[2003] LSBC 36
Report issued: October 16, 2003
Citation issued: December 18, 2002

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

PETER WALLACE HAMMOND

Respondent

Decision of the Hearing Panel on Facts and Verdict

Hearing date: May 29th, 30th and June 27th, 2003

Panel: Patricia L. Schmit, Q.C., Single Bencher

Counsel for the Law Society: Jessica S. Gossen
Counsel for the Respondent: Christopher E. Hinkson, Q.C.

Background

[1] On December 18, 2002, a citation was issued against the Respondent pursuant to the *Legal Profession Act* and Rule 4-13 of the Law Society Rules by the Executive Director of the Law Society of British Columbia, pursuant to the direction of the Chair of the Discipline Committee.

[2] The citation, marked as Exhibit #1, directed that this Hearing Panel inquire into the Respondent's conduct set out in Schedule " A" as follows:

1. You failed to serve your clients in a conscientious, diligent and efficient manner so as to provide a quality of service at least equal to that which would be expected of a competent lawyer contrary to Chapter 3, paragraph 3 of the Professional Conduct Handbook.

2. Between April, 1997 and December, 1998 you failed:

i) To hold funds collected in payment of the Provincial Sales Tax as required by statute; and

ii) To remit such funds as required to the Consumer Taxation Branch of the Government of British Columbia.

3. As Counsel for the purchasers of a farm in Abbotsford, the purchase agreement provided that you were to retain the sum of $10,000.00 as a holdback (" hold back") from the sale proceeds to pay for the clean up of the property. On March 19, 2002, without authorization or knowledge of your clients, the purchasers, you paid out the sum of $5,000.00 of the hold back, thereby misappropriating the funds.

4. You attempted to mislead the Law Society by counselling your employee, Rani Dillon, to provide false information to the Law Society auditor, Rosanne Terhart, in relation to the release of the $5,000.00 hold back. You instructed Rani Dillon to tell Ms. Terhart that Ms. Dillon, as an agent to the purchasers

of the farm, had verbally authorized the release of the money when she had not.

5. Between July 25, 2002 and September 25, 2002, while acting for the purchasers of the Abbotsford farm, you failed to reply within a reasonable time to communications from Ron Hall, counsel for the vendors.

6. You failed to reply to the written requests of the Law Society for your response to the complaint of Patricia McLean, property manager with Profile Management Ltd. (" Profile") that you had breached two undertakings dated November 28, 2001 to pay certain funds to Profile upon completion of the purchases of two different properties.

7. You breached an undertaking you gave to Profile on November 28, 2001:

i) Not to make use of the Form F and Form B in relation to the purchase by your clients of Unit 301 - 12207 - 224 th Street, Maple Ridge until you had the sum of $330.83 representing outstanding strata fees, in trust.

8. You breached an undertaking you gave to Profile on November 28, 2001:

i) Not to make use of the Form F and Form B in relation to the purchase by your clients of Unit 311 - 12207 - 224 th Street, Maple Ridge until you had the sum of $393.51 representing outstanding strata fees, in trust.

9. You breached Law Society accounting rules as set out in the Audit Report dated July 3, 2002 and more specifically, you:

i) Used a trust account for non-trust transactions and co-mingled personal funds contrary to Rule 3-52(4).

ii) Breached Rule 3-60 by failing to maintain trust books, records and accounts.

iii) Breached Rule 3-63(1)(a) by failing to record trust account transactions promptly or within 7 days of the transaction.

iv) Breached Rule 3-63(1)(b) by failing to record general account transactions promptly or within 30 days of the transaction.

v) Breached Rule 3-64 by failing to reconcile your trust account on a monthly basis.

vi) Breached Rule 3-61(1)(a) by failing to maintain a general cashbook or synoptic journal.

vii) Breached Rule 3-61(1)(b) by failing to maintain an accounts receivable ledger or any other suitable system, for each client, to record the lawyer/client position on all transactions in which a bill has been rendered or a disbursement made.

viii) Breached Rule 3-68(2) by failing to retain the books, records and accounts relating to the most recent five year period at your chief place of practice. Those books, records and accounts related to your GST records and client file number 61400198 for your client 614104 B.C. Ltd.

