

**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 GURPREET BILLING
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

Hearing Committee

Ken Warren, KC – Chair and former Bencher
Michael Mannas – Adjudicator
Sharilyn Nagina, KC – Bencher

Appearances

Shanna Hunka – Counsel for the Law Society of Alberta (LSA)
Brett Code, KC – Counsel for Gurpreet Billing

Hearing Date

December 12, 2023

Hearing Location

Virtual Hearing

HEARING COMMITTEE REPORT

Overview

1. The following citations were directed on October 18, 2022 to hearing by the Conduct Committee Panel:
 - 1) It is alleged that Gurpreet S. Billing failed to provide legal services to the standard of a competent lawyer, including failing to perform all functions competently, conscientiously, and in a diligent manner, and that such conduct is deserving of sanction.
 - 2) It is alleged that Gurpreet S. Billing failed to supervise his legal assistant and that such conduct is deserving of sanction.
2. Mr. Billing was admitted as a member of the LSA on October 29, 2015. On October 8, 2019, the LSA received a complaint from R.K., a former client of Mr. Billing, with respect to the handling of her immigration matters by Mr. Billing and his legal assistant, B.S. R.K. was a foreign student whose brother was a friend of B.S. B.S. was very experienced in immigration law as a legal assistant or paralegal, and his services were less expensive

than those of Mr. Billing. The immigration services were provided to R.K. in 2018 and 2019. As of March 13, 2019, R.K. lost her temporary residency status and was required to leave Canada. She subsequently reapplied for entry successfully.

3. R.K.'s complaint indicates that Mr. Billing's conduct deteriorated her health due to stress and that she lost money, sleep and valuable time as a result.
4. On December 12, 2023, the Hearing Committee (Committee) convened a hearing into the conduct of Mr. Billing based on the above citations. On December 7, 2023, the Committee was provided with a proposed exhibit binder containing a signed Statement of Admitted Facts and Admissions of Guilt (Agreed Statement). The Agreed Statement further advised that there may be a Joint Submission on Sanction presented based upon the Agreed Statement. A Joint Submission on Sanction (Joint Submission) was presented at the Committee at the start of the Hearing.
5. After reviewing all of the evidence and exhibits, including the Agreed Statement, and hearing the arguments of the LSA and Mr. Billing, for the reasons set out below the Committee finds Mr. Billing guilty of conduct deserving sanction on both citations pursuant to section 71 of the *Legal Profession Act (Act)*.
6. The Committee also finds, based on the facts of this case, that the appropriate sanction, in accordance with the Joint Submission, is a one-month suspension in accordance with section 72 of the *Act*. The suspension was to commence on December 16, 2023.
7. In addition, pursuant to section 72(2) of the *Act*, and in accordance with the Joint Submission, the Committee orders payment of costs in the amount of \$14,000.00, to be paid by December 31, 2024.

Preliminary Matters

8. 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 Mr. Billing's conduct proceeded.

Agreed Statement and Merits

9. The Agreed Statement contains a section headed "Background Facts" and another section headed "Admitted Facts" that deals specifically with the two citations. Mr. Billing admitted the facts contained in both sections but admitted guilt to the two citations based specifically upon the admitted facts relating to those citations. The Committee noted inconsistencies in the "Background Facts" section, including the following:

- (a) R.K. and B.S. disagreed with respect to what advice he provided to her regarding the type of work permit for which she applied;
 - (b) R.K. submitted that her applications were based on the advice of B.S. while B.S. submitted that R.K. gave him instructions contrary to his advice; and
 - (c) B.S. stated that he alone met with R.K. when she attended at Mr. Billing's office while Mr. Billing maintained that he spoke with R.K. on the phone and met with her a couple of times.
10. The Committee considered that hearing oral evidence may or may not enable the Committee to resolve the contradictory positions of the parties on those issues. Based upon the admitted facts, and admission of guilt to both citations, the Committee determined that it was appropriate and in the public interest to proceed without attempting to resolve those inconsistencies. The Committee found that the admitted facts adequately supported the citations and accordingly accepted the Agreed Statement and its admission of guilt to the two citations.

