

**THE LAW SOCIETY OF ALBERTA
HEARING COMMITTEE REPORT**

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

INTRODUCTION AND SUMMARY OF RESULT

1. On February 2, 2010 a Hearing Committee of the Law Society of Alberta (LSA) convened at the Law Society offices in Calgary to inquire into the conduct of Harris Hanson, (the “Member”). The Committee was comprised of Fred R. Fenwick, Q.C. (chairman), Anthony G. Young, Q.C., Bencher and Dr. Miriam Carey, Bencher. The LSA was represented by Lois MacLean. The Member was present throughout the hearing and was self-represented. The Member confirmed that he had been advised of the availability of pro-bono representation but confirmed his desire to self represent.
2. The Member faced one citation:
 - (a) IT IS ALLEGED that you communicated with the Complainant’s client when you knew the client was represented by the Complainant, and that such conduct is conduct deserving of sanction.
3. At the commencement of the hearing, the Member and counsel for the LSA presented the Hearing Committee with a binder containing Agreed Exhibits marked 1 through 25 and a “Notice of Admissions” signed by the Member which was entered as Exhibit 26.
4. The Complainant, a member of the Law Society, testified and was cross-examined by the Member. The Member testified and was cross-examined by counsel for the LSA.
5. Based on the admissions and the evidence, the Hearing Committee finds that the citation is proven and that the Member is guilty of conduct deserving of sanction.
6. The Hearing Committee concluded that the sanction should be a reprimand and an Order for payment of 1/3rd the actual costs of the hearing.

JURISDICTION AND OTHER PRELIMINARY MATTERS

7. Exhibits 1-4, consisting of the Letter of Appointment of the Hearing Committee, the Notice to Solicitor, the Notice to Attend and the Certificate of Status of the Member, established the jurisdiction of the Hearing Committee. The Certificate of Exercise of Discretion was entered as Exhibit 5. These Exhibits were entered into evidence by consent.
8. There was no objection by the Member or counsel for the LSA regarding the constitution of the Hearing Committee.
9. The entire hearing was conducted in public.

FACTS

10. The Member was a member of the Law Society of Alberta at all times relevant to these proceedings.
11. The Member had a long standing solicitor-client relationship with the family of HS. He personally knew Mr. S and Mr. S's grown children, JG and JS.
12. On June 21, 2004, the Member, at the instruction of the father Mr. S signed in his own name as "Agent and Solicitor for JG" a Caveat Forbidding Registration (*Exhibit 6-2*) claiming an unregistered transfer dated December 21, 1995 from HS to JG and HS jointly. The Member also signed in his own name the Affidavit in Support of the Caveat (*Exhibit 6-3*).
13. The Member testified that he did this on instructions from the father, Mr. S, not on instructions from JG and it was to protect Mr. S's income tax status. JG was never provided with any information concerning the Caveat.
14. The Caveat was placed on a rural acreage with a home that JG lived at and paid very reasonable rent to her father.
15. Evidently JG had questions about her tenancy or interest in the land and went to see two separate solicitors in late 2006 and early 2007. She first went to a solicitor named DW and subsequently she retained the Complainant, Christopher Michael Smith ("CMS") as litigation counsel.
16. CMS wrote to the Member informing him that he was representing JG but the Member continued to correspond with JG giving legal advice.
17. CMS complained of the Member contacting his client and this was the nature of the citation.
18. The chronology pertinent to the citation is illustrated precisely by the Exhibits entered into evidence:
 - (a) On January 24, 2007 CMS wrote to the Member informing him that he represented JG stating, amongst other things, that he:
 - had been retained by JG, that the Member could no longer represent JG
 - making a demand for documents underlying the Caveat referred to above
 - (b) On January 29, 2007 the Member wrote back on personal letterhead (at least not his law firm letterhead) stating amongst other things:
 - I have been HS's friend and lawyer for many years
 - I have known JG since she was a little girl
 - I am also a mediator and was trying to mediate an agreement between them ...

- I write this letter as a family friend and mediator
 - but not responding specifically to any of the requests for underlying information
- (c) On January 31, 2007 CMS wrote back to Hanson & Associates, Attention: The Member stating amongst other things:
- “I am seeking my client’s instructions as to how she wishes to proceed”
 - “... it is clear that you can no longer act at all in this matter”
 - and making further requests for documentation
- (d) On February 1, 2007 the Member sent an email to both HS and JG stating amongst other things:
- I see no need for JG to be spending money on a lawyer
 - giving tax advice
 - criticizing previous legal advice
- (e) On February 7, 2007 CMS wrote again to Hanson & Associates, Attention: Harris Hanson. His client had informed him of the February 1st email. CMS specifically asked the Member to desist contacting his client.
- (f) On February 12, 2007, having received the above letter, the Member sent a letter directly to JS putting forward the position of Mr. S and proposing a resolution of the dispute. The Committee notes with regard to the above:
- (i) The Member responded to the CMS’s letter of January 24 with his own letter of January 29, 2007;
 - (ii) CMS responded to that letter with a letter addressed to The Member on January 31, 2007 where he specifically stated that he was seeking his client’s instructions as to how she wished to proceed. The Member agreed in cross-examination that he understood this to mean that CMS was gathering evidence in order to give independent advice to his client, JG;
 - (iii) Notwithstanding that, the Member wrote directly by email, this time bypassing CMS, being critical of earlier legal advice and putting forward a position which was essentially the position of HS;
 - (iv) CMS wrote again to the Member on February 7th stating his position that there was a conflict of interest as between the Member and JG and asking for the Member to desist contacting JG;

- (v) Notwithstanding the above the Member continued to contact JG by sending her a letter on February 12, again putting forward the position of his client Mr. S;

In his evidence, the Member excused these letters by stating that he was not acting as Mr. S's lawyers, noting that the letters were not sent out on his law firm's letterhead, and producing a Power of Attorney which Mr. S had given him some years earlier, claiming at the Hearing to be acting by the Power of Attorney directly on Mr. S's behalf.

