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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
Susan Rault of Watrous, Saskatchewan A LAWYER**

**The Law Society of Saskatchewan
Discipline Decision 08-02
Susan Rault of Watrous, Saskatchewan**

DECIDED: April 18, 2008

Alan G. McIntyre on behalf of The Law Society of Saskatchewan
Michael D. Tochor, Q.C. on behalf of Susan Rault

Jurisdiction

The Law Society of Saskatchewan was established in 1907, and governs the legal profession in the Province of Saskatchewan under *The Legal Profession Act, 1990*. Its Board of Directors are Benchers and consist of seventeen persons elected from various constituencies in the Province, four non-lawyer members of the public appointed by the Lieutenant-Governor in Council, and the Dean of the College of Law.

The disciplinary process is usually precipitated by complaints received from clients, members of the public or other lawyers. The Law Society also initiates its own investigations.

The Law Society enjoys the exclusive power and responsibility to discipline its members as an aspect and condition of their membership in The Law Society. While misconduct of a member may also give rise to criminal and civil liability, The Law Society alone is responsible for the

governance of its members. Under s.6 of *The Legal Profession Act, 1990*, the disciplinary authority of The Law Society is delegated to the Benchers.

The disciplinary authority and responsibility of Benchers is invoked where a member is suspected or found to have committed an act amounting to conduct unbecoming. The term "conduct unbecoming" is defined in s.2(1)(d) of *The Legal Profession Act, 1990* as follows:

2(1)(d) "conduct unbecoming" means any act or conduct, whether or not disgraceful or dishonourable, that:
(i) is inimical to the best interests of the public or the members; or
(ii) tends to harm the standing of the legal profession generally;
and includes the practice of law in an incompetent manner where it is within the scope of subclause (i) or (ii);

It is well settled that the determination of what is and what is not conduct unbecoming must be left to the Benchers.

In the "Discipline Process of The Law Society of Saskatchewan"¹, the learned author said this of the definition of conduct unbecoming in the legislation:

Probably, there is no better definition which does not usurp the function of the hearing committee to decide the issue or alternatively simply rotate similar words in a different way. The committee must rely on its own good judgment, experience and conscience.

In exercising their delegated authority under s. 10 of *The Legal Profession Act, 1990*, the Benchers have approved and established *The Code of Professional Conduct* (the "Code"). And as Snell further stated:

Members can be subject to discipline for conduct unbecoming a lawyer, but for nothing else. It is therefore not strictly necessary that a formal complaint allege a contravention of the Rules or *The Code of Professional Conduct*. If the conduct complained of is within the definition of conduct unbecoming, it will be disciplinable regardless of the Rules or *Code*. The task of the Hearing Committee is to decide whether the facts that have been established fall within the definition of conduct unbecoming.

The Code establishes a principled and minimum standard of acceptable professional conduct. But the Code is illustrative only, and is not an exclusive or exhaustive definition of the requisite standard of professionalism expected of each lawyer. As the preface of the Code states in part:

[i] the Act and Rules do not specify the conduct which would subject a lawyer to discipline. This Code does not define conduct unbecoming. That responsibility is given under the Act to committees of the Benchers. However, the duties stated in this Code are relied on by the Benchers in making Professional Conduct Rulings and violations have been the basis for findings of conduct unbecoming by hearing

¹ Snell, A.T. 1997

committees. The rules, principles and commentaries are intended both to provide general guidance and prohibit some forms of conduct.

The preface to the Code states that the professions' duty and responsibility of self-governance is grounded in the public interest:

The Code of Professional Conduct is to be understood and applied in the light of the public interest, which is its primary purpose. This principle is implicit in the legislative grant of self-government. The application of the Code to the diverse situations that confront an active professional in a changing society will reveal gaps, ambiguities and apparent inconsistencies. The Code should not be construed as a denial of the existence of other duties equally imperative although not mentioned. The principle of protection of the public interest will serve to guide the practitioner to the intent of the Code and the applicable principles of ethical conduct.

The lawyer is more than a mere citizen. The lawyer is an officer of the courts, the client's adviser and advocate and a member of an ancient, honourable and learned profession. The lawyer's duty is to promote the public interest, serve the cause of justice, maintain the authority of the law, be faithful to the client's trust, be candid and courteous with others and be true to good conscience.

Thus, the public interest informs the standard of conduct unbecoming. A self-governing association does not enjoy the independence of a judiciary. Its power to govern itself is a privilege conferred by statute. The legitimacy of an association's self-governance is rooted in its credibility and ability to therefore sustain the public's trust. Where a self-governing association delegates its discipline authority to its own members, the adjudicative and discretionary aspect of that function must be seen as vigilantly exercised in the public interest.

The Benchers are burdened with complete and absolute discretion to determine what constitutes conduct unbecoming, and must do so in a changing legal, political and social context. Where there has been a finding of conduct unbecoming, the Benchers alone determine the appropriate sanction. Both determinations are discretionary and are informed by, but not strictly bound to, earlier precedent. Each case is decided on its own merits, according to the discretion of the Benchers.

The penalty options available to the Benchers in sentencing a member who has been found guilty of conduct unbecoming range from a reprimand, fine, the imposition of practice conditions, suspension, resignation in the face of discipline to disbarment. The Law Society does not have the jurisdiction to award damages against a member, but may require the member to return property or funds to its owner or to pay The Law Society's costs of the discipline process.

Procedural History

This matter initially proceeded by consent to the Hearing Committee consisting of Richard W. Danyiuk, Q.C., Chair (the "Hearing Committee"). The Hearing Committee convened on January 30, 2008 in Saskatoon.

The formal complaint and charge presented to the Hearing Committee alleged that Susan Rault, of the Town of Watrous, in the Province of Saskatchewan, a lawyer:

1. Is guilty of conduct unbecoming a lawyer in that she did fraudulently alter documents on 16 separate incidents.
(Reference Chapter I of *The Code of Professional Conduct*)
2. Is guilty of conduct unbecoming a lawyer in that she failed to discharge her duty to clients with diligence and honesty.
(Reference Chapters I and II of *The Code of Professional Conduct*)
3. Is guilty of conduct unbecoming a lawyer in that she failed to comply with Rules 910, 912 and 920 of the Rules of the Law Society of Saskatchewan in that she received trust funds from clients but failed to deposit them to either a mixed or separated trust account as required.
4. Is guilty of conduct unbecoming a lawyer in that she failed to preserve and keep safe the property of clients that was entrusted to her care.
(Reference Chapter VIII of *The Code of Professional Conduct*)

A plea of guilty was entered to all charges. The Hearing Committee received an Agreed Statement of Facts and accepted all counts as well-founded.

