

**THE LAW SOCIETY OF ALBERTA
HEARING REPORT**

**IN THE MATTER OF THE Legal Profession Act,
and in the matter of a Hearing regarding the conduct of
ABDI ABDI, a Member of the Law Society of Alberta**

INTRODUCTION

1. On February 25, 2014, a Hearing Committee of the Benchers convened at the Law Society of Alberta office in Calgary for a hearing into the conduct of Mr. Abdi Abdi. The Hearing Committee comprised Gillian D. Marriott, QC (Chair), Fred Fenwick, QC, Benchers and Dr. Miriam Carey, Lay Benchers (the "Committee"). The Law Society of Alberta ("LSA") was represented by Molly Naber-Sykes, QC. The Member was present and was represented by Emerson Dunlop.

JURISDICTION AND PRELIMINARY MATTERS

2. Exhibits 1 – 4 were entered by consent and established the jurisdiction of the Committee. The parties raised no objections to the jurisdiction or composition of the Committee.
3. A Certificate confirming that
 - a) the Complainant had received a Private Hearing Application Notice; and
 - b) the Deputy Executive Director had exercised her discretion pursuant to Rule 96(2)(b) and determined that 8 other individuals were to be served with a Private Hearing Application Notice.was entered as Exhibit 5.
4. The Hearing Committee was advised that no party intended to apply to have the hearing held in private. As a consequence, the hearing was held in public.

CITATIONS

5. The hearing related to five citations brought against Mr. Abdi Abdi:

1. It is alleged that you breached an undertaking; and that such conduct is deserving of sanction.
2. It is alleged that you misled another lawyer, and that such conduct is conduct deserving of sanction.
3. It is alleged that you failed to comply with your client's instructions, and that such conduct is conduct deserving of sanction.
4. It is alleged that you failed to respond to communications from your client that contemplated a reply, and that such conduct is conduct deserving of sanction.
5. It is alleged that you failed to provide a complete response to communications from the Law Society of Alberta that contemplated a reply, and that such conduct is conduct deserving of sanction.

EVIDENCE

6. At the outset of the hearing, an Agreed Statement of Facts and Admission of Guilt were entered as Exhibit 28. The Statement of Facts contains admissions at paragraphs 52 and 53 respecting the conduct complained of in citations 1 and 2 and paragraphs 37 through 39 contain admissions respecting citations 3 through 5. Documents marked Exhibits 6 through 27 were admitted by agreement and form part of the evidence before the Committee.
7. No other evidence was led by either party.
8. Mr. Abdi Abdi acknowledged to the Hearing Committee that he:
 - a) made the admissions voluntarily;
 - b) unequivocally admitted his guilt to the essential elements of the citations;
 - c) understood the nature and consequences of the admissions; and
 - d) understood that the Hearing Committee was not bound by an submission made jointly by his counsel and counsel for the LSA regarding sanction.
9. The Committee conferred and concluded that the Agreed Statement of Facts and

Admission of Guilt were acceptable and supported by the evidence. The Committee found Mr. Abdi Abdi to be guilty of conduct deserving of sanction in accordance with Section 60 of the *Legal Profession Act* with respect to citations 1 through 5.

SUBMISSIONS REGARDING SANCTION

10. The Committee was then advised that counsel for the LSA and counsel for Mr. Abdi Abdi had prepared a joint submission as to sanction. The following Exhibits were entered by consent:

- a) Letter from the Deputy Executive Director certifying that Mr. Abdi Abdi had the following discipline record (Exhibit 29):
 - i. Guilty, one count of conduct deserving of sanction – failing to ensure that the support staff assigned to deal with the S. mortgage transaction were supervised
 - ii. Guilty, one count of conduct deserving of sanction – failing to honour all undertakings given to another lawyer;

For which he received a reprimand and was ordered to pay a fine and costs.

- b) Estimated Statement of Costs (Exhibit 30).

11. It is noted by the Committee that Mr. Abdi Abdi cooperated with the LSA throughout the complaint process, taking responsibility for his conduct and demonstrating a willingness to take steps to avoid any re-occurrence. Counsel submitted that a reprimand together with a direction that Mr. Abdi Abdi pay the actual costs of the hearing was appropriate.

12. Counsel for the LSA noted that there were no issues with Mr. Abdi Abdi's honesty or integrity. Rather, the citations arose from Mr. Abdi Abdi's approach to the practice of law as a very junior lawyer which had manifested in a lack of understanding and appreciation of his obligation to selflessly serve his client's interests.

DECISION REGARDING SANCTION

13. In determining an appropriate sanction, the Committee acknowledges it is to take a purposeful approach. The overarching purpose of the sanction process is to protect the public, preserve high professional standards, and preserve public confidence in the legal profession: *Law Society of Alberta v. Mackie*, 2010 ABLS 10. The purpose of sanctions is not “to punish offenders and exact retribution”: *Lawyers and Ethics: Professional Responsibility and Discipline*, by Gavin McKenzie (at page 26-1):

14. The *Legal Profession Act*, Section 72 (1) requires that a Hearing Committee, on finding a member guilty of conduct deserving of sanction, disbar, suspend or reprimand the member. Unlike disbarment or suspension, a reprimand does not limit a member’s right to practice. It is, however, a public expression of the profession’s denunciation of the lawyer’s conduct and is to deter future misconduct by the member and within the profession: *Law Society of Alberta v. Westra*, 2011 CanLii 90716.

