



**The Law Society of Saskatchewan**

**JOSEPHINE DE WHYTELL**

**HEARING DATE: March 6, 2017**

**DECISION DATE: April 7, 2017**

*Law Society of Saskatchewan v. de Whytell, 2017 SKLSS 5*

**IN THE MATTER OF *THE LEGAL PROFESSION ACT, 1990*  
AND IN THE MATTER OF JOSEPHINE DE WHYTELL,  
A LAWYER OF REGINA, SASKATCHEWAN**

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

Members of the Hearing Committee: Sean M. Sinclair – Chair  
David Rusnak, Q.C.  
Graeme Mitchell, Q.C.

Counsel: Timothy Huber – Conduct Investigation Committee  
Robert Kennedy, Q.C. – Member, Josephine de Whytell

**INTRODUCTION**

1. Josephine de Whytell (the “Member”) is the subject of a formal complaint dated January 22, 2016. The allegations are that the Member is guilty of conduct unbecoming a lawyer in that she:

- (a) did, in her role as a witness in the legal matter of R v. JK, fail to act with candour, honour, and integrity towards her fellow Member, KB, as follows:
  - (i) failed to inform KB that her testimony at trial on material facts would be inconsistent with both the testimony that she had previously discussed with KB and her prior written witness statement; and
  - (ii) did, as a witness in the legal matter of R v. JK, intentionally provide false, misleading, or untrustworthy evidence to the Court.

2. Evidence regarding the allegations set out in the Formal Complaint was heard on March 6, 2017. There were three witnesses called at the hearing, namely:

- (a) KB, a lawyer with the City of Saskatoon;
  - (b) The Member; and
  - (c) Robert Dick, a lawyer from British Columbia.
3. The following exhibits were filed:
- (a) P-1: Notice of Hearing with proof of service;
  - (b) P-2: Agreed Statement of Facts and Admissions between the Law Society of Saskatchewan and Ms. de Whytell, including 14 tabs;
  - (c) P-3: The audio tape of the Member's testimony at the trial of R v. JK; and
  - (d) R-1: Three pages of computer printouts of google maps from an area of the North Saskatchewan River traversing through Saskatoon.
4. The Member's legal counsel filed Written Submissions prior to the commencement of the hearing and provided an opening statement.

#### **FACTUAL BACKGROUND**

5. This is the latest in the ongoing legal saga of Hachi-Ko and Bella, two Akita dogs owned by JK, a lawyer in Saskatoon, Saskatchewan.
6. The events of what transpired in an attack involving one of the aforementioned dogs has been the subject of:
- (a) A dangerous dog hearing;
  - (b) An appeal from that dangerous dog hearing;
  - (c) A small claims trial; and
  - (d) An appeal from that small claims trial.

7. The complaint in this case relates to the Member's involvement with the dangerous dog hearing involving Hachi-Ko which took place on March 1, 2013 and June 7, 2013. The Member testified on June 7, 2013.

8. The pertinent facts from the Agreed Statement of Facts and Admissions are as follows:
- (a) On March 18, 2012, the Member and another person were walking the two aforementioned Akita dogs. While passing near the Mendal Art Gallery in Saskatoon, the dogs walked past two other dogs (shelties) being walked by SJ. Hachi-Ko is alleged to have attacked one of SJ's dogs, that later died of its injuries;

