The Law Society of Saskatchewan

DALE NORMAN BLENNER-HASSETT
Hearing Date: June 25, 2013
Decision Date: February 13, 2014
***Law Society of Saskatchewan v. Blenner-Hassett,* 2014 SKLSS 4**

IN THE MATTER OF *THE LEGAL PROFESSION ACT, 1990*
AND IN THE MATTER OF DALE NORMAN BLENNER-HASSETT,
A LAWYER OF PRINCE ALBERT, SASKATCHEWAN

DECISION OF THE HEARING COMMITTEE FOR THE LAW SOCIETY OF SASKATCHEWAN

Counsel: Timothy F. Huber on behalf of The Law Society of Saskatchewan
Morris P. Bodnar, Q.C. on behalf of Dale Norman Blenner-Hassett

INTRODUCTION

1. The hearing of the Formal Complaint in this matter was held by teleconference June 25, 2013. The Hearing Committee consisted of Lorne Mysko, Public Representative and Bencher; Miguel Martinez, Bencher; and Paul Korpan, Q.C. as Chairperson. The Law Society was represented by Mr. Timothy Huber. Mr. Blenner-Hassett was represented by Mr. Morris Bodnar, Q.C. Mr. Blenner-Hassett also attended.

2. The Formal Complaint dated January 31, 2012 alleged that Mr. Blenner-Hassett:

(i) Did in the course of his practice write letters to another lawyer, J.M. which were abusive, offensive and otherwise inconsistent with the proper tone of a professional communication from a lawyer.

(ii) Did offer to forgo civil defamation proceedings against L.B. in exchange for L.B. withdrawing a complaint she had made to the Law Society of Saskatchewan.

3. There were no objections to the composition or jurisdiction of the Hearing Committee. There were no other preliminary objections or applications.

4. The evidence before the Hearing Committee consisted of the Agreed Statement of Facts and Admissions dated April 29, 2013. At the hearing, Mr. Bodnar confirmed that Mr. Blenner-

Hassett agreed that the complaints of conduct unbecoming were well founded. The Hearing Committee made a finding to that effect. Counsel presented a joint submission as to the penalty to be imposed. They provided argument in support. In answer to questions from the members of the Hearing Committee, Mr. Blenner-Hassett also addressed the Hearing Committee.

5. The facts supporting each of the counts were detailed in the Agreed Statement of Facts and Admissions and are summarized in these reasons for the purposes of the Hearing Committee's analysis:

COUNT #1
FACTS
6. The Agreed Statement of Facts and Admissions states:

> "On numerous occasions, the Member sent letters to J.M., the lawyer representing L.B. in an ongoing family matter. The Member represented the opposing party. In the letters, the Member used language that was abusive, offensive and otherwise inconsistent with the proper tone of a professional communication from a lawyer."

7. His letters were addressed both to counsel and the party opposite. In one of the letters, Mr. Blenner-Hassett urged "shame on both of you". He employed the adjective "silly" numerous times in reference to the other party's demands, her version of events and her complaint about his client's behaviour. He made a derogatory reference to the party opposite. The over-arching tone of the letter was highly personal and offensive to opposing counsel and his client. The Agreed Statement of Facts states:

> "The Member acknowledges that the comments in his letters dated February 19, 2010 and February 22, 2010, go beyond zealous advocacy and enter into a sphere of unnecessary and inappropriate personal attacks upon and denigration of a fellow member and his client."

8. The misconduct occurred in the context of an emotionally charged family law matter.

RELEVANT CODE PROVISIONS
9. The misconduct occurred while the *Code of Professional Conduct, 1991* (the "*Old Code*"), was in effect. As it relates to Complaint #1, the *Old Code* provides:

> "The lawyer should assist in maintaining the integrity of the profession and should participate in its activities.
>
> . . .3. The lawyer should not in the course of a professional practice write letters, whether to a client, another lawyer or any other person, that are abusive, offensive or otherwise inconsistent with the proper tone of a professional communication from a lawyer."

10. Chapter 1 of the *Old Code* also imposes on all lawyers a duty to act at all times with integrity and credibility, such that the integrity of the legal profession and the public confidence in that profession is preserved.

