2008 LSBC 09
Report issued: March 14, 2008
Citation issued: August 27, 2007

The Law Society of British Columbia
In the matter of the *Legal Profession Act*, SBC 1998, c.9
and a hearing concerning

Donald Andrew Lyons

Respondent

Decision of the Hearing Panel on Facts and Verdict

Hearing date: January 17, 2008

Panel: Kathryn A. Berge, QC, Chair, Anna K. Fung, QC, Thelma O'Grady

Counsel for the Law Society: Maureen S. Boyd
Appearing on his own behalf: Donald A. Lyons

Background

[1] On August 24, 2007, a citation was issued against the Respondent pursuant to the *Legal Profession Act* and Rule 4-13 of the Law Society Rules by the Executive Director of the Law Society of British Columbia pursuant to the direction of the Chair of the Discipline Committee. The citation directed that there be an inquiry into the conduct of the Respondent regarding the following:

> 1. On or about April 10, 2006 and June 5, 2006, while acting for your client, SC, you received or accepted cash in an aggregate amount of $7,500 or more in one client matter or transaction, when you were engaged on your client's behalf in some or all of paying funds, purchasing securities or business assets, or transferring funds, contrary to Rule 3-51.1 of the Law Society Rules.

[2] This citation came before this Panel and was heard on January 17, 2008.

[3] The Respondent admitted that the citation was properly issued and served pursuant to the requirements of Law Society Rule 4-15.

[4] It was noted by counsel for the Law Society and the Respondent, who appeared in person, that this is a matter of first instance, as it is the first time that the Law Society has issued a citation pursuant to Rule 3-51.1. Rule 3-51.1 is commonly known as the " No Cash Rule" and it reads as follows:

> 3-51.1(1) This Rule applies to a lawyer when engaged in any of the following activities on behalf of a client, including giving instructions on behalf of a client in respect of those activities:
>
> (a) receiving or paying funds;
>
> (b) purchasing or selling securities, real property or business assets or entities;
>
> (c) transferring funds or securities by any means.

(2) This Rule does not apply to a lawyer when

(a) engaged in activities referred to in subrule (1) on behalf of his or her employer, or

(b) receiving or accepting cash

(i) from a peace officer, law enforcement agency or other agent of the Crown acting in an official capacity,

(ii) pursuant to the order of a court or other tribunal,

(iii) to pay a fine or penalty, or

(iv) from a savings institution or public body.

(3) While engaged in an activity referred to in subrule (1), a lawyer must not receive or accept an aggregate amount in cash of $7,500 or more in respect of any one client matter or transaction.

(3.1) Despite subrule (3), a lawyer may accept or receive an amount of $7,500 or more in cash for professional fees, disbursements, expenses or bail, but any refund greater than $1,000 out of such money accepted or received must be made in cash.

(4) For the purposes of this Rule, foreign currency is to be converted into Canadian dollars based on

(a) the official conversion rate of the Bank of Canada for that currency as published in the Bank of Canada's Daily Memorandum of Exchange Rates in effect at the relevant time, or

(b) if no official conversion rate is published as set out in paragraph (a), the conversion rate that the client would use for that currency in the normal course of business at the relevant time.

Statement of Agreed Facts

[5] Counsel for the Law Society submitted a Statement of Agreed Facts, which included an admission by the Respondent that his conduct constituted professional misconduct. This Statement of Agreed Facts consists of the paragraphs that follow (references in the original to the names of the Respondent's client, and to the appendices have been omitted and the paragraphs have been somewhat consolidated and consequently amended).

1. On July 10, 1979, the Respondent was called to the Bar of British Columbia.

2. From October 1, 2005, the Respondent has practised as Donald A. Lyons Law Corporation in Vancouver, British Columbia. Commencing in 1988, he practised as a partner, first in Lyons Cawkell, then Lyons & Company, and then Lyons Hamilton, which partnership ended on September 30, 2005.

