

IN THE MATTER OF *THE LEGAL PROFESSION ACT, 1990*
AND IN THE MATTER OF DWAYNE Z. BRAUN,
A LAWYER OF SASKATOON, SASKATCHEWAN

**REASONS FOR THE DECISION OF THE HEARING COMMITTEE
MARCH 6, 2009**

1. The Hearing Committee in this matter was composed of Robert Kennedy, Q.C., Janice Wall, and Catherine Zuck, Q.C. with the Hearing taking place on Friday, March 6, 2009 in the presence of Timothy Huber, counsel on behalf of the Discipline Investigation Committee and John Beckman, Q.C., counsel on behalf of the member. The member was present.
2. At the outset of the Hearing both counsel acknowledged the jurisdiction of the Hearing Committee and neither counsel had any preliminary objections or applications.
3. As evidenced by the Amended Formal Complaint, there were three charges against the member which can be summarized as follows:
 - a) Conduct unbecoming a lawyer in that the member failed to serve three different clients in a conscientious, diligent and efficient manner;
 - b) Conduct unbecoming a lawyer in that the member failed to reply promptly to communications from the Law Society of Saskatchewan with respect to a client's complaint;
 - c) Conduct unbecoming a lawyer in that the member entered into or continued a business relationship with the client when his interests and those of the client were in conflict.
4. Counsel indicated that there was an Agreed Statement of Facts and Admissions and Mr. Beckman indicated, and Mr. Braun confirmed, that on the basis of the Agreed Statement of Facts and Admissions he was entering a plea of guilty to each of the three charges.
5. In this connection, the following evidence was admitted by consent:
 - P-1 - Notice of Hearing with Proof of Service
 - P-2 - Agreed Statement of Facts and Documents
 - M-1 - Psychologist's Opinion Letter

M-2 - Letters of support from various members of the Law Society

M-3 - Communications and correspondence from the Professional Standards Committee of the Law Society

M-4 - Letter from Mr. Beckman to Complainant A.A. dated February 12, 2009 together with a letter from Complainant A.A. to the Law Society of Saskatchewan dated February 12, 2009

6. Both counsel agreed that the first and second charges were essentially ones of dilatory practice. The factual circumstances behind these two charges did not disclose any dishonesty or lack of integrity on the part of the member and, accordingly, counsel agreed that an appropriate penalty would be one of reprimand together with costs. Counsel agreed that the costs were \$3,940.
7. In effect, this agreement of counsel was a joint submission as to sentence on Counts 1 and 2 and, the case law indicates that a Hearing Committee should not reject such a joint submission 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] LSDD No. 29 at page 8.
8. Accordingly, the Committee was prepared to accept the joint submission with respect to Counts 1 and 2.
9. The party’s positions on penalty diverged with respect to the third Count with Mr. Huber indicating that the range of penalties would be from a reprimand and costs at the low end of the scale through to a suspension at the high end of the scale.
10. The Hearing Committee’s jurisdiction to sentence is restricted to cases where the penalty is a reprimand, a fine or costs and the Committee has no jurisdiction to impose more serious penalties such as suspensions or disbarment. These more serious penalties can only be imposed by the Discipline Committee of the Law Society.
11. Mr. Huber noted that he was empowered to require the Hearing Committee to refer the matter to the Discipline Committee of the Law Society if he was of the view that a suspension was necessary under the circumstances, however he advised that he was prepared to leave it up to the Committee’s discretion as to whether the Committee felt that a suspension was warranted and, if so, the Committee would be required to refer the matter to the Discipline Committee of the Law Society on its own motion.
12. Accordingly, the sentencing issues before the Committee were:
 - a) First, to decide whether the matter at hand required a suspension, in which case the

matter would be referred to the Discipline Committee;

- b) If a suspension was not required, to assess the appropriate penalty.

DECISION ON PENALTY

- 13. At the conclusion of counsel's submissions the Committee adjourned the Hearing to consider the two issues before it and after deliberating on the matter concluded that a suspension was not warranted under the circumstances and that the appropriate penalty to be assessed was that the member was to be reprimanded, the member was fined the sum of \$500, and the member was assessed costs of the Hearing in the amount of \$3,940. The member was given 30 days to pay the monetary component of the penalty.
- 14. The Committee also advised that it would prepare and release written reasons outlining the rationale for its decision. These are those reasons.

