

**IN THE MATTER OF PART 3 OF
THE *LEGAL PROFESSION ACT*, RSA 2000, c. L-8**

AND

**IN THE MATTER OF A HEARING
REGARDING THE CONDUCT OF TODD STRANG
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

Hearing Committee

Buddy Melnyk – Chair
Schuyler Wensel, QC – Lawyer Adjudicator
Dr. Nick Tywoniuk – Public Adjudicator

Appearances

Karen Hansen – Counsel for the Law Society of Alberta (LSA)
Bill Shores – Counsel for Todd Strang

Hearing Date

July 30, 2018

Hearing Location

LSA office, at 800, 10104 - 103 Avenue, Edmonton, Alberta

HEARING COMMITTEE REPORT

Overview

1. On July 30, 2018, the Hearing Committee (Committee) convened a hearing into the conduct of Todd Strang, based on one citation:
 - 1) It is alleged that Todd Strang failed to document the disclosure to and consent of his clients B.W. and K.W. regarding his firm's representation of their tenant J.K. and his company L. Co. as required by the Code of Conduct, and that such conduct is deserving of sanction.

Preliminary Matters

2. There were no objections to the constitution of the Committee or its jurisdiction, and a private hearing was not requested, so a public hearing into Mr. Strang's conduct proceeded.

3. The jurisdiction of the Committee was established by Exhibits 1, 2, 4, 6 and 8, consisting of the letter of appointment of the Committee, the Notice to Solicitor pursuant to section 59 of the *Legal Profession Act* (the Act), the Notice to Attend to Mr. Strang, the Certificate of Status of Mr. Strang with the LSA, the Certificate of Exercise of Discretion and the Affidavit of Service.
4. This hearing was consolidated with another hearing, HE20170248. At the outset of the hearing, Exhibits 1 through 14 were entered into evidence in the hearings. Included in these Exhibits was an Agreed Statement of Facts and Admission of Guilt signed by Mr. Strang (Exhibit 13). Of the 14 exhibits filed, Exhibits 1, 2, 4, 6, and 8-13 relate to Mr. Strang's conduct.

Admission of Guilt

5. Mr. Strang has admitted guilt for failing to comply with the conflict of interest provisions of the Code of Conduct, which allow for joint representation in cases of potential conflict only where the clients provide fully-informed consent.
6. The facts underlying his conduct are set out in the Agreed Statement of Facts and Admission of Guilt, a redacted version of which is attached to this Hearing Committee Report as Schedule A.

Analysis and Decision on Citation

7. The Code of Conduct (chapter 3.4-5) defines "consent" as follows:

"consent" means fully informed and voluntary consent after disclosure

(a) in writing, provided that, if more than one person consents, each sign the same or a separate document recording the consent, or

(b) orally, provided that each person consenting receives a separate letter recording the consent.

7. After reviewing the Agreed Statement of Facts and Admission of Guilt, and in considering the relevant provisions of the Code of Conduct, and after hearing the arguments of the LSA, and counsel for Mr. Strang, the Committee accepts the admission of guilt. In accordance with subsection 60(4) of the Act, it is deemed to be a finding of this Committee that such conduct is deserving sanction on the citation pursuant to section 71 of the Act. The Committee now has to determine the appropriate sanction.

Joint Submission on Sanction

8. The Law Society and Mr. Strang presented the following joint submission regarding sanction in this matter:
- (i) A reprimand;
 - (ii) A fine in the amount of \$1,000.00; and
 - (iii) Hearing costs in the agreed upon amount of \$2,500.00.

Analysis and Decision on Sanction

9. The Committee has noted the following mitigating factors in this matter:
- (i) that Mr. Strang has no discipline record with the Law Society;
 - (ii) that Mr. Strang cooperated in an Agreed Statement of Facts and an Admission of Guilt thereby reducing the hearing time required and avoiding the need for witnesses to travel to Edmonton for a hearing;
 - (iii) that substantial steps have now been taken by Mr. Strang's firm to ensure that conflict searches are performed, and that disclosure of potential conflicts and client consent are properly documented going forward.
10. The Committee also notes that an aggravating factor is that Mr. Strang is an experienced solicitor and should have been cognizant of his obligations under the Code of Conduct.
11. The Supreme Court of Canada in *R v. Anthony-Cook*, 2016 SCC 43 (CanLII), held that the trier of fact should not depart from a joint submission unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest. The Committee finds that the joint submission would not bring the administration of justice into disrepute nor is it otherwise contrary to the public interest.
12. In accepting the joint submission on sanction, the Committee accepts that the sanctions will be of such gravity as to maintain the public's confidence in the legal profession, and that such sanctions will serve as a specific deterrent to Mr. Strang and a general deterrent to the membership. Accordingly, the Committee imposes the following sanctions:
- (i) A reprimand;
 - (ii) A fine in the amount of \$1,000.00; and
 - (iii) Hearing costs in the agreed upon amount of \$2,500.00.

