



The Law Society of Saskatchewan

ALBERT JOSEPH ANGUS

August 31, 2010

Law Society of Saskatchewan v. Angus, 2010 LSS 6

**IN THE MATTER OF THE LEGAL PROFESSION ACT, 1990
AND IN THE MATTER OF ALBERT JOSEPH ANGUS,
A LAWYER OF LLOYDMINISTER, SASKATCHEWAN**

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

1. An Investigation Committee of the Law Society of Saskatchewan was struck comprised of William H. Holliday and Gregory Walen Q.C., as a result of a series of complaints against the member. Following the completion of the Investigation Committee report, a Hearing Committee was struck by John Will, Vice-Chair of the Discipline Committee of the Benchers of The Law Society of Saskatchewan, for the purpose of determining whether the member, Albert Angus is guilty of conduct unbecoming a lawyer. The Hearing Committee was initially comprised of Peter Hryhorchuk as Chair, Dawn McBride and Karen Topolinski. Subsequently, with the consent of all involved, the Hearing Committee's composition was reduced to Peter Hryhorchuk, Chair, and Dawn McBride.
2. The hearing of the Formal Complaint against the member was held in Saskatoon, Saskatchewan on June 11, 2010.
3. At that hearing, Mr. Angus represented himself. Counsel for the Investigation Committee and Mr. Angus acknowledged that the Hearing Committee was properly constituted and had jurisdiction. There were no preliminary objections or other issues.
4. At the hearing, the formal complaint was amended by consent. A plea of guilty was entered to the following amended charges:
 - i. He, through recklessness, did misappropriate funds from his client, Mosquito Grizzly Bear's Head Lean Man First Nation TLE Trust, by rendering an account and receiving funds from that client's trust balance in relation to services for which he had already been paid;

Reference Chapter I of the *Code of Professional Conduct*.

- ii. He, through recklessness, did prepare, or cause to be prepared, a false account which contained entries for which he had already been paid;
Reference Chapters I and XI of the *Code of Professional Conduct*.
 - iii. He, through recklessness, did misappropriate funds from his Mosquito Grizzly Bear's Head Lean Man First Nation TLE Trust, by paying or transferring \$1600.00 to himself or his firm without authorization to do so;
Reference to Chapters I and XI of the *Code of Professional Conduct*.
 - iv. He, through recklessness, did misappropriate funds from his client, Mosquito Grizzly Bear's Head Lean Man First Nation TLE Trust, by paying or transferring \$4,800 to himself or his firm without authorization to do so;
Reference Chapters I and XI of the *Code of Professional Conduct*.
 - v. He did breach a written undertaking that he provided to the Law Society of Saskatchewan on June 30, 2004;
Reference Chapter XVI of the *Code of Professional Conduct*.
 - vi. He did fail to respond substantively or at all to various enquiries from the Law Society of Saskatchewan.
Reference Chapter XV of the *Code of Professional Conduct*.
5. The remaining charges were stayed by counsel for the Investigation Committee.
6. There was no Agreed Statement of Facts and as such the relevant facts were provided by the viva voce evidence of Milton Oxebin, John Allen and Albert Angus.
7. Milton Oxebin is a long time employee of the Mosquito Grizzly Bear's Head Lean Man First Nation (hereinafter "Mosquito") and was also the current band administrator in charge of the Treaty Land Entitlement. Albert Angus was appointed as legal counsel for the TLE Trustees by resolution of the Treaty Land Entitlement Trustees for the Mosquito Band (hereinafter "TLE Trustees") dated July 5, 2005. (**Exhibit P8**)
8. Mr. Angus duties as legal counsel for the TLE Trustees included holding the Treaty Land Entitlement funds (hereinafter "TLE fund") for the Mosquito Band in his law firm's trust account. Monies from the TLE fund were transferred into Mr. Angus' trust account in various amounts from time to time. Mr. Angus had full control over the disbursement of the money from his trust account. The established practice of disbursing the money in Mr. Angus' trust account was to have the TLE Trustees provide Mr. Angus with a written Order to Pay which authorized Mr. Angus to make a specific payment to a specific payee.
9. Mr. Angus' trust account was held at the First Nations Bank of Canada (TD Canada Trust) in Saskatoon and the account number was # 76018-004-7601-520663. Mr. Angus also had a general account at the same branch and the account number of this general account was #760018-004-7601-5206655.

