Law Society
of Saskatchewan

ROBERT HALE
HEARING DATE: September 28, 2021
DECISION DATE: October 12, 2021
***Law Society of Saskatchewan v. Hale*, 2021 SKLSS 5**

IN THE MATTER OF *THE LEGAL PROFESSION ACT, 1990*
AND IN THE MATTER OF ROBERT HALE,
A LAWYER OF REGINA, SASKATCHEWAN

DECISION OF THE HEARING COMMITTEE FOR THE LAW SOCIETY OF SASKATCHEWAN

Hearing Committee: John Morrall, Chair
Amanda Doucette
Della Stumborg

Counsel: Sean Sinclair: Law Society of Saskatchewan
Robert Hale: on his own behalf

INTRODUCTION

1. The Hearing Committee of the Law Society of Saskatchewan comprised of John Morrall as Chair, Amanda Doucette, and Della Stumborg (the "Hearing Committee") convened by Microsoft Teams on September 28, 2021 to hear this matter. Counsel for the Law Society was Sean Sinclair and the Member, Robert Hale, appeared on his own behalf ("the Member").

2. Neither counsel had any objections to the composition or jurisdiction of the Committee.

3. The amended formal complaint dated August 25, 2021 against the Member alleges the Member is guilty of conduct unbecoming a lawyer in that he:

1. did, in the course of his professional practice, sexually harass his client, B.H.

4. The Member entered a guilty plea to the sole count and this Hearing proceeded as a penalty Hearing.

5. An Agreed Statement of Facts and Admissions dated September 28, 2021 produced by counsel for the Law Society and consented to on the same date by the Member was filed and marked as Exhibit P-1 in relation to this proceeding. It is appended to this Decision.

6. The parties proposed a joint submission on penalty which included the following sanctions:

a) Reprimand;

b) Suspension for a period of 6 months, with 5 months considered to have already been served given that the Member was not practicing during this time. The one month remaining shall commence following the issuance of this Decision;

c) Prior to becoming an active member of the Law Society of Saskatchewan, the Member is required to complete a course regarding workplace harassment, as approved by the chair of the Discipline Policy Committee;

d) Costs in the amount of $2000.00.

7. As noted in the reasons and order set out below, the Hearing Committee accepts the joint submission.

FACTS

8. The facts are set out in the Agreed Statement of Facts and Admissions. In summary, they are as follows.

9. On or about April 27, 2010, the Member attended Court and personally met his client, B.H., for the first time prior to the commencement of proceedings. When the complainant's daughter left, the Member moved closer to B.H. and told her that he was "not expecting someone like her" and began running his hands up and down her thighs. Following this, the Member advised B.H. to plead guilty which she did.

10. After the court proceeding and while speaking to B.H. at the probation office, the Member leaned forward and began stroking her thighs in the presence of B.H.'s daughter. The complainant did not consent to any of the physical touching by the Member.

REASONS FOR PENALTY

11. The relevant section of the Code of Professional Conduct that was applicable on April 27, 2010 was the Code adopted on October 1, 1991, and thereafter subsequently amended. It stated as follows under Chapter 15 with the heading "Responsibility to the Profession Generally":

"**RULE**

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

12. The commentary to the Rule in Chapter 15 further states:

"4. A lawyer in his or her professional capacity shall not discriminate on the grounds

of race, creed, colour, national origin, disability, age, religion, sex, sexual orientation, marital or family status in the employment of lawyers, articled students or support staff or in any relations between the lawyer and members of the profession or any other person.

Sexual harassment is a form of discrimination and may broadly be defined as "unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job related consequences for the victims of the harassment". The lack of an intent to produce feelings of harassment in the complainant is irrelevant.

[Chapter XV, Commentary 4 amended Dec. 9, 1993]"

13. Under "Notes" in relation to the above paragraph, the following statement is included:

"6. Per the Supreme Court of Canada in *Janzen v. Platty Enterprises Ltd.,* [1989] 1 SCR 1252 at page 1284. The Chief Justice also said:

"Common to all of these descriptions of sexual harassment is the concept of using a position of power to import sexual requirements into the workplace thereby negatively altering the working conditions of employees who are forced to contend with sexual demands. (at p. 1281).

