ANNE ELIZABETH HARDY
NOVEMBER 1, 2011
Law Society of Saskatchewan v. Anne Elizabeth Hardy, 2011 LSS 6

C A N A D A)
PROVINCE OF SASKATCHEWAN)
T O W I T)

IN THE MATTER OF *THE LEGAL PROFESSION ACT, 1990*
AND IN THE MATTER OF ANNE ELIZABETH HARDY,
A LAWYER OF REGINA, SASKATCHEWAN

DECISION OF THE HEARING COMMITTEE FOR
THE LAW SOCIETY OF SASKATCHEWAN

(1) The Hearing Committee of the Law Society of Saskatchewan (hereinafter called the "Hearing Committee") comprised of Thomas Campbell as Chair and Michael Megaw, Q.C. and Della Stumborg, convened by conference call on Tuesday, November 1, 2011 with Mr. Timothy F. Huber representing the Investigations Committee of the Law Society and John Beckman, Q.C. representing Anne Elizabeth Hardy. Ms. Hardy was also present. All parties took part by conference call.

(2) Neither Mr. Huber nor Mr. Beckman had any objections to the formation of the Hearing Committee, the convening of the hearing by conference call or any other matter relating to the complaint or proceedings leading up to the hearing.

(3) Mr. Huber and Mr. Beckman filed an Agreed Statement of Facts and Admissions, which can be viewed by www.lawsociety.sk.ca/discipline/publichearings.htm#hardyAnne.

(4) The Formal Complaint, as reworded in the Agreed Statement of Facts and Admissions, alleges that the member is guilty of conduct unbecoming a lawyer in that she failed to serve her client, Client "X", in a conscientious, diligent and efficient manner in that she:

i) failed to keep Client "X" reasonably informed in relation to the MHS matter;

ii) failed to respond to communications from Client "X" within a reasonable time in relation to the MS matter;

iii) failed to act on her client's instructions in a timely manner in relation to the MS matter.

(5) After hearing Mr. Huber and Mr. Beckman and receiving the Agreed Statement of Facts and Admissions, wherein Ms. Hardy plead guilty to the charges, the Hearing Committee determined that Anne Elizabeth Hardy is guilty of conduct unbecoming a lawyer as outlined in the above mentioned Formal Complaint, as reworded.

(6) Mr. Huber and Mr. Beckman requested and agreed to the Hearing Committee determining the sentence and both spoke to the sentence. The Hearing Committee then adjourned to consider its sentence. The hearing was re-convened and the decision was delivered orally with written reasons to follow. These are those written reasons.

(7) CM is the owner and directing mind of Client "X", a collections company. In 1999 CM hired the members firm to provide legal services relating to debt collections. Ms. Hardy's relationship continued with Client "X" throughout several transition periods including a move by her to another law firm and later another move when she started her own law practice in May of2005. Between 1999 and the end of2007, Ms. Hardy started actions or took enforcement proceedings in over 150 matters.

(8) With respect to the first complaint, in 2005 Client "X" sought Ms. Hardy's advice on a file that they were handling for their client MHS. This file concerned a debt for work done on a truck owned by the debtor. An employee of Client "X" had registered a commercial lien against the vehicle on behalf of MHS and Client "X" ultimately instructed a bailiff to seize the vehicle. It was at this point that advice was sought from Ms. Hardy concerning service of a notice of seizure, and the rights and obligations of MHS with respect to disposition of the vehicle. The debtor disputed the validity of the lien and started an action against MHS and Client "X" as joint defendants. Ultimately, the matter was argued in Chambers and the Court held that the lien was invalid. The Court determined that a further *viva voce* hearing was necessary to address the issue of damages.

