Law Society of Saskatchewan

RONALD MAURICE
PRELIMINARY APPLICATION DATE: August 19, 2020
PRELIMINARY APPLICATION DECISION DATE; September 11, 2020
HEARING DATE: AUGUST 19, 2021
DECISION DATE: August 20, 2021
***Law Society of Saskatchewan v. Maurice*, 2021 SKLSS 3**

IN THE MATTER OF *THE LEGAL PROFESSION ACT, 1990*
AND IN THE MATTER OF RONALD MAURICE,
A LAWYER OF REDWOOD MEADOWS, ALBERTA

DECISION OF THE HEARING COMMITTEE IN REGARD TO THE PRELIMINARY APPLICATION

I. INTRODUCTION

1. A preliminary application by the Conduct Investigation Committee ("CIC") was heard by videoconference on August 19, 2020 before a hearing committee comprised of Sean Sinclair (Chair), Gerald Tegart, Q.C., and Sharon Martin. Ron S. Maurice ("the Member") was represented by Richard Buchwald at the hearing. Darcia Schirr, Q.C. represented the CIC. There were no objections to the constitution or jurisdiction of the hearing committee.

2. The formal complaint against the Member alleges the Member is guilty of conduct unbecoming a lawyer in that he:

> (a) Did, on or about March 16, 2009, prepare and enter into a retainer agreement with his client, Sakimay First Nation, that was not, in light of all pertinent circumstances, fair and reasonable;
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> (b) Did, in connection with a retainer agreement executed on or about March 16, 2009, fail to be frank and candid with his client, Sakimay First Nation, as follows:
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> (i) He provided them with information about the billing practices of other lawyers practicing in the relevant area which, ultimately, he knew or ought to have known was false; and
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> (ii) He failed to highlight the fact that the subject matter of a March 16, 2009 retainer agreement that included a 3% bonus provision for the Member, was already included within the scope of an earlier retainer agreement which was more favourable to Sakimay First Nation in that it did not provide for such a bonus.

3. The CIC brings this preliminary motion seeking the following relief:

(a) An Order that the decision of Madam Justice Krogan in *Maurice Law v The Sakimay First Nation of Grenfell* (QBG 1684 of 2011 reported at 2014 SKQB 310 ("Hearing Decision")) is admissible in these proceedings against the Respondent, Ronald Maurice;

(b) An Order that the decision of the Saskatchewan Court of Appeal in *Maurice Law v The Sakimay First Nation of Grenfell* (CACV2626 reported at 2017 SKCA 36 ("Appeal Decision")) is admissible in these proceedings against the Respondent, Ronald Maurice;

(c) An Order that the specific findings of fact contained in the Hearing Decision and upheld in the Appeal Decision are admissible as proof of those facts in these proceedings against the Respondent;

(d) An Order that the Respondent is precluded from re-litigating and challenging the specific findings of fact contained in the Hearing Decision and upheld in the Appeal Decision as to do so would constitute an abuse of process.

4. The Member does not object to the first three requests of the CIC. The Member though takes the position that he should be entitled to lead evidence to "dislodge" the findings made by Madam Justice Krogan or the Court of Appeal and otherwise provide information to allow this hearing committee to make its own assessments based on all of the evidence.

II. FACTS

5. The only materials filed on this application, apart from the Notice of Application and briefs of law, are the decisions of Madam Justice Krogan and the Court of Appeal in the taxation between the Member and his former client, Sakimay First Nation ("Sakimay"). In her decision, Justice Krogan set out some of the basic factual overview:

(a) The Member acted as legal counsel to Sakimay from 2003 to 2011;

(b) In 2003, Sakimay entered into a retainer agreement with the Member in connection with a treaty land entitlement claim (the "TLE" claim). The retainer agreement provided that the Member's law firm would be paid, at minimum, the hourly rates set out in the retainer agreement. The TLE retainer agreement further provided that any additional work provided by the Member in the future for Sakimay would be governed by the terms of that retainer agreement;

