PAULINE DUNCAN BONNEAU
August 27, 2015

IN THE MATTER OF *THE LEGAL PROFESSION ACT, 1990*
AND A REQUEST FOR RESIGNATION IN THE FACE OF DISCIPLINE
EQUIVALENT TO DISBARMENT
BY PAULINE DUNCAN BONNEAU

REASONS FOR THE DECISION
OF THE CONDUCT INVESITGATION COMMITTEE
FOR THE LAW SOCIETY OF SASKATCHEWAN

1. By correspondence dated March 26, 2015 directed to Mr. Timothy Huber at the Law Society of Saskatchewan, Pauline Duncan Bonneau (hereinafter referred to as "the Member"), applied to the Conduct Investigation Committee of the Law Society of Saskatchewan (hereinafter referred to as "the Committee") to resign her membership in the Law Society in the face of discipline which is the equivalent to disbarment. The said application by the Member to resign in the face of discipline was made pursuant to Rule 400(4) of *The Law Society Rules*.

2. Rule 400(4) of *The Law Society Rules* provides as follows:

> 400(4) A member may apply to the Conduct Investigation Committee to resign in the face of discipline deemed equivalent to disbarment
>
> (a) with consent of Counsel for the Conduct Investigation Committee;
>
> (b) at any stage of the investigation by a Conduct Investigation Committee prior to formal charges, or;
>
> (c) at any time after the formal charges, prior to the commencement of the Hearing.

3. The application to resign in the face of discipline was heard by the Committee by telephone conference call on August 18, 2015. Present on the telephone call was the Committee consisting of Della Stumborg and Gregory G. Walen Q.C. Additionally,

counsel to the Committee, Timothy F. Huber, as well as the Member, were present. At the outset of the application hearing, neither the Member nor counsel for the Committee took any objections to the composition of the Committee and its ability to either grant or deny the Member's application to resign in the face of discipline.

4. The Committee had available to it the Member's application dated March 26, 2015 and a Statement of Admissions of Pauline Duncan Bonneau executed by the Member on March 30, 2015 (which is incorporated, without tabs, by reference to this decision). The said Statement of Admissions consisted of ten (10) pages and attached thereto six (6) tabs. The total Statement of Admissions plus tabs totalled 45 pages. In accordance with Rule 400(5), the Committee accepts the aforementioned Statement of Admissions as complying with the said Rule. For the purposes of this report, the aforementioned Statement of Admissions is the equivalent of an Agreed Statement of Facts as contemplated by Rule 400(5) of *The Law Society Rules*.

5. In accordance with Rule 400(4)(a) of *The Law Society Rules*, counsel for the Committee, Timothy F. Huber, consented to the Member's application to resign in the face of discipline deemed equivalent to a disbarment.

6. As all pre-requisites to the application have been fulfilled, the Committee considered whether to grant the application to resign in the face of discipline being the equivalent to disbarment. Subject to Rule 400(5)(d) and undertakings in accordance with Rule 400(5)(e), the application by the Member is granted, subject to conditions.

7. In accordance with Rule 400(5)(d), the Committee can impose conditions on the said application which include a time period of up to five (5) years during which the Member would not be entitled to reapply for admission and further include that upon any application for re-admission, the Agreed Statement of Facts would be considered.

8. The Committee firstly makes it a condition of the said acceptance of the Member's resignation that the Agreed Statement of Facts will be considered by the Law Society of Saskatchewan on any application for re-admission by the Member. The Member took no exception to this at the application hearing.

9. In considering the time period in which the Member will not be entitled to re-apply for admission, the Committee heard from the Member who asserted the position that she should be entitled to re-apply for admission following a time period of one year from the date that her resignation was accepted by the Committee. Counsel for the Committee took the position that the maximum period of five (5) years should apply but acknowledged that the Member should receive some credit for the time period that she has already been suspended. The Member was suspended by way of an interim suspension on December 11, 2013.