10. A monetary judgment dated April 19, 2001 having been entered against you by the Minister of Finance and Corporate Relations, and not being satisfied within seven days, you failed to notify the Executive Director of the Law Society in writing of the circumstances of the judgment and your proposal for satisfying it contrary to Rule 3-44(1) of the Law Society Rules.

11. A monetary judgment dated October 9, 2001 having been entered against you by the Minister of Finance and Corporate Relations and not being satisfied within seven days, you failed to notify the Executive Director of the Law Society in writing of the circumstances of the judgment and your proposal for satisfying it contrary to Rule 3-44(1) of the Law Society Rules.

12. You failed to reply promptly to the Law Society requests for an explanation of the complaints of H.S.

13. You failed to reply promptly to the Law Society requests for an explanation of the complaint of R.M.

14. You failed to reply promptly to the Law Society requests for an explanation of the complaints of D. McD.

Agreed Facts

[3] Pursuant to Rule 5-2(2) of the Rules of the Law Society (" the Rules") the Respondent consented to a Panel composed of a single Bencher.

[4] The Respondent acknowledged proper service of the citation and waived the requirements of Rule 4-15 of the Rules.

[5] An Agreed Statement of Facts being a letter dated April 28, 2003 from Mr. Hinkson to the Law Society was filed as Exhibit #3 in these proceedings. It provided the following admissions:

(a) that between April 1997 and December 1998, the Respondent failed to:

i) Hold funds collected in payment of the Provincial Sales taxes required by the Statute; and

ii) Failed to remit such funds as required to the Consumer Taxation Branch of the Government of British Columbia. The Respondent has previously acknowledged his obligations with respect to these funds and payments.

(b) the Respondent used a Trust Fund for non-trust fund transactions and commingled personal funds contrary to Rule 3-52(4)

(c) from time to time, the Respondent failed to reconcile his Trust Account on a monthly basis as required by Rule 3-65.

(d) a monetary Judgment dated April 19, 2001 was entered against him by the Minister of Finance and Corporate Relations, but he failed to notify the Executive Director of the Law Society in writing of the circumstances of the Judgment and his proposal for satisfying it contrary to Rule 3-44(1) of the Rules.

(e) a monetary Judgment dated October 9, 2001 was entered against him by the Minister of Finance and Corporate Relations, but he failed to notify the Executive Director of the Law Society in writing of the circumstances of the Judgment and his proposal for satisfying it contrary to Rule 3-44(1) of the Rules.

[6] The admissions relate to counts 2, 9(a), 9(e), 10 and 11 in the citation marked as Exhibit #1.

[7] In testimony, the Respondent admitted the facts underlying the following counts in Exhibit #1:

(a) Count 6, in that he replied late.

(b) Count 9, in that he breached Law Society accounting rules.

(c) Count 10.

(d) Count 11.

(e) Count 12, in that he replied late.

(f) Count 13.

(g) Count 14, in that he replied late.

Background Facts

[8] The Respondent is 55 years old and was called to the Bar in British Columbia in September, 1976.

[9] The Respondent practised in firms of several members or more, from 1978 to at least 1992 and then shared space with another member until 1998 when he became a sole practitioner.

[10] His practice is composed of approximately 40% real estate, some corporate commercial matters with the balance being a general practice.

Facts

[11] Based on the testimony the Panel finds the following facts:

1. The Respondent was the subject of a " file side chat" with Peter Keighley on August 31, 1999. This was instigated because the Respondent had not responded very fully to the complaints that the Practice Standards Committee had reviewed. The Review was instigated by a request from the Practice Standards Committee as a result of complaints that revealed problems with delay, failure to communicate and financial difficulties.

2. After the meeting with the Respondent, Mr. Keighley made several recommendations regarding the Respondent tightening up his file maintenance procedures, timekeeping, returning telephone calls, dealing with receivable accounts and obtaining reliable and skilled staff.

3. The Practice Standards Committee received Mr. Keighley's report and decided that follow up was necessary to ensure the changes recommended by Mr. Keighley had been made.