(c) In March, 2006, the Member was retained by Sakimay during negotiations with the Government of Canada and the Province of Saskatchewan regarding the flooding of Sakimay land in the 1940s (the "QVIDA" claim). Other First Nations in the Qu'Appelle Valley area advanced similar claims;

(d) The Member proposed a new retainer agreement with Sakimay for the QVIDA claim, which provided for a bonus to the Member's office which would be based on the negotiated settlement obtained by Sakimay;

(e) In seeking a new retainer agreement, Maurice advised Sakimay that a 3% bonus was appropriate, in part because other law firms involved in the Qu'Appelle Valley negotiations were charging larger bonuses;

(f) At one point in the process, the Member suggested that the TLE claim should also be subject to a bonus;

(g) The Member did not suggest that Sakimay consult with independent legal counsel regarding the bonus provision;

(h) Sakimay ultimately signed the new retainer agreement which provided for new hourly rates and a 3% bonus based on the final settlement amount on the QVIDA claim;

(i) The 3% bonus, after resolution of the QVIDA claim, totalled $635,751;

(j) Sakimay ultimately did not agree to pay the bonus;

(k) The Member brought a taxation under *The Legal Profession Act, 1990* (the "Act") seeking payment of the bonus and any other outstanding fees. The taxation proceeded to a *viva voce* hearing with Justice Krogan presiding;

(l) It was determined by Justice Krogan that the other law firms that were alleged by the Member to be charging larger bonuses were not, in fact, charging bonuses at all in relation to the QVIDA claim.

6. Justice Krogan further made the following findings of fact:

(a) The QVIDA Retainer Agreement was not fair as set out in Section 64(3) of the *Act*: paragraph 69;

(b) The QVIDA Agreement was not reasonable: paragraph 80;

(c) The Member failed to convey the impact of the TLE retainer agreement on the QVIDA file to Sakimay and, hence, an uninformed decision was made when Sakimay council voted in favour of entering into the QVIDA retainer agreement: paragraph 62;

(d) The Member advised Sakimay, incorrectly, that other lawyers were being paid bonuses for the Qu'Appelle Valley flooding claims: paragraphs 13, 17 and 22.

7. The Court of Appeal further elaborated on the Member's discussions with Sakimay regarding the charging of bonuses by other lawyers:

> 63 … First, [the Member] insisted Mr. Brabant was receiving a bonus. Second, he then wrote Mr. Brabant and told him not to discuss his fee arrangement with the Sakimay leadership. This conduct raises concerns of fairness. At best, it demonstrates a reckless disregard for the truth on Maurice's part.

III. POSITION OF THE PARTIES

8. The position of the CIC is that it would be an abuse of process for the Member to re-litigate the findings of fact made by Justice Krogan and the Court of Appeal. The CIC indicates that there are limited exceptions to "re-litigation", including that:

(a) The first proceeding was tainted by fraud or dishonesty;

(b) There is fresh, new evidence that conclusively impeaches the original result; or

(c) The stakes in the original proceeding were minor such that there was not a full and robust presentation or response in the original proceeding, as opposed to the considerable stakes in the second proceeding.

9. The CIC indicates that, given the Member does not suggest that any of these "exceptions" apply, the Member should not be entitled to re-litigate the finding of fact made by Justice Krogan and the Court of Appeal.

10. In questioning from the hearing committee, the CIC further elaborated that the CIC's position is that the findings of fact made by Justice Krogan are the basis and genesis of the charges as against the Member. Thus, the CIC's position is that the Member should not be entitled to call any evidence at the hearing, as the necessary findings of fact have already been made by Justice Krogan. Further, the CIC indicates that allowing the Member to call any contextual evidence is a "slippery slope" towards re-litigation and an abuse of process.

11. The Member's position is that he should be given a fair opportunity to adduce further evidence. The decision of Justice Krogan is but one piece of evidence to be considered and that the Hearing Committee should make its own assessment based on all of the evidence.

