

**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 LEONARD THOM
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

Hearing Committee

Grant Vogeli, QC – Chair
Kene Ilochonwu – Bencher
Carsten Jensen, QC – Former President

Appearances

Kelly Tang – Counsel for the Law Society of Alberta (LSA)
Leonard Thom – Self-represented

Hearing Date

February 22, 2022

Hearing Location

Virtual Hearing

HEARING COMMITTEE REPORT

Overview

Citations

1. The following citations were directed to hearing by a Conduct Committee Panel on November 17, 2020:
 1. It is alleged that Leonard N. Thom failed to provide legal services to the standard of a competent lawyer including performing all functions competently, conscientiously, and in a timely and diligent manner and that such conduct is deserving of sanction; and
 2. It is alleged that Leonard N. Thom failed to follow his client's instructions and that such conduct is deserving of sanction.

Background

2. On July 16, 2016, Mr. Thom was retained by Ms. C to represent her in separation and divorce proceedings. Although Mr. Thom effectively assisted Ms. C in obtaining

parenting and support orders, in the negotiation of the division of matrimonial property he admitted to not properly responding to client communications and not fully following Ms. C's instructions.

3. On September 6, 2018, Ms. C made a complaint to the LSA about Mr. Thom. On October 30, 2018, Mr. Thom was referred to Practice Management pursuant to section 53(4)(b)(i) of the *Legal Profession Act* (the *Act*). A practice assessment was conducted on January 21, 2019, and a report by Practice Management was sent to the Conduct Committee on April 25, 2019.
4. Ms. C sent additional complaint materials to the LSA in January, February and March 2019. Mr. Thom responded to the additional materials on March 25, 2019.
5. The LSA sent Mr. Thom and Ms. C update letters on April 4, 2019, November 6, 2019, March 4, 2020, June 15, 2020, and September 25, 2020. On November 17, 2020, the complaint was reviewed by the Conduct Committee and referred to a hearing. Mr. Thom was served with the citations on November 25, 2020, and with the LSA disclosure package on January 29, 2021. Six pre-hearing conferences were held on February 17, 2021, April 22, 2021, June 17, 2021, July 15, 2021, October 14, 2021, and November 18, 2021.
6. The Statement of Admitted Facts, Exhibits and Admissions of Guilt (Agreed Statement) was signed by Mr. Thom on December 30, 2021. The hearing was initially scheduled for February 2, 2022 and was rescheduled to February 22, 2022 at Mr. Thom's request.
7. On February 22, 2022, the Hearing Committee (Committee) convened a hearing into the conduct of Mr. Thom in relation to the two citations noted above.
8. After reviewing all of the evidence and exhibits and hearing the testimony and arguments of the LSA and Mr. Thom, for the reasons set out below, the Committee found Mr. Thom guilty of conduct deserving of sanction on both citations pursuant to section 71 of the *Act*.
9. The Committee also found that the appropriate sanction is a two-week suspension. In accordance with section 72 of the *Act*, the Committee ordered that Mr. Thom be suspended for two weeks starting on February 25, 2022.
10. In addition, pursuant to section 72(2) of the *Act*, the Committee ordered that Mr. Thom pay costs of \$2,388.75 by March 31, 2022.

Preliminary Matters

11. There were no objections to the constitution of the Committee or its jurisdiction and a private hearing was not requested. Therefore, a public hearing into Mr. Thom's conduct proceeded on February 22, 2022.

Agreed Statement / Background

12. Mr. Thom and the LSA entered into a detailed Agreed Statement that included 25 exhibits, all of which was available to the Committee in advance of the hearing, which was entered into the record at the hearing, and which the Committee reviewed carefully. The Agreed Statement included details about Mr. Thom's failure to respond to communications from Ms. C, not following client instructions, not providing documentation to opposing counsel and not responding to communications from opposing counsel.
13. More specifically, Ms. C retained Mr. Thom to assist in her separation and divorce proceedings. Ms. C and her former husband jointly owned two properties, their matrimonial home and a rental condominium property, both of which had mortgages. Pursuant to a negotiated agreement, Ms. C stayed in the matrimonial home, and her former husband was to reside in the condominium. Ms. C expressed concerns that her former husband would not fulfill his financial obligations to make payments on the condominium mortgage, and that this would damage her credit. As a result, she wanted the condominium sold, or for sole ownership (with new financing) to go to her former husband.
14. In the end result, the condominium was in fact lost to foreclosure while Ms. C was still on title, and she was named in the Statement of Claim filed by the lender.
15. In the meantime, Mr. Thom had failed to respond to numerous telephone messages and emails from Ms. C, and he did not follow her express instructions to set the matter for trial, which instructions were repeated on several occasions.

