



The Law Society of Saskatchewan

KAROLEE ZAWISLAK

HEARING DATE: October 19, 2015

DECISION DATE: January 20, 2016

Law Society of Saskatchewan v. Zawislak, 2016 SKLSS 1

**IN THE MATTER OF *THE LEGAL PROFESSION ACT, 1990*
AND IN THE MATTER OF KAROLEE ANN ZAWISLAK,
A LAWYER OF REGINA, SASKATCHEWAN**

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

Members of the Hearing Committee:

Thomas A. Healey (Chair)

Jay Watson

Greg Stevens

Counsel

Timothy Huber for the Conduct Investigation Committee

Karolee Ann Zawislak on her own behalf

INTRODUCTION

1. A hearing in relation to the allegations against Ms. Karolee Ann Zawislak (the “Member”) was commenced on October 19, 2015 in Regina, Saskatchewan. At the outset of the hearing the Member and Mr. Timothy Huber, counsel on behalf of the Conduct Investigation Committee, agreed to file a document entitled “Agreed Statement of Facts and Admissions Between Karolee Ann Zawislak and The Law Society of Saskatchewan” with the Hearing Committee. The Member entered guilty pleas to allegations 1, 2, 3 and 4 in relation to the formal complaint dated July 5, 2012, which was subsequently amended on March 26, 2014 as well as allegations 1, 2, 3 and 5 of the formal complaint dated October 14, 2014. Each of the said allegations that the Member plead guilty to were included at the outset of the Agreed Statement of Facts and Admissions that was filed with the Hearing Committee by the Member and Mr. Huber.

2. The hearing took place in Regina, Saskatchewan and both the Member and Mr. Huber appeared in person at the hearing. The Member and counsel for the Conduct Investigation Committee acknowledged and agreed at the outset of the hearing with the constitution of the

Hearing Committee. Once the Hearing Committee accepted the guilty pleas from the Member, the Hearing Committee then heard representations by the parties regarding a penalty. At the conclusion of the hearing, the Hearing Committee advised the parties of its intention to reserve its decision and render written reasons for the penalty to be imposed.

FACTS

3. At all times relevant to this matter, the Member practiced law in the City of Regina as a partner, together with her husband, in the law firm of Zawislak and Zawislak.

4. A copy of the Agreed Statement of Facts and Submissions that was filed in relation to this matter has been attached as an Appendix to this decision. The primary facts can be summarized as follows:

PARTICULARS OF CONDUCT: THE FORMAL COMPLAINT DATED JULY 5, 2012

Count #1

5. Mr. M. was a very close, long term friend of the Member's family. Mr. M. was gravely ill and hospitalized at the time that the Member's conduct in relation to this incident arose. The Member was the Power of Attorney for Mr. M. at the relevant time. During Mr. M.'s last days, the Member prepared a Will for Mr. M. at his request which was signed on May 8, 2009. Mr. M. subsequently died on May 20, 2009 after having fallen into a coma some days prior.

6. At the time that the will was signed, the Member had hired witnesses to accompany her to the hospice where Mr. M. was a patient, to witness his signature to the Will. The signed Will named the Member and her spouse as the executors. The Will left the majority of Mr. M.'s estate to members of Mr. M.'s family. However, the Will also left gifts for the Member, her spouse and the Member's minor son. The Member and the Member's spouse applied for and received Letters Probate as joint executors of the estate. The most significant bequest in Mr. M.'s Will to the Member's family was a \$10,000.00 educational fund which was left to the Member's minor son.

7. W.B. was a relative of Mr. M. and a beneficiary of the estate of Mr. M. He filed a complaint with The Law Society of Saskatchewan on June 29, 2011, with concerns about delays in the processing of the estate and a lack of accountability on the part of the Member and her spouse in evaluating items from the estate.

8. In relation to the \$10,000.00 education fund left to the Member's son, the Member and her spouse initially received \$5,000.00 of that money from the estate on or about December 17, 2010 and they invested it into an R.E.S.P. for their son. This was done with the initial oral consent of the beneficiaries. The Member and her spouse intended to invest the remaining \$5,000.00 from the \$10,000.00 educational fund bequest, into an R.E.S.P. during the 2011 calendar year. The second \$5,000.00 investment did not occur as the beneficiaries by that time were expressing concerns about the gift. Ultimately, in December of 2012 the Member and her spouse cashed in the first investment and returned the \$5,000.00 into the estate trust account. Ultimately, the Public Trustee did not permit the Member to reject the gift to the Member's son. The Member and her spouse decided to repay the \$5,000.00 amount to the estate, essentially becoming personally responsible for the entire gift.

9. The Member acknowledges that despite the fact that her family had a close personal relationship with Mr. M. it was a breach of the Code of Professional Conduct for her to prepare a testamentary instrument that included herself and her associates (spouse and son) as beneficiaries of gifts.

Count #2

10. On September 19, 2011 the Law Society of Saskatchewan became aware that the contents of a storage locker rented by the Member were going to be auctioned off due to unpaid charges. As a result the Law Society contacted the member who indicated that she had made a payment and that the locker was no longer going to be auctioned off.

