



The Law Society of Saskatchewan

STERLING GILBERT MCLEAN

April 26, 2013

Law Society of Saskatchewan v. McLean, 2013 SKLSS 6

**IN THE MATTER OF *THE LEGAL PROFESSION ACT, 1990*
AND IN THE MATTER OF STERLING GILBERT MCLEAN,
A LAWYER OF REGINA, SASKATCHEWAN**

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

Hearing Committee: Peter Hryhorchuk- Chair, Darcia Schirr, Q.C. and Dr. Greg Stevens
Timothy Huber - Counsel for the Investigation Committee
Sterling Gilbert McLean- appearing on his own behalf

1. The Hearing Committee convened on Thursday, December 13, 2012 by telephone conference. The Investigation Committee was represented by Mr. Tim Huber. Mr. Sterling McLean represented himself.
2. The parties consented to the matter proceeding by way of telephone conference call. Neither party had any preliminary objections to the Hearing proceeding or to the composition of The Hearing Committee.
3. Counsel for the Law Society tendered the Notice of Hearing dated the 27th day of November, 2012, along with a copy of the Amended Formal Complaint with Proof of Service, which were then marked as P1 in these proceedings. Mr. McLean took no objection to the Notice of Hearing having been properly served.
4. An Agreed Statement of Facts and Admissions including 7 tabs was tendered by Mr. Huber and marked as P2.
5. The Amended Formal Complaint alleges as follows:
 - a. Did defend an action on behalf of his clients, Mr. and Mrs. L., in the absence of instructions to do so;
 - b. Did settle an action on behalf of his clients, Mr. and Mrs. L., contrary to their instructions;

- c. Did withdraw funds held in trust on behalf of his clients, Mr. and Mrs. L., to settle an action contrary to their instructions and without their knowledge;
- d. Did fail to respond to communications from K.S. within a reasonable time;
- e. Did fail to provide prompt service to K.S.;
- f. Did fail to complete the tasks necessary to ensure that the administration of the Estate of D.D. was completed within a reasonable time;
- g. Did fail to keep A.D. reasonably informed as to the status of the administration of the Estate of D.D.

6. Mr. Sterling McLean entered guilty pleas on his own behalf to allegations 4, 5, 6 and 7 of the Amended Formal Complaint and allegations 1, 2 and 3 were withdrawn by Counsel for the Investigation Committee.

7. On the basis of the pleas entered by Mr. Sterling McLean and the Agreed Statement of Facts and Admissions, the Hearing Committee finds that the allegations of conduct unbecoming contained in 4, 5, 6 and 7 are well founded.

8. There being no agreement between the parties as to a penalty which would fall within the jurisdiction of the Hearing Committee, the matter is referred to the Chair of the Discipline Committee to set a day for a meeting of the Discipline Committee to determine a sentence.

DATED at the City of Prince Albert, in the Province of Saskatchewan, this 18th day of December, 2012.

“Peter A. Hryhorchuk”
PETER A. HRYHORCHUK,
Chair on behalf of the Committee

DISCIPLINE SENTENCING DECISION

Introduction

9. A hearing in relation to allegations against Sterling Gilbert McLean (hereinafter the “Member”) was conducted by way of a conference call on December 13, 2012. At the hearing the Member entered guilty pleas to the allegations of conduct unbecoming a lawyer as set out immediately below:

- a. Did fail to respond to the communications from K.S. within a reasonable time;
- b. Did fail to provide prompt service to K.S.;
- c. Did fail to complete the tasks necessary to ensure that the administration of the estate of D.D. was completed within a reasonable time;
- d. did fail to keep A.D. reasonably informed as to the status of the administration of the estate of D.D.

10. The Member appeared for the purpose of being sentenced in relation to this matter, on April 26, 2013 before a discipline committee composed of the Benchers of the Law Society of Saskatchewan.

11. At the sentencing hearing, the Investigation Committee of the Law Society of Saskatchewan was represented by Mr. Timothy Huber. The Member represented himself at the sentencing hearing. Briefs were provided by both parties. At the outset of the hearing both parties indicated that there were no objections to the composition of the Discipline Committee and there were no preliminary motions or objections to the sentencing proceeding.

12. At all times relevant to this matter, the Law Society of Saskatchewan governed the legal profession in the province of Saskatchewan pursuant to The Legal Profession Act, 1990. Also, at all times relevant to this proceeding the Member was a practicing member of the Law Society of Saskatchewan and accordingly was subject to the provisions of The Legal Profession Act, 1990, as well as The Rules of the Law Society of Saskatchewan.