DECISION

19. The Hearing Committee finds that the following principles are engaged by this hearing:

- (a) *Legal Profession Act* Section 49(1). For the purposes of this Act, any conduct of a Member, arising from incompetence or otherwise that:

- (i) is incompatible with the best interests of the public or of the members of the Society; or
- (ii) tends to harm the standing of the legal profession generally

is conduct deserving of sanction, whether or not that conduct relates to the Member's practice as a barrister and solicitor and whether or not that conduct occurs in Alberta.

- (b) *Code of Professional Conduct* Chapter 4;

Statement of Principle;

A lawyer has a duty to deal with all other lawyers honourably and with integrity;

Rules;

If a lawyer is aware that a party is represented by counsel in a particular matter, the lawyer must not communicate with that party in connection with the matter except through or with the consent of its counsel;

Commentary. A lawyer's obligations with respect to parties known to be represented by counsel are not limited to situations in which the representation is a matter of record ...

Rule No. 6 is intended to apply whether a lawyer is acting as a lawyer or as a party to the matter ...

20. The Hearing Committee is mindful that a breach of the *Code of Professional Conduct* may be conduct deserving of sanction but that Section 49 of the *Legal Professions Act* is much wider.

21. Based on the admissions of evidence and the testimony of the Member, it is clear that the citation is made out. The Member knew that JG was represented by CMS and acknowledged this in writing. When the Member did not get the answer that he wanted from CMS, he continued to correspond directly with JG despite CMS insisting that he not.
22. Further, the communications with JG were not innocent or accidental. They contained specific legal advice, specific recommendations as to the resolution of the matters between JG and her father, in short attempting, for the benefit of his client, the father, to short-circuit JG's attempt to get independent legal advice from CMS.
23. The Member's explanations that he was contacting JG not as a lawyer but pursuant to his authority under the Power of Attorney are in direct conflict with his obligations under Chapter 4 of the *Code of Professional Conduct*.
24. Further, these communications can only tend to confuse a member of the public. Throughout the relationship with Mr. S and JG, the Member, in his correspondence and documentation described himself variously as "agent and solicitor", mediator, attorney, family friend, and it is not at all clear nor would it be clear to a member of the public which "hat" he was wearing at any point in the proceedings.
25. JG was entitled to independent legal advice and she sought this from CMS. The Member specifically and with intent to favour the position of his client, Mr. S, interfered with JG's attempt to obtain independent legal advice despite specific requests from CMS that he desist.
26. As a result of all of the above, the Hearing Committee finds that the citation is made out.

EVIDENCE AND SUBMISSIONS RE: SANCTION

27. Counsel for the LSA indicated that the Member had no previous disciplinary record, was cooperative in the preparations for the hearing including agreements as to facts and asked for a reprimand plus costs.
28. The Member acknowledged the conflict, acknowledged that he had acted under the direction of the father Mr. S. without thinking the matter through and acknowledged that after the two letters to JG that he did in fact retire from involvement in the matter.

DECISION ON SANCTION

29. The Hearing Committee had regard to mitigating factors including the Member's cooperation during the investigation, the Member's lack of discipline record, and the Member's statements during the sanction phase. The Hearing Committee also had regard to aggravating factors including the fact that the Member was a senior practitioner and ought to have known better than to interfere with JG's attempt to obtain independent advice, and that the attempt to interfere with that advice was actually for the purposes of advancing his own client's interests.

30. From the start, the Member acknowledged that if he was wrong he would apologize to CMS. This does indicate, positively, that the member is willing to accept governance. However, if an apology was needed, it is not CMS that the Member would need to apologize to, it is JG because it was her right to obtain independent legal advice that was most directly interfered with.
31. Taking into account all of the foregoing factors and evidence, the Hearing Committee concluded that the sanction should be a reprimand, no fine, and that the Member pay 1/3rd of the actual costs of the hearing.
32. The Chair of the Hearing Committee delivered the reprimand to the Member specifically noting the importance that members of the Law Society comply with the *Code of Professional Conduct* and conduct themselves in a fashion to protect the public interest, engender trust and respect for the law and the profession.
33. The Chair noted that the Member as a senior member of the Bar ought not to need reminding of the above and notes the importance of a level of objectivity and analysis in the giving of advice in any dispute. Such an analysis ought to have included an acknowledgement of JG's right to an independent opinion.

CONCLUDING MATTERS

34. No referral to the Attorney General is required in this matter.
35. No separate notice to the profession is required in respect of this matter.
36. The decision, the evidence and Exhibits in this hearing are to be made available to the public with the names of the Complainant, clients, third parties or other employees to be redacted.

Dated this 3rd day of August, 2010.

Fred R. Fenwick, Q.C., Bencher
Chair

Anthony G. Young, Q.C., Bencher

Dr. Miriam Carey, Bencher