Citation 1

11. The Agreed Statement includes the following admitted facts in relation to this citation:
- (a) Mr. Billing's file materials were incomplete and did not contain any information or notes reflecting the advice given to R.K. or her instructions;
 - (b) Mr. Billing personally failed to provide R.K. with the requisite quality of service required of a lawyer;
 - (c) Mr. Billing did not assess R.K.'s understanding of her instructions or seek a written acknowledgement of any decision to proceed contrary to the advice that B.S. claims he provided to her; and
 - (d) Mr. Billing's file materials do not document R.K.'s acceptance of the risk of her instructions and her understanding of them.'

Citation 2

12. The Agreed Statement includes the following admitted facts in relation to this citation:
- (a) Mr. Billing did not ensure that R.K. understood whether B.S. was a legal assistant, paralegal or a lawyer;

- (b) Mr. Billing allowed B.S. to provide legal advice to R.K. while Mr. Billing provided no legal advice to her; and
- (c) Mr. Billing should have been more proactive in insisting that R.K. follow the advice that B.S. claims he provided to her.

Analysis and Decision on Sanction

13. As noted in the LSA's Pre-Hearing and Hearing Guideline (Hearing Guideline), a joint submission on sanction benefits both the lawyer and the LSA in the following ways:
 - (a) It is a more efficient means of concluding the proceedings by saving time, costs and resources;
 - (b) It provides the parties with certainty regarding the outcome, particularly in cases where either party faces challenging evidentiary issues;
 - (c) Complainants and other witnesses are spared from having to testify publicly;
 - (d) Complainants may perceive the lawyer's admission as an important acknowledgement of responsibility or an expression of remorse; and
 - (e) An admission of guilt and a joint submission on sanction provides the lawyer with an opportunity to demonstrate accountability for their conduct.
14. As acknowledged by Mr. Billing in the Agreed Statement, a hearing committee is required to show deference to a joint submission but is not bound by it. When a hearing committee is presented with a joint submission on sanction, its analysis is not to determine the correct sanction in the hearing committee's view. Rather, the hearing committee is to determine whether the proposed sanction is within a range of possible sanctions that would satisfy the "public interest" test flowing from the decision of the Supreme Court of Canada in *R. v. Anthony-Cook* (2016 SCC 43) and following cases. The public interest test requires that a decision maker should not depart from a joint submission on sanction unless the proposed sanction would bring the administration of justice into disrepute or is otherwise contrary to public interest. The following questions should be considered by a hearing committee in applying the public interest test:
 - (a) Is the joint submission so markedly out of line with the expectations of reasonable persons aware of the circumstances of the offence and the offender that the joint submission would be viewed as a breakdown in the proper functioning of the conduct and discipline system?

- (b) Would the joint submission cause an informed and reasonable public to lose confidence in the regulator?
- (c) Is the joint submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the conduct and discipline system had broken down?
15. The citations to which Mr. Billing has admitted guilt represent serious breaches of the LSA's Code of Conduct (Code).
16. The Committee is satisfied that Mr. Billing's client suffered significant consequences as a result of those breaches. The conduct complained of occurred during his third and fourth years as a member of the LSA. His relative inexperience at that time does not excuse his misconduct. In these circumstances, there is not one standard for experienced counsel and a lower standard for newer members of the bar. Mr. Billing's response to the complaint indicates that R.K. was charged only for disbursements. That also does not excuse his misconduct. If a lawyer undertakes to perform legal services, they must be performed to the standard of a competent lawyer. The threshold of competent services does not depend on the amount charged.
17. As expressly noted in the Code, a lawyer who is incompetent does their client a disservice and also brings discredit to the profession and may bring the administration of justice into disrepute. The damage to the lawyer's own reputation and practice is personal to that lawyer but the damage to the profession's reputation is at large and affects both the client involved and any other client or prospective client who learns of the misconduct. As a member of the LSA, Mr. Billing had a responsibility to provide competent services in order to uphold the reputation of our profession and to not bring it into disrepute.
18. The utilization of non-lawyer staff and assistants is an integral part of the modern practice of law. Most individuals view the services of lawyers to be expensive. Utilization of non-lawyer staff and assistants allows more clients to be served and at a generally lower cost. That improves access to justice and benefits the public interest. However, as set out below, the Code imposes responsibility for the performance of all legal services to the lawyer and imposes an express obligation on the lawyer to directly supervise staff and assistants to whom the lawyer delegates particular tasks and functions. The benefit of permitted delegation comes with the burden of ensuring that a lawyer's staff and assistants are properly trained, competent and directly supervised by the lawyer.
19. Counsel provided the Committee with ten decisions dealing with lawyers' failure to serve and failure to supervise, none of which are closely analogous to the facts before the Committee, although two decisions deal with immigration matters. They are very briefly