Facts

13. This matter arose as a result of complaints received from:

- a. K.S. in December of 2009;
- b. A.D. in June of 2010.

14. Both complaints pertain to the Member's failure to advance the complainants' legal matters in a timely fashion. At the time of the complaints, the Member was involved in a Mandatory Practice Supervision Arrangement stemming from a previous finding of conduct unbecoming. Set out immediately below is a brief summary of each of the said complaints.

Complaint of K.S.

15. The Member was retained by K.S. and her husband, both Korean immigrants, to commence and advance litigation against several defendants in connection with their operation and lease of a zoo in Saskatchewan. The Member acted on the instructions from K.S. and issued a Statement of Claim against multiple corporate defendants on April 27, 1998. In that claim K.S. claimed damages in the amount of \$232,500.00. A second claim was issued on September 17, 2001 against the Government of Saskatchewan and an additional corporate defendant seeking damages in excess of \$1,000,000.00. The Member acknowledges that the litigation he was retained to advance was very significant for K.S. and her husband as they had suffered significant financial losses in connection with the operation and lease of the zoo, including the loss of their personal residence.

16. From approximately April of 1998, through August 2000, the Member worked to advance the first litigation file in a reasonable fashion. The Member marshalled the receipt of Statements of Defence from the first group of Defendants and was in regular contact with the various opposing counsel involved. The Member also attended a mandatory mediation session on April 14, 1999. At times the Member was writing opposing counsel to "prod" them along and respond to his requests to move the matter along.

17. After August 2000, the matter began to stagnate. The last thing to happen in August 2000 was a letter to the Member from opposing counsel providing a Statement as to Documents to the Member with a proposal for Examination for Discovery dates on October 30 and October

31, 2000. The Member did not respond to this letter or to a follow up letter from opposing counsel dated February 9, 2001.

18. The next activity on the initial claim file was a February 14, 2002 letter from the Member to K.S. and her husband seeking repayment of a series of small loans totaling just over \$5,000.00 that the Member had extended during 1999.

19. After the February 14, 2002 letter, there was a three year gap with no activity. The period of stagnation in relation to the first claim commenced by the Member was nearly 5 years.

20. The second claim issued by the Member in September 2001 proceeded to mediation in November of 2002. After the mediation, progress on the file halted for more than 2 years. K.S. urged the Member to move ahead with both files repeatedly during these periods of inactivity, but to no avail.

21. The long period of inactivity on both files ended with a meeting between the Member and K.S. on February 4, 2005. After that meeting the Member attempted to reinvigorate the matters by writing counsel for the Defendants on February 14, 2005. There was no subsequent follow up. Nothing further was done by the Member to advance the file after February 14, 2005.

22. In 2008, K.S. attempted to arrange a meeting with the Member on several occasions but the Member failed to reply to her requests. The Member also failed to respond to various requests from K.S. as to the status of her file nor was he able to provide a satisfactory response to K.S. to explain the years of stagnation.

23. After the Member failed to provide any response or explanation to K.S. she terminated his services in approximately October of 2008. K.S. attempted to deal with matters directly with the Government of Saskatchewan. Counsel for the Government of Saskatchewan was unable to communicate with her directly while the Member was still on the record. The Ministry of Justice sent letters to the Member on June 24, 2009, October 19, 2009 and December 16, 2009 before receiving a response from the Member confirming that he no longer represented K.S. and that they could deal with her directly. This represented a further delay of nearly 6 months.

24. K.S. complained to the Law Society on November 23, 2009.

Complaint of A.D.

25. A.D. filed a complaint against the Member on or about June 18, 2010. The Member was retained to handle the administration of the Estate of D.D., A.D.'s mother, who passed away on August 28, 2003. A.D. was the executor of the Estate of D.D.

26. A.D. raised a number of concerns surrounding the progress of her late mother's estate which had yet to be finalized by the Member some 6.5 years after he was retained. Specifically, A.D. complained that the Member had failed to obtain a tax clearance certificate with respect to the estate and that he had been unable to locate stock certificates that had been provided to him by A.D. when they were required. The Member was also non-communicative with her specifically in relation to the lost stock certificates where the Member failed to reply to repeated

communications between the months of August and December of 2007. A.D. was ultimately forced to take matters into her own hands. She attempted to resolve the outstanding issues with the tax clearance certificate and missing stock certificates on her own, without assistance from the Member.