ANALYSIS

- 15. The Committee was prepared to accept the joint submission on sentence with respect to Counts 1 and 2 so that both of the issues before it reduced down to a consideration as to whether the circumstances behind Count #3 were such that a suspension was required and, if not, whether a specific penalty with respect to Count #3 should be imposed in addition to the reprimand and costs which were involved in the joint submission on Counts 1 and 2.

FACTS

- 16. The facts with respect to the third Count can be shortly stated:
 - a) Mr. Braun had represented the complainant, A.A., with respect to various matters;
 - b) Mr. Braun and the complainant became business associates with respect to a farming operation;
 - c) Mr. Braun financed the complainant with respect to the farming operation;
 - d) The farming operation was not successful and the complainant was unable to repay Mr. Braun the monies that had been lent to him;
 - e) As security for the due repayment of the loan the complainant gave Mr. Braun's company a mortgage over his farmland;

- f) The complainant executed the mortgage after receiving a letter signed by Mr. Braun dated May 5, 2005 which letter concluded, in the last paragraph:

“You must understand that, while I have acted as your lawyer on various matters and while I continue to do so, I do not act as your lawyer with regard to this transaction. I am not providing you with legal advice with respect to this transaction, because I am not independent. An independent lawyer might very well advise you not to sign this Promissory Note and this Mortgage, for various reasons occurring to him or to her. I strongly encourage you to seek the advice of a lawyer of your choosing prior to making any decision as to whether to execute this Promissory Note, Mortgage and Security Agreement. Please indicate your preference by checking one of the two options below and signing your name where indicated as to your choice of seeking independent legal advice or proceeding in the absence thereof.”

A.A. responded to this letter in writing advising Mr. Braun that he did not want independent legal advice.

- g) Approximately 6 months after the mortgage was registered and in circumstances where the complainant was still unable to address the indebtedness, Mr. Braun requested the complainant to simply transfer the land secured by the mortgage to him rather than obliging Mr. Braun’s company to foreclose on the mortgage (the mortgagee was Mr. Braun’s company and the request to transfer the land was a request to transfer into Mr. Braun’s name personally although given the formulation in the Agreed Statement of Facts nothing of significance turns upon this point);
- h) Mr. Braun prepared the Transfer Authorizations and witnessed the Transfer and, in consequence of him being the transferee, the Transfer Authorizations were rejected by ISC;
- i) New Transfer Authorizations were prepared and A.A. attended at Mr. Braun’s office (when Mr. Braun was not present) and the Transfer Authorizations were witnessed by an employee of the member’s law office;
- j) Exhibit P-2, Tab 17 is a letter from A.A. to the Law Society dated November 7, 2007 which reads in part:

“I [A.A.] am writing you to tell you people I did not in any intention (sic) sign paper to turn over my land to Dwayne Braun . . . I was suppose to sign papers to put a lean (sic) against my land.”

k) A.A.'s letter of February 12, 2009 which was marked as M-4 reads in part:

“I wish to advise you that Dwayne Braun has treated me fairly and appropriately and I understood the nature and effect of the Mortgage and the Transfer which I signed.”

