



**The Law Society of Saskatchewan**

**MARILYN PATRICIA WAPPEL**

**HEARING DATE: June 28, 2016**

**DECISION DATE: July 11, 2016**

***Law Society of Saskatchewan v. Wappel, 2016 SKLSS 9***

**IN THE MATTER OF *THE LEGAL PROFESSION ACT, 1990*  
AND IN THE MATTER OF MARILYN PATRICIA WAPPEL,  
A LAWYER OF REGINA, SASKATCHEWAN**

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

**INTRODUCTION**

1. The Hearing Committee convened by conference call on June 28, 2016. The Committee consisted of Beth Bilson, Q.C. (Chair), Graeme Mitchell, Q.C. and Judy McCuskee. The Conduct Investigation Committee was represented by Tim Huber, and Fred Zinkhan represented Marilyn Wappel.

2. In an amended Formal Complaint dated June 20, 2016, it was alleged that Ms. Wappel was guilty of conduct unbecoming a lawyer in that she:

1. Did, between December 1, 2003 and December 13, 2012, and in the course of her legal practice, falsify the signatures of M.G., C.G. and R.R. on various corporate documents relating to her employer's business with the intent that they be relied upon as though the signatures that she had placed upon them were genuine.

3. The parties entered an Agreed Statement of Facts, which is appended to this decision as Tab A. Counsel indicated that Ms. Wappel wished to plead guilty to the charge of conduct unbecoming, and that they were making joint submissions to this Committee as to penalty. The sanctions agreed on by counsel were the following:

1. That Ms. Wappel be suspended from practice for 4.5 months effective the date of the hearing;
2. That Ms. Wappel pay the costs of the Law Society in the amount of \$3190.00; and
3. That upon her return to practice, Ms. Wappel shall engage with a mental health care provider for counselling until such time as, in the opinion of that care provider,

counselling is no longer necessary, and the member may then apply, with appropriate supporting materials, to the Law Society of Saskatchewan for consideration by the Chair of the Discipline Committee for a determination as to whether this condition should be removed.

4. The central question to be determined by this Committee is therefore whether to accept the joint submissions of the parties as to penalty. In a discussion following the hearing, the Committee concluded that the joint submissions should be accepted, and conveyed this decision to the parties. This decision provides written reasons for that conclusion.

## **BACKGROUND**

5. Between July 1992 and February 2014, the member worked as in-house legal counsel for a major Saskatchewan Crown corporation. On February 11, 2014, she was placed on leave pending an investigation by her employer. In the course of this investigation, the employer identified 26 documents on which she had forged the signature of other employees. She met with representatives of the employer on or about March 14, 2014. A follow-up meeting was scheduled for March 20, 2014, but as she had been placed on sick leave by her physician, the member did not attend that meeting.

6. On March 21, 2014, the member made a written self-report to the Law Society of Saskatchewan, and has abstained from practicing law since that time.

7. The member was terminated from her employment on May 30, 2014. Her employer sent a report to the Law Society on June 3, 2014, describing the conduct of the member that had resulted in her dismissal.

8. The member was diagnosed as suffering from a major depression, and a high level of stress and anxiety related to her work. Her psychiatrist concluded in a letter provided to the Hearing Committee that it was likely she had been experiencing undiagnosed low grade depression (dysthymia) for some years prior to the termination of her employment. The psychiatrist also identified her perception of conflict between herself and her supervisor as a contributing factor to her conduct.

9. Counsel for the Conduct Investigation Committee identified two factors aggravating the seriousness of the member's conduct. The first of these was that the duty to act with integrity is one of the central obligations of a member of the legal profession. This is clear from the prominence given to this obligation in the *Code of Professional Conduct*, where it comes first in the list of standards of the profession:

**1.01 (1)** A lawyer has a duty to carry on the practice of law and discharge all responsibilities to clients, tribunals, the public and other members of the profession honourably and with integrity.

