

IN THE MATTER OF THE LEGAL PROFESSION ACT

AND

**IN THE MATTER OF A HEARING REGARDING THE
CONDUCT OF KEITH SHUSTOV,
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

**G. M. HOPE, ESQ, COUNSEL FOR THE LAW SOCIETY OF ALBERTA (LSA)
L. K. STEVENS, Q.C., COUNSEL FOR THE MEMBER**

1. On May 12, 2014, this Hearing Committee convened at the LSA offices in Edmonton, Alberta to adjudicate on allegations against the Member.
2. LSA counsel proffered the following establishing jurisdiction:
 - (i) Letter of Appointment (Exhibit 1);
 - (ii) Notice to Solicitor (Exhibit 2);
 - (iii) Notice to Attend (Exhibit 3);
 - (iv) Certificate of Status (Exhibit 4); and
 - (v) Certificate of Exercise of Discretion Relating to Private Hearing Application (Exhibit 5).

The Agreed Statement of Facts is reproduced in paragraphs 3-53 below. (Exhibit 6)

CITATIONS

3. Law Society of Alberta member Keith Shustov ("**Mr. Shustov**") faces the following citations of misconduct in Law Society Com Complaint No. XXXXXXXXX, arising from the complaint of Norman Picard, Q.C.:
 - (a) IT IS ALLEGED THAT you failed in your duty to carry on a practice of law and discharge all responsibilities to clients, tribunals, the public and other members of the profession honourably and with integrity, and that such conduct is conduct deserving of sanction;
 - (b) IT IS ALLEGED THAT you failed in your duty to uphold the standards and reputation of the legal profession and to assist in the advancement of its goals, organizations and institutions, and that such conduct is conduct deserving of sanction; and
 - (c) IT IS ALLEGED THAT you failed in your duty to provide thorough and timely service to your client, D.B., and that such conduct is conduct deserving of sanction.

4. Mr. Shustov also faces the following citations of misconduct in Law Society Complaint No. XXXXXXXXX, arising from the complaint of D.B., his former client:

- (a) IT IS ALLEGED THAT you fabricated a court order, and that such conduct is deserving of sanction;
- (b) IT IS ALLEGED THAT you lied to and misled your client, and that such conduct is deserving of sanction;
- (c) IT IS ALLEGED THAT you failed to communicate with and failed to serve your client, and that such conduct is deserving of sanction; and
- (d) IT IS ALLEGED THAT you failed to act honourably and with integrity, and that such conduct is deserving of sanction.

5. All of the above seven citations arise from the same facts, and will be generally referred to as the Citations. The Citations were issued separately as a result of the two complaints being filed at different times by different parties involved in the relevant matters.

INTRODUCTION AND PROCEDURAL HISTORY

6. Mr. Shustov was admitted to the Alberta Bar on November 6, 2009.

7. Mr. Shustov was employed as an associate lawyer working in general practice at the Barr Picard law firm in Edmonton from September 2010 until October 2012.

8. On February 8, 2013, the LSA received a letter of complaint ("**the Complaint**"), with enclosures, about Mr. Shustov from Norman W. Picard, Q.C., of Barr Picard ("**Mr. Picard**," or "**the Complainant**"). A copy of the Complaint is attached at [TAB 1].

9. The Complaint alleged that Mr. Shustov, while a lawyer at Barr Picard, had misrepresented steps taken on behalf of a client, D.B. ("**D.B.**" or "**the Client**"). The Complaint further alleged that Mr. Shustov had fabricated a form of divorce judgment and provided it to the Client, representing that it was genuine.

10. On March 6, 2013, the LSA provided a copy of the complaint to Mr. Shustov and requested his written response to the Complaint pursuant to s. 53 of the *Legal Profession Act* ("**Act**") within 14 days.

11. Subsequently, Mr. Shustov's counsel, Laura Stevens, Q.C., requested and was granted an extension of time to submit Mr. Shustov's response to April 4, 2013.

12. On April 4, 2013, Ms. Stevens contacted the LSA to inform it that Mr. Shustov's written response was delayed by computer problems, but that Mr. Shustov intended to make a complete admission of misconduct and issue apologies to each of the Client and the Complainant in a letter that would follow the next day.

13. On April 5, 2013, Mr. Shustov provided to the LSA his written response ("**the Response**") and letters of apology to each of the Client and the Complainant.

14. On June 5, 2013, Maurice Dumont, Manager of Complaints in Edmonton for the LSA provided his completed report prepared pursuant to s. 53 of the *Act* to the Conduct Committee Panel.

