

Law Societies Discipline Decisions

Law Society of Alberta

Hearing Committee R. Stroppel, Q.C., Chair, C. Davies, Q.C. and J. Bascom, Q.C.

May 17, 1995.

Case No. 95-20

IN THE MATTER OF the Legal Profession Act AND IN THE MATTER OF a Hearing regarding the conduct of Raj Kumar Abbi, a member of the Law Society of Alberta

Summary

Case # 9520

The Member was charged with acting in a conflict of interest and with assault. The Member represented a divorcee complainant, but subsequently became personally acquainted with the client's ex-wife. The client was unhappy about this personal relationship and confronted the Member. An altercation ensued and the Member was later convicted of assault.

The Hearing Committee concluded that the Member should have been aware of the conflict and consequently should have taken measures to avoid further contact with the client. As such, the Member was found guilty and deserving of sanction. The Member was fined, ordered to pay costs and reprimanded.

Appearances

Janet Dixon, for the Law Society.

Robert White, Q.C., for the member.

REPORT OF THE HEARING COMMITTEE

1 A Hearing Committee consisting of Ms. Christine Davies, Q.C., Mr. John Bascom, Q.C., and Mr. Richard Stroppel, Q.C. (Chairperson) met in Edmonton on May 16, 1995 to consider certain allegations against Mr. Raj Kumar Abbi, a Member of the Law Society of Alberta. Mr. Abbi appeared in person and was represented by counsel, Mr. Robert White, Q.C. Ms. J. Dixon appeared as counsel for the Law Society.

2 A number of exhibits were tendered by agreement of counsel. These included documents which established the jurisdiction of the Committee.

3 Counsel for the Member indicated that he had no objection to the composition of the Committee, and the hearing then proceeded.

4 Exhibit #5 indicated that the Deputy Secretary exercised his discretion and determined that no one was to be served with a private hearing application notice. There was no application on the part of any person to have any part of the hearing held in private. Counsel for the Law Society and counsel for the Member agreed that the entire hearing should be public, therefore the Committee ordered that the hearing was to be conducted in public in its entirety.

5 At the beginning of the hearing, counsel for the Society and counsel for the Member presented an Amended Citation to the Committee. A copy of the Amended Citation is appended to this report, and was marked as exhibit #2A at the hearing. Counts #1 and #2 in the original three count citation were effectively merged into count #1 in the new citation. Count #3 was amended substantially. With the agreement of counsel, the hearing proceeded on the basis of the two counts in the Amended Citation.

6 Counsel for the Law Society then tendered an Agreed Statement of Facts into evidence, with the consent of counsel for the Member. A copy of this Agreed Statement of Facts is appended to this report, and was marked as exhibit #11 in the hearing.

7 With respect to count #1 in the Amended Citation, it should be emphasized that although Mr. Abbi had friendly and casual dealings with Mrs. B. during the time when he was acting for Mr. B., his relationship with Mrs. B. did not become intimate until after he had ceased acting for Mr. B.. It should also be noted that Mr. Abbi did not deny having contact with Mrs. B. while he was acting for Mr. B., but rather attempted to deal with the perceived conflict of interest by having his associate, Mr. Seto, act for Mr. B.. There was no proof that Mr. Abbi used any information that he had gained through his relationship with Mrs. B. to the detriment of Mr. B..

8 With respect to count #3 in the Amended Citation, other exhibits filed in the hearing indicated that Mr. Abbi was charged with assault as a result of his altercation with Mr. B.. This matter was tried in Provincial Court in Edmonton on June 9, 1994. At the conclusion of the trial, Mr. Abbi was found guilty by His Honour Judge Chisholm and fined \$500.00. Mr. Abbi had represented himself at his trial. The conviction and sentence were not appealed. Mr. Abbi had also sworn a private information alleging several offences as against Mr. B., however this information was stayed by the Attorney General's Department following the conviction of Mr. Abbi.

9 After considering the exhibits filed, the Agreed Statement of Facts and the submissions of counsel, the committee concluded on count #1 that the Member's conduct was conduct deserving of sanction. Mr. Abbi was in a position of at least perceived conflict concerning his representation of Mr. B.. He should have recognized this conflict and ceased to act for Mr. B.. The situation was not alleviated by the fact that Mr. Abbi involved his associate, Mr. Seto, in the handling of the file. Mr. B.'s complaints and express concerns should have alerted Mr. Abbi to the fact that he was in a fairly obvious conflict of interest situation.

10 With respect to count #3, the Committee concluded that the Member's conduct was conduct deserving of sanction. On February 3, 1994, Mr. Abbi was dealing with a former client in a professional context. Mr. B. had gone to Mr. Abbi's office for the purpose of discussing their past professional relationship. There was an argument which developed into a physical altercation. The Committee was satisfied that Mr. Abbi conducted himself in an imprudent and unprofessional manner at that time. Mr. Abbi should have recognized the potential for conflict in this situation and avoided personal contact with Mr. B.. Mr. Abbi should have avoided the argument and subsequent altercation with Mr. B..

