

**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
GHULAM MURTAZA, a Member of the Law Society of Alberta**

INTRODUCTION

1. On November 3, 2014, a Hearing was conducted at the Law Society of Alberta office in Edmonton for the purpose of considering the conduct of Ghulam Murtaza. The Hearing was conducted by Nancy Dilts QC, Benchler, as a single benchler hearing. The Law Society of Alberta (“LSA”) was represented by James Vaage. Mr. Murtaza was present at the hearing and was represented by Elvis Iginla.

SUMMARY OF PROCEEDINGS

2. The LSA issued three citations against Mr. Murtaza as follows:

1. *It is alleged that you failed to conscientiously serve your client and such conduct is deserving of sanction.*
2. *It is alleged that you failed to properly supervise your support staff and such conduct is deserving of sanction.*
3. *It is alleged that you failed to be candid with your client and such conduct is deserving of sanction.*

3. The matter proceeded as a single benchler hearing with the consent of both parties and in accordance with the provisions of section 60 of the *Legal Profession Act*. The process by which this matter came to be heard as a single benchler hearing is set out below.

4. Under section 60 of the *Legal Profession Act* and particularly subsection (1), a member may submit to the Executive Director a statement of admission of guilt of conduct deserving of sanction. Pursuant to section 60(2), where that statement of admission of guilt is submitted before a Hearing Committee is appointed, that statement of admission of guilt cannot be acted upon until it is in a form acceptable to the Conduct Committee.

5. In this instance, Mr. Murtaza signed and submitted to the Law Society an Agreed Statement of Facts and Admission of Guilt signed and dated July 30, 2014. In that Agreed Statement of Facts and Admission of Guilt, Mr. Murtaza acknowledged that he had the opportunity to and did obtain independent legal advice in respect of the above citations. In addition, in paragraph 42 of the Agreed Statement of Facts and Admission of Guilt, Mr. Murtaza acknowledged that the admission of facts and guilt was given by him voluntarily and without any compulsion or duress.

6. Mr. Murtaza’s Agreed Statement of Facts and Admission of Guilt was tendered prior to a Hearing Committee being appointed. It was submitted to a three person Panel of the Conduct Committee on September 11, 2014 made up of Neena Ahluwalia, QC, Benchler, Carole Michalyshyn and Barb Widdowson, QC. That Panel of the Conduct Committee determined that

the Agreed Statement of Facts and Admission of Guilt was in a form acceptable to the Conduct Committee.

7. Having determined that the Agreed Statement of Facts and Admission of Guilt signed and submitted by Mr. Murtaza was in a form acceptable to the Conduct Committee as contemplated by section 60(2) of the *Legal Profession Act*, pursuant to section 60(4), each admission contained in Mr. Murtaza's Agreed Statement of Facts and Admission of Guilt is deemed for all purposes to be a finding of the Hearing Committee that the conduct of Mr. Murtaza is conduct deserving of sanction.

8. Pursuant to section 60(3) of the *Legal Profession Act*, and with the agreement of both parties, as the Agreed Statement of Facts and Admission of Guilt was accepted by a Panel of the Conduct Committee, the matter proceeded as a single bench hearing with Ms. Dilts, a Bench, appointed to hear the matter.

9. Guilt having been determined by the Panel of the Conduct Committee, the remaining matter to be determined at the Hearing was the appropriate sanction on the three citations.

REVIEW OF THE EVIDENCE

10. Mr. Murtaza was admitted to the Law Society of Alberta in September 2009 and at the time of the hearing was an inactive member. As of May, 2011 and to the present, Mr. Murtaza actively practices law in British Columbia.

11. At the time the complaints arose, Mr. Murtaza was a relatively inexperienced lawyer; his practice included real estate.

12. The complainant was a financial institution that had provided Mr. Murtaza instructions to act for it in placing a mortgage against title in a real estate transaction. In addition to acting for the financial institution, Mr. Murtaza acted for the purchaser and mortgagor, MB. Notwithstanding clear, unambiguous and standard instructions from the financial institution relating to the registration of a mortgage, Mr. Murtaza failed to ensure that the mortgage was registered against title before advancing mortgage funds. The mortgage amount was \$252,000.00.

13. In fact, the evidence in the Agreed Statement of Facts and Admission of Guilt was that Mr. Murtaza left the responsibility of registering the mortgage to his paralegal, RN, who he believed was an experienced paralegal. Mr. Murtaza failed to supervise that paralegal's actions or to inquire into the file. Had he done so, it would have been evident that it would be impossible to register the mortgage commitment of MB against the title as the title showed that title to the land was registered to joint tenants, one of whom was Mr. Murtaza's client and one of whom was not.

14. Mr. Murtaza's client, the financial institution, made a number of appropriate inquiries of Mr. Murtaza to obtain a report confirming that security had been placed on title. Mr. Murtaza failed to respond to many of those inquiries.

15. Some months after mortgage funds had been advanced, and after an attempt to register the mortgage against title had failed, Mr. Murtaza commenced litigation to obtain an order that title to the property be vested in MB's name alone. The joint tenant AB defended that claim.

16. In the meantime, Mr. Murtaza, aware that the mortgage could not be registered against title and aware that litigation had been commenced and defended, responded to the complainant's inquires untruthfully, deliberately leaving the impression that the mortgage had been rejected for minor administrative reasons and that the errors were being fixed and the mortgage would be resubmitted to Land Titles. At the time of writing his client, the financial institution, Mr. Murtaza had no reason to believe that the mortgage could be registered against title or that there would be a quick resolution to the issue of securing title to the land in the name of MB alone.

