2003 LSBC 35
Report issued: November 4, 2003
Oral Reasons: September 17, 2003
Citations issued: July 12, 2002
February 4, 2003 and
February 4, 2003

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

MILAN MATT UZELAC

Respondent

Decision of the Hearing Panel on Facts and Verdict

Hearing date: September 16th and 17th, 2003

Panel: Patricia Schmit, Q.C., Chair, James Vilvang, Q.C.
Gerald Lecovin, Q.C.

Counsel for the Law Society: Todd Follett
Counsel for the Respondent: Peter Leask, Q.C.

Background

[1] On July 12, 2002 a citation was issued against the Respondent pursuant to the *Legal Profession Act* and Rule 4-15 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.

[2] On February 4, 2003, two further citations were issued against the Respondent pursuant to the *Legal Profession Act* and Rule 4-15 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.

[3] Counsel agreed to consolidate the three citations by incorporating the Schedules of the two citations issued February 4, 2003 in the Schedule of the July 12, 2002 citation, disclosing six counts. The consolidated citation was marked as Exhibit 2 and reads as follows:

> 1. Your conduct in that you failed to comply with the provisions set out in Division 7 of Part 3 of the *Law Society Rules* and in particular, you failed to:
>
> (a) maintain sufficient funds in your trust account to meet your obligations from February 22, 2001 to January 23, 2002, contrary to Rule 3-55;
>
> (b) maintain required books, records and accounts, contrary to Rule 3-59(1);
>
> (c) maintain trust cash book, client trust ledgers, records showing transfers between clients' trust ledgers, copies of bank validated deposit slips, and all supporting documents and vouchers from November 1, 2000 to March 18, 2002, contrary to Rule 3-60;
>
> (d) maintain general cash book, accounts receivable ledger, copies of all bank validated deposit

slips, and all supporting documents and vouchers, contrary to Rule 3-61(1);

(e) keep a billing file contrary to Rule 3-62(1);

(f) record trust transactions within 7 days and record general transactions within 30 days since February 1, 2001, contrary to Rule 3-63(1)(a)(b);

(g) eliminate a trust shortage immediately upon discovery in relation to the Ferjuc Estate, contrary to Rule 3-66(1); and

(h) produce files, vouchers, records, accounts, books as required for the purpose of the audit under Rule 3-79(2).

2. Your breach of conditions placed on your practice in May, 2002 by three Benchers hearing an application under s. 39 of the *Legal Profession Act*. In particular, you breached the following conditions in the Order dated May 13, 2002:

1) the Respondent will implement and operate a general and trust account record keeping system (such as the PC Law which he currently has) by July 2, 2002;

2) To the extent that the Respondent is now in compliance with the accounting Rules, he will maintain such records to the standard they have now attained.

3) The Respondent will provide to the Law Society or its designate, on a monthly basis:

i) trust account reconciliations and statements; and

ii) copies of billings and general account statements.

3. That you wrote trust cheques dated May 4, 2002 and May 6, 2002 payable to Check Station, attended personally at the premises of Check Station in New Westminster, cashed these cheques, and then paid the cash received to a person or persons. By so doing, you removed funds from your trust account in such a way that the recipient of the funds could not be ascertained from the trust cheques.

4. That, having paid trust funds in early May, 2002 to a person or persons by way of cashing trust cheques made out to Check Station and paying over the cash received, you did not record the name of the recipient of the money out of trust in a trust cash book or synoptic journal until approximately July, 2002, contrary to Rule 3-60(a)(v).

5. That, having paid funds in early May, 2002 to a person or persons by way of cashing trust cheques made out to Check Station and paying over the cash received, you did not record these trust transactions within seven days, contrary to Rule 3-63(1)(a).

6. That, judgments having been taken out against you by Springhill Enterprises Ltd., dba Check Station, Lebarn Investments Inc., and The Bank of Nova Scotia, which you did not satisfy within seven days of entry, you failed to advise the Executive Director of the circumstances of the judgments and your proposals for satisfying these judgments contrary to Rule 3-44(1).

[4] The Respondent acknowledged proper service of the citations pursuant to Rule 4-15 of the Law Society Rules.

Agreed Statement of Facts

[5] An Agreed Statement of Facts was filed as Exhibit 3 in these proceedings. It provides as follows:

[5] An Agreed Statement of Facts was filed as Exhibit 3 in these proceedings. It provides as follows:

1. Mr. Milan Uzelac became a member of the Law Society of British Columbia in 1975. He operated a sole practice in Vancouver from 1975 to December 2, 2002.

