

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

Single Bencher Hearing Committee:

Kathleen Ryan Q.C., Chair (Bencher)

Appearances:

Counsel for the Law Society – Nancy Bains
Counsel for Larry Ayers – Peter Royal, Q.C.

Hearing Date:

May 17, 2016

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 May 17, 2016, a Single Bencher Hearing Committee (Committee) convened at the office of the Law Society of Alberta (LSA) to conduct a hearing regarding certain conduct of Larry Ayers. Peter Royal and counsel for the LSA were asked whether there were any objections to the constitution of the Committee. There being no objections, the hearing proceeded. Mr. Ayers attended throughout the hearing.
2. Exhibits 1 through 4 consisted 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 LSA. These exhibits established the jurisdiction of the Committee.

3. Pursuant to Rule 96(2)(b) of the *Rules of the Law Society of Alberta* (“Rules”), the Deputy Executive Director and Director, Regulation of the LSA, served several individuals with a Private Hearing Application Notice. This was confirmed by Exhibit 5. Counsel for the LSA advised that the LSA did not receive a request for a private hearing. Accordingly, the Chair directed that the hearing be held in public.
4. At the outset of the hearing, Exhibits #1 through #34, contained in the Exhibit Book which had been provided to the Committee in advance, were entered into evidence in the hearing with the consent of the parties. Further, Exhibit #35 being the Member’s Record and Exhibit #36, an estimated Statement of Costs, were added to the Exhibit Book as the hearing proceeded.

Agreed Statement of Facts

5. This matter did not proceed to the citation stage because Mr. Ayers admitted that the conduct acknowledged pursuant to a Statement of Admitted Facts and Admission of Guilt (“Admitted Facts”) was conduct deserving of sanction. The Conduct Committee Panel previously determined that the Admitted Facts was in a form acceptable to the Committee as contemplated in Section 60(3) on April 13, 2016. The Admitted Facts is Appendix “A” to this decision.

The Evidence

6. From the fall of 2012 to January 2014, the relevant time span for the two complaints, Mr. Ayers failed to provide legal services on two matters to the standard of a competent lawyer. Mr. Ayers acknowledges that he failed to perform functions competently, diligently, and in a timely manner.
7. In one case, the matter related to the advancement of a personal injury file. Mr. Ayers scheduled a Judicial Dispute Resolution (JDR) on behalf of his client, but then failed to file the JDR brief. Both opposing counsel and Mr. Ayers’ client made diligent efforts to follow up with him, but Mr. Ayers allowed the matter to lag.
8. In the second matter, Mr. Ayers was providing estate administration legal services to his client. The materials submitted to the Surrogate Court were twice rejected for deficiencies. Rather than promptly correcting the deficiencies, Mr. Ayers again allowed the matter to lag, failed to respond to communications from his clients, and failed to keep his clients informed of the status of the matter.

The Submissions of the Parties

9. Mr. Ayers and the LSA made a joint submission in respect of sanction. Joint submissions should be accepted unless the sanction jointly sought is unfit or unreasonable, or is

contrary to the public interest: *R v. Patrick* 2001 ABCA 243 and *Law Society of Alberta v. Pearson* 2011 ABL 17.

10. I find that the proposed sanction in this matter is fit, reasonable and in the public interest. The joint submission on sanction is a \$2,000.00 fine and a reprimand.
11. This Committee is to take a purposeful approach to sanction. As Mr. Gavin McKenzie observed in *Lawyers and Ethics Professional Responsibility & Discipline* at page 26-1:

The purpose of law society discipline proceedings are not to punish offenders and exact retribution, but rather to protect the public, maintain high professional standards, and preserve public confidence in the legal profession.

In cases in which professional misconduct is either admitted or proven, the penalty should be determined by reference to these purposes.

12. In my view, the proposed sanction addresses the objectives of discipline in Law Society proceedings.
13. On behalf of the LSA, Ms. Bains noted that Mr. Ayers had no prior record, was very cooperative in these proceedings and was prepared to consolidate two different complaint matters in a way that allowed for efficient resolution of the complaints. After the first complaint, Mr. Ayers was referred to Practice Review and Ms. Bains reported “only the most positive” feedback from Practice Review in respect of Mr. Ayers practice.
14. On behalf of his client, Mr. Royal noted that Mr. Ayers had practiced continually at the Bar for over 35 years and that he was a very well regarded sole practitioner who perhaps took on a higher workload than he should have at the time of these events.
15. The parties also agreed on costs payable by Mr. Ayers in the amount of \$3,000.00.

Decision Regarding Sanction

16. The joint submission is accepted. A fine is imposed in the amount of \$2,000.00. A reprimand was delivered at the Oral Hearing. The reprimand is attached as Appendix “B” to this decision.

Concluding Matters

17. Mr. Ayers will have, as per his request, two weeks to pay the fine and costs.
18. There will be no referral to the Attorney General.

19. There will be no Notice to the Profession.
20. 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. Ayers 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 18th day of November, 2016.

