THE COURT OF APPEAL FOR SASKATCHEWAN

Citation: 2014 SKCA 109 Date: 2014-10-28

Between: Docket: CACV2461

Russell Milton Peet

Appellant

- and -

The Law Society of Saskatchewan

Respondent

Coram:
Richards C.J.S., Whitmore and Ryan-Froslie JJ.A.

Counsel:
Ian McKay, Q.C. for the appellant
Timothy Huber for the respondent

Appeal:

From:	Law Society Hearing and Discipline Committees
Heard:	September 25, 2014
Disposition:	Appeal dismissed
Written Reasons:	October 28, 2014
By:	The Honourable Chief Justice Richards
In Concurrence:	The Honourable Mr. Justice Whitmore
	The Honourable Madam Justice Ryan-Froslie

Richards C.J.S.

I. INTRODUCTION

[1] The appellant, Russell Peet, was found guilty of conduct unbecoming a lawyer by a Hearing Committee of the respondent Law Society of Saskatchewan. The Committee found that Mr. Peet had failed to serve two different clients in a conscientious, diligent and efficient manner and, as well, that he had failed to reply promptly to communications from the Law Society. The Discipline Committee of the Law Society then ordered that Mr. Peet be suspended for 30 days and that he pay costs in the amount of $16,216.80.

[2] Mr. Peet appeals from these decisions. He argues that the proceedings against him should have been stayed. On this front, he contends a long delay in bringing the complaints before the Hearing Committee meant his right to be tried within a reasonable time, as guaranteed by s. 11(b) of the *Charter of Rights and Freedoms*, had been offended. He also submits the delay amounted to an abuse of process which warranted the grant of a stay on administrative law grounds.

[3] As to the substance of the allegations against him, Mr. Peet contends the Hearing Committee erred in convicting him with respect to each of the three complaints in issue. He submits the evidence did not warrant the Committee's conclusions that he had failed to act diligently and efficiently or, in the case of the third complaint, that he had failed to reply promptly to Law Society communications. Finally, Mr. Peet argues that the sentence imposed on him by the Discipline Committee was unreasonable and should be substantially reduced.

[4] I conclude that, for the reasons set out below, Mr. Peet's appeal must be dismissed. The delay in dealing with the complaints against him was long. However, discipline proceedings of the sort in question here do not engage s. 11(b) of the *Charter*. Nor did the delay in advancing the complaints to a hearing result in a breach of administrative law principles. As for the substance of the complaints in question, the Hearing Committee's conclusions were reasonable and therefore must be sustained by this Court. The sentence imposed on Mr. Peet was also reasonable. The only change necessary to the decision of the Discipline Committee is the addition of a provision allowing Mr. Peet to have the Law Society's costs assessed by the Local Registrar.

II. BACKGROUND

[5] Mr. Peet was charged with three counts of conduct unbecoming a lawyer. The particulars of each of these complaints can be readily summarized.

A. The Complaint of D.D. and the Estate of O.N.

[6] The first complaint concerned the services Mr. Peet provided, or did not provide, to his clients D.D. and the Estate of O.N. The relevant particulars of the Amended Formal Complaint read as follows:

> 2. failed to serve his clients, D.D. and the Estate of O.N., in a conscientious, diligent and efficient manner as follows:
>
> a. Failed to provide prompt service to D.D. and the Estate of O.N.;
> b. Failed to respond to D.D.'s communications within a reasonable time.

[7] D.D. lives in Alberta. Her father passed away in Preeceville, Saskatchewan on February 27, 2007. D.D. retained Mr. Peet and met with him

several times in early March of 2007 about the estate. She worked with Mr. Peet toward the goal of filing for probate, selling her father's house and distributing the estate to herself and a brother who lived in Ontario.

[8] All went well at the outset. By May of 2007, virtually all of the assets in the estate had been liquidated and letters probate had been issued. On May 16, 2007, Mr. Peet wrote to D.D. and recommended that steps be taken to wind up the estate. In this regard, he asked for a complete list of the expenses D.D. had paid from estate funds.

[9] On July 9, 2007, D.D. faxed to Mr. Peet various receipts regarding ambulance and cleaning costs, landfill fees and other expenses. She believed Mr. Peet had all the information he needed to complete work on the estate.

[10] D.D. did not hear from Mr. Peet for almost a year. She then left messages with him on June 23, June 30 and July 9, 2008. D.D. finally spoke with Mr. Peet on July 22, 2008 and he advised that he was working on the necessary accounting. He offered no explanation for the delay. D.D. spoke to Mr. Peet again on July 29, 2008 and he left her a message the next day saying that documents were going to be mailed to her.

[11] D.D. called Mr. Peet on August 11, 2008 and left messages indicating she had not yet received the documents. On August 15, 2008, she received the first draft of the estate accounting along with questions from Mr. Peet about a car and about house contents.

[12] D.D. spoke with Mr. Peet on August 29, 2008 regarding some errors in the accounting schedules. She faxed several pages of material to Mr. Peet on

September 1, 2008. Revisions were required for such matters as interest received, utility payments, and the value of a car and household contents. She spoke with Mr. Peet on September 16, 2008 and he said he would send revised accounting information.

[13] D.D. left messages for Mr. Peet on September 30, October 2, 8, 15 and 17, 2008 because she had not received the revisions. Her messages were not returned.

[14] D.D. filed a complaint with the Law Society on October 22, 2008.

[15] Mr. Peet finally forwarded revised accounting documents on November 20, 2008. He requested a cheque from D.D. for Revenue Canada. Mr. Peet sent interim distribution cheques on December 5, 2008. D.D. asked him for particular documents on three occasions, before receiving them in June of 2009.

[16] D.D. says Mr. Peet did not complete the estate work and that she herself completed it in March of 2010.

B. The Complaint of M.B. and the Estate of E.B.

[17] The second complaint against Mr. Peet concerns the work he did in relation to the Estate of E.B. On this front, the Amended Formal Complaint states as follows:

> 3. failed to serve his clients, M.B. and the Estate of E.B., in a conscientious, diligent and efficient manner as follows:
>
> a. Failed to provide prompt service to M.B. and the Estate of E.B.

