



The Law Society of Saskatchewan

CANDACE GUIST

HEARING DATE: September 29, 2015

DECISION DATE: February 2, 2016

Law Society of Saskatchewan v. Guist, 2016 SKLSS 4

**IN THE MATTER OF *THE LEGAL PROFESSION ACT, 1990*
AND IN THE MATTER OF CANDACE GUIST,
OF SASKATOON, SASKATCHEWAN**

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

Counsel for Candace Guist
Counsel for the Law Society

Charmaine Panko
Timothy F. Huber

INTRODUCTION AND JURISDICTION

1. Pursuant to Rule 176(5)(d) of the Law Society Rules, the Executive Director directed that the Chair of the Admissions and Education Committee strike a Hearing Panel to hear and determine Ms. Guist's application for admission as a lawyer. The task of the Hearing Panel was to determine whether Ms. Guist met the requirements of rule 176(2) which is as follows:

176(2) In any application under this Part, applicants have the onus of proving that:

- (a) they are Suitable to Practise;**
- (b) they are competent to perform the required duties, as applicable; and**
- (c) granting the application would not be inimical to the public interest or the members and would not harm the standing of the legal profession generally.**

2. The Notice of Hearing dated August 26, 2015 (L-1) broadly described the task for the Hearing Panel:

The circumstances to be inquired into at the Hearing will include whether or not you are suitable to practice law and whether granting your application for admission as a lawyer would be inimical to the best interests of the public or the members or would harm the

standing of the legal profession generally. Specific areas of inquiry will include whether or not various statements made by you on or about March 23, 2014 amount to admissions of fraud and/or are otherwise indicative of bad character.

3. The powers of the Hearing Panel are set out in rule 187(1):

187 (1) The Hearing Panel may:

- (a) approve the application with or without conditions; or**
- (b) deny the application.**

4. A hearing was held on September 29, 2015. On October 8, 2015, counsel was advised that Ms. Guist's application for admission was approved without conditions and without costs with written reasons to follow. These are the written reasons.

PRELIMINARY MATTERS

5. By a Notice of Motion dated September 2, 2015 Ms. Guist sought the following relief:

- 1. That the complaint against Candace Guist be dismissed as being vexatious, without merit, and an abuse of process.**
- 2. In the alternative, that a ruling be made that the secret tape recording made by M.M. [the "Complainant"] will be excluded from evidence in the hearing of this matter.**
- 3. That the entire hearing in this matter be closed and that a publication ban be issued due to the personal nature of the matter, and that no public notice of the hearing or decision shall be made unless the Committee makes a finding against Ms. Guist.**

6. For the reasons set out in its decision dated September 10, 2015, the Hearing Panel concluded that it could not at a preliminary stage, rule that the proceedings were "vexatious, without merit and an abuse of process". Further, the application that the hearing be closed and that a publication ban be issued were also dismissed. As to the admissibility of a tape recording, the Hearing Panel concluded that the admissibility of the tape would be determined in a voir dire and that portion of the hearing would be conducted in-camera.

7. At the outset of the hearing, a voir dire was conducted. An audio tape of a conversation between Candace Guist and her estranged husband, M.M., was played. In addition, a transcript of that discussion was filed. After making submissions regarding the admissibility of the tape recording and before the Hearing Panel rendered its decision, counsel advised that it was agreed that the audio tape and the transcript should be admitted into evidence.

FACTUAL BACKGROUND

8. Consistent with the practice in admission hearings, the Law Society presented its case first which consisted of a joint document book (L-2) which included, inter alia, Ms. Guist's

application for admission and a transcript of a tape recorded discussion between Candace Guist and M.M. M.M. did not testify and no witnesses were called by the Law Society.

