

IN THE MATTER OF *THE LEGAL PROFESSION ACT*

AND

**IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF DAVID SALMON,
A MEMBER OF THE LAW SOCIETY**

Hearing Committee

Chair: Walter J. Pavlic, Q.C.
Member: Sarah King D'Souza, Q.C.
Member: Dr. Miriam Carey

Appearances:

Nancy Bains – Law Society

Member

HEARING REPORT:

1. This matter proceeded on March 3, 2015 before the Hearing Committee consisting of Walter J. Pavlic, Q.C., Sarah King D'Souza, Q.C., and Dr. Miriam Carey. The Law Society was represented by Nancy Bains and the member represented himself.

Jurisdiction

2. The Law Society established jurisdiction in this matter through the entry of Exhibits 1 through 5 being the Notice of Appointment of a Hearing Committee, Notice to Solicitor, Notice to Attend and Private Application Hearing Notice, Certificate of Membership and the Certificate of Exercise of Discretion pursuant to 96 (2) (b) of the *Legal Profession Act*.

Citations:

3. On October 23, 2014, the Conduct Committee Panel directed the following citations:
 - a. It is alleged that Mr. Salmon failed to serve his clients by not advising of the deadline for completion of undertakings and such conduct is deserving of sanction.

- b. It is alleged that Mr. Salmon failed to respond in a timely manner to the Law Society, and such conduct is deserving of sanction.
4. The Hearing Committee was presented with an Agreed Statement of Facts in which the member admitted his guilt to the citations and acknowledged that his conduct was deserving of sanction (see Appendix A.)

Factual Background

5. Mr. Salmon has been a member of the Law Society of Alberta for approximately 35 years and practices in Calgary at the firm of Salmon & Company.
6. During the period of February 2009 to March 2012 Mr. Salmon performed legal services in relation to a Builder's Lien filed by U.C. against lands owned by Mr. and Mrs. F.
7. During the course of that litigation, issues arose with respect to the production of answers to certain undertakings. Mr. Salmon consented to an Order that required answers to undertakings be provided by his client on or before February 21, 2012. Mr. Salmon then advised U.C. that they were to provide answers to undertakings as soon as possible but failed to advise that they were due by February 21, 2012. The answers to undertakings were not provided by February 21, 2012 and counsel for Mr. and Mrs. F then made an Application to have U.C. found in contempt for failure to complete undertakings. The Contempt Application was subsequently adjourned. U.C. then terminated their relationship with Mr. Salmon and sought other counsel. Mr. Salmon received no payment for the services he provided for U.C. from February 2009 to March 2012.
8. Subsequent to terminating the relationship with Mr. Salmon, U.C. filed a complaint with the Law Society. Mr. Salmon was then contacted by the Law Society Complaints Resolutions Officer who requested a response to the complaint by May 22, 2012. Mr. Salmon requested an extension which was provided. Despite receiving the extension, Mr. Salmon did not respond to the Complaints Resolution Officer.
9. The Law Society subsequently made three further attempts to obtain a response from Mr. Salmon. Mr. Salmon ignored each of these attempts. Ultimately, an Investigation Order was issued on October 1, 2012. Mr. Salmon was cooperative during the course of the investigation.
10. Mr. Salmon has admitted to his guilt to the citations and both he and the Law Society have agreed that the appropriate penalty in this case is a reprimand and payment of the estimated Statement of Costs agreed to be \$2,600.00.

Reprimand

11. It is the responsibility of a member of the Law Society to ensure that clients are kept fully informed of the status of their action, in particular, any outstanding Court Applications. To fail to inform a client about the contents of a Court Order and particularly the deadlines contained within it is unacceptable. Mr. Salmon had no excuse for not informing his client. Mr. Salmon was further reprimanded with respect to his failure to respond to the Law Society. It is a grave concern when a member fails to acknowledge correspondence from the Law Society. Not only does it speak to the governability of the member, it also, as in this case, prevents the Law Society from assisting the member in dealing with the matter prior to a hearing being required. Had Mr. Salmon properly and promptly responded to the Law Society this matter could very likely have been resolved very early in the process. By failing to respond, Mr. Salmon has not only aggravated the complaint made by his client but has also attracted a further citation. In all of these circumstances there is no doubt that Mr. Salmon's conduct in failing to inform his client and in his failure to respond to the Law Society is worthy of sanction.
12. Mr. Salmon is ordered to pay partial costs of these proceedings in the amount of \$2,551.25. This amount will be paid by no later than September 3, 2015. Should Mr. Salmon default on payment, he is ordered suspended.

