

IN THE MATTER OF *THE LEGAL PROFESSION ACT, 1990*
AND IN THE MATTER OF ALBERT ANGUS,
A LAWYER OF TURTLEFORD, SASKATCHEWAN

DECISION OF THE HEARING COMMITTEE

LSS Complaint File: 2956.6

1. The Hearing Committee in this matter was composed of Richard W. Danyliuk, Q.C., Chair, and Sharon M. Ludlow, panel member. The Investigation Committee was represented by Drew S. Plaxton, and the member, Joseph Albert Angus, was represented by Karen M. Prisciak, Q.C.

The Formal Complaint

2. The Formal Complaint dated October 24, 2006 contained two allegations:
 - 1: [that the member] is guilty of conduct unbecoming a lawyer in that he did breach his undertaking to the Law Society of Saskatchewan as ordered by the Discipline Committee on June 20th, 2005 and given in writing and signed July 8th, 2005, to provide specific monthly trust account reports to John Allen, the Law Society Auditor/Inspector.;
 - 2: [that the member] is guilty of conduct unbecoming a lawyer in that he did make payments from his trust account while suspended from the practice of law by the Law Society of Saskatchewan.
3. On November 28, 2007, counsel for the Investigation Committee sought and was granted leave to withdraw the first allegation. Only Count 2 above proceeded before us.

The Proceedings

4. The Hearing commenced on November 28, 2007 at 10:25 a.m. and was adjourned at 3:42 p.m. to January 9, 2008 at 10:00 a.m. Counsel for the Investigation Committee filed

Exhibit P-1 (documents) and Exhibit P-1A Admission of Facts as evidence on behalf of the Investigation Committee. Counsel for the member called him to testify and the hearing was adjourned prior to completion of cross-examination of the member.

5. On January 7, 2008, counsel for the member requested an adjournment as additional witnesses were proposed for rebuttal by counsel for the Investigation Committee and the member was still under cross-examination complicating the ability of the member's counsel to prepare.
6. On January 9, 2008, a conference call took place and the Hearing was adjourned to February 29, 2008.
7. On February 29, 2008 the Hearing was adjourned at the request of counsel for the Investigation Committee for a funeral.
8. On March 17, 2008, the hearing reconvened at 1:35 p.m. and was adjourned at 3:35 p.m. to April 25, 2008. Counsel for the Investigation Committee completed cross-examination of the member and advised that he would be applying to add additional allegations to the complaint.
9. On March 25, 2008, counsel for the Investigation Committee applied to add two allegations to the complaint being heard.
10. On May 8, 2008, that application was denied and a written interim decision was provided by the Hearing Committee.
11. On September 4, 2008, a conference call took place and the Hearing was scheduled to reconvene on November 13, 2008.
12. The Hearing reconvened at 9:20 a.m. on November 13, 2008. The member did not attend due to road conditions and waived his right of attendance as he was represented by his counsel. Counsel for the Investigation Committee called as a rebuttal witness, A. Kirsten Logan Q.C., formerly the Co-Executive Director with the Law Society of Saskatchewan and the Secretary-Treasurer of the Saskatchewan Lawyers' Insurance Association Inc. . The Hearing was adjourned at 1:30 p.m. to December 1, 2008 to hear counsel submissions.

Exhibits Filed:

P-1 Exhibit Book on Behalf of the Investigating Committee

P-1A Admission of Facts

- P-2 SLIA Assessment Remittance Form for June 15, 1995
- P-3 Handwritten Note Dated June 30, 1995
- P-4 Copy of the Law Society Guidelines for Suspended Members
- R-1 Bundle of Documents with Subdocuments A Through G
- R-2 Fax from Albert Angus to the Law Society on August 23, 2006

Evidence on Behalf of the Investigation Committee

13. The following facts were agreed to in the Admission of Facts:

- a. The authenticity and service of the Notices and other documents set forth in the Exhibit Book, Part 1 [Exhibit P-1];

Those documents are:

- i. Report of Discipline Investigation Committee to Hugh Harradence, Q.C. dated 20 October 2006;
 - ii. Letter of appointment to Hearing Committee from Hugh M. Harradence, Q.C. to Donna R. Sigmeth dated 23 October 2006;
 - iii. Letter dated October 24, 2006 forwarded by registered mail to the member as service of the Formal Complaint of the Law Society of Saskatchewan File 2956.6 and advising of the Hearing date of October 30, 2006;
 - iv. Formal Complaint dated October 24, 2006 (file 2956.6);
 - v. Affidavit of Service by registered mail, of Formal Complaint on member;
 - vi. Notice of Hearing dated November 19, 2007 for November 28, 2007;
 - vii. Acknowledgment by counsel for member, of service of Notice of Hearing.
- b. The member admitted, except where expressly stated otherwise, that he had received the various correspondence indicated on the date of same. Further, he admitted the books and records provided to the Law Society including those concerning trust account activity accurately set out the transactions therein.

