

**THE LAW SOCIETY OF ALBERTA
HEARING COMMITTEE REPORT**

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

Introduction

1. A Hearing Committee composed of Scott Watson, Q.C., Chair, James A. Glass, Q.C., and Ms. A. Umar convened October 18, 2010 at the Law Society office in Calgary to consider the conduct of Brian Warrington (the “Member”). The Law Society of Alberta (“LSA”) was represented by Janet L. Dixon, Q.C. The Member was represented by Alexander D. Lytle. The Member was present throughout the hearing and the entire hearing proceeded in public.

Citations

2. The Member faced ten Citations arising from four complaints relating to family law litigation matters:

Citation 1: IT IS ALLEGED THAT you failed to be courteous to or regarding your client, C.R., and that such conduct is conduct deserving of sanction.

Citation 2: IT IS ALLEGED THAT you exhibited a lack of courtesy, candour and professionalism in your correspondence to your client, A.W., and that such conduct is conduct deserving of sanction.

Citation 3: IT IS ALLEGED THAT you failed to ensure that your client, A.W. understood your advice and recommendations, and that such conduct is conduct deserving of sanction.

Citation 4: IT IS ALLEGED THAT you failed to serve your client, A.W., in a conscientious manner failed to be punctual in fulfilling commitments you

made to her and failed to respond to her on a timely basis, and that such conduct is conduct deserving of sanction.

Citation 5: IT IS ALLEGED THAT you exhibited a lack of courtesy, candour and professionalism in your correspondence and other conduct directed to the complainant, S.S. and that you referred to the complainant in a disrespectful manner ~~to the Court and~~ to the Law Society, and that such conduct is conduct deserving of sanction. [As amended]

Citation 6: IT IS ALLEGED THAT you failed to deal with the complainant honourably and with integrity by attempting to take unfair advantage of an unrepresented party and that such conduct is conduct deserving of sanction.

Citation 7: IT IS ALLEGED THAT misled or attempted to mislead the Court, and that such conduct is conduct deserving of sanction.

Citation 8: IT IS ALLEGED THAT you exhibited a lack of courtesy, candour and professionalism in your correspondence to the Law Society and to your client, T.M., and that such conduct is conduct deserving of sanction.

Citation 9: IT IS ALLEGED THAT you improperly disclosed confidential information about your client, T.M. and that such conduct is conduct deserving of sanction.

Citation 10: IT IS ALLEGED THAT upon withdrawing from representation of your client, T.M., you failed to promptly deliver a final report and account and failed to account to your client for property received and that such conduct is conduct deserving of sanction.

Jurisdiction

3. Exhibits 1 through 5 were entered by consent, namely the Letter of Appointment appointing the Hearing Committee members, the Notice to Solicitor with acknowledgement of service setting out the ten Citations, the Notice to Attend with acknowledgement of service directing the Member to attend the Hearing, the Certificate of Status certifying the Member was on the active/practising list of the LSA, and the Certificate of Exercise of Discretion. The foregoing exhibits established the jurisdiction of the Hearing Committee and neither party objected to its composition.

Preliminary Matters

4. Exhibits 6 through 59 were entered by consent, during the course of the hearing.
5. Prior to introducing evidence as to the Citations, Ms. Dixon notified the Hearing Committee that the LSA would not be pursuing Citations 6, 7, or 9.
6. With the Member's consent, the LSA amended Citation 5 so as to delete the words "to the Court and".
7. The Member submitted a statement of admission of guilt of conduct deserving of sanction in respect of Citations 1, 2, 5 (as amended), 8, and 10 contained in the Statement of Facts and in the Proposed Citation Disposition (Exhibits 46 and 47).
8. Ms. Dixon invited the Hearing Committee to treat Citations 3 and 4 as being in the alternative. That is, Citation 3 would only apply if the Hearing Committee found that the Member had, in fact, served Ms. W in a conscientious, punctual manner and had fulfilled his commitments to her.

