2013 LSBC 34
Decision issued: December 11, 2013

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

**Applicant 6**

Applicant

# Decision of the Hearing Panel on Application for Reinstatement

Hearing date: July 8, 9 and 10, 2013
Panel: Maria Morellato, QC, Chair, Lois Serwa, Public representative, Donald Silversides, QC, Lawyer

Counsel for the Law Society: Jean Whittow, QC
Appearing on his own behalf: Applicant 6

## BACKGROUND

[1] The Applicant was called to the bar and admitted as a member of the Law Society on January 9, 1986 and continued to practise law in British Columbia until December 31, 1998 when he elected not to pay the fee required to renew his membership. Early in 1999, the Applicant and his spouse emigrated from Canada to Spain where they lived briefly until they moved to France where the Applicant took up residence and worked in the real estate industry until he returned to Canada in October 2010.

[2] The Applicant obtained a licence to sell real estate in British Columbia on December 14, 2010 and was engaged in selling real estate until he ceased to be licensed on March 21, 2012. On July 25, 2012, he became employed as a taxi driver and was still employed as a taxi driver when this hearing was held. The Applicant is currently 62 years old.

[3] On January 12, 2012, the Applicant applied to be reinstated as a member of the Law Society. His application was referred to the Credentials Committee and, pursuant to Rule 2-50(3)(c), the Committee ordered that a hearing be held to determine whether the Applicant meets the criteria for admission under section 19(1) of the *Legal Profession Act* (the "Act").

[4] In a letter to the Applicant dated January 24, 2013, counsel for the Law Society notified him that the circumstances to be inquired into at the hearing were the following:

> (a) your departure from practice and from Canada, including your failure to terminate your practice in accordance with Law Society requirements when you ceased membership on December 31, 1998;
>
> (b) your history with the Law Society, including past complaints, reports/claims to the Lawyers Insurance Fund and accounting filings [sic]; and
>
> (c) your conduct subsequent to your termination of membership with the Law Society, including

your financial difficulties, default on the debt to the [Bank], and the subsequent bankruptcy.

## RELEVANT LEGISLATION AND RULES

[5] The criteria for reinstatement and how the Benchers of the Law Society must deal with the application are set out in subsections 19(1) and (2) of the Act, as follows:

> 19(1) No person may be enrolled as an articled student, called and admitted or reinstated as a member unless the benchers are satisfied that the person is of good character and repute and is fit to become a barrister and a solicitor of the Supreme Court.
>
> (2) On receiving an application for enrollment, call and admission or reinstatement, the benchers may
>
> > (a) grant the application,
> >
> > (b) grant the application subject to any conditions or limitations to which the applicant consents in writing, or
> >
> > (c) order a hearing.

[6] The Panel's obligation in conducting a credentials hearing are set out in subsections 22(1) and (3) of the Act, which provide:

> 22(1) This section applies to a hearing ordered under section 19(2)(c).
>
> …
>
> (3) Following a hearing, the panel must do one of the following:
>
> > (a) grant the application;
> >
> > (b) grant the application subject to conditions or limitations that the panel considers appropriate;
> >
> > (c) reject the application.

[7] The onus and burden of proof at the credentials hearing are set out in Rule 2-67(1), which provides:

> 2-67(1) At a hearing under this Division, the onus is on the applicant to satisfy the panel on the balance of probabilities that the applicant has met the requirements of section 19(1) of the Act and this Division.

## ISSUES

[8] The Law Society stated the issues to be considered in this hearing as follows:

> (a) The Applicant's departure from practice and from Canada, including his failure to terminate his practice in accordance with Law Society requirements when he ceased members hip on December 31, 1998;
>
> (b) The Applicant's history with the Law Society, including past complaints and reports/claims to the Lawyers Insurance Fund;
>
> (c) The Applicant's financial difficulties, including his handling of his indebtedness to the [Bank] at the time of his departure and later.

## EVIDENCE AND FACTS

[9] At the hearing, both the Applicant and a former client Ms. A testified. The Applicant also entered several letters of reference as exhibits as well as three pages of typewritten notes made by an investigator for the Law Society setting out the results of his telephone calls to some of the persons who authored the letters of reference.

[10] The Law Society filed an Agreed Statement of Facts, agreed to by the Applicant and the Law Society, along with two volumes of documents as exhibits.

[11] The Applicant commenced his practice of law in British Columbia when he opened an office on West Hastings Street in Vancouver on February 1, 1986. He continued to practise in Vancouver at that location and, later, at an office on Nelson Street until he ceased to be a member approximately 13 years later on December 31, 1998. Although both the Applicant and the Law Society described his practice as that of a sole practitioner, he employed two articled students during that period of time and, for several years, employed another lawyer Ms. B as an associate.

[12] When he ceased to be a member of the Law Society, the Applicant was carrying on the practice of law through his personal law corporation [name], Barrister and Solicitor, Personal Law Corporation (“A Corporation”). A Corporation was dissolved and ceased to exist as a corporate entity on September 28, 2001.

[13] In 1992, the Applicant purchased a condominium located on Chilco Street in Vancouver (“Chilco Property”). The Applicant financed his acquisition of the Chilco Property by obtaining a loan (“Chilco Loan”) from a chartered bank (“the Bank”), which was secured by a mortgage registered as a first charge against the Chilco Property that secured the principal amount of $545,300 plus interest (“Chilco First Mortgage”).

[14] A Corporation borrowed monies from the Bank for various purposes related to the Applicant's law practice. On February 24, 1999, shortly after the Applicant left Canada, A Corporation was indebted to the Bank in the aggregate amount of $237,967.98 for three separate loans (collectively, the “A Corporation Bank Debt”). These consisted of an operating loan with a limit of $150,000, a demand loan consisting of an overdraft privilege, and the amount owing on account of a corporate Visa account.

[15] The Applicant guaranteed payment of $170,000 of the A Corporation Bank Debt, plus interest on that amount, from the date of demand for payment. The Appilicant granted a second mortgage of the Chilco Property to the Bank in the principal amount of $110,000 to secure payment in satisfaction of all obligations, debts and liabilities, present or future, of the Applicant to the Bank.

[16] Initially the Applicant practised family and criminal law, particularly matters involving young offenders. He soon developed an extensive personal injury practice in which he acted for claimants. Most of his personal injury clients agreed to pay fees on a contingency basis and, accordingly, the fee charged by the Applicant was based on a percentage of the amount paid to the client either after a settlement or after a trial.

[17] In March 1986, a month after the Applicant started practising law, a client consulted him regarding a potential claim for damages arising from her use of an intrauterine contraceptive device called the Dalkon Shield, manufactured by a company based in the United States of America. The Applicant determined that a class action had been commenced in the United States against the manufacturer by users of the Dalkon Shield and that there was a deadline of April 30, 1986 for filing a claim in that class action.

[18] The Applicant determined that there were few, if any, other lawyers in British Columbia who were representing clients who were entitled to file a claim pursuant to the class action, and he placed an

advertisement in a newspaper advising potential claimants of the deadline for filing a claim. The Applicant eventually represented 194 women who had potential claims arising from the use of the Dalkon Shield and, at one point in time, he hired another lawyer to assist him with those claims. One of those clients was Ms. A.

[19] The last of the Dalkon Shield claims by the Applicant's clients was settled on December 17, 1998.

[20] No concern was raised about his representation of the Dalkon Shield claimants. The claims of those clients appeared to be dealt with in a satisfactory manner and all of them paid fees on a contingency basis.

[21] There were, however, problems arising from the Applicant's representation of some other clients, as outlined below.

### Cases with which the Applicant had problems

[22] The first of these cases involved a serious motor vehicle accident. On September 20, 1992, Ms. C, then 18 years old, was riding as a passenger in the back seat of a car driven by her cousin’s girlfriend when it skidded off the road, hit a pole and rolled over. Ms. C suffered devastating injuries including paralysis and injuries to her head, left shoulder and a broken back. This was a single vehicle incident and no alcohol was involved.

[23] On September 28, 1992, the Applicant entered into a contingent fee agreement with Ms. D, the mother of Ms. C. The agreement provided that the Applicant would represent Ms. C, who was then an infant, and that his fee would range from 10 per cent to 30 per cent of the settlement if liability was not contested, and from 13 1/3 per cent to 33 1/3 per cent if liability was contested. The agreement set out periods of time or steps in the litigation at which a settlement occurred as the determinative factors for calculating what percentage would be charged in the possible range.

[24] In the spring of 1996, after a four-day hearing, an arbitrator awarded Ms. C damages of $1,118,341. Based on the contingent fee agreement, the Applicant could have charged a maximum fee of 33 1/3 per cent of this amount. The Applicant elected to charge a fee of $296,720.18, which was slightly less than 27 per cent of the award, plus PST and GST. Without the prior approval of Ms. C, who was no longer an infant, or Ms. D, the Applicant deducted payment of his bill from the proceeds of the award and paid the balance to Ms. C.

[25] Ms. C applied for a review of the contingent fee agreement pursuant to section 78 of the Act on the basis that the agreement was unfair and unreasonable under the circumstances. At the review, Ms. C conceded that the agreement was not unfair but continued to take the position that the fee charged was unreasonable.

