

THE LAW SOCIETY OF ALBERTA
HEARING COMMITTEE REPORT

IN THE MATTER OF THE *LEGAL PROFESSION ACT*
AND IN THE MATTER OF
A HEARING REGARDING THE CONDUCT OF
KATHERINE JUNE KOSKA,
A MEMBER OF THE LAW SOCIETY OF ALBERTA

INTRODUCTION

[1] On April 3, 2014 a Hearing Committee (the "Committee") of the Law Society of Alberta ("LSA") convened at the LSA office in Edmonton to inquire into the conduct of Katherine June Koska, a Member of the LSA. The Committee was comprised of Anthony G. Young, QC Chair, Robert Harvie, QC, Benchler, and Derek Van Tassell, QC, Benchler. The LSA was represented by Jane A. Corns. The Member was in attendance throughout the hearing and was represented by Elvis Iginla. Also present at the Hearing was a Court Reporter to transcribe the Hearing.

JURISDICTION, PRELIMINARY MATTERS AND EXHIBITS

[2] The Chair, Member and Counsel for the LSA were asked whether there was any objection to the constitution of the Committee. There being no objection, the Hearing proceeded.

[3] Exhibits J1 through J4, consisting of the Letter of Appointment of the Committee, the Notice to Solicitor pursuant to section 56 of the *Legal Profession Act*, the Notice to Attend to the Member and the Certificate of Status of the Member with the LSA established the jurisdiction of the Committee.

[4] The Certificate of Exercise of Discretion pursuant to Rule 96(2)(b) of the Rules of the LSA ("Rules") pursuant to which the Director, Lawyer Conduct of the LSA, determined that there were no persons to be served with a Private Hearing Application was entered as Exhibit J5. Counsel for the LSA advised that the LSA did not receive a request for a private hearing. Accordingly, the Chair directed that the Hearing be held in public.

[5] At the outset of the hearing Exhibit 1, an Agreed Statement of Facts, with tabs 1 through 33 contained in the Exhibit Book which had been provided to the Committee in advance were entered into evidence in the Hearing with the consent of the parties. Further Exhibit 2, (the Joint Submission on Sanction), Exhibit 3 (the Estimated Statement of Costs), Exhibit 4, (Ms. Koska's discipline record) and Exhibit 5 (Undertaking) were added to the Exhibit Book as the hearing proceeded.

CITATIONS

[6] On January 24, 2012, as a result of a complaint by Ms. Monica Johnson, then legal counsel with the Public Trustee's Office ("Ms. Johnson"), the Conduct Committee of the LSA, directed the following alleged conduct to a hearing:

1. It is alleged that you [Member Koska] have brought the profession into disrepute by failing in your [her] duties as a trustee for M.M., a dependent adult under the Dependent Adults Act, and that such conduct is conduct deserving of sanction.
2. It is alleged that you [Member Koska], in your [her] capacity as a lawyer for the Estate of M.M., a dependent adult, improperly took monies belonging to the Estate which were in your [her] trust account, and that such conduct is conduct deserving of sanction.
3. It is alleged that you [Member Koska] breached Justice Macklin's Court Order of July 29, 2009, by failing to remit funds from your [her] trust account to the Public Trustee as directed, and that such conduct is conduct deserving of sanction.
4. It is alleged that you [Member Koska] engaged in court proceedings that were clearly without merit and which Justice Graesser found to be frivolous and an abuse of process, and that such conduct is conduct deserving of sanction.
5. It is alleged that you [Member Koska] failed to respond in a timely manner to communications from the Law Society in the matter of the complaint made by an employee of the Public Trustee's Office, and that such conduct is conduct deserving of sanction.

[7] On September 24, 2013, as a result of a complaint by K.K., the Conduct Committee of the LSA, directed the following alleged conduct to a hearing:

6. Ms. Koska [Member Koska] failed to serve her client;
7. Ms. Koska [Member Koska] failed to advance her client's matter;
8. Ms. Koska [Member Koska] transferred trust funds without providing a copy of the account to her client;

9. Ms. Koska [Member Koska] failed to transfer the Complainant's [K.K.'s] file to the successor lawyer; and

10. Ms. Koska [Member Koska] failed to respond promptly and completely to communication from the LSA.

SUMMARY OF RESULTS

[8] The Member tendered an Agreed Statement of Facts and Admission of Guilt regarding all 10 Citations. The Hearing Committee found that the Agreed Statement of Facts and Admission of Guilt was in a form acceptable to it and that the conduct noted was conduct deserving of sanction.

[9] There was a joint submission by counsel for the Member and counsel for the LSA regarding sanction. It was jointly submitted that the Member be suspended for a period of 6 months. The Hearing Committee agreed with the joint submission.

AGREED STATEMENT OF FACTS AND ADMISSION OF GUILT

[10] The Agreed Statement of Facts and Admission of Guilt is attached hereto as Schedule "A".

DECISION ON GUILT

[11] No additional evidence was led by either party.

[12] Ms. Koska acknowledged to the Hearing Committee that she:

- (a) made the admissions voluntarily;
- (b) unequivocally admitted her guilt to the essential elements of the citations;
- (c) understood the nature and consequences of the admissions; and
- (d) understood that the Hearing Committee was not bound by any submission made jointly by her counsel and counsel for the LSA regarding sanction.

