

**The Law Society of Alberta
Hearing Committee Report**

**In the matter of the *Legal Profession Act*,
and in the matter of a hearing regarding the conduct of Peter S. Wong,
a Member of the Law Society of Alberta.**

A. Jurisdiction and Preliminary Matters

1. A Hearing Committee of the Law Society of Alberta (LSA) held a hearing into the conduct of Peter S. Wong on March 16 and 17th, 2009. The Committee consisted of Neena Ahluwalia QC, Chair, Scott Watson QC and James Glass. The LSA was represented by Lois J. MacLean. The Member was represented by Philip G. Lister QC.
2. Exhibits 1 through 4, consisting respectively of the Letter of Appointment of the Hearing Committee, the Notice to Solicitor, the Notice to Attend and the Certificate of Status of the Member, established the jurisdiction of the Committee and were admitted into evidence by consent.
3. There was no objection by the Member's counsel or counsel for the LSA regarding the membership of the Committee.
4. The Certificate of Discretion was entered as Exhibit 5. No request for a private hearing had been received and therefore the hearing proceeded in public.
5. Exhibits 6 through 33, contained in an exhibit binder provided to the Committee members and the parties, were admitted into evidence by consent. The following additional exhibits were also entered into evidence by consent:
 - Exhibit 34 – Law Society of Alberta Complaint Notes;
 - Exhibit 35 – Alberta Rules of Court (Rules 614-620)
6. In addition, although not marked as an exhibit, the Committee members had a copy of the Law Society Summary of Key Chronological Events.

B. Citations faced by the Member

7. The Member faced the following 4 citations:
 1. IT IS ALLEGED that you impeded the complainant in obtaining a second opinion and that such conduct is conduct deserving of sanction.
 2. IT IS ALLEGED that you failed to cooperate with successor counsel in the transfer of the complainant's file, and that such conduct is conduct deserving of sanction.

3. IT IS ALLEGED that you placed your account with a collection agency in circumstances where it was not appropriate to do so, and that such conduct is conduct deserving of sanction.
4. IT IS ALLEGED that you made a settlement offer to an adjuster without the complainant's knowledge, and that such conduct is conduct deserving of sanction.

C. Overview of the Events

8. All citations arise from a single file that Mr. Wong was retained by the complainant Ms. S to represent her regarding a personal injury claim.
9. In December of 2004, Ms. S was injured when she slipped and fell on an icy parking lot outside a M... store.
10. Ms. S retained Mr. Wong on January 28, 2005 by entering into a contingency agreement (Exhibit 14, Tab 2).
11. A Statement of Claim was filed on behalf of Ms. S (Exhibit 21, Tab 3) on May 10, 2006 by Mr. Wong.
12. An offer of settlement was made on November 27th, 2006 to an insurance adjuster. The settlement offer was for the amount of \$50,700.88, plus costs and interest (Exhibit 22, Tabs 11, 12, 14, and 15).
13. On the same day, Mr. Wong's articling student (D.S.) made a call to Ms. S and informed her that the offer was made. A memo to the file from the articling student indicated that if Ms. S wanted to revoke the offer, they could do so since it been sent out a few hours ago. (Exhibit 22, Tab 15). It was clear that Ms. S was not given an opportunity to review or discuss the offer prior to it being sent.
14. The next day (Nov. 28, 2006) Ms. S contacted another lawyer (Mr. B. McAmmond) to obtain a second opinion. A consent to obtain the file was executed with the other lawyer on Dec. 22, 2006.
15. On January 8, 2007 Mr. Wong was informed that the settlement offer was rejected and a counter offer of \$10,000.00 was made. Ms. S was advised by Mr. Wong to reject the offer.
16. On January 22, 2007 Mr. McAmmond by letter to Mr. Wong, requested Ms.S's file be transferred.

