The Law Society of Saskatchewan

DALE NORMAN BLENNER-HASSETT
HEARING DATE: April 4, 2018
DECISION DATE: May 30, 2018
***Law Society of Saskatchewan v. Blenner-Hassett*, 2018 SKLSS 6**

IN THE MATTER OF *THE LEGAL PROFESSION ACT, 1990*
AND IN THE MATTER OF DALE NORMAN BLENNER-HASSETT,
A LAWYER OF PRINCE ALBERT, SASKATCHEWAN

DECISION OF THE HEARING COMMITTEE FOR THE LAW SOCIETY OF SASKATCHEWAN

Committee:	Scott Moffat (Chair), Clifford Wheatly, Della Stumborg
Counsel:	Timothy Huber, Law Society of Saskatchewan
	Dale Blenner-Hassett, for himself

I. INTRODUCTION

1. The Hearing of the Formal Complaint in this matter was held by teleconference on April 4, 2018. The Hearing Committee consisted of Della Stumborg, Clifford Wheatly and Scott Moffat as Chair. The Law Society was represented by Timothy Huber and Dale Blenner-Hassett represented himself.

2. The Formal Complaint dated November 20, 2017 alleges that the Member:

> 1. did, in the course of his practice, fail to act with courtesy, civility, and in good faith toward another lawyer, S.V.;
> 2. did fail to discharge his responsibility to other members of the profession honourably and with integrity:
>
> a. by communicating with another lawyer regarding S.V.'s conduct, competence and integrity;
>
> 3. did, in the course of his professional practice send correspondence to S.V. that was abusive, offensive or otherwise inconsistent with the proper tone of professional communication from a lawyer.

3. There were no objections to the composition or jurisdiction of the Hearing Committee and no applications prior to the commencement of the hearing.

4. An Agreed Statement of Facts and Admissions dated April 2, 2018 and signed by both Mr. Huber and Mr. Blenner-Hassett was filed with the Hearing Committee. The Member pled guilty to all three counts.

II. PARTICULARS OF THE CONDUCT

5. The Member practices criminal defence law in Prince Albert, Saskatchewan. S.V., at the relevant time, was a prosecutor. It is an understatement to say the two did not have a positive working relationship.

6. The Member sent correspondence to S.V. regarding a particular criminal client. The letter dated October 27, 2014 contained a number of misstatements, accusations and innuendo:

> i) repeatedly referred to the police officers as "your police officers";
> ii) "If there is substance to her reports, do you sanction or overlook such behaviour by our police officers? Is that the way they are instructed to treat [name omitted], and are you aware of how they are indeed treating her?"
> iii) "... her complaints may include anyone who is involved in this mistreatment, even any prosecutors who know of or condone or overlook this police conduct."

7. S.V. replied on October 29, 2014 "I am sorry to hear of your concerns relating to police conduct in [name omitted] matters. I urge you to forward your concerns directly to the police, as you have indicated in your letter."

8. The Member then wrote on November 4, 2014. Again, he referenced "your officers" and claimed "these officers are under your supervision and management during this period certainly. They and you must be accountable for the conduct. "Also, your cooperation at this point is much better than denied and then having to account to a Provincial Court Judge."

9. On a separate matter, S.V., forwarded a letter to the Member dated November 4, 2014. The body of that letter reads:

> "Further to your faxed letter of November 4, 2014, there has not been discussion about the possibility of the Crown withdrawing the charges against {name omitted] with you. I mentioned at the pre-trial conference at Queen's Bench that the Crown was considering staying the charges against [name omitted] subject to negotiation. At that point nothing else was said as her counsel was not present. In reply to your letter regarding the Crown's position against your client, it is 18 months, DNA order and s. 109 order on joint submission. With a joint position and subsequent plea, the Crown would then stay the charges against [name omitted] after conviction of [member's client]. Again, this would have to be discussed with her counsel, not you. This is a firm position by the Crown with regards to sentencing of your client."

10. The Member's reply of November 24, 2014, begins:

> "Regrettably, we find your communication of November 4, 2014- especially the

first sentence or two or three - to be quite sharp."

11. Then on March 23, 2015, the Member left a message for a prospective employer of S.V. The message was transcribed. Among the statements made by the Member:

> i) In our view she was very, very unethical, very adversarial, very sharp, very dishonest ...
> ii) I understand there is a very, very serious complaint levelled against her with the Law Society of Saskatchewan;
> iii) Very mean, very nasty, very adversarial, very personal, attacking our clients, attacking us, outright lying in certain cases and just a very, very unpleasant experience we had.