Kathleen Ryan, QC

APPENDIX "A"

IN THE MATTER OF *THE LEGAL PROFESSION ACT*

AND

IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF LARRY AYERS,

A MEMBER OF THE LAW SOCIETY OF ALBERTA

STATEMENT OF ADMITTED FACTS AND ADMISSION OF GUILT

I. INTRODUCTION

1. I was admitted as a member of the Law Society of Alberta on June 27, 1980.
2. My present status with the Law Society of Alberta is Active/Practicing.
3. Since 1980, I have practiced law in and around Edmonton, Alberta. From September 19, 1997 to present, I have practiced in Stony Plain, Alberta with offices in Edmonton and St. Albert, under the firm name LA Law.
4. My practice is comprised of 20% civil litigation, 10% corporate, 15% estate planning, 20% matrimonial and 35% real estate
5. The herein Statement of Admitted Facts and Admission of Guilt will address two separate complaints.

II. COMPLAINT #1

Citations

6. On December 15, 2014, the Conduct Committee Panel referred the following conduct to hearing:
 1. **It is alleged that Mr. Ayers failed to serve his clients and delayed a court proceeding, and that such conduct is deserving of sanction;**
 2. **It is alleged that Mr. Ayers failed to respond to his clients, another lawyer, and others in a timely manner, or at all, and that such conduct is deserving of sanction;**

3. It is alleged that Mr. Ayers failed to respond promptly and completely to the Law Society and that such conduct is deserving of sanction.

Facts

7. In January 2009, I was retained by [CB] regarding a personal injury claim arising from a motor vehicle accident almost 2 years earlier. The Statement of Claim was issued by me and served shortly thereafter.
8. Questioning was held in June 2011 and medical reports were ordered by me in August 2011. [CB's] employment records were ordered in May 2012 and received the following month.
9. Eventually, a Judicial Dispute Resolution (JDR) was scheduled for November 14, 2012. A preliminary conference was held with a Justice on September 2012 during which, it was directed that the JDR briefs be filed by counsel. A deadline of November 4, 2012 was set as a due date for my JDR brief on behalf of [CB].
10. I failed to file the JDR brief on November 4, 2012. Further, despite reminders and requests for my JDR brief by opposing counsel, I failed to file a JDR brief at all. As a result, at the JDR on November 14, 2012, the Justice determined that the JDR would not proceed, adjourned the JDR to a new date to be determined by both counsel and ordered costs of \$500 against [CB].
11. In December 2012, [CB] and her husband met with me and urged me to move her personal injury matter forward and I assured her that I would. Following that meeting, I understand that [CB] repeatedly tried to contact me by telephone, mail and email but I did not respond to her.
12. Finally, on February 25, 2013, [CB] attended my offices. I advised her that I had lost members of my staff and did not have the time to handle her case. I agreed to find a new lawyer for [CB] and I advised her that I would contact her on February 27, 2013 with the new lawyer information. I never called [CB] back with the promised information.
13. I understand that in March 2013, [CB] made complaint to the Law Society about me. On March 25, 2013 the Law Society sent me [CB's] complaint along with a request to me for a complete written response and I did not respond.
14. A further three reminder letters were sent to me by the Law Society on April 19, May 6 and May 23, 2013 but it was not until July 19, 2013 that I sent a fax with a brief response stating that "I am in the process of referring [CB] to another firm as I had told her I would do. Delays have occurred due to staffing changes that occurred these past few months. We now have a full complement again and I will endeavour to complete the referral in the next 2 weeks." I understand that this was not a complete response.
15. In the meantime, opposing counsel in this matter contacted me on several occasions after the aborted JDR in an attempt to move the file forward and I failed to respond to

her communications. Eventually, on June 21, 2013, opposing counsel filed an Application for a procedural order to complete the dispute resolution requirements. The supporting Affidavit indicated that opposing counsel had made repeated attempts to respond to her communications.

16. I understand that in August 2013, [CB] obtained new counsel without my assistance. The Law Society contacted me to transfer the file to [CB's] new counsel and on August 20, 2013, I advised the Law Society I would transfer the file in the following day or two. I did not transfer the file as I advised and so on September 11, 2013, the Law Society appointed an Investigator to accomplish the file transfer to new counsel.

