The Law Society of Saskatchewan

RUSSELL PEET
HEARING DATE: April 5, 2017
DECISION DATE: January 26, 2018
ADDENDUM TO HEARING DECISION DATE: January 26, 2018
***Law Society of Saskatchewan v. Peet*, 2018 SKLSS 3**

IN THE MATTER OF *THE LEGAL PROFESSION ACT, 1990*
AND IN THE MATTER OF RUSSELL PEET,
A LAWYER OF PREECEVILLE, SASKATCHEWAN

DECISION OF THE HEARING COMMITTEE FOR THE LAW SOCIETY OF SASKATCHEWAN

INTRODUCTION

1. The Hearing Committee of the Law Society of Saskatchewan (the "Hearing Committee") composed of Martin Phillipson (Chair), Beth Bilson, Q.C., and Ron Barsi, convened on Wednesday, April 5, 2017, in Saskatoon, to hear the complaint against Russell Peet (the "Member"). The Member represented himself and Tim Huber represented the Conduct Investigation Committee.

2. Neither the Member nor Mr. Huber raised any objection to the constitution of the Hearing Committee or made any other preliminary application.

3. The Formal Complaint made against the Member, dated January 5, 2017, alleged that Russell Peet of the Town of Preeceville, in the Province of Saskatchewan, is guilty of conduct unbecoming a lawyer in that he:

> 1. did fail to reply promptly to communications from the Law Society of Saskatchewan, namely those from the Law Society of Saskatchewan Auditor dated April 25, 2016, June 8, 2016 and August 3, 2016.

Counsel for the Conduct Investigation Committee said that the conduct that is the subject of the complaint constitutes a violation of section 7.1-1 of the *Code of Professional Conduct* (the "Code"):

> 7.1-1 A lawyer must reply promptly and completely to any communication from the Society.

4. The Member indicated that he wished to plead guilty to this charge, and the parties presented an Agreed Statement of Facts, which is attached to this decision as Appendix A.

5. After receiving the Agreed Statement of Facts and hearing the submissions of the Member and Mr. Huber, the Hearing Committee accepted the Member's guilty plea, made a finding of conduct unbecoming in relation to the allegation, and heard the representations by the parties concerning the appropriate penalty.

BACKGROUND

6. As the Agreed Statement of Facts indicates, the Formal Complaint relates to interactions between the Member and the Law Society of Saskatchewan Auditor. In early 2016, the Member submitted the required forms concerning his trust accounts for 2015 in compliance with Law Society Rules.

7. The Auditor sent follow-up questions to the Member on April 25, 2016, setting a deadline of May 25, 2017 for a response. Having received no response, the Auditor sent a letter dated June 8, 2016 referring to the April letter, and setting a new deadline of June 29, 2016. The Member contacted the Auditor by phone on June 30, 2016 and requested an extension until July 4, 2016 to respond to the Auditor's questions. The Auditor had not received any response by that date.

8. The Auditor sent a further letter to the member dated August 3, 2016, setting a final deadline of August 24, 2016, and stating that if that deadline was not met, the matter would be referred to Complaints Counsel of the Law Society. As the Member did not meet the August 24 deadline, the Auditor did refer the matter to Complaints Counsel, and so advised the Member. The matter was sent on to the Conduct Investigation Committee on September 8, 2016.

9. The Member responded to the questions sent to him by the Auditor on April 25 in a letter dated September 29, 2016.

SUBMISSIONS ON PENALTY

10. Counsel for the Conduct Investigation Committee argued that in determining the appropriate penalty in this matter, it would be appropriate for the Hearing Committee to take into account the previous disciplinary history of the Member. He provided a summary of that history, referencing the dates of the decisions:

a. December 9, 1999

Count #1 - failure to comply with undertakings
- fail to treat a fellow lawyer with courtesy and good faith in that he failed to provide an accounting of trust monies received and disbursed within a reasonable time

Count #2 - fail to respond to the Law Society

Count #3 - fail to treat the Court with courtesy

Count #4 - fail to properly represent clients in estate matters (unreasonable and unexplained delay)

Count #5 - fail to properly represent clients in estate matters (unreasonable and unexplained delay)

Count #6 - fail to respond to correspondence from the Public Trustee

Count #7 - fail to properly represent clients in estate matters (unreasonable and unexplained delay)
- failed to return phone calls and correspondence
- misled executor as to conduct of the file

Count#8 - fail to treat a fellow lawyer with courtesy and good faith
- misleading fellow lawyer regarding progress of file
- breach of undertaking
- failure to respond to correspondence

Outcome: - 3-month suspension held in abeyance pending successful completion of Professional Standards programming, $3,000.00 fine, and costs of $5.497.37.

b. December 5, 2002
- failure to comply with undertaking to provide an accounting in an estate matter.

