

IN THE MATTER OF THE *LEGAL PROFESSION ACT*

AND

**IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF
ARTHUR LARSON,
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

Hearing Committee:

Fred R. Fenwick, Q.C., Chairperson
Cal Johnson, Q.C. – Member
Kathleen Ryan Q.C. - Member

Heard: October 1, 2013
Decision: October 1, 2013
Report: March 21, 2014

Appearances

Lois MacLean, for the Law Society of Alberta
Timothy E. Foster, for Arthur Larson

REPORT OF THE HEARING COMMITTEE

INTRODUCTION AND SUMMARY

1. Mr. Larson, a criminal law practitioner faces complaints from two clients concerning delays in responding to their questions which resulted in those clients complaining to the Law Society and subsequent citations by the Law Society concerning Mr. Larson's continuing failure to respond to the Law Society's inquiries about the complaints.
2. At the opening of the hearing, Mr. Larson submitted a document entitled "Admitted Facts and Admission of Conduct Deserving of Sanction" admitting to the factual background and that the conduct was deserving of sanction.
3. Although counsel for the Law Society and Mr. Larson did not have a specific agreement on sanction, counsel were in agreement that the general range was a reprimand or fine (specifically the Law Society was not requesting a suspension or disbarment).
4. The Hearing Committee accepted the Admission of Facts and Admission of Conduct Deserving of Sanction and in light of all of the circumstances imposed a fine of \$3,000.00 actual costs of the investigation and hearing (estimated at the hearing to be approximately \$5,000.00 but now known to be \$6,394.50) and a reprimand was delivered by the chair.

CITATIONS

5. After complaints by the member's clients and investigation by the Law Society, citations were directed against member as follows:
 1. IT IS ALLEGED THAT you failed to render a final account within a reasonable time after completion of services and failed to respond to related communications on behalf of the client, and that such conduct is deserving of sanction.
 2. IT IS ALLEGED THAT you failed to respond on a timely basis and in a complete and appropriate matter to communications from the Law Society, and that such conduct is deserving of sanction.
 3. IT IS ALLEGED THAT you failed to be punctual and fulfilling commitments to the Complainant and failed to respond to the Complainant's communications, and that such conduct is deserving of sanction.
 4. IT IS ALLEGED THAT you failed to respond on a timely basis and in a complete and appropriate manner to communications from the Law Society, and that such conduct is deserving of sanction.

JURISDICTION

6. The jurisdiction of the Hearing Committee was consented to by both counsel for the Law Society and from Mr. Larson. A binder of Agreed Exhibits including jurisdictional exhibits:
 - Exhibit 1 – appointment of the Committee;
 - Exhibit 2 – notice to solicitor with citations;
 - Exhibit 3 – notice to attend and private hearing application notice;
 - Exhibit 4 – certificate of membership.
7. And the Hearing Committee finds it has jurisdiction.
8. Counsel for the Law Society and counsel for Mr. Larson confirmed that they had no objections to the Hearing Committee members on the grounds of bias or reasonable apprehension of bias.

PRIVATE HEARING MATTERS

9. Two individuals (the Complainants) were served with private hearing application notices. Counsel for both sides agreed and the Hearing Committee ordered that the hearing be held in public, subject to the usual conditions for redacting identifying names and information in the final Hearing Committee Report.

EXHIBITS WITH CONSENT OF BOTH PARTIES

10. A book of exhibits numbered 1 – 22 (exhibits 1-4 being the jurisdictional exhibits) was entered and at the opening of the hearing counsel for both parties tendered Mr. Larson's

admitted facts and conduct deserving of sanction document which was entered as exhibit 22.

FACTS

11. Complainant M retained Mr. Larson to defend criminal charges which included the conduct of a preliminary inquiry and a trial. A retainer of \$20,000.00 for the services was taken.
12. At the conclusion of the preliminary inquiry December 5, 2008, an interim statement of account for \$5,250.00 was rendered by the member and funds in that amount were removed from the retainer in trust.
13. Complainant M was convicted at trial in January 2010, no final account was rendered and the balance of the retainer remained in trust.
14. The Complainant asked the member to provide final statements of account on several occasions between March 19, 2010 and April 2010 to no avail.
15. A complaint was made to the Law Society on April 22, 2010. In May and June 2010 a complaints resolution officer of the Law Society attempted to get the member to respond to the Complainant with a final statement of account and accounting, to no avail.
16. A formal complaint reviewer of the Law Society became involved through June and August 2010 and finally, under threat of referring the matter to a Conduct Committee panel, a final statement of account was rendered August 20, 2010 and the balance of the \$20,000.00 was drawn from trust.
17. One of the reasons why Complainant M wanted the final account to be rendered was a desire to tax the member's account. The member's account was taxed by the Complainant and the member's accounts upheld.
18. Complainant R was charged with impaired driving, driving over 0.08 and dangerous driving. After some preliminary appearances in court, Complainant R directed the member to attend court on January 20, 2010 to finalize the matter.
19. The member did not attend court on January 20 as instructed but waited until March 4, 2010 to attend, plead guilty, etc.
20. One of the key issues for Complainant R was the interrelation between the initial interim suspension when charged with impaired driving offences and the suspension imposed upon a guilty plea. Ideally, if an accused person is to plead guilty, they would want the administrative suspension to run (at least partly) concurrently with the driving license suspension imposed upon conviction so as not to be suspended twice for the same offence.
21. Complainant R complained that he served additional days of drivers' licence suspension arising out of the delay of Mr. Larson between instructed January 20 date for a guilty plea and eventual March 4, 2010 date.

