

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

The Panel:

James Eamon, Q.C., Chairperson
Derek Van Tassell
Wayne Jacques

Counsel Appearances:

Molly Naber-Sykes, for the Law Society of Alberta
James Rooney, Q.C., for Mark Paidra

Date and Place of Hearing:

October 23, 2013
Calgary, Alberta

REPORT OF THE HEARING COMMITTEE

I. Introduction

1. Mr. Paidra, a member of the Law Society of Alberta, was cited under Part 3 of the **Legal Profession Act**, RSA 2000, c. L-8 (the “Act”) for failing to serve his client and failing to respond in a timely way to communications from his client which contemplated a reply.
2. The citations arose from Mr. Paidra’s representation of the Complainant, TM, in a family law dispute. TM wanted access to her children. Mr. Paidra did not diligently pursue her application, failed to keep her informed of certain matters relating to her application, and committed other errors described in this report.
3. Mr. Paidra admitted responsibility for his conduct. The Hearing Committee accepted a joint submission by the parties that Mr. Paidra receive a reprimand and fine and pay costs of the proceeding.
4. Mr. Paidra was reprimanded at a public hearing where TM was present.

II. Jurisdiction and procedural matters

5. The Law Society proved that Mr. Paidra was a member of the Law Society, he was cited under Part 3 of the Act, and the Hearing Committee was duly appointed. Law Society

counsel and Mr. Paidra's counsel had no objections to the constitution of the Hearing Committee. The Hearing Committee concluded it had jurisdiction over these proceedings.

6. The Chair invited private hearing applications as required by the Rules of the Law Society. TM and the children's father, DW, were given the required notice. No applications were made. The hearing was held in public.
7. During the hearing, the Law Society applied for a direction that TM immediately receive a copy of the agreed statement of facts signed by Mr. Paidra (Exhibit 6). Mr. Paidra's counsel supported the request. The Hearing Committee has jurisdiction to make such a direction: Rules 98(3) and 107 of the Rules of the Law Society of Alberta.
8. TM required the statement as soon as possible for purposes of explaining delay in a court hearing about access to her children. The Hearing Committee was concerned that the statement had not gone through the Law Society's standard review procedure prior to public disclosure. On the other hand, TM's need for quick access to the statement was genuine, the significant confidential information in the statement concerned only TM and were things TM would otherwise be free to disclose, and the statement was prepared by experienced counsel who understand the interests that must be balanced when publishing information in conduct cases. The Hearing Committee carefully reviewed the content of the statement and did not see any need for additional redaction.
9. The Hearing Committee granted the request.

III. Conduct deserving of sanction

10. Mr. Paidra provided an agreed statement of facts. The facts described herein are taken from the agreed statement.
11. Mr. Paidra accepted a retainer in July 2007 from TM on a legal aid certificate to help her resume visitation rights to her children.
12. Later in 2007, Mr. Paidra filed a statement of claim and certificate of lis pendens in relation to certain property. Later he discovered he filed the certificate of lis pendens against the wrong property. TM had to come downtown on public transit with her special needs infant to sign paperwork to correct the error. The withdrawal was also incorrectly completed and TM had to sign a second withdrawal the same day.
13. Mr. Paidra did not work on TM's file from March 2008 until March 2009.
14. In April 2009 TM met with Mr. Paidra about the access matter and later swore an affidavit. Mr. Paidra delayed applying to the Court until the Fall 2009. He believed the better course was to negotiate a consent order in light of opposing counsel's position that the children's father would respond with negative evidence about TM. However, Mr. Paidra did not seek TM's instructions to delay the matter and pursue a consent order.
15. The access application was scheduled for October 2009. Ten days before the scheduled date, TM called Mr. Paidra to ask whether the application was proceeding on the

scheduled date. Mr. Paidra did not return the call. He adjourned the application without instructions. TM went to the Court to attend the application, only to find it was adjourned.

16. TM said the best interests of her children have always been first and foremost and she wanted to be an involved parent and see her children. The Hearing Committee accepts this to be so.
17. Mr. Paidra admitted he failed to serve TM by taking over two years to bring the access application; incorrectly preparing the certificate of lis pendens and the withdrawal; failing to advise TM that opposing counsel requested an adjournment of the access application and that the access application was adjourned; failing to return TM's call asking about whether the application was proceeding on the scheduled day; and, not returning TM's phone calls therefore requiring her to call more than once to obtain an answer.
18. The statement indicated that TM says she called Mr. Paidra's office on several occasions and that the calls were not returned, and that Mr. Paidra's office had a system to record the existence of incoming calls but there was no record of the calls. During the hearing, Mr. Paidra advised through his counsel that the system would not record receipt of calls to his direct line so he could neither confirm nor deny TM's statement. Mr. Paidra admitted that he failed to serve TM by not returning her phone calls thereby requiring TM to call more than once to obtain an answer.
19. There is disagreement between TM and Mr. Paidra apparent from the statement of facts whether Mr. Paidra told TM in August 2007 that he forgot about her file.
20. The purposes and benefits of the admission of guilt are described in *Law Society of Alberta v. Pearson*, [2011] L.S.D.D. No. 208. Among other things, it benefits Complainants by saving their time in attending a lengthy hearing and, in some cases, by avoiding having to testify, relive the events and be subjected to cross-examination in an adversarial process.
21. There are some small areas of disagreement between TM and Mr. Paidra apparent in the statement of facts which will not be determined by the Hearing Committee if the agreed statement is accepted as an admission of guilt. The Hearing Committee considered the purposes of the disciplinary process, the public interest, TM's interests, and Mr Paidra's clarification of the records system and his other admissions of lack of diligence in his conduct of TM's file. The Hearing Committee concluded the agreed statement was a reasonable admission of guilt.
22. The Hearing Committee accepted Mr. Paidra's admission of guilt.

