



**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 JAMEL CHADI**

Jurisdiction and Preliminary Matters

1. On November 24th, 2008, a Hearing Committee composed of Vivian Stevenson Q.C. (Chair), Larry McConnell Q.C. and Dr. Larry Ohlhauser convened at the Law Society offices in Edmonton to inquire into the conduct of Jamel Chadi. Mr. Robbie H. Davison Q.C. appeared for Mr. Chadi who was also present. The Law Society was represented by Mr. Michael Penny.
2. Jurisdiction of the Committee was established by entering as Exhibits 1 through 4 the Letter of Appointment, Notice to Solicitor, Notice to Attend and Certificate of Status. Counsel for the Member did not challenge the jurisdiction of the Committee and there was no objection to the composition of the Committee.
3. The Certificate of Exercise of Discretion was entered as Exhibit 5. The complainant was served with a Private Hearing Application Notice and did not request a private hearing. Counsel for the Member did not object to the matter proceeding in public and the hearing proceeded in public.

CITATIONS

4. Mr. Chadi faced 4 citations which were as follows:
 1. IT IS ALLEGED that you failed to respond on a timely basis to written communications from C.E., your client, that were specifically addressed to you and that contemplated a reply, whether by personal written replay (sic) or by ensuring a written reply from another member of your firm, thereby breaching the Code of Professional Conduct and that such conduct is conduct deserving of sanction.
 2. IT IS ALLEGED that you failed to keep your client informed as to the progress of his matter, thereby breaching the Code of Professional Conduct, and that such conduct is conduct deserving of sanction.
 3. IT IS ALLEGED that you failed to serve your client in a conscientious, diligent and efficient manner:

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- By delegating his matter to an associate of the firm without obtaining your client's agreement to do so, and;
 - By failing to properly supervise that associate and ensuring the matter proceeded in an orderly and proper manner

Thereby breaching the Code of Professional Conduct, and that such conduct is conduct deserving of sanction.

4. IT IS ALLEGED that you failed to comply with instructions from your client

- By failing to report in writing as expressly instructed by him, and;
- By providing his file to another law firm for review without his consent

Thereby breaching the Code of Professional Conduct, and that such conduct is conduct deserving of sanction

EVIDENCE

5. The Committee was provided with Exhibits 6 through 11 all of which were entered by consent. Exhibits 12 through 29 were entered during the course of the hearing.
6. Counsel for the Law Society called one witness, CE. The Member testified on his own behalf.
7. CE was convicted of a sexual assault in November of 2004 and was sentenced to three years in jail. He was advised by his counsel that he should appeal the decision. CE was unhappy with the performance of his counsel at trial and decided to hire the Member for the purposes of the appeal.
8. It appears that CE first spoke to the Member on December 13th or 14th of 2004. No retainer agreement was signed, but CE signed an irrevocable assignment and direction to pay the proceeds from two personal injury claims to the Member. The personal injury files were being conducted by another lawyer in the Member's office.
9. CE did not know the name of the trial judge who had convicted him, so the Member's first step was to take steps to obtain that information. After the trial judge was identified, the Member said that his assistant was told the trial judge was away on vacation. He assumed that this meant that the trial judge was away over Christmas and would be back in the New Year.
10. On January 13th, 2005 a lawyer in the Member's office ordered the transcript of the trial judge's reasons on an expedited basis. In late January or early February the same lawyer made inquiries and learned that the trial judge was still away and would be away until March 2nd.
11. The Member testified that CE was told about the situation and the fact that nothing could be done until the trial judge returned. He says that CE contacted the office frequently and was told the same thing on a number of occasions.