(9) Ms. Hardy appeared before the Court on behalf of MHS and Client "X" on November 5, 2007 to argue the issue of damages. On December 17,2007, the Judgment was issued and the debtor was awarded $9,306.29 against MHS and Client "X" on a joint and several basis. Ms. Hardy sent MHS a copy of the Judgment early in January, 2008 and advised against appealing. On January 17,2008, the date that the appeal period was set to expire, Ms. Hardy sent Client "X" a copy of the Judgment, apologizing for not having sent it earlier. It was at this point that CM, the owner and directing mind of Client "X" became aware of the action against Client "X". CM sent Ms. Hardy an email the same day questioning why Ms. Hardy did not phone or inform her about the matter and expressed disbelief at the late notice. Ms. Hardy apologized for sending the Judgment so late.

While she faxed a copy to MHS, she forgot to fax a copy to Client "X" and it was not until January 17, 2008, the last day that an appeal could be filed, that she remembered to fax a copy to Client "X".

(I0) Ms. Hardy incorrectly assumed that information that she was sharing with Client "X" staff would be relayed to CM, which was not the case. Ms. Hardy overestimated staffs ability to appreciate what it meant for Client "X" to be named in the action. Ms. Hardy acknowledges that because of her incorrect assumptions, CM was not kept reasonably informed about the law suit against Client "X".

(II) With respect to the second and third complaints, on August 3, 2006, CM referred a file involving a $20,361.93 claim against an alleged debtor MS to Ms. Hardy with instructions to obtain Judgment. At that time, the alleged debtor's place of employment was known and CM intended to seek garnishment of MS's wages. Ms. Hardy held the view that the creditor's claim was not well founded but did not advise her client. The file was set aside and Ms. Hardy did not take any substantive steps towards initiating the claim against the alleged debtor until March 15, 2007 when she was contacted by her client. It was not until April 2, 2008, eight months after receiving the original instructions, that Ms. Hardy issued a claim in the matter. By that time, MS was on disability leave and had moved into his parents' home making an already slim chance of collecting even less likely.

(12) On March 15, 2007, approximately 7 months after providing instructions, and having heard nothing from Ms. Hardy, Client "X" requested an update. A similar request was made on April23, 2007 but no response was provided by Ms. Hardy to either of these requests until May 23, 2007. It was not until August 29,2007 that MS was served with the Statement of Claim and he ended up defending the claim raising many of the concerns initially contemplated by Ms. Hardy. On March 5, 2008, CM terminated the relationship between Ms. Hardy and Client "X".

(13) In the decision of the Hearing Committee for the Law Society of Saskatchewan involving Cheryl Lynn Kloppenburg, decided June 15, 2011 (written reasons rendered July 18, 2011), it was stated at paragraphs 11, 12 and 13:

> "(11) The Law Society of Saskatchewan was created by an Act of the legislature on September 1 1907. The purpose of the Law Society of Saskatchewan is to govern the legal profession in the public interest. The Mission Statement reflects this duty as follows:
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> *To govern the legal profession by upholding high standards of competency and integrity; ensuring the independence of the profession; and advancing the administration of justice, the profession and the rule of law, all in the public interest.*

(12) The public must have confidence in the ability of the Law Society to regulate and supervise the conduct of its members. It is only by the maintenance of such confidence in the integrity of the profession that the self-regulating role of the Law Society can be Justified and maintained.

(13) The purposes of Law Society. discipline proceedings are not to punish offenders and exact retribution, but rather to protect the public, maintain high professional standards, and preserve public confidence in the legal profession. In cases in which professional misconduct is either admitted or proven, the penalties should be determined by reference to these purposes."

(14) The Code of Conduct Chapter XVI provides as follows:

Competence and Quality of Service

RULE

The lawyer should serve the client in a conscientious, diligent and efficient manner so as to provide a quality of service at least equal to that which lawyers generally would expect in a competent lawyer in a like situation.

Commentary

Quality of Service

7. Numerous examples could be given of conduct that does not meet the quality of service required by the second branch of the Rule. The list that follows is illustrative, but not by any means exhaustive:

(a) failure to keep the client reasonably informed;
(b) failure to answer reasonable requests from the client for information;...
(f) failure to answer within a reasonable time a communication that requires a reply;
(g) doing the work in hand but doing it so belatedly that its value to the client is diminished or lost;...

