

Admission to Discipline Committee

JOHN TAYLOR MARTIN

AGREED STATEMENT OF FACTS

1. John Taylor Martin was called to the Bar of British Columbia on May 10, 1977.
2. Craig Kiyokata Iwata was called to the Bar of British Columbia on July 10, 1980.

Background

3. From about 1995 to 2003, Mr. Martin and Mr. Iwata were partners in the firm of Martin & Associates, (the "Firm") located in Vancouver. The Firm is a law corporation. In about 2000, the Firm took on a third partner, Paul Fang.
4. As of May 2003, Martin & Associates employed two other lawyers:
 - a) Ralph Yetman; and
 - b) Bryce Cox.
5. Only Messrs. Martin, Iwata and Yetman had signing authority on the Firm's trust accounts.
6. Only Messrs. Martin and Iwata had signing authority on the Firm's general accounts.
7. Following the filing of the Firm's Form 47 Accountant's Report for 2002, correspondence was exchanged between the Law Society of British Columbia (the "Law Society") and Messrs. Martin and Iwata regarding trust exceptions.
8. On September 22, 2003, the Chair of the Discipline Committee of the Law Society ordered an investigation be made of "the books, records and accounts" of Messrs. Martin and Iwata and the firm Martin & Associates and Martin & Associates Law Corporation pursuant to Rule 4-43 of the Law Society Rules."
9. Mr. William Kinsey, C.A., was retained by the Law Society to conduct the investigation. On Thursday, September 25, 2003, Mr. Kinsey attended the offices of the Firm and commenced the investigation.
10. On Monday, September 29, 2003, Messrs. Martin and Iwata, through their counsel, advised the Law Society that:
 - (a) On numerous occasions in 2002 and 2003, Messrs. Martin and Iwata transferred funds from trust to general as follows:
 - (i) In the morning, Messrs. Martin and Iwata transferred funds from one of the Firm's trust accounts to its general account; and
 - (ii) Later in the day, Messrs. Martin and Iwata would return funds to the trust account by a cheque drawn on the general account, sometimes in combination with fee receipts.
 - (b) These transfers took place on seventeen occasions between 2002 and March of 2003, and then daily from some point in March 2003 to May 9, 2003 and then ceased. The reason for the transfers

was to reduce the Firm's exposure on its line of credit with its bank so that the bank would not call its line of credit.

11. On October 2, 2003, the Chair of the Discipline Committee of the Law Society directed the issuance of a citation to Messrs. Martin and Iwata. The Discipline Committee referred the matter to three Benchers pursuant to s. 39 of the *Legal Profession Act* and Rule 4-17 of the Law Society Rules.

12. On October 15, 2003, Mr. Martin resigned his membership in the Law Society.

13. On October 15, 2003, Mr. Iwata provided an undertaking to refrain from engaging in the practice of law pending disposition of the citation.

14. In light of the resignation of Mr. Martin and the undertaking of Mr. Iwata, the panel of three Benchers constituted pursuant to s. 39 of the *Legal Profession Act* did not impose additional conditions to protect the public.

15. In October 2003, with the consent of Messrs. Martin and Iwata, a custodian was appointed by Order of the British Columbia Supreme Court.

16. Mr. Kinsey issued a report on his investigation under Rule 4-43 on November 24, 2003 (the "Kinsey Report")

Citation, Paragraphs 1 to 3

17. The citation was issued on December 9, 2003.

18. The affidavit of service upon Mr. Martin, was sworn by Michelle Robertson on December 18, 2003.

19. The letter acknowledging service of the citation on Mr. Iwata was received.

20. The Kinsey Report shows, and Messrs. Martin and Iwata admit that, between September 2001 and May 2003, on numerous occasions, Messrs. Martin and Iwata withdrew or caused the withdrawal of funds from one of the Firm's trust accounts by way of a cheque or an electronic transfer, when they knew that the funds were not the property of the Firm and were being held in trust for the Firm's clients.

21. More specifically, between September 2001 and February 2003, on 16 occasions Messrs. Martin and Iwata caused funds to be withdrawn by cheque or transferred electronically from the Firm's trust account at (Bank One) to be deposited to the Firm's general account with that bank. Furthermore, between March 2003 and May 2003, on 31 occasions, Messrs. Martin and Iwata caused funds to be withdrawn by cheque from the Firm's trust account at the (Bank Two) to be deposited to the Firm's general account at that bank.

