



The Law Society of Saskatchewan

DARRYL DOUGLAS LUCKE

HEARING DATE: June 16, 2014

DECISION DATE: September 2, 2014

Law Society of Saskatchewan v. Lucke, 2014 SKLSS 10

**IN THE MATTER OF *THE LEGAL PROFESSION ACT, 1990*
AND IN THE MATTER OF DARRYL DOUGLAS LUCKE,
A LAWYER OF REGINA, SASKATCHEWAN**

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

Members of the Hearing Committee: Sanjeev Anand, Q.C. (Chair)
Ronald Parchomchuk
Sean Sinclair

Counsel: Timothy Huber for the Conduct Investigation Committee
Darryl Lucke, appearing on his own behalf

INTRODUCTION

1. On June 16, 2014, before the Hearing Committee of the Law Society of Saskatchewan, Darryl Lucke (the “Member”) pled guilty to allegations of conduct unbecoming a lawyer particularized as follows:

- a. He did between June 2010 and November 2010 fail to maintain proper books and records for his legal practice contrary to Law Society Rules 960, 962, 964, 970 and 981;
- b. He did involve himself in an outside business enterprise, 101118912 Saskatchewan Ltd. in such a way that made it difficult for clients to distinguish the capacity in which he was acting; and
- c. He did, as a director and sole signing authority in connection with 101118912 Saskatchewan Ltd., fail to meet his fiduciary obligations owed to clients who were shareholders of 101118912 Saskatchewan Ltd.

2. The hearing of June 16, 2014 was convened by conference call. At that time, the Hearing Committee accepted the guilty pleas and heard the representations by the parties regarding penalty. At the conclusion of the hearing, the Hearing Committee indicated its intention to reserve its decision and render written reasons for the penalty to be imposed.

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 Law Society began an investigation into the Member on or about October 4, 2010, after receipt of a complaint from S.R., a member of the public who claimed that she was unable to obtain financial information from the Member in relation to a corporation (101118912 Saskatchewan Ltd. (the Numbered Company)) with which the Member had previously been affiliated. S.R. was one of several investors in the Numbered Company.

5. During the investigation into the complaint of S.R., other investors in the Numbered Company were uncovered. One investor, K.P., was also a client of the member while the Member had an affiliation with the Numbered Company.

6. The Numbered Company was incorporated by the Member on March 27, 2008 for his client, Mr. H. The purpose of the Numbered Company was to facilitate the publication of a book written by Mr. H. and to advance "Christian values." A specific emphasis was placed upon helping street people and similarly disadvantaged groups. At the time of incorporation, the Member was the sole director and President of the Numbered Company. The Member held 10 voting shares in his personal capacity and the balance of voting shares were held by the Member "in trust" for other individuals. All of these shares were eventually transferred from the Member and held by the individuals in their personal capacity.

7. Shortly after the incorporation of the Numbered Company, the Numbered Company began receiving money from investors. Between March 27, 2008 and August 24, 2010, the Numbered Company received amounts in excess of \$100,000 from individuals investing in it.

8. Throughout the Member's involvement with the Numbered Company, he played a number of roles. First and foremost, the Member was a lawyer. He provided legal services to Mr. H. and various other shareholders in their personal capacity, including S.R. and K.P.. The Member also provided various legal services to the Numbered Company itself. The Member was the official "face" of the Numbered Company, the sole shareholder, director and President through much of the period during which investments were being solicited by Mr. H.. Both before and after ceasing to be a director, the Member had signing authority on the bank account belonging to the Numbered Company. He signed virtually all of the cheques that were issued from the Numbered Company bank account. The Member was also a trustee for each shareholder for whom he held shares in trust. Finally, the Member was a personal friend of Mr. H..

9. In these multiple roles, the Member owed various duties to the investors. As legal counsel to various individual investors, K.P. for example, he owed them a fiduciary duty arising out of

the solicitor-client relationship. The Member in his role as President, sole director, signing authority and trustee also owed fiduciary duties to the investors.

10. The Member failed to define clear boundaries between his multiple roles. This failure made it impossible for investors to identify when the Member was acting as legal counsel to them, legal counsel to the Numbered Company or simply acting as the President, director and signing authority.

