



The Law Society of Saskatchewan

BRADLEY DAVID TILLING

November 29, 2013

Law Society of Saskatchewan v. Tilling, 2013 SKLSS 12

**IN THE MATTER OF THE LEGAL PROFESSION ACT, 1990
AND IN THE MATTER OF BRADLEY DAVID TILLING,
A LAWYER OF REGINA, SASKATCHEWAN**

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

Hearing Committee Chairman: Thomas A. Healey
Counsel for the Investigation Committee: Timothy F. Huber
Bradley David Tilling - appearing on his own behalf

1. The Hearing Committee convened on Monday, September 9, 2013 by telephone conference. The Investigation Committee was represented by Mr. Timothy Huber. Mr. Bradley David Tilling represented himself.
2. At the outset of the hearing, the parties acknowledged that the Hearing Committee was properly constituted and had jurisdiction to deal with the matter before it. Neither party had any preliminary objections to the hearing proceeding and there were no preliminary issues to be addressed.
3. Counsel for the Investigation Committee tendered the Notice of Hearing and the Agreed Statement of Facts and Admissions, which were then marked, by agreement, as Exhibits P-1 and P-2 respectively. The Agreed State of Facts and Admissions amended the wording of count number three of the Formal Complaint, which had been dated June 19, 2012. Mr. Bradley David Tilling acknowledged that the Notice of Hearing had been properly served.
4. The Amended Formal Complaint, as set out in the Agreed Statement of Facts and Admissions, alleges that Bradley David Tilling:
 - i. Did fail to serve the following clients in a conscientious, diligent and efficient manner:
 - a) B.D.;

- b) R.A.;
- c) G.C.;
- d) S.S.;
- e) T.L.;
- f) M.O.;
- g) J.W.;
- h) E.K.; and
- i) B.M.

ii. Did intentionally mislead the following clients as to the status of their legal matters:

- a) B.D.;
- b) E.K.; and
- c) J.W.

iii. Did, on May 25, 2010, recklessly provide false information to the Law Society of Saskatchewan Complaints Counsel in connection with the status of various files.

5. Mr. Bradley David Tiling entered guilty pleas on his own behalf to allegations 1, 2, and 3 of the Formal Complaint, as amended in the Agreed Statement of Facts and Admissions.

6. On the basis of the pleas entered by Mr. Bradley David Tiling and the Agreed Statement of Facts and Admissions, the Hearing Committee finds that the allegations of conduct unbecoming contained in allegations 1, 2, and 3 are well founded.

7. 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 Melfort, in the Province of Saskatchewan, this 5th day of October, 2013.

“THOMAS A. HEALEY”
Chair on behalf of the Committee

DECISION OF THE DISCIPLINE COMMITTEE ON PENALTY

Introduction

8. On November 29, 2013 the Member appeared before a Discipline Committee composed of the Benchers of the Law Society of Saskatchewan, for the purpose of imposing a penalty with respect to a finding of conduct unbecoming which had been previously made by a Hearing Committee. The Hearing Committee rendered its decision on October 5, 2013 and found that the following allegations of Conduct Unbecoming were well founded and that the Member:

- i) Did fail to serve the following clients in a conscientious, diligent and efficient manner:

- a. B.D.;
 - b. R.A.;
 - c. G.C.;
 - d. S.S.;
 - e. T.L.;
 - f. M.O.;
 - g. J.W.;
 - h. E.K.; and
 - i. B.M.
- ii) Did intentionally mislead the following clients as to the status of their legal matters:
 - a. B.D.;
 - b. E.K.; and
 - c. J.W.
 - iii) Did, on May 25, 2010, recklessly provide false information to the Law Society of Saskatchewan Complaints Counsel in connection with the status of various files.

9. Counsel for the Investigation Committee of the Law Society of Saskatchewan was Mr. Timothy Huber. The Member represented himself. Both parties indicated there were no objections to the composition of the Discipline Committee or its jurisdiction to determine penalty. There were no preliminary motions or objections at the proceeding.

