

**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 BRIAN ADAIR
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 Brian Adair pursuant to section 56 of the *Legal Profession Act* (the Act);

AND WHEREAS:

- a) The Pre-Hearing Chair approved the amendment of one of the two citations on October 9, 2019;
- b) Brian Adair signed a Statement of Admitted Facts and Admission of Guilt (the Statement, attached to this Order) in relation to his conduct on November 12, 2019;
- c) Brian Adair admits in the Statement that the conduct set out in the Statement is deserving of sanction;
- d) On December 10, 2019, the Conduct Committee found the Statement acceptable, pursuant to subsection 60(2) of the Act;
- e) On January 17, 2020, the Vice-Chair of the Conduct Committee appointed a single Bencher as the Hearing Committee (Committee) for this matter, pursuant to subsection 60(3) of the Act;
- f) Pursuant to subsection 60(4) of the Act, it is deemed to be a finding of this Committee that Brian Adair's conduct is deserving of sanction;
- g) On February 28, 2020, the Committee convened a public hearing into the appropriate sanction related to the conduct of Brian Adair;
- h) The LSA and counsel for Brian Adair have provided a joint submission on sanction for the Committee's consideration, seeking a reprimand;
- i) The parties have also agreed that it is reasonable for Brian Adair to pay \$1,443.75 in costs in relation to this matter;

- j) 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;
- k) 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 Brian Adair's conduct is a reprimand, which was delivered orally by the Committee to Brian Adair.
2. The text of the reprimand will be attached to this Order as a schedule prior to the Order being published.
3. Brian Adair must pay costs in the amount of \$1,443.75.
4. The costs of \$1,443.75 are payable by March 31, 2020.
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 that identifying information in relation to persons other than Brian Adair will be redacted and further redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 98(3)).

Dated at Calgary, Alberta, on February 28, 2020.

Stacy Petriuk

IN THE MATTER OF THE *LEGAL PROFESSION ACT*
-AND-
IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF
BRIAN A. ADAIR
A MEMBER OF THE LAW SOCIETY OF ALBERTA
HEARING FILE NUMBER HE20190077

STATEMENT OF ADMITTED FACTS AND ADMISSION OF GUILT

INTRODUCTION

1. I was admitted as a member of the Law Society of Alberta on April 30, 1980.
2. My present status with the Law Society of Alberta is Active/Practising.
3. I am a sole practitioner in Red Deer, Alberta practicing primarily in the area of Matrimonial and Family law.

CITATIONS

4. On March 19, 2019, the Conduct Committee panel referred the following conduct to a hearing:
 1. It is alleged that Brian A. Adair failed to provide competent, conscientious & diligent service to his client D.M. by failing to complete D.M.'s divorce in a timely manner and that such conduct is deserving of sanction; and
 2. It is alleged that Brian A. Adair withdrew funds from his client's trust account to pay for legal services that had not actually been provided contrary to the Rules and that such conduct is deserving of sanction.
5. On October 9, 2019, the Pre-Hearing Chair [DS], QC approved the amendment of citation 2 to read:

It is alleged that Brian A. Adair breached Rule 119.21(4) of the Rules of the Law Society of Alberta and that such conduct is deserving of sanction.

FACTS

6. On November 7, 2003, D.M. retained me to complete her divorce and division of matrimonial property. G.B. was counsel for C.A., D.M.'s spouse.

7. In November of 2003 I provided my assistant with a handwritten Statement of Claim for Divorce, Divorce Judgment and Corollary Relief Order, and draft Separation and Property Agreement and instructed her to draft the following:
 1. Agreement
 2. Consent Judgement for Divorce
 3. Divorce
 4. Dower Release
 5. Transfer of her ½ interest to H
8. On December 1, 2003, I issued an interim account to D.M. which included the following description of services provided (the “December 1st account”):

To filing of the Statement of Claim for Divorce at the Court House
9. On December 2, 2003, the December 1st account was paid from the funds held in trust.
10. The Statement of Claim for Divorce was not printed out or filed at the time of the December 1, 2003 account. The account contained no disbursement for filing the Statement of Claim for Divorce. The account as rendered was incorrect in referring to the Statement of Claim for Divorce having been filed and therefore was a breach of Rule 119.21(4) of the Rules of the Law Society of Alberta.
11. In January 2004, the Separation Agreement and Transfer of Land were completed and G.B. provided a trust cheque for D.M.’s payout pursuant to that agreement.
12. On January 21, 2004, I wrote to D.M., enclosing the following:
 1. Her copy of the executed Separation Agreement
 2. A Statement of Receipts and Disbursements
 3. My account for services rendered, marked as paid in full
 4. A trust cheque for the net settlement funds payable to D.M.