[13] The Hearing Committee was asked to consider the joint submission of guilt and make a determination that it was acceptable and that the conduct outlined therein was conduct deserving of sanction.

[14] After deliberating on the Agreed Statement of Facts and admission of Conduct Deserving of Sanction, the Hearing Committee found that it was in a form acceptable to it pursuant to Section 60 of the *Legal Profession Act*. As such, it was deemed for all purposes to be a finding of the Hearing Committee that the conduct of Ms. Koska was deserving of sanction.

JOINT SUBMISSION ON SANCTION

[15] There was a joint submission from the Member and the Law Society regarding sanction.

Specifically the joint submission was:

1. Pursuant to Section 72(1)(c) of the *Legal Profession Act* (the “Act”) Ms. Katherine June Koska shall serve a 6 month suspension, commencing Monday, April 7, 2014;
2. Pursuant to Section 72(2)(c) of the Act Ms. Katherine June Koska shall pay the costs of this hearing, fixed at \$30,000.00 and as per the Bill of Costs, to be paid upon the following terms:
 - i. \$1,000.00 of the total amount paid on the date of this hearing, being April 3, 2014, by the end of business, namely 16:30 hours;
 - ii. The balance of the total, being \$29,000.00, to be paid only upon being reinstated to the Law Society of Alberta, by way of 58 payments in the amount of \$500.00 each to be paid on the first business day of each month, by the end of business, namely 16:30 hours, only commencing the first month after Ms. Katherine June Koska has served her 6 month suspension and has been reinstated, whether active or inactive, to the Law Society of Alberta; and
 - iii. The usual terms of costs payment, as per s.79 of the Act, apply whereby there will be an automatic suspension of Ms. Katherine June Koska for non-payment for any delay in payment and wherein such delay is not rectified within 1 week of the applicable due dates.

[16] The joint submission was that the nature of the conduct giving rise to these proceedings was serious in nature:

- a) There was the misuse of trust funds;
- b) The complaints involved a member of a vulnerable population;
- c) There are concerns regarding governability and responsiveness to the Law Society; and
- d) Generally not responding in a timely manner throughout.

[17] It was submitted by way of mitigation that Ms. Koska had:

- a) cooperated with the Law Society in terms of preparing for the suspension; and
- b) demonstrated accountability by dealing with all of her files prior to the suspension such that there is no need to have a custodian engaged to manage her practice.

[18] It was indicated that the Law Society was satisfied to have Ms. Koska serve a 6 month suspension as such a suspension would be sufficient to convey general deterrence to the public that behavior of this kind will not be accepted or tolerated. In addition, the suspension would provide a significant amount of time for the Member to reflect on her practice and what she can do to improve it in the future.

Decision Regarding Sanction

[19] Paragraph 56 of the Hearing Guide states:

“If a submission on sanction is made jointly by the Member and Law Society counsel, the Hearing Committee should give serious consideration to the joint submission, and accept it unless they consider it unfit or unreasonable or contrary to the public interest. The Hearing Committee, however, is not bound by the submission, and may determine the more appropriate sanction, but only do so after the member and Law Society counsel are given an opportunity to speak to the matter.”

[20] There is to be a purposeful approach to sanctioning. The goal of sanctioning is to ensure that high professional standards are maintained and the public confidence in the legal profession is preserved. The overarching goal is protection of the public.

[21] A 6 month suspension is quite a lengthy suspension. The Hearing Committee is satisfied that it maintains the public confidence in the legal system and ensures that a message is sent to all other lawyers that high professional standards and the taking of responsibility for clients is fundamental to the practice of law in Alberta. As such, the Hearing Committee is of the view that the joint submission concerning sanction falls within the range for conduct of this kind.

[22] There shall be a six-month suspension commencing Monday, April 7, 2014.

[23] Ms. Koska shall pay the costs of this hearing, which is fixed, at \$30,000; the costs will be paid upon the following terms:

- a) \$1,000 by 4:30 PM on April 3, 2014;
- b) the balance of the total, being \$29,000, is to be paid upon reinstatement;
- c) payments shall commence on the first month after the Member has served her six-month suspension and has been reinstated to the Law Society of Alberta, whether active or inactive, by way of 58 payments of \$500 each to be paid on the first day of each month by 4:30 PM; and
- d) the usual terms with respect to cost payment under Section 79 of the *Act* apply. As such there will be an automatic suspension of Ms. Koska for nonpayment, for any delay in payment where that delay hasn't been rectified within one week of the applicable due date.

[24] There shall be a Notice to the Profession regarding the suspension.

[25] There shall be no notice to the Attorney General.

[26] There shall be such redaction of the record as may be necessary to protect confidentiality and privilege.

Dated at the City of Calgary, in the Province of Alberta this 19th day of October, 2014.

Anthony G. Young, QC (Chair)

Robert Harvie, QC

Derek Van Tassell, QC

SCHEDULE "A"

IN THE MATTER OF THE *LEGAL PROFESSION ACT*

AND

IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF KATHERINE JUNE KOSKA, A MEMBER OF THE LAW SOCIETY OF ALBERTA

AGREED STATEMENT OF FACTS

1. Katherine June Koska ("Member Koska") was admitted to the Law Society of Alberta ("LSA") on February 7, 1986, and practices law in St. Albert, Alberta as a sole practitioner.
2. Member Koska's primary area of practice is civil litigation.
3. Member Koska's current status is Active/Practicing.

