



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 TIMOTHY STONHOUSE
a Member of The Law Society of Alberta

INTRODUCTION

1. On May 5, 2008 a Hearing Committee of the Law Society of Alberta (LSA) convened at the Law Society offices in Edmonton to inquire into the conduct of the Member, Timothy Stonhouse. The Committee was comprised of J. Royal Nickerson, Q.C., Chair, Hugh Sommerville, Q.C. and Carsten Jensen, Q.C. The LSA was represented by Michael Penny. The Member was represented by his counsel, Philip G. Lister, Q.C. The Member was present throughout the short (half day) hearing.

JURISDICTION AND PRELIMINARY MATTERS

2. 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.
3. The Certificate of Exercise of Discretion was entered as Exhibit 5.
4. There was no objection by the Member's counsel or counsel for the LSA regarding the constitution of the Hearing Committee.
5. The entire hearing was conducted in public.

BACKGROUND AND CITATIONS

6. At the relevant time the Member was an experienced family law practitioner in the City of St. Albert.
7. The Member faced the following citation:

CITATION 1- IT IS ALLEGED that you failed to follow your client's instructions, and that such conduct is conduct deserving of sanction.

8. This citation is based on the evidence of C.E. (the “Complainant”) that the Member, while acting as his solicitor in a family law matter, consented to a Divorce Judgment and Corollary Relief Order without instructions.
9. This matter was initially dismissed by the Manager, Complaints on March 24, 2006. The Complainant appealed, and an Appeal Panel directed that the matter proceed on September 14, 2006. That decision was based, at least in part, on the Member’s apparent admission at the Appeal Hearing that he did not have instructions to consent to the Divorce Judgment and Corollary Relief Order. On September 5, 2007 a Conduct Panel heard a discontinuance application brought by the Member, and two other citations were dismissed, leaving the sole citation outlined above.

SUMMARY OF RESULT

10. On the basis of the evidence entered at the hearing, and for the reasons that follow, the Hearing Committee found that Citations 1 was not proven, and the Member was found not guilty of conduct deserving of sanction.

EVIDENCE AND FINDINGS

11. The genesis of the complaint arose out of a Statement of Claim for Divorce which was served on the Complainant on the 22nd of February 1997. It is relevant that the Complainant has no recollection of being served with what to many would be a stressful and memorable document.
12. The Member was retained by the Complainant on a legal aid certificate, which action eventually resulted in a Divorce Judgment granted on the 4th day of June 1999, which Divorce Judgement had the Member’s Consent to Corollary Relief endorsed thereon.
13. This hearing came to pass arising out the Member’s perception that he had the Complainant’s authority to consent as he did and the Complainant’s perception that the Member did not have such authority.
14. The Corollary Relief consisted of the following:

3. *IT IS ORDERED:*

THAT the Defendant shall have access as agreed upon between the parties. There is currently in place an interim order as follows:

- a) *The Defendant shall have access to the child of the marriage as follows:*
 - i) *For four consecutive Sundays, commencing October 25, 1998, access for 4 hours.*
 - ii) *Commencing November 22, 1998 until February 26, 1999, the Defendant shall have access for three Sundays out of each month, from 10:00 am to 5:00 pm. The Plaintiff shall choose which Sunday out of each month that she wishes to spend with the child.*
 - iii) *This ongoing access shall be reviewed February 26, 1999.*

- b) *Christmas access for 1998 shall be as follows: the Plaintiff shall have Christmas Day with the Child and the Defendant shall have Boxing Day with the Child.*

4. IT IS ORDERED:

THAT the Defendant shall pay to the Plaintiff for the maintenance of the child the amount of \$276.00 per month commencing November 1, 1998, being guideline amount of \$225.00 and 63.64% of \$80.00 or \$51.00 per month for his share of the section 7 expenses, being \$80.00 per month for daycare costs.

15. The Complainant states that he fired the Member after an exchange between them at the Court House, but has no recollection of the date and the Member has no recollection of the exchange. A Notice of Ceasing to Act was filed on 26th of July 1999.
16. A complaint was lodged with the Complaint Resolution Officer on the 10th of August 1999. The Complaint Resolution Officer noted that the dispute was over the \$276.00 per month payment and specifically indicated that access was “not an issue”. This initial complaint resulted in the Complainant being advised to obtain a second opinion.
17. On the 11th of January 2000, the Complainant filed a written complaint with the Legal Aid Society of Alberta after receiving the taxation summary from Legal Aid for which he was responsible. Nothing arose out of this complaint in the sense that the Legal Aid Society did not withdraw the account or act against the Member.
18. On the 8th of March 2000 the Complainant renews his complaint with the same Law Society Complaint Resolution Officer whose note indicates that the Complainant “had no objection” to divorce. “He wanted to be free”.
19. Unfortunately, this matter then goes into hibernation until the 9th of August 2005 when the Complainant renews his complaint to the Law Society which eventually finds itself before this Hearing Committee having to decide whether the Member is guilty of conduct deserving of sanction, in respect to the citation outlined above, which essentially alleges that the Member failed to follow his client’s instructions.
20. The Member’s Solicitor makes much of the passage of time between the circumstances resulting in the claim and the date of this hearing, but the reality is that there is no statute of limitations in these matters.
21. Unfortunately, the passage of time does have a bearing on the outcome of the hearing in the sense that both the Complainant’s and the Member’s memories were so impaired, because of the passage of time, that the Committee is of the opinion that there is insufficient credible evidence on which to base a substantive finding in this matter.
22. Both witnesses struggled to remember events which went to the heart of the issue.
23. The Law Society’s Counsel urges us to find that the Member has breached Rule 5 of the Code of Professional Conduct: “A lawyer must obtain instructions from the client on all matters not falling within the expressed or implied authority of the lawyer.”

24. The Member urges us to accept his vague and variable recollections that he had implied if not the expressed authority of his client to agree to the Divorce Judgment and Corollary Relief Order, notwithstanding his contradictory statements at the Appeal Hearing. The Complainant urges us to accept that the member had no such authority.
25. In the end, because of the weak and sometimes contradictory nature of the evidence in the matter, we find the Member not guilty of conduct deserving of sanction. We do so even though we remain somewhat troubled by the Member's contradictory statements regarding the nature of his instructions from his client.

CONCLUDING MATTERS

26. As the entire hearing was conducted in public, and as the Exhibits contain sensitive and privileged family information, the Hearing Committee directs that the Exhibits (other than the jurisdictional exhibits) be made available to the public in a redacted form, with identifying information removed. The jurisdictional exhibits (exhibits 1 - 4) will be available to the public in their entirety.

Dated this 4 day of June, 2008

J. Royal Nickerson, Q.C., Bencher
Chair

Hugh Sommerville, Q.C., Bencher

Carsten Jensen, Q.C., Bencher