11. The Member advises that he used a completely “hands off” approach in connection with the spending of Mr. H. from the Numbered Company’s Bank Account. His approach, which went as far as providing Mr. H. signed blank cheques drawn from the Numbered Company’s Bank Account, was rooted in the Member’s view that he was only a figurehead for the Numbered Company. Despite being aware of the purpose of the Numbered Company and the intentions of the investors, the Member allowed the funds of the Numbered Company to be squandered sometimes on expenditures that did not meet the stated purpose of the Numbered Company. The Member exercised absolutely no oversight over how the money that he was paying Mr. H. from the Numbered Company account (the investors’ money) was being used.

12. The Member’s conduct amounted to a complete abrogation of the fiduciary responsibility in connection with the Numbered Company account – an account that he controlled and should have operated with fiduciary interests of the investors in mind. The Member failed in this regard.

13. Finally, a variety of accounting problems were revealed in connection with the Member’s practice. For example, his accounting records for the most recent two-year period were not retained at his chief place of practice. In addition, the Member was not operating a double entry system of bookkeeping, he did not, at all relevant times, maintain a daily journal and he did not prepare monthly trust reconciliations. Moreover, other information was not recorded in the timely fashion required by the Law Society Rules.

14. The Member has no prior discipline history.

SUBMISSIONS PERTAINING TO PENALTY

15. Counsel for the Conduct Investigation Committee and the Member made a joint submission on penalty. The joint submission was that the Member should receive a reprimand in relation to count number 1 dealing with the trust accounting breaches and a global disposition consisting of a fine in the amount of \$5,000 in relation to the remaining counts (counts 2 and 3, which deal with the breach of the Member’s fiduciary obligations). In addition, it was agreed that the Member should pay costs in the amount of \$4,000. Counsel for the Conduct Investigation Committee and the Member were also in agreement that the Member should have until October 31, 2014 to pay the fine and costs.

16. Counsel for the Conduct Investigation Committee indicated that the case before the Hearing Committee involved an unusual factual scenario and that, as a result, there is virtually no precedential case law from which guidance could be sought. Instead, counsel for the Conduct

Investigation Committee urged the Hearing Committee to utilize first principles in crafting an appropriate penalty.

17. In support of the joint submission, counsel for the Conduct Investigation Committee referred to a number of factors. Given the unusual and unique facts of this case, it was submitted that reoccurrence of the Member's misconduct is virtually impossible. Consequently, the Member's rehabilitation is not a concern. Having said this, counsel for the Conduct Investigation Committee did indicate that the penalty imposed should encourage lawyers to communicate clearly with others the roles that they are playing in a given transaction. Counsel for the Conduct Investigation Committee also emphasized the fact that the Member received no benefit from his misconduct. Moreover, the breach of the Member's fiduciary obligations was not intentional but simply the result of his lack of awareness of the responsibilities entailed with the roles he had assumed. Simply put, because the Member was not clear in defining his roles, he became saddled with fiduciary obligations that he did not anticipate and did not meet. It was also noted that the impact upon the complainants was quite significant as some investors, many of whom legitimately believed that the Member was protecting their interests, lost a large sum of money (of course, the Member can be faulted for his lack of oversight but not for the high-risk nature of the investments). Finally, counsel for the Conduct Investigation Committee observed that the Member was cooperative throughout the investigatory process and chose to deal with this matter by way of an Agreed Statement of Facts and guilty pleas, which has avoided the necessity of holding a full hearing into these matters, a hearing that would, given the nature of the facts involved, have been somewhat complicated.

18. The Member expressed genuine remorse for his actions and took full responsibility for his conduct.

DECISION

19. In light of the very unusual facts of this case as well as the mitigating factors that are present (such as the cooperation and remorse of the Member) as well as the absence of key aggravating factors (such as subjective intention or foresight pertaining to the breach of fiduciary obligations), the Hearing Committee finds that the joint submission pertaining to penalty is reasonable and makes the order sought.