The entire balance of the funds received were paid out to D.M. at her request, and an accounting was provided to D. M. in that regard.
13. Throughout the first half of 2004 the file was diarized on five occasions. On August 23 of 2004 or 2005 D. M. contacted my office to ask about finalizing her divorce. The status of the file, the retainer, or discussions between myself and D.M. were not documented on the file.

14. On September 7, 2005, I filed the Statement of Claim for Divorce and Division of Matrimonial Property (“Statement of Claim”). The Statement of Claim was not served on C.A. at that time.
15. After September 7, 2005, there were no further steps taken with regard to the divorce until 2015.
16. In 2015, D.M. contacted my office. She had discovered by search of a public registry that she was not divorced.
17. On March 26, 2015, I wrote to G.B. advising that the divorce had not been completed, and asking G.B. whether she still acted for C.A.
18. G.B. wrote back to me on April 28, 2015, confirming that she was acting for C.A. and requesting the proposed Divorce Judgment and Request for Divorce (the “Divorce Documentation”). I did not respond to that letter.
19. G.B. wrote to me again on May 22, 2015 and June 5, 2015, requesting the Divorce Documentation. I did not respond to G.B.’s letters until June 29, 2015, when I wrote to her requesting C.A.’s 2014 tax return.
20. On July 15, 2015, G.B. provided me with C.A.’s tax return.
21. On July 23, 2015, I wrote to D.M. requesting a copy of her Marriage Certificate. I also requested a \$1,200 retainer to complete the divorce.
22. On August 31, 2015, I acknowledged receipt of D.M.’s Marriage Certificate. I requested the \$1,200 retainer again.
23. On September 2, 2015 and October 13, 2015, G.B. followed up on me regarding the progress of the Divorce Documentation.
24. I did not respond to G.B.’s letters until October 28, 2015, when I wrote to say that while the Statement of Claim had been filed on September 7, 2005, it was never served on C.A. I asked G.B. to serve C.A. and provide an Affidavit of Service, as well as provide other documentation. I advised that I would provide the Divorce Documentation thereafter.
25. On November 12, 2015, I wrote to D.M. noting that the divorce was not finalized several years ago for reasons that were unknown to myself and counsel for her husband. I advised that I was working with G.B. on finalizing the divorce and that it would take several months. At this point I had decided to complete the divorce for D.M. despite not having been provided with the requested retainer funds. No further money was provided from D. M. at any time, and the divorce was completed entirely at my expense.
26. On January 4, 2016, I provided G.B. the Divorce Documentation by facsimile for her approval. On January 19, 2016, I followed up with G.B. on her approval.

27. On January 5, 2016 D.M. swore the Affidavit of the Applicant in support of the Divorce judgment.
28. On February 4 and 8, 2016, G.B. wrote to me providing her comments on the proposed Divorce Documentation and advised she would be providing updated income information for her client. On March 4, 2016, G.B. provided this information.
29. On May 10, 2016, I provided G.B. the revised Divorce Documentation by facsimile. On May 13, 2016, G.B. provided further comments. I did not provide a revised version incorporating some of her comments until July 13, 2016.
30. On July 21, 2016, G.B. noted one of her May 13, 2016 comments had not been incorporated in the revised Divorce Documentation I provided on July 13, 2016. On July 26, 2016, I provided G.B. with revised Divorce Documentation incorporating her comment.
31. G.B. executed and returned the Divorce Documentation on July 27, 2016.
32. On August 17, 2016, I wrote to G.B. advising that the Divorce Judgment had been rejected because her client's Parenting After Separation Seminar ("PASS") Certificate had not been filed. On August 25, 2016, G.B. wrote to me informing me that her client did not need to obtain a PASS certificate because the youngest child was 16 years of age.
33. On November 21, 2016, I filed the Divorce Documentation after obtaining a fiat because the Statement of Claim was not served in accordance with rule 3.26.
34. On December 6, 2016, I wrote to D.M. advising that we were still waiting for the Divorce Documentation from the Court House. I wrote to D.M. again on February 16, 2017, advising same.
35. On June 7, 2017, the Request for Divorce was rejected (the "Rejection Notice") with the following observations from the Clerk:
 1. No data sheet submitted
 2. Divorce Judgment has different income for Def. from Affidavit and deviation is not addressed in preamble of Judgment
 3. Judgment para. 5 does not comply with WP2016-07
36. On July 31, 2017, G.B. wrote to me requesting a copy of the Divorce Judgment or confirmation that I had re-submitted the application. I did not respond to this letter.
37. On August 16, 2017, G.B. called me to follow up on the rejected Divorce Judgment. Later that day, I wrote back to her, enclosing the Rejection Notice and copies of the Divorce Documentation that was submitted.

