



The Law Society of Saskatchewan

BRADLEY DAVID TILLING

HEARING DATE: December 10, 2014

DECISION DATE: February 5, 2015

Law Society of Saskatchewan v. Tilling, 2015 SKLSS 1

**IN THE MATTER OF *THE LEGAL PROFESSION ACT, 1990*
AND IN THE MATTER OF BRADLEY DAVID TILLING,
A LAWYER OF REGINA, SASKATCHEWAN**

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

Hearing Committee: Gerald Tegart (Chair), Alma Wiebe, Judy McCuskee.
Representing the Investigation Committee: Timothy F. Huber.
Bradley David Tilling (“the Member”): appeared on his own behalf.

At an in-person hearing conducted at Regina on December 10, 2014, the Member entered guilty pleas to allegations that he:

1. Did, between October 15, 2013 and February 15, 2014, accept trust funds from various clients and failed to deposit said trust funds into a mixed-trust account in accordance with Law Society of Saskatchewan Rule 910;
2. Did, between October 15, 2013 and February 15, 2014, fail to maintain a book of duplicate receipts for cash transactions for cash received in excess of \$500.00 as required by Law Society of Saskatchewan Rule 909(6); and
3. Did, between October 15, 2013 and February 15, 2014, misappropriate trust funds received from clients totaling, \$6,300.00, as follows:
 - a. A.A. - \$ 400.00
 - b. J.K.- \$1,200.00
 - c. J.L. - \$ 600.00
 - d. T.M. - \$ 800.00
 - e. L.N. - \$ 800.00

f. J.R. -	\$1,500.00
g. R.S. -	\$ 500.00
h. R.T. -	\$ 500.00

Agreed Statement of Facts

The Hearing proceeded as a Penalty Hearing based on the following Agreed Statement of Facts, minus its tabbed attachments and the corresponding references to the attachments:

Jurisdiction

1. Bradley David Tilling (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”).
2. The Member is currently the subject of a Formal Complaint initiated by the Law Society dated October 14, 2014. The Formal Complaint is comprised of the allegations noted above. The original Formal Complaint was served upon the Member on October 20, 2014. The Member intends to plead guilty to the allegations and particulars set out in counts #1, #2 and #3.

Background of Complaint

3. The details of this matter came to light as a result of a report from a fellow member of the Law Society; Mr. X. Mr. X had agreed to assume carriage of a number of criminal law files from the Member in advance of a 9 month discipline suspension that the Member was to begin serving on February 15, 2014. The Member had previously received retainers on each of the files that were to be transferred to Mr. X. Mr. X. became concerned about the Member’s conduct when the Member was initially unable to provide the retainers on the transferring files and felt obliged to report the matter to the Law Society.

Particulars of Conduct

Allegation #1

4. Rule 910 requires that all client retainers paid to a lawyer in advance of work being completed must be deposited into a trust account and held until a the related work is complete and a legal account is rendered for the client. Between October 15, 2013 and February 15, 2014, the Member did not have access to a trust account as he had not set one up after leaving his old firm on October 29, 2013. During this period he accepted cash retainers from the following clients in the following amounts:

a. A.A. -	\$ 400.00
b. J.K.-	\$1,200.00
c. J.L. -	\$ 600.00
d. T.M. -	\$ 800.00
e. L.N. -	\$ 800.00

f. J.R. -	\$1,500.00
g. R.S. -	\$ 500.00
h. R.T. -	<u>\$ 500.00</u>
	\$6,300.00

5. Having no trust account to place these funds, the Member simply took possession of the funds and intermingled them with his personal funds.

6. The Member's conduct represents a violation of Rule 910.

Allegation #2

7. Rule 909(6) required that lawyers maintain a book of duplicate receipts, with each receipt identifying the date on which cash is received, the person from whom cash is received, the amount of cash received, the client for whom cash is received, any file number in respect of which cash is received and containing the signature authorized by the member who receives cash and of the person from whom cash is received. These records are to be kept current at all times and are to be kept on hand for 6 years.

8. The Member did not maintain these records in the prescribed manner in relation to the cash retainers he accepted between October 15, 2013 and February 15, 2014.

Allegation #3

9. After the Member accepted the cash retainers mentioned above and intermingled them with his personal funds, the retainers were used and spent by the Member as though they were his personal funds.

