

BACKGROUND

3. An agreed statement of facts was filed in relation to this matter, a copy of which is attached as an appendix to this decision. Nevertheless a brief summary of the facts is provided below.

4. The Member acted for the vendor in a residential real estate transaction. Conflict arose between the purchaser and the vendor during the closing process pertaining to the condition of the property.

5. As a result, the Member and counsel for the purchaser discussed an appropriate holdback to address the outstanding conflicts. Ultimately, no agreement was reached in relation to the amount of the holdback.

6. Instead, the Member wrote to the purchaser's lawyer and the Member undertook as follows: "the balance of the proceeds forwarded to our office will be maintained until further agreement between the parties in relation to the issues involving possession and compliance with the contract." Despite having provided this undertaking, the Member released the funds that she had been holding in trust to her client in the absence of any agreement between the opposing parties and without notice to opposing counsel. The release of funds occurred in the midst of ongoing negotiations between the parties.

7. It appears as if the Member intended to hold back funds until issues pertaining to possession and clean-up of the property were resolved. Nevertheless, the undertaking she gave was much broader in scope. Consequently, the Member's breach of undertaking appears to have resulted from a mistaken interpretation of her own undertaking. Thus, the breach of undertaking was the result of carelessness on the part of the Member as opposed to an intentional or reckless breach.

8. The Member does not have any prior findings of conduct unbecoming a lawyer on her record and there is no evidence as to a financial loss to the purchaser resulting from the Member's breach of undertaking.

SUBMISSIONS ON SENTENCE

9. Counsel for the Conduct Investigation Committee and counsel for the Member made a joint submission on penalty. The joint submission was that the Member should receive a global disposition consisting of a formal reprimand and a fine in the amount of \$1,500. In addition, it was agreed that the Member should pay costs in the amount of \$1,815.

10. In support of the joint submission, counsel for the Conduct Investigation Committee referred the Hearing Committee to the following five cases: *Law Society of Saskatchewan v. Brown*, Discipline Decision #08-06 (4 December 2008), *Law Society of Saskatchewan v. Simaluk*, 2012 SKLSS 1, *Law Society of Saskatchewan v. Stinson*, 2008 SKLSS 7, *Law Society of Saskatchewan v. McLean*, Discipline Decision #09-03 (12 June 2009), *McLean v. Law Society of Saskatchewan* 2012 SKCA 7, and *Law Society of Alberta v. Shymko* [2007] L.S.D.D. No. 141. These cases illustrate the range of penalty for cases involving breach of trust conditions or undertakings. At the low end of the range is a penalty consisting of a reprimand and costs. At the

high end of the range is a disposition consisting of a suspension of one to two months in duration. These cases make apparent that penalties at the high end of the range are only considered appropriate where there are either multiple instances of a breach or a prior record for breaching undertakings. Because the Member's actions resulted in a single instance of breaching an undertaking and in light of the absence of any prior disciplinary record, counsel for the Conduct Investigation Committee submitted that the current case should be categorized near the low end of the range.

11. Counsel for the Conduct Investigation Committee also supported the joint submission by referring to other factors. He noted the cooperation of the Member with the Law Society in acknowledging her error, facilitating the Agreed Statement of Facts, and entering the guilty plea, all of which have resulted in a fairly expeditious resolution of this matter. Another factor mentioned by counsel for the Conduct Investigation Committee pertains to the state of mind of the Member when she breached the undertaking. The Member did not intend to breach the undertaking nor did the Member engage in a reckless course of action leading to the breach of the undertaking. Instead, the breach resulted from carelessness on the Member's part in interpreting the scope of her undertaking.

12. Despite the presence of all of these factors, counsel for the Investigation Committee asserted that cases involving a breach of undertaking should be treated seriously because when lawyers fail to scrupulously adhere to undertakings that have been given, public confidence in the integrity of the profession suffers. As stated by counsel for the Investigation Committee, "if a lawyer's promise can't be relied upon, any value that lawyer is able to add to a transaction is really lost."

13. Counsel for the Member made reference to a number of other relevant factors. He noted that the Member has never been before a discipline committee in her over twenty years of practice and that she is extremely remorseful for her conduct. Counsel for the Member also assured the Hearing Committee that there is very little likelihood of the Member engaging in similar conduct in the future. Buttressing this contention, the Member indicated that her practice presently involves only a minimal amount of real estate work. Moreover, the Member stated that she tends to refer complex real estate matters to her partners who specialize in that area.

DECISION

14. The Hearing Committee has considered the range of penalty imposed in cases that are factually similar to the one involving the Member. As well, the mitigating factors present in this case and the absence of key aggravating factors (such as evidence of financial loss and subjective intention or foresight pertaining to the breach of undertaking) have been taken into account. In light of all of the elements, the Hearing Committee finds that the submission pertaining to penalty is reasonable and makes the order sought.

ORDER

15. It is ordered that the Member be subject to a formal reprimand and that she pay a fine in the amount of \$1,500. In addition, the Member shall pay the costs of this proceeding in the amount of \$1,815. The costs and fine shall be payable immediately.