3. The citation in this matter was authorized by the Discipline Committee on July 3, 2007.

4. The Respondent admits that on August 27, 2007 he was served with the citation in accordance with the requirements of Rule 4-15 of the Law Society Rules.

5. In or about 2005, the Respondent was retained by SC (the " Client") to act on his behalf and provide services to his movie production business, referred to as [company].

6. In or about early April, 2006, the Client delivered to the Respondent a cheque dated March 23, 2006 (the " Cheque") in the amount of $25,000 US, to be deposited to the Respondent's trust account. Before it was deposited, the Client took back the Cheque.

7. On Monday, April 10, 2006, the Client delivered to the Respondent the sum of US $32,900 in cash. At this time, the Respondent advised the Client that the Law Society had in place Rules dealing with the handling of large cash amounts, and that he needed to confirm what those Rules were before he could accept and deposit the cash. He gave the Client a receipt for the cash.

8. Also on Monday, April 10, 2006, the Client delivered to the Respondent the sum of CDN $9,000 in cash.

9. On April 10, 2006, at approximately 11:30 a.m., the Respondent called the Law Society and spoke by telephone with Ms. Ciolfitto, an employee of the Law Society. He told her that he had received trust monies in cash in the amount of US $32,000.

(a) Ms. Ciolfitto claims that she told him that the acceptance of the cash was a violation of Rule 3-51.1 and that she told the Respondent that a written report should be made. She claims she also told him that his accountant would also report it as an exception in his 2006 trust report. Ms. Ciolfitto also told the Respondent that she would send an email outlining Rule 3-51.1(3) along with some other information. Ms. Ciolfitto took notes of this telephone conversation.

(b) The Respondent claims that Ms. Ciolfitto did not use the word " violation" but used the word " exception" and that if he were to accept and deposit the cash, it would be noted as an exception on his 2006 trust audit report. He understood that if he were to accept and deposit the cash, he could report the receipt of cash, or his auditor could report the matter as an exception in his 2006 trust report.

10. On April 10, 2006, at approximately 1:23 p.m., Ms. Ciolfitto sent an email to the Respondent, which included the text of Rule 3-51.1. The Respondent received and read this email the same day and did so prior to depositing to his trust accounts any of the cash received from the Client.

11. On April 10, 2006, at 2:15 p.m., the Respondent deposited to his trust accounts the cash in the amounts of US $32,900 and CDN $9,000, which he had received from the Client.

12. On or about June 5, 2006 the Client delivered to the Respondent the sum of CDN $9,000 in cash. The Respondent made no attempt to return this cash to the Client, either on June 5, 2006 or thereafter.

13. Also on or about June 5, 2006, the Client delivered to the Respondent the sum of CDN $5,000 in cash. The Respondent made no attempt to return this cash to the Client, either on June 5,

2006 or thereafter.

14. The Respondent received from the Client a total of US $32,900 and CDN $23,000, which he disbursed according to the instructions of his Client including in the following activities: receiving or paying funds, purchasing securities, and purchasing business assets or entities.

15. On August 4, 2006, the Respondent by fax provided to the Law Society a written exception report regarding his receipt and deposit of cash on April 10, 2006 of US $32,900 and on June 5, 2006 of CDN $9,000.

16. On or about August 9, 2006, Ms. Ciolfitto wrote to the Respondent to request his explanation for why cash in excess of $7,500 was received and accepted in the two instances on April 10, 2006 and June 5, 2006.

17. On August 22, 2006, the Respondent by fax provided to the Law Society a response to Ms. Ciolfitto's letter of August 9, 2006.

18. On August 25, 2006, Ms. Ciolfitto by email requested the Respondent to advise whether he was still holding the cash he had received in trust. By reply letter dated August 25, 2006, the Respondent advised that " the majority of the funds have been paid out."