- (b) The Member was injured attempting to separate the dogs;
  - (c) Hachi-Ko was prosecuted as being a dangerous dog, partially as a result of this attack;
  - (d) Shortly after the incident, the Member provided a written statement which set out her recollection of what occurred to JK and JK provided the same to bylaw enforcement officials on or about April 4, 2012;
  - (e) In the written statement, the Member identified the attacking dog as being Hachi-Ko.
  - (f) After several adjournments, a hearing was to occur on March 1, 2013 with respect to the dangerous dog hearing;
  - (g) In advance of the hearing, on February 5, 2013, the Member spoke on the telephone with KB to discuss her trial evidence. KB had written attendance notes of that telephone discussion with the Member. In those telephone notes, the Member positively identified Hachi-Ko as being the culprit behind the attack;
  - (h) When the matter of the dangerous dog hearing came forward on March 1, 2013, the Member did not attend for the trial as she was ill. The Member called KB the day prior to the hearing to advise that she was ill. Ultimately, the matter was adjourned to June 7, 2013 to hear the Member's evidence;
  - (i) KB did not contact the Member and had no contact from the Member between March 1, 2013 and June 7, 2013; and
  - (j) The Member testified on June 7, 2013.
9. Outside of the information in the Agreed Statement of Facts, other pertinent facts included:
- (a) Hachi-Ko and Bella are almost identical Akita dogs. Hachi-Ko is a male dog and Bella is female. They are extremely difficult to distinguish. Hachi-Ko is slightly bigger than Bella. They can be distinguished by different colour of collars that they wear, as well as other minor differences that one might be able to ascertain if one knew the dogs relatively well;
  - (b) Although the Member had identified Hachi-Ko as being the attacking dog in her written statement as well as in her telephone call with KB on February 5, 2013, at trial the Member equivocated and indicated that she could not positively identify which of the two dogs had been the attacking dog;
  - (c) Ultimately, Hachi-Ko was declared to be a dangerous dog. Further, the dog's owner, JK, was successfully pursued in small claims court in relation to the attack.

10. In conjunction with the dangerous dog hearing, the Justice of the Peace had several negative comments with respect to the Member's testimony. In particular, the Justice of the Peace stated as follows:

- (a) Page 133 - The Member's "testimony today that the Akita did not bite until after [SJ] started kicking is simply not credible. It is not consistent with her earlier written statement. It is not consistent with how she described the speed of the attacking."
- (b) Page 141- "I have very grave concerns on the credibility of [the Member's] related to her newly formed uncertainty as to Hachi-Ko being the attacking Akita in the Spadina Crescent attack."
- (c) Page 141 - "The Court perceives this explanation to be a fabrication for the following reasons. [The Member] was very familiar with both Bella and Hachi-Ko. And even if one believes her new statement that Chelsea and her were switching Akitas prior to the attack, it is very difficult to accept that she did not know with certainty which Akita was with her at the time of the attack."
- (d) Page 142 - "I find it very strange that almost one year after the attack on March 18, 2012, and only three weeks before the original trial date of March 1st, 2013, [the Member's] unwavering belief that the identification of Hachi-Ko abruptly changed to uncertainty."
- (e) Page 147 - "[The Member's] testimony about stopping at the Mendal with Hachi-Ko and later switching at the College Bridge is totally implausible."

11. As noted above, Hachi-Ko was ultimately determined to be the attacking Akita.

12. A copy of those bylaw court proceedings was obtained by the Law Society of Saskatchewan, which prompted the investigation that led to this discipline hearing.

13. Throughout the investigation process and at the hearing of this matter, the Member's position has remained consistent. She indicates that she initially thought the attacking dog was Hachi-Ko. She assumes that her certainty in this regard was due to the fact that SJ at the time of the attack exclaimed "get him off of her" or words to that effect. As SJ identified the dog as being male, the Member assumes that, in the heat of the moment, she believed that the description was accurate. After considering matters for a significant period of time and realizing that some of her recollections regarding the incident were not accurate (including the precise location where the attack occurred), she started to have doubts as to her certainty as to which dog was the attacker.

#### **TESTIMONY AT THE TRIAL**

14. As noted above, there were three witnesses at the hearing: KB, RD, and the Member.

A. Testimony of KB

15. KB was called to the Bar in 2004.

16. At the relevant period of time, she was employed by the City of Saskatoon where she provided legal advice to council, assisted with legal issues involving the City, and would occasionally provide assistance with bylaw prosecutions.

17. She was counsel for the City of Saskatoon in the dangerous dog hearing involving Hachi-Ko.

18. In this particular hearing, KB identified the principal issue as being one of identity. The question was which of the two Akita dogs had attacked SJ's sheltie. This was KB's first prosecution involving an alleged dangerous dog.

