IN THE MATTER OF THE *LEGAL PROFESSION ACT*

AND IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF CYRIL BRIGHT,

A MEMBER OF THE LAW SOCIETY OF ALBERTA

Panel:

D. W. Scott, Chair
W. Pavlic, Q.C.
G. Buick, Lay Bencher

Counsel:

S. Borgland, for the Law Society of Alberta
S. Panunto, for Cyril Bright

HEARING COMMITTEE REPORT

Introduction

1. The Hearing Committee described above was appointed by the Chair, Conduct Committee by letter dated November 24, 2014.

2. The Hearing Committee met in Calgary, Alberta to hear this matter on January 15, 2015.

3. The Chair introduced the panel and asked whether there were any objections to the constitution of the panel. There were no objections.

4. The Chair inquired as to whether there were any requests for any part of the hearing to be held in private. There were no such requests and accordingly the hearing was held in Public.

5. Counsel for the LSA introduced the jurisdictional documents being Exhibits 1-5 inclusive and the Committee accepted those documents as establishing the jurisdiction of the Committee.

6. Counsel for the LSA tendered the signed copy of the Agreed Statement of Facts for inclusion as Exhibit 6 and an additional Exhibit, which was accepted and marked as Exhibit 45, being a letter from Ms. S. (the Complainant) to the Law Society dated April

30, 2013. The parties agreed to the inclusion of these Exhibits, together with Exhibits 7-44 contained in the Exhibit Book.

7. The Agreed Statement of Facts is appended to this decision as Appendix 1. Those facts are not exhaustive.

Background

8. The one citation facing Mr. Bright is described below.

> **"It is alleged that you failed to provide competent, conscientious and diligent service to your client by failing to follow your client's instructions and such conduct is conduct deserving of sanction."**

9. The Complainant, Ms. S., alleges that Mr. Bright failed to follow her specific instructions and in fact took actions which were contrary to her express instructions. Specifically, Ms. S. alleges that she repeatedly instructed Mr. Bright not to seek the partition and sale of certain rental properties in Fort McMurray (the "Property") which were the subject of a matrimonial property action. Notwithstanding those specific instructions, Mr. Bright made an application to the Court for the partition and sale of the Property on February 8, 2011 (the "Application") and thereafter did not discontinue that Application when she specifically requested he do so. The Complainant also alleges that Mr. Bright pursued a costs award against her husband, Mr. J. at a time when Mr. J. was critically ill and in the face of her specific instructions not to do so.

10. Mr. Bright alleges that in a telephone conversation which occurred on February 2, 2011, Ms. S. gave him the instructions to proceed with the Application. Ms. S. denies ever giving Mr. Bright those instructions.

11. Mr. Bright states that he did not thereafter discontinue the Application on his client's instructions to do so because a) discontinuance is not possible, or if possible, could have potentially exposed Ms. S. to a claim for damages by the opposing party and b) that he effectively discontinued the Application by simply not pursuing it.

12. Mr. Bright states that the costs award was in his favor, not Ms. S.'s, and that the costs award was granted by the Court for the purpose of paying his outstanding legal fees. He asserts that he was therefore entitled to pursue the recovery of those costs notwithstanding Ms. S.'s express instructions not to do so at that time. Again, Mr. Bright states that Ms. S. had no intention of paying his fees and therefore he was entitled to

pursue recovery of the costs award directly and in the face of her express instructions not to do so.

Facts and Evidence

13. The Agreed Statement of Facts reflects that Mr. Bright was retained by Ms. S. in July, 2010 to represent her in a divorce and matrimonial property action in Alberta commenced by her estranged husband, Mr. J.. Ms. S. had previously made application in British Columbia for divorce and matrimonial property relief. The British Columbia action was commenced after the Alberta action and therefore did not proceed.

14. Mr. J. resided in Alberta and Ms. S. resided in British Columbia.

15. The Property was owned jointly by Mr. J. and Ms. S.

16. On January 27, 2011 Mr. Bright advised Ms. S. to bring the Application for partition and sale of the Property (Agreed Statement of Facts, para 17). Ms. S. replied by email on January 28, 2011 saying, "In the Vancouver hearing, [my husband] requested the sale of the matrimonial house and the judge was very adamant in advising to avoid the sale of properties …" (Agreed Statement of Facts, para 18).