- c. On June 20, 2006, a letter was faxed from the Law Society to the member advising him that he was in default of payment of the Liability Insurance assessment, plus the penalty amount of \$10.00 per day from June 16, 2006 and that unless the amounts were paid on or before June 30, 2006 he was not to engage in the practice of law until the assessment and penalty were paid in full.
- d. On July 13, 2006, a further letter was faxed from the Law Society to the member advising him that the records indicated the liability insurance assessment and late payment fee of \$10.00 per day from June 15, 2006 were due June 30, 2006 and as they were unpaid, pursuant to Rule 605(6), he was not entitled to engage in the practice of law in Saskatchewan until the assessment and penalty were paid in full.
- e. On July 27, 2006, the member had a telephone conversation with A. Kirsten Logan, Q.C., Secretary/Co-Executive Director of the Law Society of Saskatchewan. The requirements for the member's reinstatement were discussed during that telephone call. The particulars for the reinstatement of the member were confirmed in a letter written on that day to the member. The member was advised that to be reinstated, he would have to pay \$930.37 which sum included \$100.00 per month from and including April 2006 forward for each month the trust account forms were not received by the Law Society; he was required to pay the Liability Insurance Assessment and the late penalty of \$10.00 per day – June 16 to 30, 2006; he was required to pay a reinstatement fee of \$100.00; and he was required to provide his trust account listings and bank reconciliations up to and including June 30, 2006.
- f. The member wrote a cheque on July 28, 2006 for \$930.37 which included the late filing penalty for the trust account forms from April 2006 to July 2006 inclusive; the Liability Insurance Assessment and penalty; and the reinstatement fee. The cheque for \$930.37 was receipted by the Law Society on August 9, 2006.
- g. On August 10, 2006, a letter was forwarded from Allan T. Snell, Q.C. Counsel/Co-Executive Director of the Law Society, to the member acknowledging the cheque for \$930.37 but again advising the member that prior to reinstatement, the member would need to pay the August 2006 late filing

penalty of \$100.00 for the Trust Account forms and to provide trust account listings and bank reconciliations up to and including June 30, 2006.

- h. On August 16, 2006, Allan T. Snell, Q.C. forwarded a letter to the member acknowledging payment of the additional penalty of \$100.00 for August 2006 for late filing of the Trust Account forms, but advising the member that prior to reinstatement, he would still need to file trust account listings and bank reconciliations up to and including June 30, 2006.
- i. On August 22, 2006, the Law Society received from Cheryl Carley (the accountant for the member) documents including monthly reports for January to June 2006. On August 23, 2006, Ms. Carley faxed to the attention of John Allen, Auditor/Inspector with the Law Society of Saskatchewan, copies of the member's trust account printouts for June 02, 2006 to August 23, 2006 inclusive.
- j. Transactions were apparent on the member's trust account during that time period and on August 29, 2006, an Investigation Committee was appointed to investigate trust account activity after July 1, 2006 on the member's trust account.
- k. On August 30, 2006, the Investigation Committee recommended interim suspension of the member based upon their conclusion that they had reasonable grounds to believe the member was conducting trust transactions while subject to an administration suspension and their concern regarding the failure or serious delinquency in the filing by the member of reports to the Law Society auditor pursuant to undertakings he had given. The Investigation Committee further raised concerns that the member may have been mishandling trust monies in a manner which could result in a potential insurance claim and/or special fund claim, and the potential risk to clients and others dealing with him as a solicitor.

14. The following documents, among others, were included in the Exhibit Book P-1:

- a. An Order to Pay dated July 28, 2006 and signed by the Trustees of the Mosquito Grizzly Bear's Head Treaty Land Entitlement Trust Agreement, directing the member to pay from his trust account, legal fees to the Albert Angus Law Firm in the amount of \$4,340.00 and fees to the trustees in the amounts of \$3,000.00 and 3 payments of \$1,000.00 each; copies of the bank drafts and the invoice for legal services; and a statement of account activity for Canada Trust

business savings account 5206663 showing that on July 28, 2006, a credit deposit was made of \$26.00 which appears to correspond to the cost of using bank drafts at \$6.50 per, and showing the amounts payable to the Trustees were processed out of the member's trust account by bank drafts and the amount for the legal fees was transferred from the member's trust account.

b. A second Order to Pay dated August 4, 2006 and signed by the Trustees of the Mosquito Grizzly Bear's Head Treaty Land Entitlement Trust Agreement, directing the member to pay from his trust account, fees to the trustees in the amounts of \$1,500.00 and 8 payments of \$500.00 each; copies of those bank drafts; and a statement of account activity for Canada Trust account 5206663 showing that on August 4, 2006, the amounts payable to the Trustees were processed out of the member's trust account by bank drafts.

c. A statement of account activity for Canada Trust business chequing account number 5206655 showing on July 28, 2006, a deposit of \$4,340.00 and a certified cheque for \$930.37.