Outcome - $5,000.00 fine and costs.

c. December 9, 2004
- fail to reply promptly or at all to the Law Society (7 separate counts)
- breach of undertaking
- fail to deal in good faith with another lawyer
- fail to provide competent service
- fail to deliver legal file to successor counsel in a reasonable time (2 separate counts)
- dilatory practice (2 separate counts)

Outcome – 6-month suspension, practice supervision condition, and costs of $9,244.05

d. October 27, 2008
- dilatory practice (estate matter)

Outcome - $7,500.00 fine and $4,323.00 in costs.

e. April 11, 2013
- dilatory practice (estate matter) (2 counts)
- failure to reply promptly to the Law Society

Outcome - 1-month suspension and $16,216.80 in costs.

f. January 23, 2017
- failure to reply promptly to the Law Society

Outcome - 3-month suspension, $7,500.00 fine and $2,571.75 in costs.

Counsel noted that a number of the complaints in this history include allegations of failure to respond to the Law Society in a timely way or at all; there are also allegations of unreasonable and unexplained delays in other aspects of his practice, and of dilatory practice. Counsel provided the Hearing Committee with copies of the decisions of the hearing committees that dealt with all of these complaints.

11. Counsel submitted that, in a case of this kind, the seriousness of individual offences should not be considered in isolation. He referred us to the comments of a hearing panel in *Law Society of Manitoba v. Paul Walsh*, 2006 MBLS 5, beginning at paragraph 10:

> If is true that, standing in isolation, each count might be characterized as falling on the scale somewhat closer to the “less serious” end of it. But they do not stand in isolation. Overshadowing everything else on the issue of penalty is Mr. Walsh's prior discipline record. He has been the subject of formal disciplinary proceedings on no less than nine prior occasions. That record is comprised of two formal cautions and 13 findings or admissions of guilt for professional misconduct. He has already been fined a total of $23,000.00 and ordered to pay costs of $20,500.00.
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> Significantly, many of these past convictions involve similar breaches of the Code of Professional Conduct: failure to show courtesy and good faith to his clients and other members of the Society, failure to answer with reasonable promptness communications from clients and other lawyers, failure to serve his clients in a conscientious, diligent and efficient manner, failure to observe a proper standard of conduct, failure to be honest and candid when advising his client. To put it another way, no fine that has been imposed in the past has ever deterred Mr. Walsh from reoffending in a similar manner within a relatively short time ...
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> Both parties provided a number of authorities that were decisions by discipline panels in Manitoba and other jurisdictions. These are of limited use. Many of them impose penalties that were result of a joint recommendation. It is common knowledge that such a "plea bargain" may be based on factors that are not fully disclosed on the record and are likely fact-specific to the particular case. Others are cases where the member offered explanations, such as medical conditions (depression, for example) for his failings; that is not the case here. Ultimately the prior decisions have little applicability because the extent of Mr. Walsh's discipline history puts him alone in an entirely unique category. His fellow practitioners have either avoided such misconduct in the first place, learned their

> lesson after their first few appearances before the Discipline Committee or left the profession, voluntarily or involuntarily, long before their tenth appearance before this Committee. Only Mr. Walsh has persisted to this point.

12. The hearing panel in that case ordered a 6-month suspension and fine of $25,000.00 as well as costs. This decision was upheld by the Manitoba Court of Appeal in *Walsh v. Law Society of Manitoba*, [2006] M.J. No. 461 (QL).

