

**IN THE MATTER OF *THE LEGAL PROFESSION ACT, 1990*
AND IN THE MATTER OF DARREN ARMITAGE,
A LAWYER OF SASKATOON, SASKATCHEWAN**

REASONS FOR DECISION

Decided: November 19, 2009

**Tim Huber, on behalf of the Law Society of Saskatchewan
Scott Hopley, on behalf of Darren Armitage**

**Hearing Committee: Alma Wiebe, Q.C. (Chair)
Evert Van Olst
Peggy Schmeiser**

I. Jurisdiction

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, Benchers, consists of 18 persons elected from various constituencies in the Province, four 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 of Saskatchewan 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 professional generally*”.

The public interest informs the standard of conduct unbecoming. A self-governing association does not enjoy the independence of a judiciary. Its power to govern itself is a privilege conferred by statute. The legitimacy of an association’s self-governance is rooted in its credibility and ability to therefore sustain the public’s trust. Where a self-governing association delegates its discipline authority to its own members, the adjudicative and discretionary aspect of that function must be seen to be and must be vigilantly exercised in the public interest.

The Benchers are burdened with complete and absolute discretion to determine what constitutes conduct unbecoming, and must do so in a changing legal, political and social context. Where there has been a finding of conduct unbecoming, the Benchers alone

determine the appropriate sanction. Both determinations are discretionary and are informed by, but not strictly bound to, earlier precedent. Each case is decided on its own merits, according to the discretion of the Benchers.

The penalty options available to the Benchers in sentencing a member who has been found guilty of conduct unbecoming range from a reprimand, fine, the imposition of practice conditions, suspension, resignation in the face of discipline to disbarment. The Law Society does not have the jurisdiction to award damages against a member, but may require the member to return property or funds to its owner or to pay the Law Society's costs of the discipline process.

II. Procedural History

Pursuant to Section 47(1) of *The Legal Profession Act, 1990*, John Will, Vice-Chair of the Discipline Committee of the Benchers of the Law Society of Saskatchewan, having received the report of an Investigation Committee comprised of Susan Barber, Q.C., Victor Dietz, Q.C. and George Patterson, appointed a Hearing Committee to determine whether or not Darren Armitage (hereinafter referred to as "the Member") is guilty of conduct unbecoming a lawyer.

On November 19, 2009, at the request of the Member and Counsel for the Law Society, the Hearing Committee convened by telephone conference call. In attendance were the Member, Tim Huber representing the Law Society of Saskatchewan Investigation Committee, and Member's Counsel, Scott Hopley. Counsel for the parties acknowledged and agreed to the constitution and jurisdiction of the Hearing Committee and agreed to proceed by way of telephone conference. Counsel for the Investigation Committee tendered the formal complaint dated February 7, 2007, the Notice of Hearing and an Amended Formal Complaint, together with proof of service. With the consent of Counsel on behalf of the Member, the Amended Formal Complaint and Notice of Hearing were made Exhibits P-1 and P-2 respectively.

The Member entered guilty pleas to each of the allegations set out in the Amended Formal Complaint. The allegations with respect to which guilty pleas were entered are as follows:

That Darren Armitage, of the City of Saskatoon, in the Province of Saskatchewan:

1. Is guilty of conduct unbecoming a lawyer in that he did file a registration at a public registry knowing it to be false;

Chapters I and XIX of the Code of Professional Conduct

2. Is guilty of conduct unbecoming a lawyer in that he, in the course of responding to a complaint, failed to respond to the Law Society in a diligent fashion and he made representations which were not accurate.

Chapters I and XV of the Code of Professional Conduct

An Agreed Statement of Facts and Admissions was filed with the Hearing Committee. The Hearing Committee accepted the allegations as well founded and, pursuant to Section 51 of *The Legal Profession Act, 1990*, found the Member, Darren Armitage, guilty of conduct unbecoming a lawyer.

By consent of the parties the Hearing Committee sentenced the Member on November 19, 2009.

