

**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 TERESINA BONTORIN
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

Hearing Committee

Deanna Steblyk, QC – Chair
Catherine Workun, QC – Adjudicator
Anthony Young, QC – Adjudicator

Appearances

Karl Seidenz – Counsel for the Law Society of Alberta (LSA)
Gavin Price – Counsel for Teresina Bontorin

Hearing Date

April 23, 2021

Hearing Location

Virtual Hearing

HEARING COMMITTEE REPORT

Overview

1. Teresina Bontorin is a lawyer who, at all material times, practiced in the areas of estate planning and administration, real estate conveyancing, and corporate/commercial law in Alberta. She was admitted to the LSA on June 26, 1992, and has been a sole practitioner in Calgary since 2005.
2. By way of a Statement of Admitted Facts, Exhibits, and Admissions of Guilt (Statement), Ms. Bontorin admitted her guilt in respect of seven citations relating to two separate complaints.
3. On April 23, 2021, the Hearing Committee (Committee) convened a hearing into Ms. Bontorin's conduct. The Committee accepted the admissions in the Statement and imposed the sanctions jointly recommended by the parties: a one-week suspension and a fine of \$2500.

4. In addition, pursuant to section 72(2) of the *Legal Profession Act* (the “Act”) and the joint submission of the parties, the Committee ordered Ms. Bontorin to pay the LSA \$5000 in costs.
5. This report provides the Committee's reasons for the foregoing orders.

Preliminary Matters

6. There were no objections to the constitution of the Committee or its jurisdiction, and a private hearing was not requested. Accordingly, the Committee was satisfied that jurisdiction had been established, and a public hearing into Ms. Bontorin's conduct proceeded.
7. There were no other preliminary matters raised.

Statement of Admitted Facts, Exhibits, and Admissions of Guilt

8. A joint application to amend one of the original seven citations was granted by a Vice-Chair of the LSA Conduct Committee on November 18, 2020. Following the amendment, the citations admitted by Ms. Bontorin were as follows:

Complaint #1:

- 1) It is alleged that Teresina Bontorin failed to meet the conflict of interest requirements of the Code of Conduct in acting for both sides of a transaction and that such conduct is deserving of sanction;
- 2) It is alleged that Teresina Bontorin failed to withdraw after a conflict arose between NN and JM and that such conduct is deserving of sanction;
- 3) It is alleged that Teresina Bontorin acted without integrity by taking steps to effect the transfer of the corporation knowing that NN would object and that such conduct is deserving of sanction; and
- 4) It is alleged that Teresina Bontorin failed to be candid in correspondence to NN dated July 10, 2018 and that such conduct is deserving of sanction.

Complaint #2:

- 5) It is alleged that Teresina M. Bontorin breached a trust condition by failing to provide a current tax certificate and that such conduct is deserving of sanction;
 - 6) It is alleged that Teresina M. Bontorin failed to satisfy other trust conditions within a reasonable period of time and that such conduct is deserving of sanction; and
 - 7) It is alleged that Teresina M. Bontorin failed to respond promptly to opposing counsel and that such conduct is deserving of sanction.
9. For an admission of guilt to be acceptable, the admission must have the following elements:

- 1) the admission must be made voluntarily and free of undue coercion;
 - 2) the lawyer must unequivocally admit guilt to the essential elements of the citations;
 - 3) the lawyer must understand the nature and consequences of the admission; and
 - 4) the lawyer must understand that the Committee is not bound by any submission advanced jointly by the lawyer and the LSA.
10. As mentioned, at the hearing on April 23, 2021, the Committee considered and accepted the Statement as being in the appropriate form pursuant to section 60 of the *Act*. Since the admissions in the Statement were accepted, each admission was deemed to be a finding of this Committee that Ms. Bontorin's conduct was conduct deserving of sanction.
11. The Statement was entered into the hearing record as an exhibit. It set out the following background and admitted facts.