22. On each of the occasions, between September 2001 and May 2003, after the funds were taken from trust, later in the same day or on the following day, Mr. Martin or Mr. Iwata caused a cheque to be written on the Firm's general account in an amount sufficient to replenish the account and deposited the cheque to the Firm's trust account in order to repay the funds previously taken.

23. The particulars of the withdrawals, transfers and repayments are set out in Appendix D to the Kinsey Report. In summary, the amounts involved grew from \$1,000 per occurrence to in excess of \$100,000 per occurrence.

24. Messrs. Martin and Iwata acknowledge that each of the withdrawals of funds from the Firm's trust account created a trust shortage and constituted misappropriation.

25. The 16 withdrawals and transfers from the trust account at the (Bank One), referred to in paragraph 21

above, were made to ensure that sufficient funds were on deposit in the Firm's general account to cover certain cheques. The Firm had no overdraft facility with the (Bank One).

26. At the (Bank Two), the Firm's general account operated as a line of credit. The allowable maximum indebtedness on the line of credit increased from time to time. Between March and May of 2003, the maximum allowable overdraft was \$265,000. During this time, the Firm's indebtedness on its line of credit was close to or exceeded this limit.

27. At all material times, it was the practice at the (Bank Two) that the account manager would check the indebtedness on the Firm's line of credit and a decision was to be made each day by 11:00 a.m. as to whether the overdraft was within acceptable limits. If the overdraft was not within acceptable limits, then:

- a) no further cheques would be permitted to be covered by the overdraft, and/or;
- b) the (Bank Two) would require immediate repayment of the line of credit.

The practice of the (Bank Two) was known to Messrs. Martin and Iwata, so they instituted a procedure described as follows at paragraphs 28 to 34.

28. Early each day, the Firm staff accountant determined whether an amount was required in order to bring the overdraft within acceptable limits in time for the 11:00 a.m. decision. A cheque was then prepared by his staff, drawn on the trust account and made payable to the general account in the necessary amount. The cheque, in part, reflected trust withdrawals permitted by Rule 3-56, for example, for payment of fees. The balance of the cheque represented a withdrawal which was not permitted by Rule 3-56, and was an unauthorized withdrawal of client funds. Funds were withdrawn from trust by way of a cheque signed either by Mr. Martin or Mr. Iwata. Each acted with full knowledge of, and in agreement with, the other's actions.

29. The cheque was then presented at the (branch address) of the (Bank Two) for deposit to the Firm's general account. The Firm's accounts were actually held at the branch of the (Bank Two) located at (branch address), Port Coquitlam.

30. On the deposit slip accompanying the cheque and in the Firm's accounting system, the unauthorized portion of the withdrawals was recorded in "Account 91000 - Missing Deposit Info."

31. The amount recorded to Account 91000 was the amount of the shortage in the trust account, and the amount of the funds misappropriated from clients.

32. Upon deposit to the general account, the portion of the cheque representing the unauthorized withdrawal of client funds was credited to "Account 5828 Disbursements - Miscellaneous."

33. Later in the day or on the following day, a cheque was prepared on the general account, payable to the trust account in the amount required to repay the trust shortage, that is, the amount in Account 91000. This cheque was charged against Account 5828. When deposited to the trust account, the funds received were credited to Account 91000.

34. The process was repeated daily as necessary.

35. The clients' funds utilized in the unauthorized withdrawals from trust, while in the Firm's general account, were at all times at risk of being removed by the (Bank Two) in repayment of the Firm's debt on its line of credit.

36. No client of the Firm lost any money as a result of the unauthorized withdrawals from trust.

37. The reason for the transfers of funds was to reduce the Firm's indebtedness on its line of credit, in order

to induce the (Bank Two) to continue to extend or to refrain from making demand on the Firm's credit facilities.

38. The transfers were intended to, and did, induce the Firm's Bank to continue to extend credit to or refrain from making demand on the Firm's credit facilities.

39. During the period when Messrs. Martin and Iwata were making unauthorized transfers from the Firm's (Bank Two) trust account, the manager of customer service at the (branch address) of the (Bank Two) noticed the peculiar pattern to the Firm's deposits to the trust and general account and notified the manager at the (Bank Two) branch in Port Coquitlam. The account manager then contacted Mr. Martin who informed the account manager that the Firm's procedure amounted to taking a short term advance against fees and was a "grey area" under the Law Society Rules. Later, as the size of the individual transfers became larger, the manager of customer service at the (Bank Two) branch again contacted the account manager. The account manager then contacted the Firm and asked that the practice cease. After May 9, 2003, no further transfers from the trust account to the general account took place.