Dated this 17th day of March 2015.

Walter J. Pavlic, Q.C.
Chair

Sarah King D'Souza, Q.C.

Dr. Miriam Carey

Appendix A

IN THE MATTER OF *THE LEGAL PROFESSION ACT*
AND
IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF DAVID SALMON,
A MEMBER OF THE LAW SOCIETY OF ALBERTA

AGREED STATEMENT OF FACTS AND ADMISSION OF GUILT

INTRODUCTION

1. I was admitted as a member of the Law Society of Alberta on July 10, 1980.
2. My present status with the Law Society of Alberta is Active/Practicing.
3. I have practiced in Calgary, Alberta from July 10, 1980 to present.
4. My practice comprises family law (50%) real estate law (15%), corporate law (15%) and wills and estate law (20%).

CITATIONS

5. On October 23, 2014, the Conduct Committee Panel referred the following conduct to hearing:
 1. It is alleged that Mr. Salmon failed to serve his clients by not advising of the deadline for completion of undertakings and such conduct is deserving of sanction.
 2. It is alleged that Mr. Salmon failed to respond in a timely manner to the Law Society, and that such conduct is deserving of sanction.

FACTS

6. On February 4, 2009, I was retained by U.C. and specifically by its president, M.C., related to a dispute with H.F. and J.F. U.C. had built a house for H.F. and J.F., in which they had moved into on October 3, 2008, however, there was a dispute over the balance of the purchase price to be paid.

7. The litigation between U.C. and H.F. and J.F. commenced in the following manner:
 - a) I filed a Builder's Lien on behalf of U.C. upon the F. house on February 5, 2009;
 - b) On or about May 29, 2009, I filed a Statement of Claim against H.F. and J.F. for failure to pay the full purchase price for the F. house;
 - c) A Certificate of Lis Pendens was filed by me on May 29, 2009; and
 - d) A Statement of Defence and Counterclaim was filed by the F.'s lawyer C.T., on September 15, 2009.
8. On January 21, 2011, C.T. filed a Notice of Appointment for Questioning on M.C. Questioning of both M.C., as representative of U.C., and H.F. took place in March 2011.
9. M.C., who was Questioned on March 22, 2011, gave a number of Undertakings.
10. The Court Reporter's transcripts of the March 2011 Questioning were received by me on March 31, 2011.
11. I did not provide M.C. with the transcript or listing of the Undertakings made by him, but I do remember having a discussion with him in March 2011 about his undertakings. I believed that M.C. knew what his Undertakings were since he gave them himself at the Questioning.
12. I did not communicate with my client between March 24, 2011 and December 9, 2011.
13. C.T. couriered his client's Answers to Undertakings to me on October 6, 2011.
14. On January 11, 2012, C.T. sent two filed Applications to my office. One Application was to remove the Builder's Lien and Certificate of Lis Pendens based on evidence from Questioning. The second was an Application to compel M.C.'s Undertaking Responses.
15. I did attempt to send an Application and Affidavit to M.C. on January 18, 2012, although it is unclear from my records which of the two Applications I sent over.
16. In an email dated January 19, 2012, I confirmed with C.T. my discussion with M.C. that the Applications, originally set for January 25, 2012, would be postponed. I also stated that I would forward two Consent Orders to C.T. One Consent Order would be for the removal of the Builder's Lien and Certificate of Lis Pendens and the other Consent Order would state that the Undertakings would be provided. I also confirmed that both clients were motivated to resolve the matter and the lawyers should set the matter down for Judicial Dispute Resolution (JDR) as soon as possible. C.T. faxed back his agreement to my suggestion for JDR.
17. In a letter faxed on January 20, 2012, I advised M.C. that I would like to schedule a JDR and that all 17 Undertakings would have to be satisfied before the JDR occurred.

