



**The Law Society of Saskatchewan**

**JOHN DARREN ARMITAGE**  
**HEARING DATE: September 5, 2014**  
**DECISION DATE: November 26, 2014**

*Law Society of Saskatchewan v. Armitage, 2014 SKLSS 14*

**IN THE MATTER OF THE LEGAL PROFESSION ACT, 1990**  
**AND IN THE MATTER OF JOHN DARREN ARMITAGE,**  
**A LAWYER OF SASKATOON, SASKATCHEWAN**

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

**INTRODUCTION**

1. On September 5, 2014 before the Hearing Committee of the Law Society of Saskatchewan, John Darren Armitage (the “Member”) pled guilty to an allegation of conduct unbecoming a lawyer in that he:

- (a) did on February 5, 2013, appear at the Yorkton Court of Queen’s Bench in the context of a criminal trial while under the influence of alcohol; and
- (b) did on February 5, 2013, fail to serve his client, L.P. in a conscientious, diligent and efficient manner by representing L.P. at his criminal trial while under the influence of alcohol.

2. The Hearing on September 5, 2014 was convened by conference call. At that time, the Hearing Committee accepted the guilty plea and heard the representations by the parties regarding penalty. At the conclusion of the Hearing, the Hearing Committee indicated its intention to reserve its decision and render written reasons for the penalty to be imposed.

**FACTS**

3. An Agreed Statement of Facts was filed in relation to this matter, a copy of which is attached as an appendix to this decision.

4. The salient facts as it relates to the complaint are as follows:

- (a) The Member was counsel for a client, L.P., in relation to a criminal jury trial in Yorkton. The trial was to commence on February 5, 2013;
- (b) At the commencement of the trial and continuing throughout the first day of the trial, the prosecutor had suspicions that the Member was operating under the influence of beverage alcohol;
- (c) The prosecutor confronted the Member about his suspicions. The Member admitted having consumed a substantial amount of alcohol the night before the trial. Testing revealed that the Member had a blood alcohol level exceeding .08;
- (d) The client, L.P., dismissed the Member as his lawyer and a mistrial was declared. L.P. was remanded to custody pending a new trial date which occurred several months in the future;
- (e) The Member self-reported his conduct on February 6, 2013.

5. After the Member's self-report, the Member acknowledged his drinking problem and provided an Undertaking to the Law Society to cease practice on February 12, 2013. The Member undertook to enter into a rehabilitation program including an in-patient addictions treatment. The Member facilitated the transfer of his legal practice to two colleagues. The Member remains bound by his February 12, 2013 Undertaking.

6. The Member has sought out alcohol addictions treatment. He met with an addictions counselor and successfully attended in-patient treatment. The Member has participated in AA counseling and obtained other employment outside of the legal profession.

7. The Member has one prior finding of conduct unbecoming from 2009 relating to the filing of a false registration in the Personal Property Registry and for recklessly providing false information to the Law Society in response to a complaint. The Member was also subject to an Informal Conduct Review in 2009 and a referral to the Professional Standards Committee in 2005.

#### **DECISION ON CONDUCT UNBECOMING**

8. The panel accepts the Member's admission that he is guilty of conduct unbecoming a lawyer in that he:

- a. did on February 5, 2013, appear at the Yorkton Court of Queen's Bench in the context of a criminal trial while under the influence of alcohol; and
- b. did on February 5, 2013, fail to serve his client, L.P. in a conscientious, diligent and efficient manner by representing L.P. at his criminal trial while under the influence of alcohol.

## **DECISION ON PENALTY**

9. The Law Society and the Member have agreed on a joint submission on penalty. The Panel accepts the parties' agreement on penalty and makes the order sought.

## **CONSIDERATIONS ON PENALTY**

10. In ordinary circumstances, the penalty imposed for the type of conduct engaged in by the Member would be more significant. In particular, many of the cases where lawyers have engaged in similar conduct have resulted in suspensions, including:

- (a) *Nova Scotia Barristers' Society v. Corkum*, [2000] L.S.D.D. No. 9 – The member was given a 30-day suspension;
- (b) *Law Society of Manitoba v. Golightly*, [1995] L.S.D.D. No. 51 – The member was given a 15-day suspension;
- (c) *Law Society of Upper Canada v. Kushner* - [2006] L.S.D.D. No. 36 – The member was given a one month suspension.

11. However, there are a number of mitigating factors in this case, including:

- (a) The Member self-reported his conduct immediately;
- (b) The Member has been subject to a voluntary Undertaking to not practice law since February, 2013;
- (c) The Member has been honest and forthright about his problems and about the circumstances of this particular case;
- (d) The Member has taken diligent efforts to address his alcohol addiction issues. He successfully completed an in-patient addictions treatment and has continued to seek out assistance through Alcoholics' Anonymous.