Sexual harassment is not limited to demands for sexual favours made under threats of adverse job consequences should the employee refuse to comply with the demands…Sexual harassment also encompasses situations in which sexual demands are foisted upon unwilling employees or in which employees must endure sexual groping, propositions, and inappropriate comments, but where no tangible economic rewards are attached to involvement in the behaviour". (at p. 1282)"

14. The current prohibition with respect to sexual harassment can be found at section 6.3-3 of the present Code of Professional Conduct.

15. In considering an appropriate penalty for the Member as a result of his admission of guilt, it is useful to examine decisions from the Saskatchewan jurisdiction and beyond to determine an applicable range of sanctions for his conduct in this matter. Counsel for the Law Society referred the Hearing Committee to a range of penalties at paragraph 16 of his Brief as follows:

"In another decision related to the same sequence of proceedings, *Law Society v Neinstein,* [2008] 241 OAC 199 (ONSCDC), the Ontario Superior Court of Justice (Divisional Court) provided insight into a range of penalties that had been imposed for member conduct constituting sexual harassment:

[16] In *LSUC v. Coccimiglio* (1991), a twelve month suspension was imposed where a lawyer had been found guilty of sexual assault (for which he was initially sentenced to 30 days imprisonment), and he was found to have propositioned a client using sexually explicit language, including discussions about oral sex.

[17] In *LSUC v. Bondzi-Simpson* (1999), a lawyer was suspended for 18 months after sexually harassing a client by making inappropriate sexual advances and touching her and inappropriately asking a client about her sex life. In that case, the member did not appear, nor was he represented by counsel. The majority of the Committee expressed concern about the need for protection of the public, as the

evidence disclosed some underlying problem that was probably psychiatric in nature.

[18] In the second *Zuker* case, decided in 1999, the member made unwelcome comments and overtures of a sexual nature to a client. For this second offence of sexual harassment, he received a six month suspension with conditions on his practice.

[19] In *LSUC v. Venn* (2003), the member received a one month suspension with conditions after being found guilty of sexually harassing four clients by making unwelcome sexually suggestive comments and/or advances and by engaging in unwanted physical contact of a sexual nature.

[20] Finally, in *LSUC v. Norris* (2003), the member received a three month suspension after pleading guilty to committing an indecent act with intent thereby to offend a female person."

16. The Committee also notes the conduct ruling by the Law Society of Saskatchewan at 2018 SKLSCR 2 and the decision of the Law Society of British Columbia v. Michael John Butterfield 2017 LSBC 02. Despite these rulings and the varied range of sanctions imposed in other matters, we agree with the following paragraph contained in the Brief filed by counsel for the Law Society at paragraph 18:

"While the jurisprudence is intended to act as a measuring stick for the appropriateness of the proposed penalty, it is important to emphasize that the way in which the public and the regulatory bodies have perceived matters of sexual harassment in the past may no longer be consistent or may be less relevant in the modern context of accountability."

17. This committee endorses this modern enlightened approach that reflects the seriousness of this category of misconduct. We believe that sanctions which properly bring the offending Member to account for his behaviour reflect society's increased abhorrence for this type of behaviour.

18. In this context, it is therefore appropriate to review the purposes and principles behind sentencing a Member for conduct unbecoming. While the following decision is being appealed, the Decision of *Law Society of Saskatchewan v. Evatt Anthony Merchant*, 2020 SKLSS 6 provides a guideline for the determination of penalty in professional disciplinary proceedings as follows:

"57. In Saskatchewan, as in other Canadian jurisdictions, professional regulation of lawyers is carried out through a provincial law society. The primary objective of that regulation is the protection of the public by cultivating, certifying and maintaining standards of competence and probity for those who wish to engage in the practice of law. This mandate is carried out in a number of ways, though, for example, providing practice advice and educational opportunities. It is also carried out through maintaining a process for the adjudication of complaints about the conduct of lawyers, and for sanctioning conduct found to be unacceptable. The overarching importance of the principle of protecting the public and ensuring public confidence in the profession means that hearing bodies under the *Rules* of the Law Society have a somewhat different role than other adjudicative tribunals, for example, a judge sentencing a criminal defendant. In *Bolton v. Law Society*, [1994] 1 W.L.R. 512 (C.A.), the English Court of Appeal made this point in the following terms:

> Because orders made by the tribunal are not primarily punitive, it follows that considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences imposed in criminal cases. It often happens that a solicitor appearing before the tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will say, convincingly, that he has learned his lesson and will not offend again...and [he] may also be able to point to real efforts to...redeem his reputation. All these matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness...The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price.