[26] In March 1997, after reviewing the bill, Master Patterson found that Ms. C’s case was as close to a sure thing as would be possible in all of the circumstances. He determined that: none of the possible defences were real barriers to a substantial recovery; Ms. C had suffered substantial injury; and, when the contingent fee agreement was entered into, there was a likelihood of a large damage award or settlement. He concluded the contingent fee agreement was unreasonable. He decided that, because of the concession by Ms. C that the agreement was not unfair and that there was an absolute necessity in 1994 for there to be a contingent fee agreement because of the family’s financial situation, it would not be appropriate to cancel the contract but, instead, it should be substantially modified. He therefore varied the fee chargeable by the Applicant to a maximum of 12 per cent of the amount recovered and ordered that a refund be paid to Ms. C.

[27] In the spring or early summer of 1997, the Applicant refunded a portion of his fee by paying Ms. C $204,897 plus interest in instalments. This refund did not include PST or GST.

[28] The second case of note also arose out of a serious motor vehicle accident. On May 11, 1990, Mr. E was involved in a motor vehicle accident that caused him to suffer very serious injuries including trauma to his jaw and face, a fracture of the left forearm, a skull fracture and cerebral contusion. Ongoing effects of the motor vehicle accident included a loss of short term memory, slurred speech and convulsions.

[29] The lawyer originally retained by Mr. E commenced an action on April 24, 1992. In October 1992, Mr. E engaged the Applicant to represent him in the lawsuit in the place of the lawyer whom he had originally retained. Mr. E entered into a contingent fee agreement with the Applicant dated October 14, 1992, which contained the following relevant provisions:

> I agree that my Lawyer's Contingency Fee will be a percentage of the total Settlement or Judgment…particulars of the Contingency Fee are as follows:
>
> If liability for the accident is not contested and:
>
> …
>
> (f) Settlement occurs within forty-five days of the date fixed for trial or after commencement of the trial, either by negotiation or Judgment: 30% of Settlement;
>
> If liability for the accident is contested partly or completely, an additional 3 1/3% of any settlement or Judgment will be added…

[30] A trial of Mr. E's claim commenced on October 25, 1994 and continued for four days. Both liability and the quantum of damages were in dispute. In a judgment pronounced on April 29, 1994, Mr. E was awarded a total of $985,647.04. This amount included an award of $34,560 to be paid to Mr. E, in trust, for the purpose of compensating his sisters for care provided to him before the trial.

[31] The defendant's insurance coverage was insufficient to pay the total award, but Mr. E had the benefit of underinsured motorist protection ("UMP Coverage"). Mr. E also had the benefit of private disability insurance and was eligible for disability payments pursuant to the Canada Pension Plan.

[32] Regulations made pursuant to the Insurance (Motor Vehicle) Act governing UMP Coverage allowed the Insurance Corporation of British Columbia to deduct from any payment made pursuant to the UMP Coverage both the actual disability payments provided under the Canada Pension Plan and by private insurers, and also the present value of any future payments a plaintiff is entitled to under the Canada Pension Plan or any private insurance. These deductions were made and amounted to $227,013.80, which reduced the amount recovered to $758,633.24. After adding costs and disbursements of $35,101.80, the total amount paid on account of the judgment to the Applicant's firm was $793,735.04.

[33] When calculating his fee, the Applicant deducted from the total award of $985,647.04 the $34,560 allocated in trust for Mr. E's sisters, the actual amounts paid to Mr. E for disability benefits by the Canada Pension Plan and the private insurer to the date of the award and an amount equal to disbursements that were not recovered from the defendant on taxation. After making these deductions from the award, the Applicant calculated a net award of $873,897.70 and charged 33 1/3 per cent of this amount resulting in a fee of $291,299.23 plus PST and GST. The Applicant billed Mr. E for this amount and deducted payment from the $793,735.04 actually received. After certain other deductions were made, Mr. E was paid a total of $322,296.77.

[34] Mr. E commenced four separate actions challenging the fee or the contingent fee agreement. Both the Applicant and Mr. E were represented by counsel in these actions. The Applicant testified that Mr. E did not actively pursue any of these actions and that the claims were without merit. This was not the case.

[35] Two of the actions consisted of applications for a review of the bill by the Registrar pursuant to section 78 of the Act. The first application, naming the Applicant and Ms. B as solicitors, was filed at the Vancouver Registry in August of 1994 and the second application, naming the Applicant as solicitor, was filed at the Vancouver Registry in January of 1995 (collectively, the "Vancouver Review Applications").

[36] In the Vancouver Review Applications, Mr. E took the position that the fee billed exceeded 33 1/3 per cent of the amount recovered and that the fee was unreasonable under the circumstances existing at the time the bill was prepared. Mr. E also took the position, in the alternative, that the contingent fee agreement was unfairly entered into because his mental and emotional health impaired his ability to accurately understand and appreciate the relevant circumstances and the terms of the agreement when he entered into it.

[37] The Applicant and Ms. B applied for an order that the Vancouver Review Applications be dismissed for want of prosecution. That application was heard by Master Brandreth-Gibbs on November 19 and 21, 1997.

[38] On May 7, 1996, counsel for Mr. E filed a writ of summons and a statement of claim in the New Westminster registry seeking a declaration that the contingent fee agreement was void because the fees charged pursuant to that agreement exceeded the limits established by the rules of the Law Society (the "Void Declaration Application").

[39] On August 16, 1996, counsel for Mr. E filed a petition in the New Westminster registry seeking orders that the Applicant deliver up all documents that formed part of Mr. E's file and that the Registrar be directed to review the bill and modify the same, if necessary.

[40] An application pursuant to Rule 18A of the Supreme Court Rules in the Void Declaration Application was heard by Mr. Justice Grist on November 20, 1997. The judgment on that application was reserved and the reasons for judgment were published on February 26, 1998.

[41] Mr. Justice Grist found that the amount recovered on the judgment was $689,497.52 and that the fee of $291,299.23 billed to Mr. E represented more than 42 per cent of the amount recovered. He therefore concluded the fee charged was in excess of the maximum permitted by Rule 1055 and declared the contingent fee contract void. Mr. Justice Grist also ordered that the Applicant would be at liberty to prepare a bill for taxation in accordance with section 78 of the Act.

[42] On March 11, 1998, Master Brandreth-Gibbs issued a decision on the application by the Applicant and Ms. B that the Vancouver Review Applications be dismissed for want of prosecution. Master Brandreth-Gibbs held that the Applicant and Ms. B had failed to demonstrate that any delay by Mr. E in proceeding with the actions had resulted in prejudice to them, and she therefore dismissed their application.

[43] Under cross-examination, the Applicant acknowledged he knew that, in the absence of a contingent fee agreement with Mr. E, which had been declared void, he had an obligation to charge Mr. E the fee that he could have charged if there was no contingent fee agreement and that he was required to prove his entitlement to that fee at a taxation. The Applicant also acknowledged that, based on his experience with his bill to Ms. C, there was a substantial likelihood that the fee he was entitled to charge Mr. E would be significantly less than the original fee he charged and deducted from the amount recovered and that he would likely be required to pay a very substantial refund to Mr. E.

[44] The Applicant also testified that the impending loss of monies that would result from the payment he would have to make to Mr. E was upsetting his wife and had caused her to become very ill. He was also concerned about the amount of money that he and A Corporation owed the Bank and his ability to satisfy those obligations. The Applicant decided the solution to his financial problems was to escape his creditors by leaving the country. When asked in cross-examination whether he had decided by June of 1998 to leave

the country, the Applicant acknowledged that was a very strong consideration at the time. He also testified that he did not want to leave the country until all of his clients had settled their Dalkon Shield claims.

[45] In preparation for emigration from Canada, the Applicant listed the Chilco Property for sale on June 22, 1998 for the price of $795,000. He was unable to sell the Chilco Property, and he withdrew it from the market when the listing expired on September 22, 1998.

[46] The Applicant testified that, during the fall of 1998, he made arrangements for all of his clients with existing claims to engage other counsel and he delivered his active client files to the new lawyers who were retained by his existing clients. He did not retain copies of any of the contents of those files or any of his financial records relating to those files.

[47] One of the clients the Applicant continued to represent was Ms. F, for whom he had obtained a settlement in a personal injury action. The insurers who made disability payments to Ms. F while she was recovering from her injuries claimed to be subrogated for the amount paid by them to any award for damages received by Ms. F. One insurer ("Insurer G") claimed $11,550 for payments made pursuant to its policy of short term disability insurance, and another insurer ("Insurer H") claimed $41,751.63 for payments made pursuant to its policy of long term disability insurance. Pending a resolution of these claims, the Applicant continued to hold $53,301.63 of the settlement proceeds in trust.

[48] In order to obtain payment of short term disability benefits, Ms. F had assigned and delivered to Insurer G an assignment of her claim for damages. Insurer H asserted that, in order to obtain payment of long term disability benefits, Ms. F had entered into a reimbursement agreement with Insurer H by which Ms. F agreed that, from any damages she received, she would reimburse Insurer H for disability payments she received. The agreement contained an irrevocable authorization and direction to her solicitor to pay Insurer H from any judgment or settlement the amount that Ms. F was required to reimburse Insurer H. Ms. F denied signing the reimbursement agreement, and the Applicant formed the opinion that her signature on that document had been forged.