12. The "very, very serious complaint" referred to by the Member about S.V. was reviewed by a conduct investigation committee of the Law Society of Saskatchewan and held to warrant no further action.

13. The Member acknowledges that the comments in his letters dated October 27, 2014, November 4, 2014 and November 17, 2014 exhibit an intemperate tone and go beyond zealous advocacy and enter into a sphere of unnecessary and inappropriate personal attacks upon a fellow Member.

III. FINDINGS REGARDING THE CONDUCT

14. The relevant sections of the *Code of Professional Conduct* provide:

> 7.2-1 A lawyer must be courteous and civil and act in good faith with all persons with whom the lawyer has dealings in the course of his or her practice.
>
> 7.2-4 A lawyer must not, in the course of a professional practice, send correspondence or otherwise communicate to a client, another lawyer or any other person in a manner that is abusive, offensive, or otherwise inconsistent with the proper tone of a professional communication from a lawyer.

15. The commentary to section 7.2-1 of the *Code* states:

> [2] Any ill feeling that may exist or be engendered between clients, particularly during litigation, should never be allowed to influence lawyers in their conduct and demeanour toward each other or the parties. The presence of personal animosity between lawyers involved in a matter may cause their judgment to be clouded by emotional factors and hinder the proper resolution of the matter. Personal remarks or personally abusive tactics interfere with the orderly administration of justice and have no place in our legal system.
>
> [3] A lawyer should avoid ill-considered or uninformed criticism of the competence, conduct, advice or charges of other lawyers, but should be prepared, when requested, to advise and represent a client in a complaint involving another lawyer.

16. All three counts are well founded and the Member, to his credit, admits the same.

IV. PENALTY

17. Having found all three counts well founded, the Committee must determine an appropriate penalty. Counsel for the Law Society and the member jointly submitted that the Member:

1. Shall pay a fine in the amount of $2,500.00;
2. Shall pay costs of $1,050.00; and
3. Shall complete 3 hours of CPD training on the subject of civility as approved by the Director of Admissions and Education.

18. The question for this Committee is whether this joint submission is, given the totality of the circumstances, appropriate.

19. The Member's disciplinary history, while short, is concerning. The Member was previously the subject of an Informal Conduct Review for essentially the same behaviour. The report dated May 21, 2009 states the member fully acknowledges that portions of his communications "were inappropriate, lacking in decorum and professionalism and that his response to the Law Society was 'glib.'"

20. In 2014 the Member was formally disciplined for inappropriate communications. That decision, released February 13, 2014, dealt with communications made in February, 2010. Those inappropriate communications were made less than a year after the Informal Conduct Review. That Committee wrote at paragraph 7:

> "His letters were addressed both to counsel and the party opposite. In one of the letters, Mr. Blenner-Hassett urged "shame on both of you." He employed the adjective "silly" numerous times in reference to the other party's demands, her version of events and her complaint about his client's behaviour. He made a derogatory reference to the party opposite. The over-arching tone of the letter was highly personal and offensive to opposing counsel and his client. The Agreed Statement of Facts states:
>
> > "The Member acknowledges that the comments in his letters dated February 19 and February 22, 2010, go beyond zealous advocacy and enter into a sphere of unnecessary and inappropriate personal attacks upon and denigration of a fellow member and his client."

21. That Committee agreed to impose a jointly recommended sentence of a $1,000.00 fine, a reprimand and costs in the amount of $750.00.

22. In accepting the joint submission in the previous matters, that Committee noted at paragraph 22:

> "The incivility in this case involved two separate communications in a single-family law matter. Mr. Blenner-Hassett's counsel suggested he had lost perspective in a high conflict matter and has since taken steps to limit the nature and amount of work he now performs in the family law area. He has developed a practice of reflecting and taking time before responding in high conflict situations. Mr. Blenner-Hassett also addressed the Hearing Committee. He accepted complete responsibility and was remorseful. He stated he has suffered embarrassment from the public attention to these proceedings."

23. As noted, the prior hearing and penalty decision was released February 13, 2014. The conduct founding these complaints occurred less than one year later, between October 2014 and March 2015. The conduct in this case focussed not on one particular high conflict file, but on opposing counsel, S.V. It extended over two files and, most importantly, the phone call made to a prospective employer.