Complaint #1

12. On June 15, 2015, Ms. Bontorin incorporated a numbered company (NumberCo) on behalf of NN, her niece. NN's mother is the sister of Ms. Bontorin's husband, JM.
13. NN was the sole director and shareholder of NumberCo. The Articles of Incorporation for NumberCo indicated that no shares could be transferred without the approval of all of the directors of the corporation by resolution in writing. Ms. Bontorin's office was the registered and records address for NumberCo.
14. NN got married in August 2017. In October 2017, JM provided NN's mother \$4000 in cash to help pay for the wedding. He also provided \$1000 to NumberCo to assist with expenses.
15. At NN's request, on December 12, 2017, Ms. Bontorin gave NN NumberCo's Minute Book. After that date, Ms. Bontorin no longer had the Minute Book in her possession.
16. On December 15, 2017, NN gifted NumberCo to JM. She emailed her accountant and Ms. Bontorin on December 20, 2017 to let them know she was transferring NumberCo to JM and that Ms. Bontorin could conduct the transfer. However, as Ms. Bontorin determined that the transfer was not urgent in the circumstances, she had it diarized for July 2018, when NumberCo's Annual Return was due to be filed.
17. On March 21, 2018, NN gave the Minute Book to JM. After that, Ms. Bontorin did not know where it was kept.
18. On May 23, 2018, an incident occurred at Ms. Bontorin's home between JM and his sister, NN's mother, which appears to have caused a falling out in the family.

19. On July 4, 2018, NN wrote to Ms. Bontorin and requested the return of NumberCo's Minute Book and Corporate Seal. Although Ms. Bontorin relayed the request to JM, JM did not provide the Minute Book to either NN or Ms. Bontorin.
20. On July 5, 2018, Ms. Bontorin's assistant prepared NumberCo's Annual Return based on Ms. Bontorin's instructions. The Annual Return purported to add a corporation named "PPI" as a shareholder. It also attached a Notice of Change of Directors that purported to change the director of the company from NN to JM effective January 3, 2018, and indicated that JM was now NumberCo's authorized representative.
21. As a result, as of July 10, 2018, JM was listed as sole director of NumberCo, both PPI and NN were listed as owners of 100% of NumberCo's shares, and Ms. Bontorin's office was still listed as the registered and records address. None of the changes had been authorized by NN or recorded in NumberCo's Minute Book.
22. On July 10, 2018, Ms. Bontorin responded to NN's letter of July 4, 2018. Ms. Bontorin:
 - 1) reminded NN that she (Ms. Bontorin) gave her (NN) NumberCo's Minute Book on December 12, 2017, which NN subsequently gave to JM on March 21, 2018;
 - 2) reminded NN that she (NN) had gifted NumberCo to JM on December 15, 2017, and enclosed both a copy of a card NN had sent to JM referring to the gift, and a copy of NN's December 20, 2017 email referring to the gift;
 - 3) stated, "[t]he paperwork to transfer the shares to your uncle was completed as per your instructions";
 - 4) reminded NN that on the same day NN gave the Minute Book to JM, NN had reiterated her instructions to Ms. Bontorin that she wanted to give NumberCo to JM and that her shares should be transferred to him;
 - 5) reminded NN that NumberCo did not have a Corporate Seal;
 - 6) indicated that NN no longer had an interest in NumberCo, and as she was no longer an officer, director, or shareholder, she was not entitled to the Minute Book; and
 - 7) offered on behalf of JM that if NN's mother repaid him the \$4000 he had provided for NN's wedding expenses and NN repaid the \$1000 he had provided to NumberCo, JM would consider giving NumberCo back to NN.
23. NN responded to Ms. Bontorin's letter the next day, July 11, 2018, and pointed out that she was still listed as a shareholder on NumberCo's corporate registration documents.

On July 12, 2018, Ms. Bontorin's assistant followed up with a registry agent about the change in shareholders. On September 19, 2018, the agent confirmed that NN had been removed as a shareholder, leaving JM as NumberCo's sole director and PPI as its sole shareholder.

24. NN submitted a complaint about Ms. Bontorin to the LSA on July 11, 2018, alleging that Ms. Bontorin had acted in a conflict of interest.
25. In the Statement, Ms. Bontorin admitted that:
 - 1) between December 20, 2017 and July 4, 2018, she breached the requirements of section 3.4-5(a) to (d) of the LSA Code of Conduct by acting jointly for NN and JM;
 - 2) after receiving NN's letter of July 4, 2018, she was in a conflict of interest and breached section 3.4-1 of the Code of Conduct by failing to withdraw immediately from her joint representation of NN and JM;
 - 3) she breached the requirements of section 2.1-1 of the Code of Conduct by acting without integrity in preferring the interests of JM over those of NN and in:
 - i. failing to comply with NumberCo's Articles of Incorporation, which required a written resolution of the director, NN, before its shares could be transferred;
 - ii. failing to obtain a corporate resolution to appoint JM as a director of NumberCo and, concurrently, failing to obtain NN's formal resignation as a director; and
 - iii. filing documents with Alberta Corporate Registry despite (i) and (ii) above; and
 - 4) she breached section 3.2-3 of the Code of Conduct by failing to be honest and candid in her July 10, 2018 letter to NN concerning the status of the paperwork necessary to transfer NumberCo to JM, and the steps she took to effect the transfer after receiving NN's demand for the Minute Book on July 4, 2018 and NN's subsequent response of July 11, 2018.