II. CITATIONS

4. On January 24, 2012, as a result of a complaint by Ms. Monica Johnson, then legal counsel with the Public Trustee's Office ("Ms. Johnson"), the Conduct Committee of the LSA, directed the following alleged conduct to a hearing:
 1. It is alleged that you [Member Koska] have brought the profession into disrepute by failing in your [her] duties as a trustee for M.M., a dependent adult under the Dependent Adults Act, and that such conduct is conduct deserving of sanction.
 2. It is alleged that you [Member Koska], in your [her] capacity as a lawyer for the Estate of M.M., a dependent adult, improperly took monies belonging to the Estate which were in your [her] trust account, and that such conduct is conduct deserving of sanction.
 3. It is alleged that you [Member Koska] breached Justice Macklin's Court Order of July 29, 2009, by failing to remit funds from your [her] trust account to the Public Trustee as directed, and that such conduct is conduct deserving of sanction.

4. It is alleged that you [Member Koska] engaged in court proceedings that were clearly without merit and which Justice Graesser found to be frivolous and an abuse of process, and that such conduct is conduct deserving of sanction.
 5. It is alleged that you [Member Koska] failed to respond in a timely manner to communications from the Law Society in the matter of the complaint made by an employee of the Public Trustee's Office, and that such conduct is conduct deserving of sanction.
5. On September 24, 2013, as a result of a complaint by K.K., the Conduct Committee of the LSA, directed the following alleged conduct to a hearing:
1. Ms. Koska [Member Koska] failed to serve her client;
 2. Ms. Koska [Member Koska] failed to advance her client's matter;
 3. Ms. Koska [Member Koska] transferred trust funds without providing a copy of the account to her client
 4. Ms. Koska [Member Koska] failed to transfer the Complainant's [K.K.'s] file to the successor lawyer; and
 5. Ms. Koska [Member Koska] failed to respond promptly and completely to communication from the LSA.

III. FACTS

Public Trustee Complaint

6. On July 10, 1995, Justice Clarke granted an Order, directing M.M. be declared a Dependent Adult and further directing the following:
- a) P.S., aunt of M.M. and mother of Member Koska, and Member Koska, being M.M.'s cousin, be appointed as co-Guardians and co-Trustees;
 - b) P.S. and Member Koska to apply to the Court for a review of the Order within four years from the date of the Order;
 - c) P.S. and Member Koska to file accounts with the Clerk of the Court within four years from the date of the Order; and
 - d) P.S. and Member Koska to file with the Clerk of the Court a true inventory and accounts of the assets and liabilities of M.M.'s Estate.

See Tab 1 attached here and forming part of this Agreement.

7. On July 14, 2008, M.M.'s care home applied to the Court, as a result of unpaid care charges for M.M., to have Member Koska and P.S. discharged as co-Guardians and co-Trustees and to have the Public Trustee and Public Guardian appointed (the "E" Application).
8. Member Koska states that she and P.S. made attempts to file an inventory, pass accounts, and apply for a review as directed by Justice Clarke, however such attempts were late, or otherwise deficient, so Member Koska and P.S. retained counsel, initially Christopher Head ("Mr. Head"), and subsequently Mr. Tom Plupek ("Mr. Plupek") to make the required applications for the review and passing accounts, which they did in 2009 and January 2010, to remedy such deficiencies.
9. On February 19, 2009, Member Koska, through her counsel Mr. Head filed a Notice of Motion and Affidavit seeking to continue as guardian and trustee of M.M. In support, Member Koska filed an Affidavit and attached her accounts (the "2009 Accounts") for the Court's approval. The 2009 Accounts were the first accounts submitted by Member Koska to the Court since being appointed as Trustee and Guardian in 1995.
10. Also on February 19, 2009, the E Application went before Justice Ouellette, with Mr. Ian Meikle (Mr. Meikle") acting as counsel for the care home and Mr. Head acting as counsel for both Member Koska and P.S.; and wherein Justice Ouellette granted an Interim Order directing Member Koska to continue as Trustee and Guardian on an interim basis. See Tab 2 attached here and forming part of this Agreement.
11. On April 16, 2009, the parties appeared before Justice Ouellette, who granted two Orders, including an Order that Member Koska and P.S. be terminated as Co-Trustees and Co-Guardians and appointed the Public Trustee's Office as Trustee and Guardian (the "Justice Ouellette Termination Order). See Tabs 3 and 4 attached here and forming part of this Agreement.
12. By letter of June 22, 2009, S.M. of the Public Trustee's Office requested that Member Koska provide her trust cheque for the balance of monies remaining in her account relating to M.M.'s Estate. See Tab 5 attached here and forming part of this Agreement.
13. By letter of July 14, 2009, Ms. Johnson wrote to Member Koska that:
 - a) indicated the Public Trustee was still waiting for a response; and
 - b) requested that Member Koska provide the Public Trustee with her trust cheque for the balance of M.M.'s funds, July 22, 2009, failing which the Public Trustee gave notice the matter would be brought before the Court.See Tab 6 attached here and forming part of this Agreement.

