PETER V. ABRAMETZ
HEARING DATE: February 14, 2024
DECISION DATE: February 28, 2024

***Law Society of Saskatchewan v. Peter V. Abrametz*, 2024 SKLSS 1**
IN THE MATTER OF *THE LEGAL PROFESSION ACT, 1990*
AND IN THE MATTER OF PETER V. ABRAMETZ,
A LAWYER OF PRINCE ALBERT, SASKATCHEWAN

DECISION OF THE HEARING COMMITTEE FOR THE LAW SOCIETY OF SASKATCHEWAN

Hearing Committee:	Rochelle Wempe, Chair Leah Howie Rikki Boté
Counsel:	Tim Huber, K.C.: Law Society Peter V. Abrametz: on his own behalf

INTRODUCTION

1. The Hearing Committee of the Law Society of Saskatchewan comprised of Rochelle Wempe as Chair, Leah Howie, and Rikki Boté (the "Committee") convened by videoconference on February 14, 2024 to hear this matter. Counsel for the Law Society was Tim Huber, K.C. and the Member, Peter V. Abrametz, appeared on his own behalf (the "Member").

2. Neither counsel nor the Member had any objections to the composition or jurisdiction of the Committee. The Member indicated that as part of the joint submission he would not challenge the jurisdiction of the Committee.

3. Following a hearing that spanned several days in 2017, the Member was found guilty by the original Hearing Committee of conduct unbecoming of a lawyer in that he:

1. did, in relation to the following clients, effect withdrawals of trust funds for the payment of fees, disbursements or other expenses in a manner contrary to Law Society of Saskatchewan Rule 942(3):

a. M.G.;
b. E.M.;
c. S.F.;
d. K.S.;
e. A.K.;
f. J.M.;
g. A.N.; and
h. E.H.

2. did knowingly cause trust cheques to be issued to a fictitious person for the purpose of effecting a transfer of trust funds for payment to himself;

4. did fail to maintain proper books and records in relation to his legal practice contrary to Part 13(H) of the Law Society of Saskatchewan Rules in relation to the following client matters:

a. M.G.;
b. E.M.;
c. S.F.;
d. K.S.;
e. A.K.;
f. J.M.;
g. A.N.; and
h. E.H.

5. did enter into or continue a debtor/creditor relationship with the following clients (loaning money) when his interests and the interests of those clients were in conflict and failed to ensure that:

a. the transaction was a fair and reasonable one;
b. that its terms were fully disclosed to the client in writing in a manner that is reasonably understood by the client;
c. the client was given a reasonable opportunity to seek independent legal advice about the transaction;
d. the client consented in writing to the conflict of interest; and
e. there was no appearance of undue influence; in relation to the following client matters:

i. A.N.;
ii. Doris S.;
iii, Deanna S.;
iv. R.B.;
v. L.H.;
vi. C.J.;
vii. D.M.;
viii. D.J.;

ix. C.M.;
x. T.H.; and
xi. R.B.

4. After the original Hearing Committee's findings of conduct unbecoming and just prior to the penalty phase, the Member brought an application to stay the proceedings on the basis of delay. That application was dismissed, and original Hearing Committee sentenced the Member to be disbarred and to pay costs of $58,645.24.

5. The Member then successfully applied to the Court of Appeal to stay the disbarment pending his appeal after serving 36 days of his penalty. The Member appealed all aspects of the original Hearing Committee decision including the decision on the stay application.

6. In *Abrametz v Law Society of Saskatchewan*, 2020 SKCA 81, the Court of Appeal overturned the Hearing Committee decision on the stay application due to delay and effectively ended the proceeding

7. The Court of Appeal did not overturn any aspect of the original Hearing Committee's findings on the conduct unbecoming. Those findings, therefore, remain valid and are the facts upon which this new Hearing Committee must base its penalty decision.

8. The Law Society of Saskatchewan then appealed the matter to the Supreme Court of Canada. In *Law Society of Saskatchewan v. Abrametz*, 2022 SCC 29, the Court reversed the decision of the Saskatchewan Court of Appeal to stay the matter due to delay.

9. The Supreme Court of Canada also referred the matter back to the Court of Appeal for reconsideration of the outstanding matters left undetermined in the appeal, specifically the aspects of the appeal related to the penalty imposed by the original Hearing Committee.

10. In *Abrametz v Law Society of Saskatchewan*, 2023 SKCA 114, the Court of Appeal overturned the Penalty Decision and the costs award of the original Hearing Committee and referred the issues of penalty and costs back to the Hearing Committee for reconsideration.

11. In the intervening period between the original Hearing Committee decision and the decision of the Court of Appeal to refer the penalty back to the Hearing Committee, one of the members of the Hearing Committee passed away, and another was appointed to the bench. The Hearing Administrator for the Law Society of Saskatchewan, therefore exercised his powers under the Rules to reconstitute a new Hearing Committee to allow this matter to be concluded. The Committee again notes that there were no objections by either the Member or counsel for the Law Society to the jurisdiction of the new Hearing Committee appointed by the Hearing Administrator.

12. The Notice of Hearing produced by counsel for the Law Society and consented to by the Member was filed and marked as Exhibit L-1 in relation to this proceeding. It is appended to this Decision.

13. The original Hearing Committee decision dated January 10, 2018 produced by counsel for the Law Society and consented to by the Member was filed and marked as Exhibit L-2 in relation to this proceeding. It is also appended to this Decision.

14. The parties proposed a joint submission on penalty which included the following sanctions:

> a) Peter V. Abrametz will be granted permission to resign his membership with the Law Society of Saskatchewan by the Hearing Committee;
> c) Costs in the amount of $25,000 to be deposited with the Law Society of Saskatchewan in advance of the Penalty Hearing.

15. On February 14, 2024 the new Hearing Committee accepted the joint submission with written reasons to follow. These are the written reasons.

FACTS

16. As stated earlier, the facts underlying the finding of conduct unbecoming which are the basis for the new Hearing Committee's decision on penalty are those found by the original Hearing Committee decision (Exhibit L-2). Through all the proceedings in the Court of Appeal and the Supreme Court no errors were found, and the original Hearing Committee's findings of conduct unbecoming remain valid.

17. The Supreme Court succinctly summarized the facts in their decision as follows:

> [6] In 2012, the Law Society commenced an audit investigation of Mr. Abrametz's financial records due to apparent irregularities in the use of a trust account. On the eve of a visit by investigators to his office in December 2012, Mr. Abrametz self-reported to the Law Society that he had failed to promptly deposit more than $36,000 in fees into his office account.
>
> [7] The Law Society's investigation related to eight transactions by Mr. Abrametz. In
> seven of these, Mr. Abrametz had issued cheques to clients that were then endorsed by the clients and cashed by Mr. Abrametz. In the other case, he had issued three cheques to a fictitious person, endorsed that false name on the cheques and cashed them. In addition, Mr. Abrametz had on 11 occasions advanced money to clients, relating to settlement funds, charging them a flat 30 per cent fee of the amount advanced, as well as a 30 per cent contingency fee, and interest.

18. Although the investigation resulted in seven charges being laid against the Member, the original Hearing Committee only found Mr. Abrametz guilty of four of those

charges. The facts relating to each of those four charges were summarized by the Court of Appeal as follows:

> (a) Charge 1 was for breach of LSS Rule 942(3), which required that trust funds for the payment of fees, disbursements or other expenses be withdrawn by a cheque payable to the member's general account. On seven occasions, Mr. Abrametz issued cheques to clients that were then endorsed by the clients and cashed by him. In this way, Mr. Abrametz received payments for his benefit without the funds having been first deposited in his law office general account. Mr. Abrametz self-reported these transactions on the eve of the investigatory audit and acknowledged at the conduct hearing that he had failed to comply with the applicable Rule.
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> (b) Charge 2 was also for breach of Rule 942(3). Mr. Abrametz issued three cheques drawn on his trust account to a fictitious person – being a name that his family had jokingly used to refer to him in the past. Those payments also resulted in the diversion of funds to Mr. Abrametz, enabling him to personally receive payments that were "off the books".
>
> (c) Charge 4 was for the creation of records relating to the transactions that were the subject of Charges 1 and 2, which did not accurately reflect aspects of those transactions, including the fact that legal fees had been paid to Mr. Abrametz personally rather than to his law firm.
>
> (d) Charge 5 was for breaches of provisions of Chapter VI of the Code that related to conflicts of interest which prohibited lawyers from entering into a debtor-creditor relationship with their clients. Those transactions were described as follows in Abrametz CA:
>
> > [46] As to Charge 5, the Hearing Committee found that Mr. Abrametz had advanced money to clients and charged them a 30 per cent flat fee of the amount advanced in addition to his usual 30% contingency fee. Mr. Abrametz did not deny those transactions had occurred but characterized them as advances rather than loans. There were many such advances - 128 in 2010 for a total of $55,145.36, a total of $45,306.00 in 2011, and more in earlier years. Mr. Abrametz also argued these advances did not constitute a business transaction with a client within the meaning of Chapter VI of the relevant version of the Code, which formed part of the Rules.

ANALYSIS AND REASONS

Statutory Authority

19. The authority of this Hearing Committee to impose the proposed joint submission is contained in Law Society Rule 1131. Rule 1131 provides that where there is a finding of conduct unbecoming the Hearing Committee may order one or more of a number of penalty options. Permission to resign, as a penalty outcome that may be imposed by the Hearing Committee, is provided for in section 1131(3)(a)(viii) and the authority to order costs is contained in 1131(3)(a)(vi).

Joint Submissions

20. The law with respect to joint submissions in a regulatory context has been reviewed by other hearing committees of the Law Society of Saskatchewan and the courts on many occasions including in the decisions of: *Rault v Law Society of* Saskatchewan, 2009 SKCA 81, paras 17 – 30, *Law Society of Saskatchewan v Martens*, 2016 SKLSS 12,at paras 41 - 42, and *Law Society of Saskatchewan v Buitenhuis*, 2020 SKLSS 2 at para 15. Also important to this area of the law is the decision of *R v Anthony-Cook*, 2016 SCC 43 wherein the Supreme Court confirmed a stringent public interest test be applied by a trial judge when deciding whether to reject a joint submission on sentence in the criminal context.

