



The Law Society of Saskatchewan

LARRY ZAWISLAK

HEARING DATE: October 19, 2015

DECISION DATE: January 22, 2016

Law Society of Saskatchewan v. Zawislak, 2016 SKLSS 2

**IN THE MATTER OF *THE LEGAL PROFESSION ACT, 1990*
AND IN THE MATTER OF LARRY 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

Larry Zawislak on his own behalf

INTRODUCTION

1. A Hearing in relation to the allegations against Mr. Larry 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 Larry Zawislak and The Law Society of Saskatchewan” with the Hearing Committee. The Member entered guilty pleas to allegations 1, 2 and 3 in relation to the formal complaint dated October 4, 2012 which was subsequently amended on March 26, 2014. Each of the said allegations that the Member pled 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 Gearing, 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 his wife, 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

Count #1

5. That Larry Zawislak did knowingly acquire, on his own behalf and/or on behalf of his associate (son), property from a client of his firm by way of a testamentary instrument that had been prepared by his spouse, Karolee Zawislak.

6. Mr. M. was a very close, long term friend of the Member's family. The Member's spouse prepared a will for him, which was signed on May 8, 2009. Mr. M. was in a very grave condition at the time the will was executed. Mr. M. died on May 20, 2009.

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

- a. Any coin collections or watches that Mr. M. had at the date of his death to Larry Zawislak;
- b. 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; and
- c. 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.

The Will prepared is attached.

8. The Member's spouse had hired witnesses to accompany her to the hospice where Mr. M. was a patient to witness his signature to the Will.

9. The signed Will named the Member and his spouse as executors to marshal the assets of the Estate as they saw fit. The Member and the Member's spouse applied for and received Letters Probate as joint executors of the estate.

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

11. 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 an alleged lack of accountability on the part of the Member and his spouse in evaluating items from the Estate. The complaint of W.B. is attached.

12. In relation to the \$10,000.00 education fund left to the Member's son, the Member and his 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 his 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 his spouse cashed in the first investment and return 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 his spouse decided to repay the \$5,000.00 amount to the estate, essentially becoming personally responsible for the entire gift.

13. The Member acknowledges that, despite the fact that his family had a close personal relationship with Mr. M., it was a breach of the Code of Professional Conduct and a conflict of interest for him to, as an executor, convey a testamentary gift of \$10,000.00, (or portion thereof), to his son in connection with the Mr. M. estate knowing that his spouse and firm mate Karolee Zawislak had prepared the Will.

Counts 2 and 3:

14. On September 19, 2011 The Law Society of Saskatchewan became aware that the contents of a storage locker rented by the Member's firm was going to be auctioned off due to unpaid charges.

15. The Law Society called the Member's firm mate who indicated that she had made a payment and that the locker had been taken off the block.

16. On September 27, 2011 the Law Society sent a letter to the firm indicating concern that a lawyer's storage locker could contain confidential client files.

17. 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 containing file cabinets and file boxes belonging to the Member's firm was up for auction on October 21, 2011 due to unpaid charges.

18. The Member acknowledges that the storage locker put up for auction did contain client files. The Member's firm intervened in time to avoid loss or disclosure of client information.

19. The Member was not accustomed to handling the accounting functions of the firm as these matters were typically handled by his spouse who due to illness had been unable to attend to these duties. The Member did not oversee the finances of the firm on a day to day basis.

20. The Member acknowledges that his failure to ensure that storage fees were paid put his firm's clients' information at risk and falls short of his duty to deal with client files and property in a careful and prudent manner. His failure to ensure that storage fees were paid amounts to a breach of his obligation to ensure that financial obligations incurred in the course of practice are appropriately met.

PRIOR HISTORY

21. The Member has been found guilty of conduct unbecoming on one prior occasion. In 1996 he was disciplined for falsifying a Homestead affidavit and for co-authoring an inappropriate letter. He was suspended for two weeks and received a reprimand.

CONSIDERATIONS

22. 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);

23. Counsel representing the Law Society recommended a penalty comprised of a reprimand and certain practice conditions, including a prohibition against Mr. Zawislak practising from his home, plus costs in the amount of \$2,000.00. Mr. Zawislak's position was that he had already suffered enough as a result of the investigation and did not deserve any further penalty

DECISION

24. After considering the facts and the submissions of Mr. Huber and Mr. Zawislak it is the decision of the Hearing Committee that:

- a. The Member shall be reprimanded;
- b. The Member will pay costs in the amount of \$2,000.00 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 22nd day of January, 2016.

