



The Law Society of Saskatchewan

SCOTT DAVID WOLFE

HEARING DATE: July 29, 2015

DECISION DATE: August 26, 2015

Law Society of Saskatchewan v. Wolfe, 2015 SKLSS 5

**IN THE MATTER OF *THE LEGAL PROFESSION ACT, 1990*
AND IN THE MATTER OF SCOTT DAVID WOLFE,
A LAWYER OF PRINCE ALBERT, SASKATCHEWAN**

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

Hearing Committee

Bryan Salte, Q.C., Chair

Lee Anne Schienbein

Eric Neufeld, Q.C.

Counsel

Drew Plaxton, Counsel for the Conduct Investigation Committee

Trevor Klassen, Counsel for Scott David Wolfe

DECISION

1. The Hearing Committee accepts Mr. Wolfe's admission that his conduct in misleading two clients about the status of their files is conduct unbecoming a lawyer. The Hearing Committee accepts the joint submission that Mr. Wolfe be reprimanded and required to pay costs of \$2,250.00 by August 31, 2015.

FACTUAL BACKGROUND

2. The Hearing Committee received an Agreed Statement of Facts signed by both counsel. That Agreed Statement of Facts is reproduced at the end of this decision.

3. In the Agreed Statement of Facts Mr. Wolfe admitted that he misled a client as to the status of her claim after having failed to serve the Statement of Claim on her behalf within the time limits set out in the Rules of Court. On several occasions between October, 2011 and July, 2013 he gave misleading information to the client about the status of her claim.

4. In the Agreed Statement of Facts Mr. Wolfe admitted that he misled a second client as to the status of her claim after having failed to issue the Statement of Claim on her behalf within the time limits set out in *The Limitations Act*. On several occasions between March, 2011 and December, 2013 he gave misleading information to the client about the status of her claim.

PROCEDURAL ISSUES

5. The parties agreed that the Hearing Committee was properly constituted. An Amended Formal Complaint was filed with the Hearing Committee at the hearing. The parties agreed that the Amended Formal Complaint was properly before the Hearing Committee. The only change from the Formal Complaint initially provided to the Committee was a correction to the city where Mr. Wolfe practises. The parties agreed that the hearing could occur with one member of the Hearing Committee participating by telephone.

6. The parties also agreed to a minor change to the Agreed Statement of Facts to reflect the fact that Mr. Wolfe had failed to issue a claim on behalf of the second client, rather than having failed to serve a claim as set out in the signed agreement.

7. After hearing the penalty presentations by both counsel, the Hearing Committee expressed concern about the lack of independent information about Mr. Wolfe's medical conditions referred to in the affidavit he filed. In response to that concern Mr. Wolfe's counsel provided clinical notes prepared by Mr. Wolfe's treating psychiatrist. Both counsel took the position that the clinical notes should not be available to the public.

7. The Hearing Committee reviewed the law pertaining to the open courts principle, particularly as expressed in the decisions *Law Society of British Columbia v. Mangat*, [2013] L.S.D.D. No. 115, 2013 LSBC 20 (LSBC Discipline Hearing Panel), *Law Society of British Columbia v. Eckardt*, [2013] L.S.D.D. No. 212, 2014 LSBC 7 (LSBC Discipline Hearing Panel) and *Law Society of Upper Canada v. Xynnis*, [2014] L.S.D.D. No. 38, 2014 ONLSAP 9 (LSUC Appeal Panel). The committee concluded that the test for restricting public access to those clinical notes had been met in the circumstances of this case for the following reasons:

- a. The clinical notes contain information about third parties who are not involved in the hearing;
- b. The psychiatric information contained in those notes has a high degree of sensitivity;
- c. The clinical notes were provided at the request of the Hearing Committee, not initially filed by either counsel;
- d. The Hearing Committee can adequately address Mr. Wolfe's medical issues which are relevant to the Hearing Committee's decisions in its reasons without disclosure of the clinical notes.

