

THE LAW SOCIETY OF ALBERTA
IN THE MATTER OF THE *LEGAL PROFESSION ACT*
AND
IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF ANDREW GEISTERFER
A MEMBER OF THE LAW SOCIETY OF ALBERTA

Hearing Committee:

Adam O. Letourneau, Q.C., Chairperson

Darlene W. Scott, Q.C.

Glen Buick

Appearances:

David Scheckter for Mr. Andrew Geisterfer

Lois Maclean for the Law Society of Alberta

Hearing Date:

March 7, 2016

Hearing Location:

Law Society of Alberta at 800 Bell Tower, 10104 – 103 Avenue, Edmonton, Alberta

HEARING COMMITTEE REPORT

Summary and Disposition

1. This matter involves two citations issued by the Law Society against Mr. Geisterfer. The first citation was amended at the hearing by consent of the parties. The amended citations are as follows:

- (a) It is alleged that the Member engaged in a business transaction with a client with respect to a numbered company of which they were both shareholders, where the client did not have independent legal representation, and where the Member did not document his advice to the client that he should obtain independent legal advice, and that such conduct is deserving of sanction.
 - (b) It is alleged that Mr. Geisterfer engaged in actions which were oppressive or which violated reasonable expectations of integrity, and that such conduct is deserving of sanction.
2. The matter proceeded to hearing March 7, 2016. The Hearing Committee made a decision on March 7, 2016 on the basis of joint submissions and Mr. Geisterfer admitted guilt to both citations, as amended. The Hearing Committee accepted the joint submissions on guilt, and also accepted joint submissions on sanctions.

Jurisdiction and Preliminary Matters

3. There was no objection to the constitution of the Hearing Committee, and there was no application to hold the hearing privately.
4. The Committee's jurisdiction to proceed with the hearing was established, and the hearing was held in public.

Facts

5. The citations arose from a complaint to the Complaints Department of The Law Society of Alberta (LSA) by a business partner of Mr. Geisterfer, in regard to a corporation and franchise with which both parties were involved.
6. Mr. Geisterfer submitted a Statement of Admitted Facts and Admission of Guilt, which is attached as Schedule "A" to this report. Essentially, Mr. Geisterfer entered into a business agreement and shareholder structure with the complainant without properly encouraging the complainant to obtain independent legal advice. The relationship went sour, and the complaint was made to the LSA.
7. The Hearing Committee accepted the Statement of Admitted Facts and Admission of Guilt as presented, which is therefore deemed to be a finding of the Hearing Committee that the conduct of the Member is deserving of sanction.

Joint Submissions on Sanction

8. Both counsel for Mr. Geisterfer and counsel for the LSA suggested a suspension of 60 days, to commence on March 23, 2016, to allow Mr. Geisterfer's partners to complete a smooth transfer of his files and to notify his clients of the suspension. The timing was also required to accommodate the transfer of Mr. Geisterfer's trust accounts from his former firm to his new firm.
9. Counsel for the LSA suggested that full actual costs of the hearing be paid by Mr. Geisterfer. Mr. Geisterfer agreed to pay full actual costs of the hearing. The Hearing Committee accepted the joint submissions on sanctions.

Analysis

10. This Hearing Committee accepts that joint submissions play an important role in disciplinary proceedings, in that they facilitate the expeditious resolution of matters without the need for long hearings and inconveniencing witnesses. This saves time and expense and increases certainty, all of which are desirable goals. However, a Hearing Committee has no obligation to accept a joint submission and in fact has an obligation to consider whether a joint submission is reasonable in the circumstances and is in the public interest.
11. The Hearing Committee in *Law Society of Alberta v. Pearson*, 2011 ABLS 17 (CanLII), at para 21, stated that:

“A hearing committee should give serious consideration to a jointly tendered admission ..., should not lightly disregard it, and should accept it unless it is unfit or unreasonable, contrary to the public interest, or there are good and cogent reasons for rejecting it.”
12. If a joint submission is not contrary to the public interest, or unfit or unreasonable, a hearing committee should not readily reject or substitute the joint submission with another penalty. (*Law Society of Alberta v. Bontorin*, 2015 ABLS 9 (CanLII), at paras 16 to 19.)