Oral Evidence

16. The LSA called Ms. C as a witness. Ms. C testified about the history of Mr. Thom's representation of her and his failure to respond to her communications and follow her instructions. Specifically, Ms. C testified that Mr. Thom failed to follow her instructions to set her case down for trial and to send a mortgage pre-approval document to opposing counsel.

17. Ms. C testified that Mr. Thom's conduct made her feel frustrated, helpless, traumatized and not respected. It shook her confidence in lawyers generally. Ms. C was very stressed and had to take a leave from her employment.

Submissions by Counsel for the LSA

18. Counsel for the LSA referred the Committee to four comparable cases involving two- to four-week suspensions. She pointed out that Mr. Thom committed serious breaches that undermined Ms. C's trust and contributed to her high stress. She also pointed out the mitigating factors of Mr. Thom cooperating with the LSA and pleading guilty and collaborating on the Agreed Statement.

Submissions by Mr. Thom

19. Mr. Thom apologized to Ms. C and stated that he regretted his actions. He pointed out that his errors and omissions did not cause all of Ms. C's problems.
20. Mr. Thom argued that he should not be suspended and that he should only receive a reprimand and pay costs of the hearing. He argued that his sanction should be reduced because of delays by the LSA in moving the complaint forward. He also argued that a suspension would serve no meaningful purpose because he is retired.

Analysis and Decision on Sanction

21. Mr. Thom's conduct was clearly inappropriate and it caused significant consequences to his client. Mr. Thom argued that his conduct did not cause all of Ms. C's problems, more specifically that the condominium might well have been lost to foreclosure in any event. This is undoubtedly true. However, Ms. C retained Mr. Thom to represent her, which includes providing her with good and competent advice, being responsive to her, following her instructions, and communicating in a timely way with opposing counsel. He has admitted to significant failures in this regard, and the harms suffered by Ms. C happened thereafter. It is entirely reasonable for her to be concerned that the harms were caused or contributed to by Mr. Thom's conduct. The Agreed Statement and Ms. C's oral evidence make clear that she suffered significant anxiety and stress as a result of that conduct, as well as a loss of confidence in the legal profession.
22. A suspension might be viewed as having no real impact on Mr. Thom because he is retired. Alternatively, as suggested by Mr. Thom, a suspension might be viewed as being purely punitive because of his retired status. Nevertheless, the Committee determined that a suspension of two weeks was appropriate for the following reasons:
 - (a) comparative cases support a suspension;

- (b) if Mr. Thom was a practicing lawyer the Committee would have imposed a suspension;
 - (c) Mr. Thom's conduct caused significant stress and harm to his client;
 - (d) a member of the LSA who holds inactive member (retired) status is still a member of the LSA, with certain rights and privileges, and that status can be distinguished from a former member who has, for example, resigned¹ – so a suspension is meaningful for a retired member; and
 - (e) a suspension requires a Notice to the Profession and that will provide general deterrence to the profession.
23. Mr. Thom argued that his sanction should be reduced due to delay by the LSA in dealing with the complaint. It is correct that the complaint was not dealt with as quickly as it could have been but the record does not disclose that Mr. Thom suffered any prejudice as a result of the delay. In addition, some of the delay can be explained by another complaint against Mr. Thom being dealt with at the same time, the COVID-19 pandemic, and further time that was spent back and forth between Mr. Thom and the LSA in coming to an agreement on facts. Therefore, the Committee determined that the sanction should not be reduced due to delay.

Decision

24. The Committee finds in accordance with the Agreed Statement that Mr. Thom:
- (a) failed to provide legal services to the standard of a competent lawyer including performing all functions competently, conscientiously, and in a timely and diligent manner and that such conduct is deserving of sanction; and
 - (b) failed to follow his client's instructions and that such conduct is deserving of sanction.
25. The Committee finds that the citations have been proven on a balance of probabilities and that Mr. Thom's conduct is deserving of sanction.

Concluding Matters

26. As stated above, Mr. Thom has been found guilty of the two citations, is suspended for two weeks starting on February 25, 2022, and is ordered to pay costs of \$2,388.75 by March 31, 2022.

¹ Rules 68 and 69 of the Rules of the LSA.

27. The exhibits, other hearing materials, and this report 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 Mr. Thom will be redacted and further redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 98(3)).

Dated March 16, 2022.

Grant Vogeli, QC

Kene Ilochonwu

Carsten Jensen, QC