

IN THE MATTER OF THE LEGAL PROFESSION ACT, 1990  
AND IN THE MATTER OF RUSSEL M. PEET,  
A LAWYER OF PREECEVILLE, SASKATCHEWAN

DECISION OF HEARING COMMITTEE  
OCTOBER 27, 2008

The Hearing Committee in this matter was comprised of Victor Dietz, Q.C., Janice Wall and Neil Robertson, Q.C., which Hearing took place on October 27, 2008. Counsel for the Law Society of Saskatchewan (L.S.S.) was Timothy Huber and Russel Peet (the Member) represented himself.

At the outset of the Hearing, counsel for the L.S.S. and the Member acknowledged the jurisdiction of the Hearing Committee and neither had any preliminary applications or objections. By consent, the Notice of Hearing and Amended Notice of Hearing were tendered and marked as Exhibit P① and the Agreed Statement of Facts was entered and marked Exhibit P②. In relation to the Formal Complaint, the Member entered a guilty plea to #2 and counsel for the L.S.S. withdrew #1 and #3. Thus, the Member admitted to . . . "conduct unbecoming a lawyer in that he failed to serve his client, K.G., in a conscientious, diligent and efficient manner, by failing to complete the tasks necessary to ensure that K.G.'s administration of the estate of F.K. was completed within a reasonable time".

The Hearing Committee heard representations from both counsel for the L.S.S. and the Member and accepted the Bill of Costs of the L.S.S. as Exhibit P③ and the Impact Statement from D.K. as Exhibit P④.

Counsel for the L.S.S. also provided the Hearing Committee with three prior Decisions in support of his position on penalty: Law Society of the Northwest Territories v. Seebaran, [2001] L.S.D.D. No. 42, Law Society of Alberta v. Beresh, [1994] L.S.D.D. No. 196 and Law Society of Upper Canada v. Gray, [1995] L.S.D.D. No. 220.

For all intents and purposes this was a joint submission as to sentence from counsel for the L.S.S. and the Member. Inasmuch as this can be categorized as a "dilatory practice" offence in contrast to an "integrity" offence, it is the Hearing Committee's primary responsibility in the regulation of lawyers to protect the public interest and thereby foster public confidence.

Generally it is accepted, as evidenced by the cases submitted by counsel for the L.S.S., that a reprimand is the norm for a penalty respecting dilatory practice. However, this is subject to aggravating factors including, but not limited to, prior record, if any, by the member.

In this case the Member has a prior discipline record of no less than four Hearing Committee Decisions respecting numerous counts, most of which relate to dilatory

practice, the last of which was in 2004. This aggravating factor is somewhat offset by the Member's guilty plea and the absolute lack of personal benefit to himself or selfish motive. Furthermore, the matter before this Committee was one count of conduct unbecoming.

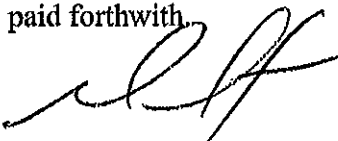
As previously stated, this was essentially a joint submission. Counsel for the L.S.S. and the Member submitted a fine and costs would be appropriate. At variance was quantum.

In considering a joint submission, a Hearing Committee should not reject it, in our opinion, unless "the joint recommendation fails to properly recognize the paramountcy of the objective of general deterrence to protect the public . . ." (see: *Law Society of Manitoba v. MacIver*, [2003] L.S.D.D. No. 29 at page 8 para. 34).

With some reluctance, we are prepared to accept the joint submission in that this conduct was not as to the integrity of the Member *per se* but rather his failure to adequately carry out the duty to his client on a timely and reasonable basis. The joint submission complies with the concept of progressive discipline by virtue of a fine being more significant a penalty than a reprimand (which would be the generally accepted penalty but for the Member's prior record) and the fine suggested is significantly higher than previously ordered against the Member. In our deliberations we considered the mitigating factors of the Agreed Statement of Facts, the guilty plea to a single count of dilatory practice and the fact the Member eventually satisfactorily completed the work for the client.

