



The Law Society of Saskatchewan

BEN CHRISTIAAN VALKENBURG

HEARING DATE: August 29, 2014

DECISION DATE: October 14, 2014

Law Society of Saskatchewan v. Valkenburg, 2014 SKLSS 13

**IN THE MATTER OF *THE LEGAL PROFESSION ACT, 1990*
AND IN THE MATTER OF BEN CHRISTIAAN VALKENBURG,
A LAWYER OF SASKATOON, SASKATCHEWAN**

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

Members of the Hearing Committee: Sanjeev Anand, Q.C. (Chair)
Gerald Tegart, Q.C.
Lorne Mysko

Counsel: Timothy Huber for the Conduct Investigation Committee
Robert Kennedy, Q.C. for the Member

INTRODUCTION

1. On August 29, 2014, before the Hearing Committee of the Law Society of Saskatchewan, Ben Christiaan Valkenburg (the “Member”) pled guilty to an allegation of conduct unbecoming a lawyer particularized as follows:

- i. He did fail to serve his client, D.R., in a conscientious, diligent and efficient manner by failing to promptly advance her family law file; and
- ii. He did fail to serve his client, D.R., in a conscientious, diligent and efficient manner by failing to respond to her communication/phone messages within a reasonable time.

2. The Hearing of August 29, 2014 was convened by conference call. At that time, the Hearing Committee accepted the guilty plea and heard the representations by the parties regarding penalty. At the conclusion of the Hearing, the Hearing Committee indicated its intention to reserve its decision and render written reasons for the penalty to be imposed.

BACKGROUND

3. An Agreed Statement of Facts was filed in relation to this matter, a copy of which is attached as an appendix to this decision. Nevertheless a brief summary of the facts is provided below.

4. D.R. commenced a divorce action against her spouse in 1998. A lawyer other than the Member commenced this divorce action. However, the action had not progressed. Consequently, the Member was asked by D.R. to move the file forward. In order to do so, the Member was advised by the Court to file a Notice of Intention to Proceed in relation to the divorce matter. In order to file the Notice of Intention to Proceed, the member would have to arrange for personal service of the opposing party. For whatever reason, the Member did not prepare the Notice of Intention to Proceed as required by the Court and little or no action was taken on the file for almost two years from May 2010 to January 2012. During this two year period, D.R. made several phone calls and left messages for the Member seeking updates in relation to the progress of her matter. Although the Member did speak, on occasion, to D.R., he admits that, for the most part, he did not contact D.R. to keep her apprised of the situation nor did he advise D.R. that he had not taken the steps necessary to complete the matter. The Member acknowledges that the level of service that he provided to D.R. over this two-year period falls far below that which is expected of a lawyer.

5. The Member has no prior discipline history.

SUBMISSIONS ON SENTENCE

6. Counsel for the Conduct Investigation Committee and counsel for the Member made a joint submission on penalty. The joint submission was that the Member should receive a global disposition consisting of a formal reprimand and a fine in the amount of \$1,000.00. In addition, it was agreed that the Member should pay costs in the amount of \$1,740.00.

7. In support of the joint submission, counsel for the Conduct Investigation Committee referred the Hearing Committee to the following three cases: *Law Society of Saskatchewan v. Hardy, 2011 LSS 6*, *Law Society of Saskatchewan v. Walper-Bossence, 2011 SKLSS 4*, and *Law Society of Saskatchewan v. Kloppenburg, 2011 SKLSS 3*. These cases establish that in relation to dilatory practice offences where the offender has no previous record for disciplinary offences and has been cooperative by taking responsibility for the level of service provided to his or her client, an appropriate penalty would be a reprimand, a fine in the range of \$1,000.00, and a cost order against the Member.

8. Counsel for the Conduct Investigation Committee and Counsel for the Member supported the joint submission by referring to the fact that this misconduct by the Member was an isolated occurrence that was highly unlikely to reoccur. Consequently, both counsel asserted that there was no need to impose a more punitive penalty in order to achieve specific deterrence.

DECISION

9. The Hearing Committee has considered the range of penalty imposed in first-time dilatory practice offence cases committed by cooperative offenders in this jurisdiction. As well, the Hearing Committee noted the absence of any other mitigating or aggravating factors in this

case. In light of all of the elements, the Hearing Committee finds that the submission pertaining to penalty is reasonable and makes the order sought.

