



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 GABOR I. ZINNER, a Member of the Law Society of Alberta

INTRODUCTION

1. On October 13, 2009, a Hearing Committee for the Law Society of Alberta (LSA), convened at the Law Society office in Calgary to inquire into the conduct of Gabor I. Zinner (the Lawyer). The Committee was Kevin S. Feth, Chair, Dale Spackman, QC, and Sarah J. King-D'Souza. The LSA was represented by Lindsay MacDonald, QC. The Lawyer was present for the Hearing and was represented by James Rooney, QC.

JURISDICTION AND PRELIMINARY MATTERS

2. Exhibits 1, 2, 4 and 5, consisting of the Letter of Appointment of the Hearing Committee, the Notice to Solicitor, the Certificate of Status of the Lawyer, and the Certificate of Exercise of Discretion by the Director, Lawyer Conduct, established the jurisdiction of the Committee.
3. The Parties had no objections about the composition or jurisdiction of the Committee to deal with this matter.
4. Counsel for the LSA advised that the LSA did not receive a request for a private hearing. Neither counsel for the LSA nor the Lawyer requested a private hearing; therefore the Hearing was held in public.

CITATIONS

5. The Lawyer initially faced the following citation: "It is alleged that you acted in a manner that was misleading with respect to your relationship with [M.T.] during the period when [M.T.] was formally articulated to Anand Sara and thereby breached the *Code of Professional Conduct* and that such conduct is deserving of sanction".

6. The Parties made a joint application at the commencement of the Hearing for the citation to be amended. Following discussions with the Hearing Committee, the Parties proposed and the Committee approved an amendment to the citation, which in its final form reads as follows:

"It is alleged that after you knew on or about October 2, 2006 that you did not have permission from the Law Society to act as a principal to a student-at-law, you continued your relationship with M. T. in a manner consistent with a principal and student-at-law relationship and that such conduct is conduct deserving of sanction."

SUMMARY OF RESULT

7. At the Hearing, the Lawyer verbally entered a Statement of Admission of Guilt on the amended citation, which was accepted by the Hearing Committee.
8. In accordance with joint representations from the Parties, accepted by the Hearing Committee, the Committee made the following Orders:
 - a. An Order that the Lawyer be reprimanded;
 - b. An Order requiring the payment to the LSA of a fine of \$1,000;
 - c. An Order requiring the payment to the LSA by the Lawyer of partial costs of the Hearing in the sum of \$1,000;
 - d. An Order referring the Lawyer to the Practice Review Committee for a general practice assessment.

EVIDENCE

9. A Binder with Agreed Exhibits 1 – 24 was entered by consent of the Parties.
10. An Agreed Statement of Facts was entered as Exhibit 25 by consent of the Parties. Paragraph 14 of the Agreed Statement of Facts, which contained the initial version of the proposed amendment to the citation, was subsequently amended to reflect the final version of the amended citation.
11. The discipline record of the Lawyer with the LSA was entered as Exhibit 26 by consent of the Parties.
12. Counsel for the LSA tendered an estimated statement of hearing costs, which was entered as Exhibit 27 by consent of the Parties.