17. In circumstances such as these Chapter VI of the *Code of Professional Conduct*, requires the solicitor to obtain the client's written acknowledgment of the conflict inherent in the business dealing and to either facilitate independent legal advice with respect to the transaction between the solicitor and the client or obtain a written waiver of such independent legal advice.
18. Mr. Huber acknowledged that Mr. Braun's letter of May 5, 2005 satisfied this requirement with respect to the mortgage but that the requirements of the *Code* had not been satisfied with respect to the subsequent transfer. (While it is clear that there was no written acknowledgment of the conflict when the debtor/creditor relationship first arose this obviously became less of an issue once the mortgage was entered into with the appropriate written waiver of independent legal advice).
19. The point of departure between Mr. Huber and Mr. Beckman's submissions on sentence revolved around the Transfer issue.
20. Mr. Huber's position was that Mr. Braun had a duty to advise A.A. about the Federal and Provincial Legislative regimes which govern farm foreclosure and that a new and separate waiver of independent legal advice was the only manner in which Mr. Braun could appropriately establish that he had treated A.A. fairly under the circumstances.
21. Mr. Beckman's position was that the Transfer was simply the culmination of the realization on the land so that the failure to obtain a written waiver of independent legal advice was a "technical breach".
22. The Committee noted that A.A.'s letters of November 7, 2007 and February 12, 2009 could be interpreted as being inconsistent if one viewed the November 7, 2007 letter as implying that A.A. did not understand that he was signing a Transfer to the land but rather thought that this was simply a further piece of security against the land. Conversely, if the letter of November 7, 2007 is interpreted in such a fashion that it relates to A.A.'s intentions prior to agreeing to sign the mortgage then there is no conflict between the two letters.
23. A conflict would however be significant because it would amount to an assertion that Mr. Braun had actively misled the client with respect to the effect of the Transfer.

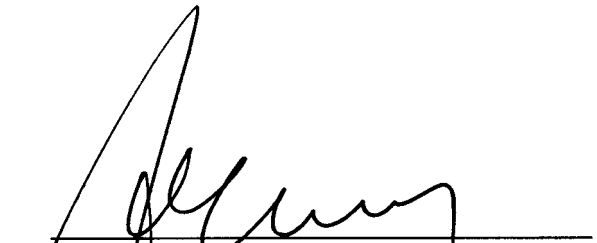
24. However, the Agreement Statement of Facts and Admissions is structured in such a way that Mr. Braun pled guilty to acts of omission and not commission.
25. Accordingly Mr. Huber was specifically asked whether it was the Investigating Committee's position that Mr. Braun had actively misled A.A. with respect to the nature and effect of the Transfer. Mr. Huber's response was that there was no allegation of actively misleading A.A. rather the issue was related to Mr. Braun's failure to properly advise A.A. and to insist upon either independent legal advice or a waiver of such independent legal advice.
26. While the Committee appreciates Mr. Huber's candor in this respect, in the final analysis, the issue is not critical to the Committee's decision.
27. If the Committee was faced with a clear conflict on a material fact in the context of a sentencing hearing the Committee would be obliged to bring the conflict to the attention of counsel to ascertain whether the Prosecutor wished to call evidence on the issue and, if the Prosecutor declined to call evidence, then the member would be entitled to the most favourable finding on the evidence.
28. In the present circumstances this approach would lead to the conclusion that A.A. was not misled about the effect of the Transfer and did indeed understand that his signing the Transfer Authorization would transfer his land to Mr. Braun.

CONCLUSION

29. While the Committee understands and appreciates Mr. Beckman's point that the Transfer was simply a continuation of the realization proceedings, on the other hand, it is of course a completely distinct transaction which obviated the necessity of perhaps extended and costly foreclosure proceedings. This aspect of the matter ought to have been communicated to A.A. and, in the absence of either independent legal advice or a waiver of such independent legal advice - *in the context of a clear statement about A.A.'s rights and options in a foreclosure proceeding* - Mr. Braun's conduct fell short of that required by the Code.
30. The Committee does not view this as a technical breach rather it is an issue of substance which goes directly to the quality of the client's understanding of what to him was likely a foreign process and procedure.
31. While the Committee understands that A.A. might have been familiar with farm foreclosure such that no independent legal advice was necessary as a matter of fact, such would only mean that the member ought to have adequately and appropriately documented the transaction.

