

**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
Wayne Gillis, a Member of the Law Society of Alberta**

INTRODUCTION

1. On February 18, 2014, a Hearing Committee of the Benchers convened at the Law Society of Alberta office in Calgary for a hearing into the conduct of Wayne Gillis. The Hearing Committee comprised Gillian D. Marriott, Q.C. (Chair), Dennis Edney, Q.C., Bencher and Dr. Miriam Carey, Lay Bencher (the “Committee”). The Law Society of Alberta (“LSA”) was represented by Jane Corns. The Member was present and was represented by James Thornborough.

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) that the Deputy Executive Director had exercised her discretion pursuant to Rule 96(2)(b) and determined that no other individuals were to be served with a Private Hearing Application Notice;was entered by consent 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 2 citations brought against Mr. Gillis:
 - a) It is alleged that you failed to conscientiously serve your client, and that such conduct is conduct deserving of sanction; and
 - b) It is alleged that you failed to respond on a timely basis and in an appropriate manner to the Law Society, and that such conduct is conduct deserving of sanction.

EVIDENCE

6. At the outset of the hearing, an Agreed Statement of Facts and Admission was entered as Exhibit 6. The Agreed Statement contains an admission at paragraph 45 respecting the conduct complained of in citations 1 and 2. Documents marked Exhibits 6(1) through (4) were admitted by agreement and form part of the evidence before the Committee.
7. Mr. Gillis 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 a submission made jointly by his counsel and counsel for the LSA regarding sanction.
8. The Committee conferred and concluded that the Agreed Statement of Facts and Admission was acceptable and was an admission of guilt and the Committee found Mr. Gillis to be guilty of conduct deserving of sanction in accordance with Section 60 of the *Legal Profession Act* with respect to citations 1 and 2.

SUBMISSIONS REGARDING SANCTION

9. Having found Mr. Gillis guilty of conduct deserving of sanction with respect to citations 1 and 2, the Committee heard from parties with respect to sanction.
10. The Committee was then advised that counsel for the LSA and counsel for Mr. Gillis had prepared a joint submission as to sanction. The Joint Submission for Sanction was entered by consent (Exhibit 7).
11. The following Exhibits were entered by consent:
 - a) Letter from the Deputy Executive Director certifying that Mr. Gillis had the following discipline record (Exhibit 8):
 - i) Guilty, one count of conduct deserving of sanction – breaching duty to hold confidential information provided by client, (reprimand and costs); and
 - ii) Guilty, one count of conduct deserving of sanction – attempting to gain a benefit for his client, (reprimand and costs).
 - b) Estimated Statement of Costs (Exhibit 9).
12. Mr. Gillis has 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, and is currently engaged with the Practice Review Committee.
13. Counsel for the LSA noted that there were no issues with Mr. Gillis' honesty or integrity. Rather, the citations arose during a time in which Mr. Gillis was experiencing serious health issues. As well there appears not to have been any prejudice caused to the client as a result of Mr. Gillis' conduct.

DECISION REGARDING SANCTION

14. In determining an appropriate sanction, the Committee acknowledged 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).
15. 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.
16. 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.”*
17. 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 ABLs 9.

18. Considering the nature of Mr. Gillis' conduct in this matter, the Committee finds that Mr. Gillis demonstrated a lack of diligence and responsiveness. His inaction and lack of attention to his client's matters caused unnecessary effort, frustration and inconvenience to his client however, it does not appear that they suffered any prejudice as a result. However, it is of concern to the Hearing Committee that Mr. Gillis did not respond to the LSA when requested to do so.

19. In reaching its decision regarding sanction, the Committee acknowledged that by choosing to enter an admission of guilt, Mr. Gillis lessened the burden of the LSA. Mr. Gillis also expressed remorse for his conduct and the Committee accepts that as true.

20. 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 ABLs 17.

21. Having regard to all of the factors discussed above, the Hearing Committee has determined that the Joint Submission for Sanction is appropriate and makes the

following decision on sanction, pursuant to Section 72 of the *Legal Profession Act*:

- a) Mr. Gillis shall receive a reprimand to be delivered by the Chair of the Hearing Committee;
- b) Mr. Gillis shall have imposed upon him:
 - i) the condition to maintain no more than seventy five (75) active files, excluding Will files; and
 - ii) the requirement to undertake to provide his active file list, excluding Will files, to the attention of the Manager, Practice Review, on a quarterly basis, commencing March 31, 2014 and every three months thereafter;until relieved of such condition and requirement by a Panel of the Practice Review Committee on application to the Manager, Practice Review;
- c) Mr. Gillis shall pay a fine in the amount of \$1,500.00, to be paid by the end of business, namely 16:30, on or before February 18, 2015; and
- d) Mr. Gillis shall pay set costs for this hearing in the amount of \$1,000.00, to be paid by the end of business, namely 16:30, on or before February 18, 2015.

REPRIMAND

22.A reprimand was delivered by the Chair at the conclusion of the hearing, reminding Mr. Gillis 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 client's interest. He failed to do so with respect to A.H. and in doing so, harmed the standing and the reputation of the legal profession.

23. The Committee also reminded Mr. Gillis 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.

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 client, 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 3 day of March, 2014.

GILLIAN D. MARRIOTT, Q.C.

DENNIS EDNEY, Q.C.

DR. MIRIAM CAREY