L.Y. He does not remember where this cash originated. The bank records indicate the cash was contained in two deposit envelopes. Mr. Young says he is confident it was not in one hundred dollar bills but in various denominations. He says he was known to carry large amounts of cash and his then girlfriend would scold him for doing so. He says at the time he often gambled, was a

skilled gambler and sometimes won large amounts of cash. He notes that at the same time he deposited a cheque payable to him from Boudreau Law dated March 18, 2015 in the amount of $1,789.17 which leads him to conclude that he was at a bank machine to deposit the cheque and it was thus convenient to deposit his cash as well. (Exhibit #16)

f) Mr. Young says it "appears" he spoke to Ms. L.Y. on the phone in early July 2015 at the time she was notified that he would be absent due to a suspension from practice. He believes he phoned her. He says Ms. L.Y. was a "nervous, fidgety person" so he phoned her to reassure her with respect to his suspension and Mr. Entz' ability to handle her file.

g) Mr. Young says that in August 2015 he was shopping. He says Ms. L.Y. phoned him. He says she asserted in the phone call that she was "out $2,500.00". He says he told her he did not know what she was talking about. He says the call "sounded dodgy". In his February 16, 2016 letter to the Law Society, he described this phone call as "completely bizarre". He thought perhaps she had provided a further retainer to Boudreau Law while he was away. He checked with the firm. He says he phoned Ms. L.Y. back and told her the only retainer was $1,500.00, a bill had been rendered and paid and there was some money left in trust. He claims Ms. L.Y. did not challenge him on this information. He says "there was no push back". He says she was "perfunctory".

h) Mr. Young recalls speaking again to Ms. L.Y. in October 2015. He understood she did not want to pay a balance owing to Boudreau Law. He says when they spoke she wanted her bill "rounded down". He says he told her he would take care of it.

i) Mr. Young says he had no further communications with Ms. L.Y. until February 2016. He says Ms. C.C. with whom he was and remains a close friend never mentioned to him that Ms. L.Y. had complained to her about $2,500.00.

j) Mr. Young recalls receiving a phone call on his mobile device on Friday February 5, 2016 from his then counsel. His phone record shows that this call came at 3:24 pm. (Exhibit #46)

k) Mr. Young says he learned in that phone call that Ms. L.Y. had made a complaint to the Society. He says for the rest of that day he was "very unwell". He says he was "sandbagged", "set-up", "people were coming out of the woodwork with nonsense complaints". He claims he was suicidal and that his then girlfriend found him in their residence curled up in a fetal position. He believes he was "catatonic". He says he cannot recall driving home following the phone call from his then counsel.

l) Mr. Young denies that he told Ms. C.C. on Friday February 5, Saturday February 6 or Sunday February 7, 2016 that Ms. L.Y. had made a complaint about him to the Society. His phone record shows that before the phone call with his counsel ended on Friday, February 5, 2016, he was sending a text message to Ms. C.C. The same records show a phone call took place between them shortly thereafter. (Exhibit #46)

m) Mr. Young says on the afternoon of Sunday, February 7, 2016 he received a phone call from Ms. C.C. She was phoning from a restaurant. He says he had nothing to do with Ms. C.C. setting up a lunch with Ms. L.Y. He says Ms. C.C. began the call by saying; "I just heard the most fucking unbelievable story". He says she told him that she was with Ms. L.Y. who had said that she had made up a false complaint to the Law Society about Mr. Young. Mr. Young says he then spoke to Ms. L.Y. He says he asked Ms. L.Y. what she was doing. He claims Ms. L.Y. told him over the phone: "I don't know what I'm doing. My life's a mess, failed pregnancy, made this up" and something about being broke. Mr. Young says he was insistent that Ms. L.Y. had to "tell the truth", had "to make this right". He says she responded by saying she would "get in trouble".

n) Mr. Young denies sending a text message, or messages, to Ms. C.C. on the afternoon of Sunday, February 7, 2016 with proposed wording for Ms. L.Y. to use in writing a letter to the Society withdrawing her complaint.

o) Mr. Young observes that he does not think Ms. C.C. was that surprised that Ms. L.Y. would make a false complaint about him.

p) Mr. Young denies that he and Ms. C.C. have ever had an intimate relationship. He denies that Ms. C.C. has ever lent him money. He says that they met casually as fellow employees of the Royal Bank of Canada many years earlier. They met coincidentally some ten years ago. He says they are friends who text one another frequently. For example, their phone records show an exchange of some 33 text messages on the morning of Friday, February 5, 2016. Mr. Young says he has done some work for Ms. C.C.'s husband. He has been in their home on some social visits and played with their infant son. (Exhibits #46 and 47)

97. Mr. Young testified over the course of several days. At times, he was agitated and emotional. At times he showed anger and bitterness. He frequently waved his arms in response to questions and raised his voice. Some of his answers to questions were long and verbose. He was on the verge of tears at other times. He would then clasp his hands together and respond to questions in a controlled, even voice. Often when under cross-examination he gave evasive and non-responsive answers to direct questions. He would on these occasions launch into a repetition of explanations he gave in direct examination. At times he averted his gaze from the panel; at others he spoke directly to the panel.

98. Ms. C.C. was called as a witness in support of Mr. Young.

a) Ms. C.C. confirmed that she and Mr. Young had been friends for a number of years.
b) Ms. C.C. said that she and Ms. L.Y. had been "very, very close friends as teenagers". She confirmed they became reacquainted in and about 2014 and then had more "regular" contact, visiting on a "semi-regular basis" once every couple of months.
c) Ms. C.C. said that Ms. L.Y. asked her about a referral to a lawyer regarding the legal proceedings she faced with her home and Ms. C.C. recommended Mr. Young.
d) Ms. C.C. said that Mr. Young had provided her from time to time with advice on legal matters. She once referred a friend to him regarding a Small Claims matter.

e) Ms. C.C. stated that in the summer and autumn of 2015 she met and communicated with Ms. L.Y. Ms. C.C. acknowledged she was aware at that time that Mr. Young was suspended. She admitted she and Mr. Young talked about the suspension. However, she said she and Ms. L.Y. did not discuss Mr. Young and that Ms. L.Y. never said anything to her about giving $2,500.00 in cash to Mr. Young. She said there was "zero" discussion during this period between her and Ms. L.Y. about Mr. Young.