Evidence as to Citations 3 and 4

9. Ms. W was married to Mr. W and she had custody of their three children.
10. Ms. W. retained an Edmonton lawyer, D.R., in 2003 in connection with her divorce. D.R. filed a statement of claim in Edmonton for divorce and division of matrimonial property. In late 2003, Ms. W. instructed D.R. not to pursue matters any further.

11. Ms. W first consulted the Member in the fall of 2006 and ultimately retained him in May, 2007. She sought the Member's services in respect to divorce, maintenance enforcement, and child custody.
12. Ms. W advised the Member August 2, 2007 that Mr. W had shorted her on support payments and that she had not worked for about a year due to stress. Ms. W instructed the Member to pursue a divorce judgement based on one year separation, namely, April 2007 to April 2008.
13. A meeting was held at the Member's office on September 16, 2007 among Mr. W, Ms. W and the Member to discuss divorce, child custody, support and maintenance, access and property division. Matters were generally agreed to between the parties. The Member did not prepare an agreement documenting the arrangements at the conclusion of the meeting. Nor did the Member pursue a court application to memorialize Mr. W's support or maintenance obligations. It was the Member's evidence that there was no need to as the parties were getting along "swimmingly" (transcript page 116). As the Member believed the arrangements between the parties, although verbal, were entirely satisfactory, he sought to ultimately conclude the divorce and all corollary matters at once following the passage of their one year separation, instead of entering into a variety of interim agreements addressing such things as maintenance, support, access and property disposition which, he believed, may have led to unnecessary litigation (transcript pages 113-115).
14. Mr. W had made two surprise visits at Ms. W's residence when she was at home, the first in April 2007 and the second December 17, 2007. Ms. W instructed the Member on January 15, 2008, to pursue an exclusive home possession order. At about the same time Ms. W advised the Member that she was planning to move. On March 2, 2008, Mr. W broke a window and gained entrance into Ms. W's residence and went through Ms. W's papers. Ms. W was not home at the time. This prompted Ms. W to renew her request to the Member to pursue the court order. The Member provided her with a draft affidavit on March 4, 2008. Ms. W swore an affidavit in support of an exclusive possession order but the order was never obtained. Later that same month, Ms. W advised the Member that she had moved out of the residence on March 15th and no longer required the exclusive home possession order (transcript pages 59-64 and 103).

15. Ms. W advised the Member that she had not previously filed a statement of claim for divorce. Ms. W had not recalled that a statement of claim had in fact been filed on her behalf by her previous lawyer, D.R. The Member proceeded to file a statement of claim in Calgary on August 3, 2007. As duplicate divorce actions are not permissible, the Member received a letter from the Central Divorce Registry, dated September 12, 2007, stating a duplicate action had previously been filed in Edmonton, necessitating the discontinuance of one of them. The Member did not read this letter when it was received and failed to detect the existence of the 2003 statement of claim until April or May, 2008. The Member assumed the first action had been commenced by Mr. W, and wrote Mr. W about the need to discontinue one of the two actions. At about the same time, Mr. W advised the Member that he had decided to retain a lawyer. These circumstances served to delay the Member's timely pursuit of Ms. W's divorce based on separation for one year.
16. In late 2007 and early 2008, Mr. W's child support payments had fallen behind. Ms. W advised the Member December 6, 2007 about a sizable increase in Mr. W's income and her desire to pursue increased support (Exhibit 55). Ms. W instructed the Member in January, 2008, to pursue a child support order and register it with Maintenance Enforcement (transcript page 154). No such order was pursued by the Member. The parties were not in agreement in May, 2008 on matters of child support and custody. The Member recommended Ms. W pursue the divorce action, sever the child support and access matters and simply deal with those issues later as they would take some time to sort out by agreement or by court order.
17. Following receipt of notice that Mr. W had moved, the Member never determined whether Mr. W had, in fact, moved further away or closer warranting an increase in child support payments (transcript page 141).
18. Up until December 2007, Ms. W had been content with the Member's legal services. She then began experiencing more and more difficulty reaching the Member. She attempted to reach the Member by phone, email, and voicemail. Initially, her attempts were made once each month beginning August, 2007 and, as time went on, she increased her attempts to once every two weeks and then in the summer of 2008, made attempts every second day. Ms. W terminated the Member's retainer and changed lawyers to C.P. in the

fall of 2008 due to lack of communication with the Member and lack of progress with her file.