21. The importance of deference to joint submissions on penalty in disciplinary matters is now well established. It has been said a joint submission should only be departed from if it is "unfit" or "unreasonable" or "contrary to the public interest" and should not be departed from "unless there are good or cogent reasons": *Rault v Law Society of Saskatchewan*, 2009 SKCA 81 at para 28 (. A joint submission should be accepted unless it "is outside a range of penalties [that are] reasonable in the circumstances": *Law Society of Upper Canada v Paskar*, [1996] LSDD No 189 at para 81.

22. A joint submission may be disregarded when it is "wholly inappropriate having regard to the nature of the conduct involved": *Law Society of Upper Canada v Orzech*, [1996] LSDD No 56 at 6. It may be departed from where the "penalty is so disproportionate to the underlying misconduct and circumstances as to be contrary to the administration of justice or would be such as to bring the administration of justice into disrepute": *Re Gay*, [2005] OCPSD No 2 at para. 12.

23. In *Law Society of Saskatchewan v. de Whytell*, 2020 SKLSS 7at para. 7, the Hearing Committee noted it was clear from the decisions that:

> a hearing committee is expected to assess joint submission to ensure that they reflect an adequate concern for the protection of the public and the credibility of the legal profession. At the same time, the committee should accord deference to the efforts of the parties and their representatives to reach an accord on a reasonable outcome. The rationale for this deference is based on the idea that it will encourage co-operation by members with the disciplinary process and represent an effective stewardship of resources by obviating the need for extensive hearing of evidence.

24. The first step in the analysis is to ask whether the proposed penalty falls within a range of penalties that are reasonable and appropriate in the circumstances of this case. If it falls within that range, it should not offend the other principles articulated by past cases and it should be followed.

25. While the Hearing Committee in this case was of the view that the joint submission put forward by counsel for the Law Society and the Member was at the low end of the range, taking into account the principles of sentencing including the aggravating and

mitigating factors (as directed by the Court of Appeal), the Committee has concluded that the joint submission was within the appropriate range of penalties and ought not to be interfered with.

Application of key principles of sentencing

26. The relevant principles of sentencing which the Committee must apply include public protection, deterrence, parity and weighing the aggravating and mitigating factors.

27. The Saskatchewan Court of Appeal in *Abrametz v Law Society of Saskatchewan*, 2023 SKCA 114 (Court of Appeal Decision #2) provided a breakdown of the key considerations as follows:

> [74] … As Wilkinson J.A. observed in Merchant 2009, "the reasonable range of sentences in disciplinary matters is elastic…[and]…will be impacted by considerations of age, experience, discipline history, the unique circumstances of the member, and the nature of the conduct complained of" (at para 95). In Gavin McKenzie, Lawyers and Ethics: Professional Responsibility and Discipline, loose-leaf (2023-2)(Toronto: Thomson Reuters, 2018) at 26:18 (WL) (McKenzie), the learned author notes that specific deterrence, general deterrence and, in appropriate cases, improved competence, rehabilitation, and restitution are relevant, and offers this overview of considerations that are often taken into account:
>
> > Factors frequently weighed in assessing the seriousness of a lawyer's misconduct include the extent of injury, the lawyer's blameworthiness, and the penalties that have been imposed previously for similar misconduct. In a 2022 decision [Abrametz SC], the Supreme Court of Canada held that the presence of an abuse of process may be considered when determining the appropriate penalty. In assessing each of these factors, the discipline hearing panel focuses on the offence rather than on the offender and considers the desirability of parity and proportionality in sanctions and the need for deterrence. The panel also considers an array of aggravating and mitigating factors, many of which are relevant to the likelihood of recurrence. These aggravating and mitigating factors include the lawyer's prior discipline record, the lawyer's reaction to the discipline process, the restitution (if any) made by the lawyer, the length of time the lawyer has been in practice, the lawyer's general character, and the lawyer's mental state. Alcoholism, drug addiction, stress caused by financial and matrimonial difficulties, and mental illness are common factors in discipline cases and are material to the assessment of penalty in cases where a causal relationship exists between the lawyer's condition and the misconduct being considered. (footnotes omitted)
>
> [75] In James T. Casey, Regulation of Professions in Canada, loose-leaf (2023-6) (Toronto: Thomson Reuters, 1994) at 14:3 (WL) (Casey) the learned author identifies a slightly different non-exclusive list of factors that have been treated as mitigating - "attitude" since the offence was committed, as a less severe sanction may be imposed where the person genuinely recognizes that their conduct was wrong, with the caveat that there is authority that while remorse can be a mitigating factor, a lack of remorse cannot be an aggravating factor, in circumstances where the offender honestly

believes in their innocence (D'Mello v Law Society of Upper Canada, (2015), 2015 ONSC 5841);

- the age and experience of the offender,

- the offender's disciplinary record;

- entering a guilty plea where doing so shows an acceptance of responsibility; provided that there is authority that it is an error to treat an explanation offered in an attempt to mitigate the sanction as an aggravating factor (McLean);

- whether restitution has been made;

- the good character of the offender; and

- a long unblemished record of public service.

[76] As Casey also observes, aggravating factors may include very serious misconduct, planning and deliberation, the vulnerability of those affected, and the impact of the misconduct on the client and others.

28. The primary consideration in all Law Society discipline proceedings is the protection of the public. This is clearly set out in section 3.1 of *The Legal Profession Act 1990*, SS 1990-91 c L-10.1 which states that the Law Society's mandate is "to protect the public by assuring the integrity, knowledge, skill, proficiency and competence of members".

29. Closely related 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 conduct of the Member must be dealt with in a way that both protects the public and fosters the public's confidence in the legal profession. While the protection of the public remains paramount, maintaining public confidence in the profession is also in the public interest.

30. The penalty should also ensure specific deterrence to the Member and general deterrence to the profession as a whole. In this particular case, given the Member's intention to resign, the emphasis is on general deterrence. The membership must understand that conduct like that of the Member is unacceptable.

31. Although mitigating and aggravating factors are less of a consideration where joint submissions are involved, the presence of aggravating and mitigating factors still serves to delineate the appropriate range of penalty in a particular case. The aggravating and mitigating factors in the present case are relevant to the Hearing Committee's considerations as to whether the penalty being advanced in the joint submission is appropriate and within the range.

32. The Committee takes direction from the Court of Appeal's recent decision (*Abrametz v Law Society of Saskatchewan*, 2023 SKCA 114 at para. 128) where they held that the mitigating factors which the Committee must consider in deciding penalty included the following:

i. Mr. Abrametz's self-report and cooperation with the investigation of the charges;
ii. The fact that Mr. Abrametz had practiced under conditions for approximately six; and years.
iii. Mr. Abrametz's long career and lack of a prior record.

33. In addition to the factors outlined by the Saskatchewan Court of Appeal, the Committee is also of the view that it is a mitigating factor that Mr. Abrametz has agreed to the joint submission, rather than contesting the penalty.

34. The Committee finds that the main aggravating factor relevant to the penalty in this case is the seriousness of the conduct including:

i. The fact that many of the clients were vulnerable individuals;
ii. The amount of money involved;
iii. The fact that the conduct was deliberate and prolonged;
iv. The fact that the conduct included serious trust account violations; and
iv. The fact that the Member went as far to create a fictitious person in carrying out the conduct.

35. At paragraphs 122 – 132 the Court of Appeal also directed that parity was another important consideration in determining a proportionate sentence. The Court of Appeal held that the original Hearing Committee's flawed approach to aggravating and mitigating circumstances caused it to err in its application of the parity principle. It is noteworthy that the Court of Appeal stated that should not be taken as having decided that disbarment cannot be considered as a possible sanction by the Hearing Committee when it rehears this matter (at paragraph 132)

36. The Hearing Committee is of the view that allowing the Member to resign strikes a balance between the aggravating and mitigating factors and takes into account the Court of Appeal's comments on the appropriate sentence.

37. Rules 724 and 727 provide that members of the Law Society of Saskatchewan cannot retire or resign their membership via simple resignation while they are subject to outstanding discipline. The discipline proceedings must be concluded. The Member's interest in resigning as a member of the Law Society is met by the joint submission. Likewise, the interest of the Law Society in concluding the outstanding proceedings against the Member, as well as its interest in seeing the Member cease practice are also achieved through permitting the Member to resign. Given that the Member has left practice, the public is protected from him continuing to practice.

38. The Hearing Committee is also of the view that a reduction of the costs that the Member must pay to $25,000 takes into account the Court of Appeal's comments at para. 136 of their decision in *Abrametz v Law Society of Saskatchewan*, 2023 SKCA 114, where they overturned the previous costs order made by the original Hearing Committee:

> [136] I would also set aside the Costs Award made by the Hearing Committee. That award was made in the context of the Penalty Decision and was accordingly based on the Hearing Committee's findings and reasoning, which will be reconsidered when it rehears the matter. For that reason, the matter of costs should be assessed by the Hearing Committee after it has determined the penalty to be imposed on Mr. Abrametz, in light of its findings and reasoning in what will be a new penalty decision.

39. Applying all these principles and weighing the mitigating and aggravating factors, the new Hearing Committee finds that the joint submission, allowing the member to resign and ordering him to pay $25,000 in costs is within the range of appropriate penalties. It is reasonable and is not contrary to the public interest.

ORDER

40. Therefore, pursuant to Rule 1131(3)(a)(viii) and 1131(3)(a)(vi) of the Rules of the Law Society of Saskatchewan, the Hearing Committee makes the following Orders:
41.

a) Peter V. Abrametz is granted permission to resign his membership with the Law Society of Saskatchewan; and
b) Peter V. Abrametz will pay costs to the Law Society in the amount of $25,000. This amount has already been paid to the Law Society.

DATED at Saskatoon the 28th of February 2024.

"Rochelle Wempe" (Chair)

"Leah Howie"

"Rikki Boté"

Law Society of Saskatchewan

C A N A D A	**)**
	)
PROVINCE OF SASKATCHEWAN	**)**
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T O W I T	**)**

IN THE MATTER OF THE LEGAL PROFESSION ACT, 1990
AND IN THE MATTER OF PETER V. ABRAMETZ, S.R.,
A LAWYER OF PRINCE ALBERT, SASKATHCEWAN

TO: PETER V. ABRAMETZ, S.R.

