PETER V. ABRAMETZ, SR.
HEARING DATES: May 17 - 19, 2017, August 9 & 10, 2017 and September 29, 2017
HEARING DECISION DATE: January 10, 2018
APPLICATION FOR STAY OF PROCEEDINGS DATE: September 18,2018
APPLICATION FOR STAY OF PROCEEDINGS DECISION DATE: November 8, 2018
***Law Society of Saskatchewan v. Abrametz*, 2018 SKLSS 8**

IN THE MATTER OF THE LEGAL PROFESSION ACT, 1990
AND IN THE MATTER OF PETER V. ABRAMETZ, SR.,
A LAWYER OF PRINCE ALBERT, SASKATCHEWAN

DECISION OF THE HEARING COMMITTEE FOR THE LAW SOCIETY OF SASKATCHEWAN

Hearing Committee: David Chow, Chair
Judy McCuskee
Evan Sorestad

Counsel: Karen Prisciak, Q.C. - Conduct Investigation Committee
Gordon Kuski, Q.C. & Amanda Quayle - Member, Peter V. Abrametz, Sr.

INTRODUCTION

1. The Hearing of this matter commenced in Regina, Saskatchewan on May 17th, 2017 for three days before resuming for a further two days on August 9th, 2017. A final day of submissions by counsel took place on September 29th, 2017. The Hearing Committee requested further written submissions that were responded to by counsel on October 16th, 2017.

2. The Hearing was convened to consider a Formal Complaint issued by Complaints Counsel for the Law Society of Saskatchewan (the "LSS") dated October 13th, 2015. The Complaint alleges:

> **THAT PETER V. ABRAMETZ, of the City of Prince Albert, in the Province of Saskatchewan is guilty of conduct unbecoming of a lawyer in that he:**
>
> **1. did, in relation to the following clients, effect withdrawals of trust funds for the payment of fees, disbursements or other expenses in a manner contrary to Law Society of Saskatchewan Rule 942(3):**
>
> **a. M.G.;**
> **b. E.M.;**

c. S.F.;
d. K.S.;
e. A.K.;
f. J.M.;
g. A.N.; and
h. E.H.

2. did knowingly cause trust cheques to be issued to a fictitious person for the purpose of effecting a transfer of trust funds for payment to himself;

3. did falsify the signature of a fictitious person as an endorsement of his firm trust cheque for the purposes of effecting a transfer of trust funds for payment to himself;

4. did fail to maintain proper books and records in relation to his legal practice contrary to Part 13(H) of the Law Society of Saskatchewan Rules in relation to the following client matters:

a. M.G.;
b. E.M.;
c. S.F.;
d. K.S.;
e. A.K.;
f. J.M.;
g. A.N.; and
h. E.H.

5. Did enter into or continue a debtor/creditor relationship with the following clients (loaning money) when his interests and the interests of those clients were in conflict and failed to ensure that:

a. the transaction was a fair and reasonable one;
b. that its terms were fully disclosed to the client in writing in a manner that is reasonably understood by the client;
c. the client was given a reasonable opportunity to seek independent legal advice about the transaction;
d. the client consented in writing to the conflict of interest; and
e. there was no appearance of undue influence;

in relation to the following client matters:

i. A.N.;
ii. Doris S.;
iii, Deanna S.;
iv. R.B.;
v. L.H.;
vi. C.J.;
vii. D.M.;
viii. D.J.;
ix. C.M.;
x. T.H.; and

xi. R.B.

6. did breach his fiduciary duty he owed to the following clients by charging excessive fees and interest on loans and/or advances:

i. A.N.;
ii. Doris S.;
iii, Deanna S.;
iv. R.B.;
v. L.H.;
vi. C.J.;
vii. D.M.;
viii. D.J.;
ix. C.M.;
x. T.H.; and
xi. R.B.

7. did, contrary to the Law Society of Saskatchewan Rule 942(4), fail to pay money from his trust account expeditiously after a legal matter was concluded on the following matters:

a. L.M.;
b. S.R.;
c. R.R.;
d. S.S.;
e. M.T.; and
f. J.T.

3. At the outset of the Hearing, counsel for the Conduct Investigation Committee ("CIC") and counsel for Peter V. Abrametz (the "Member") indicated that there were no preliminary motions or objections to be made. However, as counsel took advantage of the opportunity to make opening statements, counsel for CIC requested that the Hearing Committee make an order pursuant to Rules 184(2) and 450(7) prohibiting the publication of the names of the clients or former clients whose matters formed the basis of the Formal Complaint against the Member. In expressing his consent to such an order, counsel for the Member asked that the order extend to the pseudonym used by the Member in the past and identified as P.S. herein. That requested was not opposed by counsel for CIC and an order was issued by the Hearing Committee accordingly.

4. There were three witnesses called to testify during the Hearing, namely:

(a) John Allen, CPA, CA Auditor and Inspector for the LSS;
(b) Brenda Abrametz, spouse of the Member; and
(c) The Member.

5. The following exhibits were filed:

CIC-1, binder of 438 disclosed documents from CIC;
CIC-2, Notice of Hearing and proof of service;
R-1, binder of 308 disclosed documents from the Member;
R-2, binder of 165 supplemental disclosed documents from the Member;

R-3, February 11th, 2008 correspondence from the Member to the LSS; and
R-4, copies of cancelled trust cheques 004985 and 004732 issued to D.S.

6. It became apparent at the onset of the Hearing that many of the documents exhibited by each party were duplicates of other's documents. Unfortunately, the parties were unable to present a binder of agreed documents to the Hearing Committee.

TESTIMONY AT THE HEARING

A. JOHN ALLEN

7. Mr. Allen testified that he has been an accountant since 1972 and that he has been an Auditor and an Investigator with the LSS since 2000. His job description includes the performance of audits, review and investigation of trust and accounting activity performed by lawyers. His authority is derived from *The Legal Professions Act* (the "Act") and the *Rules of the Law Society of Saskatchewan* (the "Rules").

8. The Member was first brought to Mr. Allen's attention in 2012, as a result of an ongoing investigation into the law practice of Mr. Kristian Eggum Q.C. of Prince Albert. Mr. Eggum's trust account was shared with the Member as part of the Eggum, Abrametz & Eggum Law Firm.

9. Mr. Allen testified that he had arranged an on-site visit with the Member at his Prince Albert office to review a number of transactions of interest to the LSS. The majority of the transactions involved Saskatchewan Government Insurance ("SGI") personal injury settlement files which formed the bulk of the Member's law practice and which the Member acted almost exclusively under contingency fee arrangements.

10. That on-site visit was scheduled to occur on December 5th of 2012. Mr. Allen testified that in the early afternoon of December 4th, 2012, he received a fax from the Member self-reporting eight transactions that were admittedly non-compliant with the Rules.

11. The fax correspondence conceded that the Member had failed to promptly deposit money into his office account for legal fees on four client matters in 2008, one client matter in 2009 and three client matters in 2010. The Member reported that the total sum of money involved was $36,578.45.

12. Through the testimony of the various witnesses and their review of exhibited documentation at the Hearing, it was established that the sum of $36,578.45 was understated by $1,000.00. The amount of money that had not been promptly deposited on the E.H. matter was actually $1,953.00 rather than $953.00 as volunteered in the Member's self-report.

13. Mr. Allen testified that the on-site visit scheduled for December 5th, 2012 proceeded but, due to the self-report, the focus had shifted. It stretched out over three partial days and included review of files, trust ledgers, bank statements and discussions with the Member.

14. As a result of the investigation into the Member's practice including, but not limited to, the matters contained in his self-report correspondence of December 4th, 2012, the LSS sought to suspend the Member on an interim basis in February of 2013. Following objection from the Member's counsel, an agreement was reached with the LSS that allowed the Member to continue practicing under restrictions.

15. The Member continued to practice under conditions without incident while the LSS investigation continued.

16. A document entitled “Trust Report” and penned by Mr. Allen was issued on October 30th, 2014. The report summarized his investigation into the Member’s practice leading up to the imposition of practice conditions. Based largely upon the observations of Mr. Allen contained in that report, the LSS again sought to interim suspend the Member.

17. Negotiations between the LSS and the Member’s counsel saw the Member continuing to practice under conditions that remain in place as of the date of this decision being issued.

B. Mrs. BRENDA ABRAMETZ

18. Mrs. Brenda Abrametz is the Member’s spouse.

19. Mrs. Abrametz testified that she works part-time as an office manager in the Member’s law office. She has done so for the last 14 years although her time in the law office has increased in the more recent years.

20. She advised that she was Chair of the Prince Albert local health region and, until recently, was engaged in various other business ventures.

21. She is very familiar with the workings of the Abrametz law office including the office accounting software. She is responsible for the month-end and year-end reconciliations and reporting for the office. She fills-in when the day-to-day bookkeeper is away from the office. She is the individual that endorses the annual TA-3 Practice Declaration, as the bookkeeper, on behalf of her husband’s law firm.

22. She has some familiarity with specific files and clients of the law office although she is not responsible for legal work on the files.

23. She was instrumental in providing disclosure material to Mr. Allen and the LSS during the investigation in to the Member’s self-report and in more general terms, his practice.

C. THE MEMBER

24. The Member is 68 years old and was admitted to the LSS in 1973.

25. He has practiced entirely in the Prince Albert region.

26. At the time the investigation into the Member’s conduct was commenced in 2012, he was practicing in the firm of Eggum, Abrametz and Eggum.

27. The nature of the Member`s law practice has evolved over the years. In the last ten to fifteen years his practice has focused primarily in the area of claimant representation in SGI personal injury matters.

28. He currently maintains approximately 200 active files.

29. Many of the Member`s clients are people who are financially impecunious. Some have no bank account, no vehicle and no permanent home. Some struggle with literacy.

30. As is common in legal practices in smaller urban centers, the Member had many repeat clients with whom he formed long standing solicitor-client relationships.

31. The Member often arranged with clients, upon their request, to, as he termed it, advance money to them for a variety of purposes while their files were being guided through the SGI claim process.

32. In nearly every instance, the Member charged the client a fee of 30% of the value of the monetary advance regardless of the amount of time between the advance and the time the SGI settlement funds were made available to repay the Member.

33. The advance money, like other client file disbursements, was paid out of the general bank account used by the Member for his professional corporation. The monetary advances were not recorded in the clients' PC Law trust ledgers. They were tracked separately and paid as a disbursement, together with legal fees earned, from settlement funds posted to the clients' trust accounts.

THE CHARGES

CHARGE NUMBER 1

34. Mr. Allen testified as to each of the eight instances where it is alleged that the Member effected withdrawals of trust funds for the payment of fees, disbursements or other expenses in contravention of Rule 942(3).

35. That Rule states that a member who withdraws or authorizes the withdrawal of trust funds for the payment of fees, disbursements or other expenses, or for the payment to or on behalf of the client, shall effect the withdrawal by a cheque payable to the member's general account.

M.G. Matter

36. Mr. Allen outlined how on September 19th, 2008, the Member receipted a $22,300.00 settlement payment from SGI to the M.G. trust matter.

37. On that same date, two cheques drawn on the Eggum, Abrametz and Eggum Royal Bank of Canada trust account for that matter were issued to M.G. They were:

(a) Cheque #10751 for $14,171.73 noted as "settlement funds"; and
(b) Cheque #10752 for $6,000.00 also noted as "settlement funds".

38. Both cheques were subsequently endorsed by M.G.; however, only cheque #10751 was actually negotiated by M.G.

39. A copy of cancelled cheque #10752 for $6,000.00 illustrated that it was not only endorsed by M.G. but also endorsed by the Member before being cashed.

40. Mr. Allen testified that he concluded the Member had cashed trust cheque #10752 payable to M.G. and that the Member had received the $6,000.00 for his own benefit without having deposited the funds to the Member's law office account as required by the Rule.

41. Only days before Mr. Allen's on-site visit of December 5th, 2012, the Member generated an invoice from his professional corporation to account for the $6,000.00 that the Member had received personally through his cashing of trust cheque #10752 in 2008. Following issuance of the November 2012 invoice, the Member deposited $6,000.00 to his office account in satisfaction of that invoice .

E.M. Matter

42. This matter involved the payment of $10,428.14 by SGI to the Member's firm pursuant to a 2004 Court of Queen's Bench Judgment for the payment of costs related to the E.M. matter.

43. The payment was made in December of 2008 but was posted to the trust account of an entirely unrelated client matter, that of S.S., four months later on April 15th, 2009. The file receipt posting the payment to the trust account of the unrelated client matter noted that the $10,428.14 payment had been received from SGI with respect to P.S.

44. Mr. Allen questioned the member during the on-site visit in early December of 2012, as to who P.S. was. He testified that the Member advised him that P.S. was a pseudonym used by the Member.

45. Mr. Allen further testified that the Member advised him on December 5th, 2012, that the funds were posted to the trust account of S.S. by mistake on April 15th, 2009.

46. A copy of the December 2nd, 2008, SGI correspondence that accompanied the $10,428.14 cheque indicated that the funds were court ordered costs payable to the firm of Eggum, Abrametz and Eggum on the E.M. matter.

47. Mr. Allen conceded that the Queen's Bench Judgement of April 19th, 2004, did order costs payable to the Member's firm.

48. The trust ledger entry was never adjusted however by the Member to correct the fact that the money was actually related to the E.M. matter. Similarly, the Member never reversed the entry and paid it to the law office general account.

49. Subsequently, the Member issued three cheques from the S.S. trust account as follows:

(a) Cheque #11686 issued April 15th, 2009 payable to P.S. for $1,500.00 noted as "other";
(b) Cheque #11810 issued May 25th, 2009 payable to P.S. for $5,000.00 noted as "other"; and
(c) Cheque #11811 issued May 25th, 2009 payable to P.S. for $3,928.14 noted as "other".

50. Each of the three cheques were endorsed by the Member using the P.S. pseudonym and then signed with the Member's regular signature before being cashed.

51. Mr. Allen concluded that the Member received the $10,428.14 for his own benefit without having deposited the money to the Member's law office account as required by the Rule.

S.F. Matter

52. On April 18th, 2008, the Member receipted an SGI settlement cheque to S.F.'s trust account. The following day the Member issued three cheques as follows:

(a) Cheque #10557 payable to S.F. for $5,907.60 noted as "settlement funds";
(b) Cheque #10558 payable to S.F. for $5,000.00 noted as "settlement funds"; and
(c) Cheque #10559 payable to the Member's professional corporation for $4,782.26 and noted "for services rendered".

53. Cheque #10559 for $4,782.26 was cashed and receipted to the Member's professional corporation in accordance with the LSS Rules. Cheque #10557 for $5,907.60 was endorsed and cashed by S.F. Cheque #10558 for $5,000.00 however was endorsed by both S.F. and the Member before being cashed.