12. The Member's counsel, in oral argument, argued that the Member should be entitled to lead evidence to "dislodge" the judicial findings relied upon by the Law Society and to provide context to those decisions.

IV. ANALYSIS

13. Some of the relief sought by the CIC is not controversial. Most particularly, the Member and CIC agree that the decisions of Justice Krogan and the Court of Appeal are admissible and that the findings of fact made in those cases are admissible as proof of those facts in this proceedings against the Member.

14. The sole issue of controversy is whether the Member can provide further evidence to dislodge the findings made by Justice Krogan and the Court of Appeal.

15. In its brief of law, the CIC argues that re-litigating the decisions reached by Justice Krogan would amount to an abuse of process.

16. In that regard, the CIC quotes from the leading case of *Toronto (City) v Canadian Union of Public Employees (CUPE), Local 79*, 2003 SCC 63 ("*CUPE*"). In *CUPE*, Justice Arbour indicates as follows:

> 51 Rather than focus on the motive or status of the parties, the doctrine of abuse of process concentrates on the integrity of the adjudicative process. Three preliminary observations are useful in that respect. First, there can be no assumption that relitigation will yield a more accurate result than the original proceeding. Second, if the same result is reached in the subsequent proceeding, the relitigation will prove to have been a waste of judicial resources as well as an unnecessary expense for the parties and possibly an additional hardship for some witnesses. Finally, if the result in the subsequent proceeding is different from the conclusion reached in the first on the very same issue, the inconsistency, in and of itself, will undermine the credibility of the entire judicial process, thereby diminishing its authority, its credibility and its aim of finality.

> 52 In contrast, proper review by way of appeal increases confidence in the ultimate result and affirms both the authority of the process as well as the finality of the result. It is therefore apparent that from the system's point of view, relitigation carries serious detrimental effects and should be avoided unless the circumstances dictate that relitigation is in fact necessary to enhance the credibility and the effectiveness of the adjudicative process as a whole. There may be instances where relitigation will enhance, rather than impeach, the integrity of the judicial system, for example: (1) when the first proceeding is tainted by fraud or dishonesty; (2) when fresh, new evidence, previously unavailable, conclusively impeaches the original results; or (3) when fairness dictates that the original result should not be binding in the new context. This was stated unequivocally by this Court in *Danyluk*, *supra*, at para. 80.
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> 53 The discretionary factors that apply to prevent the doctrine of issue estoppel from operating in an unjust or unfair way are equally available to prevent the doctrine of abuse of process from achieving a similar undesirable result. There are many circumstances in which the bar against relitigation, either through the doctrine of *res judicata* or that of abuse of process, would create unfairness. If, for instance, the stakes in the original proceeding were too minor to generate a full and robust response, while the subsequent stakes were considerable, fairness would dictate that the administration of justice would be better served by permitting the second proceeding to go forward than by insisting that finality should prevail. An inadequate incentive to defend, the discovery of new evidence in appropriate circumstances, or a tainted original process may all overcome the interest in maintaining the finality of the original decision (*Danyluk*, *supra*, at para. 51; *Franco*, *supra*, at para. 55).
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> 54 These considerations are particularly apposite when the attempt is to relitigate a criminal conviction. Casting doubt over the validity of a criminal conviction is a very serious matter. Inevitably in a case such as this one, the conclusion of the arbitrator has precisely that effect, whether this was intended or not. The administration of justice must equip itself with all legitimate means to prevent wrongful convictions and to address any real possibility of such an occurrence after the fact. Collateral attacks and relitigation, however, are not in my view appropriate methods of redress since they inordinately tax the adjudicative process while doing nothing to ensure a more trustworthy result.

17. The CIC further relies upon the decision of *Law Society of Upper Canada v Piersanti*, [2016] L.S.D.D. No. 183 in which the Law Society of Upper Canada sought similar relief as this application. Specifically, the Law Society sought an order that Mr. Piersanti be barred from re-litigating the findings of fact contained in a civil court decision.