40. The (Bank Two) did not at any material time make demand upon the line of credit or decline to honour any of the Firm's cheques. The (Bank Two) expressed concern to Messrs. Martin and Iwata as to the need to reduce the indebtedness on the line of credit. Overall the account manager was of the view the line was adequately secured by other assets.

41. Mr. Martin admits that his conduct in withdrawing funds from the Firm's trust account when he knew that the funds were not the property of the Firm and were being held in trust for the Firm's clients constituted misappropriation and that he thereby committed professional misconduct.

42. Mr. Martin admits that his conduct as above described in paragraph 41 violated Rule 3-56 of the Law Society Rules.

43. Mr. Martin admits that, in making the transfers as above described, in order to temporarily reduce the Firm's line of credit and to induce the Firm's bank to continue to extend credit or refrain from making demand on the Firm's line of credit, he committed professional misconduct.

Citation, Paragraph 4

44. Mr. Martin admits that on 26 occasions he failed to immediately eliminate trust shortages contrary to Rule 3-66(1) of the Law Society Rules. Mr. Martin admits that on 17 occasions he failed to immediately report trust shortages over \$2,500 contrary to Rule 3-66(2) of the Law Society Rules. Particulars of the relevant shortages are set out in Appendix A to this Agreed Statement of Facts. Mr. Martin was away from Vancouver on business from time to time and did not have personal knowledge of all the trust shortages listed in Appendix A to this Agreed Statement of Facts. However, he acknowledges his personal responsibility to ensure compliance with the Law Society Rules.

Appendix A to the Agreed Statement of Facts

1. On or about April 14, 1999, Martin & Associates (the "Firm") closed a conveyancing transaction for file number 7498 (client initials P.L.). The Firm's fees and disbursements in the amount of \$1,077.60 were posted and paid out from trust on April 14, 1999. Furthermore, the conveyance was structured such that the Firm would make a payment to (Title Search Company) in order for (Title Search Company) to pay the property transfer tax. The lawyer responsible for file number 7498 was originally Mr. Yetman. Subsequently, at the time of the transfer of title, and contrary to the terms of the real estate transaction, the Firm made only a partial payment to (Title Search Company) as the Firm held a running account with (Title Search

Company). Therefore, \$1,797.60 remained in the Firm pooled trust account at the (Bank One) to the credit of file number 7498. Mr. Yetman does not know which person gave the following instructions in regards to this file: on June 9, 1999, the Firm posted its account for fees and disbursements in the amount of \$1,077.60 for a second time. Thereafter, \$720.00 remained in the trust account. On February 8, 2000, the remaining \$720 was taken by the Firm. On August 1, 2000, \$1,000 was paid from the trust account, to the credit of file 7498, to (Title Search Company) which created a deficiency in the trust account in the amount of \$1,000. This amount remained outstanding until January 21, 2002 at which time the Firm transferred funds into trust. The Firm did not report a trust shortage to the Law Society of British Columbia (the "Law Society") in regards to client 7498.

2. On or about September 8, 2000, the Firm completed a conveyancing transaction on file number 8638 (client initials R.C.). The responsible lawyer was Mr. Yetman. On the closing, \$147.89 remained in trust. These funds were then taken by the Firm in payment of an account and the trust account was balanced in regards to this file. On November 14, 2000, the Firm again transferred \$147.89 for its own use therefore creating a trust shortage in the amount of \$147.89. This amount remained outstanding until October 9, 2001 at which time the Firm transferred funds into trust. The Firm did not report a trust shortage to the Law Society in regards to client 8638.

3. Starting from at least month-end for January 2001, the Firm pooled trust account held at the (Bank One) for file number 1966 (client initials O.W.S.) was short by \$8,095.16. The shortage amount fell to \$5,595.16 in April 2001 and was reduced to \$560.97 in May 2001. In June 2001 the trust shortage increased to \$9,998.12 and this amount remained outstanding until June 19, 2002 at which time the Firm transferred funds into trust. The lawyer responsible for file number 1966 was Mr. Fang. The Firm did not report a trust shortage to the Law Society in regards to file number 1966.

4. Starting from at least month-end for January 2001, the Firm pooled trust account held at the (Bank One) for file number 2941 (client initials V.L.) was short by \$1,990. This amount remained outstanding until February 11, 2002 at which time the Firm transferred funds into trust. The lawyer responsible for file number 2941 was Mr. Martin. The Firm did not report a trust shortage to the Law Society in regards to file number 2941.