27. The Member stated in a letter dated September 17, 2010 that he had, in fact, advised A.D. that he would obtain a tax clearance certificate on the D.D. Estate matter, but that he did not obtain this as promised. The Member provided no explanation for his failure to obtain the tax clearance certificate other than that it should have been handled in a more prompt manner.

28. The Member also stated in his letter that the stock certificates that he received from A.D. could not be located for a long period of time and that they had been “misfiled” and provided no other explanation. By the time the Member had located the certificates, A.D. had already paid for the replacement certificates. The Member characterized this as “unfortunate”.

Prior Record

29. This is not the Member’s first dilatory practice proceeding before the Law Society of Saskatchewan. The Member’s discipline history was set out in the Brief provided by the Investigation Committee and was not disputed by the Member. The Member’s discipline history has been summarized immediately below:

i) June 14, 2006

- Count #1 - Failure to provide an adequate level of service to a client
- Count #2 - Breach of an undertaking provided to a fellow member

Outcome - The Member was:

- a) reprimanded;
- b) required to practice under supervision of another member for one year; and
- c) ordered to pay costs in the amount of \$1,616.67.

ii) June 12, 2009

- Count #1 - Breach of trust condition
- Count #2 - Breach of undertaking provided to a fellow member
- Count #3 - Failure to provide an adequate level of service to a client
- Count #4 - Failure to provide an adequate level of service to a client
- Count #5 - Misleading a client

Initial Outcome - The Member was:

- a) suspended from practicing law for a period of four months;
- b) upon resumption of his practice, required to practice under supervision of another member for such terms and duration as determined by the sentencing chair; and
- c) ordered to pay costs in the amount of \$3,396.25.

Outcome On Appeal - The Saskatchewan Court of Appeal set aside the Decision of the Discipline Committee except with respect to the payment of costs. The Court of Appeal suspended the Member for 25 days plus the time between the decision of the Discipline Committee and the date on which the suspension was stayed by the Court of Appeal (between June 15, 2009 and June 22, 2009).

Submissions of Counsel

30. In this case Mr. Huber, counsel on behalf of the Investigation Committee, acknowledged that cases such as this involving dilatory practice are typically considered as being at the lower end of the discipline spectrum, at least when dealing with a first offence. However, Mr. Huber also submitted that what should be considered an appropriate sanction for dilatory practice has been impacted significantly in situations where there have been multiple instances of this type of conduct, or where there has been a prior related discipline history. In this case, Mr. Huber submitted an appropriate penalty would fit within the range of a fine of \$7,500.00 and a short suspension for a term of up to one month, plus costs in the amount of \$3,026.25 and the requirement that the member be required to practice under the supervision of a practice supervisor.

31. The Member submitted that a reasonable penalty in this case would be a fine in the amount of \$2,000.00 plus an order that he be required to pay costs in the amount of \$1,000.00. The Member submitted that an order requiring him to practice under the supervision of a practice supervisor was not necessary.

Case Law

32. Mr. Huber referred the Discipline Committee to the following three cases in relation to this matter:

i) *Peet vs. Law Society of Saskatchewan* [2008]

In the Peet case the member was disciplined in relation to a single count of failing to serve his client in a conscientious, diligent and efficient manner. The gravity of this misconduct was acknowledged to be on the low end of the spectrum. Mr. Peet however, had a prior discipline record. Other prior but unrelated charges had led to a lengthy suspension being imposed in the previous cases. In summary, the Member had been the subject of four prior Hearing Committee Decisions, involving (among other prior charges) five prior charges relating to dilatory practice. In the Peet case a joint submission was put forward for a fine of \$7,500.00 plus costs. The joint submission was reluctantly accepted by the Hearing Committee.

ii) *Paul Walsh vs. Law Society of Manitoba* [2006]

The Walsh case involved a fact pattern that is somewhat similar to the current matter. Mr. Walsh was found guilty of conduct unbecoming in relation to three counts. The allegations proven against Mr. Walsh generally fell on the lower end of the spectrum of seriousness where a reprimand or fine would have normally been imposed as a typical sanction. However, the most significant factor in the Walsh case was the issue of his prior discipline record. Mr. Walsh had a prior record involving nine prior discipline proceedings involving thirteen findings of conduct unbecoming along with two final

cautions. The hearing committee ordered a six month suspension and a fine in the amount of \$25,000.00 plus costs in the amount of \$3,910.52. Mr. Walsh appealed the decision of the hearing committee, but the Manitoba Court of Appeal upheld the hearing committee's decision. Mr. Huber acknowledged that Mr. McLean has not reached the level of concern demonstrated in the Walsh case. However, Mr. Huber argued that the Walsh decision should still be considered instructive by the Discipline Committee.