11. On September 27, 2011 the Law Society sent a letter to the Member indicating concern that a lawyer's storage locker could contain confidential client files, and requesting a written response from the Member. On October 7, 2011 the Law Society received an e-mail from a Member of the public who informed them of an advertisement in the Regina Leader Post. The ad indicated that the contents of a locker (different than the previous storage locker) containing file cabinets and file boxes belonging to the Member were up for auction on October 21, 2011 due to unpaid charges. The Member subsequently acknowledged that the storage locker put up for auction did contain client files. She assured the Law Society that the arrears on the account would be paid and that all files would be consolidated in a new locker. The Member intervened in time to avoid loss or disclosure of client information.

12. The Member acknowledges that her failure to ensure that the storage fees were paid put her clients' information at risk and falls short of her duty to deal with client files and property in a careful and prudent manner.

Count #3

SLIA Deductible

13. As part of the requirement for all lawyers to remain in good standing and be able to practice law in Saskatchewan, they must incur certain expenses in relation to their practice. One of these expenses is practice insurance. In 2010, the Member was required to pay \$7,500.00 as an insurance deductible for a claim processed through the Saskatchewan Lawyers' Insurance Association (SLIA). On October 20, 2010, SLIA issued the Member a demand for payment. A reminder letter was sent to the Member on November 26, 2010 regarding setting up a payment schedule. On December 1, 2010, the Member informed SLIA that she would pay monthly installments of \$625.00 with the first cheque dated January 2011. The first cheque was returned for insufficient funds.

14. On March 9, 2011 the Member was reminded to replace the January NSF cheque. This cheque was replaced by the Member. On March 31, 2011 the Member informed SLIA that she was in the process of changing banks and requested a delay of the deposit of the March 2011 cheque. This cheque was processed. Over the Easter long weekend (the weekend of April 23 and 24, 2011) the Member had planned to replace the post-dated cheques with new bank cheques but she suffered a medical emergency and was hospitalized for 10 days.

15. On April 27, 2011, SLIA advised the Member that her April 2011 cheque was returned for insufficient funds. On May 6, 2011, the Law Society sent a letter to the Member advising her that the total amount of \$5,625.00 was due and payable. On May 16, 2011 the Member sent a letter to the Law Society advising them that she had been hospitalized and had undergone emergency surgery. She requested additional time to respond to the matter. The Law Society responded by giving the Member a deadline of June 6, 2011 for a written response.

16. Mr. Tom Schonhoffer, Q.C., the Executive Director of the Law Society of Saskatchewan sent a letter to the Member dated May 18, 2011, stating that despite her health issues she was still in arrears. The letter also reiterated that the total sum of \$5,625.00 was due and payable prior to June 30, 2011. The Member replied to Mr. Schonhoffer's, Q.C. correspondence suggesting that there were other factors than simply the missed deadlines at play in this situation which should be considered as mitigating factors. The Member referred to "a perfect storm of negative inter-related events" suggesting that they were beyond her control. The Member acknowledged that the demands for payment began well in advance of the medical emergency and that she had failed to meet her financial obligations to SLIA that had been incurred by her legal practice. The Member had paid \$1,875.00 of the deductible prior to April 2011. She paid the balance of \$5,675.00 by June 20, 2011.

Dr. S.

17. In this instance, the Member ordered a medical report from Dr. S. on behalf of her client C.S. The Member received the medical report from Dr. S. Included with the medical report was a bill, which was dutifully paid. The Member requested an additional newly prepared, updated medical report from Dr. S. regarding C.S. in April 2010. Rather than respond to the Member's request, Dr. S. sent a simple photocopy of his previous medical report remitting a bill of \$100.00 to the Member for the simple photocopy. The Member did not require a photocopy of the report as she already had the previous medical report. She did not pay the account or contact Dr. S. to object to the account.

18. Subsequent bills were sent by Dr. S. to the Member; however the Member refused to reply to Dr. S.'s messages or faxes, and continued to refuse to pay the outstanding bill. On November 12, 2010, Dr. S. complained to the Law Society of Saskatchewan. The Law Society forwarded a copy of Dr. S.'s complaint to the Member's firm on December 6, 2010. Two days later payment was remitted to Dr. S. with a letter of apology. The Member stated that she "took exception" to the bill, "but that is not an excuse for not paying it."

Count #4

19. On April 9, 2010, H.P. suffered an injury after slipping on the floor at a local grocery store. A doctor determined that H.P. had a severe stress fracture of the second metatarsal on her right foot and it was placed in a cast. H.P. wanted to consult a lawyer and found the Member after looking in the phone book. The Member went to H.P.'s home in early July 2010 and told H.P. that she had much experience representing clients against this particular grocery store chain. The Member also informed H.P. that she would not have to pay her anything if she did not receive a settlement. H.P. thought that the Member would work harder for her as H.P. understood that the Member's fee would be dependent on the Member obtaining a settlement on behalf of H.P.

