

**IN THE MATTER OF THE LEGAL PROFESSION ACT
AND IN THE MATTER OF A RESIGNATION APPLICATION OF
W. ARLISS DELLOW,
A MEMBER OF THE LAW SOCIETY OF SASKATCHEWAN**

MEMORANDUM OF DECISION

Mr. Arliss Dellow came before the Benchers in convocation on September 9, 2010 at Yorkton, Saskatchewan with an Application that he be allowed to resign in the face of discipline. Upon hearing counsel for the applicant and counsel for the Investigation Committee, the Benchers allowed the Application.

RELEVANT RULES

1. Rule 402(3)

Investigation Committee

- 402.(1) An Investigation Committee:
- (a) shall inquire into any complaint to it under Rule 400(2)(c); and
 - (b) may investigate any other matter that comes to its attention during the course of an investigation, that appears to constitute conduct unbecoming.
- (2) An inquiry or investigation under subrule (1) shall be completed as soon as practicable, following which the Investigation Committee shall report to the Chairperson of the Discipline Committee in accordance with Section 46 of the Act.
- (3) Notwithstanding subrule (2):
- a) if, during the course of a discipline investigation, a member requests permission to resign pursuant to Section 27 of *The Legal Profession Act, 1990*, the Investigation Committee may, prior to completing its investigation, recommend that the Benchers accept the member's resignation as a resignation in the face of discipline or as a simple resignation;
 - b) prior to making a recommendation pursuant to (a) above, the Investigation Committee may require the member to enter into an Agreed Statement of Facts to be provided to the Benchers and further, may recommend that the Benchers impose conditions pursuant to Section 27(1)(b);
 - c) if the Benchers accept a resignation pursuant to this subclause, notice shall be given in the same manner and to the same persons as required by Rule 495;
 - d) if the Benchers may accept an application for resignation as a simple resignation or as a resignation in the face of discipline or reject the application pending the completion of the discipline process;
 - e) nothing in the Rule affects the ability of the Discipline Committee to impose permission to resign as a penalty pursuant to Section 55(2)(a)(i.1) of *The Legal Profession Act, 1990*

2. Rule 1.1

"Resignation in the face of discipline" means a resignation accepted by the Benchers pursuant to Rule 402(3) or by the Discipline Committee pursuant to Section 55(2)(a)(i.1) of *The Legal Profession Act, 1990* and is deemed to be equivalent to disbarment;

SUMMARY PROCEEDINGS

As a result of complaints, an Investigation Committee was appointed to investigate the conduct of the member. During the investigation, the member requested permission to resign in the face of discipline.

The Conduct Investigations Committee, consisting of Mr. John H. McIntosh, Q.C and Lawrence J. Zatlyn, Q.C., both senior members of the Bar, recommended in writing that the Benchers accept the member's application to resign. The Investigation Committee required the member to enter into an Agreed Statement of Facts, a copy of which was presented to the Benchers. The Investigation Committee further recommended no costs or conditions be imposed.

All of the above was by way of joint submission of the Investigation Committee, the member and his counsel.

Counsel for the Investigation Committee, Counsel for the member, and the member himself, all made representations to the Benchers.

SUMMARY OF CIRCUMSTANCES

1. Over the course of seven years, Mr. Dellow represented a client in a divorce proceeding. He told his client falsely on over thirty occasions proceedings were to take place on specific dates, then gave false reasons why those dates were cancelled. While he prepared some documents, he filed no documents to protect her rights.

2. In an unrelated matter, Mr. Dellow acted on a sale of farmland and equipment. He neglected to prepare and file appropriate documents. He paid out trust funds before security was in place and delayed, fulfilling many of his obligations. In his initial responses to the Law Society, the member falsely said he had reported the matter to the partner of the firm in which he practiced.

CIRCUMSTANCES OF THE MEMBER

Mr. W. Arliss Dellow signed the Rolls on July 25th, 1968. He practiced until he was disbarred on December 11th, 1986, and did not practice again until reinstated on September 17, 1992. Upon reinstatement, Mr. Dellow was a practicing member until September 14th, 2009, when he closed his practice and went on non-practicing status.

ANALYSIS

This matter came before the Benchers as a joint submission. In cases of sentencing involving a joint submission, the reasoning of the Court of Appeal in *Rault and The Law Society of Saskatchewan*, 2009, SKCA 81 is instructive. The *Court* ruled in *Rault* that a joint submission should not be rejected unless it is unfit, unreasonable or contrary to the public interest.

As in all matters involving misconduct and discipline, the public interest involves the protection of the public as the paramount objective. In this matter, the Benchers accepted the joint submission and concluded that allowing a member to resign was a proper resolution for the following reasons:

- 1) the age of the member (71 years of age);
- 2) the member's assurance that he will never apply for a reinstatement and will never practice again;
- 3) the member's representation of and apparent remorse ;
- 4) the member was co-operative and indicated a desire to resign approximately one year prior to this date;
- 5) the need for censure and general deterrence is achieved by an outcome equivalent to disbarment;
- 6) the need for specific deterrence and protection of the public is achieved by the member's assurance that he will not reapply and the high standard that will need to be met in the event of an application for re-admission;
- 7) the public, in this case, is adequately protected without a full hearing and sentencing.

COSTS

As part of the joint submission, it was requested that the Benchers not order costs as a condition of the resignation. One of the benefits of allowing resignation in the face of discipline is a speedy resolution of the matter. If the member is unable to pay the costs, the matter remains in limbo, thereby defeating that purpose. The submission is accepted and therefore, there is no order as to costs.

Dated this at the City of Prince Albert in the Province of Saskatchewan this 26th day of,
October 2010.



Peter A. Hryhorchuk, Bencher