

**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 RUSSELL WILKINSON
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

ORDER OF THE HEARING COMMITTEE

UPON THE ISSUANCE OF CITATIONS by the Law Society of Alberta (“LSA”) to Russell Wilkinson pursuant to section 56 of the *Legal Profession Act* (the Act);

AND WHEREAS:

- a) Russell Wilkinson has executed a Statement of Admitted Facts and Admission of Guilt (the “Statement”) attached to this Order in relation to the following citations:
1. It is alleged that Russell Wilkinson failed to provide competent, conscientious, and diligent service to his client, N.B., by failing to make reasonable inquiries and to adequately confirm N.B.’s instructions given the circumstances, and that such conduct is deserving of sanction;
 2. It is alleged that Russell Wilkinson failed to provide competent, conscientious, and diligent service to his client, N.B., by failing to fully review and explain the nature and effect of each paragraph of the Enduring Power of Attorney and Personal Directive with N.B., and that such conduct is deserving of sanction;
 3. It is alleged that Russell Wilkinson failed to provide competent, conscientious, and diligent service to his client, N.B., by failing to take reasonable steps to assess N.B.’s capacity prior to execution of an Enduring Power of Attorney and a Personal Directive, and that such conduct is deserving of sanction;
 4. It is alleged that Russell Wilkinson failed to provide competent, conscientious, and diligent service to his client, N.B., by failing to take additional steps to confirm N.B.’s capacity after N.B.’s capacity had been raised as an issued by the Director of Care at N.B.’s care home, and that such conduct is deserving of sanction;
- b) Russell Wilkinson admits in the Statement that he is guilty of the above noted Citations, and that his conduct is deserving of sanction;

- c) On June 18, 2019, the Conduct Committee found the Statement acceptable, pursuant to subsection 60(2) of the Act;
- d) On July 16, 2019, the Chair of the Conduct Committee appointed a single Benchers as the Hearing Committee ("Committee") for this matter, pursuant to subsection 60(3) of the Act;
- e) Pursuant to subsection 60(4) of the Act, it is deemed to be a finding of this Committee that Russell Wilkinson's conduct is deserving of sanction;
- f) On August 28, 2019, the Committee convened a public hearing into the appropriate sanction related to the conduct of Russell Wilkinson;
- g) The LSA and Russell Wilkinson provided a joint submission on sanction for the Committee's consideration, seeking a reprimand and a fine of \$5,000;
- h) The parties have also agreed that it is reasonable for Russell Wilkinson to pay \$1,312.50 in costs in relation to this matter;
- i) The Committee has determined that the joint submission is reasonable, consistent with sanctions in similar cases, does not bring the administration of justice into disrepute and is therefore in the public interest;
- j) The Committee has accepted the joint submission on sanction, and accepted the submission with respect to the payment of costs.

IT IS HEREBY ORDERED THAT:

1. The appropriate sanction with respect to Russell Wilkinson's conduct is a reprimand and a fine of \$5,000.00.
2. The text of the reprimand will be attached to this Order as a schedule prior to the Order being published.
3. Russell Wilkinson must pay costs in the amount of \$1,312.50.
4. Russell Wilkinson must pay the fines and the costs forthwith.
5. No Notice to the Profession or Notice to the Attorney General is to be made.
6. The exhibits and this order will be available for public inspection, including the provision of copies of exhibits for a reasonable copy fee, except identifying information in relation to persons other than Russell Wilkinson will be redacted and further redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 98(3)).

Dated at Edmonton, Alberta, on August 28, 2019.

Bill Hendsbee, Bencher

IN THE MATTER OF THE *LEGAL PROFESSION ACT*
AND
IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF
RUSSELL R. WILKINSON
A MEMBER OF THE LAW SOCIETY OF ALBERTA
HEARING FILE NUMBER HE20190105
STATEMENT OF ADMITTED FACTS AND ADMISSION OF GUILT

INTRODUCTION

1. I was admitted as a member of the Law Society of Alberta on July 12, 1985.
2. I practiced in Edmonton, Alberta from 1985 to 2008, and in Spruce Grove, Alberta from 2008 to 2018.
3. My present status with the Law Society of Alberta is Retired.
4. When I last practiced, my practice comprised Matrimonial/Family (40%), Real Estate Conveyancing (30%) and Estate Planning and Administration (30%).