17. On February 14, 2007, Mr. Wong forwarded his statement of account and indicated that upon receipt of payment of the account, or Mr. McAmmond's undertaking to do so, the file would be forwarded.
18. Ms. S was informed by Mr. McAmmond that he would not be paying the account.
19. The account was placed by Mr. Wong with a collection agency on March 16, 2007.
20. Ms. S was contacted once by letter and once by telephone by the collection agency on March 20 and 21, 2007.
21. On March 22, Mr. McAmmond advised by letter to Mr. Wong that he would not accept Mr. Wong's trust conditions and that Mr. McAmmond would not be assuming conduct of the file.
22. On March 26, Mr. McAmmond and Mr. S. spoke with respect to the file and discussed various means of Mr. McAmmond reviewing the file.
23. Mr. S. spoke to the Practice Advisor of the Law Society on the same day and was told that *inter alia*, Mr. Ross McLeod would be willing to act as a mediator to assist Mr. McAmmond and Mr. Wong in the file transfer.
24. Mr. Wong sent Mr. McAmmond a letter asking whether he would be amenable to having Mr. McLeod act as a mediator in this matter on March 26, 2007.
25. On April 3, the collection agency was instructed by Mr. Wong's office to put the collection of the account on hold.
26. On April 24, a letter with 6 documents was sent to Mr. McAmmond from Mr. Wong. (Exhibit 21, Tab. 1)
27. On May 15th Mr. McAmmond returned the documents.

C. Evidence called on behalf of the Law Society

28. Ms. S. testified before the committee. Her evidence is summarized below:
 - She met with Mr. Wong in January of 2005 and signed a contingency fee agreement.
 - After the initial contact, she dropped by the office a couple of times and made and received a few phone calls for records.
 - There was an occasion before the meeting with the insurance adjuster in June of 2006, where she met with D.S. and C.R. to prepare for the adjuster meeting.

- She indicated that at this meeting she felt attacked and offended by the questions being put to her.
- On the day of the meeting with the adjuster, she met beforehand with Mr. Wong and was not impressed by him. She left feeling uncomfortable.
- In September 2006, she went to Mr. Wong's office to drop off some forms. She was approached by Mr. Wong and was told that he was not going to represent her anymore. They went into his office and it became clear that Mr. Wong had mistaken her for someone else. She testified that she was quite taken aback by this incident and felt that she had been unfairly treated.
- Ms. S received a call on November, 27, 2006 from Mr. S. indicating that an offer of settlement had been delivered to the insurance company. She acknowledged that she was given the option of withdrawing the offer as it had just been given hours before. She instructed Mr. S. to leave the offer open, but not to accept settlement without further instructions.
- She decided at that time, to seek a second opinion. She set up an appointment with Mr. McAmmond for December 7, 2006.
- At that meeting she signed a consent form to release her file to Mr. McAmmond.
- She spoke to Mr. McAmmond some time later and learned that the file would not be released without money being paid to Mr. Wong.
- She received a phone call from the collection agency indicating that she had an overdue account from Mr. Wong. She received a letter from the agency as well.
- Ms. S testified that she had never received an account from Mr. Wong.
- On March 24, 2007 she contacted the Law Society of Alberta.
- Under cross examination, Ms. S acknowledged that she had some problems with her memory.
- She did get a second opinion from Mr. McAmmond in the later part of July, 2007 by telephone conversation.
- After receiving a notice of ceasing to act from Mr. Wong, she then retained Mr. Witten. The matter is still outstanding.

29. Ms. C.R. testified before the committee. Her evidence can be summarized as follows:

- She worked at Mr. Wong's office as an assistant while in law school and then completed her articles of clerkship with Mr. Wong from September 2005 to September 2006.