ORDER

20. It is ordered that the Member be subject to a formal reprimand in relation to count 1 and that he pay a global fine in the amount of \$5,000 in relation to counts 2 and 3. In addition, the Member shall pay the costs of this proceeding in the amount of \$4,000. The costs and fine shall be payable by no later than October 31, 2014.

"Dr. Sanjeev Anand, Q.C."

"August 25, 2014"

"Ronald Parchomchuk"

"August 26, 2014"

"Sean Sinclair"

"September 2, 2014"

AGREED STATEMENT OF FACTS AND ADMISSIONS

In relation to the Amended Formal Complaint dated April 30, 2014, alleging the following:

THAT DARRYL DOUGLAS LUCKE, of the City of Regina, in the Province of Saskatchewan:

- 1. Did between June 2010 and November 2010 fail to maintain proper books and records for his legal practice contrary to Law Society Rules 960, 962, 964, 970 and 981;**
- 2. Did involve himself in an outside business enterprise, 101118912 Saskatchewan Ltd. in such a way that made it difficult for clients to distinguish the capacity in which he was acting.**
- 3. Did, as a director and sole signing authority in connection with 101118912 Saskatchewan Ltd., fail to meet his fiduciary obligations owed to clients who were shareholders of 101118912 Saskatchewan Ltd.**

JURISDICTION

21. Darryl Douglas Lucke (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”). Attached at **Tab 1** is a Certificate of the Executive Director of the Law Society of Saskatchewan pursuant to section 83 of the Act confirming the Member’s practicing status.

22. The Member is currently the subject of an Amended Formal Complaint initiated by the Law Society dated April 30, 2014. The original Formal Complaint contained seven allegations in total and was served upon the Member in April of 2012 (**Tab 2**). The Amended Formal Complaint dated April 30, 2014 was served upon the Member on May 5, 2014. Attached at **Tab 3** is a copy of the Amended Formal Complaint along with proof of service. The Member intends to plead guilty to the three allegations set out in the Amended Formal Complaint.

BACKGROUND OF COMPLAINT

23. The Law Society began an investigation into the Member on or about October 4, 2010, after receipt of a complaint from S.R. a member of the public who claimed that she was unable to obtain financial information from the Member in relation to a corporation (101118912 Saskatchewan Ltd. (the “Numbered Company”)) that the Member had previously been affiliated with. S.R. was one of several investors in the Numbered Company.

24. During the investigation into the complaint of S.R., other investors in the Numbered Company were uncovered. One investor, K.P. was also a client of the Member (the solicitor-

client relationship commenced in approximately January of 2009) while the Member had an affiliation with the Numbered Company.

25. The Numbered Company was incorporated by the Member on March 27, 2008 for his client Mr. H. The purpose of the Numbered Company was to facilitate the publication of a book written by Mr. H. and to advance "Christian values". A specific emphasis was placed upon helping street people and similarly disadvantaged groups. At the time of incorporation, the Member was the sole director and President of the Numbered Company. The registered office was the Member's Office address. The Member held 10 voting shares in his personal capacity. An additional 90 shares, the balance of the voting shares, were also held by the Member "in trust". An additional 150,000.00 preferred shares were created but not immediately issued. The reason for this Incorporation and the issuance of shares was to raise funds for the stated purpose and to provide physical protection for Mr. H and all shareholders as MR. H was authoring a book that covered his life events including involvement as a police informant. At all material times the Member was the face of the organization as there was a potentially significant risk to Mr. H. and the shareholders given that his testimony led to a conviction.

26. While the Numbered Company was being created to facilitate investment in the book writing project of Mr. H., officially, Mr. H. did not have a visible connection to the Numbered Company at the time of incorporation.

27. Shortly after the incorporation of the Numbered Company, the Numbered Company began receiving money from investors. Between March 27, 2008 and August 24, 2010, the Numbered Company received amounts in excess of \$100,000 from individuals investing in the Numbered Company.

28. The Member remained the sole director and President of the Numbered Company until October 1, 2009 when he ceased to be the director and President. At that time, Mr. H. became the sole director and President of the Numbered Company. On October 1, 2009 after resigning as director and President, the Member was appointed as signing authority for the Numbered Company by Mr. H.