Pursuant to s. 51 of *The Legal Profession Act, 1990* the Hearing Committee made no sentencing recommendation and referred the matter to the Benchers and this Discipline Committee sitting as a whole (the "Discipline Committee"). The Discipline Committee consisted of the Benchers convened at Convocation in the City of Weyburn, in the Province of Saskatchewan on the 18th of April, 2008. The Law Society was represented by Alan G. McIntyre. Ms. Rault was represented by Michael Tochor, Q.C. The report of the Hearing Committee of Mr. Danyliuk, the Agreed Statement of Facts and Agreed Statement of Costs were entered as exhibits at the hearing. Convictions were entered by the Discipline Committee on all four counts.

A quorum of Benchers was established at the hearing. There was no objection to the jurisdiction or composition of the Discipline Committee. There were no preliminary motions or other objections. The Discipline Committee received submissions as to sentencing. Ms. Rault also addressed the Discipline Committee.

Charges

The agreed statement of facts is attached to and forms part of these reasons for decision. As to each count, the material facts are summarized below:

Charge #1 - Is guilty of conduct unbecoming a lawyer in that she did fraudulently alter documents on 16 separate incidents.

Ms. Rault prepared numerous false and misleading report documents by cutting, pasting, altering, photocopying and thereafter usually reporting in an untimely way, falsely stating registration and discharge of various interests to financial institutions, clients and estates. This conduct involved 16 distinct transactions occurring in 2001, 2002 and 2003.

Charge #2 - Is guilty of conduct unbecoming a lawyer in that she failed to discharge her duty to clients with diligence and honesty.

In this series of 18 transactions, four of them related to the same clients as detailed in Charge #1. For all of these clients, Ms. Rault's conduct was similar in that it involved a failure to perform work in a timely basis or at all. Typically, Ms. Rault failed to register transfers of title, mortgages, discharges or similar documents. In some cases, she uttered forged documents and made false reports to clients and financial institutions. In some cases, Ms. Rault's work was completed by the trustee appointed by the Law Society to wind up her practice.

Charge #3 - Is guilty of conduct unbecoming a lawyer in that she failed to comply with Rules 910, 912 and 920 of the Rules of the Law Society of Saskatchewan in that she received trust funds from clients but failed to deposit them to either a mixed or separated trust account as required.

Ms. Rault did not establish a trust account at any material time. Her records show she received trust funds from clients and institutions in relation to real estate transactions and from the administration of estates. She deposited these funds into her general account and thereby commingled them with her own assets. But to be clear, there was never any allegation or finding that she misappropriated or otherwise converted her clients' property or funds to her own use.

In many of these transactions, Ms. Rault acted contrary to the instructions of her clients. In more than one case, she was in breach of trust conditions. In one case she made a variety of excuses about why probate did not occur and suggested she had taken various steps including an official judicial complaint about delay. She later fabricated notes to support her position about activities she said she had done but had not.

Charge #4 - Is guilty of conduct unbecoming a lawyer in that she failed to preserve and keep safe the property of clients that was entrusted to her care.

Ms. Rault failed to keep her clients' documents for safe keeping separate from her own property. At the time of her suspension, her clients' Wills, Powers of Attorney, Health Care Directives, Shares Certificates and other original documents were found amongst her personal and office records maintained in the home she also used as her office. She also failed to maintain adequate records of clients' property kept in her possession. At the time of her trusteeship and voluntary undertaking not to practise, a partial list of Wills, Powers of Attorneys and Health Care Directives were retrieved from her computer. No other records could be found and numerous originals of such documents were located in her premises, but not found on the list maintained on her computer.

Facts

Ms. Rault was a member of The Law Society of Saskatchewan at all material times. She convoked with her LLB in 1989. After being called to the bar in 1990, she took one year off

and moved to Watrous where she obtained work managing a restaurant. Since then, she held this job as her full-time and primary source of employment, while practicing law part-time with another lawyer and later as a sole practitioner in the Town of Watrous.

She eventually became the only lawyer residing and practicing in the Town of Watrous. As is often the case in a small community, she was pressed by the community to perform legal services, albeit reluctantly on her part. In these circumstances, Ms. Rault found herself unable to refuse work or to set legitimate boundaries between her practice as a lawyer and her personal life and role in the community. She worked without external supports and was soon overwhelmed by and unable to maintain the demands of her clientele. In dealing with her clients, she was unable to admit to or report her shortcomings. Instead, she made up documents and manufactured reports claiming to have done work that was in fact not done in a timely fashion or at all.

To her credit, she used her own funds to make her clients whole by paying interest and penalties on their behalf. She did not profit.

But her conduct throughout was manifestly dishonest and misleading. While it did not lead to personal gain for her, some 30 or more individuals and their financial institutions were inconvenienced or prejudiced, or both. In the end, this community of clients and institutions were falsely assured and deceived through a persisting and conscious course of misleading behaviour. Had this misconduct not been discovered, these clients and institutions may have been exposed to significant losses, with The Law Society and its insurer becoming liable in the end.

When these problems first came to light, Ms. Rault voluntarily undertook not to practise, thus beginning a term of self-exile from the practice of law for almost four years. After a trustee was appointed to manage and wind up her practice, some considerable period of time was required to protect the clients and fully investigate and determine the scope of the problems leading to the charges.

The Discipline Committee was satisfied Ms. Rault accepted full responsibility and demonstrated remorse for her actions. She was sincerely apologetic to The Law Society and the persons and other institutions affected by her conduct.

The Discipline Committee received and considered the joint submission and sentencing recommendation. The Discipline Committee did not consider itself bound by the joint submissions of counsel and independently exercised its responsibility and judgment.

The Duty of the Lawyer

In discerning the duty of the lawyer, the guiding and first principles are established by the Code. Significantly, the first Rule speaks to the integrity of the lawyer in all relationships: Chapter I, entitled "Integrity" provides this simple statement of the Rule:

The lawyer shall discharge with integrity all duties owed to the clients, the court, other members of the profession and the public.

As the commentary illustrates, the lawyer's integrity transcends and informs all other duties. The commentary under Chapter I provides, in part:

1. Integrity is the fundamental quality of any person who seeks to practise as a member of the legal profession. If the client is in any doubt about the lawyer's trustworthiness the essential element in the lawyer-client relationship will be missing. If personal integrity is lacking the lawyer's usefulness to the client and reputation within the profession will be destroyed regardless of how competent the lawyer may be.²

2. **The principle of integrity is a key element of each rule of the Code.**

[1]

3. Dishonourable or questionable conduct on the part of the lawyer in either private life or professional practice will reflect adversely upon the lawyer, the integrity of the legal profession and the administration of justice as a whole.³ If the conduct, whether within or outside the professional sphere, is such that knowledge of it would be likely to impair the client's trust in the lawyer as a professional consultant, a governing body may be justified in taking disciplinary action.

[Emphasis added]

While not purporting to be exhaustive, the Code provides the following Notes on the subject of integrity:

1. Cf. CBA-COD 1. *O.E.D.*: "Integrity...soundness of moral principle, esp. in relation to truth and fair dealing; uprightness, honesty, sincerity, candour." Cf. IBA. "Introductory." "The rules of professional conduct enforced in various countries...uniformly place the main emphasis upon the essential need for integrity and, thereafter, upon the duties owed by a lawyer to his client, to the Court, to other members of the legal profession and to the public at large."

