

IN THE MATTER OF THE LEGAL PROFESSION ACT

AND

IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF KENT WONG
A MEMBER OF THE LAW SOCIETY OF ALBERTA

REPORT OF THE HEARING COMMITTEE

[1] On January 29, 2007 a hearing committee comprised of Peter Michalyszyn, Q.C. (Chair), Vivian Stevenson, Q.C., and Morris Taylor, convened at the Law Society offices in Edmonton, Alberta to inquire into the conduct of Kent Wong. Mr. Wong was self-represented. The Law Society was represented by Lois Maclean. Mr. Wong was present throughout the hearing.

Introduction

[2] Mr. Wong is a sole practitioner in Edmonton, carrying on for the most part a solicitor's practice in real estate law.

[3] An Agreed Statement of Facts including an admission of guilt was exhibited before the Panel. The Panel found the citation to have been made out. The Member was reprimanded and ordered to pay the actual costs of the hearing.

Citations

[4] The Member faced the following Citation:

It is alleged that you prepared and supplied a Discontinuance of Action and a Release directly to your client for the purposes of concluding a settlement, knowing that the opposing party was represented by counsel but not advising that counsel of the settlement, and that such conduct is conduct deserving of sanction.

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. Mr. Wong accepted the jurisdiction and composition of the Panel.

Private Hearing

[6] No application was made to hold any portion of the hearing in private. However, in these Reasons and for purposes of any transcript, no reference is made to client names or identifying client information.

Other Preliminary Matters

[7] There were no other preliminary matters.

Agreed Facts

[8] The following facts were agreed to before the Panel:

- a. Mr. Wong is a member of the Law Society of Alberta, having been admitted in 1994. Mr. Wong was a member at all times relevant to this proceeding.
- b. Mr. Wong acted for T, the prime contractor on a building project in Edmonton. The project owner was W.
- c. The complainant acted for A, a sub-trade on the project. On August 19, 2003 A filed a builder's lien on the project claiming more than \$88,000 owing by T. On October 22, 2003 T purported to serve A with a notice to commence an action on the lien. Eventually the lien was discharged. However, owing to a controversy surrounding service of the notice, A filed an action claiming the lien had been improperly discharged. On November 23, 2004 a Master set aside service of the notice, the lien was declared valid, and a trial was ordered as to the amount owing.
- d. On Jan. 13th, 2005 the owner of T contacted the owner of A to discuss possible settlement of the dispute. The parties themselves reached an agreement that same day. The owner of T advised Mr. Wong of the settlement. The owner's Affidavit, which was sworn later in the proceedings, describes the next actions as follows:

“My lawyer suggested sending a General Release and Discontinuance of Action to the Plaintiff's lawyer in order to properly finalize everything. However, the owner of A indicated that he needed the funds immediately and he was not prepared to wait for everything to go through the lawyers. On that basis, I instructed my lawyer to prepare the necessary documents and send them directly to me.”

“On January 14, 2005, my lawyer provided me with a General Release and Discontinuance of Action. That same day, I met with the owner of A to review and execute the documents. We attended at the Court House to have the documents filed, and then I provided him with a money order in accordance with our settlement agreement.”
- e. On Jan. 28, 2005 Mr. Wong faxed counsel for A, advising that the clients had settled the matter directly between them. He attached a draft Consent Order, for payment out of the monies still held in Court, for counsel's approval.
- f. On Jan. 31, 2005 A's counsel replied indicating that he had been unaware of any settlement discussions. He suggested that if Mr. Wong had been aware of the discussions he should have advised counsel of that fact. A's counsel also indicated that his client owed him a substantial sum in legal fees.
- g. On the same day, Mr. Wong replied by fax as follows:

“Further to you [sic] fax of today’s date, I specifically advised my client that I could not participate in any settlement discussion other than through your office, since your client continued to be represented by counsel. However I did encourage my client to proceed with any direct negotiations since it would ultimately reduce or eliminate the costs of any further legal proceedings. My client then proceeded to negotiate a settlement directly with your client.”

I understand from my client that the parties attended at the law courts personally and filed a mutual discontinuance of action....From what I understand of the above, there does not appear to be any basis for you not to endorse the Consent Order. As such, I look forward to receiving the executed Consent Order from you...”

h. On the same date, A’s counsel replied by fax seeking missing pages from Mr. Wong’s fax, and further information with respect to the settlement.

i. On February 1, 2005 Mr. Wong replied, forwarding the missing pages. The fax contains the following final two paragraphs, with the emphasis as indicated:

“It is unfortunate that your client owes you money. I would have thought that an up front, ongoing retainer would have been required (since that is what I have always required of any litigation clients). In any event, it is clear that my client had nothing to do with this situation. As such, I required the **IMMEDIATE** endorsement of the Consent Order.

