



**IN THE MATTER OF *THE LEGAL PROFESSION ACT, 1990*
AND IN THE MATTER OF
Victoria Elliott-Erickson of Prince Albert, Saskatchewan A LAWYER**

**The Law Society of Saskatchewan
Discipline Decision #08-03**

Decided: June 25, 2008

**Timothy F. Huber on behalf of The Law Society of Saskatchewan
Victoria Elliott-Erickson, self represented**

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, called Benchers, consists of 17 persons elected from various constituencies in the Province, 4 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 undertaken on the basis of complaints received from clients, members of the public or other lawyers; however, the Law Society of Saskatchewan does initiate its own investigations where information comes to its attention which indicates inappropriate or unprofessional behaviour.

Conduct unbecoming is defined as: “*any act or conduct, whether or not disgraceful or dishonourable, that (1) is inimical to the best interests of the public or the members; or (2) tends to harm the standing of the legal profession generally*”.

The penalty options available to the Benchers in sentencing a member who has been found guilty of conduct unbecoming range from a reprimand, fine and/or the imposition of practice conditions to

disbarment and resignation in the face of discipline. The Law Society of Saskatchewan does not have the jurisdiction to award damages against a member, however, may require the member to pay the costs of the discipline hearing.

Introduction

Pursuant to Section 47(1) of *The Legal Profession Act, 1990*, John Will, Vice Chair of the Discipline Committee of the Law Society of Saskatchewan, having received the Report of an Investigation Committee comprised of William Holliday, appointed a Hearing Committee to determine whether or not Victoria Elliott-Erickson (hereinafter the “Member”) is guilty of conduct unbecoming a lawyer.

At the request of the Member and counsel for the Law Society, the hearing of this complaint was conducted by telephone conference on June 25, 2008 at 4:00 p.m. Present were the Hearing Committee consisting of Karen Topolinski, chair, and Peter Hryhorchuk; the Member; and Timothy F. Huber as counsel for The Law Society of Saskatchewan. The proceedings were transcribed by a Court Reporter.

At the outset of the Hearing, parties were identified for the record and counsel for The Law Society of Saskatchewan and the Member acknowledged and agreed to the constitution of the Hearing Committee.

Counsel for The Law Society of Saskatchewan filed the Formal Notice of Hearing with complaint attached, as well as an Affidavit of Service of these documents to the Member. The Member acknowledged the filing of said documents and agreed to the jurisdiction of the Hearing Committee.

The Formal Complaint, dated April 22, 2008, alleges the following:

THAT Victoria Elliott-Erickson, of the City of Prince Albert, in the Province of Saskatchewan:

Is guilty of conduct unbecoming a lawyer, in that she did fail to comply with Rule 1203(1)(b) of the Law Society of Saskatchewan for the fiscal period ending December 31, 2006.

Facts

Counsel for The Law Society of Saskatchewan submitted to the Hearing Committee an executed Agreed Statement of Facts, marked as exhibit P-2, signed on June 11, 2008 by the Member and counsel for The Law Society of Saskatchewan. The Member, through this Agreed Statement of Facts and her acknowledgment during these proceedings, accepted that her actions constituted conduct unbecoming a lawyer in the above complaint. The relevant facts as contained in the Agreed Statement of Facts are summarized below:

- 1) The Member failed to provide her Form TA-5 or proof of trust account inactivity within three months of her fiscal year end being December 31, 2006;
- 2) The Member was not at any time prior to this complaint exempt from filing her Form TA-5 in relation to the 2006 fiscal year;
- 3) After the March 31, 2007 filing deadline, the Member received nine letters from John Allen by regular and registered mail requesting the form TA-5 or proof of trust account inactivity, dated as follows: May 9, 2007, May 29, 2007, June 20, 2007, July 12, 2007, August 10, 2007, September 6, 2007, October 4, 2007, October 30, 2007, December 5, 2007. The Member did not provide the requested TA-5 or proof of trust inactivity to John Allen in compliance with these requests;
- 4) Seven months after the information was due, the Member made a request to the CIBC in October 2007 and obtained proof of trust account inactivity from them. The Member did not provide that proof of trust account inactivity to the Law Society of Saskatchewan until February 2008, ten months after it was due, despite the Law Society's further requests for the information. The Member also failed to take any steps to ensure that the CIBC had forwarded the proof of trust account inactivity to the Law Society of Saskatchewan;
- 5) The Member only provided the requested information relating to trust account inactivity after she was suspended from the practice of law for failure to file the required information;
- 6) The Member states that she was suffering from a medical condition as well as the loss of two family members during the relevant period of time; and
- 7) The root cause of the Member's failure to ensure that the Law Society received the required information was a lack of understanding of trust reporting procedures and a lack of appreciation as to the importance of the trust reporting requirements as they relate to public protection.