8. At the conclusion of the hearing, the Hearing Committee expressed concern whether the joint submission adequately protected the public. It invited both counsel to address its concern and respond to the Committee's suggestion that it was considering imposing some form of supervision or oversight in addition the penalty set out in the joint submission.

9. Counsel for Mr. Wolfe advised the committee that the firm where Mr. Wolfe works had taken measures to exercise oversight and would continue to do so. Counsel for Mr. Wolfe

subsequently provided a letter from the law firm confirming the measures that had been taken by the firm after becoming aware of the situation which resulted in the Formal Complaint against Mr. Wolfe.

REASONS FOR DECISION

10. Counsel for the Law Society Conduct Investigation Committee and Counsel for Mr. Wolfe submitted a joint submission that Mr. Wolfe should be reprimanded and required to pay costs of \$2,250.00 by August 31, 2015.

11. The Saskatchewan Court of Appeal concluded in *Rault v. The Law Society of Saskatchewan*, 2009 SKCA 81, that a Hearing Committee should accept a joint submission unless it decides that the disposition in the joint submission is inappropriate; not within the range of sentences; unfit or unreasonable; and/or contrary to the public interest.

12. Consequently, the issue for the Hearing Committee was not what penalty it would impose in the absence of such a joint recommendation, but rather whether the terms of the joint submission were inappropriate; not within the range of sentences; unfit or unreasonable; and/or contrary to the public interest.

13. For the reasons which follow, the Hearing Committee accepted the joint submission. Both parties accepted that the principles in assessing penalty set out in *Law Society of Saskatchewan v. Rault* (unreported, April 18, 2008, Law Society of Saskatchewan Benchers), and *Law Society of Saskatchewan v. Bliss* (available at the Law Society of Saskatchewan website, (<http://www.lawsociety.sk.ca/media/11719/Bliss2010LSS4.pdf>)) were appropriate for the Hearing Committee to consider in determining the appropriate penalty for Mr. Wolfe and in determining whether the joint submission adequately reflected the aggravating and mitigating factors to be considered by the Hearing Committee.

14. In *Rault*, the Hearing Committee stated the following:

“The Law Society of Alberta suggests a set of governing principles:

1. The need to maintain the public’s confidence and the integrity of the profession and the ability of the profession to effectively govern its own members;
2. Specific deterrence of the member from further misconduct;
3. Incapacitation of the member (through disbarment or suspension);
4. General deterrence of other members;
5. Denunciation of the conduct;
6. Rehabilitation of the member;
7. Avoiding undue disparity with sanctions imposed in other cases.

The Hearing Guide then speaks to relevant factors:

1. The nature of the conduct:
 - (a) does the conduct raise concerns about the protection of the public;
 - (b) does the conduct raise concerns about maintaining public confidence in the legal profession;

- (c) does the conduct raise concerns about the ability of the legal system to function properly; and
 - (d) Does the conduct raise concerns about the ability of the Law Society to effectively govern its members?
2. The level of intent. The appropriate sanction may vary depending on whether the member acted intentionally, recklessly or negligently, although the state of mind may be less important where the need to protect the public or maintain public confidence is greater.”
15. In *Bliss*, the Hearing Committee stated the following:

“18. In *Law Society of Alberta v. Ter Hart* [2004] L.S.D.D. No. 25, the Member was not guilty of conduct unbecoming but the decision provides a guide of sorts for some of the factors relevant to deciding whether a lawyer's conduct is conduct worthy of sanction and for assessing the appropriate sanction:

While not attempting to provide an exhaustive list of the factors to consider in assessing whether the conduct rises to the level of professional misconduct, the following factors have a bearing on our decision:

- (a) Was there a specific rule or duty which was breached?
- (b) What conflicting duties was the Member under and how evenly were they balanced?
- (c) Was the Member favouring his personal interests over his duties to his clients?
- (d) Were the circumstances and duties such that it is appropriate to conclude that the Member must have known at the time, or be taken to have known, at the time that the course of action chosen was wrong?
- (e) Was it an isolated act?
- (f) Was it planned?
- (g) What opportunity did the Member have to reflect on the act or the course of action?
- (h) What opportunity did the Member have to consult with others?
- (i) What results flowed from the act or course of action taken?
- (j) What subsequent steps could have been taken to correct the error or its consequences and were such steps taken?”

