



**The Law Society of Saskatchewan
Discipline Decision 08-01
regarding Drew Ronald Filyk of Regina, Saskatchewan**

DECIDED: January 4, 2008

Background

The Law Society of Saskatchewan was established in 1907, and governs the legal profession in the Province of Saskatchewan under *The Legal Profession Act, 1990*. Its Board of Directors, called Benchers, consists of 17 persons elected from various constituencies in the Province, 4 non-lawyer members of the public appointed by the Lieutenant-Governor in Council and the Dean of the College of Law.

The disciplinary process is usually undertaken on the basis of complaints received from clients, members of the public or other lawyers; however, the Law Society does initiate its own investigations where information comes to its attention which indicates inappropriate or unprofessional behavior.

Conduct unbecoming is defined as: “*any act or conduct, whether or not disgraceful or dishonourable, that (1) is inimical to the best interests of the public or the members; or (2) tends to harm the standing of the legal profession generally*”.

The penalty options available to the Benchers in sentencing a member who has been found guilty of conduct unbecoming range from a reprimand, fine and/or the imposition of practice conditions to disbarment and resignation in the face of discipline. The Law Society does not have the jurisdiction to award damages against a member, however, may require the member to pay the costs of the discipline hearing.

Introduction

Pursuant to Section 47(1) of *The Legal Profession Act, 1990*, the Discipline Committee of the Law Society of Saskatchewan appointed this Hearing Committee to hear and determine the Formal Complaints set out by the Investigation Committee against Drew Ronald Filyk, a lawyer and a member of the Law Society of Saskatchewan, carrying on the practice of law at

all relevant times in the City of Regina, in the Province of Saskatchewan. The first complaint was made by Mr. Filyk's client ("client G"). The second and third complaints were made by Lawyer A & Lawyer B, respectively. The complaints resulted in the charges noted below.

Charges

That Drew Ronald Filyk, of the City of Regina, in the Province of Saskatchewan:

1. Is guilty of conduct unbecoming a lawyer in that he failed to provide diligent, competent and conscientious service to client G;
2. Is guilty of conduct unbecoming a lawyer in that he failed to respond to fellow Lawyer A in a timely manner;
3. Is guilty of conduct unbecoming a lawyer in that he failed to respond to fellow Lawyer B, in a timely manner.

At the hearing of the Committee held the 21st of November, 2007, Mr. Filyk entered a plea of guilty to and was then convicted of all three charges.

Facts

The relevant facts were put into evidence by Agreed Statement of Facts signed by Mr. Filyk and Thomas Schonhoffer, Q.C., Counsel for the Law Society. The relevant facts as contained in the Agreed Statement of Facts are summarized below:

Charge #1

1. Client G separated from her husband and retained Drew Filyk to advise her.
2. The first entry on Drew Filyk's time sheet is May 3, 2004.
3. Mr. Filyk was initially diligent in drafting and negotiating a Separation Agreement. His initial draft was completed in May 2004. Thereafter, several drafts passed back and forth between Mr. Filyk and counsel for the husband. Finally, in November of 2004, executed copies of the Interspousal Agreement were sent to the husband's counsel.
4. Between November 4, 2004 and July 18, 2005, there are no further entries in the time sheet.
5. On July 18, 2005, Client G instructed Mr. Filyk to begin divorce proceedings.
6. On August 10, 2005, the time sheets indicate that Mr. Filyk drafted divorce proceedings.
7. There are no time sheet entries between August 8, 2005 and April 13, 2006, a period of approximately nine months.

8. There are no further entries in the time sheets between April 21, 2006 and September 28, 2006, a period of approximately five months.
9. Client G states that during these periods of delay that Mr. Filyk was not returning her phone calls or attending to the divorce in a timely manner.
10. Mr. Filyk's letter of November 13, 2006 anticipates completing the divorce by the end of 2006.
11. The divorce was uncontested and ultimately concluded by Mr. Filyk.