12. The penalty agreed to by the Member and the Law Society provides an appropriate balance between ensuring the protection of the public, a renunciation of the conduct displayed by the Member and ensuring that the Member can move on with his life despite his addictions issues.

## **ORDER**

13. Accordingly, the Hearing Committee orders the following:

- 1. THAT the Member shall be reprimanded;
- 2. THAT should the Member apply for reinstatement as an Active Member of the Law Society of Saskatchewan he shall include with his Application for Reinstatement a medical practitioner's report addressing his rehabilitation from substance addiction;

3. THAT should the Member be reinstated as an Active Member of the Law Society of Saskatchewan, he shall practice pursuant to the following conditions:
  - a. The Member shall not consume illegal drugs or alcoholic beverages;
  - b. The Member shall participate in an A.A. program for two years from date of reinstatement and shall, at six month intervals during the two-year term, provide written proof of his regular participation in said program;
  - c. The Member shall submit to random drug and alcohol testing at the request of the Law Society of Saskatchewan; and
  - d. The Member shall practice in association with another Member of the Law Society of Saskatchewan, either as an employee, partner or associate or alternatively, shall practice under the supervision of another Member of the Law Society of Saskatchewan under a supervision arrangement approved by the Chair of Discipline.
4. Two years after he is reinstated, the Member may apply to the Chair of Discipline to remove or modify some or all of the conditions placed upon his practice.
5. The Member shall pay costs to the Law Society of Saskatchewan in the amount of \$500.00, upon being reinstated.

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"Sean M. Sinclair"

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"Judy McCuskee"

**AGREED STATEMENT OF FACTS AND ADMISSIONS**

**In relation to the Formal Complaint dated March 24, 2014, alleging the following:**

**THAT JOHN DARREN ARMITAGE, of the City of Warman, in the Province of Saskatchewan is guilty of conduct unbecoming a lawyer in that he:**

1. **did on February 5, 2013, appear at the Yorkton Court of Queen's Bench in the context of a criminal trial while under the influence of alcohol; and**
2. **did on February 5, 2013, fail to serve his client, L.P. in a conscientious, diligent and efficient manner by representing L.P. at his criminal trial while under the influence of alcohol.**

## **JURISDICTION**

14. John Darren Armitage (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.

15. The Member is currently the subject of an Amended Formal Complaint dated March 24, 2014. The original Formal Complaint was dated October 16, 2013. The amendment was required to replace one member of the Hearing Committee who became unavailable. The allegations remained the same across both the original and Amended Formal Complaint. The Amended Formal Complaint were served on March 25, 2014. Attached at Tab 2 are copies of the original and Amended Formal Complaint along with proof of service in relation to the Amended Formal Complaint. The Member intends to plead guilty to the two allegations set out in the Amended Formal Complaint.

## **BACKGROUND OF COMPLAINT**

16. On the evening of February 6, 2013, the Member provided a self-report to the Law Society revealing that on the previous day, he had appeared in the Court of Queen’s Bench (Yorkton) in the context of a criminal trial while intoxicated. The Member’s self-report at attached at Tab 3. The Law Society investigation into this self-report commenced on February 7, 2013.

## **PARTICULARS OF CONDUCT**

Allegations #1 and #2

17. On February 5, 2013 the Member was scheduled to appear in the Court of Queen’s Bench in Yorkton in relation to a four day criminal jury trial for his client L.P. L.P. was facing charges of break and enter and assault. L.P. was in custody and had been in custody in relation to the allegations since December of 2011 when the charges were first laid.

18. The Member had also attended court in Yorkton on February 4, 2013 on the same matter to deal with a *voir dire*.

19. During the February 4, 2013 *voir dire* the prosecutor handling the matter noticed what he thought was beverage alcohol on the breath of the Member. The prosecutor was not certain that the smell was not being caused by breath mints or mouthwash. He raised the issue with an RCMP officer participating in the proceeding. The RCMP officer did not smell the odour and did not notice anything else out of the ordinary. The prosecutor dismissed the issue. The *voir dire* proceeded smoothly in the normal course.

20. On the morning of February 6, 2013, the Member attended for the commencement of the trial early. Again the prosecutor noticed the unusual odour on the breath of the Member. The prosecutor, concerned that the smell could be beverage alcohol, decided to observe the Member to look for possible signs of intoxication. Jury selection commenced on the morning of February 5, 2013. The prosecutor was often in close quarters with the Member and smelled the odour

from time to time. The prosecutor was unable to identify any overt signs of intoxication during the jury selection phase.