16. The aggravating factor of the greatest concern to the Committee was the nature of the conduct itself. Misleading a client is a very significant departure from the conduct to be expected of lawyers. That is particularly of concern when that conduct has occurred over an extended period of time, when the lawyer has had a period of time to reflect on the conduct and when the lawyer has not taken the opportunity to consult with others.

17. The conduct which led to the finding of conduct unbecoming a lawyer involved similar conduct with two clients, occurred over the period of March, 2011 to December, 2013 and involved repeated incidents in which clients were given information that was untrue.

18. Mr. Wolfe had time to reflect on his conduct and did not consult with senior members of the firm. Additionally, Mr. Wolfe had been admitted to the bar for approximately 4 years when the conduct began, and for more than 6 years when the conduct ended.

19. Members of the public have a right to expect more of lawyers than Mr. Wolfe's conduct in these two instances.

20. The mitigating factor that was most relevant to the Hearing Committee's conclusion that the conditions established by the Saskatchewan Court of Appeal in *Rault* were not met was Mr. Wolfe's medical conditions.

21. Where a professional's medical condition explains or caused the professional's unprofessional conduct, the professional's regulatory body is required to consider that member's medical condition when determining the appropriate penalty for the conduct. (*Wright v. College and Assn. of Registered Nurses of Alberta (Appeals Committee)*, 2012 ABCA 267; *MacNeil v. College of Registered Nurses of Nova Scotia*, 2010 NSSC 83; *Law Society of Upper Canada v. Kelly*, 2014 ONLSTA 16 (Ont. Law Society Discipline Committee).

22. Mr. Wolfe led evidence that he suffered from an anxiety disorder and depression which had been undiagnosed and untreated until after his conduct had been reported to the Law Society. He felt overwhelmed by the evidence which was needed to support the claims of the two clients. He suffered from a fear of failure and could not bring himself to discuss the files or discuss his concerns with other lawyers.

23. Since the matters were reported to the Law Society in January, 2014, he has obtained counseling and treatment from a psychologist and a psychiatrist, as well as his family physician. That treatment is continuing.

24. Additional mitigating factors considered by the Hearing Committee were:

- a. the absence of a record of previous conduct unbecoming a lawyer;
- b. Mr. Wolfe's actions were not taken for personal gain;
- c. after the matter came to the attention of the Law Society, Mr. Wolfe cooperated with the investigation, admitted his conduct and entered into the Agreed Statement of Facts. Those actions meant that the clients did not need to testify at a hearing.
- d. Mr. Wolfe addressed the committee at the penalty hearing. He demonstrated significant remorse for his behaviour and assured the committee that such conduct would not be repeated. He discussed the insight he has into his illness and the cause of his behaviour and the techniques which he has learned to cope with his illness.

25. The circumstances which led to Mr. Wolfe's conduct being reported to the Law Society and the extent to which Mr. Wolfe may have participated in that report were not completely clear to the Hearing Committee. The Committee did not consider the circumstances of the report to the Law Society to be either a significant aggravating or mitigating factor in determining whether to accept the joint submission on penalty.

26. At the conclusion of the Hearing, the Hearing Committee expressed its concern to both counsel that the joint submission might not sufficiently deal with the public interest and the need to protect the public against the potential of further, similar, conduct. The Committee invited both counsel to address whether the Committee should consider imposing an additional condition in the penalty that would require supervision or oversight of Mr. Wolfe's practice.

