

IN THE MATTER OF THE LEGAL PROFESSION ACT
AND IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF
RICHARD KNOX, A MEMBER OF THE LAW SOCIETY OF ALBERTA

REPORT OF THE HEARING COMMITTEE

On May 12, 2008, a Hearing Committee composed of Bradley G. Nemetz, Q.C., (Chair), Dale Spackman, Q.C., and Yvonne Stanford, convened at the Law Society offices in Calgary to inquire into the conduct of Richard Knox. James Rooney, Q.C. appeared for the member who was also present and Garner Groome appeared for the Law Society.

INTRODUCTION

[1] The Member became a lawyer in 1977, practicing with MacKimmie Matthews until 1997. Thereafter he was with Mobile Canada and Canadian Airlines until he ceased practicing in 1999. At that time he went on disability insurance, his marriage broke down, and divorce proceedings ensued. In the middle of the divorce an issue arose as to the sale of a piece of property. Mr. Knox's counsel advised Mrs. Knox's counsel that the sale of the property would close after the date set for the close of the divorce trial. Before the divorce trial commenced the Member moved up the date for closing, closed the transaction, removed his assets from the jurisdiction, and, after the first day of divorce proceedings, left Canada.

[2] The above facts gave rise to a citation of deliberately misleading or attempting to mislead the court which was amended at the outset of the hearing to a charge of conducting himself in personal proceedings in a manner that was incompatible with the public interest and which tended to harm the standings of the legal profession.

[3] The Member submitted an Agreed Statement of Facts and the panel found him guilty on the amended citation and concluded that the appropriate penalty was a reprimand, a fine of \$3,500, and an order to pay the actual costs of the proceedings and the fine within six months.

[4] This report will first discuss the facts, followed by a discussion of the amendment to the citation, concluding with the decision of the panel.

JURISDICTION

[5] Jurisdiction was established by entering as exhibits the Letter of Appointment, Notice to Solicitor, Notice to Attend, Certificate of Status and Certificate of Exercise of Discretion. Further, the member's counsel accepted the jurisdiction and composition of the panel.

FACTS

[6] During his legal career Mr. Knox was known as a "workaholic", regularly putting in 16 hour days. During the latter part of his career Mr. Knox suffered from burn-out, and was placed on the Canadian Bar Association Disability Insurance Coverage. Mr. Knox had no discipline record with the Law Society.

[7] Mr. Knox and his wife married in August 1975 and separated in August of 1999.

[8] In late 2003 Mr. Knox took up residence in Vietnam, and taught English and business classes part-time. He established and still maintains a relationship with a Vietnamese citizen and they have a 4 year old daughter. Mr. Knox is also the surrogate father of his partner's two sons from her prior marriage.

[9] The divorce proceedings were protracted and difficult. The trial judge remarked that, "to describe this lawsuit as difficult would be a substantial understatement". The matrimonial action was set for trial for early January 2005.

[10] In mid-August 2004 Mr. Knox' professional corporation entered into an agreement to sell an acreage west of Calgary for \$270,000.00.

[11] In late September 2004 Mr. Knox voluntarily disclosed to Mrs. Knox' legal counsel that his professional corporation had entered into a contract to sell the acreage.

[12] In mid-October 2004 Mrs. Knox's counsel advised Mr. Knox' counsel that at the next case management meeting she would attempt to tie-up Mr. Knox' professional corporation's assets. The case management meeting occurred in Private Chambers on or about October 14, 2004. The professional corporation was not a party to the action.

[13] The case management judge was advised that the property transaction was subject to confidentiality clauses; but that the closing date of the transaction was to be January 31, 2005. Because the closing date post-dated the anticipated conclusion of the matrimonial trial, no order was made with respect to freezing the professional corporation's assets, assuming such an Order could have been made.

[14] Shortly thereafter Mr. Knox elected to advance the closing date to November 5, 2004. Mr. Knox did not inform his counsel, his wife, her counsel, or the Court that he advanced the closing date. The trial commenced on January 25, 2005 and concluded on January 28, 2005. Mr. Knox

attended the first day of the trial but not thereafter. Mrs. Knox's counsel did not learn of the earlier closing until after the trial.

[15] The court granted the divorce and ordered that Mrs. Knox receive approximately \$450,000 and costs, which were to be set by a subsequent hearing.

