The Law Society of Saskatchewan

PETER MICHAEL MAHON
HEARING DATE: August 25, 2014
DECISION DATE: October 1, 2014
***Law Society of Saskatchewan v. Mahon*, 2014 SKLSS 12**

IN THE MATTER OF *THE LEGAL PROFESSION ACT, 1990*
AND IN THE MATTER OF PETER MICHAEL MAHON,
A LAWYER OF MELFORT, SASKATCHEWAN

DECISION OF THE HEARING COMMITTEE FOR THE LAW SOCIETY OF SASKATCHEWAN

Members of the Hearing Committee:	Heather J. Laing, Q.C. (Chair) Lorne Mysko Jay Watson
Counsel:	Timothy Huber for the Conduct Investigation Committee Michael Mahon, on his own behalf

INTRODUCTION

1. On August 25, 2014, before the Hearing Committee of the Law Society of Saskatchewan, Peter Michel Mahon (the "Member") entered a guilty plea to an allegation of conduct unbecoming a lawyer particularized as follows:

2.

> i. He did, after accepting trust conditions imposed by lawyer C. in a letter dated December 10, 2010 in connection with certain settlement funds, fail to comply with those trust conditions by releasing said funds without first ensuring the trust conditions had been met.

2. The hearing of August 25, 2014 was convened by conference call. The Member and Counsel for the Conduct Investigation Committee acknowledged and agreed to the constitution of the Hearing Committee. Thereafter, the Hearing Committee accepted the guilty plea and heard the representations by the parties regarding penalty. At the conclusion of the hearing, the Hearing Committee advised of its intention to reserve its decision and render written reasons for the penalty to be imposed.

BACKGROUND

3 An Agreed Statement of Facts was filed in relation to this matter, a copy of which is attached as an appendix to this decision. The primary facts may be summarized as follows:

4. The Member represented M.M. as his solicitor in a family law matter. At a pre-trial settlement conference, the parties agreed that D.M., spouse of M.M. and the complainant in this matter, would receive title to the family home and M.M. would be paid $30,000.00 for property equalization. It was further agreed that M.M. would assume full responsibility and remove D.M.'s name from the credit card and line of credit held with ScotiaBank. Title to the family home was vested in D.M. in October 2010, following a court application. The property equalization funds were sent to the Member on or about December 13, 2010 by M.C., counsel for D.M., on the following trust condition:

> "I am enclosing my trust cheque in the sum of $30,000.00 on the trust condition that the funds are not releasable to your client until you provide our office with confirmation that [D.M.'s] name has been removed from the Joint Line of Credit loan and the Joint VISA account as per his obligations under the Consent Judgment."

5. The Member accepted the trust condition.

6. By letters dated December 14, 2010 and December 29, 2010, the member wrote to M.M. and advised him that settlement funds had been received, but before they could be released to him he needed to confirm that D.M.'s name had been released from the credit card and line of credit.

7. On or about January 15, 2011, M.M. attended on the Member and advised he would be attending at the bank and would obtain the removal of D.M.'s name from the credit card and line of credit. On January 18, 2011, the Member sent M.C. a letter advising that M.M. had confirmed that D.M.'s name had been removed from the joint line of credit and credit card as agreed pursuant to the consent judgment, anticipating that M.M. would attend to this.

8. M.M. did not attend back at the member's office to confirm that D.M.'s name had been removed from the debts. A letter was sent by the member to M.M. on January 27, 2011 reminding him that the funds could not be released to him unless confirmation was provided that D.M.'s name had been removed.

9. On or about February 28, 2011, M.M. attended at the Member's office and verbally advised the Member that the matters had been dealt with. On the basis of M.M.'s verbal representation only, the Member released the funds to M.M. The Member did not, at any time, receive written confirmation from his client that the trust condition had been satisfied.

10. Subsequently, the Member was advised by M.C. that D.M.'s name had only been removed from the credit card, but not the line of credit. In releasing the funds to M.M. without

having actual confirmation that the conditions had been met, the member was in breach of the trust condition imposed by M.C.

