



SAMUEL H. MCCULLOUGH

MAY 18, 2011

Law Society of Saskatchewan v. Samuel H. McCullough, 2011 LSS 1

JURISDICTION AND RESPONSIBILITY

The jurisdiction and authority of the Law Society to govern itself through the regulation and discipline of its members is extensively reviewed in the decision of the *Law Society and Michael Nolin* made on the 3rd day of October, 2008, No. 08-04. Those reasons are adopted herein and need not be reproduced in this Decision.

PROCEDURAL HISTORY

This matter proceeded before the Hearing Committee, consisting of Gregory G. Walen, Q.C., as Chair, Darcia Schirr, Q.C., and Nikki Rudachyk. The Hearing Committee convened on May 18, 2011 by telephone conference. The Investigation Committee was represented by Mr. Tim Huber. The member, Samuel H. McCullough, represented himself.

The parties acknowledged that the Hearing Committee was properly constituted and had jurisdiction to deal with the matter before it.

At the Hearing, the Amended Formal Complaint was presented and the member, Samuel H. McCullough (hereinafter referred to as the "member"), acknowledged and admitted that he was guilty of conduct unbecoming in that:

- "1. He did fail to reply promptly to communications from the Law Society of Saskatchewan with respect to the complaints filed by B.R.
2. He did fail to reply promptly to communications from the Law Society of Saskatchewan with respect to the complaints filed by C.R."

The Hearing Committee had the benefit of an Agreed Statement of Facts, which was filed with the Committee and constituted the facts upon which the member entered guilty pleas.

FACTS

1. The member was called to the bar and signed the roll of the Law Society of Saskatchewan on the 1st day of August, 1986.
2. On or about July 9, 2010 the Law Society of Saskatchewan received a written complaint from B.R. with respect to the member. B.R. is employed by a lending institution to which the member was obligated to provide a final report on a mortgage transaction and proof of fire insurance on the subject property. As he had not fulfilled his obligations to the lender in a timely fashion, the complaint had not fulfilled his obligations to the lender in a timely fashion, the complaint arose. Upon receipt of this complaint, the Law Society forwarded a copy thereof to the member by regular mail on July 16, 2010. The letter sought a response within 10 days. No response was forthcoming from the member. On July 29, 2010 a second letter was sent by the Law Society by regular mail seeking the member's response within 10 days. Again, no response was received.
3. On September 2, 2010 a third letter was forwarded to the member by registered mail requesting a response to the complaint of B.R. on or before September 13, 2010, and again, he member did not respond to the Law Society.
4. On August 25, 2010 a new complaint was received, this time from C.R., another employee with a different lending institution experiencing similar problems obtaining final reporting documentation in connection with a mortgage from the member. On October 20, 2010 the Law Society forwarded the complaint of C.R. to the member via regular mail. This letter sought a response to the C.R. complaint within 10 days. No response was forthcoming.
5. On November 17, 2010 a second letter, this time via registered mail, was sent to the member seeking a response to the C.R. complaint within 10 days. No response from the member was forthcoming.
6. On November 16, 2010, both the B.R. and C.R. matters were referred to a conduct investigation committee. On December 6, 2010 the member did provide a response to the complaints directly to the conduct investigation committee.
7. Both in the Agreed Statement of Facts and the hearing on May 18, 2010, the member indicated that he, at that time, had a large influx of real estate work from a new client and that influx had overwhelmed his practice. He indicated that he was busy and failed to place a priority on providing a response to the Law Society correspondence. During the hearing the member indicated that he would not put himself in this position. He acknowledged his obligations to the Law Society to respond to complaints. As an aside, the member has satisfied all of his reporting obligations to both of the lending institutions who filed complaints.

ANALYSIS

Chapter XV of the *Code of Professional Conduct* provides that a lawyer should assist in maintaining the integrity of the profession and should participate in its activities. Commentary 2, pursuant to that Rule, states that a "*lawyer has a duty to reply promptly to any communication from The Law Society of Saskatchewan*". It is essential to maintain public confidence in the integrity of the legal profession that members are obliged to respond to complaints filed with the Law Society of Saskatchewan. Refusal to reply to the Law Society following a series of complaints is inimical to the interests of the profession and clearly deserving of sanction.

