

LAW SOCIETY OF ALBERTA
IN THE MATTER OF THE *LEGAL PROFESSION ACT*;
AND
IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF CHRISTOPHER MCKAY,
A MEMBER OF THE LAW SOCIETY OF ALBERTA

Hearing Committee:

Julie Lloyd, Q.C., Chair (Bencher)
Joshua Hawkes, Q.C. (Bencher)
Louise Wasylenko, CMA (Lay Bencher)

Appearances:

Counsel for the Law Society – Stuart Weatherill
Christopher McKay – Self represented

Hearing Date:

April 15, 2016

Hearing Location:

Law Society of Alberta at Bell Tower: 800, 10104 – 103 Avenue, Edmonton, Alberta

HEARING COMMITTEE REPORT

Jurisdiction, Preliminary Matters and Exhibits

1. On April 15, 2016, a Hearing Committee (Committee) convened at the Law Society of Alberta (LSA) to inquire into the conduct of Christopher McKay. The Law Society of Alberta (the “LSA”) was represented by Stuart Weatherill. Mr. McKay (“the Member”) was present and represented himself.

2. Exhibits 2, 3, 4, and 8 were entered by consent. They were respectively the Letter of Appointment of the Hearing Committee, the Notice to Solicitor, the Notice to Attend to Mr. McKay and the Certificate of Standing of the Member. These documents established the jurisdiction of the Hearing Committee.
3. Exhibit 6 was a certificate confirming that:
 - (a) The complainants had received a Private Hearing Notice; and
 - (b) The Deputy Executive Director had exercised her discretion pursuant to 96(2)(b) and determined that 10 other individuals were to be served with a Private Hearing Notice.
4. The Hearing Committee was advised that no party requested the hearing be held in private. The hearing was held in public.
5. No party objected to the composition of the Hearing Committee.

Citations

6. Mr. McKay faced a total of 17 citations arising from 5 separate complaints. The Hearing Committee was advised at the outset that two of the citations were withdrawn as unsubstantiated. A list of the 15 remaining citations is attached as Appendix 1.

Summary of Result

7. The Hearing Committee imposed the following sanction:
 - a. That the Member be suspended for a period of four months commencing July 1, 2016;
 - b. That the Member pay costs of the investigation and hearing in the total amount of \$24,293.49. One half of this amount is payable on or before December 31, 2016 and the balance payable on or before May 1, 2017.

Evidence

8. A binder containing Agreed Exhibits numbered 1 – 14 was entered by consent of the parties. The Exhibits included Agreed Statements of Fact and Admissions of Guilt to each of five complaints as Exhibits 10 through 14. An Estimated Statement of Costs was Exhibit 7 and a Certificate of Standing of the Member was Exhibit 8. The Certificate of Standing showed that the Member had no prior disciplinary record.

Ruling on the Statements of Fact and Admissions of Guilt

9. Mr. McKay and counsel for the LSA jointly tendered the Agreed Statements of Fact containing admissions of guilt. Mr. McKay confirmed that the admissions were being made voluntarily and that he unequivocally admitted guilt to the essential elements of the citations. He confirmed that he understood the consequences of his admission and that he

was admitting his conduct was deserving of sanction. Mr. McKay confirmed his understanding that the Hearing Committee is not bound by the joint submissions.

10. The Committee retired to consider the Agreed Statements of Fact and Admissions of Guilt, mindful that joint submissions must not be lightly disregarded. Such statements are to be rejected only where they are found unfit, unreasonable, contrary to the public interest, or there are other good and cogent reasons for rejecting them (*Rault v. Law Society of Saskatchewan*, 2009 SKCA 81; *R. v. Tkachuk*, 2001 ABCA 243, and *Law Society of Alberta v. Pearson*, 2011 ABL 17).
11. After careful review the Committee was satisfied that the recitation of facts was acceptable. The statements were robust, clear and unequivocal and they properly and fully substantiated the citations issued. The Committee accepts the Agreed Statements of Fact and Admissions of Guilt. In so finding the conduct of the Member is deemed to be conduct deserving of sanction.