24. The pattern of conduct has repeated itself and then, with the phone call, escalated.

25. The Committee notes that the letters written to S.V. were, to be generous, intemperate in tone and engaged in unnecessary personal attacks on a fellow Member.

26. Of grave concern to this Committee are the comments made by the Member in the March 23, 2015 telephone message. These comments were not made within confines of a heated litigation matter. Rather, they were a calculated attempt to damage the reputation of S.V. and impact her employability.

27. While the Member indicated that he accepted responsibility and was remorseful for his actions, the Committee, after having heard submissions from the Member, questions whether this is truly so. During his submissions, the Member sought to obfuscate and deflect blame for his actions. It was the Member who advised a prior discipline panel, that he had developed a process of reflecting and taking time before responding in high conflict situations. That process failed. It was the Member who authored and forwarded the correspondence and the Member who called and left the message. It is the Member alone who is responsible for consequences flowing from these proceedings.

28. Counsel for the Law Society submitted a number of cases dealing with improper and intemperate communications: *Law Society of Alberta v. Pozniak*, 2002 LSDD 55 (Q.L.), *Law Society of British Columbia v. Barker,* 1993 LSDD 189 (Q.L), *Nova Scotia Barristers Society v. Murrant, 2002 LSDD 2 (Q.L).* Penalty ranged from reprimand to fine to a suspension.

29. In *Pozniak,* the member was reprimanded for writing to another member on one occasion that he was "clueless." That Committee quite succinctly wrote:

> "17 Civility between counsel is not a trivial matter. Indeed, it goes to the heart of professionalism and is essential to maintain the general reputation and integrity of the legal profession. Lawyers, on behalf of clients, must face adversity on a daily basis but this does not justify a descent into incivility. Indeed, quite the

> contrary. Professionals are expected to act professionally and must do so or they compromise the interests of not only their clients but society at large. Launching or exchanging insults is not professional behaviour."

30. A disciplinary Committee of the Law Society of British Columbia imposed in *Barker*, a reprimand, fine and costs for referring to an insurance adjuster as a "real asshole" and making other intemperate comments. Mr. Barker had, by the time of adjudication, provided a written apology.

31. The decision in *Murrant* illustrates the other extreme. Mr. Murrant was dealing with his own family law matter. He authored a series of wholly inappropriate correspondence personally attacking other counsel and a sitting judge. A sample of the statements reported in the decisions include:

> "Also, Ferguson A.C.J. is the problem and not by any means the solution. It was his sadistically brilliant idea that the case would be "jerked around" for two and a half years while he was the one who kept encouraging Ms. Farquhar to continue her enforcement efforts.
>
> Ferguson A.C.J. is the one who violated my sec 15 equality right to equal treatment. Now I am the only man in Canada not having access to Guideline Criteria. He also flaunted "trial in a reasonable time" in a manner that would make South Africa in 1950 look tame.
>
> Needless to say, the practical operation of the Family Division in Halifax is a farce.
>
> (Para 26)
>
> It was Ferguson A.C.J. who decided I couldn't go to Bridgewater and that I'd never get a hearing in Halifax, meanwhile the Gestapo would drive my daughters and I into an asylum. ... if Ferguson A.C.J. can't judge a dog show, could he at least find someone who can because I'm sick and tired of being jerked around.
>
> (Para. 31)
>
> It is just another manifestation of Ms. Farquhar's lack of integrity. She is nothing better than a child molester ... .
>
> (Para. 35)
>
> If all of the above come across like kinda "fuck off and get off my back with your childish nonsense" that is exactly the intention.
>
> (Para. 37)
>
> When I demanded, yes, early on 9/11 that my daughter go immediately to [university] the true character of Ferguson J. came to light. He could have released the $8000 (like a man of integrity) but refused to do so.

> He followed this up with an irrational personal attack ordering me to pay gargantuan sums of money or be incarcerated.
>
> I can only conclude he is corruptly trying to save his own career by destroying mine. ...
>
> (Para. 51)"

32. The Nova Scotia Committee, after hearing, found Mr. Murrant guilty of conduct unbecoming and moved on to assess penalty. Mr. Murrant had two previous reprimands. The Barristers' Society asked for a one-month suspension, $2000.00 fine, a reprimand, practice restrictions for one year and costs. The member asked to resign in the face of discipline. That committee concluded:

> "105 Mr. Murrant has twice previously been reprimanded by the Discipline Committee of the Society. We agree that his repeated misconduct warrants an increase in the level of discipline. For that reason we are ordering a suspension and, by permitting him to resign, effectively removing him from the practice of law, subject to a decision of the Barristers' Society to permit him to be re-admitted. In those circumstances we do not think a fine is also warranted."