18. In *Piersanti*, the hearing division of the Law Society determined that the factual findings set out in the court decisions were admissible as proof against Mr. Piersanti and that Mr. Piersanti was precluded from re-litigating the findings of fact in the discipline proceeding. The hearing division determined that allowing Mr. Piersanti to re-litigate the findings of the court hearing would amount to an abuse of process.

19. The decision of the Law Society hearing division in *Piersanti* was upheld on appeal: *Law Society of Ontario v. Piersanti*, 2018 ONLSTA 10 and *Piersanti v Law Society of Ontario*, 2019 ONSC 1826.

20. Although not raised with this hearing committee, a similar decision was recently argued in Ontario in *Law Society of Ontario v Mazinani*, 2020 ONLSTH 24 (CanLII). In that case, the hearing panel found that:

> (a) The lawyer was not entitled to re-litigate the judicial finding that she breached the order of a judge;
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> (b) The lawyer was entitled to "re-litigate" the finding of the Divisional Court that an application for judicial review brought by her was totally without merit and was an attempt to circumvent the rules restricting the right of appeal. The hearing panel indicated that the lawyer's conduct in launching the application for judicial review was not at issue, nor did she have an opportunity to specifically address the judge's tersely worded conclusions about her conduct. Thus, it was appropriate that she be allowed to lead evidence that might dislodge this conclusion by the judge.

21. The proposition in *Mazinani* that the abuse of process doctrine does not bar a lawyer from calling evidence to dislodge comments made by a judge about the conduct of a lawyer where the lawyer is not a party in the prior judicial proceeding (whether acting as counsel or a witness) is found in a number of decisions, including: *Law Society of Saskatchewan v de Whytell*, 2017 SKLSS 5 and *Groia v Law Society of Upper Canada*, 2015 ONSC 686.

22. The Member relies on a number of decisions, including *Rosenbaum v Law Society of Manitoba* (1983), 22 Man R (2d) 260, affirmed 1983 CanLII 3037 (MBCA) ("*Rosenbaum*"), *Law Society of Upper Canada v Marler*, 2008 ONLSHP 67 and 2010 ONLSAP 29 ("*Marler*") and *Law Society of Saskatchewan v Phillips*, 2018 SKLSS 7 ("*Phillips*"), for the proposition that the Member should be entitled to introduce evidence to displace findings of fact made by Justice Krogan and the Court of Appeal.

23. This hearing committee does not believe that the aforementioned decisions assist the Member because:

> (a) *Rosenbaum* was decided prior to *CUPE* and does not reflect the evolution of the abuse of process doctrine to administrative decisions;
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> (b) The Appeal Panel decision in *Marler* is certainly not particularly determinative of whether a member should be permitted to call evidence to "displace" findings of fact from a judicial decision. In particular, the appeal panel in *Marler* indicated:
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> > [20] In our view, the hearing panel was entitled, at a minimum, to treat the findings of fact made against the appellant as *prima facie* proof of those facts… We say, at a minimum, because the Society has chosen not to argue this appeal on the basis that the findings were conclusive in the discipline proceedings and that, as a result, the hearing panel erred in law in permitting the appellant to relitigate those findings. Accordingly, we assume, for the purposes of this appeal, that the hearing panel was correct in law in allowing the appellant to relitigate the findings made against him in the judicial proceedings. The circumstances under which a licensee facing discipline proceedings may be precluded from relitigating adverse judicial or administrative findings will be left for another day.
> > [Emphasis added]

It is apparent from the wording of the appeal panel decision that it had reservations about whether the member ought to have been entitled to attack the judicial findings of fact.

(c) In *Phillips*, the issue of abuse of process was not raised or considered in the decision. Further, given that the findings of fact made against the member were from a small claims action, the exception in *CUPE* related to the stakes in the original proceeding being too minor to generate a full and robust response, while the subsequent stakes are considerable, might have been applicable.

