



DISCIPLINE CASE *DIGEST*

Case 14-08 (AMENDED)

Member:	Robert Frank Doolan
Jurisdiction:	Winnipeg, Manitoba
Called to the Bar:	June 30, 1977
Particulars of Charges:	Professional Misconduct (16 Counts): <ul style="list-style-type: none">▪ Breach of Chapter 1 of the <i>Code of Professional Conduct</i> [misappropriation and misleading the Law Society]
Plea:	Not Guilty
Date of Hearing:	October 15, 16 & 17, 2013 and October 21, 2014
Panel:	<ul style="list-style-type: none">▪ Richard Deeley, Q.C. (Chair)▪ Katherine Bueti▪ Kenneth Molloy (Public Representative)
Counsel:	<ul style="list-style-type: none">▪ Darcia A.C. Senft for The Law Society of Manitoba▪ Member Self Represented – October 15, 16 & 17, 2013▪ Regan Thatcher for the Member – October 21, 2014 (sentencing)
Date of Decisions:	Hearing Decision: August 20, 2014 Sentencing Decision: December 23, 2014 Court of Appeal Decision: May 31, 2016
Disposition:	<ul style="list-style-type: none">▪ Disbarred▪ Costs of \$38,108.23
Appeal:	Appeal to the Manitoba Court of Appeal dismissed with costs on May 31, 2016.

Misappropriation / Misleading the Law Society

Facts

In the course of his practice, Mr. Doolan would be required to make payments at the Land Titles Office (LTO) for registration fees and for land transfer tax. LTO published a schedule of fees and taxes so that calculations could be made relating to the payment due on any particular registration. Documents presented for registration at LTO had to be accompanied by a Registration Details Application (RDA), the required fee and, where applicable, the required land transfer tax. It was Mr. Doolan's practice to pay the fees and taxes by cheque, either drawn on his trust account using the client's trust funds, or drawn on his general account, the amount of which was charged as a disbursement and ultimately billed to the client. From time to time, Mr. Doolan

would overpay the required fees and taxes. LTO would then issue a cheque payable to Mr. Doolan, refunding the overpayment.

In July 2009, LTO noticed that of about 500 RDA forms submitted by Mr. Doolan, about 90 resulted in refund cheques. LTO also noticed that an RDA presented by Mr. Doolan had attached to it 8 endorsed refund cheques from unrelated transactions. Following a spot audit that was conducted in 2010, some issues were identified that resulted in an investigation by the Law Society.

The Society became concerned that Mr. Doolan received refund cheques which he then either negotiated for cash or deposited into his personal bank account. Following its investigation, the Society alleged that with respect to 87 matters, Mr. Doolan misappropriated or converted to his own use funds belonging to various clients amounting to approximately \$11,955.44. In most cases, Mr. Doolan received refund cheques from LTO which he negotiated for cash. In 4 instances, he deposited refund cheques into his personal bank account. He did not credit the clients whose funds had been used to make the overpayments, or in the case of a payment originally made by general cheque, the client who had been charged the full amount of the original disbursement cheque. With respect to 8 matters, he endorsed refund cheques and then used them to pay for registration fees for a different client and did not credit the clients against whose accounts the original disbursements had been charged.

The Society further alleged that during the course of its investigation, on 17 occasions Mr. Doolan attempted to mislead the Society by lying about having cashed cheques and then generating deliberate overpayments and lying about the purpose for which the refund cheques were issued to him. The Society further alleged that on 12 occasions, Mr. Doolan attempted to mislead the Society by falsifying bank deposits so as to conceal in each instance the negotiation for cash of a refund cheque.

During the investigation, Mr. Doolan made certain admissions including that his practices amounted to "theft"; however, during the discipline hearing, Mr. Doolan advised that he lied during the investigation (at the recommendation of counsel) and said he did so because he thought if he did not admit to using the refunds for his own purposes he would be suspended on an interim basis. At the discipline hearing, Mr. Doolan advised for the first time that he did not use the proceeds of the refund cheques for his own benefit. Mr. Doolan said that he kept the cash proceeds in an envelope in his brief case and would apply the funds for the benefit of clients who, he claimed, owed him money for unbilled disbursements. A similar explanation was given regarding the cheques that were deposited into his personal account.