SUMMARY OF FACTS

13. The material facts are largely found in the Agreed Statement of Facts (Exhibit 25), the most relevant portions of which are reproduced here, except that the names of the student-at-law and clients have been redacted. The paragraph numbering is reproduced as it appears in the Agreed Statement of Facts:
 - "3. On January 4, 2007, Angela Gallo-Dewar, counsel for the Membership Department of the Law Society of Alberta, contacted the Manager, Complaints to discuss concerns about the articles of [M.T.], a student-at-law. Ms. Gallo-Dewar submitted a memo to the Manager, Complaints (Exhibit 1). The concern raised by Ms. Gallo-Dewar was that the Member attempted to or did mislead the Law Society by acting as a principal to [M. T.] before the Member had been approved by the Law Society to act as [M.T.'s] principal. The facts, as known at January 4, 2007, were:
 - 1.1 [M.T.] applied for admission to the Law Society as a student-at-law. His proposed principal was Gabor Zinner of the firm of Zinner & Sara. His intent was to register as a student-at-law in time to attend the January 2007 CPLED (bar admission) courses;
 - 1.2 On October 2, 2006, it was determined that Mr. Zinner's suitability as a principal was an issue and a suitability hearing was scheduled for October 23, 2006. Mr. Zinner requested an adjournment of that hearing, which was granted;
 - 1.3 In the meantime, Ms. Gallo-Dewar suggested to [M.T.] that one of the options available to him was to have Mr. Sara act as his principal. Mr. Zinner and Mr. Sara operated (and continue to operate) as an association of independent practices although their offices are not in the same location and each lawyer maintains his own staff and trust accounts;
 - 1.4 [M.T.'s] articles with Mr. Sara were approved to commence on November 17, 2006 and he was notified by email addressed to: [redacted]. On November 22, 2006, Deborah Leslie, an employee in the Membership Department, attempted to telephone [M.T.] to advise that his student-at-law card was being mailed out. Natasha, Mr. Zinner's assistant, took Ms. Leslie's call and indicated that [M.T.] was out of the office and that she could take a message for him. Ms. Leslie later noticed that correspondence from Mr. Zinner received in December, 2006 relating to Mr. Zinner's suitability hearing, was on letterhead indicating that [M.T.] was a student- but not a student-at-law – with Mr. Zinner's firm. Finally, Ms. Leslie telephoned [M.T.] at Mr. Sara's office on January 2, 2007. The person who answered the call indicated there was no [M.T.] at that

office (see Ms. Leslie's memo of January 3, 2007 at Exhibit 7, Tab 4).

4. A letter went to the Member by registered mail on January 15, 2007 requesting his response to Ms. Gallo-Dewar's memo pursuant to Section 53 of the *Legal Profession Act* (Exhibit 2).
5. As result of the foregoing information, the Manager, Complaints requested that an Investigation Order be issued. The Investigation Order was issued on January 16, 2007 (Exhibit 3).
6. The Member provided his written response to the Law Society on January 26, 2007 (Exhibit 4). His response may be summarized as follows:
 - 4.1 The Member acknowledged that he was not [M.T.'s] principal, that he was not holding himself out as [M.T.'s] principal and, as far as he was concerned, [M.T.] did not hold himself out as a student-at-law articulated to the Member;
 - 4.2 It was his view that there was no reasonable basis to support the concern that he had misled the Law Society;
 - 4.3 He confirmed that [M.T.] maintained a part-time MBA practice as at January 26, 2007;
 - 4.4 He confirmed that he and [M.T.] co-owned the building where the Member's practice was located and that [M.T.] maintained an office at that location (see Exhibit 18);
 - 4.5 He advised that [M.T.] was listed as a "student" on his letterhead because [M.T.] had worked for him as a law student (rather than an articling student) for the two previous summers and he (the Member) was experimenting with his letterhead;
 - 4.6 He confirmed that the plan had been for [M.T.] to articulate for him and that Mr. Sara was acting as principal on an interim basis, pending the Law Society's decision as to the Member's suitability. He advised that if the suitability issue were resolved in his favor, then [M.T.'s] articles would be transferred from Mr. Sara to him;
 - 4.7 He advised that he had "continued to allow" [M.T.] to work on his files even though [M.T.] was articulated to Mr. Sara;
 - 4.8 He indicated that [M.T.] did not spend all his time working on the Member's files (which he termed as [M.T.'s] "rotation at the southwest office") because:

- a. [M.T.] continued to spend time on his MBA practice;
 - b. [M.T.] spent a week at his bar admission course;
 - c. [M.T.] "interfaced" with Mr. Sara on one or more files;
 - d. The holiday season and the Member's short illness "removed" [M.T.] from contact with the Member between November 27, 2007 and January 15, 2007; and
 - e. [M.T.] spent some time at Mr. Sara's office although the Member was not prepared to advise on the number or duration of those visits;
- 4.9 Pending the suitability hearing, he was not nor did he consider himself to be [M.T.'s] principal and denied holding himself out as such;
5. The Investigation was completed and the Investigation Report was issued on February 26, 2007 (Exhibit 5). The Member was interviewed during the course of the Investigation (Exhibit 5, Tab 2) and his comments may be summarized as follows:
- 5.1 he expected the suitability issue to be resolved favorably and that [M.T.'s] articles would be transferred to him;
 - 5.2 he advised that in the interim Mr. Sara was to act as principal and "would be calling the shots";
 - 5.3 he "felt relieved of any obligation" to supervise [M.T.];
 - 5.4 he had "exposed" [M.T.] to certain files, had assigned "snippets of work in relation to files" to [M.T.] and had given direction to [M.T.] on how to conduct himself in court. He indicated that [M.T.] had done some of this "stuff" previously in his capacity as the Member's summer student;
 - 5.5 he had entrusted tasks to [M.T.] and would supervise [M.T.] in relation to those tasks;
 - 5.6 he confirmed that he acted for [redacted] for a number of years, that he had done business with [M.T.'s] father, that he had hired [M.T.] in connection to [M.T.'s] MBA practice and anticipated doing so again in the future;

- 5.7 he suggested that [M.T.] did his own personal work, assumed that [M.T.] did work for Mr. Sara and that [M.T.] did the "odd" thing for him but that he did not know what [M.T.] did with his day as he was not closely supervising [M.T.]. He commented that he "honestly" didn't know what [M.T.] did for most of the day;
- 5.8 he confirmed that [M.T.'s] name had been added to the Member's letterhead before [M.T.'s] articles had been approved.
6. A letter was sent to the Member on March 16, 2007 requesting his response, to the Investigation Report pursuant to Section 53 of the *Legal Profession Act* (Exhibit 7).
7. On March 16, 2007, the Member responded by fax enclosing a copy of his January 26, 2007 letter (Exhibit 8). He was concerned that the Manager, Complaints had not received his letter. He faxed a second letter to the Manager, Complaints that day indicating that he had not received a copy of the Investigator's report (Exhibit 9). A copy of the Investigator's Report was sent to the Member on March 19, 2007 (Exhibit 10).
8. On March 30, 2007, the Member wrote and indicated he had questions and comments relating to the Investigator's report (Exhibit 11). He noted that the Investigator's Report did not include a copy of his January 26, 2007 response to the complaint (Exhibit 4). He indicated that he wanted particulars of the allegation that he had misled the Law Society. He repeated that he had "felt relieved of the obligation to supervise [M.T.] as his principal" but that he had supervised work done specifically for him by [M.T.]. He suggested that because of the Christmas holidays, illness, the bar admission course and absences from town, there had been insufficient opportunity to observe the principal/student-at-law relationship. He advised he had never been told that he could not have professional contact with [M.T.] and he had never been told that [M.T.] could not work on files assigned by him.
1. On April 2, 2007, the Member again sent his January 26, 2007 response to the complaint (Exhibits 13 and 14).
10. On April 3, 2007, a Panel of the Credentials and Education Committee met as a panel of inquiry to deal with the question of the Member's suitability to act as a principal (Exhibit 15). The Member advised the Panel that he and [M.T.] were not partners in any venture "at this time" (Exhibit 15, page 62). He noted that [M.T.] had purchased the office building they co-owned prior to [M.T.] becoming a student-at-law. He confirmed that he retained [M.T.] in relation to [M.T.'s] MBA practice and repeated that he supervised specific work that he gave to [M.T.] but did not provide general supervision. He acknowledged that [M.T.] had

provided legal services to [redacted] as agent and that it was his position that he "had no mandate or requirement to supervise him and neither did Mr. Sara in that instance" (Exhibit 15, page 67). He indicated that he had no commercial business with [M.T.] or [M.T.'s] family but acknowledged that his (the Member's) management company was responsible for the collection of rent from the building they owned together and distribution of the net revenues.

