



The Law Society of Saskatchewan

DOROTHY JANE OLSON

May 2, 2012

Law Society of Saskatchewan v. Olson, 2012 SKLSS 2

**IN THE MATTER OF THE LEGAL PROFESSION ACT, 1990
AND IN THE MATTER OF DOROTHY JANE OLSON,
A LAWYER OF SASKATOON, SASKATCHEWAN**

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

Hearing Committee: Miguel F. Martinez

Counsel from the Law Society of Saskatchewan: Timothy F. Huber

Dorothy Jane Olson appearing on her own behalf

1. This hearing was convened on Wednesday, May 2, 2012, by telephone conference call. Mr. Timothy F. Huber represented the Law Society of Saskatchewan and Ms. Dorothy Jane Olson represented herself.
2. At the outset of the hearing, Mr. Huber and Ms. Olson acknowledged that the hearing committee was properly constituted and had jurisdiction to deal with the matter before it. Neither party objected to the hearing proceeding by telephone conference call.
3. The Law Society's counsel tendered the Formal Complaint dated August 19, 2011, the Notice of Hearing dated April 17, 2012, with proof of service, and an Agreed Statement of Fact and Admissions, which were marked as exhibits P-1, P-2, and P-3, respectively. Ms. Olson acknowledged that she was properly served with the Notice of Hearing.
4. The Formal Complaint alleges the following:
 - i. Did provide false or misleading declarations to the Law Society of Saskatchewan in her annual TA-6 Trust Accounting form for the years 2004 through 2009 by stating that she did not receive or handle money or negotiable valuables in trust, when the opposite was true.

- ii. Did between 2003 and 2012 fail to deposit monies received or held in trust by her for or on account of her clients into a mixed or separate trust account, contrary to Rule 910.
- iii. Did fail to comply with Law Society of Saskatchewan Rules 911 and 942 regulating the way in which moneys received or held in trust by her for or on account of clients are to be handled.
- iv. Did fail to pay to the Law Foundation, or failed to cause to be paid to the Law Foundation, interest earned on monies received or held in trust by her for or on account of clients as required by *The Legal Profession Act* and the *Rules of the Law Society of Saskatchewan*.

5. Ms. Olson entered guilty pleas to all of the counts in the Formal Complaint.

6. No evidence was introduced in relation to the matter of sentencing and, with the agreement of the parties, the Hearing Committee refers the sentencing of Ms. Olson to the Discipline Committee of the Law Society of Saskatchewan, composed of the Benchers of the Law Society of Saskatchewan, at the next Convocation of Benchers, or such other time as may be mutually agreed.

Dated at Lloydminster, Alberta on this 30TH day of May, 2012.

“Miguel F. Martinez”
Hearing Committee Chair

DISCIPLINE SENTENCING DECISION

INTRODUCTION

7. On May 2, 2012, before the Hearing Committee of the Law Society of Saskatchewan, Dorothy Jane Olson (the “Member”) pled guilty to allegations of conduct unbecoming a lawyer particularized as follows:

- i. She did provide false or misleading declarations to the Law Society of Saskatchewan in her annual TA-6 Trust Accounting form for the years 2004 through 2009 by stating that she did not receive or handle money or negotiable valuables in trust, when the opposite was true;
- ii. She did between 2003 and 2010 fail to deposit monies received or held in trust by her for or on account of her clients into a mixed or separate trust account, contrary to Rule 910;
- iii. She did fail to comply with Law Society of Saskatchewan Rules 911 and 942 regulating the way in which moneys received or held in trust by her for or on account of clients are to be handled; and

iv. She did fail to pay to the Law Foundation, or failed to cause to be paid to the Law Foundation, interest earned on monies received or held in trust by her for or on account of clients as required by the Legal Profession Act and the Rules of the Law Society of Saskatchewan.

8. The Discipline Committee (the “Committee”) convened a hearing on sentence on the 22nd of June, 2012 in Saskatoon. At the hearing, Mr. Timothy F. Huber represented the Investigation Committee of the Law Society and the Member represented herself. At the conclusion of the hearing, the Committee indicated its intention to reserve its decision on sentence and render written reasons for the disposition crafted.

BACKGROUND

9. An agreed statement of facts was filed in relation to this matter and this agreed statement of facts is attached as an appendix to this sentencing decision. Nevertheless, a brief summary of the facts has been provided below.

10. The Member reactivated her membership with the Law Society of Saskatchewan in 2003. For several years prior to 2003, the Member practiced in the Northwest Territories.

11. At the time of her reactivation in Saskatchewan, she advised the Law Society of Saskatchewan that she would not be receiving trust funds in the course of her practice. Lawyers who do not accept trust funds in the course of their practice are not required to maintain a trust account in accordance with the Rules of the Law Society of Saskatchewan.

