



The Law Society of Saskatchewan

MICHELLE LECLAIR-HARDING

October 29, 2013

Law Society of Saskatchewan v. LeClair-Harding, 2013 SKLSS 7

**IN THE MATTER OF *THE LEGAL PROFESSION ACT, 1990*
AND A REQUEST BY MICHELLE LECLAIR-HARDING
FOR RESIGNATION INSTEAD OF CONTINUED PROCEEDINGS
PURSUANT TO LAW SOCIETY OF SASKATCHEWAN RULE 400.1(1)**

DECISION OF THE CONDUCT INVESTIGATION COMMITTEE

A. INTRODUCTION

1. Michelle LeClair-Harding (Ms. LeClair-Harding) was the subject of an Amended Formal Complaint dated August 8, 2012 (particularized below).
2. On August 9, 2012, prior to the commencement of a hearing in connection with the Amended Formal Complaint, Ms. LeClair-Harding provided an application to the Investigation Committee pursuant to Rule 400.1(1) to resign as a member of the Law Society of Saskatchewan instead of continuing the pending discipline proceeding (the “Application”). Pursuant to Rule 400.1(2)(b) Ms. LeClair-Harding was required to make admissions in relation to her conduct as part of the Application to resign. Ms. LeClair-Harding met that requirement on October 25, 2013 when she provided a signed Statement of Admissions to the Law Society.
3. Pursuant to Rule 400.1(2)(a) the Application may proceed and be determined by the Investigation Committee with the consent of Counsel for the Law Society. This consent has been received from Counsel for the Law Society.

B. FACTS

4. The facts relevant to this matter are set out in the Statement of Admissions signed by the Member on October 25, 2013. In light of the publication of this document the facts contained in the Statement of Admission must be edited to protect client confidentiality. The relevant admitted facts are as follows:

Jurisdiction

1. Michelle LeClair-Harding (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 an Amended Formal Complaint dated August 8, 2012 alleging the following:

THAT MICHELLE LECLAIR-HARDING, of the City of Saskatoon, in the Province of Saskatchewan is guilty of conduct unbecoming a lawyer in that she:

- 1. Did fail to respond promptly to communications from the Alberta Provincial Court pertaining to the D.M. matter;**
 - 2. Did fail to respond promptly to communications from the Law Society of Saskatchewan in relation to the complaint of the Alberta Provincial Court;**
 - 3. Did fail to respond promptly to communications from the Law Society of Saskatchewan in relation to the complaint of S.S.;**
 - 4. Did fail to maintain effective office systems to ensure receipt of correspondence and/or phone messages; and**
 - 5. Did, on or about June 15, 2011, abandon her legal practice without making appropriate arrangements to protect her clients' interests.**
3. The Member was placed on administrative suspension on July 1, 2011 as a result of her failure to pay her annual Saskatchewan Lawyer’s Insurance Association (SLIA) premiums.
 4. On September 15, 2011 the Member became the subject of an interim discipline suspension pursuant to section 45 of *The Legal Profession Act, 1990*. The interim discipline suspension arose as a result of the Law Society becoming aware of the Member abandoning her legal practice without making adequate arrangements to protect her clients.
 5. The investigation into the Member’s conduct continued after her administrative suspension. Allegations 1 through 4 mentioned above were in place prior to September 15, 2011. Allegation 5 was added as a result of the further investigation.
 6. Two other issues were also recently referred to a hearing by the Conduct Investigation Committee relating to a further failure to respond to the Law Society

and a failure of the Member to meet financial obligations incurred or assumed in the course of her practice.

7. The Member is now seeking permission to resign in the face of discipline pursuant to Rule 400.1 instead of concluding the discipline proceedings that she is facing by way of a hearing. Pursuant to Rule 400.1 the Member is required to make admissions in relation to her misconduct. This document sets out those admissions. In support of her application to resign in the face of discipline instead of continued proceedings, the Member admits the statements and facts contained herein and the allegations of conduct unbecoming (1 through 5) in the Amended Formal Complaint.