Reprimand

13. The Committee reprimands Mr. Strang, as follows:

Mr. Strang, the Law Society of Alberta serves to protect the public interest and to maintain the reputation of the legal profession. Your conduct in this matter engages both of those considerations.

The Committee acknowledges your apology and representation that you have taken active steps to ensure that this conduct will not occur in the future. In light of the mitigating and aggravating factors stated herein, this Committee has accepted the joint submission on a reprimand, a fine and hearing costs as being an appropriate sanction for your conduct.

A reprimand is no trifling thing, especially for someone who is a lawyer, and indeed for any professional person. It is a public and lasting expression of the profession's denunciation of the lawyer's conduct.

After the Committee's review of the exhibits and having heard from Mr. Strang, though his counsel, the Committee concludes that Mr. Strang is now mindful of his professional obligations and understands that the conduct is not acceptable. We believe that Mr. Strang has learned from this particular matter and will do better in the future.

Concluding Matters

14. Payment of the fine and costs will be made within seven (7) days.

15. The Committee finds that a Notice to the Profession and a Notice to the Attorney General are not required.

16. The exhibits and other hearing materials, transcripts, and this report will be available for public inspection, including providing copies of exhibits for a reasonable copy fee, although redactions will be made to preserve personal information, client confidentiality and solicitor-client privilege (Rule 98(3)).

Dated at Edmonton, Alberta, August 1, 2018.

Buddy Melnyk – Chair

Schuyler Wensel, QC – Lawyer Adjudicator

Dr. Nick Tywoniuk – Public Adjudicator

**IN THE MATTER OF THE LEGAL PROFESSION ACT
AND
IN THE MATTER OF A CONSOLIDATED HEARING REGARD THE CONDUCT OF
TODD P. STRANG and [PF]
MEMBERS OF THE LAW SOCIETY OF ALBERTA**

**STATEMENT OF ADMTTED FACTS AND ADMISSION OF GUILT
OF TODD P. STRANG**

FACTS

1. [PF] and I are partners at [K] Law in the city of [G]. The majority of our practice was in [G]. At the relevant time [K] Law had recently taken over the sole law practice in [F].
2. [F] is a small town surrounded by an agricultural area. It is about [...] kms from [G], the nearest city.
3. [PF] and I were part of a 3 lawyer rotation that served the [F] office two days each week. There were support staff in the [F] office for the entire week.
4. In most real estate transactions in [F], the parties know each other and have [K] Law act for all parties. A single law firm acting for all parties is common in practices in rural areas of Alberta.
5. In late January 2016, K.W. and B.W. met with [PF] to discuss the sale of a single quarter section of their land (SW ¼). K.W. and B.W. disclosed that they were under financial pressure and wanted to work towards a quick sale of the SW¼. [PF] discussed various mechanisms for selling the land (direct negotiation, use of a realtor, auction or tender) and the advantages and disadvantages of each. During the meeting, [K.W. and B.W.] revealed there was a land rental agreement, which included a right of first refusal (ROFR) for the tenant, L. Co. The principal of L. Co. was J.K. L. Co. and J.K. were clients of [K]. In view of the ROFR, [PF] recommended against a tender. He recommended that K.W. and B.W. approach J.K. directly to negotiate a purchase and sale. [PF] did not open a file or charge anything for his advice. K.W. and B.W. did not ask [PF] to do anything more or retain [K] at the time.

6. However, in case they did return when another lawyer was in the [F] office, [PF] told a staff member that he had disclosed the conflict involving L. Co. and J.K. to K.W. and B.W.
7. K.W. and B.W. made an appointment to come back to the [K] Law's office in [F]. They were told that [PF] was scheduled to be in the office. They cancelled that appointment. They rebooked an appointment on a day that another lawyer, myself, was scheduled to be in the office.
8. [PF] saw this change in appointments and told me of his meeting with K.W. and B.W. He told me that he had disclosed to B.W. and K.W.:
 - a. his representation of L. Co. and J.K.;
 - b. the fact that there was a potential conflict; and
 - c. the cautions that he had provided to K.W. and B.W. about the sort of advice that would be given to the tenant who held the ROFR.
9. I met with [B.W. and K.W.]. I do not recall whether I specifically discussed [PF's] representation of J.K. (but I believed they were aware that [PF] had represented J.K.). [B.W. and K.W.] retained [K] Law (and specifically myself) to prepare tender documents, conduct the tender process and handle the sale of the SW¼. I recommended negotiating the removal of the ROFR directly with the tenant, J.K. and L. Co. I noted that if K.W. and B.W. were going to proceed with the tender the request for tender should disclose the ROFR. In my view K.W. and B.W. had a legal obligation to disclose any interest that might affect their ability to convey title to the property, whether such an interest was registered against title or not.
10. I relied on the verbal information that I had received from [PF] about the disclosure of the potential conflict between the sellers, K.W. and B.W., and the tenant and holder of the ROFR, L. Co. and its principal, J.K. However, I did not, either in the form of a signed retainer letter or correspondence from me to K.W. and B.W., document the disclosure to B.W. and K.W. and the consent of B.W. and K.W. to act in the circumstance where [K] Law also represented their tenant L. Co. and its principal J.K.
11. Following my meeting with B.W. and K.W.
 - a. [PF] advised J. K. and L. Co. about their rights under the right of first refusal and the approach they should take in response to the tender;
 - b. I advised K.W. and B.W. in respect of the tender, the enforceability of the ROFR and the impediments to any challenge to it and their obligations under the right of

first refusal, including the obligation to notify L. Co. of the results of the tender, in the event L. Co. wished to exercise its rights. I conducted the tender process.