20. The Member then fell out of contact with H.P. for months. H.P. called the Member periodically and left messages but never received a reply. Finally in December 2010, H.P. called the Member again asking about the status of her case and requesting a response. The Member returned her call and said that she had been very busy and apologized. She also informed H.P. that she had contacted the store and given them a January 2011 deadline for answering her request for information. The Member promised that she would call H.P. to keep her up to date on any progress. H.P. never received any calls and ultimately transferred her file to another lawyer.

21. The Member states that she did attempt to work towards a determination in relation to liability on the file and made efforts to contact the store's adjuster, without success. She did not keep H.P. apprised of her efforts as she wanted to provide her views after speaking with the adjuster. The Member acknowledges that she allowed too much time to pass in communicating the situation to H.P. The Member points to an extremely busy work period as preventing her from having a discussion with H.P. in a reasonable period of time. The Member acknowledges that she should have made time for this conversation and should have returned H.P.'s phone calls. The Member has apologized for her lack of attention to this file during this busy period.

PARTICULARS OF CONDUCT: THE FORMAL COMPLAINT DATED OCTOBER 14, 2014

Counts #1, #2 and #3

22. On June 21, 2011, H.Y. had been involved in a minor car accident in Oregon while on vacation. An American driver was at fault. On October 11, 2011, H.Y. retained the Member in relation to a personal injury sustained during the accident. In a timely fashion the Member informed the relevant insurer, Farmers Insurance (Farmers) by telephone and by letter that she was representing H.Y. Between December 15, 2011 and December 12, 2013, Farmers sent the Member eleven letters. Farmers indicated that they never received a response from the Member whatsoever, although there is one letter dated May 15, 2012 that is addressed to Farmers and no evidence to suggest that it was not sent by the Member. Nevertheless, between May 15, 2012 and December 2013, six or seven letters were sent from Farmers to the Member seeking a response from the Member in relation to H.Y.'s claim without a reply. H.Y.'s own insurance coverage was with SGI. A representative from SGI wrote to the Member on April 14, 2013. In that letter the SGI representative mentioned that several messages had been left for the Member and none of them had been returned. During this same period H.Y. would e-mail the Member seeking updates and asking the Member if she required anything further from her. When the Member responded, she advised that she needed nothing from H.Y. and that there were no updates to provide. H.Y. was informed that liability had been accepted by the Insurer and that her injuries should be allowed to be stabilized before the matter could be concluded. In September 2011 the Member realized that she had missed the limitation period by diarizing the limitation period based on two years from the date of her first meeting with the client as opposed to two years from the date of the accident. The Member had many opportunities to work towards settlement of the matter with the Insurer but the Member wanted to wait for the injuries of the client to stabilize as is the norm in personal injury litigation. Farmers accepted liability early on in the process and had been pursuing settlement even without the Member's response. Farmers continued to pursue settlement even after the limitation period expired. The Member fell below

the standard expected of a lawyer in that she did not answer Farmers' letters in a timely fashion. The member admits that she missed the limitation period by failing to have a proper diarization system in place. H.Y. filed a complaint with the Law Society of Saskatchewan on October 21, 2013.

23. The Member had previously signed an undertaking dated April 1, 2012 where she undertook in part as follows:

- a. to identify any matters which are the subject of delay or dilatory practice such that the client may be upset and/or prepared to complain and report same to the Law Society of Saskatchewan;
- b. to immediately identify any potential negligence claims and report same to her insurer; and
- c. To report regularly respecting any issues or concerns with her practice to the Law Society of Saskatchewan.

24. Initially it appeared that the matter, while clearly a dilatory practice issue, was primarily a negligence situation as a result of a misdiarization. Ultimately, upon further investigation by Complaints Counsel, the eleven Farmer's letters were discovered. It was also revealed that the member had failed to report this obvious problem file to the Saskatchewan Lawyers Insurance Association (SLIA) or to her practice supervisor. The Member agrees she did not act appropriately with respect to failing to notify SLIA, the Law Society, and her practice supervisor, which amounted to a breach of her undertakings. The Member states that she became "paralyzed" and overwhelmed after discovering that she had missed the limitation period on the file. Further, with respect to the practice supervisor, the Member misled her practice supervisor by omission by failing to make him aware of the issues on the file of which she was aware. The H.Y. matter was ultimately reported to SLIA.

Counts #5

25. On or about February 21, 2012, V.R. and her husband retained the Member in relation to difficulties they were having with a contractor that they had hired for renovation work on their home. V.R. was generally unsatisfied with the contractor's workmanship and with damage he had caused to their home. V.R. and her husband refused to pay the contractor because of the substandard work. The contractor placed a builder's lien on their house. V.R. and her husband paid the Member a retainer fee of \$1,000.00 on February 23, 2012.

26. In the summer of 2012 V.R. was becoming frustrated with the level of service being provided by the Member. At this time the Member had yet to contact the opposing party's lawyer. When V.R. did finally speak to the Member, the Member was made aware of V.R.'s frustration. The Member had commenced work on the file as the Information Services Corporation had provided V.R. with notification that lapse proceedings had been initiated in relation to the lien. The contractor responded by placing a lock on the title.