2. "Integrity, probity or uprightness is a prized quality in almost every sphere of life.... The best assurance the client can have...is the basis integrity of the professional consultant.... Sir Thomas Lund says that...his reputation is the greatest asset a solicitor can have.... A reputation for integrity is an indivisible whole; it can therefore be lost by actions having little or nothing to do with the profession.... Integrity has many aspects and may be displayed (or not) in a wide variety of situations...the preservation of confidences, the display of impartiality, the taking of full responsibility are all aspects of integrity. So is the question of competence.... *Integrity is the fundamental quality, whose absence vitiates all others.*" *Bennion, passim*, pp. 108-12 (emphasis added).

3. Illustrations of conduct that may infringe the Rule (and often other provisions of this Code) include:

[1]

(b) committing, whether professionally or in the lawyer's personal capacity, any act of fraud or dishonesty, e.g., by knowingly making a false tax return or falsifying a document, even without fraudulent intent, and whether or not prosecuted therefor;

- (c) making untrue representations or concealing material facts from a client with dishonest or improper motives;
[í]
- (h) failing to be absolutely frank and candid in all dealings with the Court, fellow lawyers and other parties to proceedings, subject always to not betraying the client's cause, abandoning the client's legal rights or disclosing the client's confidences;
[í]

The Notes also speak to the privilege and trusted stature of a professional body and its membership:

- 4. Cf. IBA, Chapter 2.
öThe public looks for a hallmark bestowed by a trusted professional body, and evidenced by entry on a register or members' list.ö (p. 36).
öMembership of a...professional body is generally treated as an indication of good character in itself...ö, *Bennion*, p. 111.

In the case before the Discipline Committee, there are many and varied aspects of misconduct supporting Charges #1 and #2. The time and effort invested by Ms. Rault to these ends represents an enduring consciousness representing bad judgment or deliberate misconduct, or both.

Absent an intention to misappropriate for personal financial benefit or other *mala fides*, it is difficult to envision a more egregious course of deceit and disrespect for the lawyer's positive duty to act with integrity. While at some level, Ms. Rault appreciated the importance of attempting to keep her clients whole and thereby making up their losses with her own resources, this was also done to prevent discovery and does not mitigate the varied and deliberate constructs intended to conceal her shortcomings and failure to follow the instructions of her clients.

Charge #2 also requires an examination of Chapter II of the Code. The lawyer owes the client a duty to be competent. Rules (b) and (c) of Chapter II provide:

- (b) The lawyer owes the client a duty to be competent to perform any legal services undertaken on the client's behalf.
- (c) The lawyer owes the client a duty to be competent to perform any legal services undertaken on the client's behalf

Examples of the conduct that does not meet the quality of service required of the lawyer's duty of competence are set out, in part, in the Commentary and guiding principles under the Rule in Chapter II:

- 1. Competence in the context of the first branch of this Rule goes beyond formal qualification to practise law. It has to do with the sufficiency of the lawyer's qualifications to deal with the matter in question. It includes knowledge, skill, and the ability to use them effectively in the interests of the client.
- 2. As members of the legal profession, lawyers hold themselves out as being knowledgeable, skilled and capable in the practice of law. The client is entitled to assume that the lawyer has the ability and

capacity to deal adequately with any legal matters undertaken on the client's behalf.

3. The lawyer should not undertake a matter without honestly feeling either competent to handle it, or able to become competent without undue delay, risk or expense to the client. The lawyer who proceeds on any other basis is not being honest with the client. This is an ethical consideration and is to be distinguished from the standard of care that a court would apply for purposes of determining negligence.

[...]

7. Numerous examples could be given of conduct that does not meet the quality of service required by the second branch of the Rule. The list that follows is illustrative, but not by any means exhaustive:

[...]

- (k) withholding information from the client or misleading the client about the position of a matter in order to cover up the fact of neglect or mistakes;
- (l) failure to make a prompt and complete report when the work is finished or, if a final report cannot be made, failure to make an interim report where one might reasonably be expected;

[...]

10. The lawyer who is incompetent does the client a disservice, brings discredit to the profession, and may bring the administration of justice into disrepute. As well as damaging the lawyer's own reputation and practice, incompetence may also injure the lawyer's associates or dependants.

As Commentary #3 suggests, the lawyer also has an ethical duty to be honest with a client about the lawyer's competence and capacity for work.

Competency also includes the duty to be honest about delays. The Notes to the Competency Profile in Chapter II state:

1. Cf. CBA-COD 2; IBA B-1; ABA-MR 1.1; ABA Canon 6, ECs 6-1 to 6-5, DR 6-101 (a). "The public looks for a hallmark bestowed by a trusted professional body, and evidenced by entry on a register or members' list (p. 36)...Having bestowed a hallmark of competence, a professional institute has some responsibility for ensuring that it remains valid." *Bennion*, p. 48. See also Bastedo, *A Note on Lawyers' Malpractice*, (1970) 7 Osg. Hall L.J. 311.

2. While historically English and Canadian courts held that actions against lawyers for breach of duty were in contract or fiduciary obligation, there has developed an alternative negligence basis for liability: see, *Groom v. Crocker* (1939) 1 K.B. 194, (1938) 2 All E.R. 394 (C.A.); *Nocton v. Lord Ashburton* (1914) A.C. 932, 83 LJ Ch 784 (H.L.); *Central Trust Co. v. Rafuse et al.* (1986) 2 S.C.R. 147, 31 D.L.R. (4th) 481.

As to Charge #3, the evidence shows, and Ms. Rault admits, that she failed to comply with Rules 910, 912 and 920 of the Rules of The Law Society of Saskatchewan in that she received trust funds from clients but failed to deposit them to either a mixed or separate trust account as required.

As to Charge #4, the evidence shows, and Ms. Rault admits, that she failed to preserve and keep safe the property of clients that was entrusted to her care. Chapter VIII of the Code provides the following Rule:

The lawyer owes a duty to the client to observe all relevant laws and rules respecting the preservation and safekeeping of the client's property entrusted to the lawyer. Where there are no such laws or rules, or the lawyer is in any doubt, the lawyer should take the same care of such property as a careful and prudent owner would when dealing with property of like description.

Under the Commentary, the following principles are articulated:

[í]

3. The lawyer should clearly label and identify the client's property and place it in safekeeping separate and apart from the lawyer's own property.

4. The lawyer should maintain adequate records of clients' property in the lawyer's custody so that it may be promptly accounted for, or delivered to, or to the order of, the client upon request. The lawyer should ensure that such property is delivered to the right person and, in case of dispute as to the person entitled, may have recourse to the courts.

[í]

As to all charges, the Discipline Committee also finds the complaints well-founded. Ms. Rault's failure to meet the requisite standard of integrity, her duty of diligence and her duty to safeguard her clients' property is conduct unbecoming. The Benchers therefore have the responsibility to exercise their discipline authority.