9. At the outset of her case, Ms. Guist attempted to qualify Debra Fehr as an expert witness. Ms. Fehr is a registered psychologist employed with Adult Community Mental Health Services in Saskatoon. Ms. Fehr operates an Alternative to Violence program. Ms. Fehr had no personal knowledge of the relationship between Ms. Guist and M.M. Neither Ms. Guist nor M.M. were involved in any Alternatives to Violence programming provided by Ms. Fehr. Mr. Fehr testified that she listened to the taped conversation and she read the transcript of that conversation. Based on that, Ms. Fehr proposed to offer opinion evidence about the communication dynamics and coping mechanisms people use in abusive relationship.

10. Counsel for Ms. Guist argued that Ms. Fehr's testimony would be helpful to the Hearing Panel and that Ms. Fehr ought to be qualified to give opinion evidence in this case.

11. The Law Society objected to the ability of Ms. Fehr to give opinion evidence. In cross-examination, Ms. Fehr rightly admitted that she could not testify as to whether Ms. Guist was lying to her estranged husband in the discussion and/or whether Ms. Guist was lying to the Law Society. The Law Society argued that Ms. Fehr would be offering pure speculation as to what certain comments may have meant in the tape recording.

12. The Hearing Panel ruled that Ms. Fehr would not be qualified to give opinion evidence. Ms. Fehr is undoubtedly well qualified in her field. However, her testimony in this case does not meet the threshold criteria for admission of expert opinion evidence. That criteria is set out in the Supreme Court of Canada's decision of *R v Mohan*, [1994] 2 SCR 9:

- a. The evidence is relevant.
- b. The evidence is necessary to assist the trier of fact because the evidence is outside the experience or knowledge of the trier of fact.
- c. The evidence does not contravene an exclusionary rule.
- d. The witness is properly qualified.
- e. The evidence is reliable.

13. Each criteria must be satisfied.

14. Ms. Guist is in the best position to discuss her relationship with M.M. and the dynamics of communications with him in order to place into context certain statements she made in the tape recording. With respect, Ms. Fehr's proposed testimony was not necessary and on that basis alone, her proposed opinion evidence was not admissible.

15. Further the Hearing Panel was concerned that Ms. Fehr's proposed testimony was being proffered to bolster the credibility of Ms. Guist's own testimony. Such oath-helping evidence is generally not admissible.

S.(C). v Canada (Attorney General),
2003 SKQB 540 (CanLII)

16. Candace Guist testified before the Hearing Panel. She was the only witness called.

17. After dating for approximately a year, Ms. Guist and M.M. married on September 25, 2004. Within the first six months of marriage, M.M. became controlling and demanding, seeking to exclude her from friends and family. Ms. Guist and M.M. had two children together with her first child being born in 2005 and the second in 2008. In October, 2008, the two of them separated.

18. On October 2, 2008, M.M. was charged with assaulting Ms. Guist (L-2, tab 12). It appears M.M. was referred to Mental Health to determine whether the charge should proceed through Domestic Violence Court. Based on a document entitled “Domestic Violence Treatment Court Progress Report”, M.M. was not dealt with through Domestic Violence Court (L-2, tab 12):

Progress with plan: M.M. was referred to Mental Health for a pre-screening interview. Two mental health facilitators interviewed M.M. on two different occasions. Both facilitators indicated that M.M. was not suitable for any type of domestic violence programming. In both interviews, M.M. displayed intense emotional outbursts and described himself as a victim. The domestic violence treatment option is not a possibility for M.M.

19. M.M. continued to encounter the criminal justice system. On April 30, 2012, he was charged with uttering threats to Ms. Guist to damage her personal property (L-2, tab 12). On or about November 7, 2014, M.M. was charged with committing an assault on Jason Kines using a weapon to wit: a knife, uttering a threat to cause death to Jason Kines and committing mischief by damaging property of Ms. Guist. At that time, Ms. Guist was in a relationship with Jason Kines. Ms. Guist testified that M.M. was awaiting trial on those charges and that in the meantime, he was the subject of a no-contact order with her.

20. The conflict between Ms. Guist and M.M. also played out in family court with issues of access and parenting schedules. According to Ms. Guist, the two of them have participated in three sessions in the high conflict mediation program. The children are now ages 9 and 7 and the conflict between their parents has resulted in both children being involved in counselling.