54. Mr. Allen testified that he concluded that the Member received the $5,000.00 for his own benefit without the money having been deposited to the Member's law office account as required by the Rule.

K.S. Matter

55. In this instance, the Member issued trust cheque #10965 on October 30th, 2008, to K.S. for $5,000.00. The funds were paid from SGI settlement money posted to the trust account by the Member in November of 2006.

56. As Mr. Allen testified, the Member and K.S. both endorsed the $5,000.00 trust cheque before the cheque was cashed by the Member.

57. Mr. Allen concluded that the Member personally received the benefit of the $5,000.00 without the money having been deposited to his law office account as required by the Rule.

A.K. Matter

58. Mr. Allen testified that on July 21st, 2009, the Member receipted a payment to the trust account of A.K. for $15,000.00.

59. The payment represented SGI settlement funds payable to A.K. for which the Member was acting under a contingency fee arrangement.

60. Under the arrangement, the Member was entitled to 30%, being $4,500.00 of the settlement funds, as professional fees.

61. The Member issued two cheques on the same day that he receipted the settlement funds from SGI as follows:

(a) Cheque #12058 payable to A.K. for $10,500.00 noted as "settlement funds"; and
(b) Cheque #12059 payable to A.K. for $4,500.00 also noted as "settlement funds".

62. The member did not thereafter issue a cheque from trust for payment to his professional corporation for fees on the $15,000.00 of settlement money.

63. Cheque #12058 for $10,500.00 was endorsed by A.K. and cashed.

64. Cheque #12059 for $4,500.00 was endorsed by A.K. but subsequently endorsed and cashed by the member.

65. Based upon the documentation, Mr. Allen concluded that the Member received the $4,500.00 for his personal benefit without the money having been deposited to his law office account as required by the Rule.

J.M. Matter

66. Mr. Allen testified that the Member had receipted $4,397.31 of money to the J.M. trust matter as SGI settlement proceeds on April 26th, 2010.

67. Mr. Allen gave evidence that the J.M. file matter appeared to have been subject to a 35% contingency fee arrangement and as such the Member would have been entitled to fees of $1,539.06 plus taxes on the $4,397.31 of settlement funds.

68. On May 14th, 2010, the Member issued two cheques from trust. Both cheques were payable to J.M. and both cheques were noted as “settlement funds”.

69. Cheque #763 was issued for $2,700.00. The cheque was endorsed and cashed by J.M.

70. Cheque #764 was issued for $1,697.31. This cheque was endorsed by J.M. but then subsequently endorsed and cashed by the Member.

71. Mr. Allen suggested that the amount of contingency fees and taxes that were due to the Member on the $4,397.31 was very similar to the amount paid to J.M. with cheque #764 that was then endorsed and cashed by the Member.

72. Mr. Allen concluded that the Member received the $1,697.31 for his personal benefit without the money having been deposited to his law office account as required by the Rule.

A.N. Matter

73. On May 21st, 2010 the Member receipted $28,383.66 as SGI settlement funds in two separate postings to the client trust ledger for A.N.

74. On that same date, the Member issued a trust cheque to A.N. for $1,000.00. The cheque was endorsed and cashed by A.N.

75. On May 25th, 2010, the Member issued four more cheques to A.N. as follows:

(a) Cheque #801 payable to A.N. for $1,000.00 noted as “settlement funds”;
(b) Cheque #805 payable to A.N. for $3,000.00 noted as “settlement funds”;
(c) Cheque #806 payable to A.N. for $3,000.00 noted as “settlement funds”; and
(d) Cheque #807 payable to the Member’s professional corporation for $20,383.66 noted as “services rendered”.

76. Mr. Allen testified that Cheque #806 was endorsed by A.N. and subsequently endorsed and cashed by the member.

77. Mr. Allen concluded that the Member received $3,000.00 for his personal benefit without the money having been deposited to his law office account as required by the Rule.

E.H. Matter

78. This file was not an SGI personal injury file but was a litigation file where the Member receipted $12,000.00 into trust for the benefit of E.H. on November 24th, 2009.

79. On the same day, the Member issued trust cheque #76 payable to the Member's professional corporation for $10,047.00 noted "for services rendered". The amount represented repayment of a $10,000.00 advance made to the client on or about October 30th of 2009.

80. On February 19th, 2010 a further trust cheque, #433, was issued by the Member payable to E.H. for $1,953.00 and noted as "other". This cheque was endorsed by E.H. and subsequently endorsed and cashed by the Member.

81. Mr. Allen concluded that the Member received the $1,953.00 for his personal benefit without the money having been deposited to his law office account as required by the Rule.

82. In summary of all eight instances of Rule 942(3) breaches alleged in Charge Number 1, the Member did not dispute that he had received the benefit of the funds that had been paid out of trust to the client and then endorsed back to the Member.

83. Further, the Member acknowledged that in each of the above instances the funds received by him were not deposited to his law office account until late November of 2012, just days before Mr. Allen's on-site visit.

84. Indeed, the Member`s self-report letter dated December 4th, 2012 conceded that on each of the eight client matters he failed to promptly pay the sums into his law office account.

CHARGE NUMBER 2

85. Mr. Allen testified that, during his December 2012 investigation, he discovered that in April and May of 2009 the Member had three trust cheques totaling $10,428.14 issued from the trust account of S.S. made payable to the pseudonym P.S. as follows:

(a) Cheque #11686 payable to P.S. for $1,500.00 noted as "other";
(b) Cheque #11810 payable to P.S. for $5,000.00 noted as "other"; and
(c) Cheque #11811 payable to P.S. for $3,928.14 noted as "other".

86. By explanation, the Member advised Mr. Allen in December of 2012, that the $10,428.14 was posted, by inadvertent error, to the trust account of S.S.

87. It was clear that the funds were payable on the E.M. matter and had nothing to do with the S.S. matter.

88. It was agreed by both Mr. Allen and the Member that irrespective of what trust account the funds were posted to, the funds were not due and owing to E.M. or any other client. Pursuant to the Queen`s Bench order in the action brought by E.M. against SGI, the funds were costs payable to the Member`s firm.

89. The Member did not dispute the allegation that the cheques were issued from the client's trust account but did dispute that the funds were trust funds. It was apparent from the S.S. trust ledger presented at the Hearing that the three separate trust cheques issued over a 40-day period totaling $10,428.14 were issued payable to P.S.

90. When Mr. Allen questioned the Member in early December of 2012 about who P.S. was, the Member volunteered that P.S. was a pseudonym used by the Member and his family as a running joke for the last forty years.

91. The member testified that he had used the pseudonym in the past to order a magazine subscription and to bid on silent auction items at charity events. Historically, the name had been used by his immediate family members as the culprit for unusual behavior or occurrences.

92. From time-to-time during the Hearing the Member shifted from using the term non-existent, pseudonym and nom de plume to describe P.S.

93. The evidence surrounding the past use of the name P.S. by the Member and his family was corroborated by Mrs. Abrametz.

CHARGE NUMBER 3

94. The Member conceded both during the on-site visit and during the Hearing that he had endorsed the signature on the back of the three trust cheques totaling $10,428.14 issued in 2009, to P.S.

95. He not only endorsed his own signature, but he also endorsed a signature purported to be for the payee listed on the three trust cheques, that being P.S.

96. The Member insisted during examination in chief and cross examination that his endorsement of the trust cheques was compliant with The Bills of Exchange Act and that pursuant to section 20(5) of that act, a negotiable instrument made payable to a non-existent person may be treated as payable to the bearer.

97. The Member did not explain why there was a need to endorse the signature of non-existent P.S. if the cheque was believed by the Member to be negotiable by the Member as the bearer.

CHARGE NUMBER 4

98. In reviewing the client matters of

(a) M.G.;
(b) E.M.;
(c) S.F.;
(d) K.S.;
(e) A.K.;
(f) J.M.;
(g) A.N.; and
(h) E.H.

Mr. Allen testified that he discovered documents suggesting that the Member did not maintain proper books and records in relation to his legal practice contrary to Part 13(H) of the Rules.

99. Indeed, counsel for CIC presented documentation through Mr. Allen's testimony to illustrate that multiple statements of adjustments had been prepared for particular transactions on several of the eight referenced client matters.

100. On some files, the statements of adjustments were not dated so Mr. Allen was unable to confirm when the statements of adjustments were prepared or in what order the multiple statements of adjustments were prepared for a particular file transaction.

101. There were files where statements of adjustments corresponded with what should have been properly claimed by the Member as fees for services rendered. There were however on those same files, alternative and conflicting statements of adjustments that corresponded with the client trust ledgers.

102. In those instances, the difference between the two statements of adjustments accorded with the amount of money received by the Member through the endorsement back to him of trust cheques issued to clients as settlement funds.

103. For example, on the M.G. matter, the Member had produced a statement of adjustments indicating that fees of 30% were payable to the law firm on the settlement award of $21,500.00.

104. That statement of adjustments was signed by the client. It was not dated.

105. Contrary to that signed statement of adjustments, $6,000.00 of the fees payable to the law firm under the contingency fee arrangement with M.G. was paid to M.G. through trust cheque #10752 as settlement funds. As mentioned above, Mr. Allen testified that this cheque was endorsed by the client and the Member before being cashed by the Member for his own benefit.

106. An alternative statement of adjustments on the M.G. matter was disclosed to Mr. Allen. Although not a requirement, the alternative statement of adjustments was neither signed by M.G. nor was it dated. This alternate statement of adjustments did correspond with the trust ledger for the M.G. matter. Unlike the signed statement of adjustments however, it did not correspond with the legal fees that were itemized on invoice #338 issued by the Member's professional corporation on September 23rd, 2008.

107. During the investigation, the Member supplied a second invoice to Mr. Allen. The second invoice, #629, was issued four days before the self-report of December 4th, 2012, and four years after the M.G. file matter was concluded. It accounted for the $6,000.00 that should have been paid to the Member's law office account as fees and disbursement, but which had been paid to the client and endorsed back to the Member personally.

108. Similarly, on the S.F. matter, the file contained a statement of adjustments that indicated fees payable to the Member of $4,706.95 for the motor vehicle accident claim and fees of $5,000.00 payable to the Member in relation to criminal file number 06454.

109. The statement of adjustments was signed and dated. It did not however correspond with the client trust ledger for S.F.

110. An alternative statement of adjustments was supplied by the Member to Mr. Allen during the investigation to correspond with the client trust ledger. It was neither signed nor dated.

111. That alternative statement of adjustments demonstrated the client's entitlement of $10,907.60. As indicated, the alternative statement of adjustments corresponded with the client trust ledger where two cheques were written from trust totaling $10,907.60. Both trust cheques were payable to the client but only the cheque for $5,907.60 was cashed by the client. The remaining trust cheque for $5,000.00 was endorsed and cashed by the Member.

112. With regard to the A.K. matter, the Member supplied a statement of adjustments to Mr. Allen from the file that appeared to indicate that no legal fees were paid on a partial settlement amount of $15,000.00 despite a contingency fee agreement being on the file requiring payment of 30% of any settlement. The total settlement amount was $20,742.02 for which fees should have totaled $6,222.61.

113. An account generated by the Member on this file confirmed fees of $6,222.61 were payable to the Member on the total settlement amount of $20,742.02. Invoices #239 and #815 dating back to 2008-2009 however totaled only $1,722.60 in fees. The total fees payable were $4,500.00 less than they should have been. As noted earlier, the Member endorsed and cashed trust cheque number #12059 payable to A.K. for $4,500.00 in July of 2009.

114. More than 3 years later, and just days before the self-report, the Member generated the third invoice, #630 dated November 30th, 2012 on the A.K. matter. The invoice was for exactly $4,500.00 and accounted for trust cheque #12059 endorsed back to and cashed by the Member in July of 2009. The invoice was inclusive of fees and taxes and when added together with the historical invoices #239 and #815, still did not accord with the statement of account generated by the Member.

115. In relation to the J.M. matter, the Member provided a statement of adjustments from the file that indicated fees were payable to the Member at 35% on settlement funds of $4,397.31. The client trust ledger for this client matter reported that no fees were paid to the Member on this settlement amount. The client trust ledger also indicated that J.M. received two trust cheques totaling the entire $4,397.31. The cheque for $2,700.00 was cashed by the client but the cheque for the remaining $1,697.31 was endorsed by the client back to the Member.

116. The statement of adjustments did not correspond with the client trust ledger and the way in which the trust cheques were actually issued by the Member from the J.M. trust account.

117. With regard to the remaining four client matters referenced under Charge Number 4, being E.M., K.S., A.N. and E.H., the statement of adjustments on each of the files, although not reflecting that some of the cheques payable to the client from trust ended up being cashed by the Member, did technically correspond with the specific way in which cheques were written and recorded in each of the client trust ledgers for those matters.

118. In each of the eight instances referenced in Charge Number 4, the Member generated correcting accounts and invoices just days before the on-site visit by Mr. Allen on December 5th, 2012, to account for the $37,578.45 of money that appeared, by review of the client trust ledgers, to have gone to the benefit of clients but in reality, had been claimed for the benefit of the Member.

119. The Member and his counsel asserted that the Member's books and file records were accurate at all times such that the client trust ledger properly recorded the payee for all trust cheques issued by the Member's law office.

120. It was further submitted on the Member's behalf that once trust cheques are issued to clients there is no further obligation upon Lawyers to track who actually cashes the trust cheques.

121. Where multiple conflicting statements of adjustments were located on a client file, or where alternate statements of adjustments were disclosed by the Member and Mrs. Abrametz throughout the investigation process, it was suggested by both the Member and Mrs. Abrametz that the statements of adjustments that appeared to align with the client trust ledgers were the final and proper ones whereas the others were presumably statements of adjustments that may have been prepared in draft prior to the client's review of the account and adjustments having been made by the Member.

122. Mrs. Abrametz further speculated that while some of the exhibited statements of adjustments were printed copies retrieved from the physical client files, others may have been subsequently printed from the clients' electronic computer files in furtherance of disclosure to Mr. Allen and therefore would not be dated or signed by the clients.

CHARGE NUMBER 5

123. Mr. Allen testified about his characterization of the debtor/creditor relationship that he says existed between the Member and his clients.

124. Client trust ledgers, statements of adjustments, cancelled cheques and Requisition for Service Requests signed by clients were all presented at the Hearing to illustrate that the Member was, in Mr. Allen's terms, routinely lending money through his professional corporation bank account to clients and charging them a flat fee amounting to 30% of the amount loaned in each instance.

125. Mr. Allen testified that the 30% fee was charged by the Member irrespective of how much money was provided to the client and irrespective of how long the money was left owing to the Member. This was confirmed by both Mrs. Abrametz and the Member with one exception, that of T.H. where the fee was not charged on money provided to the client. Of note is that T.H. left the Member's firm and hired new counsel. When the file was transferred from the Member's firm to the new lawyer, the 30% fee on money provided by the Member to the client was waived.

