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PROVINCE OF SASKATCHEWAN)
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**IN THE MATTER OF THE LEGAL PROFESSION ACT, 1990
AND IN THE MATTER OF STERLING MCLEAN,
A LAWYER OF REGINA, SASKATCHEWAN**

**AGREED STATEMENT OF FACTS AND ADMISSIONS
BETWEEN STERLING MCLEAN AND
THE LAW SOCIETY OF SASKATCHEWAN**

In relation to the Amended Formal Complaint dated March 26, 2009, attached at Tab 1.

Jurisdiction

1. Sterling McLean (hereinafter “the Member”) is, and was at all times material to this proceeding, a practicing member of the Law Society of Saskatchewan (hereinafter the “Law Society”), and accordingly is subject to the provisions of *The Legal Profession Act, 1990* (herein after the “Act”) as well as the *Rules of the Law Society of Saskatchewan* (the “Rules”). Attached at **Tab 2** is a Certificate of the Executive Director of the Law Society of Saskatchewan pursuant to section 83 of the Act confirming the Member’s status.
2. The Member is currently the subject of an Amended Formal Complaint dated March 26, 2009. The Formal Complaint is comprised of five counts. The Amended Formal Complaint was served upon the Member on March 27, 2009. Proof of service of the Amended Formal Complaint upon the Member is included at Tab 1.

3. The Member acknowledges the jurisdiction of the Hearing Committee appointed in relation to this matter to determine whether the complaints against him are well founded. The Member further acknowledges service of the Formal Complaint and the Notice of Hearing and takes no issue with the constitution of the Hearing Committee.
4. The Member has agreed to enter a guilty plea in relation to all Counts set out in the Amended Formal Complaint.

Particulars of Conduct

5. These proceedings arose as a result of a Law Society investigation in relation to complaints received from two Regina lawyers, two beneficiaries of an Estate on which the Member is the executor and one other client for whom the Member was acting on his real estate purchase. The complaints from fellow lawyers deal with breach of trust conditions. The beneficiary complaints relate to unreasonable delay in administering an estate and misleading one of the beneficiaries in relation to the status of the file. The real estate complaint relates to inaction on the file and delay in relation to the discharge of an incorrectly registered mortgage.

Complaint of R.S.

6. The complaint of R.S. was received on December 18, 2007 and is attached at **Tab 3**. Mr. S's correspondence alleges a breach of trust condition by the Member. Mr. S. referred to a letter from his client HDD to the Member dated June 19, 2007, attached at **Tab 4**. With the June 19, 2007 letter, HDD, as vendor of a newly constructed residential home, enclosed various documents required to conclude the purchase and sale including a transfer authorization, power of attorney, partial discharge and a real property report. Those documents were provided to the Member on various trust conditions including the following as trust condition #3:

Respecting the seasonal holdback, prior to disbursement of mortgage funds we will provide your office with an inspection report indicating the amount of this holdback. When the seasonal work is completed, we will also provide you with an inspection report and request release of the holdback. Seasonal holdback money must be completely forwarded to our office once the final inspection is sent to your office.

7. The Member accepted the trust conditions imposed in the June 19, 2007 letter and made use of the documents upon which the trust conditions were imposed.
8. On October 15, 2007, HDD provided a letter and final inspection report, attached at **Tab 5** to the Member indicating that the seasonal work, and in fact, all work had been completed in relation to the build and that the property was 100% complete. The letter requested the release by the Member of both the builder's lien holdback of \$18,784.78 and the seasonal holdback in the amount of \$9,547.00 as was contemplated and required in trust condition #3.
9. On November 5 and November 7, 2009 Mr. S. wrote to the Member requesting payment of the holdbacks in compliance with the trust conditions. Those letters are attached at **Tab 6**.
10. On November 8, 2007, the Member wrote to Mr. S. and paid the builder's lien holdback of \$18,784.54. The letter from the Member to Mr. S. dated November 8, 2007 with a copy of the cheque for the builder's lien holdback is attached at **Tab 7**. In that letter, the Member advises that certain deficiencies still existed in relation to the build such as a missing front step stair railing and a malfunctioning jet tub. The Member advises that he had received instructions from his client to retain the \$9,547.00 designated as the seasonal holdback until the deficiencies had been resolved. The deficiencies referenced by the Member in this letter were unrelated to the seasonal work or seasonal holdback. All seasonal work had been completed as was indicated in the inspection report attached at Tab 5.
11. On December 13, 2007 Mr. S. wrote to the Member yet again. That letter is attached at **Tab 8**. The letter reiterates that the Member was required, pursuant to trust condition #3, to pay the seasonal holdback upon receipt of a final inspection report. A further demand for release of the seasonal holdback was made. The Member failed to comply with the demand and Mr. S. complained to the Law Society on December 18, 2007 by sending the letter attached at Tab 3.
12. The complaint was forwarded to the Member and he provided his response on January 21, 2008. The response is attached at **Tab 9**. In the response the Member argues that the build was not in fact 100% complete due to the existing