17. On January 28, 2011, Mr. Bright again asked Ms. S. for authorization to ask to have the Property sold (Agreed Statement of Facts para 19) and Ms. S. replied, "**Definetely [sic] you do not have my agreement to request the sale of any properties.**" [Emphasis in original.] (Agreed Statement of Facts, para 20.)

18. On February 1, 2011, Mr. Bright again requested permission to make the application for sale of the Property in Court (Agreed Statement of Facts, para 21).

19. On February 2, 2011, Mr. Bright's time records indicated he had a conversation with Ms. S. Mr. Bright has no notes regarding that conversation (Agreed Statement of Facts, para 22). Mr. Bright testifies that Ms. S. consented to the action for the sale of the Property in that telephone conversation.

20. The Application was filed in the Court of Queen's Bench on February 8, 2011 (Agreed Statement of Facts, Exhibit 16).

21. On March 1, 2011, Mr. Bright advised Ms. S. that he was “still proceeding with the application to force him to do something with the FTMC properties” (Agreed Statement of Facts, para 24).

22. On March 14, 2011, Ms. S. replied to Mr. Bright, requesting a copy of the document withdrawing the Application. She said, “I never asked you to do this as it is against what I believe should be done…You never told me you were going to apply for something like this to the court” (Agreed Statement of Facts, para 25). In a subsequent email on that same date, Ms. S. requested all correspondence to or from Mr. Bright to be copied to her to avoid “situations and misunderstandings like the application to force him to do something with the FTMC Properties” (Agreed Statement of Facts, para 26).

23. Mr. Bright responded by recommending that the Application not be discontinued, just adjourned. His rationale for that recommendation was to avoid an award of costs against Ms. S. (Agreed Statement of Facts, para 27).

24. Ms. S. replied in writing on April 1, 2011, saying “As per my prior emails please officially discontinue the application to force the sale of the FTMM [sic] properties” (Agreed Statement of Facts, para 28). Mr. Bright responded on the same date advising it is not wise to withdraw the Application and asking if she is certain (Agreed Statement of Facts, para 29).

25. Ms. S. replied by saying “I really don’t know what to tell you. I told you all along I didn’t want to do anything concerning the houses and you did it anyway without even consulting me. ….I do not want the judge when we are at the divorce settlement to sell the houses “because that is what I wanted”. That is a good business for who ever (sic) keeps it. I shouldn’t have to pay for removing the application” (Agreed Statement of Facts, para 30). This is consistent with her testimony at the hearing:

> “I never wanted to sell everything -- like same as I did with the houses, family house in Colombia, I never wanted to sell. I wanted to keep it because the best way to save money is to keep the real estate” (Hearing transcript, page 18).

And at line 27 she said “I don't like -- I'm against to sell real estate, is like a principle for me…”

26. The Agreed Statement of Facts confirms that Ms. S. advised Mr. Bright in an email dated April 29, 2011 that she never gave instructions to bring the Application and she took

exception to Mr. Bright's account which charged her for legal services related to the Application (para 32).

27. Mr. Bright replied on May 1, 2011 advising Ms. S. that he would provide her with the email in which she agreed to commence the Application. Mr. Bright was not able to locate an email and subsequently admitted that there must not have been such an email (Transcript, page 115). Mr. Bright acknowledges that:

> "My practice is, has been for some time when I get a verbal instruction from anybody, a client, is to ask them to confirm in writing - by email, text, something that I can print" (Transcript, page 115).

Notwithstanding this admitted practice, Mr. Bright could not produce any notes or other evidence confirming the alleged instructions.

28. Mr. Bright's testimony was that Ms. S. had given him instructions in a telephone call which had occurred between only him and Ms. S. on February 2, 2011. The evidence of both Ms. S. and Ms. A. (the additional witness at the hearing) suggests that Ms. S. almost invariably had either Ms. A. or another third party on telephone calls with Mr. Bright in order to assist her with communication. Ms. S. emphatically denies that she ever gave that consent or instruction: "No, that never happened. That didn't happen" (Transcript, page 34, line 20).

29. The testimony of Ms. A. is consistent with Ms. S.'s testimony, both in terms of Ms. S.'s unwavering and firm position that she did not want the Application to proceed and also as to the fact that Ms. S. always had a friend or interpreter in on the telephone conversations with Mr. Bright.

30. Mr. Bright also suggests that he did not withdraw the Application subsequently at his client's request because a) there is no way to withdraw the Application b) that there was a risk of costs being assessed against Ms. S. if he did withdraw the Application and c) that he "practically" withdrew the application by not pursuing it.