CITATIONS

5. On April 16, 2019, the Conduct Committee Panel referred the following conduct to a hearing:
 1. It is alleged that Russell Wilkinson failed to provide competent, conscientious, and diligent service to his client, N.B., by failing to make reasonable inquiries and to adequately confirm N.B.'s instructions given the circumstances, and that such conduct is deserving of sanction.
 2. It is alleged that Russell Wilkinson failed to provide competent, conscientious, and diligent service to his client, N.B., by failing to fully review and explain the nature

and effect of each paragraph of the Enduring Power of Attorney and Personal Directive with N.B., and that such conduct is deserving of sanction.

3. It is alleged that Russell Wilkinson failed to provide competent, conscientious, and diligent service to his client, N.B., by failing to take reasonable steps to assess N.B.'s capacity prior to execution of an Enduring Power of Attorney and a Personal Directive, and that such conduct is deserving of sanction.
4. It is alleged that Russell Wilkinson failed to provide competent, conscientious, and diligent service to his client, N.B., by failing to take additional steps to confirm N.B.'s capacity after N.B.'s capacity had been raised as an issue by the Director of Care at N.B.'s care home, and that such conduct is deserving of sanction.

FACTS

6. On February 21, 2017, I spoke with L.B. by phone. L.B. informed me that he was calling on behalf of his mother, N.B., who lived in a care home facility. I did not ask L.B. any details about why N.B. lived in a care home facility and for how long she had lived there. L.B. stated that N.B. wanted to change her Enduring Power of Attorney ("EPOA") and Personal Directive ("PD") from C.B. and R.B., two of N.B.'s sons, to L.B. and J.B., two other sons of N.B., with immediate effect.
7. L.B. informed me that the manager of N.B.'s bank, T.K., had advised N.B. to appoint a new trustee following the discovery of some suspicious transactions, specifically withdrawals, from her bank accounts. I did not contact the manager of N.B.'s bank, T.K., to verify this information.
8. I did not attempt to contact N.B. prior to drafting the EPOA and PD. I did not provide copies of the drafted EPOA and PD to N.B. ahead of our meeting on February 24, 2017.
9. During my phone call with L.B. on February 22, 2017, L.B. provided me with a list of the names of N.B.'s children.
10. On February 24, 2017, I attended the care home facility where N.B. lived. I did not meet or speak to N.B. before that date. I met N.B. alone in her room at the care home facility. I did not ask to see identification to confirm N.B.'s identity.
11. I asked N.B. to recall her birth date and the names of all of her children. N.B. gave me her birth date and the names of her children. I did not verify N.B.'s birth date with any form of

identification. I compared the names given by N.B. with the list I had received from L.B. on February 22, 2017. The names were correct. I did not ask N.B. about the relationships she had with her children.

12. I asked N.B. why she wanted to change her EPOA. N.B. stated that her bank manager had recommended she change it due to missing monies from her bank accounts. I did not ask N.B. why she was not using the same lawyer that prepared her original EPOA and PD. I did not see any copies of N.B.'s prior EPOA and PD
13. I asked N.B. who she wanted to appoint as her attorneys. She named J.B. as one of the attorneys. She could not remember the name of the second person she wanted to appoint as her attorney. I asked N.B. to go through the list of her children to jog her memory. She went through the list and remembered that L.B. was the second person she wanted to appoint as her attorney.
14. I confirmed with N.B. that the documents would revoke previous appointments and would appoint L.B. and J.B., another of her sons, to act on her behalf. I told N.B. that L.B. and J.B. would have the power to control N.B.'s finances, but failed to explain that N.B. would also continue to have power over her finances herself until such time as she lost capacity.
15. I did not go through each paragraph of the EPOA and PD with N.B. I did not ask N.B. to explain in her own words the nature and effect of the EPOA and PD. I did not explain paragraph 4.2(b) which was not in N.B.'s previous EPOA, and which stated that L.B. and J.B. could make gifts to N.B.'s children or grandchildren on special occasions, including cash gifts, in such amounts that they may decide in their absolute discretion.
16. After meeting with N.B., I spoke to D.H., Director of Care at N.B.'s care home facility in the hallway outside N.B.'s room. D.H. was aware that I was at the care home facility to sign legal documents with N.B.. D.H. and I had a brief discussion in which D.H. told me that she had reservations about N.B.'s capacity. I did not take any further steps to have N.B.'s capacity assessed after speaking to D.H.
17. Within the two weeks following the execution of the EPOA and PD, and the appointment of L.B. and J.B., L.B., J.B. and a third son of N.B., D.B., withdrew approximately \$156,000 from N.B. by having N.B. write cheques to them, leaving very little balance in N.B.'s bank accounts.

