



The Law Society of Saskatchewan

Douglas Allan Ottenbreit

September 20, 2012

Law Society of Saskatchewan v. Ottenbreit, 2012 SKLSS 4

**IN THE MATTER OF THE LEGAL PROFESSION ACT, 1990
AND IN THE MATTER OF DOUGLAS ALLAN OTTENBRIET,
A LAWYER OF MELVILLE, SASKATCHEWAN**

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

Hearing Committee

Miguel Martinez (Chair)

Dr. Sanjeev Anand, Q.C.

Laura Lacoursiere

Counsel from the Law Society of Saskatchewan Conduct Investigation Committee

Timothy F. Huber

Counsel for Douglas Allan Ottenbreit

Merrilee Rasmussen, Q.C.

1. This matter was heard on September 20, 2012. The hearing proceeded by way of telephone conference call with the consent of the Hearing Committee, the Member and his counsel, and counsel for the Law Society of Saskatchewan (LSS).
2. The Amended Formal Complaint alleged that Douglas Allan Ottenbreit (the Member) is guilty of conduct unbecoming a lawyer in that he:
 - i. Did sign as witness on Transfer Authorizations executed by Mr. and Mrs. K when was not in the presence of Mr. and Mrs. K when they signed the Transfer Authorizations.
 - ii. Did provide misleading information to the Law Society of Saskatchewan Practice Advisor, Jeffrey Scott in relation to the B. file as follows:
 - a. When asked by Mr. Scott to provide a list of all of his open and closed files, he provided a list that did not include the B. file; and

- b. When asked by Mr. Scott if had ever dealt with a lawyer from Weyburn (the lawyer opposite him on the B. file), he denied that he had ever dealt with a lawyer from Weyburn.
3. The only evidence before the Hearing Committee was an Agreed Statement of Facts and Admissions (a copy of which is attached to this decision as Appendix 'A').
4. The complaint against the member arose as a result of a mandatory review of the Member's practice as a relatively new solo practitioner. Fellow Member, Mr. Jeffrey Scott, conducted the practice review at the request of the LSS.
5. Mr. Scott's practice review included two visits to the Member's office on March 25 and September 20, 2011. The purpose of the first visit was for Mr. Scott to assess the Member's office systems and processes. The purpose of the second visit was for Mr. Scott to have a look at a random sampling of the Member's open and closed files. For this reason, before his second visit to the Member's office, Mr. Scott asked the Member for a list of all of his open and closed files. It was during Mr. Scott's review of the Member's open and closed files that the following incidents came to light.

COMPLAINT #1

Signing as witness when document not signed in the Member's presence

6. As part of his review, Mr. Scott examined a file where the Member represented Mr. and Mrs. K in the sale of real property they owned in Saskatchewan. Mr. and Mrs. K resided in Alberta.
7. In the file, Mr. Scott found a copy of a letter from the Member to Mr. and Mrs. K, which stated that he had enclosed two Transfer Authorizations for each of them to sign and return to his office. In his letter, the Member directed Mr. and Mrs. K to "leave the witness space blank."
8. When Mr. Scott asked why the Member told his clients to leave the witness space blank, the Member told Mr. Scott that he did not know why and offered the explanation that it may have been because spouses cannot be witnesses for each other.
9. When Mr. Scott examined copies of the signed Transfer of Authorizations, he noted that the Member's signature appeared in the space identified as "Witness Signature" and that both Transfer Authorizations were marked so as to indicate that a Saskatchewan Lawyer, the Member, had witnessed Mr. or Mrs. K sign the respective documents.
10. A few days after leaving the Member's office, Mr. Scott received a faxed letter from the Member addressed to LSS Complaints Counsel, Donna Sigmeth, in which the Member admitted that he had signed the Transfer Authorizations as witness despite not being present when Mr. and Mrs. K signed them.