11. The Member's relationship with [M.T.] was an issue brought to the attention to the Panel not in terms of any misconduct on the part of the Member but, rather, in terms of the Member's "judgment, practice management and supervision issues identified" in the Member's history (Exhibit 16, page 13, paragraph 51). The Panel concluded that the Member was not, at that time, a suitable principal to students-at-law and was not likely to be a suitable principal in the future. (Exhibit 16, page 13, paragraph 51).
12. On May 14, 2007, the Law Society Investigator conducted a further interview with the Member and provided an addendum to his original Investigation Report on June 18, 2007 (Exhibit 5, Tab A). The Member's comments in that interview (Exhibit 15, Tab 6) may be summarized as follows:
 - 12.1 The Member had an arrangement to pay [M.T.] \$100/hour in accordance with any billings generated by [M.T.]. [M.T.'s] time was recorded for tasks assigned by the Member, at least to some extent (Exhibit 5, Tab 7, 8, 9 and 10);
 - 12.2 The Member paid funds owed to [M.T.] to [M.T.'s] company, MT Consulting;
 - 12.3 He was unaware of any "conflict" between [M.T.] and Mr. Sara as to the work that Mr. Sara wanted [M.T.] to do as a student-at-law;
 - 12.4 He had hired [M.T.] on at least two occasions to perform "MBA" work;
 - 12.5 He had provided legal services to [redacted] and was still doing so. He indicated that he had 3 files for various [redacted] matters and supervised [M.T.'s] work on those 3 files;
 - 12.6 Initially, he denied having any business association with [M.T.] other than their joint ownership of their building but, when specifically asked, acknowledged that he was a 1/3 shareholder and director of a company called [E.L.]. At that time, [M.T.] was also a shareholder and a director of that company. The Member

indicated that he had forgotten his involvement because [E.L.] had not done any business that he was aware of."

JOINT SUBMISSIONS ON ADMISSION OF GUILT

14. The Lawyer verbally confirmed his Statement of Admission of Guilt in relation to the amended citation.
15. Counsel for the LSA and Counsel for the Lawyer made joint submissions about the Lawyer's conduct. In addition to the admissions contained within the Agreed Statement of Facts, the Parties jointly submitted that the Lawyer was not trying to mislead the Law Society in providing work and guidance to [M.T.] The Lawyer expected that a Panel of the Credentials and Education Committee would be convened shortly after the commencement of [M.T.'S] articles, that the Panel would accept that the Lawyer was a suitable candidate to serve as a principal, and that the Panel would then authorize the Lawyer to serve as [M.T.'s] principal. The Lawyer expected that [M.T.'s] articles would then be transferred to him from Mr. Sara.
16. The Lawyer deliberately gave work and provided supervision for [M.T.] during a period of time when he knew that the Law Society had made a determination that he was not fit to serve as a principal to a student-at-law. Since [M.T.'s] actual principal was located in another office, across the city, the Lawyer had *de facto* supervision of [M.T.], provided opportunities for [M.T.] to work on files, including attendance at court, and served in a mentorship role.
17. The joint submission of the parties were that the Lawyer exercised "poor judgment" in assuming a *de facto* role that he was expressly prohibited from undertaking. The joint submissions of the party were that this poor judgment amounted to conduct deserving of sanction.

FINDINGS RELATED TO THE ADMISSION OF GUILT

18. In accordance with Section 60 of the *Legal Profession Act*, the Lawyer verbally tendered to the Hearing Committee a Statement of Admission of Guilt to the amended citation, and invited the Hearing Committee to accept that admission of guilt.
19. The Law Society governs the profession in the public interest. To protect the public, the Law Society has adopted an apprenticeship program and rules to ensure that students are properly trained. That training involves the development of basic skills, but also the education of the student in the ethical attitudes, duties and courtesies associated with the practice of law.