Complaint #2

26. JS, a lawyer, represented a lender in a refinancing and construction loan transaction relating to the development of a real estate project in Edmonton. Ms. Bontorin represented the borrower and the guarantors for the borrower in the transaction, which involved placing a mortgage on the title to the property in favour of the lender.

27. On June 12, 2018, JS forwarded the first mortgage advance cheque to Ms. Bontorin, along with a cover letter that placed her under various trust conditions. The trust conditions included that Ms. Bontorin provide, within a reasonable period, a current tax certificate showing that the property taxes had been paid.
28. On July 16, 2018, JS forwarded the second mortgage advance cheque to Ms. Bontorin, along with a cover letter that placed Ms. Bontorin under the same trust condition to provide, within a reasonable period, a current tax certificate showing that the property taxes had been paid.
29. On January 21, 2019, JS's office sent an email to Ms. Bontorin following up on the outstanding trust conditions, including the trust condition concerning the tax certificate. Ms. Bontorin did not respond to that email.
30. On March 25, 2019, JS's office sent another email to Ms. Bontorin following up on the trust conditions. On March 29, 2019, JS received a letter from Ms. Bontorin dated March 27, 2019. While Ms. Bontorin provided documents with that letter satisfying several of the other outstanding trust conditions, she indicated that she was currently unable to provide a clear tax certificate and would continue to follow up with her client.
31. JS emailed and called Ms. Bontorin on March 29, 2019 to discuss the breach of the trust condition. Ms. Bontorin returned the call on April 1, 2019 and admitted that she had made a mistake releasing the mortgage funds without confirmation that the property taxes had been paid. As of that date, \$68,940.69 in taxes and penalties was outstanding. Ms. Bontorin advised JS that as she did not have sufficient funds to pay the arrears, she would self-report to the LSA and the Alberta Lawyers Indemnity Association (ALIA).
32. JS submitted a complaint about Ms. Bontorin to the LSA on April 8, 2019, alleging that Ms. Bontorin failed to comply with trust conditions.
33. In her response to the LSA concerning JS's complaint, Ms. Bontorin explained that she had not attended to payment of the property taxes when she received the first mortgage advance on June 12, 2018 because the taxes were not due until June 30, 2018, and because her client had advised her they would either pay the taxes directly in a lump sum or sign up for the City of Edmonton's tax installment plan.
34. In the Statement, Ms. Bontorin admitted that:
 - 1) she breached the requirements of section 7.2-14 of the Code of Conduct by failing to honour the trust condition concerning the property tax payment, and by failing to complete the other trust conditions for a period of nine months; and

- 2) she breached the requirements of section 7.2-7 of the Code of Conduct by failing to respond with reasonable promptness to JS's January 21, 2019 email inquiring about the outstanding trust conditions.

Additional Relevant Facts

35. Through June, July, and August 2018, Ms. Bontorin spent extensive time caring for her elderly, terminally ill father, who passed away from cancer on August 17, 2018. On July 5 and 6, 2018, she was only in her office briefly, and did not attend the office at all on July 9, 10, and 11, 2018.
36. In her written responses to the LSA with respect to NN's complaint, Ms. Bontorin acknowledged that she should have done things differently, expressed her regret, and gave her assurance that it would not happen again.
37. In her written responses to the LSA with respect to JS's complaint, Ms. Bontorin acknowledged her mistake and that she had no excuse for failing to follow up with respect to the tax payment.
38. Ms. Bontorin was found guilty of conduct deserving of sanction by the LSA on one previous occasion. On June 10, 2014, she was found guilty of failing to serve her client conscientiously, and failing to attend to a personal purchase of real property in the manner expected of a lawyer experienced in real estate transactions. Further to a joint submission on sanction, she was reprimanded and ordered to pay a fine of \$5000. She was also ordered to pay the actual costs of the hearing.
39. In April 2019, Ms. Bontorin was referred to the Practice Management department of the LSA. She was cooperative through the Practice Management process and appears to have benefited from it. While her file was closed on September 2, 2020, she agreed to remain under an undertaking that restricts her to practicing in the areas of corporate, commercial, real estate, and wills and estates.