14. Member Koska did not respond or provide the Public Trustee's Office with any funds at that time. Member Koska contends that any communication from the Public Trustee's office at that time should have been directed to Mr. Head.
15. On July 28, 2009, the Ms. Johnson of the Public Trustee filed a Notice of Motion returnable July 29, 2009, and Affidavit, seeking an Order directing Member Koska to pay all funds belonging to M.M., and in respect of the same:
 - a. Member Koska asserts that she was not properly served, or otherwise made aware of, such Notice and Affidavit; and
 - b. In addition to provision of unfiled copies of the Notice of Motion and Affidavit on July 22, 2009, Ms. Johnson served filed copies of the same on Mr. Head via fax and then, further to Mr. Head's request and identification of communication challenges with Member Koska, requested that, as backup, Ms. Johnson also try to provide copies to Member Koska. See Tab 7 attached here and forming part of this Agreement.
16. On July 29, 2009, Justice Macklin ordered that:
 - a) Member Koska pay all funds belonging to M.M. in Member Koska's trust account (the "Trust Account") within five (5) business days (of the Order);
 - b) Member Koska provide the Public Trustee, along with the trust funds, a statement of the Trust Account showing a balance of '\$0';
 - c) if Member Koska did not pay all trust funds of M.M. in the Trust Account and provide a statement of the Trust Account within five (5) business days (of the Order) that Member Koska appear in Justice Chambers on Friday, August 7, 2009 at 10:00 a.m., to show why she should not be held in contempt of court; and
 - d) Member Koska personally pay the costs of the application; the "Justice Macklin Directing Payment Order".See Tab 8 attached here and forming part of this Agreement.
17. In respect of the proceeding when the Justice Macklin Directing Payment Order was issued:
 - a. Member Koska was not in attendance and states that:
 - i. she was not aware of the proceeding;
 - ii. she was represented by Mr. Head; and
 - iii. there was only one day between a letter issued by Ms. Johnson to Member Koska and the proceeding; and

- b. Mr. Head was in Attendance and spoke to his role, noting, *inter alia*, to be an Officer of the Court given communication challenges with Member Koska.

See Tab 9 attached here and forming part of this Agreement.

18. On July 29, 2009, a process server attempted, but was unsuccessful, in serving Member Koska with the Justice Macklin Directing Payment Order.
19. On July 30, 2009, and after several attempts, a process server posted the Justice Macklin Directing Payment Order, on Member Koska's front door of her residence.
20. By letter of July 30, 2009, Mr. Head wrote to Ms. Johnson (of the Public Trustee's office) to confirm that he had been personally served with the Justice Macklin Directing Payment Order and that he forwarded the same, by fax Member Koska. Mr. Head also wrote that his records indicated the fax to Member Koska was successfully received. See Tab 10 attached here and forming part of this Agreement.
21. On August 6, 2009, an investigator with the Public Trustee's Office personally served Member Koska with the Justice Macklin Directing Payment Order. Tab 11 attached here and forming part of this Agreement.
22. Member Koska states that:
 - a. on August 6, 2003, she was in the lobby of the Law Courts building in Edmonton with a distraught client and an opposing lawyer after a Chambers' appearance when Ms. Johnson came up to her and handed her an envelope;
 - b. Ms. Johnson did not indicate at the that time that she Ms. Johnson was serving Member Koska;
 - c. she did not think she could be served as she was then being represented by Mr. Head and she did not know who Mr. Johnson was;
 - d. the contents of the envelope included the Justice Macklin Directing Payment Order but she did not read such contents until the afternoon of the next day, being August 7, 2009; and
 - e. Mr. Head had not been in touch with Member Koska Justice Macklin Directing Payment Order or a possible contempt application.
23. On August 7, 2009, Mr. Head and Ms. Johnson appeared before Justice Topolniski who ordered that:

- a) Member Koska be found in contempt of Court for failing to comply with the Justice Macklin Directing Payment Order;
- b) a receiver be appointed with powers and responsibilities to: i) seize and take control of funds belonging to M.M. in the Trust Account; ii) review books or records relating to M.M. in the possession or control of Ms. Koska; iii) pay to the Public Trustee trust funds belonging to M.M. seized from the Trust Account; and iv) provide a report to the Court and the Public Trustee;
- c) the receiver be agreed upon by counsel for Member Koska and the Public Trustee;
- d) Member Koska shall provide her full cooperation with the receiver; and
- e) costs be dealt with at a later date.

The “Justice Topolniski Contempt Order”, see Tab 12 attached here and forming part of this Agreement. Also see Tab 13 attached here and forming part of this Agreement.

- 24. By letter of August 7, 2009, Mr. Head reported to the Complaints Director of the LSA the Justice Topolniski Contempt Order and set out concerns as to:
 - a) Member Koska’s actions with regard to the matter being inappropriate and requiring investigation;
 - b) His view of Member Koska’s extraordinary lack of respect to the Courts; and
 - c) His concern that there may be some unidentified health issues lurking behind Member Koska’s conduct.
- 25. By letter of August 7, 2009, Ms. Johnson lodged a complaint to Maurice Dumont QC, then Manager of Complaints (Edmonton), of the LSA (“Mr. Dumont”) setting out concerns about the way in which Member Koska handled M.M.’s finances, more specifically that:
 - a) Member Koska did not file income taxes for M.M. from 2002 to 2008, although she filed such returns retroactively;
 - b) M.M.’s estate suffered, at a minimum, an estimated total loss for Guaranteed Income Supplement (‘GIS’) and Alberta Seniors Benefits (‘ASB’) of \$38,009.04, and likely other loss for Older Age Security (‘OAS’);
 - c) since August 9, 1995, Member Koska paid \$32,837.96 from M.M. funds to K. June Koska Professional Corporation without Court authorization, and of this amount: i) \$27,151.25 were billed and paid as ‘legal’ fees, ii) \$1,465.33 were paid as disbursements, and iii) \$3,792.08 were paid as legal assistant/work processing charges.
- 26. The above noted letters of complaint, from Mr. Head and Ms. Johnson, were both sent on August 7, 2009 being the same day the Justice Topolniski Contempt Order was issued.

