



The Law Society of Saskatchewan

JOHN DAVID HARDY

September 19, 2012

Law Society of Saskatchewan v. Hardy, 2012 SKLSS 3

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

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

Hearing Committee Members: Dr. Greg Stevens (Chair) and Dr. Sanjeev Anand, Q.C.

INTRODUCTION

1. On September 19, 2012, before a Hearing Committee (the Committee) appointed by the Discipline Committee of the Law Society of Saskatchewan (LSS), John David Hardy (the Member) pled guilty to allegations of conduct unbecoming a lawyer. His guilty plea was accepted by the Committee. The allegations contained in the Agreed Statement of Facts and Admissions (ASF – attached as an appendix) were offered and accepted by counsel for the Investigation Committee and the Member as an “amended formal complaint” and are particularized as follows:

- i. [The Member] “Did fail to serve his clients, B.R. and G.W. in a conscientious, diligent and efficient manner; and
- ii. Did fail to respond promptly to communications from the Law Society of Saskatchewan in relation to the complaints of B.R. and G.W.”

2. At the hearing, which was convened by teleconference, Timothy F. Huber represented the Investigation Committee of the LSS and Nicholas J. Stooshinoff represented the Member. The Member was present for the hearing. No members of the public were present for the hearing. At the conclusion of the hearing the Committee indicated its intention to reserve its decision on sentence and render written reasons for the disposition.

3. As a preliminary matter, counsel for both parties agreed the hearing could proceed with less than the 30 day’s notice prescribed by Rule 430(c) of the LSS and there was no objection to the jurisdiction and composition of the Committee.

4. Initially, the hearing materials indicated the Committee would be comprised of three people. It was noted at the hearing, however, that the complaint against the Member occurred after amendments to *The Legal Profession Act, 1990* (the “Act”) came in force (July 1, 2010). As such, it was determined that the third member of the Committee had not been appointed correctly. At the hearing it was agreed by both counsel that the hearing should properly proceed with the two Committee members indicated previously.

BACKGROUND

5. While an ASF was filed in relation to this matter, a brief summary of the facts has been provided below.

B.R. Matter

6. In early 2007 B.R. retained the Member to assist her in obtaining a work permit and residency status. The Member advised B.R. that the potential timeline for completion of such a process was a year or two.

7. In the summer of 2008 B.R. inquired about the status of her application, relaying to the Member that she was running out of financial resources and needed a work permit. The Member made inquiries and advised B.R. that the application was still being processed.

8. In 2009, with B.R. stating she was desperate, the Member began to assist B.R. by way of loaning her money, a practice that continued until September 2010.

9. B.R. last had contact with the Member on August 28, 2010, when she advised him that she needed information on the status of her application immediately so she could accept a work position. The Member advised B.R. that he would get the matter sorted out right away and asked B.R. to contact him on August 31, 2010.

10. After numerous unsuccessful attempts to contact the Member as agreed, B.R. sought new representation. Efforts to engage new counsel were thwarted because she had previously designated the Member as her representative.

11. In late September 2010 B.R. contacted the law office where the member last worked, only to be told he had left the firm on September 1, 2010. Unable to reach the Member, or even ascertain the location of her legal file, B.R. filed a complaint with the LSS on October 7, 2010.

12. On October 20, 2010 LSS complaints counsel attempted to locate B.R.’s file and contact the Member. Complaints counsel forwarded B.R.’s complaint to the Member, allowing 10 days for the Member to respond. Various LSS complaints counsel sent subsequent emails to the Member on October 26 and 27, 2010.

13. On October 28, 2010 the Member responded to the LSS via email, stating B.R.’s file was “still located where it has been for the last couple of years – in ‘Collections’ at Rask & Company with a solicitor’s lien claimed on it.” (the Member had left the employ of Rask and Company in

2009, around the time he began loaning money to B.R.). The Member promised to check his email on a daily basis in an effort to avoid further lack of communication.

14. The Member was further advised that a response to B.R.'s complaint was still required and, after extending the response deadline and receiving assurances that a response was forthcoming, no response from the Member was ever received. The LSS made several more attempts to contact the Member, both in relation to the complaint and to advise that immediate action was required so as to mitigate damage to B.R. in relation to her immigration issue. The LSS has never received a response from the Member in relation to the complaint nor did the Member contact immigration officials, as requested, on behalf of B.R.

15. The Member's failure to assist B.R. in this urgent matter placed her in the difficult position of negotiating the release of her file from the Member's former employer while dealing with timelines established by her potential employer.