27. On August 1, 2012, V.R. was served with a Statement of Claim issued by the contractor. The Member met with V.R. and her husband on September 4, 2012. At that time, the Member requested a statement from her clients and photographs copied to compact discs. These were

provided by V.R. on October 23, 2012. On that date, the Member advised that she would provide an update on progress by the end of that week. A further retainer was also requested by the Member which V.R. did not provide at that time. V.R. attempted to contact the Member twice more on November 7th and 17th, 2012, with no response. On November 20, 2012, V.R. terminated the solicitor client relationship with the Member and advised the Member that she would be complaining to the Law Society of Saskatchewan. The Member replied to V.R. on November 20, 2012 indicating that she had been ill and that she had experienced a water main break in front of her house. In that e-mail the Member requested “[V.R.] please not report [the Member] to the Law Society”. V.R. filed a complaint with the Law Society on November 26, 2012.

28. During the majority of the Member’s carriage of the V.R. matter, she was practicing pursuant to the undertaking dated April 1, 2012, that required her to report potential problem files to the Law Society of Saskatchewan or her practice supervisor as soon as she became aware of the problem. The Member knew or ought to have known that the V.R. matter was a problem file and should have been reported. Instead of reporting the V.R. matter to her practice supervisor, the Member remained silent and attempted to stifle a complaint. This was not consistent with the Member’s undertaking.

PRIOR HISTORY

29. The Member has a prior discipline history. In 1996 she was disciplined for co-authoring an inappropriate letter and filing a misleading affidavit that had been signed in blank. She was suspended for two weeks. In 2005 she was disciplined for dilatory practice, failure to pay accounts incurred in the course of her practice and trust accounting rule breaches. The Member received a reprimand and was required to pay costs.

CONSIDERATIONS

30. At the outset it is worth reviewing the definition of “conduct unbecoming” in *The Legal Profession Act, 1990*. Conduct unbecoming is defined in Section 2(d) of The Legal Profession Act, 1990, as follows:

2(d) “conduct unbecoming” means any act or conduct, whether or not disgraceful or dishonorable, that:

- i. is inimical to the best interests of the public or the members; or
- ii. tends to harm the standing of the legal profession generally;

And includes the practice of law in an incompetent manner where it is within the scope of sub clause (i) or (ii);

31. Chapter II of the pre-2012 version of the Code of Professional Conduct includes subparagraph eight of the commentary section. Subparagraph eight is entitled promptness and reads as follows:

“The requirement of conscientious, diligent and efficient service means that the lawyer must make every effort to provide prompt service to the client. If the

lawyer can reasonably foresee undue delay in providing advice or services, the client should be so informed.”

32. In this case, in both the Agreed Statement of Facts and during the hearing, the Member recognized and admitted that she was fully responsible for her mistakes and misconduct in relation to this matter; the Member accepted full responsibility with respect to what had taken place. In this case, both the Member and counsel representing the Law Society have jointly submitted to the Hearing Committee that the Member’s conduct in relation to this matter is worthy of a suspension. However, both the Member and counsel representing the Law Society also agree that since the Member has already been suspended from practicing in relation to this matter for a period of time in an excess of eighteen months, that no further suspension should be imposed in relation to this case.

33. During the hearing, counsel on behalf of the Law Society noted that in this case there were multiple infractions by the Member, a number of which took place while the Member was practicing under practice conditions. Counsel on behalf of the Law Society also noted during the hearing that the Member had two prior discipline decisions on file with the Law Society. Given the foregoing, counsel on behalf of the Law Society recommended that the Member now be permitted to practice under strict practice conditions for a further period of six months at which time the Member’s situation could be reviewed by the Chairperson of the Discipline Executive to determine whether any further or additional practice conditions would be required.

34. During the hearing, the Member submitted that since being suspended by the Law Society, her personal situation has improved dramatically, and she noted that she already has been suspended for some time. The Member recognized that the delay in dealing with this matter has primarily been due to her actions or inaction. The Member requested that the Law Society take into account the suspension she has already experienced and allow her to begin practicing with few if any practice conditions.

35. Both parties agree that costs in this case should be set at \$3,000.00 and that the Member should be permitted to pay back those costs at any point within two years from the date of this decision.

DECISION

36. In this case, in light of the fact that the Member has already been suspended for a period of time in excess of eighteen months, the Hearing Committee accepts the joint submission of the parties that no further suspension is required. The Hearing Committee finds that the submission pertaining to penalty by the parties is within the range of outcomes in other similar cases and is reasonable; the joint submission is accepted. However, it is the decision of the Hearing Committee that the Member will only be permitted to resume practicing under the supervision of a practice supervisor chosen by the Chair of the Discipline Executive on the terms set out immediately below:

- a. The Member will only be permitted to practice law under the supervision of a member of the Law Society of Saskatchewan, or a member of a Law Society from

elsewhere in Canada, who has been approved by the Chair of the Discipline Executive of the Law Society of Saskatchewan;

- b. After the expiry of six months from the date on which the Member resumes practicing law under the supervision of a practice supervisor as specified under this decision, the Member may apply, with appropriate supporting materials, to the Law Society of Saskatchewan for consideration by the Chair of the Discipline Executive for a determination as to whether or not some or all of the conditions or terms of supervision should be continued, be amended or be removed;
- c. The Member will at all times, while practicing under the supervision of a practice supervisor, cooperate fully and completely with her practice supervisor and with the Chair of the Discipline Executive;
- d. The Member will not be permitted to practice out of her residence;
- e. The Member will not be permitted to practice law with Larry Zawislak acting as her practice supervisor;
- f. The Member will be required to take psychological counselling on a regular and ongoing basis as recommended by her practice supervisor; and
- g. The Member will pay costs in the amount of \$3,000.00 to the Law Society of Saskatchewan within two years from the date of this decision.