11 With respect to count #2 in the original citation, this count was effectively merged into count #1 in the Amended Citation, therefore this charge was dismissed.

12 Following the finding that the Member's conduct was conduct deserving of sanction, the Committee heard submissions, and concluded that the Member's conduct did not arise from incompetence.

13 The Committee then heard submissions with respect to penalty. On count #1, the Committee decided to reprimand the Member, and the Chairperson of the Committee administered the reprimand. On count #3, the Committee ordered the Member to pay costs in an amount fixed at \$1,500.00, and also fined the Member \$1,000.00. The total penalty of \$2,500.00 was ordered to be paid in two instalments of \$1,250.00 payable on or before November 15, 1995 and on or about May 15, 1996.

14 The Committee concluded that all exhibits should be made available for inspection by members of the public, if requested.

15 The Committee then considered section 75(4) of the Legal Profession Act. Although there might be reasonable and probable grounds to believe the Member had committed a criminal offence in relation to count #3, that matter had already been referred to and dealt with by the Attorney General's Department, therefore the Committee declined to refer this matter to the Attorney General.

16 The Committee also concluded that this would not be an appropriate case for the application of section 80 of the Legal Profession Act, because the Member's misconduct has already been dealt with in the context of a criminal trial and a Law Society Hearing.

17 The hearing was then concluded.

DATED at the City of Edmonton, in the Province of Alberta, this 17th day of May, A.D. 1995.

"Richard A. Stroppel, Q.C." Chairperson "Christine Davies, Q.C."
"John Bascom, Q.C."

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AMENDED CITATIONS

RE Raj Kumar Abbi.

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- 1. It is alleged that you continued to act for Mr. O. B. knowing that, because of personal contact with Mrs. K. B., your continued involvement on the file was a conflict of interest or a potential conflict of interest, and that such conduct is conduct deserving of sanction.
- 3. It is alleged that your involvement in a physical altercation with Mr. O. B. on the 3rd day of February, 1994, while Mr. O. B. was attending at your office to obtain a copy of his client file is conduct unbecoming a lawyer, and that such conduct is conduct deserving of sanction.

* * *

AGREED STATEMENT OF FACTS

1. Mr. Abbi was retained by Mr. B. (the Petitioner) to act on his behalf in a Divorce and Matrimonial Property dispute in late 1992.
2. On or about February 28, 1993 Mr. Abbi moved into an apartment in Millwoods.
3. In the month of March, 1993 Mrs. B. (the Respondent) and her son moved out of the matrimonial home and into the same apartment building in which Mr. Abbi resided.
4. In late March 1993 the Respondent approached Mr. Abbi in the lobby of the apartment building and introduced herself. Mr. Abbi informed the Petitioner of this meeting.
5. In early April 1993 Mr. Abbi's brother and sister-in-law and their young son came to visit him at his apartment. The son was playing at the complex and met the Respondent's son. The two boys returned to Mr. Abbi's apartment. The Respondent came to Mr. Abbi's apartment to pick up her son. The Respondent was invited by Mr. Abbi to have a cup of tea with his company and she agreed.
6. Mr. Abbi advised the Petitioner of the incident. The Petitioner continuously called Mr. Abbi inquiring about his wife and son which was annoying to Mr. Abbi and he

advised the Petitioner that he would not entertain any more calls as he was not an information bureau. If he wished the firm to continue to represent him, he would have to deal with Mr. Seto. This occurred during the second week of April.

7. When the Petitioner was asked to see Mr. Seto to execute the Minutes of Settlement, the Petitioner apologized and said he would not ask any more questions, but that he would feel more comfortable if Mr. Abbi could attend him. On April 30 the Respondent's lawyer wrote to Mr. Abbi regarding some jewellery to be exchanged between the parties. The call about the jewellery caused the Petitioner to raise the issue that Mr. Abbi was seeing and meeting his wife. Mr. Abbi told the Petitioner that he objected to what the Petitioner was saying, denied the allegation, confirmed his duty of confidentiality to Petitioner and told the Petitioner that Mr. Abbi was free to speak to whomever he wished. Mr. Abbi advised the Petitioner that if he wished to find another lawyer he would not be charged a fee. The Petitioner then confirmed his trust in Mr. Abbi and asked him to continue to act.

8. After having tea with Mr. Abbi in April of 1993, the Respondent contacted Mr. Abbi from time to time to seek assistance with situations which arose including transporting her son to emergency and the Medi-Centre, providing boosts for her vehicle and taking her grocery shopping. The Respondent initiated the requests for assistance from Mr. Abbi.

9. The Petitioner and Respondent were granted a Divorce Judgement on June 1, 1993.

10. On February 3, 1994 the Petitioner attended at Mr. Abbi's office to pick up a copy of his file. A physical altercation occurred between the Petitioner and Mr. Abbi. As a result of the altercation private informations alleging assault were laid by both partes. On June 9, 1994 Mr. Abbi was convicted of the allegation. The Crown subsequently stayed the allegation against the Petitioner.