- deficiencies reference in his letter of November 8, 2007, and that this gave him the right to retain the seasonal holdback, to in effect secure his client's position.
13. On February 1, 2008, Mr. S. responded further to the Member's response. In his letter Mr. S. confirms that any issues relating to the jet tub and its related deficiencies were peripheral to the issue of the trust condition relating to the seasonal holdback. Mr. S. stated that the seasonal holdback could not be converted to some type of security in relation to a separate deficiency. Mr. S. confirms that the home was registered in the New Home Warranty Program and that any issues of deficiencies would have to be addressed via that program rather than by refusing to release the seasonal holdback.
 14. On February 25, 2008, in excess of 4 months after receiving the final inspection report, after having received repeated demands for payment and after the involvement of the Law Society, the Member paid the seasonal holdback in the amount of \$9,547.00 to Mr. S. in compliance with trust condition #3. In the Member's letter, attached at **Tab 10**, he acknowledges that he was not in a position to retain the seasonal holdback pending resolution of claims for deficiencies or warranty work.
 15. In this case, the Member chose to ignore the trust condition that he had previously accepted in order to benefit the interests of his own client. The Member attempted to use the seasonal holdback amount as leverage in relation to his client's warranty claim and in so doing, breached trust condition #3 as set out in the letter from HDD dated June 19, 2007.

Complaint of the Law Society of Saskatchewan - Breach of Undertaking to W.J.

16. During the course of a Law Society investigation of a complaint of delay against Mr. J., it was determined that the Member in these proceedings was the root cause of that complaint. The Member, representing a vendor, had provided Mr. J. with an undertaking to discharge a federal writ against certain property civically known as 1304 Angus Street and 1930 Quebec Street. As of May 11, 2005, the subject writ amount was \$25,416.01. The Member had failed to comply with this undertaking and as such Mr. J. could not complete a subsequent transaction in

relation to the property. The Law Society, having identified the apparent breach of undertaking investigated the Member's actions.

17. The Law Society determined that, on June 16, 2006, the Member wrote to Mr. J. and enclosed transfers for 1304 Angus Street and 1930 Quebec Street. The letter dated June 26, 2006 is attached at **Tab 11**. In that letter the Member undertook as follows:

From 1304 Angus Street, we undertake to discharge Bank of Montreal caveat Interest #10733789 and Federal Writ IR# 110271417.

From 1930 Quebec Street, we undertake to discharge Federal Writ IR# 110271417.

We undertake not to release the funds provided to us in your letter dated March 8, 2006 until the above interests have been discharged.

18. Mr. J.'s letter of March 8, 2006 as referenced above by the Member is attached at **Tab 12**. Under cover of that letter Mr. J. provided the Member with a trust cheque in the amount of \$40,906.01.
19. On September 13, 2007, the Member released \$20,453.00 of the funds provided to him by Mr. J. to the former spouse of the vendor who had been joint owner of the property. The Member had not discharged the federal writ prior to releasing these funds in accordance with his written undertaking of June 26, 2006. The balance remaining in the Member's trust account totaled \$20,670.96. The amount held by the Member was no longer sufficient to discharge the federal writ against the properties.
20. The Member has advised that his client has refused to allow him to pay any amount to the writ holder, Canada Revenue Agency. The Member has followed his client's instructions not to pay the remaining funds to the writ holder despite his undertaking. Attached at **Tab 13** is a chronology of events provided by the Member dated July 11, 2008.
21. Unfortunately, even if the Member did pay the amount to the writ holder, the amount he holds in trust would be insufficient to discharge the writ, due to the fact that he had already released roughly half of the funds contrary to his undertaking.