This Hearing Committee has considered the joint submission and does not consider it to be unfit or unreasonable in the circumstances, nor to be contrary to the public interest, and sees no good or cogent reason for rejecting it.
13. In considering the proposed sanction, we assessed the following information, about which we had concerns. The complainant is still at risk in regard to a personal guarantee that Mr. Geisterfer arranged for the complainant to sign in relation to the franchise agreement. Although a written indemnity agreement was prepared by Mr. Geisterfer and

was executed, the complainant is still liable to the bank that holds the personal guarantee, despite the indemnity agreement or Mr. Geisterfer's submissions that he will not seek any recourse from the complainant at any time.

14. Even in the face of these proceedings for failing to recommend or document that the complainant seek independent legal advice, Mr. Geisterfer still has not provided written encouragement to the complainant to seek independent legal advice. He also did not provide written encouragement to the complainant to seek independent legal advice regarding the indemnity agreement that he was court-ordered to provide.
15. There was also a significant delay of approximately two years between the time that Mr. Geisterfer was court-ordered to put an indemnity agreement in place and the time that the indemnity agreement was provided to the complainant and properly executed.
16. The events that gave rise to the first citation occurred soon after findings of guilt by a previous Hearing Committee in relation to issues of integrity. There was approximately a year between the finding of guilt in the previous decisions of *Law Society of Alberta v. Andrew Geisterfer*, 2009 LSA 14,15 and 16 (CanLII), and the misconduct in this case. In those decisions, Mr. Geisterfer was found guilty regarding three citations at a disciplinary hearing. He was given a reprimand and ordered to pay significant fines, along with costs of the hearing for those citations. Mr. Geisterfer has been a member of the LSA since 1996.
17. The proposed sanctions satisfy the objectives of denouncing the serious misconduct of Mr. Geisterfer, deterring future misconduct by him and by members of the LSA generally, and maintaining public confidence in the legal profession. (*Law Society of Alberta v. Byron*, 2013 ABLs 31 (CanLII), at para. 120)
18. The Hearing Committee directs that Mr. Geisterfer shall be suspended for 60 days, commencing March 23, 2016.
19. The Hearing Committee directs that Mr. Geisterfer shall pay full actual costs of the hearing, no later than 60 days following the date on which his counsel is served with notice of the amount of the actual costs.
20. This Hearing Committee directs that, between March 7 and March 23, 2016, Mr. Geisterfer must not enter into any business transaction without advising the other party or parties to that transaction that they should obtain independent legal advice. Such advice must be in writing, with a copy to be provided to the LSA forthwith upon providing it to the other party or parties. Mr. Geisterfer also gave an undertaking to comply with this condition during the hearing.

Concluding Matters

21. The Hearing Committee Report, and the evidence and exhibits at the hearing, are to be made available to the public, subject to redaction to protect privileged communications, the names of clients or complainants, and such other confidential personal information as is the usual practice.
22. A notice of the suspension shall be issued, pursuant to the *Legal Profession Act*.
23. No referral to the Attorney General is directed.

Dated at the City of Edmonton, in the Province of Alberta, this 4th day of May, 2016.

Adam O. Letourneau, Q.C., Chair

Darlene W. Scott, Q.C.

Glen Buick

IN THE MATTER OF THE LAW SOCIETY OF ALBERTA

And

IN THE MATTER OF A HEARING REGARDING

THE CONDUCT OF ANDREW GEISTERFER

HEARING NO: HE20150108

STATEMENT OF ADMITTED FACTS

AND

ADMISSIONS OF GUILT

Introduction

1. I am a member of the Law Society of Alberta and have been a member at all times relevant to this proceeding.
2. I was called to the Bar in 1996 and have practiced law in Edmonton since then.
3. At all times relevant to the citations, I carried on practice under the firm name River City Law Group. I, Andrew Geisterfer, was at all times the responsible lawyer for that firm.