5. Starting from at least month-end for January 2001, the Firm pooled trust account held at the (Bank One) for file number 6308 (client initials B.I.) was short by \$2,312.50. This amount remained outstanding until March 5, 2002 at which time the Firm transferred funds into trust. The lawyer responsible for file number 6308 was Mr. Martin. At material times there were trust overages in other Firm files for the same client in the following amounts:

- (a) \$307 as of month-end for January 2001,
- (b) \$1,312 as of month-end for February 2001,
- (c) \$307 as of month-end for March 2001; and,
- (d) \$6.50 as of month-end for September 2001,

but these amounts did not offset the trust shortage. The Firm did not report a trust shortage to the Law Society in regards to client 6308.

6. Starting from at least month-end for January 2001, the Firm pooled trust account held at the (Bank One) for file number 6328 (client initials B.I.K.) was short by \$100. This amount remained outstanding until October 12, 2001 at which time the Firm transferred funds into trust. The lawyer responsible for file number

6328 was Mr. Martin. The Firm did not report a trust shortage to the Law Society in regards to client 6328.

7. Starting from at least month-end for January 2001, the Firm pooled trust account held at the (Bank One) for file number 7649 (client initials O.W.U.S.) was short by \$1,500. This amount remained outstanding until January 24, 2002 at which time the Firm transferred funds into trust. The lawyer responsible for file number 7649 was Mr. Martin. The Firm did not report a trust shortage to the Law Society in regards to client 7649.

8. Starting from at least month-end for January 2001, the Firm pooled trust account held at the (Bank One) for file number 7858 (client initials D.K.C.) was short by \$2,000. This amount remained outstanding until February 6, 2002 at which time the Firm transferred funds into trust. The lawyer responsible for file number 7858 was Mr. Martin. The Firm did not report a trust shortage to the Law Society in regards to client 7858.

9. Starting from at least month-end for January 2001, the Firm pooled trust account held at the (Bank One) for file number 8112 (client initials R.F.) was short by \$1,138.58. This amount remained outstanding until January 17, 2002 at which time the Firm transferred funds into trust. The lawyer responsible for file number 8112 was Mr. Fang. The Firm did not report a trust shortage to the Law Society in regards to client 8112.

10. Starting from January 9, 2001, the Firm U.S. Dollar pooled trust account held at the (Bank One) for file number 9004 (client initials S.T.) was short by \$30 (U.S.). This amount remained outstanding until October 9, 2001 at which time the Firm transferred funds into trust. The lawyer responsible for file number 9004 was Mr. Fang. The Firm did not report a trust shortage to the Law Society in regards to client 9004.

11. Starting from at least month-end for January 2001, the Firm (SEDAR) pooled trust account held at the (Bank One) for file number 91192 (client initials A.V.I.) was short by \$1,065.15. This amount remained outstanding until November 20, 2001 at which time funds were transferred into trust. The lawyer responsible for file number 91192 was Mr. Martin. The Firm did not report a trust shortage to the Law Society in regards to client 91192.

12. By letter dated August 8, 2001, Mr. Iwata, for the Firm, reported that a trust exception occurred on March 7, 2001 in regards to file number 4644-384. The shortage had been discovered by the Firm on May 7, 2001. Mr. Iwata explained that a client cheque was returned as being Non-Sufficient Funds ("NSF"). Mr. Iwata wrote that, "A deposit has been made to correct the deficiency" although he did not state the date on which the correction was made or the lawyer responsible.

13. As of October 22, 2001, the Firm pooled trust account held at the (Bank One) for file number 9880 (client initials R.S.) was short by \$5,000. This amount remained outstanding until November 21, 2001 at which time the Firm transferred funds into trust. The lawyer responsible for file number 9880 was Mr. Martin. The Firm did not report a trust shortage to the Law Society in regards to client 9880.

14. On October 31, 2001 the Firm filed its Accountant's Report - Form 47 (the "2001 Form 47") for the fiscal year ending July 31, 2001. In a letter dated October 26, 2001 attached to the 2001 Form 47, the auditor, Mr. R. W., CA, of the accounting firm (firm) listed at paragraph 5 various trust shortages not eliminated and not reported to the Law Society.