Evidence on Behalf of the Member

Assumption of Reinstatement

Financial Obligation

15. It was the position of the member that he would be reinstated upon payment of the \$930.37 referred to in the letter of July 27, 2006 from the Law Society and that faxing a copy of the certified cheque he had prepared in that amount was satisfactory to facilitate his reinstatement. He testified that he had previously made a similar arrangement with Kirsten Logan for payment of his financial obligations to the Law Society by faxing a copy of the payment document which was then mailed the same day. He was unable to locate documents to support that testimony, however Exhibits P-2 and P-3 documented funds wired to the Law Society by him on June 30, 1995. The member confirmed that no one at the Law Society told him it would be compliance with the condition of payment to fax a copy of the cheque in July 2006.

Filing Obligation

16. The July 27, 2006 letter from the Law Society clearly stated that in addition to the financial obligation of the member as of that date, he was required to file his trust account listings and bank reconciliations up to and including June 30, 2006, and should his annual trust reports not be filed prior to the end of July, an additional \$100.00 late filing penalty would be due. The member testified that he believed his filing obligations had been met as of July 28, 2006, notwithstanding the letter was faxed from the Law Society at approximately 13:09 the previous day advising him that they had not. The member referred to a discussion he had had with Glen Sieben, who worked for the accounting firm the member used, as confirming his understanding that his reports were in order; however, his testimony was that this conversation had taken place around the middle of July 2006, after the member had received the July 13 letter from the Law Society.

Transactions on the Trust Account

17. The member testified to conflicting chronologies of the transactions on the trust on July 28, 2006.
18. When questioned by his counsel regarding the July 27, 2006 letter, the member testified he understood his financial obligation to the Law Society to be payment of \$930.37 prior to July 31, and as his clients had a trustee meeting on Friday July 28, he had a cheque certified by the First Nations Bank in Saskatoon, photocopied the certified cheque at the Shopper's Drug Mart on 22nd Street and faxed a copy of the cheque to the Law Society. The member testified that he was overwhelmed and rushed because he had to find enough time to get back to North Battleford to meet with his clients and their trustee meeting. He further testified that as a result he forgot to mail the cheque and located it in his briefcase but not until August 11, 2006.
19. The fax document from the Shopper's Drug Mart in Saskatoon shows a date stamp 07/29/2006 15:32.

Cross-Examination

20. Under cross-examination, the member testified that he was in a rush on July 28 because it preceded a long weekend and he would have to go down to North Battleford and meet with

the trustees, therefore he forgot to mail the cheque. He testified that he faxed the copy of the cheque right after he came from the bank, then the fax date stamp of July 29, 2006 was brought to his attention. The member testified that he believed he faxed it the same day he had the cheque cut because he was in Saskatoon for the purpose of getting that business out of the way.

21. It appears from the account activity shown for the Canada Trust Business-Chequing-5206655 that the July 28, 2006 deposit of \$4,340.00 which corresponds to the amount of the legal fees charged by Albert Angus Law Firm on June 17, 2006 and the trust transfer from the Business-Savings-5206663 brought the balance on account number 5206655 to \$4,331.90 indicating a previous balance of (\$8.10) and possibly a transfer of that fund from the trust account preceded the writing of the cheque to the Law Society in the amount of \$930.37. The payment of legal fees in the amount of \$4,340.00 was the first entry on the Order to Pay dated July 28, 2006.
22. In cross examination, the member testified that he had the cheque for the Law Society certified before he met with the trustees. He also testified that he received the July 28, 2006 Order to Pay before he cut the cheques on the trust account. He testified that he would have received that document on July 28 where the trustees signed it, but he couldn't recall where, whether it was North Battleford, Mosquito or Saskatoon; then he stated it was very likely North Battleford. The member then changed his recollection to testimony that it was more plausible and more likely that he had the cheque for the Law Society certified in Battleford. He testified that he had the cheque for the Law Society certified before he attended the meeting of the trustees and that he had the bank drafts drawn in Battleford as well.
23. The Order to Pay included the direction to pay the member legal fees in the amount of \$4340.00 which was transferred from the trust account. A transfer of the same amount into the general account, occurred July 28, 2006 prior to the certification of the cheque to the Law Society. As the member was suspended at the time the trust transactions were carried out on July 28, 2006, *inter alia* because the Law Society had not received the cheque from the member, it is not necessary to decide what the exact chronology was.