20. A key aspect of those ethical attitudes is respect for the governance provided by the Law Society, including its directions about suitability to serve as a principal to an articling student.
21. The Law Society had provided the Lawyer with a determination that his suitability to serve as a principal was in question, and a direction that he was not to serve in that capacity unless approved by a Panel of the Credentials and Education Committee. While the Lawyer might have felt that he was well qualified and that the dictate from the Law Society was ill advised, he was honour bound to respect that determination until due process had been followed and the direction had been reversed. Respect for that direction required the Lawyer to understand and comply with not only the letter of that dictate, but the spirit and intent as well.
22. The direction from the Law Society was not just for the Lawyer's benefit, but also for the protection of the student-at-law, and the interest of the public at large.
23. The Panel of the Credentials and Education Committee before which the Lawyer eventually appeared, made the following observations in its April 13, 2007 report:

"A student-at-law is uniquely in need of support and supervision. A student-at-law is also uniquely susceptible to starting off in the profession on the wrong foot if exposed to poor professional judgment and poor practice management."
24. The Lawyer emulated the worst traits for this articling student. By his conduct, the Lawyer implied that the governance of the profession by the Law Society is a mere technicality, that the LSA's rules and procedures may be ignored and circumvented, and that a practitioner's views about his own abilities should not be tempered by the guidance of his peers.
25. The Lawyer could have sought direction from the Law Society about the proper limits on his involvement with this student-at-law, pending his hearing before the Panel of the Credentials and Education Committee. He could have sought out one of the LSA practice advisors, the staff lawyer dealing with his application before the Credential and Education Committee, a Benchler, or any of the other resources available through the LSA. Knowing that his own professional judgment had lapsed from time to time during his career, he should have been all the more vigilant in seeking guidance. That need to seek guidance was even more acute, knowing as the Lawyer did, that he was acting as a role model for an impressionable student.
26. In these circumstances, where the Lawyer had received a clear direction from the Law Society not to serve as a principal to an articling student, the Hearing Committee was satisfied that the member's conduct was deserving of sanction. Accordingly, the Statement of Admission of Guilt was accepted.

SANCTION AND COSTS

27. The Hearing Committee accepted the joint submission of the Parties on sanction and costs, believing the proposal to be appropriate in the circumstances. As a consequence, the Hearing Committee made the following Orders:
- a. An Order that the Lawyer be reprimanded;
 - b. An Order requiring the payment to the LSA by the lawyer of a fine of \$1,000 regarding the Lawyer's conduct in respect of the amended Citation;
 - c. An Order requiring the payment to the LSA by the Lawyer of partial costs of the Hearing in the sum of \$1,000;
 - d. An Order directing the Lawyer to pay the fine and costs by November 13, 2009;
 - e. An Order referring the Lawyer to the Practice Review Committee for a general practice assessment, with a direction to cooperate with the Practice Review Committee and to satisfy any conditions which may be imposed upon the Lawyer by that Committee.

CONCLUDING MATTERS

28. Exhibits 1, 2, 3, 4, 5, 25, 26 and 27 will be available for public inspection. The balance of the Exhibits shall remain private and confidential due to issues about solicitor-client privilege and the identity of the student-at-law. In the event that any transcript of the proceeding is created, the identity of the student-at-law, the Lawyer's clients, and communications or other matters subject to proper claims of privilege shall be redacted.
29. There was no referral to the Attorney General.
30. No Notice to the Profession was directed.

31. The Chair delivered a reprimand, which expressed denunciation for the conduct of a senior and experienced member of the Bar whose poor judgment failed an impressionable articling student, the profession, and the public interest.

Dated this 9th day of November, 2009.

KEVIN S. FETH, Bencher, Chair

DALE SPACKMAN, QC, Bencher

SARAH J. KING-D'SOUZA, Bencher