

LAW SOCIETY OF ALBERTA
IN THE MATTER OF THE *LEGAL PROFESSION ACT*;
AND
IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF LARRY AYERS
A MEMBER OF THE LAW SOCIETY OF ALBERTA

Single Bencher Hearing Committee

Darlene W. Scott, QC – Bencher

Appearances

Nicholas Maggisano – Counsel for the Law Society of Alberta (LSA)

Larry Ayers – Self-Represented

Hearing Date

October 20, 2017

Hearing Location

Law Society of Alberta offices, at 800, 10104-103 Avenue, Edmonton, Alberta

HEARING COMMITTEE REPORT

Jurisdiction, Preliminary Matters and Exhibits

1. On October 20, 2017, a Single Bencher Hearing Committee (Committee) convened at the office of the LSA to conduct a hearing into the appropriate sanction related to the conduct of Mr. Ayers, as set out in the Statement of Facts and Admission of Guilt dated June 8, 2017.
2. Mr. Ayers and counsel for the LSA were asked whether there were any objections to the constitution of the Committee. There were no objections to the identity of the Bencher hearing the submissions, on the grounds of bias or otherwise and the hearing proceeded in public.
3. The jurisdiction of the Committee was established by Exhibits 1 through 4, consisting of the Letter of Appointment of the Committee, the Notice to Solicitor pursuant to section 60 of the *Legal Profession Act* (the *Act*), the Notice to Attend to the Member and the Certificate of Status of the Member with the LSA.

Statement of Facts and Admission of Guilt

4. The Statement of Facts and Admission of Guilt is attached hereto as Schedule A (the Agreed Statement). This Agreed Statement was found to be in an acceptable form by a Conduct Committee Panel on August 15, 2017, and therefore this hearing was convened by a single bencher pursuant to section 60(3) of the *Act*.
5. Pursuant to section 60(4) of the *Act*, after a statement of admission of guilt is accepted by the Conduct Committee, it is deemed to be a finding of the Hearing Committee that the lawyer's conduct is conduct deserving of sanction. After hearing submissions by counsel for the LSA and Mr. Ayers and confirming Mr. Ayers' understanding that the Bencher was not bound by the Joint Submission on Sanction, the Committee noted that the Agreed Statement constituted a finding of conduct deserving of sanction on the three citations pursuant to section 49 of the *Act*.
6. The only question for determination by this Committee is one of appropriate sanction.

Discussion on Sanction

7. The LSA and Mr. Ayers jointly sought a reprimand, a \$7,500.00 fine and actual hearing costs, to a maximum of \$2,000.00.
8. Mr. Maggisano, on behalf of the LSA, pointed out that the Agreed Statement and the Joint Submission on Sanction were factors to be considered, in that agreed statements and joint submissions avoid the costs and inconvenience associated with a contested hearing. As well, Mr. Ayers has been working cooperatively with the practice management department of the LSA, to make changes to his practice and office procedures to avoid a recurrence of this type of complaint.
9. Mr. Ayers was supportive of the LSA submissions on sanction.
10. The Committee agreed that the approach taken by both Mr. Ayers and the LSA in dealing with this matter through a Single Bencher Hearing avoided an unnecessary contested hearing, witness inconvenience, and process costs, which is ultimately in the best interests of the public and the profession. The Committee also noted Mr. Ayers cooperation with practice review and resulting change to his practice management.
11. With respect to the sanction proposed in the Joint Submission, the Committee noted that, when considering a joint submission on sanction, a Hearing Committee should not disregard it unless its acceptance would cause the administration of justice to be brought into disrepute or unless it would be contrary to the public interest. The Committee found that neither test was met in this circumstance, and therefore accepted the Joint Submission on Sanction.

Concluding Matters

- 12.** The Committee ordered a reprimand, a fine of \$7,500.00 and actual costs of the hearing (to a maximum of \$2000.00), payable within 2 months. The Committee administered the reprimand, a copy of which is attached to this report as Schedule B.
- 13.** Hearing exhibits shall be made available to the public, but shall be redacted to prevent the disclosure of confidential or privileged information in accordance with LSA Guidelines.
- 14.** There shall be no Notice to the Profession issued.
- 15.** There will be no Notice to the Attorney General.

Dated at Edmonton, Alberta, January 17, 2018.

Darlene W. Scott, QC

SCHEDULE "A"

STATEMENT OF ADMITTED FACTS AND ADMISSION OF GUILT

IN THE MATTER OF *THE LEGAL PROFESSION ACT*

AND

IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF LARRY D. AYERS,

A MEMBER OF THE LAW SOCIETY OF ALBERTA

STATEMENT OF ADMITTED FACTS AND ADMISSION OF GUILT

I. INTRODUCTION

1. I was admitted as a member of the Law Society of Alberta on June 27, 1980.
2. My present status with the Law Society of Alberta is Active/Practicing.
3. Since 1980, I have practiced law in and around Edmonton, Alberta. From September 19, 1997 to present, I have practiced in Stony Plain, Alberta with offices in Edmonton and St. Albert, under the firm name LA Law.
4. My practice is comprised of 20% civil litigation, 10% corporate, 15% estate planning, 20% matrimonial and 35% real estate

II. V.H. COMPLAINT

5. V.H. and B.H. retained me to represent them in a personal injury matter in 2009.
6. I filed a Statement of Claim on their behalf on February 28, 2011. The Defendants were noted in default on January 24, 2012.
7. In March 2012, I brought the matter to the attention of the Motor Vehicle Accident Claims Fund (the "Fund"). In July 2013 correspondence from the Fund indicated an investigation had been undertaken to obtain further information and once the investigation was complete, it would determine whether it was appropriate for it to become involved in the action.
8. Between 2012 and 2015, I took no further steps and there was no communication between myself and the Fund. **[EXHIBIT 1]** On May 28, 2015, I filed an Affidavit of Records on behalf of my clients.