Sentencing Principles & Consideration

The term "conduct unbecoming" has been defined such as to involve the collegial and public aspects of The Law Society's discipline function. Commentators and other Law Societies have similarly dealt with the philosophy of sentencing in discipline matters.

Stuart Thom, Q.C., while Treasurer of The Law Society of Upper Canada, said:

"The Society's disciplinary action is to protect the public directly and the profession indirectly from further misfeasance by erring lawyers. The lawyer is disbarred or suspended because he is regarded as unfit to practice."

Similarly, Gavin McKenzie, in his book *Lawyers and Ethics*, states:

"The purposes of Law Society discipline proceedings are not to punish offenders or exact retribution but rather to protect the public, maintain high professional standards and preserve public confidence in the legal profession."

It is suggested by The Law Society of Alberta in its Hearing Guide that the sanctioning process should be purposeful and that those fundamental concepts of protection of the public and the integrity of the profession should be given greater weight than other factors which may be put forward in mitigation. Thus, the Hearing Guide references McKenzie and Sir Thomas Bigham, M.R. in *Bolton v. Law Society*² where he states:

“Because orders made by the Tribunal are not primarily punitive it follows that considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction than [sic] on the ordinary run of sentences imposed in criminal cases. If [sic] often happens that a solicitor appearing before the Tribunal can adduce a wealth of glowing tributes from his professional brothers. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will say convincingly that he has learned his lesson and will not offend again í all these matters are relevant and should be considered but none of them touches the essential issue which is the need to maintain among members of the public a well-founded confidence that any solicitor who they may instruct will be a person of unquestionable integrity, probity and trustworthiness í the reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits but that is a part of the price.”

The Law Society of Alberta suggests a set of governing principles:

1. The need to maintain the public’s confidence and the integrity of the profession and the ability of the profession to effectively govern its own members;
2. Specific deterrence of the member from further misconduct;
3. Incapacitation of the member (through disbarment or suspension);
4. General deterrence of other members;
5. Denunciation of the conduct;
6. Rehabilitation of the member;
7. Avoiding undue disparity with sanctions imposed in other cases.

The Hearing Guide then speaks to relevant factors:

1. The nature of the conduct:
 - (a) does the conduct raise concerns about the protection of the public;
 - (b) does the conduct raise concerns about maintaining public confidence in the legal profession;
 - (c) does the conduct raise concerns about the ability of the legal system to function properly; and
 - (d) Does the conduct raise concerns about the ability of the Law Society to effectively govern its members?
2. The level of intent. The appropriate sanction may vary depending on whether the member acted intentionally, recklessly or negligently, although the state of mind may be less important where the need to protect the public or maintain public confidence is greater.

² [1994] 2 All E.R. 486 (Eng. C.A.)

3. Impact or injury caused by the conduct.
4. Potential injury which might, but for some intervening factor, have been caused.
5. The number of incidents involved.
6. The length of time involved.
7. Whether and to what extent there is a breach of trust.
8. Special circumstances, including prior discipline record, risk and recurrence, member's reaction to the discipline process, any restitution made, length of time lawyer has been in practice, general character, whether the conduct involved taking advantage of a vulnerable party, a dishonest or selfish motive, personal or emotional problems, free and full disclosure involved in the complaint or hearing process or co-operative attitude toward proceedings, interim rehabilitation remorse and remoteness or prior offenses.

The case of *R. v. Bonneteau*³, suggests that decisions of one discipline committee may be persuasive but are not binding on other discipline committees. Factors which may have not been considered in previous decisions, such as those contained in the Hearing Guide, may result in a different penalty being imposed in similar circumstances.

Just as the definition of conduct unbecoming cannot be held to or established by objective measures, the sentence itself is purely discretionary and not, in itself, binding as a matter of *stare decisis*. In the context of reviewing and applying discretionary based decisions, previous decisions on similar facts are not binding but merely illustrative as examples.

Thus, the Discipline Committee is guided by the requisite sentencing principles and their import and application in the facts of this case. The overriding and paramount sentencing objective is to maintain the public's confidence, the integrity of the profession and the ability of the profession to effectively govern its own members. Central to this determination is the need to protect the public from further harm.

Where a lawyer's conduct is unbecoming and deserving of serious sanction, it is open to that lawyer to offer his or her resignation in the face of discipline. According to Rule 402 of The Law Society Rules, the Benchers are not obliged to accept a resignation offered in the face of discipline. But where a resignation in the face of discipline is accepted, it is equivalent to disbarment, because the lawyer then loses his or her status as a member and must reapply for admission. During the effective term of the lawyer's resignation or disbarment, the public is equally protected during the effective term of the resignation or disbarment.

But the overarching importance of deterring other members from similar conduct, and thereby protecting the public broadly is not necessarily served if a lawyer is permitted to avoid a penalty, even by resigning in the face of discipline. The potential clientele of a member guilty of conduct unbecoming is protected by sanctions imposed on that member. The public in general is protected by sanctions that are generally seen as denouncing and deterring conduct unbecoming.

³ 1994 CarswellAlta 238 (Alta. Q.B.)

In the end, The Law Society must be seen as deterring all lawyers from similar and further misconduct and by maintaining the public's confidence in the ability of The Law Society and profession to effectively govern its own members.

The seriousness of the misconduct in this case invokes both imperatives.

In the end, if Ms. Rault's problems stem solely from her inability to manage the pressures of a demanding clientele without external supports, a more constructive, timely and forthcoming cry for help would have been compelling. Ms. Rault's cooperation with The Law Society and its counsel demonstrates ultimate acceptance of responsibility. But these factors are not sufficient, in the balance, to mitigate against any sentence less than disbarment if The Law Society is to maintain the public confidence in its governance. At most, these factors may suggest a desire and capacity for reform that might weigh in her favour, subject to all other just considerations, in the context of an application to reapply at the end of the effective term of this disbarment.

Decision

It is therefore this Discipline Committee's decision that Ms. Rault be disbarred, without eligibility to apply for readmission for 5 years from the date of this decision. Only in this way may The Law Society achieve a sanction necessary to denounce this misconduct, to deter others and maintain the public's confidence.

Penalty

It is ordered that:

1. Ms. Rault is disbarred and is not eligible to apply for re-admission until 5 years from the date of this decision; and
2. Ms. Rault pay The Law Society's costs in the amount of \$15,537.01.

DATED at the City of Weyburn in the Province of Saskatchewan this 18th day of April, 2008.

Per: _____
Paul H.A. Korpan, Q.C.
Discipline Committee Chair

(3439.1, .2 & .3)

**IN THE MATTER OF *THE LEGAL PROFESSION ACT, 1990*
AND IN THE MATTER OF SUSAN RAULT, OF WATROUS,
SASKATCHEWAN, A LAWYER**

REPORT OF THE HEARING COMMITTEE

Hearing Committee Members: Richard W. Danyliuk, Q.C., Chair

Investigation Committee Counsel: Alan G. McIntyre

Member's Counsel: Michael D. Tochor, Q.C.