10. The second factor identified by counsel for the Conduct Investigation Committee was the magnitude of the breach itself. There were 26 instances of forgery occurring over a nine-year period. Though the member may have been experiencing psychological problems at the time, there was no suggestion that the forgeries were not deliberate acts on the part of the member, or that she could not be expected to understand that forgery was unethical conduct.

11. On the other hand, counsel for the Conduct Investigation Committee pointed to a number of mitigating factors in this situation. The first of these was that the member has had a lengthy record of practice without a previous disciplinary record.

12. The second mitigating factor listed was that the forgeries were not aimed at producing any personal gain to the member. Furthermore, the forgeries did not inflict any damage on the employer, as the investigation showed that the documents would have been accepted in the normal course of events in any case.

13. The third mitigating factor was the diagnosis of mental illness, which helped to explain why a member with a clear disciplinary record would resort to a clearly unacceptable practice when she had nothing to gain from it.

14. The fourth mitigating factor supporting the joint submissions was the length of time the member had been absent from practice at the time of the hearing, which was approximately 25.5 months. This was not, of course, a formal suspension, but an embargo on practice the member imposed on herself. The joint submissions recommend a suspension of 4.5 months. If this is added to the time the member has already been absent, the total would be 30 months, which is at the high end of the range of penalties imposed in other disciplinary decisions for conduct analogous to that in this case.

15. Counsel for the Conduct Investigation Committee noted that specific deterrence may not be much of a consideration in relation to the sanctions here; the member has already paid a significant price for her conduct, including the loss of her employment. In terms of general deterrence, however, it is important that the penalty emphasize the seriousness of this kind of conduct. Counsel said that were it not for the lengthy period of what amounts to a suspension that the member has already had, he would regard 4.5 months of suspension as too lenient.

16. Counsel for Ms. Wappel said he essentially agreed with the factors listed by counsel for the Conduct Investigation Committee. He pointed, however, to an additional mitigating factor which was that Ms. Wappel had acknowledged the inappropriateness of her conduct and had sought medical attention.

17. In response to a question from the Hearing Committee, counsel for Ms. Wappel said that she has continued to have regular counselling since the date of the psychiatrist's report, which was October 30, 2014. The member hopes that she will be able to return to law practice, and recognizes that she will have to continue with regular counselling. Counsel also undertook that the member would not resume the practice of law until the decision of this Committee has been issued.

## ANALYSIS

18. Counsel provided the Committee with a number of disciplinary decisions related to the falsification of documents. Although none of them directly align with the circumstances of this case, they are instructive in showing how hearing committees have viewed this kind of infraction, and indicating what aggravating and mitigating factors they take into account.

19. At one end of the spectrum, there were several cases where the penalty imposed was relatively light. In the case of *Law Society of Saskatchewan v. Jacqueline Ferraton*, 2014 SKLSS 2, for example, the member had fabricated a document discharging an interest on a land title in a transaction that had been approved by her client. The member was suspended for one month and ordered to pay costs in the amount of \$4150.

20. In the *Ferraton* decision, the Hearing Committee considered two decisions from other jurisdictions. In *Law Society of British Columbia v. Begin*, [1993] L.S.D.D. No. 192, the member had obtained the signatures of his clients on a land transfer document. When it became necessary to correct information in the document, rather than meet with the clients a second time, the member copied their signatures into the new document. The hearing panel in that case considered in mitigation that the member had a good record, that he had been very generous with clients over time, and that he was motivated by concern about troubling his clients, one of whom was very ill. The member was ordered to pay costs, but no suspension was imposed.

21. In *Law Society of Upper Canada v. Kimberley*, [2009] L.S.D.D. No. 10, a relatively new lawyer was given instructions by her client to seek an extension of time for an application. In preparing the extension application, she drafted several brief affidavits, and signed the client's name. Her inexperience and the fact that she was acting to further the client's instructions were taken into account in accepting the joint submission that a two month suspension be imposed, along with remedial study and the payment of costs.