12. For the years 2004 through 2009, the Member provided annual trust accounting exemption declaration forms to the Law Society stating that she was engaged in the practice of law in private practice under the name of Olson Legal Services and that she did not receive or handle money or negotiable valuables in trust. The Member’s provision of these declarations had the effect of exempting the Member from the trust reporting requirements imposed by the Law Society in relation to all practitioners holding property in trust for their clients.

13. Contrary to her annual declarations, the Member had, since 2003 (the year she was reactivated as a Member in Saskatchewan), willingly and knowingly deposited all retainers received from clients for the provision of legal services into two general accounts rather than a trust account. This occurred on twenty-one occasions. These retainers should have been placed into a trust account until the fees were earned by the Member.

14. All of the retainers the Member received between 2003 and 2010 were deposited directly into the Member’s general account often prior to the provision of legal services and prior to those fees being earned by the Member.

15. The Member misled the Law Society each time she filed her annual trust exemption declaration swearing that she did not handle trust money. These misleading acts allowed the Member to avoid the stringent reporting obligations that are associated with holding client funds

in trust. As a result of her false declarations and by avoiding the trust reporting obligations inherent with maintaining a proper trust account, the Member saved time and money between 2003 and 2009.

16. As a result of the Member's false declarations, she was able to operate her practice without any oversight in relation to the money she held on behalf of, or in trust for, her clients.

17. The Member paid no interest to the Law Foundation on the funds she held in trust.

18. While the Member did not handle trust funds appropriately, there is no indication that the Member stole funds and no complaints of that nature have been received by the Law Society.

19. The Member does not have any prior findings of conduct unbecoming a lawyer on her record.

SUBMISSIONS ON SENTENCE

20. Using a number of publicly available cases involving similar conduct by lawyers, counsel for the Investigation Committee submitted that the appropriate range of penalty for the Member's conduct was a suspension of between two to six months in duration.

21. The only case counsel for the Investigation Committee cited from Saskatchewan, *Law Society of Saskatchewan v. Price-Jones, LSSDD 09-02*, involved a lawyer who was operating two accounts to handle trust money. One account was known to the Law Society and for that account the lawyer adhered to the trust reporting requirements. However, the lawyer maintained an additional hidden account that did not comply in any way with Law Society requirements. The lawyer purported to operate that account as a "notary" who was free from Law Society regulation rather than as a lawyer, despite the fact that identical types of transactions were being handled in both accounts. The lawyer conducted significant amounts of business through his hidden account for seven years. Thousands of dollars of interest owing to the Law Foundation went unpaid and these funds were utilized by the lawyer for his own purposes. In this case, the lawyer was suspended for a period of six months and ordered to pay costs.

22. Another case relied upon by counsel for the Investigation Committee was *Law Society of Upper Canada v. Martin [1998] L.S.D.D. No. 80*. In this case, the lawyer opened a trust ledger in his own name after having his general account frozen by the Canada Revenue Agency. Through this trust account, the lawyer conducted various aspects of personal and firm business. He also borrowed money from his clients on several occasions. In Ontario, lawyers are required to declare any such dealings. For four consecutive years, the lawyer falsely declared that he was not indebted to any clients and that he had not borrowed money from clients. No element of theft or conversion was present in this case. Nevertheless, the lawyer was suspended for a period of two months and ordered to pay costs.

23. The last case relied upon by counsel for the Investigation Committee was *Law Society of Upper Canada v. Mojtahedi [2007] L.S.D.D. No. 86*. This case involved a lawyer who practiced law while under suspension. The lawyer also failed to deposit trust moneys into a trust account

and he did not maintain proper books and records. The lawyer received a three month suspension and he was ordered to pay costs.

24. The Member took no issue with the submission that an appropriate penalty in her matter consisted of a period of suspension. However, because a significant number of her clients continue to reside in the Northwest Territories, where there is a shortage of lawyers, the Member expressed concerns that a lengthy suspension for her may result in her clients being denied access to legal representation thereby jeopardizing their interests. Nevertheless, the Member did indicate that a suspension of between one to two months in length would not significantly prejudice her clients' legal positions.

DECISION

25. It has been noted that, in its previous decisions, the Discipline Committee has been guided by the decisions of Benchers in other provinces (see *McLean v. Law Society of Saskatchewan 2012 SKCA 7* at para 49). Increased mobility of members between the various Law Societies has reinforced the need to develop national standards of discipline. As stated at para 46 of the Discipline Committee's decision in *Law Society of Saskatchewan v. McLean #09-03*, "To this end, the collective decisions of all societies constitute a comprehensive jurisprudential footing for guiding future decisions of the Benchers in all provinces." As a result, it is appropriate for the Discipline Committee to consider the two decisions of the Law Society of Upper Canada cited by counsel for the Investigation Committee alongside the decision from the Law Society of Saskatchewan in determining the appropriate range of penalty for the Member's conduct.