19. In her role as the prosecutor, KB had reviewed the written statement by the Member which had identified Hachi-Ko as being the attacker. KB indicated that she relied heavily on that written statement.

20. KB further spoke on the telephone to the Member about the attack. The Member was unwavering in identifying the attacking dog as being Hachi-Ko. She expressed a significant level of certainty given her familiarity with the dogs, whom she walked on a regular basis. The Member in fact laughed when KB questioned whether she could positively identify Hachi-Ko as being the attacker.

21. KB indicated that the stakes were low on the dangerous dog hearing, as they were not seeking to have Hachi-Ko destroyed. Rather, they were seeking muzzling and leashing of Hachi-Ko when he was being walked, along with some requirements regarding fencing around JK's home.

22. There were significant delays with getting the matter of the dangerous dog hearing to trial.

23. On February 5, 2013, the Member left a message with KB to indicate that she would not be able to attend at the hearing because she had a trial that day that might run over.

24. On February 28, 2013, the Member spoke with KB and asked for an adjournment of the trial because of a gastro bug. KB indicated that she did not wish to adjourn but offered some options to accommodate the Member's illness.

25. On March 1, 2013, there was no call or voicemail left for KB.

26. The Member did not attend for the trial on March 1, 2013. Accordingly, the matter was adjourned until June, 2013.

27. The hearing resumed to get the Member's testimony on June 7, 2013. KB indicated that the Member appeared to be in rough shape, pale and appearing as she did not sleep the night before.

KB indicated that the Member did not make eye contact. KB accordingly had a negative impression of what might occur that day.

28. At the hearing, the Member provided testimony which was inconsistent with her prior written statement and telephone call with KB in that she could not identify which of the two Akita dogs had attacked SJ's dog.

29. KB indicated that the only witness who could identify the attacking dog was the Member, as SJ was unclear on a number of key facts.

30. In cross-examination, KB acknowledged that the Member had difficulty recollecting the precise location of the attack during the Member and KB's telephone call of February 5, 2013 and had to be prompted by KB in order for the Member to correctly identify the location.

31. KB could not recall whether she advised the Member to call her back if she had any new information or change of recollection of any issues discussed by them on the telephone call of February 5, 2013.

32. It was acknowledged by all parties that, between February 5, 2013 and June 7, 2013, the Member did not contact KB to advise that she had new found doubt as to the identity of the attacking dog. It was further acknowledged that KB did not contact the Member again to confirm what her testimony would be at the resumption of the trial on June 7, 2013.

#### B. Testimony of RD

33. RD was JK's legal counsel in relation to the dangerous dog hearing. He appeared at this discipline committee hearing by telephone.

34. RD was called as a lawyer in May, 1988 and has practiced in British Columbia since that time. He routinely practices as legal counsel in Saskatchewan. His principal area of practice is in criminal defence work. He had previously been a prosecutor.

35. RD was an acquaintance of the Member before the dangerous dog hearing, as she called him for occasional advice. Prior to the commencement of the dangerous dog hearing on March 1, 2013, RD had not spoken to the Member. Approximately one week prior to the continuation of the trial on June 7, 2013, RD contacted the Member in an effort to identify what her evidence would be with respect to identification. In the course of that discussion, RD advised the Member that SJ had indicated on March 1, 2013 that the attacking dog was wearing a red collar. It was acknowledged that the red collar was worn by Bella, not Hachi-Ko. The Member indicated in that telephone call that she was unsure whether that might affect her previously stated opinion that Hachi-Ko had been the dog that she had been walking at the relevant period of time. It was not suggested that the Member change her testimony by RD. RD then did not speak with the Member until the hearing on June 7, 2013.

36. Since June 7, 2013, the Member and RD have not discussed the case, apart from the Member requesting a copy of his notes from their discussion prior to June 7, 2013 (which RD did not have as he had the conversation while in his vehicle).

37. RD indicates in his letter of May 31, 2016 that he is not aware of anything to indicate that the Member was trying to be anything other than honest and open in her testimony.