19. On September 22, 2006, Howie Caldwell, a staff lawyer employed by the Law Society wrote to the Respondent to advise that the Professional Conduct Department had commenced an investigation regarding the information set out in the Respondent's letter dated August 4, 2006, and requesting a response regarding the Respondent's receipt of cash in excess of the amount permitted by Rule 3-51.1.

20. By letter dated November 2, 2006, the Respondent provided an explanation in writing in respect of his receipt of the USD $32,900.

21. On November 15, 2006, Mr. Caldwell requested a complete response to his letter dated September 22, 2006.

22. On January 29, 2007, the Respondent provided a written response in which he advised he had received cash on two other occasions than reported in his August 4, 2006 letter: on April 10, 2006 in the amount of CDN $9,000 and on June 5, 2006 in the amount of CDN $5,000.

23. At the material times, the Respondent had personal difficulties, which included problems arising from the termination of the partnership of Lyons Hamilton, in respect of which the Respondent sought the assistance of the Law Society.

24. The Respondent says that he was familiar with the money laundering legislation and read articles published by the Law Society dated to 2001, including *A Guide to Managing Lawyer's Obligations Under the Proceeds of Crime Legislation,* and *The Model Compliance Manual*.

25. From its implementation in 2004 through to April of 2006, the Law Society has published information about Rule 3-51.1, as follows:

(a) April 2, 2004 - News Release entitled *Law Society of BC takes steps against money laundering*;

(b) May-June, 2004 - *Benchers' Bulletin*, " Benchers pass rule to fight money laundering" ;

(c) Sep.-Oct., 2004 - *Benchers' Bulletin*, " Rule 3-51.1 on cash received by lawyers" ;

(d) Nov.-Dec., 2004 - *Benchers' Bulletin*, " Closing Comments" ;

(e) 2004 - *Annual Report 2004*, " 2004 President's Message" ;

(f) Apr.-May, 2005 - *Benchers' Bulletin*, " Lawyer independence in the balance" ;

(g) Apr.-May, 2005 - *Benchers' Bulletin*, " Lawyers restricted from accepting $10,000 or more in cash" ;

(h) June 9, 2005 - Notice entitled *Lawyers not to accept $7,500 or more in cash trust deposits*;

(i) July-Aug., 2005 - *Benchers' Bulletin*, " Updates to the Rules and Handbook" ;

(j) July-Aug., 2005 - *Benchers' Bulletin*, " Lawyers not to accept $7,500 or more in cash trust deposits" ;

(k) 2005 - *Annual Report 2005*. " Our Professional Standards" ; and

(l) Mar.-Apr., 2006 - *Benchers' Bulletin*, " why we won't let down our guard on money laundering" .

26. The Respondent admits on April 10, 2006, while acting for his Client, he received and accepted cash in the amounts of US $32,900 and CDN $9,000 and he did so in breach of Rule 3-51.1 of the Law Society Rules. The Respondent admits that he read Rule 3-51.1 prior to depositing this cash into his trust account and did so knowingly in breach of Rule 3-51.1 of the Law Society Rules.

27. The Respondent admits that on June 5, 2006, while acting for his Client, he received and accepted cash in the amount of CDN $9,000 and CDN $5,000 and knowingly did so in breach of Rule 3-51.1 of the Law Society Rules.

28. The Respondent admits that his receipt and acceptance of cash amounts of $7,500 or more on each of April 10, 2006 and June 5, 2006, in breach of Rule 3-51.1, constitutes professional misconduct.

Respondent's Evidence

[6] The Respondent testified that he appreciated that he must take responsibility for his actions and that he was prepared to admit that his conduct amounted to professional misconduct in his failure to observe Rule 3-51.1 (the " No Cash Rule"). He had discussed his admission of professional misconduct with independent counsel and was satisfied that it was correct for him to make the admission.