27. By letter of August 10, 2009, Member Koska wrote to Justice Topolniski setting out, in part, that:
- a) she had not been aware of the Justice Macklin Directing Payment Order;
 - b) if she had been aware she would have tried to make other arrangements for a different date for the hearing or attend at it rather than not appear at all;
 - c) she did not intend any lack of respect to the Court in not attending;
 - d) she was alerting Justice Topolniski that the Justice Topolniski Contempt Order was affected by appeals of preceding Court Orders pending which she viewed as relevant, indicating “I do not know if you were aware of the pending appeal at the time of your Order”;
 - e) she request that Justice Topolniski not sign and have filed the Justice Topolniski Contempt Order so that she could.
- See Tab 14 attached here and forming part of this Agreement.
28. By letter of August 10, 2009 Member Koska wrote to Mr. Dumont setting out, *inter alia*, that she did not have sufficient notice of the applications. See Tab 15 attached here and forming part of this Agreement.
29. By letter of August 11, 2009, Mr. Head stated to Mr. Dumont:
- a) the possibility of an Appeal by Member Koska was specifically mentioned to Justice Topolniski; and
 - b) his belief that there was mention made before Justice Macklin of the possibility of an Appeal, but he was uncertain as to whether it was he or Ms. Johnson who made such mention.
30. On August 13, 2009, Member Koska appealed the Justice Ouellette Termination Order and the Justice Macklin Directing Payment Order.
31. On August 14, 2009, the Director of the LSA issued an Investigation Order. See Tab 16 attached here and forming part of this Agreement.
32. By letter of August 18, 2009, Mr. Dumont wrote to Member Koska stating, in part:
- a) his understanding that: i) Member Koska was cited in contempt for failing to comply with the Justice Macklin Directing Payment Order, and that ii) as of August 18, 2009 Member Koska had failed to comply with the same;
 - b) being cited in contempt of Court is of grave concern to the LSA;
 - c) failure to pay out trust funds belonging to a client adds considerably to the LSA’s concern;
- and

- d) it is imperative that Member Koska make herself available forthwith to investigator of the LSA and provide them with the materials and to answer their inquiries.

Tab 17 attached here and forming part of this Agreement.

- 33. By letter of August 24, 2009, to the LSA Member Koska commented and provided clarification with respect to the LSA's letter of August 18, 2009. Tab 18 attached here and forming part of this Agreement.
- 34. Further to contact made by Member Koska to Ms. Janet Dixon of the LSA ("Ms. Dixon"), wherein Member Koska sought direction as to how to comply with confidentiality obligations in view of a receiver being appointed, by letter of September 14, 2009, wrote to Member Koska and Ms. Johnson stating, in part, that:
 - a) the LSA's concern with the appointment of a receiver to affect the transfer of M.M.'s funds;
 - b) the LSA's concern that a receiver would necessarily have to review all of the trust records of Member Koska to arrange payment of the funds and that the right of other clients to claim solicitor client privilege may be unintentionally compromised under this model; and
 - c) on Friday, September 11th, 2009 that Ms. Dixon advised Member Koska that if she did not either comply or obtain a stay of her obligation to transfer the trust funds by the beginning of the week, that the LSA would take further action which may include an application, on notice to Member Koska, to appoint a custodian of the practice of Member Koska, which would relieve the concerns of the LSA regarding solicitor client privilege;

See Tab 19 attached here and forming part of this Agreement.

- 35. On September 14, 2009, a draft investigation report was prepared. See Tab 20 attached here and forming part of this Agreement.
- 36. On September 14, 2009, in Chamber with P.S., Member Koska and their Counsel Mr. Head, Justice Ouellette directed that
 - a. P.S. be released from liability as a former co-trustee; and
 - b. the remaining accounting issues be determined at Special Chambers on November 18, 2009 (the "Special Chambers Accounting Application").

See Tab 21 attached here and forming part of this Agreement.

- 37. On September 24, 2009, Member Koska provided Ms. Johnson with her trust cheque in the amount of \$55,748.32 representing the balance of funds in Member Koska's trust account to the credit of M.M. See Tab 22 attached here and forming part of this Agreement.

38. By letter of October 1, 2009, Ms. Johnson acknowledged to Member Koska receipt of the \$55,748.32 and confirmed that the funds represented all of the funds that Member Koska was holding for M.M.
39. On October 7, 2009, Mr. Head and Ms. Johnson executed and filed the Justice Topolniski's Contempt Order.
40. On October 30, 2009, Ms. Johnson filed the Brief of the Applicant for the Special Chambers Application wherein the Public Trustee sought:
 - a) Judgement in favour of M.M. in the amount of \$52,087.39, plus reimbursement for lost GIS payments in an amount to be determined, plus costs for previous applications; and
 - b) In the alternative, Judgement in favour of M.M. for \$60,391.39, including estimated reimbursement of GIS payments for \$8,304.00, plus costs for previous applicationsSee Tab 23 attached here and forming part of this Agreement.
41. In October 2009 Member Koska changed counsel from Mr. Head to Mr. Tom Plupek ("Mr. Plupek").
42. On November 4, 2009, Justice Ouellette granted Mr. Plupek's application for an adjournment of the Special Chamber Accounting Application and scheduled the matter to January 19, 2010 (the "Justice Ouellette Adjournment with Directions for Special Chambers Order"). See Tab 24 attached here and forming part of this Agreement.