iii) *Law Society of Upper Canada vs. Taylor* [2010]

In the Taylor case, the lawyer was found guilty of conduct unbecoming in relation to a failure to provide information to the Law Society and failure to maintain proper books and records, two matters that would typically result in penalties at the low end of the spectrum. Mr. Taylor had been disciplined five times prior to the incident referenced above. In keeping with a joint submission, the Law Society of Upper Canada suspended Mr. Taylor for a period of five months. The hearing committee noted in its decision that if it were not for the joint submission, the suspension would have been lengthier. Mr. Huber acknowledged that Mr. McLean has not yet reached the level of seriousness for dilatory conduct as was observed in the Taylor decision.

33. Mr. McLean referred members of the Discipline Committee to the cases set out below:

i) *Cheryl Lynn Kloppenburg vs. Law Society of Saskatchewan* [2011]

The member was disciplined in relation to three counts of conduct unbecoming a lawyer. In two of those counts the member was found to have failed to serve her client in a conscientious, diligent and efficient manner. In the third count the member was found to have failed to reply to a fellow member of the Law Society of Saskatchewan within a reasonable period of time. Prior to the above noted sentencing, Ms. Kloppenburg had no prior findings of conduct unbecoming. She had been the subject of some referrals to the Professional Standards Committee and had had two complaints referred to discipline; one of which resulted in an informal conduct review and the other resulted in no further action being taken. The hearing committee ordered that Ms. Kloppenburg receive a reprimand, pay a fine in the amount of \$1,000.00 and pay costs in the amount of \$3,275.00.

ii) *Walper-Bossence vs. Law Society of Saskatchewan* [2011]

The Member plead guilty to two counts of conduct unbecoming a lawyer in that she had failed to serve her clients in a conscientious, diligent and efficient manner. Ms. Walper-Bossence was given a reprimand and ordered to pay a fine to the Law Society in the amount of \$1,000.00 as well as being required to pay costs in the amount of \$250.00. The fine imposed on Ms. Walper-Bossence was in keeping with the joint submission between the parties for a fine of \$1,000.00. The Member had no prior findings of conduct unbecoming however, the Member had been the subject of two referrals to the Professional Standards Committee.

Analysis

34. The Discipline Committee recognizes that if this was the first time that the Member was being sanctioned by the Law Society, a sentence similar to what was imposed in the

Kloppenburger and Walper-Bossence decisions would be appropriate. However, the facts in this case fit somewhere between the three cases referenced by Mr. Huber and the two cases referenced by the Member. In this case, the Member's past record was less than that set out in the Peet decision and significantly less than the records described in both the Walsh and Taylor decisions. However, this is now the third time that the Law Society is sanctioning this Member for dilatory practice. Neither of the members sanctioned in the Kloppenburg or Walper-Bossence decisions had a prior record.

35. The protection of the public is the fundamental purpose which the Law Society of Saskatchewan is required to fulfill. It is well established that public confidence in the legal profession's ability to govern itself is a matter of public interest. The Discipline Committee must ensure that the public's confidence in the Law Society's ability to protect the public interest is maintained.

36. The Discipline Committee is mindful of the importance of the principles of both specific deterrence and general deterrence. The objective of the Discipline Committee is not to punish or make an example of this Member or any other member, but rather to maintain and encourage a high level of professional standards and to preserve public confidence in the legal profession through denunciation of any conduct that is unbecoming a lawyer.

37. In this case, Mr. McLean acknowledged with his guilty pleas that the complaints against him were well founded. With respect to the complaint by K.S., Mr. McLean noted that his biggest downfall was that he had not sat down with his clients or sent them a letter and either withdrawn as their legal counsel or advised them that their chances of success were minimal. Similarly with regard to the complaint by A.D., Mr. McLean stated that there was no excuse for his delay in obtaining documents and for losing documents.

38. The Discipline Committee viewed Mr. McLean's admissions and guilty pleas as mitigating factors. The Discipline Committee viewed the Member's prior record as an aggravating factor.

