



The Law Society of Saskatchewan

CHERYL LYNN KLOPPENBURG

June 15, 2011

Law Society of Saskatchewan v. Kloppenburg, 2011 SKLSS 3

**IN THE MATTER OF THE *LEGAL PROFESSIONAL ACT, 1990*
AND IN THE MATTER OF **CHERYL LYNN KLOPPENBURG,**
A LAWYER OF SASKATOON, SASKATCHEWAN**

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

1. The Hearing Committee of the Law Society of Saskatchewan (hereinafter called the "Hearing Committee") comprised of Thomas Campbell as Chair and Darcia Schirr, Q.C. and Lome Mysko, convened by conference call on Wednesday, June 15, 2011, with Mr. Timothy F. Huber representing the Investigations Committee of the Law Society and Alex Pringle, Q.C. representing Cheryl Lynn Kloppenburg. Ms. Kloppenburg was also present. All parties took part by conference call.
2. Neither Mr. Huber nor Mr. Pringle had any objections to the formation of the Hearing Committee, the convening of the hearing by conference call or any other matter relating to the complaint or proceedings leading up to the hearing.
3. Mr. Huber and Mr. Pringle filed an agreed statement of facts and admissions, which can be viewed at www.lawsociety.sk.ca/discipline/publichearings.htm#kloppenburg.
4. The Amended Formal Complaint alleges that the member is guilty of conduct unbecoming a lawyer in that:
 - i) She failed to serve her client, W.A., in a conscientious, diligent and efficient manner by failing to keep him reasonably informed as to the status relating to G.A. guardianship application;
 - ii) She failed to serve the Estate of G.A., in a conscientious, diligent and efficient manner by failing to complete the tasks necessary to ensure that the administration of the Estate of G.A. was completed within a reasonable time;

- iii) She failed to reply to fellow members of the Law Society of Saskatchewan and/or members of the Law Society of Upper Canada within a reasonable time during her involvement with the administration of the Estate of G.A.

5. After hearing Mr. Huber and Mr. Pringle and receiving the Agreed Statement of Facts and Admissions, wherein Ms. Kloppenburg plead guilty to the charges, the Hearing Committee determined that Cheryl Lynn Kloppenburg is guilty of conduct unbecoming a lawyer as outlined in the above mentioned Amended Formal Complaint.

6. Mr. Huber and Mr. Pringle requested and agreed to the Hearing Committee determining the sentence and both spoke to the sentence. The Hearing Committee then adjourned to consider its sentence. The hearing was re-convened and the decision was delivered orally with written reasons to follow. These are those written reasons.

7. With respect to the first complaint, on August 26, 2002, Ms. Kloppenburg received instructions to begin a guardianship application in relation to G. A. On October 16, 2002, the client sent Ms. Kloppenburg a fax requesting an update on the guardianship application but did not receive a reply. The client phoned Ms. Kloppenburg's office twice between September, 2002 and December, 2002 and left messages, but did not receive any responses. The client sent Ms. Kloppenburg a fax on December 19, 2002 but was advised by her office on the same date that she was away until January 2, 2003. On January 2, 2003, G. A. passed away without a guardianship application ever having been prepared by Ms. Kloppenburg, who acknowledges that she failed to keep her client reasonably informed as to the status of the guardianship application.

8. With respect to the second complaint, after the death of G. A., Ms. Kloppenburg was retained by the executor and at that time, the sole beneficiary of the Estate. Her client was not the same person that retained her with respect to the guardianship application. Ms. Kloppenburg's primary function was to assist her client with the administration of the Estate. However, due to a legal dispute and litigation, no progress could be made in completing the administration of the Estate until the litigation was concluded by way of Minutes of Settlement in March, 2006. The Minutes of Settlement provided for the bulk of the Estate to be split between Ms. Kloppenburg's client and another individual. Ms. Kloppenburg was advised of the settlement and instructed to proceed with the administration of the Estate.

9. The Application for Letters Probate was refused due to an outstanding Order requiring that the deceased's Will be proved in solemn form. On May 12, 2006, Ms. Kloppenburg received materials from another lawyer involved in the litigation, to be used in an application to rescind the Order requiring that the Will be proved in solemn form. Ms. Kloppenburg states that she misread the letter and incorrectly presumed that the materials provided were simply a copy of documents already filed with the Court. She claims to have missed the crucial element of the letter which required her to submit the documents herself. Between May 12, 2006 and October 24, 2006, Ms. Kloppenburg did not attend to the file in a diligent manner. She did not monitor the file in a way that would have revealed her initial error in failing to properly read the letter sent to her in May, 2006. Various letters and e-mails from interested parties went unanswered. No work was done on the file between the end of May, 2006 and approximately mid-October,

2006. On October 24, 2006, Ms. Kloppenburg filed the materials with the Court that had been provided to her on May 12, 2006 and Letters Probate were ultimately obtained on November 14, 2006. Ms. Kloppenburg acknowledges that between May and October, 2006, she did not handle the administration of the Estate in a conscientious, diligent and efficient manner which resulted in unnecessary delay.