To the extent of quantum, we accept those amounts as recommended by counsel for the L.S.S. and we therefore order the Member pay a fine of \$7,500.00 and costs of \$4,323.00 as per Exhibit P③.

Time to pay was not requested by the Member and thus the \$11,823.00 is to be paid forthwith.



Victor Dietz, Q.C., Chair

Janice Wall  
I concur

Neil Robertson, Q.C.  
I concur



CANADA )  
PROVINCE OF SASKATCHEWAN )  
TO WIT )

**IN THE MATTER OF *THE LEGAL PROFESSION ACT, 1990*  
AND IN THE MATTER OF RUSSEL M. PEET,  
A LAWYER OF PREECEVILLE, SASKATCHEWAN**

**AGREED STATEMENT OF FACTS  
BETWEEN RUSSEL M. PEET AND  
THE LAW SOCIETY OF SASKATCHEWAN**

**In relation to the Formal Complaint dated April 22, 2008, attached at Tab “1”.**

Jurisdiction

1. Russel M. Peet (hereinafter “the Member”) is, and was at all times material to this proceeding, a practicing member of the Law Society of Saskatchewan (hereinafter the “Law Society”), and accordingly is subject to the provisions of *The Legal Profession Act, 1990* (herein after the “Act”) as well as the *Rules of the Law Society of Saskatchewan* (the “Rules”). Attached at **Tab “2”** is a Certificate of the Executive Director of the Law society of Saskatchewan pursuant to section 83 of the Act confirming the Member’s status.
2. The Member is the subject of a Formal Complaint dated April 22, 2008. The Formal Complaint is comprised of three counts noted above. The Formal Complaint was served upon the Member on April 24, 2008. Proof of service of the Formal Complaint upon the Member is included at Tab “1”.
3. The Member intends to continue to co-operate and respond to all requests of him by the Committee, and specifically acknowledges the jurisdiction of the Hearing Committee appointed in relation to this matter to determine the complaints against him,

acknowledges service of the Formal Complaint and the Notice of Hearing and takes no issue with the constitution of the Hearing Committee.

4. The Member and the Counsel for the Law Society have agreed that upon Mr. Peet entering a guilty plea in relation to Count #2 of the Formal Complaint, the Law Society shall withdraw counts #1 and #3. Mr. Peet has agreed to enter a guilty plea in relation to Count #2. This Agreed Statement of Facts relates solely to Count #2.

#### Particulars of Conduct

5. Count #2 arose as a result of a complaint received from K.K., one of the 6 children of F.K. included as residual beneficiaries to the Estate of F.K. (the "Estate"). F.K. died on December 13, 2003. The written complaint filed, by F.K.'s daughter K.K., arrived at the Law Society on March 1, 2007 and is attached hereto at **Tab "3"**. The complaint was accompanied by 4 letters dated October 2004, 21 February 2006, 4 October 2006, and 8 January 2007 from K.K. to the Member. Three letters dated February 21, 2006, October 4, 2006 and January 8, 2007 detail the frustrations of the K. beneficiaries occasioned by a lack of progress in relation to the administration of the Estate and the lack of response to their questions to the Member. Copies of the three letters sent in 2006 and 2007 to the Member by K.K. are attached at **Tab "4"**.
6. After receiving the complaint of K.K. via the Law Society, the Member advised in a letter faxed to the Law Society of March 22, 2007, attached at **Tab "5"**, that he had immediately upon receipt of Donna Sigmeth's letter contacted K.K. in an effort to address her concerns. He further reported that he also telephoned the executrix of the Estate at issue and had offered to meet with her in her home at Kelvington Saskatchewan as the executrix had been, up to that time, unable to attend at Mr. Peet's Law Office to provide him with the records of her administration of the estate were necessary to address the concerns of K.K. The member states that on previous occasions the Executrix offered to bring the documents to the Member's office, however this never occurred. K.G. had engaged the Member to assist her in settling the Estate. After speaking to the Executrix on the telephone in March 2007 it was determined by the Member that a review of the executrix's records of her administration of the Estate remained necessary to effectively respond to the inquiry of

K.K. and allow for a distribution of the remaining funds held in the Member's trust account.