38. On August 25, 2017, G.B. wrote to me describing the deficiencies in the Divorce Documentation.
39. On August 25, 2017, I received a letter from Law Society Information Assessment Counsel regarding my client D.M.'s complaint.
40. On August 29, 2017, I wrote to G.B. by facsimile and enclosed the revised Divorce Judgment requesting her approval. On September 7, 2017, G.B. executed and returned to me the revised Divorce Judgment.
41. On September 29, 2017, G.B. emailed me to point out a further deficiency with the Divorce Judgment that she had missed.
42. On September 29, 2017, G.B. wrote to me informing me that one of the children moved in with her client. We proceeded to negotiate a Consent Order to reflect the change in parenting and child support (the "Parenting Change").
43. On October 18, 2017, I wrote to my client D.M. advising that we were ready to re-file the Divorce Judgment and needed her to come in to execute a Supplemental Affidavit.
44. On January 2, 2018, the Divorce Judgment was granted despite the deficiency noted by G.B. in her September 29th email and the Parenting Change.
45. On January [...], 2018, both parties attended court before Justice [B] regarding the Divorce Judgment. On February 9, 2018, G.B. wrote to me requesting a copy of the revised Divorce Judgment as per Justice [B]'s request.
46. On February 12, 2018, I wrote to G.B. by facsimile and enclosed the Consent Order reflecting the Parenting Change. I advised that I would re-draft and fax the Divorce Judgment soon.
47. The Amended Divorce Judgment was filed May 10, 2018.
48. On June 11, 2018, I sent my client D.M. a copy of the Amended Divorce Judgment.
49. On November 7, 2018 I was referred to mandatory Practice Management. A practice assessment of my practice occurred on January 22, 2019, and as requested by the practice assessors, I have provided a number of undertakings to take steps to improve the operation of my practice and my knowledge and competency in family law. I continue to work with the Practice Management department and to provide regular updates on my progress in fulfilling the undertakings.

ADMISSION OF FACTS AND GUILT

50. I admit as facts the statements in this Statement of Admitted Facts and Admission of Guilt for the purposes of these proceedings.
51. I admit that I failed to provide competent, conscientious and diligent service to my client, D.M. by failing to complete D.M.'s divorce in a timely manner and that such conduct is deserving of sanction.
52. I admit that I breached Rule 119.21(4) of the Rules of the Law Society of Alberta by issuing an account that contained an inaccurate item reference and that such conduct is deserving of sanction.
53. For the purposes of section 60 of the *Legal Profession Act*, I admit my guilt to the above conduct.
54. 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.

**THIS STATEMENT OF ADMITTED FACTS AND ADMISSION OF GUILT IS MADE THIS 12
DAY OF November, 2019.**

**"Brian Adair"
BRIAN A. ADAIR**

Reprimand

Mr. Adair, I am to take a purposeful approach to sanctioning a member who has been found guilty of conduct deserving of sanction, and the purpose is to protect of the best interest of the public and protection of the reputation and standing of the legal profession.

Mr. Adair, I acknowledge your cooperation with the Law Society leading up to today by agreeing to the Statement of Admitted Facts and Admission of Guilt, and the joint submission on sanction. That meant we could proceed with a single Bencher hearing, which preserves resources. Your cooperation and admissions permitted these citations to be resolved on a more efficient basis, which is not just a benefit to you sir, but also to the public and to the Law Society.

Mr. Adair, you are an experienced lawyer having practiced first in Ontario and now in Alberta since 1980, and in that time, you have no disciplinary history and you have contributed to the legal profession and the community. However, in this instance, you let your client down and you let the legal profession down. You did not serve your client in a timely, competent and conscientious manner.

This failure is exactly the kind of thing that the Law Society hopes to avoid. I know you want to avoid it in the future, and I am confident that you will avoid it in the future. I am heartened by the steps you have taken, especially in Practice Management. You know you let your client down and the legal profession down. However, you will do better in the future. It is important to learn from mistakes and your work with the practice review team has helped with that.

Mr. Adair, as a Member of the Law Society of Alberta you are expected to look at what you have done, determine how you can improve on that and move forward. Sir, I wish you all the best of luck in the future. I know you have learned from this and I know we can move forward.