

**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 UCHE NTINU
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

Single Bencher Hearing Committee

Jim Lutz, KC – Chair

Appearances

Miriam Staav – Counsel for the Law Society of Alberta (LSA)

Peter Tesi – Counsel for Uche Ntinu

Hearing Date

February 1, 2023

Hearing Location

Virtual Hearing

HEARING COMMITTEE REPORT - SANCTION

Overview

1. The following citations were directed to hearing by the Conduct Committee Panel on October 19, 2021:
 - 1) It is alleged Uche Ntinu failed to provide competent, conscientious, and professional service to his client and that such conduct is deserving of sanction.
 - 2) It is alleged Uche Ntinu failed to provide competent, conscientious, and professional service to his client and that such conduct is deserving of sanction.
2. Mr. Ntinu began practicing in Alberta in 2018. The matter before this Hearing Committee (Committee) involves Mr. Ntinu acting for two individuals in a family and criminal matter respectively.
3. The first citation (Citation 1) alleges that Mr. Ntinu inappropriately communicated with R.H., his client through a series of text messages that he agrees were improper in his role as counsel. Citation 1 also deals with his failure to withdraw as counsel of record,

resulting in a \$500.00 cost order against the client and the related application being struck.

4. The second citation (Citation 2) involves a criminal matter. Citation 2 concerns Mr. Ntinu's representation of J.B., who was charged with trafficking in methamphetamine, and his failure to properly represent J.B. in court.
5. The LSA and Mr. Tesi collaborated on a Statement of Admitted Facts, Exhibits, and Admission of Guilt (Agreed Statement) in relation to Mr. Ntinu's conduct.
6. The Conduct Committee found the Agreed 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. Ntinu's conduct is deserving of sanction in relation to the following citations:
 - 1) It is alleged Uche Ntinu failed to provide competent, conscientious, and professional service to his client and that such conduct is deserving of sanction.
 - 2) It is alleged Uche Ntinu failed to provide competent, conscientious, and professional service to his client and that such conduct is deserving of sanction.
7. On February 1, 2023, the Committee convened a hearing into the appropriate sanction.
8. After reviewing the evidence and exhibits, and hearing the submissions of the LSA and Mr. Ntinu, for the reasons set out below, the Committee has determined that a reprimand, counselling, and hearing costs is the appropriate sanction.

Preliminary Matters

9. There were no objections to the constitution of the Committee or its jurisdiction, and a private hearing was not requested, so a public hearing into the appropriate sanction proceeded.

Agreed Statement of Facts/Background

10. After the commencement of proceedings in relation to Mr. Ntinu's conduct, LSA Counsel submitted the Agreed Statement. The Conduct Committee found the Agreed Statement acceptable on September 13, 2022. Pursuant to section 60(4) of the *Act*, each admission of guilt in the Agreed Statement is deemed to be a finding by this Committee that Mr. Ntinu's conduct is deserving of sanction under section 49 of the *Act*.
11. As provided by section 60(3) of the *Act*, once the Agreed Statement was accepted by the Conduct Committee, the hearing for the appropriate sanction can be conducted by a single Bencher. As a result, I was appointed to conduct the sanction hearing.

12. To summarize, Mr. Ntinu agrees that his conduct in relation to Citations 1 and 2 failed to meet the standard of competent, conscientious and professional service.
13. Regarding Citation 1, Mr. Ntinu acted as counsel for R.H. in a family matter. He began to send text messages that he agrees were outside his capacity as R.H.'s counsel. The text messages blurred the line between his personal and his professional relationship with R. H. He further agrees he received a request for a change of counsel from R.H. through Legal Aid Alberta, owing to the inappropriate communications. As a result, Mr. Ntinu wrote opposing counsel and advised he would no longer be acting for R.H. On January 13, 2020, Mr. Ntinu filed a Notice of Withdrawal of Lawyer of Record but failed to serve a copy of said Notice on R.H. or file an Affidavit of Service. R.H. was not advised of the upcoming court date nor did he take any steps to adjourn it.
14. Consequently, the matter proceeded, without R.H. or a lawyer acting for R.H. present, and R.H.'s application was struck, and the Court ordered a \$500.00 cost award against R.H.
15. Citation 2 concerns Mr. Ntinu's representation of J.B., who was charged with trafficking methamphetamine contrary to section 5(1) of the *Controlled Drugs and Substances Act*. Mr. Ntinu was retained in July 2019 and the communications between him and J.B. show, as he admitted in the Agreed Statement, that he "failed to keep [J.B.] reasonably informed, and failed to respond to communications in a reasonable or timely way." Further, Mr. Ntinu appeared before Justice B on August 4, 2020, at a sentencing hearing without any case authorities to support his submission for a suspended sentence. Mr. Ntinu agrees that he failed to provide competent conscientious and professional service in court.
16. The parties both agree the above facts make out Citations 1 and 2.

Submissions on Sanction and Costs

17. Counsel for the LSA submits the following sanction to be appropriate and agreed to by both parties:
 - 1) A reprimand; and
 - 2) Completing a three-day Professional Boundaries offered by PBI Education at his own expense, by February 1, 2024.
18. The parties also agree to costs of \$10,000 and Mr. Tesi requested a payment plan for Mr. Ntinu.