Rebuttal

24. Counsel for the Investigation Committee called as a rebuttal witness, A. Kirsten Logan Q.C.. She confirmed that she had neither accepted payment for either SLIA amounts or Law Society fees by way of either a facsimile or a photocopy of a cheque, nor had she authorized anyone to accept payment in either a facsimile or a photocopied form.

Submissions on Behalf of the Investigation Committee

25. Counsel for the Investigation Committee argued that the allegation in the Formal Complaint has been established. The case of *R v. Sault Ste. Marie (City)*, [1978]2S.C.R.1299 was cited in support of the position taken that conduct unbecoming is a regulatory offence pursuant to a public protection statute, *The Legal Profession Act, 1990*, and therefore the test is strict liability to which there are limited defences including mistake of fact and due diligence.

Submissions on Behalf of the Member

26. Counsel on behalf of the member argued that the committee must be convinced on the balance of probabilities that the member knew that he was suspended from practicing law when he wrote the cheques on the trust account, and the member's explanation should be accepted if there is a reasonable probability of it being true.
27. The submission of counsel on behalf of the member was that the understanding of the member was that he would be reinstated if he satisfied his financial obligation.

Conclusions of Fact

28. On July 1, 2006, the member Albert Angus was suspended from practicing law. This was clearly known to the member. On July 28, 2006, when the member transferred the sum of \$4,340.00 from his trust account, and processed out of his trust account four bank drafts, one in the amount of \$3,000.00 and three in the amounts of \$1,000.00 each, the member was suspended from the practice of law as the Law Society was not in receipt of payment of his monetary obligations, being the Trust Account late filing penalties for April 2006 to July 2006 inclusive, the Liability Insurance Assessment and penalty for late payment, and

the reinstatement fee, and he had not filed the trust account listings and bank reconciliations up to and including June 30, 2006.

29. On August 4, 2006, when the member processed nine bank drafts out of his trust account, one in the amount of \$1,500.00 and eight in the amount of \$500.00, the member was suspended from the practice of law as the Law Society was still not in receipt of the cheque for \$930.37, or the \$100.00 August 2006 penalty for late filing of his year end trust account forms and the member had not filed the trust account listings and bank reconciliations up to and including June 30, 2006.

Is it Conduct Unbecoming?

30. *The Legal Profession Act, 1990* defines “conduct unbecoming” as *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);.*
31. The member acknowledged that he was aware of the Guideline for Suspended, Resigned or Disbarred Members which provide in part as follows:
- It is the suspended member’s obligation to make suitable arrangements to ensure that the client’s interests are protected, subject to the client’s right to choose who will represent him/her.*
- A suspended, resigned or disbarred lawyer may not have signing authority on any trust accounts.*
32. Further, pursuant to section 28(2) of *The Legal Profession Act, 1990*, the rights and privileges of a member who is suspended from practice pursuant to that Act or by any competent authority are removed for the period of the suspension. Rule 942 (1) of the Rules of the Law Society of Saskatchewan states that “...a member who makes or authorizes the withdrawal or transfer of funds from a mixed or separate trust account: (a) shall effect the withdrawal or transfer by a cheque marked “trust”;...and (c) shall,

notwithstanding Rule 901 and subject to subrule (4), ensure that the cheque is signed by a member.” Rule 942 (3) provides that a member who withdraws or authorizes the withdrawal of trust funds for the payment of fees, disbursements or other expenses, or for payment to or on behalf of the client, shall effect the withdrawal by a cheque payable to the member’s general account.