38. There was no cross-examination of RD.

C. Testimony of the Member

39. The Member indicates that she was called to the Bar in 2012. She grew up in the United Kingdom and immigrated to Canada in 2008. She initially commenced work as a legal assistant with Donald Worme. She continued in that role until she began articling in 2011. She stayed with the Semaganis Worme law firm until November, 2016. She is currently working in Toronto.

40. With respect to the trial and the attack prior to that, the Member indicates:

- (a) She does not specifically remember the telephone call with KB on February 5, 2013 although acknowledged the conversation likely occurred;
- (b) She recalls being confused with respect to the location of the attack and her memory was improved by KB's questions;
- (c) She acknowledges providing the written statement which identifies Hachi-Ko as being the attacking dog;
- (d) The Member further indicates that she had previously been certain as to the identity of the attacking dog;
- (e) She indicates that prior to the attack she had been walking JK's dogs on a regular basis;
- (f) She does not personally recall being pale or being sleepless prior to the trial on June 7, 2013;
- (g) She acknowledges being able to tell Hachi-Ko and Bella apart. She identified various distinguishing characteristics, including different coloured harnesses and leashes;
- (h) At the time of the attack, the Member indicates that she did not specifically look for the colour of the harness. She was more focused on the sheltie;
- (i) She indicates that the event was quite traumatic. She was injured in the attack and a dog passed away as a result of what occurred;
- (j) The Member continued to indicate that she was not certain as to which of the dogs had committed the attack;

- (k) The Member indicated that, in hindsight, she should have called KB to indicate that she was uncertain as to the identity of the attacking dog prior to June 7, 2013, given her previous written statement and telephone call on February 5, 2013. She indicates that she would contact KB if she had the ability to do it over again;
- (l) She indicates that she started having doubts about her memory after her discussion with KB on February 5, 2013. In particular, she was shaken as she realized that she had the location of the attack wrong;
- (m) The Member indicates that she thought that the result of a finding against Hachi-Ko was that he could be put down; and
- (n) The Member indicates that she was somewhat confused on June 7, 2013, as she was still uncertain with respect to the identity of the dog, although the leash colour was a consideration given SJ's prior testimony.

D. Position of the Parties

41. On behalf of the Law Society of Saskatchewan, Mr. Huber in oral argument indicated that:

- (a) The Member, despite not acting as a lawyer at the relevant period of time, had a duty of honesty, candour, and integrity in dealing with her colleague, KB;
- (b) In discharging her duty to KB, the Member had an obligation to advise KB that she had doubts with respect to recollection of the attacking dog prior to the resumption of the trial on June 7, 2013;
- (c) Mr. Huber referred to the Member's indication that she would do it differently again as being akin to an admission on the first complaint;
- (d) Mr. Huber referred to the Member's story as being implausible that she had specific recollections as to the attacking dog before June 7, but later was reduced to absolute uncertainty with no intervening issues;
- (e) Mr. Huber indicated that the Member was obviously concerned that her friend, JK's dog, would be put down. The result of that concern was that she developed a convenient uncertainty with respect to the identity of the attacker; and
- (f) Mr. Huber indicated that the findings of fact from the Justice of the Peace were prima facie evidence that the Member had failed to be candid with the Court.

42. On behalf of the Member, her legal counsel indicated:

- (a) There is no evidence of a lack of integrity or dishonesty in this case;
- (b) With respect to the first charge, counsel's submissions essentially amounted to that there is no positive obligation on the Member in these circumstances to contact the



prosecutor and advise that her testimony may be inconsistent with her prior written statement. It may have been advisable to do so, but the failure to do so does not constitute a breach under the Code and does not rise to the level of “conduct unbecoming”;