f) Ms. C.C. admitted that she and Mr. Young exchanged many text messages on Friday, February 5, 2016. In the period from 9:00 am to 2:00 pm that day she and Mr. Young exchanged 33 text messages. She said she does not recall what any of them were about. She speculated that they were perhaps "just catching up". She admitted that they spoke on the phone that day after 3:24 pm (the time of the call to Mr. Young from his then counsel). Ms. C.C. said they did not discuss Ms. L.Y. Ms. C.C. was definite that she knew nothing about a complaint made by Ms. L.Y. to the Society until the two women were having lunch together after 12:30 pm on Sunday, February 7, 2016.

g) Ms. C.C. confirmed that she arranged for the lunch meeting on Sunday, February 7, 2016. She said the two women had been trying to get together since before Christmas.

h) Ms. C.C. said they chose a restaurant close to where Ms. L.Y. lived, about a ten to twelve minute drive. Ms. C.C. confirmed that she picked up Ms. L.Y. She said it was at about 12:30 pm and that Ms. L.Y. had to be home by 3:00 pm because her children were to be dropped off.

i) Ms. C.C. says that "about half way through" the lunch at which they had been "just catching up", Ms. L.Y. became "quite upset". She recalls Ms. L.Y. mentioning an abortion in January 2016, being worried about the "pending sale" of her home and she revealed that she had made a complaint to the Society about Mr. Young that "was not true" because she was "desperate for money". According to Ms. C.C. Ms. L.Y. said she had "got advice" that if she filed a complaint with the Society, the "Law Society or somebody would refund her money". Ms. C.C. says that Ms. L.Y. admitted to her that "she had

fabricated the complaint and it was not true and she was feeling remorse about that because I had made the referral and it was not true."

j) Ms. C.C. says that upon hearing Ms. L.Y. she was "quite shocked". She says that "in retrospect" "it fits her 'MO'" in that "she finds herself in these situations". Ms. C.C. says this was "not the first time I have seen her invent a story". Ms. C.C. says that Ms. L.Y. tends to be a "dramatic type of person".

k) Ms. C.C. says that Ms. L.Y. proceeded to say that she, Ms. L.Y., thought that this complaint was "not that serious". Ms. C.C. then asked if she would believe how serious it was if she heard directly from Mr. Young and proceeded to call Mr. Young. Ms. C.C. says she heard Ms. L.Y.'s words to Mr. Young on the phone. She says Ms. L.Y. and Mr. Young spoke for about three to four minutes. She says she heard Ms. L.Y. say "I didn't mean to do that, that wasn't the intent." Ms. C.C. says the whole phone call with Mr. Young was about five minutes.

l) She says after the call, she and Ms. L.Y. remained in the restaurant for "another hour" talking about the call with Mr. Young. She says she drove Ms. L.Y. home. She says they stopped on the way at a Tim Horton's drive through for coffee. She says "we phoned Graeme" using the blue tooth in her car for a "short, minute or less" call in which call she says Mr. Young "confirmed that L. needed to come forward and tell the truth." She does not remember there being two phone conversations using the blue tooth with Mr. Young, one being in the driveway to Ms. L.Y.'s home. She says Mr. Young did not send a text message with proposed wording for Ms. L.Y. to use in a withdrawal of her complaint to the Society. She does not remember what Mr. Young was texting to her at 2:31 pm on the afternoon of Sunday, February 7, 2016. She denied in a written statement to the Society that there was a phone call using the blue tooth in her car when she and Ms. L.Y. sat in the car in Ms. L.Y.'s driveway. She says now she did not remember that call when the Society enquired about it and in her statement to the Society she "was just trying to address the material points".

m) Ms. C.C. says that that she does not remember what the complaint Ms. L.Y. made to the Law Society was about. She speculates that it may have been "something about paying for services and not getting them" or "giving cash that was not recorded in books". She says Ms. L.Y. did not tell her the amount of money she wanted paid back. She admits that she has some familiarity with complaints made to the Society because her late father made a complaint and she was privy to it.

n) Ms. C.C. was asked about the text messages she exchanged with Ms. L.Y. on the evening of Sunday, February 7, 2016 and thereafter, particularly Ms. L.Y.'s statement at 7:35 pm that evening "I just want him to make this RIGHT" and Ms. C.C.'s reply at 7:45 pm "I feel very confident that everything will be right. You just have to have a bit of faith in me" and, at 8:19 pm "I know, but if you can trust me that (sic) I'm certain that this will all be made right . . . . . can you?" These messages were provided by Ms. L.Y. as 'screen shots'. Ms. C.C. says that her references to "right" and Ms. L.Y.'s statement that she wanted Mr. Young to "make this RIGHT" are a form of shorthand in which Ms. C.C. is advising Ms. L.Y. that "if she tells the truth that will be the most important thing and everything will be right." She says Ms. L.Y. expressed a fear of criminal charges if she told the Society she had made a false complaint about Mr. Young. (Exhibit #12)

o) Ms. C.C. says that in the following days, in "typical L. fashion" Ms. L.Y. would send messages "phone me, phone me" but would not respond when Ms. C.C. left her a message. She says she concluded that Ms. L.Y. was not going to change her mind about the complaint and she stopped trying to communicate with her. She says the two women have not communicated since.

p) Ms. C.C. says she was asked to assist the Society's investigation of the complaint of Ms. L.Y. She declined to speak to the Society's investigator. She did provide written statements through Mr. Young's former counsel. She refused to provide her phone records. She says she refused because she was concerned about her privacy. She says she eliminates her text messages once or twice every week.

q) Ms. C.C. says she and Mr. Young have not had and are not having an affair. She says she has never lent money to Mr. Young.

99. Ms. C.C. was poised, calm and straightforward in giving her direct testimony. Her demeanour altered perceptively, but not dramatically, when cross-examination began. She appeared to be tense, a wee bit fidgety and nervous. She corrected herself several times during cross-examination. For example, when asked about a phone call after 3:00 pm between herself and Mr. Young on Friday, February 5, 2016, she initially said that the call "could have been about L." She then corrected herself when she realized the record in question was for a phone call on the Friday before the Sunday lunch.

Analysis of the conflicting evidence regarding the charges pertaining to Ms. L.Y. and findings

100. Ms. L.Y.'s testimony and Mr. Young's and Ms. C.C.'s cannot be reconciled. Ms. L.Y. says she gave Mr. Young $2,500.00 in cash on March 19, 2015 for legal services to be performed which did not go into a trust account and for which no accounting has ever been provided. Mr. Young says that never happened. One 'side' or the other has not told the truth.

