

LAW SOCIETY OF ALBERTA

IN THE MATTER OF THE *LEGAL PROFESSION ACT*;

AND

**IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF R. FRANK LLEWELLYN,
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

Hearing Committee:

Gillian D. Marriott, Q.C., Chair (Bencher)

Appearances:

Counsel for the Law Society – Nancy Bains

R. Frank Llewellyn – self-represented

Hearing Date:

August 10, 2015

Hearing Location:

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

HEARING COMMITTEE REPORT

Jurisdiction and Preliminary Matters

1. Exhibits 1 – 4 were entered by consent and established the jurisdiction of the Committee. The parties raised no objections to the jurisdiction and had agreed that matter could proceed by way of a Single Bencher hearing.

2. A Certificate confirming that:
 - a) the Complainant had received a Private Hearing Application Notice and,
 - b) the Deputy Executive Director had exercised her discretion pursuant to Rule 96(2)(b) and determined that no other individuals were to be served with a Private Hearing Application Notice

was entered by consent as Exhibit 5. The Bencher was advised that no party intended to apply to have the hearing held in private. As a consequence, the hearing was held in public.

Citations

3. The hearing related to one citation brought against the Member:

“It is alleged that you failed to respond to communications from another lawyer; that contemplated a reply and that such conduct is deserving of sanction.”

Background

4. At the outset of the hearing, a Statement of Admitted Facts and Admission of Guilt was entered as Exhibit 6 and is attached as Schedule “A” to this decision. The Agreed Statement contains an admission at paragraphs 23-25 respecting the conduct complained of in the citation. Documents marked Exhibits 1 through 44 were admitted by agreement and formed part of the evidence before the Committee.
5. The Member acknowledged to the Bencher that he:
 - a) made the admissions voluntarily;
 - b) unequivocally admitted his guilt to the essential elements of the citation;
 - c) understood the nature and consequences of the admissions; and
 - d) understood that the Hearing Committee was not bound by a submission made jointly on his behalf and by counsel for the LSA regarding sanction.
6. The Bencher concluded that the Statement of Admitted Facts and Admission of Guilt was acceptable and was an admission of guilt. The Bencher found the Member to be guilty of conduct deserving of sanction in accordance with section 60 of the Legal Profession Act, RSA 2000 c L-8 (“Act”).

Submissions Regarding Sanction

7. Having found Mr. Llewellyn guilty of conduct of deserving of sanction with respect to the citation, the Bench heard from parties with respect to sanction.
8. A joint submission as to sanction was presented, as both parties had agreed to a reprimand and costs. An Estimated Statement of Costs, totalling \$2,180.33, was submitted by agreement as Exhibit 44. LSA counsel made further submissions, seeking a referral to Practice Review. The Hearing Committee rejected that submission on the grounds that the Member had only one prior conduct sanction from 1996 on his record.
9. It was noted that the Member cooperated with the LSA throughout the complaint process, took responsibility for his conduct and demonstrated a willingness to take steps to avoid re-occurrence.

Decision Regarding Sanction

10. In determining an appropriate sanction, it was acknowledged that the LSA is to take a purposeful approach. The overarching purpose of the sanction process is to protect the public, preserve high professional standards, and preserve public confidence in the legal profession: *Law Society of Alberta v Mackie*, 2010 ABLS 10. The purpose of sanctions is not “to punish offenders and exact retribution”: Gavin McKenzie, *Lawyers and Ethics: Professional Responsibility and Discipline*, (Toronto: Carswell, 2009) ,at page 26-1:
11. Section 72 (1) of the Act requires that a Hearing Committee, on finding a member guilty of conduct deserving of sanction, disbar, suspend or reprimand the member. Unlike disbarment or suspension, a reprimand does not limit a member’s right to practice.
12. As stated by the Hearing Committee at paragraph 79 of *Law Society of Alberta v King*, 2010 ABLS 9:

“A reprimand has serious consequences for a lawyer. It is a public expression of the profession’s denunciation of the lawyer’s conduct. For a professional person, whose day-to-day sense of self-worth, accomplishment and belonging is inextricably linked to the profession, and the ethical tenets of that profession, it is a lasting reminder of failure. And it remains a lasting admonition to avoid repetition of that failure. Deterrence and the future protection of the public interest are therefore served accordingly.”