NOTICE OF PENALTY HEARING

You are hereby notified that a Penalty Hearing will be held in relation to the matters referred to in the attached Report of the Hearing Committee as follows:

Wednesday, February 14, 2024 at 2:00 p.m. via Teams

DATED at the City of Saskatoon, in the Province of Saskatchewan, this 20th day of December, 2023.

Greg Walen, K.C., Hearing Administrator
Law Society of Saskatchewan

The Law Society of Saskatchewan

PETER V. ABRAMETZ, SR.

HEARING DATES: May 17, 18, 19, 2017, August 9 & 10, 2017 and September 29th, 2017

HEARING DECISION DATE: January 10, 2018

Law Society of Saskatchewan v. Abrametz, Sr. 2017 SKLSS 1

IN THE MATTER OF *THE LEGAL PROFESSIONS ACT, 1990*

AND IN THE MATTER OF PETER V. ABRAMETZ, SR.,

A LAWYER OF PRINCE ALBERT, SASKATCHEWAN

DECISION OF THE HEARING COMMITTEE FOR THE LAW SOCIETY OF SASKATCHEWAN

Hearing Committee: David Chow, Chair
Judy McCuskee
Evan Sorestad

Counsel: Karen Prisciak, Q.C. - Conduct Investigation Committee
Gordon Kuski, Q.C. and Amanda Quayle - Member, Peter V. Abrametz, Sr.

INTRODUCTION

1. The Hearing of this matter commenced in Regina, Saskatchewan on May 17th, 2017 for three days before resuming for a further two days on August 9th, 2017. A final day of submissions by counsel took place on September 29th, 2017. The Hearing Committee requested further written submissions that were responded to by counsel on October 16th, 2017.

2. The Hearing was convened to consider a Formal Complaint issued by Complaints Counsel for the Law Society of Saskatchewan (the "LSS") dated October 13th, 2015. The Complaint alleges:

> ***THAT PETER V. ABRAMETZ, of the City of Prince Albert, in the Province of Saskatchewan is guilty of conduct unbecoming of a lawyer in that he:***
>
> ***1. did, in relation to the following clients, effect withdrawals of trust funds for the payment of fees, disbursements or other expenses in a manner contrary to Law Society of Saskatchewan Rule 942(3):***
>
> ***a. M.G.;***
>
> ***b. E.M.;***
>
> ***c. S.F.;***
>
> ***d. K.S.;***
>
> ***e. A.K.;***
>
> ***f. J.M.;***
>
> ***g. A.N.; and***
>
> ***h. E.H.***
>
> ***2. did knowingly cause trust cheques to be issued to a fictitious person for the purpose of effecting a transfer of trust funds for payment to himself;***

3. did falsify the signature of a fictitious person as an endorsement of his firm trust cheque for the purposes of effecting a transfer of trust funds for payment to himself;

4. did fail to maintain proper books and records in relation to his legal practice contrary to Part 13(H) of the Law Society of Saskatchewan Rules in relation to the following client matters:

a. M.G.;

b. E.M.;

c. S.F.;

d. K.S.;

e. A.K.;

f. J.M.;

g. A.N.; and

h. E.H.

5. Did enter into or continue a debtor/creditor relationship with the following clients (loaning money) when his interests and the interests of those clients were in conflict and failed to ensure that:

a. the transaction was a fair and reasonable one;

b. that its terms were fully disclosed to the client in writing in a manner that is reasonably understood by the client;

c. the client was given a reasonable opportunity to seek independent legal advice about the transaction;

d. the client consented in writing to the conflict of interest; and

e. there was no appearance of undue influence;

in relation to the following client matters:

i. A.N.;

ii. Doris S.;

iii, Deanna S.;

iv. *R.B.;*

v. *L.H.;*

vi. *C.J.;*

vii. *D.M.;*

viii. *D.J.;*

ix. *C.M.;*

x. *T.H.; and*

xi. *R.B.*

6. did breach his fiduciary duty he owed to the following clients by charging excessive fees and interest on loans and/or advances:

i. *A.N.;*

ii. *Doris S.;*

iii, *Deanna S.;*

iv. *R.B.;*

v. *L.H.;*

vi. *C.J.;*

vii. *D.M.;*

viii. *D.J.;*

ix. *C.M.;*

x. *T.H.; and*

xi. *R.B.*

7. did, contrary to the Law Society of Saskatchewan Rule 942(4), fail to pay money from his trust account expeditiously after a legal matter was concluded on the following matters:

a. *L.M.;*

b. *S.R.;*

c. *R.R.;*

d. *S.S.;*

e. *M.T.; and*

f. *J.T.*

3. At the outset of the Hearing, counsel for the Conduct Investigation Committee ("CIC") and counsel for Peter V. Abrametz (the "Member") indicated that there were no preliminary motions or objections to be made. However, as counsel took advantage of the opportunity to make opening statements, counsel for CIC requested that the Hearing Committee make an order pursuant to Rules 184(2) and 450(7) prohibiting the publication of the names of the clients or former clients whose matters formed the basis of the Formal Complaint against the Member. In expressing his consent to such an order, counsel for the Member asked that the order extend to the pseudonym used by the Member in the past and identified as P.S. herein. That requested was not opposed by counsel for CIC and an order was issued by the Hearing Committee accordingly.

4. There were three witnesses called to testify during the Hearing, namely:

   (a) John Allen, CPA, CA Auditor and Inspector for the LSS;
   (b) Brenda Abrametz, spouse of the Member; and
   (c) The Member.

5. The following exhibits were filed:

   CIC-1, binder of 438 disclosed documents from CIC;
   CIC-2, Notice of Hearing and proof of service;

R-1, binder of 308 disclosed documents from the Member;

R-2, binder of 165 supplemental disclosed documents from the Member;

R-3, February 11th, 2008 correspondence from the Member to the LSS; and

R-4, copies of cancelled trust cheques 004985 and 004732 issued to D.S.

6. It became apparent at the onset of the Hearing that many of the documents exhibited by each party were duplicates of other's documents. Unfortunately, the parties were unable to present a binder of agreed documents to the Hearing Committee.

TESTIMONY AT THE HEARING

A. JOHN ALLEN

7. Mr. Allen testified that he has been an accountant since 1972 and that he has been an Auditor and an Investigator with the LSS since 2000. His job description includes the performance of audits, review and investigation of trust and accounting activity performed by lawyers. His authority is derived from *The Legal Professions Act* (the "Act") and the *Rules of the Law Society of Saskatchewan* (the "Rules").

8. The Member was first brought to Mr. Allen's attention in 2012, as a result of an ongoing investigation into the law practice of Mr. Kristian Eggum Q.C. of Prince Albert. Mr. Eggum's trust account was shared with the Member as part of the Eggum, Abrametz & Eggum Law Firm.

9. Mr. Allen testified that he had arranged an on-site visit with the Member at his Prince Albert office to review a number of transactions of interest to the LSS. The majority of the transactions involved Saskatchewan Government Insurance ("SGI") personal injury settlement files which formed the bulk of the Member's law practice and which the Member acted almost exclusively under contingency fee arrangements.

10. That on-site visit was scheduled to occur on Dec 5th of 2012. Mr. Allen testified that in the early afternoon of December 4th, 2012, he received a fax from the Member self-reporting eight transactions that were admittedly non-compliant with the Rules.

11. The fax correspondence conceded that the Member had failed to promptly deposit money into his office account for legal fees on four client matters in 2008, one client matter in 2009 and three client matters in 2010. The Member reported that the total sum of money involved was $36,578.45.

12. Through the testimony of the various witnesses and their review of exhibited documentation at the Hearing, it was established that the sum of $36,578.45 was understated by $1,000.00. The amount of money that had not been promptly deposited on the E.H. matter was actually $1,953.00 rather than $953.00 as volunteered in the Member's self-report.

13. Mr. Allen testified that the on-site visit scheduled for December 5th, 2012 proceeded but, due to the self-report, the focus had shifted. It stretched out over three partial days and included review of files, trust ledgers, bank statements and discussions with the Member.

14. As a result of the investigation into the Member's practice including, but not limited to, the matters contained in his self-report correspondence of December 4th, 2012, the LSS sought to suspend the Member on an interim basis in February of 2013. Following objection from the Member's counsel, an agreement was reached with the LSS that allowed the Member to continue practicing under restrictions.

15. The Member continued to practice under conditions without incident while the LSS investigation continued.

16. A document entitled "Trust Report" and penned by Mr. Allen was issued on October 30th, 2014. The report summarized his investigation into the Member's practice

leading up to the imposition of practice conditions. Based largely upon the observations of Mr. Allen contained in that report, the LSS again sought to interim suspend the Member.

17. Negotiations between the LSS and the Member's counsel saw the Member continuing to practice under conditions that remain in place as of the date of this decision being issued.

B. Mrs. BRENDA ABRAMETZ

18. Mrs. Brenda Abrametz is the Member's spouse.

19. Mrs. Abrametz testified that she works part-time as an office manager in the Member's law office. She has done so for the last 14 years although her time in the law office has increased in the more recent years.

20. She advised that she was Chair of the Prince Albert local health region and, until recently, was engaged in various other business ventures.

21. She is very familiar with the workings of the Abrametz law office including the office accounting software. She is responsible for the month-end and year-end reconciliations and reporting for the office. She fills-in when the day-to-day bookkeeper is away from the office. She is the individual that endorses the annual TA-3 Practice Declaration, as the bookkeeper, on behalf of her husband's law firm.

22. She has some familiarity with specific files and clients of the law office although she is not responsible for legal work on the files.

23. She was instrumental in providing disclosure material to Mr. Allen and the LSS during the investigation in to the Member's self-report and in more general terms, his practice.

C. THE MEMBER

24. The Member is 68 years old and was admitted to the LSS in 1973.

25. He has practiced entirely in the Prince Albert region.

26. At the time the investigation into the Member's conduct was commenced in 2012, he was practicing in the firm of Eggum, Abrametz and Eggum.

27. The nature of the Member`s law practice has evolved over the years. In the last ten to fifteen years his practice has focused primarily in the area of claimant representation in SGI personal injury matters.

