



CHARLEN WERRY

August 31, 2010

Law Society of Saskatchewan v. Charlen Werry, 2010 LSS 3

C A N A D A)
PROVINCE OF SASKATCHEWAN)
T O W I T)

**IN THE MATTER OF *THE LEGAL PROFESSION ACT, 1990*
AND IN THE MATTER OF CHARLEN ROSE WERRY,
A LAWYER OF REGINA, SASKATCHEWAN**

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

(1) The Hearing Committee of the Law Society of Saskatchewan (hereinafter called the “Hearing Committee”) comprised of Ron Kruzeniski Q.C. as Chair and Della Stumborg, convened by conference call on Monday, August 23rd, 2010, with Mr. Tim Huber representing the Investigations Committee of the Law Society and Michael Tochor, Q.C. representing Charlen Rose Werry. Ms. Werry was also present. All parties took part by conference call.

(2) Neither Mr. Huber nor Mr. Tochor had any objections to the formation of the Hearing Committee, the convening of the hearing by conference call or any other matter relating to the complaint or proceedings leading up to the hearing.

(3) Mr. Huber and Mr. Tochor filed an agreed statement of facts, which can be viewed at www.lawsociety.sk.ca/ public hearings.

(4) The parties agreed on the wording of the amended complaint as follows:

- i. did fail to serve her clients, B.L., S.M. and L.M., in a conscientious, diligent and efficient manner;
- ii. did fail to co-operate with the Professional Standards Committee of the Law Society of Saskatchewan by failing to provide that Committee with information in relation to the complaint of B.L. despite repeated requests for same;
- iii. did fail to reply to a fellow member of the Law Society of Saskatchewan, within a reasonable time.

(5) After hearing Mr. Huber and Mr. Tochor and receiving the agreed statement of facts, the Hearing Committee determined that Charlen Rose Werry is guilty of conduct unbecoming a lawyer as outlined in the above amended complaint.

(6) Mr. Huber and Mr. Tochor requested and agreed to the Hearing Committee determining the sentence and both spoke to the sentence. The Hearing Committee then adjourned to consider its sentence. The hearing was re-convened and the decision was delivered orally with written reasons to follow. These are those written reasons.

(7) The situation involved three clients with complaints of lack of conscientious and diligent service involving promising to do work and numerous attempts by the client to communicate with Ms. Werry. The complaint of B.L. was referred to the Professional Standards Committee but Ms. Werry failed to provide information to the committee after repeated requests for the information. Finally, Ms Werry failed to respond to another lawyer after five letters and eight telephone messages requesting a response.

(8) The essence here is a failure to respond or communicate after repeated requests. This failure to respond is evident throughout the complaints and facts. The Hearing Committee sees this as a serious problem that needs to be addressed by Ms. Werry and by other members of the profession. Failure to respond to a client puts the reputation of the member and the entire profession in a bad light. Failure to respond to a committee of the Law Society and a representative appointed by that committee jeopardizes the Society's ability to carry out its legislated mandate and in turn affects the reputation of all members. Failure to respond to another lawyer's request affects the reputation of both

members, increases costs to clients, creates unnecessary delay and overall negatively impacts the reputations of all lawyers in Saskatchewan.

(9) As a guideline, three requests from a client, another lawyer or the Society, with a reasonable deadline given to respond, should be sufficient to justify a complaint to the Society. Of course, it is understood that the requests have to be reasonable in terms of deadline and frequency. It is hard to lay down a firm rule because situations vary with the circumstances but it is possible to suggest a guideline for members. Again, if a member fails to respond to the third request for a response given with reasonable timelines, then the client or member being ignored should consider filing a complaint with the Law Society. Put another way, the fourth letter should be to the Law Society with a carbon copy to the non-responding member. It is obvious that any complaint filed with the Society will be analyzed by the staff and Investigations Committee for reasonableness in terms of the urgency of the matter, frequency of the requests and reasonableness of the deadlines given to respond.

(10) Failure to respond can be a sign that a member is over loaded with work, is not well organized or is stressed or pre-occupied with personal matters that are affecting his or her practice. Since the reputation of the profession is extremely important to all members, members should be conscious of those not responding, and rather than viewing a complaint to the Society as something they are reluctant to do, should view it as something that might in due course assist the member to get help, either professionally through a practice management advisor, executive coach, time management expert or personally get help from a qualified professional. No member should let failure of another member to respond continue without taking action. Having said this, the Society should be aware of any member that attempts to be manipulative or vindictive in unnecessarily filing a complaint of failure to respond. As was agreed at the hearing, in most cases one can clearly see when a member has failed to respond and those are the ones that the Society should be aware of and able to take action on.

(11) Members who are failing to respond should remember it is just a matter of courtesy, good practice and required by the code of conduct to respond in a prompt manner.

The Code of Conduct, Chapter XVI provides as follows:

Responsibility to Lawyers Individually

RULE

The lawyer's conduct toward other lawyers should be characterized by courtesy and good faith.