7. On June 21, 2007, Law Society Investigator, Greg McCullagh, interviewed the Member at the Member's office. The Member advised that as the executrix had not come to his office to provide him with the documentation or to meet with him at his office he had made arrangements to meet with her in her home. He did so in early June. During the meeting he took possession of a bag of records relating to the administration of the Estate that he referred to in the March correspondence. The Member advised Mr. McCullagh that it would take several hours for him to go through the bag and determine with some reasonable accuracy what had transpired. When asked when he intended to spend the time needed to complete the accounting, the Member's response was "when I can find some time". The Member did not intend to bill the executrix for his time and was certain that if he did render another account for his time or even his travel disbursements it would exacerbate the situation. No definite date to complete the review was discussed with the investigator. The Member advised Mr. McCullagh that in a small community a person's integrity is known and that he did not believe that K.G. had misappropriated any money from the Estate. The Member states that had he any basis to suspect otherwise he would have pressed K.G. more forcefully to deliver the records following his first request to her for her estate records in February 2006. The Member stated that he had not wished to rush the executrix and had had been satisfied with the arrangement that she would organize and deliver to him the records when she would next pass through Preeceville. The file was not appropriately diarized and Mr. Peet did not follow up on the matter after February 2006 until October 2006.
8. During the interview Mr. McCullagh confirmed that the funds forming the balance of the estate for distribution had been in the Member's trust account since November 1, 2005.
9. On August 9, 2007 Mr. McCullagh attended a second time at The Member's office. The attendance was initiated by the Investigator informing Mr. Peet he had authority under the Legal Profession's Act to seize any of the Lawyer's files and that his purpose in attending upon the Member that day was to seize the K. file and transport it back to the Law Society office in Regina. A follow up interview was also completed by Mr.

McCullagh on August 9, 2007. The Member advised Mr. McCullagh that he had not prepared a report to the beneficiaries and that there was no progress towards a wrap up the Estate or the completion of a formal Accounting to the beneficiaries so as to enable to distribution of the Estate. The Member undertook to attempt to make an accounting in relation to the Estate. Mr. McCullagh seized the Member's file on that date and delivered it to the Law Society.

10. On the same date as the follow up interview with the Member, Mr. McCullagh met with the Executrix of the Estate, K.G. K.G. advised that she had met with the Member at his Preeceville Office twice during the administration of the Estate, in addition to meeting with him when he had held a branch office at Kelvington, which was discontinued after December 2004. She told the Investigator she had most recently met with Mr. Peet in her home in June of 2007. It was at that time that she provided the Member with the records which Mr. Peet had previously asked her to organize and retain for him to review. When she provided the Member with the documents the Member left her with the impression that her duties as Executrix had been completed. The Member failed to specifically impress upon her, her sworn obligations set out in the Letters Probate, attached at **Tab "6"**, including the following:

**“paying the just debts of the deceased, and the legacies contained in the Will so far as thereunto bound by law, and by distributing the residue (if any) of the estate according to law, and to exhibit under oath a true and perfect inventory of the estate, and to render a just and full account of her executorship within two years after the grant of Letters Probate or whenever so required by law to do so.”**

11. Despite regular contact from the Law Society and further efforts by the K. beneficiaries, the Member failed to complete a formal accounting in relation to the Estate or to pursue and obtain a consensus between the executrix and the beneficiaries in response to the executrix's claim to \$6,552.80 for her expenses and remuneration or take steps to resolve the administration to result in the distribution of the \$6,182.78 residue in his control. On June 23, 2008 the Member attended at the offices of the Law Society and undertook to provide an accounting in relation to the Estate to the beneficiaries and to the Law Society by the first half of July. Ultimately a document representing a summary of the status of the Estate was provided to the K. family of

August 14, 2008 and copied to the Law Society on the following day. That document is attached at **Tab “7”**.