[18] E.B., of Hudson Bay and Indian Head, Saskatchewan, passed away on March 28, 2006. Six of his siblings were named in an undated holograph “will” discovered in July of 2007.

[19] Four of the siblings, including M.B. and A.B., met with Mr. Peet on July 19, 2007 and instructed him to determine if the document in question was a valid will and to proceed with having it probated as soon as possible. M.B. said they were told by Mr. Peet that this would be done within a couple of months.

[20] A.B. is elderly. She lives in Ontario. She testified that, after the meeting, she phoned Mr. Peet several times. Two weeks after the meeting, Mr. Peet advised her that it was “too soon to know”. She waited three more weeks and then phoned again. Mr. Peet said that he had not heard anything. After a third call, A.B. said she concluded Mr. Peet had not actually done anything. Family members were calling her for updates but, in her opinion, there had been no progress on the file. As a result, in June of 2008, she asked her sister, M.B. (who lives in Regina), to take over dealing with Mr. Peet.

[21] M.B. testified that Mr. Peet did not return any of her calls but that he did leave a message for her saying the matter had fallen “through the cracks”. Eventually, M.B. was able to speak with Mr. Peet and he then said that he had thought the family was looking for another will. M.B. advised him that, according to what he had been instructed to do at the July 2007 meeting, he was to request probate of the undated holograph will. She said he had been told that they would deal with any other will should it materialize.

[22] It appears that Mr. Peet eventually did make an application to the Court of Queen's Bench regarding the validity of the will. Foley J., in a fiat dated July 24, 2008, held that it was not a valid testamentary instrument and could not be probated.

[23] In October of 2008, Mr. Peet forwarded several documents relating to the estate to family members. M.B. says there was an error in them relating to a brother who had passed away following E.B.'s death and that she contacted Mr. Peet and asked him to make the necessary corrections. She testified that this work was not done.

[24] On November 19, 2008, M.B. filed a complaint with the Law Society.

[25] In February of 2009, Mr. Peet was dismissed from the file. Another lawyer completed the administration of the estate.

C. The Complaint about Law Society Communications

[26] The third complaint against Mr. Peet deals with what were alleged to be various failures to respond promptly to communications from the Law Society during the course of its investigations of the two complaints referred to above. The Amended Formal Complaint framed the charge in this way:

> 1. failed to reply promptly to communications from the Law Society of Saskatchewan with respect to complaints by D.D. and M.B.;

[27] Melanie Hodges Neufeld was complaints counsel for the Law Society at the time the complaints in issue here were being investigated. Her affidavit sets out the correspondence between her and Mr. Peet from November 5, 2008 to June 1, 2009. This correspondence reveals that, in asking for information

from Mr. Peet, Ms. Hodges Neufeld invariably requested a response within ten days. Mr. Peet never met those deadlines. However, with the benefit of reminders and follow-up demands from Ms. Hodges Neufeld, he always responded in the end. It is also apparent that Mr. Peet was ill during the last part of 2008 and spent Christmas of that year in hospital.

III. THE DECISION OF THE HEARING COMMITTEE

[28] Mr. Peet made a preliminary application to the Hearing Committee and asked it to stay the proceedings against him because of delay. He argued that s. 11(b) of the *Charter*, which guarantees trial within a reasonable time to any person charged with an offence, was applicable. The Committee rejected this line of argument, citing *Pearlman v Manitoba Law Society Judicial Committee*, [1991] 2 SCR 869 [*Pearlman*] and holding that s. 11(b) would only engage if Mr. Peet faced "true penal consequences".

[29] The Committee then went on to consider whether the delay in dealing with Mr. Peet's charges might have some administrative law consequence. In this regard, the Committee referred to *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44, [2000] 2 SCR 307 [*Blencoe*] and dismissed Mr. Peet's application for a stay because it was not persuaded either that he had been prejudiced in his defence by the delay or that the delay was attributable solely or in the main to the Law Society.

[30] In its decision concerning the substantive allegations against Mr. Peet, the Committee began by reviewing the evidence. It then turned to each of the counts in turn. With respect to the complaint of D.D. and the Estate of O.N.,

the Committee focused on the period of July 2007 to July 2008, where the file had effectively sat dormant. The Committee convicted Mr. Peet of conduct unbecoming a lawyer and summarized its reasoning as follows:

> [57] In summary, though [Mr. Peet] appeared to be quite diligent with respect to the O.N. estate at the outset, there was an unexplained period over one year whereby there was poor, if any, communication with the client and no appreciable work advanced on finalizing the estate. Again with the lack of any explanation from [Mr. Peet] at the hearing on this failure to communicate and the delay, and in applying Chapter II of the Code, the Committee comes to the conclusion that [Mr. Peet] is guilty of conduct unbecoming with respect to the allegations in Count 2.

[31] Dealing with the complaint of M.B. and the Estate of E.B., the Committee again focused on failures on Mr. Peet's part to advance the file and to return phone calls. In convicting Mr. Peet, the Committee said this:

> [58] …After several phone calls from A.B. and M.B., the will was sent for probate in July 2008 - almost one year after the initial meeting with [Mr. Peet]. …
>
> [59] The failure to return phone calls, the failure to complete the application for probate and failure to complete the additional documents in a timely manner are indicators of service that is below that required for competent lawyers in this situation and was without explanation from [Mr. Peet] at the hearing. …
>
> …
>
> [61] In light of the above, the Committee finds [Mr. Peet] guilty of conduct unbecoming with respect to the allegations in Count 3.

[32] The Hearing Committee also convicted Mr. Peet of failing to respond to communications from the Law Society in a timely manner. In doing so, it rejected the idea that failing to meet the ten-day deadline specified in the Law Society's letters for a response was, in and of itself, determinative of whether Mr. Peet had responded within a reasonable time. But, nonetheless, it found that – on the facts before it – Mr. Peet had not replied promptly to communications from the Society.