[49] On November 1, 1998, the Applicant wrote a letter to Ms. F in which he expressed the opinion that she was not obligated to reimburse Insurer H but that the claim by Insurer G was valid. With respect to Insurer G, the Applicant stated in his letter that it was Ms. F's decision whether she paid this claim or not. The Applicant billed Ms. F $15,109.96 for collecting the $53,301.63 which he continued to hold in trust and paid this bill from the monies held in trust. With his November 1, 1998 letter to Ms. F, he enclosed a cheque payable to her in the amount of $38,110.67 representing the balance of monies held in trust after payment of his bill. Ms. F signed a copy of that letter to confirm that the Applicant had read it to her and that she understood the contents of it.

[50] The Applicant was concerned that he might be sued by Insurer G or Insurer H for paying the amount they claimed to Ms. F instead of to them. He therefore wrote a letter to the Law Society dated November 1, 1998 enclosing a copy of his letter to Ms. F dated November 1, 1998 and stated:

> I am concerned that litigation is a possibility arising from my payments to [Ms. F] over the insurers, and if I am included as a defendant, then the Law Society and its insurance may become involved and as I will not be available to discuss the matter with you I have decided to send you this letter with enclosures so that you and the Law Society are aware of the issues and can deal with any issue that may arise during my absence from Canada.

[51] The letter the Applicant wrote to the Law Society dated November 1, 1998 reporting the possible claim against him by the insurers of Ms. F was not received by the Law Society until February 18, 1999. While the Applicant, during his testimony, was able to recall his dealings with Ms. F, he had no recollection of when he

sent his letter dated November 1, 1998 to the Law Society and testified that he now assumes it was sent out on the day it was dated. We find that it is most likely that this letter was not mailed by the Applicant to the Law Society until, or shortly before, he left Canada in late January 1999.

[52] The last client the Applicant represented was Ms. I in a claim for damages resulting from a motor vehicle accident on June 24, 1996 that caused her to become a paraplegic. Ms. I, who was 26 years old in December 1998, had never completed high school, had a work history that consisted of one job for approximately four weeks and was, according to the Applicant, unsophisticated and vulnerable. Ms. I was the mother of a nine-year-old son, but she was not the custodial parent. The Applicant negotiated a settlement that included a structured settlement that would result in monthly payments to or during her lifetime plus a cash payment. The Applicant charged a fee of $100,000 plus applicable taxes. After the Applicant's fees were paid from the settlement and certain other disbursements were made, a balance of $175,000 of the cash payment remained.

[53] After becoming paraplegic, Ms. I lived with a much older man (“Mr. J”) who was the source of her care. On November 2, 1998, after the settlement had been negotiated, but before the settlement proceeds were received, Ms. I and Mr. J were married.

[54] The Applicant testified that he was very concerned that Mr. J’s primary interest in Ms. I was the money she would receive from the settlement of her claim. The Applicant wished to take steps to protect Ms. I from Mr. J as he believed Mr. J might take these monies from Ms. I. The Appliant called the office of the Public Guardian and Trustee of British Columbia to enquire whether they would provide any assistance in protecting Ms. I’s settlement. He was informed that the Public Trustee had no authority to assist because Ms. I was an adult who was capable of managing her affairs.

[55] The Applicant suggested to Ms. I that she use $175,000 of the cash settlement to purchase a home that would be registered in her name as a joint tenant with her infant son to protect that asset from Mr. J. He proposed that the $175,000, which he then held in trust, would be placed in a guaranteed investment certificate for three months while Ms. I looked for a suitable home to purchase.

[56] On December 14, 1998, the Applicant engaged a lawyer in the community in the Fraser Valley where Ms. I resided (“Lawyer L”) to provide advice and assistance to Ms. I, which included preparing a will for her. The Applicant and Lawyer L met with Ms. I at Lawyer L’s office on December 14, 1998 to obtain or confirm her instructions at which time Ms. I signed a will prepared by Lawyer L.

[57] The Applicant testified that, before he took Ms. I to Lawyer L’s office, he met with her at her home in the presence of a police officer who attended at the request of the Applicant. At that meeting Ms. I signed a direction prepared by the Applicant on December 14, 1998, the text of which was the following:

> I, [Ms. I], of [address of Ms. I], hereby irrevocably instruct my lawyer, [name], to hold in his Trust account the balance of my non-pecuniary damages arising from my insurance settlement pending the location of a house or apartment at which time he will instruct a lawyer to deal with the conveyance to myself and my son [W] as joint tenants with the right of survivorship.
>
> Should my lawyer die or for any reason be unable t o perform as above, I instruct my lawyer or his Estate to transfer the funds to the Public Trustee of British Columbia.
>
> The above is only subject to change by my attending at the office of [Lawyer L], solicitor, in [city, province] and making any change in his and my lawyer's presence.

[58] Pursuant to the December 14, 1998 letter of direction signed by Ms. I, A Corporation continued to hold $175,000 of her settlement in trust. These monies were invested in a guaranteed investment certificate with

the Bank maturing on March 16, 1999. The Applicant later gave the bank instructions to pay these monies to the Public Trustee upon maturity.

[59] On December 14, 1998, when the Applicant met with Ms. I at her home to sign the direction regarding the $175,000 cash settlement and when he met with her at Lawyer L's office, the Applicant knew that he would no longer be a member of the Law Society after December 31, 1998 and that he would be emigrating from Canada in early 1999 without leaving a forwarding address and that neither Ms. I nor Lawyer L would be able to communicate with him regarding the $175,000, which he continued to hold in his lawyer's trust account. The Applicant knew that he would be unable to instruct a lawyer to deal with the conveyance to Ms. I and her son and he would be unable to deal with the $175,000 held in trust after he left Canada.

[60] On January 21, 1999, the Applicant wrote a letter to Ms. I in which he stated:

> I have contacted the Public Trustee and as per your instructions, as I am no longer able to deal with the issue of the purchase of a home by yourself have transferred this task to the Public Trustee.
>
> The Public Trustee's office is at 600-808 West Hastings Street, Vancouver, BC, V6V 3L3 and I expect that a lawyer from its office will contact you in due course. Should you change address please ensure that you advise the Public Trustee's office of that change.

[61] On January 21, 1999, the Applicant wrote a letter to the Bank and provided them with the following instructions regarding the guaranteed investment certificate held in trust by A Corporation for Ms. I:

> I write to advise you that the direction of this GIC which is held in trust for [Ms. I] had [sic] now been transferred to the office of the Public Trustee whose address is 600-808 West Hastings Street, Vancouver, BC V6V 3L3. I expect that a lawyer from the office of the Public Trustee will be in touch with you in due course. I enclose a copy of the instructions signed by [Ms. I] on December 14, 1998 permitting this transfer.
>
> For your records [Ms. I]'s current address and telephone number is [sic] [address and telephone number].

[62] The Applicant apparently wrote a letter to the Public Trustee also dated January 21, 1999, but that letter was not produced or filed as an exhibit in the hearing of this application. A letter from the Public Trustee to the Applicant dated February 19, 1999 referring to the Applicant's letter to the Public Trustee dated January 21, 1999 was placed in evidence. That letter was received by the Applicant on or before March 11, 1999 while he was in Portugal. The Applicant was unable to explain how he received this letter, and he testified that no correspondence was being forwarded to him from Canada and that he had not left a forwarding address. He speculated that the letter may have been received by his father and that his father may have sent it to him. The letter from the Public Trustee to the Applicant contained the following statements:

> The Public Trustee has no authority under the Public Trustee Act to take in, hold, or otherwise administer the funds which are currently held by you on behalf of your client in the GIC at the Royal Bank. The Public Trustee may only hold funds as the guardian of an infant's estate, committee of an adult's estate, trustee appointed under a valid inter vivos trust, testamentary trust, or a court order, as administrator of an estate, or where authorized by statute.
>
> It appears that the document signed by your client dated December 14, 1998, is merely an irrevocable letter of instruction to you as her solicitor. Curiously, although the instructions purport to be irrevocable, the last clause of the document clearly anticipates that your client may change or revoke the instructions. This document does not create a trust as it is clearly not your client's

intention to divest herself on the legal ownership of these funds.

If you intend to retire, I suggest that you refer your client to a new solicitor who would be willing to hold these funds upon your client's instructions. Alternatively, your client may wish to appoint a power of attorney to assist her with her financial affairs. If your client requires the appointment of a committee to manage her financial affairs, you may wish to make a referral to our Services to Adults Intake Department. (I assume this is not the case as you have been taking instructions from your client).

In your letter you also indicate that you are enclosing a copy of your deceased's [sic] Will. In fact you have sent to us the original Will. I note that the Public Trustee has been named as the third alternate executor in the Will. The Public Trustee Act does allow the Public Trustee to be appointed as executor in a Will. However, given that we are the third alternate executor, it does not seem appropriate that we would hold the original Will. I suggest that your client may wish to have her new solicitor hold the original Will. Alternatively, the first named executor, [RS], could hold the original Will. We have kept a copy of the Will and are returning the original to you. We are also returning the original document executed by your client dated December 14, 1998 and the original [Bank] investment account certificate dated January 11, 1999.

I trust that you will assist your client in obtaining a new solicitor to assist her in this matter.

[63] The Applicant endorsed the following response on the letter from the Public Trustee dated February 19, 1999 and returned it to the Public Trustee:

March 11, 1999

Dear [name of author]:

Thank you for this letter which I received today as my mail is forwarded from my old office at 808 Nelson.