17. After being pressed again by his client for a further report on its security, Mr. Murtaza again failed to be truthful and again attempted to mislead his client by suggesting the mortgage had been resubmitted but had inadvertently been sent in by mail rather than by courier. None of that information was correct.

18. In a third response to his client, now seven months after releasing mortgage funds, Mr. Murtaza provided partial truths to explain why the mortgage was not registered against title, still failing to take accountability for the multiple failures committed by him and his office. After subsequent demands from his client, Mr. Murtaza reported his failures to his insurer, Alberta Lawyers Insurance Association, and his client complained to the LSA.

19. In his submissions to the Hearing Committee, counsel for the LSA characterized Mr. Murtaza's conduct as deliberate, placing the reputation of the profession at risk. He characterized Mr. Murtaza's communications with his client as deliberately vague and misleading and suggested that by their very nature, Mr. Murtaza's actions caused harm to the profession.

20. Mr. Murtaza's counsel characterized Mr. Murtaza's failures as carelessness in failing to oversee the actions of his paralegal and in failing to be informed as to the problems with the file.

SANCTION

21. Counsel for the LSA and counsel for Mr. Murtaza tendered a joint submission on sanction recommending that the Hearing Committee issue Mr. Murtaza a reprimand and impose a fine of \$3,000 and order that Mr. Murtaza be required to pay costs of the hearing in the agreed amount of \$3,000.

22. Paragraph 56 of the Hearing Guide of the LSA says that where a submission on sanction is made jointly, the Hearing Committee should give serious consideration to the joint submission and should accept it unless it is unfit, unreasonable or contrary to the public interest. The Hearing Committee, however, is not bound by the submission and may determine a more appropriate sanction after hearing the parties.

23. In sanctioning a member, the Hearing Committee is to take a purposeful approach, recognizing that the overarching purpose of the sanctioning process is to protect the public, preserve high professional standards, and preserve public confidence in the legal profession: *Law Society of Alberta v. Mackie*, 2010 ABL 10. The purpose of sanctioning is not to "punish offenders and exact retribution": *Lawyers & Ethics: Professional Responsibility and Discipline*, by Gavin McKenzie (at page 26-1).

24. A reprimand is considered a public expression of the profession's denunciation of the lawyer's conduct and is to deter future misconduct by the member and within the profession: *Law Society of Alberta v. Westra*, 2011 CanLii 90716.

25. In considering the appropriateness of a sanction to protect the public interest and to maintain the integrity of the profession, the Hearing Committee considered a number of factors, including the fact that Mr. Murtaza's conduct was intentional and reflected a disregard of his responsibilities as a member of the profession in overseeing the work of those within his office. The Hearing Committee also considered the potential impact of his actions in failing to protect his client's interests before advancing mortgage funds.

26. As a factor mitigating in Mr. Murtaza's favour, the Hearing Committee was encouraged to consider that Mr. Murtaza had no prior disciplinary record; however, noting that the complaint was received within the first two (2) years of practice, it gave Mr. Murtaza's clean disciplinary record limited weight. A more compelling mitigating factor was Mr. Murtaza's decision to tender an Agreed Statement of Facts and Admission of Guilt to a Panel of the Conduct Committee, thereby allowing this matter to proceed most efficiently as a single bench hearing and without the need for additional evidence. His choice was not only a benefit to the LSA and but also to the public to allow for the timely resolution of serious complaints. In addition, Mr. Murtaza appeared before the Hearing Committee with remorse and recognizing that his responsibilities as a member of the LSA cannot be shifted onto someone else. Finally, it is worthy of note that Mr. Murtaza had nothing to gain by his misconduct.

27. Having regard to all of the circumstances surrounding the complaints and in particular the deliberate nature of Mr. Murtaza's conduct and his failure to take accountability for the actions of those under his supervision, the Hearing Committee concluded that a reprimand and a fine was the appropriate sanction and accepted the joint submission of the parties that a fine be imposed in the amount of \$3,000. In addition to the fine of \$3,000, Mr. Murtaza is ordered to pay the costs of the hearing in the agreed amount of \$3,000. Mr. Murtaza is given six months from the date of the Hearing to pay the fine and the costs.

REPRIMAND

28. A reprimand was delivered by the Hearing Committee at the conclusion of the hearing reminding Mr. Murtaza that each of the three citations to which he admitted guilt was serious with the potential for serious consequences, including material financial loss to his client. He was reminded that as a member of the LSA, his obligation is to discharge his professional duties diligently, recognizing that the public relies on him to protect and serve their interests. He was reminded that it is the absolute obligation of the supervising lawyer to be aware of the actions of those under his supervision. In this instance, Mr. Murtaza abandoned those responsibilities to ensure that the legal work entrusted to him was being conducted diligently and appropriately.

29. Of equal concern was Mr. Murtaza's lack of candor with his client. Mr. Murtaza's contrived responses to his client's inquiries demonstrated a repeated decision to mislead and an absolute failure to take accountability for his actions and those of his paralegal. Mr. Murtaza was reminded that honesty and accountability must be cornerstones to his actions as a member of the LSA.

CONCLUDING MATTERS

30. In the event of any request for public access to the evidence heard in these proceedings, the Exhibits and the transcript of proceedings shall be redacted to protect the identity of the Member's former clients, and any information subject to proper claims of privilege.

31. No referral to the Attorney General is directed.

32. There shall be no Notice to the Profession.

Dated at Calgary, Alberta this 17th day of November, 2014.

Nancy Dilts, QC – Bencher and Chair