11. D.M. continues to be liable for the line of credit debt. M.M. has not reduced the balance beyond making minimum payments and the current balance is greater than $27,000.00. No claim has been made against D.M. to date, nor has D.M. taken any legal action against M.M. or the Member in relation to this issue.

12. The Member has one prior discipline matter. In 2001, the Member was found guilty of conduct unbecoming after improperly amending a document and forging a witness signature on mortgage documents. The Member had self-reported that conduct and ultimately received a reprimand with costs.

SUBMISSIONS ON SENTENCE

13. Counsel for the Conduct Investigation Committee and the Member made a joint submission on penalty. The joint submission was the Member should receive a formal reprimand and a fine in the amount of $1,500.00. In addition, it was proposed that the Member should pay costs in the amount of $2,000.00.

14. In support of the joint submission, Counsel for the Conduct Investigation Committee referred the Hearing Committee to the following five cases: *Law Society of Saskatchewan v. McLean*, Discipline Decision #09-03 (12 June 2009), *McLean v. Law Society of Saskatchewan* 2012 SKCA 7; *Law Society of Saskatchewan v. Stinson*, 2008 SKLSS 7; *Law Society of Saskatchewan v. Brown*, Discipline Decision #08-06 (4 December 2008); *Law Society of Saskatchewan v. Galey*, 2014 SKLSS 7. These decisions are reflective of the range of penalty for cases involving breach of trust condition or breach of undertaking, both of which are fundamentally the same in that they must be strictly complied with.

15. At the low end of the range is a penalty of a reprimand and costs (Brown). At the high end of the range is a suspension of one to two months (McLean and Stinson), wherein there were circumstances of either multiple instances of breach or a prior record for breaching undertakings.

16. Counsel for the Conduct Investigation Committee submitted that the recent decision of *Law Society of Saskatchewan v. Galey* was the most similar to the case at hand, wherein the member was found guilty of one count of breach of undertaking in the context of a real estate transaction. The conduct in *Galey* was characterized as "careless" as opposed to an intentional or reckless breach. Ms. Galey had no prior discipline record. The penalty imposed in *Galey* was a formal reprimand, a fine of $1500.00 and costs of $1,815.00.

17. In the present case, counsel for the Conduct Investigation Committee submitted that the Member's actions ought to fall at the lower end of the range. He described this as an isolated incident whereby the Member relied on the verbal assertions of his client in circumstances where he should not have done so. Another factor referenced by counsel for the Conduct Investigation Committee is that the Member's actions were not an intentional breach of the trust conditions, but rather fell within the ambit of "carelessness or recklessness". Counsel further noted the full cooperation of the Member with the Law Society in admitting to the conduct, signing an agreed

statement of facts and entering a guilty plea, all of which facilitated an early resolution of the matter.

18. The Member has a prior discipline record. Counsel for the Conduct Investigation Committee considered this record to be unrelated to the present matter and therefore of no consequence to the penalty being proposed.

19. The issue of whether the complainant, D.M., has suffered financial harm as a result of the Member's conduct was the subject of questions by the Hearing Committee and requires comment. The Member and counsel for the Conduct Investigation Committee acknowledge that D.M. remains liable for the line of credit debt as her name remains on the loan from the perspective of the bank. It was further acknowledged that in the event M.M. defaults on the loan, ScotiaBank could pursue D.M. for the outstanding debt. To date, that has not occurred. Counsel for the Conduct Investigation Committee submitted that at this point, it is unknown whether a financial loss might occur to the complainant in the future, as that may well depend on actions of third parties beyond the control of those involved in these proceedings.

20. The Hearing Committee has decided that on the facts of this matter, the absence of financial harm to the complainant at this point in time and the prospect of potential financial harm in the future must be neutral factors. It is not within the jurisdiction of this Hearing Committee to attempt to predict what may happen in the future with the line of credit, nor can we usurp or pre-empt any civil remedies the complainant may have available to her through the courts.

