



The Law Society of Saskatchewan

LORI LYNN GOLLAN

HEARING DATE: January 8, 2016

DECISION DATE: February 3, 2016

Law Society of Saskatchewan v. Gollan, 2016 SKLSS 3

**IN THE MATTER OF *THE LEGAL PROFESSION ACT, 1990*
AND IN THE MATTER OF LORI LYNN GOLLAN,
A LAWYER OF NORTH BATTLEFORD, SASKATCHEWAN**

**DECISION OF THE HEARING COMMITTEE FOR THE
LAW SOCIETY OF SASKATCHEWAN**

Members of the Hearing Committee:

Jay Watson (Chair)

Sean Sinclair

Judy McCuskee

Counsel:

Timothy Huber for the Conduct Investigation Committee

Nicholas Stooshinoff, Q.C. for the Member

INTRODUCTION

1. On January 8, 2016 before the Hearing Committee of the Law Society of Saskatchewan, by conference call, Lori Lynn Gollan, (the “Member”) pled guilty to an allegation of conduct unbecoming a lawyer in that she:

- a. Did fail to reply to communications from a fellow member of the Law Society of Saskatchewan, C.H., within a reasonable time;
- b. Did fail to act with utmost good faith to the Court in the connection with an Application for Probate she filed on the Estate E.K. by submitting an Application for probate that contained misleading information;
- c. Did fail to act with utmost good faith to a fellow member of the Law Society of Saskatchewan, C.H., in connection with an Application for

Probate she filed on the Estate of E.K. by submitting the Application for Probate on behalf of only one of two joint executors, without notifying C.H., who was, at the time, actively representing the other joint executor; and

- d. Did fail to act with utmost good faith to a member of the public, D.K., a joint executor named in the Last Will and Testament of E.K., by obtaining Letters Probate on behalf of the other joint executor then participating in the transfer of assets without the knowledge of D.K., while she knew or ought to have known that D.K. was not prepared to renounce as an executor.

FACTS

2. An Agreed Statement of Facts was filed in relation to this matter, a copy of which is attached as an Appendix to this decision. Without reciting all of the particulars of conduct as set out in the Agreed Statement of Facts and Admissions, the Member admits that she failed to reply to communications from a fellow member of the Law Society within a reasonable time and that she failed to act with utmost good faith in submitting to the Court an Application for Probate which contained misleading information and failed to notify a fellow member of the Law Society of the Application for Probate in circumstances when she clearly had an obligation to do so. Furthermore, she failed to act with utmost good faith to a member of the public, D.K., a joint executor, by obtaining Letters Probate on behalf of the other joint executor without the knowledge of D.K. in circumstances in which she knew, or ought to have known, that D.K. was not prepared to renounce as an executor.

3. The Member was admitted to the Bar in 2002. As of February of 2012, the Member advises, through her counsel, that she had been under the care of a physician with respect to mental health issues. Both co-executors have commenced action against the Member.

4. The Member has no history of previous discipline.

5. Mr. Huber, on behalf of the Conduct Investigation Committee and Mr. Stooshinoff, Q.C., on behalf of the Member, proposed a joint submission with respect to penalty to the Discipline Committee consisting of a five month suspension. With respect to costs, Mr. Huber requested costs in the amount of \$6,190.00. Mr. Stooshinoff, Q.C., on behalf of The Member, recommended costs in the amount of \$1,000.00.

DECISION

6. The panel accepts counsel's joint submission with respect to penalty and orders that:

- a. The Member shall be suspended for a period of five months commencing February 1, 2016;
- b. The Member shall pay costs in the amount of \$6,190.00 to be paid within one year of her return to practice. It is the panel's view that costs of that

amount are not inappropriate and the Member's ability to pay issue can be dealt with by granting time to pay.

DATED at the City of Saskatoon, in the Province of Saskatchewan this 3rd day of February, 2016.

“Jay Watson”
Chair, Discipline Committee

DATED at the City of Saskatoon, in the Province of Saskatchewan this 3rd day of February, 2016.

“Sean Sinclair”
Discipline Committee Member

DATED at the City of Regina, in the Province of Saskatchewan this 3rd day of February, 2016.