2. On December 2, 2002, Mr. Uzelac gave an undertaking not to practice law commencing on that date until relieved of this undertaking by any three benchers.

3. Mr. Uzelac's practice has been continued since the date of his undertaking by Mir I. Huculak, a member.

4. On July 12, 2001, Mr. Uzelac wrote a letter to the Law Society of British Columbia advising that an ex-employee had stolen $30,000.00 from his trust account.

5. In response to this letter, Ms. Mereigh of the Law Society staff wrote a letter to Mr. Uzelac dated July 23, 2001. This letter drew Mr. Uzelac's attention to his obligation to immediately eliminate any trust shortage, and requested confirmation that the trust shortage had been eliminated.

6. On October 29, 2001, Mr. Caldwell of the Law Society staff wrote to Mr. Uzelac summarizing the matter to date, and requesting further information, particularly concerning whether the trust shortage had been eliminated.

7. On November 4, 2001, Mr. Uzelac faxed a reply to Mr. Caldwell. In it, Mr. Uzelac advised that the funds wrongfully taken from trust by his ex-employee had not yet been replaced as " the member has not been able to raise the funds to date."

8. On December 10, 2001, an order was made under Rule 3-79 by the Executive Director authorizing an investigation of the books, records and accounts of Mr. Uzelac. Mr. Terrillon of Law Society staff, a certified General Accountant, was designated to perform this investigation.

9. Mr. Terrillon's qualifications to give expert evidence on the degree and quality of compliance with the requirements of the *Law Society Rules*, Division 7 are admitted.

10. On December 14, 2001, Mr. Uzelac sent a letter to the Law Society in reply to correspondence from Mr. Caldwell regarding elimination of the trust shortage. In this letter Mr. Uzelac indicated he anticipated eliminating the trust shortage within the month.

11. On January 2, 2002, Mr. Uzelac sent a letter indicating the circumstances that gave rise to the $30,000.00 shortfall in his trust account.

12. On January 23, 2002, Mr. Uzelac deposited the sum of $30,000.00 to his Royal Bank Trust Account with the intention of replacing the $30,000.00 stolen from his trust account to the credit of the Ferjuc Estate by his ex-employee.

13. Mr. Terrillon issued an Interim Audit Report dated March 18, 2002, regarding his investigation of the books, records and accounts of Mr. Uzelac's practice.

14. Mr. Terrillon performed a further review of Mr. Uzelac's practice and issued an update of his Interim Audit in the form of a memorandum to counsel dated May 2, 2002.

15. Mr. Terrillon determined that the theft of $30,000.00 from trust funds held by Mr. Uzelac to the credit of the Ferjuc Estate occurred on February 22, 2001. This trust shortage was not eliminated until January 23, 2002. Although the elimination of the trust shortage was recorded on the deposit slip, it was not recorded on the client ledger card until April 11, 2002.

16. Mr. Uzelac admits that he did not maintain sufficient funds in his trust account to meet his obligations from February 22, 2001 to January 23, 2002, contrary to Rule 3-55, and that he did not eliminate the trust shortage in relation to the Ferjuc Estate immediately upon discovery, contrary to Rule 3-66(1).

17. Mr. Terrillon determined that Mr. Uzelac did not record all funds received and disbursed in connection with this law practice by maintaining the books, records and accounts required under Division 7 of the Law Society Rules, contrary to Rule 3-59(1). Mr. Uzelac admits this.

18. Mr. Terrillon determined that Mr. Uzelac did not maintain trust cash books, client trust ledgers, records showing transfers between clients, trust ledgers and all supporting documents from November 1, 2000 to March 18, 2002, contrary to Rule 3-60. Mr. Uzelac admits this.

19. Mr. Terrillon determined that Mr. Uzelac did not maintain a general cash book, accounts receivable ledger or other suitable system, copies of all bank validated deposit slips, and all supporting documents and vouchers, from November 1, 2000 to May 2, 2002, contrary to Rule 3-62. Mr. Uzelac admits this.

20. Mr. Terrillon determined that Mr. Uzelac did not keep a billing file for the period of November 1, 2000 to May 2, 2002, contrary to Rule 3-62. Mr. Uzelac admits this.

21. Mr. Terrillon determined that Mr. Uzelac had not been recording trust transactions within seven days from November 1, 2000 to March 18, 2002, contrary to Rule 3-63(1)(a). Mr. Uzelac admits this.