13. Counsel for the Conduct Investigation Committee also referred us to *Law Society of Upper Canada v. Taylor*, 2010 ONLSHP 67, in which the hearing panel made the following comment, beginning at paragraph 14:

> However, when we have circumstances of repeat offenders, involving multiple aspects of professional misconduct, I am not satisfied that the individual, focused approach to each act of professional misconduct is appropriate. In my view, in this type of circumstance the total appropriate punishment is in fact greater than the sum of the individual parts. It would be an error in principle to examine the aspects of professional misconduct as discrete silos and attempt to fashion a punishment as though those acts of misconduct happened in isolation.
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> Further, and in particular with respect to the principle of specific deterrence, not only are the two acts of professional misconduct before me today not to be viewed in isolation from each other, they must be viewed in the context of what I now consider to be a significant discipline history, evidenced by the agreed statement of facts.

In that case, a joint submission from the parties for a suspension of 5 months was accepted by the hearing panel was accepted.

14. Counsel noted that in this jurisdiction, in *Law Society of Saskatchewan v. Hardy*, L.S.D.D. 5-2007, a hearing panel addressing a charge like the one here of failing to respond promptly to communications from the Law Society took into account the fact that in two earlier instances, *Law Society of Saskatchewan v. Hardy*, L.S.D.D. 04-2004 and *Law Society v. Hardy*, L.S.D.D. 10~2006, a lawyer had been found guilty of similar breaches, and this was taken into account in setting the appropriate penalty.

15. With respect to the disciplinary history of the Member himself, counsel noted that this history goes back over a long period, and features charges of different kinds, including a number of instances of failure to respond to the Law Society. At least in his response to such a charge in 2013, the report of the hearing committee's decision in *Law Society of Saskatchewan v. Peet*, 2013 SKLSS 5 indicates that among the Member's submissions on penalty was the argument that this breach of the Code should be seen as falling at the lower end of the spectrum in terms of its seriousness.

16. The hearing committee in that case made an effort to dispel this assumption, beginning at paragraph 48:

> In *The Law Society v. Werry* [2010 LSS 3), the hearing committee stated at paragraph 9 the following:
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> > As a guideline three requests from a client, another lawyer or the Society, with a reasonable deadline to respond, should be sufficient to justify a complaint to the Society. Of course, it is understood that the requests have to be reasonable in terms of deadline and frequency. It is hard to lay down a firm rule because situations vary with the circumstances, but it is possible to suggest a guideline for members. Again, if a member fails to respond to the third request for response given with reasonable timelines then the client or member being ignored should consider filing a complaint with the Law Society.

Though the above quoted paragraph from *Werry* appears to apply to requests for response from a client, another lawyer/member or the Society, it is this Committee's view that such "guideline" as discussed in *Werry* is only appropriate for requests dealing with a request from a client or another lawyer/member. The LSS itself, in our view, should be in a different category. It may be that the *Werry* panel misspoke with respect to including the LSS in the guidelines regarding the three requests. The above quoted paragraph goes on, in discussing a third request, to mention the client or member being ignored. It does not again mention the LSS. It is the Committee's view that a guideline for three requests from the LSS for response is not a reasonable guideline and if such was intended by the *Werry* panel, we reject it.

The reasons for the LSS being subject to a stricter standard in our view is obvious. Interestingly, the *Werry* decision at paragraph 8 provides a summary of the rationale:

> Failure to respond to a client puts the reputation of the member and the entire profession in a bad light. Failure to respond to a committee of the Law Society and a representative appointed by that committee jeopardizes the Society's ability to carry out its legislated mandate and in turn affects the reputation of all members.

Chapter XV of the Code deals specifically with the duty to reply promptly to the LSS. This obligation is at the heart of the regulation of the profession, a cornerstone of the right to self-govern.

17. It should be noted that in this 2013 decision involving the Member, the hearing committee was prepared to take into account that a lengthy delay had occurred in getting the charges before a hearing committee, and that it was unclear what had led to that delay. The hearing committee also took into account that there had been no further violations of the Code between 2008, when the events giving rise to the charges occurred, and 2013, when the matter was heard. Despite these mitigating factors, the hearing committee imposed a suspension of 30 days, as well as costs in the amount of $16,216.80. In *Peet v. Law Society of Saskatchewan*, 2014 SKCA 109, beginning at paragraph 92, the Saskatchewan Court of Appeal held that the 30-day suspension was a reasonable sanction:

> In this case, the Discipline Committee did not refuse to consider Mr. Peet's explanations (such as they were) for his misconduct. Nor, did it in any way misinterpret the facts or mischaracterize the mitigating or aggravating aspects of what Mr. Peet had done. To the contrary, it identified and must be taken to have considered all of the relevant sentencing considerations in coming to its conclusion that a 30-day suspension was an appropriate sentence. Mr. Peet's argument, therefore, necessarily reduces to a submission that a 30-day suspension is simply so long as to be unreasonable.
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> I am not able to accept that proposition. As can be seen from the particulars set out above at para. 6, Mr. Peet had an extensive disciplinary history involving a number of convictions for conduct similar to that in issue here: unreasonable and unexplained delays, failures to reply promptly or at all to Law Society communications, and dilatory practice. That history also involved fines and suspensions. The latter included a three-month suspension in 1999 (held in abeyance pending successful completion of programming) and a six-month suspension in 2004. The conduct in issue here, which occurred in 2007 to 2008, must have unfolded during the course of the proceedings which led to Mr. Peet's October 27, 2008 conviction for dilatory practice. In light of all this history, I am not prepared to say that the Disciplinary Committee's decision to impose a 30-day suspension was unreasonable.

18. In the last of the disciplinary cases against the Member prior to this hearing, *Law Society of Saskatchewan v. Peet*, 2017 SKLSS 2, the hearing committee commented on the impact on their deliberations concerning appropriate penalties of the Member's prior disciplinary history, beginning at paragraph 29:

> Considering the Member's prior record, and the widely-accepted principles of progressive discipline, the bottom end of the range in this matter is a suspension of one month. The Hardy precedent provides support for that as a starting point. But the Member in the current case has a record that is even worse than that of Mr. Hardy. The Member's last discipline proceeding yielded a suspension of one month in the presence of two significant mitigating factors (delay and no intervening complaints). In the current matter, no such mitigating factors exist. And in relation to the current matter, the Member had the benefit of the prior matter to instruct him as to what was expected of him. ln the interests of progressive discipline, something more than a one-month suspension is required in the current case. The primary consideration in all Law Society discipline proceedings is the protection of the public.
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> This is clearly set out in our governing legislation at S. 3.1 wherein the Law Society's mandate is stated to be "to protect the public by assuring the integrity, knowledge, skill, proficiency and competence of members". This is closely related to 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 Mr. Peet must be dealt with in a way that both protects the public and fosters the public confidence in the legal profession.
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> Typically, the goal is to craft a penalty that represents a specific deterrence to the Member and a general deterrence to the profession as a whole. In the current case, the issues related to both specific and general deterrence are complicated by the Member's substantial and closely related discipline history.
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> It is the decision of this committee that Mr. Peet be suspended for a period of three months such suspension to commence March 1, 2017. In addition, Mr. Peet is fined the sum of $7,500.00 to be paid by December 31, 2017. In addition, he shall pay costs in the amount of $2,571.75 to be paid by no later than December 31, 2017.

19. Counsel for the Conduct Investigation Committee alluded to a number of sentencing principles that have been suggested to guide the determination of appropriate sanctions in disciplinary proceedings involving lawyers. A number of these were mentioned in the disciplinary decisions provided to us by counsel, including those decisions relating to the prior disciplinary proceedings with this Member. Counsel noted that these principles do not focus on punishment, but on the potential for rehabilitating the lawyer, the protection of the public, the credibility of the legal profession, and deterrence of future infractions, both by the particular lawyer involved and by other lawyers. Counsel also suggested that the Hearing Committee should consider whether there are aggravating or mitigating factors.

20. In making his arguments about these sentencing principles, counsel expressed some frustration about applying them in this situation. With respect to specific deterrence, counsel pointed to a passage in the *Walsh* case, noted earlier, at paragraph 15 of the decision, where the hearing panel said, "Frankly, Mr. Walsh's prior history strongly suggests that absolutely nothing is going to deter him from this type of conduct in the future." Counsel expressed similar pessimism that any sanction levied by this committee would bring about a change in the Member's future conduct.