- She recalled the meeting with the adjustor, Ms. S and Mr. Wong. She was there to take notes and could recall nothing unusual about the meeting. Exhibit 22 tab 8 describes the meeting.
- Ms. R. recalled the pre-meeting conference and testified that she would have discussed credibility issues with Ms. S at that time.
- Ms. R. described Mr. Wong as polite and courteous with clients during the 2 years that she worked with him

30. Mr. D.S. testified before the hearing committee and his evidence can be summarized as follows:

- Mr. S. was hired in May 2006, by Mr. Wong as assistant for 2-3 days a week. In August of that year, he started his articles of clerkship with Mr. Wong. His call to the bar was in September of 2007 and he is now an associate of Mr. Wong.
- Mr. S.'s recollection of the pre-meeting conference was that he was there to take notes. He testified that Ms. Rae had concerns regarding Ms. S's previous injuries and how that may affect her credibility.
- Mr. S. recalled the incident where Ms. S was mistaken by Mr. Wong for another client. Mr. S. indicated that when Mr. Wong realized his mistake, he apologized. He also recalled that Ms. S said that as Mr. Wong acted like that, she was glad that he was on her side.
- Mr. S. indicated that he did not believe that Ms. S saw a draft of the offer to settle. The letter was sent by fax on November 27 at 2:17 p.m. He spoke to Ms. S. and advised her that the offer could be revoked as it had just been sent out hours earlier.
- Mr. S. acknowledged receiving a letter from Mr. McAmmond requesting Ms. S's file.
- Exhibit 22 Tab 22 was a memo created by Mr. S. regarding a telephone conversation with Mr. McAmmond. Mr. S. recalled the telephone conversation as being one-sided. Mr. S. testified that Mr. McAmmond would not agree with anything that was being suggested by him. He recalled dealing with another lawyer at Mr. McAmmond's firm on another file, where that lawyer came to Mr. Wong's office to review the file and take copies. That suggestion was rejected by Mr. McAmmond.
- Mr. S. felt like he was "hitting a wall" while trying to facilitate transfer of the file. He phoned Mr. Ross McLeod of the Law Society to obtain advice on how to proceed. Exhibit 22 Tab 21 was a memo created by Mr. S. that reflected the telephone conversation he had with Mr. McLeod. That memo was put on Mr. Wong's desk and a letter was sent to Mr. McAmmond by Mr. Wong (Tab 21) on the same day.
- To Mr. S.'s knowledge, no response was received from Mr. McAmmond to that letter.
- In his opinion, Mr. Wong is courteous and polite with his clients.

31. Mr. McAmmond testified before the committee and his evidence can be summarized as follows:
- He was called to the Alberta bar in 1996 and worked until 2007 with J.H. Brown and associates. He now practices with Dean Duckett.
 - Mr. McAmmond was contacted by Ms. S around January, 2007. He testified that he had a very vague recollection of the file.
 - He acknowledged that he received a letter dated February 14, 2007 from Mr. Wong enclosing Mr. Wong's statement of account (Exhibit 22, Tab 18). He was not prepared to pay Mr. Wong's statement of account and wrote to Mr. Wong on March 22 saying he was not able to do so.
 - Mr. McAmmond was not able to confirm nor deny any portion of the memo created by Mr. S. (Tab 20) regarding their telephone conversation.
 - Mr. McAmmond testified that he did not have any conversations with Mr. Wong regarding a second opinion on the file.
 - Mr. McAmmond did not profer any explanation for not responding to Mr. Wong's letter of March 26, 2007 where an offer was made to have Mr. McLeod mediate the transfer of the file.
32. Mr. R. Hillborn testified before the committee and his evidence can be summarized as follows:
- Mr. Hillborn is a complaint resolution officer employed by the Law Society of Alberta. In this capacity he received a letter of complaint signed by Ms. S dated March 24, 2007 (Exhibit 14).
 - He understood that the nature of the complaint related to two issues – negotiations with respect to settlement and transfer of the file to new counsel.
 - Exhibit 34 outlines the complaint notes regarding the file that Mr. Hillborn had opened in this case.
 - It became clear that Ms. S was not satisfied with the manner that this matter was unfolding and the complaint was referred for a section 53 review by a complaints manager.
 - Under cross-examination, Mr. Hillborn testified that Mr. Wong was cooperative in his dealings with him.

D. Evidence of the Member

33. Mr. Wong testified before the committee and his evidence may be summarized as follows:
- Mr. Wong was admitted to the Alberta Law Society in 1986. His practice consists mainly of personal injury files.