10. The Member referred to a recent decision of *The Law Society of Saskatchewan v. Tilling,* 2015 SKLSS 1, in which a Discipline Hearing Committee disbarred a member permitting him to re-apply for admission to the Law Society following one year of disbarment. The Committee also considered the decision of *Rault v. The Law Society of Saskatchewan*, 2009 SKCA 81, a decision of the Saskatchewan Court of Appeal and a decision (albeit under previous rules) of *The Law Society of Saskatchewan v. Rogers*, 2011 SKLSS 9.

11. The Committee looked to both aggravating and mitigating circumstances surrounding the conduct of the Member which has been admitted to in the Statement of Admissions. In determining the length of time as a bar against an application for re-admission, it is to be remembered that that determination is an administrative barrier to an application for re-admission and does not, in any way, represent a pre-determination of the Member's suitability for re-admission at that time.

12. The Member suggested during the application hearing that two mitigating factors in her favour are her Statement of Admissions and the fact that she self-reported regarding the misappropriation. The Committee takes no exception to the argument that the entering into of a Statement of Admissions is a mitigating factor. The degree to which the Committee puts weight on this mitigating factor is tempered by the overwhelming evidence (irrespective of the admissions) against the Member for the impugned conduct.

13. The suggestion that, with respect to the misappropriations, the Member self-reported is also, in the view of the Committee, to be given little weight. The self reporting occurred in the context of an ongoing Law Society trust audit.

14. There are aggravating circumstances which take this matter out of the *Tilling* category. Firstly, by taking advantage of an elderly individual in a highly vulnerable state, the Member admits that she placed her own interests over those of her own client. The more egregious behaviour is the misappropriation of funds from an estate account, firstly for $19,800 for which the Member has no explanation and the sum of $14,879 which the Member improperly billed as a disbursement when, in fact, the said monies had already been paid by the Royal Bank of Canada from the deceased's account.

15. In *Rogers*, the aggravating factors considered were far less egregious than this Committee was presented. In *Rogers*, there was an interim suspension, such as the case here, resulting in the Law Society instituting a three year bar against an application for re-admission. In *Rault*, the Saskatchewan Court of Appeal fixed a period of three (3) years from the date of a Discipline Committee decision before that member could apply for re-admission. The Court took into account the length of time that the member had voluntarily withdrew from practice. It is important to note that the Member in this matter did not voluntarily withdraw from practice, but was suspended by the Law Society of Saskatchewan.

16. Taking into account the Statement of Admissions of the Member and previous decisions from both the Law Society and the Saskatchewan Court of Appeal, the Committee is of the view that the time period during which the Member will not be able to re-apply for admission to the Law Society will be a period of four (4) years.

17. In accordance with Rule 400(5)(e), the Committee may also require the Member to provide particular Undertakings which shall remain on the Member's file and be reviewed and considered upon any future application for re-admission. The Rule provides examples of such Undertakings but includes a proviso that the Committee can, as a condition to the granting of the application for resignation in the face of discipline, require the Member to enter into Undertakings that the Committee deems appropriate. It is the view of the Committee that, as a condition of the granting of the Member's application for resignation in the face of discipline, the Member undertakes in writing that upon any application for re-admission to the Law Society of Saskatchewan, she will

not have, directly or indirectly, signing authority on any trust accounts. This Undertaking is, of course, not binding upon the Law Society should the Member apply for re-admission, but the Law Society clearly has the ability to take that Undertaking into account in accordance with Rule 400(5)(e).

18. In conclusion, the Committee grants the Member's application to resign in the face of discipline which is equivalent to disbarment on the following conditions:

a. That the Member not be entitled to apply for re-admission to the Law Society of Saskatchewan for a period of four (4) years;

b. That the Member forthwith provide a written undertaking to remain on the Member's file and be reviewed and considered on any application for re-admission providing that the said Member, as a condition of practice, not have signing authority, directly or indirectly, on any trust accounts;

c. That the Statement of Admissions of the Member signed by the Member on March 30, 2015 (with all attachments) will remain on the Member's file and be considered by the Law Society of Saskatchewan should the Member apply for re-admission and, in accordance with Rule 400(5)(g), the said Statement of Admissions shall be published in the same manner and to the same persons as the Notice required by Rule 495.

