

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

REPORT OF THE HEARING COMMITTEE

SUMMARY

A Judicial Assistant of Q.B. complained that a Member acted against the direction of the Court. The Hearing Committee dismissed the Citation.

A. INTRODUCTION

1. On March 26, 2014, a Hearing Committee convened at the Law Society of Alberta (LSA) office in Calgary, Alberta, to inquire into the conduct of Gabor Zinner (the Member). The Member was represented by Mr. James Rooney, QC (Mr. Rooney) and the LSA was represented by Jane Corns (Ms. Corns).

2. A Notice to Solicitor was issued on March 6, 2014.

B. JURISDICTION AND OTHER PRELIMINARY MATTERS

3. Exhibits 1 through 4, consisting of Letter of Appointment of the Hearing Committee, Notice to Solicitor, Notice to Attend, and Certificate of Status of the Member, respectively, establish jurisdiction of the Hearing Committee.

C. PUBLIC HEARING

4. The Hearing was held in public.

5. Exhibit 2, being the Notice to Solicitor, listed two Citations:

1. It is alleged that you failed to respect and uphold the law in your personal conduct by acting against a direction of the Court, and that such conduct is conduct deserving of sanction.

2. It is alleged that you failed to respect and uphold the law in rendering advice and assistance to others to act against a direction of the Court, and that such conduct is conduct deserving of sanction.

6. At the commencement of the hearing, LSA counsel advised the Panel that the LSA would not be calling evidence in relation to Citation number 2. Citation 2 is dismissed.

7. The Panel accepted the facts as set out in the proffered Agreed Statement of Facts and Admission (Exhibit 6). The facts reveal that:

- (i) The Member has been a member of the LSA since February, 1978 and is a sole practitioner. His practice consists of civil litigation, family law, commercial law and wills and estates.
- (ii) On May 13, 2013 the LSA received a complaint made by a Judicial Assistant of the Court of Queen's Bench of Alberta against the Member. As a result of that complaint, this matter was directed to a Hearing alleging that the Member failed to respect and uphold the law in his personal conduct by acting against the direction of the Court, and that such conduct is conduct deserving of sanction.

DIRECTION BY THE COURT

- (iii) On November 12 and 13, 2008 an oppression application was heard by the Honourable Mr. Justice Clark (Mr. Justice Clark). The Member was counsel for the Defendants. The Plaintiff sought an accounting of business opportunities allegedly misappropriated by the Defendants, including an opportunity on the subject lands of the Oppression Application. At the close of the Oppression Application, Mr. Justice Clark adjourned the Hearing and reserved his decision stating, *inter alia*:

"And I hope that nobody would do anything with respect to corporations that would frustrate any order that might ultimately issue because, if it did, we'd just have to set it aside." (the Direction)

Mr. Justice Clark issued his decision on October 30, 2009. (the Decision)

TRANSFER OF LANDS

- (iv) On or about June 18, 2009, prior to the release of the Decision, the Member and one of the Shareholder Defendants entered into a Master Agreement whereby, and in contradiction to the Direction, certain lands, including those lands pertaining to the subject matter and other lands that were included within the scope and subject of the Oppression Application were transferred from certain of the Defendant Corporations to a numbered corporation controlled by the Member for nominal consideration.

CIVIL ACTION

- (v) The Plaintiff commenced a civil action seeking the unraveling of the Transfers. The work in this area was completed by October 8, 2010.

COSTS

- (vi) By Order dated July 5, 2011, Mr. Justice Clark awarded the Plaintiff solicitor/client costs in the amount of \$50,207.54 which was paid.

ADMISSION OF GUILT

- (vii) The Member admitted the truth of the facts set out in Exhibit 6 and further admitted that the conduct in question amounts to conduct deserving of sanction for the purposes of the *Legal Profession Act*.

8. No Interim Order was prepared by counsel following the conclusion of the application of November 12 and 13, 2008.

9. The Member advised the Panel in response to questioning, that he was never contacted by counsel for the Plaintiff asking him if he had heard Mr. Justice Clark's Direction and/or that, in light of the Direction, Plaintiff's counsel was of the view that the Member was in breach of the Direction.

10. The Member states and the evidence is unchallenged in this area, that he did not hear the Direction of Mr. Justice Clark. In support of the Member's contention, when he became aware of the Direction, he immediately assisted in rectifying matters by instructing his counsel to endorse a Consent Order retransferring the subject lands without protest or delay and without filing a Statement of Defence or a Demand of Notice to the Statement of Claim filed and served upon him.

ANALYSIS

11. After hearing submissions by counsel for the LSA and counsel for the Member, the Panel deliberated on the issue of whether or not the admission of guilt ought to be accepted

12. Refusing to accept an admission of guilt from a Member is not something that this Panel takes lightly. The Panel Members are intimately familiar with the Hearing Guide (February 2013) concerning the admission of guilt statements found therein. As stated at para. 19 of the Hearing Guide:

A Hearing Committee, having completed the above enquiry, should then give serious consideration to a jointly tendered admission of guilt, should not lightly disregard it, and should accept it unless it is unfit or unreasonable, contrary to the public interest, or there are good and cogent reasons for rejecting it.

Rault v. Law Society of Saskatchewan, 2009 SKCA 81, *R. v. Tkachuk*, 2001 ABCA 243, and *Law Society of Alberta v. Pearson*, 2011 ABL 27.

13. Based on the Member's immediate actions following being served with the Statement of Claim, it is not a stretch for this Panel to conclude that the Member, had he been advised by his Friend at the Bar of the Direction, which the Member says he did not hear, he would not have started down the path he did. It is indeed troubling that a Member of the Bar would not, as an

officer of the Court, see fit to communicate with opposing counsel to clarify whether or not he heard or appreciated the direction of the Court. Humans are not infallible. From time to time counsel in proceedings are going to be distracted and may not, due to circumstances, (their clients speaking to them, fatigue, otherwise being distracted), will not hear everything that is said.

14. The Panel advised counsel that it could not accept the admission of guilt although the Panel accepted the facts set out in the joint submission as evidence and true. Given the facts of this case, the Panel holds that there are good and cogent reasons to reject the Member's admission of guilt. It is the finding of this Panel that the Member did not engage in conduct deserving of sanction and Citation 1 is dismissed.

Dated April 17, 2014

ROSE M. CARTER, QC, CHAIR

DENNIS EDNEY, QC

ROBERT HARVIE, QC