The Law Society of Saskatchewan

NORMAN CHRISTIAN MACLEOD
HEARING DATE: March 27, 2018
DECISION DATE: April 7, 2018
***Law Society of Saskatchewan v. MacLeod*, 2018 SKLSS 4**

IN THE MATTER OF *THE LEGAL PROFESSION ACT, 1990*
AND IN THE MATTER OF NORMAN CHRISTIAN MACLEOD,
A LAWYER OF REGINA, SASKATCHEWAN

DECISION OF THE HEARING COMMITTEE FOR THE LAW SOCIETY OF SASKATCHEWAN

INTRODUCTION

1. A Hearing was conducted by teleconference on March 27, 2018, before a Hearing Committee comprised of Gerald Tegart, Q.C. (Chair), Ron Barsi and Heather Hodgson. Norman Christian MacLeod ("the Member") was represented by Michael Tochor, Q.C. Timothy F. Huber represented the Conduct Investigation Committee ("the Investigation Committee"). There were no objections to the constitution or jurisdiction of the Hearing Committee.

2. The Formal Complaint against the Member alleges the Member is guilty of conduct unbecoming a lawyer in that he:

    1. did, in connection with the W.I. Estate matter, fail to answer with reasonable promptness all professional communications from E.K., a fellow Member of the Law Society of Saskatchewan;

    2. did, in connection with the W.I. Estate matter, fail to provide service that was competent, timely, conscientious, diligent and efficient;

    3. did, in connection with the W.I. Estate matter, fail to comply with the terms of an Order dated April 18, 2012, wherein he was required to complete the administration of the W.I. Estate and provide an accounting, all on or before July 1, 2012.

3. The Member entered guilty pleas to all three counts and the Hearing proceeded as a Penalty Hearing.

4. An Agreed Statement of Facts ("the Agreed Statement of Facts") was filed by agreement between the parties. It is attached.

5. The parties made a joint submission on penalty proposing a suspension for two weeks with an Order that the Member pay costs in the amount of $2,000.00. The parties asked that the suspension begin June 1, 2018, to allow the Member time to get his affairs in order prior to commencing the suspension, largely for the purpose of ensuring the least level of disruption to clients of the Member who may be affected by his suspension.

6. As noted in the reasons and Order set out below, the Hearing Committee accepts the joint submission.

FACTS

7. The facts are set out in full in the Agreed Statement of Facts. In brief summary, they are as follows.

8. The Member was at all material times engaged in the private practice of law in Regina. On August 5, 2005, the Member's client W.I. executed a will prepared by the Member based on the client's instructions. It granted two specific bequests of $100,000.00 each to his niece and sister-in-law. The residue of the Estate was to be donated to an institutional beneficiary situated in Saskatchewan. The value of the Estate was estimated at approximately $1.7 million at the time of probate. The will appointed the Member as primary executor and trustee.

9. W.I. died on October 19, 2007. Letters probate were granted on December 20 of that year. However, the specific bequests were not paid out until February of 2009 and the distribution of the residue to the institutional beneficiary ultimately occurred in four instalments - $14,000.00 in February of 2009, $1,137,452.87 in March of 2010, $65,000.00 in March of 2013 and a final distribution of $113,564.84 in January of 2016.

10. E.K., a lawyer representing the institutional beneficiary, began attempts to advance the administration of the Estate and the distribution to the beneficiary in late 2009. E.K. made numerous written and oral requests asking the Member for reporting and an accounting. When these requests ultimately failed, E.K. made an application to the Court of Queen's Bench for an Order compelling the filing of accounts. The Member ultimately consented to an Order granted April 18, 2012, requiring him to file accounts and to complete the administration of the Estate by July 1, 2012. However, the Member failed to comply with the Order. As noted above, the two final payments were not made until March of 2013 and January of 2016.

11. The explanation for the delays lies in large part in the nature of the Estate, the testator's instructions and the nature of the relationship between the testator and the Member, as described in paras. 10 and 11 of the Agreed Statement of Facts:

> "10. The vast majority of the value of the Estate was comprised of investments in the nature of stocks, shares and interests in various companies and mutual funds. The Will, drafted by the Member, included clauses that allowed the Member to postpone the distribution of assets and to or [sic] the sale of investments as he saw

> fit, in his sole discretion. The Member had received specific instructions from his client, W.I. not to sell the Estate investments if the market was rising or if the market was on a downward trend to hold the assets until the market recovered. The Member says that he knew W.I. well. He met W.I. when his practice was in the Cathedral area, prior to 2004. He drafted a previous will for W.I. and helped him set up a scholarship fund with entity that was the institutional beneficiary of the Estate. He would meet with W.I. at the coffee shop next to his office and W.I would also drop by the office on occasion. W.I.'s investment strategy was often discussed."