COMPLAINT #2

Misleading LSS Practice Advisor

11. Before Mr. Scott's second trip to the Member's office, he learned that a Weyburn lawyer, Lawyer W, had expressed some concern about how the Member had handled a recent real estate transaction in which both lawyers were involved (the B. file). For this reason, Mr. Scott intended to include the B. file in his review of the Member's closed files.

12. The list of open and closed files that the Member gave to Mr. Scott did not include the B. file.

13. When Mr. Scott asked the Member whether the list contained all of his open and closed files. The Member said that it did.

14. Mr. Scott then asked the Member whether he ever had a real estate file with a Weyburn lawyer. The Member denied that he ever had such a file.

SENTENCING SUBMISSIONS

15. On the basis of the facts summarized above, the Member pled guilty to both counts against him and the Hearing Committee accepted his plea.

16. The sentence recommended by both counsel included a two week suspension for count #1, a \$250 fine for count #2, certain practice conditions, and that the Member pay agreed costs of \$1,000.

17. Although they joined in the sentencing submission, not surprisingly, each counsel emphasized different sentencing factors before the Hearing Committee.

18. Counsel for the LSS reminded us of the importance of safeguarding the integrity of the land titles system in Saskatchewan, the inherently misleading nature of the Member's actions, and the need to denounce the Member's conduct.

19. The Member's counsel emphasized that the Member was remorseful, he did not gain a personal advantage from his conduct, and that no member of the public was harmed by his conduct.

20. In respect to count #1, counsel for the LSS referred us to five cases:

Law Society of British Columbia v. McLean [1993] LSDD No. 187

Law Society of Alberta v. Hirji [1994] LSDD No. 221

Law Society of British Columbia v. Cranston [2006] LSDD No. 143

Law Society of Saskatchewan v. Karolee Zawislak (1996)

Law Society of Saskatchewan v. Larry Zawislak (1996)

Law Society of British Columbia v. VanTwest [1994] LSDD No. 129

21. The lawyers involved in each of those cases either signed documents as witnesses when the person who signed them was not present or otherwise 'doctored' a document, generally for their client's convenience. The sentences in the cases range from reprimands and fines to two week suspensions

22. In respect to count #2, LSS counsel referred us to two cases in which lawyers provided misleading responses to a Law Society: *Law Society of Saskatchewan v. Armitage* [2009] and *Law Society of Manitoba v. Dragon* [1995] LSDD No. 81. In each case the lawyers were fined.

23. As discipline hearing committees always are reminded, our primary purpose is not to punish offenders or to exact retribution but to protect the public interest. The sentence we impose should maintain the public's confidence in the integrity of the legal profession and its ability to govern its own members.

24. In this case, we are satisfied that the paramount sentencing considerations are general deterrence and denunciation of the Member's conduct.

25. The Member has no previous discipline record. He admitted his misconduct, cooperated with LSS from investigation through to the hearing, pled guilty, and entered into an Agreed Statement of Facts.

26. We are satisfied that the sentence recommended to us by both counsel is within the appropriate range.

SENTENCE

27. For the reasons described above we impose the following sentence:

- i. the Member shall be suspended for a period of two weeks in relation to count #1,
- ii. the Member shall pay a fine of \$250.00 in relation to count #2,
- iii. the Member shall pay costs in the amount of \$1,000.00 to the Law Society of Saskatchewan,
- iv. the fine and costs shall be paid by September 20, 2013 or such further period as may be allowed by the Chair of the Discipline Committee,
- v. the Member's suspension shall commence on a date agreed upon by counsel and approved by the Chair of Discipline, but no later than October 31, 2012,
- vi. after the conclusion of the Member's suspension, the Member shall be permitted to practice law subject to the following conditions:
- vii. the Member shall, at the Member's own expense, work under the supervision of and cooperate with a Practice Advisor on terms approved by the Chair of the Discipline Committee,
- viii. after the expiry of one year from the date of this Order, the Member may apply, with appropriate supporting materials, to the Law Society of Saskatchewan for consideration by the Chair of the Discipline Committee for a determination as to whether or not some or all of the conditions or terms of supervision should continue, be amended, or be removed.

