

LAW SOCIETY OF ALBERTA
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

Hearing Committee:

Donald R. Cranston, Q.C. (single Bencher)

Appearances:

Nancy Bains, Counsel for the Law Society of Alberta (LSA)

Austin Nguyen on his own behalf

Hearing Date:

March 23, 2016

Hearing Location:

Law Society of Alberta at 500, 919 – 11th Avenue S.W., Calgary, Alberta

HEARING COMMITTEE REPORT

Jurisdiction

1. At the beginning of the hearing, a binder of agreed Exhibits including jurisdictional exhibits was placed before the Hearing Committee and entered as exhibits. Exhibits 1 through 4 established the jurisdiction of this Hearing Committee. Both parties agreed that the Hearing Committee had jurisdiction to hear and decide this matter.

2. The Hearing Committee found it had jurisdiction.

Public Hearing

3. I was advised that a Private Hearing Application Notice was sent to the appropriate persons, and no interested party applied to have the hearing held in public. Both parties agreed that the hearing should be held in public, and I so directed.

Citations

4. On March 3, 2015 the Conduct Committee Panel referred the following conduct citations to this hearing:
 1. It is alleged that Mr. Nguyen failed to act in good faith with opposing counsel and that such conduct is deserving of sanction;
 2. It is alleged that Mr. Nguyen engaged in sharp practice and that such conduct is deserving of sanction;
 3. It is alleged that Mr. Nguyen sent correspondence which was abusive, offensive or otherwise inconsistent with the proper tone of a professional communication with a lawyer and that such conduct is deserving of sanction;
 4. It is alleged that Mr. Nguyen failed to act honourably and with integrity and that such conduct is deserving of sanction;
 5. It is alleged that Mr. Nguyen lied to or misled opposing counsel and the Court as to matters before the Court and that such conduct is deserving of sanction; and
 6. It is alleged that Mr. Nguyen failed to provide competent services and that such conduct is deserving of sanction.

Statement of Admitted Facts and Admission of Guilt

5. Mr. Nguyen signed a Statement of Admitted Facts and Admission of Guilt on February 9, 2016. That document was entered as Exhibit 6 at the Hearing. LSA counsel and Mr. Nguyen reached a mutual agreement to seek withdrawal of citations 1, 2, 4, 5 and 6. At a pre-hearing conference (PHC) on February 16, 2016, submissions were made to Nancy Dilts, QC, the PHC chair, and she permitted the withdrawal of 5 of the 6 citations, pursuant to her authority under rule 90.1(5.1). Exhibit 7 indicated that on March 2, 2016, a Conduct Committee Panel considered the Statement of Admitted Facts and Admission of Guilt and decided that the document was in an acceptable form, as contemplated by section 60(2) of the *Legal Profession Act*.

6. Thereafter, the Chair of the Conduct Committee directed that I be appointed as the single Bencher to conduct this hearing pursuant to section 60(3) of the *Legal Profession Act*.
7. The Statement of Admitted Facts and Admission of Guilt relates to citation 3 only.
8. While I have considered the entire Statement of Admitted Facts and Admission of Guilt, it is agreed by the parties that the core issue at this hearing is the letter sent by Mr. Nguyen to Mr. Justice Park dated April 17 2012. In that letter, Mr. Nguyen said the following:

"Mr. Ewing sent me an inappropriate and unreasonable draft order for the hearing before you on 11 April 2012. This should be a no-brainer type of draft order. Instead the draft was unstructured and did not reflect the two simple applications that had taken place on that day. I offered Mr. Ewing with my helpful suggestions to no avail [*sic*]."
9. There was a long, contentious and discourteous course of conduct between counsel leading up to that letter. Mr. Nguyen, in his Statement of Facts and Admission of Guilt, stated that:

"I admit that I sent correspondence which was abusive, offensive or otherwise inconsistent with the proper tone of a professional communication with a lawyer and that such conduct is deserving of sanction."
10. Pursuant to section 60(4) of the *Legal Profession Act* the admission is deemed to be a finding of guilt of conduct deserving of sanction.

Sanction

11. I received a joint submission on sanction. It was agreed between the Law Society of Alberta and Mr. Nguyen that the appropriate sanction would be a reprimand together with payment of costs.
12. Mr. Nguyen has the following disciplinary history leading up to this hearing:
 1. On October 20, 2009, he was found guilty of two counts of conduct deserving of sanction relating to breach of trust conditions imposed on him by another lawyer. He was also found guilty of conduct deserving of sanction in failing to be candid with another lawyer. On that occasion, Mr. Nguyen was fined \$11,000, reprimanded, and ordered to pay costs;
 2. On February 27, 2013 Mr. Nguyen was found guilty of one count of conduct deserving of sanction by improperly withdrawing his representation. He received a reprimand and an order to pay costs. In a second matter that day, he was found guilty of one count of conduct deserving of sanction by failing to be candid

and in not informing the complainant of the prior release of trust funds or in not immediately correcting the resulting misapprehension. He was also found guilty of one count of conduct deserving of sanction by breaching the trust conditions imposed by a Court Order in releasing funds to his clients. On that occasion Mr. Nguyen was fined \$2,500, given a reprimand, and ordered to pay costs.

13. I have also given appropriate deference to the agreement reached by the Law Society and Mr. Nguyen with respect to sanctioning. A joint submission on sanctions should only be rejected if it is demonstrably unfit or contrary to the public interest. I have concluded that the joint submission is not demonstrably unfit and accordingly the sanction will be a reprimand and payment of the Law Society's costs. I accordingly order that Mr. Nguyen receive a reprimand and pay the costs of the hearing, in the amount of \$3,000, which shall be payable within six months of the date of the hearing.

Reprimand

14. The reprimand was delivered to Mr. Nguyen on March 23, 2016. I informed Mr. Nguyen that there is always a need to maintain the confidence of the public in the legal profession. It is not in the public interest for legal counsel to make offensive comments that are inconsistent with the proper tone of a professional communication.
15. I told Mr. Nguyen that obligation is no less present when there is a difficult relationship between counsel, as I was told was the case here. Indeed, it is all the more important that counsel rise above any urge to conduct oneself in that manner in those circumstances.
16. I pointed out to Mr. Nguyen this is not his first time before the Law Society. While the previous matters are unrelated, these are serious matters. I cautioned Mr. Nguyen that continued incidents of conduct deserving of sanction must stop or more serious consequences may follow.

Closing Matters

17. This Hearing Committee Report, and the evidence and exhibits at the hearing are to be made available to the public, subject to redaction to protect privileged communications, the names of any clients or complainants, and such other confidential personal information as is the usual practice.

18. No notice to the profession will be issued and there shall be no referral to the Attorney General.

Dated at the City of Calgary, in the Province of Alberta this 10th day of May, 2016.

Donald R. Cranston, Q.C.