32. As it stands however in this particular instance, there is nothing in the Agreement Statement of Facts that would allow the Committee to come to a conclusion, one way or the other, as to whether A.A. did or did not fully understand the significance of his options in a foreclosure proceeding, as distinct from the question of the effect of the mortgage and the effect of the Transfer.
33. Hence the Committee views the member's failure to appropriately document the transaction in a very serious light.
34. However, the Agreed Statement of Facts together with the submission of counsel did not disclose, and we did not find that there was any dishonesty or lack of integrity concerning the member's dealings with A.A. concerning the third charge. Were this to be the case then a suspension would have been warranted but, in the absence of any suggestion of dishonesty or lack of integrity, the Committee's view was that a suspension was not warranted and hence we assumed jurisdiction to sentence the member.
35. Having said that some censure is appropriate and this is the reason why the Committee assessed a fine of \$500 in addition to the reprimand and the order that Mr. Braun pay the costs of the Hearing.

DATED this 11th day of March , 2009.



ROBERT G. KENNEDY, Q.C.
Chairperson and member of the
Hearing Committee
The Law Society of Saskatchewan



CANADA)
)
PROVINCE OF SASKATCHEWAN)
)
TO WIT)

**IN THE MATTER OF *THE LEGAL PROFESSION ACT, 1990*
AND IN THE MATTER OF DWAYNE ZACHARY BRAUN,
A LAWYER OF SASKATOON, SASKATCHEWAN**

**AGREED STATEMENT OF FACTS
AND ADMISSIONS**

In relation to the Amended Formal Complaint attached at Tab 1, as follows:

THAT DWAYNE ZACHARY BRAUN, of the City of Saskatoon, in the Province of Saskatchewan:

1. Is guilty of conduct unbecoming a lawyer in that he failed to serve his clients, in a conscientious, diligent and efficient manner as follows:

R.B.

- a. Failed to keep R.B. reasonably informed.
- b. Failed to respond to R.B.'s telephone calls within a reasonable time.

C.D.

- c. Failed to keep C.D. reasonably informed.

B.B.

- d. Failed to keep the B.B. reasonably informed; and
- e. Failed to respond to B.B.' telephone calls within a reasonable time.

Reference Chapter II of the *Code of Professional Conduct*.

2. Is guilty of conduct unbecoming a lawyer in that he failed to reply promptly to communications from the Law Society of Saskatchewan with respect to the complaint by S.D.;

Reference Chapter XV of the *Code of Professional Conduct*.

3. He did enter into or continue a business relationship with his client A.A. when his interests and the interests of A.A. were in conflict, more particularly, he did:
 - a. Enter into or continue a debtor-creditor relationship with his client A.A.;
 - b. Prepare or cause to be prepared an instrument wherein his client A.A. transferred four parcels of land to him and then witnessed A.A.'s signature on that instrument;
 - c. Fail to obtain A.A.'s written consent to the conflict;
 - d. Without having A.A. obtain independent legal advice or having A.A. provide a written waiver of independent legal advice, acquire ownership of four parcels of land from A.A. without ensuring that the terms of the transaction were fully disclosed to the client in writing in a manner that was reasonably understood by A.A.

Reference Chapter VI of the *Code of Professional Conduct*.

Jurisdiction

1. Dwayne Zachary Braun (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 currently the subject of the Amended Formal Complaint referenced above. The Formal Complaint is comprised of three counts. The Amended Formal Complaint was duly served upon the Member. Proof of service of the Amended Formal Complaint upon the Member is included at **Tab 1**.
3. The Member acknowledges the jurisdiction of the Hearing Committee appointed in relation to this matter to determine whether the complaints against him are well founded. The Member further acknowledges service of the Amended Formal Complaint and the Notice of Hearing and takes no issue with the constitution of the Hearing Committee.

4. The Member has agreed to enter a guilty plea in relation to the three counts set out in the Amended Formal Complaint.

Particulars of Conduct

5. These proceedings arose as a result of Law Society investigations in relation to complaints received from a series of different complainants. The particulars of each complaint including the complaint of the Law Society will be dealt with separately below.

Complaint of R.B.

