File No. HE20120026

LAW SOCIETY OF ALBERTA

HEARING COMMITTEE REPORT

IN THE MATTER OF the *Legal Profession Act*; and

IN THE MATTER OF a hearing (the "Hearing") regarding the conduct of Evelyn Ackah, a Member of the Law Society of Alberta

INTRODUCTION

[1] On March 27, 2013 a Hearing Committee (the "Committee") of the Law Society of Alberta ("LSA") convened at the LSA office in Calgary to inquire into the conduct of Evelyn Ackah, a Member of the LSA. The Committee was comprised of Anthony G. Young, Q.C. Chair, Gillian Marriott, Q.C., Bencher and Amal Umar, Bencher. The LSA was represented by Tamara Friesen. The Member was in attendance throughout the hearing and was represented by Dana Schindelka. Also present at the Hearing was a Court Reporter to transcribe the Hearing.

JURISDICTION, PRELIMINARY MATTERS AND EXHIBITS

[2] The Chair introduced the Committee and asked the Member and Counsel for the LSA whether there was any objection to the constitution of the Committee. There being no objection, the Hearing proceeded.

[3] Exhibits 1 through 4, consisting of the Letter of Appointment of the Committee, the Notice to Solicitor pursuant to section 56 of the *Legal Profession Act*, the Notice to Attend to the Member and the Certificate of Status of the Member with the LSA established the jurisdiction of the Committee.

[4] The Certificate of Exercise of Discretion pursuant to Rule 96(2)(a) and Rule 96(2)(b) of the Rules of the LSA ("Rules") pursuant to which the Director, Lawyer Conduct of the LSA, determined that the persons named therein were to be served with a Private Hearing Application was entered as Exhibit 5. Counsel for the LSA advised that the LSA did not receive a request for a private hearing. Accordingly, the Chair directed that the Hearing be held in public.

[5] At the outset of the hearing Exhibits 1 through 31 contained in the Exhibit Book provided to the Committee were entered into evidence in the Hearing with the consent of the parties. Further Exhibits 32 through 42 were added to the Exhibit Book as the hearing proceeded.

CITATIONS

[6] At the outset of the Hearing the Member faced the following Citations:

> (1) IT IS ALLEGED THAT you counseled a client to submit an inaccurate Inland Sponsorship application on behalf of her husband, and in so doing, counseled her to mislead Citizenship and Immigration Canada, and that such conduct is conduct deserving of sanction.
>
> (2) IT IS ALLEGED THAT you assisted a client with respect to an immigration application that you knew might include misrepresentations made by the client, and that such conduct is conduct deserving of sanction.

SUMMARY OF RESULTS

[7] After hearing the evidence and arguments regarding guilt, counsel for the LSA and counsel for the Member suggested a single merged Citation. There were two versions of the merged Citation that were presented to the Hearing Committee. Neither merged Citation was acceptable to the Hearing Committee. Subsequently, a further merged Citation was presented for consideration and was found to be acceptable by the Hearing Committee. With the consent of the LSA and the Member the two Citations were merged into one citation as follows:

> (1) It is alleged that you counselled your client, N.H. to submit an inaccurate Inland Sponsorship application on behalf of her husband, and in so doing, counseled her to mislead Citizenship and Immigration Canada and that you assisted her with respect to an immigration application that you knew might include misrepresentations made by that client, and such conduct is conduct deserving of sanction.

[8] The Member was found guilty of the merged Citation and the Hearing Committee found that the conduct complained of pursuant to the merged Citation was conduct deserving of sanction.

[9] There was submission by counsel for the Law Society that the matter be dealt with by way of a short suspension. Counsel for the Member argued for a less severe sanction. The Hearing Committee found that the circumstances in the matter called for a sanction that came within a hair's breadth of suspension. In so finding, the Hearing Committee chose to impose a fine of $10,000, the maximum allowable, a reprimand and the actual costs of the proceeding. The Chair administered the reprimand.

THE FACTS

[10] The Complainant was married to M.H. At the time that she engaged the services of the Member, M.H. lived in the United States and the couple was desirous of living together in Calgary. This necessitated an application by M.H. through Citizenship and Immigration Canada ("CIC").

[11] The Complainant had planned to sponsor her Husband from outside of Canada, while he continued to work in the United States. She was frustrated with the length of the processing time. As the couple were in their 50s they wanted to get on with their lives together as soon as possible. She sought the advice of the Member in an effort to devise a strategy that would see the couple living together sooner.