The Duty of the Lawyer

Law Society of Saskatchewan Rule 1203 requires that all members file with the Law Society of Saskatchewan, an Annual Practice Declaration in Form TA-3 (1203(1)(a)(i)), a Power of Attorney for The Law Foundation of Saskatchewan in Form TA-2 (1203(1)(a)(ii)) and a Report of Accountant in Form TA-5 (1203(1)(b)). These documents must be filed no later than 3 months following the member or law firm fiscal year end.

The Law Society of Saskatchewan's Code of Conduct, Chapter XV, "Responsibility to the Profession Generally," emphasises the importance of lawyers maintaining the integrity of the profession and participating in its activities. Paragraph 2 of the Guiding Principles under this Rule states:

"2. The lawyer has a duty to reply promptly to any communication from The Law Society of Saskatchewan."³

Sentencing Principles and Considerations

The Member requested and counsel for The Law Society of Saskatchewan consented to the Hearing Committee exercising its powers and imposing a sentence pursuant to its limited powers under section 53(3) of *The Legal Profession Act, 1990*.

The issues illuminated in the within complaint are the failure of the Member to be aware of Rules of the Law Society and as well, fully appreciate her duty to comply with requests for necessary submissions from the Law Society. Considerable attempts to impart upon the Member her duty to comply with the requisite forms were made without success until the Member's practice privileges were suspended. The Law Society of Saskatchewan relies on and expects its members to cooperate when complaints arise in order to fully and effectively investigate and discipline within its self governance model. The absence of such cooperation is deleterious to the principles of self governance. The delay in the Member's submissions, and failure to appreciate the import of filing the trust account forms represents an absence of diligence and in all the circumstances is conduct unbecoming.

In this case, maintaining the public's confidence in the Law Society's ability to self govern is the paramount consideration. Failure to enforce its own rules diminishes confidence in the Law Society's ability to self govern and to that end, the Law Society must denounce conduct that brings the reputation of its ability to govern into question. The Code and the Rules require a level of awareness, diligence and cooperation that must be managed by the Law Society in order to ensure public confidence, and foster practice expectations commensurate with the guiding principles of the Law Society's legislation and policies. The Hearing Committee, however, does acknowledge several mitigating factors which influenced sentencing. In this case, the Member's conduct is mitigated by her personal and medical circumstances, guilty plea and acknowledgment of wrongful actions, and her cooperation with the Law Society during the discipline process. Further, it is recognized that no malfeasance contributed to the Member's action, nor did any harm come to the public as a result of her actions. Finally, the Member was subject to a brief suspension.

Nonetheless, accountability in the form of a sanction is necessary to denounce the misconduct, deter others, and ensure public confidence.

Decision

It is ordered that:

1. Ms. Elliott-Erickson is formally reprimanded.
2. Ms. Elliott-Erickson pay to the Law Society of Saskatchewan costs in the amount of \$1,000.00.

DATED at the Cities of Saskatoon and Prince Albert, in the Province of Saskatchewan, this 10th day of July, 2008.

Karen Topolinski
Hearing Committee Chair

Peter Hryhorchuk
Hearing Committee



CANADA)
PROVINCE OF SASKATCHEWAN)
TO WIT)

IN THE MATTER OF *THE LEGAL PROFESSION ACT, 1990*
AND IN THE MATTER OF VICTORIA ELLIOTT-ERICKSON,
A LAWYER OF PRINCE ALBERT, SASKATCHEWAN

AGREED STATEMENT OF FACTS
BETWEEN VICTORIA ELLIOTT-ERICKSON AND
THE LAW SOCIETY OF SASKATCHEWAN

In relation to the Formal Complaint dated April 22, 2008 alleging the following:

THAT VICTORIA ELLIOTT-ERICKSON, of the City of Prince Albert, in the Province of Saskatchewan:

Is guilty of conduct unbecoming a lawyer, in that she did fail to comply with Rule 1203(1)(b) of the Law Society of Saskatchewan for the fiscal period ending December 31, 2006.