I advise that my client needs these funds immediately in order to advance a business interest. If there is **ANY DELAY** in the release of these funds from Court, my client will suffer serious economic harm, damage to reputation and loss of profit. If any such loss should occur, my client reserves the right to look towards you **PERSONALLY**. I trust this will not be necessary.”

j. On the same date, A’s counsel replied by fax. He suggested that Mr. Wong had failed to address a number of issues. Among other things he asked Mr. Wong when he had first become aware that the parties intended to execute and file the Discontinuances and the Releases, and he asked who had prepared the Discontinuance and Release documents.

k. Still on February 1, A’s counsel sent a letter of complaint to the Law Society regarding Mr. Wong’s conduct. Among other things counsel suggested that it would have been inappropriate for Mr. Wong to have participated directly or indirectly in any manner with the settlement and discontinuance without advising him of what was transpiring.

l. On February 2, 2005 Mr. Wong faxed A’s counsel. The fax stated in part:

“...I note that most of the information you seek is within the direct knowledge of your client. As I already indicated to you neither myself, nor anyone from my office, was involved in the negotiation, execution, the filing of the documents or the payment of the settlement funds.”

- m. Litigation then proceeded with respect to Mr. Wong's application for payment out of the funds in Court.
- n. On September 7, 2005 the Law Society formally asked Mr. Wong for this response to A's counsel's complaint.
- o. In his reply, Mr. Wong stated with respect to the issue of the preparation of the Discontinuance of Action that he had prepared the documents, and provided them to his client. Excerpts from Mr. Wong's reply are as follow:

“...It was never my intention to act in any improper or unprofessional manner, but hindsight is 20/20 and, if I did so, I sincerely apologize to Mr. Geiger and the Profession.

In hindsight, I should have contacted A's counsel immediately, but at the time I honestly did not see any prejudice that would result to any of the parties involved by simply providing the General Release and Discontinuance of Action. Certainly if there were any hint of prejudice to anyone involved in this matter, I would not have done so.

...The limit of my involvement was to provide the Discontinuance of Action and General Release to my client, with the express understanding to my client that A's counsel would still be involved in the settlement process through participation in payment of monies out of Court. At the time, I did not see any prejudice that could result to any of he (sic) parties. This clearly was not the case and it will never happen again.”

- p. On Jan. 6, 2006 the Law Society provided Mr. Wong's reply to A's counsel and asked for his comments.
- q. With respect to the issue of possible prejudice to anyone by Mr. Wong's preparation of the documents, A's counsel took issue with Mr. Wong's response as follows:

“Mr. Wong states that “[he] was mindful that the parties would require A's counsel to endorse a Consent Order in order to effect payment out of the monies in Court.” However, Mr. Wong well knew that, after the parties had concluded the matter by executing Releases and a Discontinuance of Action, assuming that those settlement arrangements were upheld by the Court, the Order for payment out could only have one result: being payment of the entire fund to Mr. Wong's client. Mr. Wong's actions were clearly designed to eliminate the possibility of my client seeking my advice on the settlement proposal and potentially rejecting the settlement proposal as a result of my advice to him.”

- r. On February 14, 2006 the Law Society provided counsel's response to Mr. Wong, and asked for his comments.

- s. On March 5, 2006 Mr. Wong replied. With respect to the issue of the preparation of the Discharge and Release, and the lack of notice to A's counsel, his concluding paragraph, with italics as per the original, is as follows:

"My preparation of documents *after the parties had already reached a settlement* had absolutely no bearing on the ability of the complainant's client to seek legal advice. The parties discussed the terms of settlement directly as between themselves. To the best of my knowledge, there was nothing preventing the complainant's client from seeking legal advice at any time during the settlement discussions. As such, I disagree with the complainant's assertion that my actions "were clearly designed to eliminate the possibility of my client seeking my advice on the settlement proposal and potentially reject the settlement proposal as a result of my advice to him."

Mr. Wong's evidence

[9] Mr. Wong gave evidence before the Panel. He testified that when first advised by his client of the settlement, his instinct was to send settlement documents to counsel opposite for A to execute. However, Mr. Wong allowed himself to be influenced by a perceived need for haste in concluding the settlement, and as such settlement documents were exchanged without the involvement of A's counsel. Mr. Wong also testified that was "personally and professionally embarrassed" by the tone and content of his February 1, 2005 letter, set out above. Finally, Mr. Wong testified that he was never asked by his own client to avoid contacting A's counsel in connection with the settlement, or at all.

Decision

[10] Mr. Wong did not contest the submission of counsel for the Law Society that on the agreed facts his conduct was conduct deserving of sanction. The Panel agreed the conduct was conduct deserving of sanction.

[11] The Panel had no doubt that Mr. Wong, at least by the tie of the Hearing, was fully aware of the error of his ways. The Panel rejected the suggestion that Mr. Wong's conduct was intended to prevent A from obtaining legal advice from his lawyer.

Sanction

[12] Mr. Wong has been a Member of the Law Society of Alberta some 13 years. He came before the Panel with no discipline record. At the hearing he readily agreed his conduct was deserving of sanction. There was no evidence before the Panel that any member of the public had been prejudiced by Mr. Wong's conduct. The Panel was convinced Mr. Wong's error would not likely be repeated.

[13] In all the circumstances the Panel was persuaded to impose a reprimand upon Mr. Wong, together with actual costs of the hearing.

[14] The Chair delivered the reprimand.

Time to Pay

[15] The Member will have 30 days from the date he is informed of the actual costs of the hearing, to pay those costs.

Exhibits Order

[16] Exhibits will be available for inspection upon request. Should a request be made, the names of individuals will be reduced to initials, in the interest of privacy.

Dated this 3rd day of May, 2007

Peter B. Michalyshyn, Q.C. Chair

Vivian Stevenson, Q.C.

Morris Taylor