

**IN THE MATTER OF THE *Legal Profession Act*,**  
and  
In the matter of a Hearing Regarding the Conduct of  
**WILLIAM ZADWORNY**  
A Member of the Law Society of Alberta

**Hearing Committee:**

Darlene W. Scott - Chair  
Sarah King-D'Souza, Q.C. - Member  
Glen Buick - Member

**Appearances:**

Lois Maclean - for the Law Society of Alberta (LSA)  
Stewart Baker, Q.C. - for the Member

**Hearing Date:** January 19, 2015.  
**Hearing Location:** 800 Bell Tower, 10104-103 Avenue, Edmonton, AB  
**Report:** February 13, 2015

**REPORT OF THE HEARING COMMITTEE**

**I. INTRODUCTION AND SUMMARY**

1. On January 19, 2015, a Hearing Committee of the Law Society of Alberta (LSA) convened at the Law Society Offices in Edmonton to inquire into the Conduct of the Member, William Zadworny in relation to 4 citations. The Member was present throughout the hearing.
2. The Chair inquired as to whether either party had any concerns regarding the composition of the Panel. Mr. Baker inquired of Ms. Scott whether she was the same party he had acted for in a motor vehicle accident claim which arose in 1975. Ms. Scott indicated she was that party. All parties agreed that notwithstanding this prior relationship, no one had any concerns with respect to the composition of the Panel.
3. Counsel for the Law Society reviewed the jurisdictional documents entered as Exhibits 1-5 inclusive. The Hearing Committee found they had jurisdiction to hear the matter.
4. Mr. Zadworny faced 4 citations, as follows:

1. ***It is alleged that you failed to advise your client, K. T. on the benefits of independent legal advice, and that such conduct is conduct deserving of sanction.***
  2. ***It is alleged that you entered into a business arrangement or business transactions with your client or former client, K.T. that were unfair and unreasonable, and that such conduct is conduct deserving of sanction.***
  3. ***It is alleged that you failed to honour an agreement to reduce the fees owing to you by K. T. and that such conduct is conduct deserving of sanction.***
  4. ***It is alleged that you misappropriated or wrongfully converted to your personal use, funds entrusted to you through your numbered company, 1... Alberta Limited and that such conduct is conduct deserving of sanction.***
5. The Law Society recommended that the citations identified as Citation 1, 3 and 4 be dismissed due to conflicting evidence. The only remaining citation was Citation # 2. Counsel for the Member and the Law Society presented the Hearing Committee with an Agreed Statement of Facts and admission of Conduct Deserving of Sanction in relation to citation #2.
6. The Hearing Committee agreed to dismiss Citations 1, 3 and 4 and to accept the Agreed Statement of Facts and Admission of Conduct Deserving of Sanction in relation to Citation 2 which was accepted and marked as Exhibit # 18.
7. The Law Society and the Member made a joint submission on Sanction. The Hearing Committee recognizes that deference should be paid to joint submissions, and the Hearing Committee did accept the following proposed joint submission for sanction:
1. That the Member receive a reprimand; and
  2. That the Member pay a fine of \$3000 payable within 90 days of this decision;
  3. That the Member pay costs of this hearing in the approximate amount of \$2000 to be paid within 90 days of receipt of notice of the actual costs.

## **II. EXHIBITS**

8. Prior to the commencement of the Hearing (and added to during the Hearing) an Exhibit Book was created by consent and the following Exhibits entered as follows during the course of the proceedings:

- Exhibit 18 - Agreed Statement of Facts
- Exhibit 19 - Certificate showing the Member has no discipline record with the Law Society of Alberta
- Exhibit 20 - Estimated Statement of Costs.

### **III. FINDINGS OF FACT — CONDUCT DESERVING OF SANCTION**

- 9. The Agreed Statement of Facts is attached to this Report as Exhibit "A".