33. The member was suspended from practice on July 28, 2006 and on August 4, 2006, and he did not have the authority as a member of the Law Society to withdraw funds from his trust account on those dates. The Rules of the Law Society are self-governing for the protection of and in the best interests of the public. The member violated those rules in his actions and by his methods and is thereby guilty of conduct unbecoming as alleged in the Formal Complaint. Such violation of the self-governing Rules of the Law Society by a member tends to harm the standing of the profession generally in the perception of the public, and may put members of the public into actual peril. It is a central feature of the mandate of, and is critical to continued self-government of the Law Society that it take responsibility for sanctioning violations such as this which are in place for the protection of the public.
34. It is apparent from the member’s testimony that he felt pressured to release money from his trust fund to the trustees pursuant to their Order to Pay. Given the content of the letter from the Law Society of July 27, 2006, of which the member was clearly aware, his belief that certifying a cheque to the Law Society was sufficient compliance to reinstate him was not reasonable; therefore proceeding on that assumption to access the trust account as he did on July 28, 2006 and again on August 4, 2006 was conduct unbecoming as alleged.
35. By acting on assumptions and proceeding in a manner which, if given to a client as legal advice, would fall well below the level of competence expected of members of the legal profession, and by exercising his signing authority on the trust account while suspended, the member chose to disregard the rules and guidelines of the Law Society - the purpose of which are to internally govern the actions of the membership in the best interests of the public, thereby acting in a manner not only inimical to the best interests of the public, but tending to harm the standing of the profession generally.
36. The breach was established on the standard of strict liability and the member neither held a reasonable belief in the fact that he had been reinstated, nor exercised due diligence or reasonable care to confirm reinstatement, prior to accessing the trust account.

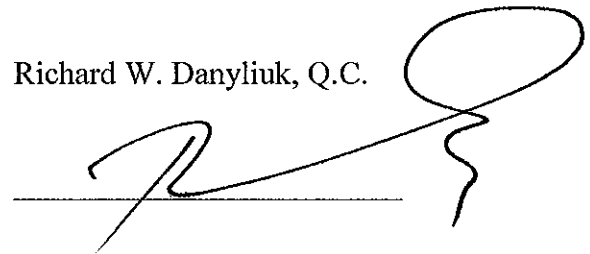
37. If, however, there is an error in this interpretation of the law, we find the testimony of the member lacked credibility in that it was inconsistent chronologically and with the documents pertaining to the transactions. His assertion that he, as a lawyer believed himself to be reinstated by writing a certified cheque, faxed to the Law Society on Saturday, July 29, 2006, the day after he accessed the trust account, without further communication from the Law Society after receiving a letter at approximately 13:09 on Thursday, July 27, 2006 advising him of the requirements to file trust reports for reinstatement, as well as payment of financial obligations, is patently unreasonable and not accepted to be true.
38. In assessing credibility, an adjudicator searches for internal and external consistency. Both are lacking here. The member's testimony changed, contradicted itself, and was not internally consistent. Also, measured against the objective and admitted facts, the member's testimony does not measure up.
39. Counsel for the member argued that the member "honestly believed" he met the requirements of the Law Society when he submitted his cheque to satisfy his outstanding indebtedness to the Law Society. The facts are that the member accessed the trust account **before** he submitted the cheque to the Law Society and until the Law Society received that cheque, or acknowledged a faxed copy as satisfactory in some way, he could not reasonably believe that he had met his financial obligation.
40. The member testified he thought that would be satisfactory because he had in the past faxed a copy of a cheque evidencing his intention to satisfy his financial obligations to the Law Society and that had been acceptable. This was contrary to the evidence of A. Kirsten Logan, but nevertheless, the member did not fax the cheque to the Law Society until the day **after** he had accessed the trust account, a Saturday, with no evidence of communication or arrangements between the member and a representative of the Law Society to facilitate the transaction in that manner.
41. The facsimile message dated August 22, 2006 from the member to the Law Society seeking permission to issue per diem money from the trust account for meetings of the trustees, as he did in relation to the Order to Pay dated August 17, 2006 was an appropriate approach within the Guidelines for Suspended members, in that it notifies the Law Society of a client which requires access to funds held in trust by a suspended member and enables the Law Society to participate in a solution to the problem to minimize negative impact on the public

while maintaining the standard of the legal profession generally. However, it is abundantly clear the member did not do this with respect to the previous transactions. His explanation that he had an honest, if mistaken, belief that he could do so is not accepted by this Hearing Committee.

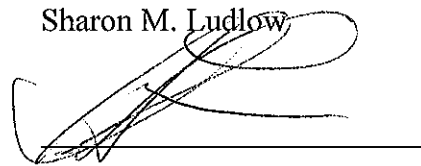
42. The member is therefore found guilty of conduct unbecoming in the one count remaining before us.
43. The Hearing Committee makes no sentencing recommendation and refers the matter to the Benchers of the Law Society of Saskatchewan at the convocation of their choosing, for sentencing to be concluded.

DATED at Saskatoon, Saskatchewan, this 30th day of June, 2009.

Richard W. Danyliuk, Q.C.

A handwritten signature in black ink, appearing to be 'R. Danyliuk', written over a horizontal line.

Sharon M. Ludlow

A handwritten signature in black ink, appearing to be 'S. Ludlow', written over a horizontal line.