The Agreed Statement of Facts is attached to and forms part of the Reasons for Decision. As to each count, the material facts are summarized below:

Count #1 – Is guilty of conduct unbecoming a lawyer in that he did file a registration at a public registry knowing it to be false.

The Member received instructions to protect client S's interest in various machinery, equipment and other property held by a third party. Initially efforts were made by the Member to obtain an injunction in relation to the property. Before the injunction was obtained, the Member chose to use alternate means to attempt to protect his client. On April 23, 2001 the Member registered an interest in the Personal Property Registry on behalf of the complainant. This interest was not supported by any legal right. The Member stated he was of the belief that the registration was unsupportable from the beginning and chose to accomplish through the "back door" what he should have accomplished from the outset through an injunction. The Member chose to abuse the Personal Property Registry process by filing an unsupportable registration as a means to achieve a tactical advantage for his clients. The Member later explained that he was aware of the fact that the interest he filed was baseless. In an email sent to the complainants on February 5, 2007 the Member states the following: "You don't actually have a security interest ... I just registered a false one because I knew it would cause him trouble and probably never rebound on us".

Count #2 – Is guilty of conduct unbecoming a lawyer in that he, in the course of responding to a complaint, failed to respond to the Law Society in a diligent manner and made representations which were not accurate.

The Member responded to S's complaint by letter dated February 20, 2007 in which he stated he was at a disadvantage in responding to the complaint because the entire file had been given to the complainants. The Member went on to state the following: "The relationship between myself and the S's was characterized by long periods, during which I had no instructions, followed by brief periods of intense activity. ... I cannot provide confirmatory details, but the facts remain that I was constantly writing to the S's advising them that I needed instructions and a retainer and that their interests were being prejudiced by the passage of time".

After investigation, it was determined that the information provided to the Law Society by the Member was not accurate. The Member had an extensive file in his possession

including most of the electronic communications between himself and the client, drafts of documents and financial records. The complainants had picked up only a portion of their file. Prior to responding to the Law Society, the Member asked his legal assistant to search for the file and was informed she could not find it. The Member did not subsequently search for the closed file to determine what, if any, contents remained in the file and further failed to turn his mind to what electronic or financial records he still had in his possession.

In his letter responding to the complaint, the Member further advised that the matter became drawn out because his clients, the complainants, would not provide instructions and because they would not pay his retainer. Upon review of the file by Law Society personnel it was determined that the complainants had provided instructions to the Member in relation to the file. It was also determined that for the majority of the time between 2001 and 2006, the complainants maintained a positive trust balance and between September, 2002 and March, 2003 the trust balance was in excess of \$2,000.00 for the purpose of ongoing fees and disbursements. The fees billed and received in relation to the file during this period amounted to approximately \$15,000.00.

The relationship between the Member and the complainants began to break down as the litigation became more complicated. The increased complexity made it more difficult for the Member to provide advice and for the complainants to give clear instructions. The Member was also concerned with the potential for significantly increased costs associated with the complexity of the matter beyond that which the complainants were accustomed to maintaining in his trust account.

The Member acknowledged his correspondence to the Law Society overstated the difficulties he had with the complainants to the extent the correspondence suggested he had no instructions and no retainer.

The provision of inaccurate information to the Law Society was occasioned by a lack of attention by the Member to the Law Society inquiry and a nonchalant attitude towards the complaints process. The Member did not take the time to review his file or his records when crafting his response to the Law Society and instead provided a careless and inaccurate response based on his recollection alone.

III. Sentencing Principles and Considerations

Counsel for the Law Society and for the Member agreed, based on precedent, that a reprimand is in order. Counsel for the Law Society also recommended a fine in addition to a reprimand and costs, as itemized, in the sum of \$2,570.00.

The primary sentencing considerations here are deterrence, both specific and general. Protection of the public and maintaining public confidence in the legal profession are paramount. With respect to Count #1, the Member's email to his client was boastful and undermines public confidence in the legal profession. The conduct exhibited by the

Member in Count #2 calls into question the ability of the Law Society to regulate its members. The Law Society must rely on members to be accurate in their communications. In this case the Member's communication with the Law Society was incomplete and inaccurate making it difficult to investigate the allegations. The mitigating factors are that: 1) the Member cooperated with the Law Society after his initial response to the complaint; 2) entered guilty pleas; 3) has no previous discipline record; and 4) did not gain financially from his misconduct.