22. Mr. Terrillon determined that Mr. Uzelac had not been recording general transactions within 30 days from November 1, 2000 to May 2, 2002, contrary to Rule 3-63(1)(b). Mr. Uzelac admits this.

23. Mr. Uzelac did not immediately produce pooled trust account cancelled cheques, bank reconciliations, completed ledger cards, general bank account records, and trust liability reconciliations to Mr. Terrillon in order that he could perform his investigation, as required by Rule 3-79(2).

24. On April 26, 2002, three benchers convened to hear an application by the Law Society under Section 39 of the *Legal Profession Act* that Mr. Uzelac be suspended from practice or have conditions imposed upon his practice pending the hearing of the citation. This application was adjourned to May 3, 2002 at the request of then counsel for Mr. Uzelac.

25. On May 3, 2002, the application before the three benchers was reconvened, and on May 13, 2002, the three benchers issued a Decision regarding the Law Society's application.

26. As part of this Decision, the three benchers ordered as follows:

> " The panel is satisfied on the evidence, that the suspension of the Respondent from practice is not required in the public interest, or for the protection of his clients, pending the hearing of the Citation which has been authorized. He must, however, comply with the following conditions:
>
> a) The Respondent's general account records will be brought up to a standard acceptable to Mr. Terrillon by May 21, 2002;
>
> b) The Respondent will implement and operate a general and trust account record keeping system (such as the PC Law which he currently has) by July 2, 2002;
>
> c) To the extent that the Respondent is now in compliance with the accounting Rules, he will maintain such records to the standard they have now attained;
>
> d) The Respondent will provide to the Law Society or its designate, on a monthly basis

i) trust account reconciliations and statements; and

ii) copies of billings and general account statements."

27. On May 21, 2002, Mr. Terrillon attended at the office of Mr. Uzelac to determine if he was in compliance with the Decision of May 13, 2002. Mr. Terrillon determined that Mr. Uzelac's general account records had been brought up to a standard acceptable to him.

28. On November 1, 2002, Mr. Terrillon wrote to Mr. Uzelac regarding provision of evidence of compliance with the other requirements of the Decision of May 13, 2002.

29. On November 1, 2002, Mr. Terrillon attended at Mr. Uzelac's office and spoke to Mr. Uzelac. He asked Mr. Uzelac if he had complied with paragraph 21, items b, c and d of the Decision of May 13, 2002. Mr. Uzelac's answer to Mr. Terrillon was " In a word no."

30. On July 16, 2002, an Order for summary judgment in the amount of $98,901.14 plus interest and costs was entered against Mr. Uzelac in an action brought by Springhill Enterprises Ltd. dba Check Station in an action brought in the Vancouver Registry of the Supreme Court of British Columbia.

31. Mr. Uzelac did not satisfy the Order referred to in clause 30 within seven days of entry, and did not notify the Executive Director in writing of the circumstances of the judgment and his proposal for satisfying it immediately or at all. Mr. Uzelac admits this is a contravention of Rule 3-44.

32. On July 29, 2002, a Judgment in the amount of $40,000.00 plus costs was entered against Mr. Uzelac in an action brought by LeBarn Investments Inc., in the Vancouver Registry of the Supreme Court of British Columbia.

33. Mr. Uzelac did not satisfy the Judgment referred to in clause 32 within seven days of entry, and did not notify the Executive Director in writing of the circumstances of the judgment and his proposal for satisfying it immediately or at all. Mr. Uzelac admits this is a contravention of Rule 3-44.

34. On October 28, 2002, a Judgment in the amount of $9,995.46 plus interest and costs was entered against Mr. Uzelac in an action brought by the Bank of Nova Scotia in the Vancouver Registry of the Supreme Court of British Columbia.

35. Mr. Uzelac did not satisfy the judgment referred to in clause 34 within seven days of entry, and did not notify the Executive Director in writing of the circumstances of the judgment and his proposal for satisfying it immediately or at all. Mr. Uzelac admits this is a contravention of Rule 3-44.

36. C& M Financial inquired with Mr. Uzelac concerning entering into a business arrangement with Mr. Uzelac.

37. Mr. Uzelac subsequently entered into a business arrangement with C& M Financial. In a letter dated April 12, 2002, C& M Financial advised Mr. Uzelac that " the proceeds of a completed commercial project" would be forwarded to him in trust.

38. There was a copy of an unsigned form of fee agreement between Mr. Uzelac and C& M Financial. This Agreement indicates that " where effort is expended by the Law Firm for the presentation of a project, a non refundable fee of Twenty Thousand Dollars ($20,000.00)" was payable.