24. The Member has not led any evidence or argued that there are any circumstances that would create unfairness if there was a bar against re-litigation, such as those non-exhaustive circumstances set out in *CUPE*.

25. Ultimately, in accordance with *Piersani, Mazinani* and *CUPE*, this hearing committee agrees with the CIC that re-litigation of specific findings of fact made by Justice Krogan and the Court of Appeal would amount to an abuse of process, given that the Member has provided no justification as to why those findings should not be binding on this hearing committee.

26. That being said, the hearing committee does not agree with the CIC that this bars the Member from calling evidence at the hearing. Indeed, there may be evidence that the Member wishes to call that does not amount to "re-litigation", particularly on matters where Justice Krogan may not have made any specific findings of fact. It is not for the CIC or this hearing committee to set out or predict what evidence might be called by the Member.

27. In terms of the CIC's argument that allowing the Member to call any evidence is a slippery slope, we do not agree. None of the decisions provided by the CIC, including *Piersanti*, indicates that the Member was barred from calling evidence at the hearing, as requested by the CIC in this case. An order preventing a member from calling any evidence in their own defence would likely breach the duty of fairness required in administrative proceedings.

IV. ORDER

28. The hearing committee makes the following orders:

(a) The decision of Madam Justice Krogan in *Maurice Law v The Sakimay First Nation of Grenfell* (QBG 1684 of 2011 reported at 2014 SKQB 310 ("Hearing Decision")) is admissible in these proceedings against the Respondent, Ronald Maurice;

(b) The Saskatchewan Court of Appeal decision in *Maurice Law v The Sakimay First Nation of Grenfell* (CACV2626 reported at 2017 SKCA 36 ("Appeal Decision")) is admissible in these proceedings against the Respondent, Ronald Maurice;

(c) The specific findings of fact contained in the Hearing Decision and upheld in the Appeal Decision are admissible as proof of those facts in these proceedings against the Respondent;

(d) The Respondent is precluded from re-litigating and challenging the specific findings of fact contained in the Hearing Decision and upheld in the Appeal Decision as to do so would constitute an abuse of process;

(e) The Respondent is entitled to call evidence at the hearing in relation to matters outside of the specific findings of fact contained in the Hearing Decision and upheld in the Appeal Decision.

Dated at the City of Saskatoon, in the Province of Saskatchewan, this 11th day of September, 2020.

"Sean Sinclair"

"Gerald Tegart, Q.C."

"Sharon Martin"

DECISION OF THE HEARING COMMITTEE FOR THE LAW SOCIETY OF SASKATCHEWAN

I. INTRODUCTION

29. The hearing of the Amended Formal Complaint in this matter was heard by videoconference on August 19, 2021. The Hearing Committee consisted of Sean Sinclair (Chair), Gerald Tegart, Q.C. and Sharon Martin. The Conduct Investigation Committee ("CIC") was represented by Darcia Schirr, Q.C. and the Member was represented by Richard Buchwald.

30. The Amended Formal Complaint dated April 17, 2018 alleges the Member is guilty of conduct unbecoming a lawyer in that he:

> "1. did, on or about March 16, 2009, prepare and enter into a retainer agreement with his client, Sakimay First Nation, that was not, in light of all pertinent circumstances, fair and reasonable;
> 2. did, in connection with a retainer agreement executed on or about March 16, 2009, fail to be frank and candid with his client, Sakimay First Nation, as follows:
> i. he provided them with information about the billing practices of other lawyers practicing in the relevant area which, ultimately, he knew or ought to have known was false; and
> ii. he failed to highlight the fact that the subject matter of a March 16, 2009 retainer agreement that included a 3% bonus provision for the Member, was already included within the scope of an earlier retainer agreement which was more favourable to Sakimay First Nation in that it did not provide for such a bonus."

31. No preliminary objections or applications were brought by either party at this hearing. There had been a prior decision rendered by this Hearing Committee (the "Preliminary Decision") in relation to an application brought by the CIC about the impact in this hearing of two judicial decisions involving the Member.