Commentary

Guiding Principles

6. The lawyer should answer with reasonable promptness all professional letters and communications from other lawyers that require an answer and should be punctual in fulfilling all commitments.⁶

Footnote

6. Alta. 20: "Failure to reply to letters or other communications from another member is at the very least discourteous...this practice frequently places the other member in an awkward and embarrassing position...and tends to lower the reputation of the whole profession."

A response does not necessarily have to be a full response if one is not possible at the time. A response might be to the effect that the member will contact the client, another lawyer or someone else to get the required information; the member is involved in a longer trial and will get back by a specified date; the member will be away on vacation and will respond by a specified date; the member is currently researching the problem, obtaining information or seeking instructions and will respond shortly; or the member cannot provide further information. The important thing is a response so that the other lawyer knows the member has received the letter, telephone message, email or fax and that you are doing something about it. It is common courtesy to respond and it is also a breach of the code of conduct to fail to do so.

(12) Having said this, the Hearing Committee was aware of the fact that Ms. Werry had admitted her failure to respond, was having workload issues at the relevant time, had

engaged an executive coach, and was implementing the plan proposed by the coach. The Hearing Committee was disappointed that Ms. Werry at the time of hearing had not made further progress in starting to make changes.

(13) Ms. Werry had filed a proposed plan, which the Hearing Committee viewed as excellent. It is attached and forms part of this decision. The Hearing Committee recommends this type of plan to any member of the profession who is having time management or workload issues or is having difficulty getting back to clients or other lawyers.

(14) The Hearing Committee believed that Ms. Werry sincerely intends to follow the plan and encourages her to do so, and encourages her firm to assist and facilitate in the implementation of the plan. When a lawyer gets behind, has workload pressures and is not responding to clients and members, this is not just a member problem but also a firm problem.

(15) Mr. Huber and Mr. Tochor made a close to joint submission on the sentence. They proposed that the Hearing Committee order a reprimand, order costs of \$2,255 and a practice condition. Mr. Huber suggested a \$1,500 fine and Mr. Tochor suggested a \$1,000 fine. At the hearing, the parties discussed the practice condition and after a brief exchange, they agreed on the wording of that condition. Regarding the length of the practice condition, Mr. Huber suggested 18 months and Mr. Tochor preferred 12 months. This was very close to a joint submission but not quite. The Hearing Committee was required to take into account that this was a near joint submission and imposed an order that does take this into account but recognized it had to decide on the amount of the fine and the length of the practice condition.

(16) As a result of the above, the Hearing Committee orders that:

A. Charlen Rose Werry shall receive a reprimand;

- B. Charlen Rose Werry shall pay a fine to the Law Society of Saskatchewan in the amount of \$1,200.00 on or before February 28, 2011;
- C. Charlen Rose Werry shall pay costs of these proceedings to the Law Society of Saskatchewan in the amount of \$2,255.00 on or before February 28, 2011; and
- D. That Charlen Rose Werry shall be subject to the following practice conditions until December 1, 2011:
 - (i) Ms. Werry shall within 30 days of the date of this Order engage a practice supervisor and develop a practice supervision plan both to be approved by the Chair of Discipline; and
 - (ii) In the event Ms. Werry wishes to change her practice supervision arrangement, any changes shall be approved by the Chair of Discipline.

DATED at the City of Regina, in the Province of Saskatchewan, this 31st day of August, 2010.

Ronald J Kruzeniski Q.C., Chair
Hearing Committee

AGREED STATEMENT OF FACTS AND ADMISSIONS
BETWEEN CHARLEN ROSE WERRY AND
THE LAW SOCIETY OF SASKATCHEWAN

In relation to the Amended Formal Complaint dated December 15, 2009, attached at Tab 1.

Jurisdiction

1. Charlen Rose Werry (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 the subject of an Amended Formal Complaint dated December 15, 2009. The Amended Formal Complaint is comprised of six counts. The Formal Complaint was served upon the Member's legal counsel on December 16, 2009. Proof of service of the Formal Complaint 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 complaints against her are 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 guilty pleas in relation to all allegations set out in the Formal Complaint, except count number five which is being withdrawn by the Law Society. It is agreed that Counts 2 and 3 are also consolidated into count 1 as follows:

did fail to serve her clients, B.L., S.M. and L.M., in a conscientious, diligent and efficient manner;

Particulars of Conduct

5. These proceedings arose as a result of a Law Society investigation in relation to complaints received from three clients and one fellow member of the Law Society of Saskatchewan. One other issue came to the attention of the Law Society via the Court of Queen's Bench.

Complaint of B.L. - Counts #1 and #4

6. On September 3, 2008, the Law Society received a complaint letter from B.L. dated September 2, 2008. B.L. complained about the Member being dilatory in acting on his behalf as his family law lawyer. Attached at **Tab 3** is a copy of the complaint received from B.L.

