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

IN THE MATTER OF *THE LEGAL PROFESSION ACT, 1990*
AND IN THE MATTER OF
Garret Oledzki of Regina, Saskatchewan A LAWYER

The Law Society of Saskatchewan
Discipline Decision 09-04
Garret Oledzki of Regina, Saskatchewan

DECIDED: August 13, 2009

Timothy F. Huber on behalf of The Law Society of Saskatchewan
Ian McKay, Q.C. on behalf of Garret Oledzki

Jurisdiction and Responsibility

1. The jurisdiction and authority of the Law Society of Saskatchewan to govern itself through the regulation and discipline of its members is reviewed extensively in the Benchers' decisions in *Susan Rault* made the 18th of April, 2008 #08-02, *Michael Nolin* made the 3rd of October, 2008 #08-04 and *Sterling McLean* made the 12th of June, 2009 #09-03. As the Benchers stated in *Nolin*, the Law Society's responsibility for discipline is a serious one which must be exercised with great care in each case and with full regard for its public policy importance.

2. The exercise of the Benchers' discretionary powers is rooted in the public interest and is informed by the *Code of Professional Conduct* (hereinafter the "*Code*") and the decisions of the Benchers. The responsibility to administer discipline demands a principled and judicious approach.

Procedural History

3. This matter initially proceeded before the Hearing Committee consisting of Alma Wiebe, Q.C. (the "Hearing Committee"). The Hearing Committee convened on April 28, 2009 by teleconference.

4. At the Hearing, the Law Society was represented by Mr. Huber. Mr. Oledzki was represented by Mr. McKay. Mr. Oledzki was present with his counsel during the teleconference.

5. Both counsel for the Law Society and Mr. Oledzki acknowledged that the Hearing Committee was properly constituted and had jurisdiction. There were no preliminary objections or other issues.

6. At the hearing, the formal Complaint was amended by consent. The Complaint against Mr. Oledzki, as amended, contained the following allegations of conduct unbecoming:

(a) He did sign a document purporting to be a Last Will and Testament of his client X using the name of his Client X when he was not in the presence of X or any witnesses;

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

(b) He did attempt to imitate the signature of his Client X on a document purporting to be the Last Will and Testament of his Client X;

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

(c) He did back date a document purporting to be a Last Will and Testament of his Client X;

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

(d) He did cause a member of the public to sign as a witness on a document purporting to be a Last Will and Testament of his Client X when he knew she had not witnessed the signing of the document;

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

(e) He did cause a member of the public to sign as a witness on a document purporting to be a Last Will and Testament of his Client X by making false representations to her;

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

(f) He did mislead fellow members of the Law Society of Saskatchewan;

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

(g) He did prepare or cause to be prepared Last Will and Testament documents wherein his clients, Mr. and Mrs. D., were to leave him a testamentary gift of $50,000;

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

(h) He did prepare or cause to be prepared a Codicil for his client Mr. D. wherein Mr. D. was to leave him a testamentary gift of his oil, mines and mineral rights in relation to certain land;

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

(i) He did prepare or cause to be prepared a Transfer Authorization for his client Mrs. D. wherein Mrs. D. was to transfer mineral rights to him and his family members in relation to certain land;

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

(j) He did prepare or cause to be prepared a Last Will and Testament document wherein his client, Mr. A.A., was to leave a family member of Mr. Oledzki's a substantial testamentary gift;

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

(k) He did sign as witness on a Last Will and Testament and Power of Attorney of his client M.W. when he was not in the presence of M.W. when she signed the Will or Power of Attorney; and

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

(l) He did attempt to imitate the signature of Y as a witness on a Last Will and Testament of his client M.W.;

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

7. The parties filed with the Hearing Committee an "Agreed Statement of Facts and Admissions between Garret Joseph Stanley Oledzki and the Law Society of Saskatchewan" dated May 24, 2008, duly endorsed by Mr. McKay and Mr. Huber. No further evidence was adduced. Given this agreement the Hearing Committee made a decision that each allegation of conduct unbecoming in the formal Complaint was well founded.

8. The Hearing Committee did not act under s. 53(3) of *The Legal Profession Act, 1990* (hereinafter the "Act") to assess a penalty or impose a requirement. In accordance with s. 53(3) of the Act and Rule 450(10) of the Law Society of Saskatchewan Law Society Rules (hereinafter the "Rules"), the Hearing Committee provided the Chairperson of the Discipline Committee with a copy of the Hearing Committee's decision and report. Pursuant to s. 55 of the Act the Chairperson of the Discipline Committee set a date for a meeting of the Discipline Committee to determine the penalty to be assessed or requirement to be imposed and gave notice to Mr. Oledzki's counsel of the day, time and place of the meeting in accordance with the Rules. The date fixed for the meeting was August 13, 2009 and the place was Regina, Saskatchewan.

9. Pursuant to s. 36(1) of the Act the Discipline Committee comprises all Benchers. A quorum of Benchers attended the August 13th meeting. The Law Society was represented by Mr. Tim Huber, and Mr. Oledzki by Mr. McKay. There was no objection to the jurisdiction or composition of the Discipline Committee. There were no preliminary motions or any objections. The entire record of evidence before the Hearing Committee was placed before the Discipline Committee along with the Hearing Committee's report. Both counsel made oral and written submissions as to penalty. Mr. Huber filed a brief addressing the scope of evidence admissible for the purpose of assessing a penalty. He also introduced an impact statement that will be

referred to below. Mr. McKay filed 28 reference letters and a report from Mr. Oledzki's psychologist. Mr. Oledzki personally addressed the Discipline Committee.

10. The Discipline Committee deliberated and rendered an oral decision on August 13, 2009. The Chair indicated written reasons would follow. All members of the Discipline Committee have since reviewed this document and confirmed it reflects the analysis and reasoning employed by the Benchers in the deliberative process leading to their oral decision on August 13, 2009. Consistent with the Benchers' responsibility to be transparent and accountable respecting the decision-making process, this document references and embodies the relevant jurisprudence that supports the principled approach used in arriving at this decision.

Charges[1] and Facts

Charges #1, 2, 3, 4, 5 and 6

11. Charges 1, 2, 3, 4, 5 and 6 pertain to the same individual, Client X. The facts supporting these Charges are set out below. The Charges themselves are as follows:

> Charge #1 – He did sign a document purporting to be a Last Will and Testament of his client X using the name of his client X when he was not in the presence of X or any witnesses.
>
> Charge #2 – He did attempt to imitate the signature of his client X on a document purporting to be the Last Will and Testament of his client X.
>
> Charge #3 – He did back date a document purporting to be a Last Will and Testament of his client X.
>
> Charge #4 – He did cause a member of the public to sign as a witness on a document purporting to be a Last Will and Testament of his client X when he knew she had not witnessed the signing of the document.
>
> Charge #5 – He did cause a member of the public to sign as a witness on a document purporting to be a Last Will and Testament of his client X by making false representations to her.
>
> Charge #6 – He did mislead fellow members of the Law Society of Saskatchewan.

Charges #1, 2, 3, 4, 5 and 6 - Facts

12. These Charges arise out of Mr. Oledzki's solicitor client and personal relationship with Client X (hereafter called "Mr. X"). At all relevant times, Mr. X was Mr. Oledzki's father-in-law. Mr. X and his wife had been Mr. Oledzki's clients for some 25 years. During this time, Mr. Oledzki provided them with advice on a number of matters, including Mr. X's Will, his Power of Attorney and a health care directive. Although Mr. Oledzki had been separated from his wife for several years, Mr. Oledzki continued to act as Mr. X's lawyer until his death on July 17, 2008.

13. On the 4th of May, 2005, Mr. X signed a Last Will and Testament prepared by Mr. Oledzki (the "Genuine Will"). Mr. X signed this document in the presence of Mr. Oledzki and

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[1] The allegations contained in the formal complaint.

Mr. Oledzki's next door neighbor, J.D. The relevant provisions of the Genuine Will appointed Mr. X's son (a lawyer and former associate of Mr. Oledzki) and Mr. X's daughter (Mr. Oledzki's former spouse) to be joint executors of his Estate.

14. Mr. X became terminally ill in the spring of 2008.

15. On the 4th of July, 2008 Mr. Oledzki caused his assistant to prepare a new Will for Mr. X. Mr. X did not provide any instructions to prepare this Will. Nonetheless, the new draft modified the appointment of executors, such that Mr. Oledzki's former spouse (Mr. X's daughter) was appointed to be the sole executor and Mr. X's son as an alternative in the event his sister died or refused to act. This change would have been consistent with the alignment of powers in the Power of Attorney made by Mr. Oledzki for Mr. X and signed by him at the same time as the Genuine Will in May of 2005 was completed.

16. In early July of 2008, and some time after July 4th but before the death of Mr. X on July 17th, Mr. Oledzki forged the signature of Mr. X on the above described draft Will (the "Forged Will"). Mr. Oledzki then back dated the Forged Will to May 4, 2005 to correspond with the date on the Genuine Will.

17. When Mr. Oledzki forged Mr. X's name on the Forged Will, he was not in the presence of Mr. X.

18. Mr. X was not aware the Forged Will existed and had never provided any instructions to Mr. Oledzki to prepare or sign the Forged Will.

19. Mr. Oledzki then approached his neighbor, J.D., who had witnessed the Genuine Will some three years before. He misled her by suggesting the Forged Will was a copy of the Genuine Will. He asked her to sign her name as an attesting witness. J.D. was not aware the Genuine Will had been altered by Mr. Oledzki. She was not told and was not aware Mr. Oledzki had created the Forged Will on his own and forged the signature of Mr. X without instructions.

20. Mr. Oledzki also signed the Forged Will as an attesting witness, knowing that Mr. X had not signed the Forged Will and that Mr. Oledzki himself had forged Mr. X's signature.

21. Mr. Oledzki had admitted he knew what he had done was wrong immediately after he had J.D. witness the Forged Will. While he knew the Forged Will must be destroyed, he moved the Forged Will from his home to his office and caused it to be placed on the client file belonging to Mr. X. The Forged Will was never destroyed or otherwise voided, notwithstanding Mr. Oledzki's knowledge he knew what he had done was wrong.

22. The day after Mr. X's death, his son, as one of the executors in the Genuine Will, contacted Mr. Oledzki's firm to obtain a copy of Mr. X's Will.

23. Another member of Mr. Oledzki's firm located the client file containing the Genuine Will and the Forged Will. Both documents bore the same date and the same witness signatures. When Mr. Oledzki was confronted by another member of his firm, he misled this member by stating Mr. X had signed both documents. He told this member that Mr. X had initially wished

to designate his daughter as the sole executor, as contained in the Forged Will, and later changed his mind to designate his son and daughter as joint executors, as contained in the Genuine Will.

24. When questioned further, Mr. Oledzki misled his partner again and suggested the Forged Will was prepared first in time, such that it was invalidated by the Genuine Will. Mr. Oledzki had no explanation as to why both documents bore the same date.

25. It was later determined by other members of Mr. Oledzki's firm that the Forged Will had been produced by the firm's computer system in 2008. When confronted with this evidence, Mr. Oledzki admitted that the Forged Will had been prepared a few weeks before its discovery after the death of Mr. X. He then misled three of his partners by stating he had attended the home of Mr. X and had attested to Mr. X's signature on the Forged Will.