21. Notwithstanding the presence of the mitigating factors described in paragraphs 17 and 18 above, counsel for the Conduct Investigation Committee submitted that this remains a serious matter. Undertakings and trust conditions are essential tools of commerce and when these are breached by lawyers, the public's confidence in the integrity of the profession is undermined. Counsel submits that in the circumstances, penalty objectives of specific deterrence to the Member and general deterrence to the profession as a whole are met.

22. The Member addressed the Hearing Committee and expressed his regret and remorse for his actions. He has cooperated with the Law Society and has made attempts to have his client, M.M., rectify the situation with the line of credit. The Member advised the Hearing Committee that he has implemented some changes in his practice, and understands that taking the word of his client without some independent verification of the truth of the statements is not an acceptable practice when one is operating under trust conditions that require strict compliance prior to release of funds.

DECISION

23. It is well established that joint submissions concerning penalties should not be disregarded by Hearing Committees of the 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 of Saskatchewan*, 2009 SKCA 81).

24. The Hearing Committee has considered the range of penalty imposed in cases that are factually similar to the one involving this Member. As well, the mitigating factors present in this case and the absence of key aggravating factors, (such as a prior related history and subjective intention or foresight pertaining to the breach of trust condition), have been taken into account. In light of all the elements, the Hearing Committee finds that the submission pertaining to penalty is within the range of outcomes in other similar cases and is reasonable. The joint submission is accepted.

ORDER

25. It is ordered that the Member be subject to a formal reprimand and that he pay a fine in the amount of $1,500.00. In addition, the Member shall pay the costs of this proceeding in the amount of $2,000.00. The costs and fine shall be payable on or before January 15, 2015.

Dated this 1st day of October, 2014, at the City of Saskatoon, in the Province of Saskatchewan.

"Heather Laing,Q.C."
(Chair)

"Lorne Mysko"

"Jay Watson"

AGREED STATEMENT OF FACTS AND ADMISSIONS

In relation to the Formal Complaint dated March 6, 2014, alleging the following:

THAT PETER MICHAEL MAHON, of Melfort, in the Province of Saskatchewan:

> **1. Did, after accepting trust conditions imposed by Lawyer C. in a letter dated December 10, 2010 in connection with certain settlement funds, fail to comply with those trust conditions by releasing said funds without first ensuring the trust conditions had been met.**

JURISDICTION

26. Peter Michael Mahon (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.

27. The Member is currently the subject of a Formal Complaint initiated by the Law Society dated March 6, 2014. Attached at Tab 2 is a copy of the Formal Complaint along with proof of

service. The Member intends to plead guilty to the single allegation of conduct unbecoming set out in the Formal Complaint.

BACKGROUND OF COMPLAINT

28. The Law Society began an investigation into the Member on or about June 14, 2011, after receipt of a complaint from D.M. D.M.'s complaint against the Member centered around the Member's involvement with D.M.'s family law matter. The Member was counsel for D.M.'s spouse, M.M. The parties had agreed to resolve their family matters on certain terms. One of the terms was that M.M. would remove D.M.'s name from a Scotiabank Joint Line of Credit. D.M.'s legal counsel imposed trust conditions upon the Member in relation to the release of a $30,000.00 equalization payment from D.M. The Member released the $30,000.00 payment to M.M. without complying with the trust conditions that had been imposed upon him.

PARTICULARS OF CONDUCT

29. The Member was acting as solicitor for M.M. in a family law matter while M.C., was representing the complainant D.M.

30. On January 7th, 2010 a Pre Trial Conference was held to deal with the various family law issues, including custody, access, child support and division of family property.