11. The Member states that his instructions from W.I. were to try to maximize the value of the gift. While the Member had the ability to transfer those assets to the institutional beneficiary in early 2008 he did not. He felt his instructions required him to avoid transferring the assets in a low market cycle or in circumstances where the assets were increasing in value.

12. The additional complicating factor beyond the Member's control was the sharp downturn of the stock market through 2008 and 2009 after significant increases through 2007. The Member felt he shouldn't distribute the residue while the market was on the rise. Once it began to fall he equally believed he should wait until it recovered. The reduction in the amount ultimately available for distribution to the institutional beneficiary as a result of the downturn is estimated to be between $82,000.00 and $226,000.00.

13. The Member acknowledges, through his pleas of guilty and his acceptance of responsibility as indicated in the Agreed Statement of Facts and the submissions of his Counsel, that his conduct fell below the acceptable standard. While he did not attempt to make excuses for his actions, there is no suggestion that he was personally motivated or received any benefit from those actions. As Counsel for the Member put it in his submissions, the Member realized at some point he was out of his depth but failed to ask for the assistance he needed. The pressure he experienced in this realization led to what Counsel described as paralysis.

14. The Member has since taken steps to narrow his practice in order to avoid situations where he might once again find himself out of his depth.

REASONS FOR PENALTY

15. This Hearing Committee is required to consider the joint submission on penalty and to follow it unless satisfied that it falls outside the principles set forth in *Rault v Law Society of Saskatchewan*, 2009 SKCA 81 (CanLII) (at para. 28):

> In summary, the Discipline Committee had a duty to consider the joint submission. The reasons for decision do not reflect that the Discipline Committee understood it was constrained to consider the joint submission and give reasons as to why it was inappropriate; not within the range of sentences; unfit or unreasonable; and/or contrary to the public interest. If the Discipline Committee was of the view the joint submission penalty was not an appropriate disposition in the case before them, then it was required to give good or cogent reasons as to

why it is inappropriate. Failure to do so leads to the inevitable conclusion that the decision of the Discipline Committee is unreasonable.

16. As noted by the discipline Hearing Committee in *Law Society of Saskatchewan v. Martens*, 2016 SKLSS 12 (CanLII) (at para. 42), a Hearing Committee must be presented with sufficient information to assess the elements described in Rault. We are satisfied we have that information.

17. We agree with the position of both Counsel that the most serious of the three counts is count 3, which is based on the Member's failure to comply with the Court Order. Counsel for the Investigation Committee referred us to seven cases relevant to a breach of Court Order and provided a summary of those cases:

> *Law Society of Alberta v. Nielson [1994] L.S.D.D. No. 215*
> The Nielson case represents one example at the very low end of the range. The facts of the Nielson case are very simple. While representing a woman in the context of a custody and access dispute, Ms. Nielson advised her client to terminate the father's access. Nielson wrote a letter to opposing counsel confirming this instruction. This occurred after the father was convicted of uttering death threats and was then subsequently charged with assaulting the client. This advice was contrary to the existing court order governing access. Ms. Nielson pled guilty to conduct unbecoming and signed an Agreed Statement of Fact. She received a $200.00 fine and a reprimand. She was ordered to pay costs of $400.00. She had no prior discipline history.
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> *Law Society of British Columbia v. Saini [2006] L.S.D.D. No. 160*
> This case represents another low range example of a lawyer breaching a court order. In Saini, the lawyer was compelled by the court to produce and deliver original testamentary documents in her possession pertaining to her client. Instead of complying with the court order, she chose to use the testamentary documents in the context of a probate application. She disregarded the court order intending that the probate application would be done before the expiry of the deadline and that she could comply thereafter. The probate application was not finished in time and she did not meet the deadline contemplated by the court order. Saini entered guilty pleas and received a reprimand and a fine of $2,500.00. She had no prior discipline history.
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> *Law Society of Saskatchewan v. Merchant #06-06*
> The facts of the 2006 Merchant case deal with a lawyer's mishandling of funds bound by a court ordered trust. In July of 2003, the lawyer used the trust funds that he held pursuant to the Court Order, and for the benefit of an opposing party (B.P.) and paid his own legal fees. The lawyer used a set-off argument based on the fact that B.P. had been ordered to pay court costs to the lawyer's client who herself owed the lawyer money for legal services. It was determined that the lawyer acted in direct contravention of the Court Order in question. In a Fiat dated August 28, 2003, Madam Justice Pritchard identified that the lawyer