6. The Law Society received the complaint of R.B. on October 3, 2005. The substance of the complaint was that the Member had failed to respond to repeated attempts by his client to contact him within the context of a heated matrimonial file. The complaint of R.B. is attached at **Tab 3** and describes R.B.'s experience with this Member as follows:

- The Member was retained in May 2005 to work on R.B.'s separation;
- R.B. saw the Member only once more in July 2005 for a mediation session;
- Arrangements were to be made for a meeting in August 2005 but the meeting did not occur;
- R.B. then began phoning the Member's office;
- R.B. received a two line letter from the Member's office advising R.B. to contact the Member if he had any questions;
- R.B. had many questions and continued to phone the Member regularly and leave messages;
- In early September, on the statutory holiday the Member called R.B.'s cellular phone and left a message saying that the Member would try to contact him;
- No contact was forthcoming from the Member;
- R.B. then began phoning the Member's office every day, sometimes 2 or 3 times per day in an effort to contact the Member, to no avail;
- On September 27, 2005 R.B. spoke with the Member's assistant and asked that his file be sent elsewhere but still received no call.

7. R.B. also struggled with being kept apprised of developments in his file. On one occasion a letter requiring a response was delivered to the Member who did not respond, nor did he forward the correspondence to R.B. for approximately two weeks. As a result of the Member's delay in communicating with R.B., opposing counsel brought a motion against R.B.
8. The complaint of R.B. was forwarded to the Member.
9. On November 8, 2005 the Member contacted the Law Society to advise that he was experiencing a marital breakdown which had been a significant distraction for him over the preceding weeks and that he was under a great deal of stress. Later that day the Member provided a formal response to the complaint of R.B. via fax. In the letter the Member accepts responsibility for the poor service that he had provided to R.B. and again cites his personal crisis as the root cause of the failure to respond to his client or keep him reasonably informed as to the status of the matter.

Complaint of C.D.

10. On July 28, 2006, the Law Society received a complaint from C.D. The complaint of C.D. is attached at **Tab 4**. C.D. had hired the Member in 2004 to appear in court to deal with custody and support issues. The substance of the C.D. complaint was that the Member had failed, over a period of several months following the initial court application, to respond to telephone messages left by C.D. Each time a message was left, C.D. provided his current telephone numbers for either his home or place of employment.
11. After becoming frustrated with the Member's inattention and lack of communication, C.D. decided to terminate his relationship with the Member. Unfortunately, C.D. was unable to contact the Member via phone to express his desire to end the relationship.
12. In December 2004, the Member received a Joint Request for Pretrial from opposing counsel. The Request was made with a 10 day deadline for a response, failing which opposing counsel would apply to have the matter noted for default. This deadline was set due to the fact that several requests had been made by opposing counsel for a pretrial since June 2004. The Member states that he had

- previously lost all contact with C.D. in September 2004 despite having a valid work number for C.D. which he did not attempt to use. The Member had not withdrawn from representing C.D. and accepted service of the Joint Request for Pre-trial on the 10 day deadline without having any means to contact C.D.
13. The Member did not contact C.D., and he was ultimately noted for default and sole custody was granted to his former spouse.
 14. The root cause of the Member's failure to keep C.D. reasonably informed in relation to the proceedings against him, was that the Member failed to ensure that he had correct contact information for his client at the time the file was opened. Instead the Member relied on an address contained on the initial retainer cheque for file opening purposes but the address on that cheque was already out of date. C.D. had provided his correct contact information at home and at work at the time the file was opened, but it was not noted by the Member. When C.D.'s home address and home phone number did change in mid 2004, notice of that change was delivered to the Member's office but again the information was not recorded properly.
 15. As a result of the Member's inattention to his client's contact information and without a proper system to record updated information, any attempts made by the Member to contact C.D. in relation to the Joint Request for Pre-trial went to out of date addresses or phone numbers.

Complaint of B.B.

16. The complaint of B.B. was received at the Law Society on March 22, 2007. The complaint is attached at **Tab 5**. B.B. complained to the Law Society approximately 5 years after she first saw the Member in relation to a dispute she was having with her bank over insurance coverage on a debt.
17. When B.B. initially saw the Member in October 2003 she explained her dispute with the financial institution. The Member asked for more information and undertook to prepare an opinion in relation to B.B.'s case. The opinion was dated November 4, 2006 and is attached at **Tab 6**. It discusses the merits of the case and discusses what might be an appropriate contingency fee for the matter. The

Member makes reference to a contingency fee of something higher than the 22.5% - 32.5% range. The opinion closes with the Member commenting that if certain facts could be established **“our case is significantly better, and potentially winnable”**.