8. The requirement of conscientious, diligent and efficient service means that the lawyer must make every effort to provide prompt service to the client. If the lawyer can reasonably foresee undue delay in providing advice or services, the client should be so informed.

(15) A lawyer's failure to keep the client reasonably informed, failing to answer reasonable requests from the client for information and failing to provide prompt service to a client puts the reputation of that lawyer and the entire profession in a bad light, increases costs to clients and creates unnecessary delay. Any penalty imposed needs to be a general deterrence to the profession and a specific deterrence for the member.

(16) Ms. Hardy has no prior findings of conduct unbecoming. She is however currently the subject of a referral to the Professional Standards Committee of the Law Society.

(17) The Hearing Committee acknowledges that Ms. Hardy has admitted her culpability and accepted responsibility for her actions. The Committee was not advised of any personal circumstances as was done in the Kloppenburg matter, nor was it advised of any workload issues as was referenced in the decision of the Hearing Committee for the Law Society of Saskatchewan involving Charlen Rose Werry, decided August 23, 2010 (written reasons rendered August 31, 2010).

(18) Mr. Huber and Mr. Beckman made a close to joint submission on the sentence, similar to what was done in the Kloppenburg and Werry matters. They proposed that the Hearing Committee order a reprimand and costs of $1,925.00. Mr. Huber requested a fine and suggested the applicable range was $1,000.00 to $1,500.00. The fine levied in the Kloppenburg matter was $1,000.00. The fine levied in the Werry matter was $1,200.00 and the fine levied in the matter involving Brenda Anne Walper-Bossence (decided July 6, 2011), was $1,000.00. Mr. Beckman suggested there be no fine levied. He argued that there was no real prejudice to Client "X" or to its clients. Also, with respect to the MS matter, he argued that the wages of the debtor could not be garnisheed before Judgment.

(19) *In Rault v. The Law Society of Saskatchewan* (2009) SKCA 81, the Saskatchewan Court of Appeal, after an extensive review of the case law, concluded that a Discipline Committee has a duty to consider a joint submission and if the Discipline Committee is of the view the joint submission penalty is not an appropriate disposition in the case before it, then it is required to give good or cogent reasons as to why it is inappropriate; not within the range of sentences; unfit or unreasonable; and/or contrary to the public interest. Failure to do so leads to the inevitable conclusion that the decision of the Discipline Committee is unreasonable.

(20) In this case, the Hearing Committee does not find the close to joint submission to be inappropriate; not within the range of sentences, unfit or unreasonable; and/or

contrary to the public interest, although recognizing it has to decide on the amount of the fine.

(21) This committee must determine the amount of the fine, if any, to impose. Before doing so, we wish to make comment on the suggestion that the applicable range for a fine is between $1,000.00 and $1,500.00. The origin of this range can be found in the Werry matter where counsel for the member suggested a $1,000.00 fine and counsel for the Investigation Committee suggested a $1,500.00 fine. The Hearing Committee was required to take into account that this was a close to joint submission and imposed an order that took that into account.

(22) Similarly, in the Kloppenburg matter, a close to joint submission was proposed to the Hearing Committee that involved a reprimand and an Order for costs. The solicitor for the Investigation Committee suggested a $1,200.00 fine and the solicitor for the member suggested a $1,000.00 fine, which was ultimately imposed by the Hearing Committee.

(23) In the Walper-Bossence matter, the Hearing Committee ordered that the member receive a reprimand, pay a fine in the amount of $1,000.00 and pay costs. The reasons for the Order have not yet been released.

(24) The facts situations in the Werry, Kloppenburg and Walper-Bossence matters are not all that dissimilar and this Hearing Committee agrees that the fines levied in each instance are not inappropriate. However, we are of the view that future Hearing Committees should not be bound by the perception that the applicable range for fines is between $1,000.00 and $1,500.00. There may be situations where the facts are so egregious, or where the presence of aggravating circumstances such as a lengthy disciplinary record is such that the Hearing Committee would reasonably conclude that a substantially higher fine or the imposition of more serious penalties would be appropriate. Similarly, there may be fact situations or mitigating circumstances that would compel a smaller or no fine or a less serious disposition. Each case is fact driven but at the same time, similar cases can be "grouped" resulting in very similar dispositions.