Clause 7 of this Order reads:

"7. The Respondent (Applicant) is not entitled to file any further Supplemental Affidavits with respect to the matter set for Special Chambers on January 19, 2010."

43. On January 15, 2010, Mr. Plupek on behalf of Member Koska filed a Notice of Motion returnable January 19, 2010, seeking for the Court to determine at the Special Chambers application:
 - (a) whether the Applicant (Respondent) has breached Clause 7 of the Order of The Honourable Justice V.O. Ouellette granted on November 4, 2009, and is in contempt of Court thereby;
 - (b) if the Court finds that the Applicant (Respondent) has breached the said Order, then what consequences shall result in these legal proceedings and what penalties should be imposed on the Applicant (Respondent);
 - (c) whether the Affidavit of S.M. filed on January 5, 2010 in these proceedings shall be struck from the Court file and declared inadmissible at the Special Chambers' application.

See Tab 25 attached here and forming part of this Agreement.

44. On January 19, 2010, presiding Justice Graesser issued his Reasons for Judgment for the Special Chambers Accounting Application (the “Justice Graesser Decision”) which stated:

a) Member Koska’s contempt application was dismissed and found to be “frivolous and an abuse of process”;

b) in dealing with the accounting issues, Justice Graesser stated:

“[66] Here, because Ms. Koska combined services as a trustee, which should not have been billed through her professional corporation, with services she was entitled to bill through her professional corporation, the Court must scrutinize the bill to try to determine what falls into what category. As well, some services might be categorized as guardianship services which should not have been billed at all. [67] Ms. Koska cannot avoid Court scrutiny by having billed everything as a lawyer and then submitting legal accounts for taxation.”

c) In dealing with Member Koska’s performance as Trustee, Justice Graesser stated:

“[90] Here, Ms. Koska’s failings as Trustee of M.M.’s Estate are numerous:

1. She failed to file an inventory of the Estate within 6 months from the August 9, 1995 order appointing her and P.S. as trustees and guardians;

2. She failed to pass accounts and reapply for such status within 4 years from the August 9, 1995 order. Indeed, her first such application was in the face of the E Application to compel her to do so and to remove her as trustee and guardian, and then only in February, 2009;

3. She purports to have completely delegated all of her duties as guardian and trustee from herself personally to her professional Corporation as lawyer for the Estate;

4. She charged for routine, administrative tasks like making bank deposits at professional rates;

5. She did not distinguish between functions as guardian (for which no compensation is allowable) and those as trustee. Many items in her various accounts (team conferences at the care home and arranging medical care, for example) are guardianship matters and not trustee matters;

6. She failed to file income tax returns for M.M. for many years;

7. She allowed payment for M.M.’s care at the care home to go into significant arrears; and

8. She took trustee compensation without prior court approval.

...

[129] Trustees are not expected to act perfectly. Minor mistakes or honest errors can and often should be forgiven. But here, I must consider a number of factors. Firstly, Ms. Koska is a lawyer and not a layperson. More knowledge should be expected of her. Secondly, Ms. Koska failed to comply with the clear requirements of the August, 1995 order appointing her that an inventory be filed within 6 months and that her accounts be passed and the order reviewed within 4 years. Nothing effective was done in that regard until February, 2009. I cannot ignore breaches of a Court order. Thirdly, the breaches were not of a sophisticated nature. Ms. Koska was well aware of the need to file income tax returns; she did so until 2002, presumably when the 2001 income tax return was filed. She was aware of the benefits flowing to M.M. and had applied for them in the first place. She must have known when the benefits stopped coming, as she apparently deposited all of the cheques herself. She had instructed an accountant to prepare tax returns for previous years, and obviously had the necessary information to do so again in late 2008 or early 2009 when the delinquent returns were ultimately prepared and filed.”

d) and, in summary, Justice Graesser stated:

“[147] I have found that Ms. Koska improperly withdrew trustee fees in the amount of \$32,837.96 from the Estate without prior Court approval. She, through her professional corporation, is entitled to be paid for legal services rendered to the Estate in the amount of \$10,894.71. She in her personal capacity as trustee is entitled to compensation in the amount of \$10,880.42. Accordingly, she and her professional corporation (to which the monies were actually paid) must reimburse the estate \$11,062.83 (sic). Prejudgment interest on that amount should run from the date the E Application was filed, namely June 25, 2008.

[148] Ms. Koska as trustee is relieved from liability for overpayments as disclosed by the accounts submitted, pursuant to s. 41 of the *Trustee Act*. Otherwise, her accounts as submitted are passed.

[149] Ms. Koska breached her duties as trustee by failing to file income tax returns for M.M. for the years 2002 through 2007, until 2009. That failure resulted in the loss to M.M.’s Estate of Alberta Seniors Benefits in the amount of \$29,705.44 and Guaranteed Income Supplement benefits of \$8,304. Ms. Koska is ordered to pay those sums, plus prejudgment interest, to the Estate.

