

LAW SOCIETY OF ALBERTA
IN THE MATTER OF THE *LEGAL PROFESSION ACT*
AND
IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF STEPHEN KACZKOWSKI,
A MEMBER OF THE LAW SOCIETY OF ALBERTA

Hearing Committee:

Sandra Corbett, QC, Chair (Bencher)
Donald Cranston, QC (Bencher)
Amal Umar (Lay Bencher)

Appearances:

Counsel for the Law Society of Alberta (LSA) – Shanna Hunka
Stephen Kaczowski – Self-represented

Hearing Date:

Monday, April 25, 2016

Hearing Location:

Law Society of Alberta, 5th Floor, 919 – 11 Avenue S.W., Calgary, AB

HEARING COMMITTEE REPORT

Jurisdiction and Preliminary Matters

1. On April 25, 2016, a Hearing Committee of the Law Society of Alberta (LSA) convened at the LSA Calgary offices. Jurisdiction of the Hearing Committee was established through Exhibits 1 to 4. Both LSA counsel and Mr. Kaczowski agreed that the Hearing Committee had requisite jurisdiction to hear and decide this matter. The Hearing Committee determined that it did have such jurisdiction.

2. Exhibit 5 constituted a "Private Hearing Application Notice" dated April 20, 2016 outlining that certain individuals were served with a Private Hearing Application Notice, and further indicating that no interested party had applied to have the Hearing held in private. Both Counsel for the LSA and the member agreed that the hearing should be held in public. Based on the foregoing, the Hearing Committee determined that the hearing would proceed to be held in public.
3. Counsel for both the LSA and the Member were asked whether they had any objection to the composition of the Hearing Committee panel. No objections were made.

Citations

4. Stephen Kaczowski is subject to conduct proceedings under the *Legal Profession Act*. The original citations were amended, with consent, at the hearing to the following:

Complaint File CO● ("R" Complaint)

1. It is alleged that Mr. Kaczowski (the Member) failed to supervise staff adequately to ensure that the probate application had been filed, and that such conduct is deserving of sanction.
3. It is alleged that the Member failed to provide courteous, thorough and prompt service which was competent, timely, conscientious, diligent and efficient including that:
 - the Member failed to file the Application for Probate promptly;
 - the Probate Application was not completed conscientiously; and
 - the Member failed to respond to communications from his client; And that such conduct is serving of sanction
5. It is alleged that the Member failed to reply promptly and completely to communications from the LSA and that such conduct is serving of sanction.

Complaint File CO● ("T" Complaint)

6. It is alleged that the Member made an offer, on behalf of a client, to withdraw criminal or regulatory charges for valuable consideration and that such conduct is deserving of sanction.

Complaint File CO● ("Q" Complaint)

9. It is alleged that the Member failed to perform all legal services undertaken on a client's behalf to the standard of a competent lawyer in that he failed to perform all

functions conscientiously, diligently and in a timely and cost-effective manner and that such conduct is conduct deserving of sanction.

11. It is alleged that the Member failed to reply promptly and completely to communications from the LSA and that such conduct is conduct serving of sanction.

Complaint File CO● (“W” Complaint)

12. It is alleged that the Member failed to discharge his responsibilities honourably and with integrity by not providing a copy of a mortgage payout statement which was in his possession and that such conduct is deserving of sanction.
14. It is alleged that the Member failed to reply promptly and completely to communication from the LSA and that such conduct is deserving of sanction.
5. The Hearing Committee received and accepted a Statement of Admitted Facts signed by Stephen Kaczowski dated March 29, 2016 (Exhibit 6) with the above noted amendments to the Citations identified in Exhibit 6.

Exhibits

6. The Hearing Committee received and entered into the records Exhibit 1 to 9.

Findings of Fact

7. The parties submitted a Statement of Admitted Facts (Exhibit 6). At the hearing, Mr. Kaczowski was asked whether he agreed with Exhibit 6. He verbally confirmed that he accepted it, and that he had not been subject to any duress with respect to Exhibit 6. There were originally 15 Citations.
8. The Member admitted guilt to Citations 1, 3 and 5 (see Paragraph 14 of Exhibit 6). At the Hearing, LSA counsel withdrew Citation 2 noting that it overlapped with Citation 3. LSA counsel further withdrew Citation 4, noting that it was included in Citation 3. The Member did not object to the aforesaid withdrawals, and the Hearing Committee accepted the same.
9. Mr. Kaczowski admitted guilt to Citation 6 (see Paragraph 26 of Exhibit 6). At the hearing, LSA counsel withdrew Citations 7 and 8. Mr. Kaczowski did not object to the aforesaid withdrawals, and the Hearing Committee accepted the same.
10. Mr. Kaczowski admitted guilt to Citations 9 and 11 (see Paragraph 35 of Exhibit 6). At the Hearing, LSA counsel withdrew Citation 10, noting that Citations 9 and 10 would be

more appropriate to one citation. The Member did not object to the aforesaid withdrawals, and the Hearing Committee accepted the same.