22. To date, the Member has failed to resolve the writ issue. No meaningful steps had been taken until February 2009 to have the writs removed from the titles since the original undertaking was provided by the Member. The writ remains on title for both properties. Attached at **Tab 14** are copies of recent land title certificates for 1930 Quebec Street and 1304 Angus Street, both showing that the writ is still present as of March 24, 2009. The amount of \$20,670.96 remains in the Member's trust account.
23. Both properties have been sold by Mr. J.'s client. In the course of those transactions Mr. J. relied upon the undertaking of the Member and provided a similar undertaking relating to the removal of the writ to counsel for the subsequent purchasers. To date, Mr. J. has not been able to fulfill his undertaking as a result of the Member's original breach of undertaking and subsequent inaction.
24. The Member has applied to the Court of Queen's Bench to pay the money held in his trust account into court in exchange for a partial discharge of the writ with respect to both properties. The application was originally returnable March 26 and was adjourned to April 23. If the Member is successful, the writ would be removed from the titles in question and Mr. J. would be in a position to satisfy his trust condition to the subsequent purchasers.

Complaint of J.L.

25. The complaint of J.L. arrived at the Law Society on May 8, 2008. The letter received from the complainant is attached at **Tab 15**. The complaint related to a delay of approximately 7 months between the complainant taking possession of his home and receiving a final statement of adjustments. As of the date of the complaint, no final report had been provided by the Member. The complainant also raised issues of failure to communicate. When the complainant did get in touch with the Member, the Member would tell him that the adjustments would be ready "on Friday", and these promises were not fulfilled.
26. The Member provided his response to the J.L. complaint to the Law Society on May 23, 2008. The response is attached at **Tab 16**. The response outlines a real estate transaction in which the Member represented Mr. L. and purchaser as well

- as the vendor. A mortgage was required to pay a portion of the purchase price. L. applied and was approved for a CIBC mortgage of \$87,851.25. On August 17, 2007 title transferred to Mr. L. and the Member registered the CIBC mortgage on title pending advancement of the funds. Unfortunately, when the Member made the request for advancement of the mortgage funds, the Member was advised that the mortgage had been cancelled and that no funds would be forthcoming from the CIBC.
27. A new mortgage was sought out and obtained by Mr. L. that new mortgage was registered on the title in priority behind the CIBC mortgage that had been registered on August 17, 2007. On October 15, 2007 the Member obtained a copy of the title showing that the new mortgage from MCAP had registered. That title also showed that the CIBC mortgage remained in the title.
 28. The Member highlights in his letter of May 23, 2008 that the CIBC mortgage had yet to be discharged from the mortgage. The Member can produce no evidence that he made any formal request for a discharge of the mortgage from CIBC between October 15, 2007 when he would have certainly known that it was still on title and the date of his May 23, 2008 letter.
 29. The Member also admits in his May 23, 2008 letter that an accounting in relation to the transaction should have been provided to Mr. L. but that it had not been. In a letter dated May 30, 2008, attached at **Tab 17**, the Member provides a preliminary report to Mr. L. and apologized to him for the delay in reporting and stated that there was no good reason for the delay. The Member stated again that the CIBC mortgage remained on the title.
 30. The Member however did not tend to obtaining a discharge in relation to the CIBC mortgage. Donna Sigmeth of the Law Society had asked the Member what efforts he had made to secure a discharge in relation to the CIBC mortgage. Donna Sigmeth's made this request by way of letter dated July 24, 2008, attached at **Tab 18**. No response was forthcoming. Further requests were made of the Member to provide this information on November 25, 2008.
 31. The Member provided the requested documents to the Law Society on February 5, 2009. Those documents showed that no request was forwarded to CIBC