29. According to a Corporate Registry search dated August 24, 2010, as of that date, the Member held his original 10 voting shares in his personal capacity. All of the other shares in the Numbered Company (117090 in total) were held by the Member "in trust" for Mr. H. (6500 shares) and 5 other individuals (110590 shares in total) all of whom were private investors contributing one dollar per share. The majority of the funds contributed by the investors flowed into the Numbered Company via Mr. H. The majority of the funds contributed by the investors (other than those from Mr. H.) were paid into the Numbered Company's bank account.

30. During the Law Society investigation into the Member's conduct, the Member withdrew from the Numbered Company as a shareholder, transferring his 10 shares to Mr. H. All other shares that he held "in trust" for other individuals were transferred directly to those individuals in their personal capacity.

PARTICULARS OF CONDUCT

Allegation #2

31. Throughout the Member's involvement with the Numbered Company he played a number of roles. First and foremost, the Member was a lawyer. From time to time he provided legal services to Mr. H. and various other shareholders in their personal capacity, including S.R. and K.P.. The Member also provided various legal services to the Numbered Company itself. The Member was the official "face" of the Numbered Company, the sole shareholder, director and President through much of the period during which investments were being solicited by Mr. H. Both before and after ceasing to be a director, the Member had signing authority on the bank account belonging to the Numbered Company. He signed virtually all of the cheques that were issued from the Numbered Company bank account. The Member was also a trustee for each shareholder for whom he held shares in trust. Finally, the Member was a personal friend of Mr. H.

32. In these multiple roles, the Member owed various duties to the investors. As legal counsel to various individual investors, K.P. for example, he owed them a fiduciary duty arising out of the solicitor-client relationship. A fiduciary duty was also owed to the investors by the Member in his role as President, sole director, signing authority and trustee.

33. These fiduciary duties obliged the Member to act, at all times, in the best interests of Numbered Company, Mr. H. and the other investors. These interests were in deep conflict. The Member's multiple roles did nothing to ameliorate these conflicts.

34. The Member states that he was not acting as legal counsel for the investors in relation to the Numbered Corporation. However, the Member failed to define clear boundaries between his multiple roles. This failure made it impossible for investors to identify when the Member was acting as legal counsel to them, legal counsel to the Numbered Company or simply acting as the President, director and signing authority.

Allegation #3

35. The Member advises that he used a completely "hands off" approach in connection with the spending of Mr. H. The Member stated that he was simply there to provide privacy to the investors and Mr. H. due to the nature of the book, and Mr. H.'s past life. He made no effort to provide oversight in connection with the funds being spent despite the fact that he was the party legally in control of the Numbered Company account, and despite the fact that he was for a period of time President and sole director of the Numbered Company, and initially, trustee in relation to the investor's shares. The Member acknowledges that he exerted no control whatsoever over Mr. H. or the spending of the investor's funds held in the Numbered Company account. The Member viewed himself as nothing more than a figurehead for the Numbered Company. The investors did not share the Member's view and the Member did not take the steps necessary to clarify that it was not his intention to protect their interests.

36. The Member owed a fiduciary duty to investors, some of whom were his clients, as the President, Director and signing authority of the Numbered Company. He owed a fiduciary duty to some of the investors as their legal counsel. The Member failed to meet his fiduciary duty to investors in his many roles, in a number of ways. The primary breach of the fiduciary duties

owed by the Member surround the Member's lack of supervision in connection with the disbursement of investment funds from the Numbered Company bank account.

37. The purpose of the Numbered Company was to advance Christian principles, through publication of a book written by Mr. H. and to assist street people. The Member was aware of this purpose.

38. Despite being aware of the purpose of the Numbered Company and the intentions of the investors, the Member allowed the funds of the Numbered Company to be squandered sometimes on expenditures that did not meet the stated purpose of the Numbered Company. Between January 2009 and March 2010, the Member signed cheques payable to Mr. H., or to others on behalf of Mr. H., in the amount of \$61,224.83. While the Member was signing authority for the Numbered Company bank account Mr. H. used the sole ATM card for the account to withdraw and spend additional amounts in excess of \$100,000.00. While it is acknowledged that Mr. H. was expected to receive reimbursement for expenses associated with writing and promoting his book, the Member exercised absolutely no oversight over how the money that he was paying to Mr. H. from the Numbered Company account (the investor's money) was being used. The Member went so far as to sign blank cheques and provide them to Mr. H.