preferred the interests of his client (or his own interests) over the interests of B.P., for whom he was holding the funds in trust. The Judge in that matter stated that the lawyer's actions were "not acceptable in any circumstances". The Judge was so troubled by the lawyer's conduct that she ordered the lawyer to personally pay $1,000.00 in costs in the matter. In the discipline context the lawyer was suspended for a period of two weeks and was required to pay costs in excess of $30,000.00.

The lawyer appealed the conviction and the penalty to the Court of Appeal without success. He then sought leave to appeal to the Supreme Court of Canada and was denied.

Law Society of British Columbia v. Scholz [2008] L.S.D.D. No. 26
In Scholz, that Member held the monies of a failed mortgage company in his trust account pursuant to a court order pending an agreement by several interested parties as to the distribution. While he held the funds in his trust account he was involved in a number of other business enterprises. An opportunity arose whereby he would be able to invest the funds he held in one of the companies he was involved in. The opportunity involved a short-term investment where the funds themselves would remain unencumbered and would be repayable on demand. Scholz obtained the consent of some, but not all, of the interested parties as required by the court order. He proceeded with the investment. The money was repaid in a matter of months without incident. He argued that the parties that he did not obtain consent from were not in fact interested in the funds and therefore not covered by the court order. The discipline Committee still found that he acted inappropriately by failing to follow the strict requirements of the court order.

The Discipline Committee stated at paragraph 40 that "strict adherence to the terms of a Court Order is among the most important duties and responsibilities of a lawyer." In the decision on penalty the panel also noted that: "All citizens have a duty to observe Court Orders. This is particularly true for Members of the Law Society, who are Officers of the Court and owe a duty to maintain the integrity of our legal system. Courts and Court Orders are at the core of our legal system."

Scholz received a one-month suspension and was required to pay costs in the amount of $26,437.50. Scholz had no prior discipline record.

Law Society of Upper Canada v. Sussman [1995] L.S.D.D. No. 17
This case illustrates that the facts of each situation and the particulars of a lawyer's conduct have a significant impact upon the penalty. The facts of the Sussman case are, on the surface, similar to those in Nielson, discussed above. The lawyer represented a woman in a custody and access dispute. Sussman counselled his client to disobey a pre-existing court order allowing access to the father. He advised the father's counsel that access would not be granted and that he intended to bring a formal variation application. This never occurred. The

Hearing Committee found that the object of his advice and of the repeated threats of bringing a variation application was to frustrate the court order and it had that effect. The Hearing panel found that he never actually intended to bring a formal variation application so long as the threat of the same and his clients continued denial of access kept the father at bay. Sussman denied responsibility and offered excuses and justifications for his conduct. The conduct in Sussman appears to have been more calculated that that in Nielson. There was no guilty plea or Statement of Admissions as was the case in Nielson. The Hearing panel in Sussman found the lawyer's conduct to be reprehensible.
Sussman was suspended for a period of one month. He had practiced at the bar for 50 years and had no prior discipline history. The panel stated that had it not been for his age and his lengthy career, the penalty would have been "far more severe".

Law Society of Alberta v. MacSween [2004] L.S.D.D. No. 61
The MacSween case deals with a lawyer in a family law matter where there was an order to preserve family property. The complaints arose from two related files on which the Member acted as counsel. MacSween became personally invested in the legal matter as a result of a strong personal empathy for his client whose spouse had left him for a neighbor. He lost his objectivity and became a participant in the fray, and in part, took on the role of Judge. He was found to have acted out of a perverted belief that he was above the law because he felt obliged to seek justice for his clients, with whom he inappropriately identified.

The primary issue of misconduct was MacSween's actions surrounding the cashing of an RRSP while a court order intended to preserve the assets was in effect. The RRSP, initially believed and intended to be in the wife's name was actually in the husband's name and was cashed, with the lawyer's assistance, to fund the husband's legal representation on a related criminal file.

On another related file MacSween paid his own legal fees from money held in trust while that money was subject to a freezing order.