26. In a subsequent interview with Law Society investigators and in the Agreed Statement of Facts and Admissions, Mr. Oledzki admitted that he had forged the signature of Mr. X on the Forged Will while at his own home in Regina. He admitted he told J.D. to sign the Forged Will as a witness when he knew she did not witness the signature. He admitted he had told J.D. the Forged Will was a "True Copy" of the Genuine Will she had witnessed years before. He admitted he had misled his partners again by stating he had received instructions from Mr. X to change the appointment of executors in his Will from joint, to sole, and then back again to joint.

27. Altogether, Mr. Oledzki consciously misled his partners in several ways about the true course of events leading to the creation of the Forged Will. At one point, he propounded the Forged Will as a Will actually executed by Mr. X.

28. When faced with the prospect of providing the Forged Will to the family of Mr. X, Mr. Oledzki confessed he had forged Mr. X's signature on the Forged Will. Until then, Mr. Oledzki had propounded the Forged Will as a Will that was executed by Mr. X and not one that had been forged by Mr. Oledzki.

29. After this admission, Mr. Oledzki reported his misconduct to the Law Society.

Charges #7, 8 and 9

30. Charges 7, 8 and 9 pertain to Clients Mr. and Mrs. D. The facts supporting these Charges are summarized below. The Charges themselves are as follows:

> Charge #7 – He did prepare or cause to be prepared Last Will and Testament documents wherein his clients, Mr. and Mrs. D., were to leave him a testamentary gift of $50,000.
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> Charge #8 – He did prepare or cause to be prepared a Codicil for his client Mr. D. wherein Mr. D. was to leave him a testamentary gift of his oil, mines and mineral rights in relation to certain land.
>
> Charge #9 – He did prepare or cause to be prepared a Transfer Authorization for his client Mrs. D. wherein Mrs. D. was to transfer mineral rights to him and his family members in relation to certain land.

Charges #7, 8 and 9, - Facts

31. Charges 7 and 8 relate to the same Estate and the relevant facts will be summarized together.

32. Mr. Oledzki had been Mr. and Mrs. D's lawyer since 1976, having acted for Mr. D's parents, his sisters and sister-in-law by assisting with their Estates and preparing Wills and Powers of Attorney for them.

33. Mr. Oledzki prepared a series of Wills for Mr. and Mrs. D. Under a Will made in 1986, and more than one iteration thereof, Mr. Oledzki was a beneficiary of a $50,000.00 cash gift and a gift of mines and minerals owned by Mr. and Mrs. D.

34. Mr. Oledzki is not a family member of Mr. and Mrs. D.

35. Mr. Oledzki performed other legal services for Mr. and Mrs. D and their extended family, involving the sale of farm property, the sale and purchase of residential property and dealing with and advising them in relation to mineral and farm land. As indicated, he also prepared their Wills.

36. Mr. Oledzki visited Mr. and Mrs. D at their home in Weyburn to provide these services. Many of these meetings included Mr. Oledzki having dinner with Mr. and Mrs. D in Weyburn and in Regina.

37. Mr. and Mrs. D had no children.

38. Sometime in 1986, Mr. D told Mr. Oledzki he and Mrs. D wished to leave him a gift of $50,000.00 in cash in their Will. Sometime thereafter, Mr. D also indicated they wished to leave Mr. Oledzki one of their mineral titles.

39. Mr. Oledzki told Mr. D he could not and should not accept the gift and that Mr. and Mrs. D's proposal to that effect would not be right. Mr. Oledzki states that Mr. and Mrs. D persisted in his suggestion that Mr. Oledzki prepare a Will to this effect. Again, Mr. Oledzki states he told Mr. and Mrs. D it would not be right for Mr. or Mrs. D to leave anything to Mr. Oledzki or to any member of Mr. Oledzki's family.

40. Notwithstanding Mr. Oledzki's protestations, Mr. Oledzki agreed to and ultimately did prepare Mr. and Mrs. D's Wills in 1986 in which a cash gift of $50,000.00 was made to him. Again in 1988, Mr. Oledzki prepared their Wills in which a mineral title was gifted to him. These gifts were reflected in subsequent iterations, culminating in the final Will made the 28th of August, 2003.

41. These Wills were signed in Weyburn in the home of friends of the D family. Mr. Oledzki states he left the room when the Wills were signed and witnessed. Mr. and Mrs. D did not receive any independent legal advice in relation to the Wills or the gift to Mr. Oledzki.

42. On September 9, 2003, Mr. Oledzki met again with Mr. and Mrs. D. This time Mr. Oledzki attended the hospital where Mr. D was receiving care. Mr. Oledzki had prepared a Codicil outlining changes to both Wills, including a clause indicating Mr. Oledzki was to receive oil, and mines and mineral rights in relation to one of the D properties. The Codicil was signed by Mr. and Mrs. D and witnessed by the same witnesses to the most recent Wills. Again, Mr. and Mrs. D did not receive any independent legal advice in relation to the Codicils or the gift to Mr. Oledzki.

43. In both the Wills and the Codicils, Mr. Oledzki's spouse was designated as an alternate beneficiary to the gifts left for him in the event of his death. Mr. and Mrs. D questioned and were opposed to the inclusion of Mr. Oledzki's spouse in the Wills and Codicils. Mr. Oledzki advised them it was Mr. Oledzki's right to determine who received his gifts as an alternative in the event of his death. The alternate gift over to Mr. Oledzki's spouse was included in both the Wills and both Codicils.

44. Mr. D died on December 6, 2004. His entire Estate passed to his wife as his beneficiary. In June of 2005, Mr. Oledzki spoke to Mrs. D and suggested she should complete an *inter vivos* transfer of the farm lands and mineral titles to all the named beneficiaries in the Will. Mr. Oledzki had prepared the numerous transfers of the surface rights and mines and mineral rights to the beneficiaries. The transfers prepared by Mr. Oledzki contemplated an *inter vivos* transfer of the mineral rights. With reference to the mineral title he was to receive, the transfer was prepared in favor of Mr. Oledzki and his three children as joint tenants. These documents were never signed.

45. After Mr. Oledzki's confession to his partners in relation to the matters involving Mr. X, Mr. Oledzki contacted Mrs. D. The purpose and scope of this communication is not in evidence.

Charge #10

46. The facts supporting Charge 10 are set out below. Charge 10 itself is as follows:

> Charge #10 – He did prepare or cause to be prepared a Last Will and Testament document wherein his client, Mr. A.A., was to leave a family member of Mr. Oledzki's a substantial testamentary gift.

Charge #10 - Facts

47. The investigation in relation to the Mr. X matters precipitated Mr. Oledzki's report in relation to this Charge that he prepared a Will for A.A. in which the testator made a gift to Mr. Oledzki's son of a gold and ruby ring valued at $2,800.00, or cash in lieu.

48. Mr. Oledzki and his family had a long personal relationship with A.A. and his wife, H.A., such relationship having commenced in or about 1976. A.A. and his wife, H.A., had a particularly close relationship with Mr. Oledzki's son.

49. Mr. Oledzki is not a family member of A.A. Mr. Oledzki had a longstanding solicitor/client relationship with A.A. and H.A. and had prepared several Wills for them.

50. Mr. Oledzki had A.A. sign the Will in question on April 10, 2001 in the presence of a junior lawyer in his firm and member of his support staff. While Mr. Oledzki left the room when the Will was signed, A.A. did not receive any independent legal advice in relation to the Will or the gift to Mr. Oledzki's son.

51. A.A. died on April 8, 2007. The Will made on April 10, 2001 was still in effect at the time of A.A.'s death.

Charges #11 and 12

52. Charges 11 and 12 pertain to Client Ms. M.W.. The facts supporting these Charges are summarized below. The Charges themselves are as follows:

> Charge #11 - He did sign as witness on a Last Will and Testament and Power of Attorney of his client M.W. when he was not in the presence of M.W. when she signed the Will or Power of Attorney.
>
> Charge #12 - He did attempt to imitate the signature of Y as a witness on a Last Will and Testament of his client M.W.

Charges #11 and 12 – Facts

53. These Charges arose as a result of the Law Society's investigation into Mr. Oledzki's practice. An examination of M.W.'s Will suggested a problem.

54. In this case, M.W. instructed Mr. Oledzki to prepare a Will for her in the fall of 2004. She resided in Saskatoon. In March of 2005 Mr. Oledzki made arrangements to meet with her in Saskatoon while he was attending to other business.

55. The meeting did not proceed but Mr. Oledzki left a draft for M.W. to pick up and review. She reviewed, made a small change to the executor and executed the Will in the absence of any witness. She left the signed Will at Mr. Oledzki's hotel. He later signed the Will as an attesting witness without having witnessed her signature. Mr. Oledzki then forged the signature of his estranged spouse, R.W., as a witness to the Will. R.W. did not sign her own name as a witness to the Will and has never met M.W.

The Duty of the Lawyer

56. The disciplinary offences committed by Mr. Oledzki arise from the breach by him of two duties (among others) owed by every lawyer to his/her client: the duty of integrity and the duty to avoid conflicts of interest. Charges 1 to 6 and 11 and 12 involve forgery and an obvious breach of the lawyer's duty of integrity. Charges 7 to 10 involve a breach of the general rule against a lawyer acting in a conflict of interest with a client and the specific Rule against the lawyer receiving a benefit from a client without the client having independent legal advice.

57. The lawyer has a duty to act with integrity in all respects and at all times. The lawyer also has a duty to act in the interests of the client without allowing the personal interests of the lawyer to be in conflict with that duty. The lawyer cannot compromise this duty by facilitating a

gift or other advantage from the client. These duties will be discussed separately and in relation to the Charges before us.

Charges # 1 – 6, 11 and 12

Duty of Integrity

58. In the decision of the Benchers in *Law Society of Saskatchewan v. Nolin*[2] the Benchers reviewed the lawyer's duty of integrity as outlined in the *Code* and related commentary and jurisprudence. Those authorities need not be discussed here in detail. The relevant provisions of the *Code* are:

> RULE
>
> The lawyer shall discharge with integrity all duties owed to the clients, the court, other members of the profession and the public.
>
> *Commentary*
>
> Guiding Principles
>
> 1. Integrity is the fundamental quality of any person who seeks to practise as a member of the legal profession. If the client is in any doubt about the lawyer's trustworthiness the essential element in the lawyer-client relationship will be missing. If personal integrity is lacking the lawyer's usefulness to the client and reputation within the profession will be destroyed regardless of how competent the lawyer may be.
>
> 2. The principle of integrity is a key element of each rule of the Code.
>
> Disciplinary Action
>
> 3. Dishonourable or questionable conduct on the part of the lawyer in either private life or professional practice will reflect adversely upon the lawyer, the integrity of the legal profession and the administration of justice as a whole.3 If the conduct, whether within or outside the professional sphere, is such that knowledge of it would be likely to impair the client's trust in the lawyer as a professional consultant, a governing body may be justified in taking disciplinary action.
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> NOTES
>
> 1. Cf. CBA-COD I. O.E.D.: "Integrity...soundness of moral principle, esp. in relation to truth and fair dealing; uprightness, honesty, sincerity, candour." Cf. IBA. "Introductory". "The rules of professional conduct enforced in various countries...uniformly place the main emphasis upon the essential need for integrity and, thereafter, upon the duties owed by a lawyer to his client, to the Court, to other members of the legal profession and to the public at large."
>
> 2. "Integrity, probity or uprightness is a prized quality in almost every sphere of life.... The best assurance the client can have...is the basis integrity of the professional consultant.... Sir Thomas Lund says that...his reputation is the greatest asset a solicitor can have.... A reputation for integrity is an indivisible whole; it can therefore be lost by actions having little or nothing to do with the profession.... Integrity has many aspects and may be displayed (or not) in a wide variety of situations...the preservation of confidences, the display of impartiality, the taking of full responsibility are all

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2 08/04 decided October 3, 2008

aspects of integrity. So is the question of competence.... Integrity is the fundamental quality, whose absence vitiates all others." Bennion, passim, pp. 108-12 (emphasis added).