126. Calculations were supplied by Mr. Allen during his testimony to illustrate that the equivalent rate of interest charged by the Member, and represented by the 30% fee, ranged, in some cases, between 51.6% and 10,950% per annum depending upon the length of time the money remained due and owing to the Member.

127. Further, Mr. Allen testified that the 30% flat fee was in addition to the typical contingency fee rate of approximately 30% charged by the Member on money recovered on behalf of clients. He concluded therefore that, on the money provided to clients by the Member during the file litigation process, the clients were paying a total of approximately 60% back to the Member as a combined contingency and flat fee.

128. Mrs. Abrametz supplied sample interest and fee calculations from two companies, Settlement Lenders Inc. and Seahold Investments, as a comparison. Both companies are in the business of lending money to litigants on potential settlements.

129. Mrs. Abrametz supplied her calculations to illustrate that the fee being charged by the Member was not unreasonable when compared with her understanding of the interest and fees charged by the two professional lending institutions. In many instances however, the fee charged by the Member was greater than the interest and fee that would have been charged to the clients by the two lending institutions on similar amounts of money for similar periods of time.

130. By review of the Requisition for Service Request ("RSR") that was typically signed by the clients and retained on their files, it was apparent that the money was being provided to the clients for various reasons including, but not limited to, the purchase of automobiles, down payments on real estate, groceries, grad dresses, babysitters and travel.

131. In the vast majority of cases, a RSR was signed by the client asking for the money and in some cases identifying the reason for the money. At the bottom of the RSR, the client signed an acknowledgment of the debt owing to the member and the 30% flat fee being charged.

132. Although the Member did not dispute that money had been provided to clients, the Member and Mrs. Abrametz characterized the nature of the transaction very differently than Mr. Allen.

133. They insisted that the money provided to clients was not a loan and was in fact an advance on funds expected to be obtained on the clients' behalf at the conclusion of the SGI claim process.

134. The 30% flat fee on each advance, they suggested, was an attendance fee that fairly represented the time and effort expended by the Member in reviewing the file to determine if the clients' request for money could be approved.

135. The Member claimed that he was not in a business relationship with the clients by virtue of his having advanced money on anticipated settlements.

136. He further asserted that because of the distinction between a loan and an advance, he had properly reported such transactions to the LSS when required to do so on his annual TA-3 Practice Declaration.

137. Finally, the Member stated that even if he was in a business relationship with his clients, he was not in violation of the Code of Professional Conduct (the "Code") prohibition on such relationships because he took the necessary precautionary measures that permitted such relationships to exist between lawyers and clients.

CHARGE NUMBER 6

138. Counsel for CIC submitted that the flat fee charged by the Member on money provided to clients was excessive thereby breaching the Member's fiduciary duty owed to his clients.

139. Mr. Allen testified that he observed that attendance fees were charged on each amount of money provided to clients irrespective of the amount of money provided and irrespective of the length of time that the money was left owing to the Member.

140. Examples of this include money loaned to R.B. The Member provided $1,000.00 to R.B. on August 5th, 2008 and charged a 30% fee. The money was not repaid to the Member until

approximately 174 days later on January 28th, 2009. The Member provided a further $1,000.00 to R.B. on August 24th, 2009 and charged a 30% fee. The money was repaid only 28 days later on September 22nd, 2009.

141. Mr. Allen observed that in several instances, money was provided to clients multiple times in one day. In each instance, a 30% fee was charged on the amount loaned. Examples of this are on the D.S. matter. On December 18th, 2009, the Member provided the client $1,000.00 and charged a 30% fee and then provided an additional $2,000.00 that same day and charged another 30% fee. Further, on the D.M. matter, the Member provided $1,000.00 to the client on February 21st, 2008 and charged a 30% fee and provided an additional $1,000.00 on that same date for which he charged D.M. a 30% fee.

142. Further, he testified that in several instances money was provided to clients within days of insurance settlement funds owing to the client being received by the Member. Examples of this include A.N. where $1,200.00 was provided by the Member only 9 days before settlement funds were received for the client's benefit. A further $1,800.00 was provided to the client only 7 days before settlement funds were received. In both instances, the client was charged 30% of the amounts provided by the Member.

143. In the D.M. matter, $1,000.00 was provided to the client on January 4th, 2008, and a further $2,000.00 was provided to the client on February 28th, 2008. The settlement funds owing to the client were receipted by the Member to the client's trust account only 4 days later. The client was a charged 30% fee on both advances.

144. Finally, Mr. Allen explained that in nearly all of the instances where money was, as he termed it, loaned to clients, it was during the period of time while the Member was retained under a contingency fee arrangement with the client for the recovery of insurance settlement money. As a result, the client was charged a 30% flat fee for the money provided to the client by the Member and charged an additional contingency fee of approximately 30% on that same money pursuant to the contingency fee arrangement.

CHARGE NUMBER 7

145. Mr. Allen reviewed each of the instances where he observed money had been sitting in trust on a particular client matter for extended periods of time before being paid out to the client or being paid out to the Member's law office account for fees due and owing. The time periods ranged from two months to as much as three and one-half years.

146. Based upon the accounting documentation, Mr. Allen concluded that the Member had failed to pay money from his trust account expeditiously after the conclusion of a matter as required by Rule 942(4).

147. Mr. Allen was unable to supply evidence during the Hearing to reinforce his assumption that the relevant file matters had indeed been concluded.

148. Mrs. Abrametz testified in each instance of alleged breach of Rule 942(2) and explained that in each instance the file matter had in fact not been concluded for various reasons.

149. The Member adopted the statements and testimony provided by his spouse and offered further details on specific file matters where money appeared to remain in trust for extended

periods. In these instances, the Member was able to provide his justification for money remaining in trust. On many of the files it related to appeals undertaken on behalf of the client.

ANALYSIS AND DECISION

150. *The Legal Professions Act*, 1990 at section 2(1) defines conduct unbecoming as:

> (d) "Conduct unbecoming" means any act or conduct, whether or not disgraceful or dishonourable, 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).

151. It is the role of the Hearing Committee to receive and assess the evidence and determine if the Formal Complaint lodged against the Member is well founded. If the Hearing Committee finds that the Formal Complaint is well founded, the Hearing Committee may impose a penalty as permitted in section 53 of the Act.

CHARGE NUMBER 1

152. One day before the site-visit by Mr. Allen on December 5th, 2012, the Member self-reported his failure to promptly pay fees to his law office account.

153. In his testimony before this Hearing Committee, the Member acknowledged that his conduct in the eight instances was in violation of Rule 942(3).

154. Rule 942(3) states:

A member who withdraws or authorizes the withdrawal of trust funds for the payment of fees, disbursements or other expenses, or for payment to or on behalf of the client, shall effect the withdrawal by a cheque payable to the member's general account.

155. At the Hearing, the Member attempted to justify his actions by characterizing the diversion of funds for his personal use as the repayment of a shareholder's loan. The Member was unable to provide any evidence that his professional corporation owed him any money as a shareholder loan. To the contrary, he indicated that such matters were beyond his level of expertise and are left to his accountant. Even if the Member's professional corporation owned him money for a shareholder loan, the Member provided no explanation as to how that scenario would legitimize his behavior such that he would not be in violation of Rule 942(3).

156. The Member maintained a large case load from year-to-year yet on eight specific files between the years of 2008 and 2010 the Member circumvented his usual legal fees billing procedure in order to obtain funds for his personal benefit without those funds having first been deposited to his law office account.

157. The reasons for the member's behavior are not clear. No testimony was supplied by any of the clients referenced in the Formal Complaint. The LSS did not attempt to speak with or interview any of the clients that were party to the Member's scheme to divert funds to his personal benefit.

158. When asked during the Hearing why he had clients endorse trust cheques back to him, the Member was unable to explain his actions. When queried further, he testified that, at the time, he thought it was a good idea and the easiest way to get money. He acknowledged that, in hindsight, it was inappropriate.

159. By issuing cheques to the clients and having the clients endorse those cheques back to the Member as payment for legal fees the clients were enlisted to participate in the Member's dishonest scheme. The Hearing Committee was unable to imagine any explanation for the Member's conduct in this regard that would not bring disrepute upon the legal profession.

160. Based upon the evidence, the Hearing Committee finds that the Member was in breach of Rule 942(3), the Formal Complaint is well founded, and the Member is guilty of conduct unbecoming.

CHARGE NUMBER 2

161. There is no dispute that the Member issued trust cheques from the S.S. trust account payable to the pseudonym P.S.

162. Throughout the Hearing, the Member referred to P.S. as his nom de plume or his pseudonym.

163. The English translation of the French non de plume, is pen name. Such names are used by writers of published works to conceal their true identity.

164. The English translation of the Greek origin word pseudonym, is a fictitious name used by an author to conceal identity.

165. Irrespective of how the name P.S. is characterized, the Member authorized the issuance of cheques from one of his trust accounts to a person known to the Member to be non-existent.

166. The Member claimed that posting the $10,428.14 to the S.S. trust account was inadvertent. Mr. Allen formed the opinion that the posting to the wrong trust account was intentional.

167. It is noteworthy that the accounting receipt for the $10,428.14 deposit to the S.S. trust account specifically referenced P.S. and SGI. It was receipted by the Member nearly four months after the SGI cheque was received. This was very unusual and would suggest that at the time the money was posted to the S.S. trust account, reportedly in error, the Member had intended on corrupting the integrity of his trust accounting records.

168. Further, the Member issued not just one trust cheque from the trust account of S.S. in the spring of 2009, but a total of three separate trust cheques on two separate days more than a month apart. Again, this conduct suggests a deliberate and calculated effort on the part of the Member to deceive.

169. Use of the pseudonym P.S. may be a long-standing joke in the Abrametz family, however, when it comes to the entrusted stewardship of money passing through a law firm's trust account there can be no humor found in the Member's actions.

170. The Member's cavalier attitude at the Hearing on this topic was disturbing. Lawyers are bestowed a respected privilege in regard to the receipt and disbursement of money. It is a tenet of maintaining public confidence in the profession.

171. The fact that the money was for the payment of fees owing to the Member's firm and that there was no defalcation of money belonging to a client does not minimize the Member's conduct of using a fictitious name to divert funds to him personally through the issuance of cheques from his law firms trust account.

172. This Hearing Committee does not accept the Member's claim that posting the money to a trust account was in error. The evidence suggests that the act was deliberate on the part of the Member.

173. At all relevant times the funds were intentionally treated by the Member as funds paid into a trust account and subsequently paid from a trust account through issuing three trust cheques payable to someone else. The Member's conduct is consistent with the funds being considered by him to be trust money. Yet he asserted to this Hearing Committee that he should not be guilty of Charge Number 2 as it is worded because the money should not have been deposited to a trust account at all.

174. Even by that logic, accepting that the funds were due and owing to the Member's firm, once they were paid into trust the funds were trust funds for the benefit of the Member's firm and by paying them to the fictitious person, P.S. the member is guilty of the allegations contained in Charge Number 2. The Formal Complaint is well founded and this Hearing Committee finds the Member guilty of conduct unbecoming.

CHARGE NUMBER 3

175. In answer to a question from the Hearing Committee for an explanation on why the Member cashed trust cheques made payable to P.S., he answered,

> "The only - - at that point in time I was working on the Bills of Exchange Act and was familiar with the terms there. I was starting to - - winter in California, and in California they have advertised fictitious names, and - - and so I'd just come back from California, I believe, then and - - and thought this would be a good thing to try - - to see if fictitious names would serve a role here. So that really - - no other purpose than that. It was an ill-conceived experiment, if you like, but didn't serve much of a purpose."

176. The member relied upon s. 20(5) of the *Bills of Exchange Act* to exculpate himself in endorsing the three trust cheques made payable to P.S.

177. That sub-section of the *Bills of Exchange Act* permits negotiation of a bill of exchange by the bearer when the payee is a fictitious person.

178. It has been settled that P.S. is a fictitious person and the trust cheques were issued payable to P.S.

179. While the Hearing Committee was troubled by the Member's conduct in this regard it was noted that the charge alleged against the Member is that he falsified the signature of a fictitious person. The Hearing Committee was not convinced how the Member could be guilty of

falsifying the signature of a person that does not exist. It seems to us that fictitious persons do not have signatures that can be falsified. As such, this Hearing Committee declines to find the Member guilty of Charge Number 3 as it is worded in the Formal Complaint.

180. In any event, the Hearing Committee determined Charge Number 3 to be a duplication of the conduct complained of in Charge Number 2.

CHARGE NUMBER 4

181. In each instance of the eight self-report files, it can be said that the Member's client trust ledgers were technically correct in so much that they accurately represented the way in which the trust cheques were issued from trust and that the trust ledgers accurately reflected the amount of money deposited to and withdrawn from trust.

182. However, the dollar amounts are not the only information that must be accurate. Moreover, the client trust ledgers are not the only documents that encompass the reference to books and records in the Part 13(H) of the Rules. The trust cheques also form part of the books and records, as do the erroneous notations and statements of adjustments that indicate payments were for "settlement" rather than for the Member's legal fees.

183. The Hearing Committee acknowledges the arguments advanced on behalf of the Member that a lawyer is not required to follow the cheques to see who endorses them and cashes them. This reasoning cannot apply however when the Member is directly involved in the process of issuing and cashing trust cheques in an effort to deceive.

184. Further, the Hearing Committee cannot accept the Member's submission that the statement of adjustments and invoices on all eight self-report files accorded with the client trust ledgers. The Hearing Committee finds that several of the files contained statements of adjustments and invoices that were prepared intentionally by the Member to give the appearance that legal fees were paid to the Member's firm when those fees were in fact paid to the client and endorsed back to the Member personally.

185. The Member argued that Charge Number 4 involves the same factual matters as Charge Number 1 and therefore the charge is a duplication of the conduct complained of in Charge Number 1.

186. The Hearing Committee rejects that argument. The elements of Charge Number 4 are separate and distinct from that of Charge Number 1. Similarly, the facts and conduct are separate and distinct.

187. Charge Number 1 involved the Member's failure to properly pay money by cheque to his law office general account for fees and disbursements.

188. Charge Number 4 however involves the Member's failure to maintain proper books and records.

189. This Hearing Committee concludes that the Member deliberately and purposefully attempted to deceive by generating multiple conflicting statements of adjustments, invoices and accounts that were neither proper nor accurate on the M.G., S.F., K.S., A.K., J.M. and A.N. matters.

190. The Hearing Committee concludes that the Member's conduct was in an effort to avoid detection of the behavior for which this Committee has found him guilty of conduct unbecoming on Charge Number 1.