Particulars of Conduct

Allegation #3

8. The Law Society first became involved with this Member as a result of a complaint by S.S. Law Society staff sent information pertaining to the complaint of S.S. to the Member at her address on file with the Law Society on January 14, 2010. In the letter dated January 14, 2010, a 10 day deadline for a response from the Member was set. When no response was received in relation to the January 14, 2010 letter, a second letter was sent to the Member on February 2, 2010, again with a 10 day deadline for a response. Again no response was received. On February 19, 2010 a third letter was sent to the Member, this time via registered mail, demanding a response on or before March 1, 2010, failing which the matter of the Member's non-response to the Law Society would be referred to the discipline committee. No response was received.

9. On March 9, 2010 the registered letter dated February 19, 2010 was returned to the Law Society unopened. Law Society staff attempted to contact the Member via email and the Member was asked to explain why she was not picking up her registered mail. The Member responded and indicated that while she was "aware" of the registered letter, she did not pick it up. The Member requested an extension of time to respond to the S.S. complaint. An extension of time was granted to March 15, 2010. On March 15, 2010, the Member emailed the Law Society at 5:12 pm to advise that her response had been sent to the Law Society that day via mail. No response was received from the Member. As no response was received from the Member a further letter was sent via registered mail on April 7, 2010 advising that her failure to respond to the Law Society had been referred to the Chair of Discipline. The registered letter dated April 7, 2010 was never picked up by the Member and was returned to the Law Society.

Allegation #2

10. On April 7, 2010 another matter pertaining to a complaint by the Alberta Provincial Court was sent to the Member via registered mail. A 10 day deadline for response was imposed. The registered letter was not picked up by the Member and was returned to the Law Society.

11. On April 29, 2010 a second request for a response to the Alberta Provincial Court complaint was sent to the Member via registered mail. No response was received.

12. In light of the fact that the Member was not picking up her registered mail, the Law Society was forced to begin corresponding with the Member by way of personal service. On May 11, 2010, the Member was personally served with the various letters pertaining to both complaints that had been previously sent to her via registered mail but were returned unopened. These documents were provided under a cover letter dated May 3, 2010.

13. On May 11, 2010, Law Society of Saskatchewan Executive Director phoned the Member and left a message on her voicemail for her to call him immediately. The Member did not respond.

14. Ultimately, the Member provided a brief response to the S.S. complaint on May 17, 2010.

15. As a result of her conduct, the Member was placed on Interim Discipline Suspension. Only then did she provide a substantive response to the Law Society communications regarding the S.S. complaint and the Alberta Provincial Court complaint. Shortly after being suspended, the Member signed an undertaking to provide requested responses and supporting documents to the Law Society within a specific time. The Member was allowed to resume practice on that basis and complied with the terms of her undertaking.

Allegation #1

16. The Member was unable to provide a response to the Law Society that excused her behavior in relation to the complaint of the Alberta Provincial Court. That complaint was primarily in relation to the Member's failure to respond to repeated directions from the Court to personally appear.

17. The complaint originated in connection with the Member's representation of D.M. in relation to an Alberta sexual assault matter. The Member assumed carriage of the D.M. matter in the Red Deer Provincial Court in approximately March of 2008. A trial was held on May 4, 2009. At a subsequent appearance of June 15, 2009 a pre-sentence report was ordered and the matter was adjourned to September 17, 2009. After a series of further adjournments the sentencing was scheduled to take place on February 24, 2010.

18. On the February 24, 2010 appearance date, the Crown and D.M. advised the Court that on February 23, 2010, the day before the sentencing, the Member informed them both that she was withdrawing from the file by way of a letter. The presiding judge who was seized with the D.M. matter, Judge W.A. Skinner, refused to accept the Member's letter as sufficient grounds to authorize her

withdrawal given the lack of advance notice and the late stage of the proceeding. Judge Skinner sought to compel the Member's personal attendance his courtroom to provide justification for her application to withdraw on the eve of sentencing. The date on which the Member was required to appear was March 1, 2010.