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

* * *

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

(c) making untrue representations or concealing material facts from a client with dishonest or improper motives;

(d) taking improper advantage of the youth, inexperience, lack of education or sophistication, ill health, or unbusinesslike habits of a client;

* * *

(g) knowingly assisting, enabling or permitting any person to act fraudulently, dishonestly or illegally toward the lawyer's client;

* * *

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

59. This is the first Rule in the *Code* and one which informs all other duties. It establishes the foundation of the relationship between lawyer and client and the relationship between society at large and the profession itself.

60. The trust reposed on individual lawyers and the profession is integral to a client's right and expectation of good representation and access to justice. Where this trust is broken by the actions of an individual lawyer, the profession has a regulatory duty to respond with those sanctions necessary to protect the public and the public's confidence in the profession's regulatory responsibility.

61. As the Benchers stated in *Nolin*:[3]

> 48. The good reputation of the lawyer is founded on his or her integrity. The court in *Adams* quoted with approval from the Supreme Court of Canada's judgment in *Hill v. Church of Scientology of Toronto* where Cory, J stated:
>
> > The reputation of a lawyer is of paramount importance to clients, to other members of the profession and to the judiciary. A lawyer's practice is founded and maintained

[3] *Nolin*, para. 9

> upon the basis of a good reputation for professional integrity and trustworthiness. It is the cornerstone of a lawyer's professional life. Even if endowed with outstanding talent and indefatigable diligence, a lawyer cannot survive without a good reputation.

49. As the court in *Adams* concluded, every member is deemed to understand that his or her behaviour reflects upon the profession at large and must therefore stand to the scrutiny of others.

Charges #7, 8, 9 and 10

Conflict of Interest between Lawyer and Client

62. The Rule in Chapter VI of the *Code* contains a series of guiding principles and commentary reflecting a non-exhaustive list of circumstances where a lawyer may be in conflict with the duty of loyalty to the client. The relevant provisions are excerpted below:

> RULE
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> * * *
>
> (b) The lawyer shall not act for the client where the lawyer's duty to the client and the personal interests of the lawyer or an associate are in conflict.
>
> (c) Unless the client is a family member and there is no appearance of undue influence, the lawyer shall not prepare or cause to be prepared an instrument giving the lawyer or an associate a substantial gift from the client, including a testamentary gift.
>
> (d) The lawyer should not enter into a business transaction with the client or knowingly give to or acquire from the client an ownership, security or other pecuniary interest unless:
>
> (i) the transaction is a fair and reasonable one and its terms are fully disclosed to the client in writing in a manner that is reasonably understood by the client;
>
> (ii) the client is given a reasonable opportunity to seek independent legal advice about the transaction;
>
> (iii) the client consents in writing to the transaction; and
>
> (iv) there is no appearance of undue influence.
>
> *Commentary*
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> * * *
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> 2. A conflict of interest between lawyer and client may exist in cases where the lawyer gives property to or acquires it from the client by way of purchase, gift, testamentary disposition or otherwise. In cases of inter vivos gifts or purchases, it may be sufficient to ensure that the client has independent legal advice before proceeding with the transaction. However, in cases of testamentary dispositions or where there is any indication that the client is in a weakened state or is not able for any reason to understand the consequences of a purchase or gift or there is a perception of undue influence, the lawyer must not prepare the instrument in question and the client must be independently represented. Independent representation and preparation of the instrument will not be required where the gift, purchase or testamentary disposition is insubstantial or of a minor nature having regard to all of the circumstances, including the size of the testator's estate.
>
> 3. This Rule applies also to situations involving associates of the lawyer. Associates of the lawyer within the meaning of the Rule may include the lawyer's spouse, children, any relative of the lawyer (or of the lawyer's spouse) living under the same roof, any partner or associate of the lawyer in the practice of law, a trust or estate in which the lawyer has a substantial beneficial interest or for which the lawyer acts as a trustee or in a similar

> capacity, and a corporation of which the lawyer is a director or in which the lawyer or an associate owns or controls, directly or indirectly, a significant number of shares.
>
> * * *

63. The duty of integrity is an integral component of the lawyer's duty of loyalty to the client. The client is entitled to an unreserved confidence the lawyer will protect the client's interests and not take advantage of his or her vulnerabilities. This level of trust and confidence in the lawyer requires unfailing integrity on the part of the lawyer.

Principles, Objectives and Factors Relevant to Penalty Assessment

64. We approve and have adopted the approach to penalty assessment articulated by the Benchers in *Nolin* and *McLean* and the authorities referred to us by counsel, including the well-known decision in *Law Society (British Columbia) v. Ogilvie*[4] and the Alberta Hearing Guide.

65. The misconduct in this case involves a breach of the duty of integrity in relation to Charges 1-6, 11 and 12 and the duty not to act in conflict with the duty to a client in relation to Charges 7-10. The jurisprudence and penalty assessment objectives relevant to each of these separate duties will be discussed below.

Charges #1 – 6, 11 and 12

66. These Charges involve a breach of integrity. We have therefore considered the several authorities referred to in *Nolin*, including those involving a breach of the duty of integrity and misappropriation. While there was no misappropriation by Mr. Oledzki, his misconduct is nevertheless a serious breach of the duty of integrity and, from that perspective, we have found the authorities in *Nolin* to be helpful in assessing the appropriate penalty.

67. The categories of misconduct that constitute a serious breach of the duty of integrity, and bring into question the lawyer's suitability to practice, are not closed. As the Benchers stated in *Nolin* at paragraph 67:

> While the inquiry is focused on how the lawyer's integrity is manifest in behaviour, in each case, certain categories of misconduct are inherently and fundamentally dishonest. In cases of fraud and misappropriation, such behaviour is incompatible with the integrity and probity expected of lawyers.

68. Counsel for the Law Society referred us to decisions in which forgery alone, without misappropriation, was held to be a serious breach of the duty of integrity, resulting in disbarment. In *Law Society of British Columbia v. Webb*,[5] the lawyer prepared and forged a real estate transfer and filed it with the land titles office. The Hearing Committee found he did not commit the forgery for personal gain but did so to correct his error on a previous transfer. He was disbarred by a unanimous decision of the Committee and was later prosecuted by the Crown for forgery.

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4 [1999] L.S.D.D. No. 45 (B.C. L.S.D.H. Pan.)

5 1983 - unreported

69. In *Law Society of Upper Canada v. Filipovich*,[6] the lawyer forged signatures and misled clients, resulting in difficulties and inconvenience for citizens and other solicitors. The pattern of forgery and misleading others occurred in three discrete matters. There was no financial gain to the member and no loss to the parties involved. The lawyer was disbarred. At paragraph 5 of the discipline sentencing decision the panel stated:

> The public in this case must be protected, and the public must be assured that in matters of importance such as mortgage transactions that solicitors acting in these matters will be beyond reproach, and for this reason, as a matter of deterrence, we are proceeding in the fashion that we are with respect to penalty.

70. In *Law Society of Manitoba v. Gottli* [7] and *Law Society of British Columbia v. Donald*[8] the members committed forgery as a means to misappropriate client funds for the lawyer's personal benefit. In *Gottli*, all funds misappropriated were later repaid. The member had a prior discipline record from 10 years before. In *Donald*, all but $7,000.00 of the misappropriated funds were returned.

71. In each case the member was disbarred. The panel in *Donald* said this of the member's conduct:

> [...] forgery and misappropriation, being the gravamen of the offences of which the member was guilty, are such fundamental abrogations of the responsibilities of the legal profession that only the most significant sanction is appropriate.

72. Counsel for the Law Society urged us to accept, as a matter of principle, that forgery in the preparation of a Will can be more serious than the cases referred to us where the forgery was discovered and rectified.

73. We conclude that a very serious breach of the duty of integrity occurs where a lawyer forges the signature of a client, and represents it to be the signature of that client in circumstances where the client cannot answer. Where the lawyer is in a position of trust, and is responsible for giving effect to a client's testamentary instructions, the lawyer's conduct must be above reproach. A breach of that responsibility is aggravated when it is committed in a way that is intended to avoid discovery.

74. An opportunity for fraud and serious mischief arises where a lawyer uses his or her trusted position as counsel to negate a client's final wish by replacing a genuine Will with a forgery. Under these conditions, the lawyer's personal integrity and the reputation of the profession is called into question, thus invoking the objective of protecting the public from the lawyer in question and other lawyers who cannot be trusted. In these circumstances, the sanction must also be sufficient to generally deter such conduct and to maintain the public's confidence in the legal profession's ability to protect the public.

75. In cases of forgery and other serious breaches of the duty of integrity, the jurisprudence suggests disbarment is generally the appropriate sanction. Circumstances that may mitigate

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6 [2002] L.S.D.D. No. 88
7 [1995] L.S.D.D. No. 80
8 [1993] L.S.D.D. No. 178

against disbarment in this case will be discussed in the context of the other Charges in the analysis to follow.

Charges #7, 8, 9 and 10

76. A conflict of duty between the lawyer and client arises where the role of the lawyer and the circumstances of the solicitor / client relationship are such that the lawyer's own interests are brought into conflict with the lawyer's duty to a client. Where a lawyer derives a benefit from that relationship, there is an appearance, and in some cases a presumption, of undue influence. The Rule in the Code is intended to protect clients from the vulnerability that inheres in the solicitor / client relationship.

77. Where there is a breach of the Rule, the sanction must be appropriate to secure the protection of the public and the public's confidence in the profession's ongoing ability to protect the public.

78. The seriousness of a breach of the Rule will be measured by the intention of the lawyer, the degree of actual or circumstantial influence and its actual or potential harm.

79. Counsel for the Law Society referred us to two decisions involving a breach of this Rule. In *Law Society of Upper Canada v. Ludwig*[9] the lawyer was deeply involved with a vulnerable and elderly couple with whom he had cultivated a personal relationship. He facilitated and accepted substantial *inter vivos* and testamentary gifts and benefits, some of which accrued when he had reason to doubt the clients' capacity.

80. The panel referenced the importance of avoiding any clear or apparent conflict or impropriety.

> The member's friendship with [couple "H"] cannot justify his self serving behavior. This is not to say that there may not be circumstances in which a lawyer can provide legal services for friends and relatives. However, where there is a personal benefit to the lawyer arising from the documents he or she prepares, or the services he renders, other than a reasonable fee, the lawyer must avoid both the clear conflict and any suggestion of impropriety.