191. As such, the Hearing Committee finds the Formal Complaint well founded, the Member in violation of Part 13(H) of the LSS Rules and guilty of conduct unbecoming.

CHARGE NUMBER 5

192. The Member took issue with the LSS's characterization of the money he provided to clients as being loans. He preferred the term advances. He claimed that there is a significant difference between the two.

193. In addressing the distinction between the terms, the Hearing Committee consulted the Meriam-Webster Dictionary which defines a loan as an amount of money that is given to somebody for a period of time with a promise that it will be paid back.

194. That same source defines an advance as the payment of money to someone before it is due.

195. The Member was not capable of advancing money to his clients because the Member did not owe money to his clients. It was SGI that owed the Member's clients the money. SGI may have been able to advance to the Member's clients on money due and owing to them for their personal injury benefit entitlements. However, the Member was loaning money to his clients while they awaited payment from SGI. The loans were for a wide variety of purchases that were clearly not "necessary expenses in the legal matters that the Member was handling for his clients" as referenced within the Commentary of the Code.

196. The Member was providing a service akin to that of the two professional lending companies, Seahold Investments Inc. and Settlement Lenders, that Mrs. Abrametz compared her husband's lending rates against.

197. It cannot be disputed that those two companies are in the business of lending money. They are subject to the legislation governing such businesses. By incorporating this unregulated lending service into the Member's legal practice he was acting outside the scope of the attorney client relationship for which he was retained.

198. This conclusion is consistent with the Member's evidence of his usual practice of having his clients endorse documentation acknowledging the 30% fee being charged on the money provided by the Member and confirming the client's promise to repay the principal amount and the 30% fee to the Member upon demand.

199. The fact that the Member would eventually receive money from SGI in trust for the clients does not alter the nature of the transactions from loans to advances.

200. This Hearing Committee acknowledges the argument advanced on behalf of the Member that the LSS also perceived a distinction between a loan and an advance and therefore amended its annual TA-3 Practice Declaration distributed to lawyers in 2011 for the year ending 2010. In general terms, prior to 2011, the TA-3 required lawyers to disclose "loans" made to clients. However, the TA-3 in 2011 required lawyers to disclose "loans or advances" made to clients.

201. Once the declaration was amended in 2011 to include the reference to advances, the Member voluntarily disclosed the money that he had provided to clients.

202. Indeed, the Member disclosed that in the 2010 fiscal year he had extended funds to clients 128 times totaling $55,145.36. In 2011 he had loaned $45,306.00 to clients.

203. While the list of clients to whom the Member loaned money was lengthy, it was determined during the Hearing that the list disclosed to the LSS was not complete. The transactions that were not disclosed to the LSS by the Member appeared to be money that was repaid prior to the date of the Member corresponded with the LSS in June of 2011.

204. It is not required that this Hearing Committee conclude the reasons for the LSS amending its TA-3 in 2011 to include reference to advances. This Committee has determined that the Member was loaning money to clients.

205. This Hearing Committee further acknowledges the Member's argument that the LSS was aware since early in 2008, that he had on at least one client matter, been charging a 30% fee on money provided to clients and that the LSS did not reprimand him for doing so.

206. In support of this argument, the Member pointed to the formal complaint of W.D. dated January 12th, 2008, whereby W.D. disclosed within his complaint, among other things, that the Member had loaned him money and charged him fees on the loan.

207. The LSS dismissed the complaint on November 18th, 2010, as warranting no further action. It is not clear from the LSS's decision to dismiss the W.D. complaint if it was based upon the complainant's refusal to reply to the LSS's repeated requests for further information. What is clear however is that the LSS included in its letter to W.D., dismissing the complaint, that the Member's conduct did not raise an issue of conduct or competence.

208. As a Hearing Committee, we do not have the benefit of knowing all of the circumstances of the W.D. complaint from 2008, or hearing all of the evidence related to that complaint file. We have no mandate to review the decision of Complaints Counsel to dismiss the W.D. complaint.

209. We do note that in the November 18th, 2010 letter to the Member advising him that the W.D. complaint had been dismissed, the Member was cautioned that loans to clients were not appropriate and inviting the Member to contact John Allen if further clarity was required.

210. There was no suggestion by the Member that he followed-up with John Allen in this regard. It is apparent that the Member continued to hold the mistaken belief that the monies that he provided to clients were advances rather than loans.

211. In any event, the LSS's dismissal of the W.D. complaint cannot reasonably be interpreted as the LSS endorsing the Member's practice of loaning money to clients.

212. Having determined that the Member was loaning money to his clients this Hearing Committee concludes that the Member was involved in a debtor/creditor relationship with his clients.

213. Chapter VI of the relevant Code deals with conflict of interests between lawyers and clients.

214. Sub-section (d) in Chapter VI states:

> **The lawyer should not enter into a business transaction with the client or knowingly give to or acquire from the client an ownership, security or other pecuniary interest unless:**
>
> **(i) the transaction is a fair and reasonable one and its terms are fully disclosed to the client in writing in a manner that is reasonably understood by the client;**
> **(ii) the client is given a reasonable opportunity to seek independent legal advice about the transaction;**
> **(iii) the client consents in writing to the transaction; and**
> **(iv) there is no appearance of undue influence.**

215. Commentary number 4 contained within sub-section (d) of the Code states:

> **The lawyer should avoid entering into a debtor-creditor relationship with the client. The lawyer should not borrow money form a client who is not in the business of lending money. It is undesirable that the lawyer lend money to the client except by way of advancing necessary expenses in a legal matter that the lawyer is handling for the client.**

216. The Member's counsel submits that the wording of Commentary number 4 within the Code is authority for the argument that entering into a debtor/creditor relationship is more permissive than entering into a business transaction as prohibited by Chapter VI of the Code.

217. The Member further argued that advances made by the Member to his clients were different in nature and kind than entering into transactions for mortgages or interests in land. He referenced the cases of *Law Society of Saskatchewan v Simaluk*, 2012 SKLSS 1 (CanLII), *Law Society of Saskatchewan v Ferraton*, 2014 SKLSS2 (CanLII), *Law Society of Saskatchewan v Johnston*, 2011 SKLSS 7 (CanLII) and the *Law Society of Saskatchewan v. Halford*, 2014 SKLSS 6 (CanLII).

218. Admittedly, the cases cited, with the exception of *Johnston*, each involve instances where lawyers loaned money to clients and took an interest in land or a mortgage in return. Transactions for mortgages or interests in land however are not the only business transactions that create a debtor/creditor relationship. The level of security and the remedies available to a lawyer against a client to whom money is loaned are not the discerning factors in the Code prohibition. Unsecured loans to clients cultivate the same potential conflicts that secured loans do. It is the debtor/creditor relationship, causing the divergence in interests, that the Code is intended to curtail.

219. The Member loaned money to clients. While he took no interest or mortgage in land he did take a promise to pay and an interest in the personal injury benefits the clients were entitled to receive. He further charged and personally benefitted from a 30% fee on the amount of the loan.

220. As stated by the Hearing Committee at paragraph number 16 in the *Simaluk* decision:

> **A conflicting interest is one that would be likely to affect adversely the lawyer's judgment or advice on behalf of, or loyalty to a client. The reason for the rule is self-evident. The client or the client's affairs may be seriously prejudiced unless the lawyer's judgment and freedom of action on the client's behalf are as free as possible from compromising influences.**

221. This Hearing Committee finds that, while not all business transactions are necessarily debtor/credit relationships, all debtor/creditor relationships are business transactions prohibited by the Code. Such relationships create and convey a pecuniary interest that inherently places the interests of the clients in conflict with those of the Member.

222. The Member argued that, if this Hearing Committee found that the Member's conduct amounted to prohibited business transactions under sub-section (d) of the Code, the Member satisfied all of the precautionary criteria listed in sub-section (d)(i-iv) in each instance of loaning money to the 11 clients as charged.

223. Precautionary criteria (i) requires that the transaction is a **fair and reasonable one and its terms are fully disclosed to the client in writing in a manner that is reasonably understood by the client.**

224. The Member's typical practice was to have clients sign a standardized document that he had entitled Requisition for Service Request (previously referred to as "RSR"). The document was often dated, included the amount of the cheque, the payee and the reason for the cheque. The bottom of the document contained an authorization that read as follows

> **I, the undersigned hereby request an advance in the amount of $_____. I understand that a 30% attendance fee will be charged on each advance, and that each advance will be paid first from the recovery of any sums. If insufficient funds are recovered to pay this advance, I promise to repay the same upon demand.**

225. Below the authorization wording there was a place for the client to date and sign the RSR.

226. The Member's counsel insisted in his submissions that in each and every case where money was provided to clients, the Member was handling a legal matter for the client and funds were advanced to meet necessary expenses.

227. This Hearing Committee can only assume that each of the instances of money being loaned to clients were for expenses that the clients felt were necessary. However, the vast majority of the expenses for which the Member loaned money to clients were not necessary to the legal matter for which the Member was retained to act for the client.

228. Many of the RSR documents did not have any explanation for the payment being made other than advance on Permanent Injury Benefits ("PIB") or Income Replacement Benefits ("IRB"). Of the requisitions that did have an explanation noted on them for the payments, some examples included:

> $1,000.00 to Deanna S. on July 31st, 2009 for Summer Games;
> $1,000.00 to Deanna S. on October 2nd, 2009 for a casket and hockey registration;
> $2,000.00 to Deanna S. on December 18th, 2009 for a deposit on a vehicle;

$1,000.00 to Deanna S. on December 18th, 2009 for Christmas Shopping;
$750.00 to R.B. on September 17th, 2008 for Sask. Power bills, groceries and miscellaneous;
$172.00 to R.B. on October 20th, 2008 for Daycare;
$625.00 to L.H. on May 17th, 2011 for Food, Phone and Summer Camping;
$1,500.00 to D.J. on May 8th, 2007 to buy a truck;
$300.00 to L.M. on September 8th, 2008 to visit her cousin in Saskatoon;
$5,000.00 to T.H. on April 25th, 2007 to purchase a house on the reserve;
$1,000.00 to R.B. on June 6th, 2009 to buy a car; and
$3,000.00 to R.B. on September 1st, 2009 to move residences.

229. The Hearing Committee concludes that payments were made by the Member to his clients for purchases and expenses that were not necessary to the legal matter that the Member was retained for.

230. Further, the Hearing Committee finds that the Member's loan arrangements with his clients were neither fair nor reasonable in that the Member charged a 30% fee on each and every loan made to a client irrespective of:

(a) the amount of money loaned;
(b) the time that the loan remained payable to the Member;
(c) the money already being subject to a contingency fee agreement of between 25%-35%; and
(d) the number of loans obtained in one day or in a short number of days.

231. The Member's suggestion that the 30% fee was a fair representation of his time and effort in assessing the client for suitability of each loan is unacceptable to this Hearing Committee. The Member was being paid under a contingency fee arrangement for his legal expertise in recovering PIB and IRB for his clients. He was not entitled to charge clients for assessing a client's file for credit worthiness for loans.

232. The second portion of precautionary criteria (i) requires that **the transaction is disclosed to the client in writing in a manner reasonably understood by the client**.

233. The Member did have a standard RSR document that was signed in nearly every instance by the client. However, there were some instances where the SRS documents were not acknowledged by the clients. They included loans to:

D.S. on June 18th, 2009;
D.M. on February 21st, 2008;
C.M. on June 25th, 2008;
C.M. on September 5th, 2008; and
R.B. on August 24th, 2009.

234. In these instances, the Hearing Committee concludes that the terms of the loan transactions were not disclosed to the client in writing.

235. The Hearing Committee must accept, based upon the lack of evidence presented to the contrary, that the clients who did sign the RSR reasonably understood the terms of the loan transactions.

236. Precautionary criteria (ii) requires **the client is given a reasonable opportunity to seek independent legal advice about the transaction**.

237. The Member testified that he routinely advised his clients that they could obtain independent legal advice ("ILA") before signing the requisition for service request. He recalled only a couple of instances where the client may have obtained ILA. Nowhere on the Member's RSR document did it include an acknowledgment that the client was provided an opportunity to seek ILA before accepting the loan. However, the acknowledgment of ILA is not required to be in writing.

238. The Hearing Committee accepts, in absence of evidence to the contrary, that the Member provided an opportunity to his clients to obtain independent legal advice before entering into the loan transactions.

239. Precautionary criteria (iii) requires **the client consent in writing to the transaction**.

240. As noted above, not all of the RSR documents were signed by the clients consenting to the loan transactions. While Commentary within the Code does not specifically require consent to the conflict of interest be disclosed in writing, the lack of any reference within the RSR documents to the inherent conflict of interest raises serious concern for the Hearing Committee about the clients' ability to effectively consent to the nature of the transaction.

241. Precautionary criteria number (iv) requires **that there was no undue influence on the client entering into the transaction.**

242. The Member was, for many of his clients, the last resort for obtaining money while they awaited insurance benefits to replace lost earnings. The money was for such things as groceries, phone bills, power bills and Christmas gifts. Some of the Member's clients were vulnerable, had no bank account, were homeless or faced literacy challenges.

243. If the clients wanted or needed money, even for the necessities of life, the Member extended loans and charged an unreasonable fee for doing so.

244. The loans extended by the Member to his clients were extensive and excessive.

245. The Hearing Committee finds that there was the appearance of undue influence in the loan transactions that the Member entered into with his clients.

246. The Hearing Committee is satisfied that the Member did not satisfy all of the precautionary criteria set out in Chapter VI sub-section (d)(i-iv) of the Code when entering into a debtor/creditor relationship with his clients. The Formal Complaint is well founded and the Member is guilty of conduct unbecoming.

CHARGE NUMBER 6

247. The Hearing Committee has concluded that Charge Number 6 relates to the same conduct complained of in Charge Number 5. But for the duplicity of charges 5 and 6, the Hearing Committee would have found the Member guilty of conduct unbecoming under Charge Number 6 for the same reasons enumerated in the analysis and findings of conduct unbecoming for Charge Number 5. On that basis, the Hearing Committee declines to find the Member guilty of conduct unbecoming on Charge Number 6.

CHARGE NUMBER 7

248. Rule 942(4) states that once a legal matter is concluded, the law firm shall ensure related trust money is paid out expeditiously.

249. Both Mrs. Abrametz and the Member testified as to the various reasons why funds had sat on the six referenced files for what Mr. Allen suggested was extended periods of time.

250. Mr. Allen conceded that he did not enquire with the Member as to the reason why the money remained in trust on a particular file matter. Similarly, he did not investigate and confirm whether any of the referenced files were in fact concluded.

251. Rule 942(4) requires evidence to suggest that money was not paid out expeditiously on a file matter that had been concluded.

252. This Hearing Committee was presented with evidence from the Member and Mrs. Abrametz that the files in question were not concluded at the relevant time and, when the file had in fact been concluded, the funds were paid out of trust expeditiously.