4. Mr. Keighley attended again at the Respondent's office on May 9, 2000. He noted the difficulty experienced in scheduling the follow up visit and that he had found a " general lack of progress toward implementing any of the suggestions" he had made in the previous file side chat.

5. The Practice Standards Committee decided that a Practice Review was necessary.

6. The Practice Review conducted by Jackie Morris took place on November 14, 2000.

7. Ms. Morris concluded, generally, that the Respondent lacked control or supervision over his practice. Her Practice Review, dated January 11, 2001, identified the lack of progress since Mr. Keighley's second report, and made 20 recommendations, including recommendations dealing with staff supervision, file control, documentation, and management including follow up on files, and with clients, closing procedures on files, and establishing effective office systems and using them.

8. Ms. Morris recommended and the Practice Standards Committee accepted that there should be a follow up Practice Review in August, 2001.

9. By letter dated February 20, 2001 the Respondent accepted that the 20 recommendations made by Ms. Morris were necessary and acknowledged that he would implement them. He indicated that as of the date of the letter, he had, in fact, implemented many of the recommendations.

10. The Practice Review did not take place in August, 2001, as planned, due to the Respondent failing to return calls, then asking for an extension, and then experiencing medical problems. A date for the follow up Practice Review was arbitrarily set by the Practice Standards Committee for February 7, 2002. The day before the Review was to take place, the Respondent advised Ms. Morris that there had been a family accident and it was agreed to postpone the Review to February 14, 2002.

11. The follow up Practice Review took place on February 14, 2002. Ms. Morris attended at the Respondent's office and reviewed files.

12. After reviewing files, office procedures, the computer system and after having discussions with the Respondent's staff and the Respondent, Ms. Morris concluded that almost no progress had been made on the recommendations from the first Practice Review.

13. The Respondent was invited to respond to the findings.

14. On April 12, 2002, the Respondent replied, disputing that significant changes to the practice had not been made, asserting that backlog reporting and file management systems had been changed and denying the conclusion that Ms. Morris made that the Respondent seemed not to have personal knowledge of his files and their status. He acknowledged that there had been staff problems and accounting computer problems but asserted that they had been or were being overcome, while using these problems as a reason for some of his office failures. While he asked for advice, he hadn't taken advice previously offered.

15. Ms. Morris found no evidence that between the two Practice Reviews, the Respondent had developed systems and methods to deal with listing of files, backlog of post closing and reporting on files. She found that he had failed to complete files, failed to document what had happened and was to happen on files, failed to close files, improperly delegated to staff and lacked supervision and follow up with staff.

16. Ms. Morris could not say whether there were in fact, systems, or whether the systems were in place, but didn't work. She testified that she made inquiries of the Respondent about systems to manage his practice, and was told there were systems in place, but the Respondent couldn't access them. He didn't show them to Ms. Morris, and she did not see evidence of them or of them being used.

17. The Practice Standards Committee resolved to refer the Respondent to the Discipline Committee pursuant to Rule 3-14 of the Rules for consideration of disciplinary action.

18. In the meantime, in or about November, 2001 the Respondent acted on a purchase for purchasers of two separate strata units. He forwarded two letters of undertaking to the strata management company, Profile Management Ltd. (" Profile") undertaking not to use certain LTO forms which he asked to be provided by them, until he had certain monies representing unpaid strata fees. It is worthwhile to set out the exact wording of the relevant portions of the two undertaking letters. The first one stated:

> " We confirm our undertaking not to make use of the above noted Forms until we have the amount of $330.83 being the amount outstanding."

The second one stated:

" We confirm our undertaking not to make use of the above noted Forms until we have the amount of $393.51 being the amount outstanding."

Each letter of undertaking was signed by the Respondent but was drafted by his secretary. The letters of undertaking were defective. They failed to state that the Respondent undertook to " forward" the payments to Profile. Instead, the letters merely stated that the Respondent would not use the Forms until he had the amounts. A proper letter of undertaking used by the real estate bar, would be expected to state that the lawyer undertook not to file the Forms until such time as he had the necessary monies in trust and after closing, that the lawyer would forward those monies forthwith to the entitled party.

19. In the instant case, when the Respondent failed to pay the sums, Profile made several calls to the Respondent, speaking to his secretaries, but never getting a reply from the Respondent. Profile complained to the Law Society on February 28, 2002.

