



The Law Society of Saskatchewan

DWAYNE JAMES STONECHILD

September 30, 2013

Law Society of Saskatchewan v. Stonechild, 2013 SKLSS 8

**IN THE MATTER OF *THE LEGAL PROFESSION ACT, 1990*
AND IN THE MATTER OF DWAYNE JAMES STONECHILD,
A LAWYER OF SASKATOON, SASKATCHEWAN**

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

1. The Hearing Committee of the Law Society of Saskatchewan (the "Hearing Committee"), comprised of Thomas Healey as Chair, Brenda Hildebrandt, Q.C., and Laura Lacoursiere, convened on Monday, September 30, 2013 to hear this matter. Counsel for the Conduct Investigation Committee was Timothy F. Huber. Dwayne J. Stonechild (the "Member") represented himself. All parties participated by conference call.
2. Neither Mr. Huber nor Mr. Stonechild had any objections to the constitution of the Hearing Committee, the conference call format for the hearing, or any other matter relating to the proceedings giving rise to the hearing.
3. Mr. Huber and Mr. Stonechild filed an Agreed Statement of Facts, a copy of which is attached to this decision.
4. The Formal Complaint, dated February 4, 2013, alleged that the Member is guilty of conduct unbecoming a lawyer in that he:
 - a. Did fail to respond to J.F., a fellow member of the Law Society of Saskatchewan within a reasonable time in relation to the W. matter;
 - b. Did fail to respond promptly to communications from the Law Society of Saskatchewan in relation to the W. matter.
5. After receiving the Agreed Statement of facts and hearing the submissions of Mr. Huber and Mr. Stonechild, the Hearing Committee accepted the Member's guilty plea to both allegations and determined that Dwayne James Stonechild is guilty of conduct unbecoming a lawyer as outlined in the Formal Complaint.

6. The circumstances which led to the Formal Complaint are described in the Agreed Statement of Facts. The Law Society began an investigation into the Member after receipt of information from J.F., a fellow member of the Law Society, in 2010, alleging a persistent failure by the Member to respond to J.F. in the context of a litigation matter. The Member's failure to respond then extended to the Law Society in the course of the investigation into the matter raised by J.F.

7. At the hearing, the Member stated he should have formally withdrawn as the lawyer of record with the Court on the litigation file. He has realized his error, and regrets he did not file a Notice of Withdrawal. During the Hearing, the Member also described some personal circumstance, which were occurring at the pertinent time, and which contributed to his lack of response. He was candid in acknowledging that these did not excuse his failure to respond, and noted that these circumstances are now being managed.

8. Mr. Huber and Mr. Stonechild both requested and agreed that the Hearing Committee determine the penalty in this matter. They provided a joint submission on the penalty, proposing that the Hearing Committee order a reprimand, a global fine of \$1,000, and order costs of \$1,975 against the Member.

9. Counsel for the Conduct Investigation Committee referred the Hearing Committee to several cases, including:

- a. *Law Society of Saskatchewan v. Charlen Werry, 2010 LSS 3*
- b. *Law Society of Saskatchewan v. Anne Elizabeth Hardy, 2011 LSS 6*
- c. *Law Society of Saskatchewan v. Russell Milton Peet, 2013 LSS 5*

10. Mr. Huber suggested the *Werry* and *Hardy* cases were the most relevant to the case at hand. He noted that this is the first discipline matter for the Member with the Law Society, and that it pertained to only one file.

11. The Hearing Committee reserved its decision on the penalty.

12. Having considered the cases, the Hearing Committee finds the fact situation in the present case to be very similar to the *Werry* and *Hardy* matters.

13. As outlined in the attached Agreed Statement of Facts, the Member failed to respond or communicate, despite repeated requests. The Hearing Committee considers this to be a problem, which must be addressed. As was noted in the *Werry* decision, a failure to respond to another lawyer's request affects the reputation of both members, increases costs to clients, creates unnecessary delay, and negatively impacts the reputation of all lawyers in Saskatchewan. Further, a failure to respond to the Law Society jeopardizes its ability to fulfill the legislated mandate to govern its members in the public interest.