18. On November 6, 2003 B.B. sent the Member an email stating the following:

“I received your letter in the mail. If you want to please go ahead with the case. I don’t care if you have to take 50%...If you want to please go forward with 50% for you.”

19. The Member’s assistant, on behalf of the Member sent the following response to B.B. on November 9, 2003:

Mr. Braun will be working on your file, but he is waiting to hear from you regarding his letter to you dated November 4, 2003. You were to ask the [bank] if they sent you any letters or notices in the mail or by hand delivery or at least telephoned you to let you know that they had mistakenly calculated your payments.

20. The following day, B.B. provided a response to the Member via email with the information requested by the Member. Attached at **Tab 7** is a copy of the email exchange between November 6 and November 20, 2003.

21. The opinion of the Member and the email exchange, specifically the email from the Member’s office on November 9, 2003, left B.B. with the impression that the Member was taking her case, so she began to wait. She periodically phoned the Member and left messages but never heard a response from the Member. This lack of contact with the Member persisted between November 2003 through September 2006. The lack of communication was punctuated by a few contacts with the Member’s assistant who advised B.B. that the Member had B.B.’s file on his desk. In 2006 B.B. spoke briefly with the Member when his assistant handed him the phone as he walked by her desk. The Member told B.B. that he was working on her file and that he would phone her back on Friday. The Member did not phone B.B. as promised.

22. B.B. was able to get an appointment to see the Member in September 2006. B.B. thought that the Member was going to tell her that the matter had been concluded as she believed he had been working on her file for the previous three years.

- During the meeting the Member gave the impression to B.B. that he knew nothing about her file. He asked for her documents again.
23. On January 24, 2007 B.B. had one final meeting with the Member. During that meeting, despite the fact that the Member had repeatedly given the impression to B.B. that her file was progressing, the Member advised B.B. that she had no case and never did.
 24. The Member did not at any time prior to 2007 inform B.B. that she did not have a case. On the contrary both he and his assistant informed B.B. on various occasions throughout the prior 3 years that he was in fact working on the file. No work was done on the file after the November 4, 2003 opinion. The Member did not inform B.B. that he was not interested in working on her file until 2007. The information the Member had in 2007 was the same as the information he had in 2003.
 25. The root cause of the Member's failure to keep B.B. informed in relation to her file and in relation to his intentions not to take the file was the general lack of communication between the Member and B.B. The Member also failed to communicate properly with and or supervise his support staff who exacerbated the misunderstanding between the Member and B.B.
 26. In an interview with Law Society investigator, Greg McCullaugh, the Member stated that he never reads his emails because his assistant and his receptionist handle them. He advised that he did not return all phone calls that he received. He stated that he could not recall the occasions when he had met with B.B. and that he typically made few notes in relation to client contacts so there would not be many notes on the file to assist him in recalling his interactions with B.B. The Member has no record of any contact between himself and B.B. between November 2003 and September 2007.

Failure to Respond to the Law Society of Saskatchewan

27. The Law Society received a complaint from S.D. on November 2, 2005. The substantive complaint dealt with allegations of delay on the part of the Member as well as a lack of communication. The complaint of S.D. was forwarded to the Member by Complaints Counsel, Donna Sigmeth, on November 4, 2005. The