G.W. Matter

16. The Member was retained by G.W. to represent him in an action against two police officers, including the preparation and filing of a Statement of Claim and the serving of the police officers. The Statement of Claim was prepared on August 13, 2007 and one officer was served.

17. In the months that followed G.W. made numerous attempts to contact the Member and determine the status of his file. Ultimately, on April 9, 2009 G.W. received a letter stating the Member was leaving Rask & Company to work with another firm, and was taking his files with him. On August 26, 2009 G.W. received a letter from counsel for the police officers indicating that only one officer had been served.

18. In September 2009 the Member contacted G.W. and made assurances that he would continue to work on the file, which would include serving the second officer. Between September and December 2009 G.W. made numerous attempts to contact the Member, being successful in January 2010, at which time the Member requested a new retainer agreement be signed and assured G.W. the matter would be handled.

19. In February 2010, after again being unable to contact the Member, G.W. sought legal assistance elsewhere. G.W. complained about the Member to the LSS on September 14, 2010, which complaint was forwarded to the Member on September 21, 2010, requesting a written response within 10 days.

20. The Member contacted the LSS on October 2, 2010 via email, indicating the file was at Rask & Company and that he would review it there, and respond to the complaint by October 18, 2010. No response was received. On October 26, 2010 the Member was again asked to respond to the complaint within 10 days; on November 3, 2010 the LSS emailed the Member stating the final deadline for a response was November 5, 2010.

21. On November 5, 2010 the LSS received an email purporting to attach a copy of the Member's response, as well as indicating a faxed copy would follow. When the LSS did not

receive any response they could open or a faxed copy, they requested the materials be re-sent. No response has ever been received from the Member in relation to the G.W. matter.

PRIOR RECORD

22. The Member has an extensive discipline history which is summarized as follows:
- i. February 5, 1999 – Guilty of conduct unbecoming a lawyer for failure to file trust forms and failure to respond to correspondence from the LSS – reprimand and costs;
 - ii. June 10, 2004 – Guilty of conduct unbecoming a lawyer for breach of trust conditions, failure to respond to another lawyer, failure to respond to correspondence from the LSS (x 2), and failure to serve his client in a conscientious, diligent, and efficient manner (x 2) – six month suspension, practice conditions, and costs;
 - iii. November 30, 2006 – Guilty of conduct unbecoming a lawyer for failure to provide acceptable levels of service to clients and failure to respond to correspondence from the LSS – 30 day suspension, practice conditions, and costs; and
 - iv. December 7, 2007 - Guilty of conduct unbecoming a lawyer for failure to respond to correspondence from the LSS (x 2) – 30 day suspension, practice conditions, and costs.

SUBMISSIONS ON SENTENCE

23. Counsel for the Investigation Committee summarized the Member’s impugned behaviour in its most simple form as a failure to serve his clients (“dilatory practice”) and a failure to respond to the LSS. These behaviours were noted to be some of the most common brought before discipline hearings and, while important, not typically considered at the severe end of the continuum of possible violations. Offences involving “integrity” are usually found to be much more significant than behaviour involving slow or unresponsive practice. Referencing but two of several decisions by the LSS on similar dilatory matters (i.e. *LSS v. Walper-Bossence*, 2011 SKLSS 4 and *LSS v. Anne Elizabeth Hardy*, 2011 LSS 6), Investigation Committee counsel offered that such behaviour typically receives a sanction of a reprimand and/or a fine and an order for costs.

24. Distinguishing the instant case from “typical” cases, counsel for the Investigation Committee noted that the Member’s extensive discipline history, including behaviour unbecoming of a similar nature, is an aggravating factor. Typical sanctions for such behaviour are thus rendered inappropriate. He further stated that general deterrence is not an issue because this Member’s discipline history is unique. Counsel for the Investigation Committee offered that the protection and perception of the public are the most important considerations. While public protection can be assured through practice restrictions, the concept of progressive discipline (see *LSS v. Peet*, October 28, 2008) is relevant and necessary to insure the public understands such behaviour is not acceptable or tolerated.

25. In *LSS v. Peet* the notion is advanced that a fine is more significant than a reprimand and when a fine has been applied for similar behaviour in the past the sanction of a larger fine is progressive and can be appropriate. Counsel for the Investigation Committee acknowledged that

the Member's guilty plea and the matter proceeding with an ASF are mitigating factors while the Member's career change 2010, in concert with strict practice restrictions, protect the public. As such, counsel for the Investigation Committee suggested that a global sanction of a two-month suspension, which doubles the Member's previous 30-day suspensions for similar behaviour in 2006 and 2007 (x 2), broad and ongoing practice conditions, and a payment of costs, would send a strong message and protect the public.