26. Price-Jones, in which the lawyer received a six month suspension, is clearly distinguishable from the current case. Counsel for the Investigation Committee acknowledged that the volume of instances of money being improperly handled through the hidden account in Price-Jones was much higher than in the current case where retainers were deposited into the Member's general account only twenty-one times over a number of years. The interest converted by Price-Jones for his own use was also much more significant than in the current case, where the interest earned on the 21 retainers would have been a nominal amount. Moreover, Price-Jones involved calculated and surreptitious behaviour – a more complex deception than in the current case.

27. The other two cases cited by counsel for the Investigation Committee are more similar to the present case than Price-Jones. In *Mojtahedi* the lawyer was given a three month suspension and ordered to pay costs for failing to deposit trust moneys into a trust account and practicing law while under a suspension. Engaging in the practice of law while under suspension is an aggravating factor that is not a feature in the present case. In *Martin* the lawyer was suspended for two months and ordered to pay costs. This decision is similar to the present case, in that it involved making false declarations over an extended period of time and misuse of a trust account with no elements of theft or conversion.

28. The primary consideration in all Law Society discipline proceedings is the protection of the public. Closely related to this consideration is the need to maintain the public's confidence in the integrity of the profession and the ability of the profession to govern its own members. In

order to restore public confidence the penalty imposed must reflect the unique constellation of aggravating and mitigating circumstances presented by this case.

29. Chief among the aggravating factors presented by this case are the fact that the Member's impugned conduct occurred on several instances over a period of years. A key mitigating factor is the Member's lack of any prior disciplinary record. It is also noteworthy that the matter was concluded by way of a guilty plea and an agreed statement of facts. Counsel for the Investigation Committee also observed that the Member was "incredibly forthcoming with the Law Society and signed a full written confession in the very early stages of the investigation." (Paragraph 43 of the written submission on penalty filed on behalf of the Investigation Committee of the Law Society of Saskatchewan.) During the hearing, it became abundantly clear that the Member felt deep and genuine remorse about her conduct and that she did not pose a significant risk to engage in such conduct in the future.

ORDER

30. Given the range of penalty articulated in the publicly available cases involving lawyers providing false declarations to the Law Society, mishandling client trust monies, and/or ignoring the trust accounting rules and appropriately weighing the aggravating and mitigating factors in this case, the Committee orders that the Member be given a global penalty consisting of a two month suspension. In addition, it is ordered that the Member pay the costs of this proceeding in the amount of \$2,590.00 to the Law Society of Saskatchewan by December 31, 2012 or such further period as may be allowed by the Chair of Discipline. Finally, it is ordered that the Member's suspension shall commence on a date determined by the Chair of Discipline after hearing from the Member and counsel for the Investigation Committee. However, the suspension shall commence no later than September 1, 2012.

DATED at the City of Saskatoon, in the Province of Saskatchewan, this 27th day of June, 2012.

"Dr. Sanjeev Anand, Q.C."
Chair, Discipline Committee

AGREED STATEMENT OF FACTS AND ADMISSIONS

31. **In relation to the Formal Complaint dated August 19, 2011, alleging that she:**
- i. Did provide false or misleading declarations to the Law Society of Saskatchewan in her annual TA-6 Trust Accounting form for the years 2004 through 2009 by stating that she did not receive or handle money or negotiable valuables in trust, when the opposite was true;**
 - ii. Did between 2003 and 2010 fail to deposit monies received or held in trust by her for or on account of her clients into a mixed or separate trust account, contrary to Rule 910;**

- iii. **Did fail to comply with Law Society of Saskatchewan Rules 911 and 942 regulating the way in which moneys received or held in trust by her for or on account of clients are to be handled; and**
- iv. **Did fail to pay to the Law Foundation, or failed to cause to be paid to the Law Foundation, interest earned on monies received or held in trust by her for or on account of clients as required by *The Legal Profession Act* and the *Rules of the Law Society of Saskatchewan*.**

JURISDICTION

32. Dorothy Jane Olson (hereinafter “the Member”) is, and was at all times material to this proceeding, a practising 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.

33. The Member is currently the subject of a Formal Complaint initiated by the Law Society dated August 19, 2011. The Formal Complaint is comprised of the four allegations noted above. The Formal Complaint was served upon the Member on August 31, 2011.