Decision on Sanction

19. LSA Counsel and Mr. Ntinu confirmed and acknowledged that the Committee is not bound by a joint submission on sanction. That said, a committee is required to give significant deference to a joint submission and should not depart from a joint submission on sanction unless it would bring the administration of justice into disrepute or is otherwise contrary to the public interest.
20. Both counsel agrees that the principles to be considered in this sanctioning phase are found in the following cases:
 - 1) *R. v. Damen*, 2022 ABLs 6 – wherein the lawyer inter alia engaged in an intimate physical relationship with his client and acknowledged an imbalance in power between himself and the client.
 - 2) *R. v. Nguyen*, 2019 ABLs 1 – wherein the lawyer made unprofessional and offensive comments and asked questions that were inconsistent with the proper tone of professional communication.
 - 3) *R. v. Ayers*, 2016 ABLs 41 – wherein the lawyer failed to provide legal services and perform functions competently, diligently, and in a timely manner.
21. The aggravating factors in this matter include:
 - 1) Unwanted inappropriate messages;
 - 2) Failing to clearly maintain the boundaries of a personal and professional relationship;
 - 3) Failing to provide adequate or proper notice to the parties when withdrawing as counsel of record;
 - 4) The fact that new counsel had to be appointed on both matters as a result of the Mr. Ntinu's conduct;
 - 5) The imbalance of power in a lawyer-client relationship and crucially, failing to recognize it; and
 - 6) The lack of adequate preparation of the submissions on sentence.
22. The mitigating factors in this case are:
 - 1) Mr. Ntinu was a very junior lawyer with limited experience;
 - 2) Lack of prior discipline record;

- 3) His agreement to accept responsibility thereby saving witnesses from testifying and lengthening proceedings;
 - 4) His record of community involvement; and
 - 5) He received no benefit as a result of his conduct.
23. Counsel emphasize that general and specific deterrence can be met through the imposition of the recommended sanction and is a joint submission within the parameters of the *R. v. Anthony-Cook*, 2016 SCC 43 case.
24. Based on the above submissions, the Committee accepts the joint submission and delivered the following reprimand to Mr. Ntinu at the hearing:

Mr. Ntinu, I address these comments to you. The Law Society and your counsel have agreed that a reprimand is the appropriate disposition for this particular matter and for your conduct. The purpose of Law Society discipline proceedings is not to punish offenders and to extract retribution, but rather to protect the public, maintain the high professional standards, and preserve the public confidence in the profession. I take those words from Gavin MacKenzie's book on "*Lawyers and Ethics – Professional Responsibility and Discipline.*" It is an often-quoted passage.

We, as lawyers, have an immense responsibility to the public, to the Courts, and to each other as professionals, and that duty is undermined when conduct that is otherwise, unprofessional makes its way into our daily workings.

So, I say this to you: The actions that you have undertaken here and admitted to – which again, go much to your credit, really serve to undermine the public confidence in the profession, and these types of things have to be dealt with.

I appreciate that this occurred at a time when you were a very young lawyer. And I have heard your counsel speak about the things you have done within the community in Red Deer, and these are the kinds of things that we want to see and encourage lawyers to do: Be members of the community; add to the benefit of the community; and show that lawyers do, again, enrich the community and help represent members of the public.

I would say this in terms of your dealings with clients: Please try to remember in the future that there's a very bright line between professional and personal relationships and those can't be blurred. Your obligations to the Court in the first citation, in terms of getting off record, I gather you've learned from this, and this is something that you'll understand and deal within a different manner in the future.

With respect to the second citation, I do not criticize you for advocating for your client, for a sentence that would be an excellent sentence for her. I do not criticize that at all. I just want you to know that, with that, the clients rely on our advice when we give them advice. And no one is suggesting you have to be perfect about any particular disposition, but it requires you to be realistic and know what the options are. And, again, you were a very young lawyer at the time this occurred, and I understand that you have taken steps to enlighten yourself in terms of what is and is not appropriate.

Remember that when we give advice to clients, they rely on that advice. And it is very important because that represents the important role we have in society, both to the public and to ourselves and to the judiciary. When we say things to clients, they listen, and they accept what we say; so, we have to be as close to being right as we can. I am not saying you have to be perfect, but you have to be realistic in terms of what you expect, but I think that has come from this hearing. I think that you have seen that.

I think everyone would acknowledge your cooperation in this proceeding and arriving at a joint submission with counsel for the Law Society and your own counsel as an acknowledgement of your responsibility.

And, again, *Anthony Cook*, as Ms. Staav from the Law Society quoted, says that we should follow joint submissions, and I have told you I intend to do so. And this reprimand is really designed to ask you to do two things: ask more of yourself and be better. The public demands it; the Law Society demands it; the Courts demand it.

So, in this particular instance, I'd like you to move on from this, become the best lawyer you can be, and do the best job you can continuing to enrich the communities. That would be my reprimand for you, Mr. Ntinu. Thank you.

Concluding Matters

25. In considering costs, the amount of \$10,000.00 is to be paid as follows:
 - 1) A lump sum payment of \$4,000.00 to be paid by February 28, 2023 with the balance of \$6,000.00 to be paid by February 28, 2025.
26. The Professional Boundaries Course shall be completed at his own expense, by February 1, 2024.
27. There will be no Notice to the Profession.

28. There is to be no referral to the Attorney General.
29. 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. Ntinu will be redacted and further redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 98(3)).

Dated March 10, 2023.

Jim Lutz, KC