Citations

4. A Conduct Committee Panel has directed the following citations:
 1. It is alleged that Mr. Geisterfer engaged in a business transaction with a client who did not have independent legal representation and that such conduct is deserving of sanction. In the alternative, it is alleged that if Mr. Geisterfer advised his client to obtain independent legal advice, Mr. Geisterfer engaged in a business transaction that was not fair and reasonable to his client in all respect and did not confirm that his client gave informed consent to Mr. Geisterfer engaging in the business transaction with him, and that such conduct is conduct deserving of sanction.
 2. It is alleged that Mr. Geisterfer engaged in actions which were oppressive or which violated reasonable expectations of integrity, and that such conduct is conduct deserving of sanction.

Facts

5. The Member and AP were both members of the same Rotary club in the City of Edmonton.
6. The Member and AP became acquainted and became friends as a result of their membership in Rotary.
7. AP attended at The Member's residence on more than one social occasion as friends.
8. AP retained The Member to assist in the purchase of a house in 2010. (Ex. 13, page 1).
9. In 2009, AP and The Member began discussing business opportunities with the intention that The Member would fund the business and AP would operate the business.
10. AP had limited business experience in Canada prior to going into business with The Member. AP had represented that he had business experience in his homeland of Russia. The Member understood that AP's primary language was Russian and that English was his second language.
11. The Member and AP explored a number of possible business ventures that did not result in purchases or a business venture.
12. AP and The Member considered a proposal for a Second Cup.
13. AP and The Member reviewed the Second Cup proposal together and agreed to proceed to attempt to purchase the Second Cup franchise.
14. The Second Cup franchise agreement did not allow for any changes or amendments to the franchise documents; and AP and The Member accepted the proposed franchise agreement as an 'as is' proposal.
15. On August 30, 2010, The Member incorporated a number company -15555937 Alberta Ltd. (1555) for the purpose of carrying out the proposed business venture.
16. The Member prepared all corporate documents which included the following (all of which are part of Exhibit 13, Tab A):
 - a. Articles of Incorporation,
 - b. Bylaw #1,
 - c. Share Subscriptions for The Member and AP,
 - d. Shareholders Register,
 - e. All Shareholder's Resolutions,

- f. All Director's Resolutions,
 - g. The Annual Returns, and
 - h. All Share Certificates.
17. In the original corporation registration, 50 shares were to be issued to AG and 50 shares were to be issued to The Member. However, at the time 1555 was incorporated, the following shares were issued by agreement:
- a. 55 Class common voting shares were issued to The Member, and
 - b. 45 Class A common voting shares were issued to AP (Exhibit 13, Tab F).
18. AP and The Member were the only shareholders of 1555 at the time of its incorporation.
19. On November 29, 2010, a franchise agreement was signed by The Member, AP, 1555 and The Second Cup Ltd. The Agreement provided for the operation of a Second Cup franchise at the corner of 50th Street and 167th Avenue, Edmonton by 1555 (Exhibit 6, Tab C).
20. With respect to the issue of independent legal advice for AP, The Member stated in a letter written to the Law Society of December 17th, 2012:
- I did verbally recommend to the Complainant that he seek Independent Legal Advice when we signed the Franchise Documents but he refused such verbal recommendations. I confirm that in your package, you have provided to me under the Tab 4, a Certificate completed by Ms. K. N., a lawyer who does not practice with River City Law Group. She is a third party lawyer who confirms that, at least for the purposes of the personal guarantee, the Complainant fully understood what he was doing (Exhibit 9).
21. The Member did not document or confirm in writing his verbal communication to AP with respect to the independent legal advice.
22. With respect to the issue of whether the recommendation was made, AP stated in his letter to the Law Society of January 6, 2014 that:
- ... I do not recall if The Member recommended me to seek Independent Legal Advice when we signed the franchise Agreement, moreover The Member stated that he knows how to do all the paperwork with regards of our business and I can rely on his expertise because we were friends and business partners. I have never stated that I do not understand the purpose of personal guarantees I have provided and still carry on even though I have no control over the company operations anymore. (Exhibit 10).
23. With respect to the involvement of K. N., she is a member of the Law Society who was employed by River City Law Group in 2007 and 2008. From 2008 to 2014 she shared space with River City Law Group, and was a tenant of River City Law Group. The office

had a common waiting room and receptionist who answered calls for Ms. N. and AG. Ms. N.'s business cards and letterhead did not use River City Law Group from 2008 to 2014.