14. The Hearing Committee considers the following comments from *Werry* to be pertinent:

“As a guideline three requests from a client, another lawyer or the Society, with a reasonable deadline given to respond should be

sufficient to justify a complaint to the society. Of course it is understood that the requests have to be reasonable in terms of deadline and frequency. It is hard to lay down a firm rule because situations vary with the circumstances but it is possible to suggest a guideline for members. Again, if a member fails to respond to the third request for a response given with reasonable timelines, then the client or member being ignored should consider filing a complaint with the Law Society. Put another way, the fourth letter should be to the Law Society with a carbon copy to the non-responding member. It is obvious that any complaint filed with the Society will be analyzed by the staff and the Investigations Committee for reasonableness in terms of the urgency of the matter, frequency of the requests and reasonableness of the deadlines given to respond.``

15. Members who fail to respond should remember that it is not only a matter of courtesy and good practice, but also a requirement of the Code of Conduct, to respond in a prompt manner. For example:

A) The Code of Conduct, Chapter XV provides as follows:

Responsibility to the Profession Generally

RULE

The lawyer should assist in maintaining the integrity of the profession and should participate in its activities.

Commentary

Guiding Principles

2. The lawyer has a duty to reply promptly to any communication from the Law Society of Saskatchewan.

B) The Code of Conduct, Chapter XVI provides as follows:

Responsibility to Lawyers Individually

RULE

The lawyer`s conduct toward other lawyers should be characterized by courtesy and good faith.

Commentary

Guiding Principles

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

Footnote

6. Alta. 20: Failure to reply to letters or other communications from another member is at the very least discourteous ... this practice frequently places the other member in an awkward and embarrassing position and tends to lower the reputation of the whole profession.

16. The Hearing Committee notes that upon receiving correspondence, lawyers are not required to immediately provide a full and complete response. A simple response with an explanation that, for example, the recipient is out of the office, involved in a trial, or requires additional time to obtain information, may be sufficient, at least initially. A limited response, as noted above, confirms to the other lawyer that the correspondence has been received and that a more complete response will be forthcoming. It is reasonable for lawyers to expect a limited response, at the very least. A complete failure to respond is discourteous, not in keeping with good practice and, as noted, a breach of the Code of Conduct.

17. In this case the Hearing Committee notes that the Member admitted his culpability and fully accepted responsibility for his actions.

18. The Hearing Committee finds the penalty requested in the joint submission appropriate, within the range of penalties for similar matters, and not contrary to the public interest.

19. The Hearing Committee therefore orders that:

- a. Dwayne James Stonechild shall receive a reprimand;
- b. Dwayne James Stonechild shall pay a fine to the Law Society of Saskatchewan in the amount of \$1,000, on or before April 30, 2014; and
- c. Dwayne James Stonechild shall pay costs of these proceedings to the Law Society of Saskatchewan in the amount of \$1,975, on or before April 30, 2014.

DATED at the city of Melfort, in the Province of Saskatchewan, this 13th day of November, 2013.

"Thomas Healey"
Chair, Hearing Committee

AGREED STATEMENT OF FACTS AND ADMISSIONS

20. In relation to the Formal Complaint dated February 4, 2013, alleging the following:

THAT DWAYNE JAMES STONECHILD, of the City of Saskatoon, in the Province of Saskatchewan:

1. **Did fail to respond, J.F., a fellow member of the Law Society of Saskatchewan within a reasonable time in relation to the W. matter;**
2. **Did fail to respond promptly to communications from the Law Society of Saskatchewan in relation to W. matter.**

Jurisdiction:

21. Dwayne James Stonechild (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”).

22. The Member is currently the subject of a Formal Complaint initiated by the Law Society dated February 4, 2013. The Formal Complaint is comprised of the allegations noted above. The original Formal Complaint was served upon the Member on February 6, 2013. Attached at **Tab 1** is a copy of the original Formal Complaint along with proof of service. The Member intends to plead guilty to the allegations set out in the Formal Complaint.

Background of Complaint:

23. The Law Society began an investigation into the Member after receipt of information from Lawyer X on May 16, 2010. The information pertained to a persistent failure of the Member to respond to Lawyer X in the context of a litigation matter. The issues with the Member’s failure to respond extended to his involvement with the Law Society in the context of the investigation into the Lawyer X matter.