58. Thus, the protection of the welfare of members of the public, and the maintenance of public confidence in the profession are critical factors in deciding on an appropriate penalty when a member of a profession behaves in a way that undermines those important considerations.

59. Deterrence is another consideration this Hearing Committee must keep in mind. The idea of specific deterrence speaks to the effort that must be made to arrive at a penalty that will bring home to the member that the impugned conduct should not be repeated, and that will induce the member to reflect on the expectations of the legislature, the judiciary, the profession and the public of how lawyers should conduct themselves. The concept of general deterrence calls on a disciplinary tribunal to consider what signal a particular penalty will send to other lawyers, and how it might influence their adherence to the *Code of Professional Conduct*.

60. Though the *Bolton* decision, quoted above at paragraph 11, places the reputation of the profession above the fortunes of individual members as a consideration in imposing a penalty, an adjudicative body must nonetheless ensure that they conduct fair proceedings, and give adequate consideration to the interests of the lawyer against whom a complaint has been made. In the case of penalty determinations, one of the important mechanisms for this is to look carefully at how comparator cases have been dealt with in the past."

19. In examining the Member's conduct in this matter, it is clear that the Member physically touched his client, the victim, without consent in a sexual manner on two occasions during the course of their professional relationship. B.H. was vulnerable. She was dependent on the Member's advice and assistance. The member took advantage of his status as a lawyer to his own benefit. His conduct could have easily amounted to a sexual assault with serious criminal consequences.

20. Therefore, it is important to examine the mitigating and aggravating factors relating to the Member and his misconduct along with the other submissions of counsel and the Member so as to determine whether the joint submission proffered by both parties is appropriate having regard to the principles previously noted.

21. The mitigating factors noted by the Committee include the Member's lack of prior discipline history and that the facts upon which this plea was based were agreed to and he accepted

responsibility for his behavior by entering a guilty plea. The most significant mitigating factor is that the Member continues to bear the consequences for his misconduct as he was terminated from his employment as a lawyer in the middle of October 2020 when the formal complaint was initiated. He has not been able to obtain employment at any other law firm or organization due to these pending allegations.

22. During the course of the hearing, we found that the Member seemed genuinely remorseful when making submissions. He did not try to minimize his misconduct and accepted sole responsibility for his behavior. He also indicated that he was taking ongoing steps in counselling to address issues of sexual boundaries and appropriateness among other matters. He further indicated that he is unsure if he will ever practice law again. He specifically acknowledged the hurt he caused the victim and wanted to apologize to her. While both he and this committee understood that a personal apology would be unwise at this point, we would ask counsel for Law Society to convey the Member's words to B.H.

23. The aggravating factors in this matter included the prolonged impact on the victim along with the clear violation of her sexual integrity. It is clear that this sexual assault weighed on the victim for 10 years before she had the courage to bring the matter forward. While sexual harassment encompasses a range of misconduct, given the physical nature of the conduct by the Member against a vulnerable client, this is an egregious violation of the Code.

24. It is within this context that we must now consider the joint submission proffered by both parties. The law with respect to joint submissions has been stated on many previous occasions including the following comments in the decision of Law Society of Saskatchewan v. Blenner-Hassett 2018 SK LSS 6 at paragraphs 33 and 34 as follows:

> "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 decisions 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)
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> 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:
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> > "[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 reasons, as I shall explain.""

25. In determining whether this joint submission is appropriate, the overarching principle of protecting the public and ensuring public confidence in the profession must be of paramount concern. As noted, past sentences may not always accord with the current appreciation of the serious nature of this type of misconduct. Any sentence proposed must have a deterrent effect while also attempting to prevent any re-occurrence of this type of sexual assault by this member or any other lawyer, whether on a client, employee, lawyer or anyone else.