34. The Member acknowledges the jurisdiction of the Hearing Committee appointed in relation to this matter to determine whether the complaint against her is well founded. The Member further acknowledges the service of the Formal Complaint and the Notice of Hearing and takes no issue with the constitution of the Hearing Committee.

35. The Member has agreed to enter a guilty plea in relation to the above allegations contained in the Formal Complaint.

PARTICULARS OF CONDUCT

36. These proceedings arose as a result of a Law Society investigation into a complaint received from J.S. a Member of the Law Society of Alberta. J.S. had been retained by a client who had previously been a client of the Member. The complaint originated after the Member wrote a cheque to J.S. that was returned for non-sufficient funds. The cheque represented the unused portion of funds paid into trust to the Member by her former client. While J.S. ultimately received the funds, he identified irregularities in the manner that the Member provided payment that caused him some concern. Specifically, J.S. questioned how fees that had not been earned could have been refunded from the Member’s general account rather than by way of a trust cheque.

37. Following the receipt of the J.S. complaint, John Allen, Auditor/Inspector for the Law Society of Saskatchewan attended the Member’s office to conduct a review of her files and accounting records. The following issues were identified:

- i. When the Member reactivated her membership with the Law Society of Saskatchewan in 2003 (prior to 2003 she practiced in the North West Territories) she advised the

Law Society of Saskatchewan that she would not be receiving trust funds in the course of her practice. Lawyers who do not accept trust funds in the course of their practice are not required to maintain a trust account in accordance with the *Rules of the Law Society of Saskatchewan*;

- ii. For the years 2004 through 2009 the Member provided annual trust accounting Exemption Declaration forms to the Law Society stating that she was engaged in the practice of law in private practice under the name of Olson Legal Services and that she did not receive or handle money or negotiable valuables in trust. The Member's provision of these declarations had the effect of exempting the Member from the trust reporting requirements imposed by the Law Society in relation to all practitioners holding property in trust for their clients;
- iii. Contrary to her annual declarations the Member had, since 2003 (the year she was reactivated as a Member in Saskatchewan) willingly and knowingly deposited 21 retainers received from clients for the provision of legal services into two general accounts rather than a trust account. These retainers should have been placed into a trust account until the fees were earned by the Member. The Member's placement of retainers into her general account prior to earning the fees violated Rule 910;
- iv. All of the retainers the Member received between 2003 and 2010 were deposited directly into the Member's general account often prior to the provision of legal services and prior to those fees being earned by the Member;
- v. The retainers that the Member accepted were not "general retainers" (which may be billed upon receipt without depositing the funds into trust if certain prerequisites are met) as defined in Rule 921(b). This is evidenced by the fact that the Member provided invoices to clients setting out the hours and disbursements charged (which would be irrelevant in a "general retainer" scenario) and by the fact that, in instances where the amount of the services provided was less than the retainer amount, the difference was refunded to the client. In the rare instance where a client has agreed to payment of a "general retainer" there is no expectation of a refund even if the entirety of the fee or any portion thereof was never earned by the lawyer. None of the Member's clients intended for the retainers they paid to be "general retainers" pursuant to Rule 921(b) and the Member has no documentation to support that these payments were "general retainers".

38. The Member misled the Law Society each time she filed a false declaration swearing that she did not handle trust money. These acts of misleading allowed the Member to avoid the stringent reporting obligations that are associated with holding client funds in trust. As a result of her misleading declarations and by avoiding the trust reporting obligations inherent with maintaining a proper trust account, the Member saved time and money between 2003 and 2009.

39. The fact that the Member failed to maintain a trust account in relation to her practice meant that none of the requirements of the Act or Rules intended to protect client property were satisfied. Because of her false declarations, the Member was able to operate her practice without any oversight in relation to the money she held on behalf of or in trust for her clients.

40. As a result of the Member's failure to maintain a trust account to hold client retainers until she earned her fee, she deprived the Law Foundation of interest that would otherwise have

been earned on any funds properly held by her in trust. Due to the relatively small practice carried on by the Member during the relevant period of time, the amount of interest that might have been payable to the Law Foundation had the Member maintained a proper trust account is nominal.

41. On October 6, 2010, the Member signed a written confession in relation to the concerns identified by John Allen in the course of his investigation. The Member's confession is attached at **Tab 2**.

42. There is no indication that the Member stole funds from any clients between 2003 and 2010. No incidents of theft were identified by John Allen in the selection of files that he reviewed nor have any complaints of theft been received from a member of the public.

PRIOR RECORD

43. The Member has no prior findings of conduct unbecoming on her record. She has two prior referrals to Professional Standards Committee from the years 1999 and 2000.