DATED at the City of Melfort in the Province of Saskatchewan this 20th day of January, 2016.

 "Thomas Healey"
 Chair, Discipline Committee

DATED at the City of Saskatoon in the Province of Saskatchewan this 20th day of January, 2016.

 "Jay Watson"
 Discipline Committee Member

DATED at the R.M. of Corman Park, in the Province of Saskatchewan this 19th day of January, 2016.

 "Greg Stevens"
 Discipline Committee Member

AGREED STATEMENT OF FACTS AND ADMISSIONS

In relation to the Formal Complaint dated July 5, 2012, as amended below, alleging that she is guilty of conduct unbecoming a lawyer in that she:

1. **Did prepare or cause to be prepared a Last Will and Testament wherein her client, Mr. M, was to leave her and or members of her family testamentary gifts;**
2. **Did fail to handle client property, namely client files and documents, in a careful and prudent manner;**
3. **Did fail to meet financial obligations incurred or assumed in the course of her practice when called upon to do so;**
4. **Did fail to serve her client, H.P., in a conscientious, diligent and efficient manner as follows:**
 - a. **failed to respond to her client’s communications in a timely fashion or at all;**
 - b. **failed to keep her client reasonably informed;**
 - c. **failed to provide prompt service.**

AND in relation to the Formal Complaint dated October 14, 2014, as amended below, alleging that she is guilty of conduct unbecoming a lawyer in that she:

1. **Did fail to serve her client, H.Y., in a conscientious, diligent and efficient manner as follows:**
 - a. **She failed to respond to communications from Farmers Insurance and SGI within a reasonable time or at all;**
2. **Did breach her undertakings to the Law Society of Saskatchewan, dated April 1, 2012, by failing to report problems with the H.Y. file to her Practice Supervisor or the Law Society of Saskatchewan;**
3. **Did mislead her Practice Supervisor in relation to the status of the H.Y. file when specific enquiries were made;**
5. **Did breach her undertakings to the Law Society of Saskatchewan, dated April 1, 2012 by failing to report problems with the V.R. file to her Practice Supervisor or the Law Society of Saskatchewan, despite being aware of the problems, including having requested that V.R. not report her to the Law Society of Saskatchewan.**

JURISDICTION

37. Karolee Ann Zawislak (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.

38. The Member is currently the subject of two Formal Complaints initiated by the Law Society dated July 5, 2012 and October 14, 2014. The Formal Complaint dated July 5, 2012 was served upon the Member on July 5, 2012. Attached at Tab 2 is a copy of the original Formal Complaint along with proof of service in the form of an Acknowledgement of Service. The Formal Complaint dated October 14, 2014 was served upon the Member on October 14, 2014. Attached at Tab 3 is a copy of the original Formal Complaint along with proof of service in the form of an Affidavit of Service.

39. The Member agrees to enter guilty pleas to the amended allegations noted above. The Conduct Investigation Committee agrees to withdraw allegations 5 and 6 set out in the original Formal Complaint dated July 5, 2012 and allegation 4 set out in the original Formal Complaint dated October 14, 2014.

BACKGROUND OF COMPLAINT

40. These proceedings arose as a result of a Law Society of Saskatchewan investigation in relation to multiple complaints against the Member. The issues particularized below flowed from the ensuing review into the Member's files and conduct.

PARTICULARS OF CONDUCT: FORMAL COMPLAINT DATED JULY 5, 2012

Count 1

41. Mr. M. was a very close, long term friend of the Member's family. Mr. M. was gravely ill and hospitalized at the time of the conduct in question. The Member was Power of Attorney for Mr. M. During Mr. M.'s last days, the Member prepared a will for him, at his request, which was signed on May 8, 2009. Mr. M. died on May 20, 2009, after having fallen into a coma some days prior.

42. The Will left gifts for the Member, her spouse, and the Member's minor son as follows:

- i. Any coin collections or watches that Mr. M. had at the date of his death to Larry Zawislak;
- ii. The contents of Mr. M.'s home to Larry Zawislak and Karolee Zawislak who were to distribute specific items to Mr. M.'s family upon request. Mr. M. intended for his family to take whatever contents that they wished to have; and
- iii. The sum of \$10,000.00 to the Member's son (a minor at the time of Mr. M.'s death) to be used for his education.

43. Mr. M. had indicated to the Member that he had a small coin collection that included a valuable coin worth \$35,000.00. Mr. M. advised the Member that his watch collection included a Rolex Imperial that Mr. M. described as expensive, but in need of repair. The Member had no actual knowledge as to whether these items existed or not. The notes taken by the Member in order to prepare the Will reflect this and are attached at Tab 3. The Will ultimately prepared by the Member for Mr. M. is attached at Tab 4.

