

THE LAW SOCIETY OF ALBERTA

IN THE MATTER OF THE *LEGAL PROFESSION ACT*

AND

AND IN THE MATTER OF A HEARING REGARDING

THE CONDUCT OF RODNEY W. MACKENZIE

A MEMBER OF THE LAW SOCIETY OF ALBERTA

HEARING COMMITTEE REPORT

Hearing Committee:

Hugh Sommerville QC, Chair (Bencher)

Julie Lloyd, Committee Member (Bencher)

W. E. Brett Code, Q.C., Committee Member (Bencher)

Appearances:

Rodney W. Mackenzie – Self Represented

Counsel for the Law Society – L.C. Livingstone

Hearing Date:

November 5, 2015

Hearing Location:

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

Introduction and Summary of Decision

1. On November 5, 2015, a Hearing Committee (Committee) convened at the offices of the Law Society of Alberta (LSA) in Calgary, Alberta to conduct a hearing regarding a citation against Rodney W. Mackenzie (Member). The Committee was comprised of Hugh D. Sommerville, Q.C., Chair, W.E. Brett Code, Q.C., and Julie C. Lloyd. The LSA was represented by L.C. Livingstone, and the Member was self-represented. Neither party objected to the jurisdiction of the Committee to hear the matter. The Committee ruled that jurisdiction had been established. The Chair invited private hearing applications, and, on hearing none, the Committee ruled that the hearing would be held in public.

2. At the commencement of the hearing, counsel for the LSA and the Member presented the Committee with a Statement of Admitted Facts and Admission of Guilt (Admission), which is appended as Appendix 1 of this Hearing Report.

3. Having considered and accepted the Admission, the Committee found the Member guilty of conduct deserving of sanction in respect of the lone Citation. The Committee sanctioned the Member with a reprimand, a fine of \$3000.00, and costs fixed at \$2000.00.

Citation

4. The Member faced a single citation:

1. It is alleged that you failed to serve your client and that such conduct is conduct deserving of sanction.

Admissions

5. The Committee considered the Admission and ruled that it was in an acceptable form. It was further confirmed that the Admission was made voluntarily, that it was an unequivocal admission of guilt, that the Member understood the nature and consequences of the Admission, and that the Member understood that the Committee was not bound by any joint submission.

Finding of Guilt

6. The Committee accepted the Admission in both form and content, and found the Member guilty of conduct deserving of sanction on the single citation.

Sanction

7. Counsel for the LSA introduced Exhibit 7, which was a Certificate showing that the Member had no discipline record with the LSA.

8. The parties placed a joint submission before the Committee, suggesting that, on the facts admitted, and with no prior record, the appropriate sanction would be a reprimand together with a fine of \$3000.00. It was also jointly submitted that the costs be fixed at \$2000.00 or less, although an Estimated Statement of Costs was entered as Exhibit 8 showing estimated costs of \$2730.35.

9. After retiring to consider the submissions on sanction, the Committee ruled that the joint submission was reasonable and within the appropriate range. The Committee imposed a reprimand, a fine of \$3000.00, and costs fixed at \$2000.00. Submissions were sought on time to pay the fine and costs. The Committee accepted the submissions of the parties and directed that the fine and costs should be paid within one year from the date of the hearing.

Concluding Matters

10. The Hearing Committee Report and the Exhibits in the hearing are to be available to the public. Personal information was redacted from the Exhibits prior to their being entered.

11. There is no need for a Notice to the Profession.

12. There is no need for a referral to the Attorney General.

13. The Reprimand was delivered by the Chair, and is attached as Appendix 2 to this report.

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

Hugh D. Sommerville, Q.C.

Julie C. Lloyd

W. E. Brett Code, Q.C.

IN THE MATTER OF THE *LEGAL PROFESSION ACT*, R.S.A. 2000, c. L-8

AND

IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF
RODNEY MACKENZIE, A MEMBER OF THE LAW SOCIETY OF ALBERTA

STATEMENT OF ADMITTED FACTS AND ADMISSION OF GUILT

BACKGROUND

1. I was admitted to the Law Society of Alberta on October 31, 2002.
2. My present status with the Law Society of Alberta is active/practicing.
3. I have practiced law in Calgary as an active member since my admission to the Bar. I initially practiced with small firms and for the last 5 years I've practiced on my own or with one other lawyer at my firm MacKenzie & Azim LLP. My practice consists primarily of civil litigation and family law.