27. Counsel for Mr. Wolfe subsequently filed a letter from the firm where Mr. Wolfe works that stated:

- a. after the report was made to the Law Society, the firm reviewed every one of Mr. Wolfe's open files as well as a number of the closed files.
- b. the firm met with Mr. Wolfe on a regular schedule for the first six months after Mr. Wolfe returned to practice with the firm in March, 2014.
- c. the firm has conducted random audits of Mr. Wolfe's files since March, 2014 and intends to continue doing so for 2015 and 2016.
- d. the firm has regularly reviewed Mr. Wolfe's work in progress and discussed it with him.
- e. since March, 2014 Mr. Wolfe has sought the advice and assistance of senior members of the firm much more frequently.

28. The Committee considered that Mr. Wolfe has effectively been working under supervision for the past 1 ½ years without significant concerns being raised about his conduct and that Mr. Wolfe and the firm expect that will continue for some time into the future. On that basis, the committee concluded that it would not depart from the joint recommendation by adding a provision in its penalty decision pertaining to supervision or oversight.

SUMMARY

29. The Hearing Committee accepts the admission by Mr. Wolfe that he is guilty of conduct unbecoming a lawyer as set out in the Amended Formal Complaint dated July 20, 2015 and finds the complaint is well founded.

30. The Hearing Committee accepts the joint submission by the Conduct Investigation Committee of the Law Society and Mr. Wolfe and consequently orders:

- a. Pursuant to Section 53(3)(a)(vi) of *The Legal Profession Act, 1990*, Scott David Wolfe is reprimanded;
- b. Pursuant to Section 53(3)(a)(v) of *The Legal Profession Act, 1990*, Scott David Wolfe is required to pay costs of \$2,250.00 to the Law Society not later than August 31, 2015.

AGREED STATEMENT OF FACTS AND ADMISSIONS

PRELIMINARY MATTERS

31. Scott David Wolfe (hereinafter sometimes "Wolfe" or "the member") is and was at all times an active member of the Law Society of Saskatchewan.

32. The Law Society of Saskatchewan received a report from a Conduct Investigation Committee consisting of Gregory Walen, Q.C. and Evert Van Olst, Q.C. concerning complaints

made to the Law Society in relation to the member by PH and GL. Upon the recommendation of the Conduct Investigation Committee, a Hearing Committee comprised of Bryan Salte, Q.C, along with Lee Anne Schienbein and Eric Neufeld, Q.C. was appointed to determine whether or not the member is guilty of conduct unbecoming a lawyer (Schedule 1). A formal complaint was laid alleging the member is guilty of two counts of conduct unbecoming a lawyer in relation to the member's dealings with PH and GL. (Schedule 2).

33. The member and the Conduct Investigation Committee agree the matters set forth in the formal complaint are properly before the Hearing Committee and the Hearing Committee has jurisdiction to deal with same. Neither the Conduct Investigation Committee nor the member takes objection with the composition of the Hearing Committee.

BACKGROUND

34. The member was admitted to the Law Society of Saskatchewan in 2007. At all times material to the matters within, the member has practiced with the firm or Sanderson Balicki Parchomchuk (hereinafter sometimes "the firm" in Prince Albert, Saskatchewan. The member has no prior discipline record with the Society.

35. The complaints before the Hearing Committee concern the member's conduct in relation to two clients of the firm of Sanderson Balicki Parchomchuk, who files were being handled by the member, PH and GL.

COMPLAINTS AGAINST THE MEMBER

Complaint of PH

36. PH retained the firm specifically the member in July of 2009 in respect to a slip and fall claim against 7-11. The member issued a Statement of Claim on behalf of the client on March 15, 2011. The limitation period expired March 20, 2011. Although, the Claim was issued within the limitation period, the member failed to see that the Statement of Claim was served upon the defendant within the six months' timeframe set out in the Rules of Court or at all.