While MacSween was initially less than entirely forthcoming with the Law Society he ultimately pled guilty and admitted his conduct.

The Hearing Committee found the conduct to be very serious and stated the following: "Members of the bar are officers of the court and bear a responsibility to uphold the law. For a lawyer to willfully disregard or assist a client in disregarding Court Orders and to attempt to obstruct the discipline process of the governing body is to undermine the effectiveness of both the justice system and the governing body."

MacSween received a one-month suspension and was required to pay costs.

Law Society of British Columbia v. Barron [1997] L.S.D.D. No. 141 [Tab 7]

> Barron represented a wife in a family law matter. After the sale of the family home a court order was issued by consent whereby both parties agreed to refrain from disposing of the family assets. The proceeds of sale from the home were the primary assets involved. Barron held these proceeds in his trust account. He also provided an undertaking to opposing counsel confirming that the funds would not be disposed of until there was an agreement as to the division or a subsequent court order. After various unsuccessful attempts to deal with opposing counsel on the final details surrounding some household items, Barron became frustrated. He was also under extreme pressure from his client to finalize matters because she wanted to purchase a new home with her share of the money held in trust.
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> Ultimately, Barron determined unilaterally that he would issue a cheque to his client in the amount that he thought would be appropriate (it was roughly a 50/50 split). He paid the money to his client. On the same day he issued a cheque to the opposing party and placed it in his file. He continued to attempt to resolve the matter with opposing counsel (opposing counsel was largely unresponsive to all communications) and at one point volunteered that he still held the money in trust, which was not the case. Approximately one month later when he and opposing counsel met to discuss the outstanding issues, he advised opposing counsel that he had already released roughly half the proceeds and gave opposing counsel the cheque that had been sitting in his file. The crux of the issue is that Barron released funds without an agreement or a new court order saying that he could do so. The discipline Committee found that the manner in which Barron distributed the funds was fair and reasonable, but for the timing and the breach of court order and undertaking. Neither party experienced any harm as a result of the conduct.
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> Barron was suspended for a period of two-months and was required to pay costs of $5,000.00. There was no prior discipline history.

18. We agree that these cases set out an appropriate range of penalties relevant to the instant case.

19. As always, it is important to examine both aggravating and mitigating factors.

20. The main aggravating factor is the length of time over which the Member's conduct continued. Throughout that lengthy period, he could have at any point taken the steps to fulfil his obligations as executor and comply with the Court Order. Furthermore, he was repeatedly reminded of those obligations through the intermittent interventions from Counsel for the institutional beneficiary.

21. There are several mitigating factors, beginning with the Member's long tenure as a lawyer with no prior discipline. This conduct appears to be an isolated instance.

22. The Member was cooperative throughout the investigation, agreed on the facts and entered guilty pleas. He has demonstrated he understands where he went wrong and what he must do to avoid similar problems in the future. Counsel for the Investigation Committee

indicated the Member has been through a process with Law Society practice advisors and has been discharged from that process. Therefore, no further remedial action is required.

23. This was not a calculated scheme in any sense and the Member did not benefit personally from his failure to meet the appropriate standard of conduct.

24. Having considered the circumstances of this case within the context of the cases set out above, we find that the recommended penalty falls within an appropriate range. We find as well that the recommended penalty is neither unfit nor unreasonable nor contrary to the public interest. Consequently, we accept Counsels' recommendation as to penalty.

ORDER

25. The Hearing Committee suspends the Member for a period of two weeks commencing June 1, 2018, and orders him to pay the costs related to the complaint in the amount of $2,000.00. The costs are payable to the Law Society on or before June 1, 2018, unless the parties agree to a different payment schedule.

"G Tegart"	"April 7, 2018"
Gerald Tegart (Chair)	Date
"Ronald Barsi"	"April 7, 2018"
Ron Barsi	Date
"H Hodgson"	"April 5, 2018"
Heather Hodgson	Date

AGREED STATEMENT OF FACTS AND ADMISSIONS

In relation to the Formal Complaint dated January 11, 2017 alleging that Norman Christian MacLeod, of the City of Regina, in the Province of Saskatchewan is guilty of conduct unbecoming a lawyer in that he:

1. **did, in connection with the W.I. Estate matter, fail to answer with reasonable promptness all professional communications from E.K., a fellow member of the Law Society of Saskatchewan;**

2. **did, in connection with the W.I. Estate matter, fail to provide service that was competent, timely, conscientious, diligent and efficient;**

3. **did, in connection with the W.I. Estate matter, fail to comply with the terms of an Order dated April 18, 2012, wherein he was required to complete the**

administration of the W.I. Estate and provide an accounting, all on or before July 1, 2012.

