



Law Society
of Saskatchewan

RODNEY SIMALUK
HEARING DATE: February 26, 2024
DECISION DATE: April 17, 2024
Law Society of Saskatchewan v. Simaluk, 2024 SKLSS 2

IN THE MATTER OF *THE LEGAL PROFESSION ACT, 1990*
AND IN THE MATTER OF RODNEY SIMALUK,
A LAWYER OF REGINA, SASKATCHEWAN

DECISION OF THE HEARING COMMITTEE FOR THE
LAW SOCIETY OF SASKATCHEWAN

INTRODUCTION

1. On February 26, 2024, a Hearing Committee of the Law Society of Saskatchewan convened virtually via MS Teams to hear and determine a formal complaint into the conduct of Rodney Simaluk (the “Member”). The panel was comprised of, Albert Lavoie, K.C, Marg Romanow, and Foluke Laosebikan, K.C., as Chair. The Law Society of Saskatchewan (“LSS”) was represented by Timothy Huber, K.C.. The Member was present for the Hearing and was not represented by counsel.

JURISDICTION AND PRELIMINARY MATTERS

2. The Hearing Committee reminded the Member of his right to counsel and his freedom to elect not to proceed in the absence of counsel. The Member wished to proceed with the Hearing.

3. Jurisdiction was established. There was no objection to the jurisdiction of the Hearing Committee to consider the case nor to the composition of the Hearing Committee.

4. There were no applications to hold the hearing in private. Accordingly, the Hearing, although held virtually, was a public hearing.

CITATION

5. The Member was responding to the following Citation:

“THAT RODNEY SIMALUK, of the City of Regina, in the Province of Saskatchewan, is guilty of conduct unbecoming a lawyer in that he:

1. did threaten to make a complaint to a regulatory authority in an attempt to secure a settlement in an ongoing civil dispute.”

SANCTIONS AND COSTS REQUESTED BY THE LAW SOCIETY

6. The Member tendered an admission of guilt on the citation in accordance with the provisions of an Agreed Statement of Facts dated November 24, 2023.

7. Counsel for the Law Society submitted that the appropriate penalty in the current case would be a fine in the range of \$9,000 to \$14,000 and an order for costs.

SUBMISSIONS OF THE LAW SOCIETY ON SANCTIONS

8. Counsel for the Law Society submitted that a fine in the range of \$9,000 to \$14,000 and an order for costs was justified. Counsel for the Law Society argued that a fine in the proposed range would be appropriate as an alternative to suspension and as a deterrent to the Member (specifically) and to others (generally). Counsel for the Law Society further argued that the conduct of the member in the circumstances could be likened to extortion and submitted that, in order to guard against the significant threat to the administration of justice and the rule of law posed by such conduct, the Law Society must aggressively denounce such conduct.

9. In support of their submissions, counsel for the Law Society cited ***Law Society of British Columbia v. Hittrich, 2020 LSBC 27 (CanLII)*** and ***Law Society of Alberta v. Wu, [2020] L.S.D.D. No. 195***. Counsel for the Law Society noted that both cases cited dealt with conduct more serious than the conduct in the instant case. Counsel for the Law Society also drew a distinction between the instant case where the Member had entered a guilty plea, and the cited cases where neither member had entered a guilty plea. Further, counsel for the Law Society noted that in the *Hittrich* case, the Member contested the proceedings throughout, and in the *Wu* case, the Member failed to appear. Counsel for the Law Society identified these as aggravating factors in the cited cases and concluded that the absence of these aggravating factors in the current case would militate in favour of a penalty which did not include a suspension in this case.

10. Counsel for the Law Society submitted that in the instant case, a monetary penalty associated to the amount of money sought to be extracted by the Member via the threat was appropriate.

SUBMISSIONS OF MEMBER ON SANCTIONS

11. The Member noted he had cooperated with the Law Society to facilitate the efficient disposition of the matter by entering an Agreement Statement of Facts and Submissions and by entering a guilty plea.

12. The Member submitted that a reprimand and an order to bear responsibility for the costs of the tribunal would be appropriate, noting that Law Society counsel was a paid employee. The Member submitted specifically that there be no Order as to fine and no further Order for costs issued, apart from the order to bear the costs of the Hearing.

REBUTTAL OF THE LAW SOCIETY

13. Counsel for the Law Society responded by noting that the mitigating factors cited by the member were already factored into the sanctions proposed on behalf of the Law Society. Counsel for the Law Society further argued that given the quantum and the aggressiveness of the Member's demand in the instant case, the costs requested by the Law Society were appropriate and reasonable. Counsel referred the Hearing Committee to *MacKay v. Law Society of Saskatchewan*, 2021 SKCA 99 (CanLII) and committed to providing the case to the Committee after the Hearing. Counsel fulfilled this commitment immediately following the hearing.