Gregory G. Walen, Q.C.

Della Stumborg

STATEMENT OF ADMISSIONS OF PAULINE DUNCAN BONNEAU

Jurisdiction

1. Pauline Duncan Bonneau (hereinafter "the Member"), was at all times material to this proceeding, a member of the Law Society of Saskatchewan (hereinafter the "Law Society"), and accordingly is subject to the provisions of *The Legal Profession Act, 1990* (hereinafter the "Act") as well as the *Rules of the Law Society of Saskatchewan* (the "Rules").

2. The Member is currently the subject of a Formal Complaint dated July 22, 2014 [**Tab 1**] alleging the following:

> **THAT Pauline Duncan Bonneau, of the City of Regina, in the Province of Saskatchewan is guilty of conduct unbecoming a lawyer in that she:**
>
> **1. Did charge or accept a fee for Power of Attorney services in relation to her client, M.M., which was not fully disclosed, fair and reasonable;**
>
> **2. Did take undue advantage of her client, M.M. by entering into a fee agreement at a time when M.M. was in a vulnerable state;**
>
> **3. Did, in connection with a fee agreement related to her services as M.M.'s Power of Attorney, prefer her own interests over those of M.M.;**
>
> **4. Did breach the fiduciary duty she owed to M.M. as her lawyer and Power of Attorney;**
>
> **5. Did act or continue to act for her client, M.M. when her duty to M.M. and her own personal interests were in conflict;**

3. On December 9, 2013 the Member became the subject of an interim discipline suspension pursuant to section 45 of *The Legal Profession Act, 1990.* That suspension arose in relation to matters unrelated to the M.M. matter. No formal charges have been issued in relation to the matter giving rise to the interim suspension.

4. The Member is now seeking permission to resign in the face of discipline, equivalent to disbarment, pursuant to Rule 400(4) instead of concluding the discipline proceedings that she is facing by way of a hearing. Pursuant to Rule 400(4) the Member is required to make appropriate admissions in relation to her misconduct. This document sets out those admissions in relation to the M.M. allegations described above. Additionally, this document is intended to address all admissions in relation to all of the Member's pending Law Society matters, including those matters that gave rise to her interim suspension.

Particulars of Conduct

M.M.

5. M.M. retained the Member to prepare a Will and Power of Attorney. The Will dated May 2, 2011 appointed the Member to be the executrix of the Estate of M.M. The Enduring Power of Attorney dated October 26, 2007 appointed the Member to act as "attorney" for M.M. in accordance with *The Power of Attorney Act, 2002*.

6. M.M. had a medical emergency in April, 2011 and as a result required hospitalization on or about April 19, 2011.

7. On April 27, 2011 the Member attended on M.M. while she was a patient at the General Hospital. On or about that same day the Member produced a Retainer Agreement which provided that M.M. would pay to the Member an hourly rate of $350.00 plus applicable taxes and disbursements for Power of Attorney Services provided to M.M. by the Member. The Retainer Agreement also provided for payment to the Member of $50.00 per hour plus taxes in relation to any services provided by the Member's legal assistant. M.M. signed the Agreement that same day while in hospital.

8. M.M. for reasons of age and medical condition was not able to return to her prior living arrangement. The Member assisted M.M. in locating a residence at a care home and assisted her in moving to the personal care home and in making various financial arrangements. These arrangements needed to be made on an urgent basis given the fact that the hospital social worker indicated M.M. could not remain in hospital as her health needs were resolved.

9. On or about August 25, 2011 the Member had rendered an interim account [**Tab 2**] in the amount of $13,818.75 which included fees and tax on fees and disbursements. The account included charges of the following nature:

-12-May -11- attendance at Renaissance to pick up M.M.'s items – 1.5 hrs.
-13-May -11- attend at SaskTel to transfer telephone service – 1.0 hr.
-13-May -11- purchase television and install – 1.0 hr.
-13-May -11- purchase pajamas and visit M.M. – 1.2 hrs.
-14- May-11- shop at the Bay for pajamas - .5 hrs.