32. At the hearing, the Member acknowledged that the charges set out at paragraphs 1 and 2(b) of the Amended Formal Complaint are well-founded. The charge found at paragraph 2(a) of the Amended Formal Complaint was withdrawn by the CIC.

II FACTS

33. The evidence of the CIC related to misconduct comprised two court decisions, being the decision of Madam Justice Krogan in *Maurice Law v The Sakimay First Nation of Grenfell* (QBG

1684 of 2011 reported at 2014 SKQB 310 ("Hearing Decision")) and the decision of the Saskatchewan Court of Appeal in *Maurice Law v The Sakimay First Nation of Grenfell* (CACV2626 reported at 2017 SKCA 36 ("Appeal Decision")).

34. The relevant facts in those decisions are set out at paragraphs 5 and 6 of the Preliminary Decision. Those facts, in detail, need not be reproduced here. However, a short summary is that:

(a) Justice Krogan, in the Hearing Decision, found that the Member had entered into a retainer agreement with his client, Sakimay First Nation ("Sakimay"), that was not fair or reasonable: paragraphs 69 and 80;

(b) The Court of Appeal upheld the Hearing Decision in relation to the fairness of the retainer agreement and did not consider the issue of whether the retainer agreement was unreasonable: paragraphs 64 and 65.

35. The Member has no prior discipline history in Saskatchewan. He had one prior unrelated discipline case in Alberta, wherein he failed to respond to communications from another lawyer with reasonable promptness.

III. JOINT SUBMISSION

36. The penalty proposed in the joint submission is:

(a) A fine of $15,000 to be paid on or before December 30, 2021. If the fine is not paid by the deadline date, the Member would be suspended from practice;

(b) Costs in the amount of $20,000 payable by December 30, 2021. If the costs are not paid by the deadline date, the Law Society may file a certified copy of the Hearing Committee Order with the Court of Queen's Bench and enforce the Order as if it were a Judgment of the Court;

(c) A reprimand.

IV. ANALYSIS

37. Having considered the Member's acceptance of the charges as aforesaid, the Discipline Decision and the Appeal Decision, the Hearing Committee finds that the Member has committed professional misconduct as set out at paragraphs 1 and 2(b) of the Amended Formal Complaint.

38. With respect to penalty, the Hearing Committee agrees with the submissions of the CIC and the Member's counsel that a joint submission is to be given deference for the reasons set out in numerous decisions, including *LSS v Buitenuis*, 2020 SKLSS 2 and *Rault v Law Society of Saskatchewan*, 2009 SKCA 72.

39. The Hearing Committee takes no issue with the agreed upon penalty. The penalty is significant enough that it will act both as a specific and general deterrent and does not fall outside the range of reasonable outcomes. Further, such a penalty would not bring the administration of justice into disrepute.

V. ORDER

40. As a result of the foregoing, the Hearing Committee adopts the joint penalty submission and makes the following orders:

(a) Pursuant to Rule 1131(3)(a)(iv), Ron Maurice shall pay a fine in the amount of $15,000 to be paid on or before December 30, 2021. If the fine is not paid by the deadline date, Mr. Maurice shall be suspended from practice pursuant to Rule 1131(4);

(b) Pursuant to Rule 1131(3)(a)(vi), Ron Maurice shall pay the costs of the inquiry in the amount of $20,000. Such costs are to be paid on or before December 30, 2021. If the costs are not paid by the deadline date, the Law Society may file a certified copy of the Hearing Committee Order with the Court of Queen's Bench and enforce the Order as if it were a Judgment of the Court pursuant to section 57(2) of *The Legal Profession Act, 1990*;

(c) Pursuant to Rule 1131(3)(a)(vii), Ron Maurice shall be reprimanded.

Dated at the City of Saskatoon, in the Province of Saskatchewan, this 20th day of August, 2021.

"Sean Sinclair"

"Gerald Tegart, Q.C."

"Sharon Martin"