28. He currently maintains approximately 200 active files.

29. Many of the Member`s clients are people who are financially impecunious. Some have no bank account, no vehicle and no permanent home. Some struggle with literacy.

30. As is common in legal practices in smaller urban centers, the Member had many repeat clients with whom he formed long standing solicitor-client relationships.

31. The Member often arranged with clients, upon their request, to, as he termed it, advance money to them for a variety of purposes while their files were being guided through the SGI claim process.

32. In nearly every instance, the Member charged the client a fee of 30% of the value of the monetary advance regardless of the amount of time between the advance and the time the SGI settlement funds were made available to repay the Member.

33. The advance money, like other client file disbursements, was paid out of the general bank account used by the Member for his professional corporation. The monetary advances were not recorded in the clients' PC Law trust ledgers. They were tracked separately and paid as a disbursement, together with legal fees earned, from settlement funds posted to the clients' trust accounts.

THE CHARGES

CHARGE NUMBER 1

34. Mr. Allen testified as to each of the eight instances where it is alleged that the Member effected withdrawals of trust funds for the payment of fees, disbursements or other expenses in contravention of Rule 942(3).

35. That Rule states that a member who withdraws or authorizes the withdrawal of trust funds for the payment of fees, disbursements or other expenses, or for the payment to or on behalf of the client, shall effect the withdrawal by a cheque payable to the member's general account.

M.G. Matter

36. Mr. Allen outlined how on September 19th, 2008, the Member receipted a $22,300.00 settlement payment from SGI to the M.G. trust matter.

37. On that same date, two cheques drawn on the Eggum, Abrametz and Eggum Royal Bank of Canada trust account for that matter were issued to M.G. They were:

    (a) Cheque #10751 for $14,171.73 noted as "settlement funds"; and
    (b) Cheque #10752 for $6,000.00 also noted as "settlement funds".

38. Both cheques were subsequently endorsed by M.G.; however, only cheque #10751 was actually negotiated by M.G.

39. A copy of cancelled cheque #10752 for $6,000.00 illustrated that it was not only endorsed by M.G. but also endorsed by the Member before being cashed.

40. Mr. Allen testified that he concluded the Member had cashed trust cheque #10752 payable to M.G. and that the Member had received the $6,000.00 for his own benefit without having deposited the funds to the Member's law office account as required by the Rule.

41. Only days before Mr. Allen's on-site visit of December 5th, 2012, the Member generated an invoice from his professional corporation to account for the $6,000.00 that the Member had received personally through his cashing of trust cheque #10752 in 2008. Following issuance of the November 2012 invoice, the Member deposited $6,000.00 to his office account in satisfaction of that invoice .

E.M. Matter

42. This matter involved the payment of $10,428.14 by SGI to the Member's firm pursuant to a 2004 Court of Queen's Bench Judgment for the payment of costs related to the E.M. matter.

43. The payment was made in December of 2008, but was posted to the trust account of an entirely unrelated client matter, that of S.S., four months later on April 15th, 2009. The file receipt posting the payment to the trust account of the unrelated client matter noted that the $10,428.14 payment had been received from SGI with respect to P.S.

44. Mr. Allen questioned the member during the on-site visit in early December of 2012, as to who P.S. was. He testified that the Member advised him that P.S. was a pseudonym used by the Member.

45. Mr. Allen further testified that the Member advised him on December 5th, 2012, that the funds were posted to the trust account of S.S. by mistake on April 15th, 2009.

46. A copy of the December 2nd, 2008, SGI correspondence that accompanied the $10,428.14 cheque indicated that the funds were court ordered costs payable to the firm of Eggum, Abrametz and Eggum on the E.M. matter.

47. Mr. Allen conceded that the Queen's Bench Judgement of April 19th, 2004, did order costs payable to the Member's firm.

48. The trust ledger entry was never adjusted however by the Member to correct the fact that the money was actually related to the E.M. matter. Similarly, the Member never reversed the entry and paid it to the law office general account.

49. Subsequently, the Member issued three cheques from the S.S. trust account as follows:

    (a) Cheque #11686 issued April 15th, 2009 payable to P.S. for $1,500.00 noted as "other";

(b) Cheque #11810 issued May 25th, 2009 payable to P.S. for $5,000.00 noted as "other"; and

(c) Cheque #11811 issued May 25th, 2009 payable to P.S. for $3,928.14 noted as "other".

50. Each of the three cheques were endorsed by the Member using the P.S. pseudonym and then signed with the Member's regular signature before being cashed.

51. Mr. Allen concluded that the Member received the $10,428.14 for his own benefit without having deposited the money to the Member's law office account as required by the Rule.

S.F. Matter

52. On April 18th, 2008, the Member receipted an SGI settlement cheque to S.F.'s trust account. The following day the Member issued three cheques as follows:

(a) Cheque #10557 payable to S.F. for $5,907.60 noted as "settlement funds";

(b) Cheque #10558 payable to S.F. for $5,000.00 noted as "settlement funds"; and

(c) Cheque #10559 payable to the Member's professional corporation for $4,782.26 and noted "for services rendered".

53. Cheque #10559 for $4,782.26 was cashed and receipted to the Member's professional corporation in accordance with the LSS Rules. Cheque #10557 for $5,907.60 was endorsed and cashed by S.F. Cheque #10558 for $5,000.00 however was endorsed by both S.F. and the Member before being cashed.

54. Mr. Allen testified that he concluded that the Member received the $5,000.00 for his own benefit without the money having been deposited to the Member's law office account as required by the Rule.

K.S. Matter

55. In this instance, the Member issued trust cheque #10965 on October 30th, 2008, to K.S. for $5,000.00. The funds were paid from SGI settlement money posted to the trust account by the Member in November of 2006.

56. As Mr. Allen testified, the Member and K.S. both endorsed the $5,000.00 trust cheque before the cheque was cashed by the Member.

57. Mr. Allen concluded that the Member personally received the benefit of the $5,000.00 without the money having been deposited to his law office account as required by the Rule.

A.K. Matter

58. Mr. Allen testified that on July 21st, 2009, the Member receipted a payment to the trust account of A.K. for $15,000.00.

59. The payment represented SGI settlement funds payable to A.K. for which the Member was acting under a contingency fee arrangement.

60. Under the arrangement, the Member was entitled to 30%, being $4,500.00 of the settlement funds, as professional fees.

61. The Member issued two cheques on the same day that he receipted the settlement funds from SGI as follows:

    (a) Cheque #12058 payable to A.K. for $10,500.00 noted as "settlement funds"; and
    (b) Cheque #12059 payable to A.K. for $4,500.00 also noted as "settlement funds".

62. The member did not thereafter issue a cheque from trust for payment to his professional corporation for fees on the $15,000.00 of settlement money.

63. Cheque #12058 for $10,500.00 was endorsed by A.K. and cashed.

64. Cheque #12059 for $4,500.00 was endorsed by A.K. but subsequently endorsed and cashed by the member.

65. Based upon the documentation, Mr. Allen concluded that the Member received the $4,500.00 for his personal benefit without the money having been deposited to his law office account as required by the Rule.

J.M. Matter

66. Mr. Allen testified that the Member had receipted $4,397.31 of money to the J.M. trust matter as SGI settlement proceeds on April 26th, 2010.

67. Mr. Allen gave evidence that the J.M. file matter appeared to have been subject to a 35% contingency fee arrangement and as such the Member would have been entitled to fees of $1,539.06 plus taxes on the $4,397.31 of settlement funds.

68. On May 14th, 2010, the Member issued two cheques from trust. Both cheques were payable to J.M. and both cheques were noted as "settlement funds".

69. Cheque #763 was issued for $2,700.00. The cheque was endorsed and cashed by J.M.

70. Cheque #764 was issued for $1,697.31. This cheque was endorsed by J.M. but then subsequently endorsed and cashed by the Member.

71. Mr. Allen suggested that the amount of contingency fees and taxes that were due to the Member on the $4,397.31 was very similar to the amount paid to J.M. with cheque #764 that was then endorsed and cashed by the Member.

72. Mr. Allen concluded that the Member received the $1,697.31 for his personal benefit without the money having been deposited to his law office account as required by the Rule.

A.N. Matter

73. On May 21st, 2010 the Member receipted $28,383.66 as SGI settlement funds in two separate postings to the client trust ledger for A.N.

74. On that same date, the Member issued a trust cheque to A.N. for $1,000.00. The cheque was endorsed and cashed by A.N.

75. On May 25th, 2010, the Member issued four more cheques to A.N. as follows:

    (a) Cheque #801 payable to A.N. for $1,000.00 noted as "settlement funds";
    (b) Cheque #805 payable to A.N. for $3,000.00 noted as "settlement funds";
    (c) Cheque #806 payable to A.N. for $3,000.00 noted as "settlement funds"; and
    (d) Cheque #807 payable to the Member's professional corporation for $20,383.66 noted as "services rendered".

76. Mr. Allen testified that Cheque #806 was endorsed by A.N. and subsequently endorsed and cashed by the member.

77. Mr. Allen concluded that the Member received $3,000.00 for his personal benefit without the money having been deposited to his law office account as required by the Rule.

E.H. Matter

78. This file was not an SGI personal injury file but was a litigation file where the Member receipted $12,000.00 into trust for the benefit of E.H. on November 24th, 2009.

79. On the same day, the Member issued trust cheque #76 payable to the Member's professional corporation for $10,047.00 noted "for services rendered". The amount represented repayment of a $10,000.00 advance made to the client on or about October 30th of 2009.

80. On February 19th, 2010 a further trust cheque, #433, was issued by the Member payable to E.H. for $1,953.00 and noted as "other". This cheque was endorsed by E.H. and subsequently endorsed and cashed by the Member.

81. Mr. Allen concluded that the Member received the $1,953.00 for his personal benefit without the money having been deposited to his law office account as required by the Rule.

82. In summary of all eight instances of Rule 942(3) breaches alleged in Charge Number 1, the Member did not dispute that he had received the benefit of the funds that had been paid out of trust to the client and then endorsed back to the Member.

83. Further, the Member acknowledged that in each of the above instances the funds received by him were not deposited to his law office account until late November of 2012, just days before Mr. Allen's on-site visit.