[12] The Complainant was referred to the Member by H.C., a former Member of the Legislature of the Province of Alberta. She met with the Member on February 28, 2011 for approximately 45 minutes. The Complainant stated that she was advised that it would be best to treat the application to CIC "as an in country sponsorship". She said that she was advised to "fill out the papers like he (her Husband) is in Canada." The Complainant inquired whether this would be lying to the CIC. She deposed that the Member stated that "in the law, it is the intent that matters" She said that the Member stated that "You intend to live together" so it will not be lying." The Complainant further deposed that the Member assured that "this is how I tell all my clients to do it". The Complainant inquired further by asking "if he is living as "in country" how can he visit?" "What will he tell the customs agents? She stated that the Member advised that "Immigration Canada does not exchange information with the Canada Border Agency." The Complainant began to be convinced that the strategy proposed by the Member would meet her objectives. She states that she left the Member's office happy.

[13] Subsequently, the Member followed up on the meeting with the following e-mail correspondence sent to the Complainant on March 1, 2011 at 4:56 pm:

> "it was a pleasure meeting with you yesterday. I am following up on a few things:
>
> In order to open a file and send you are retainer agreement for spousal sponsorships-we need the identification that Shauna requested last week-a copy of your driver's license or passport identity page is mandatory.
>
> I have attached a copy of the NAFTA Professional category chart of professions and you will see that Biologist and other Scientists are included, so I am certain that we could perhaps find a category that works for M.H. without needing to proceed by way of Labour Market Opinion."
>
> http://www.cic.gc.ca/english/information/applications/fc.asp - In Canada Spousal Sponsorship Forms.

Let me know if you have any questions or concerns.

Best regards,"

[14] At 5:02 pm on March 1, 2011 the Complainant replied to the follow up e-mail stating:

> "[…] Thank you so much for your help. I tried to fax you a copy of my passport page on Friday, and it wouldn't go thru; just kept getting a busy signal. Will mail it to you instead.
>
> I have a question about the sponsorship forms. You said that (M.H.) should use my home address as his own. What should he write when they want to know his last employer in the U.S., as far as dates worked there? He's still working there, of course, but will have to make it look like he's not. What's your advice on this? Also, we have the doctor's letter stating he had his surgery in San Antonio last month. What should we put as far as his last address in San Antonio? Should we make it look like he has been in Canada as of today, March 1? Not sure how to deal with this. Is there any danger that officials will contact his employer and find out that he is still working there and is not actually living in Calgary?
>
> I saw a number of work permit application forms on that site, and I'm not sure which one he should be using. What is the IMM number of the one he should use?
>
> Thanks again".

[15] The Member responded to the Complainant on March 1, 2011 at 5:04 as follows:

> "[…] I attached the work permit form to the e-mail.
>
> I'll have to respond shortly-just heading to a meeting "

[16] On March 3, 2011 the Complainant sent a reminder to the Member by e-mail at 12:02 pm, it stated:

> "[…] (M.H.) and I plan to get all our forms filled out this weekend, so it would be great if I could get the answers to the questions I e-mailed to you the other day, regarding what to put down about the dates of (M.H.)'s current employment, etc.
>
> Thanks so much!"

[17] The Member responded on the morning of March 4, 2011 at 9:18 am as follows:

> "Hi […], I was in Edmonton the past two days. I'll locate your original e-mail and respond to you later today."

[18] Later on March 4, 2011 at 11:59 am the Member responded to the e-mail from the Complainant of March 1, 2011 at 5:02 pm as follows:

> "[…], if you choose to proceed by way of in Canada sponsorship, then yes, I would suggest that he use his employment only to the date of the application so that it reflects that he has since entered Canada. Officials will not contact his employer-definitely not.
>
> I am not sure why you need to include the letter from his doctor regarding the surgery? Better not to include it. If you are proceeding by way of in Canada application, I suggest that you proceed as if he is in Canada and make everything consistent with that as of the date of the application.
>
> I sent you the work permit application form-did you not receive it?
>
> We look forward to receiving your identification documentation as are account will be going out shortly for the consultation.
>
> Thank you. "

[19] The Complainant replied almost immediately to the Member at 12:03 pm on March 4, 2011 as follows:

> "The reason I need to include his surgeons letter is that when he was examined by the doctor who was approved by the Canadian gov't for such examinations, that doctor mentioned in his report that (M.H.) was about to have surgery. The doctor sent this report to some office in Ottawa and told (M.H.) to get a letter from the surgeon saying the surgery would be a one-time thing, would fix the problem and would not affect his future in Canada.
>
> Should we just ignore all this and have another doctor's exam later on, and treat this one as official?? "

[20] The Member responded at 12:06 pm on March 4, 2011 stating:

> "okay that makes sense-if that's the case then you should include it and assume for instance that as of March 1 or whatever date the actual application goes in is his date of entry to Canada."