[7] That admission having been made, the Respondent expressed his view that the Law Society bore significant responsibility for the violation. This responsibility arose from the fact that when he called the Law Society's Trust Assurance Department on April 10, 2006 (the day that he received the first large cash payment), the staff member who took the call, Ms. Ciolfitto, did not specifically:

(a) direct him to return the cash to the Client immediately;

(b) direct him not to deposit the cash into his trust account;

(c) advise him that a breach of the " No Cash Rule" was a discipline violation rather than an exception that must be noted at some point on his trust report;

(d) advise him that serious discipline consequences could and would ensue if he did not comply with the " No Cash Rule" ; and

(e) follow up with him to ensure that he had complied with the " No Cash Rule" .

[8] The Respondent further submitted that if the Trust Assurance Department representative was not prepared to advise him in this manner, the Law Society should have ensured that the matter was referred to someone in the Professional Conduct Department or a Practice Advisor who would have clearly communicated the above information to him.

[9] When, on the day of their discussion, Ms. Ciolfitto forwarded him the text of Rule 3-51.1, the Respondent carefully reviewed it. He noted that it did prohibit acceptance of cash in excess of $7,500 for non-retainer purposes and that this did not comply with the understanding of his telephone discussion with Ms. Ciolfitto. Despite this, the Respondent made a decision that instead of relying upon his own understanding of the text, he would rely upon his understanding of his discussion with Ms. Ciolfitto: his receipt of the large cash amount was " only" an exception to the Trust Accounting Rules that must eventually be reported to the Law Society and noted as an exception on his trust report. He asserted that his understanding at the time was that it was not a breach of the Rules for which he could be disciplined.

[10] The Respondent admitted that he did not follow up with Ms. Ciolfitto when, upon reading the actual " No Cash Rule" , it did not accord with his understanding arising from his discussion with her.

[11] Once he had accepted the initial cash, but not deposited it, given that Ms. Ciolfitto did not specifically direct him to return it to the Client, the Respondent testified that he made an " administrative decision" , which consisted of an assessment of the relative risks of the consequences of depositing the cash in comparison to the inconvenience to his Client and to himself that would flow from returning the cash to his Client. He decided to deposit it and risk the consequences.

[12] The Respondent went on to testify that his understanding of an accounting exception is that it constitutes a " sloppy but not substantive error" . He has reported trust shortages to the Law Society Trust Accounting Department in the past and, in his experience, they constituted accounting exceptions that did not attract disciplinary consequences.

[13] As noted, on April 10, 2006, Ms. Ciolfitto did not request that the Respondent make any written report of his receipt of the offending cash. The Respondent pointed out that, despite that, he did so voluntarily by way of letter to the Law Society on August 4, 2006 (the " August 4 Report"). He took this step because it was his practice and obligation to report accounting exceptions himself rather than " wait for the authorities to do it." He was of the view that the receipt of the large cash amounts in April and June, 2006 needed to be reported, but not at any particular time, and chose August 4, 2006 to make his report out of a sense of moral obligation and not because he was under a legal obligation to do so at any particular time.

[14] The Respondent admitted that the information reported to the Law Society in the August 4 Report and the initial months of the ensuing investigation was incorrect in two respects:

(a) the August 4, 2006 Report set out that he had accepted two amounts of cash in violation of the "

No Cash Rule" when, in fact, he had accepted a total of four offending amounts of cash on two separate days; and

(b) despite advising the Law Society that he had given his Client a receipt for the first amount of cash received, he has no copy of the receipt and is no longer certain if he provided a receipt.

[15] The Respondent's explanation for the inaccuracies in his August 4 Report was that he made it without checking his trust records, as he was still acting from the point of view that he was only reporting an accounting exception and not a matter of particular disciplinary significance. He admitted that it was not until January 29, 2007, after two follow-up letters of enquiry from the Law Society, that he provided full particulars of the cash actually received by him in April and June 2006, and the relevant trust accounting records.

