

IN THE MATTER OF THE *LEGAL PROFESSION ACT*

AND

IN THE MATTER OF A HEARING REGARDING  
THE CONDUCT OF BRUCE BARRY  
A MEMBER OF THE LAW SOCIETY OF ALBERTA

**REPORT OF THE HEARING COMMITTEE**

[1] On March 12, 2007, a hearing committee comprised of Peter Michalyshyn, Q.C. (Chair), Shirley Jackson, Q.C., and Brian Beresh, Q.C., convened at the Law Society offices in Edmonton, Alberta to inquire into the conduct of Bruce Barry. The Law Society was represented by Janet Dixon, Q.C. Mr. Barry represented himself.

Introduction

[2] An agreed Binder of Exhibits was placed in evidence before the Panel. The Panel found the following citation to have been made out:

It is alleged that in your communications with the Institute of Chartered Accountants of Alberta and with the Law Society of Alberta regarding C.A. and D.T., portions of your correspondence were inappropriate and discourteous to C.A. and D.T. and such conduct is conduct deserving of sanction.

[3] The Member was reprimanded and ordered to pay the actual costs of the Hearing.

Citations

[4] The Member originally faced the following citations and a five-day Hearing commencing March 12, 2007:

1. IT IS ALLEGED that you brought the profession into disrepute by making frivolous and vexatious reports about C.A. to the Institute of Chartered Accountants, and that such conduct is conduct deserving of sanction.
2. IT IS ALLEGED that you failed to be fair, accurate and courteous in your communications with the Institute of Chartered Accountants and with the Law Society regarding C.A., and that such conduct is conduct deserving of sanction.
3. IT IS ALLEGED that you failed to be courteous to C.A. by continuing to direct communications to C.A.'s place of business when specifically asked not to do so, and that such conduct is conduct deserving of sanction.
4. IT IS ALLEGED that you failed to respond to the Law Society on a timely basis and in a complete and appropriate manner, and that such conduct is conduct deserving of sanction.

5. IT IS ALLEGED that you failed to be fair, accurate and courteous in your communications with D.T. and in your communications with the Law Society that referenced D.T., and that such conduct is conduct deserving of sanction.

[5] By agreement of the parties the first original citation was amended to the form set out above at paragraph 2. No evidence was called with regard to the original citation number 4. It was agreed that the original citations numbered 2, 3 and 5 were subsumed within the amended citation 1.

### Private Hearing

[6] No application was made to hold any portion of the Hearing in private. However, in these Reasons and for purposes of any transcript, or for purposes of any requests by a member of the public for access to exhibits, no reference is to be made to the names or clients or their counsel, or to information that identifies the clients or their counsel.

### Facts

[7] The following facts emerge from the exhibits before us. (The Member made submissions before the Panel but did not testify under oath):

- a. The Member acted for the wife of C.A. in acrimonious matrimonial proceedings. The Member began acting for his client in about 1997, and ceased to act in June, 2001. The Member was suspended from practice administratively in December, 2001. He remained suspended at the time of the Hearing.
- b. The Member complained to the Institute of Chartered Accountants regarding C.A. on June 6, 2002. The complaint entirely arose from alleged facts arising from the matrimonial litigation. By the time of the June 6, 2002 complaint, the Member was no longer counsel, and indeed was no longer an active Member of the Law Society of Alberta.
- c. C.A. immediately responded by complaining to the Law Society of Alberta regarding the Member's own conduct in making an allegedly inappropriate complaint to the Institute of Chartered Accountants.
- d. In a September 9, 2002 letter, the Institute of Chartered Accountants determined insufficient evidence existed of unprofessional conduct on the part of C.A. to go forward with the Member's complaint. As such, no further action was to be taken, subject to the complainant's right to request an appeal. There was no evidence before the Panel of an appeal.
- e. Still outstanding was C.A.'s original complaint against the Member of the Law Society of Alberta. That matter remained open, although essentially dormant, until the Member wrote to the Law Society of Alberta March 13, 2003. As stated before the Panel, the Member was motivated to move C.A.'s complaint along as it was the Member's intention to apply for reinstatement to active status from his then-status as a suspended Member of the Law Society of Alberta. The Member perceived the outstanding C.A. complaint as a potential barrier to a successful reinstatement application.