Decision Regarding Sanction and Costs

12. Mr. McKay and counsel for the LSA made a joint submission on sanction. The Hearing Committee accepted the joint submissions and directed the following:
 - a. the Member shall be suspended for a period of four months commencing July 1, 2016;
 - b. the Member shall pay costs in the total amount of \$24,577.74 with one half of this amount payable on or before December 31, 2016 and the balance payable on or before May 1, 2017.
13. The Hearing Committee is to give serious consideration of joint submissions and, while not bound by such, ought to reject joint submissions only where found unfit or contrary to the public interest (*R. v. Thachuk*, 2001 ABCA 243 and *Law Society v. Pearson*, 2011 ABL 17; also see *Hearing Guide* at para 56). This direction encourages timely settlement of conduct matters and assists in the efficient administration of the LSA's disciplinary process.
14. We are mindful that section 49(1) of the *Legal Profession Act* articulates that the purpose of the disciplinary process is, first, to protect the best interest of the public and, second, to protect the standing of the legal profession itself. We are also mindful of the various factors arising from these principles and set out in the *Hearing Guide*. The application of various factors depends on the facts of each case and on the present facts we make particular note of the following factors.
15. There can be no question that the misconduct admitted by Mr. McKay is very serious. There were 15 citations admitted, arising from five separate complaints of conduct, occurring over a three year period of the Member's practice. Four of the complaints involved family law matters and one involved a series of real estate transactions.

16. As set out in detail in Appendix 1 to this decision, Mr. McKay failed to provide conscientious, diligent and efficient service to his clients in four complaints, misled clients about the progress of their matters in three of the complaints, failed in two complaints to respond in a timely manner to clients and to lawyers, in one complaint breached trust conditions imposed by another lawyer, and in every complaint failed to respond to inquiries by the LSA.
17. Clients experienced the frustration and distress of finding the work promised was left undone and in two cases clients lost their opportunity for redress as an appeal was struck and a hearing abandoned. In one complaint, a failure to file caveats promptly avoided serious and irreparable harm by dint only of good luck.
18. Time and time again important matters that should have been dealt with promptly and effectively were not. Clients' reasonable expectations of competent and timely legal service were not met. In failing to act and in failing to maintain reasonable communications with his clients Mr. McKay surely caused distress, uncertainty and emotional harm. In other cases clients lost their opportunity for redress as an appeal was struck and a hearing abandoned. The Member let his clients down in profoundly significant ways.
19. The Member also let his professional colleagues down by causing serious harm to the reputation of this profession. The admitted conduct is unacceptable from the perspective of the public interest and from that of the standing of the legal profession itself.
20. The Hearing Committee was very concerned by the Member's failure to cooperate with the investigatory processes of the LSA. Each of the five complaints disclosed such failure. A self-regulating body such as the LSA cannot fulfil its regulatory mandate unless it is able to govern its members effectively. When a member fails to respond promptly and fully to inquiries by the LSA, immeasurable harm is done to the work and the mandate of the regulator.
21. The Hearing Committee noted some ameliorating facts among the evidence before it. The Certificate of Standing entered into evidence demonstrated that Mr. McKay had not been found guilty of any misconduct prior to these proceedings. The Member did admit facts and admit guilt, relieving former clients of any inconvenience and distress that a hearing would undoubtedly create and relieving the LSA of the administrative burden of undertaking a full hearing.
22. The Hearing Committee also heard that, despite the Member's early lack of cooperation with the LSA investigators, he did finally alter this troubling pattern of non-responsiveness. Counsel for the LSA advised us that the Member had been cooperative, provided prompt responses and was frank in his dealings throughout counsel's engagement with this matter.