[16] The Respondent testified to the particular way in which he utilized the cash once it was deposited into his trust account. Save for a minor amount reserved for the Respondent's fees, the cash was all disbursed in various ways prohibited by 3-51.1(1), that is, to others for purposes primarily related to reimbursement of expenses of the Client and others and the purchase of securities, business assets or entities.

[17] The Respondent's practice primarily consists of corporate-commercial and real estate solicitor's work. He also represents clients who run trust brokerage accounts, which, like cash, are subject to specific trust reporting rules. He testified that this was the only instance in his entire practice when he has been asked to accept a large cash sum from a client.

[18] The Respondent testified that he makes a serious effort to stay fully advised of his obligations to the Law Society. When the Federal Government's money-laundering legislation came into effect, prior to the Law Society's enactment of the " No Cash Rule" , he paid particular attention to it as he knew it would be of direct concern to his clients. However, in his view, the " No Cash Rule" did not affect his clients to the same degree and, therefore, he made a decision not to study it in any detail and decided, instead, to rely upon the Law Society to direct him should the situation arise where he was being requested to accept a significant cash amount. From this " plan" arose the Respondent's call to the Law Society's Trust Accounting Department on April 10, 2006 when he found himself in possession of the cash.

[19] The Respondent understands that the " No Cash Rule" constituted a proactive effort by the Law Society to ensure that its members were not subject to the Federal money-laundering legislation and that the Law Society wanted to ensure that members, in accepting funds in trust, know the identity of the parties making a deposit, the source of the funds, the nature of the transaction, and that there would be no problems in fulfilling their trust accounting obligations. He took all of these considerations into account in his decision about how to conduct himself in these circumstances.

[20] Despite his admission of professional misconduct, the Respondent expressed his view that it was of vital importance for the Law Society to review its practices and staff training in order to ensure that members calling for advice receive full information regarding their obligations and the possible disciplinary consequences of violation of the " No Cash Rule" .

Submissions of the Law Society

[21] The Law Society drew the attention of the Panel to the fact that, on 12 occasions between April 2004 and April 2006, the Law Society issued publications to draw members' attention to the " No Cash Rule" , its purpose, amendment and the fact that a breach could attract disciplinary sanctions. The texts of all 12 publications were provided for the Panel's review.

[22] In the first publication, the purpose of the Rule was set out in the following 2004 quotation from then President William Everett, QC:

> These new rules will ensure that BC lawyers are not involved in transactions that the federal government has identified as a concern in the fight against money laundering. ... With the new rules, lawyers will be prevented from unwittingly advancing criminal schemes. These rules, along with longstanding Law Society rules prohibiting lawyers from engaging in illegal activity, **and a strong, independent Law Society discipline process** will ensure that BC lawyers are taking proactive steps to stop money laundering. (emphasis added)

[23] Approximately four months later, in the September-October edition of the *Benchers' Bulletin* there was a further article on the " No Cash Rule" , which included the following statement:

> You should be aware that the Law Society intends that there will be serious consequences for any lawyer who does not comply with the cash transaction prohibition.

[24] In the April-May 2005 edition of the *Benchers' Bulletin* the important public interests which underlie Rule 3-51.1 were addressed:

> The public interest, the primary motivation of everything that we do as a law society, must suggest that the reporting provisions of the money laundering and terrorist financing legislation is unacceptably intrusive when it comes to solicitor-client privilege and confidentiality. Yet the government has not abandoned its approach to the legislation, insisting that the evils of illegal international currency movement justify the intrusion.
>
> There are, in fact, other ways to tackle the threat of money laundering. In 2004, the Benchers passed a rule that has become a model for most of the law societies in Canada. Known as the " no-cash rule" , it prohibits members of the law society from receiving for any purpose, other than retainers or bail, cash in excess of $10,000. This restriction can be monitored by the Law Society directly through its regulatory control of lawyers. **In this way, we are demonstrating to the federal government and the public that the legal profession in Canada will not be an inadvertent participant in the money laundering game**. (emphasis added)

[25] The Law Society submitted that, by virtue of these 12 publications, by 2006 when the Respondent accepted these four prohibited amounts of cash, every member ought to have been aware of the existence of the " No Cash Rule" . Further, they demonstrate the importance to the profession of the Rule in protecting solicitor-client privilege and confidentiality as well as the confidence of the Federal Government and the public in the integrity of the profession.