Charge #2

Mr. Filyk represented Mr. L and Lawyer A represented Ms. L in resolving matrimonial property issues. Mr. Filyk failed to respond to Lawyer A as follows:

1. Correspondence from Lawyer A to Mr. Filyk on February 17, 2006 (no reply).
2. Correspondence from Lawyer A to Mr. Filyk on March 6, 2006 (no reply).
3. Correspondence from Lawyer A to Mr. Filyk on April 18, 2006 enclosing Offer to Settle and Acknowledgement of Service (no reply to correspondence, no return of Acknowledgement of Service).
4. Telephone message Lawyer A to Mr. Filyk on April 25, 2006 (no reply).
5. Telephone message Lawyer A to Mr. Filyk on May 4, 2006 (no reply).
6. Correspondence Lawyer A to Mr. Filyk on May 4, 2006 (no reply).
7. Correspondence Lawyer A to Mr. Filyk on May 5, 2006 (no reply).
8. Correspondence Lawyer A to Mr. Filyk on May 10, 2006 serving documents with Acknowledgement of Service (no reply, no return of Acknowledgement of Service).
9. Correspondence Lawyer A to Mr. Filyk on May 12, 2006 (no reply).
10. Correspondence Lawyer A to Mr. Filyk on May 16, 2006 advising of *ex parte* application (no reply).
11. Correspondence Lawyer A to Mr. Filyk on May 18, 2006 serving *ex parte* Order and Notice of Motion, with Acknowledgement of Service (no reply, no return of Acknowledgement of Service).

12. Correspondence Lawyer A to Mr. Filyk on May 23, 2006 (no reply).
13. Correspondence Lawyer A to Mr. Filyk on May 24, 2006 serving Order with Acknowledgement of Service (no reply, no return of Acknowledgement of Service).

Charge #3

Mr. Filyk was retained by Client L for advice in a matrimonial dispute with respect to her separation from her spouse, Client A. Client A was represented by several lawyers at different times, but eventually in 2005 retained Lawyer B and was represented by Lawyer B at all times material to this charge.

One of the issues most requiring attention during the relevant time was custody.

The dispute was acrimonious, especially with respect to custody.

Incident Timeline

March 22 nd , 2006	During a hearing in Queen's Bench Chambers before Mr. Justice Zarzeczny, the Court made suggestions or directions to both counsel to reach agreement on an aspect of custody and for Mr. Filyk to draft an Order. There may have been some disagreement as to the scope of the Order to be prepared by Mr. Filyk.
April 12 th , 2006	Lawyer B sends Mr. Filyk a letter.
April 13 th , 2006	Lawyer B leaves two messages for Mr. Filyk.
April 26 th , 2006	Lawyer B leaves another telephone message and sends a letter to Mr. Filyk.
May 5 th , 2006	Lawyer B leaves a telephone message for Mr. Filyk.
May 10 th , 2006	Another telephone message is left and Mr. Filyk returns the call and a discussion is held between both lawyers.
May 11 th , 2006	Lawyer B sends a letter to Mr. Filyk.
May 23 rd , 2006	Lawyer B drafts a letter to Mr. Filyk and it is faxed on May 25 th , 2006.
May 26 th , 2006	Lawyer B sends another letter to Mr. Filyk.
May 26 th , 2006	Lawyer B leaves a message for Mr. Filyk and later that

	day a letter is sent to the Court requesting assistance.
June 2 nd , 2006	Lawyer B telephones the Law Society.
June 5 th , 2006	Lawyer B has a discussion on the telephone with the Law Society.
June 6 th , 2006	Mr. Filyk drafts a letter to Lawyer B. However, Lawyer B never received same.
June 7 th , 2006	Both lawyers exchange additional letters.
June 22 nd , 2006	Lawyer B and Mr. Filyk appear again before the Honorable Mr. Justice Zarzeczny who gives further directions to Mr. Filyk to draft a consent order.
June 23 rd , 2006	Both lawyers have a telephone discussion.
June 27 th , 2006	Lawyer B faxed a message to Mr. Filyk.
June 27 th , 2006	Another telephone message is left for Mr. Filyk.
June 28 th , 2006	Lawyer B sends a letter to Mr. Filyk.
June 29 th , 2006	Telephone message is left by Lawyer B for Mr. Filyk.
June 29 th , 2006	Mr. Filyk sends a letter to Lawyer B.
July 3 rd , 2006	Lawyer B faxed yet another message to Mr. Filyk.
July 12 th , 2006	Mr. Filyk sends a letter to Lawyer B.
July 20 th , 2006	Lawyer B sends a letter to Mr. Filyk.