CANADA)
)
PROVINCE OF SASKATCHEWAN)
)
TO WIT:)

**IN THE MATTER OF *THE LEGAL PROFESSION ACT, 1990*
AND IN THE MATTER OF
J. ALBERT ANGUS OF TURTLEFORD, SASKATCHEWAN A LAWYER**

**The Law Society of Saskatchewan
Discipline Decision _____
J. Albert Angus of Turtleford, Saskatchewan**

DECIDED: December 4, 2009

Timothy F. Huber on behalf of The Law Society of Saskatchewan
J. Albert Angus appeared on his own behalf

JURISDICTION

1. 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* (the “Act”). 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.

2. 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.

3. Conduct unbecoming is defined by the Act in section 2(1)(d) as:

- 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;

4. 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.

5. The Benchers are burdened with the 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.

6. 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

7. Pursuant to section 47(1) of the Act, Hugh Harradence, Vice-Chair of the Discipline Committee of the Law Society of Saskatchewan, received the report of the Investigation Committee comprised of Gregory G. Walen, Q.C. and William H. Holliday and appointed a Hearing Committee consisting of Richard W. Danyliuk, Q.C. and Sharon M. Ludlow to determine whether J. Albert Angus was guilty of conduct unbecoming a lawyer.

8. The hearing commenced on November 28, 2007. After a series of adjournments the hearing concluded on December 1, 2008. The Hearing Committee issued its decision on the 30th of June, 2009. In this decision the Hearing Committee found Mr. Angus guilty of conduct unbecoming a lawyer in that he did make payments from his trust account while suspended from the practice of law by the Law Society of Saskatchewan. The Hearing Committee declined to make a sentencing recommendation and referred the matter of penalty to the Benchers of the Law Society of Saskatchewan at their Convocation held on the 4th day of December, 2009.

9. The Discipline Committee consisting of a quorum of Benchers convened a hearing. The Law Society Investigation Committee was represented by Mr. Timothy Huber. Mr. Angus appeared without counsel. The report of the Hearing Committee and the entire record of evidence before that Hearing Committee were entered as an exhibit with the consent of Mr. Angus.

10. 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 written and oral submissions as to penalty.

THE COMPLAINT

11. As stated above, the formal complaint alleged that Mr. Angus:
“did make payments from his trust account while suspended from the practice of law by the Law Society of Saskatchewan.”

FACTS

12. The relevant facts were determined by the Hearing Committee and are accurately summarized below:

- (a) On June 20, 2006, a letter was faxed from the Law Society to Mr. Angus advising him that he was in default of payment of the Liability Insurance Assessment, plus the penalty amount of \$10.00 per day from June 16, 2006 and that unless the amounts were paid on or before June 30, 2006 he was not to engage in the practice of law until the assessment and penalty were paid in full.
- (b) On the 1st of July, 2006 Mr. Angus was suspended from the practice of law as a result of his failure to pay his 2006/2007 Liability Insurance Assessment. According to the findings of the Hearing Committee, "This was clearly known to the member".
- (c) On July 13, 2006, a further letter was faxed from the Law Society to Mr. Angus advising him that the records indicated the Liability Insurance Assessment and late payment fee of \$10.00 per day from June 15, 2006 were due June 30, 2006 and as they were unpaid, pursuant to Rule 605(6), he was not entitled to engage in the practice of law in Saskatchewan until the assessment and penalty were paid in full.
- (d) On the 27th of July, 2006 Mr. Angus spoke by telephone with the then secretary and co-executive director of the Law Society, Kirsten Logan, Q.C. In this conversation, Mr. Angus was informed of the requirements for re-instatement. By this time, these requirements included the payment of the Liability Insurance Assessment, late payment penalties and compliance with various outstanding trust reporting obligations.
- (e) On the 10th of August, 2006 the Law Society received a payment from Mr. Angus representing the Liability Insurance Assessment and the late penalties, to July of

2006. The August penalty amount was not provided. The Law Society wrote to Mr. Angus that same day, acknowledging receipt of this payment but again informing Mr. Angus he must pay the late filing penalty and file the outstanding trust account reconciliations before reinstatement. Mr. Angus did not comply with the outstanding trust obligations that had been discussed on the 27th of July, 2006. He therefore remained on administrative suspension.