IV. THE DECISION OF THE DISCIPLINE COMMITTEE

[33] The Discipline Committee began its decision by briefly reviewing the facts and Mr. Peet's disciplinary record. That record, which I will describe more fully below, included convictions in 1999, 2002, 2004 and 2008.

[34] The Committee acknowledged that, but for Mr. Peet's record, the conduct in issue would be "at the lower end of the spectrum for disciplinary matters". It saw no aggravating factors other than that record.

[35] The Committee characterized the delay in dealing with the charges as a mitigating factor in sentencing even though it was not able to determine whether the delay was the fault of Mr. Peet or of the Law Society. The Committee also considered Mr. Peet's then recent history of being free of disciplinary problems and his efforts to remedy his practice shortcomings as being relevant to its sentencing decision. Finally, the Committee offered the view that progressively more severe discipline was appropriate for lawyers who are repeatedly found to have committed disciplinary offences.

[36] In the end, the Committee sentenced Mr. Peet to suspension for a period of 30 days and ordered that he pay the costs of the proceedings in the amount of $16,216.80.

V. ANALYSIS

A. Standard of Review

[37] The terms of s. 56 of *The Legal Profession Act, 1990*, SS 1990–91, c L-10.1 allow Mr. Peet to appeal the decisions of both the Hearing Committee and the Discipline Committee to this Court.

[38] Mr. Peet and the Law Society both submit that the governing standard of review in this case is the reasonableness standard. In this regard, they refer to this Court's decisions in *Merchant v Law Society of Saskatchewan*, 2009 SKCA 33 at para 24, [2009] 5 WWR 478 [*Merchant 2009*] and *McLean v Law Society of Saskatchewan*, 2012 SKCA 7 at paras 11–12, 347 DLR (4th) 414 [*McLean*].

[39] I am prepared to deal with the appeal on this basis. That said, I would not want to be taken to have foreclosed an argument, in some future case, to the effect that the correctness standard of review applies in relation to constitutional and administrative law questions of the sort advanced in connection with the delay issue in this case. I need not wrestle with that point here because, as will become evident, Mr. Peet's arguments with respect to delay fail even if the standard of review is correctness.

B. The Delay Arguments

[40] There is no doubt that there was a very considerable delay in getting the complaints made against Mr. Peet to the Hearing Committee. The complaint of D.D. and the Estate of O.N. was filed in October of 2008. The complaint of M.B. and the Estate of E.B. was filed in November of that same year. A formal complaint was issued and the Hearing Committee was struck on July 9, 2010.

However, the Hearing Committee proceedings did not begin until July of 2012. Mr. Peet contends that, in light of this chronology, the proceedings against him should have been stayed.

[41] There are two aspects to Mr. Peet's submissions about delay. The first is constitutional: he says his right to a trial within a reasonable time, as guaranteed by s. 11(b) of the *Charter*, was infringed. The second argument is based on administrative law principles: he contends the delay amounted to an abuse of process. I will deal with each of these contentions in turn.

1. The *Charter*

[42] Section 11(b) of the *Charter* provides that "[a]ny person charged with an offence has the right…to be tried within a reasonable time". Mr. Peet submits that s. 11(b) applies to the proceedings in issue here and that the Hearing Committee erred in finding otherwise.

[43] In advancing this argument, Mr. Peet relies on *R v Wigglesworth*, [1987] 2 SCR 541 [*Wigglesworth*]. In that case, Wilson J. mapped the reach of s. 11 of the *Charter*. She concluded, in general terms, that s. 11 should be restricted to "the most serious offences known to our law, *i.e.*, criminal and penal matters" (p. 558). In her view, a question could fall into this category either because of its very nature or because of the fact that a conviction could lead to a "true penal consequence" (p. 559).

[44] In elaborating on these points, Wilson J. explained that a distinction had to be drawn between matters of a public nature (such as criminal and quasi-criminal proceedings) aimed at promoting public order or welfare

within a public sphere and "private, domestic or disciplinary matters which are regulatory, protective or corrective and which are primarily intended to maintain discipline, professional integrity and professional standards or to regulate conduct within a limited private sphere of activity" (p. 560). Only the former sorts of proceedings were seen as being ones which, by their nature, come within the ambit of s. 11.

[45] That said, and as noted above, Wilson J. also clarified that an individual involved in a private or disciplinary-type matter is nonetheless entitled to the protection of s. 11 if the proceeding involves true penal consequences. In explaining this proposition, she wrote as follows at pp. 560–561:

> This is not to say that if a person is charged with a private, domestic or disciplinary matter which is primarily intended to maintain discipline, integrity or to regulate conduct within a limited private sphere of activity, he or she can never possess the rights guaranteed under s. 11. Some of these matters may well fall within s. 11, not because they are the classic kind of matters intended to fall within the section, but because they involve the imposition of true penal consequences. In my opinion, a true penal consequence which would attract the application of s. 11 is imprisonment or a fine which by its magnitude would appear to be imposed for the purpose of redressing the wrong done to society at large rather than to the maintenance of internal discipline within the limited sphere of activity….

[46] In light of these comments, Mr. Peet points to the fact that *The Legal Profession Act, 1990* does not limit the size of potential fines which may be imposed on a lawyer found guilty of misconduct. This is presumably a reference to s. 53(3)(a)(iv) of the *Act* which says that, if a complaint against a lawyer is well founded, the Law Society may impose "a fine in any amount". I take Mr. Peet to be contending that the open-ended nature of this authority engages s. 11(b) of the *Charter*.