JURISDICTION

26. Norman Christian MacLeod (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.

27. The Member is currently the subject of a Formal Complaint initiated by the Law Society dated January 11, 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 allegations of conduct unbecoming set out in the Formal Complaint.

BACKGROUND OF THE COMPLAINT

28. The issues dealt with herein arose as a result of a complaint by E.K. [Tab 3] in relation to the Member's administration of the Estate of W.I. E.K., a lawyer, represented a major institutional beneficiary named in the Last Will and Testament of W.I. The focus of E.K.'s complaint was that the Member had failed to conclude the administration of the Estate after more than 8 years and had failed to respond to numerous requests for an accounting in relation to the administration of the Estate. E.K. disclosed that a Court Order compelling the production of an accounting and compelling the resolution of the Estate administration had also been obtained and that the Member failed to comply with said Order. The Law Society initiated an investigation in response to this complaint.

PARTICULARS OF CONDUCT

29. On the direction of his client, W.I., the Member drafted a Last Will and Testament for W.I., in which the Member would be appointed the primary Executor and Trustee [Tab 4]. The Last Will and Testament was executed on August 5, 2005.

30. W.I. died on October 19, 2007.

31. On or about December 14, 2007, the Member, in his capacity as Executor of the Estate of W.I., made an application for Letters Probate for the Estate of his former client. The application included a copy of the Last Will and Testament of the late W.I. who granted two specific bequests, one being the sum of $100,000 to his niece, and a further $100,000 to his sister-in-law. The residue of the Estate was to be donated to the institutional beneficiary represented by E.K. The Application for Letters Probate was made through the law firm where the Member was practicing at the time.

32. According to the affidavit filed by the Member in connection with the Application for Letters Probate, the estimated value of the Estate of W.I. as at December 14, 2007 was approximately $1,719,352.81. On December 20, 2007, Letters Probate were granted by the Court of Queen's Bench. The Member's law firm rendered an account to the Estate after Letters Probate

were granted in the amount of $30,614.00 and those funds were paid from funds being held on behalf of the Estate.

32. Following Letters Probate being granted by the Court, the Member's winding up of the Estate occurred at a very slow pace. As an example, it was not until February 18, 2009 that the specific $100,000.00 bequests were paid to each of the two recipients. These payments were made only after the specific beneficiaries made numerous attempts to obtain information from the Member themselves and later hired a law firm to contact the Member. It was only after the Member received a letter from a lawyer representing the specific beneficiaries did the Member pay out the aforementioned sums to these specific beneficiaries. That lawyer had also asked the Member to provide a number of documents relating to the winding up of the Estate, but the Member did not respond.

33. In correspondence with the Law Society, the Member admits that the amounts could have been paid out earlier, but he was attempting to get everything settled all at once.

34. The vast majority of the value of the Estate was comprised of investments in the nature of stocks, shares and interests in various companies and mutual funds. The Will, drafted by the Member, included clauses that allowed the Member to postpone the distribution of assets and to or the sale of investments as he saw fit, in his sole discretion. The Member had received specific instructions from his client, W.I. not to sell the Estate investments if the market was rising or if the market was on a downward trend to hold the assets until the market recovered. The Member says that he knew W.I. well. He met W.I. when his practice was in the Cathedral area, prior to 2004. He drafted a previous will for W.I and helped him set up a scholarship fund with entity that was the institutional beneficiary of the Estate. He would meet with W.I. at the coffee shop next to his office and W.I. would also drop by the office on occasion. W. I.'s investment strategy was often discussed.

35. The Member states that his instructions from W.I. were to try to maximize the value of the gift. While the Member had the ability to transfer those assets to the institutional beneficiary in early 2008 he did not. He felt that his instructions required him to avoid transferring the assets in a low market cycle or in circumstances where the assets were increasing in value.

36. The Member made moves towards transferring the investments on at least two occasions in April of 2008 and August of 2008 but decided not to do so. In relation to the April 2008 period, the Member went so far as to contact the beneficiary to advise that the investments would be transferred within the next two days. This did not occur. In both the April and August 2008 periods, the decision not to transfer the funds was made by the Member due to the fact that markets were experiencing an increase at the time. The transfer to the major beneficiary was delayed as a result.