21. In early 2013, Ms. Guist began a new relationship. This seemed to be the “straw that broke the camel’s back” for M.M. Their conflicted relationship became even more strained which culminated in an incident on November 7, 2014 between M.M., Jason Kines and Ms. Guist that led to the criminal charges already described.

22. Ms. Guist testified that M.M. threatened her several times that he would “ruin (her) life”. He filed complaints with Canada Revenue Agency, the student loans program and the government office that administers day care subsidies. The gist of those complaints were that Ms. Guist was obtaining benefits on the basis that she was a single parent when she had reconciled with M.M. who was living with her. M.M. called these complaints “his non-judicial way of dealing with things”.

23. In addition to bringing complaints with these authorities, M.M. telephoned Doug Surtees, the Associate Dean of the College of Law. An Affidavit sworn by Mr. Surtees was filed in these proceedings (A2) and paragraph 3 is as follows:

3. The caller identified himself as Candace Guist's ex-husband, and told me that Ms. Guist was claiming to be a single parent on her Canada Student Loan application when she was actually living with someone. I told the caller that if he had concerns about student loans perhaps he should take them up with Canada Student Loan people. He said he had tried, but they would not speak with him. I told him that I did not see his allegations as a law school matter. I do not recall whether he made more allegations during the call, but I clearly remember that by the end of the call, I was concerned that he was simply trying to make life difficult for his ex-wife.

24. On March 23, 2014, Ms. Guist and M.M. met near a Saskatoon school to exchange the children as the children had been in M.M.'s care under a parenting arrangement they had reached. M.M. indicated he wished to speak to Ms. Guist "about something really important". The children were transferred to Ms. Guist's car and she met with M.M. in his vehicle.

25. The transcript of the conversation is at tab 2 of the Joint Exhibit Book (L-2). The 50 minute tape recording was played during the hearing. The transcript has time stamps at the top of each page. Fairly early on in the conversation and at approximately the four minute mark, Ms. Guist expressed suspicion that the conversation was being recorded. M.M. denied that and the discussion continued.

26. In her testimony, Ms. Guist accepted that the transcript and tape recording was an accurate portrayal of what was said. However, she maintained that to the extent she made admissions about fraud to M.M., those statements were false and that she was making the statements to tell M.M. what he wanted to hear. In cross-examination, Ms. Guist stated that she was fearful of M.M. because there are always consequences in dealing with him. She admitted that the tape and the transcript also showed her being angry with M.M. Her explanation was that in dealing with M.M. both on this occasion and in general, she needed to sometimes tell him what he wanted to hear, sometimes fight back or a combination of both.

27. A year after the recorded discussion and on March 2, 2015, M.M. submitted a complaint about Ms. Guist to the Law Society (L-2, tab 1). By an email dated May 5, 2015, Ms. Guist provided her response to the complaint. Further correspondence ensued between Ms. Guist and complaints counsel. In a letter dated June 23, 2015 (L-4), Ms. Guist was advised by the Executive Director that her application for admission would be referred to a Hearing Panel of the Admissions and Educations Committee.

ANALYSIS AND DECISION

28. Under rule 176(2)(a), Candace Guist has the onus of proving that she is "suitable to practice". "Suitable to practice" is defined in Rule 149:

149. In this Part,

‘Suitability to Practise’ means honesty, governability, financial responsibility and respect for the rule of law and the administration of justice and ‘suitable to practice’ has a corresponding meaning.