### **IV: ADMISSION**

- 10. Mr. Zadworny admits that his conduct in relation to Citation #2 is conduct deserving of sanction.
- 11. In response to questions from the Hearing Committee the Member confirmed that he:
  - 1. Made his admission voluntarily and free of coercion;
  - 2. That he made his admission unequivocally admitting his guilt to the citation;
  - 3. That he made his admission, knowing the nature and consequences of his admission and of the potential sanctions which might be imposed upon him as a result; and
  - 4. That he made his admission knowing the Hearing Committee was not bound by any joint submission regarding sanction that might have been made between Counsel for the Law Society and his Counsel.
- 12. The Hearing Committee accepted the Member's admissions, accepted the Agreed Statements of Facts and Admissions as being in a form satisfactory to the Hearing Committee, made a finding of his guilt respecting the citation against the Member, and found that his conduct is conduct deserving of sanction.

### **IV. JOINT SUBMISSIONS ON SANCTION**

- 13. The Member has no discipline record with The Law Society of Alberta. Counsel for the Law Society and Counsel for the Member made joint submissions on sanction that included a reprimand, payment of a fine of \$3000 and the actual costs of the hearing, estimated at \$2000.
- 14. The Hearing Committee accepted the joint submission of sanction. The Chair delivered the reprimand. The Member was ordered to pay a fine of \$3000 and the actual costs of the hearing (estimated to be \$2000) within 90 days of receipt of notice of the actual costs.

**V. CONCLUDING MATTERS**

15. The Hearing Committee report, the evidence and the Exhibits in this Hearing are to be made available to the public subject to redaction to protect privileged communication, the names of any of the Member's clients and such other confidential personal information as is thought necessary by the Law Society of Alberta in the normal course.
16. There shall be no Notice to the Profession.

**DATED** this 13 day of February, 2015 at the City of Edmonton in the Province of Alberta.

Per: \_\_\_\_\_  
DARLENE W. SCOTT  
CHAIR

Per: \_\_\_\_\_  
SARAH KING-D'SOUZA, Q.C.  
MEMBER

Per: \_\_\_\_\_  
GLEN BUICK  
MEMBER

Exhibit "A"

In the Matter of the *Legal Profession Act*

And In the Matter of A Hearing Regarding  
The Conduct of **William Zadworny**

A Member of the Law Society of Alberta

Law Society Hearing file: HE20130004

**ADMITTED STATEMENT OF FACTS  
and  
ADMISSION OF CONDUCT DESERVING  
OF SANCTION ON CITATION #2**

1. William Zadworny was called to the Bar on August 13<sup>th</sup>, 1990. He has been a member of the Law Society of Alberta at all times relevant to this proceeding.
2. Mr. Zadworny faces four citations, as follows:
  1. It is alleged that you failed to advise your client, K.T., on the benefits of independent legal advice, and that such conduct is conduct deserving a sanction.
  2. It is alleged that you entered into a business arrangement or business transactions with your client or former client, K.T., that were unfair and unreasonable, and that such conduct is conduct deserving a sanction.
  3. It is alleged that you failed to honour an agreement to reduce the fees owing to you by K.T., and that such conduct is conduct deserving a sanction.
  4. It is alleged that you misappropriated or wrongfully converted to your personal funds entrusted to you through your numbered company. 1...Alberta Limited and that such conduct is conduct deserving a sanction.
3. The complainant, K.T., retained Mr. Zadworny to act for him on a number of family law matters in August of 2002.
4. Mr. Zadworny represented K.T. with respect to the family law matters from 2002 until March 29, 2006, at which time the file was transferred to Gary V. Frohlich QC.

**Background Information**

5. In April of 2004, Mr. Zadworny's Professional Corporation (Zadworny PC) entered into an agreement to purchase a condominium unit in the O. building in Edmonton for \$400,000. The condominium was under construction, and completion was anticipated to occur May 5, 2005, which was the closing date for the purchase.