10. In relation to the above noted examples of non-legal work done by the Member, the Member, charging her hourly rate for legal services, billed M.M. $1,820 plus tax. M.M. could not have anticipated that the Member would charge her $350.00 per hour for doing her shopping or visiting her. The Member's charging of fees at a rate of $350.00 per hour for non-legal work was not fair or reasonable.

11. Concerned as to the size of her account M.M. obtained new counsel and on January 3, 2012 revoked the Power of Attorney prepared by the Member.

12. The Member then sent a letter to M.M. which included her final statement of account in the amount of $1,043.42.

13. Correspondence then passed between the Member and new counsel for M.M. as to the statement of accounts rendered by the Member for "attorney" services. M.M.'s new counsel was of the view that while considerable services were provided to M.M., the hourly rate charged was not a reasonable rate for power of attorney services. The Member held a contrary view and argued that the fees charged were appropriate given that M.M. had agreed to pay them at the time she requested the Member commence acting as her Attorney.

14. An application was made on behalf of M.M. asking the court to review and to establish a reasonable fee for the Member while acting as Power of Attorney for M.M. Justice Whitmore delivered an oral judgment from the Bench on March 14, 2013. There is no written decision.

15. Justice Whitmore held that the rate of $350 per hour for legal services and emergent services is fair, but held that this rate is unreasonable for "attorney services". Justice

Whitmore capped "attorney" services at $100 per hour. Justice Whitmore reserved the matter to himself if the parties were unable to agree.

16. The Member later offered to refund the sum of $5,400.00 back to M.M. This proposal was accepted by M.M.

17. M.M. was described by the Member in her response to the complaint lodged by M.M. as being a "... a chronically anxious and paranoid senior of 87 years of age". The Member also advised that M.M.'s husband had died and that M.M. had no children and no close friends or relatives in Regina. In light of her age, health, and lack of supports, M.M. was a vulnerable senior citizen. Given the fact that she had no one to care for her in the city of Regina, M.M. wanted the Member to act as her Attorney as she was unable to care for herself. M.M. had retained the member as her lawyer prior to her health emergency.

18. Despite the vulnerability associated with M.M.'s situation, the Member attended at the General Hospital on April 27, 2011 and made it clear to M.M. that she would only provide Power of Attorney services if she was willing to pay her an hourly rate of $350.00 per hour. The Member's position on fees placed M.M. in an untenable position. M.M. had no support outside of the Member. M.M. had little choice but to accede to the terms of the Retainer Agreement presented to her. The Member told M.M. that she was only prepared to act if M.M. agreed to pay her the hourly rate she was then charging her clients. The Member told M.M. that she could revoke the Power of Attorney to the Member if the fee arrangement was not to M.M.'s satisfaction. Given her situation M.M. was left with virtually no choice but to sign the Retainer Agreement agreeing to pay the Member $350.00 per hour for all services including those over and above legal services. At all times M.M. was not suffering from mental infirmity and understood the arrangements under which the Member was prepared to carry out the attorney services.

19. When the Power of Attorney was prepared in October of 2007, when M.M. was in good health, there had been no mention of fees for Power of Attorney services and no retainer agreement had been discussed or presented to M.M. M.M. had retained the Member for various legal services prior to the execution of the Power of Attorney and was charged $350 per hour for those legal services.

20. In presenting the Retainer Agreement to M.M. while she was in a highly vulnerable state, the Member took advantage of M.M. and placed her own interests over those of M.M.

Particulars of Conduct

Trust Review Issues

21. The Member's interim suspension arose after a trust review was conducted by the Law Society Auditor/Inspector, John Allen. This review commenced on or about October 7, 2013 with various exchanges with the Member occurring for the two months that followed. The audit consisted of an examination of certain specific records and documents relating to both trust and non-trust transactions for the 2012 fiscal year including, but not limited to, bank statements, cancelled cheques, bank reconciliations, client trust listings, client trust ledgers and duplicate deposit slips. In addition, a sample of client files were selected for review from client trust listings showing account balances in 2013 and at the end of the previous 5 fiscal years. Where considered necessary, certain entries on these trust ledgers were traced to source documents (i.e. cancelled cheques, invoices, duplicate deposit slips etc.). The examination of these documents and files was supplemented by discussions with and the provision of additional documentation and verbal explanations by the Member.

