



CORY BLISS

August 24, 2010

Law Society of Saskatchewan v. Cory Bliss, 2010 LSS 4

**In the matter of *Legal Profession Act, 1990*, and in the matter of Cory Bliss, a lawyer
of Saskatoon, Saskatchewan**

Report of the Hearing Committee

Hearing Committee

Robert Heinrichs, Chair
Miguel Martinez

Counsel

Timothy Huber, Counsel for the Investigation
Committee
The Member represented himself

Background

1. This matter came before the Benchers of the Law Society of Saskatchewan as a result of the Member's report of his own conduct. After investigation the Member was subject to the following formal complaint:

That Cory Bliss, of the City of Saskatoon, in the Province of Saskatchewan, is guilty of conduct unbecoming a lawyer in that he:

- 1) did fail to be candid and did mislead opposing counsel, R.P., in the context of a criminal prosecution.
2. Mr. Bliss pled guilty to the single citation of conduct unbecoming a lawyer. The hearing proceeded on July 16, 2010, as a sentencing hearing on an Agreed Statement of Facts with submissions from counsel for the Investigation Committee of the Law Society of Saskatchewan and from the Member.

Facts

3. The Member's impugned conduct occurred on July 6, 2009, in the context of a criminal trial involving impaired driving. The Member represented the Crown and R.P. represented the accused.

4. On the morning of the trial, Mr. Bliss interviewed each of the Crown's witnesses. One of the investigating officers, Cst. J.J., revealed evidence to Mr. Bliss that was not included in the police reports or in the pretrial disclosure to R.P. The previously undisclosed information was relevant, assisted the Crown by clarifying some aspects of its case, and Mr. Bliss knew he should reveal the evidence to R.P. before trial.
5. Mr. Bliss was busy with other matters before the trial. R.P. arrived at court shortly before the trial was scheduled to commence. By the time the trial started, Mr. Bliss had forgotten that Cst. J.J. had revealed previously undisclosed information to him earlier that morning. For this reason, Mr. Bliss did not seek out R.P. before the trial commenced and he did not reveal the "new" evidence to him.
6. During his examination-in-chief of Cst. J.J., Mr. Bliss remembered the new information but he did not adjourn the trial to speak to R.P. before continuing with the officer's testimony.
7. R.P. was alarmed when he heard Cst. J.J. testify to the "new" evidence. R.P. adjourned his cross-examination of Cst. J.J. in order to speak to Mr. Bliss.
8. During the adjournment, R.P. asked Mr. Bliss about what he knew about the new evidence and whether he was aware of the information before the trial began. Mr. Bliss told R.P. that he had not heard the new evidence until Cst. J.J. testified.
9. After R.P. spoke to Mr. Bliss, the trial continued. R.P.'s cross-examination of Cst. J.J. focused on the new evidence and whether the officer had revealed the information to Mr. Bliss before trial. Cst. J.J. testified that he had told Mr. Bliss about the new evidence before the trial began.
10. The trial did not end on July 6, 2009, and was adjourned to a later date.
11. On July 9, 2009, R.P. sent a letter to Mr. Bliss asking for additional disclosure about Cst. J.J.'s new evidence and about the Crown's prior knowledge of the information. R.P. also indicated that he suspected Cst. J.J. had lied on the witness stand and suggested that the Crown should enter a stay of proceedings.
12. Mr. Bliss did not reply directly to any of R.P.'s questions or comments, but did prepare a stay of proceedings, which he provided to R.P. and to the court.
13. Mr. Bliss believed the matter was behind him until January 2010, when, in another prosecution involving evidence from Cst. J.J., R.P. questioned the officer's credibility. The only reason for R.P.'s distrust of Cst. J.J. was Mr. Bliss's earlier failure to candidly admit that Cst. J.J. had given him relevant information before the July 2009 trial.
14. Faced with how his earlier failure to be honest had affected Cst. J.J.'s credibility and reputation with R.P., Mr. Bliss reported his conduct to his employer, the Saskatchewan Department of Justice, and to the Law Society of Saskatchewan.
15. Mr. Bliss's employer removed him from court duties for a period of time and then suspended him for two weeks without pay. After returning to work, Mr. Bliss entered into a mentorship program with the senior Crown prosecutor in his office and meets with the Regional Crown prosecutor on a monthly basis for additional support and mentorship.