253. As such, this Hearing Committee declines to find the Member guilty of the allegations contained in Charge Number 7.

PENALTY HEARING

254. A Penalty Hearing on the findings of the Member's breach of the Rules, Code and his conduct unbecoming will be scheduled in due course.

DECISION OF THE HEARING COMMITTEE IN REGARD TO THE APPLICATION FOR STAY OF PROCEEDINGS

Hearing Committee: David M. Chow (Chair)
Judy McCuskee
Evan Sorestad

Counsel: Karen Prisciak Q.C. for the Conduct Investigation Committee
Gordon Kuski, Q.C. for the Member, Peter V. Abrametz

A. INTRODUCTION

255. Peter V. Abrametz (the "Member") brings this application for a permanent stay of proceedings before this Hearing Committee (the "Committee), which was appointed pursuant to s. 47(1) of *The Legal Profession Act*, 1990 (the "Act"). His Notice of Application alleges:

> **(a) delay arising out of the operation of section 11(b) of the Canadian Charter of rights and Freedoms (the "Charter");**
> **(b) a loss of this Committee's jurisdiction by operation of section 53(1) of *The Legal Profession Act*, 1990 {the "Act"); and**
> **(c) delay that amounts to a breach of natural justice and breach of procedural fairness resulting in an abuse of process.**

256. Counsel for the Conduct Investigation Committee (the "CIC") opposes the Member's application. Both counsel for the Member and counsel for the CIC submitted their written materials including briefs of law in advance of argument heard in Regina on September 18th, 2018.

B. FACTS AND BACKGROUND

257. The relevant chronology of the investigation by the Law Society of Saskatchewan (the "LSS") into the Member's conduct and the subsequent proceedings can be summarized as follows:

(a) The LSS commenced an investigation with respect to the Member in late 2012 as a result of information obtained in a separate LSS investigation into the conduct of Kristian Eggum Q.C. Mr. Eggum and the Member practiced law together in Prince Albert;

(b) On December 4th, 2012, one day before a scheduled audit by the LSS, the Member wrote to the LSS to self-report his failure to deposit legal fees to his general account on 8 files;

(c) Between December 5th, 2012 and December 7th 2012, the LSS attended at the Member's office to conduct an audit;

(d) As a result of its audit and ongoing investigation, the LSS sought to interim suspend the Member in February of 2013;

(e) By agreement with the LSS, the Member was permitted to continue his practice under supervision and conditions undertaken by the Member on March 14th, 2013. The practice conditions included limitations on the Member's access to trust accounts and an obligation to practice under the ·supervision of Mr. Gordon Kirkby of Prince Albert;

(f) The LSS Auditor issued a Trust Report on October 30th, 2014 detailing his findings and conclusions;

(g) On November 10th of 2014 the LSS again sought to suspend the Member in the interim. CIC interviewed the Member on February 5th, 2015 and the Member was permitted to continue practicing under conditions similar to those undertaken by the Member in March of 2013;

(h) The CIC issued its investigation report on July 27th, 2015;

(i) On September 8th, 2015 the LSS applied for an Order permitting the search and seizure of the Member's financial records in an attempt to obtain material that the Member had previously refused to disclose to the CIC;

(j) On October 13th, 2015, the LSS issued a Formal Complaint against the Member containing 7 charges and appointed this Hearing Committee;

(k) The LSS served a subpoena duces tecum on the Member's accountant on October 15th, 2015 and a further subpoena duces tecum on the Member himself on November 3rd, 2015;

(l) The LSS's application for the search and seizure Order and the application of the Member to quash the subpoenas were heard by Madam Justice McMurtry of the Court of Queen's Bench on November 19th, 2015;

(m) On April 21st, 2016, Madam Justice McMurtry issued her judgment quashing the subpoenas;

(n) On May 25th, 2016, the Member made a complaint of professional misconduct against the then Executive Director in relation to the Executive Director's involvement in the investigation. The complaint was independently reviewed by the Manager of Conduct from the Law Society of Alberta and, as a result of the review, the then Executive Director was disciplined in February of 2017;

(o) In March of 2016, the Member brought an application before this Committee for an interim stay of the discipline proceedings against him. The application was heard on May 2nd, 2016·

(p) The Committee dismissed the Member's application for an interim stay of proceedings on August 15th, 2016;

(q) On September 29th, 2016 Madam Justice Schwann granted the search and seizure Order for certain financial records sought by the CIC and belonging to the Member;

(r) On October 11th, 2016 the Member filed his appeal of the Judgment of Madam Justice Schwann. That appeal has not been heard;

(s) The Member's discipline hearing was conducted by this Committee on May 17th, 18th and 19th; 2017. Unable to conclude the evidence in the scheduled three days, the hearing continued on August and 10th, 2017 with closing arguments heard on September 29th, 2017. At the Committee's request, counsel for CIC and counsel for the Member filed written submissions by October 16th, 2017 on a specific point of clarification;

(t) The Committee's decision was rendered on January 10th, 2018. The Committee found the Member guilty of conduct unbecoming on 4 of the 7 charges enumerated in the Formal Complaint of October 13th, 2015;

(u) The penalty hearing was initially scheduled for June 5th and 6th, 2018; however, due to the Member's vacation plans the penalty hearing had to be rescheduled for August 3rd, 2018;

(v) On July 13th, 2018 the Member served his Notice of Application for a permanent stay of proceedings. As a result, the date of August 3rd, 2018 that had been scheduled for the penalty hearing was vacated; and

(w) By agreement, the Member's application for a stay of proceedings was argued the morning of September 18th, 2018. Submissions on penalty were heard later that same day.

C. ISSUES

(i) Does this Committee have the jurisdiction to hear the Member's application for a stay of proceedings?

(ii) Has the jurisdiction been lost by operation of section 53{1} of *The Legal Profession Act*,1990 (the "Act)?

(iii) Has there been delay amounting to a breach of section 11{b) or section 7 of the Canadian Charter of rights and Freedoms (the "Charter")?

(iv) Has there been delay that is in breach of the principles of natural justice and procedural fairness resulting in an abuse of process?

D. ANALYSIS OF THE APPLICATION

(i) Does this Committee have the jurisdiction to hear the Members application for a stay of proceedings?

258. The Member concedes that *Christie v. Law Society (British Columbia)* 2010 BCCA 195 is valid authority for this Committee to hear the Member's application for a stay of proceedings. Counsel for CIC has not challenged this Committee's jurisdiction to deal with the Member's application.

(ii) Has the jurisdiction been lost by operation of section 53{1} of the Act?

259. Historically, s. 53(1) of the Act directed that a hearing committee shall provide its decision within 45 days of a hearing having concluded. That section was however amended to remove the 45-day requirement in favour of the phrase "as soon as possible". Section 53(1) currently reads:

> A hearing committee shall provide its decision in accordance with the rules and as soon as possible.

300. The decision of *Merchant v. Law Society of Saskatchewan*, 2014 SKCA 56 (Canlll) dealt with a similar argument of delay as that being made in these proceedings by Mr. Abrametz. However, in Merchant, the historical version of s. 53(1) of the Act, namely, that the decision must be rendered within 45 days, remained intact. At that time, s. 53(1) of the Act read:

> A hearing committee shall provide its decision to the chairperson of the discipline committee in accordance with the rules, not later than 45 days after the hearing.

301. The hearing committee in Merchant had not provided its decision within the 45 days. Mr. Merchant argued on appeal that the hearing committee had lost jurisdiction over the proceedings as a result of the delay in rendering its decision.

302. Citing its previous ruling in *Law Society of Saskatchewan v. Hawrish* (1998) 1998 Canlll 12350 (SK CA), 161 D.L.R. (4th) 760, the Court in Merchant reaffirmed its interpretation of s. 53(1):

> In light of all this, coupled with the unpalatable consequences of holding otherwise, we do not think the legislature intended to ascribe fatal effect to every failure of the hearing committee to report one of its decisions to the Discipline Committee within 45 days of the hearing.

303. The Court of Appeal in *Hawrish* went on to find s. 53(1) of the Act to be directory rather than mandatory.

304. This Committee received final written submissions from counsel for CIC and counsel for the Member on October 16th, 2017 following verbal submissions being heard on September 29th, 2017. The decision of this Committee was rendered 86 days later on January 10th, 2018. The hearing, including the final verbal submissions, lasted a total of 6 days stretched over 4 months between May 17th and September 29th of 2017. This Committee was presented with several large binders full of exhibited documents totalling nearly 900 pages, none of which were agreed to between CIC and the Member in advance of the hearing. Transcripts of the testimony were in excess of 950 pages in length.

305. This Committee agrees that the phrase "as soon as possible" is far from superfluous. The phrase must be interpreted in the context of the circumstance of each particular case. The Committee won't speculate on the Legislature's specific intention in removing the 45-day requirement previously contained in s. 53(1) of the Act. Whether the removal of the prescriptive number of days was a relaxation of the former legislative provisions is not to be determined by this Committee.

306. The Member has not brought forward evidence to suggest that, under the circumstances of this particular case, the Committee's decision having been rendered 86 days after final written submissions were made fell short of the requirement that such a decision must be rendered as soon as possible. This Committee concludes that it has not violated s. 53(1) of the Act and has not lost jurisdiction over these proceedings.

(iii) Has there been delay amounting to a breach of section 11{b) or section 7 of the Charter?

307. Section 11(b) of the Charter provides that:

> Any person charged with an offence has the right...
>
> (b) to be tried within a reasonable time;

308. Counsel for CIC states that section 11(b) of the Charter has no application in these proceedings. In support of her assertion, she relies predominantly upon the Supreme Court of Canada decisions in *Perlman v. Manitoba Law Society Judicial Committee*, [1991] 2 SCR 869, 1991 Canlll 26 (SCC) and *Blencoe v. British Columbia (Human Rights Commission)* 2000 sec 44.

309. The Member submits however that the reasoning in *Blencoe* is stale. He takes the position that

since the Blencoe decision was rendered by the Supreme Court of Canada in 2000, the principles arising from subsequent cases dealing with the interaction between administrative law and the Charter, have evolved significantly.

310. In *Blencoe*, Bastarache J, for the majority, wrote at 88:

> This Court has often cautioned against the direct application of criminal justice standards in the administrative law area. We should not blur concepts which under our Charter are clearly distinct. The s. 11(b) guarantee of a right to an accused person to be tried within a reasonable time cannot be imported into s.7. There is no analogous provision to s. 11(b) which applies to administrative proceedings, nor is there a constitutional right outside of the criminal context to be "tried" within a reasonable time.

311. Further, referring to the tendency of lower courts to blur the lines between the s. 7 *Charter* analysis and s. 11(b) principles, Bastarache J. wrote at 93:

> In the criminal law context, the test to be applied under Section 11(b) is an objective one, and prejudice may be inferred from unreasonable delay. This stands in sharp contrast to the two-tiered approach to s. 7 of the Charter, where the mere passage of time in resolving a complaint does not automatically give rise to the kind of prejudice that is presumed to follow from the laying of a charge under s. 11(b) of the Charter.

312. The Court in *Blencoe* was faced with an application for a stay of proceedings of a human rights complaint that had been made to the British Columbia Human Rights Commission, an administrative tribunal tasked with investigating and addressing grievances relating to suppression of the private rights of complainants. The Member argues that the function of a human rights commission or tribunal is not analogous to the more quasi- judicial role of a professional regulatory body investigating and pursuing discipline of its members - discipline, he states, that might well include loss of the privilege to continue practicing in a chosen profession.

313. In the decision of *Peet v. Law Society of Saskatchewan*, 2014 SKCA 109 (Canlll) the Saskatchewan Court of Appeal dealt specifically with the application of s. 11(b) of the Charter as it relates to the Law Society of Saskatchewan's mandate to regulate the legal profession and its membership. At
4 it was stated:

> The delay in dealing with the complaints against him was long. However, discipline proceedings of the sort in question here do not engage s. 11 (b) of the Charter.

314. Further, at 44 in *Peet*, supra, the Court of Appeal, referencing Wilson J. in *R. v. Wigglesworth*, 1987 Canlll 41 (SCC), [1987] 2 SCR 541, confirmed that:

> ...a distinction has to be drawn between matters of a public nature (such as criminal and quasi-criminal proceedings) aimed at promoting public order or welfare within a public sphere and private, domestic or disciplinary matters which are regulatory, protective or corrective and which are primarily intended to maintain discipline, professional integrity and professional standards or to regulate conduct within a limited private sphere of activity

315. As such, this Committee finds that the distinction drawn by the Member between the investigative and adjudicative role of human rights commission or tribunal and that of a professional regulatory body is of no assistance in determining if the Member is entitled, under s 11(b) of the Charter, to the requested remedy.

316. The Member argues that the Court in *Blencoe* referenced the lack of a Charter right under s. 11(b) whereas the Member suggests, consistent with *Dore v. Barreau du Quebec*, 2012 sec 12 and *R v. Jordan*, 2016 sec 27 that the focus of this Committee should be on the underlying Charter values. As such, the Member seeks to have this Committee expand the reasoning in Dore and Jordan and conclude, irrespective of otherwise clear direction from the Supreme Court that there is no Charter right in the administrative context to be tried within a reasonable time, that there is an underlying value contained within s. 11(b) of the Charter such that this Committee may grant a stay of proceedings in the circumstances of the case before us. The Member is however unable to point to relevant decisions that have imported either s. 11(b) Charter rights or s. 11(b) Charter values in the administrative or civil law context.

317. The circumstances of the *Dore* case are not applicable in the matter before this Committee. In *Dore*, the lawyer had been reprimanded by his professional regulatory body for an abusive letter personally attacking and denouncing a member of the judiciary. The Disciplinary Council sanctioned Mr. Dore for his behaviour as having been in breach of his Code of ethics of advocates obligation to behave with objectivity, moderation and dignity. In Mr. Dore's appeal of the Disciplinary Council's decision to sanction him for the letter, Mr. Dore argued that Article 2.03 of the Code of ethics of advocates infringed upon his. 2(b) Charter right to freedom of thought, belief, opinion and expression.

318. In dismissing Mr. Dore's appeal, the Supreme Court of Canada stated that there must be a balance between an adjudicative body's decision in furtherance of its legislated objectives and the rights guaranteed by the Charter. It stated at 55:

> How then does an administrative decision maker apply Charter values in the exercise of statutory discretion? He or she balances the Charter values with the statutory objectives. In effecting this balancing, the decision-maker should first consider the statutory objectives.

319. At 56 it continued:

> Then the decision-maker should ask how the Charter value at issue will best be protected in view of the statutory objectives.