20. Subsequent to the complaint, Profile sued the Respondent for the amounts which he undertook to have. Default judgment was taken. Thereupon, the Respondent paid the judgment.

21. Kensi Gounden testified that on March 19, 2002, and April 14, 2002, he wrote the Respondent regarding the Profile complaint of February 28, 2002, requesting an explanation.

22. Mr. Gounden did not receive a reply to any of these letters.

23. Mr. Gounden testified that on August 13, 2002, and September 10, 2002 he wrote the Respondent regarding a complaint by H.S. and that he did not receive a reply to these letters.

24. Mr. Gounden testified that on June 25, 2002, July 24, 2002, August 9, 2002, August 21, 2002 and September 10, 2002, he wrote the Respondent regarding a complaint by R.M. and that he did not receive a reply to those letters.

25. Mr. Gounden testified that on August 21, 2002, he wrote the Respondent regarding a complaint by D.M.

26. The Respondent admitted to these letters from the Law Society.

27. Mr. Gounden testified that on October 2, 2002 he again wrote the Respondent, this time in an omnibus letter about the R.M. complaint, the H.S. complaint, the D.M. complaint and the Profile complaint. He received a reply to this letter from the Respondent, which was dated November 8, 2002.

28. The Respondent's explanation to these complaints was as follows:

a) Re: Profile - the Respondent stated that he provided the " usual type of undertaking" to Profile and that in the " normal transaction [the forms] would come to me and I would have filed them at closing and paid Profile at closing" . He explained that his client had picked up the Forms from Profile, paid the money due and filed the Forms in the Land Title Office, thereby circumventing him. He implied that he was thus relieved from complying with the undertaking. When Profile pressed him for payment and he could not get a receipt from his client for the alleged payment to Profile, he paid.

At no time did the Respondent suggest that if the transaction had occurred in the " normal manner" that he would be entitled to simply hold the money.

b) Re: R.M. - the Respondent explained that he had sent the required documents to the complainant.

c) Re: D.M. - the Respondent provided an explanation to the complaint.

d) Re: H.S. - the Respondent provided an explanation to the complaint.

29. In or about 2002 the Respondent was retained by the purchasers in the purchase of a farm property (" Mt. Lehman Road Property"). One of the purchasers was his conveyancing secretary (" the secretary"). A term of the interim agreement required that machinery and broken equipment was to be removed by the vendors prior to closing. Failing removal of the machinery a holdback of $10,000 would be retained by the Respondent.

30. The vendors did not clean up the property before the closing date, so the Respondent kept the holdback of $10,000 for the time being.

31. The Respondent's secretary had conduct of the file. She drafted most of the correspondence on the file dealing with the holdback, but the Respondent signed it.

32. After closing it was arranged that the purchasers were to perform the cleanup on the property and provide invoices to the vendor's lawyer as proof of the cost, so that the holdback could be dealt with.

33. The Respondent's secretary faxed invoices for the alleged cleanup to the vendor's lawyer. One of the invoices was false. The secretary knew the invoice was false. The secretary was found out, by the vendors. The Respondent learned of the attempted fraud from the vendors.

34. The matter was eventually resolved with the Respondent paying a sum from the holdback to the purchasers, and reimbursing the balance of the holdback to the vendors.

35. One of the vendor's lawyers, Ron Hall, was invited by the Law Society to seek instructions from his client, in order to complain to the Law Society regarding the Respondent's delay of over three months from closing, in dealing with the holdback.

36. Ron Hall wrote several letters and made several telephone calls to the Respondent seeking resolution of the holdback issue, prior to seeking instructions from his client to complain.

37. When Mr. Hall wrote a " hardline" letter, insisting on action, the Respondent responded and forwarded to Mr. Hall the appropriate amount from the holdback, likely sent shortly after September 24, 2002.

38. The Law Society authorized an audit of the Respondent's books, records and accounts pursuant to Rule 4-34.

39. Rosanne Terhart conducted the audit and prepared an audit report dated July 3, 2002, Exhibit 4 which covered the period March 1, 2001 to March 1, 2002 and was performed over a four day period in June, 2002.