Background

10. With the consent of the Member, Counsel for the Investigation Committee entered the following documents as Exhibits:

Exhibit P – 1 Notice of Sentencing dated October 25, 2013;

Exhibit P – 2 Report of the Hearing Committee dated October 5, 2013 which includes the Agreed Statement of Facts and Admissions between the Member and the Law Society of Saskatchewan (the “Agreed Statement” attached as an appendix to this Penalty Decision)

Exhibit P – 3 Law Society of Saskatchewan Bill of Costs.

11. The Member stated there was no issue as to the service of the Notice of Sentencing and the Member also advised the Discipline Committee that he had no issue with the costs claimed on behalf of the Law Society of Saskatchewan.

Submissions on Sentence

12. Counsel for the Investigation Committee focused his submissions on the allegations contained in Count # 2 of the Formal Complaint noting those counts comprised the most serious element of the Member’s conduct in that they involved misleading clients. While Count #1 in the Formal Complaint was made up of a relatively large number of different clients, the essence of that portion of the Complaint related to the Member’s dilatory practice - conduct that typically is considered at the low end of the range of severity. The Investigation Committee Counsel further submitted that the 3rd Count, while pertaining to the reckless provision of false

information to the Law Society also, on the facts as contained in the Agreed Statement, fell at the less serious end of the continuum of the Member's conduct.

13. Counsel for the Investigation Committee submitted that the three instances of the Member intentionally misleading clients were especially serious because they occurred with three separate clients over a span of approximately three years. Further, Counsel noted the Member's prior finding of Conduct Unbecoming for misleading his client in 2004 for which he received a one month suspension. Law Society Counsel submitted that the gravity of the misleading behaviour had increased from the 2004 occurrence because it involved multiple clients and a series of specific and deliberate lies over the course of an extended period of time.

14. In his submissions on penalty, Mr. Huber noted that the type of misconduct which occurred with respect to Count #2 involved a serious breach of integrity, thereby violating Chapters I and II of the *Code of Professional Conduct*. The relevant passages from those Chapters as referred to by Mr. Huber are as follows:

Chapter I contains the following relevant passages:

The lawyer shall discharge with integrity all duties owed to the clients, the court, other members of the profession and the public.

Commentary 1. Integrity is the fundamental quality of any person who seeks to practice as a member of the legal profession. If the client is in any doubt about the lawyer's trustworthiness the essential element in the lawyer-client relationship will be missing. If personal integrity is lacking the lawyer's usefulness to the client and reputation within the profession will be destroyed regardless of how competent the lawyer may be.

Commentary 2. The principle of integrity is a key element of each rule of the Code.

Commentary 3. Dishonorable or questionable conduct on the part of the lawyer in either private life or professional practice will reflect adversely upon the lawyer, the integrity of the legal profession and the administration of justice as a whole. If the conduct, whether within or outside the professional sphere, is such that knowledge of it would be likely to impair the client's trust in the lawyer as a professional consultant, a governing body may be justified in taking disciplinary action.

Chapter II states the following in relation to quality of service:

The lawyer should serve the client in a conscientious, diligent and efficient manner so as to provide a quality of service at least equal to that which lawyers generally would expect of a competent lawyer in a like situation.

Commentary and Guiding Principles

7 Numerous examples could be given of conduct that does not meet the quality of service required by the second branch of the Rule. The list that follows is illustrative, but not by any means exhaustive:

- (a) failure to keep the client reasonably informed;**
- (b) failure to answer reasonable requests from the client for information;**
- (c) unexplained failure to respond to the client's telephone calls;**

...

(e) informing the client that something will happen or that some step will be taken by a certain date, then letting the date pass without follow-up information or explanation;

8. The requirement of conscientious, diligent and efficient service means that the lawyer must make every effort to provide prompt service to the client. If the lawyer can reasonably foresee undue delay in providing advice or services, the client should be so informed.