101. We cannot draw any definitive conclusion from the demeanors of the three witnesses who testified. Generally, both Ms. L.Y. and Ms. C.C. were composed and responded directly to the questions put to them. Though Ms. C.C. showed signs of nervousness when she was cross-examined, these were as consistent with the apprehension many witnesses will exhibit during a cross-examination as with a consciousness of having lied during one's direct testimony. With respect to Mr. Young, his demeanour was at times combative and very emotional and many of his answers during cross-examination were not responsive to the questions put to him. However, we attribute much of this to the stress most members experience in the course of a proceeding in which disbarment is a real possibility. We cannot

conclude based on his demeanour that Mr. Young was engaged in a deliberate "performance" intended to mask a series of lies.

102. However, we have concluded that the story told by Ms. L.Y. is consistent with the independent evidence tendered, particularly the phone records, and in some instances the phone records contradict the story presented by Mr. Young and Ms. C.C. In addition, when one reflects on the story Ms. L.Y. related as compared to that told by Mr. Young and Ms. C.C., that of Ms. L.Y. is more probable and reasonable than that recited by Mr. Young and Ms. C.C. Accordingly, for the reasons described in detail below, we find that Ms. L.Y. was the credible witness and we find that Mr. Young and Ms. C.C. were not credible and, indeed, that they conspired to present a false story about Ms. L.Y.'s complaint to the Society.

103. The records for Mr. Young's and Ms. C.C.'s mobile devices (Exhibits #46 and #47) show that at 1:46 pm on the afternoon of Sunday, February 7, 2016 Ms. C.C. left a message of less than one minute on Mr. Young's phone and then, at 1.48 pm and 1:56 pm left short text messages. Ms. C.C. said she could not recall these when she testified. According to the evidence of Ms. L.Y. and Ms. C.C., they were at a restaurant that afternoon from shortly after 12:30 pm to shortly before 3:00 pm. At 2:07 pm, according to the phone records, Mr. Young phoned Ms. C.C., presumably in response to the foregoing messages. Ms. C.C. said in her direct testimony that the phone call lasted about "five minutes", about three to four of which involved Ms. L.Y. speaking to Mr. Young. In a letter he wrote a week later on February 16, 2016 to the Society (Exhibit #32), Mr. Young said that his time on the phone with Ms. L.Y. during this call "lasted no more than 2 minutes". Ms. L.Y. testified that she left Ms. C.C. at the table and went to use the washroom and when she returned she discovered Ms. C.C. speaking to Mr. Young on the phone and that Ms. C.C. handed her the phone so that Mr. Young could speak to her.

104. The phone records show that the phone call in question lasted just over 19 minutes. It was not, as Ms. C.C. first claimed a "five" minute call and it was not, as Mr. Young suggested, "no more than two minutes". The length of the call is consistent with Ms. L.Y.'s evidence that she left the table to use the washroom, which by any reasonable estimate would have taken some five to ten minutes, and returned to discover Ms. C.C. already engaged in a phone conversation with Mr. Young. On cross-examination, Ms. C.C.'s attention was drawn to the record for her mobile device. She then acknowledged the obvious; the call in question was "likely" over 19 minutes. However, she offered no explanation as to what was exchanged in the phone call beyond what she had said in her direct testimony.

105. We conclude that when the opportunity arose during the lunch and she was alone, Ms. C.C. alerted Mr. Young by text and he phoned her for a report on whether she had been able to convince Ms. L.Y. to withdraw her complaint. Hearing that she had not to that point, the pair decided that Mr. Young should speak to Ms. L.Y. with a view to persuading her to withdraw the complaint which is what Ms. L.Y. said Ms. C.C. had been trying to do and what she said Mr. Young tried to do when the phone was handed to her.

106. Ms. L.Y. said that Ms. C.C. drove her home from the restaurant, about a 10 minute drive, during which they stopped to pick up coffee at a Tim Horton's. She said that there were phone calls made from the car to Mr. Young using a blue tooth device. Ms. C.C. testified that there was a "short, minute or less" call to Mr. Young. She did not recall that there were two. She said Mr. Young was phoned so he could try again to convince Ms. L.Y. to come forward and "tell the truth." The phone records show two calls, one over seven minutes and the second over nine minutes. Ms. L.Y. says Mr. Young and Ms. C.C. persisted in trying to persuade her to withdraw her complaint, which is consistent with there being two calls, each in excess of seven minutes. She says Mr. Young sent a long text message to Ms. C.C. with proposed wording that he wanted Ms. L.Y. to use in writing a letter to the Society withdrawing her complaint. Ms. C.C. and Mr. Young deny that such a text message was sent. However, the records for the two mobile devices show that

Mr. Young began sending a lengthy text message to Ms. C.C. at 2:31 pm on February 7, 2016, almost immediately after the 19 minute phone call ended. Ms. C.C. said she does not recall what the text message she received was about but insists it was not proposed wording to be used by Ms. L.Y. We do not think it is possible for Ms. L.Y. to have known about a lengthy text message on Ms. C.C.'s mobile device from Mr. Young if she had not seen it or had it described to her. The timing of the message fits exactly with Ms. L.Y.'s recollection of events and is a decisive fact supporting her credibility and a finding that both Mr. Young and Ms. C.C. were not truthful when they denied such a message was sent.