39. In this case the Member is guilty of four counts of conduct unbecoming a lawyer. The Member has been disciplined by the Law Society of Saskatchewan on two prior occasions for a total of seven prior counts of conduct unbecoming a lawyer. The Discipline Committee considers the Member's prior record to be relevant and significant when determining an appropriate penalty in this case.

Decision

40. Having considered the above-noted factors, it is the decision of the Discipline Committee that:

- a) the Member is ordered to pay a fine in the amount of \$5,000.00;
- b) the Member is ordered to pay the costs of the Law Society fixed in the amount of \$2,000.00;
- c) the Member will have until February 28, 2014 to pay the fine and costs that have been ordered in this case; and

- d) the Member will practice under the supervision of a practice supervisor chosen by the Chair of the Discipline Committee on such terms as the Chair may determine, until February 28, 2014.

AGREED STATEMENT OF FACTS AND ADMISSIONS

41. In relation to the Amended Formal Complaint dated January 31, 2012 [Tab 1], alleging that he:
- a. Did defend an action on behalf of his clients, Mr. and Mrs. L., in the absence of instructions to do so;
 - b. Did settle an action on behalf of his clients, Mr. and Mrs. L., contrary to their instructions;
 - c. Did withdraw funds held in trust on behalf of his clients, Mr. and Mrs. L., to settle an action contrary to their instructions and without their knowledge;
 - d. Did fail to respond to communications from K.S. within a reasonable time;
 - e. Did fail to provide prompt service to K.S.;
 - f. Did fail to complete the tasks necessary to ensure that the administration of the Estate of D.D. was completed within a reasonable time;
 - g. Did fail to keep A.D. reasonably informed as to the status of the administration of the Estate of D.D.

Jurisdiction

42. Sterling McLean (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 (herein after the “Act”) as well as the Rules of the Law Society of Saskatchewan (the “Rules”). Attached at Tab 2 is a Certificate of the Executive Director of the Law Society of Saskatchewan pursuant to section 83 of the Act confirming the Member’s status.

43. The Member is currently the subject of an Amended Formal Complaint dated January 31, 2012. The Formal Complaint is comprised of seven allegations. The Amended Formal Complaint was served upon the Member on January 31, 2012. Proof of service of the Amended Formal Complaint upon the Member is included at Tab 1.

44. The Member acknowledges the jurisdiction of the Hearing Committee appointed in relation to this matter to determine whether the complaints against him are well founded. The Member further acknowledges service of the Formal Complaint and the Notice of Hearing and takes no issue with the constitution of the Hearing Committee.

45. The Member has agreed to enter guilty pleas in relation to allegations 4, 5, 6 and 7 as set out in the Amended Formal Complaint.

46. With the Member’s agreement in relation to allegations 4, 5, 6 and 7, the Investigation Committee withdraws allegations 1, 2 and 3.

Particulars of Conduct

47. These proceedings arose as a result of complaints received from K.S. and A.D. in December of 2009 and June of 2010 respectively. Both complaints pertained to the Member's failure to advance the complainant's legal matters in a timely fashion. At the time of the complaints the Member was involved in a mandatory practice supervision arrangement stemming from a previous finding of conduct unbecoming. What follows is a summary of the K.S. and A.D. matters.

Complaint of K.S.

48. The Member was retained by K.S. and her husband, both Korean immigrants, to commence and advance litigation against several defendants in connection with her and her husband's operation and lease of a zoo in Saskatchewan. The Member acted on the instructions from K.S. and issued a Statement of Claim against multiple corporate defendants on April 27, 1998. In that claim K.S. claimed damages in the amount of \$232,500.00. A second claim was issued on September 17, 2001 against the Government of Saskatchewan and an additional corporate defendant seeking damages in excess of \$1,000,000.00. The Member acknowledges that the litigation he was retained to advance was very significant for K.S. and her husband as they had suffered significant financial losses in connection with the operation and lease of the zoo including the loss of their personal residence.

49. From approximately April of 1998, through August 2000, the Member worked to advance the first litigation file in a reasonable fashion. The Member marshaled the receipt of Statements of Defence from the first group of Defendants and was in regular contact with the various opposing counsel involved. The Member also attended a mandatory mediation session on April 14, 1999. At times the Member was writing opposing counsel to "prod" them along and respond to his own correspondence to move the matter along.

50. After August 2000, the matter began to stagnate. The last thing to happen in August 2000 was a letter to the Member from opposing counsel providing a Statement as to Documents to the Member with a proposal for Examination for Discovery dates on October 30 and October 31, 2000. The Member did not respond to this letter, or to a follow up letter from opposing counsel dated February 9, 2001.