40. One of the files Ms. Terhart examined was the Mt. Lehman Road Property file. She was concerned regarding a transfer of $5,000 from the $10,000 holdback to a numbered company when there was no evidence on the file of an authorization from the purchasers to do so and no clear authorizations from anyone else involved.

41. The Respondent asserted that he had verbal authorization from his secretary, who was one of the purchasers. He also asserted he had authority from one of the vendors being a principal in a company involved in the purchase.

42. Ms. Terhart gave evidence that the secretary, one of the purchasers of the property, had told her

that she did not give the Respondent verbal authorization to deal with the holdback. Ms. Terhart also testified that the secretary told her that the Respondent had told her to tell Terhart that she, the secretary, had given authorization, when in fact, she had not.

43. The secretary testified that:

a) she hadn't told the Respondent about the attempted fraud regarding the holdback until after the fraudulent bill had been sent to the vendor and before Ms. Terhart began questioning about the apparent lack of authorization to release the holdback on the Mt. Lehman Road Property.

b) she testified in an uncertain and confusing manner to a somewhat different version of events than Ms. Terhart regarding the authorization to release the holdback monies, although the gist was basically the same.

44. The Respondent asserted that he told the secretary before he paid the holdback money out, that he was doing so, and she acknowledged that it had to happen. He also asserted that he did not instruct the secretary to lie to Ms. Terhart.

45. I am left with much doubt about whether and when authorization was given to the Respondent to release the holdback, but the Respondent's version of events makes far more sense in the context of the events surrounding the Mt. Lehman Road Property purchase and I accept his evidence.

46. More importantly, I am left with grave concerns regarding the motive the secretary may have had to tell Ms. Terhart that she had not authorized the Respondent to release the funds. I do not accept the secretary's evidence on this point.

47. Ms. Terhart's Audit revealed the following regarding the Respondent's records, books and accounts:

a) From January 2000 to April, 2001, he ran his pooled trust account out of an account from which he also operated the business of a numbered company owned by the Respondent's wife. After April 2001, he not only operated the numbered company from the trust account which contained client's trust monies, but also operated the general business of his practice out of this account, including depositing income from the law practice, and paying expenses of the law practice and writing draw cheques to himself.

b) He did not keep a cash book or synoptic journal showing all trust transactions, with dates, amount of receipt and/or disbursement, sources of funds, client identity, recipient identity, and number of cheque/voucher.

c) Ms. Terhart was able to locate with much effort the supporting documents to back up information that normally would appear in the trust cash book/synoptic journal. However some of the information was not complete.

d) He did not keep accounts receivable ledgers, cash books or synoptic journals.

e) He was very late in recording and/or reconciling trust or general activity.

48. Ms. Terhart advised the Respondent in June, 2002, that he could not operate his practice business out of the trust account.

49. The Respondent testified an accountant had told him that he could operate his trust account in this manner. The Respondent did not provide the accountant's name and the accountant did not testify.

50. It was not until mid October, 2002, that the Respondent set up his own general account out of which

to operate his law firm but even then, the account did not comply with the rules as it was an account in the name of a numbered company, " dba" Hammond & Company. The Respondent was not the holder of a law corporation permit as required by Rule 9-5.

51. Ms. Terhart returned for a second interim audit, Exhibit 5, conducted during the period October 31 to November 18, 2002, and in January, 2003 for five days. Similar deficiencies were noted as in the first audit, although by this time the Respondent was no longer co-mingling law practice receipts and disbursements with trust receipts and disbursements.

52. The Respondent testified that since 2000, he has had ongoing staff problems which affected the cash flow and profitability of his firm and made it difficult to increase the practice because the level of support was absent. During that time he was diagnosed with diabetes, which affected his eyesight.

53. The Respondent left it up to his secretary to deal with most post-closing matters.

54. The secretary did not have a computer reminder system for files on her computer.

55. The secretary did not use a bring forward system.

56. The Respondent did not use a bring forward system.

Analysis & Decision

[12] The facts supporting the following counts in the citation, marked as Exhibit 1, are admitted in Exhibit 2:

a) Count 2

b) Count 6

c) Count 9

d) Count 10

e) Count 11

f) Count 12

g) Count 13

h) Count 14.