Findings of the Hearing Committee

19. Citations 6, 7 and 9 are hereby dismissed, based on Ms. Dixon's invitation to do so.
20. We accept the Member's statement of admission of guilt as to Citations 1, 2, 5 (as amended), 8, and 10. Pursuant to section 60 of the *Legal Profession Act*, the Member's conduct is, for all purposes, found to be deserving of sanction in respect to those particular Citations.
21. Regarding Citation 4, the evidence reflects Ms. W had advised the Member that she was shorted on child support payments by Mr. W. Ms. W instructed the Member to pursue an order for support and file it with Maintenance Enforcement to give her certainty as to future support payments. Such order was not pursued. She also advised the Member about Mr. W's increase in income. Ms. W was raising three children in a home with a mortgage, was not working due to stress and wanted the Member to pursue increased child support as a result of a change in Mr. W's circumstances. The Member admitted that Ms. W had repeatedly requested he take steps related to child support. The Member acknowledged instructions from Ms. W on several occasions and indicated that steps were being taken or would be taken by him to pursue those instructions. While the Member took some steps to bring about disclosure from Mr. W., he didn't pursue an increase in support payments.
22. Following the September, 2007 meeting among the Member, Ms. W and Mr. W, the Member failed to explain the various options available to Ms. W arising from that meeting. Namely, maintaining the status quo, pursuing a consent order, obtaining a written agreement or bringing an application to court for the relief that Mr. W was, at that time, prepared to provide voluntarily.
23. The Member relied on his late detection of the first filed statement of claim as a contributing factor to justify his delay in service to Ms. W.
24. From January until August, 2008, when she replaced the Member as her lawyer, the Member accomplished little for Ms. W and was practically inactive in response to his

client's requests for legal assistance. The Member took steps to respond to Ms. W's requests for information but failed to act on her instructions during that time.

25. The Member had decided to deal with the Ms. W's corollary relief in an all-encompassing way at a future time when the divorce judgement was to be granted. The Member's rationale for not pursuing interim corollary relief was based at least in part on his assessment that Mr. W had been cooperative. While the Member had sought to take a somewhat collaborative approach, those were not his instructions. The Member had instead decided what was in his client's best interest and subordinated her instructions to his discretion.
26. Chapter 9 of the *Code of Professional Conduct* provides that "a lawyer has a duty to provide informed, independent and competent advice and to obtain and implement the client's proper instructions". A lawyer has a duty to ask questions, examine the information, apply legal tests, explain possible alternate outcomes to his client, the related costs and then take instruction. Thereafter a lawyer has a duty to take steps to actually implement those instructions.
27. It wasn't for the Member to unilaterally decide what to do. It was his duty to provide Ms. W with adequate information to ensure he was satisfied she was in a position to give him informed instruction and then act on those instructions.
28. Section 49(1) of the *Legal Profession Act* identifies conduct of a member which is deserving of sanction as follows:

For the purposes of this Act, any conduct of a member, arising from incompetence or otherwise, that

- (a) is incompatible with the best interests of the public or of 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 and solicitor and whether or not that conduct occurs in Alberta.

29. Ms. W was in a vulnerable position and was looking for service and solutions. We find this conduct deserving of sanction. The Member's conduct brings the legal profession into disrepute. The Member failed to serve his client in a conscientious manner, failed to

be punctual in implementing his client's instructions and in responding to her on a timely basis.

30. We found that the Member's conduct up until December 2007 had not amounted to sanctionable conduct. While the Member's conduct relating to the matrimonial possession order between January 15, 2008 and March 2, 2008 was not performed on a timely basis, nor did we find such conduct deserving of sanction.
31. Based on Ms. Dixon's invitation to treat Citations 3 and 4 in the alternative, Citation 3 is hereby dismissed.