84. Indeed, the Member`s self-report letter dated December 4th, 2012 conceded that on each of the eight client matters he failed to promptly pay the sums into his law office account.

CHARGE NUMBER 2

85. Mr. Allen testified that, during his December 2012 investigation, he discovered that in April and May of 2009 the Member had three trust cheques totaling $10,428.14 issued from the trust account of S.S. made payable to the pseudonym P.S. as follows:

    (a) Cheque #11686 payable to P.S. for $1,500.00 noted as "other";
    (b) Cheque #11810 payable to P.S. for $5,000.00 noted as "other"; and
    (c) Cheque #11811 payable to P.S. for $3,928.14 noted as "other".

86. By explanation, the Member advised Mr. Allen in December of 2012, that the $10,428.14 was posted, by inadvertent error, to the trust account of S.S.

87. It was clear that the funds were payable on the E.M. matter and had nothing to do with the S.S. matter.

88. It was agreed by both Mr. Allen and the Member that irrespective of what trust account the funds were posted to, the funds were not due and owing to E.M. or any other client. Pursuant to the Queen`s Bench order in the action brought by E.M. against SGI, the funds were costs payable to the Member`s firm.

89. The Member did not dispute the allegation that the cheques were issued from the client's trust account but did dispute that the funds were trust funds. It was apparent

from the S.S. trust ledger presented at the Hearing that the three separate trust cheques issued over a 40 day period totaling $10,428.14 were issued payable to P.S.

90. When Mr. Allen questioned the Member in early December of 2012 about who P.S. was, the Member volunteered that P.S. was a pseudonym used by the Member and his family as a running joke for the last forty years.

91. The member testified that he had used the pseudonym in the past to order a magazine subscription and to bid on silent auction items at charity events. Historically, the name had been used by his immediate family members as the culprit for unusual behavior or occurrences.

92. From time-to-time during the Hearing the Member shifted from using the term non-existent, pseudonym and nom de plume to describe P.S.

93. The evidence surrounding the past use of the name P.S. by the Member and his family was corroborated by Mrs. Abrametz.

CHARGE NUMBER 3

94. The Member conceded both during the on-site visit and during the Hearing that he had endorsed the signature on the back of the three trust cheques totaling $10,428.14 issued in 2009, to P.S.

95. He not only endorsed his own signature but he also endorsed a signature purported to be for the payee listed on the three trust cheques, that being P.S.

96. The Member insisted during examination in chief and cross examination that his endorsement of the trust cheques was compliant with *The Bills of Exchange Act* and that pursuant to section 20(5) of that act, a negotiable instrument made payable to a non-existent person may be treated as payable to the bearer.

97. The Member did not explain why there was a need to endorse the signature of non-existent P.S. if the cheque was believed by the Member to be negotiable by the Member as the bearer.

CHARGE NUMBER 4

98. In reviewing the client matters of

    (a) M.G.;
    (b) E.M.;
    (c) S.F.;
    (d) K.S.;
    (e) A.K.;
    (f) J.M.;
    (g) A.N.; and
    (h) E.H.

    Mr. Allen testified that he discovered documents suggesting that the Member did not maintain proper books and records in relation to his legal practice contrary to Part 13(H) of the Rules.

99. Indeed, counsel for CIC presented documentation through Mr. Allen's testimony to illustrate that multiple statements of adjustments had been prepared for particular transactions on several of the eight referenced client matters.

100. On some files, the statements of adjustments were not dated so Mr. Allen was unable to confirm when the statements of adjustments were prepared or in what order the multiple statements of adjustments were prepared for a particular file transaction.

101. There were files where statements of adjustments corresponded with what should have been properly claimed by the Member as fees for services rendered. There were however on those same files, alternative and conflicting statements of adjustments that corresponded with the client trust ledgers.

102. In those instances, the difference between the two statements of adjustments accorded with the amount of money received by the Member through the endorsement back to him of trust cheques issued to clients as settlement funds.

103. For example, on the M.G. matter, the Member had produced a statement of adjustments indicating that fees of 30% were payable to the law firm on the settlement award of $21,500.00.

104. That statement of adjustments was signed by the client. It was not dated.

105. Contrary to that signed statement of adjustments, $6,000.00 of the fees payable to the law firm under the contingency fee arrangement with M.G. was paid to M.G. through trust cheque #10752 as settlement funds. As mentioned above, Mr. Allen testified that this cheque was endorsed by the client and the Member before being cashed by the Member for his own benefit.

106. An alternative statement of adjustments on the M.G. matter was disclosed to Mr. Allen. Although not a requirement, the alternative statement of adjustments was neither signed by M.G. nor was it dated. This alternate statement of adjustments did correspond with the trust ledger for the M.G. matter. Unlike the signed statement of adjustments however, it did not correspond with the legal fees that were itemized on

invoice #338 issued by the Member's professional corporation on September 23rd, 2008.

107. During the investigation, the Member supplied a second invoice to Mr. Allen. The second invoice, #629, was issued four days before the self-report of December 4th, 2012, and four years after the M.G. file matter was concluded. It accounted for the $6,000.00 that should have been paid to the Member's law office account as fees and disbursement but which had been paid to the client and endorsed back to the Member personally.

108. Similarly, on the S.F. matter, the file contained a statement of adjustments that indicated fees payable to the Member of $4,706.95 for the motor vehicle accident claim and fees of $5,000.00 payable to the Member in relation to criminal file number 06454.

109. The statement of adjustments was signed and dated. It did not however correspond with the client trust ledger for S.F.

110. An alternative statement of adjustments was supplied by the Member to Mr. Allen during the investigation to correspond with the client trust ledger. It was neither signed nor dated.

111. That alternative statement of adjustments demonstrated the client's entitlement of $10,907.60. As indicated, the alternative statement of adjustments corresponded with the client trust ledger where two cheques were written from trust totaling $10,907.60. Both trust cheques were payable to the client but only the cheque for $5,907.60 was cashed by the client. The remaining trust cheque for $5,000.00 was endorsed and cashed by the Member.

112. With regard to the A.K. matter, the Member supplied a statement of adjustments to Mr. Allen from the file that appeared to indicate that no legal fees were paid on a partial settlement amount of $15,000.00 despite a contingency fee agreement being on the file requiring payment of 30% of any settlement. The total settlement amount was $20,742.02 for which fees should have totaled $6,222.61.

113. An account generated by the Member on this file confirmed fees of $6,222.61 were payable to the Member on the total settlement amount of $20,742.02. Invoices #239 and #815 dating back to 2008-2009 however totaled only $1,722.60 in fees. The total fees payable were $4,500.00 less than they should have been. As noted earlier, the Member endorsed and cashed trust cheque number #12059 payable to A.K. for $4,500.00 in July of 2009.

114. More than 3 years later, and just days before the self-report, the Member generated the third invoice, #630 dated November 30th, 2012 on the A.K. matter. The invoice was for exactly $4,500.00 and accounted for trust cheque #12059 endorsed back to and cashed by the Member in July of 2009. The invoice was inclusive of fees and taxes and when added together with the historical invoices #239 and #815, still did not accord with the statement of account generated by the Member.

115. In relation to the J.M. matter, the Member provided a statement of adjustments from the file that indicated fees were payable to the Member at 35% on settlement funds of $4,397.31. The client trust ledger for this client matter reported that no fees were paid to the Member on this settlement amount. The client trust ledger also indicated that J.M. received two trust cheques totaling the entire $4,397.31. The cheque for $2,700.00 was cashed by the client but the cheque for the remaining $1,697.31 was endorsed by the client back to the Member.

116. The statement of adjustments did not correspond with the client trust ledger and the way in which the trust cheques were actually issued by the Member from the J.M. trust account.

117. With regard to the remaining four client matters referenced under Charge Number 4, being E.M., K.S., A.N. and E.H., the statement of adjustments on each of the files, although not reflecting that some of the cheques payable to the client from trust ended up being cashed by the Member, did technically correspond with the specific way in which cheques were written and recorded in each of the client trust ledgers for those matters.

118. In each of the eight instances referenced in Charge Number 4, the Member generated correcting accounts and invoices just days before the on-site visit by Mr. Allen on December 5th, 2012, to account for the $37,578.45 of money that appeared, by review of the client trust ledgers, to have gone to the benefit of clients but in reality had been claimed for the benefit of the Member.

119. The Member and his counsel asserted that the Member's books and file records were accurate at all times such that the client trust ledger properly recorded the payee for all trust cheques issued by the Member's law office.

120. It was further submitted on the Member's behalf that once trust cheques are issued to clients there is no further obligation upon Lawyers to track who actually cashes the trust cheques.

121. Where multiple conflicting statements of adjustments were located on a client file, or where alternate statements of adjustments were disclosed by the Member and Mrs. Abrametz throughout the investigation process, it was suggested by both the Member and Mrs. Abrametz that the statements of adjustments that appeared to align with the client trust ledgers were the final and proper ones whereas the others were

presumably statements of adjustments that may have been prepared in draft prior to the client's review of the account and adjustments having been made by the Member.

122. Mrs. Abrametz further speculated that while some of the exhibited statements of adjustments were printed copies retrieved from the physical client files, others may have been subsequently printed from the clients' electronic computer files in furtherance of disclosure to Mr. Allen and therefore would not be dated or signed by the clients.

CHARGE NUMBER 5

123. Mr. Allen testified about his characterization of the debtor/creditor relationship that he says existed between the Member and his clients.

124. Client trust ledgers, statements of adjustments, cancelled cheques and Requisition for Service Requests signed by clients were all presented at the Hearing to illustrate that the Member was, in Mr. Allen's terms, routinely lending money through his professional corporation bank account to clients and charging them a flat fee amounting to 30% of the amount loaned in each instance.

125. Mr. Allen testified that the 30% fee was charged by the Member irrespective of how much money was provided to the client and irrespective of how long the money was left owing to the Member. This was confirmed by both Mrs. Abrametz and the Member with one exception, that of T.H. where the fee was not charged on money provided to the client. Of note is that T.H. left the Member's firm and hired new counsel. When the file was transferred from the Member's firm to the new lawyer, the 30% fee on money provided by the Member to the client was waived.

126. Calculations were supplied by Mr. Allen during his testimony to illustrate that the equivalent rate of interest charged by the Member, and represented by the 30% fee, ranged, in some cases, between 51.6% and 10,950% per annum depending upon the length of time the money remained due and owing to the Member.