10. The Member admits that while he may have ultimately earned a portion of some of the retainers by making appearances in court on some matters, obtaining disclosure and providing initial consultations to clients, he had not earned the full amount in relation to any of the retainers by February 15, 2014, the time he was required to transfer the files at Mr. X. The Member admits that he had earned no portion of any of the retainers at the time when he received and intermingled the funds in his personal funds and used the funds for his personal benefit.

11. The Member advised Mr. X. that he would be transferring the files in question with the full retainer paid by the clients. The Member acknowledged that any work that had been done to earn even a portion of the retainers (a first appearance for example) would need to be duplicated by Mr. X. after the files were transferred. The Member agreed to turn over the full retainers to Mr. X. so that Mr. X. would have sufficient retainers to represent the clients and to avoid the clients having to pay twice for any legal services provided.

12. The Member did not provide Mr. X with the retainers upon file transfer. The Member made a subsequent promise on March 6, 2014 to deliver the retainers the

following Monday. He did not pay the retainers as promised. This represented a “red flag” for Mr. X. and caused Mr. X. to contact the Law Society.

13. When confronted by the Law Society in relation to this matter the Member confirmed that he did not pay the retainers to Mr. X. as promised because he had spent the original retainers for his own benefit and did not have the money to replace those amounts.
14. Ultimately, on April 4, 2014 the Member paid \$6,300.00 from his personal funds to Mr. X. to replace the retainers that he had taken.
15. On April 15, 2014 the Member signed a series of admissions in relation to this matter and has been co-operative with the Law Society.

Prior History

16. The Member has a prior discipline history as follows:
 - a. February 2004 – 1 Month Suspension, costs
 - i. Dilatory practice – failure to advance an appeal on behalf of his client when he had undertaken to do so; and
 - ii. Misleading client and a fellow member as to the status of the appeal;
 - b. January 5, 2005 – Reprimand; fine, costs
 - i. Failure to co-operate with Law Society Investigator; and
 - ii. Counseling client to sign an Affidavit attaching exhibits that did not yet exist.
 - c. November 29, 2013 – 9 month suspension and costs
 - i. Dilatory practice (9 counts);
 - ii. Intentional misleading of clients (3 counts); and
 - iii. Recklessly providing false information to the Law Society.

In the course of the Hearing, we asked for clarification on one further factual issue relating to the timing of the Member’s payments to Mr. X relative to the Law Society’s initial inquiries and in particular in relation to the Member’s first knowledge that the Law Society was looking into his conduct in the present matter. While the precise timing and the details of the payments remained somewhat unclear, it was conceded by Counsel for the Investigation Committee that the Member had begun to make payments to Mr. X prior to becoming aware that the Law Society was making inquiries.

Submissions Regarding Penalty

Counsel for the Investigation Committee asked us to accept that the modern case law establishes a central principle with respect to cases of misappropriation, that being disbarment is the default outcome, regardless of the amount involved, barring exceptional circumstances. Arguing that

the circumstances of the present case did not justify the application of the exception contemplated in the principle, he recommended that the Member be disbarred.

The Member urged us to take a less rigid view of the cases relied on by Counsel for the Investigation Committee, arguing that the decisions tend to take a more holistic approach. Given all of the circumstances present, he submitted that a brief suspension with a return to practice under supervision would be appropriate.

Reasons for Decision

The allegations are of two types. Allegations 1 and 2 are based on the rules – one might say the technical requirements – related to the establishment and maintenance of trust accounts. The third allegation involves actual misappropriation of trust funds.

The rules regarding the establishment of trust funds and the care of clients' money are not arbitrary. They are carefully constructed to ensure that the lawyer's obligations in relation to trust funds can be easily and confidently met by the member. In order to meet the required standard, the member need only follow the very simple rules established by the Law Society. To ignore these rules demonstrates an attitude that brings into question a lawyer's suitability to practice law.

The actual misappropriation of client funds, in any circumstances, is even more serious, going to the heart of the solicitor-client relationship and the public's confidence in the legal profession and its ability to govern itself. When a lawyer intermingles clients' money with the lawyer's and spends it as if it were the lawyer's own money, the obligations of the Law Society to protect the public require consideration of the most severe sanction. We agree with counsel for the investigation committee that the principle is well established: in the case of misappropriation, regardless of the amount involved and barring exceptional circumstances, the Member's conduct will result in disbarment.