14. Counsel for the Law Society clarified that costs assessed in the Hearing did not go to Law Society Counsel.

STATEMENT OF THE MEMBER

15. The Member accepted the findings and took responsibility for his conduct.

16. The Member stated that he was admitted to the Law Society of Saskatchewan in 1988. He indicated that prior to the occurrence of this Complaint, he had built a busy Real Estate practice. According to the Member, since the Complaint he had suffered reputational damage from bad publicity and his practice had experienced a decrease in income from Real Estate. It should be noted that there was no evidence presented to the Hearing Committee by the Member substantiating amounts of any lost income.

17. Additionally, the Member noted his promptness and responsiveness in his communication with the Law Society with respect to this matter. The Member requested time until June 30th 2025, to pay any fine ordered.

ANALYSIS, SANCTIONS AND COSTS

18. Having satisfied itself that the Member and Counsel for the Law Society did not wish to provide further information, the Hearing Committee reserved its decision.

19. In the assessment and determination of appropriate sanctions, the Hearing Committee considered the documents submitted by the parties prior to the Hearing and the information and submissions provided at the Hearing. The Hearing Committee also considered and applied the relevant law.

20. The Law on Sanctions

The Law Society of Saskatchewan Rule 1131 sets out the authority of the Hearing Committee to impose a penalty in the context of a hearing where a finding of conduct unbecoming has been made, as follows:

Law Society of Saskatchewan Rule 1131

“(1) This Rule applies if the Hearing Committee makes a finding of conduct unbecoming with respect to a Formal Complaint.

(2) The Hearing Committee:

- (a) may consider any relevant information respecting the member’s professional conduct history; and
- (b) shall invite Discipline Counsel and the member to make submissions as to penalty.

(3) The Hearing Committee may, by order, do one or more of the following:

- (a) assess any penalties or impose any requirements that it considers appropriate, including but not limited to:
 - (i) directing that the member be disbarred and setting the period, not exceeding five years, during which the person is not eligible to apply for reinstatement;
 - (ii) suspending the member from practice for a specified period until specified requirements are met, including requirements that the member:
 - (A) successfully complete specified courses;
 - (B) obtain medical treatment or treatment for addiction to drugs or alcohol;
 - (iii) specifying conditions under which the member may continue to practice, including conditions that the member:
 - (A) not do specified types of work;
 - (B) successfully complete specified classes;
 - (C) not have exclusive control of the member’s Trust account;
 - (D) obtain medical treatment or treatment for addiction to drugs or alcohol;
 - (E) practise only as a partner with, or as an associate or employee of one, or more members that the Committee may specify;
 - (iv) imposing a fine in any amount that the Committee may specify;
 - (v) requiring the member to pay restitution, in any amount that the Committee may specify, to any aggrieved party;
 - (vi) requiring the member to pay costs of the inquiry calculated in accordance with Rule 1135;
 - (vii) reprimanding the member;
 - (viii) permitting the member to resign from the Society;
- (b) if the Formal Complaint relates to the transfer of identified property or funds in an ascertainable amount, require the member to transfer the property or the amount to the rightful owner;
- (c) make any other direction or set any additional requirement that the Committee considers appropriate.

(4) In addition to a decision made pursuant to subrule (3), the Hearing Committee may order that, if a member fails to make payment in accordance with an order made pursuant to subclause (3)(a)(iv) or (v), the member be suspended from practice.

(5) When the Hearing Committee makes an order pursuant to this section, the Hearing Committee shall:

- (a) specify the penalty assessed or requirement imposed in its decision pursuant to subrule (3);
- (b) send the following to the member:
 - (i) a copy of the Committee's decision; and
 - (ii) a notice of the penalty assessed, or requirement imposed; and
- (c) send a notice of the penalty assessed or requirement imposed to the complainant, if any, and may send a notice of the penalty assessed or requirement imposed to any other person that the Hearing Committee considers advisable;
- (d) if it imposes a fine, fix the date by which payment to the Society shall be completed;
- (e) if it imposes costs, fix the date by which payment to the Society shall be completed;
- (f) if it imposes a requirement, fix the date by which the requirement shall be fulfilled; and
- (g) if it imposes restitution, fix the date by which restitution shall be paid."