(25) In this case, the Hearing Committee does not consider the suggestion that there was no prejudice to Client "X" or its clients to be a significant mitigating circumstance. Furthermore, the Agreed Statement of Facts and Admissions states at paragraph 30: "Client "X"'s clients are reportedly very unhappy with the way this matter was handled and Client "X" doubts that this particular creditor will ever use her company again."

(26) As a result of the above, the Hearing Committee orders that:

A. Anne Elizabeth Hardy shall receive a reprimand;

B. Anne Elizabeth Hardy shall, on or before January 3, 2012, pay a fine to the Law Society of Saskatchewan in the amount of $1,000.00;

C. Anne Elizabeth Hardy shall, on or before January 3, 2012 pay costs of these proceedings to the Law Society of Saskatchewan in the amount of $1,925.00

Dated at the City of Yorkton, in the Province of Saskatchewan this "12th" day of December, 2011.

Thomas Campbell, Chair
Hearing Committee

AGREED STATEMENT OF FACT

In relation to the Formal Complaint dated June 15, 2010, alleging that she:

1. **Failed to serve her client, CLIENT "X", in a conscientious, diligent and efficient manner in that she:**

   a. failed to keep CLIENT "X" reasonably informed in relation to the MHS matter;
   b. failed to respond to communications from CLIENT "X" within a reasonable time in relation to the MS matter;
   c. failed to act on her client's instructions in a timely fashion in relation to the MS matter.

Jurisdiction

1. Anne Elizabeth Hardy (hereinafter "the Member") is, and was at all times material to this proceeding, a practising 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.

2. The Member is currently the subject of a Formal Complaint initiated by the Law Society dated June 15, 2010. The Formal Complaint is comprised of the three allegations noted above. The Formal Complaint was served upon the Member on June 18, 2010.

3. The Member acknowledges the jurisdiction of the Hearing Committee appointed in relation to this matter to determine whether the complaint against her is well founded. The Member further acknowledges the 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 the above allegations contained in the formal complaint.

Particulars of Conduct

Background

5. These proceedings arose as a result of a Law Society investigation into a complaint received from the Member's former client, C.M. On March 25, 2008 C.M. wrote to the Law Society raising a number of allegations against the Member.

6. C.M. is the owner and directing mind of a collections company ("CLIENT "X""). In 1999 C.M. hired the Member's firm to provide legal services relating to debt collections. At the time, the firm was managed and owned by the Member and her brother. The Member's brother was the primary contact during the earlier stages of this relationship. According to the engagement letter, duties to be provided by the lawyers at H.H. included 1) the provision of services relating to debt collections, 2) the preparation of legal paperwork in pursuit of debt claims through the Queen's Bench simplified procedure to obtain default judgments, 3) the pursuit of claims through trial process with the client's agreement in the event the debtor defended the action, 4) the preparation and filing of paperwork to pursue collection once a client had obtained Judgment.

7. The Member's relationship continued with CLIENT "X" throughout several transition periods. In 1999, the Member became CLIENT "X"'s primary solicitor when her brother ceased to practice. In 2002, the Member moved to Merchant Law Group. Three years later, she moved from Merchant Law Group and started her own practice in May of 2005.

8. The services provided by the Member also changed over time, as the administrative staff and collectors at CLIENT "X" carried out more legal work by themselves. Initially, the Member prepared and filed the paperwork to commence claims in Provincial Court, Small Claims Division, registered Small Claims Judgments in the Court of Queen's Bench and prepared and filed paperwork to enforce such Judgments. During the time that the Member was at Merchant Law Group, the administrative staff at CLIENT "X" took over these functions. The administrative staff at CLIENT "X" also commenced registering commercial liens and other security interests on behalf of clients, without legal advice from the Member.

9. Between commencement of the relationship in 1999 and the end of 2007, the Member started actions or took enforcement proceedings in over 150 matters.