summarized below. The Committee is not bound by prior discipline decisions but has regard for prior decisions so as to avoid undue disparity with sanction decisions imposed in other cases. The Committee agrees with the following statement from the panel in *Law Society of BC v. Faminoff*, 2015 LSBC 20, at paragraph 80:

In the Panel's view, a decision on disciplinary action includes a review of authorities, but must in the end be grounded on the particular facts of each case and on the experience and common sense of the Hearing Panel.

20. In *Law Society of Upper Canada v. Hohots*, 2015 ONLSTH 205 the lawyer was found guilty of professional misconduct by abdicating his professional responsibilities to and failing to serve his refugee clients. He delegated the most important tasks to a non-licensuree. The liability finding was based upon an agreed statement of facts and the sanction was based upon a joint submission. The lawyer was suspended for five months, restricted from practicing refugee law for two years, ordered to participate in practice review upon his return to practice and ordered to pay \$15,000.00 in costs. The lawyer's misconduct extended over a three-to-four-year period and involved 17 sets of clients in a high-volume practice. The hearing panel found the case involved an egregious failure to serve vulnerable clients and the abdication of professional responsibilities to them. The consequences to some clients were dire. The lawyer's cooperation shortened the hearing and simplified the Law Society's task of proving its case. He had no discipline history.
21. In *Law Society of Alberta v. Heming*, 2021 ABLs 1 the lawyer was relatively inexperienced at the time and initiated proceedings on behalf of her client that were ill-advised and eventually resulted in significant cost awards and enforcement proceedings against her clients without them gaining the remedy they had sought. There was no joint submission on sanction. The lawyer had a discipline history and had already participated in the Practice Review program. The LSA sought a two-week suspension while the member submitted that a reprimand was sufficient. The hearing committee imposed a one-week suspension and payment of \$3,500.00 in costs.
22. In *Law Society of Alberta v. Yarshenko*, 2018 ABLs 18 the lawyer provided incompetent and ineffective legal assistance to his client in a criminal trial, resulting in the client's conviction. After a re-trial, the client was acquitted. The lawyer entered into an agreed statement of facts and admission of guilt that he had failed to represent his client competently, failed to obtain proper instructions and failed to respond in a timely manner to communications from other lawyers during the client's appeal. The hearing committee accepted a joint submission on sanction requiring a reprimand, payment of \$3,000.00 costs, payment of a fine of \$7,000.00, and referral to Practice Review. The lawyer had no discipline history.