There was no suggestion by the panel that a close friendship between the client and lawyer will excuse or justify the lawyer receiving a benefit from the client. The panel in Ludwig instead concluded that a friendship with a vulnerable client, and steps taken by the lawyer to nurture that friendship, deepened the vulnerability of the client and therefore qualified as an aggravating factor. At paragraph 5 in its reasons for decision on penalty, the panel stated:

> The member blurred the line between his role as a friend and his role as a lawyer. The fact that the member charged no fee for his services is not a mitigating factor. We find, however, that the member's intimate friendship with vulnerable clients, which he nurtures and then used to his own financial advantage, is an aggravating factor. We are of the view that a member of the profession should be very mindful of the potential for conflict when acting for a vulnerable client with whom she or he has a personal relationship.

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9 [Tab 5, Paragraph 15]

81. In *Law Society of Saskatchewan v. Jeffrey Miller*,[10] the lawyer was involved in a close personal relationship with a client. Apart from their longstanding friendship, there was no unique vulnerability. The client asked Mr. Miller to prepare a Will and to include the lawyer as a beneficiary. He protested at first, stating it was a conflict of interest and inappropriate. He ultimately prepared a Will containing that bequest and repeated that bequest in a subsequent iteration in a new Will. He was suspended for a period of three months in relation to the single Charge of drafting a Will in which he was a beneficiary.

82. The reasons for decision are not sufficient to indicate the principled basis for the sanction imposed upon Mr. Miller. The decision also involved a consecutive six month suspension for not being frank and candid with the court by not disclosing he had prepared the Will and by applying to have the Will probated at a judicial centre where the lawyer did not reside. The most that can be said of the sanction in *Miller* is that the Benchers considered both aspects of misconduct to be deserving of serious sanction.

83. In *Ludwig*, the panel disbarred Mr. Ludwig and suggested the misconduct was a breach of the duties of the lawyer's core responsibility to protect the client's interest. The Benchers articulated the importance of general deterrence and a strong denunciation to protect the public's confidence in the profession's ability to self govern. The panel stated at paragraphs 12 and 13 that:

> The breaches were fundamental and go to the heart of a lawyer's responsibility which is to protect the client's interest. It also went to the heart of public confidence in the profession.
>
> The member gained the confidence of [couple "H"] by providing day-to-day assistance to them. By doing so, he took advantage of their deteriorating physical and mental health and manipulated [couple "H"] for his own financial gain. We believe that the public's confidence in the profession would be shaken unless the member's penalty is severe. As such, we find that Peter Ludwig should be disbarred.

84. Put another way, the panel in *Ludwig* effectively concluded that the lawyer misappropriated his client's property by exploiting his client's vulnerability within the context of the solicitor/client relationship. In substance, there is little distinction between this form of exploitation and a direct misappropriation. In either event, the lawyer inappropriately benefits from his or her trusted position as the trustee of a client's affairs and property.

85. We hasten to add for the purposes of this analysis that not every case of taking or receiving a benefit from a client effectively amounts to a misappropriation. Before applying the general rule of disbarment in cases of misappropriation, there must be a finding of misappropriation by exploitation or other means. Simply accepting and facilitating a gift from a client may still involve a breach of duty to the client without it qualifying as an act of misappropriation. In any event, preparing a Will under which a benefit is taken from a client is a form of misconduct which may support a serious sanction.

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[10] [2000] [Tab 6, Paragraph 21]

86. The overall penalty appropriate for all Charges in this case must be determined in the context of the aggravating and mitigating factors discussed in the analysis to follow.

Analysis

Analysis – Charges #1 – 6

87. These Charges involve a series of actions involving intentional forgery, misrepresentation and an attempt to alter the appointment of an executor under a Will. It is helpful in this context to begin the analysis with an objective characterization of the acts themselves.

88. In relation to Charges 1-6, the misconduct involved an initial act of forgery. This was followed by Mr. Oledzki misrepresenting the Forged Will to a neighbor and to his former partners as something it was not. If the Forged Will were admitted to probate, the testamentary intentions of Mr. X would have been negated. The rights and powers of the executors under the Genuine Will would have been changed. Under the Genuine Will, the executors were appointed jointly, thus requiring consensus in all decisions, including the discretionary distribution of residue. Under the Forged Will, Mr. X's son's rights and powers as a joint executor were removed, thus compromising his entitlement to equally participate in discretionary decisions required of executors.

89. The forgery and misrepresentation were committed while Mr. Oledzki was in a position of trust. He was the lawyer for Mr. X, and had been so for many years. The Will was done when Mr. X was suffering from a terminal illness. Mr. Oledzki was the only person who knew, or might ever have known, he had forged the Will and falsely presented the same as a Will executed by Mr. X.

90. Mr. MacKay suggested at the hearing that a copy of the Genuine Will had been previously delivered to one of the executors. Mr. Huber did not dispute this suggestion. Mr. MacKay therefore argued the Forged Will could not have been probated. This does not necessarily follow as Mr. Oledzki would have been in a position to present the Forged Will as having been last in time and therefore caused the Forged Will to be admitted to probate. When asked by his fellow partners to explain the existence of two Wills dated the same date he misrepresented events. In two different versions of events he persisted in his assertion that Mr. X himself had signed the Forged Will when Mr. Oledzki knew he had forged Mr. X's signature. At the very least, the circumstances support an inference the Forged Will was prepared for the purpose and with the intent of misleading.

91. As a matter of law, a Will is read as of death, and thus reflects the last wish of the testator. Had the Forged Will replaced the Genuine Will, it would have negated the true and final intentions of Mr. X. Mr. Oledzki's actions violated the trust reposed in him by Mr. X to give effect to his final wishes.

92. It is not necessary to determine whether Mr. Oledzki's actions amounted to fraud, or attempted fraud, as defined by the Supreme Court of Canada in *R. v. Theroux*.[11] The question is whether his misconduct raises an issue as to integrity or good character generally. It is therefore

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[11] [1993] S.C.J. No 42, para. 4

more helpful in this context to discern how Mr. Oledzki's state of mind, intent and integrity is manifest in his conduct.

93. On their face, overt acts of forgery and misrepresentation are patently dishonest. In this case, it is also possible to draw inferences about Mr. Oledzki's state of mind and motives from the circumstances in evidence and Mr. Oledzki's own admissions.

94. The misconduct was not a spontaneous or isolated act. Rather, it involved a series of intentional steps, which, when taken together, demonstrate a premeditated, deliberate scheme to possibly commit a fraud, or at the very least to mislead. The evidence shows that:

(a) Mr. Oledzki instructed his assistant to prepare the Forged Will;
(b) In creating this document, Mr. Oledzki replaced Mr. X's previous directions regarding the appointment of executors;
(c) He was never instructed by Mr. X to do so;
(d) He took the document home where he privately forged the signature of Mr. X;
(e) He knew his neighbor, J.D., had signed the Genuine Will as a witness;
(f) He then back dated the Forged Will to the same date as the Genuine Will, thus creating the appearance the Genuine Will had been signed on the same date in the presence of Mr. Oledzki and the same witness, J.D.;
(g) When J.D. appeared to be moving out of her home, he asked her to sign again as a witness. He told her it was a copy of the same document, when he knew it was not;
(h) He then brought the Will to his office and placed it on the client file for Mr. X. The Agreed Statement of Facts and Admissions states at paragraph 10:

> The Member has advised the Law Society that he knew that what he had done was wrong immediately after he had JD witness the Forged Will. The Member stated that he knew the Forged Will needed to be destroyed at this moment. However, the Member took the Forged Will from his home and caused it to be delivered to his office and caused the Forged Will to be placed on the file belonging to Client X. The Forged Will was never destroyed or voided despite the Member's admission that he knew that what he had done was wrong.

95. As indicated above, Mr. Oledzki then made a series of false and misleading statements to his partners at the time regarding the circumstances of and Mr. X's intentions regarding the Genuine Will and the Forged Will. In the first version of events represented to his partners, Mr. Oledzki stated that Mr. X himself had executed the Forged Will. He also misrepresented Mr. X's instructions by stating Mr. X instructed him to change the appointment of executors under the Genuine Will.

96. He ultimately confessed that the Forged Will was invalid and that he had never been instructed to change the Genuine Will.

97. These actions are objectively consistent with a considered intent to propound a forged Will as genuine or to at least carry out a plan to deceive. Mr. Oledzki's consciousness of guilt or

wrongdoing on some level is confirmed by his own admission that he knew his actions were wrong and that the Will should be destroyed.

98. Mr. Oledzki knew, or ought to have known, his conduct represented a breach of his duty to his client and his overarching duty to act in all respects with honesty and integrity in his dealings with his client, the public, and his colleagues at his former firm.

99. In the face of the foregoing we are unable to accept the written submissions of Mr. Oledzki's counsel that Mr. Oledzki was merely "vague initially" when he informed his partners what had happened. As the record shows, there was a series of clear but false representations which were fabricated by Mr. Oledzki.

Analysis – Charges #11 & 12

100. The misconduct in relation to Charges 11 and 12 is similar to the misconduct in relation to Charges 1-6. In these matters, Mr. Oledzki signed as an attesting witness without actually having witnessed his client's signature. He then forged the signature of his wife from who he was separated at the time as a witness to a Will, when she had never seen the Will or met the Testator.

101. As in the Will prepared for Mr. X, Mr. Oledzki committed an act of forgery and falsely represented himself to be a witness for the ostensible purpose of formalizing a Will.

102. As in the case of Mr. X, he knew, or should have known it was "wrong" to forge a signature. This series of events was consistent with a consciousness he was acting deliberately and dishonestly.

Analysis Charges #1-6, 11 and 12

103. Here, Mr. Oledzki committed several acts of dishonesty in relation to two separate client matters. The events giving rise to Charges 11 and 12 occurred in March of 2005. The events giving rise to Charges 1-6 occurred in July of 2008. The time intervening between these events spanned approximately 40 months.

104. As noted, a lawyer's good character is founded on his or her trustworthiness. Each lawyer is accountable to the profession and the public through his or her behavior. The Benchers have previously held that where the lawyer's conduct manifests a pattern of dishonesty, the character of the lawyer becomes incompatible with the suitability to practice and the privilege of membership.[12]

105. As the authorities referenced in *Nolin* indicate, a serious breach of the lawyer's duty of integrity brings into question his or her suitability to practice. This concern is raised in cases involving dishonest acts including fraud, forgery and misappropriation, where the general rule is that, save in unusual circumstances, disbarment is the appropriate penalty.

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12 *Nolin*, paras. 88 and 89

Analysis – Charges #7-10

106. In each of these cases, Mr. Oledzki has admitted he prepared a Will under which he, or his family members, were beneficiaries. In the last Wills of Mr. and Mrs. D, the Will provided a gift over to his wife. The Will of Mr. A.A. confers a substantial gift upon his son.

107. Mr. Oledzki knew, and told Mr. and Mrs. D, that it was wrong for them to make a gift to him in their Will. As the Will of Mr. A.A. was made later in time it is also reasonable to infer Mr. Oledzki knew it was wrong to facilitate a testamentary gift to his son.

108. Mr. Oledzki did not recommend or arrange independent legal advice before concluding these Wills. While he arranged for other individuals and other members of his firm to witness these Wills in his absence, there is no suggestion they provided independent advice. It is reasonable to infer that this was done to ensure the gift over to Mr. Oledzki complied with the requirements under *The Wills Act* and did not therefore fail on the grounds he was present as an attesting witness.