44. The Member hired witnesses to accompany her to the hospice where Mr. M. was a patient to witness his signature to the Will.

45. The signed Will named the Member and her spouse as Executors. The Member and the Member's spouse applied for and received Letters Probate as joint Executors of the Estate.

46. The watches bequeathed to the Member's spouse by Mr. M. were of no value. The coin collection bequeathed to the Member's spouse was of a nominal value, likely less than \$50.00. The Member's spouse ultimately did not accept the coins or the watches bequeathed to him by Mr. M. under the May 8, 2009 Will. Neither the Member nor her spouse accepted any of the household goods bequeathed by Mr. M.

47. W.B. was a beneficiary of the estate of Mr. M. He filed a complaint with the Law Society of Saskatchewan on June 29, 2011 with concerns about the delays in the processing of the estate and the lack of accountability on the part of the Member and her spouse in evaluating items from the estate. The complaint of W.B. is attached at Tab 5.

48. In relation to the \$10,000.00 education fund left to the Member's son, the Member and her spouse received \$5,000.00 of that money from the estate trust account held in their firm on or about December 17, 2010 and invested it into an RESP for their son. This was done with the initial oral consent of the beneficiaries. The Member and her spouse intended to invest the \$5,000.00 remainder into an RESP during the 2011 calendar year. This second investment did not occur as the beneficiaries by that time were expressing concerns about the gift. Ultimately, in December of 2012, the Member and her spouse cashed in the first investment and returned the \$5,000.00 into the estate trust account. Ultimately, the Public Trustee did not permit the Member to reject the gift to the Member's son. The Member and her spouse decided to repay the \$5,000.00 amount to the estate, essentially becoming personally responsible for the entire gift.

49. The Member acknowledges that, despite the fact that her family had a close personal relationship with Mr. M. it was a breach of the Code of Professional Conduct for her to prepare a testamentary instrument that included herself and her associates (spouse and son) as beneficiaries of gifts.

Count 2

50. On September 19, 2011 the Law Society of Saskatchewan became aware that the contents of a storage locker rented by the Member was going to be auctioned off due to unpaid charges. This storage locker contained office furniture.

51. The Law Society called the Member who indicated that she had made a payment and that the locker had been taken off the block.

52. On September 27, 2011 the Law Society sent a letter to the Member indicating concern that a lawyer's storage locker could contain confidential client files. They requested a written response from the Member.

53. On October 7, 2011 the Law Society received an email from a Member of the public who informed them of an advertisement in the October 5, 2011 Regina Leader Post. The ad indicated that the contents of a locker (different than the previous storage locker) containing file cabinets and file boxes belonging to the Member was up for auction on October 21, 2011 due to unpaid charges [Tab 6].

54. The Member acknowledged that the storage locker put up for auction did contain client files. She assured the Law Society that the arrears on the account would be paid and that all files were being consolidated in a new locker. The Member intervened in time to avoid loss or disclosure of client information.

55. The Member acknowledges that her failure to ensure that storage fees were paid put her client's information at risk and falls short of her duty to deal with client files and property in a careful and prudent manner.

Count 3

SLIA Deductible

56. As part of the requirements for all lawyers to remain in good standing and able to practice law in Saskatchewan, they must incur certain expenses in relation to their practice. One of these expenses is practice insurance.

57. In 2010 the Member was required to pay \$7,500.00 as an insurance deductible for a claim processed through the Saskatchewan Lawyers' Insurance Association (SLIA).

58. On October 20, 2010, SLIA issued the Member a demand for payment.

59. On November 26, 2010 the Member was sent a reminder regarding setting up a payment schedule.

60. On December 1, 2010, the Member informed SLIA that she would pay monthly installments of \$625.00, with the first cheque dated January 2011. This cheque was returned for insufficient funds.

61. On March 9, 2011 the Member was reminded to replace the January NSF cheque. This cheque was replaced by the Member.

62. On March 31, 2011, the Member informed SLIA that she was in the process of changing banks and requested a delay of the deposit of the March 2011 cheque. This cheque was processed. Over the Easter long weekend the Member had planned to replace the post-dated cheques with the new bank cheques. She unexpectedly suffered a ruptured bowel over the Easter weekend and underwent emergency surgery, was in intensive surgical care and suffered complications. She was hospitalized for ten days.

63. On April 27, 2011, SLIA advised the Member that her April 2011 cheque was returned for insufficient funds.

64. On May 6, 2011, the Law Society sent a letter to the Member advising her that the total amount of \$5,625.00 was due and payable.

65. On May 16, 2011, the Member sent a letter to the Law Society informing them that she had been hospitalized and had undergone emergency surgery. She requested additional time to respond to the matter. The Law Society responded by letter dated May 19, 2011 and gave the Member a deadline of June 6, 2011 for a written response.