1. As a result of a series of complaints against the member, an Investigation Committee of the Law Society of Saskatchewan was struck, comprised of Greg Walen, Q.C. and Marilyn Scott, Q.C.. The Investigation Committee completed its report on November 8, 2006. As a result of having received the Report of an Investigation Committee a Hearing Committee was struck by Susan Barber, Vice-Chair of the Discipline Committee of the Benchers of the Law Society of Saskatchewan, for the purposes of determining whether Susan Rault (hereinafter "the Member") is guilty of conduct unbecoming a lawyer. Initially, the Hearing Committee was comprised of Richard W. Danyliuk Q.C., Chair, Karen Topolinski, and Dawn McBride. Subsequently, with the consent of all involved, the Hearing Committee's composition was reduced to Richard W. Danyliuk Q.C., Chair.

2. The Hearing Committee convened on January 30, 2008 in Saskatoon, Saskatchewan via teleconference. Mr. Alan G. McIntyre represented the Law Society of Saskatchewan. Mr. Michael D. Tochor Q.C., represented the Member. By agreement and in light of the Agreed Statement of Facts ultimately presented, the Member was also present via teleconference.

3. At the outset of the hearing, counsel for the parties acknowledged and agreed to the constitution of the Hearing Committee. Counsel for the Investigation Committee tendered the Formal Complaint and the Notice of Hearing as Exhibit P-1, and an Agreed Statement of Facts as Exhibit P-2. With Mr. Tochor's consent, these documents were made Exhibits in this proceeding. No issue was taken with respect to service of the Formal Complaint or Notice of Hearing. Copies of both Exhibits are appended hereto and form part of this Decision.

4. The Formal Complaint alleges as follows:

That Susan Rault, of the Town of Watrous, in the Province of Saskatchewan, a lawyer:

1. **Is guilty of conduct unbecoming a lawyer in that she did fraudulently alter documents on 16 separate incidents.**

(Reference Chapter I of *The Code of Professional Conduct*)

2. **Is guilty of conduct unbecoming a lawyer in that she failed to discharge her duty to clients with diligence and honesty.**

(Reference Chapters 1 and 2 of *The Code of Professional Conduct*)

3. **Is guilty of conduct unbecoming a lawyer in that she failed to comply with Rules 910, 912 and 920 of the Rules of the Law Society of Saskatchewan in that she received trust funds from clients but failed to deposit them to either a mixed or separate trust account as required.**

4. Is guilty of conduct unbecoming a lawyer in that she failed to comply with Rules 962 through 965 inclusive of the Rules of the Law Society of Saskatchewan in that she failed to maintain an accounting system or trust ledger of any kind throughout her period of practice.

5. Is guilty of conduct unbecoming a lawyer in that she failed to comply with Rule 930(1) of the Rules of the Law Society of Saskatchewan in that monies which she held in trust to the credit of individual persons were insufficient to pay what she properly owed to those persons.

(Reference Chapter 8 of *The Code of Professional Conduct*)

6. **Is guilty of conduct unbecoming a lawyer in that she failed to preserve and keep safe the property of clients that was entrusted to her care.**

(Reference Chapter 8 of *The Code of Professional Conduct*)

5. A plea of guilty was entered as to counts 1, 2, 3 and 6, which have been delineated in bold lettering above. Upon receipt of said pleas counsel for the Law Society withdrew counts 4 and 5.
6. It is the Decision of the Hearing Committee that the allegations as set out in counts 1, 2, 3 and 6 above are well-founded and pursuant to Section 51 of *The Legal Profession Act 1990* the Hearing Committee finds that the complaints are well-founded on the charges, as revealed by the Agreed Statement of Facts.
7. The Hearing Committee makes no sentencing recommendation and refers the matter to the Benchers of the Law Society of Saskatchewan at the Convocation of their choosing, for sentencing to be concluded. Both counsel expressed a desire to have this matter dealt with at the April 2008 Convocation of the Law Society of Saskatchewan.

DATED at Saskatoon, Saskatchewan this 12th day of March, 2008.

Richard W. Danyliuk Q.C., Chair

CANADA)
PROVINCE OF SASKATCHEWAN)
TO WIT)

**IN THE MATTER OF *THE LEGAL PROFESSION ACT, 1990*
AND IN THE MATTER OF SUSAN RAULT,
A LAWYER OF WATROUS, SASKATCHEWAN**

AGREED STATEMENT OF FACTS

The Law Society through counsel and Ms. Rault agree to and admit the following facts:

1. That Susan Rault was a member of the Law Society at all material times. She graduated with a LLB from the University of Saskatchewan in 1989 and articulated in Saskatoon. Thereafter, she took one year off and in 1991 went to Watrous and worked there;
2. Although having a law degree and being admitted as a barrister and solicitor Ms. Rault always held another job;
3. After Mr. Lannon's departure from practice, Ms. Rault was a sole practitioner in Watrous;
4. Ms. Rault describes her problem as taking on too much work and an inability to say no to people;
5. Based on a series of complaints, an Investigation Committee was struck. A report of the Investigation Committee was completed November 8, 2006 and excerpts of it are incorporated in this Agreed Statement of Facts;

6. By that same report of November 8, 2006, the Investigation Committee recommended a Hearing Committee be appointed to determine if Ms. Rault is guilty of conduct unbecoming. Precise allegations are set out in a Formal Complaint. Ms. Rault acknowledges service of the complaint, which will be marked as an exhibit in these proceedings. Ms. Rault further admits service of the Notice of Hearing and takes no issue with the constitution of the Hearing Committee.

The Formal Complaints

7. Fundamentally, Ms. Rault's problems relate to the real estate and estate practice at her office. More will be said of this. However, by failing to register transfers, mortgages, discharges etcetera and thereafter making up documents suggesting she had done those activities, Ms. Rault failed to discharge her duties as a solicitor. As well, failing to have a trust account until 2004 resulted in a commingling of trust and general funds. Each allegation of the complaint will be discussed in turn.

Formal Complaint

Charge 1 - Fraudulently alter documents on 16 separate incidents (Reference Chapter 1 of *The Code of Professional Conduct*).

Synopsis

8. Ms. Rault prepared numerous report documents by cutting, pasting, altering, photocopying and thereafter usually reporting in an untimely way, falsely stating registration and discharge of various interests to financial institutions, clients and estates. The years involved are 2001, 2002 and 2003.

9. A brief summary of each of the sixteen incidents of fraudulently altering documents follows. A more complete description for each of these occurrences is found at **Tab 1**.

- (a) V., A. and C.