109. Mr. Oledzki suggests the presence of a different lawyer from Mr. Oledzki's firm at the execution of the Will prepared for Mr. A.A. negates any apprehension of undue influence. With respect, undue influence, or an apprehension of undue influence, is not a component of the Charge. Undue influence is one element of the mischief the Rule is intended to prevent. The absence of undue influence is no complete answer to the Complaint. It was Mr. Oledzki's responsibility and positive duty to ensure independent advice was given by another lawyer at arms' length to Mr. Oledzki and his firm. These Charges involve more than the breach of a technical Rule. They involve a breach of the lawyer's duty to protect his client's interests and to not prefer his own.

110. In any event, Mr. Oledzki has admitted to the facts contained in the Agreed Statement and admitted the Complaint and allegations of conduct unbecoming are well-founded. Moreover, the evidence shows Mr. Oledzki was in a close, personal and trusted relationship with each of these clients. The evidence also shows he used this relationship in the creation of the Wills for Mr. and Mrs. D to impose his desire for a gift over to his wife, contrary to his clients' wishes. The suggestions he was close to Mr. and Mrs. D and to Mr. A.A. and that the gifts were presumably made freely are not supported by any evidence from these clients. These circumstances do not mitigate the seriousness of Mr. Oledzki's misconduct. But apart from Mr. Oledzki's close friendship with these clients, there is no evidence of vulnerability. As such, we are unable to recognize these circumstances as an aggravating factor, in the same way as the panel did in *Ludwig*.

111. There is evidence Mr. Oledzki used his position to influence his clients to benefit him and his family. Mr. Oledzki prepared transfers with a view to completing the intended gifts in Mr. and Mrs. D's Wills into gifts *inter vivos*. This is consistent with an intention on Mr. Oledzki's part to unconditionally acquire these assets for himself and his family, without reserving the right of Mrs. D to change her intentions and her Will.

112. We were not given any convincing evidence that these transfers were consistent Mrs. D's instructions or interests. The evidence does support the inference Mr. Oledzki intended to secure title to these assets for the benefit of Mr. Oledzki and his family.

113. In each case, the misconduct is a clear breach of Mr. Oledzki's duty to protect his client's own interests and to not prefer his own.

114. The jurisprudence regards this misconduct, in the context of preparing Wills for clients, to be a serious breach of the lawyer's duty to protect the client, and the client's justifiable expectation the lawyer may be trusted for that purpose.

115. The jurisprudence has imposed serious penalty, including disbarment, in these cases.

Analysis – All Charges

116. Mr. Oledzki has raised a number of considerations he suggests militate against the most serious sanction. Each will be dealt with in turn.

117. To demonstrate Mr. Oledzki's good character and to mitigate a serious penalty, his counsel filed 28 letters from prominent and respected members of the legal and business communities and from different arts, cultural, church, education and sports groups. Among these was a letter from a former colleague of Mr. Oledzki and from another member of the firm who last employed him, indicating that firm's willingness to provide a supervised work environment for Mr. Oledzki. These letters also included a letter from his priest, his psychologist and the mother of the Testatrix of the Will referenced in Charges 11 and 12.

118. In his written submission, Mr. Oledzki's counsel summarized the relevance of this evidence this way:

> The foregoing indicates that major players in the legal profession as well as the community at large have put their personal reputations on the line in an effort to have Garret continue his profession. Obviously one of the considerations in penalty is the reaction and perception of the public and it appears that a cross section of the public and the profession are not of the view that he should be suspended or something more drastic.

119. As noted in *Nolin*, the relevance and inherent limitations of character evidence are discussed by Gavin McKenzie[13]:

> Some types of evidence in mitigation of penalty are more reliable indicators of the likelihood of recurrence than are others. Character Evidence is common and can be persuasive, but it is much less valuable if the witnesses are not fully informed of the facts. Even then, it is difficult to gauge the extent to which the evidence is affected by factors such as friendship. Virtually all lawyers are responsible for some good deeds, and virtually all are held in high esteem by some other lawyers and clients. The discipline hearing panel must ensure that the process is not transformed from a deliberative process into a referendum among members of the profession

In *Nolin*, The Benchers held such evidence should be treated with caution and be considered and weighed against the whole of the evidence in any event.

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13 MacKenzie, paras. 26 to 45

120. In the regulatory and discipline context, the Benchers' responsibility for penalty assessment should not be abdicated to the community at large, even where a respected element of that community supports leniency. In the end, the Benchers alone are responsible for exercising the authority and responsibility of the Law Society in discipline matters. To that end, the Benchers assume the broader responsibility of meeting the objectives of the assessment process.

121. In decisions where the integrity and character of a lawyer are an issue, a determination must be made in the context of all the evidence, including such inferences as are objectively reasonable from the lawyer's behavior in general, including his misconduct.

122. Subject to its inherent limitations, evidence of very good character and reputation is relevant to the overall determination of a lawyer's integrity. The Benchers must still decide on the whole of the evidence, if a lawyer's misconduct is untrustworthy and that he acted with deliberate and dishonest intent. Where this finding is made, as is the case here, the sanction must fulfill the broad and legitimate penalty objectives of the discipline process.

123. Mr. Oledzki addressed the Discipline Committee at the discipline sentencing hearing. He expressly admitted his guilt and responsibility. He apologized. He did not attempt to present himself as having a state of mind consistent with diminished responsibility for his actions. There is no suggestion to this effect in his psychologist's report. The most that was said by Mr. Oledzki was that he had become busy with political and other activities outside his practice and that this somehow compromised his judgment. In this report, his psychologist stated:

> I did not complete a comprehensive mental health assessment. After our first two sessions, I felt that Mr. Oledzki was mentally stable, competent and not suffering from any clinical syndrome.

His psychologist did not express any definitive conclusion as to the cause of Mr. Oledzki's behaviour. He suggested that certain feelings of responsibility, failure and guilt for those in his care "may be at the heart of this incident and explain what I assume to be his uncharacteristic behaviour in this matter." The psychologist does not articulate the foundation for this assumption. The report as a whole suggests Mr. Oledzki knew what he was doing was wrong. There is no clinical basis or other evidence to conclude he was not conscious of or in control of his actions. As indicated above, his misconduct in relation to Charges 1-6 is consistent with a persistent plan to deceive and consciousness that what he was doing was wrong. He knew it was wrong to forge signatures. He knew it was wrong to create and forge a Will without any instructions from his client. He also knew it was wrong to facilitate a gift to him or his family from his clients.

124. In *Nolin*, the Benchers considered the factors that may mitigate against responsibility for serious acts of dishonesty where the lawyer's integrity and character are brought into question. As the authorities in *Nolin* suggest, a lawyer must be trusted in all circumstances and must be held to account where his conduct and character are incompatible with the overarching duty of integrity.

125. Stress and the other pressures of a busy practice do not displace the duty of integrity. In his discussions of factors mitigating against disbarment, MacKenzie said this:[14]

> Evidence that a lawyer's misconduct occurred during a period of stress caused by financial or matrimonial pressures may also be of doubtful value in mitigation of the penalty. The fact that lawyers yield to temptation while under stress may, indeed, be regarded as a sign that they lack the moral strength necessary to be lawyers. As an Ontario discipline committee states in a 1995 case, **"[i]t is exactly when the stresses are greatest, when compliance with our profession's rules of conduct are most difficult, that members must faithfully hew to the line. Those are the times when lawyers must be worthy of being 'trusted to the ends of the earth', no matter what difficulties they face."** [emphasis added]
>
> Neither the fact that a lawyer has a heavy workload nor the fact that a lawyer relied on employees should be compelling mitigating factors, because both are within the lawyer's control.
>
> Other factors may, nevertheless, suggest strength of character in ways germane to a lawyer's ability to function responsibly in practice. The fact that a lawyer has made restitution is always relevant (except perhaps in cases in which it has been effected by the exercise by the victim of a right of set-off or other legal process), but it is much more likely to be indicative of a genuinely altered attitude if made prior to discovery by the law society of the lawyer's misconduct. Similarly, a lawyer who voluntarily discloses wrongdoing to the law society before it learns of the lawyer's misconduct -- and before it has become inevitable that the misconduct will come to light -- may properly be regarded as a more suitable person to continue in practice than one who merely co-operates with the law society after it uncovers misconduct as a result of the initiatives of others.

126. The explanation that Mr. Oledzki had become busy and overwhelmed by his practice and responsibilities in the community are recent in time and can only mitigate his most recent misconduct, involving Charges 1 to 6 and 11 and 12. The misconduct involving Charges 7-10 occurred over the course of several years from 1986 to 2003. There can be no credible suggestion Mr. Oledzki's recently busy practice and work in the community are an explanation for these events. Moreover, claims of this nature are generally made to excuse short-cuts. They cannot, and should not, be advanced as an excuse for a breach of integrity or a lawyer preferring his or her interests in conflict with the duty to the client. The Benchers cannot excuse misconduct of that nature on the grounds a lawyer was busy or overwhelmed. Otherwise, the credibility and legitimacy of the discipline process, and the public's trust in and expectations of the legal profession and its ability to govern itself, would be seriously compromised.

127. In his written Brief, Mr. McKay stated that Mr. Oledzki "did not cause injury to anyone." Although this may be correct in relation to Charges 11 and 12, the same cannot be said of the other matters.

128. In relation to Charges 1 to 6, the evidence shows Mr. Oledzki attempted to carry out a plan having the potential to negate the testamentary intentions of his client and to thereby

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[14] MacKenzie, paras. 26-45 and 26-46.

commit a serious breach of the trust reposed in him by his client. Mr. Oledzki intended this to be done without the knowledge of his client. Had it been discovered by his client, it is reasonable to conclude it would have caused his client a sense of upset and betrayal.

129. Had the Forged Will been probated, Mr. Oledzki's misconduct would have affected the rights and powers of his client's children in their capacities as executor and executrix of their father's estate. In the end, his client's children were justifiably and profoundly upset by Mr. Oledzki's attempt to negate their father's final wish. Their pain was compounded by their close personal relationship with Mr. Oledzki and the trust and respect reposed in him by Mr. X and his family. A very clear sense of legitimate betrayal resonates in the impact statement from the family.

130. In relation to Charges 7-10, he put himself in a position of improperly obtaining a series of testamentary benefits for him and his family. In the case of Mr. and Mrs. D, he created Wills which benefitted his family, contrary to his client's wishes. In his capacity as counsel for Mrs. D, he took steps to effect an *inter vivos* transfer of land. As already indicated, these transfers would have caused the lands and other interests to irretrievably pass to him and his family, and could not have been part of Mrs. D's estate or subject to a change in her intention and her ability to revoke the gift as a testamentary disposition. Had any of these plans come to fruition, Mr. Oledzki and his family would have inappropriately benefitted.

131. Time and effort has been expended by his former partners to investigate and otherwise deal with these issues and their intended impact on the clients of the firm and the reputation of the firm itself.

132. His misconduct as a whole has injured the reputation of the legal profession.

133. Mr. Oledzki's counsel suggested he self reported all misconduct and did not attempt to hide anything from the Law Society. This claim is true, but only in part. Mr. Oledzki did report the misconduct involving Mr. X, but only after attempting to mislead his former partners about the relevant events. When faced with the prospect of inevitable discovery, he first confessed to his partners and then self reported to the Law Society. It is not clear whether information regarding all other misconduct was volunteered by Mr. Oledzki or discovered by the Law Society in its investigation.