[13] The elements of professional misconduct are set out in the case Re: Pierce and the Law Society of British Columbia (1993) 103, DLR (4th) 233 (B.C.S.C.) at page 248-9, as follows:

" . . . it is conduct which would be reasonably regarded as disgraceful, dishonourable or unbecoming of a member of the profession by his well-respected brethren in the group - persons of integrity and good reputation amongst the membership."

[14] Subsequent to Re: Pierce, the Benchers in the matter of Jed Maxwell Hops [1999] LSBC 29 held as follows:

" . . . a review of the decisions that the Benchers have made, either by way of a Discipline Panel or the Benchers, en banc, indicates a determination by the Benchers that something less than dishonourable or disgraceful conduct can support a finding of professional misconduct."

and later, in that decision:

> " If the standard for professional misconduct still requires " disgraceful" or " dishonourable" conduct the Benchers have lowered the level of impropriety to attract those descriptions . . . It is clear that conduct matching those descriptive adjectives is no longer required for a finding of professional misconduct."

[15] The Benchers, in Hops noted that no court has sought to set limits as to what constitutes " disgraceful" or " dishonourable" conduct, leaving that determination with the Benchers.

[16] The standard of proof in professional misconduct matters ranges from a standard approaching that of proof beyond a reasonable doubt for the most serious allegations of misconduct to that approaching a balance of probabilities for those of a less serious nature. The issue to be determined is whether I am " reasonably satisfied" that professional misconduct has occurred " on the totality of circumstances" proven by a fair and reasonable preponderance of credible evidence. Smith v. Smith [1952] S.C.R. 312 at 331-2.

[17] As stated in Jory v. College of Physicians and Surgeons No. A850601, Vancouver Registry, S.C.B.C.:

> " Evidence must be sufficiently cogent to make it safe to uphold the findings with all the consequences for the professional person's career and status in the community."

[18] Breach of the provisions in the Professional Conduct Handbook simpliciter is not, per se, professional misconduct. Something more than a " mere" breach of one or more of those provisions is needed to reach the threshold of professional misconduct. See the Review decision in Re: Dobbin [1999] LSBC 27 at paragraph 17-18 applying Fan v. Law Society of B.C. (1977) 77 D.L.R. (3rd) 97 at p. 102 where Mr. Justice Seaton observed:

> " [the Law Society's] position was that conduct that was a breach of a ruling would necessarily constitute professional misconduct or conduct unbecoming a member. I do not think that to be so. If it were, Section 48 (now Section 47) would be worded so as to encompass breach of a ruling or there would be a provision in the Act giving status to the Handbook. Most breaches would constitute either professional misconduct or conduct unbecoming a member but there was no finding that this breach was either."

[19] The Panel is mindful of this direction. However, it is obliged to view the evidence as a whole, assess its cogency and weight and decide if the evidence as a whole admitted to be breaches of the Handbook attains the standard necessary to constitute professional misconduct.

[20] Given the admissions made by the Respondent regarding the facts underlying Counts 2, 6, 9, and 10 - 14, and the evidence heard, as accepted above, the Panel finds professional misconduct occurred on all of Counts 2, 6, 9, 10, 11, 12, 13 and 14.

[21] Regarding Counts 6 and 12 to 14, as the Benchers have recently restated in Re: James Douglas Hall [2003] LSBC 11, lawyers are obligated to respond promptly to complaint inquiries from the Law Society. The Law Society cannot fulfill its statutory duty to protect the public interest if lawyers ignore it. It is professional misconduct to do so in these circumstances.

[22] The Panel dismisses Counts 3 and 4. These two counts involve the sale of the Mt. Lehman Road Property and are bound up together in a very confused and poorly documented file. Even while dismissing these counts, the Panel finds that it was not always clear who the Respondent acted for nor what specific services he was to provide. This was partly due to the nature of the instructions from his clients and partly due to the fact that he allowed his secretary to do most of the file work. In dismissing these counts the Panel

finds that the Respondent did not instruct his secretary, one of the purchasers, to lie to Ms. Terhart regarding the authorization to release the holdback. The Panel rejected the secretary's evidence regarding the holdback and her instructions regarding the holdback due to the secretary's deception in this matter. Specifically, the secretary had claimed funds were due, based on fraudulent invoices. She had been found out, and the vendors were demanding their money. The Panel finds that there was some form of authorization given by the secretary to allow the Respondent to deal with the holdback. In dismissing these counts the Panel noted that the confused dealings on the file point to a general failure to manage the file in a lawyerly fashion.

