

**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 JAY C. P. DAMEN
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

Hearing Committee

Bud Melnyk, QC – Chair
Barbara McKinley – Lay Bencher
Grant Vogeli, QC – Bencher

Appearances

Kelly Tang – Counsel for the Law Society of Alberta (LSA)
John Craig, QC – Counsel for Jay C. P. Damen

Hearing Dates

March 2, 2022

Hearing Location

Virtual Hearing

HEARING COMMITTEE REPORT

Overview

1. The following citation was directed to hearing by the Conduct Committee Panel on June 15, 2021:

It is alleged Jay C. P. Damen acted in an inappropriate and unprofessional manner with a client, and that such conduct is deserving of sanction.

2. Mr. Damen has been a lawyer since 1992 and is currently practicing family law in Calgary. Mr. Damen was retained by [X.Y.], a single thirty-two year old mother, on December 19, 2019 to assist in a contested family law proceeding. In a text message sent to Mr. Damen on December 20, 2019 [X.Y.] disclosed that she was suffering from post traumatic stress disorder.
3. Following his retainment, Mr. Damen engaged in non-lawyer related matters with [X.Y.] as follows:

- (a) At the initial meeting, Mr. Damen paid [X.Y.] a compliment about her hair colour. At this same meeting, Mr. Damen, due to his colour blindness, “hired” [X.Y.] to attend at his home to pair his suits with his shirts and ties. [X.Y.] attended at Mr. Damen’s home on December 21, 2019. Mr. Damen answered the door in jeans and slippers, without his shirt, since he had not finished dressing, but did not want to leave [X.Y.] in the cold. The visit ended with an intimate encounter involving kissing and touching, which was initiated by Mr. Damen.
- (b) After this initial encounter on December 21, 2019, Mr. Damen and [X.Y.] engaged in a personal relationship for about two weeks. This included intimate and personal text messages and other forms of communication such as Facetime and telephone calls.
- (c) On December 30, 2019, [X.Y.] offered to sell Mr. Damen her vehicle and he agreed. Mr. Damen provided [X.Y.] with Kijiji postings in support of the purchase price, but he did not retain any of those records.
- (d) [X.Y.] in her complaint indicated that she participated in the personal relationship since she was worried that Mr. Damen would stop providing legal services. However, there is no evidence to suggest that Mr. Damen in fact stopped working on [X.Y.]’s file or that the relationship was other than consensual.

Preliminary Matters

- 4. There were no objections to the constitution of the Hearing Committee (Committee) or its jurisdiction, and a private hearing was not requested.
- 5. The jurisdiction of the Committee was established by Exhibits 1, 2, 3 and 4, consisting of the Revised Letter of Appointment of the Committee, the Notice to Attend to Mr. Damen, the Certificate of Status of Mr. Damen with the LSA and the Letter of Exercise of Discretion.

Statement of Admitted Facts and Admission of Guilt

- 6. A Statement of Admitted Facts and Admission of Guilt (Statement) was tendered into evidence. The Committee found the Statement acceptable. Accordingly, pursuant to section 60(4) of the *Legal Profession Act (Act)*, it is deemed to be a finding of this Committee that Mr. Damen’s conduct is deserving of sanction under section 49 of the *Act* in relation to the following citation:

It is alleged that Jay C. P. Damen acted in an inappropriate and unprofessional manner with a client, and that such conduct is deserving of sanction

- 7. The particulars admitted by Mr. Damen in the Statement are as follows:

- (a) He exercised poor judgment in his dealings with [X.Y.] and breached the boundaries of the solicitor-client relationship.
- (b) As family law legal counsel for [X.Y.], Mr. Damen was in position of power.
- (c) Mr. Damen failed to advise [X.Y.] to obtain independent legal advice prior to the sale of [X.Y.]'s car to Mr. Damen and he failed to retain records to confirm that the transaction was fair and reasonable.

Submissions on Sanction

- 8. In view of the Statement the Hearing proceeded to a sanctioning phase.
- 9. There was a joint submission by the LSA and Mr. Damen for the following sanction:
 - (a) That Mr. Damen will attend and complete a three-day “Professional Boundaries and Ethics” course offered by PBI Education, at his own expense, to be completed by June 30, 2022;
 - (b) A reprimand; and
 - (c) Costs.
- 10. In support of the joint submission, LSA counsel provided the following decisions:
 - (a) *Law Society of Alberta v. Nguyen*, 2019 ABLs 13;
 - (b) *Law Society of Alberta v. Sparling*, 2014 ABLs 11;
 - (c) *Law Society of Alberta v. Jeffrey Plantje*, 2007 LSA 22;
 - (d) *Law Society of Ontario v. Tweyman*, 2021 ONLSTH 166;
 - (e) *Law Society of Upper Canada v. Macri*, 2017 ONLSTH 19;
 - (f) *Law Society of Upper Canada v. Carlesso*, 2014 ONLSTH 129;
 - (g) *Law Society of Upper Canada v. Edward John Kiernan*, 2006 ONLSHP 98;
 - (h) *Law Society of Upper Canada v. Mark Elliott Joseph*, 2003 CanLII 39550 (ON LST).
- 11. LSA counsel made the following submissions:
 - (a) The cited authorities make it clear that engaging in a personal relationship with a client will almost invariably result in a conflict of interest. The conduct in question, namely engaging in a personal relationship, will therefore trigger section 3.4-12 of the Code of Conduct, which states:

3.4-12 A lawyer must not act when there is a conflict of interest between lawyer and client, unless the client consents and it is in the client's best interests that the lawyer act.

