

LAW SOCIETY OF ALBERTA
IN THE MATTER OF THE *LEGAL PROFESSION ACT*;
AND
IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF BRIAN FISH
A MEMBER OF THE LAW SOCIETY OF ALBERTA

Single Bencher Hearing Committee:

Dennis Edney, QC - Bencher

Appearances:

Counsel for the Law Society – Nancy Bains

Counsel for Brian Fish – Simon Renouf, QC

Hearing Date:

January 18, 2017

Hearing Location:

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

HEARING COMMITTEE REPORT

Jurisdiction, Preliminary Matters and Exhibits

1. On January 18, 2017, a Single Bencher Hearing Committee (Committee) convened at the office of the Law Society of Alberta (LSA) to conduct a hearing regarding a Statement of Facts and Admission of Guilt dated December 15, 2016.
2. The jurisdiction of the Committee was established by Exhibits 1 through 4, consisting of the letter of appointment of the Committee, the Notice to Solicitor pursuant to section 56

of the *Legal Profession Act*, the Notice to Attend to the Member and the Certificate of Status of the Member with the Law Society of Alberta.

3. Mr. Fish and counsel for the LSA were asked whether there were any objections to the constitution of the Committee. There being no objections on the grounds of bias or otherwise the hearing proceeded. The Chair directed that the hearing be held in public.

Citation

4. Mr. Fish faced the following citation:

[1] It is alleged that you were not sufficiently diligent in providing legal services to your client by failing to obtain your client's confirming instructions before releasing data to the CBC, and such conduct is deserving of sanction.

Statement of Facts and Admission of Guilt

5. Mr. Fish signed a Statement of Admitted Facts and Admission of Guilt to the citation, on the 15th day of December, 2016, attached as Appendix "A" to this Hearing Report ("Admission").
6. The Admission was found to be in an acceptable form by a Conduct Committee Panel on January 9, 2017, and therefore this hearing was convened by a single bencher pursuant to section 60(3) of the *Legal Profession Act*.
7. Pursuant to section 60(4) of the *Legal Profession Act*, after a statement of admission of guilt is accepted by the Conduct Committee, it is deemed to be a finding of the Hearing Committee that the lawyer's conduct is conduct deserving of sanction.
8. The only question for determination by this Committee is one of appropriate sanction.

JOINT SUBMISSIONS ON SANCTION

9. Counsel for the LSA advised that Mr. Fish had admitted responsibility immediately upon being contacted by the LSA. He had co-operated in the preparation and signing of the Admission and had consented to a single Bencher hearing, resulting in very brief hearing and estimated costs of \$3,903.99.
10. The Committee received oral submissions from counsel for the LSA and counsel for Mr. Fish, in support of a joint submission, proposing a sanction by way of a reprimand, a fine in the amount of \$1,500.00 and payment of the actual costs of the hearing.

LAW ON JOINT SUBMISSIONS

11. Historically, LSA hearing committees have found that joint submissions on sanction should not be lightly disregarded and should be accepted unless unfit, unreasonable, contrary to the public interest, or there are good and cogent reasons for rejecting them (citing *Rault v. Law Society of Saskatchewan*, 2009 SKCA 81 (CanLII)). More recently, the Supreme Court of Canada has established the “public interest test” as the appropriate test when determining whether to depart from a joint submission (*R. v. Anthony-Cook*, 2016 SCC 43 (CanLII)). The “public interest test” requires the tribunal to consider whether the joint proposal regarding sentence would bring the administration of justice into disrepute or would otherwise be contrary to the public interest.
12. The judgment of the Alberta Court of Appeal in *R. v. Magas*, 2012 661, 524 A.R. 98 (para.16) stands for the proposition that rejection of a joint submission is unlikely to warrant appellate intervention where the sentencing judge demonstrated a thorough appreciation of the relevant facts, their significance, and the proper sentencing principles.

DECISION AS TO SANCTION

13. The Hearing Committee acknowledges that it is neither the function nor the purpose of disciplinary proceedings to punish anyone. (See *Denovan Hill (Re)*, 2011 LSBC 16 (CanLII)).
14. The Hearing Committee is guided by the public interest, which seeks to protect the public from acts of professional misconduct and to ensure that the public maintains a high degree of confidence in the legal profession. Professional discipline exists to address misconduct but also to restore and maintain public trust in the legal profession.
15. In arriving at the appropriate sanction, the Committee concurs that a joint sentencing submission should not be lightly disregarded and should be accepted unless it is unfit or, as more recently articulated by the Supreme Court, contrary to the public interest. In this case, the joint submission was rejected.
16. Counsel on behalf of the LSA described the conduct matter as “unusual” and “unlikely to be repeated”.
17. Counsel, on behalf of Mr. Fish, advised that Mr. Fish was 76 years of age. He had an extensive and ongoing career as a lawyer, representing many low-income individuals on Legal Aid and on a pro bono basis, over 37 years of practice. He practiced in the area of mental health and, more recently, in the area of child welfare.
18. The Committee was mindful of the following mitigating factors:

- Mr. Fish had been a member of the LSA since 1980 with an unblemished disciplinary record;
 - The conduct in question had not resulted in personal gain;
 - Mr. Fish co-operated fully with the LSA in its investigation and provided an admission of his conduct.
19. The Committee determined that specific deterrence of Mr. Fish was not a concern in this matter, and the determination of guilt and a reprimand would be sufficient denunciation of his conduct in these circumstances.
 20. Having regard to the foregoing factors, the Committee rejected the joint submission, in which the parties proposed a reprimand, fine and costs. Mr. Fish exercised a single moment of poor judgement. He enjoyed a formerly unblemished career, and has served the public well for the past 37 years, in some of the most difficult areas of law, where the rewards are personal rather than financial. The Committee was satisfied that Mr. Fish understands the gravity of his actions and that they will not occur again.
 21. The Committee finds an appropriate sanction to be a reprimand. No fine shall be payable. Mr. Fish will be required to pay half of the final Statement of Costs, rather than the full costs proposed. Costs shall be payable within 60 days following confirmation of the final amount.
 22. The exhibits and proceedings will be available for public inspection, which includes copies of exhibits for a reasonable copy fee. The exhibits and transcripts shall be redacted to exclude privileged information and any information that identifies the member or any complainants in this matter.
 23. There will be no Notice to the Attorney General.
 24. There shall be no Notice to the Profession.
 25. The Chair delivered a reprimand to Mr. Fish, a copy of which is appended to this Hearing Report as Appendix "B".

Dated this 2nd day of February, 2017.

Dennis Edney, QC

APPENDIX "A"

IN THE MATTER OF THE LEGAL PROFESSION ACT

AND

IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF BRIAN FISH

A MEMBER OF THE LAW SOCIETY OF ALBERTA

STATEMENT OF ADMITTED FACTS AND ADMISSION OF GUILT

INTRODUCTION

1. I was admitted as a member of the Law Society of Alberta on August 22, 1980.
2. My present status with the Law Society of Alberta is Active/Practicing.
3. I have practiced in Edmonton, Alberta from 1980 present.
4. In 2009, my practice comprised: Matrimonial/Family law (40%), Criminal law (15%), Aboriginal law (10%), Corporate law (5%), and Other (30%).

CITATIONS

5. On July 12, 2016 the Conduct Committee Panel referred the following citations to hearing:
 1. It is alleged that you disclosed confidential information received from your client to the CBC without your client's consent and such conduct is deserving of sanction.
 2. It is alleged that you failed to provide conscientious and competent legal services to your client and such conduct is deserving of sanction.
6. On December 14, 2016, Kathleen Ryan, QC, Pre-Hearing Conference Chair of the matter, granted withdrawal of Citation 1 and allowed an amendment to Citation 2, pursuant to her authority under Rule 90.1(8)(e). Citation 2 has been amended to:
 2. It is alleged that you were not sufficiently diligent in providing legal services to your client by failing to obtain your client's confirming instructions before releasing data to CBC, and such conduct is deserving of sanction.

ADMITTED FACTS

7. I have for many years been a vocal opponent of coercive state tactics in the areas of drug enforcement and drug treatment. In the course of this advocacy, I have on occasion made public, critical comments about ABC.
8. AS initiated contact with me on March 22, 2009 via email using an alias on a web forum. She appeared to be aware that I was a vocal opponent of ABC. She told me that there were, in her view, problems at ABC.
9. AS and I traded communications for several weeks via email about the data. In the emails, I indicated to AS that I considered her a client and that way, our communications would be confidential and subject to solicitor-client privilege.
10. After several weeks of communicating, I met AS at the public library in April 2009. At this meeting, AS transferred the data from her computer to my computer and provided me with at least one thumb drive. I subsequently learned that the data provided by AS included some materials which showed concerns about how ABC clients were treated and concerns related to ABC's funding. Some of the data transferred was not in a readable form.
11. In our communications, AS advised me that that she was in discussion with CBC about the data and required advice regarding the same. AS told me that she had already provided some materials to CBC.
12. I was able to review some of the data but not all. Specifically, I tried opening the V----.pst file several times over several months but I was not able to open the V----.pst file at any time.
13. A CBC reporter contacted me on what I understood to be the behest of AS. In July 2009, I provided a copy of the data I received from AS, via memory sticks, to a CBC reporter without confirming the instructions with AS.
14. AS later advised me that she had been fired by V Co.. I do not recall what she told me about V Co's expressed reason for the firing.
15. In 2011 ABC sued AS. AS contacted me to assist in her defence and I referred her to her current lawyer EN. Subsequently, ABC amended its claim to add me and CBC as defendants. That litigation is ongoing.
16. Thus, I admit that I had a solicitor-client relationship with AS, received information/data from AS and provided that information to the CBC.
17. When I met AS at the library in Edmonton we did not discuss potential civil liability or criminal actions against AS. After she was sued by ABC we did discuss her potential civil liability and I referred her to her current lawyer, EN.

ADMISSIONS OF FACT AND GUILT

18. I admit that I was not sufficiently diligent in providing legal services to my client in that I failed to obtain my client's confirming instructions before releasing data to CBC.

19. For the purposes of Section 60 of the Legal Profession Act, I admit my guilt only to Citation 2 directed on July 12, 2016 and amended on December 14, 2016.
20. I admit as facts the statements in this Statement of Admitted Facts and Admission of Guilt for the purposes of these proceedings.
21. I acknowledge that I have had the opportunity to consult legal counsel and provide this Statement of Admitted Facts and Admission of Guilt on a voluntary basis.

THIS AGREED STATEMENT OF FACTS AND ADMISSION OF GUILT IS MADE THIS 15th DAY OF DECEMBER, 2016.

“Brian Fish”

BRIAN FISH

APPENDIX "B"

It is my obligation to provide you with a reprimand.

The practice of law is both a challenge and a privilege. We must never lose sight of the fact that we are the guardians of the public interest. If we fail to do so, then the legal profession and the public are injured. I am convinced you well understand your obligations and the exercise of poor judgement will not occur again.