15. As stated by the Hearing Committee in *Law Society of Alberta v King*, 2010 ABLS 9:

A reprimand has serious consequences for a lawyer. It is a public expression of the profession’s denunciation of the lawyer’s conduct. For a professional person, whose day-to-day sense of self-worth, accomplishment and belonging is inextricably linked to the profession, and the ethical tenets of that profession, it is a lasting reminder of failure. And it remains a lasting admonition to avoid repetition of that failure. Deterrence and the future protection of the public interest are therefore served accordingly.

16. When deciding how the public interest should be protected through the sanction process, the Hearing Committee is invited to take into account various factors,

including a) the nature and gravity of the misconduct, b) whether the misconduct was deliberate, c) whether the misconduct raises concerns about the lawyer's honesty or integrity, d) the impact of the misconduct on the client or other affected person, e) general deterrence of other members of the profession, f) specific deterrence of the particular lawyer, g) whether the lawyer has incurred other serious penalties or other financial loss as a result of the circumstances, h) preserving the public's confidence in the integrity of the profession's ability to properly supervise the conduct of its members, i) the public's denunciation of the misconduct, j) the extent to which the offensive conduct is clearly regarded within the profession as falling outside the range of acceptable conduct, and k) imposing a penalty that is consistent with the penalties imposed in similar cases. In addition, the Hearing Committee considers mitigating circumstances that may temper the sanctions that may be imposed including the lawyer's conduct since the misconduct, the lawyer's prior disciplinary record, the age and experience of the lawyer and whether the lawyer entered an admission of guilt, thereby showing an acceptance of responsibility: *Law Society of Alberta v Elgert*, 2012 ABL 9.

17. The Hearing Committee also considered the authority set out in the Hearing Guide that a joint submission on sanction must be given serious consideration and accepted unless it is unfit, unreasonable, or contrary to the public interest: *R. v. Tkachuk*, 2001 ABCA 243; *Law Society of Alberta v. Pearson*, 2011 ABL 17.

18. In this case, the Hearing Committee determined that the joint submission on sanction was appropriate. In reaching its decision regarding sanction, the Committee places emphasis on the fact that by choosing to enter an admission of guilt, Mr. Abdi Abdi lessened the burden on the LSA, Mr. Abdi Abdi gave evidence and expressed remorse for his conduct and the Committee accepts that as true. The Committee noted that at the time of these events, Mr. Abdi Abdi was a very junior lawyer responsible for a significant real estate practice without effective supervision or mentoring.

19. It is also of note that Mr. Abdi Abdi voluntarily ceased practising in response to the stress and the difficulties he found himself in. He has returned to practice with a new firm and it is a condition of his reinstatement that he engage with the Practice Review Committee. Counsel for the LSA advises that Mr. Abdi Abdi's involvement continues, and he reports quarterly to Practice Review and they are positive as to his progress and engagement. The Committee is confident that he appreciates and understands his ethical and professional responsibilities and will govern himself accordingly.

20. Having regard to all of the factors discussed above and taking into account that Mr. Abdi Abdi is currently earning a minimal income, the Hearing Committee reaches the following decision on sanction:

1. Mr. Abdi Abdi will continue his engagement with Practice Review and will comply with the conditions imposed by Practice Review until the Practice Review Committee determines that his engagement with them is no longer necessary;
2. Mr. Abdi Abdi shall receive a reprimand to be delivered by the Chair of the Hearing Committee;
3. Mr. Abdi Abdi is ordered to pay a fine of \$2,000.00;
4. Mr. Abdi Abdi is ordered to pay the actual costs of the proceedings, \$1,963.50; and
5. Both the fine and costs shall be paid on or before February 24, 2015.

REPRIMAND

21. A reprimand was delivered by the Chair at the conclusion of the hearing, reminding Mr. Abdi Abdi that both the public interest and the *Code of Professional Conduct* requires that members of the LSA serve their clients diligently, conscientiously, and with due regard for the clients' interest. His failure to do so harmed the standing and the reputation of the legal profession.

22. The Committee also reminded Mr. Abdi Abdi that it is imperative that he recognize the importance of timely, complete and thorough dealings with the LSA. The responsibility of the Committee is to consider the importance of a member's governability and to take action to preserve the public's confidence in the integrity of the profession's ability to properly supervise the conduct of its own members.

23. Finally, and importantly, Mr. Abdi Abdi is encouraged to move forward with his career as a productive and important member of his community.

CONCLUDING MATTERS

24. In the event of any request for public access to the evidence heard in these proceedings, the Exhibits and the transcript of the proceedings shall be redacted to protect the identity of the Member's former clients, and any information subject to proper claims of privilege.

25. No referral to the Attorney General is directed.

26. There shall be no Notice to the Profession issued.

DATED at Calgary, Alberta this 17th day of March, 2014.

GILLIAN D. MARRIOTT, QC

FRED FENWICK, QC

DR. MIRIAM CAREY