Particulars of Conduct:

Failure to Communicate with Opposing Counsel

24. At all times material to these matters, the Member was the lawyer of record for the W First Nation.

25. On July 15, 2005 the S.R. School Division issued and served a Statement of Claim on the W First Nation. On October 17, 2005 the Member served the Government of Saskatchewan (hereinafter “Saskatchewan”) with a Third Party Notice in the action. On January 16, 2006 Saskatchewan served the Member with a Demand for Particulars.

26. On July 21 and September 21, 2006, Lawyer Y, a member of the Law Society of Saskatchewan employed by Saskatchewan, faxed letters to the Member reminding him that his client had not responded to the Demand for Particulars and inquiring whether W First Nation intended to continue its Third Party Action.

27. The Member did not reply to either letter.

28. On June 6, 2007 Lawyer X telephoned the Member and left a voicemail message asked him to return his telephone call.

29. The Member did not return the telephone message from Lawyer X.
30. On June 11, 2007 Lawyer X faxed a letter to the Member stating that if he did not respond to Lawyer Y's previous letters and to Lawyer X's telephone call by June 20, 2007, Saskatchewan would apply for an Order compelling W First Nation to provide its Reply to the Demand for Particulars.
31. On June 26, 2007 the Member telephoned Lawyer X telling him that he would provide First Nation W's Reply to the Demand for Particulars by the end of that week (June 29, 2007).
32. The reply to the Demand for Particulars did not arrive as promised.
33. On August 15, 2007 Lawyer X faxed a letter to the Member reminding him that he had not provided his client's Reply to Demand for Particulars and asking whether his client intended to proceed with its action against Saskatchewan.
34. The Member did not reply to the letter from Lawyer X.
35. On January 11, 2008 Lawyer X faxed a letter to the Member indicating that Saskatchewan no longer required a reply to certain portions of its Demand for Particulars but asking that he provided his client's response to the balance of the Demand. In his letter, Lawyer X specifically referred to the Code of Conduct and the obligation of lawyers to respond to communications from other lawyers.
36. The Member did not respond to the letter from Lawyer X.
37. On January 25, 2008 Lawyer X served the Member by fax, with a Notice of Motion, supporting affidavit, and Acknowledgment of Service form. The application was to compel First Nation W to provide its answers to Saskatchewan's Demand for Particulars and was returnable on February 5, 2008.
38. On January 29, 2008 Lawyer X telephoned the Member and left a voicemail message asking that he return the signed Acknowledgment of Service which he had forwarded with Saskatchewan's application.
39. The Member did not sign and return the Acknowledgment of Service.
40. On February 5, 2008 Mr. Justice Goldenberg granted Saskatchewan's application. The Member did not file any materials with the Court and no one appeared for First Nation W in Court of Queen's Bench Chambers, either in person or by telephone.
41. On February 25, 2008 Lawyer X faxed a letter to the Member with a copy of the Order.
42. The Member never responded to Lawyer X's letter and First Nation W never complied with the Order.

43. On April 26, 2010 Lawyer X served the Member by fax with an application to dismiss First Nation W's action against Saskatchewan. The application was returnable on May 4, 2010.

44. On May 4, 2010 Mr. Justice Gabrielson granted Saskatchewan's application with costs against First Nation W. The Member did not file anything with the Court. Neither he nor anyone else appeared in Court of Queen's Bench Chambers, either personally or by telephone, on behalf of First Nation W.

Failure to Communicate with the Law Society

45. On May 18, 2010, a couple of days after receiving the information from Lawyer X in relation to the Members lack of communication, Ms. Jody Martin, Complaints Counsel for the Law Society of Saskatchewan, sent a letter to the Member with a copy of the letter of complaint from Lawyer X asking that he provide his written comments within ten days.

46. The Member did not reply to this letter.

47. On June 2, 2010 Ms. Martin mailed another letter to the Member asking that he reply within 10 days. The Member did not reply to Ms. Martin's second request.

48. On July 8, 2010 Ms. Martin again wrote to the Member asking that he respond to the issues raised by Lawyer X and that he provide his response within ten days.