[47] In my view, this argument fails for at least two reasons. First, it does not take account of the fact that the fine imposed on Mr. Peet – $16,216.80 – represents no more than an attempt by the Law Society to recoup the cost of conducting the disciplinary proceedings in this case. As a practical matter, this award obviously increases the weight of the sanction imposed on Mr. Peet for his misconduct but, nonetheless, its gravamen is not concerned with redressing wrongs done to the larger community. This is evidenced by the fact that the component elements of the $16,216.80 have been itemized in detail and referenced to things like the cost of meeting rooms, the cost of reporting services and counsel's time. Moreover, the $16,216.80 itself will be retained by the Law Society for its own internal purposes. Accordingly, it is quite clear that the "fine" here is in fact an order to pay "costs" as *per* s. 53(3)(a)(v) of *The Legal Profession Act, 1990*. That provision allows the Law Society to require a lawyer found guilty of misconduct to pay "the costs of the inquiry…the costs of the society for counsel…and…all other costs related to the inquiry."

[48] As a consequence, in my view, there is no reasonable way to characterize the fine complained of by Mr. Peet as being aimed at "redressing a wrong done to society". It is self-evidently related to the Law Society's mandate concerning the regulation of the conduct of its members. It follows that the fine here is not a "true penal consequence" within the meaning of the governing authorities.

[49] Second, Mr. Peet's argument fails to take account of the substantial body of case law which has grown up since *Wigglesworth*. The most significant decision in this regard is *Pearlman*. It involved a situation where

disciplinary proceedings had been taken by the Law Society of Manitoba against Mr. Pearlman, a lawyer. Significantly, for our purposes here, *The Law Society Act*, RSM 1987, c L100, s 52(4) (as it then read) provided that a lawyer found guilty of professional misconduct could be ordered to pay "all or any part of, the costs and expenses incurred by the society" in relation to the discipline proceedings. Section 52(1)(e) also provided that the lawyer could be ordered "to pay a fine".

[50] Mr. Pearlman argued, among other things, that delays in dealing with his file had resulted in a violation of his rights under s. 11(b) of the *Charter*. Iacobucci J., writing for the Supreme Court, summarily rejected this line of argument. At pp. 879–880, he said s. 11(b) was not applicable:

> First of all, the allegations of undue or unreasonable delay and laches should be dismissed. I would adopt the reasons of the courts below in this regard which found that, once aware of Pearlman's conduct, the Society had acted with reasonable dispatch. Pearlman also advances his rights to a timely trial under s. 11*(b)* of the *Charter*, although counsel for Pearlman conceded in oral argument that the post-charge delay is not at issue in this appeal. I find persuasive and agree with the reasoning of the majority in the Court of Appeal below, where two decisions of this Court were cited (*R. v. Wigglesworth* and *R. v. Kalanj*, *supra*) in support of the conclusion that s. 11*(b)* does not apply to the facts of the instant appeal, which, as already noted, involve disciplinary matters of a regulatory nature designed to maintain professional integrity, discipline, and standards and do not have true penal consequences.

[51] A significant number of other appellate-level decisions have also held that s. 11(b) is not engaged by disciplinary-type proceedings concerned with regulating a profession or occupation in the public interest. See, for example: *Burnham v Metropolitan Toronto Police*, [1987] 2 SCR 572 at 575; *Trumbley and Pugh v Metropolitan Toronto Police*, [1987] 2 SCR 577 at 580; *Trimm v Durham Regional Police*, [1987] 2 SCR 582 at 589; *Knutson v Saskatchewan Registered Nurses Assn.* (1990), 75 DLR (4th) 723 (Sask CA) at 731–732;

Barry v Alberta Securities Commission (1986), 25 DLR (4th) 730 (Alta CA) at 736.

[52] Accordingly, and by way of conclusion, I find that the Hearing Committee acted correctly when it found that s. 11(b) of the *Charter* was not engaged by the proceedings against Mr. Peet.

2. Administrative Law Principles

[53] Mr. Peet also argues, as I understand his submission, that the delay in dealing with the complaints against him should have given rise to administrative law remedies and, in particular, to a stay of proceedings. In this regard, he relies on *Blencoe*.

[54] In *Blencoe*, the Supreme Court identified two ways that delay in administrative proceedings can run afoul of administrative law principles. The first is where the delay impairs an individual's ability to answer the complaint against him or her because memories have faded, witnesses have become unavailable and so forth. In such circumstances, the delay can form the basis of an argument to both impugn the validity of the proceedings and to obtain an appropriate remedy.

[55] The Court also indicated that, in limited circumstances, unacceptable delay can amount to an abuse of process even when it does not directly undermine the fairness of the proceedings themselves. Bastarache J., who wrote for the Court, explained as follows:

> 115 I would be prepared to recognize that unacceptable delay may amount to an abuse of process in certain circumstances even where the fairness of the hearing has not been compromised. Where inordinate delay has directly caused significant psychological harm to a person, or attached a stigma to a person's reputation, such

> that the human rights system would be brought into disrepute, such prejudice may be sufficient to constitute an abuse of process. The doctrine of abuse of process is not limited to acts giving rise to an unfair hearing; there may be cases of abuse of process for other than evidentiary reasons brought about by delay. It must however be emphasized that few lengthy delays will meet this threshold. I caution that in cases where there is no prejudice to hearing fairness, the delay must be clearly unacceptable and have directly caused a significant prejudice to amount to an abuse of process. It must be a delay that would, in the circumstances of the case, bring the human rights system into disrepute. The difficult question before us is in deciding what is an "unacceptable delay" that amounts to an abuse of process.
>
> [emphasis added]

[56] Bastarache J. also observed that there must be more than just a lengthy delay for an abuse of process to arise. The delay must have caused "actual prejudice of such magnitude that the public's sense of decency and fairness is affected" (para. 133). He concluded his analysis by noting that, for there to be an abuse of process, the proceedings must be unfair to the point that they are contrary to the interests of justice (para. 120) or that the public's sense of decency is affected (para. 133).

[57] Mr. Peet does not suggest the delay here affected the fairness of the proceedings before either the Hearing Committee or the Discipline Committee. He makes no reference to fading memories, missing documents or the like. As a result, he must base his position on the notion that the delay caused him such psychological harm or created so much stigma that it was an abuse of process for the Committees to entertain the complaints against him.

