



**The Law Society of Saskatchewan**

**MICHAEL SCOTT**

**HEARING DATE: June 23, 2015**

**DECISION DATE: February 16, 2016**

***Law Society of Saskatchewan v. Scott, 2016 SKLSS 5***

**IN THE MATTER OF *THE LEGAL PROFESSION ACT, 1990*  
AND IN THE MATTER OF MICHAEL SCOTT,  
A LAWYER OF REGINA, SASKATCHEWAN**

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

Members of the Hearing Committee:

Brenda Hildebrandt, Q.C., Chair  
Ronald Barsi  
Nicholas Cann

Counsel:

Michael Steven Scott on his own behalf  
Timothy Huber for the Conduct Investigation  
Committee

**INTRODUCTION**

1. The Hearing Committee of the Law Society of Saskatchewan (the "Hearing Committee"), comprised of Brenda Hildebrandt, Q.C. as Chair, Ronald Barsi, and Nicholas Cann, convened on Tuesday, June 23, 2015 to hear this matter. Counsel for the Conduct Investigation Committee was Timothy F. Huber. Michael Steven Scott (the "Member") represented himself. All parties participated by conference call.
2. Neither Mr. Huber nor the Member had any objections to the constitution of the Hearing Committee, the conference call format for the hearing, or any other matter relating to the proceedings giving rise to the hearing.
3. At the Hearing, the Member pled guilty to the allegations of conduct unbecoming a lawyer, as outlined in the Formal Complaint dated November 14, 2014, which were that he:

i. did, after accepting trust conditions imposed by Lawyer S in a letter dated December 24, 2010 in relation to a family law matter, fail to comply with those trust conditions in a reasonable time; and

ii. did fail to reply to communications from Lawyer S, a fellow member of the Law Society of Saskatchewan, within a reasonable time.

4. An Agreed Statement of Facts was filed in relation to this matter, a copy of which is appended to this Decision.

5. After receiving the Agreed Statement of Facts and hearing the submissions of Mr. Huber and the Member, the Hearing Committee accepted the Member's guilty plea, made a finding of conduct unbecoming a lawyer in relation to both allegations, and heard the representations by the parties regarding penalty.

## **BACKGROUND**

6. The Law Society began an investigation into the matters giving rise to this hearing following receipt of a complaint dated August 30, 2011, filed by Lawyer S on behalf of her client. The Member represented the husband in a matrimonial matter, while Lawyer S acted for the wife.

7. Although the facts are outlined in the attached Statement of Facts, several matters are noteworthy in the context of the decision of the Hearing Committee, so are briefly summarized in the following.

8. By letter dated December 24, 2010, Lawyer S remitted various settlement documents to the Member, imposing four trust conditions on use of the documents. The Member made use of the documents, thereby accepting the trust conditions that had been imposed.

9. The first trust condition required return of signed copies of agreements within two weeks. The second necessitated payment, within thirty days, of certain equalization amounts in relation to property transfer authorizations. Albeit late, and following reminder emails from Lawyer S, the Member fulfilled the obligations in relation to the first two trust conditions. He also indicated by letter dated January 27, 2011 that he was in the process of complying with the remaining conditions.

10. Trust conditions three and four were more involved, but were stipulated to be fulfilled by February 22, 2011, 60 days following Lawyer S's letter of December 24, 2010. The Member was required to remove Lawyer S's client from mortgages associated with the matrimonial home and another parcel of land. By trust condition four, her name was to be removed from association with the family farming corporation and that corporation was to complete an Indemnification Agreement in her favour.

11. Fulfillment of these latter two trust conditions was beyond the control of the Member and he was unable to comply by the February 22, 2011 deadline. However, matters worsened when he failed to respond to communication from Lawyer S. From March 1, 2011 to August 30, 2011,

when the complaint was submitted to the Law Society, Lawyer S contacted the Member eleven times in writing regarding the trust conditions. By an email dated August 5, 2011, the Member indicated he was meeting with his client and would report thereafter. No further word was heard from the Member until his response to the complaint on December 28, 2011, by which he apologized and accepted responsibility for his lack of attention to the matter.

12. The Member has no prior discipline history and cooperated with the Law Society investigation.

13. As well, in February of 2012, the Member signed a Consent Judgment, purporting to release and indemnify Lawyer S's client from liabilities associated with the mortgages and family farm corporation, which had been referenced in the third and fourth trust conditions. The costs associated with this measure, which had been undertaken by Lawyer S, were paid by the Member personally.