[21] The Complainant called her husband and advised him to fill out the papers to make them look like an "in country" application." M.H. started the process but upon close inspection of the application he changed his mind. He spoke to his wife a couple of days later saying that he was not going to lie on the application. "I am not going to say that I was in Canada on March 1, 2011." M.H. had read the warnings on the documents. In particular, he was concerned about the declaration that states:

"I understand that any false statements or concealment of a material fact may result in the refusal of my application and may be grounds for my prosecution or removal from Canada."

[22] On March 22, 2011 the couple received a second opinion. She was advised by M.S. a Calgary immigration lawyer that "she should never lie to the Canadian Government." CIC and the Canada Border Agency exchange information all the time.

DECISION

[23] The Complainant stated in the March 1, 2011 5:02 email that:

> "I have a question about the sponsorship forms.
>
> You said that (M.H.) should use my home address as his own. What should he write when they want to know his last employer in the U.S., as far as dates worked there? He's still working there, of course, but will have to make it look like he's not. What is your advice on this?"

[24] The words "will have to make it look like he's not." indicate that the Complainant was intending to make a misleading statement in the sponsorship form. In particular, she stated that "M.H." is "still working in the U.S." but they "will have to make it look like he is not." There can be little doubt from the reading of these words that the Complainant was intending to lie or make misleading statements in the application.

[25] Subsequently, the Member compounds the deception by stating in her March 4, 2011 e-mail that:

> "if you choose to proceed by way of in-Canada sponsorship, then yes, I would suggest that he use his employment only to the date of the application so that it reflects that he has since entered Canada."

[26] The only reasonable conclusion is that the Member made this statement knowing that factual basis for making it is false. The Complainant has indicated her intention to mislead. The qualifier "if you choose to proceed by way of in-Canada sponsorship" makes it clear that the Complainant must "mislead" if she was going to use that form of application.

[27] The appropriate advice would have been that the in-Canada sponsorship was not available to the Complainant and M.H. unless M.H. was now resident in Canada. It would have been any easy thing for the Member to have been pointed out that the Complainant may not use the in-Canada sponsorship if her spouse "lives outside Canada".

[28] The words the "Officials will not contact his employer – definitely not" are words of assurance that the inaccuracies will not be uncovered. There would be no need to insert this comment (in response the Complainant's inquiry "Is there any danger that officials will contact his employer and find out that he is still working there and is not actually living in Calgary?" unless he Member was aware that the Complainant intended to be inaccurate in her application.

[29] It was argued by counsel for the Member that although there was an e-mail that made it look like counselling took place, this was done "innocently" by the Member. As such, she did not have the requisite intent to make out the Citation. Unfortunately, the Hearing Committee does not agree. It is difficult, if not impossible, to find that the conversations and correspondence between the parties were done innocently. The Complainant's version of events had a "ring of truth" even under strenuous cross examination by counsel for the Member. She was consistent and believable. Her comments gave additional context to the written correspondence that was in evidence.

[30] The question that must be answered is whether the Member, on the balance of probabilities had the intent to counsel the Complainant to mislead? The words in the Member's e-mail, viewed objectively, counsel the Complainant to submit inaccurate information. There is no discouragement from the Member. There is no warning even though the Sponsorship Guide itself states that an applicant is not to use this guide when the applicant lives outside Canada. In fact, there is active encouragement and assurance that the subject matter of the misleading statement will not be discovered.

[31] The Hearing Committee accordingly finds, on the balance of probabilities, that the Member counselled the Complainant to submit an inaccurate Inland Sponsorship application on behalf of her husband, and in so doing, counselled her to mislead Citizenship and Immigration Canada and that the Member assisted the Complainant with respect to an immigration application that she knew might include misrepresentations made by the Complainant, and such conduct is conduct is deserving of sanction.

SANCTION AND ANCILLARY MATTERS

[32] During the sanctioning phase of this proceeding two more witnesses were presented by the Member. One witness was a corporate services manager for a Calgary energy company. The other witness was a benefits and insurance advisor for an insurance brokerage firm. Both witnesses had originally met the Member through business and had later become friends. One witness had known the Member for nine years and the other for approximately four and a half to five years. Each of these witnesses spoke to the ethics and character of the Member. Their descriptions were generally that she was upstanding, honest, ethical and professional.