107. As noted, Mr. Young in a letter to the Society on February 16, 2016 described the foregoing lunch on February 7, 2016 between Ms. L.Y. and Ms. C.C. and his conversations with Ms. L.Y. (Exhibit #32). There are several inconsistencies in Mr. Young's report to the Society and the testimony of Ms. C.C. about the conversation between Mr. Young and Ms. L.Y. Ms. C.C., of course, could overhear only what Ms. L.Y. was saying during the phone call. First, Mr. Young says, only a week after the lunch and phone call, that he "received" a telephone call from Ms. C.C. The records show that in fact he phoned Ms. C.C., albeit in response to messages she sent him a short while earlier. Arguably, this is a small discrepancy. However, it takes on larger significance when one considers that if Mr. Young revealed the existence of text messages, the Society might well ask to see them. Further, the fact that he phoned Ms. C.C. in response to communications from her tends to undermine his assurances to the Society in the same letter that when he "answered his phone", "the conversation" happened "very quickly" and he "simply reacted". He was not "reacting" to an unexpected phone call. He placed a call having been alerted through reading two messages. Secondly, in the foregoing letter, Mr. Young says that Ms. C.C., in the phone call, told him that she had learned during the lunch that Ms. L.Y. had made a complaint to the Society and "the nature of the complaint". But in her testimony, Ms. C.C. said that she could not recall what the complaint was about. Thirdly, Mr. Young says that in the phone call, Ms. C.C. reported that over the lunch Ms. L.Y. had also told her that the Society would "provide to her $2,500". But when she testified, Ms. C.C. said that "no amount" was mentioned during the lunch and that she did not ask Ms. L.Y. about the amount of money at issue. Fourthly, Mr. Young claims in the letter

that over the phone, Ms. L.Y. told him "she was having 'emotional difficulties', that 'her life was a mess', that she 'didn't know what she was doing' she was having 'extreme financial difficulties' and she didn't know how to 'fix her mistake'". But Ms. C.C., who testified that she heard what Ms. L.Y. said to Mr. Young, did not testify that she heard any of these things being said by Ms. L.Y. to Mr. Young. She said she heard Ms. L.Y. say "I didn't mean to do that, that wasn't the intent". Fifthly, Mr. Young in the letter claimed the phone call was "no more than two minutes" when it was obviously much longer. We conclude that a short phone call suited Mr. Young's desire to assure the Society that he was not trying to interfere with the evidence of his former client and that Ms. C.C., in order to be consistent with the claim that the phone call was short, initially testified under oath that it was only about "five minutes". And sixthly, Mr. Young in the letter makes no reference to the two subsequent phone calls from Ms. C.C. while in her car with Ms. L.Y.

108. Ms. C.C. is insistent that although she and Mr. Young exchanged communications on Friday, February 5, 2016 and on Saturday, February 6, 2016, he did not tell her that her friend Ms. L.Y. had made a complaint to the Society about him on February 5. To accept her evidence, one must find that it was just a coincidence that she arranged for a lunch two days after Ms. L.Y. made her complaint, the purpose of which lunch was for two friends to "catch up on the news" because they had not seen each other for some time. She says, further, that mid-way through their lunch on Sunday, February 7, 2016 Ms. L.Y. "shocked" her by revealing that she had made a complaint to the Society about Mr. Young. However, she says she cannot recall what the complaint was about, other than "something about paying for services and not getting them". She describes Ms. L.Y. at the lunch as being "quite upset" and "feeling remorse" because she had fabricated a complaint about Mr. Young, to whom Ms. C.C. had referred her and who she knew to be a friend of Ms. C.C. But, then she says Ms. L.Y. began to argue with her regarding the seriousness of making a complaint to the Society and denied that there would be serious repercussions for Mr. Young.

109. We do not find Ms. C.C.'s story to be in harmony with the preponderance of probabilities that one would reasonably expect in the circumstances. If we are to believe Ms. C.C., she knew nothing of the complaint when the lunch began. Mid-way through lunch, Ms. L.Y., apparently overcome with remorse and guilt reveals her transgression and in doing so, "shocks" Ms. C.C. But Ms. C.C., by her own evidence, seeks no particulars about what has happened, what the details of the complaint are, what amount of money is at issue, what services were not performed and the like. We find it inconceivable that someone in the position of Ms. C.C. would not press for details, if not out of sheer curiosity, then out of a desire to try to assess the seriousness of the situation with a view to helping her friend find a proper resolution. We do not find the characterization of Ms. L.Y. in Ms. C.C.'s evidence to be consistent with what would be reasonable. Within, apparently minutes, of becoming "quite upset" as a consequence of remorse and guilt, Ms. L.Y., according to Ms. C.C. becomes combative and defensive, arguing that what she has done in making the complaint is in fact not serious, suggesting it was not a matter which would cause Ms. L.Y. any sense of remorse. We conclude that Ms. C.C. knew about the complaint before the lunch and that, as Ms. L.Y. testified, Ms. C.C. told her she had received a "frantic" phone call earlier in the weekend from Mr. Young. We accept as true that Ms. C.C. did not ask Ms. L.Y. for details of the complaint to the Society but that was because she had already heard the essence of them from Mr. Young. We conclude it was not a coincidence that the two women met for lunch on February 7. Ms. C.C. set up the lunch for the express purpose of trying to persuade Ms. L.Y. to withdraw her complaint and Ms. L.Y. is telling the truth when she says that the subject was introduced at the lunch by Ms. C.C. and that both Ms. C.C. and Mr. Young tried repeatedly to convince her to withdraw the complaint on the grounds that if it were to proceed it could ruin Mr. Young's career.

110. Exhibit #12, screen shots of her mobile device taken by Ms. L.Y., shows that at 7:23 pm on Sunday, February 7, 2016 Ms. C.C. asked her in a text message, "So what do you think?". Ms. L.Y. answered at 7:35 pm the same evening, "I just want him to make this RIGHT". Ms. L.Y. testified that "him" was a reference to Mr. Young. At 7:45 pm, Ms. C.C. replied, "I feel very confident that everything will be right. You just have to have a bit of faith in me." Ms. L.Y.'s explanation of her text

message at 7:35 pm is simple and understandable and fits with her story. She wanted Mr. Young to admit that he took her $2,500.00 and wanted it paid back. Ms. C.C.'s explanation of the words exchanged between the two makes no sense and we find it to be contrived. Ms.C.C. testified that what she was writing was in effect "if she [Ms. L.Y.] tells the truth that will be the most important thing and everything will be right."

111. The screen shots, Exhibit #13, from Ms. L.Y.'s mobile device show repeated "missed calls" on Monday, February 8, 2016. The screen shots, Exhibit #12, of text messages show that Ms. C.C. was trying to speak on the same day to Ms. L.Y. and was not getting through. Ms. L.Y. says she could see on her device who was calling and she did not wish to speak again with Ms. C.C. because she expected more efforts to persuade her to withdraw her complaint. Ms. C.C. says it was Ms. L.Y. who was leaving messages for her to call and then was not answering. The screen shots are consistent with Ms. L.Y.'s version of events. The exhibits are not consistent with what Ms. C.C. said.