Charges # 1 & 2

10. An invoice from the Albert Angus Law Firm dated June 17, 2006 in the amount of \$4,340.00 (**Exhibit P9**) was received by the TLE Trustees who authorized payment by way of an Order to Pay dated June 28, 2006 (**Exhibit P10**).

11. Another invoice from the Albert Angus Law Firm dated November 21, 2006 in the amount of \$7,153.86 (**Exhibit P11**) was received by the TLE Trustees who authorized payment by way of an Order to Pay dated November 21, 2006 (**Exhibit P12**). This bill contained entries and charges for the exact same services billed in the June 17, 2006 invoice along with additional charges for 4 more hours of time and a disbursement of \$2,103.86 paid to lawyer Karen Prisciak. The following sets out the similarities and differences in the June 17, 2006 bill and the November 21, 2006 bill:

- i) Both bills included an entry dated February 21, 2006 for “TLE meeting by telephone and transfer funds to Trustees by electronic interbank transfer from Winnipeg 1.2 hours”. The only difference between this entry on both bills was that the November 21, 2006 bill corrected the spelling of the word “from” whereas the June 17, 2006 spelled it “fro”.
- ii) Both bills included an entry as follows: “March 2.06 “TLE meeting and issue cheques on Trustee’s Order to Pay 2.5 hrs”.
- iii) Both bills included an entry dated “MAR 11.06” for “TLE meeting and issue cheques on Trustee’s Order to Pay 2.5 hrs”. This entry on both bills abbreviated the word “March” to “MAR”.
- iv) Both bills included an entry as follows “March 20.06 TLE meeting and issue cheques on Trustee’s Order to Pay 2.5 hrs”.
- v) Both bills included an entry “June 2.06 TLE meeting and issue cheques on Yrustee’s Order to Pay 2.5 hrs”. The only difference between this entry on both bills was that the misspelled word “Yrustees” in the June 17, 2006 was corrected to the word “Trustee” on the November 21, 2006 bill.
- vi) Both bills included an entry for June 17 which showed the wrong year as “05” for “Review trust account and preparation for audit 8.0 hrs”.

12. The amounts charged to the TLE Trustees under the June 17, 2006 account were transferred from the trust account held by Albert Angus Law Firm (**Exhibit P16**) into the General Account of Albert Angus Law Firm (**Exhibit P17**). The payment of the November 21, 2006 account, including the double entries that had already been paid, was paid by trust cheque #159 written on Albert Angus’ trust account (**Exhibits P19 and P20**).

13. Albert Angus indicated in his testimony that both the June 17, 2006 and the November 21, 2006 accounts were prepared on his word processor. He indicated that he kept a running total of work he had done on the draft invoice and then finalized the invoice prior to a meeting of

the TLE Trustees. Albert Angus confirmed that he is the only person in control of his trust account.

Charges #5 and #6

14. Charges #5 and #6 relate to payments from Mr. Angus' trust account to his firm in the absence of an Order to Pay. According to the Albert Angus Law Firm trust journal (**Exhibit P21**), Mr. Angus processed a payment of \$1,600.00 relating to his own legal fees from the trust account on November 24, 2006 for which the TLE Trustees have no record of ever receiving an invoice from Albert Angus in relation to this payment or there being a record of payment being authorized by way of an Order to Pay.

15. John Allen asked Albert Angus to substantiate the November 24, 2006 payment and was provided with an Order to Pay in relation to an account provided on November 21, 2005. (**Exhibit P22**). Mr. Angus was unable to clearly explain why he received the 2006 payment or if this payment related in any way to the earlier 2005 payment.

