

**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 AUSTIN NGUYEN
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

Single Bencher Hearing Committee

Stacy Petriuk – Chair

Appearances

Karen Hansen – Counsel for the Law Society of Alberta (LSA)

Austin Nguyen – Self-represented

Hearing Date

November 9, 2018

Hearing Location

LSA office, at 500, 919 - 11 Avenue SW, Calgary, Alberta

HEARING COMMITTEE REPORT

Overview

1. In November 2016, Austin Nguyen had a preliminary meeting with V.N. regarding providing independent legal advice on a marriage contract. When Mr. Nguyen discovered that V.N. was in a same sex relationship with another woman, he asked V.N. unprofessional and offensive questions, and made unprofessional and offensive comments about her private relations with her wife.
2. Subsequently, Mr. Nguyen was interviewed by two Law Society investigators on March 28, 2017. In that interview, Mr. Nguyen denied that he had asked the unprofessional and offensive questions, or made the unprofessional and offensive comments about V.N.'s private relations with her wife.
3. The Law Society of Alberta (LSA) and Mr. Nguyen entered into an Agreed Statement of Facts and admission of guilt (the Agreed Statement) in relation to Mr. Nguyen's conduct. The Conduct Committee found the Agreement Statement acceptable. The Agreement Statement is appended to this report for reference.

4. Pursuant to subsection 60(4) of the *Legal Profession Act* (the *Act*) it is deemed to be a finding of the Conduct Committee that Mr. Nguyen's conduct is deserving of sanction in relation to the following citations:
 - 1) It is alleged that Austin Q.T. Nguyen communicated with his client, V.N., in a manner that was offensive, or otherwise inconsistent with the proper tone of professional communication, and that such conduct is deserving of sanction; and
 - 2) It is alleged that Austin Q.T. Nguyen failed to be candid with the LSA and that such conduct is deserving of sanction.
5. On November 9, 2018, the Hearing Committee (Committee) convened a hearing into the appropriate sanction related to the conduct of Mr. Nguyen.
6. After reviewing all of the evidence and exhibits, hearing the testimony and arguments of counsel for the LSA and Mr. Nguyen, and the reviewing the case law provided by the counsel for the LSA, for the reasons set out below, the Committee determined that the following sanction was appropriate:
 - 1) Reprimand covering both citations;
 - 2) Fine of \$1,000 for the first citation;
 - 3) At Mr. Nguyen's discretion, he may choose to spend the \$1,000 referred to in paragraph 2, instead of paying it to the LSA, on such training dealing with professional boundaries, as may be approved by the Manager of Practice Management, to be completed within 3 months of November 9, 2018;
 - 4) Fine of \$2,000 for the second citation;
 - 5) Costs of \$8,000; and
 - 6) Mr. Nguyen has 3 months from November 9, 2018 to pay the fines and costs.
7. The above sanction was presented as a joint submission by both counsel for the LSA and Mr. Nguyen. The Committee found that the proposed sanction would not bring the administration of justice into disrepute and would not be contrary to the public interest, and therefore accepted it. The Committee provided its decision and the reprimand orally at the hearing. This Report contains the reasons for the Committee's decision, as well as the text of the reprimand.

Preliminary Matters

8. There were no objections to the constitution of the Committee or its jurisdiction. A private hearing was not requested, so a public hearing into the appropriate sanction proceeded.

Agreed Statement of Facts

9. On May 27, 2018, Mr. Nguyen executed the Agreed Statement. On July 18, 2018, the Conduct Committee Panel found the Agreed Statement acceptable, as contemplated by

subsection 60(4) of the *Act*. Pursuant to subsection 60(4) of the *Act*, each admission of guilt in the Agreed Statement is deemed to be a finding by this Committee that Mr. Nguyen's conduct is deserving of sanction under section 49 of the *Act*.