21. *The Legal Profession Act*, 1990, L-10 is the governing legislation of the Law Society of Saskatchewan. S.3.1 of the Act provides that the Law Society's mandate is "to act in the public interest.... and to protect the public by assuring the integrity, knowledge, skill, proficiency and competence of members".

Further, S.3.2 of the *Legal Profession Act* provides:

"In any exercise of the society's powers or discharge of its responsibilities or in any proceeding pursuant to this Act, the protection of the public and ethical and competent practice take priority over the interests of the member."

The Hearing Committee took cognisance of s.3.1 and s.3.2 of the Act as central in their consideration as to appropriate sanctions. The Hearing Committee further agreed that the need to maintain the public's confidence in the integrity of the profession and the ability of the profession to govern its own members were relevant considerations in the instant matter. Accordingly, the Hearing Committee agreed that the conduct of the Member should be dealt with in a way that protects the public and fosters the public's confidence in the legal profession.

22. The Hearing Committee considered the following general factors in this matter:

- (a) The protection of the public and the need to maintain the public's confidence in the integrity of the profession.
- (b) Specific deterrence- for the Member.
- (c) General deterrence- for other members.
- (d) Denunciation of the conduct.
- (e) Additionally, the Hearing Committee took into consideration the presence of mitigating factors and aggravating factors in determining the appropriate sanction. The Hearing Committee assessed the Member's promptness and responsiveness in the matter, his entry into an agreed Statement of facts and his entry of a guilty plea to be mitigating factors. Conversely, the Hearing Committee considered the Member's prior Complaint history and the quantum of the Member's demand to be aggravating factors, noting that the Member's demand letter entered into the realm of extortion when damages to that extent were not proven.

23. The Hearing Committee found that the Member's conduct did raise concerns with respect to the protection of the public and the maintaining of public confidence in the legal profession. Accordingly, the Hearing Committee found it appropriate to impose sanctions which would serve as an unequivocal denunciation of the conduct in question while also addressing the following

concerns: the protection of the public; the preservation of public confidence in the legal profession; specific deterrence in relation to the Member and general deterrence in relation to the membership.

24. The Hearing Committee agreed that the instant matter could be distinguished from the *Hittrich* case and the *Wu* case. Accordingly, it was determined that a penalty of suspension was not warranted in this case.

The Hearing Committee then determined that the objectives of denunciation and deterrence as well as the other objectives outlined in paragraph 23 hereof, could be accomplished through a fine. The Hearing Committee noted:

“We would be remiss if we did not mention that part of general deterrence has to take into consideration the collateral negative consequences and stress on each party as a result of the Member’s actions.”

25. The following notice was issued by the Hearing Committee:

“Lawyers are bound by very clear ethical and professional guidelines, and it might be appropriate for this Hearing Committee to remind the profession that at times, rather than taking the literal instructions of a client, they are constrained by ethical guidelines.”

CONCLUSION AS TO SANCTIONS AND COSTS

26. The Hearing Committee orders that:

- a. The Member shall pay a fine in the amount of \$9,000.00 to be paid in full by June 30th, 2025.
- b. Additionally, the Member shall pay the full costs of the Hearing as per the Costs Statement filed by Counsel for the Law Society in the amount of \$4,230.00, said costs to be paid in full by the Member no later than November 1, 2024.
- c. A Notice to the Profession capturing the essence of paragraph 25 of this Report be issued.

DATED this 17th day of April 2024 at the City of Melfort in the Province of Saskatchewan.

Per: “Foluke Laosebikan, K.C.”, Chair

Per: “Albert Lavoie, K.C.”

Per: “Marg Romanow”

AGREED STATEMENT OF FACTS AND ADMISSIONS

In relation to the Formal Complaint dated April 13, 2023, alleging the following:

THAT RODNEY SIMALUK, of the City of Regina, in the Province of Saskatchewan, is guilty of conduct unbecoming a lawyer in that he:

- 1. did threaten to make a complaint to a regulatory authority in an attempt to secure a settlement in an ongoing civil dispute.**

Jurisdiction

27. Rodney Simaluk (hereinafter "the Member") is, and was at all times material to this proceeding, a Member of the Law Society of Saskatchewan (the "LSS"), 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").

28. The Member is currently the subject of a Formal Complaint initiated by the LSS dated April 13, 2023. The Formal Complaint is attached at **Tab 1** along with proof of service.

Particulars of Conduct

29. On or about January 12, 2023, realtor and real estate brokerage owner, W.Z., filed a complaint against the Member. The Member had been involved in a residential real estate transaction wherein D.M., a realtor working with W.Z.'s brokerage, acted for buyers of property being sold by the Member's clients.