Unfortunately I have no way of contacting [Ms. I] and therefore could I ask that you write to [Ms. I] and that she attend to your office. If you do this you will see that [Ms. I] is competent, however my concern throughout the handling of her file is the role of her husband [Mr. J].

[64] The Applicant testified that his statement that his mail was being forwarded from his old office was not correct.

[65] In December 1998 or January 1999, the Applicant destroyed all files that were not delivered to other counsel for continuing matters. These files included all of his files relating to Mr. E and the four actions commenced by Mr. E with respect to the fees charged by the Applicant and the Applicant's contingent fee agreement with Mr. E. At the same time, the Applicant destroyed all of his financial records and did not retain them for ten years as required by Rule 3-68(1).

[66] At some time during December 1998, the Applicant closed his office and left a recording on an answering machine for his firm's telephone number, which stated that he was out of the country until February 1999 and that callers should not leave a message because those messages would not be retrieved.

[67] Sometime in late January 1999, before leaving Canada, the Applicant deleted the message on the answering machine for his law firm's telephone number stating that he would be out of the country until February and replaced it with a new message stating that he would not be returning to his office until March. On February 28, 1999, the telephone number for the Applicant's law firm was disconnected.

[68] The Applicant acknowledged in his testimony that, since he intended to leave Canada permanently, the messages he left on his answering machine were misleading because they implied he would be returning to his office. He testified that he left the misleading messages because he had great concerns about the power of the Bank.

[69] Sometime after January 21, 1999, but before February 1, 1999, the Applicant, with his wife, left Canada for Portugal with the intention he would not return to Canada. From the airport, on his way to Portugal, the Applicant mailed the keys for the Chilco Property to the Bank.

[70] The Applicant testified that in late January 1999, his only assets were $300,000 cash, which he took with him to Portugal, and his interest in the Chilco Property.

[71] When the Applicant left Canada, he did not leave a forwarding address and took steps to ensure that no one in Canada, with the possible exception of close relatives, knew where he would be going or how to contact him.

[72] The Applicant did not inform the Law Society that he intended to cease practising law and, except for the cryptic comment about not being able to deal with a possible insurance claim during his absence from Canada in the letter he wrote to the Law Society dated November 1, 1998 (described in paragraph [50] above), the Applicant did not inform the Law Society either that he would be leaving Canada permanently or that he would not be available to deal with any matters involving his clients. The Applicant also did not inform the Bank that he intended to leave Canada.

[73] The Applicant did not advise the Executive Director of the Law Society of his intended disposition of his open and closed files, wills and trust accounts before leaving Canada as required by Rule 3-80(1).

[74] The Applicant, through A Corporation, continued to hold $175,000 in trust for Ms. I and did not remit those funds to her or transfer them to another lawyer; he did not close his trust account or confirm to the Executive Director of the Law Society that he had done so within three months of withdrawing from practice as required by Rule 3(80)(2).

[75] When an employee of the Law Society attempted to telephone the Applicant on two occasions in January 1999, the employee received the first recording left on his answering machine described in paragraph [66] above. On February 18, 1999, a Law Society employee telephoned the Applicant and received the second recording left on his answering machine described in paragraph [67] above. When that employee again telephoned the Applicant on March 11, 1999, the Applicant's telephone was no longer in service.

[76] On March 10, 1999, Ms. I telephoned the Law Society regarding the $175,000 guaranteed investment certificate held in trust by A Corporation, which was due to mature on March 16, 1999. She said she was concerned because an official at the Bank had informed her that the money was to be transferred to another account on maturity. Ms. I informed the Law Society that she did not instruct the Applicant to transfer the funds and that he did not discuss with her the fact that the funds would be transferred to another account. On March 19, 1999, the new lawyer for Ms. I (“Lawyer M”) wrote a letter to the Law Society requesting the assistance of the Law Society with respect to resolving the issue of the disposition of the $175,000 held in trust by A Corporation. Lawyer M also wrote to the lawyer for the Bank (“Lawyer N”) on March 19, 1999 and informed him that the Applicant was nowhere to be found and suggested the funds held in trust be transferred to the Public Trustee.

[77] On March 22, 1999, Lawyer N wrote to the Law Society with respect to the $175,000 investment by A Corporation, in trust for Ms. I. Lawyer N informed the Law Society that the Bank had attempted to locate the Applicant but had been unsuccessful. Lawyer N stated that it would be difficult for the Bank to deal with the

demands being made by Lawyer M on behalf of Ms. I until a custodian of the practice of the Applicant was appointed.

[78] On March 11, 1999, the Law Society received enquiries from two persons seeking to determine the whereabouts of the Applicant. One was a law firm and the other was the custodial guardian (“Ms. O”) for an infant (“Child P”) for whom the Applicant had obtained a settlement in respect of a claim for damages.

[79] The Law Society engaged a private investigator (“Mr. Q”) to locate the Applicant.

[80] Mr. Q determined that the Applicant had closed and vacated his office at 808 Nelson Street, that he had no current or listed telephone number and that his neighbours near the Chilco Property reported not having seen him recently. The Law Society also spoke to the Applicant's brother on March 22, 1999, and he informed the Law Society that he had not had contact with the Applicant since late January 1999 and did not know where he was. Mr. Q also determined that a vehicle leased by the Applicant had been terminated on January 25, 1999 and that he did not have any other vehicles registered in his name.

[81] On March 29, 1999, the Law Society obtained an order from Master Tokarek appointing Mr. R custodian of the practice of the Applicant to manage and arrange for the conduct of the legal practice of the Applicant. Mr. R was eventually discharged as custodian on March 1, 2002.

[82] After his appointment, Mr. R wrote to 42 storage companies seeking their advice as to whether any of them were holding files or other documents for the Applicant or his corporation but none responded that they were. Mr. R was unable to locate any of the Applicant's files, practice materials or accounting records.

[83] Mr. R was unable to locate any law firm general or trust accounts operated by the Applicant personally in connection with his practice. He determined, however, that A Corporation did maintain a trust account at the Bank in which there was both the $175,000 investment plus interest made for Ms. I and $1,258.64 on deposit. Of the amount on deposit $1,254.32 represented a cheque which had been issued but not cashed for which Mr. R issued a replacement cheque. The balance of $4.32 was paid to the Law Society as unclaimed trust funds.

[84] Mr. R located two general accounts maintained by A Corporation. One had a nil balance and the second had an overdraft balance of more than $60,000.

[85] Ms. O raised concerns regarding the settlement trust monies held on behalf of Child P. She informed the Law Society that the Applicant had told her that, if she needed any help for Child P, all she needed to do was call the Applicant and he would put the request for funds to the trustees. She also said the Applicant told her that a “Living Allowance” was available for her to use for the care of Child P if she needed it. She said that, when she called the Applicant to request money for Child P for the first time in early February 1999, his answering machine said that he would return at the end of that month and call back at the beginning of March, but when she did so she received an out of service message. She was then unable to find a telephone number for him from the telephone directory service, and when she called the Law Society, she was informed he was no longer practis ing law. She complained she was concerned that the Applicant may have misappropriated Child P’s settlement.

[86] Mr. R determined that the Applicant had not misappropriated the settlement of Child M. The settlement in the amount of $117,672 had been paid to the Public Trustee to the credit of Child P to be held in trust until Child P obtained the age of 19 years. This was not known to Ms. O because the action on behalf of Child P had been commenced by his father, as guardian ad litem. The Applicant testified that he had reported to Child P’s father regarding the outcome of the claim and we accept the Applicant's testimony in this regard.

[87] Mr. R also determined that, at the request of the Applicant, in July 1997, the Public Trustee had

advanced the sum of $1,800 to pay the cost of sending Child P to reside with his aunt in Massachusetts while his father was engaged in commercial fishing but that, so far as the Public Trustee had been able to determine, these monies were never used for that purpose. The Public Trustee wanted the monies to be repaid. Mr. R reported the $1,800 refund claimed by the Public Trustee to the Lawyers' Insurance Fund ("LIF") as a potential claim against the Applicant.

[88] With respect to Ms. I's case, Lawyer M obtained an order removing the Applicant and A Corporation as the trustee of the $175,000 plus interest held in trust for Ms. I and appointing a new trustee. Mr. R then delivered the monies held in trust for Ms. I to the new trustee. Mr. R reported the cost incurred by Ms. I for this application to LIF as a claim against the Applicant. LIF paid Ms. I an indemnity of $4,300 to cover this cost. This payment was an amount that should have been paid by the Applicant as part of his deductible.

[89] In addition to the claim by Ms. I and the potential claim by Ms. O, Mr. R reported five other potential claims to LIF. None of the claims reported by Mr. R, other than the claim by Ms. I, were pursued, and no expenses or indemnities were paid by LIF in respect of the seven claims or potential claims reported by Mr. R, other than the payment of the $4,300 indemnity to Ms. I.

[90] In addition to the reports by Mr. R, there was only one other claim or potential claim against the Applicant reported to LIF. This was a potential claim reported by the Applicant in 1997 regarding one of the claims made against him by Mr. E. In one of the four actions commenced by Mr. E relating to the contingent fee charged bythe Applicant, Mr. E alleged that the Applicant was negligent in failing to recover the full amount of his judgment from the UMP Coverage. LIF appointed counsel to defend the Applicant, but the claim by Mr. E based on negligence was not pursued. LIF paid expenses to defend that claim in the amount of $5,909.58.

