

THE LAW SOCIETY OF MANITOBA

IN THE MATTER OF:

CAROLINE CRAMER

- and -

IN THE MATTER OF:

THE LEGAL PROFESSION ACT

Hearing Date: April 20, 2023

Panel: Grant Mitchell, K.C. (Chair)
Penny Piper
David Rondeau (Public Representative)

Counsel: Rocky Kravetsky for the Law Society of Manitoba
David Hill for the Member

REASONS FOR DECISION – PRELIMINARY MOTION

1. CAROLINE CRAMER appeared through her counsel, David Hill, before a panel of the Discipline Committee of the Benchers of The Law Society of Manitoba (“the Society”) on Thursday, April 20, 2023, pursuant to three (3) citations, two (2) from 2020 and one (1) from 2022. Rocky Kravetsky appeared as counsel for The Law Society of Manitoba. Members of the panel were Grant Mitchell, K.C., Chair; Penny Piper; and David Rondeau, Public Representative. Mr. Hill and Mr. Kravetsky did not have any objections to the constitution of the panel. The hearing was conducted virtually using Zoom technology. No observers requested access to the hearing. The April 20th hearing was

convened exclusively to deal with a motion from Mr. Hill on behalf of his client asserting that the Society had lost jurisdiction over Ms. Cramer because of her retirement.

2. This preliminary motion asserts that in making a conditional agreement to allow a member to retire, the Society loses its disciplinary jurisdiction over a practitioner because they are no longer a "member".

Facts:

3. Ms. Cramer was called to the bar in 1962. She practised for almost 60 years with only one disciplinary matter on her record. She was the subject of two citations in 2020 and retained prominent, experienced counsel, Saul Simmonds, to represent her. Through negotiations in December 2020 with senior staff of the Society (Leah Kosokowsky, the current CEO of the Society), it was agreed that in exchange for Ms. Cramer's commitment to voluntarily retire from practice no later than February 14, 2021 and to enter into an undertaking that took effect on December 14, 2020, the Society would not proceed to a Discipline panel with the charges in the two 2020 citations.
4. It is apparent from the record that the Society alleges that Ms. Cramer did not comply with that undertaking and the Society issued a third citation, in 2022, against her relating to her activities following the agreement to retire and the undertaking signed December 7, 2020. The Society also suspended Ms. Cramer from practice on an interim basis. Ms. Cramer has not admitted to the allegations in any of the citations.

5. Mr. Hill, Ms. Cramer's current counsel, asserts that when the Society agreed to let Ms. Cramer retire in exchange for not proceeding on the first two citations, it lost jurisdiction over her as she ceased to be a member. For the purpose of *The Legal Profession Act* ("the Act"), and his argument, Mr. Hill argues that retirement and resignation are synonymous.
6. Mr. Kravetsky on behalf of the Society submits that once a person becomes a member of the Society, they can only cease to be a member if they die, or if they are disbarred, or if a panel of the Discipline Committee makes an order allowing them to resign.
7. Mr. Hill argues that the Society's failure to cross-examine Ms. Cramer on her affidavit means that it has tacitly admitted the facts asserted in that affidavit. In that affidavit, Ms. Cramer does not assert that she resigned, only that she retired.
8. Mr. Kravetsky argues that the affidavit of Ms. Kosokowsky answers the facts alleged in the Cramer affidavit. Ms. Kosokowsky was not cross-examined on her affidavit. Mr. Kravetsky also submits that the facts for the purpose of this motion are not in dispute, only the legal consequences of those facts. He submits that while there was an agreement to accept a retirement in exchange for not proceeding with the disciplinary charges in the first two citations, there was not an agreement to allow her to resign within the meaning of the Act and there could be no such agreement, because Ms. Kosokowsky did not have the power to allow a member to resign – only a panel of the Discipline Committee has that power and only when it is dealing with

charges under the Act. None of that occurred in this case, and Ms. Cramer does not assert that it did. The last paragraph of Ms. Kosokowsky's affidavit states:

"To date there have been no proceedings resulting in a "discipline order" of any kind affecting Ms. Cramer's membership. She has never been granted, nor asked for, permission to resign."

9. In reply, Mr. Hill argued that this distinction between retirement and resignation is one of form and not substance. He submits that when a lawyer commits to retiring, they are resigning from membership in the Society, in particular when that commitment comes in the context of answering to charges under the Act.

10. The relevant provisions of *The Legal Profession Act* are as follows:

Ceasing to be a member

17(3) A person ceases to be a member when

(a) the person dies;

(b) as a result of disciplinary proceedings,

(i) the person is disbarred,

(ii) the person's name is ordered to be struck from the student register, or

(iii) the person is permitted to resign; or

(c) the person ceases to be a student, unless he or she is then registered in the rolls of the society.

Members may not resign

17(4) No person may resign as a member unless permitted to do so by the panel conducting the proceedings referred to in clause (3)(b).

11. Mr. Kravetsky informed the panel during his submission that s. 17(4) was added to the Act after events where a member purported to resign rather than face disciplinary charges. The section was designed to prevent loss of the Society's jurisdiction in such circumstances, for the protection of the public. Mr. Hill did not dispute this legislative history.
12. Neither Mr. Hill nor Mr. Kravetsky had any precedent decisions from this or any other jurisdiction on the issue of whether retirement is equivalent to resignation. Mr. Kravetsky submitted that this is because the Act is clear and the argument in this case is novel and contrary to the express provisions of the Act.
13. This panel finds that the provisions of s. 17 of the Act are clear as to the requirements for a resignation to be effective in ending the membership of a practitioner. Only when a panel of the Society hearing a disciplinary matter concerning the member makes an order permitting the member to resign, can a resignation be effective and membership ended on that basis. No such panel order has occurred yet in this case, and none is asserted to have occurred.
14. In fact, at the time of the agreement between the parties, Ms. Cramer formally applied to be accepted as a non-practising member of the Society and submitted her payment to gain that status (\$100 plus GST). There is no suggestion that she was misled about her withdrawal from practice and changing her membership in the Society, while she was represented by senior, experienced counsel.

15. It can be added that lawyers who choose to cease practice for reasons other than death generally retire and must meet the requirements of the Society to care for the interests of their clients in doing so. That act of retirement does not remove their membership status or the Society's jurisdiction over them. They are either non-practising or inactive, per their election. In some instances, lawyers come out of retirement and to do so, request the Society to accept them back as practising members in good standing on whatever conditions the Society imposes. The third citation in this matter alleges that Ms. Cramer effectively came out of retirement without the Society's approval, and in contravention of her undertaking at the time of her December 2020 retirement.
16. For all of the above reasons, this panel rejects the jurisdiction submission on behalf of Ms. Cramer and finds that the Society retains jurisdiction over her. The parties may now proceed to schedule a hearing on the three (3) citations at a time convenient to all.

DATED this 17th day of May, 2023.


Grant Mitchell, K.C.


Penny Piper


David Rondeau