23. In *Law Society of Alberta v. Walia*, 2016 ABLS 54 the lawyer entered into a statement of admitted facts and admission of guilt that he failed to provide competent services to his client in a criminal matter, resulting in a mistrial. The single Bench hearing committee accepted the joint submission on sanction requiring a reprimand, a complete restriction on criminal practice and payment of the actual costs of the hearing.
24. In *Law Society of Alberta v. Billingsley*, 2023 ABLS 22 the lawyer entered into a statement of admitted facts and admission of guilt that he failed to provide his client with thorough, conscientious and diligent service. Acting in family law proceedings, the lawyer acted without instructions in one instance and acted in direct opposition to his instructions in another matter. The hearing committee accepted the joint submission on sanction requiring a reprimand, a fine of \$5,000.00 and payment of costs of \$3,500.00. The lawyer had been found guilty of professional misconduct a few years earlier under similar circumstances and so the "step up" principle was a consideration in determining the appropriate sanction.
25. In *Law Society of Upper Canada v. Farkas*, 2017 ONLSTH 75 the lawyer was an experienced practitioner who was found to have failed to serve his clients with respect to their refugee claims and in the manner that he ran his law practice and supervised his non-lawyer staff. During the sanction hearing, the Law Society sought revocation of the lawyer's license to practice and payment of \$400,000.00 in costs. The lawyer submitted that the appropriate sanction was a four-month suspension. The hearing panel ordered a six-month suspension, payment of \$200,000.00 in costs and supervision of the lawyer's refugee law practice for a period of one year after his return to practice. The lawyer had acted in a *pro bono* capacity or for minimum compensation and was not motivated by personal gain or an interest in taking financial advantage of the complainants. The hearing panel noted that acting *pro bono* or for little financial reward still requires service to the standard of competent lawyer. The lawyer's misconduct was described as "an egregious failure to serve vulnerable clients and the abdication of professional responsibilities..." but not dishonest. The lawyer had practiced for 22 years, had no discipline history and expressed remorse for his conduct.
26. In *Law Society of Alberta v. Kazakoff*, 2021 ABLS 10 the lawyer was a very senior member of the bar who failed to supervise his assistant, resulting in the misappropriation of monies from the lawyer's trust and general accounts and losses in excess of \$500,000.00. The lawyer did not participate in the hearing but did consent to a notice to admit facts that simplified the hearing. LSA counsel sought a suspension in the range of 12 to 18 month on the basis that the lawyer had completely abdicated his supervisory responsibilities over an extended period of time. The hearing committee imposed a suspension of 15 months and payment of costs in the approximate amount of \$18,000.00. The lawyer's stated intention was to no longer practice law.

27. In *Law Society of Alberta v. Souster*, 2016 ABL 1 the lawyer faced 21 citations dealing largely with failing to conscientiously serve his clients and failing to supervise his support staff. The lawyer entered into a statement of admitted facts and admission of guilt with respect to all 21 citations. The lawyer admitted that he unknowingly participated in a mortgage fraud scheme. The hearing committee accepted the joint submission on sanction requiring a four-month suspension. The hearing committee noted a number of mitigating factors: the lawyer admitted the facts and his guilt; he was cooperative with the investigation; he made timely admissions about his involvement; he had no discipline history; and there was a low risk of reoccurrence. The lawyer was also ordered to pay the actual costs of the hearing.
28. In *Law Society of Alberta v. Laurich*, 2014, ABL 45 the lawyer entered into an agreed statement of facts and admission of guilt. The lawyer had been practicing about six years when he unwittingly engaged in a mortgage fraud scheme. He did not understand the underlying transactions and he failed to protect the interests of his clients. The hearing committee imposed a five-month suspension and payment of costs in the approximate amount of \$47,000.00. The hearing committee's analysis respecting sanction dealt at length with the fact that the lawyer was found to have been a "dupe", as opposed to a knowing participant in the fraudulent schemes.
29. *Law Society of Ontario v. Dinnen*, 2019 ONLSTH 33 was a wills case in which the lawyer failed to competently serve the testator and subsequently the estate. The lawyer admitted that he engaged in professional misconduct by failing to serve both clients to the standard of a competent lawyer, by failing to assume complete responsibility for his practice and the supervision of his staff, and by acting in a conflict of interest. The hearing panel accepted the joint submission on sanction that the lawyer be suspended for 45 days, undertake three additional hours of professional development on conflicts of interest and pay costs of \$15,000.00.
30. The Hearing Guideline, at paragraph 198, notes that the prime determinant of the appropriate sanction is the seriousness of the misconduct and that the seriousness of the misconduct may be determined by various factors, some of which include:
 - (a) the degree to which the misconduct constitutes a risk to the public;
 - (b) the degree to which the misconduct constitutes a risk to the reputation of the legal profession;
 - (c) the harm caused by the misconduct;
 - (d) the potential harm to a client;
 - (e) the number of incidents involved; and

