ROCH DUPONT
PRELIMINARY APPLICATION HEARING: May 19, 2017
HEARING DATE: October 26, 2018
PENALTY HEARING DATE: March 11, 2019
DECISION DATE: April 23, 2019
***Law Society of Saskatchewan v. Dupont*, 2019 SKLSS 3**

IN THE MATTER OF *THE LEGAL PROFESSION ACT, 1990*
AND IN THE MATTER OF ROCH DUPONT,
A LAWYER OF REGINA, SASKATCHEWAN

DECISION OF THE HEARING COMMITTEE FOR THE LAW SOCIETY OF SASKATCHEWAN REGARDING THE PRELIMINARY APPLICATION

Members of the Hearing Committee: Jay Watson (Chair)
Heather Hodgson
David Flett

Counsel: Timothy Huber for the Conduct Investigation Committee
Reg Watson, counsel for Roch Dupont

1. Timothy F. Huber, Counsel for the Investigation Committee of the Law Society of Saskatchewan, by application dated May 2, 2017 heard May 19, 2017 by conference call sought an Order from the Discipline Committee allowing the Complainant in this matter, P.J., a Lawyer residing in St. Cloud, Minnesota, be allowed to testify on behalf of the Conduct Investigation Committee via Skype.

2. The Preliminary Application was not accompanied by an Affidavit, however, Mr. Reg Watson, counsel for the Member acknowledged that the Complainant, P.J. is in fact a Lawyer and resides in St. Cloud, Minnesota. Mr. Huber contends that the Complainant's testimony in chief would take approximately an hour and that credibility does not play much of a role in the matter. Mr. Watson disagreed that credibility was not an issue. For the purposes of this decision the Discipline Committee must assume, in the circumstances, that credibility will be in issue.

3. *Queen's Bench Rule* 9-20 reads as follows:

> **Evidence by telephone** or **audio-visual method**
> **9-20(1)** The Court may order that the testimony of any witness taken orally by telephone or by any audio-visual method approved by the Court is admissible in evidence:

(a) if the parties consent; or
(b) if the Court so orders.

(2) Unless the Court orders otherwise, the witness may be sworn or affirmed by answering affirmatively the oath or affirmation administered by the Court.

(3) The oath or affirmation mentioned in subrule (2) may be in these words:

"Do you solemnly affirm (swear) that the evidence to be given by you shall be the truth, the whole truth and nothing but the truth? (So help you God?)"

(4) If the taking of evidence by telephone or approved audio-visual method is or becomes unsatisfactory or if the personal attendance of the witness is desirable, the presiding judge may:

(a) refuse to hear or continue to hear the evidence;
(b) receive or reject any evidence that may have been heard; and
(c) make any order or give any directions, including directions as to costs, that the judge considers appropriate.

(5) Unless the Court orders otherwise, copies of all reports, memoranda or other written material to which the witness intends to refer must be disclosed to the other party.

(6) Telephone or other charges:

(a) must be paid in the first instance by the party on whose behalf the witness is called; and
(b) unless the Court orders otherwise, may be claimed as a proper disbursement in the proceedings.

4. In *Gillam v. Waschuk Pipeline Construction Ltd.,* 2011 SKQB 25 (CanLii) a similar application was made before Gunn, J. As in this case, no affidavits were filed and the matter proceeded on the basis of representation from counsel. The case is short and illustrative and is read as follows:

> [1] Mr. Gillam seeks an order pursuant to Rule 284A and Rule 289 of the *Queen's Bench Rules* providing that the evidence of Jim Kilgour may be taken *viva voce* by video teleconferencing and that it be admissible in evidence.
>
> [2] Waschuk Pipeline Construction Ltd., ("Waschuk) is opposed to the application.
>
> **The Rule**
>
> **284A1)** The court may order that the testimony of any witness taken *viva voce* by telephone or by any audio-visual method approved by the court shall be admissible in evidence:
>
> (a) where the parties consent; or
> (b) where it may be necessary for the purposes of justice.
>
> [3] No formal motion was presented to the court and no evidence was filed. Submissions were made by counsel.
>
> [4] Mr. Gillam submits that Mr. Kilgour is currently employed In Fort Nelson, British Columbia. This is a distance of approximately 2,000 kilometres from Regina and would entail three days of travelling time to come for the trial. Mr. Kilgour is currently the superintendent of a construction project, is responsible for 25 employees and is working on a project which must be completed by the end of next week (January 21, 2011). This

trial is set for January 17-21, 2011 inclusive and accordingly it would be most inconvenient and expensive for Mr. Kilgour to come to give *viva voce* evidence in Saskatchewan.