19. Both the Crown and the Court Clerk made repeated efforts to contact the Member by phone to inform her of Judge Skinner's direction that she be personally present. Both the Crown and the Court Clerk phoned the phone number provided by the Member in her February 23, 2010 letter and left voice messages. The Member did not respond to the voice mail messages and did not appear on the March 1, 2010 court date. The Court made a detailed record of the situation and the attempts made to contact the Member during the February 24, 2010 and March 1, 2010 appearances. These attempts included phone calls and voice mail messages to the Member from the Court Clerk to the phone number provided by the Member (in her February 23, 2010 letter) on February 24, 2010, February 25, 2010 and February 26, 2010.

20. After the Member failed to appear on March 1, 2010, Judge Skinner wrote the Member directly on March 2, 2010, to compel her attendance on March 23, 2010 to show cause why she should not be held in contempt of court. Judge Skinner's letter was sent via registered mail to the Member's address as stated on her February 23, 2010 correspondence and Canada Post confirmed delivery on March 8, 2010. The Member provided no response to the letter and did not appear in court on March 23, 2010 as required to do so.

21. A further letter was sent to the Member by Judge Skinner on March 24, 2010. This letter directed the Member to be personally present in Judge Skinner's courtroom on April 30, 2010, failing which a warrant would be issued for her arrest. Judge Skinner's April 30, 2010 letter was sent to the Member via registered mail to the Member's address as stated on her February 23, 2010 correspondence and Canada Post confirmed delivery on March 26, 2010.

22. On March 24, 2010 Judge Skinner also filed a complaint with the Law Society of Saskatchewan.

23. The Member failed to appear on April 30, 2010 as directed. A warrant was issued by Judge Skinner for the Member's arrest.

24. The warrant remained outstanding against the Member until August 12, 2010 when she made a personal appearance in Judge Skinner's courtroom and the warrant was vacated. The Member was granted leave to withdraw from the D.M. matter on January 10, 2011 when D.M. confirmed that he had new counsel and wished to fire the Member.

25. The Member acknowledges that she has no explanation for her failure to respond to phone messages from the Court. When asked to explain why she did

not respond to correspondence from the Court the Member stated that she “did not have control over her mail” despite the fact that letters were sent to the address that the Member had provided only days before the first letter was sent.

Allegation #4

26. The Member admits that she did not have adequate office systems in place to ensure that she could be reached by clients, the court or the Law Society. She provided a phone number to the Alberta Provincial Court where she appeared to be unreachable. Voicemail messages were either not received or disregarded by the Member. The Member provided an address for correspondence where she claims that she was “not in control of her mail” although the Member confirmed at least once that she was aware of registered mail being delivered to the address but that she never picked up the delivery.

27. Personal service upon the Member proved to be the only reliable method of communication. The Member acknowledges that this falls far below that which should be expected of a lawyer.

Allegation #5

28. After July 1, 2011, when the Member failed to pay her SLIA premiums, the Law Society did not hear from her despite the fact that notification of her administrative suspension was provided to her directly and published widely to all members via email.

29. In September 2011 the Law Society became aware that the Member was contacting various clients, literally on the eve of their court appearances, to tell them that she was withdrawing as their counsel.

30. The Member had left Saskatchewan for New Brunswick on or about June 15, 2011 where she remained until the fall of 2011. The Member failed to take steps to properly inform her clients as to her departure or that she would be unable to continue representing them. The Law Society discovered that the Member had left Saskatchewan on September 14, 2011, when it began receiving reports of clients being abandoned by the Member. The following are some examples of what the Member’s clients experienced.