ANALYSIS

11. The conduct in relation to Count #1 does not involve a matter of trustworthiness but it does reflect negatively on the credibility and reputation of the legal profession. In this case, the misconduct also impacted opposing counsel and his client. As the *Old Code* suggests throughout, lawyers are held to a higher standard of conduct than members of the public. They are part of a respected profession that must be trusted and respected at all times if the public is to have confidence in the judicial system and the administration of justice. Behaviour which degrades others negatively impacts the profession's reputation. It is conduct unbecoming and deserving of censure. The member admits that the allegation of conduct unbecoming was well founded.

COUNT #2
FACTS

12. The Agreed Statement of Facts and Admissions states:

> "In response to the L.B. complaint, the Member threatened to sue L.B. for defamation. During a period when there was a known prospect of a defamation law suit being launched against L.B., the Member sent a letter dated July 23, 2010, [Tab 4] to the complainant's counsel. In that letter, the Member offered to forgo the threatened defamation proceeding against L.B. in exchange for her withdrawal of the complaint she had made to the Law Society."

RELEVANT CODE PROVISIONS

13. The *Old Code* does not contain a specific provision against bargaining away a complaint to the Law Society. But the *Old Code* is not exhaustive and serves only as a guide to determining conduct unbecoming for discipline purposes. Such conduct is nonetheless regarded as conduct unbecoming because it compromises the effectiveness of the Law Society's responsibility to respond to complaints and to generally regulate its members using its discipline authority.

14. This duty is central to the Law Society's statutory mandate to protect the public against unethical, incompetent or otherwise inappropriate behaviour. This authority cannot be delegated to others or subsumed into private negotiations involving lawyers.

15. The Law Society and the complaint process do not exist to adjudicate or otherwise determine disputes between lawyers and others. The complaint process instead serves the public interest. The public's confidence in lawyers, and in the ability of the Law Society to regulate its members, can only be sustained if the Law Society retains full authority to investigate and otherwise pursue complaints without interference by the member or the complainant. Any attempt by a lawyer to subvert the complaint process is generally regarded as a breach of the lawyer's overarching duty of integrity.

16. Where a complaint is made, the investigative process assumes the lawyer will cooperate and will therefore facilitate a full investigation of all complaints, including those elements solely within the control of the lawyer. The Law Society must maintain control of the complaint process to ensure every allegation is fully investigated and the public is protected in all events.

17. In the matter of the *Sandra Thompson Family Trust* the Superior Court of Justice of Ontario considered an application to enforce a covenant to provide a "... Final Release, including all pending and possible future complaints filed with the Law Society of Upper Canada..." [1]

18. The Court refused to enforce the covenant. The Court held that such a covenant was contrary to public policy and unenforceable. The Court suggested the regulatory authority of the Law Society must be exercised in the public interest only, and without being limited by private bargains between its members and others. The Court reviewed the relevant jurisprudence and said this of the public policy and importance of the independent regulatory authority of the Law Society of Upper Canada[2]:

> [13] In *Law Society of British Columbia v. Gerbrandt*, [1993] L.S.D.D. No. 190 (Discipline Hearing Panel), a Disciplinary Hearing Panel found that a lawyer attempted to obtain the agreement of his former clients to withdraw their complaint to the Law Society as part of an overall release of liability upon a settlement having been reached between them. The decision of the Discipline Hearing Panel noted:
>
> > ... The public must have confidence that the Law Society will investigate the integrity and standards of its Members, notwithstanding individuals' rights to enter into settlements with regard to their private affairs.
>
> [18] The mandate of the Law Society is to regulate the legal profession. The Law Society is concerned with the ethics and honesty of the members of the legal profession. It has a duty to protect the public interest (see *Law Society Act*, R.S.O. 1990, c. L.8, s. 4.2, para. 3). What these examples point out is that, across many jurisdictions, it offends the public interest and the public policy where a term of the settlement requires the refraining from filing, withdrawal of or declining to co-operate regarding a complaint made against a lawyer. That this extends to the discipline process of regulated professions, like lawyers and doctors, is confirmed in *Prior v. Sunnybrook and Women's College Health Sciences Centre*, [2006] O.J. No. 2070, 148 A.C.W.S. (3d) 534 (S.C.J.). In that case, an employee sued the employer for wrongful dismissal and libel. She was terminated for cause following 12 years of employment. She pleaded that the employer, a hospital, offered to withdraw the regulatory complaint if she agreed to sign a release. The employer sought to remove the reference to this offer from the pleading on the basis that it mentioned privileged settlement discussions. The motion was dismissed. The master found the offer could not be regarded as a bona fide offer to settle the issue between the parties. He observed [at para. 5]:
>
> > . . . it cannot be proper to offer to withdraw an allegation of fraud made to an outside body contingent on a release in a civil proceeding. The court would not countenance a threat to pursue a criminal or quasi-criminal proceeding to obtain an advantage in a civil proceeding. A discipline process that could affect the livelihood of the other party is in the same category. I see no difference in quality between a threat to prosecute or an agreement to withdraw a complaint. Either of these may be indicia of bad faith and neither should attract the protection afforded to bona fide settlement discussions.