134. Self reporting is generally regarded as a mitigating factor because it shows insight by the lawyer into his or her wrongdoing, and is therefore much more likely to reflect a genuinely altered attitude.[15] In this case, the most serious misconduct involved the forgery of Mr. X's Will and Mr. Oledzki's attempts to mislead his partners about the circumstances of that Will. It is clear from the evidence that Mr. Oledzki did not disclose this misconduct until its discovery was inevitable. Even then, he initially attempted to conceal his misconduct by misleading his former partners.

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15 MacKenzie, para. 64; *Nolin*, page 27

135. Had Mr. Oledzki reported all matters to the Law Society before discovery was inevitable, his cooperation would have weighed more heavily in his favor than a self report and admission given in the face of discovery.

136. We are unable to accept his counsel's assertion that "none of the complaints involved taking advantage of a vulnerable party".

137. In the case of Mr. X, Mr. Oledzki forged a Will when his client was terminally ill and within days of his death. Mr. Oledzki was his lawyer and had possession of the related client file and the original Genuine Will. He had the opportunity and ability to substitute the Forged Will for the Genuine Will because Mr. X entrusted him with his affairs, the making of his Wills and their safe keeping. The existence of a copy of the Genuine Will in the hands of the executor did not preclude Mr. Oledzki from later preparing the Forged Will and propounding it as having been made later in time.

138. In the matters referenced in Charges 7-10, Mr. Oledzki caused his clients to provide testamentary gifts to him and his family. In one case, he prepared a Transfer Authorization intended to convey an *inter vivos* gift of the lands referenced in the testamentary gift. The Rule prohibiting such conduct recognizes that a conflict of interest arises in such cases because of the trust and vulnerability that inheres in the solicitor/client relationship.

139. Paragraph 25 of the Agreed Statement of Facts and Admissions indicates that Mr. Oledzki used his position and authority as a lawyer to prevail over his client's stated reluctance to provide a gift over to Mr. Oledzki's spouse. To this extent, his clients were vulnerable to his influence. By influencing his clients, Mr. Oledzki appeared to prefer his own interests.

140. Mr. Oledzki's counsel also suggested in his written Brief that: "There was no dishonest or selfish motive."

141. We have difficulty accepting this submission. As the evidence reviewed above indicates, Mr. Oledzki's forgeries and related misrepresentations were patently dishonest. He did put himself in a position of deriving a personal benefit from the Wills he prepared. In so doing, he promoted his own financial interests in conflict with his duty to his clients.

142. In relation to Charges 7-10, Mr. Oledzki's counsel asserted that these clients were close friends of Mr. Oledzki and wished to make a gift to him and his immediate family. He suggests there was no undue influence, that Mr. Oledzki left the room and was not present when the Wills were signed and that the lawyer and another employee of Mr. Oledzki's former firm who did witness the Will raised no concern or issue about the gift to Mr. Oledzki.

143. We do not accept Mr. McKay's assertion there "is no indication that there was any influence placed on either of these faculties to make the dispensation they did". The evidence states clearly that Mr. Oledzki did influence Mr. D and Mrs. D by asserting they should provide a gift over to Mr. Oledzki's spouse in the event he predeceased Mr. and Mrs. D. The Agreed Statement of Facts indicates they were opposed to this gift but agreed to the gift over after Mr. Oledzki advised them it was his right as a beneficiary to request a gift over. After the death of Mr. D, Mr. Oledzki then prepared *inter vivos* transfers of these and the other gifts contemplated

by the Will of Mrs. D. The transfer also contemplated a conveyance to his children when he was never instructed to do so.

144. More importantly, Mr. Oledzki admitted in the Agreed Statement of Facts he knew these gifts were wrong and made no attempt to arrange independent counsel. He agreed the complaint in relation to all Charges was well founded.

145. Mr. Oledzki's counsel argued there was no historic and strict prohibition in the relevant provisions of the *Code* and its varying iterations over the period of time when these Wills and gifts were made. He suggested with respect to Mr. A.A. and Mr. D and Mrs. D that he was unaware of the change in language to the *Code*: "otherwise he would have sent the clients to independent lawyers".

146. Much of this argument appears intended to demonstrate Mr. Oledzki's conduct is not a breach of the Rule and therefore not conduct unbecoming and not deserving of any penalty. With respect, these submissions do not address the substantive concern that arises when a lawyer places his or her own interests in priority to and in conflict with the duty to his or her client. Drafting a Will under which the lawyer is a beneficiary is merely one example articulated by the *Code*. At its essence, the lawyer's duty to the client transcends all other interests, including the personal interests of the lawyer. A caution to this effect in the context of the lawyer's duty in preparing Wills is expressed as early as 1964 in The Canons of Legal Ethics and Etiquette of the Law Society adopted by the Benchers on September 24, 1964 at page 4(13):

> "He should not draw a will by which he benefits as a legatee".

In this case, Mr. Oledzki has admitted his actions were in conflict with the *Code* and his duty to his clients and therefore constitute conduct unbecoming.

147. Mr. McKay asserts, in regard to the completion of Ms. W's Will as described in Charges 11 and 12, the Will conformed with her intention, that no harm was done and that "the nature of the errors and omissions while not justified are not of a substantive nature".

148. As the Agreed Statement of Facts indicates, Mr. Oledzki signed as an attesting witness when he was not. He forged the signature of his wife when he knew she was not present to attest to the signature of Ms. W. The suggestion that this misconduct falls into the category of an error or omission is an unacceptable trivialization of a fundamentally dishonest act of forgery.

149. While Mr. Oledzki may have been motivated in good faith to cut corners, it does not excuse the dishonest act of forgery. Such actions objectively compromise the trustworthiness and good character of the lawyer. Such behavior is highly relevant to his or her suitability to practice. It is an untenable proposition to suggest that forgery or other dishonest acts are justified where the ends seem legitimate. As indicated above, the overarching duty and responsibility of a lawyer is to act with integrity at all times and in all respects. Where a lawyer's conduct manifests a dishonest pattern of behaviour, his integrity, and the integrity of the profession, is brought into serious question. In this case, the forgeries were committed in two separate matters. They were conscious and deliberate. In the matters involving Charges 1-6, the dishonesty was compounded by Mr. Oledzki's several attempts to mislead.

150. Mr. Oledzki's counsel argues that the gift of $50,000.00 to Mr. Oledzki's son in the Will of Mr. and Mrs. D is not "substantial" within the meaning of the Rule, having regard to the relative size of the estate. With respect, this submission is an inappropriate attempt to avoid responsibility for a complaint for which culpability has already been admitted. We disagree, in any event, that a $50,000.00 gift is insubstantial by any measure. This submission is not consistent with the attitude of a lawyer who genuinely accepts his actions were wrong.

151. Mr. Oledzki's counsel argues that he was denied procedural fairness when he was suspended on an interim basis on August 14 of 2008. He suggests the unfairness of this decision is a factor mitigating in his favour in the context of the ultimate sanction. We disagree. It is not the role of this Discipline Committee to now sit in review of the earlier decisions of the Discipline Executive. Mr. Oledzki had a right of appeal from that decision, but did not pursue an appeal. While the length of Mr. Oledzki's suspension to this point does weigh into the overall assessment of penalty, the propriety of that decision cannot now be raised as a mitigating factor in the context of the ultimate sanction.

152. To Mr. Oledzki's credit, he has never been disciplined by and has no other negative experience with the Law Society in an otherwise lengthy and respected career. He did not misappropriate trust or general funds. He was cooperative with the Law Society. He has suffered the consequences of not working or earning any income as a lawyer since August 14th of 2008. His previously good reputation in the community has been disgraced by his misconduct, these proceedings and the related publicity. He had already paid a heavy price by the time this matter came on for hearing before the Discipline Committee. These factors mitigate in his favour in the ultimate balance.

153. In his own submissions to the Discipline Committee, Mr. Oledzki attributed his misconduct to becoming busy and overwhelmed. As indicated, this is no answer to a complaint stemming from acts of fundamental dishonesty involving forgery and misleading others. There was no evidence to suggest he suffered from a state of mind that should legitimately diminish his responsibility for his actions. There is no objective assurance against recurrence. While it is certainly correct Mr. Oledzki has suffered the public shame and humiliation of these proceedings and the media attention they have attracted, it is equally apt to observe that the reputation of his former firm and of the profession itself has been damaged. The penalty objectives of specific and general deterrence therefore become imperative if public confidence is to be sustained.

Conclusion

154. We recognize and are guided by the approach to penalty assessments outlined in the Alberta Hearing Guide and the *Ogilvie* decision. We have considered the jurisprudence relevant to the imposition of sanctions in matters involving serious misconduct, including a breach of the duty of integrity, as referenced in the materials cited to us by counsel and as considered in the Benchers' earlier decisions in *Rault, Nolin* and *McLean.*

155. Mr. Oledzki's counsel referred to the principled importance of uniformity within the criminal sentencing process. He argued that the Benchers are bound by the range of penalties established in earlier cases for similar misconduct in the discipline context.

156. While there are parallels to the criminal sentencing process, including the importance of parity, consistency and predictability, the penalty assessment process in the discipline context is distinctly different and serves broader objectives. As Gavin MacKenzie stated in his book *Lawyers & Ethics*:[16]

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

157. As the court stated in *Adams v. Law Society (Alberta)*:[17]

> 6 [...] A professional misconduct hearing involves not only the individual and all the factors that relate to that individual, both favourably and unfavourably, but also the effect of the individual's misconduct on both the individual client and generally on the profession in question. This public dimension is of critical significance to the mandate of professional disciplinary bodies.

158. Mr. McKay cited authorities from the criminal context as authority for the proposition that uniformity and parity are fundamental sentencing objectives. We do not agree that a formulaic approach to penalty assessment should apply in the discipline context in the same way it might in the criminal sentencing process. The Court of Appeal in *Merchant (2008)*[18] addressed the distinction between these processes:

> [96] The appellant complained the Sentencing Committee did not take a principled approach to sentencing, but was unable to suggest what form that principled approach should take. Do we adopt the sentencing principles established in criminal courts and look to these as a guide, particularly the concept of parity in sentencing, and whether the penalty is a marked departure from the range for similar offences committed by similar offenders?
> [97] From the parity perspective alone, the penalty of suspension for a short period is certainly not extraordinary. For example, the respondent cited the decision in Law Society of British Columbia v. Fred Collins Marion Lowther.[31] There, the solicitor in a matrimonial matter was found in breach of a consent order by failing to release trust funds as required, and attempting to apply them upon arrears of support owed to his client. That conduct deprived a member of the public of the benefit of funds to which they were entitled. The solicitor was reprimanded, suspended for two weeks and directed to make a contribution to the Law Society's costs.
> [98] However, the sentencing approach in disciplinary proceedings is different than in criminal courts. In Law Society of Upper Canada v. Kazman,[32] the Law Society Appeal Panel considered the philosophy of sentencing in disciplinary matters and its unique considerations. The panel quoted extensively

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16 Gavin MacKenzie, *Lawyers & Ethics: Professional Responsibility and Discipline (3rd ed.)*, looseleaf, (Toronto: Carswell, 1993, updated as of November 13, 2008, at p.26-1)

17 2000 AB C.A. 240, [2000] 11 W.W.R. 280 at para. 6

18 2009 SKCA 33

> from Bolton v. Law Society.[33] **The critical distinction between sentencing in criminal matters and sentencing in disciplinary matters is highlighted in this paragraph:**
>
> > **[74] A criminal court judge ... is rarely concerned with the collective reputation of an accused's peer group but is free to focus instead on the individual accused to the exclusion of most other considerations. On the other hand, law society discipline panelists must always take into account the collective reputation of the accused licensee's peer group – the legal profession. According to Bolton, it is the most fundamental purpose of a panel's order.** This is a major difference between the criminal court process and a law society's discipline process. It is largely this difference that causes many principles of criminal law, such as mitigation, to have less effect on the deliberations of law society discipline panels. It is a difference easy to lose sight of, but one that should be ever in mind. [emphasis added]

159. As the Court stated in *Adams*, the penalty assessment process must maintain the public's confidence in the Law Society's ability to govern its members. This responsibility must be discharged in the prevailing social and legal context:

> [...] We acknowledge that considering the dispositions in disciplinary matters in other cases and in other jurisdictions can be helpful. **But this assessment must be undertaken with due respect to contemporary values in Canadian society**. [...] [emphasis added]

160. The public interest and the need to protect the public directs the discretion to be exercised by the Law Society in its self-governance role, particularly in the area of discipline. The public interest is paramount and must always be in step with societal values and standards.