22. At the other end of the spectrum, in the 2009 case of *Law Society of Saskatchewan v. Garret Oledski*, the penalty of disbarment was imposed in a case where, among other charges, the member had forged the signature of a witness on a will in which the member was named as a beneficiary. The element of personal gain was clearly considered an aggravating factor in that case.

23. In the rather terse decision in *Law Society of Upper Canada v. Filipovich*, [2002] L.S.D.D. No. 88, the member was disbarred after it was established that he had committed a number of acts of misleading clients and other lawyers, including by forging signatures on documents. The member was not present or represented at the hearing. In *Law Society of British Columbia v. Donald*, [1993] L.S.D.D. No. 178, the member was disbarred for forging clients' signatures on a number of cheques in order to withdraw money from the trust account.

24. As we observed earlier, none of these cases is exactly on point with the circumstances in this case. They do suggest, however, that the presence or absence of mitigating factors can play an important role for a disciplinary body trying to determine how severe a penalty should be imposed. In the three cases cited to us where disbarment was imposed as the penalty, for example, the disciplinary bodies were unable to identify any factors that would mitigate the seriousness of the ethical breaches. On the other hand, in *Ferraton*, *Begin* and *Kimberley*, such factors as concern for the welfare of clients, or a wish to comply effectively with client instructions were taken into account in imposing a less severe penalty.

25. In the present case, as counsel for the Conduct Investigation Committee pointed out, the actions of the member constituted serious breaches of the *Code of Professional Conduct*. Over a lengthy period of time, she falsified the signatures of other corporate officials, and must have been aware that this was an infraction of an obligation that lies at the ethical core of the legal profession.

26. At the same time, the member has already paid a heavy price for these actions. She has lost long-term employment that was evidently important to her, and has voluntarily withdrawn from the practice of law for a lengthy period. In addition, there is evidence that she was struggling with mental illness over a number of years, and counsel for the parties are in agreement that this was a factor in the choices she made. Though we do not think the "no harm, no foul" argument should be determinative in assessing the conduct, it is true that the business of Ms. Wappel's employer was not

in fact affected by her actions. It is also significant that the member has accepted responsibility for her conduct, and has undertaken to continue medical treatment to strengthen her defenses in future.

27. We have concluded that it is reasonable to accept the joint submissions of the parties with respect to penalty. In this context, we would note that we are influenced by the length of time the member has already been out of the practice of law. Though this was not a suspension imposed by the Law Society, we agree with counsel that it has been the equivalent of such a suspension. If this were not the case, the penalty of a 4.5 month suspension would seem to us to be an inadequate sentence for infractions of this magnitude.

## **DECISION**

28. We therefore make the following orders:

1. That Ms. Wappel be suspended from practice for 4.5 months effective from June 28, 2016;
2. That Ms. Wappel pay the costs of the Law Society in the amount of \$3,190.00; and
3. That upon her return to practice, Ms. Wappel shall engage with a mental health care provider for counselling until such time as, in the opinion of that care provider, counselling is no longer necessary, and the member may then apply, with appropriate supporting materials, to the Law Society of Saskatchewan for consideration by the Chair of the Discipline Committee for a determination as to whether this condition should be removed.

DATED at the City of Saskatoon in the Province of Saskatchewan the 11th day of July, 2016.

“Beth Bilson, Q.C.”

“Graeme Mitchell, Q.C.”