16. The Order to Pay filed as **Exhibit P12**, prepared on November 21, 2006 did not include any reference to the \$1,600.00 that Albert Angus took just three days later on November 24, 2006.

17. The second payment that was made without authorization from Albert Angus Law Firm trust account was in the amount of \$4,800 in relation to Albert Angus' legal account dated December 9, 2005 (**Exhibit P13**). Payment of this \$4,800 account was authorized by way of an Order to Pay dated December 9, 2005 (**Exhibit P14**). The trust ledger for Albert Angus' trust account (**Exhibit P15**) indicated that the funds were paid to Albert Angus via trust cheque #176 on December 9, 2005.

18. Albert Angus then wrote his firm a second trust cheque, on consecutive trust cheque #177. This cheque was also in the amount of \$4,800.00. Neither the Trustees or Albert Angus were able to provide an Invoice or an Order to Pay respecting this payment. Albert Angus did not provide any clear explanation in relation to this double payment.

Charges #8 and #9

19. Albert Angus signed an undertaking (**Exhibit P3**) pursuant to an earlier discipline Order dated June 20, 2005(**Exhibit P4**) which required him to provide monthly trust reconciliations to the Law Society (for a period of two years following the opening of the trust account) as well as any other information requested by the Law Society.

20. Various letters from John Allen to Albert Angus (**Exhibits P5 and P6**) requested trust account information as per the Undertaking which was to be provided on a monthly basis by the 20th of the month following. These letters dated September 22, 2005, September 30, 2005, October 31, 2005, November 28, 2005, December 20, 2005, February 2, 2006, August 31, 2006, September 20, 2006, September 28, 2006, October 5, 2006 (two letters), November 23, 2006, February 7, 2007, and September 6, 2007 reminded Albert Angus of his requirement to provide monthly submissions by the 20th of the month following as well as requested the shortfalls in the information that had been previously provided by Albert Angus to John Allen.

21. Albert Angus was consistently late in providing his monthly trust reconciliations. As of the date of the hearing, Albert Angus has failed to provide specific information that the Law Society has requested. John Allen's Memo to Donna Sigmeth dated June 28, 2007 (**Exhibit P7**) details the issues that remain outstanding.

DECISION

Charge #1

He, through recklessness, did misappropriate funds from his client, Mosquito Grizzly Bear's Head Lean Man First Nation TLE Trust, by rendering an account and receiving funds from that client's trust balance in relation to services for which he had already been paid.

22. The Committee finds that Albert Angus billed and received payment for services set out in the June 17, 2006 legal account then five months later he billed his client and wrote his firm a cheque to pay this account which contained entries for \$4,340.00 that he had previously been paid. The Committee finds that Albert Angus did recklessly misappropriate funds from his client, Mosquito Grizzly Bear's Head Lean Man First Nation TLE Trust by rendering an account and receiving payment of this account for services for which he had already been paid. The Committee finds that such conduct constitutes conduct unbecoming under *The Legal Profession Act, 1990*.

Charge #2

He, through recklessness, did prepare, or cause to be prepared, a false account which contained entries for which he had already been paid.

23. The Committee finds that Albert Angus double billed his client for work that he performed. Albert Angus, using his word processor, used a previous bill that existed on his word processor, added a new date, added some entries, made some spelling corrections then re-totaled the entire account without checking his records to confirm that this work had been previously billed and paid. The Committee therefore finds that Albert Angus did recklessly prepare a false account which contained entries for which he had already been paid. The Committee finds that such conduct constitutes conduct unbecoming under *The Legal Profession Act, 1990*.

Charge #5

He, through recklessness, did misappropriate funds from his Mosquito Grizzly Bear's Head Lean Man First Nation TLE Trust, by paying or transferring \$1600.00 to himself or his firm without authorization to do so.