15. On July 30, 2013, the Conduct Committee Panel referred the Citations to the Hearing Committee.

16. By letter dated October 7, 2013, the LSA notified Ms. Stevens that Mr. Shustov, if found guilty of conduct deserving of sanction, could face a sanction of lengthy suspension or disbarment.

17. On November 6, 2013, the LSA received a complaint from the Client, D.B., with respect to Mr. Shustov (the "**Client Complaint**") [TAB 2]. The Client Complaint is essentially duplicative in substance to the Complaint, alleging that Mr. Shustov failed to serve D.B., failed to respond to her communications, failed to progress the matter, knowingly misled her, and fabricated a divorce judgment which he held out to be genuine.

18. With respect to the Client Complaint:

- (a) By letter of February 6, 2014, Mr. Shustov provided to the LSA his written response to the Client Complaint.
- (b) On February 13, 2014, James Oake, Formal Complaints Reviewer for the LSA, provided his completed report prepared pursuant to s. 53 of the *Act* to the Conduct Committee Panel.
- (c) On April 8, 2014, the Conduct Committee Panel referred the citations arising from the Client Complaint to the Hearing Committee.
- (d) Mr. Shustov and his counsel Ms. Stevens agree that the citations arising from each of the Complaint and the Client Complaint should be combined and heard in a single hearing, given the duplicative nature of the facts and citations.

19. Mr. Shustov is currently employed at Calgary Legal Guidance in Calgary, Alberta.

FACTS RELATING TO THE CITATIONS

Background

20. Following his call to the Bar on November 6, 2009, Mr. Shustov worked as an associate at Balazs Trela Law Office in Edmonton until September 2010, at which point he became an associate lawyer at the Barr Picard firm in Edmonton.

21. In October 2010, one month after he joined Barr Picard, Mr. Shustov was retained to act for D.B. in her divorce matter (the "**Divorce Matter**"), in which she sought a divorce and corollary relief from her husband at the time, M.V.

22. Mr. Shustov's date of birth is [REDACTED]. At the time he was retained by D.B. Mr. Shustov was 26 years of age.

23. Between October 2010 and June 2011, Mr. Shustov took a number of steps in the Divorce Matter, including that he:

- (a) filed a Statement of Claim for Divorce and Division of Property on or about October 22, 2010;
- (b) brought an application to freeze M.V.'s assets, with accompanying Questioning of the Respondent, all of which ensued in November-December 2010 and was ultimately unsuccessful; and
- (c) exchanged document disclosure between the parties in February 2011.

Misrepresentations, Substandard Quality of Service, and Dishonesty

24. In approximately April or May 2011, Mr. Shustov told D.B. that he would bring an application for more complete disclosure from M.V. In fact, Mr. Shustov did not bring any such application at any time.

25. In the midst of making application to the Court and taking what steps he did on the file, Mr. Shustov had D.B. swear certain Affidavits that he did not file with the Court despite agreement to do so, and also failed to provide D.B. with copies of such documents.

26. In approximately April or May 2011, Mr. Shustov informed D.B. that he had set a Judicial Dispute Resolution for the Divorce Matter to be heard on or about March 27, 2012, Mr. Shustov knew this to be false, as no judicial dispute resolution of the Matter had been scheduled or was ever scheduled.

27. When D.B. appeared at the court house for the JDR, Mr. Shustov called and told her that the JDR had been cancelled due to a death in the opposing counsel's family. Mr. Shustov knew this to be false.

28. On June 14, 2011, Mr. Shustov obtained a consent Order to sever the claim for divorce from the claim for corollary relief. This was the last substantive step Mr. Shustov actually took on the Divorce Matter.

29. On December 20, 2011, D.B. sent an email to both Mr. Shustov and Mr. Picard to complain about Mr. Shustov's handling of her Matter and the lack of progress in obtaining her divorce. In her e-mail, she wrote that she was "so disappointed" and stated, "If your firm is not interested in taking care of my case ... PLEASE let me know so I can search out other options." A copy of the e-mail string containing this referenced e-mail between D.B., Mr. Shustov and Mr. Picard on December 20, 2011 is attached at [TAB 3].

30. In response to D.B.'s e-mail complaint of December 20, 2011, Mr. Shustov contacted D.B. that same day and reassured her that her divorce had in fact been granted. Mr. Shustov knew this to be false, as the divorce had not been granted.