15. Counsel for the Investigation Committee referred the Discipline Committee to a number of different decisions but ultimately relied on the decisions of the *Law Society of Upper Canada v. Iannetta* [1995] L.S.D.D.No.176 and the *Law Society of Society of Upper Canada v. Thériault*, [1997] L.S.D.D.No.165

16. In the *Iannetta* case, the misleading conduct of the lawyer involved two separate clients and spanned approximately four years. During that time the lawyer periodically advised the clients that certain tasks had been completed on their files when, in fact, nothing had been done. In one instance in which the lawyer was instructed to recover land by way of a foreclosure proceeding, the Member created documents to support lies covering his inaction including a fake Land Title showing his client that the foreclosure had been completed when it had not even been commenced. There was some potential loss to the clients involved and some litigation ensued as a result. The lawyer in that case had no prior discipline record, admitted his misconduct and plead guilty. He received a three month suspension and a requirement to pay costs in the amount of \$3,000.00.

17. Likewise, *Thériault* was a “misleading” case involving two separate clients and spanning a period of time lasting approximately two years. In both cases the clients in those cases incurred some monetary loss. Again, the lawyer had no prior discipline history although he was facing discipline simultaneously on an unrelated complaint regarding failure to file forms with the Law Society. The lawyer received a suspension of six months and was required to pay costs in the amount of \$400.00.

18. While noting the case at bar involved no fabrication of documents such as existed in the *Iannetta* case, Mr. Huber noted the similarities between these cases and the Member’s conduct of misleading clients as contained in the Agreed Statement and suggested an order suspending the Member from practicing law for a period of three to six months as a starting point for the current matter. Mr. Huber then suggested the Discipline Committee must review the aggravating and mitigating factors in order to determine if the present case fell outside of the proposed suspension range. The aggravating factors considered most prominent by Counsel for the Investigation Committee were the Member’s prior discipline record; the long pattern of conduct which included many individual acts of misleading three different clients over the course of the separate files and over the course of a period of years; and the possibility of recurrence should the Member engage in general litigation practice in the future. Mitigating factors referred to by Mr. Huber included the Member’s candid cooperation with the Law Society and the fact that he entered into the Agreed Statement.

19. In speaking to penalty, the Member noted the misconduct was not the result of sudden impulsive acts but rather the result of a gradual decline at a time when the Member felt a great deal of stress in regards to his law practice and his obligations outside the practice of law to various organizations and to family. The Member stated he was remorseful and that he blamed the impugned conduct on personal weakness. The Member noted that while some of the misconduct resulted in some potential loss to the clients involved, the majority of instances did not. While not denying the presence of the aggravating factors as outlined by Law Society Counsel, the Member referred the Discipline Committee to the following mitigating factors which he believes to be present: the fact that while the initial self-reporting of misconduct was triggered by the Complaint of client B.D. to the Law Society in May of 2010, the Member self-reported the other matters; the Member was cooperative with the investigation throughout; the Member did not gain any personal advantage as a result of the misconduct; and the Member has practiced under conditions since early 2010 which include limiting his practice to criminal files and being monitored by a Practice Supervisor. The Member noted that an order of suspension is a real possibility in this case and proposed that the Discipline Committee should view any period of suspension in light of the fact that suspensions have an “after-effect” as the period of time following the cessation of practice necessarily involves a time period when clients may be slow to return. The Member suggested that an appropriate penalty may include a suspension of up to three months but, on the facts of this case the appropriate penalty could also be something less than a suspension.

Decision

20. The primary decisions referred to earlier both originate from Ontario. With respect to the relevance of decisions of Benchers in other Provinces guiding this Committee, we refer to the 2012 decision of the Discipline Committee in *The Law Society of Saskatchewan v. Merchant* at paragraph 13 which states in part:

13. 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 paragraph 46 of the Discipline Committee’s decision of *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.”