24. The Committee finds that Albert Angus wrote his firm a cheque on his trust account in the amount of \$1,600.00 for which there was no record of an invoice from Albert Angus nor was there a record of this payment being authorized by way of an Order to Pay. Therefore, the Committee finds that Albert Angus did misappropriate funds from the Mosquito Grizzly Bear's Head Lean Man First Nation TLE Trust by paying or transferring \$1,600.00 to himself or his firm without authorization to do so. The Committee finds that such conduct constitutes conduct unbecoming under *The Legal Profession Act, 1990*.

Charge #6

He, through recklessness, did misappropriate funds from his client, Mosquito Grizzly Bear's Head Lean Man First nation TLE Trust, by paying or transferring \$4,800 to himself or his firm without authorization to do so.

25. The Committee finds that Albert Angus did transfer funds in the amount of \$4,800.00 from his trust account without any invoice or authorization by way of an Order to Pay. Therefore the Committee finds that Albert Angus did misappropriate funds from his client by paying or transferring \$4,800.00 to himself or his firm without authorization to do so. The Committee finds that such conduct constitutes conduct unbecoming under *The Legal Profession Act, 1990*.

Charge #8

He did breach a written undertaking that he provided to the Law Society of Saskatchewan on June 30, 2004.

26. The Committee finds that Albert Angus breached a written undertaking by being consistently late in relation to his monthly trust filings. Therefore the Committee finds that Albert Angus did breach a written undertaking that he provided to the Law Society of Saskatchewan on June 30, 2004. The Committee finds that such conduct constitutes conduct unbecoming under *The Legal Profession Act, 1990*.

Charge #9

He did fail to respond substantively or at all to various enquiries from the Law Society of Saskatchewan.

27. The Committee finds that numerous letters from John Allen to Albert Angus requested certain information be provided by Albert Angus regarding his accounting records, trust account and general account. Albert Angus failed to provide certain information that the Law Society had requested and as of the date of the hearing, there were still outstanding requests for substantive information that Albert Angus has not provided. Therefore, the Committee finds that Albert Angus did fail to respond substantively or at all to various enquiries from the Law Society of Saskatchewan. The Committee finds that such conduct constitutes conduct unbecoming under *The Legal Profession Act, 1990*.

ANALYSIS

28. Albert Angus, as legal counsel for the TLE Trustees, held the TLE funds on behalf of his client, in a trust account in his law firm. Albert Angus had full control over the disbursement of any money from this trust account. Payments from the trust account were authorized by Mr. Angus' client by way of an Order to Pay. Albert Angus is the only person in control of his trust account.

29. Albert Angus entered guilty pleas to, through recklessness misappropriating funds from his client by inappropriately rendering an account and receiving funds from his trust account for services he had already been paid and for transferring money from his trust account to himself

without authorization to do so. Albert Angus also entered a guilty plea to preparing a false account which contained entries for which he had already been paid.

30. The case of *Law Society of Upper Canada v. Kazman* [2008] L.S.D.D. No. 46 provides a helpful discussion of recklessness within the context of professional discipline. The following excerpts beginning at paragraph 43 are useful in the current case:

43. In the context of the Rules, there are three kinds of knowledge regarding wrongdoing:

- a) **No knowledge. The licensee did not know that he was doing wrong.**
- b) **Actual knowledge. The licensee knew that he was doing wrong.**
- c) **Imputed knowledge. The licensee should have known that he was doing wrong, and that it could result in harm or risk of harm, but was either willfully blind or reckless.**

44. Knowledge of wrongdoing relates to two elements:

- a) **Knowledge of the risk.**
- b) **Knowledge of the possible consequences of engaging in the risk.**

45 ...In the case of recklessness, the licensee is aware of the risk (the first element) but proceeds anyway, reckless as to the possible consequences of engaging in the risk (the second element). Willful blindness is tantamount to actual knowledge of both elements. In recklessness, the wrongdoer has actual knowledge of the risk, but may have something less than actual, or tantamount actual, knowledge of the possible consequences of engaging in the risk.