31. Mr. Shustov then sent two e-mails to Mr. Picard, again on the same day — December 20, 2011. The first email reassured Mr. Picard that Mr. Shustov had "just spoken" with D.B. and that she was "satisfied" with the progress of the Divorce Matter [TAB 3]. The second e-mail forwarded to Mr. Picard was D.B.'s e-mail expressing satisfaction at the "great news" that her divorce had been granted [TAB 4].

32. Throughout the course of the Divorce Matter, Mr. Shustov would regularly fail to reply to D.B.'s phone and e-mail communications seeking updates on the status and steps in the matter, and generally was not diligent, timely or conscientious in his handling of the matter.

Further Misrepresentations and Fabrication of a Court Judgment

33. On January 26, 2012, Mr. Shustov received a further e-mail from D.B. requesting a copy of the divorce judgment he had previously suggested that had been obtained. She explained that she needed the divorce judgment so that she could renew her passport in her maiden name, and asked if her husband protested the divorce [TAB 5].

34. On January 30, 2012, four days after receiving D.B.'s e-mail, Mr. Shustov responded that he would provide a copy of the divorce judgment the following morning, and stated that D.B. was correct that her husband did not protest the divorce, Mr. Shustov knew that this information was a lie [TAB 5].

35. Two days later, on February 1, 2012, Mr. Shustov e-mailed D.B. an attachment titled "Divorce.pdf" (the "**Fake Judgment**"), writing "Here it is" [TAB 5].

36. The Fake Judgment was a regular form divorce judgment that purported to have been granted on December 5, 2011. Although it did not bear a clerk's stamp, it bore what appeared to be a signature by a Justice of the Court of Queen's Bench of Alberta. The name of the judge who ostensibly granted the judgment was written illegibly in the space provided, and an illegible signature had been placed on the signature line for that of the Justice. A copy of the Fake Judgment is attached at [TAB 6].

37. In fact, the Fake Judgment was not a copy of a divorce judgment, but rather was fabricated by Mr. Shustov to resemble a genuine divorce judgment. Mr. Shustov had completed the Fake Judgment in a way to make it appear as though it had been signed by a Justice of the Court of Queen's Bench and issued by the Court. Mr. Shustov admits that his intention in providing D.B. with the Fake Judgment was to make her believe that that a divorce judgment had been granted in the Divorce Matter, when he was aware this was false.

38. D.B. accepted the Fake Judgment as proof that she had been granted a divorce, as Mr. Shustov intended.

39. In approximately March 2012, after Mr. Shustov had misrepresented to D.B. that the judicial dispute resolution that he had previously misrepresented was scheduled for that month

had been cancelled. Mr. Shustov told D.B. that the issue of corollary relief would be proceeding directly to a trial that was set down for October 9-10, 2012. In fact, Mr. Shustov knew that this was false, as the Divorce Matter had never been scheduled for judicial dispute resolution or trial.

40. On approximately September 30, 2012, Mr. Shustov informed D.B. that the trial had also been cancelled because the opposing counsel had been fired. Mr. Shustov knew this representation to be false.

41. D.B. scheduled a meeting with Mr. Shustov for October 26, 2012. Prior to the meeting, Mr. Shustov called D.B. to cancel the appointment, advising her that his sister had died. Mr. Shustov knew this representation was false. D.B. advised Mr. Shustov around this time that she wanted to pick up her file nonetheless.

42. When D.B. informed Mr. Shustov that she wanted to pick up her file, Mr. Shustov removed from the file records of correspondence between himself and D.B. before providing D.B. with the file. Mr. Shustov also went through his e-mail and deleted correspondence between himself and D.B.

43. When D.B. attended to pick up her file on October 26, 2012, she was advised that it was Mr. Shustov's last day at the Barr Picard firm.

44. Mr. Shustov left employment at Barr Picard at the end of October 2012, and moved to Calgary to work for Calgary Legal Guidance. Before Mr. Shustov left, he made no attempt to explain to D.B., Mr. Picard or any other member of Barr Picard that the divorce judgment D.B. believed she had been granted was in fact fabricated, or to clarify or admit any of the misrepresentations he had made.

Problems with Fabricated Divorce Judgment Discovered

45. On February 13, 2013, Mr. Picard wrote to Mr. Shustov at his new place of employment at Calgary Legal Guidance, stating that he had received a complaint from D.B. about Mr. Shustov's handling of the Matter. Mr. Picard provided the relevant documentation and background and invited Mr. Shustov to provide a reconciliation of the matter to him. Mr. Picard informed Mr. Shustov that if he did not provide an explanation, Mr. Picard would be forced to report him to the LSA. A copy of Mr. Picard's February 13, 2013 letter is attached at **[TAB 7]**.