[58] This argument cannot succeed. As was pointed out in *Blencoe* itself, abuse of process in this sort of context will be found only in "the clearest of cases" and such findings will be "extremely rare" (para. 120). The only evidence concerning the impact of the delay on Mr. Peet is an affidavit he filed with the Hearing Committee. In that affidavit, he says no more than that "the

extended period of pending discipline and the publication [of the Formal Complaint] as aforesaid have unfairly affected my professional and personal circumstances without any explanation for the delay in this matter being resolved."

[59] In my view, this failure to demonstrate significant prejudice or stigma is a full answer to Mr. Peet's administrative law argument. He has simply not shown the sort of personal impact that would offend the public's sense of decency and fairness.

[60] That said, I also note that there are other considerations which suggest the Hearing Committee acted correctly when it refused to find an abuse of process. First, it is not clear who – Mr. Peet or the Law Society – was responsible for the delay in issue. For its part, the Discipline Committee found that it was "unable to determine whether either party should be considered to be at fault for the delay, or parts thereof, as evidence was not tendered in this regard at the hearing." This is significant because the cases in this area indicate that, if the evidence is unclear as to who caused the delay, or if the delay was caused by the person subject to discipline proceedings, a stay is not appropriate. See: *Allen v Alberta (Law Enforcement Review Board)*, 2013 ABCA 187 at paras 51–53, 362 DLR (4th) 594 [*Allen*]; *Merchant v Law Society of Saskatchewan*, 2014 SKCA 56 at para 97, [2014] 6 WWR 643 [*Merchant 2014*].

[61] Second, it is not apparent from the record whether the effect on Mr. Peet's "professional and personal circumstances" referred to in his affidavit were caused by the complaints themselves or by the delay in dealing

with them. This cuts against a finding of abuse of process because it is only prejudice resulting from delay itself which is properly weighed into the balance when determining if there has been unfairness or prejudice warranting a stay.

[62] I would also point out that Mr. Peet's administrative law arguments do not reconcile with a number of appellate-level decisions which have considered broadly similar situations. Those decisions reveal that an abuse of process is not easily established and that even long delays do not readily outweigh the public interest in seeing complaints of the sort in issue here resolved on their merits. See, for example: *Robertson v British Columbia (Teachers Act Commissioner)*, 2014 BCCA 331; *Merchant 2014*; *Allen*; *Sazant v College of Physicians and Surgeons of Ontario*, 2012 ONCA 727, 113 O.R. (3d) 420.

[63] Therefore, I conclude that the Hearing Committee was correct in holding that the delay in dealing with the complaints against Mr. Peet did not warrant the granting of a stay on administrative law grounds.

C. The Complaint of D.D. and the Estate of O.N.

[64] Mr. Peet submits that, in relation to the complaint of D.D. and the Estate of O.N., he performed all the services required of him and that any delays on his part were the result of not having received necessary information from D.D.

[65] I am not persuaded by this characterization of the evidence. The analysis of the Hearing Committee revolved around a simple chronology: on

May 16, 2007, Mr. Peet asked D.D. for a list of expenses paid from the estate; D.D. sent receipts on July 9, 2007; D.D. did not receive a draft of the first accounting until August 15, 2008. This was a delay of over 13 months. Further, during the period June to October of 2008, D.D. left about ten telephone messages for Mr. Peet which were not returned. That led the Committee to conclude as follows:

> [55] During June to October 2008, D.D. left many telephone messages for [Mr. Peet], about 10, which were not returned. The failure to return phone calls and failure to complete the accounting for the estate work on the file in a timely manner are indicators of service that is below that required and expected for competent lawyers in this situation and are without any explanation from [Mr. Peet] at the hearing.

[66] This, in my view, is an entirely reasonable conclusion. After sending in the receipts, D.D. had no idea that Mr. Peet believed there were gaps in the material she had provided. It was incumbent on Mr. Peet to draw those issues to her attention and, without doubt, incumbent on him to respond to her requests for information about the status of the file.

[67] I see no basis on which it could be concluded that the Hearing Committee's decision on the D.D. and Estate of O.N. complaint was unreasonable.

D. The Complaint of M.B. and the Estate of E.B.

[68] Mr. Peet's argument with respect to the reasonableness of the Hearing Committee's decision on the M.B. and the Estate of E.B. complaint has two features. First, he contends that, in order to determine if he acted conscientiously and diligently in administering E.B.'s estate, the Committee needed to hear from an expert – a lawyer with deep experience in estate work.

He says that, without the benefit of this sort of evidence, the members of the Hearing Committee were in no position to assess whether the file had been moved forward in a reasonable fashion. Second, Mr. Peet submits that Foley J.'s decision in July of 2008 created some complications in the administration of the estate which, of necessity, took time to work through.

[69] I am not persuaded by either of these arguments. As to the first line of attack, I see no reason why, on the facts of this complaint, the evidence of an expert was necessary. The root reality is that effectively nothing was done to advance the file concerning E.B.'s estate from July of 2007 (the initial meeting with M.B. and her siblings) to July of 2008 (when the will was sent for probate). During this time, Mr. Peet left many calls unreturned and acknowledged in a message for M.B. that things had fallen "through the cracks". No expert was required to allow the Hearing Committee to determine that all of this amounted to a failure to provide legal services to M.B. and the Estate of E.B. in a conscientious, diligent and efficient manner.

[70] Mr. Peet's second concern – the one concerning the fiat of Foley J. – is ultimately of no consequence. Regardless of what complications might have flowed from the observations made by Foley J. in that fiat, the fact remains that, in the year leading up to it, Mr. Peet had failed to do anything to advance the administration of E.B.'s estate. Further, and in any event, even after Foley J.'s decision was released, Mr. Peet failed to respond to requests for corrections to the documents he had sent to M.B. and, according to M.B., never did finish work on the file. In his submissions, counsel for the Law Society labelled Foley J.'s fiat a "red herring". I agree. There was an entirely reasonable basis for the Hearing Committee to enter a conviction on the M.B.

and the Estate of E.B. matter, irrespective of what might have flowed from the fiat.