46. A licensee accused of professional misconduct may try to evade responsibility by claiming that he did not have actual knowledge of both elements and thus did not 'knowingly' engage in the risky behavior and did not 'knowingly' intend the adverse consequences. If that does not work (*i.e.*, he is facing a finding of willful blindness -- the imputation of actual knowledge of both elements), he may try to argue that he is less culpable because he was 'merely reckless' (*i.e.*, while he had actual knowledge of the risk (the first element), he did not have actual knowledge of the possible consequences of engaging in the risk (the second element)), hoping that a finding of recklessness will lead to a lower penalty than a finding of willful blindness. It will almost always be a vain hope.

47. In the administrative law sphere of the Law Society's

regulation of its licensees, there will normally be little difference in culpability or sanction whether the licensee is willfully blind or reckless. While it may be possible to argue successfully that there is a difference in some cases, such arguments will fail in almost all cases. This is so because, even if a wrongdoer, who knowingly engaged in professional misconduct, can show that he did not know, by being reckless or cavalier, how or whether adverse consequences would result, the public interest is harmed whether or not he turned his mind to the possibility or exact form of the adverse consequences. The public relies on the licensees of the Law Society not to engage in professional misconduct in the first place, precisely to avoid the harm, or even the risk of harm, of such misconduct.

48. It is said that maintaining public confidence in the integrity of the legal profession is the responsibility of the Law Society. In reality, it is the responsibility of every licensee of the Law Society. The Law Society is merely the primary agency by which the licensees at large achieve that goal. The integrity of the legal profession must be vigilantly guarded so that the public's reliance on, and confidence in, the legal profession remain at the highest level. Where a licensee is either willfully blind or reckless, then, to protect the public and maintain their faith, we may impute to the wrongdoer the knowledge requisite for culpability. Willful blindness and recklessness are merely the conduits for the imputation, *i.e.*, once knowledge of either the risk or possible consequences of the risk or both is imputed to the wrongdoer by whatever conduit, culpability will follow.

49. In criminal law, willful blindness has been held to be equivalent to actual knowledge while recklessness has been held to be something less than full actual knowledge but nevertheless highly sanctionable behaviour.

31. Albert Angus testified at the hearing and provided written submissions to explain his conduct in the handing of his trust account. In his testimony, Albert Angus indicated that he was unclear as to why the transactions complained of occurred. It was clear that Albert Angus did not maintain proper books and records in relation to his practice. In his written submissions, Mr. Huber submits that all lawyers, especially those in private practice know the importance of keeping proper books and records in relation to the operation of their trust accounts. Further Mr. Huber submitted that Albert Angus would have special knowledge as to the importance of proper trust reporting as a result of the fact that he was prosecuted in the year 2000 for failure to keep proper records and convicted, and again in 2004 for failure to file trust forms. The Committee agrees with Mr. Huber's submission on this point.

32. The Committee finds that Albert Angus was aware of the risk associated with his failure to carefully monitor the use of his own trust account. Knowing this risk, Albert Angus took no care to ensure that his billings were accurate. He failed to ensure payments to himself from the TLE funds held in his trust account were based on documented invoices and authorization by his client. His failure to follow the basic protocols in the handling of the trust account was reckless.

33. With respect to Mr. Angus' obligations under the Undertaking he provided to the Law Society, he was required to provide monthly trust reconciliations to the Law Society. Mr. Angus testified at his hearing and reiterated in his submissions the following explanation:

“8. And finally, all my accounting records were managed by my chartered accountant who not only was responsible for the annual return (in my case a monthly return) but also was my bookkeeper. I did not keep any records at my Red Pheasant Reserve office but were kept for me at Battleford at the office of my accountant and when my records were seized by the Law Society, it made it difficult for me to meet my undertaking as I did not have a good recollection of who or why certain accounting errors were made; and

9. I did not earn enough money to hire another chartered accountant to assist me and I was also unable to afford legal counsel to continue to represent me as it is difficult to find work as a suspended lawyer.”