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1 *Thompson (Family Trust)* 2011 ONSC 7056 at para 3.

2 *Ibid* at paras 13 and 18 to 22.

> [19] The public policy concern is demonstrated by no less fundamental authority than Halsbury, where the rule has been stated, as follows (Halsbury 8 Hals, (3d) 136, as quoted in *K. (E.) v. K. (D.)*, 2003 BCSC 1296 (CanLII), [2003] B.C.J. No. 1961, 2003 BCSC 1296, at para. 30):
>
> > An agreement to stifle or withdraw from a prosecution in respect of an offence of a public nature is against public policy and illegal, because the effect of it is to take the administration of the law out of the hands of the judges and to put it into the hands of a private individual to determine what is to be done in the particular case. [page186]
>
> [20] The case from which this quotation is extracted makes the point that this does not ask whether the offence was "criminal" or "civil", but whether it can be characterized as a "public offence" (see *K. (E.) v. K. (D.)*, supra, at para. 31). The case considered whether an order from a New Jersey court requiring compliance with a settlement agreement in which it appeared that the husband had agreed to pay support for his two children in return for the withdrawal of a charge or complaint of domestic violence. It says [at para. 16]:
>
> > A provision will be contrary to the public policy of British Columbia if it contains the agreement to withdraw, compound or drop a public offence, stifle a public prosecution or forgo a public right. . . . Analyzing this matter on a balance of probabilities, I find the impugned provisions should be set aside as contrary to public policy.
>
> [21] The complaint to the Law Society, made by Sandi Thompson, raises issues of public importance that extend beyond the private interests of the parties to the settlement. It raises issues of public policy and implicates the duty of the Law Society to protect the public interest. It is incumbent on us to ensure that members of the public can trust the work of the lawyers they retain and be sure that those who step outside the rules and ethical principles will be properly disciplined.
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> [22] Counsel for William D. Martin submitted that the answer to all of this is the acknowledgment made by his client that the settlement cannot bind the Law Society. Counsel says that even with the withdrawal of the complaint, the Law Society would be free to continue any investigation and take whatever disciplinary action is warranted. This suggests that there would be no impact on the ability of the Law Society to proceed. In a theoretical world, this might be possible. In the practical world, it is not. It is not just that complaints raise matters that have a broader public interest. It is that, by their nature, these matters are important and the way we treat them is demonstrative of the significance we give them. Anything that limits the complainant from willingly and openly taking part would signal a lack of concern for the broader public interest. In this case, Sandi Thompson and Nancy Thompson would be required to withdraw the complaint and provide William D. Martin with a "Full and Final Release" with respect to "all pending and future complaints filed with the Law Society . . ."

19. Attempts to bargain away the Law Society's regulatory responsibility compromises the essence of the regulatory and complaints process. It is widely accepted that such conduct by lawyers is unbecoming and deserving of censure.

ANALYSIS

20. In this case, the written communication of the member to the Complainant's counsel is a clear attempt to bargain away a complaint. Mr. Blenner-Hassett has admitted to the same in the Agreed Statement of Facts and has admitted that the related allegation of conduct unbecoming is well founded.

PENALTY

21. Counsel for the Law Society and for Mr. Blenner-Hassett jointly submitted the following penalties as appropriate in this case:

Count #1 - A fine of $1,000.00.

Count #2 - A reprimand.

Count #3 - Costs in the amount of $750.00.