9. Between 2012 and 2015, my clients contacted me for status updates. I failed to respond, or substantively respond, to their communications.
10. B.H. passed away in July 2015, after which time V.H.'s daughter-in-law, J.C. started contacting me for status updates on her behalf. I failed to respond, or substantively respond, to her communications.
11. An Application for Judgment (the "Application") was drafted by my assistant on or around October 2015. I reviewed the Application and made a note to my assistant that stated: "I think we need more information + current information. Perhaps receipts or pharmacy statements. And a letter from her doctor..." [EXHIBIT 2] Nothing further was done to obtain further information or finalize the Application. A May 26, 2015 note from my assistant to me stated: "...There are no recent Statement of Benefits Paid or medical records on file. And nothing for [B.H.] at all. Do we want to request up to date medical records?" [EXHIBIT 3] Updated medical records were not requested.
12. In June 2016 I informed J.C. that the Application would be prepared and that I would have V.H. attend my office to sign the documents. That did not happen and subsequently a complaint was made to the Law Society.
13. On August 18, 2016, I served the Fund with the filed Affidavit of Records. Counsel from the Fund raised the prospect of filing an application to dismiss for long delay. I did not respond to Counsel from the Fund, nor did I raise the prospect of dismissal for long delay with my client.
14. The Law Society sent me a letter on December 16, 2016, requesting my response to the complaint. I received it but did not respond. I did ultimately respond to the complaint.

Conduct - Admissions

15. I admit that I failed to serve my client(s) and that such conduct is deserving of sanction.
16. I admit that I failed to respond promptly and completely to communications from my client(s) and that such conduct is deserving of sanction.
17. I admit that I failed to respond promptly to communication from the Law Society and that such conduct is deserving of sanction.

III. ADMISSION OF FACTS AND GUILT

18. I admit as facts the statements in this Statement of Admitted Facts and Admission of Guilt for the purposes of these proceedings.

19. I acknowledge that I have had the opportunity to consult legal counsel and provide this Statement of Admitted Facts and Admission of Guilt on a voluntary basis.
20. For the purposes of Section 60 of the *Legal Profession Act*, I admit guilt to the following conduct:
 1. It is alleged that Mr. Larry D. Ayers failed to serve his client(s) and that such conduct is deserving of sanction;
 2. It is alleged that Mr. Larry D. Ayers failed to respond promptly and completely to communications from his client(s) and that such conduct is deserving of sanction; and
 3. It is alleged that Mr. Larry D. Ayers failed to respond promptly to communication from the Law Society and that such conduct is deserving of sanction.

THIS AGREED STATEMENT OF FACTS AND ADMISSION OF GUILT IS MADE THIS 8th DAY OF JUNE, 2017.

“Larry D. Ayers”

LARRY D. AYERS

SCHEDULE “B”

REPRIMAND

Mr. Ayers, you have admitted that your conduct in this matter is deserving of sanction on the three noted citations –

1. Failure to serve your client
2. Failure to respond promptly and completely to your client
3. Failure to respond to the Law Society of Alberta

The Conduct Committee Panel has accepted the Agreed Statement of Facts and your Admission of Guilt in respect of these citations. Accordingly, pursuant to section 60 of the *Legal Profession Act*, this is deemed to be a finding of this Hearing Committee that your conduct is conduct deserving of sanction on each of those citations.

Mr. Ayers, you are an experienced lawyer having practiced in and around Edmonton for over 37 years and servicing clients in very diverse areas, including real estate, family law, estate and civil litigation. Your career has been marked by many complaints to the Law Society. These citations relate to matters which go to the very root of our obligations as members of a profession – failure to serve and respond to your client and failure to respond to your regulator.

We belong to a profession which enjoys the privilege and the responsibility of self-regulation, and as a result, we have to ensure that members of the profession are candid and provide full and comprehensive replies to their regulator on each and every occasion that such is requested of them. We have duties to preserve and protect the trust that the public has in the legal profession and in the ability of the profession to self-regulate. Can you put yourself in the shoes of your client, who has put their faith and trust in you to seek a fair and just resolution of a civil wrong, when they can't even reach you to obtain information on the status of a matter which is so critical and important to them? You are obliged to communicate with your clients and to keep them updated on all their matters and to actually provide the services for which you were engaged, notwithstanding what is occurring in your office or your practice.

I have noted the positive comments of the Practice Review report, which indicates that you were cooperative with the Practice Management team and undertook many of the changes they suggested, and I see that you have taken steps to change the management of your practice.

Your joint recommendation is that these citations result in a reprimand, a \$7,500.00 fine and payment of the actual costs of the hearing.

It is my view that these submissions are within a reasonable range of sanction for the conduct complained of, considering that you have made a joint submission in the matter.

When considering a joint submission on sanction, a Hearing Committee should not disregard a joint submission unless its acceptance would cause the administration of justice to be brought into disrepute or unless it would be contrary to the public interest. I don't think that either test is met in this circumstance and am therefore prepared to accept the joint submission on sanction. The reprimand has been administered.

Mr. Ayers, it is my sincere hope that this conduct will not be repeated, for the benefit of both your own reputation and also that of our entire profession. You are nearing the end of your professional life and I am sure you wish to leave it with your head held high, knowing you have served both the public and your profession with integrity and diligence. I hope you are successful in doing so.