18. On March 20, 2017, following an emergency application by C.B., C.B. was appointed as N.B.'s temporary guardian and trustee.
19. On December 5, 2017, pursuant to an application by C.B., Justice [Y] ordered judgment against J.B. and D.B. for the monies withdrawn from N.B.'s account. In her judgment, Justice [Y] found that N.B. lacked capacity on February 24, 2017 to sign the EPOA, and found that I did not go far enough in the circumstances to establish that N.B. understood what she was signing and the impact on her of changing her EPOA and PD. Justice [Y] stated that I did not obtain any independent medical verification "even after being told by [D.H.] that she had concerns about capacity", and despite other red flags, such as the urgency of the matter and the fact that the initial instructions came from the children and not from N.B. Further, Justice [Y] stated that I did not counsel N.B. and "failed to take the steps required to ensure that [I] had all of the information required to advise her properly and to determine if she had the capacity to instruct [me] and to confirm that she had comprehension of what she was confirming".

ADMISSION OF FACT AND GUILT

20. I admit as facts the statements in this Statement of Admitted Facts and Admission of Guilt for the purposes of these proceedings.
21. I admit that I failed to make reasonable inquiries and to adequately confirm N.B.'s instructions given the circumstances, and that such conduct is deserving of sanction.
22. I admit that I failed to fully review and explain the nature and effect of each paragraph of the Enduring Power of Attorney and Personal Directive with N.B., and that such conduct is deserving of sanction.
23. I admit that I failed to take reasonable steps to assess N.B.'s capacity prior to execution of an Enduring Power of Attorney and a Personal Directive, and that such conduct is deserving of sanction.
24. I admit that I failed to take additional steps to confirm N.B.'s capacity after N.B.'s capacity had been raised as an issue by the Director of Care at N.B.'s care home, and that such conduct is deserving of sanction.

INDEPENDENT LEGAL ADVICE

25. 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 07 DAY OF June, 2019

"Russell Wilkinson"

Russell R. Wilkinson

Reprimand

The Hearing Guide of the Law Society of Alberta requires that Hearing Committees take a purposeful approach to sanctioning a member who has been found guilty of conduct deserving of sanction.

The fundamental purposes of sanctioning are primarily the protection of the public interest as well as the protection of the reputation and standing of the legal profession generally.

As Ms. Hansen indicated, a joint submission on sanction is to be given deference. Ms. Hansen outlined the basis for the joint submission, and I accept her submissions in that regard. I've also reviewed the case law provided, which was of assistance to me.

Mr. Wilkinson, your cooperation in proceeding with today's process helped to avoid unnecessary hearing costs as well as avoiding inconvenience and stress to the parties affected by your actions. In light of all of the circumstances, I conclude that it is in the public interest to accept the joint submission.

Mr. Wilkinson, I understand that you retired from the practice of law subsequent to the events giving rise to these sanctions; however, at the time you were an experienced lawyer, having been called to the bar in 1985. As such, you should have been aware of the high standards expected of you in dealing with your clients, particularly those in a vulnerable position, as was the case in this instance.

I note that you have no previous disciplinary record with the Law Society, which makes it unfortunate that these events took place near the conclusion of your legal career. However, as you are aware, as an independent regulator, it is crucial that the Law Society reinforce the obligation that our members have to the public we serve.

In this instance you damaged your reputation as well as the reputation of the Law Society by failing to provide your client with competent, conscientious and diligent service, and for that you are hereby reprimanded.

I am hopeful that this process has been of some benefit to you as you move forward in life, and I do wish you well in your retirement from the profession.

Thank you.