26. Counsel for the Member offered that the Member desperately wants to be a good lawyer and is an intellectually capable lawyer (receiving the Gold Medal in Law for having the highest academic standing in the graduating class of 1987) but for reasons of personality, character, organization, or management has difficulty engaging and managing clients.

27. Member's counsel submits that the Member now has insight into his limitations as a lawyer and recognizes he cannot function in private practice or practise without supervision. Counsel stated the member is remorseful and notes the Member's behaviour did not cause any real injury or loss. Counsel further states that the Member's current area of practice (Brydges Duty Counsel¹) is sufficiently narrow in scope and time-limited in how the member engages the public, and is serving a public good.

28. Member's counsel submitted that any sanction given the Member should not be based on his past because that is not in the interest of the Member or public. Rather, he proposed that a fine (in an amount equivalent to approximately one month of the Member's salary), a reprimand, an order for costs, and practice conditions with an indeterminate duration would be appropriate.

DECISION

29. Protection of the public is the overriding purpose of the LSS. The Member has shown a consistent inability to provide legal services to the public in an appropriate manner unless he is operating under supervision and with strict practice conditions. The Member is reported to have delivered quality legal services for the last two years in a needed, underserved, and focused area of practice while under supervision. Restricting the Member to practice under supervision and in specific areas of practice should continue. These conditions are necessary for public protection.

30. While the primary consideration in all LSS discipline proceedings is the protection of the public, it is also important to maintain the public's confidence in the integrity of the profession and the ability of the profession to govern its own members. In order to uphold public confidence the penalty imposed must reflect the unique constellation of aggravating and mitigating circumstances presented by this case.

31. The chief aggravating factor presented by this case is the Member's extensive discipline history. It is noteworthy, however, that the current matter was concluded by way of a guilty plea and an agreed statement of facts. These are important mitigating factors. The Member

¹ In the current situation, Brydges Duty Counsel involves the Member being available to answer phone calls and provide immediate free legal advice to individuals the police have arrested. The Member has no ongoing contact with these individuals and his work is supervised by one of two authorized lawyers.

demonstrates some insight into his limitations by practicing in the area he does. His insight provides a degree of mitigation.

32. The notion of progressive discipline is valid and important and should be considered in the current situation. Indeed, it can be argued that the Member has already been subject to progressive discipline in that he has received significant suspensions for behaviour that is typically sanctioned by far less than a suspension, in part as a consequence of his discipline history. In his 2006 and 2007 convictions (both resulting in 30-day suspensions) the Discipline Committee determined the Member's impugned behaviour arose from, or was mitigated by, a health condition. No such claim was made in the current situation. Indeed, the Member's counsel emphasized that the Member's behaviour was not the result of a medical condition.

33. While progressive discipline is important so is the principle of proportionality. The behaviour to which the Member has currently pled guilty is still best classified as dilatory practice. The impact of this behaviour on the complainants, while likely causing stress and anger, did not involve actual or significant loss or harm.

34. Considering the Member's history with similar infractions, the sanctions imposed previously, and the weighing of aggravating and mitigating factors, it is clear that a more significant suspension than imposed previously for similar behaviours is warranted. Quantum is the only question. Public protection will not be affected by the length of suspension. Public protection is achieved through strict and limiting practice conditions. It is important, however, to indicate strongly to the public, the profession, and the Member that dilatory practice is not acceptable and that the ongoing inability to manage one's practice is a serious matter.

ORDER

35. Considering this Member's discipline history, all current aggravating and mitigating factors, and the range of sanctions for similar and more severe infractions, the Committee is of the view that increasing the length of any previous suspension this Member has received for similar behaviour by 50% is appropriate. The Committee orders that the Member's sanction for all charges be a global penalty consisting of a 45-day suspension and to pay the costs of this proceeding in the amount of \$1,655.00. Payment should be made to the LSS by January 15, 2013 or such further period as may be allowed by the Chair of Discipline. It is ordered that the Member's suspension shall commence on a date determined by the Chair of Discipline after hearing from the Member and counsel for the Investigation Committee. However, the suspension shall commence no later than December 15, 2012.

36. The Member's existing practice conditions shall be continued. To be clear, among other existing conditions, the Member must receive the approval of the Chair of the Discipline Committee, or a designate approved by the Chair, before engaging in a practice of law different from his current practice. This restriction is without time limit and specifically excludes the Member from entering any area of private practice or an area of practice where the Member might have any ongoing contact with public clients or where public clients might have a reasonable expectation for the timely delivery or performance of work by the Member.