### **SUBMISSIONS ON PENALTY**

14. Upon acceptance by the Hearing Committee of the Member's guilty plea, counsel for the Conduct Investigation Committee and counsel for the Member made a joint submission on penalty. This was that the Member should receive a global reprimand, and be required to pay a fine of \$1,500.00 in relation to the first finding of conduct unbecoming a lawyer, a fine of \$500.00 regarding the second finding, and costs in the amount of \$2,250.00.

15. In support of the joint submission, counsel for the Conduct Investigation Committee referred the Hearing Committee to the cases of *Law Society of Saskatchewan v Galey*, 2014 SKLSS 7, and *Law Society of Saskatchewan v Mahon*, 2014 SKLSS 12, to illustrate comparable penalties, particularly in relation to the first allegation outlined in the Formal Complaint. In the first decision, *Galey*, like the case at hand, there was neither a prior record nor multiple instances of breaching undertakings. As well, in *Galey*, like the instant case, acknowledgement of error, remorse, and cooperation with the Law Society processes were demonstrated. Ms. Galey received a formal reprimand and was ordered to pay a fine of \$1,500.00 and the costs of the proceeding in the amount of \$1,815.00.

16. Similarly, in the *Mahon* case, a reprimand, fine of \$1,500.00, and costs of \$2,000.00 were ordered. The Hearing Committee relied upon the *Galey* decision, noting that Mr. Mahon's conduct had been described as "an isolated incident" and that he had cooperated fully with the Law Society in the disciplinary process. This, again, is similar to the present case.

17. Along with the decisions in *Galey* and *Mahon*, on which both the Member and Counsel for the Conduct Investigation Committee relied to support the joint submission, other cases were noted, which reflect the range of penalty for matters involving breach of trust conditions or breach of undertakings: *Law Society of Saskatchewan v McLean*, Discipline Decision #09-03 (12 June 2009), *McLean v Law Society of Saskatchewan* 2012 SKCA 7; *Law Society of Saskatchewan v Stinson*, 2008 SKLSS 7; and *Law Society of Saskatchewan v Brown*, Discipline Decision #08-06 (4 December 2008). At the low end of the range is a penalty consisting of a reprimand and costs, as was administered in *Brown*. At the high end, a suspension of one or two months is directed, as occurred in both *Stinson* and *McLean*. From a review of the decisions,

penalties at the high end of the range are only considered appropriate where there are either multiple instances of breach or a prior record of disciplinary action for breaching undertakings.

18. As noted in paragraph 13 of the Agreed Statement of Facts, the problem in the present case was that the Member accepted trust conditions in circumstances where their fulfillment was beyond his control. While his breach was not intentional, it nonetheless represented a mistake, which could have been avoided by consideration of his ability to satisfy the obligation requested. Although the delay in relation to compliance with the first two trust conditions was waived by Lawyer S, as paragraph 14 of the Agreed Statement of Facts acknowledges: “the two and four year delay associated with trust conditions number three and number four represents a clear breach and falls far below that which is expected of a lawyer.”

19. In considering the impact of the breach of undertakings, it was noted that in the instant case Lawyer S’s client was protected from harm by the Interspousal Contract she had with the Member’s client, and further by the Consent Judgment limiting liability, the costs of which were covered by the Member. However, she was still subjected to the anxiety of the unresolved legal issues for an extensive period. Further, breaches of this nature raise the potential for loss of confidence in the legal profession generally. As the Hearing Committee in *Mahon* stated, at paragraph 21 of the decision: “Undertakings and trust conditions are essential tool of commerce and when these are breached by lawyers, the public’s confidence in the integrity of the profession is undermined.”

20. With respect to the second allegation of the Formal Complaint, the Hearing Committee was referred to the decision in *Law Society of Saskatchewan v Trunks*, 2013 SKLSS 11, where the member received a reprimand and was directed to pay a fine of \$500.00 and costs in the amount of \$1,135.00. There, as here, the member had failed to respond to a fellow member of the Law Society despite repeated requests and reminders. Likewise, Mr. Trunks, as the Member in this case, admitted his culpability, fully accepted responsibility for his actions, and apologized. Further parallels between the two cases include the absence of prior disciplinary records and the conduct subject to discipline pertained to only one file.