46. Mr. Shustov did not respond to Mr. Picard's letter, and accordingly Mr. Picard filed the Complaint **[TAB 1]**. The Complaint alleged the following:

- (a) That Mr. Shustov misrepresented that he took certain steps with regard to the Matter; and
- (b) That Mr. Shustov fabricated a form of divorce judgment and provided it and represented it to D.B. as a genuine divorce judgment.

Mr. Shustov's Response to the LSA on the Initial Complaint

47. Mr. Shustov was provided with a copy of the Complaint by letter dated March 6, 2013 and was asked for a response. A copy of the letter is attached at [TAB 8]. Mr. Shustov provided the LSA with the Response by letter sent via e-mail from his counsel, Ms. Stevens, on April 5, 2013. A copy of the Response is attached at [TAB 9].

48. In the Response, Mr. Shustov:

- (a) Fully admitted the allegations set out in the Complaint as well as the various other misrepresentations noted above;
- (b) Noted that he realized sometime shortly after opening the file in the Divorce Matter that it was beyond his competence level, but did not seek assistance in that regard despite the lawyers at Barr Picard always having been welcoming and willing to offer assistance;
- (c) Admitted that instead of seeking assistance, he indeed told the various above-noted lies to D.B. about the steps on the Divorce Matter;
- (d) Noted that while he had hoped to be able to "repair the situation", he was not able to and he "simply descended into denial and deception";
- (e) Stated that D.B.'s frustration was "entirely justified";
- (f) Expressed remorse that he "seriously harmed D.B.'s interests," "damaged the reputation of Barr Picard" and "brought the legal profession into disrepute." [TAB 9]

49. Enclosed with the Response were copies of letters of apology that Mr. Shustov sent to D.B. and Barr Picard, which are attached at [TAB 10] and [TAB 11] respectively.

Mr. Shustov's Response to the LSA on the Client Complaint

50. Mr. Shustov was provided with a copy of the Client Complaint of November 6, 2013, and provided his letter of response dated February 6, 2014, enclosing his previous responses to the initial Complaint. [TAB 12]

ADMISSION OF FACTS AND GUILT

51. Mr. Shustov admits as fact the statements contained within this Agreed Statement of Facts for the purposes of these proceedings. Mr. Shustov admits that all correspondence sent to or by him was received or sent by him on or about the dates indicated, unless stated otherwise.

52. For the purposes of Section 60 of the *Legal Profession Act*, Mr. Shustov admits his guilt to Citations #1 and #3 in the Initial Complaint No. XXXXXXXXX, and to all four Citations in the subsequent Complaint No. XXXXXXXXX, and that his conduct set out herein was conduct

deserving of sanction, being incompatible with the best interests of the public and tending to harm the standing of the legal profession generally.

53. This Agreed Statement of Facts is not exhaustive and Mr. Shustov and the Law Society may lead additional evidence not inconsistent with the stated facts herein.

Decision

54. The Hearing Panel accepted the Agreed Statement of Facts and the Member's admission of guilt and determined that the Member's conduct is deserving of sanction.

Sanction

55. The Hearing Committee heard Submissions from counsel for the LSA and counsel for the Member. The Member also gave evidence as did LSA Member Margaret Mary Keelaghan. Ms. Keelaghan is a senior manager with Calgary Legal Guidance (CLG).

56. Counsel for LSA argued that the Member ought to be disbarred. Counsel for the Member argued that a suspension is the proper sanction. At no time did the Member, through his counsel, or during his evidence, suggest that anything less than a suspension was the appropriate sanction in the circumstances.

57. In support of the Member, the Hearing Committee was offered the following:

- (a) Letter dated May 7, 2012 from Grady Rowand of Rowand Law;
- (b) Letter dated April 30, 2014 from S.D., a Court Support Counselor; and
- (c) Letter dated May 8, 2014 from Tiffany Butler, Barrister & Solicitor and a colleague of the Member at CLG.

58. Ms. Keelaghan has been a Member of the LSA since 1991 and at the CLG since January 2013. Prior to joining the CLG, she was in private practice in the area of criminal law.

59. Ms. Keelaghan testified that in early April 2014 the Member attended with her and admitted to the conduct set out in the Agreed Statement of Facts. The Member offered to resign but Ms. Keelaghan refused to accept his resignation. She requested and received from the Member, a copy of his response to the LSA which she carefully reviewed. She assured the Member she would continue to support him.