34. Mr. Angus has responsibility over his trust accounts and he cannot delegate this responsibility. While Mr. Angus entered guilty pleas to the charges, he testified to provide some contextual explanation for his conduct. His explanation is not reasonable. His accountant was not responsible for providing the monthly trust filings or requested information by the Law Society and Mr. Angus' consistent non compliance under the Undertaking showed a disregard of his obligations. We find that Mr. Angus clearly failed to fulfill his undertaking to provide monthly trust filings. We also find that Mr. Angus failed to respond substantively or at all to various enquiries from the Law Society of Saskatchewan.

35. Mr. Angus in his testimony presented some possible explanations, which in his view, may have explained his inappropriate billing. The committee finds that these possibilities whether accurate or not do not mitigate the finding of recklessness. Further based on the evidence before us the Committee finds that all the amounts improperly billed are owed to the Mosquito Grizzly Bear's Head Lean Man First Nation TLE Trust.

36. The Hearing Committee not having imposed a penalty pursuant to section 53 refers the matter to the Discipline Committee to be dealt with in accordance with section 55 of the Legal Profession Act.

Dated at Prince Albert, Saskatchewan this 14th day of December, 2010.

“Peter Hryhorchuk”

DISCIPLINE SENTENCING DECISION

INTRODUCTION AND SUMMARY

37. Albert Angus was charged with and pled guilty to six counts of conduct unbecoming, comprising of three instances of reckless misappropriation of funds, reckless preparation of a false account, breach of Undertaking to the Law Society, and failing to respond substantively or at all to inquiries from the Law Society of Saskatchewan.

38. The Discipline Sentencing Committee, after hearing submissions, imposed a 12 month suspension, practice conditions, restitution and costs.

JURISDICTION AND RESPONSIBILITY

39. The Law Society of Saskatchewan was established in 1907 and governs the legal profession in the Province of Saskatchewan under *The Legal Professions Act, 1990*.

40. The disciplinary process is usually undertaken on the basis of complaints received from clients, members of the public or lawyers. However, the Law Society may undertake its own investigation where information comes to its attention which indicates inappropriate or un-professional behavior.

41. Conduct unbecoming is defined as: “any act or conduct, whether or not disgraceful or dishonorable, that; (1) is inimical to the best interest of the public or the members; or (2) tends to harm the standing of the legal profession generally”.

PROCEDURAL HISTORY

42. The Hearing of the Formal Complaint was held on June 11, 2010 at Saskatoon, Saskatchewan before the Hearing Committee comprised of Dawn McBride and Peter Hryhorchuk (as Chair).

43. The parties acknowledged that the Hearing Committee was properly constituted and had jurisdiction to deal with the matter before it.

44. At the Hearing, Mr. Angus pled guilty to an Amended Formal Complaint as follows:

Count 1) He through recklessness, did misappropriate funds from his client, Mosquito Grizzly Bear’s Head Lean Man First Nation TLE Trust, by rendering an account and receiving funds from that client’s trust balance in relation to services for which he had already been paid;

Reference Chapter I of the *Code of Professional Conduct*

Count 2) He, through recklessness, did prepare, or cause to be prepared, a false account which contained entries for which he had already been paid;

Reference Chapter I of the *Code of Professional Conduct*

- Count 3) He, through recklessness, did misappropriate funds from his Mosquito Grizzly Bear's Head Lean Man First Nation TLE Trust, by paying or transferring \$1,600 to himself or his firm without authorization to do so;

Reference Chapter I and IX of the *Code of Professional Conduct*.

- Count 4) He, through recklessness, did misappropriate funds from his client, Mosquito Grizzly Bear's Head Lean Man First Nation TLE Trust, by paying or transferring \$4,800 to himself or his firm without authorization to do so;

Reference Chapter I and IX of the *Code of Professional Conduct*.

- Count (5) He did breach a written Undertaking that he provided to the Law Society of Saskatchewan on June 30, 2004;

Reference Chapter XVI of the *Code of Professional Conduct*.