Jurisdiction

1. Victoria Elliott-Erickson (hereinafter “the Member”) is a practicing member of the Law Society of Saskatchewan and is subject to the provisions of *The Legal Profession Act, 1990* as well as the *Rules of the Law Society of Saskatchewan*. Attached at **Tab “1”** is a copy of the most recent Practice Certificate of the Member.
2. The Member is currently the subject of a Formal Complaint initiated by the Law Society of Saskatchewan dated April 22, 2008. The Formal Complaint is comprised of the single count noted above. The Formal Complaint was served upon the Member on May 6, 2008. Attached at **Tab “2”** is a copy of the Formal Complaint along with proof of service.

3. The Member acknowledges the jurisdiction of the Hearing Committee appointed in relation to this matter to determine whether the complaint is well founded.

Particulars of Conduct

4. Law Society of Saskatchewan Rule 1203 requires that all members file with the Law Society of Saskatchewan, an Annual Practice Declaration in Form TA-3 (1203(1)(a)(i)), a Power of Attorney for The Law Foundation of Saskatchewan in Form TA-2 (1203(1)(a)(ii)) and a Report of Accountant in Form TA-5 (1203(1)(b)). These documents must be filed no later than 3 months following the member or law firm fiscal year end.
5. The fiscal year end for the Member in this case is December 31. In accordance with Rule 1203 the Member was obligated to file Forms TA-5, TA-3 and TA-2 on or before March 31, of 2007. The Member had not received an exemption from filing any of the required forms relating to the 2006 fiscal year, since she had not provided 3rd party confirmation that there had been no trust account activity. This exemption was not granted despite the fact that she had not had any trust account activity since the trust account was opened in 2004 and she had, in prior years, provided an undertaking to notify the Law Society of Saskatchewan if the account was being used.
6. On May 9, 2007, John Allen, Law Society of Saskatchewan Auditor/Inspector had not yet received Forms TA-5, TA-3 and TA-2 from the Member due on March 31, 2007. Mr. Allen prepared a letter to the Member on that date advising the Member of the late filing penalty, then \$100.00 per month, and requesting that the required forms and penalties for April and May be forwarded to the Law Society of Saskatchewan within 10 days. Attached at **Tab "3"** is a copy of the letter from John Allen to the Member dated May 9, 2007 along with the enclosed invoice relating to the penalties.
7. On May 29, 2007 Mr. Allen wrote a second letter to the Member having received no response from her. This letter, sent via registered mail, enclosed the previous correspondence from May 9, 2007 and advised that the matter would be referred for disciplinary action if a response was not received within 10 days. Attached at **Tab "4"** is the letter from John Allen to the Member dated May 29, 2007.

8. On June 14, 2007 the Law Society of Saskatchewan received from the Member the required Annual Practice Declaration in Form TA-3. None of the other required documents were provided along with the TA-3.
9. Given that the Member had not yet provided all of the required documents, Mr. Allen wrote another letter on June 20, 2007 requesting the TA-2 and trust account statements, or alternatively confirmation from the Member's bank that her trust account was not active in 2006. A new invoice for \$300.00 was included in that correspondence in relation to the growing monthly penalty for late filing. Again 10 days were given for the Member to respond. Attached at **Tab "5"** is a copy of the letter from John Allen to the Member dated June 20, 2007.
10. On July 12, 2007 a further letter was sent by Mr. Allan to the Member seeking the TA-2 form as well as confirmation in relation to the Member's trust account activity. A further \$100.00 was also added to the late filing penalty and another invoice was enclosed, this time for \$400.00. Attached at **Tab "6"** is a copy of the letter from John Allen to the Member dated July 12, 2007 with the enclosed invoice.
11. The Member paid \$400.00 in late filing penalties on July 12, 2007, however, none of the outstanding documents were forthcoming on that date.
12. On August 10, 2007, Mr. Allen wrote another letter to the Member by registered mail. In that letter Mr. Allen confirmed that the TA-2 was still outstanding along with the required confirmation from her bank in relation to the trust account activity. In that letter, Mr. Allen confirmed with the Member that the matter had been referred for disciplinary action. Attached at **Tab "7"** is the letter from John Allen to the Member dated August 10, 2007 with a further invoice for August penalties.
13. By September 6, 2007, Mr. Allen had yet to receive a response from the Member in relation to the requested documents. Another letter was sent via registered mail to the member reiterating the efforts that Mr. Allen had made to secure either a TA-5 form or confirmation from the Member's bank that there was no trust activity in 2006, as well as the TA-2. Attached at **Tab "8"** is a copy of the letter from John Allen to the Member dated September 6, 2007.