Per: “Thomas Healey”, Chair

DATED at the City of Saskatoon, in the Province of Saskatchewan this 22nd day of January, 2016.

Per: Jay Watson

DATED at the R.M. of Corman Park, in the Province of Saskatchewan this 22nd day of January, 2016.

Per: Greg Stevens

AGREED STATEMENT OF FACTS AND ADMISSIONS

In relation to the Formal Complaint dated October 4, 2012 alleging that he:

- 1. did knowingly acquire on his own behalf and/or on behalf of his associate (son), property from a client of his firm by way of a testamentary instrument that had been prepared by his spouse Karolee Zawislak;**
- 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 his practice when called upon to do so.**

JURISDICTION

25. Larry 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.

26. The Member is currently the subject of a Formal Complaint initiated by the Law Society dated October 4, 2012. The Formal Complaint is comprised of the three allegations noted above. The original Formal Complaint was served upon the Member in October of 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.

27. The Member agrees to enter guilty pleas to all 3 of the allegations noted above.

BACKGROUND OF COMPLAINT

28. These proceedings arose as a result of a Law Society of Saskatchewan investigation in relation to complaints against the Member and his firm mate and spouse Karolee Zawislak. The issues particularized below flowed from the ensuing review into the Member's files and conduct.

PARTICULARS OF CONDUCT

Allegation 1:

29. Mr. M. was a very close, long-term friend of the Member's family. The Member's spouse prepared a will for him, which was signed on May 8, 2009. Mr. M. was in a very grave condition at the time the will was executed. Mr. M. died on May 20, 2009.

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

- a. Any coin collections or watches that Mr M. had at the date of his death to Larry Zawislak;
- b. 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; and
- c. 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.

The Will prepared by the Member's spouse for Mr. M. is attached at Tab 3.

31. The Member's spouse had hired witnesses to accompany her to the hospice where Mr. M. was a patient to witness his signature to the Will.

32. The signed Will named the Member and his spouse as executors to marshal the assets of the Estate as they saw fit. The Member and the Member's spouse applied for and received Letters Probate as joint executors of the Estate.

33. The watches bequeathed to the Member by Mr. M. were of no value. The coin collection was of a nominal value, likely less than \$50. The Member did not accept the coins or the watches bequeathed to him by Mr. M. under the May 8, 2009 Will. Neither the Member nor his spouse accepted any of the household goods bequeathed by Mr. M.

34. 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 an alleged lack of accountability on the part of the Member and his spouse in evaluating items from the Estate. The complaint of W.B. is attached at Tab 4.

35. In relation to the \$10,000.00 education fund left to the Member's son, the Member and his 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 his 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 his 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 his spouse decided to repay the \$5,000.00 amount to the Estate, essentially becoming personally responsible for the entire gift. The Member acknowledges that, despite the fact that his family had a close personal relationship with Mr. M., it was a breach of the Code of Professional Conduct and a conflict of interest for him to, as an executor, convey a testamentary gift of \$10,000.00 (or portion thereof) to his son in connection with the Mr. M. estate knowing that his spouse and firm mate Karolee Zawislak had prepared the Will.

Allegations 2 and 3:

36. On September 19, 2011 the Law Society of Saskatchewan became aware that the contents of a storage locker rented by the Member's firm was going to be auctioned off due to unpaid charges.

37. The Law Society called the Member's firm mate who indicated that she had made a payment and that the locker had been taken off the block.

38. On September 27, 2011 the Law Society sent a letter to the firm indicating concern that a lawyer's storage locker could contain confidential client files.

39. 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 containing file cabinets and file boxes belonging to the Member's firm was up for auction on October 21, 2011 due to unpaid charges [Tab 5].

40. The Member acknowledges that the storage locker put up for auction did contain client files. The Member's firm intervened in time to avoid loss or disclosure of client information.

41. The Member was not accustomed to handling the accounting functions of the firm as these matters were typically handled by his spouse, who due to illness had been unable to attend to these duties. The Member did not oversee the finances of the firm on a day to day basis.

42. The Member acknowledges that his failure to ensure that storage fees were paid put his firm's client's information at risk and falls short of his duty to deal with client files and property in a careful and prudent manner. His failure to ensure that storage fees were paid amounts to a breach of his obligation to ensure that financial obligations incurred in the course of practice are appropriately met.

PRIOR HISTORY

43. The Member has been found guilty of conduct unbecoming on one prior occasion [Tab 6].