33. As previously noted, this matter comes before us as a joint submission. As such, this Committee is mindful of the decision of the Saskatchewan Court of Appeal *in Rault v. LSS*, 2009 SKCA 81. In *Rault*, the Court of Appeal reversed a discipline decision declining to impose a jointly recommended submission. Joint submissions are not to be lightly disregarded. Where a committee considers declining a joint submission, a principled approach, similar to that used in the criminal process, ought to be used. (Para 19)

34. The Court of Appeal recently provided guidance as to when, in the criminal process, a joint submission might be rejected. In *R. v. Bear*, 2018 SKCA 22, Chief Justice Richards wrote:

> "[23] In *R v Anthony-Cook*, 2016 SCC 43, [2016] 2 SCR 204 [*Anthony-Cook*], the Supreme Court recently confirmed that a rather stringent public interest test must be applied by a trial judge when deciding whether to reject a joint submission on sentence. Justice Moldaver, writing for the Court, explained as follows:
>
> > [33] In *Druken*, at para. 29, the court held that a joint submission will bring the administration of justice into disrepute or be contrary to the public interest if, despite the public interest considerations that support imposing it, it is so "markedly out of line with the expectations of reasonable persons aware of the circumstances of the case that they would view it as a break down in the proper functioning of the criminal justice system". And, as stated by the same court in *R. v. B.O.2*, 2010 NLCA 19, at para. 56 (CanLII), when assessing a joint submission, trial judges should "avoid rendering a decision that causes an informed and reasonable public to lose confidence in the institution of the courts".

> [34] In my view, these powerful statements capture the essence of the public interest test developed by the Martin Committee. They emphasize that a joint submission should not be rejected lightly, a conclusion with which I agree. Rejection denotes a submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down. This is an undeniably high threshold —and for good reason, as I shall explain."

35. The joint submission was made in the context of a guilty plea and Agreed Statement of Facts. The Member has been cooperative in moving the matter forward. The Law Society is represented by experienced counsel. The Member is a 2004-year call and has prior experience in the disciplinary process.

36. Based upon the caselaw provided to us, this Committee is unable to conclude the joint submission is outside the reasonable range. The conduct is more serious than that in *Pozniak* or *Barker*. It occurred on three occasions and the Member has a record for this type of behaviour. However, this matter is arguably less serious than *Murrant*, wherein a suspension was warranted. Here, the Member acknowledged the conduct was inappropriate, has been reprimanded on one prior occasion and did not level allegations of corruption against a sitting judge.

37. We cannot say the submission is so unhinged from the circumstances of the offence and the offender that a reasonable person would conclude the proper functioning of the system had broken down. As such the Committee will give effect to the joint submission.

V. CONCLUSION

38. This Committee therefore orders that the Member, Dale Blenner-Hassett:

1. Shall pay a fine in the amount of $2,500.00;
2. Shall pay costs of $1,050.00; and
3. Shall complete 3 hours of CPD training on the subject of civility as approved by the Director of Admissions and Education.

39. The Member has until 4:00 p.m., Monday, December 17, 2018 to comply with the above, failing which a suspension from practice shall be imposed until such time as all of the above are complied with.

Per: "Scott Moffat", Chair May 30, 2018

Per: "Clifford Wheatly" May 30, 2018

Per: "Della Stumborg" May 30, 2018

AGREED STATEMENT OF FACTS AND ADMISSIONS

In relation to the Formal Complaint dated November 28, 2017 alleging that Dale Norman Blenner-Hassett, of the City of Prince Albert, in the Province of Saskatchewan, is guilty of conduct unbecoming a lawyer in that he:

1. **did, in the course of his practice, fail to act with courtesy, civility, and in good faith toward another lawyer, S.V.;**
2. **did fail to discharge his responsibility to other members of the profession honourably and with integrity:**
   a. **by communicating with another lawyer regarding S.V., using ill-considered words which criticized S.V.'s conduct, competence and integrity;**
3. **did, in the course of his professional practice send correspondence to S.V. that was abusive, offensive or otherwise inconsistent with the proper tone of professional communication from a lawyer.**

JURISDICTION:

40. Dale Norman Blenner-Hassett (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").

41. The Member is currently the subject of a Formal Complaint initiated by the Law Society dated November 28, 2017. The Formal Complaint is comprised of the three allegations noted above. The original Formal Complaint was served upon the Member on December 19, 2017. Attached at **Tab 1** is a copy of the original Formal Complaint along with proof of service in the form of an Acknowledgement of Service. The Member intends to plead guilty to all three allegations set out in the Formal Complaint.