- (f) On the 16th of August, 2006 the Law Society confirmed in writing to Mr. Angus that the late payment had been received but that the outstanding trust reconciliations must still be filed, pursuant to an earlier undertaking by Mr. Angus.
- (g) On the 22nd and 23rd of August, 2006 Mr. Angus's accountant provided the Law Society with the required trust reports from January 2006 to and including August 23, 2006.
- (h) It then became apparent to the Law Society that Mr. Angus had been operating his trust account after July 1st, 2006 while suspended. The following transactions were identified:
 - (i) July 28, 2006:
 - (A) Transfer of \$4,340.00 from his trust account to pay his legal account;
 - (B) Four bank drafts drawn from his trust account, one in the amount of \$3,000.00 and three in the amount of \$1,000.00 each;
 - (ii) August 4, 2006:
 - Nine bank drafts were drawn from his trust account, one in the amount of \$1,500.00 and eight in the amount of \$500.00.

13. The Hearing Committee made this finding at paragraph 31:

The member acknowledged that he was aware of the Guideline for Suspended, Resigned or Disbarred Members which provide in part as follows:

It is the suspended member's obligation to make suitable arrangements to ensure that the client's interests are protected, subject to the client's right to choose who will represent him/her.

PRIOR DISCIPLINE RECORD

14. Mr. Angus has an extensive discipline history with the Law Society of Saskatchewan, including findings of conduct unbecoming in relation to the following matters. In reference to these events, the dates indicate the date of sentencing:

(a) December 9, 1998

Failure to meet financial obligations incurred in the course of his practice.

Penalty - Reprimand and costs.

(b) October 31, 2000

Failure to maintain proper trust accounting records;

Failure to file TA-2, TA-3 and TA-5 Trust Forms.

Penalty - Reprimand, condition for monthly trust reporting and costs.

(c) June 9, 2005

Failure to file trust accounting forms and termination of firm documents;

Failure to respond to communications from the Law Society.

Penalty - \$2,500.00 fine, monthly trust reporting undertaking (signed July 8, 2005) and costs.

(d) May 31, 2007

Failure to comply with his undertaking to the Law Society regarding provision of monthly trust reports.

Penalty - 3 month suspension, conditions restricting eligibility to use trust accounts and for practice management counselling. Costs of \$9,000.00 were also ordered, and were still outstanding at the hearing on December 4, 2009.

15. At the time of this hearing Mr. Angus was currently the subject of a further and unresolved formal complaint in relation to his alleged misuse of his trust account and the continuing breach of his undertaking to provide monthly reports. He had been on interim suspension in relation to this breach of undertaking allegation since March 2, 2007. A trustee has been in place since that date.

ANALYSIS

16. As counsel for the Investigation Committee correctly points out, section 28(2) of the Act provides that the rights and privileges of a member are removed upon suspension:

28(2) The rights and privileges of a member who is suspended from practice pursuant to this Act or by any competent authority are removed for the period of the suspension.

17. Rules 900 - 1013 confer upon members the right and responsibility to operate a trust account. The Rules prescribe the conditions under which such accounts must be operated. This privilege is not open to non-members. Where a member is suspended, the Law Society does not expect the member to file reports or to otherwise comply with the trust accounting rules.

18. The operation of a trust account by a member who has been suspended and thereby lost the privilege to maintain a trust account is a serious breach of the Rules. The problem is compounded where the member does not file reports with the Law Society and effectively operates a hidden trust account. Clients rightfully expect the Law Society to govern lawyers, such that their trust funds are protected. Where a member operates a trust account under the circumstances existing in this case, there is an opportunity for serious mischief and for the public to be at risk.

19. In the end, the purpose of these Rules is to prevent misappropriation and to promote the Law Society's oversight over the use of trust funds, such that the public confidence is maintained.

20. In this case, the Discipline Committee was unable to infer any fraudulent intent of the part of Mr. Angus. But the Committee does conclude Mr. Angus's discipline history and misconduct in this case demonstrates a persisting disregard for the Rules relating to the use of trust accounts. It also reflects a failure on his part to appreciate the consequences of his suspension and the clear limitations on his privileges as a suspended member.

21. At the hearing before the Discipline Committee, Mr. Angus urged the Discipline Committee to conclude he acted on an honest and mistaken belief that he was operating within the Rules. The Discipline Committee was not prepared to receive submissions relating to the question of whether Mr. Angus was guilty of conduct unbecoming. In this case, the Hearing Committee heard the same plea from Mr. Angus and had considered evidence on the question of his *mens rea* in relation to his breach of the Rules. The Hearing Committee concluded, on the basis of Mr. Angus's *viva voce* testimony that he "chose to disregard the Rules and Guidelines of the Law Society." Nonetheless, conduct unbecoming is a matter of strict liability where there is a breach of trust accounting rules.