[33] There was a submission from counsel for the Law Society that this matter be dealt with by way of a short suspension. Reference was made to a number of cases in support of this sanction. In *Law Society of Upper Canada v. Sussman, [1995] LSSD No 17*, a Discipline Committee of the Law Society of Upper Canada found a member guilty of counselling his client to breach the terms of a court order. In sanctioning the member to a one month suspension the Committee stated:

> "As members of the bar we are all officers of the Court and the burden of responsibility as such is no greater than when resting on the shoulders of the advocate who appears before the Courts. There can be no behaviour more disruptive to our system of justice and more likely to bring its administration into disrepute than a lawyer, while representing a party to a dispute, counselling his or her client to disobey the clear unequivocal terms of a Court Order."

[34] In *Law Society of Alberta v. White [1995] L.S.D.D. No 292* the Hearing Committee found a member guilty of swearing false affidavits, and with failing to exercise proper precaution and care. The member was suspended for 30 days.

[35] It was conceded that the Member is an accomplished and respected lawyer. She is well regarded in the legal community and has an impeccable reputation with no prior disciplinary record. Counsel for the LSA stated that the nature of the conduct in this case has a real effect on the administration of justice and general public confidence of lawyers and the system.

[36] It is an issue of integrity.

[37] Counsel for the LSA commented on the fact that the Member had taken this matter to a full hearing and therefore could not have the benefit she might have otherwise made with respect to the benefits of a guilty plea in illustrating remorse and this was not a factor that could weigh in her favour.

[38] This Hearing Committee is not offended by the fact that the Member took this matter to a full hearing. That is her right. Lawyers, naturally, may be somewhat more litigious than other members of the public and pursuing a hearing that is a right should not be criticized by this Hearing Committee. We are confident that the Member has remorse that may have been tempered by the Member's training and instincts. The consequences to the Member in this matter are very dire indeed. It is natural for the Member to desire a full hearing.

[39] Lawyers are generally suspended for knowingly making misleading or false statements to a court, tribunal or government agencies. Generally, these suspensions are for longer periods of time due to the public outrage that results from having a lawyer act contrary to the essence and expectations of their profession, which are rooted in honesty and integrity. In other words, acting in a way that is not in keeping with how a lawyer is expected to act.

[40] The Hearing Committee is of the view that the Member came as close to suspension as possible without actually being suspended.

> The primary purpose of disciplinary proceedings is found in section 49(1) of the Legal Profession Act: (1) the protection of the best interest of the public (including members of the society) and (2) protecting the standing of the legal profession generally. The fundamental purpose of the sanctioning process is to ensure that the public is protected and that the public maintains a high degree of confidence in the legal profession.

[41] The Hearing Committee is confident that the Member will not offend again. A suspension is not required to ensure the protection of the public. The only question that remains is whether a suspension is required such that the standing of the legal profession is not undermined. This Member's reputation is forever tarnished by the choices that she made in this matter whether she is suspended or not. As such, the Hearing Committee has balanced the needs of clients for uninterrupted representation against the public indignation that must be addressed through sanction. In weighing these considerations, the Hearing Committee has concluded that a substantial fine (the highest amount that the Committee is permitted to give) together with a reprimand and actual costs of the hearing are sufficient to address this concern.

[42] In the circumstances, the Member is ordered to pay a fine of $10,000, the actual costs of the hearing and will be subject to a reprimand. A copy of the reprimand is attached hereto as Schedule "A".

[43] The Member shall have with one month from the receipt of the final Statement of Costs from the Law Society to pay both the fine and costs.

[44] There shall be no referral to the Attorney General.

[45] There shall be no notice to the profession.

Dated this 9th day of May 2013

Anthony G. Young, Q.C. (Chair)

Gillian Marriott, Q.C. (Bencher)

Amal Umar (Bencher)

Schedule "A"

(paraphrased)

Lawyers are generally suspended for knowingly making misleading or false statements to a court, tribunal or government agencies. Generally, these suspensions are for longer periods of time due to the public outrage that results from having a lawyer act contrary to the essence and expectations of their profession, which are rooted in honesty and integrity. In other words, acting in a way that is not in keeping with how a lawyer is expected to act.

The conduct in this matter is something that the public, and quite frankly, the profession finds reprehensible. This Hearing Committee is concerned about the consequences of a suspension, not particularly to the Member, but to the clients.

In this particular case the Member has come as close to suspension as possible without actually being suspended.

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