BACKGROUND OF COMPLAINT:

42. The Law Society began an investigation into the Member after receipt of a letter dated February 16, 2015 from the complainant S.V. alleging a variety of misconduct. The Member and S.V. did not have a positive working relationship. The three issues particularized below flowed from the ensuing investigation.

PARTICULARS OF CONDUCT:

Counts 1 and 2:

43. On March 23, 2015, the Member called a prospective employer of S.V., and left a voice mail for a prospective supervisor, W.S. In the voice mail the Member spoke negatively about S.V., saying S.V. is "very unethical, very adversarial, very sharp, very dishonest… very mean, very nasty… outright lying in certain cases." The Member encouraged W.S. to return his call "before you hire [S.V.]" and stated that a "serious complaint" had been initiated against S.V. with the Law Society of Saskatchewan.

44. The Member called W.S. on his own initiative.

45. Staff from the Law Society transcribed the contents of the voicemail [**Tab 2**].

46. The alleged "serious complaint" referred to by the member was determined by the Conduct Investigation Committee to warrant no further action.

Counts 1 and 3:

47. The Member represented several accused persons. S.V. acted as agent from the Crown Prosecutor. In letters to S.V., the Member used language that was inconsistent with the proper tone of a professional communication from a lawyer.

48. In one instance, on October 27, 2014, the Member wrote a letter [**Tab 3**] to S.V. referring to "your police officers", suggesting that the police officers answered to S.V., as Crown Prosecutor. The Member questioned S.V., "Do you sanction or overlook such behaviour by our police officers? Is that the way they are instructed to treat [client], and are you aware of how they are indeed treating her?" The Member indicated his client would report the incidents to the Police Commission and that the complaints "may include anyone who is involved in this mistreatment, even any prosecutors who know of or condone or overlook this police conduct."

49. S.V. sought guidance from her supervisor as to how to respond to this letter. S.V. responded [**Tab 4**] encouraging the Member's client to report concerns about police misconduct to the proper authority.

50. The Member responded in a letter, dated November 4, 2014 [**Tab 5**] claiming that S.V.'s response was "woefully inadequate" and again referring to "your police officers." The Member stated that "these officers are under your supervision and management during this period certainly. They and you must be accountable for the conduct." The Member stated that S.V.'s conduct may be examined "using other avenues." The Member also indicated that he would also raise these issues in Court. The Member stated, "Your cooperation at this point is much better than denied and then having to account to a Provincial Court Judge."

51. In a second series of letters, the Member and S.V. were dealing with the Crown's position on sentencing of one of the Member's clients. S.V.'s letter to the Member, dated November 4, 2014 [**Tab 6**] outlines the Crown's position. The Member's response dated November 17, 2014 [**Tab 7**] criticizes the tone and content of S.V's letter. Nothing in the tone or content of S.V.'s letter justified any such criticism.

52. The Member acknowledges that the comments in his letters dated October 27, 2014, November 4, 2014 and November 17, 2014, exhibit an intemperate tone and go beyond zealous advocacy and enter into a sphere of unnecessary and inappropriate personal attacks upon a fellow member.

PRIOR HISTORY

53. On May 20, 2009, the Member was the subject of an Informal Conduct Review in relation to inappropriate and abusive correspondence to an unrepresented litigant, L.B. The report of the Informal Conduct Review Committee is attached at **Tab 8**.

54. On February 13, 2014, the Member was the subject of a Discipline Hearing in relation to letters to another lawyer (representing the formerly unrepresented litigant that was associated with the above noted Informal Conduct Review) that were abusive, offensive, and otherwise inconsistent with the proper tone of a professional communication from a lawyer and offering to forgo civil defamation proceedings in exchange for the withdrawal of a complaint to the Law Society of Saskatchewan. The Decision of the Hearing Committee for the Law Society of Saskatchewan is attached at **Tab 9**.