"Dr. Sanjeev Anand, Q.C."
Sanjeev Anand, Q.C. (Chair)

April 16, 2014
Date

"Dr. Greg Stevens"
Greg Stevens, Ph.D.

April 16, 2014
Date

"Brenda Hildebrandt, Q.C."
Brenda Hildebrandt, Q.C.

April 16, 2014
Date

AGREED STATEMENT OF FACTS AND ADMISSIONS

In relation to the Formal Complaint dated June 13, 2013, alleging the following:

THAT BARBARA LYNN GALEY, of the City of Swift Current, in the Province of Saskatchewan:

1. did, in the context of a real estate transaction, breach a written undertaking that she had provided to a fellow lawyer, J.K., on April 18, 2011.

JURISDICTION

16. Barbara Lynn Galey (hereinafter "the Member") is, and was at all times material to this proceeding, a practicing Member of the Law Society of Saskatchewan (hereinafter the "Law Society"), and accordingly is subject to the provisions of *The Legal Profession Act, 1990* (hereinafter the "Act") as well as the Rules of the Law Society of Saskatchewan (the "Rules").

17. The Member is currently the subject of a Formal Complaint initiated by the Law Society dated June 13, 2013. The Formal Complaint is comprised of the allegation noted above. The original Formal Complaint was served upon the Member on June 25, 2013. Attached at Tab 1 is a copy of the original Formal Complaint along with proof of service. The Member intends to plead guilty to the allegation set out in the Formal Complaint.

BACKGROUND OF COMPLAINT

18. The Law Society began an investigation into the Member after receipt of a complaint from Alberta lawyer, J.K. on or about July 29, 2011. That lawyer alleged that the Member improperly disbursed trust funds to her client in breach of a trust condition.

PARTICULARS OF CONDUCT

19. At all times material to these matters, the Member represented G.P., formerly of Calgary, now of Admiral, Saskatchewan, in a sale and conveyance of title of G.P.'s home located in Calgary.

20. J.K., a lawyer in Calgary, represented B.L., the purchaser.

21. Closure of the sale was scheduled for April 15, 2011. Conflict arose between the G.P. and B.L. prior to and during the closing process. This conflict related to the condition of the home and yard. These conflicts delayed transfer of possession of the property beyond the agreed upon closing date. Attached at Tab 2 is a copy of the Residential Real Estate Contract between G.P. and B.L.

22. Despite the conflict in relation to the condition of the property and the delay in possession, J.K. authorized the Member to pay out the existing mortgages to avoid penalties and interest.

23. Both counsel discussed an appropriate holdback to address the outstanding conflicts. On April 18, 2011, the Member sent a fax to J.K. suggesting a holdback of \$4,000.00. Ultimately, no agreement was reached in relation to the amount of the holdback. Instead, the Member wrote to J.K. on April 18, 2011 indicating, with reference to J.K.'s agreement to allow payout of the existing mortgages, that "the balance of the proceeds forwarded to our office will be maintained until further agreement between the parties in relation to the issues involving possession and compliance with the contract." Attached at Tab 3 is the Member's letter to J.K. dated April 18, 2011. Possession was granted shortly thereafter on April 21, 2011.

24. Negotiations continued in relation to the settlement of the outstanding issues. The Member and J.K. had contact on several occasions. For example, on May 3, 2011, the Member sent a letter to J.K. offering \$3,000.00 in settlement of all matters with specific mention of the delay in possession and ongoing cleanup of the property [Tab 4]. On May 13, 2011, J.K. sent the Member a letter stating that there were issues in relation to various chattels that were removed from the property contrary to the agreement including two refrigerators, a stove, washer and dryer, and a dishwasher. At this time J.K. advised that his clients would accept \$6,000.00 in full and final settlement [Tab 5].

25. After receiving a letter from the Member on May 24, 2011 rejecting the \$6,000.00 offer [Tab 6], J.K. countered on June 2, 2011 with an offer to accept \$5,000.00 in full and final settlement [Tab 7]. At this point the Member and J.K. were, at most, \$2,000.00 apart in relation to the settlement amount, according to the initial offer from the Member for a payment of \$3,000.00. The Member committed to forward this offer to her clients.

26. On July 13, 2011, the tone of the correspondence changed. In a letter from the Member to J.K. she stated the following [Tab 8]:

Please be advised that my client is not providing any further instructions in relation to dealing with your client's concerns. Accordingly, I am hereby closing my file.

27. J.K.'s immediate reaction to the Member's statement was to contact her on July 14, 2011 [Tab 9] to ascertain the status of the funds that the Member had undertaken to hold in trust pending further agreement between the parties pursuant to her April 18, 2011 letter.

28. The Member wrote to J.K. on July 18, 2011 [Tab 10] advising that she had released the balance of the funds she held in trust (approximately \$70,000.00) to her client G.P. but for \$1,807.42.

29. By releasing the balance of the funds she held in trust to G.P., the Member breached her April 18, 2011 undertaking to J.K. While negotiations were ongoing, no agreement had been reached in connection with the damage to the property, late possession and the missing chattels. These issues were germane to the contract between G.P. and B.L. and required resolution before the Member could release the funds as per her April 18, 2011 undertaking.

PRIOR HISTORY

22. The Member has no prior discipline history.