Having said that, adopting the Member's interpretation of the case law would not, in these circumstances, lead to a more lenient consideration of the Member's conduct. When the totality of the facts are considered, including those aspects that reflect more favourably on the Member, these admitted allegations warrant a significant response.

Both counsel for the investigation committee and the member cited aspects of the circumstances and the Member's conduct that supported consideration of a more lenient penalty. Counsel for the Investigation Committee invited us to consider the following mitigating factors:

- a. The Member has been co-operative and frank with the Law Society as to his misconduct. The Member entered into an Agreed Statement of Fact [*sic*] and pled guilty to the allegations, thus avoiding a hearing involving many witnesses.
- b. The Member made restitution in relation to the entire amount misappropriated shortly after transfer of the files.
- c. There appears to be no evidence of deception involved with the Member's conduct.

- d. The Member ultimately did not receive a benefit from the misappropriated funds, although he may have realized a benefit in the short term having access to funds that he was not entitled to upon receipt of the retainers.
- e. There was no loss to clients.

In his oral submission, the Member advanced more or less the same mitigating factors. He also pointed out that the period of time between his receiving the funds and ultimately paying equal amounts over to the lawyer to whom these client files were transferred was relatively brief. He asked us to contrast that with the various other cases where lawyers have been disciplined for a pattern of conduct over a lengthy period. He also emphasized it was always his intention to reinstate the amounts misappropriated and that he did so shortly after transferring the files.

Neither counsel identified any external factors that might have led to the Member's misconduct. The Member himself characterized his conduct as "incredibly stupid".

There are also aggravating factors present. Counsel for the Investigation Committee pointed to the intentional nature of the Member's conduct. He accepted the trust funds knowing he had no trust account. He intermingled the funds with his own and then used them for his own purposes. He intentionally operated in contravention of the rules regarding the handling of trust funds.

The Member's prior discipline history cannot be ignored. The Member asked us to consider that this was his first instance of misappropriation. However, all three instances of discipline prior to this proceeding also involved issues of integrity and must be given substantial weight when determining an appropriate penalty.

Also significant is that, during the period when the circumstances giving rise to this complaint arose, the Member was freshly dealing with another discipline penalty and was, in fact, winding up his practice in order to serve a period of suspension. That he would, under these circumstances, ignore the clear requirements applicable to his handling of trust funds is difficult to understand.

Landing on the correct penalty is often the most difficult challenge facing a Hearing Committee. As Wilkinson J.A. stated in *Merchant v. Law Society of Saskatchewan*, 2009 SKCA 33, at para. 95:

Each party was able to cite innumerable examples where the penalty, costs aside, were [*sic*] greater than, similar, or lesser than the penalty in this case. Not unexpectedly, the reasonable range of sentences in disciplinary matters is elastic. It will be impacted by considerations of age, experience, discipline history, unique circumstances of the member, and the nature of the conduct complained of.

This difficulty is perhaps most poignant when the discipline committee is forced to confront the possibility of disbarment. However, having considered all of the circumstances, including both the aggravating and mitigating factors present, the hearing committee concludes that disbarment is required.

Order

Given the three allegations constituting the Formal Complaint arise from the same general circumstances, the penalty will be a global penalty based on all three. However, it should be noted that we would impose the same penalty based solely on the third allegation in these circumstances.

The Hearing Committee orders, pursuant to s. 53(3)(a)(i) and (v) of *The Legal Profession Act, 1990*:

- (a) the Member is disbarred;
- (b) the Member will not be eligible to apply for reinstatement for a period of one year from the date of the disbarment;
- (c) the Member will pay the costs related to the complaint in the amount of \$4,032.50 or such other amount agreed to between the Member and Counsel for the Investigation Committee.

The Member indicated that he would require time to pay the costs. The costs are payable immediately. However, we expect the Law Society will accommodate any reasonable request by the Member to stage payments over time.

"Gerald Tegart"	February 5, 2015
Gerald Tegart (Chair)	Date

"Alma Wiebe"	February 5, 2015
Alma Wiebe	Date

"Gerald Tegart based on the authorization of Judy McCuskee"	February 6, 2015
Judy McCuskee	Date