Re: Purchase of "Address A", Watrous, from G. and M. B., Possession Date May 12, 2003

In this transaction after paying out a Royal Bank Mortgage, Ms. Rault failed to discharge it. By cutting, pasting and photocopying, Ms. Rault fabricated a title print concealing the Royal Bank registration and showing the Credit Union to have a Caveat registered as the only charge. That fabricated title was used to report to the Credit Union.

- (b) K., D. and V.

Re: Purchase of "Address B", Watrous, Possession Date August 1, 2002

Ms. Rault acted for all parties in the sale of the property. That sale involved the payout of the vendor's mortgage. In reporting to the Credit Union on its mortgage, Ms. Rault fabricated a Title eliminating the reference to the Vendor's mortgage among other things.

- (c) R., R. and L.

Re: Purchase of "Address C", Watrous, Saskatchewan, Possession Date July 1, 2002

In this instance, the bank's mortgage instructions required a Surveyor's Certificate or Title Insurance as a condition precedent to the release of funds. After releasing the mortgage proceeds to the Vendor in August of 2002, Ms. Rault obtained a Title Insurance Policy on January 9, 2003 which she provided to the bank but whited out the words "draft" in the Title Insurance,

the search date (January 9, 2003) in the title print and also whited out an unpaid utility account balance which otherwise showed up in a Tax Certificate.

(d) B., B. and H.

Re: Sale to T. and M. P.

In this instance, Ms. Rault altered titles to change the registration date of the mortgage to show October 14, 2003 and used copies of the altered titles in reporting to the mortgage company saying it was registered on October 14, 2003.

(e) R., R. Estate of

Re: Estate

In April 2002 Ms. Rault was engaged to make an Application by Surviving Joint Tenant in relation to five land titles. Ms. Rault failed to register any such application but prepared a title showing three joint tenants as registered owners as surviving joint tenants when in fact she simply whited out the name of the deceased.

(f) R., R. and M.

Re: Purchase of "Address D", Watrous, Possession Date June 14, 2003

The transfer and mortgage was only registered by Ms. Rault on November 17, 2003. By cutting and pasting a title print Ms. Rault showed that the mortgage was registered on June 14, 2003 and also at the same time concealed a miscellaneous interest against the title. Ms. Rault used a fabricated title to report to the financial institution and also falsely stated that the mortgage was registered as a first charge on June 14, 2003.

- (g) H., S. and T. and M., D. and D.

Re: Purchase of "Address E", Watrous, Possession Date October 15, 2001

Registration was completed promptly in this instance. However, in reporting to the Credit Union some six months later, Ms. Rault provided a photocopy of the October 9 Certified Copy of Title after she altered it by cutting out the registration notation of the vendor's mortgage.

- (h) A., J. and M.

Re: Mortgage on "Address F", Watrous, Possession Date April 1, 2003

Title was registered on April 4, 2003. In October 2003 the purchasers whom Ms. Rault acted for were approved for a mortgage. The mortgage was signed October 29, 2003 and funds were advanced on November 6, 2003. In her final report to the Credit Union dated November 17, 2003 Ms. Rault attached title prints showing mortgage registration as October 31, 2003 and stated that was the registration date when in fact it was not registered until November 19. She did this by cutting, pasting and photocopying.

- (i) A., A.

Re: Purchase of "Address G", Watrous from J. and M. A., Possession Date September 15, 2003

In this instance, mortgage proceeds were received on September 19, 2003 and paid out the same date but the transfer of title and mortgage were not registered until November 5, 2003. By photocopying, pasting and recopying the title Ms. Rault showed that the mortgage registration date to be September 17 and she falsely stated in her closing report that the mortgage had been registered on September 17.

(j) T., D.

Re: Purchase of "Address H", Watrous from Y., S. and W., Possession Date October 1, 2003

Ms. Rault received mortgage proceeds from the Credit Union on October 6, 2003 but the transfer of title and mortgage were not registered until November 26, 2003. By copying, pasting, re-photocopying and using whiteout she altered the date of the mortgage registration to show it registered October 1, 2003 instead of November 26, 2003. In the same way she also concealed prior encumbrances which had not been discharged. In her closing report Ms. Rault attached copies of the altered title prints and falsely reported that the mortgage had been registered on October 1, 2003 and that the Credit Union had a first charge on the titles.

(k) R., B.

Re: Purchase and Mortgage on "Address I", Manitou Beach from I., C., Possession Date March 1, 2003

The titled transferred and the purchaser's mortgage was registered on March 5, 2003. The vendor was paid out including the payout of his mortgage on March 7. While the vendor's encumbrances were paid out they were not discharged from title. Ms. Rault altered the titles in her report by cutting, pasting and photocopying concealing the prior mortgage and caveat which continued on title and falsely stated there were no other mortgages or charges or encumbrances on the property.

(l) R., B.

Re: Purchase and Mortgage on "Address J", Manitou Beach from I., C.

Here, the purchaser's mortgage and transfer were registered on July 16. The vendor's mortgage was paid out on July 23 but a discharge of that mortgage was not registered. Ms. Rault altered titles to conceal the vendor's mortgage had not been discharged and reported to the Drake Credit Union in her final report on security that it had been.

(m) V.V., B. and K.

Re: Purchase of Lot from "Address K" and Mortgage to Page Credit Union, Possession Date July 25, 2003

Ms. Rault failed to register either the title transfer or the mortgage. She sent the Credit Union a final report on security falsely claiming that a mortgage in favour of the Credit Union had registered on July 21 and that they had a valid first charge on the property. Ms. Rault attached to her final report a title print which was completely fabricated.

(n) A., R.

Re: Purchase of "Address L", Watrous from J. and G. K., Possession Date August 15, 2003

While the mortgage was executed promptly and funds also received promptly, the transfer authorization and the purchaser's mortgage were not completed until November 26, 2003. Ms. Rault altered the registration date by copying, pasting and photocopying and claimed in her final report that the mortgage was registered on August 15, 2003.

(o) S., A. and B.

Re: Purchase of "Address M", Emma Lake from E. K., Possession

Date July 15, 2002

While acting for both vendor and purchasers, a collateral mortgage was promptly executed. However, the transfer of title was not registered until February 11, 2003 and the mortgage was not registered until February 12, 2003. Ms. Rault thereafter altered some of the titles to conceal prior encumbrances and a Heartland Credit Union mortgage and a prior Royal Bank mortgage.

(p) B., E.

Re: Estate of

The deceased died February 1, 2002. Ms. Rault was instructed to make an Application by Surviving Joint Tenant and a transfer by the surviving widow to her son. She was also to obtain Letters Probate. By January 2004 the estate had not been completed. Ms. Rault represented and showed copies of titles indicating the Application by Surviving Joint Tenant had been completed when it had not. Ms. Rault had fabricated the tile print shown to the clients.

**Charge 2 – Failed to discharge her duty to clients with diligence and honesty
Reference – Chapters 1 and 2 of *The Code of Professional Conduct*).**

Synopsis

10. In this series of eighteen transactions, four of them relate to the same clients as detailed in complaint 1. However, for all clients affected, the conduct of Ms. Rault is somewhat similar. Typically she would fail to attend to register transfers of title,

mortgages, discharges or similar documents. In some cases those steps needed to be completed by the Trustee. A more complete description of these transactions is found at **Tab 2**.