320. The Supreme Court ultimately determined at 71:

> In the circumstances, the Disciplinary Council found that Mr. Dore's letter warranted a reprimand. In light of the excessive degree of vituperation in the letter's context and tone, this conclusion cannot be said to represent an unreasonable balance of Mr. Dore's expressive right with the statutory objectives.

321. In the case before us, it has not been suggested that provisions of the Act and provisions of the Charter, specifically s.11(b), are in conflict with one another. The Member's argument is that the manner in which CIC has carried out the legislated mandate offends the Charter values of timely investigation and prosecution of complaints.

322. The Member argues that the *Jordan* decision is authority to conclude that the estimated 66 months between the date of the LSS investigation commencing and the date this Committee rendered its decision amounts to a breach of the Charter values and the procedural timelines set out in *Jordan*. This Committee is not aware of any authority to draw the connection, as invited by the Member, between the principles outlined in Jordan, a purely criminal case in nature, and the analysis of timely conclusion of civil and administrative proceedings. Perhaps the Member's argument in this regard is grounded more properly in s. 7 of the Charter. That section of the Charter states:

> Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

323. Counsel for CIC reminded this Committee that s. 7 of the Charter was not cited in the Member's Notice of Application or Amended Notice of Application for a stay of proceedings. The s. 7 Charter argument was however advanced in the Member's brief of law and verbal representations were made on this point during the application heard on September 18th, 2018. As such, this Committee is prepared to consider the Member's submissions that the procedural delay of these proceedings has infringed upon hiss. 7 Charter entitlements to liberty and security of the person.

324. At 45 of the *Blencoe* case, Bastarache J, stated:

> Although there have been some decisions of this Court which may have supported the position that s. 7 of the Charter is restricted to the sphere of criminal law, there is no longer any doubt that s. 7 of the Charter is not confined to the penal context.

325. He went on to say at 46:

> The question to be addressed, however, is not whether delays in human rights proceedings can engages. 7 of the Charter but rather, whether the respondent's. 7 rights were actually engaged by delays in the circumstances of this case.

326. Each of life, liberty and security of the person as protected under s. 7 of the Charter is a distinct interest requiring separate analysis. Considering the facts of this case, review of the s. 7 Charter entitlement to life is unnecessary.

(a) Liberty

327. At 49 of *Blencoe*, Bastarache J. wrote:

> The liberty interest protected by s. 7 is no longer restricted to mere freedom from physical restraint. Members of this Court have found that "liberty" is engaged where state compulsions or prohibitions affect important and fundamental life choices.

328. The Member has provided no compelling evidence to this Committee to suggest that the delay between initiation of the investigation in 2012 and the decision of this Hearing Committee

in January of 2018 has impacted his personal autonomy or ability to make free and private choices independent of interference by the LSS.

329. At 54 of *Blencoe*, Bastarache J stated:

> Although an individual has the right to make fundamental personal choices free from state interference, such personal autonomy is not synonymous with unconstrained freedom.

330. The Member has been under practice conditions in his professional capacity. The practice conditions are set out in detail in the Member's affidavit sworn July 13th, 2018. The practice conditions require supervision of the Member's trust account dealings. The conditions further require monthly meetings between the member and the supervisor and review and approval of any financial arrangements with clients. The approved supervisor is Mr. Kirkby, a colleague of Mr. Abrametz in the City of Prince Albert.

331. The practice conditions have been in place since early in 2013. No evidence was presented to suggest that the practice conditions have hampered the Member's practice, professional activities or freedom. No evidence has been tendered indicating that the regular involvement of Mr. Kirkby has been challenging for the Member.

332. This Committee finds that the restriction on the Member's practice cannot be said to impact the Member's s. 7 Charter entitlement to liberty.

(b) Security of the Person

333. The s. 7 Charter interest of security of the person is not restricted to only physical preservation but includes protection of an individual's psychological existence. Such psychological protection includes the freedom from state-imposed stress and anxiety.

334. In the case before us, the Member did swear in his affidavit material that he has been under stress. He swears in his affidavit of July 13th, 2018 that he is being monitored for high blood pressure. He swears that the delay has impacted his family, home life and his employees.

335. No medical evidence has been provided by the Member. No affidavit from his family, his employees or his doctor was presented with his application.

335. In assessing the infringement upon the Member's Charter entitlement to security of the person the Committee accepts that, since the initial site visit from the LSS auditor in early December of 2012 through to the present day, there has been some degree of stress on Member.

336. However, consistent with the analysis in *Blencoe*, supra, the Committee must be satisfied that any delay in the investigation or hearing process is the contributing cause to the harm that the Member may have experienced due to the stress.

337. This Committee is unable to conclude that the minor medical condition complained of by the Member is connected to any delay in the investigation or hearing process.

338. The stress experienced by the Member's family and the Member's employees, even if they were somehow relevant to the Member's s. 7 Charter interests, can reasonably be

attributed to the allegations of professional misconduct against the Member and the publicity that followed this Committee's decision of January of 2018, rather than any delay in the investigation or hearing process.

339. The legislated objectives of the LSS as enumerated in s. 3.1 of the Act can be summarized as the responsibility for maintaining the discipline, standards, competency and integrity of the profession's membership in furtherance of protecting the public from those within the profession that may fall below the acceptable threshold established by the regulatory body.

340. This Committee has carefully and thoroughly considered the legislated objectives of the LSS and balanced them against the Member's entitlements underlined by the values contained within the Charter. In doing so, this Committee has concluded that there has not been a breach of the Member's Charter rights entitling him to a stay of proceedings.

(iv) Has there been delay that is a breach of the principles of natural justice and procedural fairness resulting in an abuse of process?

341. The leading case in this area of administrative law remains the 2000 Supreme Court of Canada case of *Blencoe*, supra.

342. The Member's argument that he is entitled to a remedy on the basis of a breach of the principles of natural justice and procedural fairness is independent of the examination of his s. 7 Charter interests that has been referred to earlier in this Committee's decision.

343. The Court in *Blencoe* confirmed that an applicant is not entitled to a stay of proceedings for the mere passage of time, and nothing more. In assessing what state-caused delay might warrant a stay of proceedings, Bastarache J identified three distinct forms of prejudice that might amount to an abuse of process.

(a) <u>Prejudice to the Fairness of the Hearing</u>

344. Delay in the investigation or hearing process may result in the unavailability of witnesses, faded recollections of witnesses and the loss of important evidence thereby compromising the fairness of administrative proceedings.

345. In this instance, the Member has been unable to demonstrate to this Committee that any delay of the proceedings has impacted the Member's ability to answer the complaint against him. The Member and his wife testified on his behalf. Neither of them claimed to have an impaired recollection of the events dating back to the time of the investigation or the events for which the Member was accused. Further, the Member has not suggested that delay in the proceedings compromised his ability to obtain and produce documentary evidence in support of the explanations provided by him during the hearing in 2017. Hundreds of pages of documents were presented by the Member to this Committee relating to the transactions throughout the years 2008- 2012.

346. This Committee finds that there was no prejudice to the Member in the fairness of the hearing and his ability to respond to the complaint against him.

(b) <u>Personal Prejudice</u>

347. In the absence of prejudice to the fairness of the hearing, there may still be instances of delay that are so significant that continuation of the proceeding would amount to an abuse of process.

348. As noted by Bastarache J. at 115 of *Blencoe:*

> Where inordinate delay has directly caused significant psychological harm to a person, or attached a stigma to a person's reputation, such that the human rights system would be brought into disrepute, such prejudice may be sufficient to constitute an abuse of process. It must however be emphasized that few lengthy delays will meet this threshold. I caution that in instances where there is no prejudice to hearing fairness, the delay must be clearly unacceptable and have directly cause a significant prejudice to amount to an abuse of process. It must be a delay that would, in the circumstances of the case, bring the human rights system into disrepute.

349. The Member submits in his affidavit of July 13th, 2018 that he has suffered personal prejudice. At paragraphs numbered 24-26 of his affidavit he swears that he has been prejudiced by the adverse media attention following this Committee's decision in January of 2018.

350. While this Committee accepts that the Member's reputation has suffered as a result of the media attention, we conclude that the Member has failed to illustrate that he has suffered prejudice by any state-caused delay in the proceedings. The Member has not pointed to any publicity, adverse or otherwise, of the proceedings between 2013 and 2018. The publicity occurred over a short period of time early in 2018. Media coverage of the hearing, which pursuant to s. 48(9) of the Act is open to the public, has no connection to the passage of five years between initiation of the investigation and this Committee's decision in January 2018.

351. The Member submits that he has been prejudiced as a result of the practice conditions that he has been subjected to since March, 2013. The practice conditions are set out in Exhibit "G" of the Member's affidavit sworn July 13th, 2018. In general, they include supervision of the Member's practice and trust account activities. The conditions were consented to by the Member as an alternative to the LSS's move to interim suspend him. The practice conditions are not overly restrictive of the Member's practice. They are consistent with the LSS's mandate of protecting the public, having taken into account the allegations against the Member and the Formal Complaint issued on October 13th, 2015.

352. Indeed, the majority of the allegations lodged against the Member were determined by this Hearing Committee to be well founded. In this Committee's decision of January 10th, 2018, it was noted at paragraph number 159 that the Member had enlisted his clients to participate in his dishonest scheme. Further, at paragraph number 168, the Committee concluded that the Member's conduct suggested a deliberate and calculated effort to deceive. At paragraphs 244 and 245 of the decision it was determined that loans to the Member's clients were extensive and excessive and in entering into the business relationships with his clients there was the appearance of undue influence by the Member.

353. Other than the Member's general statement that he has suffered prejudice as a result of delay in these proceedings, the Member has been unable to provide supporting evidence that he has suffered as a result of the practice conditions he has been under during the last 5 years. He has not argued that the practice conditions have impacted his billings or his caseload or the time typically required by him to process his personal injury files. He has provided no validating

evidence that the practice conditions have unreasonably impacted his business and this Committee is unable to find evidence of personal prejudice suffered by the Member due to any delay in the proceedings.

(c) Unacceptable Delay

354. Delay that has been inordinate or unacceptable may constitute a breach of the duty of fairness to the Member in these proceedings. In *Blencoe*, supra this concept was intermingled with the concept of oppression. Essentially, the delay must be so significant that to continue with the proceedings would cause such a degree of damage to the public's interest and sense of fairness as to outweigh the potential damage to the public's interest should the proceedings be halted.

355. To determine if delay has been inordinate this Committee must look not just at the amount of time that has elapsed during the proceedings but examine the explanations for the passage of time in this particular case.

356. In *Blencoe* at 122 it was stated:

> The determination of whether a delay has become inordinate depends on the nature of the case and its complexity, the facts and issues, the purpose and nature of the proceedings, whether the respondent contributed to the delay or waived the delay, and other circumstance of the case.

357. In this case, the nature and number of allegations of conduct unbecoming, the total number of client files reviewed and documents examined during the investigation and the lengths to which the Member went to conceal his conduct were extensive and complex. While the Member initially cooperated with the investigation, that cooperation ceased in May of 2015.

358. The total amount of delay between the investigation being initiated in December of 2012 and the date of the discipline hearing in September of 2018 amounts to approximately 66 months. In *Merchant v. Law Society of Saskatchewan*, 2014 SKCA 56 (Canlll) the court held that the need for protection of the public outweighed any prejudice demonstrated by Mr. Merchant. In that case the delay was 81 months.

359. In this case, the affidavit of Timothy Huber sworn August 23rd, 2018 summarizes the events that transpired over the 66 months to illustrate that the Member should be credited with a significant share of any delay in these proceeding.

360. At paragraph number 12 (a)-(j) of the CIC brief the delay attributable to either the Member or the Member's counsel being unavailable for certain steps in the proceedings totalled 14.5 months. Additionally, the Member brought an application before this Committee for a temporary stay of the proceedings in April of 2016. The application was not based upon an allegation that there had been delay up to that point in the process. To the contrary, the Member's application at that time was to temporarily put the proceedings on hold pending further CIC investigation - an investigation that was stalled due to the Member's refusal to disclose certain financial records. The application made by the Member to temporarily suspend proceedings at that time had the very real potential to cause further delay. CIC opposed the Member's application for a temporary stay of proceedings. The application was heard on May 2nd, 2016 and decision rendered on August 22nd, 2016 denying the Member's application.

361. Between June 23rd, 2016 and September 29th, 2016 matters related to the investigation and the allegations against the Member were dealt with in the Court of Queen's Bench. With the Queen's Bench matters having been partially resolved attempts were made by this Committee in November of 2016 to arrange dates for hearing the Formal Complaint against the Member. Due to unavailability of a CIC witness and the Member's schedule, dates had to be set into early May of 2017. The May 2017 dates were confirmed by the parties in early February of 2017. Approximately 2 weeks after the hearing dates were confirmed however the Member filed a complaint with the LSS against Mr. Huber, Council for the CIC. In Mr. Huber's affidavit of August 23rd, 2013, he states that the Member's complaint against him necessitated that the CIC hire outside counsel to proceed with the hearing dates in May of 2017, rather than delay the hearing until after the complaint against Mr. Huber had been resolved.

362. Counsel for the member consented to proceeding with the hearing on the dates in May of 2017 however due to both counsel being unable to reach an agreement on certain facts and documents being admitted into evidence by consent, the proceedings could not be concluded within the 3 days set aside in May of 2017. As stated by the Member's counsel at line 16 of page 513 of the transcript of the May 19th, 2017 proceedings:

> And I should say that my suggestion now, like, wildly underestimated how long this was going to take, and I apologize for that.

363. Due to the Member's busy schedule and that of counsel for CIC and counsel for the Member, two days were arranged in early August of 2017 to conclude the hearing. Following close of the evidence on August 10th, 2017 final arguments were arranged to be heard in late September of 2017. Written submissions on a point of interpretation were provided to this Committee by counsel for the parties by October 16th, 2017. The decision was rendered 86 days later on January 10th, 2018.

364. The approximately 66 months that elapsed between commencement of the investigation and the decision having been rendered was neither inordinate nor was it unacceptable given the complexity of the case, the size of the investigation and the delay that can be attributable directly to the Member's conduct. The importance of the LSS's primary mandate of public protection overshadows the specific delay, state caused or otherwise, in this matter. Any prejudice that the Member may have experienced as a result of the delay is not so significant that continuation of the process would taint these proceedings or be so unfair to the member that the public's sense of fairness would be harmed.

E. DECISION

365. The Member's application for a stay of these proceedings is dismissed.

366. The matter of costs will be addressed in the decision of this Committee on the Member's penalty arising from this Committee's January 10th, 2018 findings of conduct unbecoming.

PENALTY HEARING DECISION

Hearing Committee: David Chow, Chair
Judy McCuskee
Evan Sorestad

Counsel: Karen Prisciak, Q.C. - Conduct Investigation Committee
Gordon Kuski, Q.C. & Amanda Quayle - Member, Peter V. Abrametz, Sr.