15. On November 30, 2001, Mr. George Robertson, Trust Accountant at the Law Society, wrote to the Firm concerning the 2001 Form 47. Mr. Robertson informed the Firm of the requirements of Law Society Rules 3-66(1) and (2) to "immediately" eliminate any trust shortage and "immediately" report any trust shortage over \$2,500.

16. As of January 4, 2002, the Firm pooled trust account held at the (Bank One) for file number 9095 (client initials I.D.) was short by \$6,500. By letter dated February 21, 2002, Mr. Iwata, for the Firm, reported this trust exception and explained that a client cheque was returned as NSF. Mr. Iwata wrote that, "a deposit has

been made to correct the deficiency" although he did not state the date on which the trust shortage was discovered, when the correction was made, or the lawyer responsible. The firm accounting records show that the amount of \$6,500 remained outstanding until February 15, 2002 and the lawyer responsible for file number 9095 was Mr. Martin.

17. On March 8, 2002, Mr. Iwata, for the Firm, reported that a trust exception occurred in relation to file number 9868 on October 30, 2001. Mr. Iwata explained that a cheque in the amount of \$5,000 deposited to the Firm's account at the (Bank One) came back as NSF. Mr. Iwata wrote that, "The bank was not overdrawn, only the client's position." Mr. Iwata's report that the bank was "not overdrawn" was false. When funds were drawn from trust against a cheque which was later returned as NSF, the Firm created a trust shortage. Mr. Iwata also wrote that, "A deposit has been made to correct the deficiency" although he did not state the date on which the notice of the NSF cheque was received by the Firm, when the correction was made, or the lawyer responsible.

18. On March 11, 2002, Mr. Iwata, for the Firm, reported that a trust exception occurred in relation to file number 8872 on September 11, 2000. Mr. Iwata explained that a cheque in the amount of \$3,000 deposited to the Firm's account at the (Bank One) came back as NSF. Mr. Iwata erroneously reported that, "The bank was not overdrawn, only the client's position." Mr. Iwata also wrote that, "A deposit has been made to correct the deficiency" although he did not state the date on which the notice of the NSF cheque was received by the Firm, when the correction was made, or the lawyer responsible. The accounting records of the Firm show that the Firm pooled trust account held at the (Bank One) for file number 8872 (client initials T.M.Y.) was short from at least month-end for January 31, 2001 until the Firm transferred funds in the amount of \$3,000 into trust by way of two instalments each for \$1,500 on March 8, 2002 and March 12, 2002. The lawyer responsible for file number 8872 was Mr. Iwata.

19. On March 12, 2002, Mr. Iwata, for the Firm, reported that a trust exception occurred in relation to file number 7552 on January 3, 2002. Mr. Iwata explained that a cheque in the amount of \$6,500 deposited to the Firm's account at the (Bank One) came back as NSF. Mr. Iwata again wrote that, "The bank was not overdrawn, only the client's position." Mr. Iwata also wrote that, "A deposit has been made to correct the deficiency" although he did not state the date on which the notice of the NSF cheque was received by the Firm, when the correction was made, or the lawyer responsible. The Firm accounting records for file number 7552 (client initials F.J.) show that from at least month-end for January 2001, the Firm pooled trust account held at the (Bank One) for was short by \$217.50. In September 2001 the trust shortage increased to \$2,917.50. It appears that the Firm attempted to correct the overdraft in October 2001 but did so incorrectly. The trust shortage increased in October 2001 to \$6,667.50. As of November 9, 2001, the trust shortage stood at \$6,232.50. As reported by Mr. Iwata, a client cheque in the amount of \$6,500 was received on January 3, 2002. On January 4, 2002 the Firm had notice that the cheque was not honoured and reversed the cheque from the trust accounting records. Therefore, the amount of \$6,232.50 continued to be outstanding until March 12, 2002 at which time the Firm transferred funds into trust. The lawyer responsible for file number 7552 was Mr. Martin.

20. In response to Mr. Iwata's letters to the Law Society of March 8, 2002 and March 11, 2002, on March 26, 2002, Roma Carroll, Trust Accountant at the Law Society, wrote to Mr. Iwata and again informed the Firm of the need to "immediately" report any trust exceptions over \$2,500 pursuant to Law Society Rule 3-66(2).