[16] The costs application was subsequently brought at a time when Mr. Knox's departure from the jurisdiction, his advance of the sale, and his removal of assets were known. As a result, Mrs. Knox's counsel asked for and obtained punitive costs of \$90,000. The learned trial judge also issued a warrant for his arrest which required him to attend and show cause as to why he should not be held in contempt. The trial judge was critical of Mr. Knox's actions in connection with the divorce proceedings, the sale and his non appearance after the first day of the trial.

[17] On October 14, 2005 another Queen's Bench judge, on motion but without the attendance of Mr. Knox or his counsel, held Mr. Knox in contempt and ordered him jailed until he purged his contempt.

[18] In July of 2007 Mr. Knox's parents paid Mrs. Knox \$475,000 and the divorce proceedings were terminated including an order vacating the contempt order.

[19] Mr. Knox acknowledges that his conduct in his divorce action was incompatible with the public interest and tended to harm the reputation of the legal profession as a whole.

AMENDMENT TO CITATION

[20] The original citation read:

IT IS ALLEGED that you misled or attempted to mislead the court regarding the closing date of the sale of an 80.5 acre parcel of land, and that such conduct is conduct deserving of sanction.

[21] At the opening of the hearing the Law Society applied to amend the citation, with the consent of the Member and counsel for the Member, to read:

IT IS ALLEGED that you acted in a manner, during your personal legal proceedings, which was incompatible with the public interest and tended to harm the standing of the legal profession, and that such conduct is conduct deserving of sanction.

[22] The Hearing Committee was concerned with the amendment, in particular given that the amendment had, as its principal effect, the removal of the allegation of misleading or attempting to mislead the court. However, on the basis of representations by both counsel for the Law

Society and counsel for the Member, the Committee was satisfied that there was no clear evidence to support the charge of misleading the court regarding the closing date of the sale. At the pre-trial meeting with the case management judge the representation made by counsel for Mr. Knox was accurate as to the closing date. The Member was not in attendance. At the opening of the trial no representation was made as to the closing date by the Member or his counsel. What the Member did was take advantage of an opportunity, provided in the sale agreement, to advance the sale date and thus to defeat the expectation of his wife that the trial would conclude before he would have the sale proceeds. The Hearing Committee concluded that these facts made the amendment appropriate.

VERDICT ON AMENDED CITATION

[23] The Committee agreed that the facts set out reveal a standard of conduct by the Member in his divorce proceedings that is unacceptable and which tends to bring the reputation of the profession into disrepute. While the Committee does not feel that Members should be held to a standard of perfection when appearing before the court as litigants, and not lawyers, Mr. Knox's behaviour fell so far short of what the court is entitled to expect of litigants, resulting in punitive costs and contempt proceedings, that his admission that "his conduct in his divorce action was incompatible with the public interest intended to harm the reputation of the legal profession as a whole" was fully justified. Accordingly, the Committee unanimously found the Member guilty on the amended citation.

SANCTION

[24] Counsel for the Law Society suggested that a reprimand, a fine between \$2,500 and \$5,000 and actual costs of the hearing constituted the appropriate sanction and provided cases to support the range of fine being suggested.

[25] Counsel for Mr. Knox agreed with the Law Society's submissions and noted a number of mitigating factors including the admission of guilt, the absence of a prior record, the depression which led to the behaviour, the fact that the depression continues, the Member's current obligations to his new family, and the Member's current financial difficulties, which include being unemployed.

[26] The Committee concluded that a fine of \$3,500, when coupled with approximately \$3,000 in costs, resulting in a financial burden placed upon the Member of nearly \$7,000, was an appropriate financial sanction. Given that the Member is currently out of work the Committee provided the Member six months in which to pay the fine and the costs. A

reprimand was issued which noted the severity of the Member's conduct and the impact that his conduct has had both upon his former wife and family and his own parents.

CONCLUDING MATTERS

[27] The Law Society made a request with respect to redaction of names. If any one requests copies of any of the evidence the names will be redacted.

[28] There will be no referral to the Attorney General.

Dated this 5th Day of June 2008

Bradley G. Nemetz, Q.C. (Chair)

Dale Spackman, Q.C.

Yvonne Stanford