39. In a letter dated April 29, 2002, Mr. Uzelac delivered to a representative of C& M Financial a proposal for a business project.

40. In a letter dated May 1, 2002, Mr. Uzelac delivered to a representative of C& M Financial a copy of

a proposal for a business project.

41. On Friday, May 3, 2002, Mr. Uzelac was notified by bank staff while attending at the Royal Bank branch where he maintained his trust account that a " funds transfer" had been deposited into his trust account in the amount of $5,389,657.22. This transfer of funds was sent to Mr. Uzelac's branch of the Royal Bank via an internal Royal Bank delivery system.

42. On May 3, 2002, Mr. Uzelac disbursed the sum of $70,900.00 from his trust account to various payees by way of eight trust cheques and one money order. Mr. Uzelac indicates this was done on the instructions of his client, C& M Financial. These disbursements from trust included a cheque in the amount of $27,500.00 to Anthony Robinson.

43. The disbursement of funds from trust on May 3, 2002 also included a cheque to Milan Uzelac Law Office in the amount of $20,000.00 for fees and disbursements.

44. On Monday, May 6, 2002, Mr. Uzelac purchased four money orders with funds from his trust account in the total amount of $5,144,757.02. Mr. Uzelac indicates these money orders were purchased on the instructions of his client, C& M Financial, to use in paying funds out of his trust account as directed by his client.

45. On May 4, 2002, Mr. Uzelac arranged with Springhill Enterprises Ltd. dba Check Station, to purchase currency in the amount of $71,500.00 at the Check Station location in New Westminster. Springhill Enterprises Ltd. dba Check Station is a company engaged in the business of cashing cheques, normally for a fee of three percent of the face amount of the cashed cheque.

46. The arrangement was that the cheque for $71,500.00 was to be cashed in exchange for the sum of $30,000.00 US Dollars and $20,000.00 Canadian Dollars.

47. On May 4, 2002, Mr. Uzelac attended at the business premises of Check Station in New Westminster. Mr. Uzelac tendered to Check Station a trust cheque in the amount of $71,500.00. In exchange for this cheque, Mr. Uzelac received the sum of $20,000.00 cash and was to receive the sum of $30,000.00 US Dollars cash on May 6, 2002.

48. On May 6, 2002, Mr. Uzelac attended again at the offices of Check Station in New Westminster. At this time, Mr. Uzelac received the sum of $30,000.00 US Dollars as the remaining proceeds of his cashing of the trust cheque of May 4, 2002 to Check Station.

49. During his May 6, 2002 attendance at Check Station in New Westminster, Mr. Uzelac also tendered for cashing an additional trust cheque in the amount of $50,000.00.

50. As Check Station did not have sufficient funds on hand to cash the $50,000.00 trust cheque, staff at Check Station arranged to pick up the funds at a branch of the HSBC bank in Vancouver.

51. Mr. Uzelac met an employee of Check Station at this branch of the HSBC later on May 6, 2002, and received the sum of $50,000.00 cash.

52. For its services, in cashing the trust cheques of May 4, 2002 and May 6, 2002, Check Station charged a service fee of $2.000.00 together with a mark up of $2,456.00 on the exchange rate for the $30,000.00 US Dollars, for a total profit of $4,456.00.

53. Mr. Uzelac indicates that he delivered all funds he received in cash from Check Station on May 4, 2002 and May 6, 2002 to Mr. Anthony Robinson of C& M Financial on the instructions of Mr. Robinson.

54. On May 28, 2002, Mr. Uzelac spoke to Rosanne Terhart, Chartered Accountant, then a member of

the staff of the Law Society. Mr. Uzelac indicated that as of May 28, 2002 he had not recorded the name of the recipient of the cash received from Check Station when the trust cheques of May 4, 2002 and May 6, 2002 were cashed.

55. On May 7, 2002, Mr. Uzelac was advised by staff of the Royal Bank of Canada that the $5,389,657.22 instrument deposited into his trust account was suspected by the Bank to be fraudulent.

56. On May 8, 2002, staff of the Royal Bank of Canada definitely ascertained that the $5,389,657.22 instrument deposited to Mr. Uzelac's trust account was fraudulent. The Bank faxed Mr. Uzelac to this effect and demanded the return of all bank drafts purchased from these funds.

57. The Royal Bank of Canada refused to honour Mr. Uzelac's May 4, 2002 and May 6, 2002 trust cheques to Check Station and informed staff at Check Station, New Westminster of this on May 10, 2002.