(a) T., D.

Re: Sale of "Address N", Watrous to D. and J. H., Possession Date
February 1, 2004

After the purchase price was paid and released on or about February 1, 2004 Ms. Rault failed to attend to the transfer of title or the discharge of the vendor's encumbrances.

(b) W., A.

Re: Purchase of "Address O", Watrous from B. C., Possession Date
June 28, 2003

Sale proceeds were released to the vendor on July 31 but the transfer of title was only completed by the Trustee approximately eight months after the purchase price was paid.

(c) B., D. and J.

Re: Purchase of "Address P", Watrous, Possession Date August 1, 2003

The Royal Bank advanced the purchaser's mortgage proceeds prior to July 31, 2003 and they were released on July 31, 2003 to the Vendor's solicitor. Ms. Rault did not register the transfer of title or mortgage in favour of the Royal Bank. Completion of those steps was done by the Trustee approximately seven months after the mortgage proceeds and the balance of the purchase price were received by the vendor's solicitor. Ms. Rault breached the Bank's instructions to lawyers concerning the negotiation of the cheque and what it represented.

(d) B., P. and L.

Re: Purchase of "Address Q", Regina from M. I. LTD., Possession Date
April 27, 2002

On April 25, 2002 Ms. Rault falsely reported to the Credit Union that the transfer had been registered and based on that the Credit Union advanced mortgage proceeds. On May 6 Ms. Rault also falsely told the vendor's solicitor that the transfer had registered and the funds were therefore released. The mortgage in question was registered on the property previously owned by the purchasers but Ms. Rault did not register the transfer of title or the mortgage on the property being purchased. The transfer of title, registration of the purchaser's mortgage and discharge of the vendor's encumbrances were not completed until after the commencement of trusteeship.

(e) V., C.

Re: Sale of "Address R":, Watrous to P. V., Possession Date December 1,
2003

While acting for both vendor and purchaser Ms. Rault received the purchaser's mortgage proceeds from the Royal Bank on December 1, 2003 and released it February 4, 2004. No title had been transferred and no mortgage had been registered. This was sorted out by the trusteeship.

(f) M., M.

Re: Sale of "Address S", Watrous to L. and A. F., Possession Date
November 7, 2003

While acting for both the vendor and purchasers Ms. Rault released all sale proceeds to the vendor on October 25, 2003. She failed to register the transfer.

(g) L., B. and P.

Re: Royal Bank Mortgage on "Address T", Watrous

Ms. Rault acted for the L's in a re-mortgage of their property with proceeds being advanced to her on May 28, 2003. Ms. Rault paid out the previous mortgage on September 8, 2003 and received a discharge authorization. Ms. Rault did not complete and register adequate mortgage documentation in relation to the bank's re-mortgage.

(h) A., R.

Re: Sale of "Address U", Watrous to A. M. and L. K., Possession date December 12, 2003

Ms. Rault acted for the vendor, the purchasers and the Royal Bank. She received purchasers' mortgage proceeds on December 17 and sale proceeds were released to the vendor. Ms. Rault did not register a transfer of title or a mortgage in favour of the Royal Bank. Negotiation of the Royal Bank cheque, pursuant to instructions represented completion of all necessary steps and the mortgager's having a good title.

(i) W., G. and M.

Re: Sale of "Address V" to S. W., Possession Date December 1, 2003

Ms. Rault acted as solicitor for the vendors, purchasers and Co-operative Trust. Co-operative Trust advanced the purchasers' mortgage on December 4 on Ms. Rault's request which funds were subsequently released. She failed to register the transfer authorization and mortgage. Vendor encumbrances also remained against the title. Those actions by her were contrary to the instructions to solicitor from the Co-operative Trust Company.

(j) O., L. and J.

Re: Sale of "Address W", Watrous to J. and L. D., Possession Date November 7, 2003

Ms. Rault acted as solicitor for vendors, purchasers and ING Direct. The lender advanced the purchasers' mortgage proceeds on November 7 and the sale proceeds were released to the vendors on December 15. On December 10 Ms. Rault falsely reported to the realtor that the transfer had been registered and that their deposit was releasable. The transfer of title and mortgage had not been registered.

(k) R., A. and G. and N., L. and R.

Re: Sale of "Address X", Manitou to L., V. and S., A., Possession Date November 1, 2003

Acting for both the vendors and purchasers, Ms. Rault authorized release of the deposit held by the realtor on December 4, 2003 and on December 5, 2003 she released the sale proceeds to the vendors. The transfer of title had not been registered.

(l) B., S.

Re: Purchase of "Address Y", Saskatoon, Possession Date August 20, 2003

Ms. Rault acted for the purchaser and for Scotia Bank. The purchaser's mortgage proceeds were advanced on September 11, 2003 and the sale proceeds released to the vendor's solicitor on September 10, 2003. On September 10, 2003 Ms. Rault falsely indicated to the vendor's solicitor that the transfer had been registered. She was in breach of a trust condition regarding submission of the transfer for registration within seven days after

the possession. No transfer authorization or mortgage was registered prior to Ms. Rault's suspension.

(m) F., A. and P.

Re: Sale of "Address Z", Watrous to K., J. and M., Possession Date November 15, 2003

In acting for the vendors, purchasers and Scotia Bank, Ms. Rault did not obtain mortgage proceeds until March 11, 2004. She failed to obtain the balance of the purchase price from the purchaser. She advised the clients that the transaction had been completed and gave the vendor's payment in full including \$1,732.99 in interest for late payment from trust. The transfer and mortgage had not been registered. As well, Ms. Rault overdraw her trust account to the credit of the purchasers by \$8,216.02. Ms. Rault failed to collect the balance to close from the purchasers.

(n) L., A. and J.

Re: Purchase of "Address AA", Manitou Beach, Possession Date May 1, 2003

In acting for the purchasers the Royal Bank advanced purchase sale proceeds to Ms. Rault which she forwarded with the balance of the purchase price to the vendor's solicitor before possession. Ms. Rault registered the transfer on May 8, and also indicated the funds were releasable notwithstanding that the mortgage had not been registered. Ms. Rault did not obtain either a Surveyor's Certificate or a Title Insurance contrary to the bank's instruction to the lawyer.

(o) W. E. INC.

Re: Purchase of "Address BB", Vernon, B.C, Possession Date October 31, 2003

In acting for the purchasers and the Credit Union, Ms. Rault requisitioned mortgage proceeds and instructing the Credit Union to wire transfer the funds to the vendor's solicitor. She represented to the Credit Union that the mortgage had been registered when in fact she had not registered the mortgage.

(p) B., D.and A.