31. An agreement was entered into at the Pre Trial Conference, which for the purposes of dealing with the complaint, provided in the area of property divisions as follows:

a. That the family home would be transferred to D.M. alone;

b. That M.M. would be paid the sum of $30,000.00 for property equalization, which sum was to be paid within a 90 day time period from date of signing of the settlement agreement;

c. That M.M. would assume full responsibility for and remove D.M.'s name from the credit card and line of credit held with Scotiabank. (Credit card not specified in agreement but agreed to as well);

d. That the parties would sign such documentation as might be necessary.

32. The settlement was reduced to a Consent Judgment on or about April 12th, 2010 (the relevant portion of which is attached at Tab 3).

33. D.M. did not tender the settlement proceeds within the period as set out in the settlement agreement, and that when it was subsequently tendered, a few months after the deadline, the M.M. refused to sign the title transfer documents.

34. D.M. brought an application to force the issue and title was transferred to her name in October, 2010.

35. The settlement funds were not sent to the Member until they arrived by letter dated December 13th, 2010 from M.C [Tab 4], which indicated that the funds were sent on the following trust condition:

> I am enclosing my trust cheque in the sum of $30,000.00 on the trust condition that the funds are not releaseable to your client until you provide our office with confirmation that [D.M.'s] name has been removed from the Joint Line of Credit loan and the Joint Visa account as per his obligations under the Consent Judgment.

36. Despite the fact that the issue of removing the name could arguably have been dealt with the by way of the implied indemnity found in similar family law agreements, and the clause that the parties would sign such further documents necessary to give effect to the agreement, the Member accepted the trust conditions imposed by M.C.

37. On December 21st, the Member prepared an account and paid the same from trust, and at the same time prepared a cheque payable to the M.M., but did not release the funds to him at that time.

38. By letters dated December 14th, 2010 and December 29th, 2010 the Member wrote the respondent and advised him that settlement funds had been received and that before they could be released to him that he needed to confirm that D.M.’s name had been released from the credit card and line of credit.

39. That on January 15th, 2011, M.M. attended on the Member and advised he would be attending at the bank and would obtain the removal of D.M.’s name from the credit card and line of credit. On January 18, 2011, the Member sent M.C. a letter [Tab 5] advising that M.M. had confirmed that D.M.’s name had been removed from the joint line of credit and visa as agreed pursuant to the Consent Judgment, anticipating that M.M. would attend to this.

40. M.M. did not attend back at the Member’s office to confirm that the issue had been dealt with and accordingly a letter dated January 27th, 2011 [Tab 6], was sent by the Member to M.M. which again stated that the funds could not be released unless confirmation was provided that D.M.’s name had been removed from the debt.

41. M.M. attended at the Member’s office on or about Feb. 28th, 2011 and advised the Member that the matters had been dealt with. Upon the Member’s receipt of M.M.’s verbal representation, the Member release the settlement proceeds to M.M. being the trust cheque dated December 21, 2010, which cheque cleared Member’s trust account on March 2nd, 2011.

42. The Member did not receive any written confirmation that the conditions had actually been met. He acted only on the verbal representations of M.M.

43. Subsequently the Member was advised by M.C., that D.M.’s name had only been removed from the credit card and not the line of credit.

44. M.M.'s verbal representations to the Member had been incorrect. The Member released the funds without obtaining confirmation that M.M. had in fact done addressed the condition. In releasing the funds to M.M. without having actual confirmation that the conditions had been met, the Member was in breach of the trust condition imposed by M.C.

45. As a result, D.M. continued to be liable for the Scotiabank line of credit.

46. No claim has been made on D.M. pertaining to the line of credit, however D.M. still remains jointly liable for the debt. M.M. has not reduced the balance beyond making payments near the minimum and the current balance continues to be more than $27,000.00. To date, D.M. has not taken legal action against M.M. or the Member in relation to this issue.

PRIOR HISTORY

47. The Member has one prior discipline matter. In 2001 the Member was found guilty of conduct unbecoming after improperly amending a document and forging a witness signature on mortgage documents. The Member had self-reported that conduct and ultimately received a reprimand with costs. A case digest in relation to the 2001 matter is attached at Tab 7.