DATED at the R.M. of Corman Park, in the Province of Saskatchewan, this 2nd day of November, 2012.

“Greg Stevens”
Chair, Hearing Committee

AGREED STATEMENT OF FACTS AND ADMISSIONS

In relation to the original Formal Complaint dated December 1, 2011, as amended, alleging that he:

- 1. Did fail to serve his clients, B.R. and G.W. in a conscientious, diligent and efficient manner; and**
- 2. Did fail to respond promptly to communications from the Law Society of Saskatchewan in relation to the complaints of B.R. and G.W.**

JURISDICTION

37. John David Hardy (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 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.

38. The Member is currently the subject of a Formal Complaint dated December 1, 2011 that has been amended and consolidated. The Amended Formal Complaint is comprised of the allegations noted above. Attached at **Tab 2** is a copy of the original Formal Complaint dated December 1, 2011 along with proof of service dated December 12, 2011. The Member has agreed to plead guilty to the allegations of conduct unbecoming as amended.

PARTICULARS OF CONDUCT

B.R. Matter

39. In 2005 B.R. retained the Member to handle immigration work on her behalf. At that time the Member successfully renewed a student visa for B.R. In early 2007 when B.R. decided to seek a work permit and permanent residency status she retained the Member once again.

40. The Member had anticipated that this might be the case as this type of immigration proceeding sometimes moves at a slow pace. He advised B.R. of the potential timeline for completion of the work as being a year or two.

41. In the summer of 2008, B.R. contacted the Member to determine the status of her matters. She was running out of financial resources and required her work permit. The Member advised her that he would check on the status and ultimately advised her that the application was still processing.

42. In 2009 B.R. became desperate. The Member offered to loan B.R. money while her applications were pending. At this time the Member was also changing firms from Rask and Company to Sonnenschein Law Office. The Member continued to assist B.R. financially until September 2010. B.R. maintained frequent contact with the Member in an effort to remain current on the status of her immigration matters. The Member was only able to tell B.R. that the application was filed and that B.R. would have to wait and see.

43. In late September 2010, after losing contact with the Member, B.R. contacted Sonnenschein Law Office looking for the Member. She was advised that he left the firm on September 1, 2010.

44. The last time B.R. had contact with the Member was on August 28, 2010 when she advised him that she required information on the status of her applications immediately in order to accept a work position that she had been offered. The Member advised B.R. that he would get it sorted out right away and to contact him on August 31, 2010. That was the last she heard from the Member.

45. After August 28, 2010, B.R. made repeated efforts to contact the Member on his cell phone and at his home she began to seek out new representation to conclude her matter, which had become critical. B.R. was advised that the only person that would be able to assist her was the Member because of the fact that she had designated him as her representative.

46. Unable to reach the Member for several weeks, and unable to even ascertain the whereabouts of her legal file, she complained to the Law Society on October 7, 2010.

47. Law Society Complaints Counsel, Jody Martin, took steps to locate the B.R. file on October 20, 2010. She attempted to contact the Member via phone and left a message for the Member to call her. Ms. Martin also forwarded the B.R. complaint to the Member on that date setting a 10 day deadline for response. She contacted Sonnenschein Law Office and was advised that the file was no longer in that office and no funds were in trust.

48. On October 26 and October 27, 2010, Ms. Martin and Complaints Counsel, Donna Sigmeth both sent emails to the Member seeking a response.

49. On October 28, 2010, the Member responded to Mr. Martin via email to the previous phone and email messages that had been left in the days prior. The Member informed Ms. Martin that the B.R. file was “still located where it has been for the last couple years – in “Collections” at Rask & Company with a solicitor’s lien claimed on it.” Rask & Company was one of the firms the Member had previously practiced with. The Member promised to check his email every day at noon in an effort to avoid further lack of communication.

50. On November 2, 2010, Ms. Martin advised the Member that he was still required to respond to the substantive complaint of B.R. and that that deadline set in the October 20, 2012 letter had expired. The Member advised that the written response was being prepared and would

be provided on November 4, 2010. Ms. Martin agreed to extend the deadline to 5:00 p.m. on November 4, 2010.