### Law Society complaints

[91] Eleven complaints were made to the Law Society about the Applicant. Eight were made before December 31, 1998, while he was still a member, and three were made after December 31, 1998, when he was no longer a member.

[92] The first three complaints against the Applicant consisted of a complaint made in 1998 in relation to a family law matter with respect to an alleged conflict of interest, a complaint made by Mr. E in 1994 regarding the fees charged to him by the Applicant, and a complaint made in 1995 by two individuals who were dissatisfied with the Applicant's representation of them and his alleged delay in transferring their file. The Law Society has no records regarding these complaints, other than the fact they were made and that the files relating to them were closed without any action being taken by the Law Society.

[93] Three complaints against the Applicant were made in 1997, two by clients and one by opposing counsel, all of which related to their inability to contact the Applicant. The Applicant had been away from his office on a vacation cruise from October 23 to November 18, 1996, and his office was closed during that period of time. Before leaving he had contacted opposing counsel, his own clients and other interested persons with respect to most of his open files to inform them of his planned absence, and he left a message on his answering machine. The answering machine malfunctioned while he was on holidays. The Applicant later met with a Bencher to discuss how he had dealt with being away from his practice for approximately three weeks. He informed the Bencher that, if he intended to be away in the future, he would arrange for an answering service to respond to his calls and that he would arrange for a colleague to receive documents and review mail in his absence. The Bencher reported to the Law Society that the Applicant seemed to be a decent, responsible lawyer, that nothing further needed to be done and that the Law Society should close its files with respect to the complaints. The meeting with the Bencher did not constitute a conduct review, and

the Law Society closed its files related to the three complaints.

[94] The other two complaints made to the Law Society while the Applicant was still a member were both made by Ms. D regarding the fee the Applicant charged Ms. C (as described in paragraph [24] above). The first complaint, made in 1996, was dismissed, and the file was closed because it involved a fee dispute, which was outside the Law Society's jurisdiction. The second complaint, made on May 14, 1997, reiterated the allegation that the Applicant's fee was excessive. In addition, Ms. D complained that the Applicant had refused to refund the GST and British Columbia social service tax (PST) charged on that portion of the fee, which the Applicant was required to refund as a result of the variation of his fee made by Master Patterson. In addition, Ms. D complained that the Applicant had advertised the result of her daughter's case incorrectly and without her permission.

[95] After correspondence between the Law Society and counsel for the Applicant, the Law Society concluded that the Applicant should refund the GST charged on the refundable portion of the fee but that the client had an obligation to apply directly to the taxing authority for a refund of PST. The Applicant subsequently did refund the GST charged on the refundable portion of his fee.

[96] The advertisement Ms. D complained about was a full-page ad by the Applicant in the yellow pages listing examples of ICBC claims dealt with by his office, which referred to six settlements. Each was identified by two initials, which the Applicant said represented the first letters of the surnames of the plaintiff and defendant. In the case of the settlement for Ms. C, the initials were followed by the text "Vancouver Island $1,180,000 paraplegia." The actual award for Ms. C was $1,118,341. In response to the complaint, the Applicant acknowledged the amount advertised was not correct and speculated the error occurred either because he transposed the numbers 1 and 8 or because he inadvertently added $70,000 which had been paid as an advance when this amount was included in the total settlement. He volunteered to correct the amount in the next edition. He took the position that Ms. C's identity could not be determined from the ad because the initials were an abbreviation of the case name and were not the initials of Ms. C. He said he did not believe he needed his client's consent to publish a description of the award if the information in the advertisement was correct and did not disclose confidential information, but he offered to withdraw the ad if the Law Society decided he was not entitled to advertise results without the consent of his client.

[97] The second complaint by Ms. D had not been fully resolved before the Applicant left Canada in January 1999, and in June 1999 the Law Society's file was closed by a staff lawyer on the basis that, if and when the Applicant applied for readmission, the matter would be referred to the Credentials Committee.

[98] Of the three complaints made to the Law Society after the Applicant ceased to be a member, one was the complaint made by Ms. O, one was the complaint made by Ms. I and the third was a complaint made by the Law Society that the Applicant had failed to properly wind up his practice and to comply with the requirements of Rule 3-80.

[99] The Applicant acknowledged in cross-examination that, when he left Canada in 1999, he did so in an attempt to conceal his whereabouts from his creditors for the purpose of avoiding his financial obligations to the Bank and Mr. E.

[100] After leaving Canada, the Applicant did not make any payments on account of the debts owed by him and A Corporation to the Bank.

[101] Since the Applicant had been unable to sell the Chilco Property for $795,000 in 1998, or for any lesser amount that was acceptable to him, he knew that the value of the Chilco Property was less than $795,000 and that, from whatever value it had, it would be necessary to deduct the cost of selling it, including a real estate commission.

[102] In April 1999, the Royal Bank commenced a foreclosure action with respect to the Chilco First Mortgage (“Foreclosure Action”). An appraisal report for the Chilco Property as of April 19, 1999 was an exhibit to an affidavit filed in the Foreclosure Action (“1999 Appraisal”). The 1999 Appraisal expressed the opinion that the Chilco Property had a market value of $650,000. Although he was not aware of the appraisal until several years later, the Applicant testified that he thought this appraisal was fair.

[103] An order nisi in the Foreclosure Action dated August 16, 1999 declared the amount owing on account of the Chilco Loan, which was secured by the Chilco First Mortgage, was $530,766.18 plus interest at the rate of $83.55 per day after August 16, 1999. The Applicant does not disagree that this was the amount he owed in respect of the Chilco Loan on August 16, 1999. The Applicant testified that he and A Corporation also owed the Bank an additional $237,000 on account of practice debts. The aggregate of the debt owed to the Bank by the Applicant and A Corporation when he left Canada was therefore approximately $767,000, while the Chilco Property had a market value of not more than $650,000.

[104] The order nisi made in the Foreclosure Action set December 16, 1999 as the last day for redemption and included an order authorizing the Bank to sell the Chilco Property.

[105] The Chilco Property was listed through the Multiple Listing Service on November 5, 1999 at a price of $585,900. In or about February 2000, the listing price was reduced to $519,900. An offer to purchase the property for $526,000 was made on March 28, 2000, and the sale of the Chilco Property for this amount was approved by a vesting order made on March 28, 2000 and the sale was completed on April 3, 2000. After adjustments for taxes and condominium charges and payment of a commission and closing costs the net proceeds of the sale were $500,935.02. This was not sufficient to fully pay and satisfy the amount secured by the Chilco First Mortgage resulting in a deficiency of approximately $49,690 plus the costs of the Foreclosure Action.

[106] On May 26, 1999, the Bank commenced an action against the A Corporation for payment of the amounts owed for an operating loan, an overdraft and a credit card account plus interest. In the same action, the Bank also made a claim against the Applicant for $170,000, being the portion of the A Corporation debt to the Bank, of which he had guaranteed payment, plus interest from March 5, 1999, the date on which the Bank had demanded payment pursuant to the guarantee. On August 25, 1999, the Bank obtained judgments in that action against A Corporation in the amount of $249,083.43 and against the Applicant in the amount of $176,162.98. This judgment against the Applicant was in addition to the amount he owed the Bank for the deficiency remaining on the Chilco Loan after the sale of the Chilco Property pursuant to the Foreclosure Action.

### The Applicant's life overseas

[107] As noted above, after a brief stay in Portugal, the Applicant and his wife moved to France in the fall in 1999 where they established a permanent residence.

[108] In late 1999 or early 2000, the Applicant became employed as a real estate agent in France. From 2001 until 2010 he was employed by a French real estate company (“R Corporation”) which was owned and operated by a French lawyer specializing in real estate (“Mr. S”). While working as an agent for the R Corporation, the Applicant specialized in the sale of second, or vacation, homes to purchasers in the United Kingdom. He maintained an office in Charente-Maritime during that period of time and carried on his business under the slogan B Dream Homes. He succeeded as a real estate agent and, by 2008, employed two subagents.

[109] While in France, the Applicant established a banking relationship with a local financial institution (“T Bank”).

[110] From October 2001 until September 2010, the Applicant and his wife resided in a home in Charente-Maritime which they rented from Mr. U. Although the Appilcant and his wife were divorced in 2005 they continued to reside together.

### The Applicant's return to Canada

[111] In mid-2008, the international financial crisis caused a collapse of the market for properties of the type that the Applicant specialized in selling. Although he continued to maintain his office, the Applicant made few, if any, real estate sales after the middle of 2008, and his employees either quit or were terminated. By early 2010, the Applicant had decided that, since he was continuing to lose money in his real estate business and because his father was terminally ill, he should stop selling real estate in France and return to Canada.

[112] The judgment obtained by the Bank against the Applicant in the amount of $176,162.98 on August 25, 1999 remained unpaid and was due to expire after ten years in August, 2009. The Bank commenced a new action on August 18, 2009 against the Applicant for the amount of the judgment plus post-judgment interest owing on August 12, 2009 in the total amount of $268,174.35. In the same action, the Bank claimed $279,181.74 from A Corporation, being the balance then owing on the judgment it obtained in 1999 plus post-judgment interest. The Royal Bank obtained new judgments for the amounts owing.