13. The Hearing Committee in *Law Society of Alberta v King* also stated at paragraph 71 that the following factors may be considered when deciding how the public interest should be protected through the sanction process:
- a) the nature and gravity of the misconduct;
 - b) whether the misconduct was deliberate;
 - c) whether the misconduct raises concerns about the lawyer's honesty or integrity;
 - d) the impact of the misconduct on the client or other affected person;
 - e) general deterrence of other members of the profession;
 - f) specific deterrence of the particular lawyer;
 - g) whether the lawyer has incurred other serious penalties or other financial loss as a result of the circumstances;
 - h) preserving the public's confidence in the integrity of the profession's ability to properly supervise the conduct of its members;
 - i) the public's denunciation of the misconduct;
 - j) the extent to which the offensive conduct is clearly regarded within the profession as falling outside the range of acceptable conduct; and
 - k) imposing a penalty that is consistent with the penalties imposed in similar cases.

Mitigating circumstances, such as the lawyer's conduct since the misconduct, the lawyer's prior disciplinary record, the age and experience of the lawyer, and whether the lawyer entered an admission of guilt, thereby showing an acceptance of responsibility, may also be considered: see *Law Society of Alberta v King* at para 72, and *Law Society of Alberta v Elgert*, 2012 ABLS 9 at para 41.

14. The Member in these circumstances demonstrated a lack of diligence and responsiveness. His inaction and lack of attention to his clients' matters caused unnecessary effort, frustration and inconvenience. However, it does not appear that significant prejudice resulted from the Member's actions.
15. By choosing to enter an admission of guilt, the Member lessened the burden of the LSA. The Member also expressed remorse for his conduct and the Committee accepts that as true.
16. Further, as set out in the Hearing Guide, a joint submission on sanction must be given serious consideration and accepted unless it is unfit, unreasonable, or contrary to the public interest: see also *R v Tkachuk*, 2001 ABCA 243; *Law Society of Alberta v Pearson*, 2011 ABLS 17.

17. Having regard to all of these factors, the joint submission on sanction is appropriate and the following is the decision on sanction, pursuant to section 72 of the Act;
 - a) The Member shall receive a reprimand to be delivered by the Chair of the Hearing Committee;
 - b) The Member shall pay a fine in the amount of \$2,000, to be paid by the end of business, namely 16:30, on or before February 18, 2016;
 - c) The Member shall pay set costs for this hearing in the amount of \$1,000.00, to be paid by the end of business, namely 16:30, on or before February 18, 2016.

Reprimand

18. A reprimand was delivered by the Benchler at the conclusion of the hearing, reminding the Member that both the public interest and the Code of Conduct require that members of the LSA serve their clients diligently, conscientiously, and with due regard for the clients' interest. He failed to do so in this matter and in doing so, harmed the standing and the reputation of the legal profession. The Reprimand is summarized as Schedule "B" to this Report.

Concluding Matters

19. In the event of any request for public access to the evidence heard in these proceedings, the Exhibits and the transcript of the proceedings shall be redacted to protect the identity of the Member's former clients, and any information subject to proper claims of privilege.
20. No referral to the Attorney General is directed.
21. There shall be no Notice to the Profession issued.

DATED at the City of Calgary, in the Province of Alberta this 18th day of February, 2016.

Gillian D. Marriott, Q.C.