112. As noted, Ms. L.Y. provided evidence from her mobile device to the Society. She says she was motivated to do this when she learned that Ms. C.C. and Mr. Young were giving a very different version of events to the Society. Ms. C.C. was asked by the Society to provide her mobile device, or relevant copies of its contents, to the Society. She admits she refused to do so and says her refusal was based upon her concern for her "privacy". We find this odd and inconsistent with her insistence that it was important for the truth of what Ms. L.Y. did and said to come out. Her refusal to cooperate with the Society's investigation is troubling, particularly if, as she testified, she was a friend of Mr. Young and anxious to assist him. We conclude that Ms. C.C. did not provide her mobile device, or copies at least of relevant text messages, because she well knew that they would corroborate the story of Ms. L.Y.

113. Ms. L.Y. says that upon learning in early July 2015 that Mr. Young was leaving practice, she asked him on the phone about the $2,500.00. Ms. L.Y. and Mr. Young agree that she subsequently asked him again about the $2,500.00. Mr. Young is specific and says this occurred in a phone call in August 2015. On September 21, 2015, in email exchanges with an assistant at the Boudreau Law Firm (Exhibit #31) Ms. L.Y. complains that she has not received full value for the $4,000.00 that she gave Mr. Young. In an email on October 20, 2015 Ms. L.Y. advises Mr. Entz that she wants "confirmation that graeme has taken care of the bill like he had informed me." And, ultimately, she files a complaint with the Society. Taken together, these conversations and emails are all consistent with Ms. L.Y.'s story. They are what one would reasonably expect in the case of a client who has provided a lawyer with $2,500.00 in cash and has not received any accounting for it. Ms. L.Y. had trouble recalling the dates of her telephone conversations and had no explanation for what she was doing in the approximately one half hour of time on March 19, 2015 from the end of her interview with Mr. Young to the time when she used her mobile device to draw money from her line of credit. Notably, she signed a retainer agreement on March 19, 2015 that references the sum of $1,500.00, not $4,000.00. We are not persuaded that these gaps make her testimony unbelievable. In the absence of keeping a record, it is not surprising that she was unable to provide dates and precise recitations of everything that was said regarding conversations that were, by the time she testified, over a year old. We do not find it remarkable that a client who admits she herself does not declare a portion of her income in order to avoid paying tax would think it untoward to give Mr. Young $2,500.00 in cash that was clearly not going into a trust account on the understanding that this would "save" her tax and "buy" additional legal "time".

114. Ms. C.C., who knew Ms. L.Y. reasonably well, and Mr. Young endeavoured to portray Ms. L.Y. as a person with significant personal and financial problems who was prone to making snap and ill-advised decisions that she subsequently regretted. They suggested in their evidence that Ms. L.Y.'s complaint about Mr. Young was an example of just such a snap, poorly conceived decision. However, if Mr. Young's evidence is to be believed, this was no "snap" decision. He says in August 2015 Ms. L.Y. phoned him and asked about the $2,500.00 in a phone call

that he testified was "dodgy" and in a letter to the Society he described as "completely bizarre". This call took place some six months before Ms. L.Y. filed her complaint. If she was perpetrating a fraud, as Mr. Young and Ms. C.C.'s story suggests, then it was a fraud planned at least six months earlier. Moreover, if Ms. L.Y. was engaged in a scheme to defraud the Society, her communication to the Boudreau Law Firm on September 21, 2015 makes little sense. Why enquire about, and not pursue, the $4,000.00 reference if one knows one never gave Mr. Young $4,000.00 but is intent on convincing others one did for the purpose of receiving $2,500.00? Indeed, why wait several months before filing a complaint with the Society? We find it too far-fetched to accept that on March 19, 2015 Ms. L.Y. withdrew $4,000.00 from her bank on a plan to give $1,500.00 as a retainer to Mr. Young and to assert at a later date that she gave him an additional $2,500.00 for which she received no service. On March 19, 2015 Ms. L.Y. had no knowledge that Mr. Young would agree to a suspension of his practice in July 2015 and thus become 'vulnerable' to accusations of misappropriating her money. Further, she had no control over the fact that in his notes of the previous day of his phone call with her he wrote "$4,000 retainer", thus helping to bolster her story that she was asked for and provided a total of $4,000.00. And, although there was no proof that the $2,300.00 in cash that Mr. Young deposited into his personal account at 2.49 and 2:51 pm on March 19, 2016 was most of the $2,500.00 in cash that Ms. L.Y. says she gave him one hour earlier, this circumstance is clearly consistent with Ms. L.Y.'s story. Mr. Young's speculation that the cash came from gambling strikes us as contrived. Mr. Young and Ms. C.C. had motivation to conspire and lie regarding Ms. L.Y.'s complaint. Mr. Young's career in law was indeed in jeopardy and Ms. L.Y.'s complaint raised the specter of a further misappropriation. We find it improbable that Ms. L.Y. would make up a story with a view to persuading the Society to give her a reimbursement of $2,500.00.

Penalty

115. We have found Mr. Young guilty of professional misconduct arising out of ten charges: seven instances (three charges) of misappropriation, six of which he

admitted; two instances (two charges) of breach of trust conditions, both admitted; one charge (founded on several instances) of misleading clients, also admitted; three breaches (three charges) of an undertaking given to the Society, also admitted; and one instance (one charge) of misleading the Society which was denied. The misappropriations took place over a period of almost four years, from July 2011 into March 2015 and, with the exception of the $2,500.00 from Ms. L.Y., they all occurred during Mr. Young's association with the firm of Restall & Restall LLP. The other transgressions also took place during Mr. Young's association with the firm of Restall & Restall LLP save and except for the breaches of his undertaking to the Society which continued through his association with Boudreau Law and his misleading of the Society which took place on February 16, 2016 while he was suspended. The total amount of the misappropriations was $82,436.57. Three different clients were involved in the misappropriations if one treats Mr. H.T. and his company T. Holdings Ltd. as a single client and the Estates of W.A. and S.A. as a single client.