- Member's response was required within 10 days of the date of the letter. Attached at **Tab 8** is a copy of the letter dated November 4, 2005 enclosing the complaint and setting the initial response deadline.
28. On November 30, 2005, Donna Sigmeth, having not received a reply to her previous correspondence, sent a follow-up letter to the Member via registered mail. The follow-up letter again established a 10 day response deadline. Attached at **Tab 9** is a copy of the letter dated November 30, 2005.
 29. On January 3, 2006, Donna Sigmeth, having not received a reply to her previous two letters, sent a further follow-up letter to the Member, again via registered mail. That letter established January 19, 2006 as the final deadline for a response, failing which, the matter would be referred to the Discipline Committee. Attached at **Tab 10** is the letter dated January 3, 2006.
 30. The Member contacted Donna Sigmeth on January 13, 2006 via phone. During the conversation the Member advised that he would provide a substantive response to the complaint the following week being January 16-20, 2006.
 31. Donna Sigmeth did not receive a response from the Member as promised and on January 24, 2006 wrote the Member via registered mail advising that if no response was received by January 30, 2006, the matter would be referred to the Discipline Committee. Attached at **Tab 11** is a copy of the letter dated January 24, 2006.
 32. No response was received from the Member and the matter was referred to the Discipline Committee. Ultimately, on February 20, 2006 an Investigation Committee was appointed in relation to this matter to review both the complaint of S.D. but also the complaint of the Law Society regarding the Member's failure to respond.
 33. On February 21, 2006, the Member provided a substantive response in relation to the complaint of S.D. The investigation committee accepted the Member's response and did not recommend charges in relation to the complaint of S.D. but did recommend charges in relation to the Member's failure to respond promptly to the requests of Law Society.

Complaint of A.A.

34. The complaint of A.A. originated with a letter from A.A.'s father C.A. received at the Law Society on September 10, 2007. Attached at **Tab 12** is a copy of the original complaint package sent by C.A. The substance of the complaint was that the Member had taken land from A.A. in a manner that was unfair.
35. Attached at **Tab 13** is the response of the Member in relation to the complaint of A.A.
36. The Member had a preexisting solicitor client relationship with A.A. and had represented him in relation to divorce proceedings.
37. An investigation revealed that A.A. and the Member and the Member's farming corporation Aylesbury Farms Ltd. also had a business relationship. This relationship included a verbal lease agreement in relation to farm land and various verbal debtor creditor arrangements relating to use of the land, input costs and crop sharing.
38. The debtor creditor relationship between the Member, Aylesbury Farms Ltd. and A.A. was ultimately formalized on May 7, 2005 when a \$250,000.00 mortgage in favor of the Member's farming corporation, Aylesbury Farms Ltd., was executed by A.A. Attached at **Tab 14** is a copy of the mortgage signed by A.A.
39. Prior to A.A. signing the mortgage on May 7, 2005, the Member provided A.A. with a letter dated May 5, 2005 attached at **Tab 15**. The letter includes a summary of the events leading up to the mortgage as well as a clear recommendation that A.A. seek independent legal counsel in relation to the mortgage. At the bottom of the letter were two boxes where A.A. was to elect whether or not he wanted to seek independent legal advice. A.A. checked the box indicating that he did not wish to seek independent legal advice and signed his name to the letter.
40. The Member then witnessed A.A. sign the mortgage.
41. The debtor creditor arrangement between the Member and A.A. did not go smoothly. The Member elected to take action in relation to the debt that was owed by A.A. to Aylesbury Farms Ltd.

42. On November 23, 2005, six months after the mortgage was signed, the Member attended to the farm of A.A. with transfer authorizations in relation to 4 quarter sections of land referenced in the mortgage. The transfer authorizations contemplated a transfer to the Member personally rather than Aylesbury Farms Ltd., the entity holding the mortgage on the land. The Member had prepared the transfer authorization or caused it to be prepared.
43. The Member had A.A. sign the transfer authorizations. No independent legal advice was offered or recommended to A.A. in writing nor did A.A. provide a written waiver of independent legal advice. Neither the terms nor implications of the transfer were disclosed in writing to A.A. in a manner that was reasonably understood. A.A. did not consent in writing to the transaction. The Member witnessed A.A.'s signature on these transfer authorizations. Attached at **Tab 16** is a copy of the transfer authorizations executed on November 23, 2005.
44. The Member submitted the transfer authorizations to ISC in the spring of 2006. The land was transferred into the name of the Member but that transfer was later rejected and reversed by ISC when they learned that the transferee (the Member) had witnessed the document transferring property to himself.
45. New transfer authorizations were executed by A.A. on October 3, 2006 at the offices of the Member and were, on that occasion, witnessed by an assistant at the office. No independent legal advice was offered or recommended to A.A. nor did A.A. provide a waiver of independent legal advice.
46. A.A. subsequently reported that he believed that he was signing a lien in relation to the property. Attached at **Tab 17** is a letter dated November 7, 2007 from A.A. to the Law Society describing why he signed the documents.
47. The transfer authorizations were submitted to and accepted by ISC. The land transferred into the name of the Member. At the time of the transfer, a writ against A.A., held by a third party, in the amount of \$61,465.08 transferred along with the land. Attached at **Tab 18** are copies of the titles relating to the 4 parcels of land that were transferred from A.A. to the Member.
48. As of the date of the transfer, A.A. owed Aylesbury Farms Ltd. approximately \$250,000.00. Aylesbury Farms Ltd. in turn owed substantial sums to the