The Duty of the Lawyer

The lawyer owes the client a duty to be competent. Chapter II, Rule C of the Code of Professional Conduct, codifies the duty:

“(c) The lawyer owes the client a duty to be competent to perform any legal services undertaken on the client’s behalf”

Examples of the conduct that does not meet the quality of service required of the lawyer’s duty of competence are set out, in part, in paragraph 7 of the Guiding Principles under Rule in Chapter II:

- “(a) failure to keep the client reasonably informed;
- (b) failure to answer reasonable requests from the client for information;
- (c) unexplained failure to respond to the client’s telephone calls;
- (f) failure to answer within a reasonable time a communication that requires a reply;”

Competency also includes the duty to directly meet the needs of other lawyers, the legal system and the public. The Rule in Chapter II provides in part:

- “(a) A competent lawyer meets the needs of clients, other lawyers, the legal system and the public by:
 - (ii) acting with diligence and honesty;
 - (iv) fostering professional relationships in which reasonable expectations are met, appropriate strategies are adopted, strong communication links are maintained, and the interest of the public is the prime consideration. (See attached Appendix A “Competency Profile”)

Chapter XVI also codifies the lawyers’ conduct toward others as being characterized by courtesy and good faith. Paragraph 6 of the Guiding Principles under the Rule provides:

- “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.”

In the circumstances of this case, Mr. Filyk’s failure to meet these duties is conduct unbecoming and therefore invokes the discipline authority of the Benchers.

Sentencing Principles and Considerations

Mr. Filyk and counsel for the Law Society consented to the Hearing Committee exercising its powers and imposing a sentence pursuant to its limited powers under section 53(3) of *The Legal Profession Act, 1990*.

The unifying theme to all three charges is the element of delay. In charge #1, Mr. Filyk’s own client was the complainant. In all three cases there were considerable and unexplained delays and problems in Mr. Filyk responding to his own client and opposing counsel. All three of the complaints arose out of family matters. In at least one case, Mr. Filyk’s delay may have exacerbated the conflict and difficulties between the parties. Altogether, the delay represents an absence of diligence and in all the circumstances is conduct unbecoming.

There was no evidence of sharp practice or improper motive on the part of Mr. Filyk. In complaints #1 and #2, the delay appears to stem from a heavy workload Mr. Filyk was managing with little external support. He has since made changes in his practice to reduce and better manage his workload.

In complaint #2, Mr. Filyk's client's instructions may have contributed to his failure to respond. Mr. Filyk now appreciates that intransigent clients and the acrimony and conflict between parties does not displace the duty of courtesy owed between counsel.

In this case, the protection of the public and its confidence in the profession is the paramount consideration. To that end, the Law Society must denounce conduct that brings the reputation of its members and the administration of justice into disrepute. The Code and the practicing standards of the Saskatchewan Bar require a level of diligence and cooperation that does not allow clients and other parties to have their remedies frustrated or complicated through the actions of their own counsel, or counsel opposite. In this case, the seriousness of Mr. Filyk's conduct is mitigated by his apology, the changes to his practice, and his cooperation with the Law Society.

Nonetheless, a punitive sanction is necessary to denounce the misconduct and to deter others. Mr. Filyk may benefit from the assistance of a practice advisor to ensure the changes to his practice are effective and enduring.

Penalty

It is ordered that:

1. Mr. Filyk will pay a fine in the amount of \$1,500.00 not later than February 15, 2008.
2. Mr. Filyk will cooperate with the questions and directions of a practice advisor to be designated from time to time by the Discipline Committee.
3. Mr. Filyk will pay the Law Society's costs in the amount of \$1,390.00 not later than February 15, 2008.