



The Law Society of Saskatchewan

HOLLY ANN KNOTT

HEARING DATE: May 20, 2015

DECISION DATE: June 4, 2015

Law Society of Saskatchewan v. Knott, 2015 SKLSS 3

**IN THE MATTER OF *THE LEGAL PROFESSION ACT, 1990*
AND IN THE MATTER OF HOLLY ANN KNOTT,
A LAWYER OF SASKATOON, SASKATCHEWAN**

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

1. The Hearing in this matter proceeded on May 20, 2015, by conference call with Hearing Committee members Lorne Mysko, Lee Anne Schienbein, and Perry Erhardt, Q.C. (Chair) present on the call. At the Hearing, Holly Ann Knott, Q.C., the member, represented herself and Timothy Huber represented the Law Society of Saskatchewan (LSS).
2. The Hearing was convened to consider a Formal Complaint set out by the Conduct Investigation Committee of the LSS against Ms. Knott, which comprised a single count. The LSS complaint alleged that Ms. Knott is guilty of conduct unbecoming a lawyer in that she did attempt to impose, as a term of settlement of her client's litigation with L.M., the requirement that L.M. forego the right to pursue allegations of conflict of interest against her.
3. At the outset of the Hearing, both Ms. Knott and Mr. Huber indicated that there were neither any objections to the composition of the Hearing Committee nor preliminary motions to be presented. The Hearing proceeded and Mr. Huber filed three documents, which were accepted by the Hearing Committee: namely, Notice of Hearing - Exhibit P-1; Agreed Statement of Facts – Exhibit P-2; and Statement of Costs – Exhibit P-3.
4. Ms. Knott entered a plea of guilty to the single count set out in the Formal Complaint.
5. The Hearing Committee then entertained submissions on penalty from each of Mr. Huber and Ms. Knott.
6. Mr. Huber directed the Hearing Committee's attention to prior discipline decisions that affirmed a lawyer cannot "bargain away" or dissuade a complainant from making a complaint

against the lawyer; in particular, *Thompson Family Trust* [2011] O.J. No. 5398, which set out the public policy considerations underpinning the guiding principle. He submitted that other Saskatchewan disciplinary decisions in this vein are clear, and that a penalty in the form of a reprimand would be appropriate especially given that Ms. Knott has had no prior findings of conduct unbecoming against her and had been entirely cooperative with the investigation.

7. Ms. Knott took no exception to Mr. Huber's submission and the summary of key facts as set out in the Agreed Statement of Facts. It was apparently distilled from voluminous materials. Ms. Knott indicated that the offending incident was an "aberration" and the Hearing Committee accepts this contention from her. She was very apologetic and embarrassed by the entire matter. She was clearly remorseful.

8. Both Mr. Huber and Ms. Knott submitted that an appropriate penalty in the circumstances would be a reprimand of the member and order of costs against her.

9. Following submissions, the Hearing Committee reserved its decision in this matter.

10. Without either reciting lengthy passages of the Agreed Statement of Facts or attaching it here, it is worthy to note within this decision that the member's offending conduct arose only after a number of prior complaints had been made against her to the LSS within approximately a two year period by the same complainant, and each complaint had been dismissed by the LSS as unfounded. All of the earlier complaints arose in the context of the member's representation of a brother of the complainant in estate litigation and included allegations of conflict of interest.

11. A further allegation of a conflict of interest was subsequently raised in the context of an application to the Court of Queen's Bench in the course of the estate litigation. On that occasion, no ruling was made by the presiding judge on the alleged conflict of interest, and the matters pertaining to the estate were set down for a pretrial conference.

12. Prior to the pretrial conference, a draft Minutes of Settlement was prepared by the member for consideration by the parties, and contained the following paragraph:

"[L.M. (the complainant)] will not pursue in any forum her notion that any of the parties or their counsel have been in a conflict of interest"

13. It was this paragraph that gave rise to a further complaint by the same complainant. This paragraph was an unfortunate misstep by the member, as it had her interests in mind rather than just those of her client. Following investigation, the LSS proceeded with a Formal Complaint which resulted in this Hearing.

14. The Hearing Committee agrees that it has a duty to consider and accept a jointly recommended submission on sentencing unless it falls outside of the range of available sentencing options. The Hearing Committee notes *Law Society of Saskatchewan v. Wilson*, 2011 SKLSS 8, which cites and follows *Rault v. Law Society of Saskatchewan*, 2009 SKCA 81, in this regard.

15. It is not without some sympathy for the member that this Hearing Committee accepts her guilty plea. It finds that her conduct was improper in the circumstances and an appropriate penalty must be assessed. In this matter, the Hearing Committee accepts the joint submission of Mr. Huber and Ms. Knott and hereby orders that:

- a) Ms. Knott be reprimanded; and
- b) Ms. Knott pay costs in the amount of \$1,505.00 within 60 days of the date of this decision.

Agreed upon by the Hearing Committee this 4th day of June, 2015.