[113] On February 17, 2010, the Applicant wrote a letter (“Licence Application”) to the Real Estate Council of British Columbia (“Council”) and applied for pre-screening in anticipation of his application to be licensed to sell real estate in British Columbia.

[114] In the Licence Application, the Appilcant disclosed the existence of the renewed judgment obtained by the Bank in 2009 and also described in considerable detail his version of his problems with Mr. E. The Applicant said in the Licence Application that Mr. E’s claim had become the sword of Damocles for him and his wife and that the uncertainty of the outcome of the claim had caused distress for his wife and had an adverse effect on his marriage. He said that he decided the only way he could “end this nightmare with [Mr. E] and save my marriage was to close my practice and leave the province … and in January of 1999 [I] left the province and moved to France.” He said that, with the benefit and clarity of hindsight, he recognized that this was the wrong thing to do and that he had made a mistake when he did so.

[115] In the Licence Application, the Applicant also stated that he would be unable to pay the judgments against him and that, when he returned to Vancouver to take his examination for a real estate licence, he would meet with a trustee in bankruptcy to discuss the possibilities of settling his financial difficulties by proposal. He said that, failing a proposal and subject to the advice of a trustee, it would probably be necessary for him to declare bankruptcy.

[116] The Applicant returned to Canada in August 2010 and took the examination required to become a licensee entitled to sell real estate in British Columbia pursuant to the *Real Estate Services Act*.

[117] The Applicant then returned to France and made arrangements to return to Canada and reside there permanently, which he did on October 27, 2011.

[118] On November 24, 2010, the Applicant made an assignment in bankruptcy.

[119] After successfully completing his real estate licensee examination, the Applicant applied to the Council to be licensed as a representative to sell real estate in British Columbia. After receiving the Applicant's application for pre-screening and the Licence Application, the Council conducted an investigation and determined that he was of good reputation and eligible for licensing. The Council issued a licence to the

Applicant while he was still an undischarged bankrupt on December 14, 2010.

[120] The Applicant became employed as a representative to sell real estate in December 2010 and attempted to sell properties until he allowed his licence to expire on March 21, 2012. While licensed to sell real estate, the Applicant sold very few properties. After leaving the real estate industry, the Applicant was unemployed until July 12, 2012 when he became a taxi driver, and he was still employed as a taxi driver at the time of this hearing in July 2013.

[121] In his bankruptcy assignment, the Applicant disclosed that his only assets consisted of furniture and personal effects having a value of $800, and he disclosed liabilities of $728,563.78, all of which were unsecured. Included in those liabilities were the judgments obtained by the Bank against him personally and against A Corporation. The Applicant also included the T Bank as a creditor for an unsecured loan having a balance of $37,000 and a second financial institution in France to which he owed $2,600. The Law Society was shown as a creditor for $16,607.69. Mr. E was listed as an unsecured creditor for an unspecified amount.

[122] When the Applicant applied to be discharged from bankruptcy his application was opposed by the Bank. He was ordered to answer questions put to him by way of affidavit, and he provided those answers. The Bank continued its opposition to his discharge, and after a hearing before Master Taylor on June 13, 2012, at which both the Applicant and counsel for the Bank appeared, the Applicant was discharged.

[123] When applying for a real estate licence, in his application for a discharge and in his application for reinstatement, the Applicant consistently took the same position with respect to his indebtedness to the Bank and the practice debts owed by A Corporation to the Bank. He said he believed the Chilco Property was worth more than the aggregate of the debts owed by him personally and by A Corporation to the Bank and that the Bank should have been able to recover all, or almost all, of that debt from the sale of the Chilco Property. He took the position that the Bank was either negligent or acted improperly in conducting the sale of the Chilco Property and sold it for far less than it was worth.

[124] In his testimony at this hearing the Applicant initially continued to take the same position with respect to the Bank Debt and the sale of the Chilco Property. In cross-examination, however, he conceded that the Chilco Property was worth significantly less than the total debt which he and A Corporation owed the Royal Bank.

[125] After leaving Canada in January 1999, the Applicant never made any payments to the Bank on account of the debts he and A Corporation owed the bank. As well, he took no steps to determine how the foreclosure of the Chilco Property was being prosecuted or how the Chilco Property was marketed by the Bank or when it was sold or for how much. It was not until he decided in early 2010 to apply for a licence to sell real estate in British Columbia that he took any steps to determine whether he still owed the Bank any money and, if so, the amount owed.

[126] In 1998, he had been unable to sell the Chilco Property when he listed it for sale for $795,000. As a lawyer, particularly one who specialized in litigation, he would have known that there would be deducted from the proceeds of any sale the costs of that sale, including a real estate commission and court costs. He left Canada without telling the Bank he intended to do so and without leaving any forwarding address. He testified that one of his motivations for leaving Canada was that he was afraid of the Bank and did not want them to be able to contact him. We find that, when the Applicant left Canada in January, 1999, either he knew, or he was being wilfully blind and ought to have known, that the net proceeds of the Chilco Property that the Bank would realize when it foreclosed would be insufficient to fully pay his debt and the debt of A Corporation to the Bank.

[127] The Applicant continued to take the position before this Panel that the Bank had acted improperly or negligently in the sale of the Chilco Property and that the Chilco Property was sold for far less than it was actually worth.

[128] In his testimony, both in chief and in cross-examination, the Applicant repeatedly stated that leaving Canada as he did in 1999 was a terrible mistake and that he regretted having done so. He was particularly remorseful about the way in which he failed to deal with a refund of the fee he charged and collected from Mr. E. He stated that, if he were in the same circumstances today, he would attempt to negotiate with Mr. E or his counsel a mutually acceptable amount for his fee and that he would refund the amount taken that exceeded the agreed amount.

[129] The Applicant admits that he did not comply with Rule 3-68(2), which requires books and records to be kept for at least ten years. The Applicant also admits he did not comply with Rule 3-80, which requires a lawyer to: (1) report the disposition of his open and closed files, trust accounts and trust funds to the Executive Director of the Law Society; and (2) within three months after withdrawing from practice, inform the Executive Director whether the dispositions occurred as intended.

[130] The Applicant testified that he was unaware of the requirements of Rules 3-68(2) and 3-80. He testified that, although he did not comply with these rules, he felt the actions he took served the interests of his clients and that he dealt with his clients and their records in a proper and responsible manner when he ceased practising. He said he ensured that all of his continuing clients were represented by new counsel and that all of their files and records were transferred to those new counsel before he left Canada.

[131] The Applicant does acknowledge that he created a problem for Ms. I when he ceased practising. He attributes the problems she encountered with the term deposit of $175,000 to a drafting error in the irrevocable letter of directions that he prepared and Ms. I signed on December 14, 1998. He said that, since he intended to leave the country, the letter of direction should have provided that the irrevocable instructions could be changed with the approval of Lawyer L.

[132] The Applicant takes the position that he successfully completed his representation of Ms. I by obtaining a generous settlement of her claim and that he would have been justified in concluding his engagement when the settlement was finalized. He said that holding the $175,000 portion of the cash settlement in trust to be invested in a residence to be owned by Ms. I and her infant son was recommended by him out of his concern that Ms. I's new husband was likely to take advantage of her and that she was in danger of losing the benefit of that payment. The Applicant testified that he also took steps to protect Ms. I's interest by arranging for local counsel, Lawyer L, to be engaged to advise and represent her and, further, that Lawyer L concurred with the Applicant's advice and recommendations.

[133] During his testimony, the Applicant was unable to recall many of the events that occurred or the actions that he took in the late 1990s or early 2000s. He was also unable to produce relevant documents as he had destroyed them prior to leaving Canada. During cross-examination inconsistencies or errors in the Applicant's testimony were brought to his attention by counsel for the Law Society. In each case, he acknowledged that he had been wrong in his recollection and in several instances stated that the information that counsel brought to his attention was either information he was not previously aware of or, if he had been aware of it, he had forgotten it. The Applicant was, in any event, candid in acknowledging his errors, including the irresponsible manner in which he left his practice and his other financial responsibilities behind in Canada.

[134] We are satisfied that the Applicant does regret leaving Canada in the manner in which he did in 1999 and that he is truly remorseful of the manner in which he dealt with Mr. E and his bill to Mr. E.

[135] One character witness testified on behalf of the Applicant. This was Ms. A, one of his Dalkon Shield clients. Over a period of ten years he handled her claim and eventually settled it successfully. Ms. A gave glowing testimony regarding the Applicant's representation of her. She expressed extreme gratitude to him for the services he performed and urged the Law Society to reinstate him. Her evidence was that the Applicant was a fantastic lawyer in every way, shape or form, and she said, “He is the kind of lawyer we want out there representing people.”

### Reference Letters

[136] The Applicant also tendered 14 letters of reference, one of which was from Ms. A.

[137] In her letter of reference to the Law Society dated March 18, 2013, Ms. A described the Applicant as being forthright, fair, professional and extremely knowledgeable in the type of case in which he represented her. She also stated:

> I know that [the Applicant] should be practising law again and without hesitation, I implore you to see that this happens soon. The need is great for those requiring the services of such a gifted Lawyer. He will do the Law Society and our court system honour, of that I have no doubt!

[138] An investigator for the Law Society (“Investigator”) spoke with the authors of eight of the reference letters and one other person who was the immediate supervisor of another author. The Investigator prepared notes of his conversations with them and those notes were filed as an exhibit.