161. The misconduct in this case raises a serious concern about Mr. Oledzki's honesty and integrity and his suitability to practice law. The discipline sentencing objectives of specific and general deterrence are therefore invoked. Serious censure is required. We are mindful of the serious and irretrievable consequences of disbarment; however, the public interest and confidence must be protected in the context of a finding that brings the integrity of a lawyer and the profession into question. Disbarment is a sanction within the range of outcomes in other decisions involving a serious breach of integrity and where a principled reasoning process is articulated. The authorities suggest there is a general rule calling for disbarment in such cases.

162. In the balance, there is nothing in this case to mitigate against the most serious penalty. Under s. 55(2)(a)(i) of the Act, the Benchers may determine the minimum period of time before the disbarred member may apply for readmission, provided that such period of time may not exceed 5 years. It is therefore appropriate to consider the factors that may be relevant on an application for re-admission, having regard to the paramount public interest.

163. Mr. Oledzki has the support of his friends and colleagues. Subject to the reservations noted above, he appears to have good insight into his personal problems and his misconduct. He has a family to support. He is highly motivated to recover his identity and productivity as a lawyer. As Mr. Oledzki may present some legitimate prospect for reform, it is reasonable to

leave open the opportunity for him to reapply for admission before 5 years. Having regard to the period of time he has been suspended prior to the hearing before the Discipline Committee, it is appropriate that the minimum time for him to reapply for admission be fixed closer to the low end of the range.

164. There is no reason to depart from the general rule that costs be awarded against the member on a full indemnity basis. In the circumstances it is reasonable to allow time to pay.

Decision

165. It is therefore ordered that:

(a) Mr. Oledzki be disbarred.

(b) Mr. Oledzki may not apply for readmission to the Law Society of Saskatchewan before August 14, 2010.

(c) Mr. Oledzki is ordered to pay costs in the amount of $7,566.25 by August 14, 2010, or such other date as the Chair of the Discipline Executive may approve.

DATED at the City of Regina in the Province of Saskatchewan this 26th day of February, 2010.

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

IN HE MATTER OF THE LEGAL PROFFESSION ACT, 1990
AND IN THE MATTER OF GARRET JOSEPH STANLEY OLEDZKI,
A LAWYER OF REGINA, SASKATCHEWAN

REPORT OF THE HEARING COMMITTEE

Hearing Committee: Alma Wiebe, Q.C., Chair

Counsel for the Law Society of Saskatchewan: Timothy F. Huber

Member's Counsel for Mr. Oledzki: Ian McKay, Q.C.

1. The Hearing Committee convened on May 27, 2009 by telephone conference. The Law Society was represented by Mr. Tim Huber. Mr. Oledzki was represented by Mr. Ian McKay, Q.C. The Chair was advised that Mr. Oledzki was present with his counsel during the conference call.

2. Counsel for the parties acknowledged that the Hearing Committee was properly constituted and had jurisdiction to deal with the matter before it. Neither party had any preliminary objections. Mr. McKay made a brief statement on behalf of his client and Mr. Huber responded.

3. The amended Notice of Hearing dated May 19, 2009 and an agreed Statement of Facts and Admissions dated may 25, 2009 were filed by consent as Exhibits P-1 and P-2 respectively.

4. The formal complaint was amended by consent to add the words "is guilty of conduct unbecoming in that:" to the first sentence of the complaint.

5. The amended formal complaint alleges the following:

THAT GARRET JOSEPH STANLEY OLEDZKI, of the City of Regina, in the Province of Saskatchewan is guilty of conduct unbecoming in that:

1. He did sign a document purporting to be a Last Will and Testament of his client X using the name of his client X when he was not in the presence of X or any witnesses;

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

2. He did attempt to imitate the signature of his client X on a document purporting to be a Last Will and Testament of his client X:

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

3. He did back date a document purporting to be a Last Will and Testament of his client X:

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

4. He did cause a member of the public to sign as a witness on a document purporting to be a Last Will and Testament of his client X when he knew she had not witnessed the signing of the document;

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

5. He did cause a member of the public to sign as a witness on a document purporting to be a Last Will and Testament of his client X by making false representations to her;

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

6. He did mislead fellow members of the Law Society of Saskatchewan;

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

7. He did prepare or cause to be prepared Last Will and Testament documents wherein his clients, Mr. and Mrs. D., were to leave him a testamentary gift of $50,000;

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

8. He did prepare or cause to be prepared a Codicil for his client Mr. D., wherein Mr. D. was to leave him a testamentary gift of his oil, mines and mineral rights in relation to certain land;

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

9. He did prepare or cause to be prepared a Transfer Authorization for his client Mrs. D. wherein Mrs. D. was to transfer mineral rights to him and his family members in relation to certain land;

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

10. He did prepare or cause to be prepared a Last Will and Testament document wherein his client, Mr. A.A., was to leave a family member of Mr. Oledzki's a substantial testamentary gift;

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

11. He did sign as witness on a Last Will and Testament and Power of Attorney of his client M.W. when he was not in the presence of M.W. when she signed the Will or Power of Attorney; and

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

12. He did attempt to imitate the signature of Y as a witness on a Last Will and Testament of his client M.W.;

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

6. Mr. McKay, on behalf of his client, waived reading of the counts and entered guilty pleas to all counts.

7. By agreement of the parties, the Hearing Committee refers the sentencing of Mr. Oledzki to the Discipline Committee of the Law Society composed of Benchers of the Law Society of Saskatchewan at such time and date as mutually agreed upon.

8. Pursuant to Section 54(1) of *The Legal Profession Act*, 1990, this matter is being reported to the Chair of Discipline.

Dated at Saskatoon, Saskatchewan this 15 day of June 2009.

Alma Wiebe, Q.C., Chair

CANADA)
PROVINCE OF SASKATCHEWAN)
TO WIT)

IN THE MATTER OF *THE LEGAL PROFESSION ACT*, 1990
AND IN THE MATTER OF GARRET JOSEPH STANLEY OLEDZKI,
A LAWYER OF REGINA, SASKATCHEWAN

AGREED STATEMENT OF FACTS AND ADMISSIONS
BETWEEN GARRET JOSEPH STANLEY OLEDZKI AND
THE LAW SOCIETY OF SASKATCHEWAN

In relation to the Formal Complaint dated December 12, 2008, alleging the following:

1. He did sign a document purporting to be a Last Will and Testament of his client X using the name of his client X when he was not in the presence of X or any witnesses;

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

2. He did attempt to imitate the signature of his client X on a document purporting to be a Last Will and Testament of his client X;

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

3. He did back date a document purporting to be a Last Will and Testament of his client X;

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

4. He did cause a member of the public to sign as a witness on a document purporting to be a Last Will and Testament of his client X when he knew she had not witnessed the signing of the document;

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

5. He did cause a member of the public to sign as a witness on a document purporting to be a Last Will and Testament of his client X by making false representations to her;

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

6. He did mislead fellow members of the Law Society of Saskatchewan;

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

7. He did prepare or cause to be prepared Last Will and Testament documents wherein his clients, Mr. and Mrs. D., were to leave him a testamentary gift of $50,000.00;

   Reference Chapters I and VI of the *Code of Professional Conduct*.

8. He did prepare or cause to be prepared a Codicil for his client Mr. D., wherein Mr. D. was to leave him a testamentary gift of his oil, mines and mineral rights in relation to certain land;

   Reference Chapters I and VI of the *Code of Professional Conduct*.

9. He did prepare or cause to be prepared a Transfer Authorization for his client Mrs. D. wherein Mrs. D. was to transfer mineral rights to him and his family members in relation to certain land.

   Reference Chapters I and VI of the *Code of Professional Conduct*.

10. He did prepare or cause to be prepared a Last Will and Testament document wherein his client, Mr. A.A., was to leave a family member of Mr. Oledzki's a substantial testamentary gift;

    Reference Chapters I and VI of the *Code of Professional Conduct*.

11. He did sign as witness on a Last Will and Testament and Power of Attorney of his client M.W. when he was not in the presence of M.W. when she signed the Will or Power of Attorney; and

    Reference Chapters I of the *Code of Professional Conduct*.

12. He did attempt to imitate the signature of Y as a witness on a Last Will and Testament of his client M.W.;

    Reference Chapters I of the *Code of Professional Conduct*.

<u>Jurisdiction</u>

1. Garret Oledzki (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 "1"** is a Certificate of the Executive Director of the Law Society of Saskatchewan pursuant to section 83 of the Act confirming the Member's practicing status.

2. The Member is currently the subject of a Formal Complaint initiated by the Law Society dated December 12, 2008. The Formal Complaint is comprised of the twelve counts noted above. The Formal Complaint was served upon the Member through his legal counsel on December 12, 2008. Attached at **Tab "2"** is a copy of the Formal Complaint along with proof of service in the form of an Affidavit of Service.

Background of Complaint

3. The Law Society began an investigation into the Member after receiving a report from Reginald Watson of Balfour Moss LLP the firm where the Member was, at the time, a Partner. The report of Mr. Watson resulted in a full scale investigation in relation to the entire practice of the Member. The Law Society investigation which included two face to face interviews with the Member yielded the charges noted above.

Particulars of Conduct

Counts #1 through #6 - Regarding the Last Will and Testament of "Client X".

4. The Member had a personal relationship with Client X. Client X was the Member's former father-in-law. At the time of Client X's passing, the Member and his wife had been separated for several years. During the time that the Member and his former spouse were together as well as after their separation Client X had received legal advice from the Member in relation to his Will, Power of Attorney and Health Care Directive. The Member had been the lawyer for Client X and his wife for some 25 years and had given them advice on a number of matters. On May 4, 2005, Client X signed a Last Will and Testament that the Member had prepared (the "Genuine Will"). Client X signed this document in the presence of both the Member and the Member's next door neighbour, J.D. Attached at **Tab "3"** in a copy of the Genuine Will signed by Client X in the presence of the Member and J.D. on May 4, 2005.

5. The Genuine Will provides for Client X's son (a lawyer and former associate of the Member) and daughter (the Member's former spouse) to be "joint" executors in relation to his estate. The remaining provisions of the Genuine Will are of limited significance within the context of this proceeding.