[26] It should also be noted that the purpose and effect of Rule 3-51.1 are to prevent money laundering in the simplest way possible - " If cash cannot be accepted, it cannot be laundered." The rule is a financial transaction rule, not a money laundering rule. It is objective and simple, and does not call for any application of judgment or due diligence as to the purpose or intentions of the person tendering the prohibited cash to the lawyer.

Legal Principles and Reasoning

[27] As a result of this being the first citation to be heard under this Rule, there are no precedents to be considered by the Panel in its assessment of whether the facts established support a finding of professional misconduct within the meaning of the *Legal Profession Act*, s. 38(4)(a) and (b):

38(4) After a hearing, a panel must do one of the following:

(a) dismiss the citation;

(b) determine that the respondent has committed one or more of the following:

(i) professional misconduct;

(ii) conduct unbecoming a lawyer;

(iii) a breach of this Act or the rules;

(iv) incompetent performance of duties undertaken in the capacity of a lawyer;

(v) if the respondent is not a member, conduct that would, if the respondent were a member, constitute professional misconduct, conduct unbecoming a lawyer, or a breach of this Act or the rules;

[28] In these circumstances, the two applicable options under s. 38(4)(b) are professional misconduct under subsection (i) or a breach of the Rules under subsection (iii).

[29] Notwithstanding the admission of the Respondent to the charge of professional misconduct, the onus rests upon the Law Society to satisfy this Panel that indeed his actions constitute professional misconduct or a breach of the Rules.

[30] In either event, the standard of proof that must be met by the Law Society to establish its charge is also set out in *Law Society of BC v. Martin*, 2005 LSBC 16 at paragraph [137] where it is observed:

The Panel instructs itself as follows:

(a) The onus of proof throughout these proceedings rests on the Law Society to prove the facts necessary to support a finding of professional misconduct.

(b) The standard of proof is higher than the balance of probabilities but less than reasonable doubt. The standard is a civil standard but rises in direct proportion to the gravity of the allegation and the seriousness of the consequences.

[31] This Panel is satisfied that the breach of the " No Cash Rule" was established by the evidence. The key issue is whether or not the evidence supports the Law Society's contention that the Respondent's conduct goes beyond that and constitutes professional misconduct.

[32] A breach of the Rules does not, in itself, constitute professional misconduct. A breach of the *Act* or the Rules that constitutes a " Rules breach" , rather than professional misconduct, is one where the conduct, while not resulting in any loss to a client or done with any dishonest intent, is not an insignificant breach of the Rules and arises from the respondent paying little attention to the administrative side of practice (*Law Society of BC v. Smith*, 2004 LSBC 29).

[33] The fact that there are no precedents for a finding that a breach of the " No Cash Rule" constitutes professional misconduct does not restrict this Panel. Such a finding can be made in a wide variety of circumstances. Whether conduct deserves discipline is a factual question to be decided by the member's

professional peers. " What may, in each particular circumstance, constitute professional misconduct ought not to be unduly restricted." *Stevens v. Law Society (Upper Canada)* (1979), 55.O.R. (2d) 405 (Div. Ct.) at 410.

[34] It is no longer a requirement that the conduct proven be disgraceful in itself or dishonourable. The overall test for professional misconduct is set out in *Martin* (*supra*) at para. [171] where the Panel reviewed the law and concluded that the test for misconduct is " whether the facts, as made out, disclose a marked departure from that conduct the Law Society expects of its members; if so, it is professional misconduct."