21. He also made a link between the credibility of the legal profession and the concept of general deterrence. He pointed to another passage in the *Walsh* decision, also at paragraph 15:

> With the benefit of the hindsight that comes with being the tenth Discipline Panel to deal with Mr. Walsh, we can say that Mr. Walsh's history has turned the concept of "general deterrence" on its head. The Society tells students in its Bar Admission course that they must live by the word and the spirit of the Code of Professional Conduct or they will (professionally) die by it. But a cynic would point to Mr. Walsh's record as evidence that such admonitions from the Society have a hollow ring. Mr. Walsh's record is the exact opposite of general deterrence. Something must be done to end that illusion.

Counsel expressed similar concern that a failure to impose sanctions that would get the attention of the Member would have the effect of eroding public confidence in the ability of the Law Society to regulate its members effectively.

22. In his submissions, counsel also outlined the principle of progressive discipline, which is founded on the idea that disciplinary penalties should escalate from milder to more serious sanctions. In this case, he suggested that application of the principle would lead to a lengthier period of suspension than the 3 months imposed by a hearing committee in January of 2017, or a more significant fine.

23. Counsel stopped short of using the term "ungovernable" in relation to the Member, although he submitted that were the Member's pattern of conduct unbecoming to continue, future hearing committees might have to decide whether it is an appropriate label and would also have to consider whether severing the Member's relationship with the Law Society altogether would be the logical next step.

24. The Member's submissions concerning the appropriate penalty were relatively brief. He acknowledged that it had been an error not to respond more promptly to the communications from the Law Society Auditor. He said that he had felt it necessary to give priority to a major piece of litigation he was involved in, and that in that context he had not found sufficient time to address routine correspondence. In retrospect, he said he could see that this may have been an unwise strategy, and he assured the Hearing Committee that he would revise his approach in the future.

25. The Member noted that he had in fact ultimately provided the answers sought by the Auditor. There was no substantive cause for concern with his trust accounts or his record keeping, as he was able to demonstrate. The complaint only dealt with the relatively technical question of whether his response to the Law Society had been unduly delayed. He argued that a suspension would be an unnecessarily harsh penalty in relation to this issue.

ANALYSIS

26. Were this a matter of dealing with a single charge of failing to reply promptly to the Law Society, the task of determining an appropriate penalty might be a fairly straightforward one, resolved by consulting similar prior instances of law Society disciplinary proceedings and choosing an analogous case. What creates a challenge for the Hearing Committee in this case is the lengthy and extensive disciplinary history of this Member, including examples of similar allegations to the one made here.

27. This is the seventh occasion on which the Member has been before a hearing committee, and the penalties imposed on him have ranged from a suspension held in abeyance to permit him to receive practice management advice, to fines of various sizes, to suspensions for periods as long as 6 months.

28. A reading of the decisions relating specifically to the offence of failing to respond promptly to the Law Society reveals a pattern of successive requests for a response from the Law Society, perhaps a request for an extension of time to reply (always granted), further requests for

a response, an indication by the Law Society of an intention to refer the matter to discipline, and, in nearly all cases, an ultimate response from the Member. In his submissions before disciplinary bodies, the Member has always downplayed the seriousness of this pattern of interaction with the Law Society, noting that while they may technically be a violation of the Code, it has caused no harm to clients and is thus at the "lower end" of the professional misconduct spectrum.

29. In the first disciplinary decision concerning this Member, which addressed a total of eight charges (including one of failing to respond to the Law Society), the sentencing body decided on a three-month suspension, along with a $3,000.00 fine and costs; the suspension was held in abeyance pending successful completion of professional standards programming. By the third disciplinary proceeding, which also included seven separate counts of failure to respond promptly to the Law Society, the penalty was escalated to a 6-month suspension, with practice supervision conditions, as well as costs. The fifth time the Member faced a hearing committee, in 2013, a suspension of 30 days was imposed, despite the mitigating factors of an unexplained delay and the absence of any infractions after 2008; without those mitigating factors, it is Impossible to assess what sanction might have been considered appropriate. In the most recent disciplinary proceeding, in 2017, a 3-month suspension as well as a fine and costs, was considered appropriate. In all cases, the Law Society bodies responsible for sentencing the Member appear to have carefully considered the appropriateness and proportionality of the sanctions they imposed, and to have paid careful attention to the factors put forward by the Member. Those decision-makers seem to have taken seriously the principle of progressive discipline in calibrating their response to the Member's breaches of the Code.