10. As provided by subsection 60(4) of the *Act*, once the Agreed Statement was accepted by the Conduct Committee Panel, the hearing into the appropriate sanction could be conducted by a single Bencher. As a result, I was appointed to conduct the sanction hearing.
11. In the Agreed Statement, Mr. Nguyen admitted the following:
 - 1) In November of 2016, I had a preliminary meeting with V.N. regarding providing independent legal advice on a marriage contract.
 - 2) When I discovered the V.N. was in a same sex relationship with another woman, I asked V.N. unprofessional and offensive questions and made unprofessional and offensive comments about her private relations with her wife.
 - 3) I was interviewed by two Law Society investigators on March 28, 2017. In that interview, I denied that I had asked the unprofessional and offensive questions or made the unprofessional and offensive comments about V.N.'s private relations with her wife.
 - 4) I admit that I communicated with V.N. in a manner that was offensive or otherwise inconsistent with the proper tone of professional communication, and that such conduct is conduct deserving of sanction.
 - 5) I admit that I failed to be candid with the Law Society investigators and that such conduct is conduct deserving of sanction.

Submissions on Sanction

12. Counsel for the LSA and counsel for Mr. Nguyen submitted a joint submission on sanction, as outlined above. In addition to the Agreed Exhibit Book, counsel for the LSA also provided case law. There were no exhibits entered in addition to the exhibits provided in the Agreed Exhibit Book and entered by consent.
13. Both counsel for the LSA and Mr. Nguyen provided submissions on the appropriate sanction. Mr. Nguyen also commented on his personal experience and how he learned from the incident.

Decision on Sanction

14. A Committee is not bound by a joint submission on sanction. However, a Committee is required to give serious consideration to a joint submission, should not lightly disregard it, and should accept it unless it is unfit or unreasonable, contrary to the public interest or there are good and cogent reasons for rejecting it.

15. The test as outlined by the Supreme Court of Canada in *The Queen v. Anthony-Cook*, 2016 SCC 43 at para 5 is "...whether the proposed sentence would bring the administration of justice into disrepute, or would otherwise be contrary to the public interest."
16. In considering the joint submission on sanction, it is important to consider the purpose of disciplinary proceedings. As outlined in subsection 49(1) of the *Act*, they are:
 - 1) Protection of the best interests of the public (including members of the LSA); and
 - 2) Protecting the standing of the legal profession generally.
17. It is important to ensure the public is protected and the public maintains a high degree of confidence in the legal system. In this instance, Mr. Nguyen communicated in an unprofessional and offensive manner with V.N. In addition, Mr. Nguyen failed to be candid with the LSA investigators when asked about these communications. Mr. Nguyen has a history of discipline proceedings with the LSA from 2009 to 2016. These are outlined in Exhibit 8.
18. However, it is important to acknowledge that Mr. Nguyen has agreed to the Agreed Statement, drastically shortening the proceedings against him at the LSA, and not requiring witnesses, especially V.N., to be called. Mr. Nguyen is to be commended for that. In addition, Mr. Nguyen was quite forthright in his submissions that he has learned from this experience and continues to learn.
19. The approach taken by both Mr. Nguyen and the LSA in dealing with this matter through a Single Bench hearing also avoided an unnecessary contested hearing, witness inconvenience, and process costs. After reviewing the Agreed Statement, the submissions by LSA counsel and Mr. Nguyen, the case law provided by LSA counsel, the purpose of disciplinary hearings as outlined in the *Act*, and the factors as outlined above, the Committee finds that the joint submission on sanction is appropriate in this instance.
20. A reprimand is a public expression of the profession's denunciation of the lawyer's conduct, intended to deter future misconduct by the lawyer and within the profession as a whole, as stated in *Law Society of Alberta v. Pontin*, 2014 A.B.L.S. 13 at para 16:

It is to be noted that a reprimand is a public expression of the profession's denunciation of the lawyer's conduct intended to deter future misconduct by the lawyer and within the profession as a whole:

A reprimand has serious consequences for a lawyer. It is a public expression of the profession's denunciation of the lawyer's conduct. For a professional person, whose day-to-day sense of self-worth, accomplishment and belonging is inextricably linked to the profession, and the ethical tenets of that profession, it is a lasting reminder of failure. And it remains a lasting admonition to avoid

repetition of that failure. Deterrence and the future protection of the public interest are therefore served accordingly.