12. Specifically:

- a. After K.W. and B.W. advised me, through an assistant, that J.K. would not remove the ROFR, I prepared a draft tender for K.W. and B.W. It included a provision that the “highest or any bid need not be accepted.” I sent an email with a description of the tender process that included the following:

...The successful tender will still be subject to [J.K.’s] right of first refusal...

....

Unless [J.K.] sign off on the right of first refusal there is nothing legally we can do to make that go away...

....

Assuming [J.K.] haven’t signed off on the tender we have to notify them on the 11th of the highest tender bid and let them consider whether they want to match this. They have 30 days under the existing right of first refusal to do that.

- b. K.W. and B.W. enquired of me “...current lease agreement has my [K.W.] name only, not [B.W.], can that be enough to change things on first refusal on sale”. [Note the lease with the ROFR had both K.W. and B.W.’s name on it; it was signed only by K.W.] In response, I advised K.W. and B.W. that:

...If you wish to challenge the right of first refusal, you likely would have to make an application to the court and this certainly would not be a quick or easy matter to deal with – the law would not necessarily require two signatures, all that might be required is that it appeared that there was authority to create a binding obligation. Any application to the court could take many months or even longer than a year to deal with so this is not a practical option.

- c. The invitations to tender were run in the [F] newspaper on 3 dates, each one week apart. After the first advertisement [PF] advised me and a legal assistant that:

J.K. has been in contact with me regarding this tender. He asked if he should submit and tender and I advised him that no, he should not, as

[K.W. and B.W.] are well aware of his right of first refusal. I want to confirm that our client, L. Co., intends to exercise its right of first refusal if one of the tenders is acceptable to K.W. and B.W. Please confirm that your instructions are to provide L. Co. with the required notice in such instance. If not, we are likely in a conflict on this and will need to discuss how we handle this.

- d. After the tenders closed, there were two bids. I advised K.W. and B.W. of the results by phone.
 - e. I told [PF], as counsel for J.K. of the amount of the highest bid. I also advised that at that time I had not yet received instructions from K.W. and B.W. to accept the tender at that price and that if they were not willing to accept that price, they would not sign the offer.
 - f. I proceeded on the basis that I had consent from the K.W. and B.W. to provide [PF], as J.K.'s counsel, with information about the highest tender, specifically my email to B.W. and K.W. which said: "Assuming the [K's] haven't signed off on the tender we have to notify them on the 11th of the highest tender bid and let them consider whether they want to match this."
 - g. To facilitate the potential transaction, I drafted an offer to purchase and sent it to K.W. and B.W. I also sent it to [PF]. I told [PF] that I had not yet had an opportunity to review the offer with K.W. or B.W. or obtain their instructions.
13. Preparation and circulation of the draft offer to purchase was my last involvement in the tender and sale process. K.W. and B.W. retained other counsel, who contacted and negotiated directly with J.K. for the sale of the SW $\frac{1}{4}$ and two other quarters, which resulted in a higher price for the SW $\frac{1}{4}$ than the tender process had.
 14. K.W. and B.W. complained to the Law Society.
 15. [K] Law has now improved its protocols at its [F] office for identifying conflicts and ensuring that the disclosure to and consent of clients to potential conflicts is documented. Those protocols include:
 - Requiring conflict searches before new files are opened;

- Conflict searches that include searching the firm's Esi-law database, its corporate database, and its cold call intake system;
- Prompt use of conflict letters to document the disclosure and consent of clients at the inception of any file where there is a potential conflict situation.

CITATIONS

16. On September 13, 2017, a Conduct Committee Panel referred three citations to hearing regarding my conduct.
17. On July 19, 2018, Margaret Unsworth, QC, Pre-Hearing Chair, granted an amendment of the citations against me to one citation as follows:

It is alleged that Todd Strang failed to document the disclosure to and consent of his clients B.W. and K.W. regarding his firm's representation of their client J.K. and his company L. Co. as required by the Code of Conduct, and that such conduct is deserving of sanction.

ADMISSION OF GUILT

18. I admit that I failed to document the disclosure to and consent of my clients B.W. and K.W. regarding my firm's representation of its client J.K. and his company L. Co. as required by the Code of Conduct, and that such conduct is deserving of sanction.
19. I acknowledge that I have had the opportunity to consult legal counsel and that I have signed this Statement of Facts and Admission of Guilt voluntarily and without compulsion or duress.

DATED THE "25" DAY OF JULY, 2018

"TODD P. STRANG"

TODD P. STRANG