- (c) Counsel indicated that the reputation of the profession would not likely be affected by this type of conduct. Mr. Kennedy analogized it to two lawyers fighting in a recreational hockey league. The fact is that they, like the Member, were acting outside the scope of their professional duties and did not engage in behaviour so reprehensible as to bring into question the Member’s professional integrity;
- (d) With respect to the second complaint, counsel indicates that in order to make out the charge there has to be evidence that the Member intentionally misled a court on a point of substance. In other words, there has to be a design to mislead a decision-maker;
- (e) Counsel takes issue with many of the Justice of the Peace’s findings and provided detailed analysis challenging many of his determinations;
- (f) As a central point, without walking through all of the evidentiary points raised by counsel, counsel indicates that it has not been established that the Member intentionally misled a court. Counsel indicates that the Member’s re-examining of her certainty of the identity of the attacking dog was honestly held. Further, it highlights the vagaries of the human memory. Counsel highlights that there were a number of months between the events that took place and when the trial occurred. The events occurred very quickly. The dogs involved in the incident were extremely similar. There were issues with respect to the colour of the leashes and harnesses which could honestly lead the Member to have questions about the dog’s identity; and
- (g) In short, Counsel indicates that the Law Society has not established that there was an intentional act on the part of the Member to mislead a court.

## **ANALYSIS**

43. The Code of Professional Conduct sections that are applicable to this case are:

2.1-1 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.

44. Commentaries 3 and 4 under section 2.1-1 provide additional context to the integrity requirement:

[3] Public confidence in the administration of justice and in the legal profession may be eroded by a lawyer’s irresponsible conduct. Accordingly, a lawyer’s conduct should reflect favourably on the legal profession, inspire the confidence,

respect and trust of clients and of the community, and avoid even the appearance of impropriety.

[4] Dishonourable or questionable conduct on the part of a lawyer in either private life or professional practice will reflect adversely upon the integrity of the profession and the administration of justice. Whether within or outside the professional sphere, if the conduct is such that knowledge of it would be likely to impair a client's trust in the lawyer, the Society may be justified in taking disciplinary action.

[5] Generally, however, the Society will not be concerned with the purely private or extra-professional activities of a lawyer that do not bring into question the lawyer's professional integrity.

45. Further, *The Legal Profession Act, 1990* (the "Act") at Section 2(1) defines conduct unbecoming as follows:

In this Act:

...

(d) "conduct unbecoming" means any act or conduct, whether or not disgraceful or dishonourable, that:

(i) is inimical to the best interests of the public or the Members; or

(ii) tends to harm the standing of the legal profession generally;

and includes the practice of law in an incompetent manner where it is within the scope of subclause (i) or (ii);

#### A. First Allegation

46. With respect to the first allegation, there is no dispute with respect to the facts. The Member had clearly provided a written statement and subsequently had a telephone call with KB in February, 2013 in which she identified Hachi-Ko as being the attacking dog. When the Member provided testimony on June 7, her testimony differed from what she had said previously, as she could not identify the attacking dog.

47. The question though is whether the Member's failure to advise KB in advance of the trial that her testimony would be different than she had previously stated constitutes "conduct unbecoming". Put another way, the question is whether, once a lawyer indicates to a fellow lawyer what he or she expects their evidence to be at trial, are they duty bound under the Code of Professional Conduct to advise if they expect their evidence to change at the hearing?

48. The panel, after consideration, assesses that, in this particular case, it would have been preferable for the Member to advise KB that she had some doubts on identification now that she

had been considering matters further, but that her failure to do so does not amount to conduct unbecoming.

49. The panel does not believe that the Member was acting dishonorably, without integrity or intentionally misleading in not advising KB of her doubts that had arisen. Conduct unbecoming is defined in the Act as being conduct that is inimical to the best interests of the public or the Members or tends to harm the standing of the legal profession generally.

50. In this case, the Member was not acting in a legal capacity at the relevant period of time. As per the fifth commentary to paragraph 2.1-1 of the Code, the Society is not generally concerned about the purely private or extra-professional activities of a lawyer unless the lawyer's behaviour calls into question the lawyer's professional integrity.

51. While the Member likely should have advised KB of her new-found concerns about identification, her failure to do so, in this context, does not rise to the level of conduct unbecoming where the Member's honesty or integrity is put into question.