- Count 8) He did fail to respond substantively or at all to various enquiries from the Law Society of Saskatchewan.

Reference Chapter XV of the *Code of Professional Conduct*.

45. The Hearing Committee accepted Mr. Angus' guilty pleas and found that the conduct complained of constituted conduct unbecoming.

46. Pursuant to Section 55 of the *Legal Profession Act, 1990*, the Hearing Committee, not having assessed a penalty, referred the matter to the Chair of Discipline to set a date for sentencing. On the 10th of September, 2010, the Discipline Sentencing Committee met at Yorkton, Saskatchewan to conduct a Sentencing Hearing and impose sentence.

47. The Law Society was represented by Mr. Tim Huber. Mr. Angus appeared without counsel.

48. A Sentencing Committee was established at the Hearing and no objection was taken to either the jurisdiction or the composition thereof. The Discipline Sentencing committee received submissions from Mr. Huber and Mr. Angus.

FACTS PURSUANT TO LAW SOCIETY RULE 450(10) AND RULE 470(7)

49. The facts before the Discipline Sentencing Committee were as found by the Hearing Committee and evidenced in the Report of the Hearing Committee. The following is a brief recitation of the facts as found by the Hearing Committee:

- i. Mr. Angus billed and received payment for \$4,340 for services as set out in an invoice dated June 17, 2006. Five months later, he billed his client in the amount of \$7,153.86 and wrote his firm a cheque to pay this account. This subsequent account contained an entry for \$4,340 that had been previously paid as evidenced in the invoice of June 17, 2006;
- ii. Mr. Angus, while using his word processor, used a previous bill that existed on his word processor, added a new date, added some entries, made some spelling corrections then re-totaled the entire account without checking his records to confirm that this work had been previously billed and paid. This resulted in the double billing which occurred as set out in subparagraph (a);
- iii. Mr. Angus issued his firm a cheque from his trust account in the amount of \$1600, for which there is no record of an invoice from Albert Angus, nor is there a record of this payment being authorized by way of an Order to Pay;
- iv. By way of an Order to Pay dated December 9th, 2005 Mr. Angus via trust cheque #176 transferred from his trust account to his own account payment in the amount of \$4800.00. Mr. Angus then wrote his firm a second trust cheque in the amount of \$4800 via consecutive trust cheque # 177. There was no invoice from Mr. Angus nor an Order to Pay respecting this second payment;
- v. Mr. Angus signed an Undertaking pursuant to an earlier Discipline Order which required him to provide monthly trust reconciliations to the Law Society, as well as any other information requested by the Law Society. He breached the written Undertaking by being consistently late in relation to his monthly trust filings. Numerous letters had to be sent to him in order for him to reply at all.
- vi. During the period covered by this investigation, numerous letters were sent by Mr. John Allan to Mr. Angus, requesting information regarding his accounting records, trust account and general account. Mr. Angus failed to provide the information to the Law Society that had been requested and as of the date of the Hearing, there were still outstanding requests for substantive information.

DISCIPLINE HISTORY

50. Angus appears before the Discipline Sentencing Committee with the following discipline history:

- i. Failure to meet the financial obligations occurred in practice; (reprimand, 1998)
- ii. Failure to maintain Trust Records and file Trust Forms; (reprimand and reporting conditions, 2000)
- iii. Failure to respond to the Law Society and failure to file Trust Forms; (\$2000 fine and practice conditions, 2005)
- iv. each of Undertaking; (3 months suspension and costs, 2007);
- v. Operating a trust account while suspended; (6 months suspension, 2009).

POSITION OF THE PARTIES
INVESTIGATION COMMITTEE:

51. Mr. Huber, on behalf of the Investigation Committee, submitted that the appropriate sanction in this case, was disbarment.