24. The Shareholder's Resolution for 1555 of August 20, 2011 appointed River City Law Group as the solicitors for the Corporation for the ensuing year (Exhibit 13, Tab K).
25. The Second Cup franchise opened for business in mid December of 2011.
26. In 2012, differences developed between The Member and AP over the management of the franchise.
27. On or about February 18th, 2012, AP's role as the manager of the Second Cup ended. Both The Member and AP have different recollections on how exactly the role ended.
28. On March 6th, 2012, The Member sent AP notice of a shareholders and director meeting of the numbered company, 1555, to be held on March 8th, 2012 at The Member's office (Exhibit 6, Tab E). The notice stated:

... The purpose of this meeting is to accept the resignation of AP as director of the corporation and to authorize the performance of a share sale or share freeze with the value of the Class 'A' Common voting shares currently held to take place for the sum of \$1.00 per share. All class 'A' common voting shares shall be terminated or sold and new shares issued in their place.

29. The Bylaws of 1555 require the following notice:
 - a. Notice of meetings of the directors -not less than 48 hours -paragraph 4, II, and
 - b. Notice of meetings of the shareholders -not less than 21 days -paragraph 10.03.
30. The Bylaws further provided in paragraph 10.03 that:

... Notice of Meetings of Shareholders called for any purpose other than consideration of the financial statements and Auditor's Report, election of Directors and reappointment of the incumbent Auditor shall state the nature of such business in sufficient detail to permit the Shareholder to form a reasoned judgment thereon and shall state the text of any Special Resolution to be submitted to the Meeting.

31. In his various letters to the Law Society, AP has stated that he did not receive the notice until after the meeting had already been held (Exhibit 6).
32. AP did not attend the March 8th, 2012 shareholders meeting.
33. At the March 8th, 2012 shareholders meeting, The Member took the following steps:
 - a. The Member redeemed all existing shares of the Numbered Company;
 - b. The Member reissued 90 Class A common voting shares to himself;

- c. The Member reissued to Class A common voting shares to LO, who had been working for the franchise as a manager;
 - d. The Member issued 55 Class E non-voting preferred shares to himself; and
 - e. The Member issued 45 Class E non-voting preferred shares to AP.
34. AP commenced a lawsuit against The Member in 2013 as a result of the March 8th, 2012 shareholders meeting and other disputes related to the business venture.
35. The lawsuit was settled pursuant to the order of Judge Haymour.
36. The lawsuit was settled in 2014. With respect to the settlement, AP stated in his letter to the Law Society of August 5th, 2014 that:
- ... I have settled my Civil Claim against The Member only due lack of resources needed to continue my Claim in Queen's Bench Court because Civil Claim Court cannot proceed with my claim due corporate shares were involved. (Exhibit 14)
37. At the time of his complaint, and to the best of AP's knowledge, his personal guarantee remains in force.

All of these facts are admitted, and it is admitted that the conduct set out above constitutes conduct deserving of sanction with respect to the Citations set out in paragraph 4 above.

This Admitted Statements of Facts is dated March 4th, 2016 and Citation 1 is to be amended as follows:

- 1. It is alleged that The Member engaged in a business transaction with a client with respect to a numbered company of which they were both shareholders, where the client did not have independent legal representation, and where The Member did not document his advice to the client that he should obtain independent legal advice, and that such conduct is deserving of sanction.

“Witness”

Witness

“Andrew Geisterfer”

Andrew Geisterfer