- Member. The transfer was made to repay the Member from Aylesbury Farms Ltd. and with a view to preventing any suggestion of merger with the mortgage.
49. The Land was eventually sold to a third party for \$200,000.00. After paying back taxes in the amount of \$11,446.95, real estate commission of approximately \$11,000.00 and the writ of execution in the amount of \$69,591.78, the net proceeds of the land was approximately \$108,000.00. The payment of the Writ of Execution was made necessary because of a mistake in the Merchant Law Office in which the mortgage of Aylesbury Farms Ltd. was discharged before the Writ of Execution.
 50. At the present time, the Member's net loss in relation to the Debtor/Creditor arrangement with A.A. is approximately \$107,000.00.
 51. From the time that the Member entered into a debtor creditor relationship with A.A. their interests began to diverge. The Member was in a conflict of interest with A.A. throughout the business relationship. As the relationship deepened the Member provided less protection to A.A. rather than more.

Summary

52. The following is a summary of the foundation for the allegations of conduct unbecoming a lawyer:
 - Complaints of R.B., C.D. and B.B.
 - a. The Member failed to respond to requests for contact from these clients;
 - b. The failure to respond to his clients resulted in a serious breakdown in communication;
 - c. The Member's failure to communicate effectively with his clients was exacerbated by the Member's general lack of attention to these files;
 - d. Further difficulties arose as a result of the Member's various law office management problems including his failure to take notes during client interactions and his practice of allowing support staff to review and respond to emails without his input or supervision;

- e. During the fall of 2005 the Member was also experiencing a marital breakdown which acted as a serious distraction for the Member in relation to his practice;

Complaint of the Law Society

- f. The Member failed to respond to various communications from the Law Society in a timely fashion or at all with regard to the complaint of S.D. for a period of several months;
- g. The Member's failure to respond to the Law Society took place during the fall of 2005 and into the winter of 2006, shortly after the Member's marital breakdown;

Complaint of A.A.

- h. The Member failed to create adequate documentation in relation to the verbal debtor creditor arrangements with A.A., specifically in relation to those transactions occurring before the mortgage was executed;
- i. Independent legal advice was recommended in writing to A.A. only in relation to the mortgage itself and at that time none was received due to A.A.'s waiver of independent legal advice;
- j. Knowing that A.A. had not received independent legal advice in relation to the land transfer or the mortgage, and without having obtained a written waiver of independent legal advice from A.A. in relation to the land transfer, the Member failed to set out the terms or implications of the transfer in writing in a way that was reasonably understood by A.A. or at all;
- k. The Member failed to obtain A.A.'s written consent to continue to act in the conflict situation;
- l. The Member drafted and witnessed the transfer authorizations wherein A.A. was transferring his land to the Member and, in effect, waiving the protections and safeguards afforded to farmers under both provincial and federal legislation. At the time of the transfer, only Aylesbury Farms Ltd. had an interest in the land. The Member had no personal interest.

DATED at the City of Regina, in the Province of Saskatchewan, this _____ day of February, 2009.

MCKERCHER LLP

John Beckman Q.C., Legal Counsel for
Dwayne Z. Braun

DATED at the City of Regina, in the Province of Saskatchewan, this _____ day of February, 2009.

LAW SOCIETY OF SASKATCHEWAN

TIMOTHY F. HUBER, Counsel
on behalf of the Investigation Committee