22. The Hearing Committee was referred to jurisprudence establishing a range of penalty outcomes for incivility, involving a reprimand and fine at the low level. The Hearing Committee was also referred to decisions in other cases establishing a similar range of penalties for bargaining away a complaint.

23. The incivility in this case involved two separate communications in a single family law matter. Mr. Blenner-Hassett's counsel suggested he had lost perspective in a high conflict matter and has since taken steps to limit the nature and amount of work he now performs in the family law area. He has developed a practice of reflecting and taking time before responding in high conflict situations. Mr. Blenner-Hassett also addressed the Hearing Committee. He accepted complete responsibility and was remorseful. He stated he has suffered embarrassment from the public attention to these proceedings.

24. It is well established that joint submissions concerning penalties should not likely be disregarded by Discipline Committees of 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 (*Rault v. Law Society* Court of Appeal for Saskatchewan 2009 SKCA 81).

25. The Hearing Committee is satisfied that the proposed penalty is within the range of outcomes in other similar cases. The joint submission is accepted.

26. As to Count #1, Mr. Blenner-Hassett will pay a fine of $1,000.00 not later than April 30, 2014.

27. As to Count #2, the attempt to bargain away a complaint to the Law Society was an attempt to achieve a complete resolution of the matters in issue between Mr. Blenner-Hassett and the Complainant. He now appreciates this was an inappropriate attempt to abridge the Law Society's authority and responsibility to deal with the complaint on its merits, and in the public interest. The Hearing Committee accepts Mr. Blenner-Hassett's uncontroverted explanation that he was attempting to resolve all issues between him and the Complainant, and to allow the parties to move on. He was dealing with the Complainant's counsel throughout and stated he did "not intend to do anything wrong".

28. As to Count #2, the Hearing Committee concludes that Mr. Blenner-Hassett be reprimanded.

29. The Hearing Committee accepts the joint submission as to costs.

Conclusion

30. The Hearing Committee therefore orders that:

(a) As to Count #1: Mr. Blenner-Hassett pay a fine in the amount of $1,000.00 not later than April 30, 2014;
(b) As to Count #2: Mr. Blenner-Hassett is reprimanded; and
(c) Mr. Blenner-Hassett will pay costs not later than April 30, 2014.

DATED this 13th day of February, 2014.

Per: "Paul H.A. Korpan, Q.C." (Chair)

Per: "Miguel F. Martinez"

For: "Paul H.A. Korpan, Q.C." for Lorne Mysko

AGREED STATEMENT OF FACTS AND ADMISSIONS

In relation to the Formal Complaint dated January 31, 2012 alleging that he:

1. **Did in the course of his practice write letters to another lawyer, J.M. which were abusive, offensive and otherwise inconsistent with the proper tone of a professional communication from a lawyer.**
2. **Did offer to forgo civil defamation proceedings against L.B. in exchange for L.B. withdrawing a complaint she had made to the Law Society of Saskatchewan.**

JURISDICTION:

31. Dale Norman Blenner-Hassett (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").

32. The Member is currently the subject of a Formal Complaint initiated by the Law Society dated January 31, 2012. The Formal Complaint is comprised of the two allegations noted above. The original Formal Complaint was served upon the Member on January 31, 2012. Attached at **Tab 1** is a copy of the original Formal Complaint along with proof of service in the form of an Acknowledgement of Service. The Member intends to plead guilty to both allegations set out in the Formal Complaint.

BACKGROUND OF COMPLAINT

33. The Law Society began an investigation into the Member after receipt of a letter dated February 18, 2010 from the complainant L.B. alleging a variety of misconduct. The two issues particularized below flowed from the ensuing investigation.

PARTICULARS OF CONDUCT

Count 1

34. On numerous occasions, the Member sent letters to J.M., the lawyer representing L.B. in an ongoing family matter. The Member represented the opposing party. In the letters, the Member used language that was abusive, offensive and otherwise inconsistent with the proper tone of a professional communication from a lawyer.