#### B. Second Allegation

52. With respect to the second allegation that the Member intentionally provided false, misleading or untrustworthy evidence to the Court, the panel is not satisfied that the Law Society has established that there was intentional misconduct on the part of the Member.

53. The onus is on the Law Society to establish the charge as set out in the Complaint. In this case, the panel does not need to assess all of the evidence from the prior hearing and determine whether the Justice of the Peace was correct in determining whether Hachi-Ko was the attacking dog. Rather, the question is whether the Member was feigning ignorance as to which of the dogs attacked in order to protect Hachi-Ko.

54. The Law Society relies heavily on the written decision of the Justice of the Peace from the dangerous dog hearing to establish that the Member provided false, misleading or untrustworthy evidence to the Court. In support of its reliance of the Justice of the Peace's decision, the Law Society cites the cases of *Law Society of Prince Edward Island v. Lawyer* 94-01, [1994] LSDD No. 11, *Law Society of Upper Canada v. Marler*, [2008] ONLSHP 67 and *Rosenbaum v. Law Society of Manitoba* [1983] 5 W.W.R. 752.

55. All of the aforementioned decisions stand from the proposition that a hearing committee can consider, as evidence, the findings of a tribunal or court in assessing allegations against a Member in a professional disciplinary setting. The Law Society acknowledges at paragraph 23 of its Brief of Law that the decision of the Justice of the Peace is but one piece of evidence to be considered in assessing the allegations against the Member.

56. This panel accepts that it can and consider the findings of fact by the Justice of the Peace. However, the panel must make its own assessment, based on all of the evidence and particularly from the transcripts and testimony of the Member, KB and RD, whether the Member intentionally misled the hearing officer.

57. After considering all of the relevant evidence, the panel cannot determine that the Member intentionally misled the hearing officer at the dangerous dog hearing. The panel cannot determine that the Member was merely feigning ignorance of the identity of the attacking dog.

58. The panel believes it is entirely plausible that the Member became confused as to the identity of the attacking dog given:

- (a) The passage of time;
- (b) The events of the day in question being chaotic; and
- (c) The Member being confused as to other issues related to the incident and reconsidering her previously stated recollections regarding the identity of the attacking dog.

59. The panel further notes that the Member's testimony at this discipline hearing was consistent with her testimony at the dangerous dog hearing of June 7, 2013.

60. The Justice of the Peace was certainly at liberty to make the determinations that he did and prefer the evidence of others or the Member's prior statements, as opposed to her testimony on June 7, 2013. However, this does not lead to the panel concluding that the Member was attempting to obfuscate or otherwise mislead the Court in the dangerous dog hearing.

61. Given the foregoing, the panel rejects the second allegation against the Member.

## **CONCLUSION**

62. Given the foregoing, the panel rejects all of the allegations against the Member.

63. On the issue of costs, the panel believes that it is appropriate for both parties to bear their own costs. While costs can be assessed against the Law Society, in the context of this case where the Member likely ought to have advised KB of her doubts as to the identity of the attacking dog, it cannot be said that the prosecution of this matter warrants an award of costs as against the Law Society. Certainly, although the Member has not been found to have engaged in conduct which is sanctionable, the Member should have had the foresight to make the call in advance which could have avoided many of these issues.

Dated at the City of Saskatoon, in the Province of Saskatchewan, this 17<sup>th</sup> day of April, 2017.

Sean M. Sinclair, Chair

Dated at the City of Yorkton, in the Province of Saskatchewan, this 14<sup>th</sup> day of April, 2017.

David K. Rusnak, Q.C.

Dated at the City of Regina, in the Province of Saskatchewan, this 7<sup>th</sup> day of April, 2016.

Graeme G. Mitchell, Q.C.