- (f) the length of time involved.
31. Paragraph 204 of the Hearing Guideline outlines additional factors that may have either an aggravating or mitigating effect on the appropriate sanction, some of which include:
- (a) prior discipline record;
 - (b) length of time the lawyer has been in practice;
 - (c) acknowledgement of wrongdoing, including self-reporting and admission of guilt;
 - (d) level and expression of remorse;
 - (e) the extent to which the lawyer benefited from their misconduct; and
 - (f) whether the misconduct involved taking advantage of a vulnerable party.
32. The admitted misconduct of Mr. Billing constituted a risk to the public and caused harm to R.K. There is no suggestion that Mr. Billing sought to take advantage of R.K. and he did not profit financially from the retainer. However, a lawyer who undertakes a matter must do so competently whether the services are provided for significant reward or on a *pro bono* basis. Mr. Billing has admitted that he failed to meet that standard, contrary to his obligations under section 3.1-2 of the Code.
33. The Code stipulates the supervisory responsibilities of a lawyer and restricts the activities that a lawyer may permit a non-lawyer to do;
- 6.1-1 A lawyer has complete professional responsibility for all business entrusted to him or her and must directly supervise staff and assistants to whom the lawyer delegates particular tasks and functions.
 - 6.1-3 A lawyer must not permit a non-lawyer to:
 - (a) accept cases on behalf of the lawyer, except that a non-lawyer may receive instructions from established clients if the supervising lawyer approves before any work commences;
 - (b) give legal advice;
 - (d) act finally without reference to the lawyer in matters involving professional legal judgment;

- (i) take instructions from clients, unless the supervising lawyer has directed the client to the non-lawyer for that purpose and the instructions are relayed to the lawyer as soon as reasonably possible;
 - (l) forward to a client or any third party any documents, other than routine, standard form documents, except with the lawyer's knowledge and direction; and
 - (m) perform any of the duties that only lawyers may perform or do things that lawyers themselves may not do.
34. Mr. Billing admittedly failed in his supervisory responsibilities but on the facts his misconduct was over a relatively short period of time and involved only one client. He was a relatively junior lawyer at the time of misconduct and had no discipline history. Mr. Billing's willingness to enter into the Agreed Statement and Joint Submission enabled the proceedings to be concluded efficiently. It is unfortunate that Mr. Billing expressed no remorse for his misconduct in either his response to the complaint or the Agreed Statement.
35. With respect to the referenced authorities, the *Hohots* and *Farkas* decisions deal with similar legal services but the misconduct in those cases occurred over a longer period and involved many more clients. The lengthier suspensions ordered in those cases would not be appropriate here. The *Kazakoff* and mortgage fraud decisions are of little assistance in this case. The remaining decisions, that for the most part relate to failures to conscientiously serve a single client, resulted in sanctions ranging from a reprimand to a 45-day suspension.
36. Based on its review of the Agreed Statement and all the factors to be taken into account in determining sanction, and consideration of the authorities referred to it, the Committee is satisfied that the public interest test is met by the Joint Submission and therefore accepts it.

Concluding Matters

37. The costs payable by Mr. Billing in the amount of \$14,000.00, representing about 80 percent of the LSA's statement of costs, are to be paid by December 31, 2024.
38. No Notice to the Attorney General is required.
39. A Notice to the Profession pursuant to section 85 of the *Act* is required in the case of a suspension. The Notice was published by the LSA on December 15, 2023.

40. 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. Billing will be redacted and further redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 98(3)).

Dated January 15, 2024.

Ken Warren, KC - Chair

Michael Mannas

Sharilyn Nagina, KC