[5] Mr. Gillam further submits that Mr. Kilgour's direct evidence will be approximately one hour and that it will not be necessary for him to review any documents. His evidence is material to Mr. Gillam's case as Mr. Kilgour was Mr. Gillam's supervisor at Waschuk. Mr. Gillam has provided Waschuk with a summary setting out the essence of Mr. Kilgour's evidence.

[6] Mr. Giilam submits that it is possible for Mr. Kilgour's evidence to be given by video teleconference and that is will not unreasonably prejudice Waschuk if he is permitted to do so. He further submits it Is in the interests of justice for the requested order to be made.

[7] Waschuk opposes the application on the basis that credibility is a crucial issue. It submits that Mr. Kilgour's evidence will be in direct conflict with evidence from the defendant's witnesses and that it will be prejudiced in its cross-examination of Mr. Kilgour if he is permitted to testify by video teleconference. It further submits it will be more difficult for the court to make findings of credibility if some witnesses testify in person and Mr. Kilgour testifies by video teleconference. It submits it is not in the interests of justice to permit Mr. Kilgour to testify by video teleconference.

THE LAW

[8] In *Onofrichuk v. Simpso (*1997) 155 Sask.R. 54 (Q.B.) Wilkinson, J. dismissed an application by a defendant to have five expert witnesses, all residents of British Columbia, examined by the plaintiff and defendant with their evidence being preserved by way of videotape and written transcript. This was all to be done in advance of a jury trial.

[9] At para.9 of her judgment, Wilkinson, J. had the following to say about the use of video taped evidence:

> [9] Objections which have been raised to the utilization of telephone evidence have focussed on the inability to observe demeanor of the witnesses and difficulty in dealing with demonstrative or documentary evidence. Neither of these concerns is material when videotape evidence is the recording method, as the trier of fact is fully able to assess the candour and credibility of the witness and a visual record can be made of any documentation or demonstrative evidence. Furthermore, there is no good reason why a videotape presentation should carry any less weight than a live presentation ....

[10] In my view Justice Wilkinson's observations about the use of video taped evidence apply equally to evidence presented by video teleconferencing. Live video conferencing allows the court, counsel and the witness to engage in simultaneous visual and oral communications. The parties and the court have the ability to see and observe the demeanor of the witness during the examination in chief and the cross examination.

[11] I am satisfied in the circumstances before me that permitting Mr. Kilgour to testify by video teleconference is necessary for the purposes of justice.

[12) Mr. Gillam is responsible in the first instance for making all the necessary arrangement in British Columbia and Saskatchewan for the use of video teleconferencing and for any costs associated with the use of this technology.

[13) Costs of the application will be costs in the cause.

J.
E.J.GUNN

5. The inconvenience to the witness, PJ, in forcing him to travel to Saskatchewan for at least two and perhaps three days would be considerable. The cost involved in having him appear in person is not insignificant. In all the circumstances, it is the Discipline Committee's decision to allow PJ to testify via Skype.

Dated the 12th day of June, 2017.

"Jay Watson", Chair

"Heather Hodgson"

"David Flett"

DECISION OF THE HEARING COMMITTEE FOR THE LAW SOCIETY OF SASKATCHEWAN

INTRODUCTION

6. On May 16, 2018, a Hearing was held regarding allegations of conduct unbecoming against Roch Dupont. The allegations, contained in the Amended Formal Complaint dated October 27, 2016 are as follows:

1. Did fail to disclose or account for fees and disbursements charged to his client, PFF, in a timely fashion;
2. Did fail to, within a reasonable time, deliver a bill or other written notification to his client, PFF, in connection with an invoice dated December 30, 2014 rendered to PFF totaling $12,502.03;
3. Did pay out to third parties trust monies held on behalf of his client, PFF, without the knowledge or consent PFF;
4. Did pay out to third parties trust monies held on behalf of his client, PFF, without verifying the validity of the third parties' claims to said monies;
5. Did, through recklessness, mislead a fellow lawyer, PJ, United States legal counsel for PFF, by stating that he had sent the information PJ was requesting on behalf of PFF, without regard for whether his statements were true or false.