10. That with respect to the third complaint, Ms. Kloppenburg acknowledges that, in addition to the period from May through October, 2006 when she was unresponsive to fellow members of the Law Society of Saskatchewan, similar issues arose outside of this period of time. From October, 2006 until the fall of 2009, there were examples of Ms. Kloppenburg failing to provide a prompt response to communications from lawyers in Saskatchewan and Ontario. On 6 occasions, replies took over 6 weeks, the two worst delays being periods of approximately 3 1/2 months and 2 3/4 months.

11. The Law Society of Saskatchewan was created by an Act of the Legislature on September 1, 1907. The purpose of the Law Society of Saskatchewan is to govern the legal profession in the public interest. The Mission Statement reflects this duty as follows:

To govern the legal profession by upholding high standards of competency and integrity; ensuring the independence of the profession; and advancing the administration of justice, the profession and the rule of law, all in the public interest.

12. The public must have confidence in the ability of the Law Society to regulate and supervise the conduct of its members. It is only by the maintenance of such confidence in the integrity of the profession that the self-regulating role of the Law Society can be justified and maintained.

13. The purposes of Law Society discipline proceedings are not punish offenders and exact retribution, but rather to protect the public, maintain high professional standards, and preserve public confidence in the legal profession. In cases in which professional misconduct is either admitted or proven, the penalties should be determined by reference to these purposes.

14. The *Code of Conduct Chapter XVI* provides as follows:

Competence and Quality of Service

RULE

The lawyer should serve the client in a conscientious, diligent and efficient manner so as to provide a quality of service at least equal to that which lawyers generally would expect in a competent lawyer in a like situation.

Commentary - Guiding Principles

7. Numerous examples could be given of conduct that does not meet the quality of service required by the second branch of the Rule. The list that follows is illustrative, but not by any means exhaustive:

- (a) failure to keep the client reasonably informed;
- (b) failure to answer reasonable requests from the client for information;
- (c) unexplained failure to respond to the client's telephone calls; ...
- (t) failure to answer within a reasonable time a communication that requires a reply; ...

8. The requirement of conscientious, diligent and efficient service means that the lawyer must make every effort to provide prompt service to the client. If the lawyer can reasonably foresee undue delay in providing advice or services, the client should be so informed.

Responsibility to Lawyers Individually

RULE

The lawyer's conduct towards other lawyers should be characterized by courtesy and good faith.

Commentary

Guiding Principles

6. The lawyer should answer with reasonable promptness all professional letters and communications from other lawyers that require an answer and should be punctual in fulfilling all commitments

15. The failure to respond is a serious problem that needs to be addressed by members of the profession. In the decision of the Hearing Committee for the Law Society of Saskatchewan involving Charlen Rose Werry, decided August 23, 2010, it was stated at paragraph 8:

Failure to respond to a client puts the reputation of the member and the entire profession in a bad light.... Failure to respond to another lawyer's request affects the reputation of both members, increases costs to clients, creates unnecessary delay and overall negatively impacts the reputations of all lawyers in Saskatchewan.

16. Similarly, a lawyer's failure to provide prompt service to a client puts the reputation of that lawyer and the entire profession in a bad light, increases costs to clients and creates unnecessary delay.

17. Any penalty imposed needs to be a general deterrence to the Profession and a specific deterrence for the member.

18. Ms. Kloppenburg has no prior findings of conduct unbecoming. She has, however, been the subject of four referrals to the Professional Standards Committee of the Law Society in 2003, 2004 and 2006. Two of the complaints were referred to discipline, one resulted in an Informal Conduct Review and the other resulted in no further action.

19. The Hearing Committee acknowledges that Ms. Kloppenburg has admitted her culpability and accepted responsibility for her actions. The Hearing Committee has also been advised by Ms. Kloppenburg's counsel as to her extensive involvement in volunteer organizations, the fact that she was the only caregiver for an ailing mother and that no further complaints against her have been advanced. Ms. Kloppenburg has since removed herself from most of her volunteer work and has a much better handle on her practice. Also, the Hearing Committee was advised that no prejudice was suffered by the Estate as a result of Ms. Kloppenburg's delay.

20. Personal circumstances are more relevant when the offending behaviour is not such that the appropriate penalty is suspension or disbarment. Nonetheless, the public interest and the need to protect the public directs the discretion to be exercised by the Law Society in its self-governance role, particularly in the area of discipline. Members are cautioned that where a member's workload or personal circumstances result in undue delay, it is appropriate to refer existing clients to other lawyers in the firm or outside the firm and restrict or eliminate taking on new clients until the circumstances giving rise to the undue delay have been resolved.