21. The Hearing Committee in *Trunks* considered several decisions, including *Law Society of Saskatchewan v Werry*, 2010 SKLSS 3, and *Law Society of Saskatchewan v Stonechild*, 2013 SKLSS 8. In both of those decisions it was noted that “a failure to respond to another lawyer’s request affects the reputation of both members, increases costs to clients, creates unnecessary delay, and negatively impacts the reputation of all lawyers in Saskatchewan.”<sup>1</sup>

22. Regarding the calculation of costs, the parties agreed on the statement filed as Exhibit P-3 in this proceeding, indicating the total amount of \$2,250.00, which the Member indicated could be paid promptly.

23. Finally, counsel for the Conduct Investigation Committee indicated that, in the circumstances, the penalty objectives of specific deterrence to the Member and general deterrence to the profession as a whole are met by the penalties requested in the joint submission.

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<sup>1</sup> *Law Society of Saskatchewan v Trunks*, 2013 SKLSS 11, at para. 13.

## DECISION

24. It is well established that joint submissions concerning penalty should not be disregarded by hearing committees of the Law Society if the proposed penalty is within the range of outcomes in similar cases and is responsive both to the type of conduct established and the particular circumstances of the member. [See *Rault v Law Society of Saskatchewan*, 2009 SKCA 81.]

25. From the cases discussed above, the Hearing Committee has considered the range of penalties imposed in circumstances factually similar to the case at hand in relation to both allegations contained in the Formal Complaint. The lack of aggravating factors, such as a “subjective intention or foresight pertaining to the breach of the trust conditions”<sup>2</sup>, has also been noted. As well, the mitigating factors have been taken into account. These include the absence of financial harm to Lawyer S’s client, the Member’s clear remorse and acceptance of responsibility, and his long service with no prior disciplinary record.

26. Having considered the submissions on penalty as outlined above, taking into account both the nature of the conduct and the mitigating factors, the Hearing Committee finds the penalties requested in the joint submission for each respective element of the Formal Complaint to be reasonable and appropriate, within the ranges of penalties for similar matters, and not contrary to the public interest.

27. The Hearing Committee therefore orders that:

- a. the Member shall receive a formal reprimand;
- b. the Member shall pay a fine of \$1,500.00 in relation to the finding of conduct unbecoming a lawyer pursuant to allegation 1 of the Formal Complaint dated November 14, 2014;
- c. the Member shall pay a fine of \$500.00 in relation to the finding of conduct unbecoming a lawyer pursuant to allegation 2 of the Formal Complaint dated November 14, 2014;
- d. the Member shall pay the costs of these proceedings to the Law Society of Saskatchewan in the amount of \$2,250.00; and
- e. The fines and costs shall be paid by March 15, 2016.

”Brenda Hildebrandt, Q.C.” February 16, 2016

”Ronald Barsi” February 16, 2016

“Nicholas Cann” February 17, 2016

<sup>2</sup>*Law Society of Saskatchewan v Mahon*, 2014 SKLSS 12, a para. 24.

**AGREED STATEMENT OF FACTS AND ADMISSIONS**

**In relation to the Formal Complaint dated November 14, 2014, alleging the following:**

**THAT MICHAEL SCOTT, of Regina, in the Province of Saskatchewan did:**

- 1. did, after accepting trust conditions imposed by Lawyer S in a letter dated December 24, 2010 in relation to a family law matter, fail to comply with those trust conditions in a reasonable time; and**
- 2. did fail to reply to communications from Lawyer S, a fellow member of the Law Society of Saskatchewan, within a reasonable time.**

**JURISDICTION**

28. Michael Scott (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”).

29. The Member is currently the subject of a Formal Complaint initiated by the Law Society dated November 14, 2014. The Formal Complaint is comprised of the allegations noted above. The Formal Complaint was served upon the Member on November 14, 2014. Attached at Tab 1 is a copy of the original Formal Complaint along with proof of service. The Member intends to plead guilty to the allegations set out in the Formal Complaint.

**BACKGROUND OF COMPLAINT**

30. The Law Society first became involved in this matter as a result of a complaint from Lawyer S. At the time, Lawyer S. was acting for Mrs. W. in the context of a matrimonial matter. The Member represented Mr. W. Lawyer S. filed a complaint against the Member due to a persistent failure on the part of the Member to respond to correspondence and comply with certain trust conditions that Lawyer S. had imposed on various settlement documents.