[35] In determining whether a particular set of facts constitutes professional misconduct or, alternatively, a breach of the *Act* or the Rules, panels must give weight to a number of factors, including the gravity of the misconduct, its duration, the number of breaches, the presence or absence of *mala fides*, and the harm caused by the respondent's conduct.

[36] In this instance, the Respondent was sufficiently aware of the existence of the " No Cash Rule" to contact the Law Society to make enquiries immediately after receiving the first amount of cash on April 10, 2006 from his client.

[37] After having his attention drawn to the text of the " No Cash Rule" and his subsequent reading of it, the Respondent made a conscious decision not to abide by the clear wording of the Rule. The Statement of Agreed Facts establishes that the deposit of the two offending amounts of cash was made by the Respondent only 52 minutes after Ms. Ciolfitto emailed the Rule to him. As he put it, he made a risk assessment and concluded that he could live with the risks of the breach of the Rule. He did not follow up with questions of Ms. Ciolfitto or any other party to clarify his understanding of the Rule.

[38] Further, on June 5**,** 2006, the Respondent accepted two additional amounts of cash in excess of the Rule's limits. In his August 4 Report, he failed to report the full extent of the June 5 cash, only finally admitting to it on January 29, 2007, after several enquiries by the Law Society.

[39] The Respondent did not take any steps to clarify his understanding of the Rule in the following months, until he learned that the Law Society Professional Conduct Department's investigation into this matter was underway.

[40] Taken as a whole, this Panel finds that the Respondent was not frank in his dealings with the Law Society in several respects: with Ms. Ciolfitto in the telephone call made on April 10, 2006 regarding the extent of the cash received; in his replies to the follow-up enquiries made by her; in his August 4 Report; and in the ensuing months of the Law Society's investigation. It is not necessary for us to decide whether the Respondent's lack of candour represents a deliberate effort to hide the extent of the cash received or gross negligence in his handling of his professional obligations.

[41] The fact that the Respondent was not fully aware of the extent of the potential consequences of a breach of the " No Cash Rule" is an insufficient excuse for its violation. Certain Law Society Rules have primarily an administrative intent, but the " No Cash Rule" is not one of these. This Rule has at its heart the mandate of the Law Society to regulate the practice of law in the public interest. By its clear prohibition, it strives to protect members from being drawn into acting as the willing or inadvertent dupes of the unscrupulous and the dishonest. The Respondent was knowledgeable about the Rule, its importance to the Law Society and to the public, and yet chose to ignore it, despite his awareness of its importance to the regulation of the legal profession.

[42] In considering the criteria that distinguish a Rules breach from professional misconduct, this Panel takes into account that the conduct for which the Respondent has been cited is serious: there were four separate breaches of the " No Cash Rule" persisting over a period of nine months from the initial

acceptance of cash to the point of full disclosure to the Law Society, and this Panel is not satisfied that the breach was unintentional or purely administrative in nature.

[43] The Panel accepts that the Respondent may not have been fully briefed by the Trust Assurance Department representative as to all of the steps that he must take under the circumstances and the possible consequences of a breach of the " No Cash Rule" . However, ultimately, it is the Respondent's responsibility to inform himself regarding the Rules. It is not lost upon the Panel that the Respondent now accepts this responsibility.

[44] Taken as a whole, this Panel finds that the Respondent's conduct constitutes a marked departure from the conduct that the Law Society expects from its members. While taken in its best light, it may fall somewhat short of being described as disgraceful or dishonourable, the Respondent's actions fall well short of the frank, conscientious and honourable conduct that is expected of members of the Law Society who have been accorded the privileges of practice.

Conclusion

[45] In light of the foregoing findings, this Panel accepts the Respondent's admission of professional misconduct arising from his violation of Rule 3-51.1 and, accordingly, determines under section 38(4) of the *Legal Profession Act* that the Respondent has committed professional misconduct.