Client M.

a. This matter was scheduled for half day trial on September 1, 2011, on charges of possession of stolen property. The Member texted Client M. on August 31, 2011 indicating that she would not be appearing for the trial on the following day. Crown counsel made several attempts to contact the Member the week prior to the trial date as she had become aware that the Member had been placed on administrative suspension for non-payment of your SLIA premiums. Crown counsel left voicemails on the Member’s phone but did not receive any return phone call;

Client D.

b. This matter was scheduled for a complex sentencing hearing on September 14, 2011 involving charges related to an \$80,000.00 fraud. Client D. received a text message from the Member on September 12, 2011 advising that she would not be appearing and that Client D. should seek new counsel. Client D. had been residing in Calgary and drove to Saskatoon for the purposes of appearing on September 14, 2011 to conclude the sentencing in her matter. Neither Crown counsel nor the Court were advised by the Member that she would not be appearing on Client D.'s matter. Client D. was forced to engage new counsel on her matter to conduct her sentencing which ultimately led to an 8 month jail term. At the time of the Member's sudden withdrawal from the file, she had been representing Client D. on her legal matter for approximately 3 years;

Client S.

c. On September 14, 2011 the Member was also scheduled to conduct a preliminary hearing in a sexual assault matter. The Member notified the accused on the morning of the hearing that she would not be appearing on his behalf. The accused had tried to contact the Member for a month prior to the hearing without success.

31. As a result of the reports that the Member had left to New Brunswick without making adequate arrangements to protect her clients' interests, the Law Society sought to impose an interim discipline suspension, and sought a trusteeship in relation to the Members practice. On September 21, 2011, the Member's files were seized from her Saskatoon home, at the same address all correspondence from the Law Society and the Alberta Provincial Court had been directed. The Member had approximately 30 open Legal Aid files and 9 Court Services files in various stages of completion. While some of these files were complete to the billing stage, others matters were still pending before the court.

32. George Green, the trustee appointed to assume the Member's legal practice, found the Member's files in her home in a one room office with a computer. The room was extremely messy and disorganized. Many items did not appear to be actual files but rather Crown Disclosure packages scattered everywhere around the room. Due to the lack of any discernible filing system, and with file fragments scattered about, it was impossible to determine what files were live and what files were concluded. The trustee was forced to wait for phone calls from the Courts and crown prosecutors to determine what files still needed work. Mr. Green received several calls in relation to live files that needed to be handled, in addition to the three files detailed above.

33. The trustee found no financial records whatsoever which made it impossible to determine what files had been billed and what files had not, or what files had been paid.

34. The Member admits that she failed to make adequate arrangements for her clients or for the proper winding up of her practice before or after her departure from Saskatchewan to New Brunswick.

Recent Referrals to Hearing Committee

35. Two other matters that had previously been pending discipline investigations have recently been referred to hearing by the Conduct Investigation Committee. The first of these two matters relates to the Member's involvement in the Metis Nation Legislative Assembly. A complaint dealing with a variety of issues was received by the Law Society on February 16, 2011. That same day a letter was sent to the Member's address by regular mail imposing a 10 day deadline for response. No response was received. On March 11, 2011 a second letter was sent via regular mail to the Member's Saskatoon address. Again no response was received. On April 18, 2011 a third letter was sent to the Member via registered mail. It was never picked up by the Member. The failure to respond was referred to discipline on June 15, 2011. The Member has never responded to this complaint.

36. The second issue that has recently been referred to a hearing committee pertains to the Member's use of a cell phone that had been passed on to her from another lawyer for use in a duty counsel position. The Member agreed to pay for personal usage of this phone which was in the other lawyer's name. The Member was to be reimbursed for usage associated with her duty counsel position. The Member used the cell phone for business and personal use and did not reimburse the other lawyer for her personal use of the phone despite receiving several demands for payment. The Member continued to use the phone after she stopped working in the duty counsel position. She has never reimbursed the other lawyer for more than \$3,000.00 in fees associated with the use of this phone.

C. DECISION

5. Based on the forgoing, the Investigation Committee accepts Ms. LeClair-Harding's Application to resign as a member of the Law Society of Saskatchewan pursuant to Rule 400.1, effective as of the date of this decision.

DATED THE 29th DAY OF OCTOBER, 2013.

"William Holliday"
WILLIAM HOLLIDAY,
INVESTIGATION COMMITTEE