30. It is clear, however, that none of the sanctions devised by previous disciplinary panels has brought about lasting change in the conduct of the Member. Counsel for the Conduct Investigation Committee seemed at somewhat of a loss to provide guidance to this Hearing Committee about what sanctions would be appropriate, and we share his pessimism that any sanction we could impose, other than perhaps disbarment, would impress on the Member the seriousness of the pattern of successive infractions he has established. We also share the concern of counsel, so well-articulated in the *Walsh* decision, that the apparent inability of the Law Society to regulate the conduct of this Member has the capacity to undermine the credibility of the Law Society, and possibly also the legal profession, in the eyes of the public.

31. It must be remembered that the principle of progressive discipline is founded on the notion that a person whose conduct is considered unacceptable should be given an opportunity to modify the impugned behavior and pursue a new course. If this does not have the desired effect in the first instance, a more stringent sanction is applied in order to persuade the offending party that there is indeed a need to change. This idea is based on a faith in the potential for rehabilitation of people who have broken the rules, but there will always be cases where this proposition is in doubt. The idea of progressive discipline cannot be seen as a strait jacket for disciplinary proceedings. It is necessary for those responsible for formulating a disciplinary regime in a particular case to be able to look critically at the likelihood of redemption. The Member's own submissions, suggesting as they do that he still has difficulty understanding the seriousness of the law Society's concerns, are discouraging in this respect.

32. We are in agreement with counsel for the Conduct Investigation Committee that the disciplinary record of the Member is an aggravating factor that elevates the seriousness of a breach of the Code which might be treated fairly leniently on a first offence. We also agree that there are no mitigating factors in this case; the Member himself acknowledged before us that it had been an error on his part not to respond to the Law Society Auditor more promptly. We have come to the conclusion that it is necessary for us to impose a significant sanction in light of the obliviousness shown by the Member to the gravity of the message previous hearing committees have been trying to convey to him.

CONCLUSION

33. As we have said earlier in this decision, there is no evidence that the previous pattern of complaints and disciplinary sanctions has made a genuine impression on the Member. Indeed, this pattern and his arguments before this Hearing Committee suggest that he considers these interactions with the Law Society as part of the cost of doing business. Though counsel for the Conduct Investigation Committee did not press us to draw a conclusion that the Member should be considered ungovernable, our view is that the disciplinary record in this case is strongly suggestive of a trend in that direction, and that only robust sanctions have any hope of attracting the attention of this Member.

34. This Hearing Committee has determined that the Member should be sentenced to a suspension of 6 months, a fine of $40,000.00 and costs in the amount of $1,865.00.

35. We acknowledge that this set of sanctions is a considerable escalation from previous disciplinary penalties imposed on this Member. We have concluded, however, that the only hope of convincing the Member of the significance of the regulatory regime which governs his conduct as a lawyer is to impose sanctions which may have a greater impact on his thinking than previous penalties apparently have. The primary objective of the Law Society is the protection of the public, and it is impossible for it to do this effectively if lawyers who fall under its jurisdiction refuse to treat its regulatory system with respect. The insistence of the Law Society on timely and complete response from its members is not merely a technical rule which members are justified in slighting but is a fundamental aspect of a framework which is designed to ensure that the public can have confidence in the soundness of professional services provided by Saskatchewan lawyers.

36. Though counsel for the Conduct Investigation Committee drew back from using the label "ungovernable" to describe the record of this Member and did not argue that disbarment was an appropriate penalty in this instance, our own view is that any future infractions would make it necessary for a hearing committee to think in those terms.’

DATED at Saskatoon, Saskatchewan the 26th day of January, 2018.

“Martin Phillipson”, Chair

“Beth Bilson, Q.C.”

“Ron Barsi”

ADDENDUM OF THE HEARING COMMITTEE FOR THE LAW SOCIETY OF SASKATCHEWAN

37. Prior to the commencement of Mr. Peet's suspension, Mr. Huber, on behalf of the Law Society of Saskatchewan, requested a delay in the commencement of the suspension. The primary motivation for this request was to ensure an orderly transition of the suspended Member's practice and to avoid any unintended harm to his clients.

38. We are of the view that this Hearing Committee retains jurisdiction to make the requested adjustment to the previous Order and there is significant precedent that supports this conclusion and the requested amendment of the Order.