37. Little did the Member know that the markets had peaked in October of 2007. The market fluctuation that occurred in the period of time between W.I.'s death and when the Member could have transferred the shares to the major beneficiary in early 2008 (but made the fateful decision not to) was followed by a nearly 50% decline in the markets through the second half of 2008 and into the first quarter of 2009.

38. Through the dramatic downturn in the second half of 2008 the Member held the view that he was forced to delay the transfer of the investments because the value was decreasing. The Member was in a situation where he was delaying the transfer in the hopes of a market recovery, which was slow in coming.

39. The Member's actions, and the view that he should not transfer the investments when they were increasing and should not transfer them when they were decreasing, placed the Member in a situation where he was hoping that the property of the primary beneficiary would increase in value, but he was also taking a risk that it would decrease. The Member recognizes that his judgment may have been clouded by his desire to follow W.I's wishes; he believed that the movement in the markets would be corrected in the normal course, which turned out not to be the case.

40. As the administration of the Estate progressed, the residual institutional beneficiary received interim distributions from the Estate as follows:

(i) $14,000.00 on February 17, 2009;
(ii) $1,137,452.87 on March 10, 2010; and
(iii) $65,000.00 in March 2013.

41. When the largest part of the distribution to E.K.'s client was made in March of 2010, the decrease in value of the gift as a result of the Member's decision to delay transfer of the investments was somewhere between $82,000.00 and $226,000.00. The calculation leading to the $226,000.00 decrease is based on the difference between the amount that would have been realized had the Member transfer at an ideal time in June of 2008 as compared to the actual value of the assets transferred in March of 2010. The calculation leading to the $82,000.00 decrease takes into consideration interest and dividend income earned to the date the assets were transferred in March of 2010.

42. Throughout the time the Member had carriage of this matter, E.K. made a variety of efforts to advance the administration of the Estate if W.I. to a conclusion and to obtain information on behalf of the residual beneficiary. Between September of 2009 and March of 2011 E.K. wrote to the Member on numerous occasions requesting an accounting from the Member in relation to the Estate and various other information, to no avail. The following are some examples of E.K.'s efforts to have the matter moved to a conclusion and to obtain information after receiving the March 10, 2010 interim distribution:

a. On each of May 6, 2010, June 14, 2010 and August 9, 2010, E.K. emailed the Member, reiterating the request for a reporting letter from the Member with respect to the Estate;

b. On August 25, 2010, E.K. spoke to the Member by telephone. The Member requested more time to prepare the report and advised that he would make the preparation of the report a priority within the next week;

c. On September 29, 2010, E.K. sent the Member a letter, requesting a reporting letter not later than October 15, 2010;

d. On October 20, 2010, E.K. and the Member spoke by telephone. The Member told E.K. that he was preparing the reporting letter but required more time to complete it. E.K. asked the Member to send the reporting letter within the next two weeks;

e. On November 23, 2010, E.K. emailed the Member, advising that the residual beneficiary was becoming anxious to receive the requested information, and requesting that such information be provided no later than December 1, 2010;

f. On December 1, 2010, E.K. received a voicemail message from the Member advising that he would be in touch on December 6, 2010;

g. On December 7, 2010, E.K. received a voicemail message from the Member, wherein he stated that he had not yet prepared the reporting letter, but that he would call E.K. later in the week;

h. On December 8, 2010, E.K. spoke to the Member by telephone. The Member advised that he had not yet prepared the reporting letter, but he stated that he would do so that week;

i. On December 20, 2010, the Member emailed E.K. advising that he would send the reporting letter that week;

j. On January 5, 2011, E.K. and the Member spoke by telephone. The Member advised that when he conducted his review of the file, he had determined that he was missing some bank statements. The Member said that he was now in receipt of those bank statements and that he was in the process of completing a cheque reconciliation as well as a reconciliation for the sale of the shares in the Estate. The Member advised that he would be providing E.K. with the reporting letter "very soon";

k. On February 10, 2011, E.K. sent an email to the Member insisting that the requested information be provided by the end of the month;

l. On February 25, 2011, E.K. received an email from the Member stating that he was out of the office until March 14, but that he would contact E.K. upon his return;

m. On March 29, 2011, E.K. emailed the Member noting that it had been two weeks since his return to the office and more than six weeks since the last request of February 25, 2011. E.K. asked to hear from the Member within the week.