7. At the Hearing, Mr. Huber, on behalf of the Conduct Investigation Committee called three witnesses, PJ, EW and Pamela Harmon. Reg Watson, on behalf of the Member called one witness being the member himself, Roch Dupont.

FACTS

8. In 2014, the PFF("PFF") was appointed by a court in Minnesota as Guardian of property owned by AP. AP had investments held in Canada through Manulife Investments ("Manulife"). Manulife would not allow payment out to the U.S. Guardian without some Canadian legal

authority. The Minnesota attorney for PFF, PJ, hired Merchant Law Group in June, 2014 to assist in the process to have funds released from Manulife to PFF on behalf of JP.

9. The Member, Roch Dupont, a lawyer with Merchant Law Group, was not originally involved in significant work on the file but took on some further duties towards the end of the retainer. In December 2014, Mr. Dupont was involved in correspondence with Manulife, returning funds sent from Manulife and requesting that funds be reissued and payable to Merchant Law Group in trust. (P.4- page 44).

10. On January, 20, 2015, Mr. Dupont sent a letter to PFF, including an invoice (P-4, page 76) that includes 2.0 hours of time of the Member on January 14, 2015 for "review cheque\documents", a further 2.0 hours of time for "Prepare disbursements", on January 15, 2015, and 4 further hours in total for other entries on January 15, 2015 for "Correspondence", "Correspondence, disbursements" and "Review invoices". In all the fees charged to the client for such work was $4,600.00, before taxes. No other lawyer with the firm had any time recorded on that invoice. Also included with the correspondence at that time was a trust statement. That trust statement (Exhibit P-4, page 78) lists a balance in trust only, and does not show any disbursements from trust.

11. Trust funds received from Manulife were deposited in the account of PFF in late January. Once funds were deposited, there was concern expressed by PFF that the amount of the funds expected was $594,879.58, but the amount received was $45,483.58 less than that amount. An explanation was requested. (P-4, page 83) PJ was advised by Mr. Dupont by email. of January 30, 2015 (P-4, page 83) that:

> "Yes the deductions were explained in the last invoice sent out to you it was sent as part of the bill, deductions were made for attorney fees, and broker fees".

12. It was not disputed that the discrepancy was the result of disbursements made by Merchant Law Group of $24,640 to JB, a broker that provided services on the matter; of $5,000 paid to JP (AP's brother) for expenses he incurred in handling the matter; and for payment of a $10,776.41 owing on a December 30, 2014 invoice of Merchant Law Group. There is no allegation that the funds were misappropriated. But contrary to Mr. Dupont's January 30, 2015 email, in fact there had not been any explanation of these deductions included with the January 15 invoice and trust statement.

13. This misunderstanding led to further difficulties, with PFF requesting explanation (after accounting for a Merchant Law Group invoice of $5,067.11), for the remaining $40,416.41 still missing. (P-4, page 85). PJ testified that he did not receive a response to this request.

14. PJ next sent a letter dated October 5, 2015 to Mr. Dupont (P-4, page 88), asking again for an explanation of the apparent shortfall in the funds provided of $40,416.42. Reference was made in that letter to the January 30, 2015 email of Mr. Dupont referring to an invoice that explained the disbursements; with PJ stating that no such invoice had been included.

15. In response, Mr. Dupont sent an email of October 7 to PJ, stating:

> "Hi PJ the money discrepancy was the 3.5% commission plus taxes paid to Jim Britton for his services in the money administration. I had given you a previous explanation". (P-4 page 95).

16. This led to an exchange of emails between PJ and Mr. Dupont (P-4 pages 91-94), with PJ again stating that no invoice had been received other than for Merchant Law Group fees, requesting documentation to explain the $40,000 discrepancy. Mr. Dupont indicated that he had sent it, and would need to retrieve the file from archives, and PJ again insisted that the only accounting provided with regarding the Merchant Law Group invoice. In response, Mr. Dupont replied November 4, 2015:

> "Be carefu711 [sic] what you say I sent you again for the 2nd time the accounting of the funds and you keep losing the documents I will take you to the law society for your incompetence in handling this matter if you don't stop these accusations".