10. It was after the move from Merchant Law Group to the Member's own firm, that CLIENT "X" began having difficulty staying in touch with the Member. CM states that updates on claims often took weeks and that they would have to leave multiple messages before getting any reply.

M.H.S. Matter

11. In 2005, CLIENT "X" sought the Member's advice on a file that they were handling for their client M.H.S. The Member's interactions on this matter occurred primarily with C.M.'s administrative assistant H.O. and the collector handling the file P.S. This file concerned a debt for work done on a truck owned by the debtor G.L. H.O. had registered a commercial lien against the vehicle on behalf of M.H.S. CLIENT "X" ultimately instructed a bailiff to seize the vehicle. At that point, H.O. and P.S. sought advice from

the Member concerning service of notice of seizure, and the rights and obligations of M.H.S. with respect to disposition of the vehicle.

12. G.L. disputed the validity of the lien that was placed upon the truck and started an action against M.H.S. and CLIENT "X" as joint defendants. On March 16, 2006, H.O. sent the Member a copy of the Notice of Motion. The Notice of Motion named M.H.S. and CLIENT "X" as co-respondents. In the accompanying letter, H.O. requested that the Member attend Chambers on their client's [M.H.S.] behalf.

13. The Member met with and prepared Affidavits for H.O., P.S. and M.H.S., and duly argued the matter in Chambers. As a result of these proceedings, the Court held that the lien was invalid because certain preconditions to its registration had not been met, and determined that a further *viva voce* hearing was necessary to address the issue of damages. The Member forwarded a copy of the decision to CLIENT "X" and asked that it advise M.H.S. On July 20, 2007 the Member wrote to P.S. about the upcoming hearing and asked that she advise M.H.S. of such date. She further requested M.H.S.'s contact information so that she could meet with him to prepare his evidence for the upcoming hearing. She did not make arrangements for a similar meeting with anyone from CLIENT "X", as, in her judgment, they had no useful information about value of the vehicle or about its ultimate disposition.

14. The Member had not informed, nor consulted directly with C.M. about the M.H.S. matter or the fact that CLIENT "X" had been named in the related action that arose from the inappropriate seizure.

15. The Member appeared before the Court on behalf of M.H.S. and CLIENT "X" on November 5, 2007 to argue the issue of damages. On December 17, 2007 the Judgment was issued and G.L. was awarded $9,306.29 against M.H.S. and CLIENT "X" on a joint and several basis. The Plaintiff had been seeking damages in excess of $30,000.00 and costs on a solicitor-client basis.

16. The Member sent M.H.S. a copy of the Judgment early in January, 2008, after the Christmas holidays. She advised against appealing. On January 17, 2008 the date that the appeal period was set to expire, the Member sent CLIENT "X" a copy of the Judgment. She apologized for not having sent it earlier. She also advised that, "[M.H.S.] feels that [CLIENT "X"] should be responsible for some, if not all, of the damages, as he feels that he was relying on you to collect the bad debt in an appropriate manner." Attached hereto at **Tab 2** is the fax from the Member to CLIENT "X" dated January 17, 2008.

17. It was at this point that C.M., owner and directing mind of CLIENT "X" became aware of the action against CLIENT "X". In an email to the Member sent on that same day, C.M. demanded why the Member did not phone to inform her about the matter and expressed disbelief at the late notice. Attached at **Tab 3** is the email from C.M. and a response from the Member.

18. The Member apologized for sending the judgment so late in her subsequent reply to C.M. While the Member faxed a copy to M.H.S. on January 7, 2008, she forgot to fax a copy to CLIENT "X". She also discussed the matter of an appeal with M.H.S. and advised against doing so. It was not until January 17, 2008, the last day that an appeal could be filed, that she remembered to fax a copy to CLIENT "X" Attached at **Tab 4** is a fax sent on January 17, 2008 from M.H.S. inquiring as to whether the Member has contacted CLIENT "X"

19. The Member made assumptions as to the chain of communication that existed at CLIENT "X" that were incorrect. She assumed that information that she was sharing with CLIENT "X" staff would be relayed to C.M. This was not the case. The Member appears to have overestimated staff's ability to appreciate what it meant for CLIENT "X" to be named in the action. They appear to have misunderstood the gravity of the situation and thought that their involvement was only because they were working for M.H.S. and

not because CLIENT "X" could become liable, as it eventually did. Because CLIENT "X" staff did not appreciate the significance of the matter, they never spoke with C.M. about it despite the fact that the file had developed into something very different from their routine collections files.

