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Don't Gossip About Your Client to the Press... Some (Mildly) Complicating Thoughts on *Robidoux*

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Decision commented on: [In the matter of the *Legal Profession Act*, and in the matter of a hearing regarding the conduct of Kristine Robidoux, QC, a Member of the Law Society of Alberta](#)

On June 9 2014 the Law Society of Alberta suspended Kristine Robidoux for four months after she admitted to violating her duties of confidentiality and candour to her client, provincial Conservative party candidate and former journalist Arthur Kent. Robidoux was legal counsel to Kent's election team in the 2008 Alberta provincial election. She was also Kent's agent and the Conservative party's quadrant chair for five of the electoral constituencies in Calgary. During that time Robidoux had e-mail correspondence with Don Martin, a journalist, in which she gave Martin information about problems with the Kent campaign and, in part based on which, Martin wrote a column that "was unbalanced and wholly negative, thereby leaving a misleading and false impression about the candidate" (Agreed Statement of Facts, para 24).

Because of Robidoux's admissions, the Law Society Hearing Panel reasons (see [here](#)) are relatively limited. After noting that Robidoux was Mr. Kent's counsel, they state that they had "no difficulty in accepting that she improperly disclosed confidential information" (para 11), that she was not candid about having done so (para 12) and that there was an "element of cover-up" given her failure to admit what she done, instead hoping that journalist-source privilege would mean her disclosures were never revealed (para 13). The bulk of the Panel's decision focused not on the finding of professional misconduct, but rather on the issue of whether the 4 month suspension proposed by the Law Society and Ms. Robidoux was the appropriate sanction.

In this post I will argue that, as a matter of the law governing lawyers, Robidoux's conviction was based on relatively weak grounds. The justification for the decision can only follow because the central problem with her behaviour was that she violated the central ethical obligations of the lawyer – loyalty and confidence keeping – and she did so in circumstances proximate to legal practice, even if not actually related to legal practice.

As a matter of professional regulation, finding that Robidoux violated her duty of confidentiality requires showing that she disclosed information subject to that duty. But the information disclosed by Robidoux was not provided to her in relation to her provision of legal advice to Kent. She told the reporter about: (1) the candidate's decision making and his failure to follow "the advice of his campaign team" (Agreed Statement of Facts, para 18); (2) the resignation of the candidate's finance agent; (3) the candidate not attending an announcement by the Premier (information she learned from a third party); and, (4) that

campaign brochures had scattered across Deerfoot Trail while workers scrambled to pick them up. Some of this information was inaccurate. None of it was communicated directly to Robidoux by Kent. None of it related directly to any legal matter or question brought to her by Kent. Some of it was based on Robidoux's own observations, rather than information provided to her.

The information Robidoux communicated to Martin was thus not privileged. Was it confidential? Under the [Alberta Code](#) (and all other provincial codes) confidentiality covers "all information concerning the business and affairs of a client acquired in the course of the professional relationship." The breadth of that definition does seem to cover the type of information Robidoux disclosed – it makes it irrelevant that the information was not from the client or that it was known to third parties. All that is required is that the information be acquired "in the course of the professional relationship".

But was it? Robidoux did provide legal advice to Kent. She advised him about setting up the campaign's bank account, paying for radio ads, about Election Act provisions related to volunteer door knocking, executing the official nomination papers and reimbursing expenses (Agreed Statement of facts, para. 43). These are, however, discreet and straightforward legal matters; it seems likely that the vast majority of the work Robidoux did on the campaign did not relate to the provision of legal advice. It seems a bit of a stretch to say that the information she learned, which was not communicated by Kent, which had no obvious connection to the matters on which she gave him legal advice, and which she learned while working on his campaign in a variety of ways, was nonetheless "acquired in the course of a professional relationship".

If Robidoux did not violate her duty of confidentiality, the allegation that she violated her duty of candour also becomes suspect. The duty of candour arises only in relation to the lawyer's professional obligations. The candour required is in relation to the provision of legal services, not generally. If Robidoux did not violate confidentiality in her legal role then there was no violation she was required to disclose.

But when examined on more general ethical grounds, these arguments seem fairly obviously to miss the point. Robidoux is a lawyer. She was Kent's legal counsel, even if only for narrow and discreet purposes. And while occupying that role Robidoux violated the key ethical duties that lawyers owe: loyalty, confidentiality and candour (See, e.g., *R. v. Neil*, 2002 SCC 70 at para 19). She may not have done so in her capacity as his legal counsel, or in relation to the legal services she provided. But there are good reasons not to allow lawyers to rely on "well, I wasn't a lawyer *then*" defences when they act improperly in matters closely related to their legal role; otherwise lawyers could simply frame activities as outside legal practice in order to escape professional duty. In Robidoux's case the defence based on the law governing lawyers may have had some legitimacy given her narrow advising role and her broader campaign involvement. Nonetheless, the significance of her ethical violations, the centrality of those violations to the ethical duties of lawyers, and the fact that she and Kent *were* in a lawyer-client relationship, make her admission of professional misconduct, and the severity of the sanction, understandable.

In short, "I acted disloyally and I told secrets I was obligated to keep, but I wasn't being a lawyer in the precise moment when I did so" doesn't carry much water as a defence to professional misconduct. And nor should it.

This comment was originally posted in Alice Woolley's column on [Slaw](#).

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