[23] Regarding Count 5, when the Respondent received the " hardline" letter from Mr. Hall, he responded quickly. There were other problems with the holdback, most notably the secretary's attempted fraud regarding cleanup costs, which were beyond the Respondent's control and which explains some of the delay.

[24] The delay in replying to Mr. Hall is explained by the numerous problems on the Mt. Lehman Road Property file, and while lengthy, is not inordinate. The Panel dismisses Count 5.

[25] Concerning Counts 7 and 8, breaches of undertaking are dealt with in Chapter 11 of the Handbook. Undertakings are the most solemn of promises. They are not to be made sloppily or casually. Reliance on undertakings is fundamental to the practice of law. Lawyers must articulate undertakings in a clear and unequivocal manner. They must be scrupulous and make diligent efforts to meet all undertakings. Failure to do so undermines public credibility and trust in lawyers. Standard undertakings are given and received in virtually all real estate transactions and all knowledgeable solicitors are aware of the intended effect of those undertakings.

[26] A lawyer is responsible for every piece of correspondence that goes out of his or her office. Particularly where letters of undertaking are concerned, lawyers must ensure that they are clear and capable of being satisfied.

[27] At the least, the Respondent failed to review the letters drafted by his secretary to Profile to ensure that they adequately and clearly set out what he was obligated to do. The Respondent was dealing with the public, as represented by Profile. A normal real estate practice letter made in the usual practice would have clearly imposed an obligation on him to pay the money for the outstanding strata fees or, if he could not, to return the Forms. The Respondent argued that because of his own failure to define his own duties, he is not obligated to fulfill them and has not breached the undertaking despite the fact that, when sued, he paid the amounts himself. When the Law Society made inquiries, he did not raise the allegation that he had not undertaken to pay.

[28] A further factor is that the lack of particularity in the undertaking was brought to the Respondent's attention by Profile after the deal closed on November 30, 2001. He failed and/or refused to respond to Profile's inquiries.

[29] The Panel finds that the Respondent breached his undertakings to Profile and that Counts 7 and 8 are made out.

[30] The most problematic count is Count 1. Consideration of this Count involves the Panel in examining the whole of the Respondent's practice. The inquiry concerns competence to practice law. Competence involves more than legal knowledge. It is challenging and difficult to run a law practice. A lawyer undertakes many duties, including that of businessperson, systems organizer, human resources manager, bookkeeper, paper filer, office manager. In addition, the lawyer must comply with the Rules of the Law Society that set out duties in the public interest. The Rules that require certain types of accounting and record keeping are

necessary to protect the public, and incidentally, to protect the member. By complying with these Rules, a lawyer can prove to all that he or she has managed money, whether it be client's money or money due government, in a responsible manner and has carried out his or her promises and the instructions of clients.

[31] The Respondent failed to do that.

[32] His failures to respond to Law Society inquiries are also evidence of a practice disintegrating.

[33] The sloppy undertaking letters, the difficulties sorting out whether and from whom authorizations to release monies were given, lack of appropriate documentation on files, the failures to pay monetary judgments all go to the issues raised in Count 1.

[34] The Panel finds that the circumstances surrounding the Profile complaint are further evidence of the Respondent's practice being out of control, his failure to supervise and then failure to deal with the consequences of that lack of supervision until faced with a judgment.

[35] Finally, the serious breaches of accounting rules are further evidence of the failure to manage client property in a responsible manner. Managing client property is one of the core responsibilities of being a lawyer. It goes to the issue of basic competence in conscientiously, diligently, and efficiently serving clients.

[36] The Panel finds that with respect to Count 1, the Respondent failed to serve his clients in a conscientious, diligent and efficient manner in his capacity as a lawyer, and finds that this constitutes professional misconduct in the circumstances.