23. The Hearing Panel also observed that the Member was not found to have engaged in any financial impropriety. The Member did not bill the delinquent files and returned entire retainers on at least two occasions. While work was not done, neither was it remunerated. Misappropriation of client's funds and other forms of financial impropriety are among the most serious misdeeds a lawyer can commit. It is clear that no such misdeeds happened here.
24. The Hearing Committee acknowledges that the sanction of suspension is harsh. The Member will be deprived of the ability to practice and to earn a living at the practice of law for a period of time. The Member will also suffer some professional notoriety as a notice will be posted to his professional colleagues on the LSA website, a publicly accessible site. It is reasonable to expect that the consequences of a suspension will have significant impact and will linger. The Member described the impact of the suspension as devastating. As the primary income earner for his family, this sanction will doubtless be difficult for the Member to bear. While harsh in its effect, the intent of sanction is to protect the public:

Plainly it is hoped that the experience of suspension will make the offender meticulous in his future compliance with required standards (from *Bolton v. Law Society*, [1994] 2 All ER 486 (C.A.), referenced in paragraph 57 of the *Hearing Guide*).

25. The Hearing Committee was satisfied that suspension is an appropriate sanction and that a four month period of suspension is appropriate and consistent with the nature of the misconduct and with sanctions previously directed by other Hearing Committees.
26. The Hearing Committee is aware that an order directing the payment of the full estimate of the costs of the investigation and hearing will also be burdensome for the Member. The Member is responsible for the natural consequences of his misconduct. If wrongful conduct did not occur, or if wrongful conduct were promptly disclosed to the LSA, investigative and adjudicative processes would be largely unnecessary. It is reasonable in the circumstances that the costs be paid in full and according to the payment schedule set out earlier.

Concluding Matters

27. There is a referral to the Practice Review Committee to oversee the closure or transfer of Mr. McKay's client files. By June 20, 2016, Mr. McKay is to provide the Practice Review Committee with a ledger of his files and their current status and the LSA will exercise any rights, including rights of custodianship, as required or deemed advisable. Mr. McKay will also comply with any requirements of the Trust Safety Department.

28. The LSA shall issue a notice of the suspension.
29. There shall be no notice to the Attorney General.
30. The exhibits and this report will be available for public inspection, including the provision of copies of exhibits for a reasonable copy fee, except that identifying information in relation to persons other than Mr. McKay will be redacted and further redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 98(3)).

Dated at the City of Edmonton, in the Province of Alberta, this 23rd day of September, 2016

Julie Lloyd, Q.C. – Chair

Joshua Hawkes, Q.C.

Louise Wasylenko

APPENDIX 1
Christopher McKay
HE20130064
CITATIONS

CO20110946;

1. It is alleged that you failed to serve your client in a conscientious, diligent and efficient manner and such conduct is deserving of sanction.
2. It is alleged that you misled your client during your communications with them and such conduct is deserving of sanction.
3. It is alleged that you failed to respond in a timely, complete and appropriate manner to communication from the Law Society that contemplated a reply and such conduct is deserving of sanction.

CO20110764;

4. It is alleged that you failed to serve your client in a conscientious, diligent and efficient manner and such conduct is deserving of sanction.
5. It is alleged that you misled your client during your communications with them and such conduct is deserving of sanction.
6. It is alleged that you failed to respond in a timely, complete and appropriate manner to communication from the Law Society that contemplated a reply and such conduct is deserving of sanction.

CO20110456;

7. It is alleged that you failed to comply with a trust condition and such conduct is deserving of sanction.
8. It is alleged that you failed to respond in a timely, complete and appropriate manner to communication from the Law Society that contemplated a reply and such conduct is deserving of sanction.

CO20131438;

9. It is alleged that you failed to serve your client in a conscientious, diligent and efficient manner and that such conduct is deserving of sanction;
10. It is alleged that you failed to respond to another lawyer on a timely basis and that such conduct is deserving of sanction; and
11. It is alleged that you failed to respond promptly or completely to the Law Society and that such conduct is deserving of sanction.

CO20121184;

12. It is alleged that you failed to serve your client in a conscientious, diligent and efficient manner and that such conduct is deserving of sanction;
13. It is alleged that you misled or failed to be candid with your client and that such conduct is conduct deserving of sanction;
14. It is alleged that you failed to respond in a timely manner to your client's communications and that such conduct is conduct deserving of sanction;
15. It is alleged that you failed to respond in a timely, complete an appropriate manner to the Law Society of Alberta and that such conduct is conduct deserving of sanction;