58. On May 10, 2002, staff of Check Station, New Westminster, advised Mr. Uzelac that the Royal Bank had refused to honour the trust cheques to it of May 4, 2002 and May 6, 2002, and demanded repayment of the funds paid to Mr. Uzelac in cashing those cheques.

59. On May 10, 2002, Mr. Uzelac had delivered to Check Station, New Westminster, a cheque to him from RBC Dominion Securities endorsed to Check Station in the amount of $22,598.86. This was sent in partial repayment of the funds paid to him by Check Station.

60. Prior to May 4, 2002, Mr. Uzelac had acted as counsel for Springhill Enterprises Ltd. dba Check Station on some matters.

[6] The Law Society's case was comprised completely of Exhibit 2, the amended citation and Exhibit 3, the Agreed Statement of Facts and documents attached.

[7] The Respondent gave evidence and was subject to cross examination. No other evidence was heard.

[8] The Panel instructs itself that the onus at all times rests on the Law Society to prove that the conduct described in Exhibit 2 reaches the level sufficient to that required to show professional misconduct. The standard which must be found to support a finding of professional misconduct is described in Re: Hops, a decision on Review heard January 11, 2000. That is that the standard of proof, though remaining a civil standard, is a high standard, more than a mere balance of probabilities, but not beyond a reasonable doubt. It must be shown by a fair and reasonable preponderance of the evidence that the facts disclosed by the evidence would reasonably be regarded by the Benchers as disgraceful or dishonourable (Pierce v. The Law Society of British Columbia 1993, 10 D.L.R. (4th) 233).

The Evidence

[9] The Respondent is a sole practitioner, called in 1975. He has practiced mostly as a sole practitioner; although from time to time he has practiced in association with other members.

[10] In the fall of 2000, the Respondent gave his bookkeeper, Ms. M notice of termination. The Respondent did not replace her.

[11] From the time the bookkeeper left his employment, the Respondent's books, including his trust accounting records, were not maintained adequately. As far back at November 2000, the Respondent had demonstrated poor bookkeeping practices. Being heavily involved in his litigation practice, the Respondent permitted his former bookkeeper, Ms. M, to handle her own purchase of her home in February, 2001. Unbeknownst to the Respondent, the bookkeeper took funds from an interest bearing trust account and

applied the funds towards the purchase of her home. Due to the completely inadequate state of the Respondent's accounting records, the theft was not discovered by the Respondent until July, 2001, and then only because of the request for funds made by the proper recipient of the trust funds.

[12] At that point the Respondent reported the theft and trust shortage to the Law Society. This triggered an audit which was followed by a Hearing pursuant to Section 39 on April 26 th and May 3rd, 2002.

[13] As a result of the Hearing, the Respondent was permitted to continue practicing on conditions.

[14] During the winter and spring of 2002, the Respondent had met Mr. R in a social setting. Mr. R presented himself as an investor looking to invest a large amount of money in a suitable business opportunity that might be suggested by the Respondent. Mr. R suggested that he might require the Respondent's services.

[15] The Respondent forwarded two business proposals to Mr. R in the spring of 2002. The Respondent testified that at that point, he believed that much of what Mr. R said was puffery. On the very day that the Section 39 Hearing concluded, the Respondent received notice via telephone from his Royal Bank that 5.2 million dollars had been deposited to his trust account by way of transfer from another Royal Bank Branch.

[16] The Respondent immediately contacted Mr. R to inform him of this, and the two met that day.

[17] Mr. R gave the Respondent instructions to incorporate several companies to pay out some of the trust monies by way of bank drafts and cheques to several parties in a total amount of approximately $120,000, and most significantly, to provide Mr. R with cash of $20,000 Canadian and $30,000 U.S. currency.

[18] Having neglected to give instructions to the Royal Bank on Friday, May 3, 2002, regarding withdrawal of cash for Mr. R, the Respondent contacted Check Station. Check Station was a former client of the Respondent.

[19] The Respondent wrote a trust cheque drawn from the trust funds made payable to Check Station. The Respondent attended at Check Station with the trust cheque in the amount of $71,500. He received the cash in the amount of $20,000 Canadian on Saturday.

[20] The Respondent returned to Check Station on May 6, 2002, to pick up $30,000 U.S., being a portion of the proceeds from the trust cheque tendered on Saturday, May 4, 2002.

[21] The balance of the funds of $4,456 went to Check Station for their commission.