22. The review and subsequent conversations with the Member revealed a variety of issues.

I.G. Estate

23. A review of the client trust ledger for the I.G. Estate identified no significant legal fees charged to the estate account when Part I assets were approximately $230,000.00. On or about Nov 8, 2013, Mr. Allen discussed this matter with the member who advised that she had purchased a car from the estate for $6,500.00 and the transaction was "just processed incorrectly". The file included an undated estimate of fees, disbursements and taxes totalling $4,901.00 plus probate fees of $1,610.00 for a total of $6,511.00. The file included an invoice for $4,809.30 but this amount was never paid from trust.

24. Receiving "in kind" payments is in violation of Rule 942(3) in that the amount is not paid to the member's general account and Rule 942(1) in that the payment from trust was not

made by cheque. The internal "Accounting Statements" show the auto purchase as a reconciling item. The probate charges were not paid from this trust account. By processing the transaction in this manner, the member would avoid payment of income tax on income earned from the provision of legal services.

25. The Member maintains that the client was a sophisticated business man who determined the price at which he would sell the car to the Member when the Member agreed to purchase it. The client had not received independent legal advice on the transaction nor did the Member suggest it.

26. After being discovered, the Member advised that an amended tax return was filed with Canada Revenue Agency and reported the income and paid the taxes assessed and all penalties assessed by CRA with respect to the "in kind" payment.

E.S. Estate

27. A review of the file for the E.S. Estate identified an invoice for $68,310.96 which did not appear to have been paid from the trust account. This issue was discussed with the Member on or about Nov 8, 2013 and she advised that she had bought a house from the estate and there could be some confusion between the files. Mr. Allen requested the purchase/sale file to be obtained from off-site storage. It took some time for the file to be provided and when received it included a version of the trust ledger that had been altered by the Member to show the payment of fees to the firm from the Member ($63,941.68) as partial payment for the house. The client trust ledger for the Estate however did not show the $63,941.68 amount as being received. Copies of client trust ledgers (including the one altered by the Member) are attached at **Tab 3**.

28. Several days later the Member confessed to Mr. Allen that she had received an "in kind" payment of her fees in the amount of $63,941.68 by redirecting the amount payable for legal fees and costs towards the purchase of a house from the E.S. Estate. The Member further admitted to altering the client trust ledger to reflect how the transaction "should have flowed". The Member's conduct was an attempt to mislead Mr. Allen in relation to her trust account activities.

29. As with the I.G. Estate matter noted above, the Member's taking of "in kind" payments represents a breach of Rules 942(3) and 942(1). By processing the transaction in the manner she did the Member would have avoided payment of tax on the significant fees earned on the E.S. Estate matter.

30. After being discovered, the Member has advised that she filed an amended tax return with Canada Revenue Agency and reported the income and paid the taxes assessed and all penalties assessed by CRA with respect to the "in kind" payment.

M.C. Estate

31. In this matter, a payment of $11,000.00 was made via trust cheque from the Member's trust account directly into the Member's personal account. This payment is contrary to Rule 942(3) in that it did not flow through the Member's general account and would have again resulted in an avoidance of income tax. The amount taken by the Member was approximately consistent with what the Member would have been entitled to according to the tariff for administration of estates.

32. After being discovered, the Member has advised that she filed an amended tax return with Canada Revenue Agency and reported the income and paid the taxes assessed and all penalties assessed by CRA with respect to the $11,000.00 payment.

D.C. Estate

33. In this matter, the Member prepared a will on the instructions of D.C., her client; the said will being executed by D.C. on November 25, 2006. The will was witnessed by the Member and one J.F. The will provided for specific bequests to individuals and charities, as well as a residual provision that the residue of her estate be paid to six charities.