29. The onus is on Ms. Guist to prove that she is suitable to practice at the time of the hearing of the application.

Law Society of Upper Canada v Preyra
(2000) CanLII 24383 (ONLST)

Law Society of Saskatchewan v Mapagunaratne
2015 SKLSS 7

30. In addition, Ms. Guist must establish that granting her application for admission as a lawyer “would not be inimical to the public interest or the members and would not harm the standing of the legal profession generally”. (See Rule 176(2)(c))

31. In *Law Society of Saskatchewan v Burns*, 2013 SKLSS 3, the hearing panel said this about the “inimical to the best interest or the members” factor:

82. No case law has been provided to this Committee that helps define the factors to be considered in assessing whether an applicant’s admission to the legal profession or as a student-at-law is ‘inimical to the best interests of the public or the members or would harm the standing of the legal profession generally’. However, the purpose of the admissions process, like discipline is to ensure public protection, the maintenance of professional standards and generating public respect for and confidence in the legal system and lawyers who are integral to that system. Therefore, without limiting the various factors that a panel may take into account, it is open for this Committee to consider Mr. Burns’ competence, his integrity and his demonstrated judgment or lack thereof in his interactions with members of the public and the legal profession.

32. The essence of M.M.’s complaint to the Law Society is that Candace Guist received benefits that she was not entitled to and that she made admissions to that effect in the recorded discussion of March 23, 2014. Her eligibility for those benefits was based on whether she was living separate and apart from M.M. By necessary implication, this means that Ms. Guist would have had to have lied to these various agencies in order to collect the benefits.

33. Under oath, Ms. Guist was adamant that she did not lie to any of these agencies. Further, she has filed an Affidavit with the Hearing Committee in support of the preliminary application in which she stated:

11. Specifically, the Complainant has alleged that I lied and committed fraud against Canada Revenue Agency; the Ministry of Advanced Education, Employment and Labour; and Student Loans. I have been found innocent of any wrongdoing by all three agencies and have attached a copy of confirmation of same from each agency to this as Exhibit “F”.

34. Exhibit “F” contains letters from Advanced Education Employment and Labour, the Ministry of Social Services and Canada Revenue Agency. The correspondence refers to audits conducted by these various agencies. In all cases, the agencies indicate that as a result of the audits, the conclusion was that the benefits were properly paid.

35. There was no evidence produced as to the nature of the investigations conducted by these agencies. Further there was no evidence as to the eligibility requirements of these various agencies in order for Ms. Guist to collect benefits. Undoubtedly the different agencies have different requirements in terms of what it may mean to live separate and apart.

36. The Hearing Panel is left with the sworn statements of Ms. Guist that she did not fraudulently collect benefits, that M.M. complained to these agencies suggesting that she had, that the agencies investigated and audited her claims and in all cases, the agencies concluded that the benefits paid to her were correct. The Hearing Panel accepts Ms. Guist’s uncontradicted evidence.

37. To the extent Ms. Guist apparently made admissions to M.M. that she had engaged in fraud, the Hearing Panel accepts her explanation and finds that those “admissions” were not true. In listening to the tape and in reviewing the transcript as a whole, it was clear that M.M. pushed and persisted to the point that Ms. Guist pushed back with sarcasm (“I will say I lie and manipulate regularly. It is a habit that I have.”). Further, there was an undercurrent of coercion and threats in many of M.M.’s comments (“I don’t have time for games, Candace . . .”, “Can you say that to me out loud, so I can hear instead of nodding your head, instead of whispering yes to me. . .”, “That’s only if you get to become a lawyer. We’re so not there yet. . .”). These statements illustrate much of the nature of the questioning M.M. engaged in.

38. As indicated in *Burns*:

. . . The purpose of the admissions process, like discipline, is to ensure public protection, the maintenance of professional standards and generate public respect for and confidence in the legal system and lawyers who are integral to that system.

39. Ms. Guist filed a series of reference letters which included her participation in CLASSIC and a letter from the law firm in which she articulated. The law firm has invited her to continue to practice if she was admitted as a lawyer, referring to her demonstration of integrity “both professionally and personally”.

40. Given the appropriate legal principles and all of the evidence, the Hearing Panel has concluded that Ms. Guist has established that she is suitable to practice. Pursuant to rule 187(1) (a), the Hearing Panel approved Ms. Guist's application for admission as a lawyer without conditions.

DATED this 2nd day of February, 2016.

"Darcia G. Schirr, Q.C."
Hearing Panel, Chair

"Sean Sinclair"
Hearing Panel Member

"Della Stumborg"
Hearing Panel Member