“Judy McCuskee”
Discipline Committee Member

AGREED STATEMENT OF FACTS AND ADMISSIONS

In relation to the Formal Complaint dated August 19, 2013, as amended herein, alleging the following:

THAT LORI LYNN GOLLAN, of North Battleford, in the Province of Saskatchewan did:

- 1. did fail to reply to communications from a fellow member of the Law Society of Saskatchewan, C.H., within a reasonable time;**
- 2. Withdrawn.**
- 3. did fail to act with utmost good faith to the Court in the connection with an Application for Probate she filed on the Estate E.K. by submitting an Application for probate that contained misleading information;**
- 4. did fail to act with utmost good faith to a fellow member of the Law Society of Saskatchewan, C.H., in connection with an Application for Probate she filed on the Estate of E.K. by submitting the Application for Probate on behalf of only one of two joint executors, without notifying C.H., who was, at the time, actively representing the other joint executor; and**

5. **did fail to act with utmost good faith to a member of the public, D.K., a joint executor named in the Last Will and Testament of E.K., by obtaining Letters Probate on behalf of the other joint executor then participating in the transfer of assets without the knowledge of D.K., while she knew or ought to have known that D.K. was not prepared to renounce as an executor.**

JURISDICTION

1. Lori Lynn Gollan (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 (hereinafter 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 June 17, 2014. Attached at **Tab 2** is a copy of the Formal Complaint along with proof of service. The Member intends to plead guilty to allegations 1, 3, 4 and 5. The Law Society agrees to withdraw allegation #2.

BACKGROUND OF COMPLAINT

3. The Law Society began an investigation into the Member on or about August 19, 2013, after receipt of a complaint from D.K. D.K.’s complaint against the Member centered around the Member’s involvement in an Application for Probate that the Member had prepared and filed on behalf of her client K.K. K.K. and D.K. are siblings and were joint executors in relation to the Estate of their mother E.K. who died on February 27, 2012. The Application for Probate launched by the Member was brought without the knowledge or consent of D.K. or her legal counsel.

4. Prior to the death of E.K., both K.K. and D.K. were represented by counsel in the context of preexisting legal issues surrounding their parents’ marital breakdown and division of their parents’ property. P.K., husband of E.K. and the father of K.K. and D.K., had died on December 15, 2011. P.K. and E.K. separated in 2009. Prior to the deaths of P.K. and E.K. negotiations were ongoing in relation to property division, specifically in relation to two quarter sections of farmland that was the matrimonial property of E.K. and P.K. No resolution was realized in relation to the property division issues prior to the deaths of P.K. and E.K. The relationship between K.K. and D.K. was, at all times, strained.

PARTICULARS OF CONDUCT

5. Shortly after the death of E.K., K.K. attended with the Member concerned about protecting his interest in his parents’ farmland. K.K. knew that his mother had executed a Will in 2005 that had named both K.K. and D.K. joint executors. K.K. had a copy of this Will [**Tab 3**].

6. The Member had been involved in the prior negotiations relating to the farmland. The Member knew that D.K. was represented by legal counsel, C.H. and had communications with C.H. on the matter.

7. During the initial meeting between the Member and K.K. after E.K.'s death, the Member advised K.K. to apply for Letters Probate in relation to the 2005 Will, on his own, without involving D.K.

8. At the time, K.K. had advised the Member that there was a possibility that a more recent will had been prepared by his mother as D.K. had mentioned that to K.K. in September of 2011. K.K. did not believe that his mother had capacity to execute a new will and did not know as a certainty that a new will had been prepared. The Member did not explore this issue further. In fact, E.K. had executed a new will on December 22, 2011, wherein D.K. was named as sole executor. The December 22, 2011 will was substantively the same as the 2005 will.

9. The Member advised K.K. to apply for Letters Probate on his own as a means of putting the Court and D.K. "on notice" that K.K. was asserting a claim against the farmland and to protect his interest in the Estate. The Member also advised K.K. that the best way to assert that the 2005 Will was the proper Will was to probate it. The Member advised K.K. that she did not think that the Court would grant the Application for Letters Probate because the will had named two executors and only he was party to the Application for Probate. The Member told K.K. that the application would likely be rejected. Nevertheless, the Member prepared an Application for Grant of Probate, on behalf of K.K. alone [Tab 4] on or about March 8, 2012. The Application was not filed immediately.

10. The Application for Grant of Probate and supporting materials, including an Affidavit of K.K. and a Statement of Property were prepared by the Member. The Application and Statement of Property were incorporated as exhibits to the Affidavit of K.K.

11. The Statement of Property was prepared without K.K. having any actual knowledge of E.K.'s financial and property affairs. Paragraph 9 of the Application also stated the following: **The applicant is the executor named in the will and is 18 years of age.**

12. The Affidavit of K.K. swore that the contents of the Application were true. The Member commissioned K.K.'s Affidavit and the exhibits including the Application containing the above noted statement.

13. K.K. accepted the advice of the Member to proceed to file the Application for Grant of Probate in the manner she prepared it. K.K. did not question the Member's advice.

14. The day before K.K. attended with the Member to sign the Application for Grant of Probate and his supporting Affidavit, the Member filed miscellaneous interests against the land titles for the farmland that was in dispute [Tab 5].