The view of the Hearing Committee is that 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. Some form of punitive sanction is necessary to denounce his misconduct and to deter others.

IV. Penalty

It is ordered that:

1. The Member be reprimanded;
2. The Member pay a fine in the sum of \$2,500.00;
3. The Member pay costs in the sum of \$2,570.00 to the Law Society of Saskatchewan;
4. The fine and costs are payable on or before May 19, 2010; and
5. If further time is required for payment of the fine and/or costs, an extension of time to pay may be granted on application by the Member to the Chair of the Hearing Committee.



CANADA)
PROVINCE OF SASKATCHEWAN)
TO WIT)

**IN THE MATTER OF *THE LEGAL PROFESSION ACT, 1990* AND IN
THE MATTER OF DARREN ARMITAGE, A LAWYER OF
SASKATOON, SASKATCHEWAN**

**AGREED STATEMENT OF FACTS AND
ADMISSIONS**

In relation to the Amended Formal Complaint dated November 4, 2009, attached at Tab 1, as follows:

THAT Darren Armitage, of the City of Saskatoon, in the Province of Saskatchewan:

1. Is guilty of conduct unbecoming a lawyer in that he did file a registration at a public registry knowing it to be false;

Reference Chapters I and XIX of the Code of Professional Conduct.

2. Is guilty of conduct unbecoming a lawyer in that he, in the course of responding to a complaint, he failed to respond to the Law Society in a diligent fashion and he made representations which were not accurate.

Reference Chapter I and Chapter XV of the Code of Professional Conduct .

Jurisdiction

1. Darren Armitage (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 2** is a Certificate of the Executive Director of the Law Society of Saskatchewan pursuant to section 83 of the Act confirming the Member's status.

2. The Member is currently the subject of an Amended Formal Complaint dated November 4, 2009. The Formal Complaint is comprised of two counts as noted above. The Formal Complaint was duly served upon the Member. Proof of service of the Formal Complaint upon the Member is included at Tab 1.
3. The Member acknowledges the jurisdiction of the Hearing Committee appointed in relation to this matter to determine whether the complaints against him are well founded. The Member further acknowledges service of the Formal Complaint and the Notice of Hearing and takes no issue with the constitution of the Hearing Committee.
4. The Member has agreed to enter a guilty plea in relation to counts one and two as set out in the Amended Formal Complaint.

Particulars of Conduct

5. These proceedings arose as a result of a Law Society investigation in relation to a complaint received from A.S. (hereinafter the "Complainants") including reference to Mr. S.'s spouse, dated February 7, 2007. A copy of the original complaint along with attachments forwarded to the Law Society by the Complainants is attached at **Tab 3**. The original complaint dealt with the Member's performance in relation to a litigation file dealing with his client's interests and entitlements to various chattels owned by a third party. The complaint was forwarded to the Member for a response. Attached at **Tab 4** is a letter from Donna Sigmeth to the Member dated February 14, 2007 seeking a response to the complaint.

Failing to Respond to the Law Society in a Diligent Fashion

6. The Member responded to the complaint in a letter dated February 20, 2007. A copy of the letter from the Member dated February 20, 2007 is attached at **Tab 5**. The Response letter forms the foundation for the allegation that the Member made representations to the Law Society that were inaccurate.
7. In the letter the Member stated that he was at a disadvantage when responding to the complaint as he said that the entire file had been given to the Complainants. The Member

went on to state the following:

The relationship between myself and the S.s was characterized by long periods, during which I had no instructions, followed by brief periods of intense activity.

...

I cannot provide confirmatory details, but the fact remains that I was constantly writing to the S.s and advising them that I needed instructions and a retainer and that their interests were being prejudiced by the passage of time.