21. Having regard to *Iannetta* and *Thériault*, the types of misleading behaviour which occurred there are similar to the case at bar. It is noted that *Iannetta* involved the situation where the lawyer created documents to support lies covering his inaction, which admittedly does not exist in the present case. However, the missing factor of fabricated documents in this case does nothing to lessen the severe degree of deception that occurred, particularly with client B.D. As indicated in paragraphs 26-28 of the Agreed Statement, the instances where the Member lied to client B.D. were numerous and became more detailed as time went on. The Member agreed that the frequent instances of detailed misleading of B.D. was a result of B.D. pushing him for information more than the other clients and it seems a reasonable inference that the Member’s

misleading behaviour would have done nothing but escalate had his other clients been as tenacious.

22. The Discipline Committee is concerned that despite the Member's professed remorsefulness and his admission that there is no excuse for his behaviour, the Member did minimize the seriousness of the offences when submitting that in spite of the large number of clients affected by the impugned behaviour, very few suffered any direct harm as a result.

23. As noted earlier and as stated in the commentary to Chapter 1 of the *Code of the Professional Conduct*, the principal of integrity is a key element of each rule of the Code. To act as the Member did with multiple clients over multiple years and then claim that the lack of harm is a mitigating factor, misses the point. Actions such as those of the Member undermine not only the Member's reputation within the profession but also undermine the profession's reputation in the eyes of the public. The Member himself admitted observing the cynicism with which B.D. now views the legal profession as whole, as a result of his negative experience with the Member.

24. An aggravating factor that escalates the case at bar from *Iannetta* and *Thériault* is the Member's prior record. In February 2004 the Member received a one month suspension and an order to pay costs as a result of a finding of professional misconduct for dilatory practice and misleading a client and a fellow member as to the status of an appeal. Subsequently, in January of 2005, the Member was found guilty of conduct unbecoming in that he failed to co-operate with the Law Society Investigator and that he advised his client to sign an affidavit attaching an exhibit that did not yet exist. In assessing a penalty consisting of a reprimand, fine and costs the Hearing Committee in the 2005 Decision stated as follows:

“...The Hearing Committee feels that Mr. Tilling, although displaying similar conduct to that which had resulted in a previous suspension, deserves one chance to prove that he has reformed his ways and his intent to deal with the Law Society in a cooperative fashion.”

The “one chance” given in that case resulted in a penalty short of suspension. It is noted that some of the misleading behaviour which forms the subject matter of the 2nd Count in the Formal Complaint began to occur in May of 2007 (see paragraph 29 of the Agreed Statement). The gap between the 2005 finding and the beginning of the behaviour that resulted in the present case is not large and evidences the lack of deterrence which the 2005 penalty had on the Member.

25. *The Legal Profession Act, 1990* mandates the Law Society to, among other things, protect the public by assuring the integrity, knowledge, skill, proficiency and competence of Members. Earlier decisions of the Law Society of Saskatchewan Discipline Committee have noted that 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. The penalty imposed must fall within the appropriate range of penalties imposed in similar cases but also must reflect the special aggravating and mitigating factors on a case by case basis.

Order

26. Utilizing a suspension range of 3-6 months as suggested by the cases as a starting point in this case, and accounting for the additional aggravating factors of lying to multiple clients over a span of numerous years, and the Member's previous related record, and also taking into account the mitigating factors of the Member's cooperation and guilty pleas, the Committee orders that the Member be suspended for a period of nine months. The Member has been practicing to a limited extent under conditions pending this disposition and in order to provide time for the Member to transition his active files to another lawyer or law firm the suspension shall commence February 15, 2014. In addition, the Member is to pay the costs of this proceeding in the amount of \$4,130.00 to the Law Society of Saskatchewan prior to the Member being allowed to resume practice or such other period as may be allowed by the Chair of Discipline. Finally, it is ordered that upon the expiry of the suspension and upon the Member's return to practice, the Member shall practice under the same conditions as are presently imposed upon him, such conditions to be reviewable after three years from when he resumes practice.

Dated at the City of Swift Current in the Province of Saskatchewan this 10th day of December, 2013.