30. The relationship between the parties, including the Member, the vendors, the buyers, the buyers realtor and the brokerage soured dramatically after the buyers realtor allowed potential renters into the property to view it before possession (once with permission and on a second occasion (the following day) during an inspection without explicit permission). During one of the viewings a vase was broken.

31. The decline in relations resulted in the vendors instructing the Member not to release real estate commissions, first to both realtors (the vendors realtors also work at W.Z.'s brokerage), and then finally only with regard to D.M.

32. The vendors complained against D.M. to the Saskatchewan Real Estate Commission. That complaint remains outstanding and has not yet been resolved.

33. W.Z. complained against the Member for withholding the real estate commissions. That complaint was determined to warrant "no further action" by the Law Society due to the fact that the Member was not subject to a trust condition or undertaking that required him to pay the commissions. The legal obligations of the Member regarding the commissions, in all the circumstances, was determined to be a legal issue, and not an ethical breach.

34. W.Z. attempted to resolve the conflict by way of an offer to pay the vendors \$1,000.00 from his brokerage and \$1,000.00 from D.M. This offer was rejected by the vendors.

35. In the context of discussions surrounding the dispute, the Member then sent a "without prejudice" letter dated December 8, 2022, to W.Z. and D.M. **[TAB 2]**.

36. The December 8, 2022, letter references the parties' history of conflict and goes on to mention a potential complaint against the W.Z. and his brokerage to the Saskatchewan Realtor Association (meaning the Saskatchewan Real Estate Commission). The most relevant excerpts of that letter are as follows:

3. Our clients are now contemplating lodging a complaint against W.Z. personally and [the brokerage] for their involvement in this matter.

4. Our clients would like to move forward from these unfortunate circumstances, and to see a resolution to the matter. To this end, we provide you with the following offer to settle:

| CLAIM BY OUR CLIENTS | AMOUNT |
|--|---------------------|
| Buyer Realtor Fees | \$ 11,220.00 |
| Solicitor costs related to the unprofessional actions of D.M. | \$ 5,614.61 |
| Replace Broken Vase | \$ 250.00 |
| General Damages | \$ 12,000.00 |
| TOTAL | \$ 29,084.61 |
| LESS: Funds held in trust | \$ 11,220.00 |
| TOTAL DUE AN OWING | \$ 17,864.61 |

5. This settlement offer is provided pursuant to the following conditions:

a. You confirm that you have released realtor fees to our clients' realtors, J.K. and S.W., which were provided to your office of possession. Our clients' position has always been that Ms. K and Ms. W were not involved in the issues arising from D.M.'s unprofessional actions.

b. Our clients will waive their right to lodge a complaint against W.Z. and [the brokerage] with the Saskatchewan Realtor Association.

...

7. Failing an agreement our clients will exercise all legal remedies available to them.

37. W.Z and D.M. did not accept the offer to settle contained in the letter dated December 8, 2022.

38. W.Z. filed a complaint with the Law Society on or about January 12, 2023 **[TAB 3]**. In it, he takes issue with the threatening tone and language of the December 8, 2022, letter referenced above.

39. The Member's clients filed a complaint against W.Z. on or about January 24, 2023. That complaint **[Tab 4]** focused on W.Z.'s management of the entire situation, specifically the payment of commissions to the vendor's realtor (the other agent in W.Z.'s brokerage). The complaint mentions the fact that ongoing legal guidance was being provided by the Member.

40. The new complaint of W.Z. was forwarded to the Member for response on or about February 9, 2023. The Member's response, dated February 21, 2023 (including several attachments), sets out, in some detail, the issues between the sellers and D.M., and briefly characterizes the December 8, 2022, letter as an attempt to resolve the dispute, denying it was threatening **[TAB 5]**.

41. On March 21, 2023, Valerie Payne, Director of Professional Responsibility, wrote to the Member, identifying specific concerns about the December 8, 2022, letter **[TAB 6]**. The intention was to make it clear for the Member that there was an apparent breach of Code sections 3.2-5(b) and 5.1-2(n), and to allow him one more opportunity to recognize and address the concern. On March 22, 2023, the Member responded **[TAB 7]**.

Prior History

42. The Member has two prior findings of conduct unbecoming. In 2007, the Member was found guilty of conduct unbecoming for one count of dilatory practice. In 2012, the Member was found guilty of conduct unbecoming in connection with entering into a debtor-creditor relationship with a client without ensuring that proper safeguards were in place for the client regarding the conflict of interest inherent in the transaction.