51. The next activity on the initial claim file is a February 14, 2002 letter from the Member to K.S. and her husband seeking repayment of a series of small loans totaling just over \$5,000.00 that the Member had extended during 1999.

52. After the February 14, 2002 letter, there is a three year gap with no activity. The period of stagnation in relation to the first claim commenced by the Member was nearly 5 years.

53. The second claim issued by the Member in September 2001 proceeded to mediation in November of 2002. After the mediation, progress on the file halted for more than 2 years. K.S. urged the Member to move ahead with both files repeatedly during these periods of inactivity, but to no avail.

54. The long period of inactivity on both files ended with a meeting between the Member and K.S. on February 4, 2005. After that meeting the Member attempted to reinvigorate the matters by writing counsel for the Defendants on February 14, 2005. There was no subsequent follow up. Nothing further was done by the Member to advance the file after February 14, 2005.

55. In 2008, K.S. attempted to arrange a meeting with the Member on several occasions but the Member failed to reply to her requests. The Member also failed to respond to various requests from K.S. as to the status of her file nor was he able to provide a satisfactory response to K.S. to explain the years of stagnation.

56. After the Member failed to provide any response or explanation to K.S. she terminated his services in approximately October of 2008. K.S. attempted to deal with matters directly with the Government of Saskatchewan. Counsel for the Government of Saskatchewan was unable to communicate with her directly while the Member was still on the record. The Ministry of Justice sent letters to the Member on June 24, 2009, October 19, 2009 and December 16, 2009 before receiving a response from the Member confirming that he no longer represented K.S. and that they could deal with her directly. This represented a further delay of nearly 6 months.

57. K.S. complained to the Law Society on November 23, 2009. Attached at Tab 3 is a copy of the complaint letter of K.S., including her last correspondence to the Member and a letter from the complainant detailing the background of her litigation matter.

58. Attached at Tab 4 is a summary of the litigation from the Member's perspective.

Complaint of A.D.

59. A.D. filed a complaint against the Member on or about June 18, 2010 [Tab 5]. The Member was retained to handle the administration of the Estate of D.D., A.D.'s mother, who passed away on August 28, 2003. A.D. was the executor of the Estate of D.D.

60. A.D. raised a number of concerns surrounding the progress of her late mother's estate which had yet to be finalized by the Member some 6.5 years after he was retained. Specifically, A.D. complained that the Member had failed to obtain a tax clearance certificate with respect to the estate and that he had been unable to locate stock certificates that had been provided to him by A.D. when they were required. The Member was also incommunicative with her specifically in relation to the lost stock certificates where the Member failed to reply to repeated communications between the months of August and December of 2007. A.D. was ultimately forced to take matters into her own hands. She attempted to resolve the outstanding issues with the tax clearance certificate and missing stock certificates on her own without assistance from the Member.

61. The Member stated in a letter dated September 17, 2010 [Tab 6] that he had, in fact, advised A.D. that he would obtain a tax clearance certificate on the D.D. Estate matter, but that he did not obtain this as promised. The Member provides no explanation for his failure to obtain the tax clearance certificate other than that it should have been handled in a more prompt manner.

62. The Member also stated in his letter that the stock certificates that he received from A.D. could not be located for a long period of time and that they had been “misfiled” and provided no other explanation. By the time the Member had located the certificates, A.D. had already paid for replacement certificates. The Member characterized this as “unfortunate”.

Discipline History

63. This is not the Member’s first discipline proceeding before the Law Society. On June 14, 2006 the benchers of the Law Society found the Member guilty of conduct unbecoming in that he failed to provide an acceptable level of service to clients and that he failed to respond to a fellow member. That finding of conduct unbecoming related to three different files. The subject matter of the June 14, 2006 proceeding included problems with this Member failing honor commitments to discharge interests from property and failure to provide adequate levels of service in estate matters. A digest of the decision is attached at Tab 7.

64. During the June 14, 2006 proceeding the Member was also found guilty of conduct unbecoming for breaching an undertaking provided to another member by failing to comply within a reasonable time. The Member received a reprimand and was required to pay costs.

65. More recently on June 12, 2009, the Member was found guilty of conduct unbecoming on five allegations pertaining to four separate client files. The allegations including breach of trust condition, breach of undertaking, dilatory practice (x2) and misleading a client as to the status of an estate matter. The Member was suspended for 4 months, but that sentence was reduced on appeal to 25 days.