21. Mr. Huber and Mr. Pringle made a close to joint submission on the sentence, similar to what was done in the matter of Charlen Rose Werry. They proposed that the Hearing Committee order a reprimand and order costs of \$3,275.00. Mr. Huber suggested a \$1,200.00 fine as was levied in the matter of Charlen Rose Werry and Mr. Pringle suggested a \$1,000.00 fine.

22. In *Rault v. The Law Society of Saskatchewan (2009) SKCA 81*, the Saskatchewan Court of Appeal, after an extensive review of the case law, concluded that a Discipline Committee has a duty to consider a joint submission and if the Discipline Committee is of the view the joint submission penalty is not an appropriate disposition in the case before it, then it is required to give good or cogent reasons as to why it is inappropriate; not within the range of sentences; unfit or unreasonable; and/or contrary to the public interest. Failure to do so leads to the inevitable conclusion that the decision of the Discipline Committee is unreasonable.

23. In this case, the Hearing Committee does not find the close to joint submission to be inappropriate; not within the range of sentences; unfit or unreasonable; and/or contrary to the public interest, although recognizing it had to decide on the amount of the fine.

24. As a result of the above, the Hearing Committee orders that:

- i. Cheryl Lynn Kloppenburg shall receive a reprimand;
- ii. Cheryl Lynn Kloppenburg shall, on or before June 30, 2011, pay a fine to the Law Society of Saskatchewan in the amount of \$1,000.00;
- iii. Cheryl Lynn Kloppenburg shall, on or before June 30, 2011, pay costs of these proceedings to the Law Society of Saskatchewan in the amount of \$3,275.00.

AGREED STATEMENT OF FACT AND ADMISIONS

In relation to the Amended Formal Complaint dated April 11, 2011, alleging that:

1. She failed to serve her client, W.A., in a conscientious, diligent and efficient manner by failing to keep him reasonably informed as to the status relating to G.A. guardianship application;
2. She failed to serve her client, W.A., in a conscientious, diligent and efficient manner by failing to respond to W.A.'s communications within a reasonable time;
3. She failed to serve the Estate of G.A., in a conscientious, diligent and efficient manner by failing to complete the tasks necessary to ensure that the administration of the Estate of G.A. was completed within a reasonable time;
4. She failed to reply to fellow members of the Law Society of Saskatchewan and/or members of the Law Society of Upper Canada within a reasonable time during her involvement with the administration of the Estate of G.A.;
5. She deliberately or negligently made misrepresentations to T.H and S.W. members of The Law Society of Saskatchewan, regarding the status of the Application for Letters Probate on the G.A. Estate;
6. She rendered an account to her client, the Estate of G.W., for time or expenditures associated with her response to a complaint to the Law Society of Saskatchewan.

Jurisdiction

1. Cheryl Lynn Kloppenburg (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").
2. The Member is currently the subject of an Amended Formal Complaint dated April 11, 2011, attached at Tab 1, comprised of the six allegations noted above. Service of the Amended Formal Complaint is admitted by the Member.
3. The Member intends to enter guilty pleas in relation to allegations 1, 3 and 4. Allegations 2, 5 and 6 are withdrawn.

Particulars of Conduct

Allegation #1

4. On August 22, 2002, W.A. and the Member met to discuss a personal guardianship application in relation to W.A.'s brother G.A. Also present at this meeting was M.G, G.A.'s great-nephew. After this meeting, W.A. expressed his desire to be appointed as the personal

guardian for his brother together with M.G. Instructions to the Member to begin the application process were provided on August 26, 2002.

5. After the initial meeting where the personal guardianship application was discussed, W.A. did the following:

a. Provided a list of sibling names and addresses to M.G., who faxed the list to the Member on August 26, 2002, so that the Member could contact the family members and obtain their consent to W.A. being appointed;

b. On October 16, 2002, sent the Member a fax requesting an update on the personal guardianship. He did not receive a reply;

c. He telephoned the Member's office twice between September 2002 and December 2002 and left messages. He did not receive any responses;

d. He sent the Member a fax on December 19, 2002 advising that if she could not handle the work he would make other arrangements. He received a message back on the same date from the office advising that the Member was away until January 2, 2003.

6. On January 2, 2003, G.A., the subject of the guardianship application, passed away.

7. No personal guardianship application was ever prepared by the Member who made little progress, if any, towards fulfilling the instructions of W.A.

8. The Member acknowledges that she failed to keep W.A. reasonably informed as to the status of the guardianship application.

Allegation #3

9. After the death of G.A., the Member continued to be involved as counsel for M.G., who was the Executor and sole beneficiary of the Estate of G.A. The Member's primary function was to assist M.G. with the administration of the estate.

