



**The Law Society of Saskatchewan**

**BRENDA ANNE WALPER-BOSENCE**

**July 6, 2011**

***Law Society of Saskatchewan v. Walper-Bossence, 2011 SKLSS 4***

**IN THE MATTER OF *THE LEGAL PROFESSION ACT, 1990*  
AND IN THE MATTER OF BRENDA ANNE WALPER-BOSENCE,  
A LAWYER OF MOOSE JAW, SASKATCHEWAN**

**DECISION OF THE HEARING COMMITTEE FOR THE  
LAW SOCIETY OF SASKATCHEWAN**

**INTRODUCTION AND DISPOSITION**

1. The Hearing Committee of the Law Society of Saskatchewan (hereinafter called the "Hearing Committee") was comprised of Reginald Watson, Q.C., as Chair, Gregory Walen, Q.C., and David Brundige, Q.C. The Hearing Committee convened by telephone conference call on Wednesday, July 6, 2011 and accepted the guilty pleas of the Member. Namely, that BRENDA ANNE WALPER-BOSENCE was guilty of conduct unbecoming a lawyer, in that:

- i. She did fail to serve her client, K.R., in a conscientious, diligent and efficient manner by failing to act on the instructions of K.R. within a reasonable time; and
- ii. She did fail to serve her client, M, in a conscientious, diligent and efficient manner by failing to complete the tasks necessary to effect a transfer of property to D.K. within a reasonable time.

2. After reviewing the Agreed Statement of Facts, considering the representations made by and on behalf of parties, and accepting the guilty pleas, the Hearing Committee imposed the following sentence:

- i. Brenda Anne Walper-Bossence shall receive a reprimand;
- ii. Brenda Anne Walper-Bossence shall, on or before July 29, 2011, shall pay a fine to the Law Society of Saskatchewan in the amount of \$1,000;

- iii. Brenda Anne Walper-Bossence shall, on or before July 29, 2011, pay costs of these proceedings to the Law Society of Saskatchewan in the amount of \$250.00.
3. Reasons for judgment were to be issued at a later date and these are those reasons.

## **JURISDICTION**

4. No objections were raised with respect to the appointment of the Hearing Committee or its jurisdiction to hear these matters.
5. Brenda Anne Walper-Bossance (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”). Accordingly, the Member 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”).

## **PARTICULARS OF CONDUCT**

### **Complaint of K.R.**

6. The Member represented K.R. in relation to family law matters dating back to 2004. The issues relevant to the complaint of K.R. began in 2007. In July of 2007, the Member obtained a Court Order wherein the spouse of K.R. would be required to pay child support to K.R. A subsequent Consent Order was issued after a pre-trial conference on March 13, 2008. Unfortunately, the March 13, 2008 Consent Order resulted in confusion on the part of the Maintenance Enforcement Office. Specifically, the Maintenance Enforcement Office questioned the impact of the March 13, 2008 Consent Order on pre-existing arrears. As a result of this confusion, the Maintenance Enforcement Office refused to collect the prior arrears on behalf of K.R. unless further information and context could be provided.
7. On January 26, 2009, K.R. engaged the Member to contact the Maintenance Enforcement Office and deal with the issues surrounding their refusal to pursue her spouse for prior arrears.
8. K.R. contacted the Member on January 29, 2009 which yielded a response from the Member on February 3, 2009, wherein the Member indicated that she would be pulling K.R.’s file the following day. K.R. heard nothing more from the Member. K.R. emailed the Member on several occasions and left several telephone messages with the Member’s assistant. The Member did not return these messages. On April 6, 2009, K.R. filed a complaint with the Law Society of Saskatchewan.
9. The complaint package received from K.R. was provided to the Member via regular mail on April 29, 2009. The Member provided her response to the Law Society on June 10, 2009. On that date she also sent communications to the Maintenance Enforcement Offices in Alberta and Saskatchewan. These communications to the Maintenance Enforcement Offices in Saskatchewan and Alberta represent the only work that the Member had done on the file since receiving instructions from K.R. on January 26, 2009, more than four months prior.

10. In a letter dated July 13, 2009, the Member acknowledged that the level of service that she provided to K.R. was inadequate. The Member stated that part of the reason for her tardiness in relation to the K.R. matter was due to the fact that her file was voluminous. The Member also stated that she had a five day family law trial scheduled in June of 2009 which took up a large amount of her time. The Member acknowledged that neither of these issues justified her failure to act on K.R.'s January 2009 instructions.