[139] One reference letter was from a retired chartered accountant who was engaged by the Applicant while he was in practice to prepare financial statements and tax returns both for the Applicant personally and for A Corporation (“External Accountant”). The External Accountant also conducted the audits that were then required by the Law Society and completed the Form N and Form 47 reports of those audits. The External Accountant’s reference letter supported the Applicant’s application for reinstatement, and the External Accountant stated in it that he had never known the Applicant to act other than completely ethically towards, or other than in the best interest of, any of his clients. The Investigator reported that the External Accountant had described the Applicant as decent, reliable and professional and had stated that the Applicant had paid his invoices promptly and that he did not delay matters or leave them unfinished nor did he demonstrate a lack of judgment in business dealings.

[140] While he was practising law the Applicant engaged an external bookkeeper (“Mr. V”). Mr. V maintained the Applicant’s books and financial records from the time he began practising in 1986 until he left Canada in 1999. Mr. V reviewed and updated the Applicant’s trust records weekly and his general records on a monthly basis at the Applicant’s office. Mr. V performed similar services for other law firms.

[141] In his letter of reference, Mr. V said that the Applicant always maintained proper records, that he was always a pleasure to deal with and that when he left Vancouver Mr. V lost his best client.

[142] When the Investigator interviewed him, Mr. V spoke very positively of the Applicant. Mr. V told the Investigator that there was never any question about inappropriate bookkeeping or dealing with trust funds by the Applicant and that he did not demonstrate a lack of judgment, nor did he delay things or leave them unfinished. Mr. V described the Applicant as reliable and good to his clients and stated that he went far beyond what was necessary for his clients.

[143] Mr. S, the owner of R Corporation in France, wrote a letter of reference dated June 25, 2010 in which he confirmed the Applicant had worked for R Corporation since 2001 as an agent. In his letter he stated that the Applicant had all the qualities required to practise his profession as a realtor in terms of ethics, respect and honesty and that the Applicant had a perfect knowledge of French property rights, legal procedures and

international transactions. When interviewed by the Investigator, Mr. S spoke very highly of the Applicant and stated that he was an example of straightforwardness, honesty and trust and that he was very fair, extremely reliable and never demonstrated a lack of judgment.

[144] The manager of the T Bank wrote a letter of reference dated August 3, 2010 addressed “To whom it may concern” in which he stated that he had been the personal banker for the Applicant since 1999 and confirmed that the Applicant had always conducted his dealings with the bank in a proper manner. This letter was written before the Applicant made his assignment in bankruptcy.

[145] The Applicant’s landlord in France, Mr. U, made a written certification on August 23, 2010 stating that the Applicant had rented accommodation from him since October, 2001 and that he always paid the rent and properly maintained the leased property in good repair.

[146] Three of the reference letters were from real estate agencies that employed the Applicant during the period of time from December 2010 until March 2012, and those letters merely confirmed his employment. The Investigator interviewed the authors of the letters from the real estate agencies.

[147] The managing broker for the real estate agency for which the Applicant worked from November 26, 2010 to April 14, 2011 wrote a reference letter. When the Investigator interviewed him, he stated there was no time when the Applicant demonstrated a lack of judgment or delay while employed by his agency.

[148] The office manager of the agency who employed the Applicant from April 2011 until August 2011 who wrote a reference letter told the Investigator she did not know the Applicant very well and did not remember enough about him to comment on any of his qualities, whether positive or negative, other than that he had not sold many properties. She later telephoned the Investigator and informed him that she had spoken to a retired real estate representative who had been employed by her agency and who had worked with the Applicant. She said that person had nothing negative to say about the Applicant.

[149] Another letter of reference was from the real estate agency that engaged the Applicant in August 2011. It was dated December 12, 2011 while the Applicant was still working for them and was written by the managing broker. She told the Investigator that the Applicant was a lovely person who worked hard but had just not been successful selling real estate. She described him as being a genuine person with the right intentions who was always courteous and professional. She said there were no instances where the Applicant demonstrated a lack of judgment. She stated that his best judgment was deciding to leave the real estate business when he did.

[150] Two of the Applicant’s recent landlords also wrote letters of reference. The landlord of a condominium that the Applicant began renting in November 2010 wrote a letter “To whom it may concern” dated December 15, 2011 in which she stated that the Applicant had always been prompt when paying his rent and keeping her informed of any concerns or issues regarding the unit. She also stated that neighbours had remarked to her that the Applicant was a quiet and respectful neighbour and that she enjoyed having him as a conscientious tenant.

[151] The second landlord rented an apartment to the Applicant beginning in January 1, 2013. She wrote a letter of reference to the Law Society dated June 12, 2013. This landlord resides in Saskatchewan and described the Applicant as a landlord’s dream as he always pays his rent on time. She stated that he is reliable, competent and informs the landlord of any in-suite issues that need to be addressed, which she said was incredibly beneficial because she is currently living out of the Province. She also stated that she was impressed with the Applicant’s credibility and integrity.

[152] The assistant branch manager of the Applicant’s current bank wrote a letter to the Law Society dated June 29, 2013 confirming that the Applicant had maintained a deposit account with that bank since

September 3, 2010 and that, since opening this account, the Applicant has handled all financial dealings in a satisfactory manner. The Investigator did not interview the assistant branch manager but, instead, interviewed the manager of that branch. The manager confirmed that the Applicant had been a client of their bank at that branch for some time, and she described him as a very proper, polite and well-mannered individual. She said that the bank does not issue these types of reference letters frequently but she is able to do so at her discretion. She told the Investigator there was no evidence of the Applicant demonstrating lack of judgment or unreliability and that he seemed "extremely reliable."

[153] The operations manager for the first taxi company the Applicant worked with after he stopped selling real estate wrote a reference letter for him dated September 27, 2012 stating that the Applicant had been associated with him since July 25, 2012 as an independent lease operator of a taxi, which he leased on a full-time basis and that the operations manager had found the Applicant to be a reliable and very well-respected member of their shift operators. The letter stated that the company had received many compliments from their clients regarding the Applicant and his pride in servicing them and that his clients made a point of requesting him.

[154] On January 11, 2013, the Applicant became an independent driver with a different taxi company. The business development manager for that company wrote a letter of reference dated June 7, 2013 addressed to "To whom it may concern" which stated that the Applicant maintains a highly professional and responsible relationship with their company and that within the short time he had been associated with them, the Applicant had demonstrated a high level of client service skills, maintained all regulatory requirements and interacted with all employees and staff of the company in a courteous and well-spirited nature.

## DISCUSSION AND ANALYSIS

[155] Section 19(1) of the Act requires this Panel to determine whether we are satisfied that the Applicant is of good character and repute and fit at the present time to become a barrister and a solicitor of the Supreme Court. While the Applicant's conduct as a member of the Law Society until 1999 and in the intervening time between then and when he applied for reinstatement is relevant as a predictor of his future conduct and, therefore, his character and his fitness to again become a practising lawyer, our task is not to determine what his character was in 1998 and 1999 but to determine whether he is now of good character and can be trusted to act honestly and ethically in the best interests of his clients.

[156] A leading authority on the question of what constitutes being "of good character and repute," including fitness to be a barrister and solicitor, is the decision of the Court of Appeal for British Columbia in *McOuat v. Law Society of British Columbia* (1993), 78 BCLR (2d) 106. At paras. 6 and 7, the Court of Appeal approved the following statement by the panel who considered Mr. McOuat's application for reinstatement:

> But we think we are required to consider the regard in which the candidate is held by others as well as the qualities of character Mr. McOuat possesses, that is both the subjective and objective senses of "good character".
>
> It is for this panel acting reasonably upon the evidence before it to decide whether Mr. McOuat has discharged the burden of satisfying the panel that he is fit to become a barrister and solicitor. The objective sense of "good character" overlaps with the requirement of fitness.
>
> The demands placed upon a lawyer by the calling of barrister and solicitor are numerous and weighty and 'fitness" implies possession of those qualities of character to deal with the demands properly. The qualities cannot be exhaustively listed but among them must be found a commitment to speak the truth no matter what the personal cost, resolve to place the client's interest first and never expose the client to risk of avoidable loss and trustworthiness in handling

the money of a client.

The cannons [sic] of legal ethics adopted by the Law Society provide assistance, when they assert:

> A lawyer is a minister of justice, an officer of the Courts a client's advocate, and a member of an ancient, honourable and learned profession.
>
> In these several capacities it is a lawyer's duty to promote the interests of the State, serve the cause of justice, maintain the authority and dignity of the Courts, be faithful to clients, be candid and courteous in relations with other layers and demonstrate personal integrity.

To be fit to practice a lawyer must be ethically equipped to never break the client's trust.

[157] The onus is on the Applicant to satisfy us, on a balance of probabilities, that he has met the requirements for reinstatement as set out in section 19(1) of the Act and as articulated by the court in cases such as *McOuat*, supra.

[158] With two important exceptions, the Applicant appears to have carried on a successful practice focusing on personal injury claims for 13 years. During this period of time, he was able to purchase what he describes as a unique and desirable residence. His External Accountant told the Investigator that he was not aware of the Applicant having had any financial problems and that the Applicant "spent a lot because he made a lot."