- f. In a letter dated April 22, 2003, the Member wrote directly to C.A.'s counsel, D.T. The April 22, 2003 letter was in response to D.T.'s own correspondence to the Member. That correspondence was not in evidence before the Panel. It was not in dispute that the Member's April 22, 2003 letter included discourteous and inappropriate references particularly to D.T. The letter was copied to the Member's former client in the matrimonial proceedings, who was C.A.'s former spouse.
- g. In a letter dated July 11, 2003, the Member made a further formal complaint regarding C.A. to the Institute of Chartered Accountants.
- h. In a letter of September 29, 2003, the Institute of Chartered Accountants Complaints Inquiry Committee determined insufficient evidence existed of unprofessional conduct on C.A.'s part. The Complaints Inquiry Committee directed that no further action be taken, subject to the complainant's right to request an appeal. The Complaints Inquiry Committee noted the Member had been asked on 2 occasions to supply additional information in support of his complaint, but that he had failed to do so. There was no evidence of an appeal from that Committee's decision by the Member.
- i. In a letter dated October 21, 2003, C.A. made a second complaint to the Law Society of Alberta regarding the Member's conduct. The essence of C.A.'s complaint was the Member's own alleged inappropriate complaint to C.A.'s professional association arising out of events unrelated to C.A.'s practice as a chartered accountant.
- j. After the dismissal of the Member's second complaint against C.A., C.A. asked the Law Society, in a letter of January 5, 2004, to advise of the status of his October 21, 2003 complaint regarding the Member's conduct. In turn, a Complaints Resolution Office of the Law Society asked the Member, in a letter dated February 6, 2004, to respond to the "new complaint" by C.A. arising out of the Member's own July, 2003 complaint to the Institute of Chartered Accountants.
- k. The Member responded in a letter of February 11, 2004. That letter was addressed to both the Law Society of Alberta and to the Institute of Chartered Accountants of Alberta. It was copied to both C.A., by fax, and to C.A.'s counsel, D.T. It was not in dispute before the Panel that the February 11, 2004 letter contained references to both C.A. and his counsel that were discourteous and inappropriate.
- l. In a letter of February 11, 2004, C.A. wrote directly to the Member objecting to the Member's fax to C.A.'s office of the Member's letter of the same date.
- m. A further series of correspondence followed between the Member and the Law Society with regard to the Member's request for access to certain letters or parts of letters. By early October, 2004, the Law Society of Alberta advised the Member that notwithstanding attempts to resolve the parties' differences through a Complaints Resolution Officer, further attempts would be pointless and as such C.A.'s complaint was being referred for review by the Manager of Complaints in Edmonton.

- n. The Manager of Complaints, Maurice Dumont, Q.C., then made a demand under s. 53 of the *Legal Profession Act* for the Member's response to C.A.'s complaint. (By this time, C.A. had abandoned his original complaint, but was maintaining the complaint arising from the Member's *second* complaint about C.A. to the Institute of Chartered Accountants.)
- o. In a letter of January 5, 2005, The Member responded to the s. 53 demand. The Member took the position that his response to C.A.'s complaint was the same as his previous responses (although those previous responses had not been in a s. 53 context). It was not in dispute that the Member's January 5, 2005 response to the Law Society of Alberta contained inappropriate and discourteous references to C.A.
- p. The Manager of Complaints noted, in a letter of January 6, 2005, that the Member's January 5, 2005 letter was not responsive to C.A.'s complaint. It failed to address issues requested of the Member in the s. 53 demand. It noted those issues had not been previously dealt with under the informal complaint process.
- q. In a letter of January 6, 2005, C.A. once again wrote to the Manager of Complaints with the Law Society in Edmonton. At this time, C.A. complained he had received another faxed letter at his office from the Member dated January 5, 2005. C.A. complained the Member's faxed correspondence was disruptive and unprofessional and had nothing to do with C.A.'s professional capacity.
- r. What finally followed was a further series of correspondence between the Member and the Law Society. This series culminated in a last request by the Law Society, in a letter dated January 27, 2005, that the Member respond to C.A.'s complaint in a substantive way, failing which the Manager of Complaints would review the file and make a determination whether to discuss C.A.'s complaint, or send it to a Conduct Committee Panel for consideration.
- s. The Member responded with a brief letter dated February 2, 2005. It failed to deal substantively with C.A.'s complaints. Before the Panel, the Member confirmed the February 2, 2005 letter was the last such correspondence with the Law Society prior to the within Hearing.