60. Ms. Keelaghan offered her impressions of the Member's work at the CLG. She testified that the Member is a very hardworking lawyer; the Member is good at keeping her informed on the progress of files; and they have two meetings a week. The Member deals with domestic violence clients specifically in the areas of Parenting Orders, Support Orders and Orders for the exclusive possession of matrimonial homes. The Member liaises with various organizations with family violence. We heard how involved the Member is, on behalf of the CLG, in Calgary community speaking to various organizations concerning his area of practice.

61. Ms. Keelaghan described the Member's work as being very consistent. He has a reasonable work load. She described him as a "go-to person" for others. The Member readily volunteers and puts in many hours of extra work. She testified that she has had no cause to question the Member's honesty.

62. She advised that if the Member is suspended she has a plan in place and has spoken to another lawyer who will fill the Member's position at CLG until his suspension lifted. His position will remain open for him throughout the period of suspension. Once the Member's suspension is lifted, he would be welcomed to resume his position at CLG.

63. The Executive Director and the Board of CLG are fully aware of the circumstances that bring the Member before us and are very supportive of the Member.

64. The Member's background is described in the above Agreed Statement of Facts. The Member made it clear in his response to the LSA and in the letters of apology to his former client and to Mr. Picard, Q.C. of Barr Picard LLP of his deep remorse at his unprofessional actions. His former client and her current solicitor were present throughout the Hearing.

65. There is no question that the Member's deceitful behavior is totally contrary to what is expected of a Member of the LSA. Members of the public rely on Members of the LSA to be completely honest with them and to act in their best interest at all times. The Member did anything but during most of his representation of his client. The Member testified and also wrote, that he felt supported at Barr Picard LLP and ought to have sought assistance when he realized that the work required of him on this client matter was beyond his capabilities. Instead, he went into avoidance mode and conducted himself unprofessionally in most aspects of his representation of his client.

66. Counsel for the Member suggested that a three to six month suspension was in order while, as already stated, counsel for the LSA argued for disbarment.

67. In arriving at an eight-month suspension as the appropriate sanction and so ordering, the Hearing Committee considered a number of factors. The factors included the Member's age, his relative inexperience at the time the offences occurred, his full cooperation with the LSA once he was contacted by the LSA, the significant remorse he has demonstrated, the support of Ms. Keelaghan, the Executive director and the Board of Directors of the CLG, his truthfulness in immediately reporting his misdeeds to his supervisor at the CLG, and the letters of support from his co-workers and senior members of the Bar. In balancing the need for sanctioning of the Member for his unprofessional behavior and the public interest, it was deemed that a suspension was a more appropriate sanction. In this instance, there was no financial malfeasance on the part of the Member although we certainly acknowledge that his client was not well served and has had to retain other counsel. It is also noteworthy that the Member had no prior record and that he is regarded very highly by those he serves and works with at the CLG.

68. In addition to the eight-month suspension, the Hearing Committee orders that:

- (a) The Member is referred to Practice Review upon his reinstatement, so that his return to practice and conditions associated with that may be supervised. The Member will co-operate with Practice Review and follow any recommendations

or directions of Practice Review, including but not limited to recommendations and directions in relation to any change in his practice.

- (b) Commencing on his reinstatement and continuing until the Member is relieved of this obligation by Practice Review, he will only practice in an employed capacity, under the direct supervision of his supervising lawyer at CLG or another member of the LSA approved for that purpose by the Manager, Practice Review. Any changes to his practice arrangement must be approved by the Practice Review Committee prior to the change being implemented. The Member is required to notify the Manager, Practice Review on a priority basis of any proposed changes, together with sufficient particulars, to allow sufficient time for the Practice Review Committee to meet and consider the proposal.
- (c) Prior to his reinstatement the Member shall receive education on legal ethics, the content, format and timing of which will be determined in conjunction with, and subject to the approval of, the Manager, Practice Review.

69. At the request of CLG, the Member's suspension is held in abeyance for 30 days from the date of this Hearing. The reason for the suspension being held in abeyance is to enable CLG, with the cooperation of the Member, time to integrate, into the organization, the lawyer who will be replacing the Member for the eight-month suspension. The Hearing Committee is of the view that the 30 day period is in the best interests of those served by the CLG.

70. Costs are payable in full within one year of the Member's reinstatement as a LSA Member.

71. There shall be a referral to the Attorney General. There shall be publication of the Member's suspension.

Verbal Reasons delivered on May 12, 2014

Written Reasons delivered this 6th day of July, 2014

Rose M. Carter, Q.C., Chair

W.J. Pavlic, Q.C., Member

G. Buick, Member