31. The Hearing Committee accepts the evidence of Ms. S. and finds she did not give Mr. Bright authority to commence the Application. Her evidence in this regard is supported by all of the written communication both before and after the February 2, 2011 telephone conversation and by the testimony of Ms. A..

32. Ms. S. also alleges that Mr. Bright pursued a costs award against Mr. J. at a time when he was critically ill in hospital, notwithstanding her express instructions not to do so. This was very upsetting to the children of Ms. S. at a time when they were dealing with their father's impending death (Transcript, pages 29, 30).

33. Mr. Bright's response to this allegation was that the costs award was his and that he was entitled to pursue it irrespective of Ms. S.'s instructions not to. Mr. Bright alleges that Ms. S. never intended to pay him and he therefore was entitled to pursue the costs award on his own, without her concurrence.

34. There is no evidence to suggest that Ms. S. did not intend to pay the outstanding legal fees to Mr. Bright, and in fact, the evidence shows that Ms. S. had borrowed from friends on many occasions in order to make payments on account of Mr. Bright's fees. The evidence further shows payments of approximately $60,000.00 were in fact paid to Mr. Bright over the course of the matter. The source of those funds is irrelevant. The Committee finds this excuse to be neither relevant nor supported by the evidence.

DECISION

35. It is the decision of this Hearing Committee that Mr. Bright did fail to serve his client by failing to follow her express instructions and that this conduct is conduct deserving of sanction.

36. Mr. Bright took steps which were contrary to his client's continuing clear and express instructions; in commencing the Application contrary to her instructions, in failing to discontinue the Application contrary to her instructions and in pursuing the costs award against her husband at a time when she insisted he not do so.

37. Clients are entitled to make decisions about strategy, priorities and direction and, provided those decisions are lawful, the lawyer must heed those instructions and take the litigation in the direction that the client wishes. This is so irrespective of whether the lawyer is of the view as to the best or most effective strategy. If a lawyer disagrees with the instructions he or she is receiving from a client, then that disagreement has to be dealt with between the lawyer and client. Ultimately, if the lawyer is unable to convince the client of the wisdom of following his or her suggested course of action, then the lawyer may be entitled to withdraw and have the client seek alternate representation. A

lawyer is not entitled simply to substitute his judgment for that of his client. A lawyer must heed their client's instructions.

38. The Code of Professional Conduct provides that:

> "A lawyer must obtain instructions from the client on all matters not falling within the express or implied authority of the lawyer" (Chapter 2, Rule 2.02 (3)).

It appears that Mr. Bright was aware of this requirement as he did request authorization to make the Application, on several occasions. The evidence shows that although Mr. Bright sought the instructions, at least in respect of the Application, he failed to follow those instructions and indeed proceeded in the face of his client's instructions to the contrary. Moreover, Mr. Bright then pursued enforcement of the costs against Mr. J. in the face of express instructions not to do so.

39. The Committee was most troubled by Mr. Bright's failure to admit his errors, and his explanation that his conduct was warranted because the matter was difficult and acrimonious or that his client never intended to pay her bills (a suggestion which was neither relevant nor substantiated by the evidence).

40. Mr. Bright's testimony throughout the hearing reflected an arrogant and dismissive attitude towards his client and her instructions. He consistently referred to what a difficult file it was, how deceptive Mr. J. was, how difficult the divorce was and how Ms. S. was not paying his fees quickly enough. All of these factors are irrelevant to the question of whether Mr. Bright failed to serve his client by ignoring her express instructions.

41. The Hearing Committee is of the view that this is conduct is deserving of sanction. One of the very fundamental aspects of the lawyer-client relationship is that the lawyer must follow the client's instructions, unless those instructions are unlawful. In no circumstance is the lawyer entitled to substitute his or her own decision on a matter, even where the lawyer is of the view that those instructions are not in the client's best interests. Mr. Bright consistently acted in a manner which was contrary to express instructions, in commencing an action, and pursuing an award of costs, all contrary to his client's express instructions. This conduct caused severe emotional hardship to Ms. S. in the course of this action.

SANCTION

42. The Hearing Committee has considered the absence of a prior record and the extent of cooperation in agreeing to certain Facts, which resulted in saving time and expense for the Law Society and benefitted all parties, including the Complainant. However, the Committee also notes that Mr. Bright seemed not to understand the requirement to obtain instructions and to follow them in all circumstances, provided they are lawful. The Committee finds that Mr. Bright should receive a reprimand, which has already been administered at the hearing. In addition, Mr. Bright should pay the costs of this hearing which are estimated to be $7,159.74 within 60 days of the issuance of this decision.