Conduct - Admissions

17. I admit that I failed to serve my clients and delayed a court proceeding, and that such conduct is deserving of sanction.
18. I admit that I failed to respond to my clients, another lawyer, and others in a timely manner, or at all, and that such conduct is deserving of sanction.
19. I admit that I failed to respond promptly and completely to the Law Society and that such conduct is deserving of sanction

III. COMPLAINT #2

Citations

20. On November 17, 2015, the Conduct Committee Panel referred the following conduct to hearing:

In a probate matter for his clients J.L. and G.K. in 2013 – 2014 (Law Society complaint CO[●]), he:

- a) **Failed to provide legal services to his clients to the standard of a competent lawyer, including that he failed to perform all functions competently, conscientiously, diligently, and in a timely manner and including that he failed to properly complete and file the probate application.**
- b) **Failed to respond to communications from his clients between January 2013 – January 2014, and during that time failed keep his clients informed of the status of their matter.**
- c) **Failed to adequately supervise his staff to ensure that the probate application was properly completed and filed.**

Facts

21. On January 18, 2013, I was retained by the children of the late [HM] – [WM], [WK], [GK] and [JL] (“the [M] children”) to prepare and file the application for grant of probate with the Surrogate Court regarding the estate of their mother.
22. I prepared the application as instructed and on February 15, 2013, the [M] children came to my office to sign the documents. At that time, they found numerous errors which were corrected. The documents were then filed with Surrogate Court. However, there were a number of problems and the application was bounced back to my office on a few occasions. I did not advise the [M] children about the problems with the application.
23. The [M] children attempted to contact me through telephone and email on several occasions after February 15, 2013 until August 2013 but I did not respond. Finally, on August 27, 2013, [WM], [WK] and [GK] travelled to [●] and met with me. I advised at the time that because of problems, I had to re-file the documents with Surrogate Court and that probate should be completed by end of September 2013.
24. After the August 2013 meeting, the application was re-filed. However, the application was bounced back again to my office on October 3, 2013 for correction.
25. It appears that the [M] children tried to contact my office after August 2013 for further information on their application and were not provided with adequate answers.
26. In January, 2014, it appears that upon inquiry with the Court, the [M] children became aware that the application had been bounced back on October 3, 2013. Following that, on January 16, 2014, [GK] tried to contact me, and since I was unavailable, spoke with my Real Estate assistant. [GK] was advised that at that time, no one in my office worked on estates/probates matters. She requested that I call her back and I never did.
27. In a letter dated January 18, 2014, the [M] children effectively terminated my services. They indicated to me that it appeared to them that my office did not have the necessary resources to complete the required processes with the Probate Court in the matter of their deceased mother’s estate. Therefore, they requested all of the relevant documentation be returned so that they could “pursue another means of completing the probate process”. They requested that the documentation be given to [WM] for pick up the week of January 20, 2014. They also requested the invoice for services.
28. I understand that the [M] children made a complaint against me to the Law Society in January 2014. In a February 19, 2014 letter that served as my initial response to the complaint, I stated that while “[w]e were off to a good start” with getting the application for grant of probate ready and it was first submitted the spring of 2013, “there were errors in the documents which ultimately were returned to us from the clerk more than once.” I went on to explain how my office had undergone staffing changes in the past year and I also learned that my then assistant had mistakenly used the old/wrong

firms when the court had recently instituted changes to the procedure and forms which she was not familiar with.

29. Subsequently, I was involved in a fee dispute with the [M] children and that was resolved in June 2014 through the Review Officer at the Court of Queen's Bench.

Conduct – Admissions

30. I admit that I failed to provide legal services to my clients to the standard of a competent lawyer, including that I failed to perform all functions competently, conscientiously, diligently, and in a timely manner and including that I failed to properly complete and file the probate application.
31. I admit that I failed to respond to communications from my clients between January 2013 – January 2014, and during that time failed keep my clients informed of the status of their matter.
32. I failed to adequately supervise my staff to ensure that the probate application was properly completed and filed.

IV. ADMISSION OF FACTS AND GUILT

33. I admit as facts the statements in this Statement of Admitted Facts and Admission of Guilt for the purposes of these proceedings.
34. 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.
35. For the purposes of Section 60 of the *Legal Profession Act*, I admit my guilt to Citations 1, 2 and 3 directed on December 15, 2014 regarding Complaint #1.
36. For the purposes of Section 60 of the *Legal Profession Act*, I admit my guilt to Citations a, b and c directed November 17, 2015 regarding Complaint #2.

THIS AGREED STATEMENT OF FACTS AND ADMISSION OF GUILT IS MADE THIS 28th DAY OF MARCH, 2016.

"Larry Ayers"

LARRY AYERS

APPENDIX "B"

REPRIMAND

Mr. Ayers, you are here today as a result of two matters in which you failed in service to your clients -- members of the public whose interests we are collectively charged to protect. It is particularly unfortunate that after a blemish-free record of service to the public for over 35 years, you are now in these circumstances.

The record shows that for each of these complaints, there were serious deficiencies in work, a protracted absence of client response, and inordinate delays in service. As your counsel notes, you perhaps had taken on an excessive workload as a sole practitioner; and this was, no doubt, compounded by the loss of some key personnel in your office around the time of these complaints.

Your clients trusted you to communicate with them to serve them faithfully and to diligently and properly advance their interests. You failed them. This means you failed your regulator, your profession, and the public interest.

Your admission of guilt today combined with an expedited proceeding and a very positive Practice Review outcome leaves me with the distinct impression that these circumstances will not occur again and I trust, Mr. Ayers, that you will see that they do not occur again.