20. Because of the Member's incorrect assumptions, she never communicated with C.M. directly about the matter until the last day of the appeal period in relation to the judgment that had been issued against CLIENT "X"

21. The Member acknowledges that because of her incorrect assumptions with regard to the sophistication of the CLIENT "X" staff and the internal communication structure at CLIENT "X", C.M., the principal of CLIENT "X" was not kept reasonably informed about the lawsuit against CLIENT "X"

MS Matter

22. C.M. also complained that about delays on the part of the Member that impacted the chances of collection. Specifically, C.M. referred to a file involving a $20,361.93 claim against the alleged debtor M.S. That file was sent to the Member August 3, 2006 with instructions to obtain Judgment. At the time that the Member received these instructions, the alleged debtor's place of employment was known and C.M. intended to seek garnishment of M.S's wages.

23. The Member held the view that the creditor's claim was not well founded. There were some serious problems that the Member identified early on. The claim was for damages for breach of a contract under which M.S. agreed to remain in the employment of a company for a minimum period of time. There was an argument that it would be against public policy to enforce the contract in question. The company was not registered in Saskatchewan, and was not registrable in Saskatchewan, as there was already a company with that name. Preparing the Statement of Claim in the name of the principal of the

company could give rise to defences such as lack of privity of contract between the principal and the M.S. This was not a simple collection matter.

24. In retrospect, the Member states that she should have advised the creditor and CLIENT "X" of the weaknesses of the claim. She did not. Instead, the Member decided to set the file aside. The Member did not take any substantive steps toward initiating a claim against the M.S. until March 15, 2007 when CLIENT "X" contacted her to follow up. At that time they confirmed their original instructions. It was not until April 2, 2008, eight months after receiving the original instruction, that the Member issued a claim in the matter. The Member acknowledges there was a delay in commencing the action against M.S.

25. By the time the claim was issued against M.S., his circumstances had changed substantially. Within 7 weeks of the Member's initial receipt of instructions, M.S. went from being employed to being on disability leave. He also had moved into his parent's home. This change in circumstances meant that the already slim chance of collecting became even less likely.

26. During the course of the file the Member failed to keep CLIENT "X" reasonably informed as to the status of the matter. On March 15, 2007, approximately 7 months after providing instructions, and having heard nothing from the Member, CLIENT "X" requested an update. A similar request was made on April 23, 2007. No response was provided by the Member to either of these contacts until May 23, 2007.

27. On May 29, 2007 CLIENT "X" provided the Member with updated information regarding the M.S.'s place of employment and residence. The Member confirmed that the statement of claim was sent to the Sheriff in the town in which M.S. was residing. However, CLIENT "X" remained uncertain as to what the status of the file was. An email was sent on June 1, 2007, inquiring as to whether the statement of claim had been served and further reiterating the client's concern that M.S. be served quickly.

28. Three months later, CLIENT "X" sent another email asking whether M.S. had been served and if so, whether Judgment had been issued. CLIENT "X" also expressed their client's frustration at the slow progress and the lack of information. Attached hereto at **Tab 5** is the email dated August 28, 2007. M.S. was served on August 29, 2007. He ended up defending the claim. His counsel raised many of the concerns initially contemplated by the Member.

29. Ultimately, on March 5, 2008, C.M. terminated the relationship between the Member and CLIENT "X"

30. CLIENT "X"'s clients are reportedly very unhappy with the way this matter was handled and CLIENT "X" doubts that this particular creditor will ever use her company again.

Prior Record

31. The Member has no prior findings of conduct unbecoming. The member is, however, currently the subject of a referral to the Professional Standards Committee of the Law Society.