6. Client X became terminally ill in the spring of 2008.

7. On July 4th, 2008 the Member, had his assistant prepare a new draft Last Will and Testament for Client X. No instructions to prepare this draft will had been received from Client X. This new draft will modified the executor arrangement for Client X. The Member removed the clause which provided for Client X's son and daughter act as "joint" executors in relation to this estate. The Member replaced that clause with another clause which stated that the Member's former spouse (Client X's daughter) would be primary and sole executor in relation to the estate, and that Client X's son would be an alternate executor only in the event the primary executor had died or refused to act. This change would have been consistent with a Power of Attorney that had been previously drafted for Client X and signed at the same time the May 4, 2005 Will was drafted.

8. In early July of 2008, sometime after July 4, the Member signed the name of Client X on the modified Last Will and Testament (the "Forged Will"). The Member then back dated the Forged Will to May 4, 2005 to correspond with the date on the Genuine Will. When the Member signed Client X's name on the Forged Will he was not in the presence of Client X, nor was Client X aware of the fact that the Forged Will was being signed by the Member. The Member had no

instructions or authorizations from Client X to sign the Forged will. Client X was not aware that the Forged Will existed.

9. The Member then approached his neighbour J.D. who had witnessed the Genuine Will some 3 years prior. He misled J.D. by advising her that the Forged Will was "a copy" of the Genuine Will and asked her to sign her name as a witness. J.D. was not aware of the fact that the text of the Genuine Will had been altered by the Member, nor was she aware of the fact that the Member had himself signed the name of Client X on the Forged Will without any instructions to do so. The Member also signed his name to the Forged Will as a witness to Client X's signature, obviously knowing that Client X had not signed the Forged Will. The Forged Will is attached hereto at **Tab "4"**.

10. The Member has advised the Law Society that he knew that what he had done was wrong immediately after he had J.D. witness the Forged Will. The Member stated that he knew the Forged Will needed to be destroyed at this moment. However, the Member took the Forged Will from his home and caused it to be delivered to his office and caused the Forged Will to be placed on the file belonging to Client X. The Forged Will was never destroyed or voided despite the Member's admission that he knew that what he had done was wrong.

11. Client X passed away on Thursday July 17, 2008.

12. The day after Client X's death, his son, an executor in the Genuine Will contacted the Member's firm to obtain an original of Client X's Last Will and Testament. The Member was out of the office at the time the call came in and another Member of the firm. Yens Pedersen located Client X's file.

13. Mr. Pedersen located both the Genuine Will and the Forged Will. Mr. Pedersen reviewed the documents and discovered that both had the same date and the same witness signatures. Uncertain as to why both documents were on the file Mr. Pedersen went to discuss the matter with another Member of the firm, Jeff Grubb. Mr. Grubb confronted the Member with both the Genuine Will and the Forged Will asking why there were two different original wills with the same date on Client X's file. At this time the Member misled Mr. Grubb and advised that Client X had signed both documents and that Client X had initially wanted to designate his daughter as the sole executor (as is set out in the Forged Will) but then changed his mind to designate both his son and daughter as joint executors (as is set out in the Genuine Will). When questioned further, the Member again misled Mr. Grubb and advised that the Forged Will was prepared first and the Genuine Will was prepared second thereby making the Genuine Will the operative will. The Member had no explanation as to why both documents had the same date. It was later determined by Mr. Grubb and another partner Reginald Watson that the Forged Will had been produced on the firm computer system in 2008. This would mean that, by law, the Forged Will was the most recent and therefore it was the operative will. When confronted with this fact, the Member confessed that the Forged Will had been prepared just a few weeks prior. The Member then misled his fellow partners Jeff Grubb, Reginald Watson and Rick Van Beselaere by stating that he had attended the home of Client X in Moose Jaw to have the Forged Will signed. The Member actually signed the name of Client X on the Forged Will while at his own home in Regina. The

Member did confess that he told J.D to sign as a witness on the Forged Will when she did not in fact witness Client X's signature. The Member confirmed that he told J.D. that the will was a "true copy" of the Genuine Will that she had witnessed years prior. The Member falsely stated to the partners in his firm that he had received instructions from Client X to change the executor arrangement from joint executors to sole executors and then back again.

14. The discussion then turned to providing the Forged Will to the family of Client X. Faced with the prospect of the Forged Will being provided to the family of Client X, the Member confessed that it was he who had signed Client X's name on the Forged Will without instructions to do so and that the Forged Will was therefore invalid.

Counts #7, #8 and #9 - Regarding Mr. and Mrs. D.

15. During the initial phase of the investigation in relation to the Client X file Mrs. D contacted Balfour Moss LLP in relation to her file. The Member had been Mr. and Mrs. D's lawyer since 1976 having acted for Mr. D's parents, his sisters and sister-in-laws by doing their estates and preparing Wills and Power of Attorneys for them. The Member had contacted Mrs. D subsequent to the confrontation with his partners concerning the previous matter but not in relation to this matter. The Member had prepared Mr. and Mrs. D's Wills for a number of years and the Member had been included as a beneficiary in those Wills in relation to a $50,000.00 cash gift and a gift of a mineral title owned by Mr. and Mrs. D. This was first placed into their Wills in approximately 1986.

17. The Member had been the lawyer for Mr. and Mrs. D for an extended period of time, by the Member's account since approximately 1976. They initially came into the office and dealt with Ken Halvorson one of the senior Partners of the firm and eventually with Robert Thompson who introduced them to the Member who first became involved with Mr. D's father's estate then his mother's estate. The Member is not a family relative of Mr. and Mrs. D.

18. The Member provided various legal services to Mr. and Mrs. D and their extended family which included the sale of farm property, sale and purchase of residential homes, dealing and advising with respect to mineral and farm leases as well as preparing their wills. The Member frequently made home visits to Mr. and Mrs. D in Weyburn to provide these services in person. Many of these meetings included the Member having dinner with Mr. and Mrs. D not only in Weyburn but in Regina.

19. Mr. and Mrs. D had no children.

20. In approximately 1986 Mr. D advised the Member that he and Mrs. D wanted to leave him a gift in their will. Specifically, Mr. D advised the Member that they wanted to leave him $50,000.00 in cash and sometime thereafter indicated that they wanted to leave him one of their mineral titles.

21. The Member has stated that he told Mr. D that he could not and should not accept the gift. The Member stated that he told Mr. D that his proposal would not be right. The Member stated that Mr. D persisted in his suggestion that the Member should prepare Mr. and Mrs. D's wills to include the $50,000.00 gift and in about 1988 wanted the mineral title to the Member. The Member stated that he advised

Mr. and Mrs. D that it would not be right for Mr. D to leave anything to the Member or anyone of the Member's family.

22. Despite his initial view on the proposal, the Member after numerous discussions with Mr. and Mrs. D finally agreed and ultimately prepared wills in about 1986 reflecting the cash gift of $50,000.00 and in about 1988 one mineral title was included. This was reflected in subsequent wills culminating in the final will being August 28th, 2003. Attached at **Tab "5"** are copies of the most recent wills signed by Mr. and Mrs. D.

23. The Member states that these wills were signed in Weyburn in the house of friends of the D family. The Member states that he left the room while the wills were signed and witnessed at this couples kitchen table. Mr. and Mrs. D did not receive any independent legal advice in relation to the wills or the gift to the Member that the Member is aware of.

24. Shortly thereafter on September 9, 2003 the Member attended upon Mr. and Mrs. D once again. This time the Member attended the Hospital where Mr. D was receiving care. The Member had prepared a Codicil outlining minor changes to both Mr. and Mrs. D's wills. Included in this Codicil was a clause stating that the Member was to receive oil, mines and mineral rights in relation to one of the D properties. The Codicil was signed by Mr. and Mrs. D and witnessed in hospital by the same witnesses to the recent wills. Again Mr. and Mrs. D did not receive any independent legal advice in relation to the codicils or the gift to the Member.

25. In the case of both the Wills and the Codicils, the Member's spouse was designated as an alternate beneficiary to the gifts left for the Member in the event

of the Member's death. Mr. and Mrs. D had never me the Member's spouse Mr. and Mrs. D questioned the inclusion of the Member's spouse in their wills. Both Mr. and Mrs. D were opposed to the inclusion of the Member's spouse in the wills and codicils. The Member advised that it was the Member's right to determine who received his gifts as an alternate in the event of his death. Ultimately, the alternate gift to the Member's spouse was included in both the wills and both codicils.

26. Mr. D died on December 6, 2004. His entire estate went to his wife as his primary beneficiary.

27. In June 2005, after Mr. D died, the Member discussed with Mrs. D and suggested that she should complete *inter vivos* transfers of the farmlands and mineral titles to all the named beneficiaries in the will. He had prepared the numerous transfers of the surface rights and mineral rights to the various beneficiaries. The transfers prepared by the Member contemplated an *inter vivos* transfer of the mineral rights and with reference to the mineral title that he was to receive the transfer was prepared in the name of himself and his three children as joint tenants. A copy of the transfer documents prepared by the Member are attached at **Tab "6"**. The documents were never signed.

Count #10 - Regarding the A.A. Will

28. As a result of the investigation the Member advised the Law Society of the A.A. will. The A.A. will was prepared by the Member and had contemplated a gift to the Member's son of a gold and ruby ring valued at $2,800.00. The will provided

that if the ring was "missing" the Member's son was to receive cash in the amount of $2,800.00. A copy of the A.A. will is attached at **Tab "7"**.

29. The Member and his family had a long personal relationship with A.A. and his wife, H.A. such relationship commencing in about 1976. A.A. and his wife, H.A. had a particularly close relationship with the Member's son. The Member is not a family relative of A.A.

30. The Member also had a long standing solicitor-client relationship with A.A. and his wife, H.A. and had prepared several wills for both of them.

31. The Member had A.A. sign the will in question on April 10, 2001, in the presence of a junior lawyer in his firm and a member of his support staff. He advises that he left the room when the will was signed by A.A. A.A. did not receive any independent legal advice in relation to the will or the gift to the Member's son.

32. A.A. died on April 8, 2007. The will signed on April 10, 2001 was still in effect at the time of A.A.'s death.

Counts #11 and #12 - Regarding the M.W. Will

33. The last two counts also arose as a result of the Law Society investigation into the Member's practice. An examination of M.W.'s will appeared to be problematic. The M.W. will is attached at **Tab "8"**.

34. M.W. instructed the Member to prepare a will for her in the fall of 2004. M.W. resides in Saskatoon. In March of 2005, plans were made for the Member to meet with M.W. while he was in Saskatoon on other business. The two planned to have breakfast to discuss a draft will that had been prepared. The Member was unable to meet with M.W. as planned but volunteered to leave the draft will at his

hotel for M.W. to pick up and review. M.W. received the document and reviewed it. M.W. found that the will was drawn as she had intended but for a small change to the executor which she made on the face of the will and initialled.

35. M.W. then signed the will. The Member was not present when M.W. signed the will. No witness signatures were included on the will at the time it was signed by M.W. She left the signed, but un-witnessed will at the Member's hotel for him.

36. The Member later signed his name on the M.W. will as a witness without having actually witnessed her signing the will.

37. The Member also signed the name of his wife R.W. (at that time separated from the Member) as a witness to the will. R.W. did not sign her own name as a witness to the M.W. will dated March 12, 2005. R.W. has never met M.W.

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