12. The Member, at the suggestion of Counsel for the Law Society, proposed to file an Interpleader to payout the funds forming the balance of the Estate, however having advised the executrix of his intention to Interplead and remove himself from the dispute over the funds in his Trust account, she has recently repaid to the Estate all but \$2,427.86 of the monies she had paid out to herself for remuneration on July 12, 2005 and has instructed Mr. Peet to distribute the repaid monies and the full sum of \$6,192.78 held in his Trust Account to the 6 children without deduction for K.G.’s distributive 1/7<sup>th</sup> share in the residue of the estate. All monies held for the Estate of F.K. have been paid out of the Member’s trust account to this date.

#### Timeline

13. After the August 2007 meeting wherein Mr. McCullagh copied the Member’s file, Donna Sigmeth prepared a timeline based on the file contents. The file timeline, beginning at the date of F.K.’s death on December 13, 2003 and ending on February 28, 2007 with the Member’s original response to the written complaint of K.K., is attached at **Tab “8”** in the form of a memo to the Investigation Committee dated October 2, 2007.
14. For approximately 10 months after the death of F.K., issues relating to the claim of a common law spouse and a joint property owner had to be addressed before Letters Probate could be granted. These issues were resolved in August 2004.
15. Letters Probate were granted on October 14, 2004. Seven days later, on October 21, 2004, the Member billed his legal account in relation to the administration of the Estate at or above the Administration of Estates Tariff set out in the *Saskatchewan Court of Queen’s Bench Rules*.
16. The primary asset of the Estate, other than the somewhat larger Life Insurance Claim, was F.K.’s home in which he held at the date of his death an undivided ½ interest together with the son of the late E.S., with whom F.K. had resided until her death. Following Mr. Peet successfully negotiating a division of the expected proceeds of sale of the house with the Lawyer representing E.S.’s son the house was sold in 2005. The

third party interests were paid out of the proceeds from the sale. The remainder being \$6,182.78 was deposited by the Member into his trust account on November 1, 2005. That \$6,182.78 represents the balance of the Estate to which the residual beneficiaries, including K.G. are entitled.

17. After the sale of the F.K.'s house in October of 2005, the Member made no progress toward finalizing the administration of the Estate until his letter of August 15, 2008.
18. The file discloses activity after October 2005 as being letters and phone messages left for the Member from the beneficiaries, correspondence with the Law Society in relation to the complaint, and two telephone attendances with the Executrix that occurred immediately after the complaint was first brought to the Member's attention, as well as a 13 minute call by the member to K.K. on 21 February 2006, another call to her on 23 March 2006 and a conversation with her brother R.K. on 30 November 2006. The substance of the telephone attendances on March 21, 2007 and April 13, 2007 was that the Executrix felt she deserved a larger share of the Estate than was stated in the Will to compensate her for expenses associated with her involvement with the Estate. In the April 4, 2007 attendance the Executrix advised that she was "not going to kick about it" but felt that she should be entitled to more.
19. It was apparent in the spring of 2007 that it would be required to obtain and review the records of the executrix and to justify or relent on the executrix's claim to \$6,552.80 to finalize the administration of the Estate and satisfy all parties that each received that to which they were entitled. No efforts to complete an accounting were made by the Member until August 15, 2008, despite his being in possession of all the records since June of 2007, and despite the fact that he had left the Executrix with the impression that her duties as an Executrix were complete.

#### Discipline History of the Member

20. The Member has a history of involvement with the Law Society including three previous findings of guilt in relation to charges of conduct unbecoming a lawyer. The Member's first discipline proceeding occurred in December 1999. The substance of the 1999 charges included dilatory work and a failure to properly represent estate administrators. The Member was convicted of all charges.