17. On November 12, 2015, PJ wrote to the Law Society of Saskatchewan with a complaint (P-4, page 97) that eventually gave rise to this proceeding.

18. On November 17, 2015, Mr. Dupont wrote to PJ, apologizing for the delay, advising that the file had been retrieved from archives, and included copies of the documents regarding the invoices and payments to JB and JP (P-4, pages 106). This letter was sent prior to Mr. Dupont having any notice of the November 12, 2015 complaint to the Law Society. The documents indicated that the approximate $40,000 discrepancy arose from the total of the $24,640 paid to JB, $5,000 paid to JP, and an invoice to Merchant Law Group for $10,776.41. PJ testified that receipt of these documents was first had in November 2015. PJ testified that there had not been any discussion or consultation with Mr. Dupont on the payment of these disbursements in advance.

LAW

19. The Conduct Investigation Committee bears the burden of proof on a balance of probabilities. The standard of proof requires clear, convincing and cogent evidence. The offence is a strict liability offence in *Merchant v. Law Society of Saskatchewan*, 2014 SKCA 56, the Court adopted the reasoning set out in *Merchant v Law Society of Saskatchewan*, 2009 SKCA 33 with respect to these types of offences:

> [50] Regulatory offences that affect matters of public interest or concern fall into the intermediate category. These frequently involve controlled, restricted, or regulated spheres of activity rather than conduct prohibited on pain of criminal sanction. In strict liability offences, the onus is on the accused to establish on a balance of probabilities that he took all reasonable steps to avoid committing the offence. Or, as more recently articulated by Goudge J.A., speaking for the Ontario Court of Appeal, what must be established is that the "… accused exercised all reasonable care by establishing a proper system to prevent commission of the offence and by taking reasonable steps to ensure the effective operation of the system" [*R. v. Petro-Canada* (2003), 2003 CanLII 52128 (ON CA), 222 D.L.R. (4th) 601 at para. 15 (O.C.A.)]
>
> [51] The rationale behind the creation of a third category of offences is that in regulatory situations, it is the defendant who has the relevant knowledge regarding the measures taken to avoid the particular breach in question. It was deemed proper to expect that the defendant would come forward with the evidence of due diligence. Thus, while the prosecution was required to prove beyond a reasonable doubt that the prohibited act has been committed, the defendant had to establish, on a balance of probabilities, that he or she had been duly diligent, taking all reasonable care to avoid offending. Alternatively, the defendant had only to establish the requisite reasonable belief in a state of facts that, if true, would render the act an innocent one.

> [52] Therefore, a strict liability offence requires, at minimum, a fault element amounting to negligence before misconduct will be found. Negligence consists in an unreasonable failure to know the facts which constitute the offence, or the failure to be duly diligent in taking steps which a reasonable person would take. [As articulated by *Gonthier J. in R. V. Pontes*, 1995 CanLII 91 9SCC), [1995] 3 S.C.R. 44 (in dissent) at para. 79]

20. Count 5 of the Amended Formal Complaint alleges that the member was "reckless". Recklessness was described as follows in *Law Society of Upper Canada v. Kazman* [2008] L.S.D.D No. 46:

> 44 Knowledge of wrongdoing relates to two elements:
> a) Knowledge of the risk.
> b) Knowledge of the possible consequences of engaging in the risk.
>
> 45 …In the case of recklessness, the licensee is aware of the risk (the first element) but proceeds anyway, reckless as to the possible consequences of engaging in the risk (the second element). …In recklessness, the wrongdoer has actual knowledge of the risk, but may have something less than actual knowledge of the risk, but may have something less than actual, or tantamount actual, knowledge of the possible consequences of engaging in the risk.
> …
> 47 In the administrative law sphere of the Law Society's regulation of its licensees, there will normally be a little difference in culpability or sanction whether the licensee is willfully blind or reckless. While it may be possible to argue successfully that there is a difference in some cases, such arguments will fail in almost all cases. This is so because, even if a wrongdoer, who knowingly engaged in professional misconduct, can show that he did not know, by being reckless or cavalier, how or whether adverse consequences would result, the public interest is harmed whether or not he turned his mind to the possibility or exact form of the adverse consequences. The public relies on the licensees of the Law Society not to engage in professional misconduct in the first place, precisely to avoid the harm, or even the risk of harm, of such misconduct.