14. Another letter was sent by Mr. Allen to the member via registered mail on October 4, 2007 seeking a response to his previous letters of August 10, 2007 and September 6, 2007. This letter included an invoice for late filing fees for August, September and October 2007. Attached at **Tab “9”** is a copy of the letter from John Allen to the Member dated October 4, 2007 along with the attached invoice.
15. On October 9, 2007 Donna Sigmeth, Complaints Counsel for the Law Society of Saskatchewan wrote her first letter to the Member via registered mail seeking a response in relation to the complaint filed by Mr. Allen within 10 days. Attached at **Tab “10”** is a copy of the letter from Donna Sigmeth to the Member dated October 9, 2007.
16. After receiving no response, Donna Sigmeth sent a follow up letter to the Member, also via registered mail, on October 24, 2007. The response deadline was also 10 days. Attached at **Tab “11”** is a copy of the letter from Donna Sigmeth to the Member dated October 24, 2007.
17. On October 29, 2007, Donna Sigmeth received a telephone message from the Member. Donna Sigmeth phoned the Member back and left a message as the Member was away from her desk. The Member phoned back and left another message for Donna Sigmeth advising that she would phone back.
18. On October 30, 2007, the Law Society of Saskatchewan received an undated letter from the Member enclosing the required TA-2 Power of Attorney for the Law Foundation of Saskatchewan along with a \$400.00 cheque for payment of late filing penalties. The letter also advised that the Member had made a request to her bank to provide her with the necessary trust account information to prove that her trust account was dormant. She advised that the bank had not responded and that she would make another request. In her letter the Member also advised that there were personal and medical reasons for her failure to respond. Attached at **Tab “12”** is the letter from the Member to Donna Sigmeth and John Allen received on October 30, 2007.
19. On November 1, 2007, Donna Sigmeth wrote the Member seeking verification from the Member’s health care provider that she was indeed experiencing medical

- problems. No such verification was ever forthcoming. Attached at **Tab “13”** is a copy of the letter from Donna Sigmeth to the Member dated November 1, 2007.
20. On November 26, 2007, Donna Sigmeth sent a follow up letter in relation to her request for verification of the Member’s medical problems as no response had been received in relation to her first letter. Attached at **Tab “14”** is a copy of the letter from Donna Sigmeth to the Member dated November 26, 2007.
 21. On December 5, 2007, John Allan wrote the Member via registered mail, once again seeking either the Member’s Form TA-5 or confirmation from the Member’s bank that the Member’s trust account was inactive in 2006. A further invoice for \$100.00 for late filing penalties was included with the correspondence. Attached at **Tab “15”** is a copy of the letter from John Allen to the Member dated December 5, 2007 and the enclosed invoice.
 22. On December 10, 2007, Donna Sigmeth referred this matter to the Vice-Chair of Discipline.
 23. On January 2, 2008, John Will, as Vice-Chair of the Discipline Committee referred this matter to the Discipline Investigation Committee. Attached at **Tab “16”** is a copy of the letter from John Will to Karl Bazin and Donna Sigmeth dated January 2, 2008.
 24. The lone member of the Discipline Investigation Committee was William Holliday. A copy of the Member’s discipline file was provided to William Holliday on January 15, 2008, along with verification that the Member had no insurance claim history and no complaints history prior to the complaint herein.
 25. On January 22, 2008, the Member was suspended from the practice of law pursuant to Rule 1208. Attached at **Tab “17”** is a copy of the letter from Thomas Schonhoffer to the Member dated January 22, 2008.
 26. On January 29, 2008, William Holliday recommended that a Hearing Committee be appointed in this matter.
 27. On January 31, 2008, Mr. Schonhoffer spoke with the Member on the phone and discussed her suspension. The Member was advised as to what was required in