43. The requested reporting letter and information surrounding the administration of the Estate was not provided by the Member as promised. On August 13, 2011, E.K. provided one final request to the Member for an accounting in relation to the Estate and stated that if he failed to provide said accounting that an application would be made in Court to compel the filing of an accounting.

44. Receiving no accounting from the Member, E.K. ultimately applied to the Court by way of a Notice of Motion dated April 4, 2012 to have the Member file accounts in respect of the Estate and for a deadline in relation to the completion of the administration of the Estate. On or about the 17th of April 2012, the Member, after negotiating the terms of an Order, executed the consent portion to the draft Order that required him to file accounts in respect of the Estate of W.I. and to complete the administration of the Estate on or before July 1, 2012 [Tab 5]. Mr. Justice Gerein granted the Order on April 18, 2012 [Tab 6]. The complainant, E.K. served the Member with the Order as issued by Mr. Justice Gerein on April 19, 2012.

45. July 1, 2012 came and went without the Member concluding the administration of the Estate or providing an accounting to E.K. or E.K.'s client. E.K. continued to communicate with the Member seeking advancement of the Estate matter. In one case on March 25, 2013 E.K. emailed the Member reminding him of his obligations pursuant to the Order of Mr. Justice Gerein stating, in part, the following: "the [beneficiary] requires you to provide a detailed accounting of the administration of the Estate (including as ordered by Mr. Justice Gerein on April 18, 2012)."

46. Instead of finalizing the Estate or providing the accounting as required, the Member continued a pattern of delay and avoidance in relation to his dealings with E.K. on the Estate matter. Some examples include:

a. Email from the Member on January 20, 2014- "Hello [E.K.], I should have this wrapped up soon. I will provide you with a final report or an update near the end of this month";

b. Email from the Member on March 7, 2014- "Still working on it. Hope to spend some time on it today. May be able to wrap it up.";

c. Email from the Member on October 14, 2014- "I hope to have this matter progressed if not completed within the next month or so. I would like to say by the end of this month ... ";

d. Voicemail from the Member on March 12, 2015- "I'm calling now because I've just about got things done, .. I'm catching a plane here in about an hour and a half and I haven't had time to put it all together for you. I'm back on March 31..."

47. Having seen no compliance with the Court Order to finalize the Estate or provide an accounting, E.K. ultimately filed the complaint to the Law Society on September 15, 2015. At that time the Member had exceeded the deadline set out in the Court Order by more than 3 years.

48. When asked why he did not comply with the Court Order, the Member suggested that he was unaware that the Order had actually been granted and that he mistakenly thought that the matter had been adjourned sine die. The member subsequently checked the Court file and immediately advised the Law Society that he had been mistaken in that regard.

49. The Member also failed to appropriately address issues arising in relation to the Canada Revenue Agency which resulted in garnishee proceedings in relation to the Estate accounts and monetary penalties and interest in the amount of $1,295.81.

50. With respect to the substance of the complaints the Member has admitted the following to the Law Society within the context of the investigation:

a. "I accept that my communication with the beneficiaries was not what it should have been";

b. Regarding the delay in remittances to CRA "I take full responsibility for my actions";

c. “I will begin by stating the obvious. It [the Estate] should have been done sooner." "In hindsight, with the downturn in world markets, I should have transferred the assets earlier." "There was no intention other than to realize the greatest value for the Estate. I failed in that regard";

d. "I tried many times to figure this out [and] was not able to do so ... I would become more frustrated ... overwhelmed ... and perhaps not thinking clearly ... ";

e. "Inexperienced in the area" " ... the way I dealt with the investment account Reconciliation, on Mr. Allen's suggestion, was to have my accountant do it. That I had never considered doing that on my own dumfounds [sic] me."

f. “I was busy with my practice" focusing on Criminal Law matters and "phasing out my solicitor’s work";

g. "So no excuses". I "did not ask for assistance. I have never been good at asking for help, but clearly this is a case where I should have.";

h. It was a mistake to try to conclude the administration "all at once".

51. The final distribution of funds to E.K.’s client occurred on January 13, 2016 with a final payment in the amount of $113,564.84. A partial accounting was provided by the Member in January of 2016. A final accounting has yet to be completed by the Member as minor issues remain outstanding in relation to the Estate including a potential refund from the Canada Revenue Agency and accountant’s fees. The amount of $25,000.00 remains in the trust account of E.K. pending resolution of all Estate matters.