116. Counsel for the Society submitted that the necessary penalty where there is misappropriation must be disbarment. A line of authorities to that effect were provided to the Panel. They support the conclusion that absent "exceptional extenuating circumstances" or "special circumstances", lawyers who misappropriate clients' money ought to be disbarred. Lawyers who misappropriate their clients' money act without integrity. A panel of the Society in *The Law Society of Manitoba v. Griffin*, 2005 MBLS 5 wrote that: "It is beyond doubt that integrity is the cornerstone of the legal profession. If a lawyer does not have it, he cannot be trusted by the public or by other members of the profession." Integrity is the subject of the first Chapter of the Society's Code of Professional Conduct. Counsel for the Society summarized the evidence upon which the various charges laid against Mr. Young have been proven and stated that anything short of disbarment would be inconsistent with the obligation of the Society to protect the public and would send a disconcerting message to the members of the legal profession and the public about the Society's ability to discipline its members. Mr. Young, the Society says, has acted repeatedly without integrity and cannot be trusted to practice law in the future.

117. Mr. Young's counsel submitted that an appropriate penalty would be the continuation of his current suspension for a further eight to nine months. He submitted, and the Society's counsel agreed, that if the decision of this Panel were to be a further suspension, that Mr. Young was entitled to a four and a half month "reduction" as a consequence of the fact that the commencement of the hearing of the Citations herein was delayed in the autumn of 2016 on account of matters outside Mr. Young's control and notwithstanding his fervent wish that the hearing proceed forthwith. It was pointed out that most of the charges now admitted and proven against Mr. Young occurred in the period from 2011 through to the middle of July 2014 when Mr. Young practiced at Restall & Restall LLP, namely the same period with respect to which a previous panel accepted a plea bargain arising out of 19 charges of professional misconduct. It was submitted that the previous panel accepted that Mr. Young's practice during this period of time was troubled and that he was not functioning properly. He was overworked, without adequate mentorship and suffering from personal issues, including depression. Although the charges we have before us were not known or considered by the previous panel that found that a suspension would adequately protect the public and fairly penalize Mr. Young, it was suggested that the same underlying causes resulted in the misconduct which we must consider and accordingly a similar remedy was in order.

118. We were told that this is not a fair instance of a member having been suspended who then returns to work and sometime thereafter engages in more misconduct. Mr. Young has not returned to work. He has not had a fair chance, we were told, to demonstrate that he can practice without breaching his obligations. Our attention was drawn to a few authorities where members of law societies were not disbarred though they had been found guilty of misappropriation. It was submitted on Mr. Young's behalf that the misappropriations in the matters involving Mr. H.T. and his company and in the matter of the Estates of W.A. and S.A. were "technical" in nature and hence distinguishable from what some in common parlance would describe as "outright theft". We were reminded of Mr. Young's testimony to the effect that his misappropriations from these clients were "wrong" but he did not intend to steal from them. He said he did not turn his mind

to whether the process he was following to obtain payment for his work was appropriate. At previous firms he said he was a "worker bee" and was not schooled in how and when to render accounts. We were advised that Mr. Young was unreconciled to our finding with respect to the charges involving Ms. L.Y. and maintains that he told the truth. It was submitted that the question we should ask ourselves in deliberating upon penalty was: "Is there rehabilitation potential for Mr. Young?" Mr. Young also addressed us. He asked that we be "lenient" and that he be granted a second chance to prove himself. He described to us the devastating impact his suspension from practice has had on his finances and personal life.

119. For the reasons set out below, we find that the appropriate penalty is that Mr. Young be disbarred.

120. Our primary concern must be the public interest. We agree with counsel for the Society that in this case it has been proved that over the course of five years Mr. Young repeatedly ignored his obligation to act with integrity, not just in the stewardship of his clients' money but in his communications with them, in his observance of trust conditions imposed by lawyers on him, in his adherence to an undertaking given by him to the Society and in a response to the Society regarding a complaint made against him. There is in many circumstances merit to the plea of a colleague for a second chance, occasionally even in circumstances where that colleague has committed the most grievous of transgressions, misappropriation. However, having given close consideration to each of the factors that arguably mitigate some aspects of Mr. Young's conduct, we are left with the conclusion that he should not be permitted to continue to practice law and that no penalty short of disbarment provides adequate protection for the public.

121. There is nothing exceptional, or special, in the description Mr. Young gave of his practice at Restall & Restall LLP, namely that he was overwhelmed with the work, was coping with personal issues including depression and had little support from other lawyers at the firm. Indeed, in our experience, it is common for lawyers

to find themselves struggling to keep up with the demands of clients and trying to cope with the exhaustion, and sometimes depression, which can accompany an intense workload. And it is not unusual that in a small firm, the other lawyers do not have the time or energy to assume conduct of some of a colleague's files. We observe that aside from Mr. Young's testimony regarding his state of mind and health during his years of practice at Restall & Restall LLP we were provided with no evidence regarding his health, any treatment he sought and any prognosis regarding a reoccurrence of the same conditions were he to be permitted to continue to practice. It is evident from reading the decision of the panel which accepted Mr. Young's suspension on the 19 charges of misconduct in July 2015 that they had before them some medical reports, but these were not before us.

122. A number of the authorities provided to us stipulate that in deliberating upon penalty, a panel such as ours should consider and weigh "various factors" relevant to the proven misconduct of the lawyer. For example, in *Law Society of Alberta v. Ingimundson,* 2014 ABLS 52 the panel suggests that one look at "the nature and gravity" of the misconduct, whether the misconduct was "deliberate", the "impact" of the misconduct on the client, and that one impose a penalty "consistent" with that in "similar" cases. We have already observed that misappropriation ranks as the most serious misconduct.

123. Mr. Young's counsel submits, with respect to the clients Mr. H.T., T. Holdings Ltd., and the Estates of W.A. and S.A., that the six misappropriations were not "deliberate", but "technical". Misappropriation is any "unauthorized use . . . of clients' funds entrusted to [a lawyer]". See *Doolan v. The Law Society of Manitoba,* 2016 MBCA 57 wherein Hamilton, JA adopts the words originally written in *Nebraska State Bar Association v. Veith,* 470 NW (2d) 549 (NEB 1991) (at para.6). Hamilton, JA reviews the "growing trend" to find misappropriation wherever there has been unauthorized use of client funds by a lawyer, regardless of the lawyer's subjective intentions. Whether there is evidence of recklessness, willful blindness, incompetence or a pattern of disregard and inattention, misappropriation has been found.