11. Mr. Kaczowski admitted guilt to Citations 12 and 14 (see Paragraph 45 of Exhibit 6). At the Hearing, LSA counsel withdrew Citations 13 and 15. The Member did not object to the aforesaid withdrawals, and the Hearing Committee accepted the same.
12. With respect to the 8 remaining Citations (1, 3, 5, 6, 9, 11, 12 and 14), the Hearing Committee confirmed with Mr. Kaczowski that:
 - a. He was making the admission voluntarily and free of undue coercion;
 - b. He unequivocally admitted guilt to the essential elements of the relevant citations describing conduct deserving of sanction;
 - c. He understood the nature and consequences of his admission; and
 - d. He understood that the Hearing Committee was not bound by joint submissions made by the member and LSA counsel.
13. Section 60(4) of the *Legal Profession Act* sets forth that an accepted Statement of Admission of Guilt regarding the member's conduct is deemed to be a finding of the Hearing Committee that the conduct of the member is conduct deserving of sanction.

Based on the foregoing, the Hearing Committee accepted Mr. Kaczowski's admissions of guilt with respect to the 8 noted citations, and concluded that his conduct was conduct deserving of sanction.

Sanctions

14. The Hearing Committee was provided with Mr. Kaczowski's Discipline Record (Exhibit 7) and an estimated Statement of Costs (Exhibit 8).
15. Joint submissions on sanctions were provided to the Hearing Committee. LSA counsel specifically highlighted the member's cooperation with LSA counsel. LSA counsel noted that this matter had originally been scheduled for a three-day hearing; however, the member's cooperation and willingness to work with LSA counsel reduced the time to one day. LSA Counsel also noted Mr. Kaczowski's remorse for the conduct deserving of sanction.
16. Mr. Kaczowski had no prior discipline history. In response to the Hearing Committee's questions, he noted the presence of unfortunate personal and professional circumstances arising around the time of the events related to the 8 citations to which he admitted guilt.
17. LSA counsel sought a one day suspension, a \$3,000.00 fine, and Mr. Kaczowski's payment of costs of the hearing. In support of the sanctions sought by LSA counsel, the Hearing Committee was provided with a brief and supporting cases. Mr. Kaczowski

confirmed that he had been provided with a copy of the materials submitted to the Hearing Committee.

18. The Hearing Committee's review of the brief and materials submitted raised a concern that the precedents submitted by LSA counsel did not support a one day suspension. The Hearing Committee questioned LSA Counsel and Mr. Kaczowski on the issue.
19. Section 72(1) of the *Legal Profession Act* provides 3 alternatives: to order disbarment; to order a suspension; or to order a reprimand. Section 72(2)(a) further permits a Hearing Committee to order conditions on a member's suspension or practice, and other penalties.
20. The Hearing Committee carefully considered the joint submission on sanctions. The Hearing Committee recognized that it is required to give serious consideration to a jointly tendered admission of guilt, should not lightly disregard it and should accept it unless it is unfit or unreasonable, contrary to the public interest, or there are good and cogent reasons for rejecting it.
21. The Hearing Committee determined that it could not accept the joint submissions on sanctions on the basis that the precedents submitted did not support a one day suspension. On that basis, the Hearing Committee determined that the jointly tendered proposed sanctions were unfit or unreasonable, and that there were good and cogent reasons here for rejecting them.
22. The Hearing Committee re-convened to provide an opportunity to LSA counsel and Mr. Kaczowski to make further submissions, or to adjourn the hearing to call further evidence or make further argument.
23. LSA counsel and Mr. Kaczowski did not seek adjournment of the hearing. LSA counsel and Mr. Kaczowski made further submissions on sanctions, LSA counsel submitted that the LSA would be satisfied with a reprimand instead of a one day suspension based on Mr. Kaczowski's cooperation and her view that he had rehabilitated. Mr. Kaczowski confirmed that he would agree to that revision. He did express his view that the \$3,000.00 fine was too high.

Decision

24. It is the decision of the Hearing Committee that the following sanctions apply:
 - a. That the Member be reprimanded;
 - b. That the Member pay a \$3,000.00 fine; and
 - c. That the Member pay half the costs of the hearing (adjusted to reflect the length of the hearing) in the sum of \$2,139.38.

25. The Chair of the Hearing Committee delivered the following reprimand:

Mr. Kaczowski, you have admitted guilt to 8 citations deserving of sanction. The bulk of the citations have to do with failing to serve your clients, and failing to respond adequately to other counsel and to the Law Society of Alberta. One of the citations had to do with making an offer on behalf of a client to withdraw criminal or regulatory charges for valuable consideration. These citations are serious matters. All members of the Law Society of Alberta are responsible for protecting the public interest, and maintaining confidence in the legal profession. You have admitted that your actions failed to do that. The panel is impressed that you admitted the personal and professional issues that you were experiencing at the time the events giving rise to the citations arose. The panel is gratified to hear that you are in a better place, but wants to remind you that the Law Society has resources to assist members in difficulty, like Practice Review. This is your first disciplinary involvement with the Law Society, and the panel sincerely hopes that it is your last.

26. The Hearing Committee directs that the transcript of the proceedings and the Exhibits filed in the proceedings be redacted to protect the identity of any complainants or witnesses, and to protect any information which may be subject to confidentiality or solicitor-client privilege prior to any publication or public access.

DATED at the City of Edmonton, in the Province of Alberta, this 17th day of October, 2016.

Sandra Corbett, QC (Chair)

Donald Cranston, QC

Amal Umar