10. Shortly after the death of G.A. in 2003, W.A. commenced a legal action in relation to the estate. The litigation remained active until early 2006. Between 2003 and 2006 the Member remained involved with the administration of the estate, which was effectively in abeyance pending the resolution of the litigation. However, due to the legal dispute, no progress could be made in completing the administration of the estate. W.A. and M.G. each engaged other lawyers to represent them on the litigation matter.

11. In March of 2006, the litigation is concluded by way of Minutes of Settlement providing for the bulk of the estate to be split evenly between W.A. and M.G. The Member was advised of the settlement and is instructed to proceed with the administration of the estate. An application for Letters Probate had been filed in 2003 but could not be concluded as a result of the litigation.

12. Before probate could continue a caveat that had been filed in 2003 needed to be removed. The application to remove the caveat was filed with the court by counsel for W.A. (Mr. H.) on or about March 23, 2006. Copies of the application were provided to the Member on April 7, 2006.

13. When Letters Probate had not been received on April 24, 2006, the Member inquired of court staff. She was informed that the application for removal of the caveat would have gone to Regina. The Application for Letters Probate was then placed before Mr. Justice Goldenberg. The application was refused by Mr. Justice Goldenberg due to an outstanding order of Mr. Justice Klebuc requiring the G.A. Will to be proven in solemn form.

14. On May 12, 2006, after having advised counsel for the parties of the fiat of Mr. Justice Goldenberg, the Member received materials from counsel for M.G. (Mr. W.) to be used in an application to rescind the Order of Mr. Justice Klebuc requiring that the Will be proven in solemn form. The letter from Mr. W. to the Member dated May 11, 2006, reads as follows:

With regard to the above noted matter, please find attached documents prepared by Mr. H. [counsel for W.A.] and executed by myself in relation to approving the Will in solemn form. According to Mr. H. you are going to submit these documents for Mr. Justice Klebuc's perusal in the hopes of expediting your application for Letters Probate without the need for approving the Will in solemn form. If I can be of any further assistance, please feel free to call me.

15. The Member states that she misread the letter and incorrectly presumed that the materials provided were simply a copy of documents already filed with the court. The Member claims to have missed the crucial element of the letter which required her to submit the documents herself.

16. The Member did not file the materials provided by Mr. W. on May 12, 2006.

17. Between May 12, 2006 and October 24, 2006, the Member did not attend to the file in a diligent manner. Nothing was done to check the status of the application to rescind the Order of Mr. Justice Klebuc. The Member did not monitor the file in a way that would have revealed her initial error in failing to properly read the May 11, 2006 letter from Mr. W. On June 15, 2006, Mr. H. sent a written request to the Member for an update in relation to the application for Letter's Probate. On June 16, 2006, Mr. W. provided a similar written request to the Member. On July 24, 2006 M.G. also emailed the Member directly for an update. The Member did not respond to any of these inquiries, nor did she review her file or contact the court house to determine why the matter was not progressing. The Member's records reflect no work being done on the file between the end of May 2006 and approximately mid October 2006. Any activity on the matter was directed towards the Member from other counsel.

18. On October 16, 2006, the Member spoke with Mr. W. who expressed his continued concern in relation to the progress on the file. Mr. W. followed up the conversation with a letter.

19. On October 24, 2006 the Member filed the materials with the Court that had been provided to her on May 12, 2006 for the removal of the requirement that the Will be proved in solemn form. A fiat was issued on October 26, 2006.

20. After the Order requiring proof of the Will in solemn form was rescinded, Letters Probate were obtained on November 14, 2006.

21. The Member acknowledges that between May and October 2006, she did not handle the administration of the Estate of G.A. in a conscientious, diligent and efficient manner which resulted in unnecessary delay.

Allegation #4

22. The Member acknowledges that, in addition to the period from May through October 2006, where she was unresponsive to fellow members of the Law Society of Saskatchewan, similar issues arose outside of this period of time. From October 2006 until the fall of 2009 when the Clearance Certificate for the Estate of G.A. was received from the Canada Revenue Agency there were examples of the Member failing to provide a prompt response to communications from Mr. H. and Mr. T. (W.A.'s Ontario legal counsel). Specifically, on two occasions replies to Mr. H. took over 6 weeks. On four occasions replies to Mr. T. took over 6 weeks, with the worst delays being from November 15, 2007 to February 8, 2008 and February 5, 2009 to May 19, 2009. During each of those periods regular follow-up requests for response were also being sent to the Member by Mr. T.

Prior Record

23. The Member has no prior findings of conduct unbecoming. The Member has, however, been the subject of four referrals to the Professional Standards Committee of the Law Society in 2003, 2004 and 2006. Two of the complaints were referred to discipline, one resulting in an Informal Conduct Review and the other resulting in no further action.