ANALYSIS and CONCLUSIONS
ALLEGATIONS OF CONDUCT UNBECOMING:

A) Did fail to disclose or account for fees and disbursements charged to his client, PFF, in a timely fashion.

B) Did fail to, within a reasonable time, deliver a bill or other written notification to his client, PFF, in connection with an invoice dated December 30, 2014, rendered to PFF totaling $12,502.03.

21. These first two matters are closely related and will be discussed together.

22. Disbursements of $24,640 were made to JB and $5,000 to JP in January 2015. There was no explanation for these disbursements provided to the client by Mr. Dupont until November 2015. At that time, the client was also advised of the Merchant Law Group invoice of December 30, 2014, of which $10,776.41 was paid from funds received from Manulife.

23. Law Society Rule 941 requires a member forward an invoice to the client within - 3 days of withdrawing or authorizing withdrawal from trust where there is liability of the client for fees earned by the member or disbursements paid by the member from trust funds.

24. Given that the rules require a quite short time frame between action on the trust account and providing information to the client, taking over 9 months here to provide information to the client was clearly not meeting this obligation in a timely fashion.

25. The failure to provide these details in a timely fashion is highlighted in having regard to the requests of the client in late January, again in March and yet again in October of 2015 seeking details and explanations on the apparent discrepancy between the expected amount of funds from Manulife and the reduced amount provided through Merchant Law Group. Mr. Dupont responded to the client on more than one occasion to insist that the information had been provided, when in fact it had not. This caused further delay to the client in receiving the necessary information.

26. It should have been apparent to Mr. Dupont on receiving each of the requests for information that his assumption - that documents explaining the disbursements and reductions had been included with the January 20, 2015 letter - was incorrect.

27. Mr. Dupont indicates in his written submissions that he is not to be responsible for the apparent error in failing to include documents in the original January 20, 2015 letter to the client, for a number of reasons. He states that other lawyers in the firm, namely Mr. Runyowa originally and later EW, had primary carriage of the file, with EW continuing to have primary care of the file until leaving the firm in March, 2015, and that it is the lawyer having primary carriage of the file that remains responsible for ensuring timely delivery of bills for fees and disbursements.

28. This argument ignores that it was Mr. Dupont that willingly took on responsibility to pay disbursements on the file, forward correspondence accordingly, and to forward an invoice for 8 hours of his time in that regard to the client. Responsibility for the correspondence reviewed and signed by a lawyer and sent to the client lies with that lawyer. This responsibility cannot be foisted to another member who may have also worked on the file. That is particularly the case here, as it appears that with respect to payment of the disbursements and reporting of that matter to the client, it was Mr. Dupont that took on primary responsibility for that duty, with EW testifying that he sought Mr. Dupont's assistance in this regard given Mr. Dupont's seniority as counsel and his own relative lack of experience. It was Mr. Dupont that billed the client for time to review the issue of correspondence on disbursements, to pay those disbursements, and to forward an invoice to the client with correspondence, which he indicated ought to have properly included copies of documents outlining the disbursements.

29. Mr. Dupont also indicated that he may have given instructions to an assistant to attach documents to the letter, and that he did not have any control over assistants as he was without his own dedicated assistant at the time. He also testified that the accounting department of Merchant Law Group would not provide him with information, with only the owning partner Mr. Merchant having ability to demand information from the accounting office. This again ignores that responsibility for the contents of a communication from a lawyer to a client lies with that lawyer. Ultimately it was Mr. Dupont that signed and sent the communication in January 2015 to PFF. The responsibility to ensure that all expected attachments were included with that letter was Mr. Dupont's.