66. The Executive Director of the Law Society of Saskatchewan, Mr. Thomas J. Schonhoffer, Q.C. sent a letter to the Member dated May 18, 2011. In that letter he indicated to the Member that despite her health issues, she was still in arrears. The letter also reiterated that the total sum of \$5,625.00 was due and payable prior to June 30, 2011. As well, a copy of the letter was provided to Donna Sigmeth, Deputy Director of the Law Society and Complaints Counsel.

67. The Member replied to the complaint regarding the non-payment of insurance fees on June 6, 2011. She stated that while the dates set out in the letter sent by Mr. Schonhoffer were correct, there were other factors at play that should be considered mitigating factors. The member referred to “a perfect storm of negative inter-related events” suggesting that they were beyond her control.

68. The Member acknowledged that the demands for payment began well in advance of the medical emergency and that she had failed to meet her financial obligations to SLIA that had been incurred in her legal practice. The Member had paid \$1,875.00 of the deductible prior to April 2011. She paid the balance of \$5,675.00 by June 30, 2011.

Dr. S.

69. This complaint concerns a personal injury file. The Member ordered a medical report from Dr. S on behalf of her client C.S. The Member received the medical report from Dr. S. Included with this medical report was a bill, which was dutifully paid. The Member requested an additional newly prepared, updated medical report from Dr. S. regarding C.S. in April 2010. Rather than respond to the Member’s request, Dr. S. sent a simple photocopy of his previous medical report remitting a bill of \$100.00 to the Member for this simple photocopy. The Member did not require a photocopy of the report as she already had the previous medical report. She did not pay the account or contact Dr. S. to object to the account.

70. On September 9, 2010, Dr. S.’s office sent a fax to the Member. It indicated that voicemail messages were left on September 3, 2010 and on that same day requesting a response and payment from the Member. The Member did not reply.

71. On October 8, 2010 Dr. S.’s office again faxed the Member with a request to please remit the \$100.00 owing since April 2010. The Member did not reply.

72. On November 3, 2010 Dr. S.’s office again faxed the Member reminding her that he was owed \$100.00 for the services rendered regarding C.S. The fax also indicated that a voicemail was left with a request for payment. The Member did not reply.

73. Dr. S. complained to the Law Society of Saskatchewan on November 12, 2010.

74. The Law Society forwarded a copy of Dr. S.'s complaint to the Member's firm on December 6, 2010. Two days later payment was remitted to Dr. S. with a letter of apology. The Member stated that she "took exception" to the bill, "but that is not an excuse for not paying it."

Count 4

75. On April 9, 2010, H.P. suffered a slip and fall after stepping in on the floor at a local grocery store. A doctor determined that H.P. had a severe stress fracture of the second metatarsal of her right foot and it was placed in a cast.

76. H.P. wanted to consult a lawyer and found the Member after looking in the phone book.

77. The Member went to H.P.'s home in early July 2010 and told H.P. that she had much experience representing clients against this particular grocery store chain.

78. The Member also informed H.P. that she would not have to pay her anything if she did not receive a settlement, which H.P. thought would mean that the Member would work harder for her if she wanted some financial gain.

79. The Member then fell out of contact with H.P. for months. H.P. called the Member periodically and left messages but never received a reply.

80. Finally, in December of 2010, H.P. called the Member again asking about the status of her case and requesting a response. The Member returned her call and said that she had been very busy and apologized. She also informed H.P. that she had contacted the store and given them a January 2011 deadline for answering her request for information. The Member promised that she would call H.P. to keep her up to date on any progress. H.P. never received any calls. Ultimately, H.P. transferred her file to another lawyer.

81. The Member states that she did attempt to work towards a determination in relation to liability on the file and made efforts to contact the store's adjuster, without success. She did not keep H.P. apprised of her efforts as she wanted to provide her views after speaking with the adjuster. The Member acknowledges that she allowed too much time to pass in communicating the situation to H.P.

82. The Member states that being unsuccessful in obtaining contact from the adjuster and being left with the options of abandoning the case to aggressively pursuing the matter in the courts, she felt that she needed to have a conversation with H.P. before going any further with the file. The Member points to an extremely busy work period as preventing her from having that discussion with H.P. within a reasonable time. The Member acknowledges that she should have made time for this conversation and should have returned H.P.'s phone calls. The Member has apologized for her lack of attention to this file during this busy period.

PARTICULARS OF CONDUCT: FORMAL COMPLAINT DATED OCTOBER 14, 2014 Counts #1, #2 and #3

83. On June 21, 2011, H.Y. had been involved in a minor car accident in Oregon while on vacation. An American driver was at fault. On October 11, 2011, H.Y. retained the Member in relation to a personal injury sustained during the accident. In a timely fashion the Member informed the relevant insurer, Farmers Insurance (Farmers), via phone and by letter that she was representing H.Y.

84. Between December 15, 2011 and December 12, 2013 Farmers sent the Member eleven letters. Farmers indicates that they never received any response from the Member whatsoever, although there is one letter dated May 15, 2012 that is addressed to Farmers and no evidence to suggest that it was not sent by the Member. Nevertheless, between May 15, 2012 and December 2013, six or seven letters from Farmers to the Member seeking a response from the Member in relation to H.Y.'s claim went without a reply.