8. In his February 20, 2007 letter, the Member advises that he did not have possession of the file to use in crafting his response.
9. After further investigation into this matter it was determined that the information provided to the Law Society by the Member was not accurate. The Member had an extensive file in his possession including most of the electronic communications between himself and the client, drafts of documents and financial records. The Complainants had only picked up a portion of their file. Prior to responding to the Law Society, the Member asked his legal assistant to search for the file and was informed she could not find the file. The Member did not subsequently search for the closed file to determine what if any contents remained in the file and further failed to turn his mind to what electronic or financial records he still had in his possession.
10. In his letter, the Member further advised that the matter became drawn out because his clients, the Complainants, would not provide instructions and because they would not pay his retainer. Upon review of the file by Law Society personnel it was determined that the Complainants had provided instructions to the Member in relation to the file. It was also determined that for the majority of the time between 2001 and 2006, the Complainants maintained a positive trust balance and between September, 2002 and March 2003 the trust balance was in excess of \$2,000 for the purposes of ongoing fees and disbursements. The fees billed and receipted in relation to the file during this period amounted to approximately \$15,000.

11. The relationship between the Member and the Complainants began to break down as the litigation became more complicated. The increased complexity made it more difficult for the Member to provide advice and for the Complainants to give clear instructions. The Member was also concerned with the potential for significantly increased costs associated with the complexity of the matter beyond that which the Complainants were accustomed to maintaining in his trust account.
12. The Member acknowledges his correspondence to the Law Society overstated the difficulties he had with his former clients to the extent the correspondence suggested he had no instructions and no retainer.
13. At the same time the Member states the initial instructions to pursue an oppressed shareholders remedy and to take steps to prevent the dissipation of corporate assets became more complicated through the need to amend the claim to allege conspiracy and to add parties. Additional issues arose requiring instructions, for example whether the Complainants' lender had acted properly in taking security from the corporation and then realizing on the security during the time the injunction was in place.
14. The provision of inaccurate information to the Law Society was occasioned by a lack of attention by the Member to the Law Society inquiry and a nonchalant attitude towards the complaints process. The Member did not take the time to review his file or his records when crafting his response to the Law Society and instead provided a careless and inaccurate response based on his recollection alone.

Filing a False PPR Registration

12. The foundation for the allegation that the Member filed a false registration in the Personal Property Registry is found in several documents as follows:
 - a. Email dated February 5, 2007 from the Member to the Complainant, attached at **Tab 6**;
 - b. Response letter of the Member dated February 20, 2007 (see Tab 5); and
13. Throughout the course of the matter, the Member received instructions to protect his

client's interest in various machinery, equipment and other property held by a third party. Initially, efforts were made by the Member to obtain an injunction in relation to the property. Before the injunction was obtained the Member chose to use alternate means to attempt to protect his client. On April 23, 2001 the Member registered an interest in the Personal Property Registry on behalf of the Complainants. A copy of the registration is attached at **Tab 7**. This interest was not supported by any legal right.

14. The Member stated he was of the belief that the registration was unsupportable from the beginning and chose to accomplish through the “back door” what he should have accomplished from the outset through an injunction.
15. The Member chose to abuse the Personal Property Registry process by filing an unsupportable registration as a means to achieve a tactical advantage for his clients.
16. The Member later explained that he was aware of the fact that the interest that he filed was baseless. In an email sent to the Complainants on February 5, 2007, the Member states the following:

You don't actually have a security interest.. .. I just registered a false one because I knew it would cause him trouble and probably never rebound on us

Summary of Conduct

17. In summary, the foundation for the charges of conduct unbecoming set out in Counts #1 and #2 is as follows:

Provision of False Information to the Law Society

- a. The Member provided a response to the inquiry of Donna Sigmeth dated February 14, 2007 which contained false information;
- b. The Member's provision of inaccurate information to the Law Society was occasioned by the Member's indifference in responding to the Law Society without first taking measures to ensure that the information was accurate;

Filing a False PPR Registration

- c. During the Member's representation of the Complainants, the Member knowingly registered an unsupportable and illegitimate registration in the Personal Property Registry to achieve a tactical advantage for his client.

Edited for publication.