21. On March 28, 2002, Mr. Iwata, for the Firm, reported that trust exceptions occurred in relation to file number 1301 on January 3, 2002 and January 9, 2002. Mr. Iwata explained that two client cheques, each in the amount of \$5,000 deposited to the Firm's account at the (Bank One) came back as NSF. Again Mr. Iwata wrote that, "The bank was not overdrawn, only the client's position." Mr. Iwata also wrote that, "A

deposit in the amount of \$10,000 from the client has been made to correct the deficiency" although he did not state the date when the shortage was discovered, when the correction was made, or the lawyer responsible. The Firm's accounting records show that the Firm pooled trust account held at the (Bank One) for file number 1301 (client initials T.K.) was short by \$10,000 from January 9, 2002, the date on which the Firm reversed the two NSF cheques from the Firm's trust accounting records. This amount remained outstanding until March 28, 2002 at which time funds were transferred into trust from a company, the initials of which are R.R. The lawyer responsible for file number 1301 was Mr. Martin.

22. On May 31, 2002, Mr. Iwata, for the Firm, reported that a trust shortage occurred on April 30, 2002. Mr. Iwata stated that a cheque deposited to the (Bank One) for client 9738 in the amount of \$5,000 came back as NSF. Mr. Iwata wrote, "The bank was not overdrawn, only the client's position. A deposit from the company's general account has been made to correct the deficiency." The Firm failed to report when the trust shortage was discovered, when it was eliminated and the lawyer responsible.

23. By letter dated September 4, 2002, Mr. Iwata, for the Firm, reported that an exception occurred on August 30, 2002 in regards to file number 10836. Mr. Iwata explained that a cheque in the amount of \$214,543 was deposited directly into the Firm's (Bank Two) trust account and a draft in the amount of \$102,045.86 was deposited into the Firm's (Bank One) trust account. In error, the Firm's bookkeeper transferred the funds from the (Bank Two) account to the (Bank One) but wrote all the disbursement cheques from the (Bank Two) account. Mr. Iwata wrote that, "a deposit has been made to correct the deficiency" although he did not state the date on which the correction was made or the lawyer responsible. Mr. Iwata ended his letter with the sentence, "The bank was not overdrawn, only the client's position." Mr. Iwata's claim that the bank was "not overdrawn" was erroneous. The error of the Firm constituted a trust shortage.

24. As of September 30, 2002, the Firm U.S. Dollar pooled trust account held at the (Bank Two) for file number 8673 (client initials M.I.) was short by \$7,500. This amount remained outstanding until November 20, 2002 at which time the Firm transferred funds into trust. The lawyer responsible for file number 8673 was Mr. Martin. The Firm did not report a trust shortage to the Law Society in regards to client 8673.

25. By letter dated October 16, 2002, Mr. Iwata, for the Firm, reported that a trust shortage occurred on October 1, 2002 in regards to file number 10898. Mr. Iwata explained that cheque in the amount of \$158,662.59 was deposited directly into the Firm's (Trust Company). Also, a cheque in the amount of \$984,000 along with a transfer from another file in the amount of \$156,696.15 was deposited into the Firm's (Bank One) trust account. Again, Mr. Iwata wrote that the shortage had occurred due to an error by the Firm's bookkeeper as the bookkeeper wrote all the disbursement cheques from the Firm's trust account at the (Bank One). Mr. Iwata wrote that, "a deposit has been made to correct the deficiency" although he did not state the date on which the correction was made or the lawyer responsible. Mr. Iwata ended his letter with the sentence, "The bank was not overdrawn, only the client's position." Claiming that the bank was "not overdrawn" was erroneous. The error of the Firm constituted a trust shortage.

26. On October 30, 2002, R.W. prepared for the Firm an Accountant's Report - Form 47 for the fiscal year ending July 31, 2002 and enclosed a letter dated October 28, 2002 detailing 12 different types of trust exceptions (the "2002 Form 47"). In regards to trust shortages Mr. W. wrote:

(a) At paragraph 4, "Overdraft balances on individual clients' trust ledgers are not being promptly corrected." Mr. W. then listed various trust shortages over \$2,500 during the 2002 fiscal year which were not reported to the Law Society and were not immediately corrected.

(b) At paragraph 7, "Six separate letters to the Law Society reporting client trust shortages greater

than \$2,500 incorrectly stated that "the bank was not overdrawn, only the client's position". Pooled trust accounts were overdrawn on September 28-29 by \$42,506.14; September 30 by \$2,499.07; October 30 by \$1,105.11; May 2 by \$13,082.11; May 9 by \$67,598.59; May 21 by \$1,568.02; May 27-28 by \$3,428.61.