124. We have considered, with respect to the misappropriations involving Mr. H.T. and T. Holdings Ltd. that a settlement has been concluded wherein there evidently has been an explicit acknowledgement by Mr. H.T. that Restall & Restall LLP and Mr. Young were entitled to be paid some fees for Mr. Young's work and hence they have been permitted to retain some portion of the $41,936.57 misappropriated by Mr. Young. We also note that when opposing counsel learned in December 2011 of the misappropriation of monies held in trust for and owned by CC.I.MB Inc. on July 4, 2011, he did not demand that they be replaced, only that in due course Mr. Young's clients bear the cost of the amount taken by Mr. Young for fees. These facts suggest that the "impact" of the misappropriations on Mr. Young's clients and the opposing party in the shareholders' dispute was not as severe, say, as a situation where there was no work done by the lawyer who has misappropriated the funds.

125. Mr. Young argues that the file of Mr. H.T. and T. Holdings Ltd. was reviewed in 2012 by the Society and in August 2012 he received a letter from the Society advising that it concluded he had not breached the trust condition imposed upon him by Campbell Marr LLP in January 2011 and that this letter "lulled him" into a sense of confidence that he was handling the file in accordance with his ethical obligations and there was nothing untoward regarding the transfer of CC.I. MB Inc.'s monies on July 4, 2011 to pay the account dated June 30, 2011. Within weeks of receipt of this letter, Mr. Young rendered a second account and transferred further monies from trust to pay for it which he now admits was a misappropriation. We are not persuaded that the letter in question amounts to an exceptional circumstance that mitigates the misappropriation. The Society was not in 2012 investigating an alleged misappropriation, only a suggestion of breach of trust. The Society's conclusion regarding the suggested breach of trust was sound. At best, had the Society's investigator decided to "fish" for other misconduct and done a thorough review of Mr. Young's file and the Restall & Restall LLP trust account, she no doubt would have identified the misappropriation and the error in the account that identified the client as CC.I. MB Inc. But there was no onus on the

Society to "fish" and we think doing so would be seen by some lawyers as intrusive and uncalled for in the absence of other complaints about Mr. Young.

126. We observe that on June 29, 2011 Mr. Young participated in a judicially mediated session with respect to the litigation he was handling for Mr. H.T. and T. Holdings Ltd. The monies of CC.I. MB Inc. in his trust account were specifically discussed at that mediation. The settlement to which he agreed with his clients required him to use the trust monies to pay certain, stipulated debts of CC.I. MB Inc. and to hold the balance in trust. Yet the very next day, he caused an account to be prepared that within five days thereafter he caused to be paid through a clearly unauthorized withdrawal out of the same trust monies. We cannot persuade ourselves that this was mere oversight or carelessness on the part of Mr. Young or, as he suggested, an assistant at Restall & Restall. And notwithstanding that in due course, when they learned of it, both his own clients and opposing counsel demanded something less that the outright replacement of the entire amount misappropriated, we conclude that the taking of the money was deliberate and for the benefit of Mr. Young. In May 2013, Mr. Young received a significant sum under easy to understand trust conditions. Within a month, in direct breach of those conditions, he transferred some of the money to pay a fourth account. We are not persuaded that in the space of one month a lawyer could simply forget the trust conditions, such that, as he testified, "it did not dawn" on him that he could not render an account "in the normal course" and use some of the money to pay his bill. We adopt as sound the words quoted with approval by Hamilton, JA in *Doolan*: "Because of the sacrosanct nature of trust funds, removing a client's trust funds is and should always be a memorable, conscious and deliberate act that a lawyer carefully considers before carrying out." (From *Geller (Re),* 2013 LSBC 22 (CanLII).

127. Turning to the misappropriations from the Estates of W.A. and S.A., we observe that the evidence is unequivocal that in September 2011, Mr. Young asked Ms. B.A. to have Ms. E.L. send to him $23,000.00 and $7,500.00. In doing so, he explicitly told her that the monies would be held until the accounts of the Estates

were passed. We think it immaterial that he chose not to state explicitly in his email that he would not use any of the funds to pay fees to which he was entitled as distinct from Campbell Marr LLP. Silence, here, does not constitute a license to draw on funds that one has expressly stated will be held. Mr. Young received the two cheques on September 23, 2011. He did not wait for them to clear. The same day he caused $23,000.00 to be transferred from trust and to be paid to himself personally. He prepared no account. In similar fashion, in June 2012, Mr. Young received further funds from his clients and without even allowing time for the cheques to clear, he caused a further $15,000.00 to be paid to "Graeme E. Young Law Corporation". Again, there was no account prepared. We are struck by the deliberate nature of Mr. Young's conduct and the short time between receipt of the funds and the payments out to himself. We are not persuaded that this conduct was carelessness, incompetence or the consequence of an overworked lawyer functioning in a fog of depression. At precisely the same time as these misappropriations took place Mr. Young was writing coherent emails to his clients and to counsel for the Public Trustee's office in which he correctly summarized the obligation upon him to hold Estate monies in trust until the accounts of the two Estates were passed.

128. Mr. Young argues that in the case of the Estates of W.A. and S.A., the monies he took had been earned by him at Campbell Marr LLP. He points to the time record of Campbell Marr LLP which puts a value on his time of $34,256.00, not, we note, $38,000.00. Mr. Young says the difference factors in GST and PST. These, we note, he did not assess because he prepared no accounts when he misappropriated the funds. Mr. Young says he assumed that Campbell Marr LLP had rendered an account for his time or, at best, that it was the obligation of Campbell Marr LLP to render such an account. Campbell Marr LLP of course did render an account and through Mr. Reimer did review with Mr. Young how much the firm and Mr. Young should bill the Estates for the unbilled time as of December 2010. On its face, the account rendered by Campbell Marr LLP covered none of Mr. Young's time and was sent in trust to Mr. Young on a condition that it was to be paid after, not before, the accounts of the Estates were passed. According to the emails exchanged in December 2010 between Mr. Reimer and Mr. Young, Mr. Young was to receive, after the accounts were passed, the sum of $24,488.50,

exclusive of taxes, not the $38,000.00 that was subsequently misappropriated. Mr. Young says the email exchanges did not result in an "agreement" between him and the Campbell Marr LLP firm, the consequence being he was entitled to be paid for the value of his time based upon the time record. However, he admits that the "value" of his time at Campbell Marr LLP, if it had been billed at that firm in the normal course, would have seen 30% allocated to Mr. Reimer, leaving Mr. Young with $23,971.20, exclusive of taxes, by our calculation.