Plea

At the start of the hearing, Mr. Doolan entered a plea of guilty with an explanation to 7 separate charges of failing to discharge with integrity his duty to the profession. Included in these charges were 17 different examples of deliberate attempts to mislead the Society by advising the Society of facts which he knew to be untrue, and then making deliberate overpayments to LTO in order to obtain a refund cheque which he intended to provide to the Society to cover up the fact that he had previously misappropriated the amounts in issue. However, this guilty plea was made somewhat conditional upon the provision of an explanation in regard to what led up to the events.

Mr. Doolan entered a plea of not guilty to the remaining charges against him. With respect to one citation, there were seven separate charges of misappropriation amounting to the total sum of \$1,284.01 relating to 14 different clients. With respect to a further citation, there was one charge of misappropriating the total sum of \$10,671.43 from various clients on 73 separate real estate transactions. As well, there was a further charge that Mr. Doolan attempted to mislead the Society during its investigation by falsifying bank deposit slips on 12 separate occasions.

Decision and Comments

During the prosecution, the Society relied upon 2 Affidavits that were filed in the proceedings. Mr. Doolan objected to some of the exhibits that were attached to one affidavit and argued that they

should not be admitted into evidence. The panel ruled that affidavit evidence is admissible in this type of proceeding, pursuant to s. 71 of *The Legal Profession Act*. It was noted that there was no objection being taken to the substance of the affidavits. Only some of the exhibits were alleged to be irrelevant and, therefore, potentially inflammatory. The panel ruled that the affidavits would be admitted into evidence and the panel would reserve on the weight, if any, to be given to the exhibits or to the affidavits themselves until all of the evidence and argument had been heard.

With respect to Mr. Doolan's "conditional" guilty plea to certain charges, the panel found that the explanations advanced by Mr. Doolan did not have an impact upon his acknowledged guilt with respect to those specific charges and admissions.

The panel found Mr. Doolan to be guilty of 86 instances in which he misappropriated client monies or appropriated them to his own use. The panel further found that on 17 occasions, Mr. Doolan misled or attempted to mislead the Society by making misleading statements and by making deliberate overpayments to LTO when registering documents for clients in order to conceal his misappropriation of client monies. As well, the panel found that on 12 separate occasions, Mr. Doolan attempted to mislead the Society by deliberately falsifying bank deposit slips to conceal that he had misappropriated client monies. The panel gave Mr. Doolan the benefit of the doubt and acquitted him with respect to one allegation that he misappropriated the sum of \$2,859.00 from one client.

The panel held that in order to constitute misappropriation of client funds it is not necessary that there be an element of personal gain or benefit involved. The panel also considered whether or not there needs to be an element of "intention" to misappropriate or steal trust monies before such a charge can be substantiated. Noting that the panel was not dealing with a criminal charge and a criminal standard of proof that might require an element of intention, the panel determined in any event that Mr. Doolan did knowingly intend to both misappropriate client monies and to obtain a personal benefit when he deposited LTO refund cheques owing to his clients into his own personal bank account and when he negotiated such cheques for their cash value.

The panel held that all monies belonging to a client, no matter how small or large, must be reported to the client and returned to the client in the absence of specific instructions or an authorization from that particular client to the contrary. Also, it was no excuse for Mr. Doolan to say that he was too busy to comply with the appropriate rules. The panel found that he made a conscious decision to abandon or not comply with his obligations and stated that he must be held responsible. The panel also found that Mr. Doolan's belief that he was "entitled" to the funds because of certain unrecorded and unbilled services provided by him defied logic and could not be a reasonably held belief. In addition to the findings of misappropriation, the panel considered the serious breach of integrity charges relating to the misleading statements provided to the Society and the other actions he took that were specifically designed to mislead the Society. Such actions could not be ignored or minimized and must be dealt with appropriately. The panel also took into consideration the statement made by Mr. Doolan during the course of his original evidence and argument that he was not sure that he would not do the same things again if he found himself in similar circumstances. The panel considered that the disposition for offences in the nature of theft and fraud typically involve disbarment and did not find that any "exceptional circumstances" had been demonstrated.

Penalty

The panel ordered that Mr. Doolan be disbarred and his name struck from the Rolls of the Society. In addition, the panel ordered that he pay the sum of \$38,108.23 towards the costs associated with the investigation and prosecution.

Appeal

The member appealed the conviction and sentence to the Manitoba Court of Appeal. The appeal was dismissed with costs pursuant to a decision rendered on May 31, 2016.