39. The bank statements in connection with this account came to the Member at the Member's Office address. The Member advises that he ignored these bank statements and did not open them, but simply provided them to Mr. H. Had the Member reviewed the bank statements he would have realized that Mr. H. was spending investor funds on expenses not associated with the purpose of the corporation. In fact, Mr. H. was using the Numbered Company account for all of his day to day living expenses, treating it as his personal account. The use of the Numbered Company account in this manner was, at least in part, inconsistent with the intentions of the investors and outside of the corporate mandate.

40. The Member's conduct amounted to a complete abrogation of fiduciary responsibility in connection with the Numbered Company account, an account that he controlled and should have operated with the fiduciary interests of the investors in mind. The Member failed in this regard.

Allegation #1

41. During the initial phase of the investigation, a variety of accounting problems were revealed in connection with the Member's practice. Various breaches of the Law Society of Saskatchewan Trust Accounting Rules were identified.

42. Rule 981 requires accounting records for the most recent two year period to be retained at the member's chief place of practice. The Member normally works out of his home but at the time of commencing this review his home was under extensive renovation and he was living at another residence in the city. He had arranged for temporary office space at another law office in Regina. The Member was also in the process of converting his manual accounting processes and records to a computerized system. As a result of the above, the accounting records and files requested were found at five different locations, those being his temporary office, two residences, his accountant's office and his accountant's home. The Member was unable to

immediately locate certain documents. For example, the trust journal for the period from December 2008 to May 2010 was located on approximately January 20, 2011, in a desk drawer at the accountant's office over a month after originally requested. The Member was in breach of Rule 981.

43. Rule 960 states that "a member shall maintain an adequate accounting system...in order to record all funds and other negotiable property received and disbursed..."

44. According to the Member, the books and records of Lucke Law Office were maintained primarily by his wife up until June 2010. After that time he took over that task but only maintained the client trust ledgers. As such, the Member was in violation of Rule 960 since he was not operating a double entry system of bookkeeping. A system which does not provide for double entry of accounting transactions is not adequate since it does not provide for "balancing" of records and therefore the accuracy of the records is suspect and cannot be assured.

45. Rule 962 states a member shall maintain at least the following trust books, records and accounts:

- a) daily journal;
- b) client trust ledger;
- c) transfer record;
- d) monthly trust reconciliations; and
- e) supporting records;

46. For the period from June 2010 to December 2010, the Member did not maintain a daily journal and did not prepare monthly trust reconciliations. The Member was in violation of Rule 962. Although the Member manually maintained client trust ledgers during this time, the fact that a daily journal and a trust bank ledger account was not maintained severely compromised the reliability of the client trust ledgers maintained.

47. It should be noted that subsequent recording and balancing of records by the Member's accountant identified a number of minor errors in the trust ledger cards which required correction.

48. Rule 970 requires the member to prepare a monthly reconciliation of:

- a) trust bank statement
- b) trust daily journal
- c) client trust listing.

49. As mentioned above the trust account for Lucke Law Office was not reconciled monthly for the period from June 2010 to November 2011. The reconciliation subsequently prepared by the accountant identified a number of minor errors. The Member was operating in violation of Rule 970.

50. Rule 964(1) requires trust transactions to be recorded in the daily trust journal within three days of the transaction. Trust transactions for the period from June to November 2010 were not recorded in the daily trust journal until December 2010 and/or January 2011. This represents a violation of Rule 964(1).

51. Rule 962(2) requires non-trust transactions to be recorded in the daily general journal promptly and no later than 7 days after the end of the month in which the transaction occurred. Non-trust transactions for the period from June 2010 to November 2010 were not recorded until December 2010 and/or January 2011 in violation of Rule 962(2).

PRIOR HISTORY

22. The Member has no prior discipline history.