Law Society of Alberta v. King, 2010 ABLs 9 (CanLII)

21. The following reprimand was delivered at the conclusion of the hearing:

Members of the public depend on lawyers to provide impartial and ethical legal advice in times of need. When lawyers make unprofessional or offensive comments in the context of a solicitor-client relationship, or a potential solicitor-client relationship, it erodes the public's confidence in the legal profession. It also erodes the trust of the client or potential client, and trivializes the legal problem or issue the client, or potential client, was seeking advice on. By making offensive comments and by not conducting yourself with the proper tone of professional communications, you breached an obligation to the profession, V.N. and the public. Lawyers belong to an independently regulated profession, and with the privilege and independence we have an obligation to be accurate in all our communications with the Law Society. Your failure to be candid with the Law Society investigators reflects poorly on you and the profession. By failing to be candid, you breached your obligation as a professional.

However your efforts since are a sign that you have learned from this incident. I also trust that this incident and these proceedings will serve to make you a better lawyer in the future. In making these comments today, I urge you to constantly remember what is required by you as a member of the legal profession.

Sir, I wish you the best as you move forward from this incident and thank you for your attendance today.

Concluding Matters

22. Mr. Nguyen was ordered to:
- 1) Pay hearing costs in the amount of \$8,000,
 - 2) Pay a fine in the amount of \$1,000 with respect to citation 1, or alternatively, at Mr. Nguyen's discretion, he may choose to spend the \$1,000 on training dealing with professional boundaries, as may be approved by the Manager of Practice Management, which training is to be completed within 3 months of November 9, 2018;
 - 3) Pay a fine of \$2,000 with respect to the citation 2; and
 - 4) Pay the fines and hearing costs within 3 months of November 9, 2018.
23. No notice to the Attorney General or Notice to the Profession is required.

24. 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 Calgary, Alberta, January 4, 2019

Stacy Petriuk

IN THE MATTER OF THE *LEGAL PROFESSION ACT*

-AND-

IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF

AUSTIN Q.T. NGUYEN

A MEMBER OF THE LAW SOCIETY OF ALBERTA

HEARING FILE NUMBER HE20180024

STATEMENT OF FACTS AND ADMISSION OF GUILT

INTRODUCTION

1. I was admitted as a member of the Law Society of Alberta (the "Law Society") on July 19, 1999 and have practiced in Calgary, Alberta since that time.
2. My present status with the Law Society of Alberta is Active/Practicing.
3. My practice comprises Civil Litigation (30%), Real Estate (25%), Matrimonial/Family (20%), Criminal (15%), Corporate (5) and Immigration (5%).

CITATIONS

4. On January 16, 2018, the Conduct Committee Panel referred the following conduct to a hearing:
 1. It is alleged that Austin Q.T. Nguyen sexually harassed his client, V.N., and that such conduct is deserving of sanction;
 2. It is alleged that Austin Q.T. Nguyen communicated with his client, V.N., in a manner that was offensive or otherwise inconsistent with the proper tone of professional communication, and that such conduct is deserving of sanction; and
 3. It is alleged that Austin Q.T. Nguyen failed to be candid with the Law Society and that such conduct is deserving of sanction.
5. On May 14, 2018, Pre-hearing Conference Chair [MU] QC granted an application to

withdraw Citation 1.

FACTS

6. In November of 2016, I had a preliminary meeting with V.N. regarding providing independent legal advice on a marriage contract.
7. When I discovered that V.N. was in a same sex relationship with another woman, I asked V.N. unprofessional and offensive questions and made unprofessional and offensive comments about her private relations with her wife.
8. I was interviewed by two Law Society Investigators on March 28, 2017. In that interview I denied that I had asked the unprofessional and offensive questions or made the unprofessional and offensive comments about V.N.'s private relations with her wife.

ADMISSION OF GUILT

9. I admit that I communicated with V.N. in a manner that was offensive or otherwise inconsistent with the proper tone of professional communication, and that such conduct is conduct deserving of sanction.
10. I admit that I failed to be candid with the Law Society investigators and that such conduct is conduct deserving of sanction.

INDEPENDENT LEGAL ADVICE

11. 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 any compulsion or duress.

DATED THE 27th DAY OF MAY, 2018

Austin Q.T. Nguyen