22. At the hearing of this matter, Mr. Foster, Mr. Larson's counsel entered as exhibit 23 a chart showing their calculation of additional driver suspension days as follows:
- Offence date October 18, 2009
 - 24 hour suspension expires October 19, 2009
 - 21 day driving period ends November 9, 2009
 - Three months suspension ends February 8, 2010
 - Complainant R pleads March 4, 2010 (23 days after expiry of suspension)
 - Additional days of suspension served due to Mr. Larson January 20 – February 8: 19 days
23. The Hearing Committee accepts that the delay occasioned by Mr. Larson by not getting back to court January 20, 2010 as instructed was 19 days more or less (the Hearing Committee accepts that docket and scheduling requirements may not allow for court appearances on the exact day that the client instructs).
24. As a result of the complaint by Complainant R Mr. Larson offered to and did eventually refund Complainant R's original \$750.00 retainer.
25. In both of the complaints of M and R, Mr. Larson failed to respond directly to the complaints of his clients, failed to respond to initial complaints by a complaints resolution officer, delayed in responding to requests of a formal complaints reviewer, never responded in writing to the Law Society's requests and eventually only responded to the Law Society in a formal interview by a Law Society investigator.
26. Arising out of those failures to respond to the Law Society, Mr. Larson was charged with the two "failure to respond" citations.

DISCUSSION

27. In the matter of Complainant M, Mr. Larson did not take money out of the retainer in trust for the balance of the \$20,000.00 retainer upon completion of trial without sending a proper account to the client so did not contravene the trust accounting rules in this regard.
28. Further, although the documentation was not put before the Hearing Committee, we understand that when the account for the preliminary inquiry and trial work done by Mr. Larson was taxed by Complainant M, that the account was upheld by the taxing officer. Therefore, Mr. Larson did not render an unfair bill.
29. In the R complaint, Mr. Larson's inability to get to court exactly on his client's preferred schedule may have caused the client up to an additional 19 days of suspension of his drivers' license due to the overlapping of the administrative and criminal suspensions.

30. The Hearing Committee does not consider that Mr. Larson or a member is under a particular “guarantee” to have the matter concluded on an exact date but it is clear that the client did suffer additional days of administrative suspension as a result of delay. Mr Larson refunded R his retainer based on this.
31. However in both of these cases, Mr. Larson not only ignored requests from his clients to respond to their inquiries, if not exactly immediately when they requested, but at least within a reasonable period of time. Further, the clients felt that they had to involve the Law Society’s investigative function in order to get Mr. Larson to respond to their inquires at all, and Mr. Larson never did (except at investigation) fully and completely respond to the Law Society.
32. The Law Society is a self-regulating profession and as part of that regulation as delegated from the Provincial Government, citizens can make complaints. The Law Society is statutorily obligated to investigate those complaints and every member of the Law Society is charged with a professional obligation to cooperate in the investigation of complaints.
33. The Law Society’s investigative interest is further attracted, where, as in the case of Complainant M, the complaint centers around the possible misuse of trust (retainer) fees and the inability or the unwillingness of a member to respond quickly and accurately to a financial complaint.
34. The key sanctioning section of the *Legal Profession Act* reads as follows:
- 49(1) For the purpose of this *Act* any conduct of a member, rising from incompetence or otherwise that:
- a) Is incompatible with the best interest of the public or the members of the Society; or
- b) Tends to harm the standing of the legal profession generally.
- is conduct deserving of sanction, whether or not that conduct relates to the member’s practice as a barrister or solicitor and whether or not that conduct occurs in Alberta.
35. The Hearing Committee accepts that failure to respond to Complainant M’s legitimate requests for statements of account and the resolution of the retainer matter (even though M’s taxation was eventually unsuccessful), the failure to get to court on or about the day requested by Complainant R, to Complainant R’s detriment, the underlying failure to keep his clients informed and the subsequent failure to answer the Law Society’s complaints are all matters incompatible with the best interests of the public, the members of the Society and also tend to harm the standing of the legal profession generally.
36. The Hearing Committee also notes that the failure of Mr. Larson to respond to the official request by the Law Society put up a “red flag” for the investigators, caused the investigation to be prosecuted, and eventually resulted in cost to the Law Society (and its members) and an unnecessary imposition on the Law Society’s scarce regulatory resources.