[8] The member admitted and it is not in dispute that his letter of March 13, 2003 contained discourteous and inappropriate remarks with regard to both C.A. and C.A.'s counsel, D.T.

### Code of Professional Conduct

[9] Chapter 1 of the *Code of Professional Conduct* notes the lawyer's special responsibilities and duties arising from the privileges accorded Members of the legal profession. Rules under Chapter 1 oblige a lawyer to be courteous in dealings with others. Commentary underlying the Rules expand upon the notion of courtesy, obliging a lawyer to refrain from conduct that is rude, dishonest or misleading.

[10] Chapter 3 of the *Code of Professional Conduct* sets out a lawyer's duties to uphold the standards and reputation of the profession. The Rules under Chapter 3 require that a lawyer refrain from personal or professional conduct that brings discredit to the profession; and that all

correspondence and remarks by a lawyer addressed to or concerning another lawyer, the Law Society or any other professional organization or institution be fair, accurate and courteous.

[11] Commentary to Chapter 3 expands upon the Rules. In particular, commentary C.2 states:

“the tone and content of remarks by a lawyer affecting the profession or one of its Members must at all times be appropriate, despite strongly-held opinions or personal animosities.”

[12] Chapter 15 of the *Code of Professional Conduct* deals with the lawyer in activities other than the practice of law. By definition, the Member engaged in the conduct at issue while suspended as an active Member of the Law Society of Alberta. Chapter 15 provides that activities engaged in by a lawyer other than the practice of law must not compromise the lawyer’s professional responsibilities nor bring discredit to the profession. Commentary C.2 notes that

“membership in a professional body is often considered evidence of good character in itself. Consequently, society’s expectations of lawyers will be high, and the behavior of an individual lawyer may affect generally-held opinions of the profession and the legal system. The Law Society is empowered by the *Legal Profession Act* to find that the conduct of the Member is deserving of sanction whether or not it is related to the practice of law. However,...behavior outside the practice will not normally prompt disciplinary proceedings unless it is harmful to the profession or justice system or evidences a lack of integrity or honor.”

### Decision

[13] As noted above, Mr. Barry acknowledged to the Panel that amended Citation 1 was acceptable to him and indeed disclosed conduct worthy of sanction.

[14] The Panel, having reviewed all of the evidence and having heard submissions, we find that Citation 1 has been established and that it discloses conduct worthy of sanction.

### Sanction

[15] Mr. Barry became a Member of the Law Society of Alberta upon being called to the bar July 24, 1992.

[16] He was suspended administratively in late November, 2001. As noted above, he has remained suspended throughout.

[17] The Member has an unrelated record.

[18] Counsel for the Law Society asked the Panel to impose a reprimand and actual costs of the Hearing. That suggested sanction is in line with the authorities involving discourteous dealings and/or communications, including: *Law Society of Alberta v. Robichaud* [2002] L.S.D.D. No. 78; *Law Society of Alberta v. Edney* [2002] L.S.D.D. No. 71 and *Law Society of Alberta v. Knight* [2001] L.S.D.D. No. 80. Counsel for the Law Society also urged the Panel to refer the Member to Practice Review.

[19] Other than to object to a Practice Review referral, Mr. Barry did not object to the sanction proposed by counsel for the Law Society.

[20] The Panel agreed to impose a reprimand, together with the actual costs of the Hearing. Noting the Member was already before the Practice Review in the context of a reinstatement application, the Panel declined to direct a mandatory referral to Practice Review in the Member's circumstances.

[21] Time to pay was granted to 1 year from the date of the Hearing, being March 12, 2008.

[22] The Chair delivered the reprimand.

#### Miscellaneous matters

[23] In this case, there was no order directing publication of the outcome of the Hearing, and no referral to the Attorney General.

[24] With regard to Exhibits, the Panel directed that Exhibits be made available to inspection but on the basis that the identities of clients and counsel other than the Member himself be kept private.

Dated this 30 day of April, 2007

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Peter B. Michalyshyn, Q.C. Chair

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Shirley Jackson, Q.C. – Member

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Brian Beresh, Q.C. - Member