35. In one instance, on February 19, 2010, the Member wrote a letter [**Tab 2**] to J.M. stating the following:

> **"Regarding your threat of a Police escort, shame on both of you. This is entirely unnecessary and entirely silly. This does not serve [R]'s best interests. We have already phoned the City Police and explained the situation to them. There is no difficulty here. There is no problem here. Mr. [E] will release [R] to your client at 6:00 p.m. at his house. The City Police are not needed and further shame on you and your client if you try to bring them for this purpose."**
>
> **"We have much more to say about this matter. We will write another day. In sum, we are very disappointed in you and your client's threats and handling of these matters. Your conduct is simply aggravating the situation – and for no reason. You really need to re-evaluate what you are doing."**

36. In another instance, on February 22, 2010, the Member wrote another letter [**Tab 3**] to J.M. stating the following:

> **"It is your client's obligation to obtain information concerning school holidays, not mine (personally), not my client's. Your client could have and should have requested a school calendar a long time ago. She didn't. This is her neglect, not ours. She caused her own loss. It is not my job to find a school calendar and provide it to your client. It is not Mr. [E]'s obligation to do so. To suggest that it is, is offensive and silly."**
> **"There was no choice on our part not to disclose, as there was no obligation to find the information and disclose it"**
> **"Please consider an apology for attempting to force a response within hours of receiving a fax. Please consider an apology for getting your facts all wrong. Please consider an apology for blaming me (personally) and for blaming D.E. for not providing to your client a**

> **school calendar. You have made one mistake after another after another (see immediately above) lately – and instead of taking responsibility for your errors, you make things worse by blaming us"**
> **…**
> **"And what will your client say when the security camera video is played – and totally refutes her silly story? Will she not just withdraw her silly complaint now? (We have information that even the City Police now laugh at your client and her complaint(s) and see her as a loon and a wacko)"**
> **…**
> **"I am becoming more and more concerned with the manner in which you are directing this file, and writing, and allowing your client to act. The two parties need a time and space to get over their differences and to cool things down – they do not need your client or you continually stirring up some new "emergency". The framework is now in place – and even tested in court. Your client has access, let her enjoy it. She has her schooling, her employment, her "boyfriend" her child support to pay. Let her fulfill those obligations. She needs to leave D.E. alone. He has had enough of both of you. Let him be.**
> **…**
> **"I kindly urge you to regain control of your client and this file – and to be a force in assisting these two individuals get on with their lives peaceably and independent of each other, yet sharing [R]. You may need to re-evaluate your involvement in this file and your management of the file and of your client. This file is an "over" file. Let us let the parties live and let live. That is "in [R]'s best interests""**

37. The Member acknowledges that the comments in his letters dated February 19, 2010 and February 22, 2010, go beyond zealous advocacy and enter into a sphere of unnecessary and inappropriate personal attacks upon and denigration of a fellow member and his client.

Count 2

38. In response to the L.B. complaint, the Member threatened to sue L.B. for defamation. During a period when there was a known prospect of a defamation law suit being launched against L.B., the Member sent a letter dated July 23, 2010, [**Tab 4**] to the complainant's counsel. In that letter, the Member offered to forgo the threatened defamation proceeding against L.B. in exchange for her withdrawal of the complaint she had made to the Law Society.

39. The July 23, 2010 letter from the Member to J.M. stated the following:

> **"One of the matters that he [the Member's client, D.E.] feels strongly about is that he would like to "ramp down" the issues between [L.B.] and myself [the Member]. He asked me to write today to propose that, as part of the resolution of matters at the Pre Trial, you discuss with [L.B.] the prospect of her withdrawing her ongoing complaint**

> **against me, and that he would get me to agree not to commence the civil suit (defamation) that I am wrestling with what to do and that he would get me to withdraw as his counsel, to leave the two of them to work on things. What does she say to that – she drop her complaint, I drop my pending civil suit, we walk away, wish each other the best, leave the parties to communicate and work things out, hopefully I can withdraw as counsel for [D.E.] etc.?"**

40. Mr. J.M. responded to the Member's letter on August 6, 2010. He informed the Member that his July 23, 2010 letter requesting L.B. to withdraw her complaint against the Member, on the basis that the Member's client, D.E. would "get him" to agree not to commence the civil suit, was conduct unbecoming a lawyer and that he had no choice but to forward the letter to the Law Society.

PRIOR HISTORY

41. On May 20, 2009, the Member was the subject of an Informal Conduct Review in relation to inappropriate and abusive correspondence to an unrepresented litigant; the same individual who complained in this matter, L.B. The report of the Informal Conduct Review Committee is attached at **Tab 5**.

42. The Member has no other discipline history.