16. Mr. Bliss also personally apologized to R.P. and Cst. J.J. for his conduct.

Submissions on Sentence

17. Mr. Huber, counsel for the Investigation Committee, submitted that the mitigating factors in this case and the relevant decisions of this and other Law Societies called for a sentence consisting of a reprimand of the Member and an order to pay costs. Mr. Huber directed the attention of the Hearing Committee to the following relevant Law Society decisions from this and other jurisdictions.
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?
22. In *Law Society of Upper Canada v. Brown* [1997] L.S.D.D. No. 93, the Law Society sentenced a criminal defence lawyer for conduct unbecoming after he had been criminally convicted and fined \$5,000.00 for obstruction of justice because he had acquiesced in his client's use of a false identity at trial. As a result of Mr. Brown's full co-operation, numerous letters of support, and lack of prior record, the discipline committee determined that the appropriate sanction should be a reprimand and payment of costs in the amount of \$3,000.00.
23. Mr. Huber also referred the Hearing Committee to *Law Society of Saskatchewan v. Megaw* [2004] L.S.S. 04-05, as the most relevant Saskatchewan case. In *Megaw* the Member misled his client after inadvertently missing a court appearance. This was an isolated instance of misconduct and, like Mr. Bliss, Mr. Megaw reported his own conduct, co-operated fully throughout the discipline proceedings, and expressed significant remorse for his conduct. Mr. Megaw received a reprimand and was required to pay costs of \$563.57.

24. For his part, Mr. Bliss agreed that the appropriate sentence should be a reprimand and that he should pay at least some of the costs of the discipline proceedings.

Sentence

25. In light of Mr. Bliss's clear remorse and the professional and personal consequences to which he has already been subjected, the sentence we impose need not be directed at specifically deterring him from similar conduct in the future. The notoriety of this incident among his colleagues and a formal reprimand should provide adequate general deterrence to the profession.

26. As Mr. Huber stated in his written submission:

"The goal is not to make an example of this Member. Rather the intention is to maintain high professional standards and preserve public confidence in the legal profession through denunciation of this conduct."

27. Integrity and honesty are important characteristics that the public should expect of all lawyers. In some ways, this expectation may be most important when applied to Crown prosecutors, as their duty is not to win their case but "to present all available credible evidence relevant to the alleged crime in order that justice may be done through a fair trial upon the merits" [*Code of Professional Conduct*, Chapter IX, Commentary 9].

28. The most significant aggravating factor in this case is that Mr. Bliss did not "come clean" about his misconduct at the earliest opportunity. His reticence was motivated by embarrassment. On the other hand, he immediately dealt with and reported his conduct when the broader consequences of his actions, namely the effect on Cst. J.J.'s credibility with, at the very least, R.F., became clear.

29. In this case, the mitigating factors outweigh the aggravating factors. Without providing an exhaustive list, the Hearing Committee took into account the following mitigating factors:

- Mr. Bliss reported his own conduct to his employer and to the Law Society. In addition, he took additional and appropriate steps to deal with his misconduct including personally apologizing to the other parties involved and participating in a mentorship program with his employer.
- He fully co-operated in the investigation and pled guilty to the single citation of conduct unbecoming a lawyer.
- He deeply regrets his actions.
- His conduct occurred "in the heat of the moment" without planning or premeditation.
- This was an isolated incident and Mr. Bliss does not have a Law Society discipline record.
- The Member's deception was not in relation to information that would have helped the accused.

- The Member did not mislead opposing counsel for personal gain or in order to "win" his case.
30. The primary consideration of Law Society discipline proceedings is protection of the public. We are of the view that in light of Mr. Bliss's remorse, the penalties imposed on him by his employer, and the steps he has taken since reporting his conduct, it is unlikely that he will make the same mistake twice. For these reasons it is not necessary to impose a more severe sentence than a formal reprimand in this case.
31. We find Mr. Bliss guilty of conduct unbecoming a lawyer in that he failed to be candid and did mislead opposing counsel, R.P., in the context of a criminal trial, and impose the following sentence, that:
1. the Member be formally reprimanded, and
 2. on or before September 30, 2010, the Member must pay costs in the amount of \$1,075.00 to the Law Society of Saskatchewan.

Robert Heinrichs, Chair Miguel Martinez

**AGREED STATEMENT OF FACTS
AND ADMISSIONS**

In relation to the Formal Complaint dated April 21st, 2010, attached at Tab 1, as follows:

THAT Cory Bliss, of the City of Saskatoon, in the Province of Saskatchewan is guilty of conduct unbecoming a lawyer in that he:

did fail to be candid and did mislead opposing counsel R.P. in the context of a criminal prosecution.

Jurisdiction

1. Cory Bliss (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 a Formal Complaint dated April 21st, 2010. The Formal Complaint is comprised of a single count 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 complaint against him is 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 the single allegation of conduct unbecoming contained in the formal complaint.