### **Complaint of D.K.**

11. This matter stems from the Member's representation of the Village of M in relation to a property conveyance to D.K. D.K. purchased property from the Village of M in December 2005. D.K. intended to invest a large amount of money into the improvement of the property and use it as both his home and business. D.K. intended to build an addition onto the property as part of the improvements.

12. In the early stages of the transaction it became apparent that portions of the property purchased by D.K. from the Village of M were held in the names of third parties. Certain third party owners had not paid taxes on the properties for decades. The Village of M instructed the Member to take the steps necessary to transfer the properties in question back to the Village of M so that the Village of M could satisfy the terms of its deal with D.K. The Member received these instructions from the Village of M in early 2006. D.K.'s money in relation to the transaction was released to the Village of M on March 2, 2006, on the assumption that the transfer of the "problem titles," first to the Village of M and then to D.K., would be completed in a timely fashion.

13. Unfortunately, despite regular contact from the Village of M seeking a status update, prompted by D.K.'s regular inquiries, the matter stagnated. The Member did virtually no work to advance the transfer of titles to D.K. in accordance with her instructions from the Village of M until March 2008. In March 2008 the Member applied to the Court of Queen's Bench for a Vesting Order in relation to the properties. The application was successful.

14. The titles relating to the transaction were transferred to the Village of M along with another title, unrelated to the D.K. deal. When the Member attempted to transfer the relevant titles to D.K. she was unable to do so because of the ties to the unrelated title. This issue led to a further period of inactivity on the file from August 25, 2008 until October 2009.

15. D.K. filed his complaint with the Law Society on December 9, 2009.

16. The Member ultimately finalized the work required to affect a transfer of the titles to D.K. on March 19, 2010, more than four years after receiving instructions from her client.

17. During the period of time between the Member's receipt of instructions and the actual transfer of property to D.K., D.K. was left in a state of uncertainty with respect to his home and business. Initially, D.K. chose to delay plans for the construction of an addition to the existing building on the property he purchased.

18. The addition was to be built on the “problem titles” that the Member had been instructed to address. D.K. opened his business in a much smaller space because of the delayed expansion. Approximately one year later, on July 30, 2008, with no progress being made by the Member in relation to the transfer of titles, D.K., through his own counsel, sought and obtained an Indemnity Agreement from the Village of M. According to the agreement, the Village of M allowed D.K. to begin construction on the lots despite the fact that they remained in the name of the Village of M. The Village of M would account for any losses associated with any ultimate failure to transfer the lots to D.K. This gave D.K. the comfort he needed to begin construction of his addition and he did so approximately two weeks after the Indemnity Agreement was signed.

19. For nearly two more years, until the Member finally completed the work necessary to complete the transfer of the titles in question, D.K. remained uncertain as to the fate of his home and business. This caused him and his spouse a great deal of stress and anxiety.

20. In February 2010 the Member admitted her failure to represent her clients in a diligent fashion.

21. The Member has no prior findings of conduct unbecoming.

## **FAILURE TO RESPOND**

22. This Hearing Committee cites and relies upon paragraphs 8 - 11 of the August 31, 2010 decision in re: Werry and The Law Society of Saskatchewan where Ronald J Kruzeniski, Q.C. stated:

“(8) The essence here is a failure to respond or communicate after repeated requests. This failure to respond is evident throughout the complaints and facts. The Hearing Committee sees this as a serious problem that needs to be addressed by Ms. Werry and by other members of the profession. Failure to respond to a client puts the reputation of the member and the entire profession in a bad light. Failure to respond to a committee of the Law Society and a representative appointed by that committee jeopardizes the Society’s ability to carry out its legislated mandate and in turn affects the reputation of all members.

Failure to respond to another lawyer’s request affects the reputation of both members, increases costs to clients, creates unnecessary delay and overall negatively impacts the reputations of all lawyers in Saskatchewan.

(9) As a guideline, three requests from a client, another lawyer or the Society, with a reasonable deadline given to respond, should be sufficient to justify a complaint to the Society. Of course, it is understood that the requests have to be reasonable in terms of deadline and frequency. It is hard to lay down a firm rule because situations vary with the circumstances but it is possible to suggest a guideline for members. Again, if a member fails to respond to the third request for a response given with reasonable timelines, then the client or member being ignored should consider filing a complaint with the Law Society. Put another way, the fourth letter should be to the Law Society with a carbon copy to the non-

responding member. It is obvious that any complaint filed with the Society will be analyzed by the staff and Investigations Committee for reasonableness in terms of the urgency of the matter, frequency of the requests and reasonableness of the deadlines given to respond.