- (b) Regarding the purchase by Mr. Damen of his client's vehicle, LSA counsel noted section 3.4-13 of the Code of Conduct:

3.4-13 A lawyer must not enter into a transaction with a client who does not have independent legal representation unless the transaction is fair and reasonable to the client and the client consents to the transaction.

- (c) Mr. Damen has been fully cooperative throughout, and has agreed to take a robust educational course at his own expense.
- (d) Mr. Damen's law firm helped find a new lawyer for [X.Y.] and paid for the legal fees associated with the new counsel becoming familiar with the matter.
- (e) An aggravating factor is that Mr. Damen has been sanctioned previously for failing to be candid with clients, acting in a conflict of interest and entering into a business transactions with his client.
- (f) The cited cases have a range of sanction from a reprimand up to two and one-half months suspension, and the joint sanction falls within the cited cases.

12. Mr. Damen's counsel made submissions as follows:

- (a) Mr. Damen believed at all times that the relationship was consensual, though he does not use this as a justification for his conduct.
- (b) The educational course will require some notable expense, both financial and in terms of loss of work hours.
- (c) Mr. Damen has owned his conduct by way of his Statement.
- (d) Mr. Damen also voluntarily enrolled and completed two other courses.
- (e) Mr. Damen has paid a heavy price given the public nature of this complaint.

Decision on Sanction

13. The Committee notes that Mr. Damen used his position of power to take advantage of his client's vulnerable situation. This abuse of power is totally unacceptable.

14. The Committee is not bound by a joint submission on sanction. However, the Committee is required to give serious consideration to a joint submission and should not lightly disregard it unless it would bring the administration of justice into disrepute or would otherwise be contrary to the public interest. This test was outlined by the Supreme Court of Canada in *The Queen v. Anthony-Cook*, 2016 SCC 43 at paragraph 5 where the Court set out the test: "...whether the proposed sentence would bring the administration of justice into disrepute, or would otherwise be contrary to the public interest."
15. In considering the joint submission on sanction, it is important to consider the purpose of disciplinary proceedings. As outlined in section 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.
16. After reviewing all of the evidence and exhibits, the submissions of the LSA and Mr. Damen, the purpose of the disciplinary process and the submitted cases, we have 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.
17. The approach taken by Mr. Damen in dealing with this matter through a Statement also avoided an unnecessary contested hearing, witness inconvenience, and process costs.

Concluding Matters

18. The exhibits, other hearing materials, 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)).
19. It is further ordered that:
 - (a) Mr. Damen will attend and complete a three-day "Professional Boundaries and Ethics" course offered by PBI Education, at the sole expense of Mr. Damen, such course to be completed by June 30, 2022;
 - (b) A reprimand, which is produced herein; and
 - (c) Mr. Damen is to pay \$12,731.25 in costs, such amount to be paid within twelve months.
20. No Notice to the Profession or Notice to the Attorney General is to be made.
21. The following reprimand was delivered orally to Mr. Damen at the Hearing:

Mr. Damen you are long time member of the Law Society of Alberta.

You have acknowledged that you failed to ensure that you acted in an appropriate and professional manner with a client.

Your actions have put your professional reputation and integrity at risk and compromised your client's confidence in both you and the legal profession.

In making these comments today and expressed in your reprimand today, we urge you to constantly have at the forefront of your mind and your practice the need for recognizing that as a lawyer you have a great deal of power and influence over clients.

That is especially the case when you know a client is vulnerable due to being involved in a high conflict family case, and where you were aware that the client had a mental health issue which placed her in an incredibly vulnerable position.

You acknowledge that you are taking courses on professional boundaries, but you may find that you might benefit if you also consider courses aimed at recognizing the impact of post traumatic stress disorder on a client.

Mr. Damen, we acknowledge your cooperation with the Law Society leading up to today and resolving these complaints by admitting guilt. Your admissions have permitted the citation to be resolved on a more efficient basis, which is not just a benefit to you, but is a benefit to the public and to the Law Society.

Dated at Calgary, Alberta, March 7, 2022.

Bud Melnyk, QC – Chair

Barbara McKinley – Lay Bencher

Grant Vogeli, QC – Bencher