- Ms. S was a “cold call” in that she became a client from a telephone call to his office and a meeting was set up. Ms. S signed a contingency agreement with Mr. Wong and Ms. R. would have interviewed her for the claim.
- The statement of claim (exhibit 21 Tab 3) would have been drafted by Ms. R. and reviewed by Mr. Wong before filing.
- It was Mr. Wong’s practice to review all memos on the file.
- Mr. Wong’s recollection of the meeting with the adjuster was that Ms. R. would have been in attendance to take notes and Mr. Wong would be there to make sure the questions asked by the adjuster were proper questions. He did not feel that there was anything unusual about that meeting.
- Mr. Wong recalled the meeting with Ms. S in September where he misidentified her as another client. He had been told by the staff that another client had been very difficult to deal with on a number of matters. He had decided that he would inform that client that he would not act for her any longer. When he saw Ms. S, he thought that she was the other client. Ms. S insisted that he talk to her and when he had her in his office, it became clear that she was not the client that he had originally thought. He apologized for his error and believed that she was content with his apology.
- Mr. Wong confirmed that an offer of settlement was sent on the file on November 27th. He testified that he did not have discussions with Ms. S before sending the letter out to the insurers. He related his standard practise on a file such as this would be to wait 18 months to 2 years to determine injuries. He would then order the relevant medical charts and review them with a view to determine whether a referral to an expert would be in order. A quantum brief would then be prepared and contact would be initiated with the client to review the numbers. He assumed that this would have been done in this case.
- Mr. Wong testified that there was no intention to act without instructions on this file. He had assumed that this file was like all other personal injury files since the quantum brief was on the file and he assumed that it had been discussed with the client. Mr. Wong testified that it came as a surprise to him that there was no memo on this file about a meeting with the client regarding the quantum brief. He testified that this could have been why Mr. S. was instructed to call the client to inform her of the offer.
- Mr. Wong testified that in his experience slip and falls were very vigorously defended and that is why his contingency fees on this type of file were higher. In this particular case, the facts were problematic in that Ms. S was wearing running shoes in December and there were prior medical conditions. This was outlined in the memos to the file (Exhibit 21 Tabs 4, 5, 6 and 7). The memos indicated research done on the file by Mr. S..
- Mr Wong indicated that when he received Mr. McAmmond’s original letter, he believed that Mr. McAmmond was assuming conduct of the file. He instructed his staff to draw up a statement of account and sent that with his letter to Mr. McAmmond in February. Mr. Wong had had other clients fire him and he worked out trust conditions with other lawyers assuming the conduct of the file. It appeared to him that Mr. McAmmond was not interested in working out any trust conditions.

- Mr. Wong was concerned about protecting his account and gave instructions to send the account to a collection agency on March 14. He was still under the impression that Mr. McAmmond was taking over the file.
- When Mr. Wong found out that Mr. McAmmond did not want to deal with his trust conditions, he wrote a letter to Mr. McAmmond based on Mr. S.'s memo of his conversation with Mr. McLeod suggesting that Mr. McLeod mediate the transfer of the file. There was no reply to this letter.
- Mr. Wong believed that Ms. S was no longer his client and that he did not have the authority to discuss trust conditions with her and he was obliged to deal with Mr. McAmmond.
- Mr. Wong testified that upon Mr. S. speaking to Mr. McLeod, he instructed Mr. S. to contact Ms. S and get further information. This was done on April 3. On that date the collection agency was also informed to hold off on collecting the account. It would appear that they did not do so and another letter was sent to Ms. S on April 6. There was confirmation that the collection was put on hold on April 10. (Exhibit 22 Tab 17).
- Mr. Wong testified that it was not until discussions with Mr. Hillborn that he realized that Mr. McAmmond was not taking over the file, but rather was requesting the file to give a second opinion. Mr. Wong wrote to Mr. McAmmond on April 24 sending him documents from the file under certain trust conditions. These documents were returned to Mr. Wong on May 15.
- Another letter was sent by A... to Ms. S on May 3. On May 11th, the Agency was again informed to hold collection of the account.