27. Also on October 30, 2002, the Firm provided the 2002 Form 47 to the Law Society along with a cover letter from Mr. Iwata. Mr. Iwata did not address any of the trust exceptions noted by the auditor rather Mr. Iwata explained that, *inter alia*, the Firm had hired Mr. A.W., C.M.A., M.B.A., in September 2002 to oversee financial transactions.

28. On November 14, 2002, Mr. Iwata, for the Firm, sent three letters to the Law Society concerning three different trust exceptions. The following is the complete text of one of the letters:

An exception occurred on October 1, 2002. A cheque, which was deposited to the (Bank One) Trust account for client 9738 in the amount of \$10,000.00 came back as Non-Sufficient Fund. The bank was not overdrawn, only the client's position. A deposit has been made to accept the deficiency. Mr. Iwata failed to state when the trust shortage was discovered and when it was eliminated. Again, Mr. Iwata wrote the erroneous statement that, "The bank was not overdrawn, only the client's position."

29. On November 21, 2002, Mr. Iwata, for the Firm, reported that a trust shortage occurred on September 30, 2002. Mr. Iwata stated that a cheque deposited to an (Bank Two) account for client 8673 in the amount of \$7,500 came back as NSF. Mr. Iwata wrote, "The bank was not overdrawn, only the client's position. A deposit was made to correct the deficiency." The Firm failed to report when the trust shortage was discovered and when it was eliminated.

30. On December 20, 2002, as a result of the exceptions disclosed in the 2002 Form 47, Mr. George Robertson of the Law Society made a written enquiry of Messrs. Iwata and Martin in regards to various trust accounting issues.

31. On December 31, 2002, Mr. Iwata, on behalf of the Firm, sent three letters to the Law Society regarding three trust exceptions, two of which were reported to have occurred on October 30, 2002. In each of the three letters Mr. Iwata failed to report when the trust shortages were eliminated and erroneously reported that, "The bank was not overdrawn, only the client's position."

32. By letter dated January 23, 2003, Mr. W responded for the Firm to the concerns raised by Mr. Robertson in Mr. Robertson's letter of December 20, 2002.

33. By letter dated January 29, 2003, Mr. Iwata, for the Firm, reported that a trust shortage occurred on November 21, 2002. Mr. Iwata explained that a cheque was deposited to the (Bank Two) for client 9738 in the amount of \$10,000 which came back as NSF. Mr. Iwata wrote that, "A deposit from our firm's general account has been made to correct the deficiency" although Mr. Iwata failed to report when the trust shortage was detected and when it was eliminated. Rather, Mr. Iwata wrote the following:

As indicated in our response of January 23, 2003 to Mr. George Robertson concerning our form 47, our bookkeeper was of the misunderstanding that exceptions of this nature were to be reported when corrected. As we are now aware that exceptions of this nature are to be reported and corrected immediately, we confirm that any future exceptions of this nature will be reported & corrected immediately upon discovery.

34. By letter dated April 30, 2003, Mr. Iwata reported, for the Firm, that on January 3, 2003, the (Bank Two) incorrectly posted a cheque in the amount of \$12,725.94 on deposit for client 11217 to the Firm's general account. Mr. Iwata wrote:

We had correctly posted the deposit to our client's trust account. It was not until we completed our bank reconciliation that this error was brought to our attention.

We have corrected the error on both bank accounts.

In this letter of April 30, 2003, Mr. Iwata did not specify when the trust shortage was discovered, when it was eliminated, or the lawyer responsible.

35. By letter dated May 15, 2003, Roma Carroll of the Law Society wrote to Mr. Iwata concerning his letter of April 30, 2003 and requested that copies of both the trust and the general bank statements be provided to the Law Society for the entire period of the particular trust shortage reported on April 30, 2003.

36. On May 21, 2003, Mr. Iwata, for the Firm, reported a trust shortage that occurred on March 24, 2003 for client 11591. Mr. Iwata explained that a cheque in the amount of \$3,000 came back as NSF and reported that, "a deposit has been made to correct the deficiency." Mr. Iwata failed to report when the trust shortage was discovered and when it was eliminated.