15. On March, 20, 2012 the Member wrote to C.H., counsel for D.K. In that letter the Member asked that D.K. renounce her right as executrix in relation to the estate of E.K. and

leave K.K. as the sole executor [Tab 6]. The Application for Probate prepared by the Member had not yet been filed.

16. On March 26, 2012, C.H. replied to the Member and explicitly indicated that D.K. had no intention of renouncing her position as executrix in relation to the Estate of E.K. [Tab 7].

17. In the March 20, 2012 and March 26, 2012 letters, both the Member and C.H. discussed the exchange of documents with a view to resolving matters amicably.

18. On or about April 9, 2012, the Member filed the Application for Grant of Probate (on behalf of K.K. alone) with the Court of Queen's Bench in Battleford, Saskatchewan. The Court granted Letters Probate to K.K. on April 18, 2012 [Tab 8].

19. The Court's granting of the Letters Probate was contrary to the Member's stated belief that the Court would reject the application as a result of the fact that it was brought on behalf of only one of the joint executors. However, in response to this development, the Member informed K.K. that he was, as executor, obliged to act on the Letters Probate. The Member advised K.K. to take the steps necessary to transfer the land. Both of the disputed pieces of farmland vested with E.K. as a surviving joint tenant upon the death of P.K. The Member facilitated transfers of the disputed farmlands to "K.K. as personal representative for the estate of E.K." via her office on or about June 4, 2012 using the Letters Probate that had been obtained without the consent of D.K..

20. The Member and K.K. still had an interest in obtaining various documents relevant to the affairs of E.K. D.K.'s had similar interests in relation to the affairs of P.K. On or about April 19, 2012, the day after Letters Probate had been granted, the Member caused her associate to write a letter to C.H. [Tab 9]. The Member was out of town at the time the letter was written but her associate prepared and signed the letter under her direction and is solely responsible for its contents. The letter was designed to allow K.K. to obtain information from D.K. that he needed to advance the probate of the estate of E.K. including a copy of an unserved Petition that had been prepared, a copy of the new will (if a new will did in fact exist) and detailed information relating to E.K.'s property and assets for the prior two years (information that should have been known prior to the completion of the Statement of Property). The letter contained a sealed envelope on trust conditions that it was not to be opened until the requested documents were provided to the Member. The Member indicated that the sealed envelope contained documents relevant to both parents' estates. The envelope included a copy of the Grant of Letters Probate. It took several weeks to gather the materials in order to comply with the trust conditions.

Ultimately, C.H. mailed the Member all of the requested documents on or about June 18, 2012. Having complied with the trust conditions, C.H. opened the sealed envelope and was shocked to discover that K.K. had applied for and been granted Letters Probate on an individual basis and without D.K.'s consent, two months prior.

21. After C.H. opened the sealed envelope and discovered what had occurred, she attempted to contact the Member. On June 4, 2012 C.H. had contacted the Member's firm and was informed by an associate that the Member would be out of the office until June 21, 2012. C.H.

wrote to the Member on June 29, 2012, July 11, 2012 and July 18, 2012. The Member did not reply to those letters within a reasonable time. In the circumstances, an immediate replay to C.H. by the Member was warranted.

22. In a letter dated October 4, 2012 [**Tab 10**], the Member wrote to C.H. and stated that she had no legal obligation to advise D.K. or C.H. about the Application for Probate. In her letter the Member seems to indicate that the issue was caused by a “lapse in communication” on the part of D.K. and K.K.

23. Following D.K.’s discovery that the Member and K.K. had advanced the 2005 Will to the probate stage and acted to transfer the disputed lands, D.K. applied to have probate revoked. The application to revoke the Letters Probate obtained by K.K. was granted with costs on May 30, 2013 [**Tab 11**]. The Court found that K.K. and the Member should not have applied for letters probate in the manner that they did and that the Letters Probate should not have been granted. The Court found that the Application for Letters Probate was made by the Member with knowledge that it should not have been.

24. The revocation of Letters Probate did not bring any form of resolution to the estate matters. D.K. applied to probate the will executed on December 22, 2011. Letters Probate issued but due to ongoing acrimony D.K. renounced and probate was granted to a third party, the sister of D.K. in 2014. The administration of the estate remains unresolved.

25. The circumstances surrounding the initial grant of probate came to the attention of the RCMP. On January 2, 2015, the RCMP laid criminal charges against K.K. alleging perjury, fraud and theft. K.K. was required to engage criminal defence counsel in relation to these allegations. Ultimately, the criminal allegations against K.K. were stayed in August of 2015.

PRIOR HISTORY

26. The Member has no prior discipline history.