[71] In the end, the Hearing Committee's decision with respect to the M.B. and the Estate of E.B. matter was reasonable. Mr. Peet's submissions on this aspect of the appeal must fail.

E. The Complaint Concerning Replies to the Law Society

[72] Mr. Peet does not accept the decision of the Hearing Committee to the effect that he failed to respond promptly to Law Society communications. He emphasizes that he was hospitalized at the end of 2008 and that he did, in fact, ultimately reply to all of the Society's requests for information. Mr. Peet also notes that it sometimes took the Law Society considerable time to review his correspondence and then ask for supplementary information. On that front, he suggests that, if the Society could take an extended time to reply to him, he should have been able to take a similar amount of time to respond to the Society. What is sauce for the goose should be sauce for the gander in his view.

[73] The history of the communications between Mr. Peet and the Law Society, specifically him and Ms. Hodges Neufeld (the complaints officer), is somewhat involved but it is nonetheless necessary to set it out. Some of the letters and messages involved in this history concerned both complaints. But, in order to make the chronology as easy to follow as possible, I will outline the story of each complaint separately from that of the other.

[74] The history with respect to the D.D. and Estate of O.N. complaint is as follows:

- November 5, 2008 – Ms. Hodges Neufeld sent Mr. Peet a copy of the D.D. and Estate of O.N. complaint and asked for his written comments within ten days.

- November 13, 2008 – It appears that Ms. Hodges Neufeld faxed to Mr. Peet a copy of her November 5 letter with attachments. (Mr. Peet says he did not receive the original.)

- November 26, 2008 – Mr. Peet responded to the November 5 letter.

- November 28, 2008 – Ms. Hodges Neufeld, presumably not yet in receipt of Mr. Peet's response to her November 5 letter, wrote to him and asked for a reply to that letter.

- March 2, 2009 – Ms. Hodges Neufeld wrote to Mr. Peet acknowledging his letter of November 26, 2008, and pointing out he had not addressed the allegation that he had not returned D.D.'s phone calls. She asked for a reply within ten days.

- March 23, 2009 – Ms. Hodges Neufeld wrote to Mr. Peet asking him for a response within ten days to her March 2 letter.

- March 31, 2009 – Mr. Peet wrote to Ms. Hodges Neufeld saying that his file indicated D.D.'s calls had been returned.

- April 7, 2009 – Ms. Hodges Neufeld, presumably not yet in receipt of Mr. Peet's letter of March 31, wrote to him again asking for a response to her March 2 letter within ten days.

- April 27, 2009 – Ms. Hodges Neufeld wrote to Mr. Peet acknowledging receipt of his March 31 letter and asking him, within ten days, for the attendance notes of his telephone conversations with D.D.

- May 7, 2009 – Mr. Peet left a telephone message for Ms. Hodges Neufeld indicating that he was remiss for not responding to her letter of April 27, making references to health issues, things being hectic, weather and farming, and saying that he may have a response to her by the end of the day.

- May 12, 2009 – Ms. Hodges Neufeld wrote to Mr. Peet, acknowledging his telephone message, indicating she had still not received a response to her April 27 correspondence and asking him for a reply by May 15, 2009.

- May 25, 2009 – Ms. Hodges Neufeld wrote again to Mr. Peet, referring to her letters of April 27 and May 12 and to his telephone message of May 7. She asked for a reply by June 2, 2009 and indicated that if she did not receive a response by that date, she would refer matters to the Discipline Committee.

- June 1, 2009 – Mr. Peet wrote to Ms. Hodges Neufeld and provided the requested information.

[75] The history of the communications between Ms. Hodges Neufeld and Mr. Peet in relation to the M.B. and Estate of E.B. complaint is set out below:

- November 28, 2008 – Ms. Hodges Neufeld wrote to Mr. Peet and provided him with a copy of the complaint. She asked for his comments within ten days.

- December 11, 2008 – Ms. Hodges Neufeld wrote to Mr. Peet again, pointing out that she had received no response to her letter. She asked for a response within ten days.

- December 20, 2008 – Ms. Hodges Neufeld received a phone call indicating that Mr. Peet was ill. As a result, she extended the reply date to January 5, 2009 and asked that Mr. Peet let her know if he needed more time.

- January 6, 2009 – having heard nothing from Mr. Peet, Ms. Hodges Neufeld wrote to him and asked for a reply, within ten days, to her letters of November 28 and December 11, 2008.

- January 26, 2009 – Ms. Hodges Neufeld wrote again to Mr. Peet saying that she would refer matters to the Discipline Committee if she did not have a response on or before February 6, 2009 to her letters of November 28 and December 11, 2008 and January 6, 2009. The letter was faxed to Mr. Peet on January 27, 2009.

- January 28, 2009 – Mr. Peet telephoned Ms. Hodges Neufeld. He explained that he had spent Christmas in the hospital and had been

back on his feet for only two weeks. He said he would respond in writing by February 6, 2009.

- February 6, 2009 – Mr. Peet wrote to Ms. Hodges Neufeld and replied to her request for comments on the complaint.

- March 31, 2009 – Ms. Hodges Neufeld forwarded Mr. Peet a copy of a letter from M.B. commenting on his letter of February 6. She asked for Mr. Peet's written comments within ten days.

- March 31, 2009 – Mr. Peet wrote to Ms. Hodges Neufeld and supplied her with copies of recent correspondence between him and M.B.

- April 27, 2009 – Ms. Hodges Neufeld wrote to Mr. Peet reminding him that she had not received his comments on M.B.'s letter. She asked for his response within ten days.

- May 7, 2009 – Mr. Peet left a telephone message for Ms. Hodges Neufeld indicating that he was remiss for not responding to her letter of April 27. He made references to health issues, things being hectic, weather and farming, and said he may have a response to her by the end of the day.

- May 12, 2009 – Ms. Hodges Neufeld wrote to Mr. Peet acknowledging his telephone message, indicating she had still not received a response to her April 27 correspondence and asking for a reply by May 15.