21. The Member's second discipline proceeding took place on December 5, 2002. The substance of the charge related to dilatory work and failing to provide an accounting in relation to an estate which he had volunteered to provide. The Member did not provide the accounting despite repeated requests of the beneficiaries and being urged to do so by the Professional Standards Committee. The Member was found guilty of the charge.
22. The most recent discipline proceedings took place on December 9, 2004. The substance of those matters included dilatory work relating to the administration of an estate.

### Summary

23. In summary the foundation for the charge of conduct unbecoming set out in Count #2 is as follows:
  - a. F.K. died on December 13, 2003 and the Member was hired to assist the Executrix in the administration of the Estate;
  - b. Ancillary matters relating to the Estate were dealt with relatively quickly and Letters Probate were ultimately granted on October 14, 2004;
  - c. The Member billed his account for the administration of the Estate at or in excess of the tariff rate on October 21, 2004;
  - d. The primary asset of the Estate was sold on October 28, 2005;
  - e. Funds for distribution to the beneficiaries in the amount of \$6,182.78 became available and were deposited into the Member's trust account on November 1, 2005;
  - f. After the Member received the balance of the funds forming the Estate he did not take the steps necessary to conclude the administration of the estate and this exacerbated the beneficiaries preexisting angst both in relation to the length of time the administration was taking and in relation to how the Executrix handled the Estate and her entitlements;
  - g. The Member did nothing to address the issues of delay with the beneficiaries, nor did he do anything to address the conflict between the beneficiaries and the Executrix;

- h. After the February 2007 complaint of K.K. was brought to the Member's attention he did take steps to secure the records relating to the administration of the Estate by the Executrix with the intention of preparing an accounting. The Member did mention to the Executrix on prior occasions (in 2006) that she needed to gather the records of the administration, unfortunately, the records were not secured by the Member until June of 2007;
  - i. When the Member took possession of the records from the Executrix, he had a discussion with the Executrix that left her with the impression that her duties as an Executrix were completed even though the obligations set out in the Letters Probate had not been satisfied;
  - j. The Member advised Law Society Investigator, Greg McCullagh in June of 2007 that the accounting would take several hours to complete and that completing the accounting would be required before the distribution of the Estate.
  - k. The Member did no work on the Estate matter and made no effort to complete the accounting in relation to the Estate until August 15, 2008 when he provided a status report in relation to the Estate to the beneficiaries;
  - l. As of the date of this Agreed Statement of Facts, the Member has distributed the funds from his trust account to the beneficiaries representing a delay of nearly 3 years from the date the last asset of the Estate was liquidated, 4 years from the date of Letters Probate and nearly 4 years from the date the Member billed his legal account in relation to the Administration of the Estate. The member has offered and undertaken to absorb all subsequent disbursements and fees otherwise billable to the Estate.
24. Due to the Member's Law Society, Discipline and Professional Standards history, he was well aware of the importance of completing estate matters in a timely fashion and the lack of motivation that can occur when estate matters are billed according to tariff when they are nowhere near completion. In years past, the Law Society had made recommendations to the Member that he should avoid billing estate files early.

25. The unreasonable delay and inaction on the part of the Member appears to be rooted in his perception that he could not give the estate moneys to the beneficiaries without a release nor could he give the moneys to the Executrix for distribution because of the beneficiary's allegations of wrong doing directed towards her. The Member was unable to reconcile these issues and as a result did nothing to move the file forward.
26. The delay in relation to the Member addressing his role in the administration of the Estate, the failure of the Member to effectively inform his client as to her duties as Executrix and his failure to address conflicts between the Executrix and the beneficiaries represents a failure of the Member to serve his client in a conscientious, diligent and efficient manner. The level of service he provided to his client falls below that which would be expected of a competent lawyer in a like situation.

*CLIENT AND COMPLAINANTS IDENTITIES HAVE BEEN REMOVED FOR PUBLICATION*