37. On June 2, 2003, Mr. Iwata, on behalf of the Firm, wrote to the Law Society and provided the banking documents requested in Ms. Carroll's letter of May 15, 2003 concerning the trust shortage of \$12,725.94 which had occurred on January 3, 2003 but was reported on April 30, 2003. Mr. Iwata wrote that the error was discovered "in our month end reconciliation" although he failed to specify when the January 2003 month-end reconciliation was completed. Mr. Iwata provided copies of the Firm banking records which show that the trust shortage of January 3, 2003 was not corrected by the Firm until April 2003 when the Firm returned the funds to trust by way of four instalments paid on the following dates in the following amounts:

- (a) April 14, 2003 - \$3,000
- (b) April 22, 2003 - \$3,000
- (c) April 25, 2003 - \$3,300
- (d) April 29, 2003 - \$3,425.94

Therefore, the Firm waited until it had repaid the trust shortage, by way of instalments, before reporting the shortage to the Law Society on April 30, 2003, contrary to the Law Society Rules and Mr. Iwata's representation in his letter of January 29, 2003 that, "we confirm that any future exceptions of this nature will be reported & corrected immediately upon discovery."

38. On June 4, 2003, Mr. Iwata met with Roma Carroll to explain, *inter alia*, the numerous overdrafts to the Firm's trust accounts. At this meeting, Mr. Iwata confirmed the information contained in his letter to the Law Society of June 2, 2003 that the amount of \$12,725.94 deposited into the Firm's general account rather than the Firm's trust account in January 2003 was not corrected or reported until April 2003.

39. On June 17, 2003, Mr. Caldwell, Staff Lawyer at the Law Society, wrote to Mr. Iwata and informed him that the Law Society Professional Conduct Department had opened a file and began an investigation into the series of trust shortages at the Firm. Mr. Caldwell also posed numerous questions to Mr. Iwata in this letter of June 17, 2003.

40. On July 8, 2003, Messrs. Martin and Iwata responded in writing to Mr. Caldwell's letter of June 17, 2003:

(a) At page 4, in the fourth full paragraph, the Firm reported, for the first time, a trust shortage which occurred when a cheque in the amount of \$3,500 was returned as NSF on April 15, 2003 for client number 11591. The Firm did not rectify the shortage until June 12, 2003.

(b) At page 5, at paragraph 2(c), the Firm provided further details on the trust shortage which had previously been reported by the Firm on January 29, 2003. In Mr. Iwata's letter of January 29, 2003, Mr. Iwata had not provided information as to when the trust shortage had been detected and eliminated. Here, Messrs. Martin and Iwata explained that, "The error of November 21, 2002 in the amount of \$10,000 was rectified in the following amounts and on the following dates.

\$2,000 - January 7, 2003

\$6,000 - January 24, 2003

\$2,000 - January 29, 2003."

Further at page 5, also at paragraph 2(c), the Firm clarified its previous trust shortage report of May 21, 2003. In regards to this particular shortage, Messrs. Martin and Iwata wrote, "The error of March 20, 2003 [March 24, 2003?] in the amount of \$3,000 was rectified on May 21, 2003."

41. The Firm trust listing for September 2003 shows that as of August 26, 2003, the Firm pooled trust account held at the (Bank One) for file number 12268 (client initials V. & L. N.) was short by \$1,543.13. This shortage arose because the Firm's legal account was posted and paid from trust on August 26, 2003, one day prior to the receipt of partial funds to process the conveyance. The conveyance then completed. On October 6, 2003, the sum of \$152.90 was returned to the client. However, also on October 6, 2003, the Firm posted its account in the amount of \$1,543.13 for the second time and transferred funds to the Firm general account at the (Bank One). Later on the same day, the shortage was rectified by the transfer of funds from the Firm.

42. By a letter dated October 1, 2003, Mr. Iwata, for the Firm, reported an exception that occurred on June 17, 2003 in a conveyancing file. The explanation for the exception was that the bookkeeper of the Firm prepared a computer-generated cheque for \$156,656.88 but the cheque was improperly printed. As a result, the bookkeeper wrote the cheque by hand and inadvertently read the incorrect figure of \$615,521.05 from the trust ledger and wrote a cheque in that amount. Mr. Iwata explained that upon discovery of the error, the vendor returned the excess funds of \$458,864.17 on June 23, 2003. A cheque was then written in this amount from (Trust Company) and was deposited to the Firm's (Bank One) trust account to rectify the trust shortage. Mr. Iwata explained that a letter reporting the trust exception to the Law Society was prepared by the Firm's bookkeeper on June 23, 2003 for execution by Mr. Iwata but the letter was "misplaced" and not brought to Mr. Iwata's attention until the last week of September 2003.

43. On October 2, 2003, the Chair of the Discipline Committee of the Law Society directed the issuance of a citation to Messrs. Martin and Iwata.