127. Further, Mr. Allen testified that the 30% flat fee was in addition to the typical contingency fee rate of approximately 30% charged by the Member on money recovered on behalf of clients. He concluded therefore that, on the money provided to clients by the Member during the file litigation process, the clients were paying a total of approximately 60% back to the Member as a combined contingency and flat fee.

128. Mrs. Abrametz supplied sample interest and fee calculations from two companies, Settlement Lenders Inc. and Seahold Investments, as a comparison. Both companies are in the business of lending money to litigants on potential settlements.

129. Mrs. Abrametz supplied her calculations to illustrate that the fee being charged by the Member was not unreasonable when compared with her understanding of the interest and fees charged by the two professional lending institutions. In many instances however, the fee charged by the Member was greater than the interest and fee that would have been charged to the clients by the two lending institutions on similar amounts of money for similar periods of time.

130. By review of the Requisition for Service Request ("RSR") that was typically signed by the clients and retained on their files, it was apparent that the money was being provided to the clients for various reasons including, but not limited to, the purchase of automobiles, down payments on real estate, groceries, grad dresses, babysitters and travel.

131. In the vast majority of cases, a RSR was signed by the client asking for the money and in some cases identifying the reason for the money. At the bottom of the RSR, the client signed an acknowledgment of the debt owing to the member and the 30% flat fee being charged.

132. Although the Member did not dispute that money had been provided to clients, the Member and Mrs. Abrametz characterized the nature of the transaction very differently than Mr. Allen.

133. They insisted that the money provided to clients was not a loan and was in fact an advance on funds expected to be obtained on the clients' behalf at the conclusion of the SGI claim process.

134. The 30% flat fee on each advance, they suggested, was an attendance fee that fairly represented the time and effort expended by the Member in reviewing the file to determine if the clients' request for money could be approved.

135. The Member claimed that he was not in a business relationship with the clients by virtue of his having advanced money on anticipated settlements.

136. He further asserted that because of the distinction between a loan and an advance, he had properly reported such transactions to the LSS when required to do so on his annual TA-3 Practice Declaration.

137. Finally, the Member stated that even if he was in a business relationship with his clients, he was not in violation of the *Code of Professional Conduct* (the "Code") prohibition on such relationships because he took the necessary precautionary measures that permitted such relationships to exist between lawyers and clients.

CHARGE NUMBER 6

138. Counsel for CIC submitted that the flat fee charged by the Member on money provided to clients was excessive thereby breaching the Member's fiduciary duty owed to his clients.

139. Mr. Allen testified that he observed that attendance fees were charged on each amount of money provided to clients irrespective of the amount of money provided and irrespective of the length of time that the money was left owing to the Member.

140. Examples of this include money loaned to R.B. The Member provided $1,000.00 to R.B. on August 5th, 2008, and charged a 30% fee. The money was not repaid to the Member until approximately 174 days later on January 28th, 2009. The Member provided a further $1,000.00 to R.B. on August 24th, 2009, and charged a 30% fee. The money was repaid only 28 days later on September 22nd, 2009.

141. Mr. Allen observed that in several instances, money was provided to clients multiple times in one day. In each instance, a 30% fee was charged on the amount loaned. Examples of this are on the Deanna S. matter. On December 18th, 2009, the Member provided the client $1,000.00 and charged a 30% fee and then provided an additional $2,000.00 that same day and charged another 30% fee. Further, on the D.M. matter, the Member provided $1,000.00 to the client on February 21st, 2008 and charged a 30% fee and provided an additional $1,000.00 on that same date for which he charged D.M. a 30% fee.

142. Further, he testified that in several instances money was provided to clients within days of insurance settlement funds owing to the client being received by the Member. Examples of this include A.N. where $1,200.00 was provided by the Member only 9 days before settlement funds were received for the client's benefit. A further

$1,800.00 was provided to the client only 7 days before settlement funds were received. In both instances, the client was charged 30% of the amounts provided by the Member.

143. In the D.M. matter, $1,000.00 was provided to the client on January 4th, 2008, and a further $2,000.00 was provided to the client on February 28th, 2008. The settlement funds owing to the client were receipted by the Member to the client's trust account only 4 days later. The client was a charged 30% fee on both advances.

144. Finally, Mr. Allen explained that in nearly all of the instances where money was, as he termed it, loaned to clients, it was during the period of time while the Member was retained under a contingency fee arrangement with the client for the recovery of insurance settlement money. As a result, the client was charged a 30% flat fee for the money provided to the client by the Member and charged an additional contingency fee of approximately 30% on that same money pursuant to the contingency fee arrangement.

CHARGE NUMBER 7

145. Mr. Allen reviewed each of the instances where he observed money had been sitting in trust on a particular client matter for extended periods of time before being paid out to the client or being paid out to the Member's law office account for fees due and owing. The time periods ranged from two months to as much as three and one-half years.

146. Based upon the accounting documentation, Mr. Allen concluded that the Member had failed to pay money from his trust account expeditiously after the conclusion of a matter as required by Rule 942(4).

147. Mr. Allen was unable to supply evidence during the Hearing to reinforce his assumption that the relevant file matters had indeed been concluded.

148. Mrs. Abrametz testified in each instance of alleged breach of Rule 942(2) and explained that in each instance the file matter had in fact not been concluded for various reasons.

149. The Member adopted the statements and testimony provided by his spouse and offered further details on specific file matters where money appeared to remain in trust for extended periods. In these instances, the Member was able to provide his justification for money remaining in trust. On many of the files it related to appeals undertaken on behalf of the client.

ANALYSIS AND DECISION

150. *The Legal Professions Act*, 1990 at section 2(1) defines conduct unbecoming as:

> **(d) "Conduct unbecoming" means any act or conduct, whether or not disgraceful or dishonourable, that:**
>
> **(i) is inimical to the best interests of the public or the Members; or**
>
> **(ii) tends to harm the standing of the legal profession generally;**
>
> **and includes the practice of law in an incompetent manner where it is within the scope of sub clause (i) or (ii).**

151. It is the role of the Hearing Committee to receive and assess the evidence and determine if the Formal Complaint lodged against the Member is well founded. If the Hearing Committee finds that the Formal Complaint is well founded, the Hearing Committee may impose a penalty as permitted in section 53 of the Act.

CHARGE NUMBER 1

152. One day before the site-visit by Mr. Allen on December 5th, 2012, the Member self-reported his failure to promptly pay fees to his law office account.

153. In his testimony before this Hearing Committee, the Member acknowledged that his conduct in the eight instances was in violation of Rule 942(3).

154. Rule 942(3) states:

> **A member who withdraws or authorizes the withdrawal of trust funds for the payment of fees, disbursements or other expenses, or for payment to or on behalf of the client, shall effect the withdrawal by a cheque payable to the member's general account.**

155. At the Hearing, the Member attempted to justify his actions by characterizing the diversion of funds for his personal use as the repayment of a shareholder's loan. The Member was unable to provide any evidence that his professional corporation owed him any money as a shareholder loan. To the contrary, he indicated that such matters were beyond his level of expertise and are left to his accountant. Even if the Member's professional corporation owned him money for a shareholder loan, the Member provided no explanation as to how that scenario would legitimize his behavior such that he would not be in violation of Rule 942(3).

156. The Member maintained a large case load from year-to-year yet on eight specific files between the years of 2008 and 2010 the Member circumvented his usual legal fees billing procedure in order to obtain funds for his personal benefit without those funds having first been deposited to his law office account.

157. The reasons for the member's behavior are not clear. No testimony was supplied by any of the clients referenced in the Formal Complaint. The LSS did not attempt to

speak with or interview any of the clients that were party to the Member's scheme to divert funds to his personal benefit.

158. When asked during the Hearing why he had clients endorse trust cheques back to him, the Member was unable to explain his actions. When queried further, he testified that, at the time, he thought it was a good idea and the easiest way to get money. He acknowledged that, in hindsight, it was inappropriate.

159. By issuing cheques to the clients and having the clients endorse those cheques back to the Member as payment for legal fees the clients were enlisted to participate in the Member's dishonest scheme. The Hearing Committee was unable to imagine any explanation for the Member's conduct in this regard that would not bring disrepute upon the legal profession.

160. Based upon the evidence, the Hearing Committee finds that the Member was in breach of Rule 942(3), the Formal Complaint is well founded and the Member is guilty of conduct unbecoming.

CHARGE NUMBER 2

161. There is no dispute that the Member issued trust cheques from the S.S. trust account payable to the pseudonym P.S.

162. Throughout the Hearing, the Member referred to P.S. as his nom de plume or his pseudonym.

163. The English translation of the French non de plume, is pen name. Such names are used by writers of published works to conceal their true identity.

164. The English translation of the Greek origin word pseudonym, is a fictitious name used by an author to conceal identity.

165. Irrespective of how the name P.S. is characterized, the Member authorized the issuance of cheques from one of his trust accounts to a person known to the Member to be non-existent.

166. The Member claimed that posting the $10,428.14 to the S.S. trust account was inadvertent. Mr. Allen formed the opinion that the posting to the wrong trust account was intentional.

167. It is noteworthy that the accounting receipt for the $10,428.14 deposit to the S.S. trust account specifically referenced P.S. and SGI. It was receipted by the Member nearly four months after the SGI cheque was received. This was very unusual and would suggest that at the time the money was posted to the S.S. trust account, reportedly in error, the Member had intended on corrupting the integrity of his trust accounting records.

168. Further, the Member issued not just one trust cheque from the trust account of S.S. in the spring of 2009, but a total of three separate trust cheques on two separate days more than a month apart. Again, this conduct suggests a deliberate and calculated effort on the part of the Member to deceive.

169. Use of the pseudonym P.S. may be a long standing joke in the Abrametz family, however, when it comes to the entrusted stewardship of money passing through a law firm's trust account there can be no humor found in the Member's actions.

170. The Member's cavalier attitude at the Hearing on this topic was disturbing. Lawyers are bestowed a respected privilege in regard to the receipt and disbursement of money. It is a tenet of maintaining public confidence in the profession.