Re: Sale of "Address CC" Watrous to T. and A. A., Possession Date August 29, 2003

Ms. Rault acted as solicitor for both vendors and purchasers. Before September 2, 2003 the Royal Bank advanced the purchasers' mortgage proceeds to Ms. Rault. On September 2, 2003 she reported to the Heartland Credit Union that the sale had been completed and she paid out the vendors' mortgages in the purchasers' mortgage funding from the Royal Bank. Transfer of title and registration of the purchasers' mortgage were not completed before Ms. Rault was suspended, approximately six months after the mortgage proceeds were received, contrary to the Royal Bank's instructions to the lawyer.

(q) V., B. and K.

Re: Sale of "Address DD", Y. to C. and R. W., Possession Date August 1, 2003

Ms. Rault acted as solicitor for the vendors, purchasers and the Royal Bank. The Royal Bank advanced the purchasers' mortgage proceeds. Ms. Rault

reported to the Heartland Credit Union on September 8, 2003 that the sale had been completed and she paid out the vendors' mortgage. She had never registered the transfer of title nor had she prepared and registered the mortgage. She did not register a discharge of the vendors' mortgage and failed to obtain either a Surveyor's Certificate or Title Insurance as required by the bank's instruction to their lawyer.

(r) B., E.

Re: Estate of _____

In relation to the estate, Ms. Rault was instructed to make an Application by Surviving Joint Tenant. In January 2004 some two years after Mr. B.'s death, the Executrix spoke to Ms. Rault who showed a title print indicating that she and her son now own the land in joint tenancy. That title print was fabricated. Ms. Rault also provided a variety of excuses about why probate did not occur and suggested she had taken various steps and even made an official judicial complaint about delay. In fact that was false. Ms. Rault fabricated notes to support her position about activity she said she had done. She did the same thing with respect to a Saskatchewan Wheat Pool Certificate when she said the Wheat Pool had lost it.

Charge 3 – Failed to comply with Rules 910, 912 and 920 of the Rules of the Law Society of Saskatchewan in that she received trust funds from clients but failed to deposit them to either a mixed or separate trust account as required.

Synopsis

11. Ms. Rault did not establish a trust account of any kind until January 2004. Her records show that she received trust funds from real estate transactions and from the administration of estates prior to January 2004 and deposited all such trust funds into her general account.

Charge 4 – Failed to comply with Rules 962 through 965 inclusive of the Rules of the

Law Society of Saskatchewan in that she failed to maintain an accounting system or trust ledger of any kind throughout her period of practice.

Synopsis

12. No manual or computerized accounting records of any kind were maintained. It was necessary to reconstruct her accounts from cancelled cheques, cheque stubs and bank statements

Charge 5 – Failed to comply with Rule 920(1) of the Rules of the Law Society of Saskatchewan in that monies which she held in trust to the credit of Individual persons were insufficient to pay what she properly owed to those persons (Reference – Chapter 8 of *The Code of Professional Conduct*).

Synopsis

13. Prior to January of 2004 Ms. Rault did not have a trust account, she just commingling trust funds in her general account. Two of the four matters in this complaint relate to clients mentioned in complaint 2, that is complaint 5(d) F. which is also dealt with in complaint 2(m) and V. which is also complaint 2(e).
14. In each of these cases Ms. Rault overdraw the trust account funds available for the file. Details follow.
 - (a) G., A. & J. sale to S., J.

Ms. Rault made deposits totalling \$47,000.00 to her trust account on February 4, 2004 related to the above real estate transaction but without making further deposits, made the following withdrawals:

February 27, 2004	\$15,000.00	paid to Vendor
March 12, 2004	\$29,289.45	paid to vendor's mortgage

March 12, 2004	<u>\$ 3,359.79</u>	paid to vendor
Total	\$47,649.24	

(b) F., F.& M. sale to W., B. & J.

Ms. Rault deposited the purchasers' mortgage proceeds of \$118,835.00 on March 5, 2004 but without making further deposits, caused \$119,615.87 to be withdrawn by telephone transfer to the vendors' solicitor on March 8, 2004.

(c) V., C. to V., P.

Ms. Rault deposited the purchaser's mortgage proceeds of \$34,035.00 on February 4, 2004 but without making further deposits made the following withdrawals:

February 4, 2004	\$33,559.20	paid to Vendor
February 4, 2004	<u>\$ 2,240.80</u>	paid to vendor
Total	\$35,800.00	

(d) F., A.& P. to K., J.& M.

Ms. Rault issued payment to the vendor on March 8, 2004 in the amount of \$115,051.02 without having any funds in trust to the credit of that client and deposited only \$106,835.04 into trust on March 11, 2004. No other deposits were made to the credit of that client on this transaction.

Charge 6 – Failed to preserve and keep safe the property of clients that was entrusted to her care (Reference – Chapter 8 of *The Code of Professional Conduct*).

Synopsis

15. Susan Rault failed to keep the clients' documents for safekeeping separate from her own property. At the time of her suspension, clients' Wills, Powers of Attorney, Health Care Directives, share certificates and other original documents were found mixed amongst her personal and office records which were maintained in stacks around the bedroom that Ms. Rault also used as her office.
16. Susan Rault also failed to maintain adequate records of clients' property in her possession. At the time of her suspension, only a partial list of Wills, Powers of Attorneys and Health Care Directives were retrieved from her computer. No other records could be found and numerous originals of such documents were located in her office but not found on the list maintained on her computer.

DATED at the City of Regina, in the Province of Saskatchewan, this _____ day of February, 2007.

ROBERTSON STROMBERG PEDERSEN LLP

Per: _____

Alan G. McIntyre, Solicitor for the
Investigation Committee of The Law Society
of Saskatchewan

DATED at the Town of Watrous, in the Province of Saskatchewan, this _____ day of February, 2007.

WITNESS

SUSAN RAULT

AFFIDAVIT OF EXECUTION

C A N A D A
PROVINCE OF SASKATCHEWAN
TO WIT:

I, _____, of the Town of Watrous, in the Province of Saskatchewan,
MAKE OATH AND SAY:

- 17. THAT I was personally present and did see SUSAN RAULT named in the within Agreed Statement of Facts, who is personally known to me to be the person named therein, duly sign and execute the same for the purpose named therein.
- 18. THAT the same was executed at Watrous, Saskatchewan, and that I am the subscribing witness thereto.
- 19. THAT I know the said party and he is in my belief of the full age of 18 years.

SWORN BEFORE ME at Watrous,)
 Saskatchewan, this _____ day)
 of _____, 2007.) _____
)
)
 _____)

A Commissioner for Oaths in and for the
 Province of Saskatchewan
 My Commission Expires:
 Or
 Being a Solicitor

This document was delivered by:

ROBERTSON STROMBERG PEDERSEN LLP
Barristers and Solicitors
500 – 2220 12TH AVENUE
BOX 1037
REGINA, SK
S4P 3B2

Whose address for service is the same as above.

Lawyer in charge of file: Alan G. McIntyre
Phone: 565-6507