129. It does seem from the evidence that in December 2010 neither Mr. Young nor Mr. Reimer turned their minds to how Mr. Young's entitlement to as yet unbilled time for the two Estates was to be billed -- by the firm of Campbell Marr LLP (with a commitment that upon receipt of payment, the fees would be paid over to Mr. Young) or by Mr. Young personally or through his Law Corporation. Arguably, this resulted in some small confusion or oversight. We think this could easily and efficiently have been rectified through Mr. Young raising it with Campbell Marr LLP. It seems that the clients in this matter have not asked for the money "back". At least no evidence was advanced to this effect. The Court, on the passing of accounts, expressly deferred the matter of the two amounts taken by Mr. Young. We think it unlikely that any party will move the Court to finish the passing of accounts by reviewing the two misappropriations. A great part of Mr. Young's formative experience in the practice of law was at the Campbell Marr firm from 2006 through December 2010. He was a partner at the firm for two years. We accept that from day to day, he was largely, as he testified, a "worker bee" engaged in a busy litigation practice. We accept that the Estates of W.A. and S.A. were clients brought to the firm by Mr. Reimer and Mr. Reimer played a critical role in the rendering of accounts. We accept as a small, but relevant, consideration that what Mr. Young "saw" and "learned" at the firm with respect to the billing of these Estates was that significant fees of some $230,000.00 were billed and paid out of Estate funds without there being any passing of accounts. This is "offset", of course, by the email exchanges with Mr. Reimer in December 2010 wherein it is expressly observed that further accounts are only to be paid after the accounts are passed and Mr. Young accepted a trust condition that he move with dispatch to pass the accounts. In sum, the "impact" on the clients with respect

to these misappropriations is also not as severe as, say, a situation where a lawyer has done no work and has misappropriated all or most of an Estate's money.

130. The amount misappropriated from Ms. L.Y. was $2,500.00. Some of the authorities indicate that if the amount taken is small, this is a relevant factor in determining whether disbarment is appropriate. For example, in *Law Society of Manitoba v. Frank Johnson* (October 2014) the amount misappropriated was also $2,500.00. A suspension of one month was ordered. In the case of *Robert Lewis Fisher* (Law Society of Manitoba Discipline Case Digest 98-05) the amount was $3,350.00 and a suspension of three months was ordered. In *The Law Society of Manitoba v. Laxer,* 2002 MBLS 3, the amount misappropriated was $2,867.90. A suspension of three months was ordered in that case. Of course, as counsel for the Society observed, in order to appreciate the appropriateness of the penalty in each of those cases, one must look at all of the facts and when one does that, the cases can be distinguished from the facts before us. For example, the Society notes that at the time Mr. Young misappropriated Ms. L.Y.'s money, he was subject to an Undertaking he had given to the Society. Moreover, the Society says that when she complained, he failed to acknowledge what he did and, instead, in a letter dated February 16, 2016 he lied to the Society regarding the $2,500.00, for which he was charged separately and has now been found guilty. Although he was not charged with doing so, we have concluded that he conspired with Ms. C.C. to meet with Ms. L.Y. for the purpose of persuading her to withdraw her complaint to the Society on the basis that she had lied to the Society.

131. Mr. Young's counsel submitted five cases from other jurisdictions wherein the amount misappropriated was much larger, in some of them close in amount to the $82,436.87 that Mr. Young, in total, misappropriated. However, the Society notes that these cases can be distinguished. In *Law Society of Upper Canada and Northcott* (October 17, 2008) and in *Law Society of Upper Canada and Paradiso* (July 25, 2011) the lawyers did not benefit personally from the misappropriations which surely must be a factor to consider in weighing the breaches of integrity. On the facts before us, it is clear that Mr. Young misappropriated money on each of

seven occasions for the purpose of benefiting himself. In *Law Society of Saskatchewan and Baumgartner* (May 11, 2010) evidence appears to have been presented that the lawyer was suffering from "psychological issues" for which, by the time of the hearing, he was receiving treatment. The panel accepted a joint recommendation for suspension and then a supervised practice. In *Law Society of Alberta and Dear* (January 12, 2015) the panel was advised that the lawyer had been suffering from "addiction issues" and had taken steps to address these. Again, on a joint recommendation the panel ordered a suspension of eighteen months to be followed by a "practice review". We observe again that no medical evidence was submitted to us that would corroborate Mr. Young's testimony to the effect that during his years of practice at Restall & Restall LLP his health declined and he was barely functioning from day to day. We cannot and should not speculate that Mr. Young was suffering from an illness and has now sought and received treatment for it. Counsel for the Society submitted that decisions wherein a joint recommendation on penalty has been accepted must be understood to involve a weighing of facts by counsel and clients, some of which may well not be presented when the matter comes before a panel. Accordingly, one must be careful in considering such decisions and trying to be consistent with them.

132. To conclude, while each instance of misconduct, had it been the only misconduct before us, might warrant a penalty short of disbarment, when we look at all of the misconduct and Mr. Young's troubling and unsatisfactory explanations for what he did, repeatedly, over the course of four years, we believe that disbarment is the appropriate penalty. Disbarment is the appropriate penalty to protect the public and to send an appropriate message to the public and to the profession that lawyers will be disbarred who make unauthorized use of their clients' money, regardless of what their intention is, even if they assert that they gave the matter no serious consideration at all; who mislead clients with respect to the use of their money; who breach trust conditions with respect to the use of such money imposed upon them; and who mislead the Society when it investigates what has happened with such money.

133. The Society asks for costs in the amount of $43,051.11. It says this amount represents a reduction for those charges that we found were not proven, namely with respect to Mr. S.D. and Ms. S.C. The amount claimed does include $945.00 for "Blue Cross" to attend the Complaints Investigation Committee meeting that considered whether Mr. Young should be suspended pending the hearing of the charges before us. We understand that the purpose of this expense is for the laudable purpose of providing counselling and medical support to members who may become distraught if a decision is made that they be suspended. We think it unfair to require, now, that Mr. Young pay this expense which was incurred, albeit with his well-being in mind, but without his request or any evidence that the service was actually used by him. The remaining costs claimed by the Society are in order and therefore we order that Mr. Young pay costs to the Society in the amount of $42,106.11. If the parties wish, we can hear submissions on the period of time over which the costs ought to be paid.

134. We observe that the Rules of the Society mandate that there be publication when a member has been disbarred.

DATED this 7th day of September, 2017.

Douglas A. Bedford, Chairperson

Wendy Stewart

Maureen Morrison