[22] Also on May 6, 2002, the Respondent tendered a second trust cheque drawn on the trust funds made payable to Check Station for $50,000 and again obtained cash. The Respondent stated that he gave all the cash to Mr. R.

[23] On May 7, 2002, the Royal Bank advised the Respondent that the approximate 5.2 million dollars deposited to his trust account was suspected to be fraudulent. As a result, the Royal Bank refused to honour the Respondent's May 4 th and 6th trust cheques, including those to Check Station.

[24] Since that time, the Respondent has been unable to locate Mr. R, who has disappeared.

[25] As a result of the Royal Bank's actions in dishonouring the trust cheques written by the Respondent, certain payees have obtained judgments against him in amounts totalling approximately $140,000, which the Respondent failed to report to the Executive Director of the Law Society within seven days of entering as set out in Rule 3-44.

Analysis

[26] With respect to counts 1, 2, 4 and 5, the Panel views this conduct as part of a continuing course of action evidencing a complete neglect of the Respondent's obligations to maintain trust records. Individually taken, breaches of Accounting Rules might not be regarded as professional misconduct. However, the case before us, taken as a whole, satisfies this Panel that the Respondent professionally misconducted himself regarding these counts.

[27] The Respondent neglected to keep adequate books for a period from February, 2001 to at least December 2002, at which time he gave an undertaking not to practice law.

[28] On April 26th and May 3rd, 2002, the Respondent appeared before a Panel pursuant to Section 39 of the *Legal Profession Act* and was permitted to continue practicing on the condition that he rectify his accounting practices. He failed to do so.

[29] These failures were not inadvertent or transient. The Respondent demonstrated, for over one year, a complete disregard for the Accounting Rules. The Respondent's failure is even more egregious in light of the fact that he suffered a theft in February, 2001, that he did not discover until July of 2001. Compliance with the Accounting Rules are required of members in order to protect the public.

[30] By July, 2001, the Respondent was alive to the danger inherent in failing to keep such records. Nevertheless, he failed to remedy the situation.

[31] The question posed by Mr. Leask is this; would the Respondent's conduct, viewed by his peers of good repute and competence, be found to be deserving of censure and sanction? The Respondent has admitted the conduct alleged constitutes breach of the Rules. The question is, do these breaches amount to professional misconduct.

[32] Pursuant to Section 38 of the *Legal Profession Act* the Panel has open to it a number of alternatives including a finding of breach of the *Act* or Rules, and/or professional misconduct. The Respondent has admitted he breached the Accounting Rules, behaviour worthy of sanction by the Panel which occurred in the context of a member functioning as a lawyer in practice.

[33] In these circumstances, the Panel finds that the conduct described and admitted to in counts 1, 2, 4, and 5, when considered as a whole, constitutes professional misconduct.

[34] Because counts 4 and 5 refer to specific acts described generally in counts 1 and 2, we decline to record separate findings of professional misconduct on counts 4 and 5.

[35] Regarding count 3, Rule 3-56(2) provides a lawyer who makes or authorizes the withdrawal of funds from a pooled or separate trust account must withdraw the funds with a cheque marked trust, not make the cheque payable to cash or bearer, and insure that the cheque is signed by a practicing lawyer. The effect of those Rules is twofold; one, to create a paper trail that would reduce the opportunities for a lawyer to commit theft, and two, to protect a lawyer from a client who might falsely accuse the lawyer of not delivering the cash.

[36] Although counsel for the Law Society acknowledged that the Respondent's conduct did not amount to a breach of Rule 3-56(2), there is no question that the Respondent's actions breached the spirit of the Rule. The question before the Panel is did this constitute professional misconduct? The Panel believes that the Respondent was duped by an unscrupulous client, but that he should have realized that writing cheques to Check Station in this manner was a foolish thing to do. The Panel recommends that consideration be given to amending Rule 3-56(2) to specifically prohibit transactions of this sort.

[37] Nevertheless, we are not convinced that the Respondent's actions, as described in count 3 and admitted, were dishonourable or disgraceful, and we are accordingly not satisfied that they constitute

professional misconduct. This finding should not in any way be construed as approving of the practice of giving trust cheques to cheque cashing facilities and providing cash to clients. The practice is risky, is to be discouraged, and may, in other circumstances, constitute professional misconduct.

[38] With respect to count 6 of Exhibit 2, the Respondent has admitted a failure to report judgments and that this is a breach of the Rules. In all of the circumstances of this case, we do not find that this behaviour amounts to professional misconduct.