52. Mr. Huber pointed to a number of aggravating factors including the following:

A discipline history of failure to comply with rules related to trust accounting, failure to co-operate with the Law Society and breach of Undertaking:

- i. The personal benefit Mr. Angus received from the misappropriations;
- ii. A lack of co-operation with the Law Society investigation and the late plea of guilty;
- iii. The lack of restitution to the client;
- iv. The conduct occurred on more than one occasion over a substantial period of time;
- v. The breach of undertaking and failure to provide information has been ongoing essentially since 2005.

53. Counsel for the Investigation Committee could not point to a precedent where reckless misappropriation resulted in disbarment. His position, however, was that the combination in this case of recklessness misappropriation, discipline history, failure to comply with Undertakings, failure to provide information and failure to make restitution elevated this case from suspension to disbarment.

54. Counsel further asked the Sentencing Committee to impose an order of restitution and costs.

B. THE MEMBER:

55. Mr. Angus' position was essentially that he was not very good at book keeping and/or office management. He suggested that most of his problems with the Law Society were in regard to his trust accounts. Mr. Angus did not dispute the misappropriations and/or the failure to provide information. He generally agreed that he should not be in charge of a trust account. Mr. Angus urged the Discipline Sentencing Committee to impose a suspension in the circumstances. He did not dispute that an order for restitution and costs was appropriate.

ANALYSIS

56. The primary function of the Law Society in the regulation of its members is protection of the public. If disbarment is necessary in order to achieve that objective, it is the duty of the Law Society through its sentencing in disciplinary matters to impose that ultimate sanction. The general starting point in misappropriation cases is that, but for unusual circumstances, disbarment is the appropriate sanction. (*Law Society of Saskatchewan v. Nolin [2008] L.S.D.D. No.158*). However, it appears that this general statement applies to cases where misappropriation is deliberate and intentional. No case was presented to the Committee in which disbarment was the penalty where the misappropriation was reckless. In the context of this case, recklessness was taken to mean more than negligence but less than willful blindness. This should not be taken to

imply that a case of reckless misappropriation can never lead to disbarment. There may be situations in which due to the large number of instances of misappropriation and/or the amounts that a pattern is demonstrated which could lead a sentencing committee to conclude that the member's conduct is wanton and willfully blind and that the member is incapable of carrying out his professional responsibilities and should therefore not be a member of the Law Society.

57. In this case, the Committee is of the opinion that the public can be protected and the integrity of the profession maintained by the imposition of a lengthy suspension with strict practice conditions and a restitution order.

58. The reasons for the above are as follows:

Mr. Angus' past history, while substantial, pertains largely to issues which did not involve dishonesty:

- i. The misappropriation was not intentional or dishonest;
- ii. Any future problems can be controlled by denying access to a trust account;
- iii. Any future practice of Mr. Angus will be closely supervised by the Law Society.

59. After considering all the submissions of counsel and the member, the decision of the Sentencing Committee is that Mr. Angus be suspended. In arriving at the length of suspension, the Committee takes into account that this current suspension will be consecutive to the suspension of six months made in December of 2009. Further, Mr. Angus has been on administrative suspension from approximately 2006.

60. The Committee therefore orders as follows:

- i. That the member shall be suspended for a period of 12 months, which shall commence upon the expiration of the 6 month suspension made in the Order dated December 8, 2009;
- ii. That on his return to practice after the suspension by this Order, the Member's practice shall be restricted to matters which do not require the Member to maintain a trust account for which the Member has control or responsibility;
- iii. That the Member will practice under the supervision and direction of a practice advisor designated by the Chair or Vice-chair of the Discipline Committee and will co-operate fully in accommodating any directions of such practice advisor including any directions which may relate to the Member's competency and that may be made in consultation with the practice advisor, the Executive Director, the Admissions and Education Committee and/or the Professional Standards Committee;
- iv. That the Member shall pay restitution in the amount of \$10, 740.00 to the Mosquito Grizzly Bear Head Lean Man First Nation TLE Trust; and

- v. That the Member shall pay costs in the amount of \$8,135.00 to the Law Society of Saskatchewan on or before December 31, 2011, or such later date as a Chair of Discipline Committee might approve.