**PARTICULARS OF CONDUCT**

31. On December 24, 2010, Lawyer S. sent the Member a letter enclosing various settlement documents including an Interspousal Contract and separation Agreement [Tab 2]. Trust condition number one required the Member to return signed copies of various documents to Lawyer S. within two weeks of the date of the letter (January 7, 2011). Trust condition number two required the Member to pay certain equalization amounts to Lawyer S. within thirty days of the date of the letter (January 23, 2011) in relation to transfer authorizations provided for certain real property.

32. Trust condition number three required the Member to remove Mrs. W. from mortgages associated with the matrimonial home and another piece of land. Trust condition number four required the Member to remove Mrs. W.’s name from being associated with a farming corporation held by the family. The Member was also required to have an Indemnification

Agreement completed by the farming corporation in favor of Mrs. W. Compliance with trust conditions three and four was required within sixty days of the December 24, 2010 letter (February 22, 2011).

33. The Member made use of the documents provided by Lawyer S. and thereby accepted the trust conditions that had been imposed by Lawyer S.

34. The Member complied with trust conditions one and two, on January 27, 2011, twenty days later than the deadline imposed. Lawyer S. had sent the Member two emails seeking compliance with trust conditions one and two prior to the Member fulfilling his obligations. The Member apologized for his delay and advised Lawyer S. to return the documents and payment if it was no longer acceptable [Tab 3]. Lawyer S. accepted the documents and payment. In the January 27, 2011 letter the Member confirmed that he was in the progress of complying with trust conditions three and four.

35. The Member did not comply with trust conditions three and four by the February 22, 2011 deadline. On March 1, 2011, Lawyer S. wrote the Member seeking an update in relation to the Member's compliance with these trust conditions. There was no response. This was the first of a series of written requests from Lawyer S. to the Member seeking compliance. Lawyer S. wrote to the Member a total of nine times [Tab 4] without ever receiving a response. The first contact from the Member came on August 5, 2011 in the form of a two line email stating that he was meeting with his client and would report to Lawyer S. thereafter. Two additional follow up emails from Lawyer S. to the Member on August 17, 2011 and August 23, 2011 also went without reply. Lawyer S. showed extreme patience in dealing with the Member's lack of attention to the matter but ultimately, Mrs. W. asked Lawyer S. to file a complaint to the Law Society on her behalf. The complaint was dated August 30, 2011.

36. The complaint was forwarded to the Member and on December 28, 2011, he replied and acknowledged that he had been dilatory in relation to the matter. He accepted responsibility for his lack of attention to the matter and offered an unreserved apology to Lawyer S. Trust conditions three and four remained outstanding.

37. On or about February 10, 2012 the Member signed a Consent Judgment [Tab 5] purporting to release and indemnify Mrs. W. from liabilities associated with the mortgages referenced in trust condition number three and in relation to the family farming corporation referenced in trust condition number four. The costs associated with Lawyer S. having to resort to this measure in order to protect her client were paid by the Member personally in the amount of \$1,500.00. As of the date of the Consent Judgment, Mrs. W. remained on the mortgages referenced in trust condition number three and she remained affiliated with the family farming corporation.

38. Ultimately, Mrs. W. was formally removed from the mortgages in December of 2012, nearly two years after the deadline imposed in the trust conditions. As of June 27, 2014, Mrs. W. remained the corporate secretary/treasurer of the family farming corporation, contrary to trust conditions number four.

39. The Member acknowledges that he breached all of the trust conditions imposed in the December 24, 2010 letter of Lawyer S. While the twenty day delay in relation to compliance with trust conditions numbers one and two was waived by Lawyer S., the two and four year delay associated with trust conditions number three and number four represents a clear breach and falls far below that which is expected of a lawyer.

40. The Member's breach of trust conditions was rooted in his decision to accept trust conditions that included the fulfillment of obligations that were beyond his control. In the circumstances, Mrs. W. was protected from legal harm by the Interspousal Contract between her and Mr. W., and further, by the Consent Order limiting liability in relation to the family farming corporation. The Member did cover the legal expenses associated with obtaining that Order. Nevertheless, the Member's conduct did result in Mrs. W. having to live with this lingering legal matter for an extended period of time.

#### **PRIOR HISTORY**

41. The Member has no prior discipline history.