

THE LAW SOCIETY OF ALBERTA
HEARING COMMITTEE REPORT

IN THE MATTER OF THE *Legal Profession Act*, and
in the matter of a Hearing regarding the conduct of AUSTIN NGUYEN a
Member of The Law Society of Alberta

INTRODUCTION

1. On October 20, 2009 a Hearing Committee at The Law Society of Alberta (LSA), convened at The Law Society's Office in Calgary to inquire into the conduct of the member, Austin Nguyen. The Committee was comprised of J. Royal Nickerson, Q.C., the Chair, Frederica Schutz, and Norma Sieppert. The LSA was represented by Garner Groome. The Member was represented by his counsel, James B. Rooney, Q.C. The Member was present throughout the proceedings, which commenced at 09:30 a.m. and adjourned at 14:00 p.m.

JURISDICTION AND PRELIMINARY MATTERS

2. Exhibits 1-4, consisting of the Letter of Appointment of the Hearing Committee, the Notice to Solicitor, the Notice to Attend, and the Certificate of Status of the Member, established the jurisdiction of the Hearing Committee.
3. The Certificate of Exercise of Discretion was entered as Exhibit 5.
4. There was no objection by the Member's counsel or counsel for the LSA regarding the constitution of the Hearing Committee.
5. The entire hearing was conducted in public.

BACKGROUND AND CITATIONS

6. At the relevant time the Member was an experienced practitioner with an interest in criminal law and civil litigation.
7. The Member faced the following citations:

CITATION 1 – IT IS ALLEGED that you breached trust conditions imposed upon you by another lawyer, George Roszler, and that such conduct is conduct deserving of sanction.

CITATION 2 – IT IS ALLEGED that you failed to be candid with another lawyer, George Roszler, and that such conduct is conduct deserving of sanction.

CITATION 3 – IT IS ALLEGED that you failed to be candid with the Law Society in the matter of a complaint by another lawyer, George Roszler, and that such conduct is conduct deserving of sanction.

CITATION 4 – IT IS ALLEGED that you breached a trust condition imposed upon you by another lawyer, Darren Hamilton, and that such conduct is conduct deserving of sanction.

8. Prior to the commencement of the Hearing, the Member adopted an Agreed Statement of Facts, with attachments, which were marked as Exhibit 8.
9. In the Agreed Statement of Facts the Member acknowledged that his conduct was deserving of sanction as far as Citations 1, 2, and 4 were concerned.
10. Prior to proceeding, counsel for the LSA indicated they would be asking for a dismissal of Citation 3 and both counsel for the LSA and the Member confirmed that they would be making a joint recommendation as to sanctions for Citations 1, 2, and 4.
11. The Member was affirmed and answered questions of the Panel and counsel for the LSA.

EVIDENCE

12. The complaints and resulting citations arise out of the Member receiving two files from the same firm pertaining to a motor vehicle injury accident and a criminal matter on explicit trust conditions, which were essentially as follows:
 - a) On the motor vehicle accident file - upon the successful completion of the motor vehicle accident file, the Complainant and referring lawyer was to be forthwith notified of the completion of same and the Member was not to release any settlement funds until an arrangement had been made between the lawyers as to a pro-rata quantum merit split of the fees, or a determination by the Taxing Officer, or the Court.
 - b) On the criminal file, which was essentially the Crown disclosure documents, - on the explicit trust condition that he attend Provincial Court by a certain date and remove his predecessor from the record.
13. The Agreed Statement of Facts and the evidence of the Member revealed that:
 - i. on the motor vehicle accident file, he did not forthwith advise his predecessor of the successful completion of the file and he did advance some settlement monies to the client prior to an agreement on an apportionment of fees between the lawyers;
 - ii. on the criminal matter, the Member took no steps to remove his predecessor from the record.

14. The Member admitted that the Complainant law firm was known to him prior to the complaints as they are geographical neighbours and it is apparent that there was unfortunate history between the Member and the two Complainant counsel.
15. It is unnecessary to dwell further on the facts of this case as the Member admitted that his actions towards his predecessors so far as Citations 1, 2, and 4 are concerned, constitute conduct deserving of sanctions.

DECISION

16. CITATION 3 – The Panel acceded to the LSA counsel's request to dismiss Citation 3 – that the Member had failed to be candid with the Law Society, on the basis that in all the circumstances the threshold for imposing sanctions had not been met.
17. The joint submission by counsel for LSA and the Member, was that the Member receive a reprimand and fines on each of Citations 1, 2 and 4 of between \$2,000.00 and \$4,000.00 per count and be obliged to pay the appropriate costs.
18. The Hearing Committee then was further provided with Exhibits 9-12 consisting of the Member's Certificate of No Discipline Record, Estimated Statement of Costs, and a Practice Assessment Report of August 13, 2009 and the Member's response to same.
19. No referral to the Attorney General is required.
20. The Hearing Committee directs that the names of the clients be redacted from the transcripts, exhibits, the Hearing and Sanction Reports, before being made available to the public.
21. Mitigating factors in favour of the Member are as follows:
 - a) His admission of guilt on the subject Citations substantially reduced the time necessary to deal with these matters;
 - b) His partial advance to one of the motor vehicle accident clients did not put his predecessor in jeopardy of losing any legal fees;
 - c) His failure to remove his criminal predecessor from the record was an oversight; and
 - d) He has no prior record.
22. Aggravating factors against the Member are as follows:
 - a) His blatant disregard for trust conditions;

- b) His actions were contrary to the best interest of his clients and are unprofessional.

SANCTIONS IMPOSED

- 23. On Citations 1 and 4, the Member is fined \$4,000.00 for each breach of trust conditions.
- 24. On Count 2, the Member is fined \$3,000.00 for failing to be candid with another lawyer.
- 25. The Member will pay the appropriate costs of the Hearing.
- 26. The Chair delivered a reprimand, which condemned the Member's unprofessional actions of disregarding trust conditions to the detriment of the best interests of his clients and which disparaged the entire legal profession.

Dated this 20 day of November, 2009

J. Royal Nickerson, Q.C., Bencher
Chair

Frederica Schutz, Member

Norma Sieppert, Member