171. The fact that the money was for the payment of fees owing to the Member's firm and that there was no defalcation of money belonging to a client does not minimize the Member's conduct of using a fictitious name to divert funds to him personally through the issuance of cheques from his law firms trust account.

172. This Hearing Committee does not accept the Member's claim that posting the money to a trust account was in error. The evidence suggests that the act was deliberate on the part of the Member.

173. At all relevant times the funds were intentionally treated by the Member as funds paid into a trust account and subsequently paid from a trust account through issuing three trust cheques payable to someone else. The Member's conduct is consistent with the funds being considered by him to be trust money. Yet he asserted to this Hearing Committee that he should not be guilty of Charge Number 2 as it is worded because the money should not have been deposited to a trust account at all.

174. Even by that logic, accepting that the funds were due and owing to the Member's firm, once they were paid into trust the funds were trust funds for the benefit of the Member's firm and by paying them to the fictitious person, P.S. the member is guilty of the allegations contained in Charge Number 2. The Formal Complaint is well founded and this Hearing Committee finds the Member guilty of conduct unbecoming.

CHARGE NUMBER 3

175. In answer to a question from the Hearing Committee for an explanation on why the Member cashed trust cheques made payable to P.S., he answered,

> **"The only - - at that point in time I was working on the *Bills of Exchange Act* and was familiar with the terms there. I was starting to - - winter in California, and in California they have advertised fictitious names, and - - and so I'd just come back from California, I believe, then and - - and thought this would be a good thing to try - - to see if fictitious names would serve a role here. So that really - - no other purpose than that. It was an ill-conceived experiment, if you like, but didn't serve much of a purpose."**

176. The member relied upon s. 20(5) of the *Bills of Exchange Act* to exculpate himself in endorsing the three trust cheques made payable to P.S.

177. That sub-section of the *Bills of Exchange Act* permits negotiation of a bill of exchange by the bearer when the payee is a fictitious person.

178. It has been settled that P.S. is a fictitious person and the trust cheques were issued payable to P.S.

179. While the Hearing Committee was troubled by the Member's conduct in this regard it was noted that the charge alleged against the Member is that he falsified the signature of a fictitious person. The Hearing Committee was not convinced how the Member could be guilty of falsifying the signature of a person that does not exist. It seems to us that fictitious persons do not have signatures that can be falsified. As such, this Hearing Committee declines to find the Member guilty of Charge Number 3 as it is worded in the Formal Complaint.

180. In any event, the Hearing Committee determined Charge Number 3 to be a duplication of the conduct complained of in Charge Number 2.

CHARGE NUMBER 4

181. In each instance of the eight self-report files, it can be said that the Member's client trust ledgers were technically correct in so much that they accurately represented the way in which the trust cheques were issued from trust and that the trust ledgers accurately reflected the amount of money deposited to and withdrawn from trust.

182. However, the dollar amounts are not the only information that must be accurate. Moreover, the client trust ledgers are not the only documents that encompass the reference to books and records in the Part 13(H) of the Rules. The trust cheques also form part of the books and records, as do the erroneous notations and statements of adjustments that indicate payments were for "settlement" rather than for the Member's legal fees.

183. The Hearing Committee acknowledges the arguments advanced on behalf of the Member that a lawyer is not required to follow the cheques to see who endorses them and cashes them. This reasoning cannot apply however when the Member is directly involved in the process of issuing and cashing trust cheques in an effort to deceive.

184. Further, the Hearing Committee cannot accept the Member's submission that the statement of adjustments and invoices on all eight self-report files accorded with the client trust ledgers. The Hearing Committee finds that several of the files contained statements of adjustments and invoices that were prepared intentionally by the Member to give the appearance that legal fees were paid to the Member's firm when those fees were in fact paid to the client and endorsed back to the Member personally.

185. The Member argued that Charge Number 4 involves the same factual matters as Charge Number 1 and therefore the charge is a duplication of the conduct complained of in Charge Number 1.

186. The Hearing Committee rejects that argument. The elements of Charge Number 4 are separate and distinct from that of Charge Number 1. Similarly, the facts and conduct are separate and distinct.

187. Charge Number 1 involved the Member's failure to properly pay money by cheque to his law office general account for fees and disbursements.

188. Charge Number 4 however involves the Member's failure to maintain proper books and records.

189. This Hearing Committee concludes that the Member deliberately and purposefully attempted to deceive by generating multiple conflicting statements of adjustments, invoices and accounts that were neither proper nor accurate on the M.G., S.F., K.S., A.K., J.M. and A.N. matters.

190. The Hearing Committee concludes that the Member's conduct was in an effort to avoid detection of the behavior for which this Committee has found him guilty of conduct unbecoming on Charge Number 1.

191. As such, the Hearing Committee finds the Formal Complaint well founded, the Member in violation of Part 13(H) of the LSS Rules and guilty of conduct unbecoming.

CHARGE NUMBER 5

192. The Member took issue with the LSS's characterization of the money he provided to clients as being loans. He preferred the term advances. He claimed that there is a significant difference between the two.

193. In addressing the distinction between the terms, the Hearing Committee consulted the Meriam-Webster Dictionary which defines a loan as an amount of money that is given to somebody for a period of time with a promise that it will be paid back.

194. That same source defines an advance as the payment of money to someone before it is due.

195. The Member was not capable of advancing money to his clients because the Member did not owe money to his clients. It was SGI that owed the Member's clients the money. SGI may have been able to advance to the Member's clients on money due and owing to them for their personal injury benefit entitlements. However, the Member was loaning money to his clients while they awaited payment from SGI. The loans were for a wide variety of purchases that were clearly not "necessary expenses in the legal matters that the Member was handling for his clients" as referenced within the Commentary of the Code.

196. The Member was providing a service akin to that of the two professional lending companies, Seahold Investments Inc. and Settlement Lenders, that Mrs. Abrametz compared her husband's lending rates against.

197. It cannot be disputed that those two companies are in the business of lending money. They are subject to the legislation governing such businesses. By incorporating this

unregulated lending service into the Member's legal practice he was acting outside the scope of the attorney client relationship for which he was retained.

198. This conclusion is consistent with the Member's evidence of his usual practice of having his clients endorse documentation acknowledging the 30% fee being charged on the money provided by the Member and confirming the client's promise to repay the principal amount and the 30% fee to the Member upon demand.

199. The fact that the Member would eventually receive money from SGI in trust for the clients does not alter the nature of the transactions from loans to advances.

200. This Hearing Committee acknowledges the argument advanced on behalf of the Member that the LSS also perceived a distinction between a loan and an advance and therefore amended its annual TA-3 Practice Declaration distributed to lawyers in 2011 for the year ending 2010. In general terms, prior to 2011, the TA-3 required lawyers to disclose "loans" made to clients. However, the TA-3 in 2011 required lawyers to disclose "loans or advances" made to clients.

201. Once the declaration was amended in 2011 to include the reference to advances, the Member voluntarily disclosed the money that he had provided to clients.

202. Indeed, the Member disclosed that in the 2010 fiscal year he had extended funds to clients 128 times totaling $55,145.36. In 2011 he had loaned $45,306.00 to clients.

203. While the list of clients to whom the Member loaned money was lengthy, it was determined during the Hearing that the list disclosed to the LSS was not complete. The transactions that were not disclosed to the LSS by the Member appeared to be money that was repaid prior to the date of the Member corresponded with the LSS in June of 2011.

204. It is not required that this Hearing Committee conclude the reasons for the LSS amending its TA-3 in 2011 to include reference to advances. This Committee has determined that the Member was loaning money to clients.

205. This Hearing Committee further acknowledges the Member's argument that the LSS was aware since early in 2008, that he had on at least one client matter, been charging a 30% fee on money provided to clients and that the LSS did not reprimand him for doing so.

206. In support of this argument, the Member pointed to the formal complaint of W.D. dated January 12th, 2008, whereby W.D. disclosed within his complaint, among other things, that the Member had loaned him money and charged him fees on the loan.

207. The LSS dismissed the complaint on November 18th, 2010, as warranting no further action. It is not clear from the LSS's decision to dismiss the W.D. complaint if it was based upon the complainant's refusal to reply to the LSS's repeated requests for further information. What is clear however is that the LSS included in its letter to W.D., dismissing the complaint, that the Member's conduct did not raise an issue of conduct or competence.

208. As a Hearing Committee, we do not have the benefit of knowing all of the circumstances of the W.D. complaint from 2008, or hearing all of the evidence related to that complaint file. We have no mandate to review the decision of Complaints Counsel to dismiss the W.D. complaint.

209. We do note that in the November 18th, 2010 letter to the Member advising him that the W.D. complaint had been dismissed, the Member was cautioned that loans to

clients were not appropriate and inviting the Member to contact John Allen if further clarity was required.

210. There was no suggestion by the Member that he followed-up with John Allen in this regard. It is apparent that the Member continued to hold the mistaken belief that the monies that he provided to clients were advances rather than loans.

211. In any event, the LSS's dismissal of the W.D. complaint cannot reasonably be interpreted as the LSS endorsing the Member's practice of loaning money to clients.

212. Having determined that the Member was loaning money to his clients this Hearing Committee concludes that the Member was involved in a debtor/creditor relationship with his clients.

213. Chapter VI of the relevant Code deals with conflict of interests between lawyers and clients.

214. Sub-section (d) in Chapter VI states:

> **The lawyer should not enter into a business transaction with the client or knowingly give to or acquire from the client an ownership, security or other pecuniary interest unless:**
>
> > **(i) the transaction is a fair and reasonable one and its terms are fully disclosed to the client in writing in a manner that is reasonably understood by the client;**
> >
> > **(ii) the client is given a reasonable opportunity to seek independent legal advice about the transaction;**
> >
> > **(iii) the client consents in writing to the transaction; and**
> >
> > **(iv) there is no appearance of undue influence.**

215. Commentary number 4 contained within sub-section (d) of the Code states:

The lawyer should avoid entering into a debtor-creditor relationship with the client. The lawyer should not borrow money form a client who is not in the business of lending money. It is undesirable that the lawyer lend money to the client except by way of advancing necessary expenses in a legal matter that the lawyer is handling for the client.

216. The Member's counsel submits that the wording of Commentary number 4 within the Code is authority for the argument that entering into a debtor/creditor relationship is more permissive than entering into a business transaction as prohibited by Chapter VI of the Code.