6. On October 19<sup>th</sup>, 2004 Zadworny PC borrowed \$5,000 from K.T. The loan was repaid on January 8<sup>th</sup>, 2005. (Ex. 9)
7. On October 17<sup>th</sup>, 2005, the Purchase Contract with respect to the condo was amended to provide that Mr. Zadworny's PC was to purchase an entire floor of the building rather than just one unit. The new purchase price was \$730,000 plus GST of \$51,100, for a total of \$781,100 (Ex. 7). The development of this floor of the O. building by Mr. Zadworny became known as the O. Project.
8. Zadworny PC arranged for a deposit of \$42,800, and obtained financing of \$776,000 for the transaction from B. Inc. From the mortgage proceeds, \$626,000 was used as part of the purchase price, and approximately \$150,000 was used for tenant improvements.
9. In July 2005, Mr. Zadworny prepared an investment proposal for K.T. in which he proposed that K.T. borrow funds which he would then lend to Zadworny PC. The proposal indicated that the PC would use the funds for the O. Project, and K.T. would be repaid his principal plus any interest he had paid on the bank loan, plus 10% of the amount loaned. The faxed proposal is at Exhibit 8.
10. K.T. rejected the proposal. One of the reasons K.T. rejected the proposal was that he wanted to be an owner in the O. Project. (Ex. 17, page 10 and Ex. 8, pages 1 and 2) In August of 2005, Mr. Zadworny's PC assigned the PC's interest in the condo to 118XXXX Alberta Ltd. (referred to as 118). Mr. Zadworny owned 80% of 118, and two of his nephews owned 20%. (Ex. 17, Sch. A, page 6)
11. During late 2005 and early 2006, 118 borrowed a total of \$72,000.00 from members of the T. family or holding companies owned by them. None of these monies had been repaid by Mr. Zadworny when K.T. made his complaint to the Law Society of June 30, 2008.
12. In March of 2006, Mr. Zadworny approached K.T. with respect to a possible investment in the O. Project; the proposal was that K.T. would become a one-half owner of the condominium. No written agreement was prepared, however it appears that there was an oral agreement that K.T., or his relatives, or companies under their control would invest in the O. Project. It was understood by Mr. Zadworny and K.T. that formal documentation would be prepared in relation to the agreement between them.
13. In March 2006, Mr. Zadworny retained Prathavan Venkatraman to act for Mr. Zadworny with respect to the O. Project. Mr. Venkatraman has sworn an Affidavit in civil proceedings commenced by the T.s, in which Mr. Venkatraman deposes that he was informed by Mr. Zadworny that Darryl Ackroyd would be acting for K.T. with respect to the project.
14. On March 29<sup>th</sup>, 2006, Mr. Zadworny and K.T. met with Gary Frohlich QC, to ask that Mr. Frohlich take over as counsel for K.T. on the matrimonial file. (Ex. 16). That was done with K.T.'s consent. Also on March 29<sup>th</sup>, Darryl Ackroyd reported to K.T. that a new numbered corporation had been incorporated the day previously for K.T.'s parents. A fax was sent to K.T. attaching a copy of the Certificate of Incorporation for 123XXXX Alberta Limited (referred to as 123), a registration statement outlining the details of the

corporation, and the articles of incorporation. The directors and shareholders were Mr. L.T. and Ms. L. T. (Ex. 11).<sup>1</sup> Copies of these documents were sent to Mr. Venkatraman.

15. Mr. Venkatraman's file notes of his meeting with Mr. Zadworny include the following:

Call B.L. Who owns the equipment/lease etc. etc. etc.

Company A will be the beneficiary of everything.

Need partnership agreement in place.

Call B.L. to set up documents. Need to check with B.L. and set up as he suggests to be done.

Ackroyd – certificate of independent legal advice. Needs to know that Will has represented the family in the past. (Will represented K.T., but not the family), but therefore WANTS ILA.<sup>2</sup> (Ex. 10)

16. Subsequent to that, Mr. Zadworny repeatedly contacted Mr. Venkatraman, to ask that he follow up with Mr. Ackroyd with respect to the agreement and independent legal advice. Mr. Venkatraman advised Mr. Zadworny that Mr. Ackroyd was not responding to him.