"Robert R. Heinrichs"
Chair, Discipline Committee

AGREED STATEMENT OF FACTS AND ADMISSIONS

In relation to the Formal Complaint dated June 19, 2012, as amended, alleging that he:

1. Did fail to serve the following clients in a conscientious, diligent and efficient manner:

- a. B.D.;
- b. R.A.;
- c. G.C.;
- d. S.S.;
- e. T.L.;
- f. M.O.;
- g. J.W.;
- h. E.K.; and
- i. B.M.

2. Did intentionally mislead the following clients as to the status of their legal matters:

- a. B. D.;
- b. E.K.; and
- c. J.W.

3. Did, on May 25, 2010, recklessly provide false information to Law Society of Saskatchewan Complaints Counsel in connection with the status of various files.

Jurisdiction

27. Bradley David Tilling (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.

28. The Member is currently the subject of a Formal Complaint initiated by the Law Society dated June 19th, 2012. The Formal Complaint is comprised of the allegations noted above. The original Formal Complaint was served upon the Member on June 26, 2012. Attached at **Tab 2** is a copy of the original Formal Complaint along with proof of service in the form of an Acknowledgement of Service. The Member intends to plead guilty to the allegations and particulars set out in counts #1, #2 and #3.

Background of Complaint

29. The details of this matter came to light as a result of two separate complaints from members of the public in February and May of 2010. After the second complaint was brought to the attention of the Member, the Member attended at the offices of the Law Society on May 25, 2010 to respond to the two complaint matters in person and to disclose a number of other potential incidents of conduct unbecoming, some of which form the subject matter of the allegations listed above. A subsequent self-report revealing other instances of conduct unbecoming occurred on July 20, 2010.

Particulars of Conduct

Allegation #1

B.D.

30. The B.D. complaint originated after B.D. fired the Member as his legal counsel and took his file to another lawyer. The solicitor-client relationship between B.D. and the Member ended as a result of a lack of progress in relation to the file.

31. B.D. first contacted the Member in December of 2008 to assist him with litigation against a construction contractor. In January of 2009, B.D. reviewed and approved a draft Statement of Claim that the Member had prepared.

32. Throughout the balance of 2009, the Member failed to advance B.D.’s litigation file in any way. The Member did not issue the Statement of Claim that had been drafted and did not serve it upon the proposed defendant. As a result of the Member’s lack of diligence in relation to the matter, the limitation period within which a claim needed to be commenced had expired.

33. The Member has been sued by his client in connection with this matter.

R.A.

34. The R.A. matter came to the attention of the Law Society as a result of a self-report by the Member during his personal attendance at the Law Society on May 25, 2010.

35. R.A. retained the Member on October 26, 2007 to initiate a claim after suffering a slip and fall injury on October 17, 2007. A written retainer and medical authorizations were signed on or about October 26, 2007.

36. After the initial meetings, the Member appears to have done nothing to advance the personal injury claim. As of the date of the self-report in May of 2010, the file consisted of a rough draft precedent personal injury claim and a few phone message notes. The Member had done nothing to advance the personal injury claim between October 2007 and May 2010 nor did he follow up with his client in any way. The Member stated that the file had, at one point, been diarized for July 21, 2009, and had then simply sat in his office thereafter.

37. The Member has been sued by his client in connection with this matter.

G.C.

38. The G.C. matter was another file raised by the Member as a self-report during the May 25, 2010 meeting.

39. G.C. has suffered a slip and fall injury at a night club on December 3, 2005. A retainer was signed shortly after the injury. The client was interviewed and a letter was sent to the proposed defendant on January 5, 2006. The Member undertook some research as to the owners of the corporate defendant. The Member requested \$200 to cover the issuance of the Statement of Claim which the client provided to him immediately. Throughout 2006 the client provided updates and medical information to the Member. The Member prepared a draft Statement of Claim in May of 2006. The file did not progress beyond that point up to 2010. No claim was ever issued or served in relation to this matter. The client began to contact the Member asking for updates and the Member responded by saying that he did not have time to work on the file.

S.S.