Joint Submission as to Sanction

40. As mentioned, the parties made a joint submission on sanction and costs. They agreed that the appropriate sanction was a one-week suspension to be served within three months of the date of the hearing, plus a fine of \$2500 to be paid within one year of the date of the hearing. In addition, they agreed that Ms. Bontorin should be ordered to pay \$5000 in costs within one year of the date of the hearing.

LSA Submissions

41. With reference to the LSA's Pre-Hearing and Hearing Guideline (April 2021) (Guideline), LSA counsel reviewed the purposes of sanctioning and some of the factors for

consideration in determining an appropriate sanction. In his view, the factors with particular relevance to this matter were the degree to which Ms. Bontorin's misconduct constituted a risk to the public and to the reputation of the legal profession; the importance of compliance with undertakings and trust conditions; the harm caused to the affected clients, the public, the profession, and the administration of justice; and the number of incidents involved (here, two separate complaints).

42. In addition, LSA counsel pointed out that Ms. Bontorin's conduct vis-à-vis NN was intentional, and involved a lapse in integrity. Other aggravating factors were also noted, including Ms. Bontorin's prior discipline history and the length of time she has been in practice, which suggests she should have known better. However, LSA counsel acknowledged the mitigating effect of her admissions, her expression of remorse, and her high level of cooperation with LSA staff throughout these proceedings.
43. LSA counsel also addressed the fact that the sanction proposal in this matter was jointly proposed by the parties, and that the law indicates a joint submission should be shown deference by this Committee unless the Committee finds it to be contrary to the public interest.
44. Finally, while LSA counsel conceded that he had been unable to find much in the way of prior decisions involving comparable misconduct and circumstances that might suggest the appropriate range for sanctions in this matter, he cited several for our consideration, including *Law Society of Alberta v. Belzil*, 2009 LSA 27; *Law Society of Alberta v. Botan*, 2016 ABLs 8; *Law Society of Alberta v. Bourdon*, 2015 ABLs 18; *Law Society of Alberta v. Herman*, 2013 ABLs 7; *Law Society of Alberta v. Johnston*, 2020 ABLs 18; *Law Society of Alberta v. Lacourciere*, 2017 ABLs 6; *Law Society of Alberta v. LeDrew*, 2020 ABLs 5; and *Law Society of Alberta v. Nguyen*, 2013 ABLs 15.

Ms. Bontorin's Submissions

45. In his submissions, Ms. Bontorin's counsel emphasized the difficult circumstances in Ms. Bontorin's life at the time most of the events referenced in the citations occurred. He noted that Ms. Bontorin was attending to her father and therefore was not in the office much in those months, and was not in a good frame of mind. In particular, her father learned that his cancer was terminal on July 4, 2018, the same day NN sent her correspondence requesting the return of NumberCo's Minute Book and Corporate Seal.
46. Ms. Bontorin's counsel also pointed to her cooperation and success with the LSA's Practice Management process, which resulted in the positive report included with the Statement in the hearing exhibits. He further argued that future risk has been addressed at least in part by the restrictions imposed with respect to her areas of practice. In his submission, if it were not for Ms. Bontorin's past discipline record, lighter sanctions in this matter would be appropriate in the circumstances.

Analysis and Decision on Sanction

47. Hearing committees are not bound to accept joint submissions as to sanction. However, as LSA counsel pointed out, such submissions carry significant weight, and the case law indicates that they should be accepted unless they are demonstrably unfit and contrary to the public interest. In *Law Society of Alberta v. Lewellyn*, 2018 ABLS 11, the hearing committee described this as a "high standard" (at paragraph 11) and made the following observations (at paragraph 10):

The Committee is not bound by joint submissions on sanctions. However, the Committee is required to give serious consideration to jointly tendered submissions, and accept, unless they are found to be unfit, unreasonable, contrary to the public interest, or there are good and cogent reasons for rejecting the joint submissions.