26. After careful review, we find the sanction recommended to be appropriate and not "unhinged" having regard to the circumstances of the offense and the Member. He has taken steps to change his behavior without any other reported incidents in the last ten years. As well, while the sanction is equivalent to a 6 month suspension, it is clear that the public aspect of the complaint and the decision will haunt him for the rest of his life. Given his bleak employment prospects and the sanction he would have to fulfill before becoming an active member of the Saskatchewan Law Society, we find the penalty appropriately protects the public while denouncing the conduct and deterring others.

ORDER

27. Therefore, pursuant to section 1131(3) of the Rules of the Law Society of Saskatchewan, the Hearing Committee suspends the Member for a period of one month commencing on the date of this decision. The sentence will reflect that the total period of suspension will be 6 months with 5 months considered to have already been served given that the Member was not practicing since January 1, 2021.

28. Further, the Member will pay the costs associated with the complaint, fixed in the amount of $2000.00. The costs are payable to the Law Society on or before April 15, 2022 unless the parties agree in writing to a different payment schedule. The Member is also issued a reprimand and is ordered to complete a course regarding workplace harassment, as approved by the Chair of the Discipline Policy Committee prior to becoming an active Member of the Law Society of Saskatchewan.

	"John Morrall, Chair"	"October 8, 2021"
I concur	"Amanda Doucette"	"October 12, 2021"
I concur	"Della Stumborg"	"October 8, 2021"

AGREED STATEMENT OF FACTS AND ADMISSIONS

In relation to the Amended Formal Complaint dated August 25, 2021 alleging that Robert Hale, of the City of Regina, in the Province of Saskatchewan is guilty of conduct unbecoming a lawyer in that he:

1. did, in the course of his professional practice, sexually harass his client, B.H.

JURISDICTION

29. Robert Hale (hereinafter "the Member") is, and was at all times material to this proceeding, a member of the Law Society of Saskatchewan (hereinafter the "Law Society"). At the times relevant to the complaint against the Member, he was an active member of the Law Society and practicing in Swift Current. The Member is currently an inactive member of the Law Society. The Member 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 confirming the Member status.

30. The Member is currently the subject of an Amended Formal Complaint initiated by the Law Society dated August 25, 2021. The Amended Formal Complaint contains the single allegation noted above. Attached at Tab 2 is a copy of the Amended Formal Complaint along with proof of service. The Member intends to plead guilty to the allegation set out in the Amended Formal Complaint.

BACKGROUND OF COMPLAINT

31. The Law Society began an investigation into the Member after receiving a complaint from B.H. on or about April 24, 2020.

32. The Member was representing B.H. in relation to criminal proceedings. B.H.'s complaint centered around certain inappropriate touching and comments made by the Member on the date that B.H. pled guilty to her criminal charges.

PARTICULARS OF CONDUCT

33. On or about April 27, 2010, in Swift Current, Saskatchewan, the complainant was required to appear in court. B.H. had been charged with theft.

34. The Member took over B.H.'s file from a lawyer at a different law office.

35. At the time, B.H. was a resident in Alberta. She had spoken on the telephone to the Member, but had not met in person until court hearing on April 27, 2010.

36. When B.H. attended in Court in Swift Current on April 27, 2010, the Member met with B.H. prior to the commencement of proceedings. When B.H.'s daughter (who was accompanying her) excused herself to use the washroom, the Member moved closer to B.H. and told her that he was "not expecting someone like her" and began running his hands up and down her thighs. Following this, B.H. indicated that the Member advised her to plead guilty and she accepted that advice. Such advice by the Member had also been made prior to April 27, 2010. The Member does not dispute this account of events, but has no recollection of the interaction.

37. Following the Court appearance, B.H., B.H.'s daughter and the Member met at the probation office. B.H. and the Member drove their own vehicles. When they had parked in the parking lot where the office was located, B.H. remained in the driver's seat of her truck. The Member approached the truck and B.H. opened the door to the truck to engage in conversation. The Member then leaned forward and began stroking B.H.'s thighs. This interaction was observed by B.H.'s daughter who returned to B.H.'s vehicle after obtaining documents inside the probation office.

38. B.H. indicates that she did not initially report this interaction with the Member as she was trying to "get over it". B.H. later came to see it as important to have an acknowledgment that the Member's conduct was inappropriate in his role as her lawyer when she was particularly vulnerable.

PRIOR HISTORY

39. The Member has no prior findings of conduct unbecoming.