21. After the jury selection phase was complete, the trial commenced with the instruction to the jury and the opening remarks of the Crown. The proceedings adjourned for lunch at 12:15 p.m. until 2:00 p.m.

22. The Member did not return to court at 2:00 p.m. He arrived 25 minutes late. When the Member arrived in the court room he was disheveled and out of breath having had to rush back to court. Upon the Member's return to court, the prosecutor noticed that the smell of beverage alcohol emanating from the Member was more pronounced than it had been prior to the lunch break. The Member stated that he was late because he had fallen asleep in his hotel room during the lunch break.

23. The prosecutor determined that he needed to speak with the Member about his concerns privately and asked the court for that opportunity. The prosecutor and the Member went to another room where the prosecutor confronted the Member about his suspicions that he was under the influence of alcohol. The Member apologized to the prosecutor and admitted that he had been drinking heavily the night before. The Member stated that he believed that he was able to proceed with the trial. The prosecutor stated that he had arranged to have a breath screening device brought to the court house for the Member to demonstrate whether he had alcohol in his system. The Member acknowledged that there was no doubt in his mind that the screening device would detect alcohol in his system.

24. Both the prosecutor and the Member returned to the courtroom to inform the judge as to what was transpiring. The Member admitted to the court that he had been drinking heavily the night before until 4 a.m. and that he believed that he still had alcohol in his system. The Member apologized. The Member advised the court of his view that he could proceed with the matter. A one day adjournment was discussed before the proceedings broke for a half hour to allow parties, including L.P. to consider their positions.

25. During the break the Member provided a breath sample into the screening device and failed, indicating a blood alcohol level exceeding .08.

26. During the break L.P. determined that he wanted to fire the Member and find a new lawyer. He was in potential jeopardy of being designated a dangerous offender in the context of the proceeding, and the stakes were too high to proceed without having full confidence in the Member.

27. After L.P.'s decision to fire the Member, the Judge declared a mistrial. The Member apologized to all parties involved and to the court. The Member acknowledged in open court that he had a drinking problem. The Judge had the jury return to the courtroom and excused them. The jury had not been in the court room since the beginning of the lunch break. The trial was adjourned for several months to allow for L.P. to find a new lawyer and for a new trial to be scheduled. L.P. remained in custody during this period.

28. The prosecutor advised the Law Society that despite being intoxicated, the Member appeared prepared to handle the case and was familiar with the possible defences. The prosecutor did not observe the Member making any obvious errors in handling the proceeding up to the point where the issue of his intoxication was revealed. After being confronted the Member appeared remorseful and was concerned for his client's welfare.

29. After the proceeding ended, the prosecutor discussed with the Member the prosecutor's ethical obligations to report the Member's conduct to the Law Society. The Member stated that he would self-report to the Law Society and did so the following day.

30. On February 7, 2013, after receiving the Member's self-report, the Law Society of Saskatchewan received notification of the Member's conduct from the Court of Queen's Bench.

### **REHABILITATIVE EFFORTS**

31. After the Member's self-report, and the Member's acknowledgement that he had a drinking problem, he provided an undertaking to the Law Society to cease practice on February 12, 2013. The Member undertook to enter into a rehabilitation program including in-patient addictions treatment. As part of this undertaking the Member facilitated the transfer of his legal practice to two colleagues. The Undertaking imposed a series of requirements governing the Member's ability to return to practice. The Undertaking is attached at Tab 4. The Member remains bound by his February 12, 2013 Undertaking.

32. Since the Member provided his self-report and undertaking, he made arrangements to set aside his practice and sought out alcohol treatment. He met with an addictions counsellor for three sessions before obtaining admission to inpatient treatment. He attended to the Pine Lodge Alcohol and Drug Inpatient Treatment Centre and was admitted on April 18th, 2013. He successfully completed treatment on May 6, 2013. He participated in all aspects of treatment. Following his release the Member has participated in AA counselling and has a sponsor with whom he maintains a relationship. The Member's AA group meets on Wednesdays. The Member works out of town in a northern fishing camp on Wollaston Lake from spring to early fall. When he returns to Saskatoon he resumes his AA participation. The Member states that he has been clean and sober since April 17, 2013 – immediately before turning himself into Pine Lodge. He acknowledges his alcoholism and expresses a firm determination to maintain a life of sobriety.

### **PRIOR HISTORY**

33. The Member has one prior finding of conduct unbecoming from 2009 relating to the filing of a false registration in the Personal Property Registry and for recklessly providing false information to the Law Society in response to a complaint. The Member was also the subject of an Informal Conduct Review in 2009 and a referral to the Professional Standards Committee in 2005.