85. H.Y.'s own insurance coverage was with SGI. A representative from SGI wrote to the Member on April 14, 2013. In that letter the SGI representative mentioned that several messages had been left for the Member and none of them had been returned.

86. During this same period H.Y. would email the Member seeking updates and asking the Member if she required anything further from her. When the Member responded, she advised that she needed nothing from H.Y. and that there were no updates to provide. H.Y. was informed that liability had been accepted by the insurer but that her injuries should be allowed to stabilize before the matter could be concluded.

87. In September of 2013, the Member realized that she had missed the limitation period by diarizing the limitation period based on two years from the date of her first meeting with the client as opposed to two years from the date of the accident.

88. The Member had many opportunities to work towards settlement of the matter with the insurer but the Member wanted to wait for the injuries of the client to stabilize as is the norm in personal injury litigation. Farmers accepted liability early on in the process and had been pursuing settlement, even without the Member's response. Farmers continued to pursue settlement even after the limitation period expired. The Member fell below the standards expected of a lawyer in that she did not answer Farmer's letters in a timely fashion. The Member admits that she missed the limitation period by failing to have proper diarization systems in place.

89. H.Y. filed a complaint with the Law Society of Saskatchewan on October 21, 2013.

90. The Member had previously signed an undertaking dated April 1, 2012 [TAB 7] wherein she undertook, in part, as follows:

- a. to identify any matters which are the subject of delay or dilatory practice such that the client may be upset and/or prepared to complain and report same to the Law Society of Saskatchewan;
- b. to immediately identify any potential negligence claims and report same to her insurer; and

- c. to report regularly respecting any issues or concerns with her practice to the Law Society of Saskatchewan.

91. Initially it appeared that the matter, while clearly a dilatory practice issue, was primarily a negligence situation as a result of a misdiarization. Ultimately, upon further investigation by Complaints Counsel, the eleven Farmers letters were discovered. It was also revealed that the Member had failed to report this obvious problem file to the Saskatchewan Lawyers Insurance Association (SLIA) or to her practice supervisor, Ron Miller. The Member agrees she did not act appropriately with respect to failing to notify SLIA, the Law Society, and her Practice Advisor, which amounted to a breach of her undertakings. The Member states that she became “paralysed” and overwhelmed after discovering that she had missed the limitation period on the file.

92. Further, with respect to the Practice Supervisor, the Member misled her Practice Supervisor by omission by failing to make him aware of the issues on the file of which she was aware.

93. The H.Y. matter was ultimately reported to SLIA.

Count#5

94. On or about February 21, 2012, V.R. and her husband retained the Member in relation to difficulties they were having with a contractor that they had hired for renovation work on their home. V.R. was generally unsatisfied with the contractor’s workmanship and with damage he had caused to their home. V.R. and her husband refused to pay the contractor because of the substandard work. The contractor placed a builder’s lien on their house. V.R. and her husband paid the Member a retainer fee of \$1,000.00 on February 23, 2012.

95. In the summer of 2012 V.R. was becoming frustrated with the level of service being provided by the Member. At this time the Member had yet to contact the opposing party’s lawyer. When V.R. did finally speak to the Member the Member was made aware of V.R.’s frustration.

96. The Member had commenced work on the file as ISC had provided V.R. with notification that lapse proceedings had been initiated in relation to the lien. The contractor responded by placing a lock on the title.

97. On August 1, 2012, V.R. was served with a Statement of Claim issued by the contractor.

98. The Member met with V.R. and her husband on September 4, 2012. At that time the Member requested a statement from her clients and photos copied to compact disks. These were provided by V.R. by October 23, 2012. On that date the Member advised that she would provide an update on progress by the end of that week. A further retainer was also requested by the Member which V.R. did not provide at that time. V.R. attempted to contact the Member twice more on November 7 and 17, 2012 with no response. On November 20, 2012, V.R. terminated the solicitor-client relationship with the Member and advised the Member that she would be complaining to the Law Society of Saskatchewan.

99. The Member replied to V.R. on November 20, 2012 indicating that she had been ill and that she had experienced a water main break in front of her house. In that email the Member requested “that [V.R.] please not report [the Member] to the Law Society”.

100. V.R. made her complaint to the Law Society on November 26, 2012.

101. During the majority of the Member’s carriage of the V.R. matter, she was practicing pursuant to the undertaking dated April 1, 2012, [TAB 7] that required her to report potential problem files to the Law Society of Saskatchewan or her practice supervisor as soon as she became aware of the problem. The Member knew or ought to have known that the V.R. matter was a problem file that should have been reported. Instead of reporting the V.R. matter to her practice supervisor immediately, the Member remained silent and attempted to stifle a complaint. This was not consistent with the Member’s undertaking.

PRIOR HISTORY

102. The Member has a prior discipline history. In 1996 she was disciplined for co-authoring an inappropriate letter and filing a misleading Affidavit that had been signed in blank. She was suspended for two weeks. In 2005 she was disciplined for dilatory practice, failure to pay accounts incurred of the course of her practice and trust accounting rule breaches. The Member received a reprimand and was required to pay costs. These decisions are attached collectively at Tab 8.