37. After the Claim was issued, the member had a number of email exchanges with the client, who was concerned about the status of her file and inquiring as to where her Claim stood. It appears the member also spoke with the client following the claim being issued.

38. Once the member realized he had not served the Claim within the time period set out in the Rules, the member acknowledges in correspondence to the Society, he did not take any steps to obtain an extension of time nor seek the assistance of senior members of the firm. He further acknowledged that the client would inquire sporadically inquire as to the status of her Claim, approximately once every six (6) months to a year. When these inquiries were made, he would advise her that this type of claim was a lengthy process and her claim was proceeding in due course. He did not advise the client that he had failed to serve the Statement of Claim nor of the fact her claim was not proceeding.

39. The following are excerpts of email exchanges between the member and the client bearing the dates indicated:

“October 3, 2011

[PH],

I have not heard about court dates as of yet. I have just received dates for criminal matters that had been waiting longer than this, and unfortunately civil matters, such as this, do not get priority for court time. As soon as I hear I will let you know.

December 6, 2012

Scott,

... any way, please get back to me with an update.

[PH],

I have not heard anything further, as soon as I do I will let you know.

June 29, 2013

Scott,

... any information regarding a court date?

July 5, 2013

[PH],

Things are progressing, and once I am given firm options for dates, I will be in touch with you to confirm. We will need to obtain medical information at some point in the fall as part of the process.”

40. After the matter was reported to the Law Society of Saskatchewan, the Saskatchewan Lawyers' Insurance Association arranged to have new counsel for the client. The Court granted the client an extension on serving the Statement of Claim curing the failure to serve same within the time limits.

41. The member admits that he is guilty of conduct unbecoming a lawyer, in that did mislead his client PH as to the status of her Claim after having failed to serve the Statement of Claim on her behalf within the time limits set out in the Rules of Court.

Complaint of GL

42. GL retained the firm and more specifically the member in April of 2011 with respect to medical issues that had arisen as a result of ill-fitting dentures. The member met with the client on a several occasions and drafted a Statement of Claim against the dentist involved. The Claim was not issued within the two year limitation period for same. The member advises once he learned the limitation period had been missed, he did not take steps to deal with the file in a proactive manner nor contact senior members of the firm for their assistance.

43. The member spoke to the client on a number of occasions between March of 2011 and December 2013 promising her that the Claim had been sent to the Court and she would eventually have her money. Further, the client contacted the member on several occasions in the fall of 2013. He called her back on or about 1 December, 2013, assuring the client that it (presumably the Court case) would soon be before the Court and mediation.

44. The member admits that he is guilty of conduct unbecoming a lawyer, in that did mislead his client GL as to the status of her Claim after having failed to serve the Statement of Claim on her behalf within the time limits set out in the Rules of Court.

45. In relation to the GL matter, the member is insured through SLIA.

DEALINGS WITH THE LAW SOCIETY

46. Both PH and GL complained to the Law Society concerning the member's conduct. A senior member of the firm first reported the matters in question to the Law Society on or about the 3RD of February, 2014 after a passing discussion with the member, which was followed up by a telephone call to the senior member of the firm from the member's spouse.

47. The member self-reported the matter to the Law Society on the 25TH of March, 2014.

MEDICAL HISTORY OF THE MEMBER

48. The member believes he has suffered from anxiety since he was a child, although he was largely unaware of same until he sought medical assistance following reporting of the matter to the firm. He became aware at approximately the same time that his father's family has a history of anxiety and depression. Please see the member's affidavit dated 29 June 2015.

49. Following the report to the firm, the member sought medical attention. The member is currently under the medical care of his family physician and psychiatrist for his anxiety and depression. He also maintains contact with a psychologist.

50. The member has attended group therapy/counselling sessions and completed two programs with through Prince Albert Parkland Health Region, Mental Health Services. He continues to attend group sessions from time to time.