[150] The Public Trustee has succeeded in the main in its application. Various cost awards have been made against Ms. Koska during the course of these proceedings. The Public Trustee seeks costs of these proceedings in the amount of \$1,900.00 plus disbursements. That is a reasonable and indeed modest request, and I order that the Public Trustee is entitled costs in that amount for all steps in these proceedings which have not already been the subject of a costs award.”

See Tab 26 attached here and forming part of this Agreement.

45. By letter of January 25, 2010, Mr. Maurice Dumont QC of the LSA (“Mr. Dumont”) requested Member Koska advise as to the outcome of the January 19, 2010 court appearance and requested she provide a copy of Mr. Plutek’s Special Chambers’ Brief (the “LSA Outcome Request”).
46. Member Koska did not comply nor respond to the LSA Outcome Request.
47. On June 17, 2010, Mr. Plupek acting for Member Koska objected to Ms. Johnson’s form of Order (Justice Graesser Order). Counsel for the parties appeared before Justice Graesser on this date with respect to Member Koska’s application for a reconsideration of the terms of the unfiled Order from the Justice Graesser Application (the “Justice Graesser’s Settlement of Terms and Reconsideration Application”). See Tab 26 (for transcripts of such application).
48. From the Justice Graesser’s Settlement of Terms and Reconsideration Application, Justice Graesser ordered that:
 - a) Member Koska’s application for relief against the Public Trustee as set out in her Notice of Motion filed December 31, 2009 was adjourned *sine die* with no determination as to her status to bring such application;
 - b) Member Koska and K. June Koska Professional Corporation, reimburse the estate of M.M. the sum of \$11,062.83 plus prejudgment interest;
 - c) Member Koska and K. June Koska Professional Corporation, reimburse the estate of M.M. in the sum of \$32,837.96, but be entitled to deduct \$10,894.71 as payment for legal services rendered by Member Koska through her law firm and deduct \$10,880.42 for her work in her professional capacity as trustee’s fees;
 - d) Member Koska be relieved of liability for overpayments made during her administration of the estate of M.M. as disclosed by the accounts submitted, and otherwise, Member Koska’s accounts for her administration of the estate of M.M. are passed in the form submitted;
 - e) Member Koska pay the estate of M.M. \$29,705.44 plus prejudgment interest from June 25, 2008 for loss of ASB, but such judgment be stayed pending the outcome of an appeal (by the Public Trustee) of a decision by Alberta Seniors Benefits (“ASB”) to deny M.M. an extension of retroactive benefits (2004 to 2008) in the amount of \$29,705 (the “ASB Appeal”);
 - f) for the ASB Appeal, the stay continue until a decision is rendered, and if the Minister does not appoint a Citizen’s Appeal Panel, the stay (regarding the \$29,705.44 loss) be lifted;
 - g) the Public Trustee provide a copy of the ASB Appeal decision to Member Koska forthwith;
 - h) Member Koska shall pay the estate of M.M. plus prejudgment interest for loss of the GIS benefits;
 - i) Member Koska’s June 17, 2010 application for reconsideration of the judgment be denied; and
 - j) Member Koska personally pay the Public Trustee’s costs and disbursements for the Special Chambers Accounting Application and for all steps in the proceedings that had not already been the subject of a costs award.

See Tab 27 attached here and forming part of this Agreement.

49. By couriered letter of January 20, 2011, a section 53 demand under the *Legal Profession Act* was made on Member Koska by the LSA (the “S.53 Demand”).
50. Member Koska did not respond to the S.53 Demand, nor to follow up letters issued by Mr. Dumont dated February 8, 2011 and February 28, 2011. Member Koska contends that she did not respond as the ASB Appeal was pending.
51. By letter dated March 14, 2011, Mr. Dumont sent Member Koska a further follow up letter to the S.53 Demand. In response, by letter of March 21, 2011, Member Koska requested an extension of time to respond until after the ASB Appeal, scheduled for April 6, 2011.
52. The ASB Appeal was adjourned until May 12, 2011, and by letter dated May 25, 2011, Mr. Dumont granted Member Koska an extension of fourteen days after receipt of the results of the ASB Appeal.
53. At hearing for the ASB Appeal, Counsel, other than Ms. Johnson, appeared for the Public Trustee and Mr. Plupek appeared for Member Koska.
54. On June 7, 2011, the ASB Appeal decision was issued which upheld the original decision denying retroactive payments of the ASB.
55. By letter dated June 14, 2011 sent to Mr. Plupek acting for Member Koska, Mr. Dumont inquired of Member Koska whether she had the results of the ASB appeal.
56. Member Koska did not respond to Mr. Dumont’s letter of June 14, 2011, nor to follow up letters issued by the LSA dated June 28, 2011 and July 18, 2011.
57. By fax of October 18, 2011, Mr. Plupek, counsel for Member Koska, sent to the LSA a copy of the ASB Appeal decision, which he had received on June 13, 2011. The ASB Appeal decision set out that:
 - a) as to findings of fact, that: i) 2002 income information was due June 2003 in order to determine benefits; ii) after non-receipt six months after that date, M.M.’s benefits were terminated January 2004 when the Department was unable to obtain the information; iii) the Department records showed Member Koska to be Trustee for M.M.; iv) a letter dated January 8, 2004 was sent to Member Koska notifying that M.M. would no longer be eligible for ASB benefits ‘at this time’; and v) the letter indicated that the file would remain inactive until information was provided as to 2002 income; and
 - b) as to reasons for the decision: i) if Member Koska was not able to continue to be responsible for M.M. due to personal circumstances, the responsibility should have been delegated and the Department advised; ii) had the proper documentation to establish on-going eligibility been provided in a timely manner, termination of benefits would not have occurred; iii) persons given financial authority to manage the affairs of M.M. failed to provide necessary information and communicate with the Department; iv) it was the responsibility of Member

Koska to communicate with the Department when she believed her appointment as Trustee had terminated and she no longer wished to perform this task.