37. This was unfortunate in Mr. Larson's case as it is reasonably apparent that a very short letter to Complainant M with a proper account at the completion of the trial, or a report to Complainant R reporting that they were unable to get to court on the day in question made the initial complaints unnecessary, and even if they had been, a copy of that letter provided to the Law Society investigator would have answered the complaint without further investigative involvement.
38. Even once the delays and complaints were registered, simple, principled answers would have sufficed but the Law Society went through an informal complaints process, a complaints review process and investigation, the placing of citations, the scheduling of a hearing, and the inevitable imposition on all concerned. So although it is acknowledged that there was not underlying competence or honesty questions involved, the whole thing was a substantial investment in regulatory resources which could have been easily avoided.

SANCTION

39. The circumstances appear to the Hearing Committee to be indicative either of a member who doesn't acknowledge his responsibility to clients, courts and his regulator, or alternatively as suggested by Mr. Larson, a member temporarily overworked and not paying attention to essential detail. The Hearing Committee accepts, after hearing from counsel for the Law Society and counsel for the member that the latter is the case:
 - a) The member has been practicing successfully in criminal law for over 30 years and is considered a senior practitioner in Southern Alberta;
 - b) The member does have a discipline record (entered as exhibit no. 28 at the hearing):
 - April 13, 1979 – failing to respond, reprimand and costs
 - September 29, 1982 – failing to respond, failing to serve, reprimand and costs.And although similar to the matters in front of the Committee, the record is over 30 years old;
 - c) Mr. Larson produced letters of reference (together entered as exhibit 27) from Provincial Court judges, senior prosecutors, and senior lawyers testifying to the quality of his work in court and his general reputation;
 - d) The member's own admission that he was overworked during the years in question.
40. Particularly important to the Hearing Committee's deliberations were statistics put together by Mr. Larson and his counsel indicating Mr. Larson's attempt to mitigate his overwork position including:
 - a) Exhibit 24 comparison of file openings between 2010 and 2013;
 - b) Exhibit 25 comparison of court and non-court days between 2010 and 2013; and
 - c) Exhibit 26 changes in Mr. Larson's advertising package.
41. The Hearing Committee accepts that the matters complained of were an aberration in Mr. Larson's long and successful practice and, probably most importantly from a public

protection point of view, that Mr. Larson has taken steps to mitigate the overwork that may have been behind neglecting the details of his practice which led to the complaints.

42. Particularly the Hearing Committee notes that although, hence the citations, Mr. Larson's initial involvement with the Law Society was unsatisfactory, that eventually Mr. Larson came to the Hearing Committee with an Admission of Facts, a Joint Submission with the Law Society on range of sentence, and some very useful material calculating Complainant R's drivers' license suspension circumstances, and statistics regarding mitigation of what Mr. Larson thought to be the primary cause of this neglected detail, being overworked.
43. In this regard, the Hearing Committee notes that it could not increase the punishment of a member for putting the Law Society to the proof of its case and actually running a Hearing (we are lawyers after all) but notes that the steps Mr. Larson eventually took in preparation for the hearing shows a positive engagement with his regulator and gives the Law Society some faith that these unfortunate circumstances may not occur again.
44. In consideration of all the circumstances the Hearing Committee imposed a sanction as follows:
 - a) Mr. Larson was fined \$3,000.00;
 - b) Mr. Larson was ordered to pay the actual costs of the hearing as set out in exhibit 29, \$6,394.50; and
 - c) A reprimand will be administered by the chair of the Hearing Committee.

CLOSING MATTERS

45. 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 communications, the names of any clients and such other confidential personal information as is thought necessary by the Law Society of Alberta.
46. No referral to the Attorney General is directed.
47. There shall be no notice to the profession issued.
48. In final closing, the Hearing Committee recognizes and commends counsel for the Law Society and counsel for Mr. Larson in the preparation of the hearing materials. Particularly, the analysis of the suspension provisions and the practice statistics provided by Mr. Larson's counsel, Mr. Foster, were most helpful.

REPRIMAND

49. Mr. Larson you acknowledged that you were embarrassed by all of this and we agree that you should be. We are embarrassed and the Law Society is embarrassed. The whole affair does not reflect well on the profession, either the public or the message that this sort of behaviour gives to other members of the Law Society. A senior member of the Law Society cannot be seen to, in effect, "thumb his nose" at his regulator.

50. You are in a position as senior counsel to influence other junior members at the bar. Criminal law is not always happy for clients and complaints will be made about you and your colleagues. Lawyers will come to you for advice as a senior member and you must tell them that their response to the regulator is not as in a defence to criminal charge context (say nothing to the investigator) but in the context of the Law Society carrying out the statutory duty and regulation which is entrusted to them and in the context of a member of the Law Society cooperating as required by the Code of Professional Conduct.
51. You have been fined and assessed the costs of this hearing as a reflection of the wasted cost to the Law Society of the investigation of this matters which, but for a simple letter to the clients early on or the Law Society later, probably never would have been necessary.
52. We needn't go on, and trust that we won't hear further about this sort of thing for another 30 years.

Dated this 1st day of October, 2013,

Written Reasons delivered this 21st day of January, 2014.

Fred R. Fenwick, Q.C., Chair

Kathleen Ryan, Q.C., Member

Cal Johnson, Q.C., Member