17. On April 24, 2006 a construction management contract was prepared between 118 and Constructive (a construction management company) with respect to the necessary tenant improvements of the condominium. The estimated cost of the work to be done was just over \$314,000. The contract was signed on behalf of 118 by William Zadworny and Ms. L.T. (as vice-president of 118). (Ex. 12)

18. Sometime in June of 2006, Mr. Venkatraman faxed to Mr. Ackroyd's office a draft of a Share Sale Agreement. Mr. Ackroyd also filed an Affidavit in the civil action, and was examined on that Affidavit. He testified that he did not see the June email, and had no knowledge of the draft of the Share Sale Agreement.

19. On August 9<sup>th</sup>, 2006 Mr. Venkatraman called Mr. Ackroyd to follow up with respect to the Share Sale Agreement and the Certificate of Independent Legal Advice. Mr. Venkatraman testified that Mr. Ackroyd said that he would get back to him, but never did. Mr. Ackroyd has no recollection of the conversation, but does not dispute that it occurred. Mr. Ackroyd's evidence was that he was first consulted by the T.s about the O. Project in October of 2007 – see below.

20. On December 14<sup>th</sup> 2006 Mr. Zadworny faxed Mr. Venkatraman a handwritten note which said in part:

"As discussed on the telephone I confirm as follows:

1. 123XXXX Alberta Ltd. is a 50% equity partner. Therefore please transfer 50% of the common shares in 118XXXX Alberta Ltd. to this company. I confirm their investment of \$368, 875 which went toward tenant improvements and servicing of mortgage.

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<sup>1</sup> Mr. Ackroyd's evidence with respect to when he was first consulted by the T.s with respect to the O. Project and the loans made by the T.s or their companies is summarized below.

<sup>2</sup> Capitalization is as per the original file note.

2. Please transfer the other 50% of the shares of 118XXXX Alberta Ltd. to my new holding company 124XXXX Alberta Ltd. (you incorporated this company); HOWEVER these shares are then to be held by 123XXXX Alberta Ltd. until it recoup's [sic] its investment, then transferred back to 124XXXX Alberta Ltd.

Queare: Are we then in effect, transferring all shares in 118XXXX Alberta Ltd. to 123XXXX Alberta Ltd. with the proviso that once investment is recovered, shares are transferred back?

PLEASE do this immediately. We can embed it in a Partnership Agreement in due course. HAVE you heard from the other lawyer yet?" (Ex. 13 pg 1-2)

21. On December 18<sup>th</sup> 2006, Mr. Venkatraman replied to Mr. Zadworny, stating that he had again left a message for Darrell Ackroyd and:

...I know that Darrell is to provide ILA to the T.s, but until that happens, I expect they will not want to, nor will you want them to, sign the Share Sale Agreement and that leaves us continually in this holding pattern....

...Lastly, in respect to the actual issuance of shares, even though the agreement has not yet been signed, and even though the shares have not yet been issued, **monies have been advanced**, so there is a constructive agreement already in place,...(*emphasis added, Ex.14*)