Dated at the City of Lloydminster, in the Province of Saskatchewan this 5th day of November, 2012.

"Miguel Martinez"
Chair of the Hearing Committee

AGREED STATEMENT OF FACTS AND ADMISSIONS

In relation to the Formal Complaint dated March 1, 2012 (as amended) alleging that he:

- i. Did sign as witness on Transfer Authorizations executed by Mr. and Mrs. K when he was not in the presence of Mr. and Mrs. K when they signed the Transfer Authorizations.**
- ii. Did provide misleading information to the Law Society of Saskatchewan Practice Advisor, Jeffrey Scott in relation to the B. file as follows:**
 - a. When asked by Mr. Scott to provide a list of all of his open and closed files, he provided a list that did not include the B. file; and/or**
 - b. When asked by Mr. Scott if he had ever dealt with a lawyer from Weyburn (the lawyer opposite him on the B. file), he denied that he had ever dealt with a lawyer from Weyburn.**

JURISDICTION

28. Douglas Allan Ottenbreit (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.

29. The Member is currently the subject of a Formal Complaint initiated by the Law Society dated March 1, 2012. The Formal Complaint is comprised of the two allegations noted above. The original Formal Complaint was served upon the Member on March 1, 2012. Attached at **Tab 2** is a copy of the original Formal Complaint.

BACKGROUND OF COMPLAINT

30. The details of this complaint came to light as a result of a Practice Review conducted by fellow Member, Mr. Jeffrey Scott, at the request of the Law Society of Saskatchewan on March 25, 2011 and the subsequent follow up visit of September 20, 2011. The two issues particularized below flowed from the ensuing review.

PARTICULARS OF CONDUCT

Count 1:

31. On March 25, 2011, Mr. Jeffrey Scott attended the Ottenbreit Law Office which is located in the basement of the residence of the Member's family home. The Member's wife does the bookkeeping and prepares the accounting records for the Ottenbreit Law Office. The Member is also a new sole practitioner and new sole practitioners are automatically referred for practice review assistance.

32. In the course of the practice review, Mr. Scott asked the member to pull some files for examination. Mr. Scott noted that in some cases the file materials were grouped together; with attendance notes and correspondence being comingled with other file materials.

33. Mr. Scott provided a list of recommendations for improving the Member's processes. The Member suffers from Cerebral Palsy which makes it difficult at times for him to carry out routine tasks such typing, handwriting, handling exhibits and checking his calendar when in court to set down matters. Mr. Scott stressed the importance of the need for the Member to speak up and ask for more time in completing these tasks.

34. Mr. Scott filed his report with the Law Society on April 4, 2011.

35. On September 20, 2011, Mr. Scott returned to the Ottenbreit Law Office as part of follow up to the practice review of March. 25, 2011. Prior to this meeting, on September 2, 2011, Mr. Scott informed the Member via email that he wanted to review in detail some of his files, and specifically asked for the Member to have all of his open and closed files in his office on the date set for the visit. Mr. Scott also informed the Member that during the visit he would be reviewing the file lists pertaining to all of the Member's open and closed files. The email from Mr. Scott to the Member stated the following:

Hi Doug:

Tuesday, Sept. 20 works for me. I will get to your office at around 10:00am. Please set aside 3 hours for our meeting.

As a part of the follow up practice review, I will select and review some of your closed and open files. Please have all of your closed files in your office on the 20th. I am assuming that all of your open files are located in your office. I am assuming that you have a listing of all of your open and closed files. I will review the list when I am at your office. Thanks.

Have a good long weekend.

Jeff

36. Among the files that Mr. Scott reviewed was the "E.H." – DO-0045 file. This was a real estate file. Mr. Scott soon discovered that there was more than one real estate transaction filed within the one folder.