18. C.T. sent two draft Consent Orders to me on January 23, 2012, one in respect of the removal of the Builder's Lien and the Certificate of Lis Pendens and the other in respect of completion of M.C.'s Undertakings.
19. In an email on January 24, 2012, I brought two errors to C.T.'s attention and asked if the errors should be corrected. C.T. then emailed the revised Consent Orders with an apology about the errors.
20. On or about January 30, 2012, I then attended court and obtained and filed the Consent Orders. The Consent Order for the Undertakings provided for a deadline of February 21, 2012.
21. On January 30, 2012, I advised C.T. by facsimile letter that I had obtained and filed the Consent Orders, that I would like to schedule a JDR in the matter and that M.C. was working on his Undertaking Responses.
22. On February 1, 2012, I wrote to M.C. asking him to complete his Undertakings as soon as possible but did not advise him that they were due by February 21, 2012 pursuant to the Consent Order. M.C. did not fulfill his Undertakings by February 21, 2014.
23. On February 24, 2012, C.T. faxed correspondence to me enclosing a Filed Application and Affidavit, returnable on March 2, 2012, to declare M.C. in contempt of court for his failure to complete his Undertakings by February 21, 2012. I forwarded this correspondence to M.C. on February 27, 2012.
24. I understand that M.C. did not know of the deadline of February 21, 2012 until he saw the February 27, 2012 correspondence.
25. On February 29, 2012, M.C. faxed to me a letter requesting that I present a letter to C.T. and to the Court of Queen's Bench informing that M.C. had not been advised of the timeline for completion of the Undertakings and requesting an extension of date for completion.
26. I advised C.T. as to the Undertakings not being complete because of a misunderstanding between my office and M.C. and that M.C. felt that the Undertakings were not urgent as there were no JDR dates available until July 2012.
27. On March 2, 2012 I confirmed with C.T. that the March 2, 2012 Contempt Application would be adjourned to March 9, 2012.
28. On or about March 7, 2012, U.C. and M.C. retained new counsel.
29. Upon the receipt of the complaint by U.C. and M.C., the Law Society Complaint Resolutions Officer wrote to me on May 2, 2012 and requested a response to the complaint by May 22, 2012. I requested an extension and was given one until June 8, 2012. I never did respond to the Complaints Resolution Officer.

30. I was sent a letter on June 15, 2012 by the Manager, Complaints at the Law Society, who advised me that the complaint was now referred to the formal process and requested a response within 2 weeks of the letter. I failed to respond to the June 15, 2012 letter.
31. Follow-up letters dated July 27, 2012 and August 24, 2012 were sent to me requesting a response, and advising me that a failure to respond could result in both a hearing and an adverse inference being drawn against me on the complaint itself. I still failed to respond.
32. In the absence of any response from me, an investigation order was issued against me on October 1, 2012 pursuant to Section 53(3)(b) of the *Legal Profession Act*. I cooperated with the investigation.

CONDUCT – CITATION No. 1

33. I admit that I failed to serve his clients by not advising of the deadline for completion of undertakings and such conduct is deserving of sanction.

CONDUCT – CITATION No. 2

34. I admit that I failed to respond in a timely manner to the Law Society, and that such conduct is deserving of sanction.

ADMISSION OF FACTS AND GUILT

35. I admit as facts the statements in this Agreed Statement of Facts for the purposes of these proceedings.
36. I acknowledge that I have had the opportunity to consult legal counsel and provide this Statement of Facts and Admission of Guilt on a voluntary basis.
37. For the purposes of Section 60 of the *Legal Profession Act*, I admit my guilt to Citations 1 and 2 directed October 23, 2014.

THIS AGREED STATEMENT OF FACTS AND ADMISSION OF GUILT IS MADE THIS 17TH DAY OF FEBRUARY, 2015.

DAVID SALMON