48. This is in accordance with the leading case on joint submissions, *R. v. Anthony-Cook*, 2016 SCC 43. In that decision, the Supreme Court of Canada held that a joint submission should be accepted unless the proposed sanction "would bring the administration of justice into disrepute or is otherwise contrary to the public interest" (at paragraph 32). *Anthony-Cook* is a criminal law case, but it is commonly applied in the regulatory context, including in LSA conduct matters.
49. The Committee is satisfied that the jointly recommended sanction in this matter is both reasonable and appropriate in the circumstances. We agreed with the submissions of both parties concerning the applicable factors we should take into account in assessing their proposal.
50. Ms. Bontorin's misconduct was significant. Integrity and strict compliance with undertakings and trust conditions are critical to the public's trust in members of the legal profession. They are also critical to the proper functioning of the justice system. Two complaints were at issue in this hearing, and they involved several separate instances of misconduct that took place over an extended period of time. One of the two complaints involved intentional misrepresentation of the facts, while the other involved a serious lapse in attention to detail. Ms. Bontorin is an experienced lawyer who knows that better is expected of her.
51. That said, the Committee agrees with the parties that Ms. Bontorin's remorse, acceptance of responsibility, and extensive cooperation are mitigating factors that should be taken into consideration. We also accept the mitigating effect of her personal circumstances in the summer of 2018, which no doubt affected her judgment and her ability to concentrate on her practice. Further, we are satisfied that future risk to the public is attenuated by Ms. Bontorin's successful interactions with the LSA's Practice Management group and the current limitations on her areas of practice.

52. According to paragraph 187 of the Guideline, the "[f]undamental purposes of sanctioning are to ensure the public is protected from acts of professional misconduct and to protect the public's confidence in the integrity of the profession". Sanctions should be sufficient to denounce the misconduct at issue, and to deter future misconduct by both the specific lawyer facing the allegations and by other members of the profession. We are of the view that the proposed sanction will meet these goals. It is sufficient enough to have a deterrent effect, yet it is not disproportionately severe in the circumstances.
53. Although, unsurprisingly, the prior decisions cited by LSA counsel are not on all fours with this case, they did provide us with an idea of the sanctions applied in the past in situations involving at least somewhat similar misconduct – including acting in a conflict of interest, acting without integrity, failures to comply with trust conditions, and failing to respond promptly to another lawyer. The sanctions imposed ranged from reprimands, fines from \$2000 to \$10,000, a short suspension, and, in the most serious matter, *Johnston*, acceptance of the lawyer's resignation from practice.
54. The jointly proposed sanction in this case is within the range suggested by these decisions, which satisfies the Committee that the proposal is proportionate. At paragraph 193, the Guideline indicates that a "[s]uspension is appropriate for the denunciation of serious or repeated misconduct", and that the aggravating and mitigating factors particular to the case should be considered in determining the length of the suspension. Given Ms. Bontorin's prior discipline, a short suspension in combination with a moderate fine is an appropriate "step up".
55. For the foregoing reasons and in accordance with section 72 of the *Act*, the Committee accepted the joint submission of the parties and ordered that Ms. Bontorin be suspended for one week (the suspension to be served within three months of the date of the hearing), and that she pay a fine of \$2500 within one year of the date of the hearing. The Committee found the LSA's Estimated Statement of Costs reasonable, and therefore also ordered Ms. Bontorin to pay the LSA \$5000 in costs within one year of the date of the hearing, as jointly recommended by the parties.

Concluding Matters

56. As indicated, on April 23, 2021, the Committee accepted the jointly-proposed sanction and costs order. Accordingly, pursuant to section 72 of the *Act*, Ms. Bontorin:
- 1) is suspended for one week, to be served within three months of April 23, 2021;
 - 2) must pay the LSA a fine of \$2500 within one year of April 23, 2021; and
 - 3) must pay the LSA \$5000 in costs within one year of April 23, 2021.

57. A Notice to the Profession shall be issued, as required by section 85 of the *Act* in the circumstances of a suspension.
58. There shall be no referral to the Minister of Justice and Solicitor General under section 78(6) of the *Act*.
59. 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 Ms. Bontorin will be redacted and further redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 98(3) of the Rules of the LSA).

Dated at Calgary, Alberta, May 14, 2021.

Deanna Steblyk, QC - Chair

Catherine Workun, QC

Anthony Young, QC