51. On November 4, 2010, the Member emailed Ms. Martin advising that his written response was attached to his email and that a hard copy would be faxed. There was no response attached to the email and no hardcopy was ever received via fax. On November 5, 2012 the Member was advised by Ms. Martin that there was no document attached to his November 4, 2010 email and that the Law Society had not received a faxed response. Two additional follow up emails were sent to the Member by Ms. Martin on November 5, 2012 and November 8, 2010. The Law Society has never received a response from the Member in relation to the B.R. complaint.

52. On November 8, 2010, Ms. Martin also requested that Mr. Hardy contact the immigration officials to obtain information on her application. This information was urgently required for her work placement. A further voice mail message was left with the Member on November 12, 2010. In that message Ms. Martin advised that she required the Member's immediate response and that his attention was urgently required to mitigate the damage to R.B. No response was received from the Member, nor did the Member contact the immigration authorities as requested.

53. Because of the Member's inaction and failure to assist R.B. in this urgent matter, she was placed in the difficult position of attempting to negotiate the release of her file with the Member's former firm while trying to deal with timelines established by her potential employer, all while her representative was unresponsive to her.

G.W. Matter

54. In 2007 G.W. retained the Member to represent him in an action against two police officers. The Member was retained to prepare and file a Statement of Claim, file it with the Court and serve each of the police officers. The Statement of Claim was prepared on August 13, 2007 and one of the officers was served. The other officer was not served.

55. In the months that followed, G.W. made numerous attempts to contact the Member to determine the status of his file with no success. On April 9, 2009, G.W. received a letter from Rask & Company indicating that the Member was leaving that firm and moving to Sonnenschein Law Office and that he was taking his files with him. During this period G.W. continued to try to reach the Member and schedule meetings to no avail.

56. On August 26, 2009, G.W. received a letter from legal counsel to the police officers involved in his matter. The letter explained that the second officer had not been served with the Statement of Claim that had been issued approximately 2 years prior.

57. In September of 2009, the Member contacted G.W. and confirmed his intention to continue working on his file. The Member assured G.W. that he would tend to service of the second officer. Between September and December of 2009 G.W. continued to seek updates from the Member as to the progress on his file. The Member did not respond until January of 2010 when he indicated that G.W. needed to sign documents, specifically a new retainer agreement for his new firm. G.W. met with the Member and the Member assured G.W. that the

matter would be handled. In February of 2010, after a further period with no contact from the Member, G.W. sought legal assistance elsewhere.

58. The Member admits that he failed to handle G.W.'s legal matter in a conscientious diligent and efficient manner or respond to him in a timely fashion. G.W.'s matter was significantly delayed and he was put to the added inconvenience of having to seek an extension of time for service of his Statement of Claim more than two years after it was issued. The Member's inaction on the G.W. file and failure to respond left G.W. with the impression that he was virtually without legal representation.

59. G.W. complained to the Law Society on September 14, 2010. The complaint was forwarded to the Member on September 21, 2010. A written response was requested within 10 days. On October 2, 2010 an email arrived from the Member indicating that the G.W. file was still at the Rask & Company office and that he would have to arrange to review it there. The Member agreed to respond to the complaint by October 18, 2010. No response was received. On October 26, 2010 the Member was again asked to respond to the complaint within 10 days. The deadline was not met. On November 3, 2010 the Member was sent an email setting a final deadline of 5:00 p.m. on November 5, 2010.

60. On November 5, 2010 the Member sent an email to the Law Society purporting to attach his response and indicating that a hard copy would be faxed to the Law Society. An attachment was present on the email in a format that could not be opened. On November 15, 2010 the Member was sent another email indicating that his attachment could not be opened and that a hard copy of the response was never received via fax. He was asked to resend the document to the Law Society. No response has ever been received from the Member on the G.W. matter.

PRIOR RECORD

61. The Member has an extensive discipline history summarized as follows (case digests attached at **Tab 3**):

- a. February 5, 1999 – Guilty of conduct unbecoming for failure to file trust forms; fail to respond to correspondence received from the Law Society (reprimand and costs);
 - i. June 10, 2004 - Guilty of conduct unbecoming for breach of trust conditions; fail to respond to another lawyer; fail to respond to correspondence received from the Law Society (X2); fail to serve his client in a conscientious diligent and efficient manner (X2) (6 month suspension, practice conditions and costs);
 - ii. November 30, 2006 – Guilty of conduct unbecoming for failure to provide acceptable level of service to clients; failure to respond to correspondence received from the Law Society (30 day suspension, practice conditions and costs); and
 - iii. December 7, 2007 - Guilty of conduct unbecoming for failure to respond to correspondence received from the Law Society (X2) (30 day suspension, continuation of practice conditions and costs).