"Perry Erhardt, Q.C."

Perry D. Erhardt, Q.C., Chair

"Lorne Mysko"

Lorne Mysko

"Lee Anne Schienbein"

Lee Anne Schienbein

AGREED STATEMENT OF FACTS AND ADMISSIONS

In relation to the Formal Complaint dated March 23, 2015, alleging the following:

THAT HOLLY ANN KNOTT, of Saskatoon, in the Province of Saskatchewan is guilty of conduct unbecoming a lawyer in that she:

- 1. Did attempt to impose, as a term of settlement of her client's litigation with L.M., the requirement that L.M. forego the right to pursue allegations of conflict of interest against her.**

JURISDICTION

16. Holly Ann Knott (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 (hereinafter 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.

17. The Member is currently the subject of a Formal Complaint initiated by the Law Society dated March 23, 2015. The Formal Complaint is comprised of the single allegation noted above. The Formal Complaint was served upon the Member on March 24, 2015. Attached at **Tab 2** is a

copy of the original Formal Complaint along with proof of service. The Member intends to plead guilty to the allegation set out in the Formal Complaint.

BACKGROUND OF COMPLAINT

18. The Law Society first became involved in this matter when L.M. made a complaint to the Law Society against the Member in February of 2012. The original complaint by L.M. pertained to the Member's representation of L.M.'s brother J.H. in the context of a highly contentious estate matter. J.H., L.M. and their other sister K.B were all co-executors and equal beneficiaries of their father's estate. J.H. had retained the Member to assist him individually in dealing with matters related to the estate. The 2012 complaint made by L.M. against the Member was determined to be unfounded and the Law Society found no basis to take any action against the Member.

19. On February 27, 2012 a second complaint was filed by L.M. against the Member. That complaint included allegations that J.H. and the Member were acting in the presence of a conflict of interest vis-à-vis the estate. That complaint, like the first complaint of L.M., was determined not to provide any basis for action to be taken against the Member.

20. On January 23, 2014, after two more years of acrimonious dispute between J.H. and his sisters in relation to their father's estate, L.M. complained against the Member again. In the intervening period between February 2012 and January 2014, L.M. continued to allege that J.H. and the Member were acting in the presence of a conflict of interest. This issue was even raised by L.M. before the Court in the context of an application before Mr. Justice Danyliuk heard on July 10, 2013. No rulings were made in relation to the conflict issue at the time and all matters pertaining to the estate were set for pre-trial. In the January 23, 2014 complaint L.M. again alleged a series of conflicts of interest associated with the Member's continued representation of J.H. on the estate matter.

PARTICULARS OF CONDUCT

21. In February of 2014 the Member was in the process of drafting Minutes of Settlement in advance of the upcoming pre-trial conference. Negotiations between the parties to resolve various disputes were progressing. Several drafts of the Minutes of Settlement were exchanged between the Member and L.M. over February 25, 2014 and February 26, 2014. The final draft prepared by the Member [Tab 3] included a new term at paragraph #7 that read as follows:

“7. [L.M] will not pursue in any forum her notion that any of the parties or their counsel have been in a conflict of interest”.

22. The Minutes of Settlement included a provision for all of the parties to bear their own legal costs. In her cover email [Tab 4] forwarding this version of the Minutes of Settlement, the Member advised L.M. that “**after today**” she would be including a claim for J.H.'s legal expenses since January 2013 (about \$12,000.00) against the estate. The implication was that if L.M. did not sign the Minutes of Settlement as presented on February 26, 2014, the value of her share of the estate would be diminished as a result of J.H.'s legal expenses. L.M. was self-represented at the time.

23. On March 3, 2014 L.M. filed a fourth complaint with the Law Society pertaining to the Member's inclusion of paragraph #7 in the Minutes of Settlement, specifically, the portion of paragraph #7 that included reference to L.M. agreeing not to pursue "counsel" "in any forum" for issues related to conflict of interest.

24. The Member acknowledges that the inclusion of the reference to L.M. agreeing not to pursue counsel in any forum for issues related to conflict of interest was included by the Member with her own interests in mind rather than those of J.H. The Member was aware of the fact that L.M. was of the view that the Member was acting in a conflict of interest and knew the potential for repercussions relating to L.M.'s view, including complaints to the Law Society (as two such complaints had already been filed by L.M. against the Member). The Member was also put on notice by the Law Society on February 11, 2014 that L.M. had reinvigorated the complaints process with the Law Society in relation to the Member.

25. The substantive complaints raised by L.M. in her January 23, 2014 letter, were reviewed and the determination was made by the Law Society that L.M.'s complaints did not provide any basis for discipline proceedings against the Member. No further action was ordered against the Member. L.M. requested a review of this decision by the Complainants' Review Committee. The Complainants' Review Committee confirmed the original decision of the Law Society that there was no basis upon which to take any action against the Member in connection with the January 23, 2014 complaint of L.M.

PRIOR RECORD

26. The Member has no prior findings of conduct unbecoming.