30. A simple and prudent precaution would have been to avoid signing a final copy of any letter to be sent until it had been reviewed, with all attachments included. Section 6.1-1 of the Code of Conduct speaks to this issue, stating: "a lawyer has complete professional responsibility for all business entrusted to him or her and must directly supervise staff and assistants to whom the lawyer delegates particular tasks and functions". If the office circumstances at Merchant Law Group were such that Mr. Dupont could not have confidence that the documents to be attached to a letter would actually be attached, then the responsibility lies with the member to either not delegate business to support staff, or to refuse to sign and send any letter that has not been properly vetted. That is the case whether there are issues with oversight of assistants or accounting personnel. A member of the public relying on the service of a member the Law Society must have confidence that tasks taken on by the member will be carried out, without concern that a member may fail to do so and pass on the responsibility for that failure to support staff. Protection of the public and ensuring a high level of confidence in the profession of law would each suffer if this were not the case.

31. Furthermore, upon being advised by the client in both March and again in October that there were unanswered questions which should have been answered in full had the expected attachments been included with the letter (namely copies of the invoice, and correspondence to and from the third parties regarding the disbursements paid), Mr. Dupont could have and should have reviewed the file and made appropriate efforts to find out if in fact attachments to the letter were mistakenly omitted. This is in fact what he finally did prior to sending documents in November 2015. Prior to that time, Mr. Dupont simply advised the client, incorrectly and apparently without any review of the file, that the relevant information had already been sent.

32. The Committee therefore finds that the member is guilty of conduct unbecoming a lawyer with respect to each of the above allegations.

C. Paying out to third parties trust monies held on behalf of his client, PFF, without the knowledge or consent of PFF;

D. Paying out to third parties trust monies held on behalf of his client, PFF, without verifying the validity of the third parties' claim to said monies.

33. These two matters are closely linked and will be discussed together.

34. Rule 940(1)(a) of the Law Society Rules requires that a member shall not withdraw or authorize from withdrawal from a trust account any trust funds unless the funds are properly required for payment to or on behalf of a client. To comply with Rule 940 therefore, a member must have some basis to know that payments to third parties are properly required for payment to or on behalf of a client. Discharging this duty would generally require that the member consult with the client, make proper inquiries regarding any requested payment to a third party, or both.

35. There was no evidence lead here to indicate that there was any consultation at all from any lawyer with Merchant Law Group to their client regarding either the disbursement made to JB, nor to JP. The payments were made without the knowledge or consent of PFF.

36. Mr. Dupont's testimony and position on this matter was that he relied on the work of EW, EW was the responsible lawyer on the file, and he reasonably assumed that EW had received instructions from the client authorizing the payments. There was no basis for this assumption. There was no evidence of any discussion or correspondence between Mr. Dupont and EW that would reasonably lead Mr. Dupont to any such assumption. This assumption was not reasonable in the circumstances, nor was any due diligence exercised by the member in this regard.

37. The problem with this assumption is particularly in focus when the time billed to the client by Mr. Dupont is considered. In total, Mr. Dupont billed the client 8 hours' time largely related to the correspondence received and sent for these two disbursements. This suggests a significant amount of time in which to review the file and consider whether it was appropriate to send the disbursements. But there was no evidence lead as to any effort made by Mr. Dupont to either verify that EW had received instructions on the payments from the client, nor as to any verification of the validity of the submitted accounts. Each of these demands for payment by JB and JP were made without any prior consultation with the client, and without the client even having notice of invoices or the amounts claimed; without any particulars sought on either invoice; and without any type of agreement or contract in place as to the payment owing.

38. The payments to JP and JB also violated the Code of Conduct, specifically section 2.5-1, requiring a lawyer to "care for a client's property as a careful and prudent owner would when dealing with like property". An owner of property would not simply pay out almost $30,000 on receiving the invoices from JB and JP, both of which were lacking in detail. A prudent owner would have sought particulars.

39. Mr. Dupont also suggests that the gravity of this offence was minimal, as there was no dispute by PFF ultimately as to the legitimacy of the funds requested. But as pointed out for counsel by the Law Society, the fact that there was no dispute made of these payments by PFF when they learned of them months after the payments had been made is not equivalent to concluding that these would have been approved originally without question had these been raised prior to disbursement. The client may have seen little to be gained in disputing these payments months after the fact, when the funds are already in the hands of the payees. Furthermore, this argument requires assuming that there was no reason for counsel to have consulted with the client at all prior to disbursing almost $30,000 in funds, which ignores that the client may well have had information or a viewpoint on the requested disbursements unknown to counsel, or that the client may have demanded further particulars or details from either of the third parties to be fully satisfied the payments were properly required. The fact that the client chose to take no action to contest or challenge the disbursements months after learning of them does not excuse counsel from the operation of Rule 940 and the need to ensure that funds are properly required for payment on behalf of a client prior to disbursement.