ORDER

10. It is ordered that the Member be subject to a formal reprimand and that he pay a fine in the amount of \$1,000.00. In addition, the Member shall pay the costs of this proceeding in the amount of \$1,740.00. The costs and fine shall be payable immediately.

<u>“Dr. Sanjeev Anand, Q.C.”</u>	<u>”October 8, 2014”</u>
	Date
<u>”Gerald Tegart, Q.C.”</u>	<u>”October 8, 2014”</u>
	Date
<u>”Lorne Mysko”</u>	<u>”October 14, 2014”</u>
	Date

AGREED STATEMENT OF FACTS AND ADMISSIONS

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

THAT BEN CHRISTIAAN VALKENBURG, of Saskatoon, in the Province of Saskatchewan did:

- 1. Fail to serve his client, D.R., in a conscientious, diligent and efficient manner by failing to promptly advance her family law file; and**
- 2. Fail to serve his client, D.R., in a conscientious, diligent and efficient manner by failing to respond to her communication/phone messages within a reasonable time.**

JURISDICTION

11. Ben Christiaan Valkenburg (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.

12. The Member is currently the subject of a Formal Complaint initiated by the Law Society dated June 17, 2014. Attached at **Tab 2** is a copy of the Formal Complaint along with proof of service. The Member intends to plead guilty to the allegations of conduct unbecoming set out in the Formal Complaint.

BACKGROUND OF COMPLAINT

13. The Law Society began an investigation into the Member on or about February 23, 2012, after receipt of a complaint from D.R. D.R.'s complaint against the Member centered around the Member's lack of communication with her and the Member's inability to act diligently on her divorce file which had not progressed in a timely fashion.

PARTICULARS OF CONDUCT

14. The Member was originally retained by D.R. on May 8, 2007. The Member was to assist her in obtaining a divorce. D.R. paid the Member \$400.00 on June 6, 2007. The Member issued a Petition on June 13, 2007. Unfortunately, in July of 2007, the Member became aware of the fact that a previous divorce action had been commenced in relation to D.R. in 1998.

15. The Member discontinued the 2007 Petition on January 8, 2008. Very little happened on the file for more than a year. On July 10, 2009, D.R. paid another \$500.00 to the Member to move the matter forward. Again, there was a period of inactivity until approximately May of 2010 when D.R. signed the materials required to finalize her divorce. On May 17, 2010, the Member was advised by the Court that due to the extremely lengthy period of inaction in relation to the matter commenced by D.R. in 1998, there would need to be a Notice of Intention to Proceed filed, and a thirty day waiting period observed, before the divorce could be finalized.

16. As D.R.'s spouse was a self-represented litigant, the Notice of Intention to Proceed process would require that he be personally served. D.R. advised the Member that her spouse was living in Glaslyn, Saskatchewan and provided a picture and a physical description to permit the process server to identify the spouse for the purposes of serving the process.

17. The Member did not prepare the Notice of Intention to Proceed as required by the Court. Little or no action was taken on the file for almost two years. On January 27, 2012, D.R. terminated her solicitor-client relationship with the Member. D.R. was frustrated and dissatisfied with the Member's failure to move her matter to completion in a timely fashion. After his services were terminated, the Member returned D.R.'s retainer to her.

18. During the intervening period between May 2010 and January 2012, D.R. made several phone calls and left messages for the Member seeking updates in relation to the progress of her matter. The Member did speak, on occasion, to D.R. but, for the most part, the Member did not contact D.R. to keep her apprised of the situation. The Member did not advise D.R. that he had not taken the steps necessary to complete the matter.

19. Had the Member prepared, served, and filed the Notice of Intention to Proceed, he could have finalized the divorce proceedings after waiting just 30 days.

20. Instead, the Member admits that he ignored D.R.'s file. The Member has advised that he cannot completely explain why he did not take the steps necessary to complete the file by serving and filing the Notice of Intent to Proceed except to indicate that what he perceived to be the difficulties around service caused something of a mental block about the file which in turn led him to ignore the issue. The Member acknowledges that D.R. deserved better service from him

and is both apologetic and embarrassed with his failure to provide the legal services which were required.

21. The Member acknowledges that the level of service that he provided to D.R., specifically in relation to the period between May 2010 and January 2012, falls far below that which is expected of a lawyer.

PRIOR HISTORY

22. The Member has no prior discipline history.