SENTENCING PRINCIPLES AND CONSIDERATIONS

22. The prevailing theme in this, and in much of Mr. Angus's discipline record, is a failure to observe trust accounting rules and to appreciate the limits of his rights and privileges as a suspended member. While we do not find a deliberate intent to operate a hidden trust account for fraudulent purposes, we accept the Hearing Committee's determination that Mr. Angus deliberately breached the Rules while he knew he was suspended and not authorized to operate a trust account. The practice of law and the use of a trust account under these conditions put the public at risk and compromised the public's confidence in the legal profession's ability to govern its members and to protect the public.

23. These considerations invoke the imperative of general deterrence. Given Mr. Angus's extensive history and his deliberate breach of the trust accounting rules, there is also a clear need to specifically deter this member from further misconduct and to therefore treat this breach as a serious one.

24. We were urged by counsel for the Investigation Committee to invoke the principles of general and specific deterrence, with the primary focus on the latter sentencing objective. We were referred to the decision of the Benchers of Saskatchewan in *Price-Jones*¹ and in *Law Society of Upper Canada v. Nawab*². While those decisions also involved the operation of a hidden or unregulated trust account, those cases also involved a continuous course and pattern of misconduct and appropriation of trust funds.

25. In this case, the conduct of Mr. Angus involved only two series of transactions during a small time frame. There was no fraudulent intent or attempt to mislead the Law Society. No one was harmed by the misconduct.

26. But there is little else to mitigate the seriousness of a course of conduct when, taken together with his discipline record, suggests this member is unwilling to follow the Rules and to keep his commitments to the Law Society. This case involves the fourth determination of conduct unbecoming in relation to Mr. Angus's handling of trust funds. Throughout his history he has appeared unwilling to adhere to his obligations as a practicing member and to keep his own undertakings to the Law Society. His repeated disregard for the Rules and the general authority of the Law Society undermines the ability of the Law Society to effectively govern its members.

27. When this matter first came on before the Hearing Committee, Mr. Angus failed to accept responsibility for his conduct. A lengthy hearing was required. While not all charges proceeded to a hearing and there was some divided success in the end, Mr. Angus still testified before the Hearing Committee that he believed he was entitled to issue cheques and drafts on his trust account while suspended. This testimony was rejected as lacking in credibility. In this context, this testimony reflects a failure to be accountable and to remediate his misconduct.

¹ The Law Society of Saskatchewan Discipline Decision 09-02 dated May 1, 2007.

² [2008] L.S.D.D. No. 58.

28. The penalty must recognize the potential risk of injury or harm to the public presented by conduct such as that of Mr. Angus. The risk is compounded in his case because of his negative prospects of rehabilitation. At the hearing before the Discipline Committee Mr. Angus himself acknowledged that a suspension would be appropriate.

29. While we conclude that the particular breach of the Rules in this case would invoke a modest sanction in the first instance, the misconduct in this case and the context of Mr. Angus's record now requires the Law Society to seriously denounce the misconduct and with the specific objective of deterring this member. While Mr. Angus conceded a suspension was warranted, the Discipline Committee was still not satisfied he fully appreciated the seriousness of his misconduct, and its impact on the Law Society's ability to govern its members and to maintain the confidence of the public.

30. Mr. Angus's discipline history involves a pattern of similar misconduct and an escalating and progressive approach in sentencing. A progressive and increasingly serious course of discipline and penalty is warranted for the reasons and objectives outlined above.

31. As there was divided success before the Hearing Committee, the Discipline Committee is not prepared to award costs in the full amount of \$18,782.50.

PENALTY

32. Mr. Angus is suspended from the practice of law and as a member of the Law Society of Saskatchewan for a period of six months, such suspension to run consecutive to and immediately upon the end of the current administrative suspension, any other interim suspension and the suspension of three months made by the Order of the Discipline Committee of May 31, 2007.

33. Upon his return to practice, Mr. Angus shall work under the supervision and direction of a practice advisor designated by the Chair or Vice-Chair of the Discipline Executive Committee, and will co-operate fully with such practice advisor.

34. Upon Mr. Angus's return to practice, he shall restrict his practice to matters which do not require him to maintain a trust account for which he is solely responsible.

35. Costs are awarded in the amount of \$9,391.25, payable by Mr. Angus not later than December 31, 2010, or such other date as the Chair of Discipline may approve.

RECOMMENDATION

36. As Mr. Angus will be suspended for at least four years before his return to practice, this Committee urges the Executive Director and the Admissions and Education Committee to exercise care in assessing Mr. Angus's competencies and suitability to return to the practice of law.

DATED at the City of Regina in the Province of Saskatchewan this 3rd day of September, 2010.

Per: _____

Paul H.A. Korpan, Q.C.
Discipline Committee Chair