217. The Member further argued that advances made by the Member to his clients were different in nature and kind than entering into transactions for mortgages or interests in land. He referenced the cases of *Law Society of Saskatchewan v Simaluk*, 2012 SKLSS 1 (CanLII), Law Society of Saskatchewan v Ferraton, 2014 SKLSS2 (CanLII), *Law Society of Saskatchewan v Johnston*, 2011 SKLSS 7 (CanLII) and the *Law Society of Saskatchewan v. Halford*, 2014 SKLSS 6 (CanLII).

218. Admittedly, the cases cited, with the exception of *Johnston*, each involve instances where lawyers loaned money to clients and took an interest in land or a mortgage in return. Transactions for mortgages or interests in land however are not the only business transactions that create a debtor/creditor relationship. The level of security and the remedies available to a lawyer against a client to whom money is loaned are not the discerning factors in the Code prohibition. Unsecured loans to clients cultivate the same potential conflicts that secured loans do. It is the debtor/creditor relationship, causing the divergence in interests, that the Code is intended to curtail.

219. The Member loaned money to clients. While he took no interest or mortgage in land he did take a promise to pay and an interest in the personal injury benefits the clients

were entitled to receive. He further charged and personally benefitted from a 30% fee on the amount of the loan.

220. As stated by the Hearing Committee at paragraph number 16 in the *Simaluk* decision:

> **A conflicting interest is one that would be likely to affect adversely the lawyer's judgment or advice on behalf of, or loyalty to a client. The reason for the rule is self-evident. The client or the client's affairs may be seriously prejudiced unless the lawyer's judgment and freedom of action on the client's behalf are as free as possible from compromising influences.**

221. This Hearing Committee finds that, while not all business transactions are necessarily debtor/credit relationships, all debtor/creditor relationships are business transactions prohibited by the Code. Such relationships create and convey a pecuniary interest that inherently places the interests of the clients in conflict with those of the Member.

222. The Member argued that, if this Hearing Committee found that the Member's conduct amounted to prohibited business transactions under sub-section (d) of the Code, the Member satisfied all of the precautionary criteria listed in sub-section (d)(i-iv) in each instance of loaning money to the 11 clients as charged.

223. Precautionary criteria (i) requires that the transaction is a **fair and reasonable one and its terms are fully disclosed to the client in writing in a manner that is reasonably understood by the client**.

224. The Member's typical practice was to have clients sign a standardized document that he had entitled Requisition for Service Request (previously referred to as "RSR"). The document was often dated, included the amount of the cheque, the payee and the reason for the cheque. The bottom of the document contained an authorization that read as follows

I, the undersigned hereby request an advance in the amount of $_____. I understand that a 30% attendance fee will be charged on each advance, and that each advance will be paid first from the recovery of any sums. If insufficient funds are recovered to pay this advance, I promise to repay the same upon demand.

225. Below the authorization wording there was a place for the client to date and sign the RSR.

226. The Member's counsel insisted in his submissions that in each and every case where money was provided to clients, the Member was handling a legal matter for the client and funds were advanced to meet necessary expenses.

227. This Hearing Committee can only assume that each of the instances of money being loaned to clients were for expenses that the clients felt were necessary. However, the vast majority of the expenses for which the Member loaned money to clients were not necessary to the legal matter for which the Member was retained to act for the client.

228. Many of the RSR documents did not have any explanation for the payment being made other than advance on Permanent Injury Benefits ("PIB") or Income Replacement Benefits ("IRB"). Of the requisitions that did have an explanation noted on them for the payments, some examples included:

$1,000.00 to Deanna S. on July 31st, 2009 for Summer Games;
$1,000.00 to Deanna S. on October 2, 2009 for a casket and hockey registration;
$2,000.00 to Deanna S. on December 18th, 2009 for a deposit on a vehicle;
$1,000.00 to Deanna S. on December 18th, 2009 for Christmas Shopping;
$750.00 to R.B. on September 17th, 2008 for Sask. Power bills, groceries and miscellaneous;
$172.00 to R.B. on October 20th, 2008 for Daycare;
$625.00 to L.H. on May 17th, 2011 for Food, Phone and Summer Camping;

$1,500.00 to D.J. on May 8th, 2007 to buy a truck;

$300.00 to L.M. on September 8th, 2008 to visit her cousin in Saskatoon;

$5,000.00 to T.H. on April 25th, 2007 to purchase a house on the reserve;

$1,000.00 to R.B. on June 6th, 2009 to buy a car; and

$3,000.00 to R.B. on September 1st, 2009 to move residences.

229. The Hearing Committee concludes that payments were made by the Member to his clients for purchases and expenses that were not necessary to the legal matter that the Member was retained for.

230. Further, the Hearing Committee finds that the Member's loan arrangements with his clients were neither fair nor reasonable in that the Member charged a 30% fee on each and every loan made to a client irrespective of:

(a) the amount of money loaned;
(b) the time that the loan remained payable to the Member;
(c) the money already being subject to a contingency fee agreement of between 25%-35%; and
(d) the number of loans obtained in one day or in a short number of days.

231. The Member's suggestion that the 30% fee was a fair representation of his time and effort in assessing the client for suitability of each loan is unacceptable to this Hearing Committee. The Member was being paid under a contingency fee arrangement for his legal expertise in recovering PIB and IRB for his clients. He was not entitled to charge clients for assessing a client's file for credit worthiness for loans.

232. The second portion of precautionary criteria (i) requires that **the transaction is disclosed to the client in writing in a manner reasonably understood by the client**.

233. The Member did have a standard RSR document that was signed in nearly every instance by the client. However, there were some instances where the SRS documents were not acknowledged by the clients. They included loans to:

Deanna S. on June 18th, 2009;

D.M. on February 21st, 2008;

C.M. on June 25th, 2008;

C.M. on September 5th, 2008; and

R.B. on August 24th, 2009.

234. In these instances, the Hearing Committee concludes that the terms of the loan transactions were not disclosed to the client in writing.

235. The Hearing Committee must accept, based upon the lack of evidence presented to the contrary, that the clients who did sign the RSR reasonably understood the terms of the loan transactions.

236. Precautionary criteria (ii) requires **the client is given a reasonable opportunity to seek independent legal advice about the transaction.**

237. The Member testified that he routinely advised his clients that they could obtain independent legal advice ("ILA") before signing the requisition for service request. He recalled only a couple of instances where the client may have obtained ILA. Nowhere on the Member's RSR document did it include an acknowledgment that the client was provided an opportunity to seek ILA before accepting the loan. However, the acknowledgment of ILA is not required to be in writing.

238. The Hearing Committee accepts, in absence of evidence to the contrary, that the Member provided an opportunity to his clients to obtain independent legal advice before entering into the loan transactions.

239. Precautionary criteria (iii) requires **the client consent in writing to the transaction.**

240. As noted above, not all of the RSR documents were signed by the clients consenting to the loan transactions. While Commentary within the Code does not specifically require consent to the conflict of interest be disclosed in writing, the lack of any reference within the RSR documents to the inherent conflict of interest raises serious concern for the Hearing Committee about the clients' ability to effectively consent to the nature of the transaction.

241. Precautionary criteria number (iv) requires that **there was no undue influence on the client entering into the transaction.**

242. The Member was, for many of his clients, the last resort for obtaining money while they awaited insurance benefits to replace lost earnings. The money was for such things as groceries, phone bills, power bills and Christmas gifts. Some of the Member's clients were vulnerable, had no bank account, were homeless or faced literacy challenges.

243. If the clients wanted or needed money, even for the necessities of life, the Member extended loans and charged an unreasonable fee for doing so.

244. The loans extended by the Member to his clients were extensive and excessive.

245. The Hearing Committee finds that there was the appearance of undue influence in the loan transactions that the Member entered into with his clients.

246. The Hearing Committee is satisfied that the Member did not satisfy all of the precautionary criteria set out in Chapter VI sub-section (d)(i-iv) of the Code when entering into a debtor/creditor relationship with his clients. The Formal Complaint is well founded and the Member is guilty of conduct unbecoming.

CHARGE NUMBER 6

247. The Hearing Committee has concluded that Charge Number 6 relates to the same conduct complained of in Charge Number 5. But for the duplicity of charges 5 and 6, the Hearing Committee would have found the Member guilty of conduct unbecoming under Charge Number 6 for the same reasons enumerated in the analysis and findings of conduct unbecoming for Charge Number 5. On that basis, the Hearing Committee declines to find the Member guilty of conduct unbecoming on Charge Number 6.

CHARGE NUMBER 7

248. Rule 942(4) states that once a legal matter is concluded, the law firm shall ensure related trust money is paid out expeditiously.

249. Both Mrs. Abrametz and the Member testified as to the various reasons why funds had sat on the six referenced files for what Mr. Allen suggested was extended periods of time.

250. Mr. Allen conceded that he did not enquire with the Member as to the reason why the money remained in trust on a particular file matter. Similarly, he did not investigate and confirm whether any of the referenced files were in fact concluded.

251. Rule 942(4) requires evidence to suggest that money was not paid out expeditiously on a file matter that had been concluded.

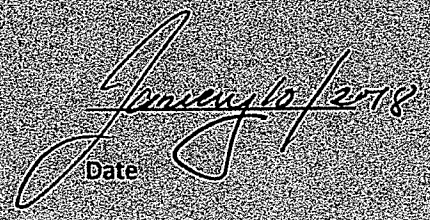
252. This Hearing Committee was presented with evidence from the Member and Mrs. Abrametz that the files in question were not concluded at the relevant time and, when the file had in fact been concluded, the funds were paid out of trust expeditiously.

253. As such, this Hearing Committee declines to find the Member guilty of the allegations contained in Charge Number 7.

PENALTY HEARING

254. A Penalty Hearing on the findings of the Member's breach of the Rules, Code and his conduct unbecoming will be scheduled in due course.

David M. Chow (Chair)

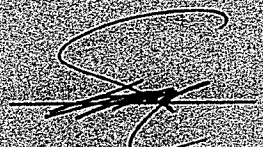


Date

Judy McCuskee

8 January 2018

Date



Evan Sorestad

9 January 2018

Date