22. No shares were ever issued in 118 to any member of the T. family, nor are there any corporate minutes indicating that any member of the T. family was ever elected as a director or officer of 118.
23. The O. Project was completed in late 2006. K.T. and Mr. Zadworny agreed to obtain a second mortgage to pay out the trades and expenses, and the second mortgage was obtained in the amount of \$320,000.
24. As noted above, Mr. Ackroyd has testified that he was consulted by the T.s with respect to the O. Project for the first time in October 2007. He wrote a letter to Mr. Venkatraman and Mr. Zadworny dated October 19<sup>th</sup>, 2007, asking for a meeting of all parties as quickly as possible.
25. Subsequent to March 29, 2006, K.T., his family, or holding companies owned by them had invested substantial monies in the O. Project. The Law Society Investigation reviewed the O. Project records, and found that the T.s or their companies advanced \$560,150 to the O. Project (Ex. 17, Sch. B.). Of that amount, some \$290,000 was borrowed by Mr. L.T. and Ms. L.T. from Bank A. Some of the money contributed to the Project by the T.s was paid to 118, and some of it was advanced to various contractors or suppliers. K.T.'s Affidavit pegged the amount of the investment at \$533,588.
26. Mr. Zadworny states that he was not advised by K.T. that the T. family members were borrowing funds for the purpose of this investment. All communications that related to the O. Project were between Mr. K.T. and Mr. Zadworny. Mr. Zadworny did not communicate directly with any other members of the T. family.
27. The Investigators state that Mr. Zadworny or his PC contributed a total of \$82,025 to the O. Project (Ex. 17 Sch. C). Mr. Zadworny states that he also contributed the furniture for 3 offices and the reception area.



28. The Investigators noted that funds were paid out from 118 to Mr. Zadworny or his PC, or for his benefit over the relevant time period totaling \$68,327 (Ex. 17 Sch. D).
29. It is clear from the records that the O. Project was under serious financial pressure and that 118 was having difficulty paying the subcontractors who were working on the construction of the condominium interior.
30. The lenders eventually foreclosed on the mortgages, and on Feb. 20, 2008 the final Order for foreclosure (i.e. Order for Sale) was granted.
31. The T.s and their various companies commenced a claim in Queen's Bench in action #XXXX XXXXX claiming that they were owed \$605,588 by Mr. Zadworny and his companies.
32. Mr. Zadworny assigned himself into bankruptcy on May 8, 2009, and in April 2012, through counsel he made an application for a declaration that the T.s' claims against him had not survived the bankruptcy.
33. That preliminary application was initially dismissed by a Master, and by a Justice on appeal. Before the trial of the matter a settlement was reached between Mr. Zadworny and the T.s. The settlement agreement was finalized in May, 2013, and provides that Mr. Zadworny is to pay the sum of \$150,000 to "the T. Group" (which includes various members of the T. family), in monthly installments of \$5,000 according to an agreed upon schedule.

#### **The Citations and the Proposed Disposition**

##### **Citation #1 – failing to advise the client of the benefits of independent legal advice**

34. There is conflicting evidence on this point and the Law Society will not be calling evidence on this Citation, and asks that it be dismissed.

##### **Citation #2 – Entering into a business arrangement with a client of former client that was unfair or unreasonable**

35. As noted above, the T.s advanced some \$560,000 to Mr. Zadworny or his companies for the purposes of advancing the O. condo project. The construction was completed, but the project ran out of funds. The mortgagees foreclosed, resulting in the loss of all funds advanced by either the T.s or Mr. Zadworny and his companies.
36. The T.s are being repaid some of that money by Mr. Zadworny, in accordance with the settlement agreement referred to above.
37. Mr. Zadworny admits the facts above that relate to this Citation, and acknowledges that his conduct was conduct deserving of sanction on Citation #2

##### **Citation #3 – Failing to honour an agreement to reduce fees**

38. There is conflicting information relating to this Citation. The Law Society will not be calling any evidence on this Citation and asks that it be dismissed.

**Citation #4 - Misappropriating or wrongfully converting funds to your personal use fund that were entrusted to you through your numbered company**

39. The investigation has produced conflicting information on this citation as well. In the circumstances, the Law Society will not call evidence on this Citation and asks that it be dismissed.

All of these facts are agreed to and admitted by Mr. Zadworny. The Law Society has no means of knowing whether some of the facts stated above are true, but does not oppose the Statement of Admitted Facts for the purposes of the Hearing.

I acknowledge that the facts as set out above constitute conduct deserving of sanction within the meaning of the *Legal Profession Act of Alberta* with respect to Citation #2.

This Agreement is dated the 13 day of January, 2015.

“Witness Name”  
\_\_\_\_\_  
Witness

“William Zadworny”  
\_\_\_\_\_  
William Zadworny