43. Mr. Bright's counsel argued that the costs of the attendance of Ms. A. to testify should not be paid by Mr. Bright as her testimony in the matter was not required. The Hearing Committee is of the view that Mr. Bright should pay the full costs of the matter, including those involved in Ms. A. attending at the hearing. Her testimony, although not determinative, did substantiate the other evidence.

CONCLUDING MATTERS

44. There shall be no Notice to the Profession.

45. There shall be no referral to the Attorney General.

46. Exhibits shall be available, but the Exhibits and transcript shall be redacted in accordance with Law Society policy.

Signed and dated at Edmonton, Alberta this 25th day of June, 2015.

____

Darlene W. Scott – Chair

____

Walter Pavlic, Q. C.

____

Glen Buick

IN THE MATTER OF THE *LEGAL PROFESSION ACT*;

AND IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF CYRIL BRIGHT A MEMBER OF THE LAW SOCIETY OF ALBERTA

LAW SOCIETY HEARING FILE HE20130076

AGREED STATEMENT OF FACTS

1. Cyril Bright ("Mr. Bright") is a member of the Law Society of Alberta ("Law Society"), having been admitted on February 6, 2003. He was a member at all times relevant to this proceeding.

2. Mr. Bright was admitted to the Law Society of Saskatchewan on July 4, 2000.

CITATION

3. Mr. Bright faces one citation as follows:

   M.S. Complaint (COXXXXXXXX)

   It is alleged that you failed to provide competent, conscientious and diligent service to your client by failing to follow your client's instructions and such conduct is deserving of sanction.

COMPLAINT PROCESS BACKGROUND

4. The Law Society received a written complaint dated August 15, 2012 in respect of Mr. Bright from a client, M.S. The complaint with enclosures is attached as **EXHIBIT 7, TABS 1 -15.**

5. A copy of the complaint and enclosures were sent to Mr. Bright who provided a written response by email dated October 20, 2012. **(EXHIBIT 8)**

6. M.S. responded to Mr. Bright's response by letter (with enclosures) incorrectly dated October 26, 2011, (should be October 26, 2012). **(EXHIBIT 9, TABS 1 - 4)**

7. Mr. Bright provided further information to the Law Society by email dated November 19, 2012. **(EXHIBIT 10)**

8. M.S. provided further information to the Law Society by letter dated incorrectly December 13, 2013, (should be December 13, 2012). **(EXHIBIT 11)**

9. Mr. Bright provided further information to the Law Society by email dated December 22, 2012. **(EXHIBIT 12)**

10. By letter dated January 11, 2013, the Law Society sought further records from Mr. Bright. In particular, the Law Society requested a copy of an email that Mr. Bright advised contained M.S.'s written instructions. **(EXHIBIT 13)**

11. Mr. Bright advised the Law Society by email dated April 7, 2013 that he was unable to locate an email containing M.S.'s written instructions. **(EXHIBIT 14)**

<u>AGREED UPON FACTS</u>

12. Mr. Bright was retained by M.S. to defend her in both a divorce action and a matrimonial property action in Alberta commenced by her estranged husband, J.J. At all material times, J.J. resided in Alberta.

13. At all material times, M.S.'s primary residence was the matrimonial home located in Vancouver, B.C.

14. M.S. also filed a divorce action and a matrimonial property action in B.C. with separate B.C. counsel. The divorce action in B.C. did not proceed as it was commenced after the divorce action in Alberta.

15. Mr. Bright acted for M.S. from about July, 2010 to March, 2012.

16. M.S. and J.J. jointly owned 3 properties in Fort McMurray as tenants in common.

17. In an email dated January 27, 2011, Mr. Bright advised M.S. to bring an application for the partition and sale of the 3 Fort McMurray properties (the "Application") and stated as follows:

    "I think we should ask the court here to order the sale of all the Fort McMurray property. I can make the application fairly easily and quickly. This kind of application is fairly routine and often is granted. …" **(EXHIBIT 7, TAB 2)**

18. In an email dated January 28, 2011, M.S. responded as follows:

    "In the Vancouver hearing, [my husband] requested the sale of the matrimonial house and the judge was very adamant in advising to avoid the sale of properties…" (**EXHIBIT 7, TAB 2)**

19. Later on January 28, 2011, Mr. Bright emailed M.S. and asked:

    "Do I have your authorization to ask to have the FTMC properties sold?" **(EXHIBIT 7, TAB 2)**

20. Later still on January 28, 2011, M.S. emailed a response which states in part:

"**Definetely** [sic] **You do not have my agreement** to request the sale of any properties." [emphasis in original]. **(EXHIBIT 7, TAB 2)**

21. In an email dated February 1, 2011, Mr. Bright advised M.S.:

"I understand your point against selling the fort mcmurray property [sic]…But I don't think you quite understand the realities of your situation."