(10) Failure to respond can be a sign that a member is over loaded with work, is not well organized or is stressed or pre-occupied with personal matters that are affecting his or her practice. Since the reputation of the profession is extremely important to all members, members should be conscious of those not responding, and rather than viewing a complaint to the Society as something they are reluctant to do, should view it as something that might in due course assist the member to get help, either professionally through a practice management advisor, executive coach, time management expert or personally get help from a qualified professional. No member should let failure of another member to respond continue without taking action. Having said this, the Society should be aware of any member that attempts to be manipulative or vindictive in unnecessarily filing a complaint of failure to respond. As was agreed at the hearing, in most cases one can clearly see when a member has failed to respond and those are the ones that the Society should be aware of and able to take action on.

(11) Members who are failing to respond should remember it is just a matter of courtesy, good practice and required by the code of conduct to respond in a prompt manner.

The Code of Conduct, Chapter XVI provides as follows:

**Responsibility to Lawyers Individually**  
**RULE**

The lawyer's conduct toward other lawyers should be characterized by courtesy and good faith.

**Commentary**  
**Guiding Principles**

6. The lawyer should answer with reasonable promptness all professional letters and communications from other lawyers that require an answer and should be punctual in fulfilling all commitments.

**Footnote**

6. Alta. 20: "Failure to reply to letters or other communications from another member is at the very least discourteous. This practice frequently places the other member in an awkward and embarrassing position and tends to lower the reputation of the whole profession." A response does not necessarily have to be a full response if one is not possible at the time. A response might be to the effect that the member will contact the client, another lawyer or someone else to get the

required information; the member is involved in a longer trial and will get back by a specified date; the member will be away on vacation and will respond by a specified date; the member is currently researching the problem, obtaining information or seeking instructions and will respond shortly; or the member cannot provide further information. The important thing is a response so that the other lawyer knows the member has received the letter, telephone message, email or fax and that you are doing something about it. It is common courtesy to respond and it is also a breach of the code of conduct to fail to do so.”

23. In this case the Member admits that she failed to provide timely professional services to her clients, as she should have. The Code of Conduct requires lawyers to be timely in the delivery of legal services to clients and long periods of unexplained delay, lack of communication and unresponsiveness are not acceptable.

24. In February of 2010 the Member acknowledged that her conduct and lack of action was not acceptable and she has taken steps to ensure that like incidents do not occur again in the future. The Member has been successful in overcoming various health and human resource problems that were contributing factors to her failure to deliver legal services to her clients in a conscientious, diligent and efficient manner and the likelihood of this type of conduct repeating itself in the future is considered to be remote.

## **SENTENCE**

25. In a joint submission the parties agreed that a fine in the amount of \$1,000.00 and a reprimand were an appropriate sentence and we agree.

26. In addition the Member shall pay costs which are fixed at the sum of \$250.00.

## **AGREED STATEMENT OF FACTS AND ADMISSIONS**

1. In relation to the Formal Complaint dated March 4th, 2011, alleging that she:
  1. Did fail to serve her client, K.R. in a conscientious, diligent and efficient manner, by failing to act on the instructions of K.R. within a reasonable time; and
  2. Is guilty of conduct unbecoming a lawyer in that she failed to serve her client, M., in a conscientious, diligent and efficient manner, by failing to, within a reasonable time, complete the tasks necessary to effect a transfer of property to D.K.

## **JURISDICTION**

2 Brenda Anne Walper-Bossance (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 (herein after 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.

3. The Member is currently the subject of a Formal Complaint dated March 4, 2011. The Formal Complaint is comprised of the two allegations noted above. The Formal Complaint was served upon the Member on March 9, 2011. Attached at Tab 2 is a copy of the original Formal Complaint along with proof of service in the form of an Acknowledgement of Service. The Member intends to enter guilty pleas in relation to both allegations of conduct unbecoming.

## **PARTICULARS OF CONDUCT**

### **Complaint of K.R.**

4. The Member represented K.R. in relation to family matters dating back to 2004. The issues relevant to the complaint of K.R. began in 2007. In July of 2007, the Member obtained a Court Order wherein the spouse of K.R. would be required to pay child support to K.R. A subsequent Consent Order was issued after a pre-trial conference on March 13, 2008. Unfortunately, the March 13, 2008 Consent Order resulted in confusion on the part of the Maintenance Enforcement Office. Specifically, the Maintenance Enforcement Office questioned the impact of the March 13, 2008 Consent Order on the preexisting arrears. As a result of this confusion, the Maintenance Enforcement Office refused to collect the prior arrears on behalf of K.R. unless further information and context could be provided.

5. On January 26, 2009, K.R. engaged the Member to contact the Maintenance Enforcement Office and deal with the issues surrounding their refusal to pursue her spouse for prior arrears.