E. Decision of Hearing Committee

34. The Hearing Committee dismissed all citations against Mr. Wong.
35. Dealing with citations one and two, the committee believed that Mr. Wong did not impede the complainant or fail to cooperate with successor counsel in the transfer of the file. We note that from January to March of 2007, Mr. Wong was attempting to transfer his file to Mr. McAmmond. The committee finds that Mr. Wong was under the impression that Mr. McAmmond was taking over conduct of the file and was attempting to arrange trust conditions that would protect his account and the work that he had done on the file before transfer. There was no deliberate withholding of the file and indeed, Mr. Wong, through his student Mr. S., contacted the Law Society and requested that he and Mr. McAmmond meet with Mr. McLeod to mediate the transfer. We find that this contact with the Law Society was an act of good faith by Mr. Wong in his attempts to transfer the file. It was only when Ms. S contacted the Law Society and they (through Mr. Hillborn) contacted Mr. Wong that he knew that the Mr. McAmmond was only to provide a second opinion. At that point, it is clear to the committee that Mr. Wong followed the direction of the Law Society to provide his file to Mr. McAmmond. It is of note that Mr. McAmmond did not inform Mr. Wong at any point that he was requesting the file only to provide a

second opinion. It is also of note that new counsel, Mr. Witten has not requested any file transfer.

36. Citation number 3 deals with the placing of Mr. Wong's account with a collection agency in circumstances where it was not appropriate to do so. The Hearing Committee finds that in the circumstances, this citation is dismissed. Mr. Wong was under the impression in March of 2007, that he had been fired as Ms. S's counsel. He was attempting to transfer his file to another lawyer that he assumed was taking over the conduct of the file. When the other lawyer refused trust conditions including payment of Mr. Wong's account and did not attempt to mediate the transfer of the file, Mr. Wong wished to protect his account. He did so pursuant to his contingency agreement with Ms. S. Mr. Wong had sent his account to Mr. McAmmond and assumed that this would have been passed on to Ms. S. He did so because he believed that Mr. McAmmond was taking over conduct of the file. When he did not receive any further correspondence from Mr. McAmmond, he sent his account to a collection agency. When Mr. Wong realized that the file transfer was only for a second opinion, his office contacted the agency to put a hold on collection. There is evidence accepted by the committee that the agency did contact Ms. S after April 3, but we accept that this was done contrary to instructions from Mr. Wong.

37. With respect to citation number 4 where it is alleged that Mr. Wong made a settlement offer to an adjuster without the complainant's knowledge, the hearing committee dismisses the citation. The committee accepts Mr. Wong's evidence regarding his usual practice regarding settlement offers. He indicated that a quantum brief is prepared and is discussed with the client before the offer is made. In this case, the brief was not discussed with the client. When realizing his mistake, Mr. Wong directed Mr. S. to immediately contact the client. This was done a few hours after the fax letter was sent to the insurer's adjuster. At that time, it was made clear that if this was not acceptable to Ms. S, the offer could be revoked. Ms. S's instructions at that point were to leave the offer in place, but not to make any settlement without her consent. That was agreed upon. The offer was not accepted and a significantly lower offer of settlement was sent back to Mr. Wong. This was not accepted on behalf of Ms. S. The committee finds that any member of the Law Society acting without instructions from a client is of serious concern. However, in the circumstances of this case, within hours of sending the offer of settlement, the client was contacted and her instructions were to leave the offer "on the table". The Hearing committee does not find this to be sanctionable conduct on the part of Mr. Wong.

F. Concluding Matters

38. There will be redaction of any information that would be subject to solicitor client privilege from the Law Society file and the transcript. Any matters discussed that would affect Ms. S's claim will not be disclosed until her action is finalized.

Dated this 18th of August, 2009

N. Ahluwalia QC – Chair and Bencher

S. Watson QC -- Bencher

J. Glass -- Bencher