…

So whether or not we actually follow through with the sale – I need permission to make the application in court – so that J.J. feels some pressure rather than you." **(EXHIBIT 15)**

22. Records indicate that M.S. called Mr. Bright on February 2, 2011. Mr. Bright does not have any notes regarding that conversation.

23. On February 8, 2011, the Application was fax filed in Fort McMurray **(EXHIBIT 16)**. The Application relied in part on an Affidavit sworn by M.S. on October 20, 2010 **(EXHIBIT 17)** as well as an Affidavit sworn by M.S.'s estranged husband on January 27, 2011 **(EXHIBIT 18)**.

24. In an email dated March 1, 2011, Mr. Bright advised M.S.:

"I'm still proceeding with the application to force him to do something with the FTMC properties." **(EXHIBIT 7, TAB 3)**

25. In an email dated March 14, 2011, M.S. writes:

"Further to our conference call on March 10, please send me a copy of the document of the withdrawl [sic] of the application forcing J.J. to sell the FFM properties. I never asked you to do this as it is against what I believe should be done. Below a segment of my email sent to you on March 2, to which I had no response. You never told me you were going to apply for something like this to the court."

"Cyril, I hope you understand my position. I can't go ahead with anything else until I get the spousal support. I have no money to pay anything and until I get the money I don't want you to go ahead in any other direction but the spousal support. …" **(EXHIBIT 7, TAB 4)**

26. In an email later that day (March 14, 2011), M.S. writes:

"Mr. Bright, from now on I would like all correspondence (email, letter or fax) from Mr. Mogdan to be replied in writing and copy of these and any correspondence from you to him to be copied to me. This to avoid situations and misunderstandings like "the application to force him to do something with the FTMC properties." **(EXHIBIT 7, TAB 5)**

27. Mr. Bright responded on March 14, 2011 as follows:

"As for discontinuing the application to force the sale of the FTMC property. It's not wise to just discontinue it – because then J.J. will demand costs against you – better to just adjourn the application – for a few months and forget about it. Let the trial judge decide what is to be done with it." **(EXHIBIT 7, TAB 6)**

28. In an email dated April 1, 2011, M.S. writes:

"As per my prior e-mails please officially discontinue the application to force the sale of the FTMM [sic] properties." **(EXHIBIT 7, TAB 9)**

29. Mr. Bright responded the same day as follows:

"There will be costs associated with this if you withdraw the application. This is not wise. Are you sure?" **(EXHIBIT 7, TAB 9)**

30. M.S. responded the same day as follows:

"I really don't know what to tell you. I told you all along I didn't want to do anything concerning the houses and you did it anyway without even consulting me. I do not want the judge when we are at the divorce settlement to sell the houses "because that is what I wanted". That is a good business for who ever (sic) keeps it. I shouldn't have to pay for removing the application." **(EXHIBIT 7, TAB 9)**

31. In an email concerning her account dated April 29, 2011, M.S. reiterated that she never gave instructions to bring the application and stated that she took exception to being charged for legal services related to the application. **(EXHIBIT 7, TAB 10)**

32. In an email dated May 1, 2011, Mr. Bright advised that he would provide M.S. with a copy of the e-mail in which she agreed to commence the application. **(EXHIBIT 7, TAB 11)**

33. Mr. Bright was not able to locate an e-mail evidencing M.S.'s instructions regarding the application. **(EXHIBIT 14)**

ADMISSION OF FACTS

34. Mr. Bright admits the facts contained within this Agreed Statement of Facts for the purposes of these proceedings.

35. This Agreed Statement of Facts is not exhaustive. Mr. Bright and the Law Society may lead additional evidence not inconsistent with the facts stated herein.

This Agreed Statement of Facts and Admission is dated the 15th day of January, 2015.

“Witness Signature”
WITNESS

“Cyril Bright”
CYRIL BRIGHT