The member, in entering a guilty plea to the two counts in the Amended Formal Complaint, and as well statements made to the Hearing Committee, clearly recognizes he failed in his obligation to promptly reply.

POSITION OF THE PARTIES

Counsel for the Investigation Committee sought a fine in the range of \$500.00 to \$1,000.00, and as well a reprimand and costs in the amount of \$900.00. The member did not oppose the order of costs, nor the reprimand, but sought a fine in the lower end of the range suggested by counsel for the Investigation Committee. The sanction for failure to respond ranges from a reprimand through to a small fine or a suspension.

Decision

The Hearing Committee orders the following:

- (a) That the member, Samuel H. McCullough, be reprimanded.
- (b) That the member, Samuel H. McCullough, shall forthwith pay a fine to the Law Society of Saskatchewan in the amount of \$750.00.
- (c) That the member, Samuel H. McCullough, shall forthwith pay costs of these proceedings to the Law Society of Saskatchewan in the amount of \$900.00.

Dated at the City of Regina, in the Province of Saskatchewan this 18th day of May, 2011.

Gregory G. Walen, Q.C.
Chair of Hearing Committee

Darcia Schirr, Q.C.

AGREED STATEMENT OF FACT

In relation to the Amended Formal Complaint dated March 11, 2011, alleging that he:

- 1. did fail to reply promptly to communications from the Law Society of Saskatchewan with respect to the complaints filed by B.R; and**
- 2. did fail to reply promptly to communications from the Law Society of Saskatchewan with respect to the complaints filed by C.R.**

Jurisdiction

1. Samuel McCullough (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 as well as the *Rules of the Law Society of Saskatchewan* . 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.
2. The Member is currently the subject of an Amended Formal Complaint dated March 11, 2011. The Formal Complaint, as amended, is comprised of the two counts noted above. Attached at **Tab 2** is a copy of the Amended Formal Complaint along with proof of service in the form of an Acknowledgement of Service. The Member has agreed to enter guilty pleas in relation to both allegations.

Particulars of Conduct

3. The Law Society began an investigation in relation to the Member after receiving a written complaint from B.R dated July 9, 2010. B.R. is employed by a lending institution to which the Member was obligated to provide a final report on a mortgage transaction and proof of fire insurance on the subject property. The Member had not fulfilled his obligations to the lender in a timely fashion.
4. The complaint of B.R. was forwarded from the Law Society to the Member via regular mail on July 16, 2010. The letter sought a response within 10 days. Attached at **Tab 3** is a copy of the July 16, 2010 letter.

5. No response was forthcoming from the Member in relation to the initial letter from the Law Society. On July 29, 2010, a second letter was sent via regular mail to the Member seeking a response within 10 days. Attached at **Tab 4** is a copy of the July 29, 2010 letter. Again no response was received.
6. On September 2, 2010 a third letter was forwarded to the member by registered mail requesting a response to the complaint of B.R. on or before September 13, 2010. Attached at **Tab 5** is a copy of the letter dated September 2, 2010. The letter was successfully delivered on September 10, 2010. Still the Member provided no response to the Law Society.
7. On August 25, 2010, a new complaint was received, this time from C.R., another employee with a different lending institution experiencing similar problems obtaining final reporting documentation in connection with a mortgage from the Member.
8. On October 20, 2010 the Law Society forwarded the complaint of C.R. to the Member via regular mail. A response to the C.R. complaint was sought within 10 days. Attached at **Tab 6** is a copy of the October 20, 2010 letter. No response was forthcoming from the Member.
9. On November 17, 2010, a second letter, this time via registered mail, was sent to the Member seeking a response to the C.R. complaint within 10 days. Attached at **Tab 7** is a copy of the November 17, 2010 letter. No response was forthcoming.
10. On November 16, 2010, both the B.R. and C.R. matters were referred to a Conduct Investigation Committee.
11. On December 6, 2010 the Member provided a response to the complaints directly to the Conduct Investigation Committee. The Member explained that a large influx of real estate work from a new client had overwhelmed his practice. As a result of the fact that he was busy, he failed to place a priority on providing a response to the Law Society correspondence. The Member acknowledges that being busy is not a valid excuse for failing to respond to the Law Society.
12. The Member has satisfied all of his reporting obligations to both of the lending institutions who filed complaints.

Prior Record

13. The Member has no prior findings of conduct unbecoming on his record.