CITATION

4. I understand and acknowledge that the following conduct has been referred to a hearing:

It is alleged that Mr. MacKenzie failed to serve his client and that such conduct is deserving of sanction.
5. I further understand and acknowledge that the conduct referred to is regarding my former client JF and my failure to respond to correspondence from her and to complete tasks she had instructed me to complete.

FACTS

6. The conduct at issue took place in 2009-2010 when I was working as an associate at a law firm (the "Firm").
7. JF retained the Firm in 2006 to represent her in a litigation matter. She had filed a Statement of Claim herself and then retained the Firm after a Counterclaim was filed against her.
8. On June 16, 2006, JF's daughter provided a financial retainer to the Firm on her mother's behalf. JF's daughter also provided background documents and confirmed JF's instructions in writing.
9. I was not involved with JF's file for the first few years the Firm had carriage of the file.

10. On April 27, 2009, I met with another member of the Firm to discuss assuming carriage of JF's file.
11. On April 29, 2009, the counsel with previous carriage of the file advised JF that he was asking me to take over the case. I was not copied on that letter.¹
12. My first contact with JF was on September 25, 2009 when I wrote to advise her that a further \$3000 retainer was required for the Firm to continue acting on the matter.
13. On September 30, 2009, JF's daughter sent a cheque for the additional retainer funds.
14. On December 10, 2009, my assistant attempted to contact JF to set up a meeting. She was advised by JF's daughter that JF was out of town until mid-January but that she could be contacted for any matters before then that could not wait.
15. I met with JF in person for 20-30 minutes on January 27, 2010.
16. By letter dated January 29, 2010, JF instructed me to complete certain tasks.²
17. I did not respond to JF's January 29, 2010 letter.
18. JF wrote to me again on March 22, 2010.³
19. I did not respond to JF's March 22, 2010 fax.
20. On April 12, 2010 JF wrote to the counsel at the Firm who had previously had carriage of her file.⁴
21. On May 12, 2010, I spoke to JF on the phone. While I do not recall the content of that phone call, I accept JF's recollection that I told her I would send her draft pleadings for review during that call.
22. I did not send JF draft pleadings for review.
23. JF wrote to me again on May 28, 2010.⁵
24. I did not respond to JF's May 28, 2010 letter.
25. I did not provide any explanation to JF for not responding to her letters or for not completing the tasks she had instructed me to complete.
26. JF initiated a complaint with the Law Society of Alberta on June 14, 2010 and thereafter severed ties with me and the Firm.

¹ Attached as **Tab A** is a redacted copy of the April 29, 2009 letter to JF.

² Attached as **Tab B** is a redacted copy of the January 29, 2010 letter.

³ Attached as **Tab C** is a redacted copy of the March 22, 2010 fax.

⁴ Attached as **Tab D** is a redacted copy of the April 12, 2010 letter.

⁵ Attached as **Tab E** is a redacted copy of the May 28, 2010 letter.

ADMISSION OF GUILT

27. I admit the facts contained in this Statement of Facts for the purpose of this proceeding.
28. I admit that I failed to respond to correspondence from my client JF that contemplated a response and that I failed to carry out instructions given to me by my client JF.
29. I acknowledge that I have had the opportunity to consult legal counsel and that I am providing 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 4th DAY OF NOVEMBER, 2015.

'Rodney MacKenzie'

APPENDIX 2

REPRIMAND

A reprimand is something we don't like to do, but we have to do. We hate to just look a Member in the eye and let them know that their behaviour has been a failure.

The public relies on lawyers to steward their problems through the legal system. When a lawyer doesn't respond, doesn't act, doesn't help, the public loses faith in the justice system. That inactivity brings the entire justice system into disrepute. It brings the reputation of the legal profession into disrepute.

Now, we all have files that we freeze on. It happens to everyone. But it is our duty to pick them up and deal with them or pass them on.

You have no prior record. Hopefully this is a one-time involvement with the Law Society conduct process, and we hope that you can move forward and continue to assist the public without freezing in your duties.

Thus ends the reprimand.