37. Mr. Scott came across materials for one real estate transaction involving E.H. as purchaser and Mr. and Mrs. K. as vendors. The Member represented both parties to this transaction.

38. Mr. Scott noted an undated letter at **Tab 3** from the Member to Mr. and Mrs. K, who resided out of province, that stated the following:

“Please find enclosed the following document;

i. Two copies of the transfer authorization you are each obligated to sign one transfer document.

Once you each have signed the transfer document please forward them back to my office with photocopies of your individual IDs specifically photo ID.

Please leave the witness space blank.”

39. Mr. Scott wanted to review the completed transfer but could not locate it. Nor could the Member. The Member indicated that he did not have access to the ISC database and that the Fisher Law Office completes his real estate registrations.

40. When Mr. Scott asked why he told Mr. and Mrs. K to **“leave the witness space blank”**, the Member said that he did not know why and later offered as a possible explanation that spouses cannot witness for one another.

41. The Member called the Fisher Law Office and requested a copy of the transfer. When Mr. Scott left the Member’s office, he had not yet seen a copy of the Transfer. He requested that the Member keep him informed and forward a copy of the Transfer to him.

42. The package verification notice was sent to the Fisher Law Office from ISC on July 9, 2011, showing the application to transfer the property from the vendors (Mr. and Mrs. K.) to the purchaser (E.H.). The title was registered with the Saskatchewan Land Titles Registry on July 9, 2011.

43. The date on the Transfer Authorization documents appears as June 26, 2011. In the space identified as “Witness Signature”, the Member’s signature appears. Under “Lawyer Name”, the Member’s signature appears and, the box is ticked beside the words, “Check if Witness is Lawyer in and for the Province of Saskatchewan.”

44. The form also contains a section that states, “Affidavit of Execution (if witness is not a Saskatchewan lawyer). This portion of the form is blank.

45. When Mr. Scott returned to his Regina office, there was a message from the Member requesting Mr. Scott to call him on September 21, 2011 at 10:00 am.

46. Mr. Scott called the Member the following day as requested. The Member disclosed that he had prepared a letter that he was going to fax but did not elaborate on its contents.

47. When Mr. Scott received the fax, it contained an undated letter to the Law Society, addressed to Complaints Counsel, Donna Sigmeth, as well as copies of the Transfer

Authorization from ISC with the Member's signature and photocopies of the vendors' Alberta driver's licenses. A copy of these documents is provided at **Tab 4**.

48. In the letter, the Member admitted that he had signed the transfer authorization stating that he had witnessed the signatures when in fact he had not and offered an apology for not being completely forthcoming with Mr. Scott. The Member's letter to the Law Society is attached at **Tab 5**.

Count 2:

49. As was indicated above at paragraph 8, prior to Mr. Scott's visit, the Member was to have gathered all of his open and closed files and have lists available for all open and closed files for review.

50. In advance of his meeting with the Member on September 20, 2011, it had come to the attention of Mr. Scott that Weyburn lawyer, Lawyer W, dealt with a real estate file, the "B" file, involving the Member from May and June of 2011. Lawyer W had expressed concerns with regard to the Member's handling of that real estate transaction. This was one of the files that Mr. Scott expected to review during his September 20, 2011 visit.

51. During the visit, the Member provided Mr. Scott with file lists. The listing provided to Mr. Scott did not include the "B" file.

52. Mr. Scott again asked the Member whether the provided list of clients contained all of his open and closed files and the Member assured him it did. Mr. Scott then directly asked the Member if he had ever had a real estate file with a lawyer from Weyburn. The Member replied that he had not despite the fact that the B. file, involving Lawyer W from Weyburn had been active only three months prior and that he had received correspondence directly from Lawyer W as recently as June 2011. Neither of the Member's responses to Mr. Scott were accurate.

PRIOR HISTORY

53. The Member has no other discipline history.