49. On July 19, 2010 the Member sent a letter to Ms. Martin, but his letter contained information about a completely unrelated matter.

50. On July 29, 2010 Ms. Martin mailed another letter to the Member — this time by registered mail — asking that he respond specifically to the issues raised by Lawyer X's letter of complaint. Again, Ms. Martin asked that the Member respond in ten days.

51. The Member did not reply to Ms. Martin's letter.

52. On August 13, 2010 Ms. Melanie Hodges Neufeld, Law Society of Saskatchewan Complaints Counsel, sent a follow-up letter to the Member asking that he reply within ten days.

53. On August 24, 2012 the Member emailed Ms. Hodges Neufeld stating that he had been out of the office, had just seen the letter of August 13, 2010, and that he would reply by the end of the week.

54. On September 3, 2010 the Member sent a letter to Ms. Hodges Neufeld asking for an extension of time to provide his response and Ms. Hodges Neufeld granted an extension until September 13, 2010.

55. On September 14, 2010 the Member emailed Ms. Hodges Neufeld telling her that his response was ready.

56. The Law Society of Saskatchewan did not receive the Member's response.
57. On September 30, 2010 Ms. Martin emailed the Member asking that he provide his response immediately.
58. The Member did not reply to Ms. Martin's email.
59. On October 6, 2010 Ms. Martin spoke to the Member by telephone. He reiterated that his response was ready. He told Ms. Martin that during the relevant period referred to in Lawyer's X's letter he had not been able to attend to his law practice because he was suffering significant personal health problems. He also told her that he had begun seeking treatment for a variety of issues and felt that he was getting his life in order.
60. On October 8, 2010 Ms. Martin mailed a letter to the Member summarizing the substance of their telephone conversation and requesting that he give certain undertakings. The requested undertakings included the following two relevant undertakings:
- a. "A. To provide a substantive response to the issues of delay and inattention regarding the W First Nation matter to the Law Society by October 22, 2010. The issues to be responded to are set out in the correspondence of Lawyer X to Law Society, a copy of which was provided to you on May 18, and reiterated to you in my correspondence dated July 29, 2010...";
 - b. "D. To provide a copy of your file list from the timeframe when you were unable to attend to your practice and a copy of your current file list to the Law Society by October 22, 2010. Your file lists are to indicate the following: area of law; open or closed status; if the file is active the stage the files is at; and the date of the last contact with the client."
61. Ms. Martin asked for the Member's undertakings within ten days.
62. The Member did not respond to Ms. Martin's letter.
63. On October 25, 2010 Ms. Martin sent another letter to the Member, by registered mail and by email, asking for his written undertakings and his responses to undertakings 'A' and 'D', all of which must be received by October 29, 2010.
64. On October 29, 2010 the Member faxed a letter to Ms. Martin stating that he undertook to comply with undertakings 'A' and 'D' but asking for an extension to November 3, 2010.
65. On November 5, 2010 the Member faxed a letter to Ms. Martin in which he admitted the facts in Lawyer X's letter and called them an "abuse of the courts[sic] process". He also reiterated that his legal practice issues were caused by his severe health problems during the relevant period.

66. On December 20, 2010 Ms. Martin telephoned the Member and left a voicemail message asking that he provide clarification of his comment about abuse of court process. She followed this up with an email on December 21, 2010 asking for more details pertaining to his comment, and about the work done on and the status of the W First Nation file.

67. On January 20, 2011 the Member emailed Ms. Martin telling her that his response was ready. Ms. Martin responded by email the same day asking that he fax or email his response to her questions the next day.

68. The Law Society did not receive the Member's response.

69. On February 28, 2011 Ms. Martin mailed a letter to the Member demanding that he reply within ten days.

70. The Member did not reply to Ms. Martin's letter.

71. On March 11, 2011 the Member telephoned Ms. Martin to tell her about developments on the W First Nation file. Ms. Martin reminded him of her questions which still required his reply.

72. The Member did not communicate with the Law Society again until after this matter was referred to the Complaints Investigation Committee and after the Law Society demanded that the Member provide his entire file in the W First Nation matter.

Prior History

73. The Member was the subject of a referral to the Professional Standards Committee in 2009 in relation to three separate complaints.

74. The Member has no other discipline history.