40. The S.S. matter was also raised by the Member as a self-report on May 25, 2010.

41. The S.S. matter also related to a slip and fall claim. S.S. had fallen in a parking lot on December 15, 2005 and retained the Member in January of 2006. A draft Statement of Claim was prepared by the Member and provided to S.S. in February of 2006. In March the Member requested \$200 to cover the cost to issue the Statement of Claim. By May 2006, the Statement of Claim appeared ready to be issued and a court runner sheet was prepared. The claim was never issued and never served. The last activity on the file was a contact from the client providing contact numbers in September of 2006. Nothing further happened on the file between September 2006 and the Member's self-report.

T.L

42. The T.L matter was the last matter that the Member self-reported to the Law Society during the May 25, 2010 meeting.

43. T.L. retained the Member on March 16, 2007 in relation to an injury he sustained while in hospital on October 7, 2006. T.L. was dropped by hospital staff and broke his collar bone. A variety of other health issues meant that this injury caused this client particular difficulty.

44. The Member's work on the file did not progress beyond preparing a draft Statement of Claim sometime in 2007. The last communication on the file was a February 2008 email exchange between T.L. and the Member regarding T.L.'s income prior to his injury. The draft claim was never issued and never served. T.L. passed away in June of 2009. During the course of the file, the Member informed T.L. that steps were being taken to advance the litigation when, in fact, the work was not being done.

M.O.

45. Several other files came to light after the Member's initial self-report. The M.O. matter was one of these files.

46. M.O. retained the Member to deal with litigation surrounding a negligently constructed home. The M.O. case was part of a larger collection of files relating to the same type of issue. The Member represented a number of clients in relation to more than a dozen homes. M.O. rejected an initial offer of settlement made by the home builder. In approximately February of 2006 the Member and M.O. began discussions about commencing an action against the builder (given the fact that M.O. was unwilling to accept the voluntary settlement amount). On February 9, 2006, the Member discussed certain things that he wanted to arrange before commencing the action. The Member failed to follow up with M.O. after that. The next contact was not until July 2008, then nothing further to the point of the Law Society becoming involved in May 2010.

47. The Member never issued a Statement of Claim in this matter giving rise to potential limitation issues.

J.W.

48. Another file that came to light after the initial self-report was the J.W. file. This was a criminal file wherein J.W. was charged with sexual assault and acquitted after a trial. The focus then transferred to getting J.W.'s job back, which he had lost after the charged had been laid. J.W. worked in a unionized environment.

49. On November 1, 2004, the J.W.'s union declined to pursue a grievance in relation to J.W.'s termination. For approximately two and a half years the Member made some efforts to convince the union to change their mind without success. In May 2007 the discussion turned to bringing an action against the union for failing to assist J.W. and J.W. instructed the Member to commence such an action. The Member did not advance the file and did not commence an action against the union. The Member acknowledges that limitation periods were missed due to his lack of diligence. The Member acknowledged that he did not have experience in this area of law and should not have agreed to take on this matter.

E.K.

50. The Member first acted for E.K. on a family dispute between her and her mother with respect to E.K.'s entitlement to certain monies. In April of 2007 the client retained the Member to pursue an action against E.K.'s mother regarding some perceived misleading activity with respect to the amounts that were paid to her. The client was convinced that paperwork she had received in relation to monies she had received was inaccurate and she was paid less than what she was due. A December 16, 2008 letter from E.K. was the last communication on the file to the Member. The Member did not follow up with the client and never issued a Statement of Claim.

B.M.

51. The Member acted for B.M. on a criminal mischief charge originating in July of 2007. The charge stemmed from B.M.'s conduct in her workplace and she was terminated from her employment. She was found guilty in relation to the mischief charge. B.M. then asked the Member to bring a claim for wrongful dismissal against her employer. The Member did issue the claim on June 23, 2009. However, the claim was never served upon the employer within the 6 month time limit or at all. The Member never advised client of poor chances of success nor of the fact that he had simply done nothing after issuing the Statement of Claim. There was no follow up with the client.