Schedule “A”

THE LAW SOCIETY OF ALBERTA

IN THE MATTER OF:

THE LEGAL PROFESSION ACT

-and-

IN THE MATTER OF:

A HEARING INTO THE CONDUCT OF

R. FRANK LLEWELLYN, a member of THE LAW SOCIETY OF ALBERTA

STATEMENT OF ADMITTED FACTS AND ADMISSION OF GUILT

INTRODUCTION

1. I was admitted to the Law Society of Alberta (“LSA”) on July 23, 1973.
2. I have practiced law in Lethbridge as an active member since July 23, 1973, operating a general practice consisting mainly of civil litigation and real estate files.
3. I was a sole practitioner from 1988 until 2007, when I joined the Stringam Denecky firm. I realized that some of the issues I was experiencing which led to complaints resulted from poor practice organization. I decided to move my practice to Stringam Denecky so I could relieve myself of administrative obligations and reduce my file and workload.
4. While I was a sole practitioner, I had a high volume, general type of practice. I had two assistants and a bookkeeper. Since joining Stringam Denecky, my practice has focused on civil litigation. I have two secretaries and all of the support services associated with a large office.

CITATIONS

5. I understand that the following conduct is being referred to a Hearing:

- It is alleged that I failed to respond to communications from another lawyer that contemplated a reply and that such conduct is deserving of sanction.
6. The conduct complained of may be summarized as follows:
- a) I acted for a client in the Northwest Territories and inadvertently let my Restricted Appearance Certificate lapse which meant that I could not sign my client's Certificate of Lawyer required to be filed along with divorce documents in the Northwest Territories; and
 - b) upon learning that my RAC had lapsed and that I would have to pay the full annual fee (approximately \$800), I delayed responding to opposing counsel and did not apply for a new RAC for a period of more than one year.

FACTS

7. I was retained by Mr. C, the defendant in a divorce action in the Northwest Territories. I obtained a Restricted Appearance Certificate ("RAC") from the Law Society of the Northwest Territories ("LSNT") so that I could represent Mr. C. Mr. C's wife was represented by Mr. S of Edmonton.
8. Mr. C and his wife reached an agreement in principle on January 3, 2012. Mr. S wrote to me on January 6, 2012 to confirm the settlement and advised that he would prepare a form of Agreement to resolve both the divorce and a damages claim. He stated that he would prepare the execution copies and the necessary court documents.
9. I wrote to Mr. S on February 7, 2012 as I had not received any documents from him with respect to the C divorce. I advised him that if he lacked the time to prepare the documents, I would take care of them since my client would like to have this matter settled.
10. I developed a mental block on this file as Mr. C was a difficult client which caused significant delays in moving the divorce forward and the subject matter on this file was somewhat sordid. In addition, while Mr. C agreed to the terms of settlement, he later refused to comply with the terms of the settlement agreement and sign corporate and ancillary documents. I had to persuade him that he had to sign these documents or be in breach of the settlement agreement.
11. I sent draft documents to Mr. S on April 18, 2012 and suggested that this matter be concluded by the end of April.