12. It was CE's evidence that after he spoke to the Member about the case in December of 2004, he spoke to him once again sometime before February 9th, 2005, and then did not have any contact with the Member again until September of that year.
13. CE testified that he made a number of calls to the Member's office from December onwards. He said the calls were never refused and that people at the office spoke to him and answered his questions as best they could, but that he could not reach the Member. He said that he mostly dealt with the Member's assistant Karen.
14. The Member says that when the transcript of the reasons finally arrived he retained a lawyer (PM) outside of his office to provide an opinion on the merits of an appeal from the decision. He conceded that he did not have CE's express permission to do so, but felt this was within the scope of his retainer and indicated that he did not forward anything to that lawyer other than the transcript. He does not appear to have received a written opinion from PM.
15. CE suggested that throughout his case he had difficulty getting information. He said that at some point a lawyer named Grant Nickless became involved on the file at which time CE was able to speak to Mr. Nickless.
16. The Member knew Mr. Nickless from dealing with him in the past and knew that he had practiced in the area of criminal law for some 25 years. Mr. Nickless assisted the Member on the CE file and the Member testified that when a date for a bail hearing became available before a judge that the Member considered a good draw, the Member sent Mr. Nickless to the hearing because he was not available. The Member testified that CE knew about this and wanted the bail hearing to proceed promptly.
17. CE denies that he knew Mr. Nickless was going to attend the bail hearing and says he was unhappy to learn that the Member had not appeared on his behalf.
18. The bail application proceeded on April 27th, 2005 and was denied. The Member testified that his telephone records for April 27th show a 15 minute phone call with CE explaining what had occurred.
19. After this bail hearing, it appears that Mr. Nickless effectively had conduct of CE's file. The Member testified that CE never indicated any concern over the fact that Nickless was handling the matter, and that he still intended to deal with the actual appeal.
20. From February to September CE wrote a series of letters to the Member which were entered as Exhibit 9 tabs 1-9.
21. The first of these letters was dated February 9th, 2005. In that letter, CE indicated his understanding that certain papers had not been sent in by the Member until January 13th which was "not a good sign". He accused the Member of avoiding his phone calls until he decided to take his work somewhere else, at which time the Member returned the call. CE also indicated that he understood that the judge would be back on March 2nd. He asked to hear something positive by the following Wednesday or he would seek another counsel.
22. In his letter of March 15th, 2005 CE again complained that the Member had not sent for transcripts until January 13th and asked the Member to "get serious and start working on my case".

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23. On June 6th CE wrote again to the Member complaining that he did not know what was going on and requesting a letter by June 8th to let him know what is going on or what the plan was with his case.
24. On June 10th, CE's letter indicates that he spoke to the Member's office on that date. He complained that he had sent a few letters and that the Member had not written back and advised that he understood that the Member still did not have the file from his previous counsel. He wrote:
- Is it take (sic) for you to get a court order to get my file. I expect you to do that . First you gave my file to Mr.PM, now you give my file to Mr.Grant. With you avoiding my calls, lets me call your office way more I want or should (sic). Grant is answering my calls and he talk (sic) to me about my case...
- ...I would like your company start putting something in writing (Everything). I have nothing on record of what you told me, which you never keep your words. For now I think Mr.Grant is doing a good job (so far).
25. On July 15th CE wrote again. He again advised that he did not know what was going on and repeated his request that he would like a written response. It appears that by this point he was aware that there had been two bail applications, since he writes:
- Do you know why I think I did not get bail, because you guys play (sic) your card (sic) wrong from the start. First you went before the court without a transcript, that Judge told you to come back, why would you go in front another (sic) judge . Why not wait for the same Judge....
26. CE testified that he never got a response to his July 15th letter in writing or by phone.
27. The Member admitted that from April to June of 2005 he had no contact with CE. He was on holidays in July and August and had no contact with CE then either. The Member said that he never saw the June 6th or July 15th letters from CE because in his office the practice was that letters would go to the lawyer handling a particular file even if those letters were addressed to someone else. He said that he would expect any lawyer handling a file for him to let him know if the client had concerns.
28. On September 19th and 20th CE again wrote to the member. In his September 19th letter he indicated that he had called the member's office three weeks before and was told that Mr.Nickless was fired and that since then he had been calling to find out who would be handling his file and could not get an answer. He advised that Karen told him his appeal date was October 12th and that he wanted to know what was going on.
29. On September 20th, CE wrote again complaining of his inability to contact the Member. He asks the Member not to go ahead with his appeal without him being present in court.
30. The Member received CE's letters of September 19th and 20th and says he called CE after he read them. He says that he "fired" CE at that point and told him to find someone else. He also says he told CE that Nickless would continue acting if he wanted, but CE told him that he had made his own inquiries about a lawyer. The Member said that 10 days or 2 weeks later he got a letter from another lawyer and that ultimately he transferred his file to that lawyer.