seeking a discharge of the CIBC mortgage until September 17, 2008. A subsequent letter was sent to the CIBC on November 10, 2007. Both letters sent by the Member to the CIBC are attached at **Tab 19**. Confirmation of discharge of the mortgage was received by the Member from the CIBC on January 14, 2009. The actual discharge of the mortgage occurred on December 19, 2008. Attached at **Tab 20** is a copy of the letter written to Mr. L. confirming the discharge. With that, the real estate file came to a close approximately 17 months after the Member's client took possession of the property.

32. The Complainant did not suffer any monetary loss as a result of the delay. After the failed CIBC mortgage he was successful in obtaining the MCAP mortgage. Just after the CIBC mortgage was discharged in December 2008 the Complainant refinanced yet again with a new mortgage being registered on December 30, 2008.

Complaint of the Beneficiaries of the Estate of D.D.

33. On May 27, 2008 the Law Society received a complaint from L.P., a beneficiary of the Estate of D.D. The Member was acting as Executor for the Estate and also as the solicitor representing the Estate. The complaint letter of L.P. is attached at **Tab 21**.
34. As of the date of the complaint, nine months had passed since the date of D.D.'s death. Ms. P. advised in her letter that she had spoken to the Member on March 24, 2008 at which time he told her that "documentation" would be forwarded to the court the following Tuesday. At that time he also promised to provide a list of D.D.'s assets to Ms. P. Follow up phone calls and emails dated March 26, May 11 and May 20, 2008 were not returned by the Member.
35. The Member provided a response to the L.P. complaint on June 9, 2008. The Response is attached at **Tab 22**. In his response the Member raises the allegation that the beneficiaries had had a family feud. The beneficiaries have denied this.
36. On or about February 22 2008 the Member met with K.D., another beneficiary to the D.D. Estate to discuss land values. The Member told Mr. D. that "things would be wrapped up by Friday" on more than one occasion. No results were

- ever forthcoming. The probate of the estate had yet to be completed in the spring of 2008.
37. Probate was ultimately applied for on Friday July 11, 2009. Probate was granted thereafter on July 18, 2009.
 38. The business of the estate has not been completed in a timely fashion. The delay of approximately one year before letters probate was obtained is not the only issue concerning the beneficiaries. The Member also failed to pay the funeral expenses of D.D. until March 6, 2009. The account for funeral services in the original amount of \$5,431.71 remained unpaid for approximately 19 months. Interest accrued at a rate of 24% per annum in relation to this account and totaled \$2,326.11. The March 6, 2009 payment only did not cover the entire account. Attached at **Tab 23** is a letter from Paragon Funeral Services dated March 6, 2009 outlining the issues with the account. In that letter Paragon Funeral Services refers to occasions where they had phone communications with the Member which included numerous phone calls including on November 12, 2007, February 13, 2008 and May 28, 2008. An account reminder was also sent to the Member on May 28, 2008 and is attached at **Tab 24**.
 39. Despite these frequent reminders, the Member advised Mr. D. in a letter dated March 3, 2009, attached at **Tab 25**, that he had understood that the account had been paid. In that letter the Member also seeks the return of a \$10,000.00 distribution that he has previously made to Mr. D. The Member wrote another letter to Mr. D. on March 16, 2009, attached at **Tab 26**, indicating that he was not aware of the outstanding account. He confirms in this letter that Paragon was prepared to sue unless the outstanding interest was not paid within 15 days. The Member concedes in this letter that he should have been in closer contact with Mr. D. in relation to the payment of this account. No explanation is provided in relation to the Member's disregard for the frequent account reminders that the Member from the funeral service provider.
 40. As of the date of this proceeding, the Estate of D.D. has not yet been finalized.