12. I did not realize that my RAC from the LSNT expired on April 27, 2012.
13. Mr. S's client decided to obtain tax advice respecting the tax indemnity clause in the documents which caused delays during the period from April through June of 2012. However, Mr. S's client executed the documents on July 13, 2012 in the Northwest Territory and Mr. S sent two copies to me for my client to execute on July 29, 2012.
14. My client executed the documents and I submitted them to the Supreme Court of the Northwest Territories, more than two months after my RAC expired. The Court rejected the documents because of deficiencies, which included the fact that I was not a member of the LSNT at the time and therefore could not sign the Certificate of Lawyer which formed part of the filing.
15. I was very frustrated by this situation and the fact that I would have to apply for a new RAC. I wrote to Mr. S on October 10, 2012 stating that the fee for me to obtain a new RAC was \$850 and suggested that he should pay a portion of this fee because of the matter had been settled in January and would have been completed by the date on which my RAC expired but for delays by his client. Mr. S advised that he would not pay this fee and asserted that the delays were not solely his client's fault.
16. Mr. S wrote to me on October 19, 2012 and advised me that he spoke with one of the Practice Advisors who suggested that I withdraw from the file and instruct counsel as agent to complete the matter. I did not reply to this letter. Mr. S attempted to follow up with me on October 29, 2012 and December 18, 2012. I wrote him on January 7, 2013 at which time I advised him by letter that I would be happy to speak to the Practice Advisor.
17. I had hoped that the LSNT would allow me to renew my RAC for a short period of time to reduce the fee that would be payable and I spoke to the LSNT about this in early January of 2013. However, on January 24, 2013, the LSNT wrote to advise me that this was not possible and that I would have to pay the full annual fee in order to obtain a new RAC.
18. Mr. S wrote to me on January 29, 2013 and asked me to have my client properly execute the required documents and asked what I intended to do with respect to the entering of the Divorce Judgment as I was required to be a member in good standing of the LSNT prior to the Court entering the Divorce Judgment. I did not reply to this letter but contacted an agent in the Northwest Territories who advised that I could not complete this matter through an agent as I would have to be a member of the NSNT to instruct an agent. Mr. S wrote to me to follow-up on the matter on February 7, 2013, February 25, 2013, March 7, 2013 and April 1, 2013. Mr. S and I spoke about this on April 8, 2013 and he wrote a letter confirming our discussion that I would perfect my membership in the LSNT in order to complete this matter.

19. On April 30, 2013, my office advised Mr. S that my application to the NSLT was nearly complete; however, I did not in fact complete my application and send it to the NSLT until June 17, 2013.
20. The LSNT approved my application for a new RAC on August 8, 2013.
21. The divorce documents were subsequently submitted to the Northwest Territory Supreme Court on and the Divorce Judgment was entered.

The Complaint

22. On or about April 26, 2013, Mr. S filed a complaint with both the LSA and the LSNT. As I was not a member of the LSNT, the complaint was handled by the LSA.

Admission of Guilt

23. I admit as facts the contents of this Statement of Admitted Facts and Admission of Guilt for the purposes of these proceedings.
24. I admit that I failed to respond to communications from another lawyer that contemplated a reply and that such conduct is deserving of sanction.
25. I admit guilt to the above conduct pursuant to section 60 of the *Legal Profession Act*.
26. 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 STATEMENT OF ADMITTED FACTS AND ADMISSION OF GUILT IS MADE
THIS 26TH DAY OF MARCH, 2015.

"R. Frank Llewellyn"

R. FRANK LLEWELLYN

Schedule “B”

Reprimand

The primary purpose of disciplinary proceedings is the protection of the public and the standing of the legal profession, as well as maintaining high professional standards and preserving public confidence in the legal profession. Your delay and the impact on the opposing party was quite significant, and erodes public confidence.

We need to have those goals as our focus, and one of the ways, as members of the Bar, we do that is to rise above the fray, and realize that we are not responsible for what is happening between the clients. We still have to get the deal done, and we still have to proceed.

The professional relationships between our members allow us to do what we do. We rely on other members of the profession to be objective and to work to achieve the ultimate goal, which is closing the file.

We have a requirement of professionalism that ensures that we can work together to move forward and maintain public confidence. And when one lawyer does something wrong and it has an impact on a client, the public confidence is eroded.

I understand the reasons why this situation arose. I am trusting that it won't arise again and that, in working with Stringam and having the support of the firm, these matters would be able to be dealt with in a much more professional manner than this matter was dealt with at the time.

I also take into consideration the fact that you have been practicing for 42 years. You have, as indicated, made significant contributions as a member of the profession, and I'm trusting that that will continue in the future. I think it's very important that senior members of the bar stay active, to the extent that they want to, and that young lawyers need that. And I think that young lawyers really need to know that professionalism is key to how we practice.

I am hoping that, when you're mentoring the young lawyers at Stringam, you will emphasize the importance of maintaining professional, collegial relationships with other lawyers and other members of the profession.

I am trusting that, having gone through this process, we won't see similar issues arise again in your practice and that you will have the systems in place to ensure that correspondence is responded to promptly and without delay.