Sanction and Orders

32. The Member is a lawyer with no prior record of sanctionable conduct. At the time the Citations were directed, the Member was concurrently referred to the Practice Review Committee and had been participating in a program with them.
33. Counsel for the LSA and counsel for the Member proposed a joint submission on sanction, namely, the Member be reprimanded and seven conditions be imposed on the Member (Exhibit 56). Counsel did, however, depart on the duration of condition number one, Ms. Dixon arguing it ought to apply for 36 months, and Mr. Lytle, for 24 months.
34. The sanctioning process involves a purposeful approach. Paragraph 51 of the Hearing Guide provides:

The primary purpose of the disciplinary proceedings is found in section 49(1) of the *Legal Profession Act*: (1) the protection of the best interests of the public (including the members of the Society) and (2) protecting the standing of the legal profession generally. The fundamental purpose of the sanctioning process is to ensure that the public is protected and that the public maintains a high degree of confidence in the legal profession.

35. Citations 1, 2, 5 (as amended), and 8 relate to a lack of courtesy, candour and professionalism. Treating clients discourteously when they legitimately access a complaint process has a consequence of denigrating the reputation of lawyers and undermines public confidence in the Law Society and the legal profession. A basic

element of a self regulating profession is a complaint process. It must be supported and encouraged by its members. Citations 4 and 10 relate to providing poor service and reporting. These instances of sanctionable conduct by the Member over a relatively short duration causes the Hearing Committee serious concern.

36. The Hearing Committee considered the mitigating factors which included the Member not having a previous disciplinary record with the LSA, the Member's acknowledgement of wrong-doing, his co-operative attitude during the proceedings, and the Member's remorse.
37. Based on all the foregoing, the Hearing Committee accepts the joint submission of counsel as to sanction believing it to be appropriate in the circumstances and agreed the Member's conduct warranted a reprimand and the imposition of conditions.
38. The Chair delivered the reprimand.

Mr. Warrington, your disrespectful remarks and comments contained in your correspondence and your failure to conscientiously fulfill your commitment to your clients on a timely basis are all serious matters. Your conduct is incompatible with the best interests of the public and has harmed the standing of the legal profession generally. I must remind you of the importance of being courteous, candid and professional in your correspondence and in your dealings with clients, complainants, and the Law Society and the overriding importance of fulfilling your commitments to clients on a timely basis. These are essential duties to be fulfilled by all members of the legal profession. Mr. Warrington, you must hold yourself to a higher standard in meeting your professional obligations as a barrister and solicitor.

39. The Hearing Committee made an Order directing the Member to:
 - (a) fully cooperate with Practice Review for a further period of twenty four months;
 - (b) continue working with a consultant on becoming more self-aware regarding anger, including developing strategies to delay initial emotional responses in order to respond to situations with greater sensitivity;
 - (c) include in future continuing professional development (CPD) activities, courses relating to civility; interest based negotiation; the collaborative process and mediation, client management and relations, and family law;

- (d) forthwith file with the Manager of Practice Review a CPD plan for 2009 together with a report on compliance with the plan;
- (e) forthwith file with the Manager of Practice Review a CPD plan for 2010 together with a report on compliance with the plan to date and quarterly updates of compliance with the plan;
- (f) file with the Manager of Practice Review a CPD plan for 2011 and quarterly updates of compliance with the plan; and
- (g) identify a mentor who is a senior family law practitioner, approved by the Manager, Practice Review. The mentor shall be provided all of the disclosure related to the hearing commenced October 18, 2010 and shall receive copies of all other complaints and formal review material during the term of the mentorship. The mentor shall agree to meet with the Member in person or by telephone at least monthly. The mentorship shall continue at least twenty four months. The mentor shall provide semi-annual reports to the Manager, Practice Review or such shorter frequency as the Manager may request.

40. The Hearing Committee made an Order directing the Member to pay costs of \$4,242.00 on or before October 19, 2011.

Concluding Matters

- 41. The exhibits shall be made available to the public on the basis that any information which might identify a client first be redacted.
- 42. No notice to the profession be made.
- 43. No referral to the Attorney General be made.

Dated this 27th day of June, 2011.

Scott Watson, Q.C. - Chair and Bencher

James Glass, Q.C. - Bencher

Ms. A. Umar - Bencher