- order for her to be reinstated with direct reference to the letter of John Allen dated December 5, 2007.
28. On February 3 and February 4, 2008, the Member provided via fax, the information required by John Allen to confirm that her trust account was inactive in the year 2006. After reviewing this information John Allen agreed to dispense with the requirement that the Member prepare a Form TA-5.
 29. Included in the material received from the Member was a letter from the CIBC wherein they advise that in October 2007 the Member attended to their branch and requested that a letter be prepared for her for the Law Society of Saskatchewan showing that her accounts were inactive. The CIBC letter states that the original letter was presented to the Member. The CIBC advises that they were of the understanding that the Member would be forwarding their letter to the Law Society of Saskatchewan. The CIBC also states that the Member was of the understanding that the CIBC was going to forward the letter to the Law Society of Saskatchewan. Attached at **Tab "18"** is a copy of the letter from the CIBC to the Law Society of Saskatchewan dated February 4, 2008.
 30. On February 3, 2008, the Member also provided the Law Society of Saskatchewan with a copy of the letter prepared by the CIBC on October 30, 2007 advising that the account was inactive. Attached at **Tab "19"** is a copy of the letter from the CIBC directed to the Law Society dated October 30, 2007 that was provided directly to the Member.
 31. The Member was reinstated as of February 15, 2008 having provided all of the outstanding documentation required by the Law Society of Saskatchewan relating to the 2006 fiscal year.

Personal Circumstances of the Member

32. As noted above, on October 30, 2007 the Law Society of Saskatchewan received a letter from the Member advising that she had medical and personal issues. Donna Sigmeth requested via letter dated November 1, 2007, that the Member provide confirmation, without specifics, from the Member's health care provider that health issues were in fact present. The Member did not respond. A further

- letter seeking a response to the November 1, 2007 letter was sent on November 27, 2007. No response to that letter was provided by the member and the discipline proceeding continued.
33. On May 28, 2008, nearly 6 months after the initial request of information by Donna Sigmeth, the Member advised the Law Society of Saskatchewan by email that her medical issues involved Dupuytren's Contracture and Ledderhose Disease, a condition causing pain and contracture of the hands and feet.
 34. In that same email the Member advised that she had also cut her finger in September 2007 and required two surgeries to repair the injury.
 35. The email also detailed the fact that in the winter and spring of 2007 her father and another family member passed away. The Member advises that, in March 2007, she told John Allen that she would be filing her reporting documents late due to her father's death. In situations where a family member has died near the reporting deadline, John Allen is sometimes prepared to grant an extension of approximately 2 weeks.
 36. The Member admits that she did not fully appreciate the importance of trust reporting, nor did she appreciate that her assurances in the absence of third party confirmation in the form of a TA-5 Accountants Report or at very least a letter from her bank, were not sufficient to meet her obligations to report to the Law Society.

Summary

37. In summary the foundation for the charge of conduct unbecoming is as follows:
 - a. The Member failed to provide her Form TA-5 or proof of trust account inactivity within three months of her fiscal year end being December 31, 2006;
 - b. The Member was not at any time prior to this complaint exempt from filing her Form TA-5 in relation to the 2006 fiscal year;

c. After the March 31, 2007 filing deadline, the Member received nine letters from John Allen by regular and registered mail requesting the Form TA-5 or proof of trust account inactivity, dated as follows:

- i. May 9, 2007;
- ii. May 29, 2007;
- iii. June 20, 2007;
- iv. July 12, 2007;
- v. August 10, 2007;
- vi. September 6, 2007;
- vii. October 4, 2007;
- viii. October 30, 2007;
- ix. December 5, 2007;

The Member did not provide the requested TA-5 or proof of trust inactivity to John Allen in compliance with these requests;

- d. Seven months after the information was due, the Member made a request to the CIBC in October 2007 and obtained proof of trust account inactivity from them. The Member did not provide that proof of trust account inactivity to the Law Society of Saskatchewan until February 2008, ten months after it was due, despite the Law Society's further requests for the information. The Member also failed to take any steps to ensure that the CIBC had forwarded the proof of trust account inactivity to the Law Society of Saskatchewan;
- e. The Member only provided the requested information relating to trust account inactivity after she was suspended from the practice of law for failure to file the required information;
- f. The Member states that she was suffering from a medical condition as well as the loss of two family members during the relevant period of time; and

- g. The root cause of the Member's failure to ensure that the Law Society received the required information was a lack of understanding of trust reporting procedure and a lack of appreciation as to the importance of the trust reporting requirements as they relate to public protection.