Discipline History

41. This is not the Member's first discipline proceeding before the Law Society. On June 14, 2006 the benchers of the Law Society found the Member guilty of conduct unbecoming in that he failed to provide an acceptable level of service to clients and that he failed to respond to a fellow member. That finding of conduct unbecoming related to 3 different files. The subject matter of the June 14, 2006 proceeding included problems similar to those set out in the current proceeding with this Member failing honor commitments to discharge interests from property and failure to provide adequate levels of service in estate matters. A digest of the decision is attached at **Tab 27**.
42. During the June 14, 2006 proceeding the Member was also found guilty of conduct unbecoming for breaching an undertaking provided to another member by failing to comply within a reasonable time.

Summary

43. To summarize, the foundations for the charges of conduct unbecoming set out in the Amended Formal Complaint are as follows:
 - a. In relation to the R.S. complaint, the Member accepted trust conditions imposed by a builder in a letter dated June 19, 2007 and made use of the documents upon which the trust conditions were imposed;
 - b. The Member later failed to comply with trust condition #3 set out in the letter dated June 19, 2007, by refusing to release seasonal holdback money to the builder upon receipt of a final inspection report;
 - c. The Member breached the trust condition and held the seasonal holdback funds as security for unrelated warranty work relating to the build;
 - d. The Member paid the seasonal holdback money to the builder only after repeated demands by the builder's counsel and only after the Law Society became involved;
 - e. In relation to the complaint of W.J., the Member failed to fulfill a written undertaking provided on June 16, 2006 to secure a discharge of writ from

titles to two properties being sold by his client to Mr. J.'s client as purchaser;

- f. The Member had undertaken to not release the purchase funds until the writ had been discharged in relation to the properties in question;
- g. Contrary to his undertaking the Member released \$20,453.00 of the funds to the vendor's former spouse on September 13, 2006 without having first discharged the writ;
- h. The writ remained on both titles and the Member's client refused to have the remaining funds applied to the writ;
- i. Even if the Member had been able to get instructions from his client he would not have been able to fulfill the writ as the amount of money remaining from the proceeds of the sale was less than the amount of the writ;
- j. The writ remains on both titles to this date, however the Member has an application pending on the Court of Queen's Bench in an effort to have the writs discharged;
- k. In relation to the complaint of J.L., the Member failed to rectify an anomaly arising out of a failed mortgage transaction;
- l. On August 17, 2007 Mr. L. received possession of property. He intended to fund the purchase with a CIBC mortgage and the mortgage was in fact registered on title prior to his taking possession of the property;
- m. The mortgage company later cancelled the mortgage deal and no money was advanced in relation to the deal. A new mortgage was obtained and the registered on the title;
- n. The member failed to make any efforts to have the CIBC mortgage removed from the title until September 2008, over a year after the mortgage transaction collapsed;
- o. No reporting was provided to the purchaser until May 30, 2008 when a preliminary report was made, and even then this report was incomplete due to the presence of the CIBC mortgage on title;

- p. In December 2008, roughly 3 months after the Member sent his first request for discharge letter to the CIBC, the mortgage was removed from the title;
- q. In January 2009, the Member concluded the real estate file, approximately 17 months after it began;
- r. The complaint of the beneficiaries of the Estate of D.D. relates primarily to the delay in the Member dealing with estate business;
- s. The Member, in his role as both executor and estate solicitor did not apply for probate on the uncontested estate for approximately 1 year after the date of death;
- t. The Member failed to deal with major estate expenses. The bill for the funeral service remained unpaid for approximately 19 months and during that time \$2,326.11 in interest accrued in relation to the original funeral cost of \$5,431.71;
- u. The Member received various account reminders by way of letter and telephone call from the funeral service provider and has no explanation for his failure to pay the account;
- v. To this date, the estate remains unresolved
- w. In relation to the allegation of misleading K.D. in relation to the status of the estate file, the Member on a number of occasions left Mr. D. with the impression that the matter would be concluded in short order, and on more than one occasion assured Mr. D. to the effect that “the matter would be wrapped up by next Friday”;
- x. The Member did not live up to his promises; and
- y. The Member was found guilty of conduct unbecoming a lawyer on facts similar to those in the current case in 2006 in relation to 4 separate files.

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