[159] The two exceptions to the Applicant's otherwise successful and competent practice arose as a result of very large bills to two clients for whom he obtained large settlements, both of which were billed on a contingent fee basis.

[160] He charged the first of these two clients, Ms. C, a fee of approximately $298,000. After his bill was reviewed, he was required to, and did, pay a refund of approximately $205,000 to that client in 1997.

[161] The Applicant rendered a very large bill to the second, Mr. E, and had already been paid from the settlement amount received in trust for him. In early 1998, it became clear that the Applicant was very likely going to be required to pay a very substantial refund to Mr. E.

[162] By the end of 1998, the Applicant and his law corporation owed the Bank approximately $769,000 and had a then unquantified liability to Mr. E of between $200,000 and $300,000. The Applicant's significant assets were the Chilco Property, which he knew had a value of less than $795,000, and $300,000 cash. Payment of a refund to Mr. E would have been a financial disaster for the Applicant and could have reduced his net worth to nothing or even a negative amount.

[163] Instead of taking steps to satisfy or otherwise deal with his obligations to the Bank and Mr. E, the Applicant decided to quit practising law, abandon the Chilco Property and leave the country with $300,000.

[164] When he left the country, the Applicant knew or ought to have known, that a large part, and perhaps all, of the $300,000 cash he took with him was money that he should have refunded to his client, Mr. E.

[165] The Applicant also knew, or ought to have known, that there was a good possibility that the security the Bank held in the Chilco Property would be insufficient to satisfy the Applicant's debt to the Bank and that he would continue to owe monies to the Bank after the Bank foreclosed on its mortgage.

[166] The Applicant did not disclose to any of his clients or the Law Society that he was intending to leave Canada permanently, and he left messages on his voice mail that erroneously implied that he would be returning to his office. He did not leave any forwarding address, nor did he make arrangements that would allow his clients, the Law Society or anyone else to contact him.

[167] The Applicant is presumed to have known when he left Canada in 1999, and we find that he either did know or ought to have known, that the Rules of the Law Society required him to retain his financial records for at least ten years and that he was required to inform the Law Society of his intended disposition of his open and closed files and his trust accounts and trust funds. The Applicant did neither. He failed to comply with the requirements of the Law Society with respect to his withdrawal from practice, and he breached Rules 3-68(2) and 3-80.

[168] The manner in which the Applicant dealt with his two major creditors, including leaving Canada without notice, departing with a substantial cash asset and taking steps to conceal the location of his new residence to prevent persons from finding or communicating with him, reveals there were flaws in his character. This is particularly so with respect to Mr. E. The Applicant was obligated to justify the amount of the fee payable by Mr. E and the amount of this fee would have been substantially less than the fee he actually charged and collected. Mr. E was entitled to a substantial refund. By leaving the country with $300,000, the Applicant preferred his own financial interest to that of his client, Mr. E. In doing so, he exposed Mr. E not only to the risk of an avoidable loss but to an actual loss of a substantial amount of money, which the Applicant used for his own benefit instead of paying it to Mr. E.

[169] Six of the eight complaints to the Law Society made while he was still a member were satisfactorily resolved, and there was no evidence that the Applicant acted improperly with respect to the matters that were the subject of these complaints.

[170] The other two of those eight complaints were made by Ms. D regarding the fee that the Applicant charged her daughter, Ms. C. One complaint related to a fee dispute, which was not dealt with by the Law Society because it was not within its jurisdiction, although the dispute was resolved. The other complaint had two additional components. One related to a refund of GST and PST on the portion of the fee refunded to Ms. C and was satisfactorily resolved; the other related to the accuracy and propriety of an advertisement and was not dealt with because the Applicant had already left Canada. In our view, the complaint relating to the advertisement was not significant.

[171] The eight complaints made to the Law Society about the Applicant before he left practice either did not contain serious allegations or did not involve any improper conduct by the Applicant and, in our view, are not evidence that he was, or is, not of good character and repute or fit to become a barrister and a solicitor of the Supreme Court.

[172] The remaining three complaints were made after the Applicant left Canada. One, by Ms. O, was based on incorrect facts, and there is no evidence that the Applicant acted improperly.

[173] There were two other post-practice complaints. One was made by Ms. I regarding her inability to contact the Applicant and to obtain the $175,000 term deposit held in trust by A Corporation. The other was a complaint by the Law Society that the Applicant failed to properly wind up his practice and to comply with the requirements of Rule 3-80. Both complaints were well-founded and are related to, and a direct consequence of, the unacceptable manner in which the Applicant wound up his practice and left Canada. This is evidence of a flawed character.

[174] With two exceptions, the other potential or actual claims to LIF made by the Applicant, or on his behalf by Mr. R, as custodian, did not raise issues regarding the Applicant’s character or reputation or his fitness to be a practising lawyer.

[175] Of the remaining two claims, one related to expenses paid by LIF to defend a claim by Mr. E in one of his actions. LIF concluded this claim had no merit and was unlikely to succeed. Mr. E did not proceed with that claim.

[176] The other claim was the indemnity paid to Ms. I for the cost of obtaining the appointment of a substitute trustee in the place of the Applicant. This was related to the manner in which the Applicant wound up his practice and left Canada, which we have already found was evidence of a flawed character. The insurance claim, however, was not in itself evidence that the Applicant was not of good character and repute or fit to become a practising lawyer.

[177] There is no question the Applicant has made some serious mistakes in the past in the conduct of his practice and in fulfilling his duties as a lawyer. However, as noted above, he has acknowledged his mistakes and is remorseful. This Panel must now determine whether we are satisfied the Applicant, having learned from his mistakes, is currently of good repute.

[178] It is clear from the evidence of Ms. A and from the letters of reference from six of his current and former employers, his External Accountant, his former bookkeeper, Mr. V, and three landlords, and supported by the interviews conducted by the Investigator, that they all have a very favourable view of the Applicant and believe he has a good reputation. There was no evidence before this Panel that the Applicant currently has anything but a good reputation. We therefore find that the Applicant, on a balance of probabilities, has satisfied us that he is of good repute.

[179] A second determination the Panel must make is whether we are satisfied the Applicant is now of good character. As noted above, we have found the manner in which the Applicant dealt with his two major creditors in 1999, one of whom was a client, and the manner in which he left Canada, was evidence that he was not of good character. We also find, however, that these were a series of related but isolated actions and that they are not consistent with the rest of the Applicant's practice history or his conduct after settling in France and returning to Canada.

[180] We accept the Applicant's testimony that he regrets having dealt with his two major creditors in 1999 in the manner in which he did and that he is very remorseful that he chose to leave Canada in the manner that he did. We are satisfied that he would act differently today if faced with the same circumstances. We therefore find that the manner in which he dealt with his debt to the Bank and his liability to Mr. E and the manner in which he left Canada in 1999 are not predictors of future bad character and that the Applicant has established, on the balance of probabilities, that he is currently of good character.

[181] The final determination the Panel must make is whether we are satisfied the Applicant is fit to again become a barrister and a solicitor of the Supreme Court.

[182] With the exception of the irrevocable letter of direction he drafted for Ms. I to sign and how he dealt with the $175,000 investment on her behalf, there was no evidence before us that the Applicant did not competently and properly represent his clients. Other than for the manner in which he dealt with his two major creditors and, in particular, his client Mr. E, there is no evidence that the Applicant acted for his clients or dealt with counsel or other parties in any manner other than a competent, honest and trustworthy manner.

[183] During his 13 years of practice, the Applicant encountered only two situations that he failed to deal with properly. One was the amount that he billed Ms. C and, after a review, he dealt with that matter appropriately by promptly making a refund to her of the reduction made to his fee by Master Patterson.

[184] The other was the fee charged to Mr. E, which exceeded the maximum contingent fee allowed by the Act and the Rules and which the Applicant took payment of from the settlement monies he held in trust for Mr. E. The Applicant did not deal with this issue properly. We have found, however, that he regrets the manner in which he dealt with this matter and is genuinely remorseful regarding his conduct. We are satisfied that, if he were faced with the same situation today, he would not deal with it as he did in 1999.

[185] We therefore find that the Applicant has satisfied us on a balance of probabilities that he is now fit to become a barrister and a solicitor of the Supreme Court.

[186] We are very mindful of the fact that the Applicant has not practised law for almost 15 years. Before he is reinstated, the Credentials Committee will undoubtedly require him to take steps to ensure that he is still qualified to practise law in British Columbia. In view of his previous difficulties with his contingent fee billings, we recommend that the Credentials Committee consider imposing conditions or limitations on the Applicant's practice that would require him to practise in a setting where another lawyer or lawyers would be responsible for reviewing his work as well as his contingent fee agreements and his bills for contingent fees.

## CONCLUSION

[187] The Applicant has satisfied this Panel on the balance of probabilities that he is currently of good character and repute and is fit to become a barrister and a solicitor of the Supreme Court.

[188] We therefore grant the application for reinstatement subject to the following conditions and limitations:

> (a) that he comply with, and fulfill, all requirements of the Credentials Committee with respect to his qualification to practise law; and
>
> (b) that he practise only in a supervised setting as directed and approved by the Credentials Committee, for the period of time to be set by the Credentials Committee.

## COSTS

[189] We did not receive any submissions on costs, and accordingly, if counsel cannot agree, written submissions may be made within 30 days of the delivery of this decision to counsel.