- May 26, 2009 – Ms. Hodges Neufeld wrote again to Mr. Peet and indicated she had received no response to her letters of April 27 or May 12. She advised that if she did not receive a response by June 2, 2009, she would refer matters to the Discipline Committee.

- June 1, 2009 – Mr. Peet wrote to Ms. Hodges Neufeld with his comments on the March 17, 2009 letter from M.B.

[76] It is apparent from these two chronologies that, as he contends, Mr. Peet did, in fact, ultimately respond to each of the Law Society's inquiries. However, this is not a basis for overturning the finding of the Hearing Committee. The Amended Formal Complaint did not allege that he failed to respond to communications from the Society. It alleged that he failed to reply "promptly" to such communications.

[77] In deciding whether this allegation had been made out, the Committee did not take Ms. Hodges Neufeld's ten-day time limit for a response to be, in and out of itself, determinative of the matter. Rather, it looked to the circumstances as a whole and to the version of the *Code of Professional Conduct* in place at the time of the alleged misconduct. Chapter XV spoke specifically to the matters in issue here in that the relevant Rule stated "The lawyer should assist in maintaining the integrity of the profession…" and the second Guiding Principle in relation to the Rule said "The lawyer has a duty to reply promptly to any communication from The Law Society of Saskatchewan". (This Guiding Principle is now Rule 6.01(1) of the current version of the *Code*.) All of the Committee's references in this regard were quite appropriate.

[78] In this case, Mr. Peet generally responded to Ms. Hodges Neufeld only after at least one reminder letter. More significantly, on two occasions, he responded to her only after repeated requests for a response and, only then, after she threatened to draw his failure to respond to her letters to the attention of the Discipline Committee. All of this is a basis on which it could be reasonably determined that the complaint in issue had been made out.

[79] The record does reveal that Mr. Peet had some health issues and that he was hospitalized at the end of 2008. However, when this situation was drawn to Ms. Hodges Neufeld's attention, she seems to have readily agreed to extend the deadline for replies to January 5, 2009 and she also offered to provide further extensions should that be necessary. While Mr. Peet made some reference to his health (among other things) in the May 7, 2009 message he left for Ms. Hodges Neufeld, the record does not in any way establish that his health was the reason for his ongoing failure to reply to her letters.

[80] It is also apparent that sometimes several weeks elapsed after Ms. Hodges Neufeld received a letter from Mr. Peet until she sent him supplementary follow-up correspondence. Nonetheless, the Hearing Committee cannot be said to have acted unreasonably in failing to accept the idea that, if the Law Society sometimes took longer than might have been ideal to take a step in the proceedings, Mr. Peet should have been entitled to do the same. There are two reasons for this. First, there are explanations for at least some of the Law Society's delays. (For example, after Ms. Hodges Neufeld received Mr. Peet's letter of February 6, 2009 on the M.B. and Estate of E.B. complaint, she provided it to M.B. for comments and had to wait for those comments before sending them on to Mr. Peet.) Second, and more

fundamentally, Mr. Peet and the Law Society are not in the same position. The Society is a regulator. Mr. Peet is not. As noted above, at the relevant time, Chapter XV of the *Code of Professional Conduct* imposed a specific obligation on Mr. Peet to respond promptly to communications from the Society.

[81] In the end, I am not prepared to find that the Hearing Committee acted unreasonably in finding Mr. Peet guilty of failing to respond promptly to communications from the Law Society.

F. The Reasonableness of the Sentence

[82] As indicated above, the Discipline Committee ordered that Mr. Peet be suspended for 30 days and that he pay $16,216.80 in costs. Mr. Peet submits the suspension was not reasonable. In his view, the nature of his conduct warranted nothing more than a fine or a reprimand.

[83] In support of this line of argument, Mr. Peet emphasizes that a 30-day suspension is particularly difficult for sole practitioners like him who do not have professional colleagues to manage their files during the course of a suspension. He also suggests, as I understand it, that the Discipline Committee did not take account of the delay issue when fashioning his sentence. Finally, Mr. Peet points to a decision of this Court, *McLean*, and suggests the sentence here cannot be reconciled with it.

[84] I will deal briefly with each of Mr. Peet's points but, as a preliminary matter, it may be worth repeating that it is not open to this Court to simply re-make the decision of the Discipline Committee. The governing standard of

review is reasonableness and thus, given the nature of the arguments advanced by Mr. Peet, the question here is whether the sentence falls within "a range of possible, acceptable outcomes which are defensible in respect of the facts and the law" (see: *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190).

[85] All of this is significant because sentencing of any sort, including sentencing for professional misconduct, is a difficult business. There is no single "right answer". This is so because the sentencing authority must consider, balance and reconcile a number of different considerations. Here, and as noted earlier, the Discipline Committee recognized that, seen in isolation, Mr. Peet's conduct was "at the lower end of the spectrum" of severity for disciplinary matters. Moreover, it also characterized the delay in getting the complaints to a hearing as a mitigating factor and noted that, in the four or so years between the conduct underlying the complaints in issue and its decision, Mr. Peet had not been the subject of further complaints. However, against those considerations, it concluded that it had to balance Mr. Peet's history of misconduct.

[86] The obvious reality confronting the Committee was that Mr. Peet had a reasonably extensive misconduct record. It is reproduced below:

i) December 9, 1999

Count #1	- failure to reply with undertakings; - fail to treat a fellow lawyer with courtesy and good faith in that he failed to provide an accounting of trust monies received and disbursed within a reasonable time;
Count #2	-fail to respond to the Law Society;

Count #3 - fail to treat the Court with courtesy;

Count #4 - fail to properly represent clients in estate matters (unreasonable and unexplained delay);

Count #5 - fail to properly represent clients in estate matters (unreasonable and unexplained delay);

Count #6 - fail to respond to correspondence from the Public Trustees;

Count #7 - fail to properly represent clients in estate matters (unreasonable and unexplained delay);
- failed to return phone calls and correspondence;
- misled executor as to the conduct of the file;

Count #8 - fail to treat a fellow lawyer with courtesy and good faith;
- misleading fellow lawyer regarding progress of file;
- breach of undertaking; and,
- failure to respond to correspondence.

