

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

REPORT OF THE HEARING COMMITTEE

A. INTRODUCTION

1. On April 17, 2013, a Hearing Committee comprised of Rose M. Carter, Q.C. (Chair), Kathleen Ryan, Q.C., and Miriam Carey, PhD, (the Hearing Committee), convened at the Law Society of Alberta (LSA) office in Edmonton, Alberta, to inquire into the conduct of Susan Lynham (the Member). The Member was represented by Mr. William Tatarchuk, Q.C. (Mr. Tatarchuk) and the LSA was represented by Ms. Molly Naber-Sykes (Ms. Naber-Sykes).
2. This Hearing arose as a result of the Member being cited for allegedly failing to serve her client in a timely, efficient and conscientious manner; failing to respond to her client's communications in a timely manner; and withdrawing her representation of her client in an unprofessional manner.
3. A Notice to Solicitor was issued on October 29, 2012.

B. JURISDICTION AND OTHER PRELIMINARY MATTERS

4. Exhibits 1 through 4, consisting of Letter of Appointment of the Hearing Committee (*Exhibit 1*), Notice to Solicitor (*Exhibit 2*), Notice to Attend (*Exhibit 3*), and Certificate of Status of the Member (*Exhibit 4*), establish jurisdiction of the Hearing Committee.

C. PUBLIC HEARING

5. The Hearing was held in public.

D. CITATIONS

6. Exhibit 2, being the Notice to Solicitor, listed three allegations:
 - 1) It is alleged that you failed to serve your client in a timely, efficient and conscientious manner, and that such conduct is conduct deserving of sanction.
 - 2) It is alleged that you failed to respond to your client's communications in a timely manner, and that such conduct is conduct deserving of sanction.
 - 3) It is alleged that you withdrew your representation of your client in an unprofessional manner, and that such conduct is conduct deserving of sanction.

E. EVIDENCE

7. The LSA called no evidence in support of Citation 2. As such, Citation 2 is dismissed.

8. The solicitor-client relationship between Ms. B. and Ms. Lynham began in June of 2009. Ms. B. retained Ms. Lynham to assist her with the breakdown of her matrimonial relationship. A retainer letter was sent from Ms. Lynham to Ms. B., which provided, in part: "Don't call us, we will call you... If we aren't calling you, nothing is going on." Ms. Lynham served Ms. B.'s husband with divorce papers. Ms. B.'s husband did not respond and Ms. Lynham noted him in default. This information was not communicated to Ms. B. and she indicated that this caused her concern.
9. In July of 2010, sale proceeds from properties owned by Ms. B.'s company were paid in trust to Ms. Ticoll, the lawyer for Ms. B.'s husband. These proceeds were frozen and not available to Ms. B. for use in the continued operation of her company. Ms. B. requested Ms. Lynham's assistance with freeing these assets and Ms. Lynham undertook the retainer.
10. Correspondence between Ms. Ticoll and Ms. Lynham suggested that September 22, 2010 was selected as the date the parties would go to Court to have the monies released to the benefit of Ms. B. and her company. However, there was no Court application on September 22, 2010. Ms. B. sent email correspondence to Ms. Lynham on the following dates: September 20, 2010; September 29, 2010; and October 4, 2010. Ms. Lynham did not respond to those emails.
11. On October 5, 2010, Ms. B. called Ms. Lynham at home and they had a conversation (the contents of this conversation were not before the Panel). Following this conversation, Ms. B. left further voice mails with Ms. Lynham on the following dates: October 15, 2010; October 16, 2010; and October 19, 2010. In addition, Ms. B. left a message with Ms. Lynham's assistant. These messages were not returned by Ms. Lynham.
12. On October 22, 2010, Ms. B. wrote to Ms. Lynham. The subject matter of the email was "Are you representing me?" In that email, Ms. B. said, in part, as follows:

I want to discuss the motion with you and I have questions about discovery. I am also concerned that if you don't have time to prepare the motion you also don't have time to prepare for discovery. Sue, I have told you many times that I like you and I'm glad you're my lawyer, but your avoidance of me for the past month is disrespectful and unprofessional. I am asking that you have the courage to be straight-up with me and tell me honestly if you are representing me or not.
13. Ms. Lynham responded by email on October 25, 2010 at 8:22 a.m. as follows: "Of course I am acting for you....however, I point out to you again that you are not my only client. Please bear that in mind." She goes on to say: "I will try to speak to you tonight."
14. On October 25, 2010, at 9:34 p.m., Ms. Lynham sent an email to Ms. B. advising of a conversation she had with Ms. Ticoll that day with respect to the discovery scheduled for the following day (October 26, 2010). In that email, Ms. Lynham advised that she could not confirm with Ms. Ticoll that they would be proceeding with the discovery and goes on to say: "Therefore they will not be going ahead as planned." Ms. Lynham then recommended that Ms. B. retain other counsel as soon as possible as she felt that Ms. B. has lost confidence in her.

15. Early on October 26, 2010, Ms. B. replied to Ms. Lynham by email, stating: "I've been waiting for you to call. I am looking forward to discovery tomorrow. I do want to continue tomorrow. Can you please get the discoveries back on?" Ms. Lynham responded to Ms. B.'s email by sending an email on October 26, 2011 to Ms. Ticoll stating that she would be ceasing to act for Ms. B. and that Ms. B.'s new counsel would contact her with the date for discoveries. Ms. Lynham subsequently transferred the file to another lawyer who worked at the same firm as Ms. Lynham.
16. The discoveries ultimately took place on January 31, 2011 and the matter was resolved shortly thereafter.

F. DECISION REGARDING SANCTION

17. The Member pled guilty to Citations 1 and 3.
18. In considering the appropriate sanction, the Panel took into account the purpose of discipline proceeding. *Lawyers & Ethics: Professional Responsibility and Discipline*, by Gavin McKenzie (at pages 26-1):

The purposes 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...

The seriousness of the misconduct is the prime determinant of the penalty imposed. In the most serious cases, the lawyer's right to practice will be terminated regardless of extenuating circumstances and the probability of recurrence. If a lawyer misappropriates a substantial sum of clients' money, that lawyer's right to practice will almost certainly be determined, for the profession must protect the public against the possibility of a recurrence of the misconduct, even if that possibility is remote. Any other result would undermine public trust in the profession.

19. As stated in *Bolton v. Law Society*, [1994] 2 All ER 486 at 492 (C.A.), per Sir Thomas Bingham MR for the court:

If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends on trust.

20. After due deliberation, the Chair, on behalf of the Hearing Committee, accepted the recommendation of both counsel that a reprimand is appropriate in this matter. The Member is also fined \$1,000. This Hearing Committee is satisfied that the interests of the public are served and protected by such a sanction.
21. The Chair delivered the reprimand to the Member.

G. COSTS

22. Counsel for the LSA proffered an Estimated Statement of Costs (the Cost Estimate) in the amount of \$3000.
23. After hearing from both counsel, the Panel ordered that the Member pay \$1,500, being the set costs of the Hearing within 30 days from receipt by her of the statement of costs.

H. CONCLUDING MATTERS

24. The Exhibits in these proceedings shall be available to the public with redaction of client names to protect solicitor-client privilege.
25. There shall be no Notice to the Profession.
26. There shall be no referral to the Attorney General.
27. There shall be no referral to Practice Review.

DATED this 13th day of June, 2013.

ROSE M. CARTER, Q.C.
Chair

KATHLEEN RYAN, Q.C.
Member

MIRIAM CAREY, PhD
Member