“Judy McCuskee”

## **AGREED STATEMENT OF FACTS AND ADMISSIONS**

In relation to the Amended Formal Complaint dated June 20, 2016, alleging the following:

**THAT MARILYN PATRICIA WAPPEL, of the City of Regina, in the Province of Saskatchewan is guilty of conduct unbecoming a lawyer in that she:**

1. **Did, between, December 1, 2003 and December 13, 2012, and in the course of her legal practice, falsify the signatures of M.G., C.G. and R.R. on various corporate documents relating to her employer’s business with the intent that they be relied upon as though the signatures she had placed upon them were genuine.**

## **JURISDICTION**

29. Marilyn Patricia Wappel (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.

30. The Member is currently the subject of an Amended Formal Complaint dated June 20, 2016. The Amended Formal Complaint is comprised of the allegation noted above. The Amended Formal Complaint was served upon the Member on June 20, 2016. Attached at Tab 2 is a copy of the Amended Formal Complaint along with proof of service. The Original Formal Complaint was served upon the Member on July 23, 2015. Attached at Tab 3 is a copy of the original Formal Complaint along with proof of service.

31. The Member intends to plead guilty to the allegation set out in the Amended Formal Complaint dated June 20, 2016. By agreement between the parties, the Amended Formal Complaint entirely replaces the original Formal Complaint. The original Formal Complaint dated July 23, 2015 is therefore withdrawn.

## **BACKGROUND OF COMPLAINT**

32. Between July 1992 and February 2014, the Member worked as in-house legal counsel for a major Saskatchewan Crown Corporation. On February 11, 2014 she was placed on leave in connection with an investigation being conducted by her employer.

33. In the course of the investigation of the Member by her employer, her employer discovered that the Member had forged a number of signatures on documents relating to the employer’s business. The Member was informed of this discovery during a meeting with representatives of her employer on or about March 14, 2014. A follow-up meeting between the Member and her employer was later set for March 20, 2014. Between those two dates, the Member attended with her doctor who placed her on sick leave for one week. As a result, she informed her employer that she would not be attending the March 20, 2014 meeting. On March 21, 2014 the Member made a written self-report to the Law Society [Tab 4].

34. Ultimately, after several extensions of her sick leave by her healthcare providers, the Member was terminated by her employer for these matters on May30, 2014. On June 3, 2014, the Member’s employer made its own report to the Law Society detailing the conduct of the Member that culminated in her termination.

## **PARTICULARS OF CONDUCT**

35. An extensive review by the Member’s employer uncovered 26 separate documents that involved some form of forgery or fabrication of signatures by the Member. Copies of the forged documents are attached hereto at Tab 5. A schedule prepared by M.G. on January 26, 2015, describing the nature of each forgery, is included at the beginning of Tab 5.

36. The Member forged the signature of M.G. on 12 separate occasions. There are 13 examples of forgery in relation to the signature of C.G. There is one example of the signature of R.R. being included in a “cut and paste” that included the signature of M.G. In total, the Member caused

signatures on documents that she had forged to be used and relied upon as though they were genuine on 25 separate occasions between December 1, 2003 and December 13, 2012.

37. The documents in question included Service Agreements, Consultant Agreements, Supplier Alliance Agreements and Corporations Branch registration documentation.

### **MITIGATING FACTORS**

38. The Member's employer has not identified any documents that it would not have otherwise been executed under the proper protocols and has suffered no loss. The Member did not bind her employer to anything of substance that was not in her employer's interest, nor did any of the forgeries result in any personal benefit to the Member.

39. As was already noted, the Member provided a self-report to the Law Society. However, the self-report was provided after she was discovered by her employer and she would have known that a report by them to the Law Society would be likely. Nevertheless, the Member did report to the Law Society first, and she has been entirely co-operative with the Law Society throughout this process.

40. In the context of this matter the Member was diagnosed with major depression. She was also suffering from high levels of stress and anxiety related to her work situation. A letter from her psychiatrist is attached at Tab 6. That letter includes a finding that the Member had likely been experiencing an undiagnosed low grade depression (dysthymia) for years prior to her termination. That, combined with her perception of conflict on various fronts between herself and her supervisor is described as being a contributing factor towards her conduct.

41. The Member has not practiced law or had any other form of employment since she was terminated by her employer in connection with these matters on May 30, 2014.

42. The Member has no prior record of conduct unbecoming through 22 years of practice.