



DISCIPLINE CASE *DIGEST*

Case 15-03

Member:	Peter Ottavio Jachetta
Jurisdiction:	Winnipeg, Manitoba
Called to the Bar:	June 25, 1974
Particulars of Charges:	Professional Misconduct (25 Counts): <ul style="list-style-type: none">▪ Breach of Rule 2.1-1 of the <i>Code of Professional Conduct</i> [Integrity-Misappropriation of client trust funds] [x25]
Plea:	Guilty
Date of Hearing:	July 20, 2015
Panel:	<ul style="list-style-type: none">▪ Douglas Finkbeiner, Q.C. (Chair)▪ Jennifer Cooper, Q.C.▪ Suzanne Hrynyk (Public Representative)
Counsel:	<ul style="list-style-type: none">▪ Darcia A.C. Senft for The Law Society of Manitoba▪ Michael Cook for the Member
Date of Decision:	July 20, 2015
Disposition:	<ul style="list-style-type: none">▪ Disbarment▪ Costs of \$42,176.00

INTEGRITY / MISAPPROPRIATION

Facts

Mr. Jachetta misappropriated client funds in 25 separate estate matters.

With respect to one estate matter, Mr. Jachetta misappropriated trust funds on 82 occasions amounting to approximately \$307,095.40. The misappropriations took place between October 21, 2008 and November 25, 2013. The testatrix had died testate in the summer of 2007 with an estate valued at \$298,250.81. The testatrix's Will provided that certain legacies be paid from her estate. In addition, the Will named five charities that were to receive the balance of her estate.

Mr. Jachetta was the executor and solicitor for the said estate. Although he received a grant of probate on December 16, 2009, he did not advise anyone of the testatrix's death, contact the five charities that were named in the Will or pay the bequests.

Mr. Jachetta paid total estate funds in the amount of \$355,841.22 into trust. He issued notices to

creditors, paid debts and attended to the estate taxes. Mr. Jachetta then transferred trust funds totalling \$173,937.21 out of the estate to 14 other client ledgers in order to meet his trust obligations on those client files. In addition, the estate trust ledger indicated that Mr. Jachetta also made 66 payments out of trust ostensibly on account of fees and disbursements, totalling \$133,158.19.

Mr. Jachetta made no distributions on the above estate; rather, he used the estate as a pool of funds to replace funds that he had misappropriated in other estate matters over the course of several years, as well as for his own benefit, eventually depleting the estate.

With respect to 16 other estate matters, Mr. Jachetta misappropriated trust funds. Prior to making the final distribution and report to the beneficiaries in those matters, Mr. Jachetta replaced some or all of the misappropriated funds, either by transferring monies from the aforementioned estate or from his general account.

In 8 other estate matters, Mr. Jachetta misappropriated trust funds. In those matters, the misappropriated funds had not been replaced. From those 8 estate files, he misappropriated the following sums respectively: \$29,427.56, \$20,509.38, \$6,437.92, \$10,103.79, \$11,171.23, \$6,695.44, \$7,700.00 and \$16,588.96.

The total amount of trust funds misappropriated by Mr. Jachetta was approximately \$598,015.64. When taking into account the monies Mr. Jachetta misappropriated from one estate in order to repay misappropriations relating to other estates, the net amount of trust funds misappropriated by Mr. Jachetta amounted to approximately \$416,291.19.

Plea

Mr. Jachetta entered a plea of guilty to all 25 charges of professional misconduct and consented to his disbarment along with an order of costs.

Decision and Comments

The Panel noted that the misappropriations by Mr. Jachetta were particularly egregious and among the highest the Panel recalled in the Law Society's history. The Panel noted that the misappropriations involved some 25 matters and took place over many years in a very deliberate way. Further, the Panel noted that the misappropriations were from estates, and given the circumstances of dealing with estates, they were particularly vulnerable to this type of activity.

The Panel stated that disbarment was the only appropriate remedy in the circumstances.

Penalty

The Panel accepted the joint recommendation and made an Order that:

- (i) Mr. Jachetta be disbarred and his name struck from the Rolls of the Society; and
- (ii) Mr. Jachetta be required to pay costs to the Society in the amount of \$42,176.00 as a contribution towards the costs associated with the investigation, prosecution and hearing of this matter.