6. K.R. contacted the Member on January 29, 2009 which yielded a response from the Member on February 3, 2009, wherein the Member indicated that she would be pulling K.R.’s file the following day. K.R. heard nothing more from the Member. K.R. emailed the Member on several occasions and left several telephone messages with the Member’s assistant. The Member did not return these messages. On April 6, 2009, K.R. filed a complaint with the Law Society of Saskatchewan. Attached at Tab 3 is a copy of the Complaint Package received from K.R.

7. The complaint package received from K.R. was provided to the Member via regular mail on April 29, 2009. The Member provided her response to the Law Society on June 10, 2009. On that date she also sent communications to the Maintenance Enforcement Offices in Alberta and Saskatchewan. These communications to the Maintenance Enforcement Offices in Saskatchewan and Alberta represent the only work that the Member had done on the file since receiving instructions from K.R. on January 26, 2009, more than 4 months prior.

8. In a letter dated July 13, 2009 [Tab 4], the Member acknowledged that the level of service that she provided to K.R. was inadequate. The Member stated that part of the reason for her tardiness in relation to the K.R. matter was due to the fact that her file was voluminous. The

Member also stated that she had a 5 day family law trial scheduled in June of 2009 which took up a large amount of her time. The Member acknowledges that neither of these issues justified her failure to act on K.R.'s January 2009 instructions.

### **Complaint of D.K.**

9. This matter stems from the Member's representation of the Village of M. in relation to a property conveyance to D.K. D.K. purchased property from the Village of M in December 2005. D.K. intended to invest a large amount of money into the improvement of the property and use it as both his home and business. As part of the improvements D.K. intended to build an addition onto the property.

10. In the early stages of the transaction, it became apparent that portions of the property purchased by D.K. from the Village, were held in the names of third parties. The third party owners in question had not paid taxes on the properties for decades and the Village instructed the Member to take the steps necessary to transfer the properties in questions back to the Village so that the Village could satisfy the terms of its deal with D.K. The Member received these instructions from the Village in early 2006. D.K.'s money in relation to the transaction was released to the Village on March 2, 2006, on the assumption that the transfer of the "problem titles" first to the Village and then to D.K. would be completed in a timely fashion.

11. Unfortunately, despite regular contact from the Village seeking a status update, prompted by D.K.'s regular inquiries, the matter stagnated. The Member did virtually no work to advance the transfer of titles to D.K. in accordance with her instructions from the Village until March 2008. In March 2008 the Member applied to the Court of Queen's Bench for a Vesting Order in relation to the properties. The application was successful.

12. The titles relating to the transaction were transferred to the Village along with another title, unrelated to the D.K. deal. When the Member attempted to transfer the relevant titles to D.K. she was unable to do so because of the ties to the unrelated title. This issue led to a further period of inactivity on the file from August 25, 2008 until October 2009.

13. D.K. filed his complaint with the Law Society on December 9, 2009. Attached at Tab 5 is a copy of the complaint package received from D.K. The Member ultimately finalized the work required to affect a transfer of the titles to D.K. on March 19, 2010, more than 4 years after receiving instructions from her client.

14. During the period of time between the Member's receipt of instructions and the actual transfer of property to D.K., D.K. was left in a state of uncertainty in relation to his home and business. Initially, D.K. chose to delay plans for the construction of an addition to the existing building on the property he purchased. The addition was to be built on the "problem titles" that the Member had been instructed to tend to. D.K. opened his business in a much smaller space because of the delayed expansion. Approximately 1 year later, on July 30, 2008, with no progress being made by the Member in relation to the transfer of titles, D.K., through his own counsel, sought and obtained an Indemnity Agreement from the Village. Pursuant to the agreement, the Village agreed to allow D.K. to begin construction on the lots despite the fact that they remained in the name of the Village and for the Village to pay any losses associated with

any ultimate failure to transfer the lots to D.K. This gave D.K. the comfort he needed to begin construction of his addition and he did so approximately two weeks after the Indemnity Agreement was signed. For nearly two more years, until the Member finally completed the work necessary to complete the transfer of the titles in question, D.K. remained uncertain as to the fate of his home and business. This caused him and his spouse a great deal of stress and anxiety.

15. The Member admitted her failure to handle this matter in a diligent fashion in a February 3, 2010, letter to the Law Society in response to the D.K. complaint. This letter is attached at Tab 6.

#### **PRIOR RECORD**

16. The Member has no prior findings of conduct unbecoming. The Member has, however, been the subject of two referrals to the Professional Standards Committee of the Law Society. Both referrals occurred in 2001.