367. On January 10th of 2018 the Hearing Committee (the "Committee"), having been constituted pursuant to s. 47(1) of The Legal Professions Act, and having conducted six days of Hearings between May 17th, 2017 and September 29th, 2017, found the Peter V. Abrametz (the "Member") guilty of conduct unbecoming as defined in s. 2(1)(d) of *The Legal Professions Act* on four of the seven charges contained in the Formal Complaint dated October 13th, 2015. The relevant portions of the Formal Complaint are set out below. The counts upon which the Committee declined to find the Member guilty of conduct unbecoming have been removed.

> **THAT PETER V. ABRAMETZ Sr., of the City of Prince Albert, in the Province of Saskatchewan is guilty of conduct unbecoming of a lawyer in that he:**
>
> **1. did, in relation to the following clients, effect withdrawals of trust funds for the payment of fees, disbursements or other expenses in a manner contrary to Law Society of Saskatchewan Rule 942(3):**
>
> **a. M.G.;**
> **b. E.M.;**
> **c. S.F.;**
> **d. K.S.;**
> **e. A.K.;**
> **f. J.M.;**
> **g. A.N.; and**
> **h. E.H.**
>
> **2. did knowingly cause trust cheques to be issued to a fictitious person for the purpose of effecting a transfer of trust funds for payment to himself;**
>
> **4. did fail to maintain proper books and records in relation to his legal practice contrary to Part 13(H) of the Law Society of Saskatchewan Rules in relation to the following client matters:**

a. M.G.;
b. E.M.;
c. S.F.;
d. K.S.;
e. A.K.;
f. J.M.;
g. A.N.; and
h. E.H.

5. did enter into or continue a debtor/creditor relationship with the following clients (loaning money) when his interests and the interests of those clients were in conflict and failed to ensure that:

a. the transaction was a fair and reasonable one;
b. that its terms were fully disclosed to the client in writing in a manner that is reasonably understood by the client;
c. the client was given a reasonable opportunity to seek independent legal advice about the transaction;
d. the client consented in writing to the conflict of interest; and
e. there was no appearance of undue influence;

in relation to the following client matters:

i. A.N.;
ii. Doris S.;
iii, Deanna S.;
iv. R.B.;
v. L.H.;
vi. C.J.;
vii. D.M.;
viii. D.J.;
ix. C.M.;
x. T.H.; and
xi. R.B.

368. A detailed recitation of the evidence presented at the Hearing and the Committee's conclusions relating to each of the above counts can be found in the Committee's decision of January 10th, 2018. A brief summary of the Committee's findings of facts are as follows:

Charge #1. The Member was found to have engaged in an elaborate scheme of making trust cheque payments from his law office trust account to clients for amounts that were supposed to be paid to the Member or his firm for legal fees. The clients then endorsed the trust cheques back to the Member personally. The Member negotiated the cheques and received the payments without the funds passing through, and being recorded in, his law office general account. The Member self-reported his failure to comply with Rule 942(3) in the eight instances between 2008 and 2010. The self-report was made by the Member one day prior to the Law Society's auditor attending at the Member's office for a scheduled visit on December 5th 2012;

Charge #2. The Member knowingly issued trust cheques to a fictitious person, P.S. The cheques were then negotiated by the Member with his endorsement of a signature

on the back purported to be that of the fictitious person. The Member claimed that the fictitious person was dreamt-up years ago by his family and had been used by the Member in the past for ordering magazine subscriptions and bidding on silent auction items. The member considered the use of the fictitious person's identity as a running joke within his family.

Charge #4. The Member prepared or caused to be prepared misleading invoices and law office accounting records in an attempt to conceal the fact that he had issued trust cheques to his clients for amounts that were owing to the Member or his firm as legal fees. The Committee concluded that the conduct in Charge #4 was distinct from that alleged in Charge #1; and

Charge #5. The Member had frequently loaned money to his clients between the years 2008 to 2010. In nearly every instance the Member charged 30% on each amount loaned to his clients. The 30% fee was charged in addition to the file contingency fee of between 20-30%. The loan fee was charged irrespective of the amount of money loaned or the length of time that the loan remained outstanding. The loans were made to clients, many of which were considered vulnerable, for various purposes including the purchase of a house and vehicles, Christmas shopping, daycare expenses and hockey registration. The Committee found that the Member had made the loans for purposes that were not necessary to the legal matter that the Member was retained for and that the 30% loan fee charged by the Member was neither fair nor reasonable.

369. On September 18th 2018 counsel for the Member and counsel for the Conduct Investigation Committee ("CIC") made submissions on the Member's application for a stay of proceedings against him. Later that same day, the parties made their submissions on penalty. Counsel provided written briefs and case authorities on penalty and, in the case of the Member, 22 letters of support were tendered by his counsel from community leaders, friends, professional colleagues and clients of the Member. The Committee dismissed the Member's application for a stay of proceedings in its decision dated November 9th, 2018. The Committee's decision on penalty is set out below pursuant to s. 53(1) of *The Legal Professions Act*, 1990.

ISSUES

370. The committee identified the following two issues for analysis:

A. The appropriate sentencing principles in determining the penalty to be imposed upon the Member; and

B. The appropriate penalty to impose upon the Member having regard to the sentencing principles and the relevant facts relating to the charges upon which the Committee found the Member's conduct unbecoming

ANALYSIS

A. The appropriate sentencing principles in determining the penalty to be imposed upon the Member

371. In assessing the appropriate penalty to impose the Committee has adopted the following principles for consideration:

i) Sentencing ranges for similar offences;
ii) The member's discipline history;
iii) Admissions of guilt;
iv) Applicable mitigating factors;
v) The length of any interim suspension or practice supervision prior to the penalty being imposed and the impact of the interim suspension or supervision on the member's practice;
vi) The members conduct during the suspension or period of supervision prior to penalty being imposes; and
vii) The impact the member's behaviour has had on the reputation of the legal profession and the need for protection of the public.

B. The appropriate penalty to impose upon the Member having regard to the sentencing principles and the relevant facts relating to the charges upon which the Committee found the Member's conduct unbecoming

i) Sentencing ranges for similar offences

372. Not surprisingly, counsel for the Member and counsel for CIC have a very different view on the appropriate penalty and how the circumstances of this case should be viewed in light of the jurisprudence. Counsel for the Member suggests a suspension of 2 months is appropriate. CIC argues that the Member should be disbarred. Counsel supplied the Committee with a wide breadth of discipline decisions to assist in the determination of an appropriate penalty to impose upon the Member. Several of the cases illustrating the ranges are set out below:

373. In the case *of Law Society of Saskatchewan v Angus*, 2010 LSS 6, the member was found guilty of conduct unbecoming on six counts including three instances of misappropriation of funds, preparation of false accounts and failing to respond to the Law Society of Saskatchewan. The committee acknowledged that, except in unusual circumstances, disbarment is a starting point in instances of misappropriation of funds. In that case the committee found the misappropriation to be reckless rather than deliberate and intentional. The committee determined that the public protection and integrity of the profession could be maintained by imposing a suspension of twelve months, restitution of $10,740.00 and costs of $8,135.00.

374. In the more recent case of *Law Society of Saskatchewan v Ferraton*, 2014 LSS 4, the member pleaded guilty to four allegations of conduct unbecoming including improperly fabricating documents and entering into business relationships with clients. The committee suspended the member for one month and ordered the payment of costs in the amount of $4,150.00.

375. The case of *McLean v Law Society of Saskatchewan*, 2012 SKCA 7, involved five counts of conduct unbecoming including failure to comply with trust conditions and undertakings, dilatory practice and a failure to serve his client's interests. The Discipline Committee suggested that Mr. McLean's submissions on penalty illustrated a lack of remorse and a failure to take responsibility for his actions. The Discipline Committee imposed a four-month suspension followed by an indefinite period of supervision. Mr. McLean appealed to the Court of Appeal. His suspension was cut in half. The Court of Appeal took issue with the Discipline Committee drawing an adverse inference from Mr. McLean using the opportunity on penalty submissions to explain his conduct. The committee felt the explanation was indicative of a lack of remorse.

376. The case of *Law Society of Saskatchewan v Migneault*, 2017 SKLSS 7, resulted in a suspension of two years with credit for the period of supervision, costs of $15,360.00 and continued practice conditions. In that case, Mr. Migneault pleaded guilty to five counts in the Formal Complaint against him. Following a single day of hearings Mr. Migneault was found guilty of three additional counts contained within the Formal Complaint. Much of the evidence was submitted by way of an agreed statement of facts. The proven allegations included trust accounting rule breaches, entering into debtor/creditor relationships with clients through the loan of money, misleading the Law Society of Saskatchewan and facilitating the commission of a fraud by his client. Mr. Migneault was included among the individuals that lost a significant amount of money as a result of his client's fraud.

377. In the case *of Law Society of Saskatchewan v Winegarden*, 2017 SKLSS 8, the member pleaded guilty to two counts of conduct unbecoming. The charges included the acceptance of retainers without deposit to Mr. Winegarden's mixed trust accounts as well as breaches of trust accounting rules and the failure to maintain proper books and records. The member was suspended for fourteen months. Costs were ordered in the amount of $3,990.00 and practice conditions were imposed upon expiry of the suspension.

378. The case of *Law Society of Saskatchewan v Wilson*, 2007 SKLSS 4 involved the member depositing a client's funds into the member's general account without generating and providing the client with a bill. The client was not aware of the funds for which he was entitled to receive from the lawyer. The conduct was an isolated incident however the breach of trust and the need for protection of the public necessitated a significant penalty. The member received a suspension of three months, ongoing practice conditions and ordered to pay costs of $2,588.50.

379. *In Law Society of Saskatchewan v Hagen*, 2003 SKLSS 4, the member had improperly used trust funds to cover shortfalls on client files. The conduct was not for Mr. Hagen's direct personal gain but to conceal a missed limitation period. The clients were compensated by the member's law firm. Mr. Hagen was suspended for thirty months. Practice conditions were imposed and costs awarded in the amount of $8,822.00.

380. In *Law Society of Saskatchewan v Anderson* [1998] L.S.D.D. No. 69, the member received a suspension of two years. Mr. Anderson acted for the widow in completing her husband's estate. Mr. Anderson was aware of the fair market value of land received by the widow however purchased the land from her for significantly less than that value. He benefitted at the expense of his client. He abused his position of trust and integrity with a vulnerable and unsophisticated client. He was ordered to pay $7,000.00 in costs.

381. In the cases of *Law Society of Saskatchewan v Borden*, 2016 SKLSS, *Law Society of Upper Canada v Aguirre*, 2009 ONSHP 23 and *Law Society of Saskatchewan v Duncan-Bonneau*, 2015 SKLSS 6, the members each resigned in the face of discipline for various trust accounting irregularities and misuse of trust funds. The Hearing Committee equates resignation in the face of discipline to that of disbarment.

382. In *Borden*, the member had failed to deposit retainers to his trust account. He further billed and received payment for work that had not actually been completed. In each instance he had personally benefited from the conduct at the expense of his clients. Similarly, in *Aguirre*, the member had misappropriated retainer monies that he had failed to deposit into his trust account. The hearing committee acknowledged the mental health issues and work load stress the member had been struggling with. Costs were ordered in the amount of $15,000.00 and a

further payment of $4,150.00 to the Compensation Fund. In the case of *Duncan-Bonneau*, the member resigned for a period of four years in the face of discipline for her role in misappropriating approximately $34,000.00 from a vulnerable client. She submitted a statement of facts and admissions. The conduct investigation committee took into consideration the fact that the member had already been under suspension for a period of one year leading up to her application to resign in the fact of discipline.

383. This Committee took further note of four cases where the members were disbarred. In the case of *Law Society of Upper Canada v Dyer*, [2004] L.S.D.D. No. 57, the member, who had a prior discipline history, had taken $6,300.00 of client money and disguised the funds as legal fees. The member had benefitted at the expense of the client. In *Law Society of Saskatchewan v Nolan*, 2008 SKLSS 4, the member pleaded guilty to misappropriating $2,800.00 of money payable to the firm through falsifying disbursements. The member was disbarred for one year. In *Law Society of Saskatchewan v Tilling*, 2015 SKLSS 1, the member was found guilty of three counts of conduct unbecoming including accepting and failing to deposit trust funds, misappropriation of trust funds and failure to record cash transactions. Mr. Tilling was disbarred for one year and ordered to pay costs of $4,032.00. Mr. Tilling had a previous discipline record including two prior suspensions. Finally, in *Law Society of Saskatchewan v Oledzki*, 2009 SKLSS 4, the member was disbarred and ordered to pay $7,500.00 in costs for committing forgery in a premeditated scheme for self-benefit at the expense of his client. The penalty was upheld on appeal to the Court of Appeal.

ii) The member's discipline history

384. It has been conceded by counsel for CIC that Mr. Abrametz has no discipline history.

iii) Admissions of guilt

385. The Member suggests that his self-report should mitigate his sentence and references *Tilling*, supra as well as *McLean*, supra where at 48 of its decision, the Court of Appeal in *McLean* stated:

> Mr. McLean's guilty pleas meant that the Discipline Committee did not have to determine whether he had a lawful justification for not complying with his undertakings, but that did not mean the Committee was not required to consider his explanation and the existence of extenuating circumstances. Not only did the Committee not assess his explanation, the members used the fact Mr. McLean had proffered an explanation to conclude that he did not accept full responsibility for his actions – and this in the face of guilty plea and a statement by prosecuting counsel the Mr. McLean had, in fact, accepted full responsibility for his actions.

386. The circumstances of the Member's case are unlike that of *McLean* where a plea of guilty was followed by an attempt to provide a mitigating explanation on sentencing. Mr. Abrametz self-reported to the Law Society of Saskatchewan one day prior to a scheduled visit from its auditor. The Member's self-report letter of December 4th, 2012 was exhibited during the Hearing at CIC binder #1, Tab #5 of Part #1. The letter concedes that the Member "failed to promptly deposit into his office account the following fee, on the following files……". The Member's failure to deposit fees was in relation to eight client files between the years of 2008 and 2010. The letter itemized the client names, file identification numbers and the amounts

totaling $36,578.45. The letter contained the statement that the sums had all since been paid to the office general account. The letter provided no further details of the admitted Rule breach.