7. In his complaint B.L. states that the Member promised to finalize an aspect of B.L.'s family law proceeding by the end of 2007. This promise was made by the Member in September of 2007. Having heard nothing from the Member as the end of 2007 drew near, B.L. began attempting to contact the Member. B.L. attempted to contact the Member by way of telephone calls and voicemails, emails and even registered letters. No response was forthcoming from the Member. Attached at **Tab 4** are examples of correspondence sent by B.L. to the Member illustrating a complete lack of response.
8. In response to the complaint of B.L. the Member sent a letter to the Law Society dated November 24, 2008 acknowledging the validity of B.L.'s complaint. Attached at **Tab 5** is a copy of the letter from the Member to the Law Society dated November 24, 2008.
9. Ultimately, this complaint was referred to the Professional Standards Committee on February 20, 2009. Rod MacDonald Q.C. was appointed as the sole member of the Professional Standards Committee to assess the B.L. complaint and conduct a Law Office Management Review.
10. On May 19, 2009 Rod MacDonald Q.C. referred the B.L. matter back to complaints counsel due to a lack of co-operation from the Member. During an initial meeting on April 14, 2009 the Member committed to provide a report in relation to the B.L. complaint to Mr. MacDonald by May 1, 2009. The understanding was confirmed by Mr. MacDonald in writing on April 16, 2009. The Member did not provide her report to Mr. MacDonald by May 1, 2009. On May 7, 2009, Mr. MacDonald sent the Member another letter demanding the report immediately. No response was received. On May 12, 2009 a further letter was sent setting a final deadline of May 14, 2009. The Member did not reply to this letter. On May 19, 2009 Mr. MacDonald wrote the Member advising that he had referred the matter back to complaints counsel.

11. The Member has not provided an adequate explanation for her failure to cooperate with Mr. MacDonald.

Complaint of S.M. – Count #2

12. On June 19, 2009, the Law Society received a complaint letter from S.M. dated June 10, 2009. S.M. complained about the Member being dilatory in acting on her behalf as her family law lawyer. Attached at **Tab 6** is a copy of the complaint received from S.M.
13. In her complaint S.M. states that the Member had failed to respond to communications and had taken a very long time to complete the tasks requested, specifically the adoption of an adult child and an uncontested divorce. S.M. hired the Member in July 2007. Two years had passed without resolution to either the adoption or the divorce.
14. Concerned about the delay, S.M. began attempting to contact the Member via phone and email. Attached at **Tab 7** are communications outlining the Member's inattentiveness to S.M.
15. The matter was referred to the Discipline Committee on July 2, 2009.
16. Ultimately the Member wrote the Law Society on August 21, 2009 and acknowledged that she had failed to provide prompt service to S.M. Attached at **Tab 8** is the response from the Member dated August 21, 2009. The Member and client have agreed to resume the solicitor client relationship and matters have been progressing well.

Complaint of L.M. – Count #3

17. On June 17, 2009, the Law Society received a complaint letter from L.M. dated June 15, 2009. L.M. complained about the Member being dilatory in acting on her behalf in relation to an estate and property matter. Attached at **Tab 9** is a copy of the complaint received from L.M.
18. In her complaint L.M. states that the Member had failed to respond to communications seeking updates in relation to her father's estate. L.M.'s father passed away on June 25, 2006. During the intervening three year

period L.M. attempted to contact the Member many times via phone or email without receiving a response from the Member.

19. On June 12, 2009 L.M. advised the Member that a complaint would be filed with the Law Society. This elicited a 1 line response from the Member on the same day stating that she would be writing a letter to an opposing party to move the matter forward. L.M. asked for a copy of the letter and none was ever received.
20. L.M. met with the Member on October 17, 2008. At that time the Member requested materials from L.M. which were provided on October 20, 2008. Despite her efforts, that was the last time she heard from the Member until the June 12, 2009 communication.
21. On August 21, 2009 the Member responded to the complaint of L.M. with a letter to the Law Society. Attached at **Tab 10** is the letter of the Member dated August 21, 2009. In the response the Member admitted that she did not serve L.M. in a prompt manner. The client has since resumed her relationship with the law firm. As mutually agreed, matters have been handled by one of the Member's partners with assistance from the Member. The client has received an "agreed to" discount on the accounts from the law firm.

Count #6 – Complaint of Lawyer X

22. A complaint letter from Lawyer X was received by the Law Society on October 15, 2009. The letter is attached hereto at **Tab 11**.
23. The complaint centered around the Member's failure to respond to repeated attempts at contact by Lawyer X in relation to a real estate file. The file commenced in June 2008.
24. An unresolved matter relating to tax adjustments was identified and Lawyer X began writing the Member in February of 2009. Lawyer X wrote the Member on February 25, 2009, March 17, 2009, April 23, 2009, June 26, 2009 and October 15, 2009. The letters send by Lawyer X to the Member are attached at **Tab 12**.

25. In addition to the written communications, Lawyer X telephoned the Member on eight other occasions. The only response by the Member was an attempt to return a call to Lawyer X in the middle of a long weekend. This matter has been satisfactorily concluded by the Member.

Discipline History

26. The Member has had one prior finding of conduct unbecoming a lawyer relating to misleading a fellow member. Attached at **Tab 13** is a copy of the Discipline Decision relating to that matter.