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

In relation to the Formal Complaint dated January 22, 2016, alleging the following:

**THAT JOSEPHINE DE WHYTELL, of the City of Saskatoon, in the Province of Saskatchewan is guilty of conduct unbecoming a lawyer in that she:**

**1. did, in her role as a witness in the legal matter of R. vs. JK., fail to act with candor, honour and integrity towards her fellow Member KB, as follows:**

**fail to inform KB (the Crown Prosecutor for whom she was a witness) that her testimony at trial on material facts would be inconsistent with both the testimony that she had previously discussed with KB and her prior written witness statement; and**

**2. did, as a witness in the legal matter of R. vs. JK., intentionally provide false, misleading or untrustworthy evidence to the Court.**

### **JURISDICTION**

64. Josephine de Whytell (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.

65. The Member is currently the subject of a Formal Complaint initiated by the Law Society dated January 22, 2016. Attached at Tab 2 is a copy of the Formal Complaint along with proof of service.

### **ORIGIN OF COMPLAINT**

66. The Law Society began an investigation into the conduct of the Member after receiving a complaint on August 29, 2013 (dated August 26, 2013) [Tab 3]. This complaint was filed by KB, a Member of the Law Society of Saskatchewan and a solicitor with the City of Saskatoon.

### **PARTICULARS**

#### **Dangerous Animal Proceeding**

67. On March 18, 2012 the Member and another person were walking two Akita dogs named Hachi and Bella owned by JK. While passing near the Mendel Art Gallery in Saskatoon, the dogs were walked past two other dogs (Shelties) being walked by SJ. Hachi is alleged to have attacked one of SJ’s dogs, that later died of its injuries. Ms. de Whytell was injured attempting to separate

the dogs. This incident led to JK, Hachi's owner, being notified that a dangerous animal hearing would be commenced regarding Hachi.

68. Shortly after the incident, the Member provided a written statement which set out her recollection. She provided her statement to JK and JK provided same to bylaw enforcement officials on or about April 4, 2012. The Member's written statement is attached hereto at Tab 4.

69. An investigation was conducted by the Saskatoon Animal Control Agency. Ultimately, a dangerous animal hearing was triggered by the issuance of a Notice of Hearing dated August 22, 2012. On September 5, 2012, the Member was served with a subpoena to testify on behalf of the City of Saskatoon. The hearing was initially scheduled for October 19, 2012. That initial date was adjourned to March 1, 2013.

70. In advance of the hearing, on February 5, 2013, KB, who was prosecuting the matter, spoke to the Member on the phone to discuss her trial evidence. Attached at Tab 5 are the attendance notes of KB in connection with her February 5, 2013 conversation with the Member.

71. On March 1, 2013, all of the evidence of the City of Saskatoon, but for that of the Member, was entered at the hearing. The Member called KB the day prior to the hearing indicating that she was ill. She did not attend on March 1, 2013. A transcript of the proceeding held on March 1, 2013 is attached hereto at Tab 6. Ultimately, the matter was adjourned to June 7, 2013 to be concluded.

72. KB did not contact the Member, and had no contacts from the Member, between March 1, 2013 and the June 7, 2013 adjourn date.

73. The hearing resumed on June 7, 2013 to hear the Member's testimony. A transcript of the proceeding held on June 7, 2013 is attached hereto at Tab 7.

74. Attached at Tab 8 is a transcript of the August 23, 2013 ruling made by the hearing officer. Attached at Tab 9 in the Written Decision in connection with the August 23, 2013 transcript. The conclusions regarding the Members evidence are central to the charges against her.

#### The Member's Responses to the Law Society

75. Subsequent to the complaint being filed it was forwarded to the Member. What followed was an investigation during which the Member provided a series of responses to the Law Society. The following correspondence between the Law Society and the Member are attached hereto as follows:

- i. Letter from Valerie Payne to Josephine de Whytell dated September 2, 2014; [Tab 10]
- ii. Email from Josephine de Whytell to Valerie Payne dated September 11, 2014; [Tab 11]
- iii. Letter from Valerie Payne to Josephine de Whytell dated June 4, 2015; [Tab 12]

- iv. Letter from Valerie Payne to Josephine de Whytell dated June 19, 2015; [Tab 13]
- v. Email from Josephine de Whytell to Valerie Payne dated June 19, 2015; [Tab 14]