387. During the Hearing, the Member did not plead guilty to the allegations in Charge #1. He admitted in his testimony to what was contained in his self-report letter of December 4th, 2012. It was more than just semantics. He offered the Committee explanations in an attempt to justify why his behaviour may have been a technical breach of Rule 942(3) but was otherwise appropriate. The Committee wholly rejected the Member's explanations. Beginning at paragraph number 155 of this Committee's decision dated January 10th, 2018 it was said:

> 155. At the Hearing, the Member attempted to justify his actions by characterizing the diversion of funds for his personal use as the repayment of a shareholder's loan. The Member was unable to provide any evidence that his professional corporation owed him any money as a shareholder loan. To the contrary, he indicated that such matters were beyond his level of expertise and is left to his accountant. Even if the Member's professional corporation owned him money for a shareholder loan, the Member provided no explanation as to how that scenario would legitimize his behaviour such that he would not be in violation of Rule 942(3).
>
> 156. The Member maintained a large case load from year-to-year yet on eight specific files between the years of 2008 and 2010 the Member circumvented his usual legal fees billing procedure in order to obtain funds for his personal benefit without those funds having first been deposited to his law office account
>
> 157. The reasons for the member's behaviour are not clear. No testimony was supplied by any of the clients referenced in the Formal Complaint. The LSS did not attempt to speak with or interview any of the clients that were party to the Member's scheme to divert funds to his personal benefit.
>
> 158. When asked during the Hearing why he had clients endorse trust cheques back to him, the Member was unable to explain his actions. When queried further, he testified that, at the time, he thought it was a good idea and the easiest way to get money. He acknowledged that, in hindsight, it was inappropriate.

388. Further, the Member did not self-report or admit responsibility on the other allegations for which the Committee found him guilty of conduct unbecoming. Again, he offered explanations to the Committee as to why he believed his conduct was entirely appropriate. With the possible exception of Charge #1, his evidence presented at the hearing was to avoid culpability rather than mitigate his sentence on prior admissions of wrongdoing. The Committee similarly rejected the Member's explanations on charges #1, 2, 4 and 5.

389. The Committee found the Member's attitude to be cavalier and disturbing in relation to the use of the pseudonym P.S. With regard to the Member's accounting books and records the Committee determined the Member had created trust ledger statements in an effort to deceive. Moreover, despite the Member's characterization of the many transactions with his clients as legitimate advances permitted within the Code of Professional Conduct, the Committee concluded the Member had entered into debtor/creditor relationships with clients by loaning them money when his interests and those of his clients were in conflict. The Committee is of

the opinion, based upon the evidence presented at the Hearing, that the Member has shown a complete lack understanding and remorse for his behaviour.

iv) Applicable mitigating factors

390. The Member is 69 years of age and had practiced without an instance of discipline for nearly 40 years at the time of the Law Society of Saskatchewan's investigation that lead to these proceedings. He submits that his self-report on the eight files prevented members of the public from having to testify which both expedited the Hearing and prevented any harm, or alternatively, any further harm, to members of the public.

391. There were instances where the Committee would have welcomed testimony from the Member's clients in an effort to assist the Committee in understanding the Member's behaviour; in particular, instances where the Member had his clients endorse trust cheques back to him. It was the failure of the Law Society of Saskatchewan to interview any of the Member's clients during its investigation, rather than the Member's self-report, that rendered the clients' attendance at the Hearing avoidable.

392. The Member further suggests that the delay in the audit investigation and the disciplinary proceedings entitle him to favourable consideration on the assessment of penalty. The Committee dismissed the Member's application for a stay of proceedings in its decision of November 9th, 2018 including extensive reasons for doing so. The dismissal of the Member's application however does not prohibit the Committee from considering the length of the investigation and proceedings in determining an appropriate penalty to impose. Although the investigation and the discipline process has extended over six years, the circumstances of this case and the stages of the proceedings were complex, protracted and pointedly adversarial throughout. In the circumstances of this particular case the Committee does not agree that the investigation and discipline process has been unreasonably lengthy such that it amounts to a mitigating factor in determining the appropriate penalty for Mr. Abrametz.

v) The length of any interim suspension or practice supervision prior to the penalty being imposed

393. The Member has been under practice supervision since March 14th of 2013. The requirements for supervision have not been overly restrictive. They are summarized in Tab #4 of the Member's supplemental disclosure binder marked as R2. They include the addition of the supervisor's signature on the Member's trust accounts, monthly lists of all open files to be supplied to the supervisor, approval from the supervisor for all trust cheques, prior approval of the supervisor of all retainer and contingency fee agreements, monthly approval of trust account reconciliations and trust ledgers and monthly review of the Member's law office general account.

394. On two occasions the Law Society of Saskatchewan sought to interim suspend the Member. The practice supervision and conditions that were consented to by the Member on each occasion permitted the Member to continue his practice throughout these proceedings. The Member tendered no compelling evidence that his practice has been negatively impacted as a result of the required supervision or that the length of time that he has been under supervision warrants a reduction in his penalty.

vi) The members conduct during the suspension or period of supervision prior to penalty being imposed

395. By all accounts the Member's behaviour during the period of his practice supervision has been positive. The Law Society of Saskatchewan reports no issues. The Committee is not

aware of any complaints by the Member's clients or other members of the public during the period of supervision. The practice supervisor, Gordon Kirkby, provided his letter dated September 13th, 2018 in support of the Member. In his letter, co-signed by two other lawyers of Mr. Kirkby's firm, he states:

> At the commencement of this role there were a small number of proposed retainers that were turned down or required modification but where that was required by us, he was eager to comply. He treated all requests for changes or additional information with professionalism and integrity. There have been absolutely no issues which raised any concerns with us after Mr. Abrametz was able to familiarize himself with our views and requirements. He has conducted himself in a fully appropriate fashion.

396. The Member supplied the Committee with twenty-one additional letters of support and references from members of the community, colleagues, clients and friends of the Member. Obviously the Member has been heavily involved with his community and has shown many instances of benevolence during his career. Some of the letters of support suggested that the author was unaware of the allegations against the Member or the charges for which the Member had been found guilty of conduct unbecoming. Still others gave the impression that the Member's conduct was as trivial as disorganized record keeping. Others suggested that, absent defalcation or complaints from the Member's clients, the public interest would be best served by not suspending the Member. With the exception of the letter of support provided by Gordon Kirkby and Philip Fourie, the Committee finds the letters to be of limited assistance in determining the appropriate penalty to impose upon the Member for the conduct of which he has been found guilty of conduct unbecoming.

vii) The impact the member's behaviour has had on the reputation of the legal profession

397. The Committee can only speculate on the actual impact that the Member's behaviour has had on the legal profession. Unfortunately, no testimony was ever provided by the Member's clients that had been caught up in his schemes in regard to Charge #1 or the loans in regard to Charge #5.

398. In this Committee's decision of January 10th, 2018, it was concluded at paragraph 159:

> By issuing cheques to the clients and having the clients endorse those cheques back to the Member as payment for legal fees the clients were enlisted to participate in the Member's dishonest scheme. The Hearing Committee was unable to imagine any explanation for the Member's conduct in this regard that would not bring disrepute upon the legal profession.

399. The Committee finds as an aggravating factor in determining the appropriate penalty that the Member not only engaged in the offending behaviour for his self-benefit but that over a three-year period of time he involved members of the public to assist him in carrying out his deceitful acts. The Member's behaviour strikes a blow against the fundamental principles of the legal profession's code, namely; honesty, trustworthiness and protection of the public.

400. Mr. Abrametz is a senior member of the provincial bar. He was admitted as a lawyer in 1973. He argues that he does not attract the public's attention like more notable lawyers in Saskatchewan. He argues that he is not a partner of a large firm or in a large city. While the Member may not practice out of Regina or Saskatoon, he has practiced out of the province's

third largest city for many years. It is hard to deny that he is a very recognizable member of the Prince Albert legal community. His conduct has drawn media attention in the central and northern part of the province. The media has publicized the Member's dishonest conduct and has included some excerpts of this Committee's decision. The letters of support tendered by the Member reinforce the Committee's conclusion that the Member is closely and prominently associated with the public's perception of the legal profession in the Prince Albert region.

401. The impact upon the legal profession should not be viewed exclusively from the perspective of the public. This Committee should also consider the importance of general deterrence within the legal profession in addressing the impact that the Member's behaviour has had on the reputation of the profession. The ability of the Law Society of Saskatchewan to effectively regulate the profession and its members requires not only the confidence and respect of the general public but also that of the membership itself. It may be said that an insufficient penalty would offend the public's sense of justice, and that of the profession.

402. In *Migneault*, supra, it was said at 92

> What then is a "significant disciplinary response", in the words of the panel in McCandless, or a "significant sanction", in the words of counsel for the investigation Committee? Clearly, disbarment would be significant. However, so would a lengthy suspension. A long suspension has serious consequences in almost any situation. It would typically involve significant economic hardship. It's highly disruptive to every part of the Member's life. And it carries with it all of the ignominy associated with the suspension and the discipline process as a whole. It's clear in this case that the Member has already experienced all of this.

403. In the *Migneault* case the member, who had no prior discipline history, had facilitated fraud perpetrated by his client that resulted in losses to members of the public in excess of $1,000,000.00. Migneault had been negligent and failed to exercise due diligence but he was not found to have intentionally deceived the public or perpetrated the scheme himself. Indeed, Migneault lost a significant amount of his own money through his client's fraud. Further, in *Migneault*, similar to the facts of the Abrametz case herein, the member had loaned money to clients without regard to the appropriate safeguards for entering into business transactions with clients. In *Migneault*, the clients were residential school claimants and reasonably considered vulnerable.

404. In this Committee's decision of January 10th, 2018, referring to Mr. Abrametz, it was said at paragraphs 167:

> This was very unusual and would suggest that at the time the money was posted to the S.S. trust account, reportedly in error, the Member had intended on corrupting the integrity of his trust accounting records.

405. Further, at paragraphs numbered 168, 172, 183 and 189 of its decision the Committee repeatedly referred to the Member's deliberate and calculated effort to deceive. The Committee finds for these reasons that Mr. Abrametz's conduct is more egregious than that described in the *Migneault* case.

406. In *Oledzki v Law Society of Saskatchewan*, 2010 SKCA 120, Mr. Oledzki admitted to his guilt on twelve allegations including fraud, forgery, misleading members of the public and

members of the profession. It was concluded that Mr. Oledzki had not acted with the intention to directly self-benefit. Mr. Oledzki was disbarred with the opportunity to apply for reinstatement after one year. In its decision to uphold the Hearing Committee's decision, the Court of Appeal stated at paragraph number 6:

> The appellant's counsel argued that disbarment is a severe penalty where the member has not benefited from the impugned conduct. With respect, the absence of self-benefit is not especially mitigating in matters of this nature. The appellant forged signatures on testamentary documents, caused a member of the public to sign as witness to a forged testamentary document, misled his partners, and failed to ensure that his clients received independent legal advice when he prepared Wills that contained provisions that would benefit either himself or his immediate family member. Considering the number of charges to which the appellant admitted guilt and taking into account his year under suspension prior to the discipline hearing, disbarment with the right to apply for readmission after one year is at the low end of possible and acceptable penalties. Where complaints of forgery, misleading the public and misleading other members of the profession are proven or admitted, the paramount concern is the risk to the public of that type of conduct. Acts of forgery and deceit go straight to the heart of a lawyer's integrity and to that of the profession, regardless of motivation or the absence of self-benefit. The seriousness of these complaints cannot be overstated. In these circumstances, disbarment is a reasonable and defensible outcome.

407. Contrary to the findings in the *Oledzki* case, Mr. Abrametz was acting entirely for self-benefit by charging a fee of 30% for loans to clients in addition to the 20-30% file contingency fee. He directly benefitted from the cheques endorsed back to him by his clients, he directly benefited from the trust cheques he knowingly issued to a fictitious person and negotiated with the endorsement of a fictitious person.

408. The Committee is mindful of the Law Society of Saskatchewan's role in regulating the legal profession with an aim of protecting the public, maintaining public confidence in the profession, meeting the requirements of general deterrence within the Saskatchewan legal community and meeting the requirements of specific deterrence of the Member himself. The Committee finds that the circumstances in *Oledzki*, *Tilling* and *Dyer* as well as those in the cases of *Duncan-Bonneau* and *Aguirre* to be most analogous to those before this Committee. Having considered the principles of penalty enumerated herein and having measured the circumstances of the charges for which the Member was found guilty the Committee concludes that imposing a suspension upon the Member is inadequate.

ORDER

409. Pursuant to s. 53(3)(a)(i) of *The Legal Professions Act*, 1990 the Member is disbarred and prohibited from applying for readmission as a lawyer in Saskatchewan prior to January 1st, 2021.

410. On the matter of costs, counsel for CIC has submitted its itemization of time and costs associated with this file. CIC seeks $102,629.18 in costs from the Member. Compared to many of the cases cited by both counsel on the matter of penalty, the monetary costs in this case are considerably larger. This case has stretched over six years. In addition to a lengthy

investigation the case has involved additional applications to this Committee, the Court of Queen's Bench and the Court of Appeal.

411. It is understood that the expense associated with CIC counsel's work on any file is not necessarily an out of pocket expense for the Law Society of Saskatchewan since CIC counsel is a salaried employee of the Law Society of Saskatchewan. In this case however there were significant out of pocket expenses due to the engagement of outside counsel, at a reasonable hourly rate, to conduct the Hearing, defend against the application for a stay of proceedings and speak to the matter of penalty. CIC's decision to engage outside counsel may, in some circumstances, not be a financial burden for the charged Member to bear. In this instance the Member filed a formal complaint against CIC counsel in the weeks before commencement of the Hearing. To avoid rescheduling and further delay of the proceedings private counsel was hired to conduct the Hearing and the subsequent proceedings.

412. This Committee would not presume to dissuade a member of the profession from making a valid complaint against another member of the Saskatchewan bar, including one employed by the Law Society of Saskatchewan; however, the complaint against CIC counsel, which was ultimately dismissed without merit, was consistent with the obstructive behaviour of the Member throughout the investigation. The Committee has considered this only in its deliberations on the matter of costs.

413. Although it has become more common to order costs payable by a member on the basis of a full indemnity, the costs must be reasonable. This Committee is not prepared to further punish the Member through the imposition of the overwhelming and unusual costs in this case. There has been mixed success among the parties. The Committee is prepared to adopt the approach taken in *Huerto v. College of Physicians and Surgeons of Saskatchewan*, 2004 SKQB 360 by apportioning the costs on the basis of the divided success and award less than the full indemnity sought by CIC.

414. The Formal Complaint contained seven charges, four of which were determined by this Committee to be well founded. The Committee has apportioned the costs equally over the seven charges which the Member faced in the Formal Complaint and calculated the costs payable on the basis of the four charges for which he was found guilty of conduct unbecoming. Pursuant to s. 53(3)(a)(v) of *The Legal Professions Act*, 1990 the Member is ordered to pay $58,645.24 in costs to the Law Society of Saskatchewan on or before December 31st, 2020. Should the Member fail to pay any of the ordered costs within the prescribed time he shall be prohibited from applying for readmission as a lawyer.

"David Chow", Chair

"Judy McCuskee"

"Evan Sorestad"