



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 William Shymko, a Member of the Law Society of Alberta.

A. Jurisdiction and Preliminary Matters

1. A Hearing Committee of the Law Society of Alberta (LSA) held a hearing into the conduct of William Shymko on September 5, 2008. The Committee consisted of Neena Ahluwalia QC, Chair, Larry McConnell QC and Wayne Jacques. Garner Groome represented the LSA. Alexander Pringle, QC, represented the Member.
2. Exhibits 1 through 4, consisting respectively 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 Committee and were admitted into evidence by consent.
3. There was no objection by the Member's counsel or counsel for the LSA regarding the membership of the Committee.
4. The Certificate of Discretion was entered as Exhibit 5. No request for a private hearing had been received and therefore the hearing proceeded in public.
5. Exhibits 6 through 16, contained in an exhibit binder provided to the Committee members and the parties, were admitted into evidence by consent. The following additional exhibits were also entered into evidence by consent:
 - Exhibit 17 – Agreed Statement of Facts dated September 5, 2008 and signed by the member;
 - Exhibit 18 – Practice Review File of the Member – Closing Summary Dated June 3, 2005.
 - Exhibit 19 – Discipline Record of the Member dated August 28, 2008
 - Exhibit 20 – Estimated Statement of Costs

B. Agreed Statement of Facts

The Agreed Statement of facts is as follows:

GENERAL BACKGROUND

1. The Member is a sole practitioner in Edmonton, Alberta. He was admitted to the Bar on June 21, 1973.

CITATIONS

2. On November 20, 2007, the Conduct Committee referred one citation to hearing:

IT IS ALLEGED THAT you failed to respond in a timely fashion to communications from another lawyer that contemplated a reply, and that such conduct is conduct deserving of sanction.

FACTS

2. On September 28, 2006, C... Ltd and 8... Inc. entered into a commercial land exchange agreement with a closing date of October 31, 2006. The Member acted for 8... Inc. and the Complainant, RP, acted for C... Ltd.
3. An exchange of transfer documentation occurred between the Member and RP with certain trust conditions imposed and undertakings given to facilitate the closing of the agreement, which had been delayed for reasons not relevant to these proceedings.
4. In particular, on December 20, 2006, the Member undertook, *inter alia*, to discharge certain prior encumbrances on the title to lands being transferred from 8... Inc. to C... Ltd. (Ex 6).
5. As a result of discussions between the Member and RP concerning the wording of an undertaking in Ex. 6 regarding one of the prior encumbrances, the next day the Member amended his undertaking concerning this encumbrance from "making best commercial efforts" to an unqualified undertaking to discharge this encumbrance (Ex 7).
6. By January 30, 2007, the land exchange was completed with the registrations of the respective transfers of land.
7. On January 31, 2007, RP wrote the Member asking for provision of the several outstanding discharges as per the Member's undertakings and other loose ends (Ex 8). The Member received this letter but did not respond.
8. By way of letter dated March 7, 2007, RP again requested the subject discharges from the Member (Ex 9). The Member received this letter but did not respond.
9. On April 9, 2007, RP wrote the Member a third time seeking the completion of the Member's undertakings (Ex 10). The Member received this letter but did not respond.
10. RP's requests were repeated for a fourth time by way of letter to the Member dated May 7, 2007 (Ex 11). The Member received this letter but did not respond. The Member did, however, instruct his assistant to make a report to RP concerning the

outstanding matters but he did not follow up with his assistant to make sure this was done nor did he deal with the matter personally.

11. By way of letter dated May 22, 2007, RP demanded compliance with the Member's undertakings and other outstanding matters by June 5, 2007, failing which RP indicated he would "have no choice but to address this matter with the Law Society of Alberta" (Ex 12). The Member received this letter but did not respond.

12. As a result, on June 6, 2007, RP complained to the Law Society. This same day the Member's assistant contacted RP's office by telephone to explain a delay in getting discharges from third parties.

13. On June 7, 2007, after receiving notice of the complaint from the Law Society the Member responded to RP's correspondence, apologizing for his failures to respond and for his lack of diligence (Ex 13).

14. By way of letter dated June 12, 2007, the Member advised RP of his progress in addressing the outstanding matters (Ex 14).

15. By June 23, 2007, the Member had registered the required discharges at the Land Titles Office. On June 26, 2007, RP wrote the Member asking if he was in a position to provide compliance with all outstanding matters in the land exchange (Ex 15).

16. On June 27, 2007, the Member forwarded proof of compliance with his undertakings and provided the outstanding items RP had been requesting (Ex 16).

ADMISSION OF FACTS AND GUILT

17. The Member admits as fact the statements contained within this Agreed Statement of Facts. The Member further acknowledges his conduct as described in the within statement of facts is conduct deserving of sanction as particularized in the citation.

18. The Member makes these admissions as an admission of guilt to the citation as contemplated by Section 60 of the *Legal Profession Act*.

THIS AGREED STATEMENT OF FACTS IS MADE THIS "5" DAY OF SEPTEMBER, 2008.

"Original Signed"

William Shymko

C. Decision as to Citation

6. The Hearing Committee determined that the Agreed Statement of Facts and Admission of Guilt (exhibit 17) was in an acceptable form. Consequently, it is deemed for all purposes to be a finding of the Hearing Committee that the conduct of the Member, as stated in the citation, is deserving of sanction.

D. Decision Regarding Sanction

7. Mr. Shymko testified before the committee and responded to questions posed by counsel and by the Committee members. The Hearing Committee also heard submission regarding sanctions from both counsel.
8. The Hearing Committee decided that the member receive a reprimand and be required to pay a fine of \$2000.00 and costs of the hearing.

E. The Reprimand

9. Mr. Shymko has been a member of the Law Society of Alberta since February of 1977. He is an urban general practitioner—somewhat of an anomaly.
10. At the time of this matter, an experienced conveyancer had left the firm. Mr. Shymko's practice, was extremely busy with real estate transactions. Mr. Shymko relied heavily on his staff to keep him up to date with correspondence.
11. Mr. Shymko was candid to admit that he was not diligent in this particular matter. He also indicated that he has taken steps to become more diligent on all correspondence on all files.
12. The Hearing Committee was faced with a citation dealing with timely responses to communications from another member of the Law Society of Alberta.
13. This is a breach of Chapter 4, Rule 5 of the Code of Professional Conduct. The commentary in that Chapter includes the following:
 - a. Good relations among members of the bar are important from several perspectives. They contribute to the effective and expeditious dispatch of client's business while enhancing working conditions for lawyers. To the extent that dealings among counsel are observed by the public, polite and professional conduct fosters respect for lawyers on an individual and collective basis.
 - b. Responding promptly to telephone calls and correspondence and being punctual for appointments are important aspects of courteous professional dealings. Even in circumstances in which the information sought cannot or ought not to be provided, the lawyer is ethically obliged to courteously recognize the request.

14. The Committee is clearly indicating that the Law Society will act when we find that the actions of an individual member would impugn the reputation of all members of the Law Society of Alberta.

G. Concluding Matters

15. There will be no referral to the Attorney General.
16. There will be no notice to the profession.
17. With regard to time to pay, both the fine and the costs payable shall be paid 45 days from the date of receipt of the costs invoice by the member's counsel.
18. There will be redaction of any information dealing with client identities from the Law Society file or the transcript.

Dated this 6th day of April, 2009.

Neena Ahluwalia, QC – Chair and Bencher

Larry McConnell, QC – Bencher

Wayne Jacques– Bencher