See Tab 28 attached here and forming part of this Agreement.

58. By letter of October 18, 2011, the LSA wrote to Member Koska:
- a) identifying that Member Koska failed to respond to its letters inquiring whether Member Koska had received the ASB Appeal decision;
 - b) that having obtained the ASB Appeal decision from Mr. Plupek, it was noted that Member Koska had almost four months to respond; and
 - c) advising that failing an immediate response to the S.53 Demand, the matter would go to a Conduct Committee Panel without the benefit of Member Koska's response (the "LSA Final Response Demand")

See Tab 29 attached here and forming part of this Agreement.

59. In respect of the Final Response:
- a. The LSA is of the view that Member Koska did not respond; and
 - b. Member Koska is of the view that a response was provided by Mr. Plupek and that a response was not required.

K.K. Complaint

60. K.K. retained Member Koska in March 2012 to represent her in her divorce and K.K. paid \$3,000.00 retainer.
61. In September 2012, K.K. made multiple attempts to contact Member Koska so she could arrange a meeting with her.
62. A meeting, between K.K. and Member Koska, was scheduled for October 19, 2012 and Member Koska was to prepare documents for a child support order (the "October Meeting").
63. One hour before the October Meeting, Member Koska emailed K.K. and cancelled.
64. The October Meeting was not rescheduled. K.K. and Member Koska vary in their recollections for the reason why the October Meeting was not rescheduled:
- a) K.K. recalls that she attempted to contact Member Koska on multiple occasions to reschedule the October Meeting but was unsuccessful in doing so, in part because the phone number

- K.K. had for Member Koska became out of service, and eventually K.K. received no response from Member Koska; and
- b) Member Koska recalls that she provided K.K. new meeting dates by way of email, and that generally the delay was a problem due to the contentious nature of K.K.'s family situation, living arrangements, and limited funds.
65. On November 22, 2012, new counsel for K.K., Ms. Jennifer Leung ("Ms. Leung"), wrote to Member Koska and requested that she provide K.K.'s file to her by November 28, 2012, in order to determine Christmas access and to have child support put in place (the "Transfer File Request"). See Tab 30 attached here and forming part of this Agreement.
66. Member Koska did not respond to the Transfer File Request.
67. On December 11 and 13, 2012, a Complaints Resolution Officer of the LSA ("LSA CRO") instructed, and restated the instruction, respectively, that Member Koska forthwith:
- c) provide K.K.'s file to Ms. Leung; and
 - d) provide an accounting of the \$3,000.00 retainer paid, to Ms. Koska, by K.K. the "LSA CRO Instructions".
68. Member Koska did not respond to, nor follow, the LSA CRO Instruction.
69. Between December 28, 2012 and January 9, 2013, Member Koska contacted the LSA stating that she was in hospital and was too ill to talk but she would call again to discuss the complaint.
70. In January 2013, an LSA Trust Safety audit was commenced on Member Koska's trust account and copies of the client ledger, bank account statement, and Statement of Account relating to K.K.'s matter were obtained. The Audit revealed that:
- e) the Statement of Account identified Member Koska having billed K.K. for three meetings with her in March 2012, and charged a total of \$2,450.00; and
 - f) (the client ledger card showed that from the \$3,000.00 retainer paid by K.K., \$2,520.00 was transferred out of trust leaving a balance of \$480.00 remaining
- See Tabs 31 and 32, respectively, attached here and forming part of this Agreement.
71. In a letter dated February 22, 2013, K.K. informed the LSA that she never received a Statement of Account from Member Koska and, as of that date, she had still not transferred her file over to Ms. Leung. See Tab 33 attached here and forming part of this Agreement.

72. On March 7, 2013 a letter was sent from the LSA to Member Koska requesting her formal response to the complaint pursuant to Section 53 of the *Legal Profession Act* (“Final and Formal Response Request”).
73. Member Koska did not respond to Final and Formal Response Request nor to three follow up letters from the LSA, dated April 8, April 30 and May 22, 2013.

IV. ADMISSION OF FACTS AND CONDUCT DESERVING OF SANCTION

74. For the purposes of s.60 of the *Legal Profession Act*, Member Koska admits the truth of the facts set out above the purposes of these proceedings. She further admits that the conduct in question, amounts to conduct deserving of sanction.

THIS AGREED STATEMENT OF FACTS AND ADMISSION OF CONDUCT DESERVING OF SANCTION IS MADE THIS 28th DAY MARCH 2014.

KATHERINE KOSKA

Counsel Printed Name

Counsel Signature

JANE CORNS, COUNSEL FOR THE LSA