Outcome - 3 month suspension held in abeyance pending successful completion of Professional Standards programming, $3,000.00 fine, and costs of $5,497.37;

ii) December 5, 2002

- fail to comply with undertaking given to provide an accounting in an estate matter.

Outcome - $5,000.00 fine and costs;

iii) December 9, 2004

- fail to reply promptly or at all to the Law Society (7 separate counts);
- breach of undertaking;
- fail to deal in good faith with another lawyer;
- fail to provide competent service;
- fail to deliver legal file to successor counsel in a reasonable time (2 separate counts); and
- dilatory practice (2 separate counts).

Outcome - 6 month suspension, practice supervision condition, and costs of $9,244.05.

iv) October 27, 2008

- dilatory practice (estate matter).

Outcome - $7,500.00 fine, $4,323.00 costs.

[87] These, then, are the ingredients that the Discipline Committee stirred into its decision-making. What of the specific sentence imposed here?

[88] There is, no doubt, a good deal of truth in Mr. Peet's submission that a 30-day suspension is more difficult to manage for a sole practitioner like him than it is for a lawyer who has partners or associates to tend files during his or her absence from the office. That said, the Discipline Committee knew Mr. Peet practiced on his own and it must be taken to have been aware of such a basic proposition and to have factored it into the sentencing decision.

[89] In relation to the question of a suspension, Mr. Peet was particularly concerned about Rule 1607.1 of the *Law Society Rules* which was said to provide that a lawyer suspended for 30 or more days must not be listed on a firm's letterhead or in any marketing activity. He said this would impose a particular burden on him because he is a sole practitioner. However, as counsel for the Law Society points out in his September 26, 2014 letter to the Registrar, Rule 1607.1 has been repealed. As a result, the complications for Mr. Peet which might flow from it are not a relevant part of the equation here.

[90] As well, I am not persuaded that the sentence in this case is unreasonable when compared to the sentence imposed by this Court in *McLean*. I say this, in large part, because a specific act of misconduct, in and of itself, will often not be an accurate guide to the reasonableness of the

sentence imposed for that misconduct. Often, much will depend on context. Ottenbreit J.A. explained this point as follows in *Merchant 2014*:

> [121] In deciding on whether a decision is reasonable, one must look to penalties imposed for similar actions as well as any relevant aggravating or mitigating factors. Although the following should be noted:
>
> > [T]he penalties imposed for similar cases of misconduct differ widely, both within and among jurisdictions. This is largely due to the fact that one of the main purposes of the process is to protect the public. It may be entirely appropriate that a lawyer who has proven to be incorrigible be disbarred for the same conduct for which a different lawyer is reprimanded. [Gavin MacKenzie, *Lawyers & Ethics: Professional Responsibility and Discipline*, looseleaf (Toronto: Carswell, 2011) at 26-43]
>
> Thus, the reasonableness of a sentence will largely depend on the specific circumstances of the offence and the offender.

[91] Seen in this light, this Court's decision in *McLean* can be readily reconciled with the sentence imposed here. In *McLean*, the Court found that the Discipline Committee had (a) refused to consider and weigh the explanations offered by Mr. McLean for his conduct, and (b) mischaracterized Mr. McLean's conduct and turned mitigating factors into aggravating ones. It found that, given the cumulative effect of these errors, the true gravity of Mr. McLean's misconduct and the sentences imposed in other cases, the four-month suspension and indefinite term of supervision imposed by the Discipline Committee was unreasonable. It concluded that sentencing in the order of a 60-day suspension would have been appropriate.

[92] In this case, the Discipline Committee did not refuse to consider Mr. Peet's explanations (such as they were) for his misconduct. Nor, did it in any way misinterpret the facts or mischaracterize the mitigating or aggravating aspects of what Mr. Peet had done. To the contrary, it identified

and must be taken to have considered all of the relevant sentencing considerations in coming to its conclusion that a 30-day suspension was an appropriate sentence. Mr. Peet's argument, therefore, necessarily reduces to a submission that a 30-day suspension is simply so long as to be unreasonable.

[93] I am not able to accept that proposition. As can be seen from the particulars set out above at para. 86, Mr. Peet had an extensive disciplinary history involving a number of convictions for conduct similar to that in issue here: unreasonable and unexplained delays, failures to reply promptly or at all to Law Society communications, and dilatory practice. That history also involved fines and suspensions. The latter included a three-month suspension in 1999 (held in abeyance pending successful completion of programming) and a six-month suspension in 2004. The conduct in issue here, which occurred in 2007 to 2008, must have unfolded during the course of the proceedings which led to Mr. Peet's October 27, 2008 conviction for dilatory practice. In light of all this history, I am not prepared to say that the Disciplinary Committee's decision to impose a 30-day suspension was unreasonable.

[94] Mr. Peet does not suggest that an order with respect to costs is in and of itself unreasonable. However, he does submit that basic fairness requires that he be able to have those costs assessed by the Local Registrar, an independent third party. The Law Society does not oppose this submission and, as a result, the Discipline Committee's decision will be varied, pursuant to the Court's authority under s. 56(5) of *The Legal Profession Act, 1990*, to provide for such an assessment.

VI. CONCLUSION

[95] I conclude that Mr. Peet's appeal should be dismissed with the sole exception that the decision of the Discipline Committee must be varied to provide that Mr. Peet, if he so chooses, may have the Local Registrar assess the $16,216.80 award with respect to costs.

[96] The Law Society is entitled to costs in relation to this appeal.

DATED at the City of Regina, in the Province of Saskatchewan, this 28th day of October, A.D. 2014.

"Richards C.J.S."
Richards C.J.S.

I concur "Whitmore J.A."
Whitmore J.A.

I concur "Ryan-Froslie J.A."
Ryan-Froslie J.A.