40. The Committee therefore finds the member guilty of conduct unbecoming a lawyer with regard to each of the above-mentioned allegations.

E) Did, through recklessness, mislead a fellow lawyer, PJ, United States legal counsel for PFF, by stating that he had sent the information PJ was requesting on behalf of PFF, without regard for whether his statements were true or false.

41. This count relates to the member's conduct in asserting to PJ that he had sent the requested documents to PJ in circumstances where the member made no effort to determine whether or not that information was correct.

42. On January 30, 2015, the member told PJ and PFF the following (document book page 83):

> "Yes the deduction were explained in the last invoice sent out to you it was sent as part of the bill, deductions were made for attorney fees, and broker's fees."

43. On October 7, 2015, the member told PJ the following (document book page 95):

> "Hi PJ the money discrepancy was the 3.5% commission plus taxes paid to Jim Britton for his services in the money administration. I had given you a previous explanation."

44. On November 4, 2015, the member told PJ the following (document book page 92):

> "Be careful what you say I sent you again for the 2nd time the accounting of the funds you keep losing the documents i will take you to the law society for your incompetence in handling this matter if you don't stop these accusations."

45. The member conceded the following in cross examination (transcript page 224):

> "Q So each of the three times you said, I'd already provided this information, you did so without looking at the file?
>
> A Correct.
>
> Q And you did that without knowing either way?
>
> A Correct."

46. The members actions in asserting three separate times that he had sent information that he had not, without checking the accuracy of his assertions, amounts to recklessness and accordingly the committee finds the member guilty of count 5.

Dated the 26th day of October, 2018.

"Jay Watson", Chair

"Heather Hodgson"

"David Flett"

PENALTY HEARING DECISION

47. On October 26, 2018 this committee found Roch Dupont guilty of five counts of conduct unbecoming a Barrister and Solicitor as follows, he:

1. Did fail to disclose or account for fees and disbursements charged to his client, PFF, in a timely fashion;
2. Did fail to, within a reasonable time, deliver a bill or other written notification to his client, PFF, in connection with an invoice dated December 30, 2014 rendered to PFF totaling $12,502.03;
3. Did pay out to third parties trust monies held on behalf of his client, PFF, without the knowledge or consent PFF;
4. Did pay out to third parties trust monies held on behalf of his client, PFF, without verifying the validity of the third parties' claims to said monies;

5. Did, through recklessness, mislead a fellow lawyer, PJ, United States legal counsel for PFF, by stating that he had sent the information PJ was requesting on behalf of PFF, without regard for whether his statements were true or false.

48. A penalty hearing was convened via telephone conference on March 11, 2019.

49. Mr. Huber, on behalf of the Conduct Investigation Committee of the Law Society of Saskatchewan, argued that a proper penalty would be a global reprimand, a fine of $5,000.00 and costs in the amount of $12,990.00.

50. Mr. Watson, on behalf of the member, suggested a $3,000.00 fine and argued that a small portion of the costs regarding cancellation for hearing room should not be borne by the member. Mr. Huber did not strenuously disagree with Mr. Watson's suggestion.

51. Mr. Huber also did not strenuously disagree with the suggested fine of $3,000.00 but only on the basis of the members impecuniosity as he felt the seriousness of the offences warranted a $5,000.00 fine.

52. The committee is of the view that the penalties suggested by both counsel are in the range of acceptable outcomes and that given the fact that the member's finances are rather bleak, the committee unanimously orders that the penalty with respect to this matter be as follows:

1. The member shall receive a global reprimand from the Law Society of Saskatchewan;
2. The member shall pay a fine of $3,000.00;
3. The member shall pay costs in the amount of $12,390.00.

Given the member's impecuniosity, the member shall have 24 months to pay the fine and costs.

Dated the 23rd day of April, 2019.

"Jay Watson", Chair

"Heather Hodgson"

"David Flett"