34. The will further appointed G.N. of Moose Jaw, Saskatchewan and E.J. of Okotoks, Alberta to be the co-executors of the will, with the Member being an alternate executrix in the event either primary executor was unable or unwilling to act.

35. D.C. passed away on December 31, 2006. As the will of D.C. provided that the Member's services were to be utilized by the executors, the Member undertook to

represent the executors in their duties. In fulfilling her duties the Member proceeded to complete documentation for an application for letters probate which was granted on January 25, 2007 by the Honourable Madam Justice C.L. Dawson.

36. When the application for letters probate was filed with the Court of Queen's Bench, the Royal Bank of Canada was requested to provide a draft from the estate account to the Court of Queen's Bench in the amount of $14,894.00. The Member submitted the bank draft from the Royal Bank of Canada along with the application for letters probate to the Court of Queen's Bench.

37. The trust accounting records of the Member show that on or about the 15th day of February, 2007 approximately three weeks after the grant of letters probate, the Member took from the estate account the sum of $26,987.43. No statement of account was rendered on that date. The trust accounting records also show that on October 10, 2008 the Member charged the estate the additional sum of $5,500 which related to legal services provided to D.C. in the months prior to her death. This account was accepted by the beneficiaries of the D.C. estate as legitimate.

38. The Member provided an accounting to one of the charities named in the will on or about October 10, 2008. That correspondence resulted in a reply from the charity questioning the amounts taken from the account as the amounts had exceeded the tariff for legal fees associated with estate administration. The Member did not reply to this inquiry.

39. On April 1, 2009 the same charity that inquired on October 10, 2008 wrote a follow up letter to the Member. Again no response was forthcoming. On December 15, 2009 the charity wrote to the Member advising that they would apply for a passing of accounts if the information was not provided by January 15, 2010.

40. On January 11, 2010, the Member did provide a response to the charity. Along with that response was an account. The account included a legal fee of $15,800.00 plus a disbursement for probate fees in the amount of $14,879.00 [**Tab 4**]. This amount was paid by the Royal Bank of Canada directly, not by the Member. The Member had no basis to receive payment of this disbursement as she had never incurred the expense. The

letter detailed the additional amounts previously taken by the Member from the estate trust account all totaling $48,287.43, (not including the improperly taken probate fee disbursement). The Member self-reported the error to the Law Society auditor, John Allen, in the context of the ongoing audit and made immediate arrangements to make restitution to the estate in the sum of $14,879.00.

41. The Member took an additional $19,800.00 from the D.C. Estate trust account via trust cheque dated May 20, 2010. The cheque was payable to herself **[Tab 5]**. The cheque was generated in the Member's accounting system as being payable simply to "Pauline". The Member's last name was hand written on the cheque in the Member's handwriting. The cheque was signed by the Member and deposited directly into her personal bank account. The Member had no legitimate basis for removing this amount from the trust account. She misappropriated these funds. The Member has since made restitution to the estate in the sum of $19,800.00.

42. The Member self-reported these misappropriations to the Law Society in the context of an ongoing Law Society trust audit. The Member subsequently reimbursed the D.C. Estate and beneficiaries in relation to the amounts she had misappropriated from the trust account in an amount totaling $34,678.00.

Fabrication/Alteration of Documents

43. During the trust audit and ancillary investigation, several instances were discovered wherein the Member fabricated documents (in addition to the fabrication of the trust ledger as was described above). Based on original materials located on the Member's file **[Tab 6],** the Member, on or about January 19, 2011, altered a Transfer Authorization and Affidavit of Value in relation to the Estate of E.S. by "cutting and pasting" new title numbers onto original documents signed by the estate's personal representative. This was necessitated due to errors in the original Transfer Authorization. The Member then caused these documents to be submitted to the Information Services Corporation with the intent that they be relied upon as genuine. Upon registration of the Transfer Authorization the beneficiary of the E.S. estate was granted title to all of the estate lands to which he was entitled pursuant to the terms of the will.

DATED at the City of Regina, in the Province of Saskatchewan, this "30th" day of March, 2015.

PAULINE DUNCAN BONNEAU