31. Before the file was transferred the Member filed a factum on behalf of CE because of a Court Order made on October 12th that his firm either obtain an order removing them from the file or that a factum be filed by October 26th or the appeal would be struck.
32. The Member conceded that at all times he knew that CE remained in custody and that CE's original trial counsel was of the view that there was a good prospect of success on the appeal.
33. In fact, CE's new lawyer was successful on appeal in having a new trial directed. CE was released from custody. The Crown subsequently entered a stay of proceedings.
34. CE also advised that he had started a civil action against the Member with respect to his conduct of the file.
35. Although CE maintained that he did not know what was going on with his file, the letters that he sent demonstrate that he had a fairly good understanding of what was happening. His February 9th, 2005 letter shows he was aware that the transcripts had been ordered on January 13th and that there was a delay because the Judge was away until March 2nd. In April CE was sent an affidavit with respect to his bail application. That Affidavit was sworn by CE on April 13th. From his letter of July 15th it appears that CE spoke to the Member about that affidavit when it was being prepared.
36. It is also clear from CE's July 15th letter that he knew about the 2 bail applications that had been brought but which had not succeeded.
37. The Member also indicated that the decision to apply for bail without the transcript of the entire trial was made on purpose for strategic reasons so that there would be another opportunity to apply if they were unsuccessful on the initial attempt. CE swore an affidavit on March 13th in support of the bail application.
38. The Member specifically denied CE's evidence that they had only spoken three times. He testified that he spoke to CE several times from January to March, and spoke to him in April as well.
39. The Member said that Mr.Nickless made the first bail application because the Member was not available that day and that CE never expressed any concerns. He says Mr.Nickless was hired as an independent contractor, that he was experienced in the practice of criminal law with over 20 years experience and that the Member did not expect to supervise him in handling the file. However, the Member says he spoke to Mr.Nickless about the file from time to time after Mr.Nickless became involved.
40. The Member also denied that CE wanted him to make every court appearance. He said he understood that CE wanted him to handle the appeal but that CE consented to Mr.Nickless handling the matter until that point.

DECISION

41. With respect to the first citation, the Committee accepted the evidence of the Member that he had more than 3 communications with CE between January and April. The Member did not communicate with CE between April and September. It was his evidence that he did not see the correspondence from CE during this time and that he

was under the impression that everything was proceeding as necessary towards the Appeal in the hands of his associate Mr.Nickless. The Committee had some concerns with the Member's position that he does not consider it necessary to read correspondence addressed directly to him, and that he considers it sufficient if his mail is given to whomever is handling the file at his request, but in all of the circumstances, and in part for the reasons in relation to Citation 3, the Committee did not consider this to be conduct deserving of sanction.

42. With respect to the second citation the Committee was satisfied on the basis of all of the evidence, including CE's own correspondence that CE was kept advised of what was occurring on his file, initially by the Member, and then through other individuals at the Member's office including Mr.Nickless. CE's initial testimony on this issue was challenged successfully on a number of occasions on cross-examination.
43. With respect to the third citation, the Committee accepted the Member's evidence that it was necessary for Mr.Nickless to attend the bail hearing in the first instance. The Committee did not consider the delegation of such a matter to an individual with the experience of Mr.Nickless to be inappropriate in all of the circumstances. Even if CE was not aware that Mr.Nickless would be attending the hearing in the place of the Member (and the Committee was not satisfied this was the case), the Committee is of the view that CE would have preferred the hearing to proceed rather than await the Member's availability.
44. Furthermore, it is clear from the evidence that if CE was not aware of Mr.Nickless's involvement in the bail hearing before the hearing, he was aware shortly after the hearing occurred, and he did not express any objection to Mr.Nickless attending the hearing or to Mr.Nickless's continued involvement. The Committee agreed with the Member's observation that if CE had not been prepared to have Mr.Nickless act, that he would have expressed that position in writing along with his other concerns. The fact that he did not was significant to the Committee.
45. The Committee accepted the Member's evidence that he discussed the file from time to time with Mr.Nickless as the matter progressed and had no reason to suspect there were any issues until he saw CE's correspondence in September. The Committee did not consider there to be sufficient evidence to show that the supervision by the Member was inadequate given all of the circumstances and the Committee accepted the Member's evidence that he intended to argue the actual appeal when it took place.
46. With respect to the second aspect of the fourth citation, counsel for the LSA fairly conceded that there was no evidence that the Member provided CE's file to another lawyer without CE's consent as the Member's evidence was that all he provided to the other lawyer was a copy of the reasons for decision. With respect to the first aspect of the citation, for the reasons already expressed, the Committee is not prepared to find the Member guilty of conduct deserving of sanction for failing to respond to letters which he did not see when he had a reasonable expectation that the lawyer handling the file had sufficient experience to recognize if there were issues on the file and would bring those issues to his attention. The situation might well have been different had the Member handed off the file to a much more junior associate.

47. In the result, all four citations were dismissed.

Dated this 7th day of February, 2009.

Vivian Stevenson, Q.C., Chair and Bencher

Larry McConnell, Q.C., Bencher

Dr. Larry Ohlhauser, Bencher