Particulars of Conduct

5. This proceeding arose after the Member self reported the circumstances of the misconduct first to his employer, the Ministry of Justice, Public Prosecutions Branch, and then to the Law Society.
6. The self report to the Law Society by the Member was made by way of a letter dated February 4, 2010. Attached at **Tab 3** is the letter from the Member to the Law Society dated February 4, 2010.
7. The self report details that the misconduct occurred on July 6, 2009 within the context of an impaired driving prosecution led by the Member out of the Judicial Center of Humboldt. Defence counsel on the matter was R.P. The Member had provided disclosure to R.P. prior to the trial date in the normal course.
8. On the morning of the trial, the Member, who had two trials scheduled that day, spent a small amount of time meeting with his witnesses to discuss their evidence. During a discussion with one of the police officers scheduled to testify in the matter of Mr. K., Cst. J.J., the Member became aware of additional evidence not contained in the police reports or the previous disclosure. The “new” evidence benefitted the Crown in that it clarified certain elements of the Crown’s case.
9. R.P. arrived at the court house a short time before court was set to open. The Member did not seek him out to share the information that had been disclosed to him earlier that morning. The trial of R.P.’s client Mr. K commenced.
10. During the examination in chief of Cst. J.J., the Member remembered the new information that had been disclosed to him and that he had forgotten to disclose that information to R.P. Unfortunately, the Member did not adjourn the proceeding to speak with R.P., but instead forged ahead.
11. The Member acknowledges that the information he received from Cst. J.J. was relevant to the defence and should have been disclosed, even though the evidence supported the Crown’s case.
12. R.P. was alarmed when he heard Cst. J.J. testify to the new evidence. After R.P. commenced his cross examination, R.P. requested an adjournment to speak with the Member. R.P. asked the Member about his knowledge of the new information. R.P. asked the Member if he had been aware of the new information prior to the commencement of the trial. The Member lied to R.P. and said no.

13. The Member realized immediately that it was wrong to mislead R.P. as to his knowledge about the new information but had been embarrassed about his oversight in failing to disclose the information prior to the commencement of the trial.
14. The trial continued as did R.P.'s cross examination of Cst. J.J. The focus was on the new information and whether Cst. J.J. had communicated its existence to the Member prior to the trial. Cst. J.J. indicated to R.P. that he had informed the Member prior to the commencement of the trial. This testimony conflicted with the representations that the Member had made to R.P. moments prior.
15. The trial was not concluded July 6, 2009 and an adjourn date was selected.
16. On July 9, 2010, R.P. sent a letter to the Member seeking further disclosure in relation to the new information and details in relation to the new information raised by Cst. J.J. and the Crown's knowledge of the same. In that letter R.P. also suggested that a stay of proceedings was warranted in all the circumstances. R.P. went so far as to allude to his belief that Cst. J.J. may have lied on the stand.
17. The Member ultimately decided to draft a stay of proceedings and provide it to R.P. and the court. The Member did not respond to any of the comments that R.P. had made in his July 9, 2010 letter questioning the truthfulness of Cst. J.J.'s testimony.
18. The Member considered the matter concluded until January 2010 when R.P. raised the issue of Cst. J.J.'s credibility within the context of another prosecution that the Member and Cst. J.J. were both involved in. R.P. held the view that based on the events of July 6, 2010, Cst. J.J. was a dishonest individual. The sole basis for R.P.'s belief was the Member's misleading comments with regard to the non-disclosure of information prior to the commencement of the Mr. K. trial.
19. Faced with the reality of how his conduct had negatively impacted Cst. J.J.'s credibility, the Member reported his conduct to his employer and then to the Law Society.

Mitigating Factors

20. The Member has been fully co-operative throughout this matter. His detailed self-report allowed the investigation to be completed in a very short period of time and with relative ease. He is deeply regretful of his actions.
21. The Member has been forthright with his employer and the Law Society. After he disclosed the conduct in question to his employer, he was removed from court duties for two weeks. Ultimately, the Member's employer imposed an additional two week suspension from his job, without pay.
22. Both the removal from court duties and the two week suspension required a reassignment of the Member's files to his colleagues which he also appreciates

caused them undue hardship. He has explained his conduct to his co-workers.

23. The Member has apologized to everyone involved. On February 5, 2010, he attended the office of R.P. with the Executive Director of Public Prosecutions, Daryl Rayner Q.C. to provide a personal apology. R.P. has accepted the Member's apology, although has since indicated a preference that the Member not appear opposite him.
24. After meeting with R.P. the Member also contacted Cst. J.J. The Member apologized to Cst. J.J. who was accompanied by his superior, via phone, also on February 5, 2010. Cst. J.J. advised that he did not feel that the incident would interfere with their professional relationship.
25. The Member has entered into a mentoring relationship with a Senior Crown Prosecutor in his office. They regularly discuss work issues. Monthly meetings have also been established between the Member, his mentor and the Regional Crown Prosecutor to provide additional support and supervision.