39. Therefore, this Committee's Decision of January 26, 2018 is hereby amended to the effect that Mr. Peet's suspension shall commence March 1, 2018.

DATED at the City of Saskatoon, in the Province of Saskatchewan this 26th day of January, 2018.

"Martin Phillipson", Chair

"Ronald G. Barsi"

"Beth Bilson Q.C."

AGREED STATEMENT OF FACTS AND ADMISSIONS

In relation to the Formal Complaint dated January 5, 2017 alleging that Russell Peet of the Town of Preeceville, in the Province of Saskatchewan is guilty of conduct unbecoming a lawyer in that he:

> **1. did fail to promptly to communications from the Law Society of Saskatchewan, namely those from the Law Society of Saskatchewan Auditor dated April 25, 2016, June 8, 2016 and August 3, 2016.**

JURISDICTION

40. Russell Peet (hereinafter "the Member") is, and was at all times material to this proceeding, a practicing Member of the Law Society of Saskatchewan (hereinafter the "Law Society"), and accordingly is subject to the provisions of *The Legal Profession Act*, 1990 (hereinafter the "Act") as well as the *Rules of the Law Society of Saskatchewan* (the "Rules"). Attached at Tab "1" is a Certificate of the Executive Director of the Law Society of Saskatchewan pursuant to section 83 of the Act confirming the Member's practicing status.

41. The Member is currently the subject of a Formal Complaint initiated by the Law Society dated January 5, 2017. Attached at Tab "2" is a copy of the Formal Complaint along with proof of service. The Member intends to plead guilty to the allegation of conduct unbecoming contained in the Formal Complaint.

BACKGROUND OF THE COMPLAINT

42. Each year, lawyers in Saskatchewan are required to file certain forms with the Law Society. In the case of private firms with trust accounts, each year a TA-3 and TA-5 form must be filed following the firm's year end. The Member filed his TA-3 and TA-5 forms for 2015 after his December 31, 2015 year end, thereby complying with that annual requirement.

43. It is not unusual for Law Society Auditors to have follow-up questions in relation to the forms that are filed. In the Member's case, the Auditors had several questions. After writing to request a response to questions on April 25, 2016, and two additional follow-up letters with no written response provided by the Member, the Auditor referred the matter to Complaints Counsel for the Law Society. After this referral, the trust issues were fully addressed by the Member in a one paragraph letter on September 29, 2016. The Formal Complaint herein pertains exclusively to the Member's failure to respond to the Auditor with responses to the questions asked in the interim.

PARTICULARS OF CONDUCT

44. The first letter from the Auditor to the Member seeking a response to follow-up questions was sent to the Member on April 25, 2016 (Tab 3). The letter set a deadline of one month (May 25, 2016) to respond. No response was forthcoming from the Member.

45. The second letter from the Auditor was dated June 8, 2016 (Tab 4). The letter made reference to the previous letter and se t a new deadline of June 29, 2016. No response was forthcoming from the Member in advance of the deadline. The Member contacted the Auditor via phone on June 30, 2016 and requested an extension of time to respond until July 4, 2016. The Member did not meet the July 4, 2016 deadline.

46. The third letter from the Auditor to the Member was dated August 3, 2016 (Tab 5). In that letter the Auditor provided one final extension for the Member to respond to the original correspondence. The new deadline was set as August 24, 2016. The Auditor stated in her letter that if a response was not provided by August 24, 2016, the matter would be referred to Complaints Counsel and discipline may result. The Member did not meet the August 24, 2016 deadline.

47. The Auditor referred the matter of the Member's failure to respond to Complaints Counsel on August 29, 2016. On August 30, 2016, the Auditor write further correspondence to the Member via email (Tab 6) to inform him that the matter had been referred to Complaints Counsel. All of the prior correspondence was provided to the Member in that email.

48. Complaints Counsel forwarded the complaint to the Member and to the Conduct Investigation Committee on September 8, 2016.

49. The Member responded to the original follow-up questions from the Auditor's April 25, 2016 letter on September 29, 2016 (Tab 7). The Member's responses to the Auditor were found to be satisfactory and no further follow-up by the Auditor was required.

50. The above-noted Formal Complaint relates solely to the Member's failure to respond to the Auditor's correspondence between April 25, 2016 and September 29, 2016.