IV. Sanction

23. The parties proposed an agreed sanction of a reprimand, a fine of \$1000, and a direction that Mr. Paidra pay the costs of the hearing. Mr. Paidra requested and the Law Society advised it would consent to a direction that Mr. Paidra be granted 60 days to pay the fine and costs.

24. A hearing committee should give serious consideration to a joint submission on sanction, should not lightly disregard it, and should accept it unless it is unfit or unreasonable, contrary to the public interest, or there are cogent reasons for rejecting it. There is no single correct sanction and the Hearing Committee considers whether the proposed sanction falls into the range of what is reasonable. *Pearson* (above).
25. The evidentiary record may be abbreviated in a joint submission. In this case, the record did not explain why much of the conduct deserving of sanction occurred. The Hearing Committee is aware of a recent decision of another panel which rejected a joint submission in similar circumstances. *Law Society v. Shea*, [2013] L.S.D.D. 129.
26. The Hearing Committee proceeded on the basis that in deciding whether to accept the joint submission, it should not be unduly concerned that the evidentiary record is not as complete as it would have been if sanction were contested.
27. Requiring too much detail about a negotiated solution is both unnecessary and undesirable.
28. It is unnecessary for at least two reasons. First, Law Society counsel is mandated to protect the public interest in respect of conduct matters. As stated in *Pearson*, Law Society counsel is in a far better position than the Hearing Committee to judge the prospects of the outcome if the hearing is contested. Second, the Hearing Committee is not the only mechanism that may be addressing issues arising from misconduct in any particular case it is considering. The Executive Director, Practice Review Committee and Conduct Committee play a role in protecting the public interest by taking proactive steps in relation to practice issues where necessary. The Hearing Committee need not micro manage the process.
29. It is undesirable because requiring too much in terms of additional explanations would chill the joint submission process and inhibit the numerous benefits that flow from it.
30. The purpose of the sanctioning process and the factors to be considered are described in the Hearing Guide. In considering the joint sanction the Hearing Committee was mindful of those matters.
31. The Act requires the Hearing Committee to impose a reprimand, suspension, or order of disbarment. Fines are optional. In some cases a fine may provide that additional degree of denunciation of the conduct which is necessary to maintain the standing of the legal profession. Such a fine demonstrates to the public and the lawyers who are regulated by the Law Society that the conduct will not be tolerated. In other cases, a fine might serve to deter the lawyer or others from misconduct in future.
32. There are no integrity or governance issues. There is no evidence that the problem is widespread in Mr. Paidra's practice. Mr. Paidra's admission of responsibility, clean record and the evidence that he believed he was protecting TM's interests by negotiating a consent resolution of the access issue strongly suggest that deterrence of Mr. Paidra is not an issue.

33. Delay in the justice system and meaningful access to legal services are of great concern to the Law Society of Alberta and all other participants in the justice system. The misconduct negatively affected TM in a very personal way through lengthy delay of, and leaving her uninformed about, proceedings for access to her children. The conduct, in contributing to unnecessary delay in the court system and making it more difficult for TM to access her lawyer, also impinged on the standing of the legal profession.
34. In this case imposing a fine delivers the message that Mr. Paidra's conduct must be denounced to maintain the standing of the legal profession.
35. The amount of the fine is not outside the range of reasonableness. There were no breaches of confidence, solicitor client privilege or loyalty, and no bad faith toward TM. The amount of a fine is very much discretionary in each case and the Hearing Committee could not say that the amount of the proposed fine was unreasonable or unfit.
36. Having regard to the above considerations, the Hearing Committee could not see a reason to reject the joint submission.

V. Record of Decision

37. Mr. Paidra is guilty on citations 1 and 2.
38. Mr. Paidra is reprimanded and fined the sum of \$1000.
39. Mr. Paidra shall pay the costs of the hearing as determined in the Statement of Costs.
40. Mr. Paidra is granted 60 days from service of the statement of costs on his counsel to pay the fine and costs.
41. The Law Society shall provide TM with a copy of Exhibit 6. The Record and this decision are available to the public after review and redaction in accordance with standard Law Society procedures.

Dated at Calgary, Alberta on November 20, 2013

Wayne Jacques

Derek Van Tassel

James Eamon, Q.C.