Allegation #2**B.D.**

52. As is set out above, the Member failed to advance the B.D. litigation matter in any way for approximately one full year (most of 2009). During this period the Member intentionally misled B.D. by informing him that steps had been taken when they had not been. The following are examples of instances of misleading on the part of the Member:

- a. In January of 2009 the Member advised B.D. that the Statement of Claim had been served;
- b. The Member advised B.D. that the matter was in court in March of 2009 but that neither the defendant nor his counsel appeared;
- c. The Member advised B. D. that the defendant's counsel went to court to get more time to respond to the claim and the matter was adjourned to late May;
- d. In June 2009, the Member advised B.D. that the contractors insurers had become involved;
- e. The Member advised B. D. that the court was going to release a decision on October 30, 2009; and
- f. On October 30, 2009 the Member advised B.D. that opposing counsel did not appear and that the judge adjourned the matter to December 18, 2009.

53. None of the updates that the Member had provided to B.D. noted above were true. Nothing had been done on the file and no claim or court file existed. After B.D. heard nothing from the Member after December 19, 2009 and after being unable to reach him in early January,

B.D. terminated his relationship with the Member. B.D.'s new lawyer conducted a search of the court file and found no action pertaining to B.D.

54. The B.D. matter represents the most severe example of misleading by the Member in terms of frequency and false detail provided. The Member states that B.D. pushed him for information more than the other clients which gave rise to the frequent instances of misleading.

J.W.

55. As is set out above, the Member failed to advance J.W.'s claim against the union. During the period of time between May 2007 and May 2010, the Member intentionally misled J.W. by informing him that steps had been taken in the litigation matter when they had not been. The information provided to J.W. during this period was false and nothing had been done to advance the file against the union. The Member failed to express his misgivings about his client's instructions. The misleading information provided to J.W. was more general in nature in the form of assurances that the matter was proceeding when in fact it was not. J.W. did not press the Member for information as B.D. had done.

E.K.

56. As is set out above, the Member failed to advance E.K.'s claim against her mother. While E.K. was the Member's client, he intentionally misled her as to the steps that were being taken on the file specifically that the matter was progressing when, in fact, it was not. The Member failed to express his misgivings about the client's instructions. Again E.K. did not press the Member as B.D. had so the frequency and specificity of the misleading was less severe.

Allegation #3

57. On May 25, 2010, the Member self-reported to the Law Society in relation to several files on which he knew he had been dilatory and or misled his clients. During his self-report the Member was asked the extent of the problems within his practice and specifically if there were any other "problem files". The Member provided assurances to the Law Society stating that the files that he had reported that day were the only files on which there were problems. The Law Society moved forward on the basis that they had received full disclosure of problem files from the Member. Approximately two months after his initial report, and after arrangements had been made between the Member and the Law Society which would allow the Member to continue to practice, the Member disclosed four more problem files, specifically, M.O., J.W., E.K. and B.M. All of the newly disclosed files were similar in nature to the previously disclosed files and each involved serious matters, specifically E.K. and J.W. which involved misleading clients.

58. When the Member provided assurances to the Law Society that the first batch of problem files he disclosed were the only problem files associated with his practice, he did so recklessly without knowing whether or not the assurances were true or false. Due to the dilatory state of the Member's practice he himself did not know the extent of his file problems or the status of all of his files. After conducting a file review with his firm mate at the request of the Law Society the Member discovered the M.O., J.W., E.K. and B.M. files and disclosed them to the Law Society on July 20, 2010. The assurances that the Member provided on May 25, 2010 as to there being no further problem files beyond those initially disclosed were false.

Prior History

59. The Member has a prior discipline history as follows:
- i. February 2004 – 1 Month Suspension, costs [**Tab 3**]
 - ii. Dilatory practice – failure to advance an appeal on behalf of his client when he had undertaken to do so; and
 - iii. Misleading client and a fellow member as to the status of the appeal;
 - iv. January 5, 2005 – Reprimand; fine, costs [**Tab 4**]
 - v. Failure to co-operate with Law Society Investigator; and
 - vi. Counseling client to sign an Affidavit attaching exhibits that did not yet exist.