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 Gary Bilyk,
a member of the Law Society of Alberta.

Jurisdiction and Preliminary Matters

1. The Hearing Committee of the Law Society of Alberta (LSA) held a hearing into the conduct of Gary Bilyk on September 20 and 21, 2006. The committee was comprised of Shirley Jackson, Q.C., chair, Dale Spackman, Q.C. and Rod Jerke, Q.C.. The LSA was represented by Jim Conley, Esq.. The member was represented by David Younggren, Esq.

2. Exhibits one through four, 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 jurisdiction of the committee.

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 Exercise of Discretion was entered as exhibit five. Counsel for the LSA advised that the LSA did not receive a request for a private hearing, therefore the hearing was held in public.

5. An Exhibit Book containing Exhibits 1 to 41 was entered by consent. As the Hearing proceeded two further Exhibits were added:

    Exhibit 42 – Opinion letter of JM
    Exhibit 43 Estimated Statement of Costs

Citations

6. The member faced the following citations:

    Citation 1: It is alleged that you failed to respect and uphold the law in personal conduct and in rendering advice and assistance to others, thereby breaching the *Code of Professional Conduct*, and that such conduct is conduct deserving of sanction.
    This citation was amended by consent by deleting the words 'in personal conduct and'

    Citation 2: It is alleged that you failed to be courteous and candid in dealings with others, thereby breaching *the Code of Professional Conduct*, and that such conduct is conduct deserving of sanction.

No evidence was led on this Citation and the LSA was not seeking a conviction.

Citation 3: It is alleged that you were aware that the Complainant was represented by counsel and communicated with the Complainant in connection with the matter, without the consent of her counsel, thereby breaching the *Code of Professional Conduct*, and that such conduct is conduct deserving of sanction.

Evidence

7. The Member was retained by KW for whom he had previously provided legal services, in June 1999 to prepare the documents to do an amalgamation of an Business A and a Business B by August 31, 1999. The Member took his instructions from KW and perhaps from her parents, PE and FE. He obtained details of the companies from the accountant who was consulted by FE and the accountant consulted with Mr Forbes of Collins Barrow with respect to certain aspects of the amalgamation of the two companies (Business A and Business B). The arrangement was what one might call a 'limited retainer', that is, a retainer to provide specific legal services for a negotiated fee.

8. LS , the Complainant, owned shares in Business A which ran a business. There were six shareholders: her parents, PE and FE, her sister KW, her brother, RE and a non-family member, MG. In order to accomplish the amalgamation, it was necessary that KW, RE, MG and LS transfer their shares to PE or FE. In late August or early September 1999 LS was sent the certificate representing her shares in an envelope, likely by her sister, with no covering letter with the certificate being endorsed for transfer to her mother and showing the Member as the attorney to effect the transfer. She advised both her sister and parents that she would not be transferring her shares but never spoke to the Member.

9. In 1999 LS lived in Ottawa and in 2004 she lived in Airdrie. During this time, the shares and the company were never discussed at family events.

10. The amalgamation was completed August 31,1999 in spite of the fact that LS did not endorse the share certificate for transfer. The amalgamation documents were filed and the amalgamation occurred on the basis that LS had transferred her shares.

11. September 20, 2004 LS learned from her sister that the business was being sold and was shocked to learn that her shares were gone.

12. She learned that the Member facilitated the amalgamation of the Business A and the Business B. She made notes at the time of these events.

13. LS called the Member September 20, 2004 and he confirmed that she was no longer a shareholder and that if she had a claim it was with her parents as they signed the Directors' Resolutions transferring her shares to them.

14. She called a lawyer, Richard Horne September 20, 2004 and he advised her to request a letter of confirmation that she was no longer a shareholder and a written explanation of the events.

15. She phoned the Member the morning of September 21, 2004 as she wanted to deal directly with him and was told he would only send the documents to her lawyer. She gave him the name of Richard Horne.

16. LS spoke to her sister, KW September 21, 2004 and told her she thought the matter was a criminal matter and if they could not resolve it she was going to talk to the RCMP.

17. Shortly after that she received a voice mail from the Member. There is a transcription of the voice mail in Exhibit 15 Tab 3 wherein he suggests, inter alia, she consult with her lawyer to discuss what constitutes extortion before speaking to the RCMP and that her actions have already cost the company money. It states he will be providing her lawyer with his comments.

18. In Exhibit 15 Tab 1 is a faxed letter dated September 21, 2004 from the Member to Richard Horne where he indicated that he knew Richard Horne acted for LS and that he left a message on LS's (his client's) answering machine at home suggesting that LS contact him. He indicated that LS contacted his client that date and he felt that her comments might constitute extortion.

19. The accountant had dealt with FE since 1978 regarding the business decisions and KW regarding the day to day operations of the companies. PE and FE did not have corporate counsel and maintained their own minute books.

20. In 1999 the Business A was suffering financially and the accountant obtained an opinion of options from Collins Barrow. The option chosen was to do a simplified amalgamation. This option was chosen as the accountant assumed that all four of the minority shareholders were prepared to transfer their shares to PE and FE and that they were or would be signing the necessary documentation.

21. KW confirmed with the Member that all the shareholders were signing off their shares. She did not instruct the Member to obtain their consent and assumed her parents were doing so. Once KW became aware, in September 1999, that LS was not transferring her shares, she did not notify the Member. She was advised by the Member that all the shareholders had to sign off on the shares. This was never discussed at family events.

22. JM gave opinion evidence on the standard of practice of a reasonable competent solicitor in 1999 in the area of amalgamation of two private family owned companies. Often there is a timing issue to file corporate documents when they are not perfect; clients sometimes retain counsel to do a limited part of the amalgamation; counsel often take instructions from an accountant; when the shares are of little value the level of due diligence is less rigorous; documents are filed on hearsay of interested parties if counsel knows the client and/or this is a family situation.

23. The Member was retained to do the documents for a company (Business A) that had 6 shareholders, Four of the shareholders were to transfer their shares to PE and FE, the parents. These shares were to be transferred by the parents to another company (Business B) that the parents already owned. This would result in Business A being a wholly owned subsidiary of Business B that would just have 2 shareholders, the parents. The Business A and the Business B would then amalgamate into a successor corporation (Business C) with shares owned by the parents with the intention that those shares would then be transferred to KW and MG.

24. The Member did not have any direct communication with the other three shareholders of the company, LS, RE, and an employee, MG.

25. The Member testified that he was not retained to facilitate the transfer of the shares. He was fully aware that all non-voting shareholders of Business A would have to consent to transfer their shares to PE and FE. He was advised by KW and the accountant that all the shareholders were in agreement and that they would be complying with the obligation to sign over their shares to the principal shareholders PE and FE. He advised his clients and the accountant that before the documents to amalgamate the companies could be filed that this transfer of shares must take place.

26. The Member set this obligation out in a letter to the accountant dated August 26, 1999 and made handwritten notes of conversations with KW on the file where he confirmed that the shareholders were signing off their shares, Exhibit 39.

27. The reverse of LS's shares were prepared and indicated that Member's professional corporation was to be appointed to transfer the shares. Exhibit 6 Tab 2. When the Minute Books were returned to KW September 17, 2004, the unsigned share certificates were in it.

28. The Member testified that he was never advised that LS would not transfer her shares until September 20, 2004 when he was retained to deal with the sale of the Business C and she called him. The Member had had no further dealings with the companies or clients until the Business C was being sold in 2004.

29. The Member's notes and testimony confirm the telephone conversation with LS on September 20, 2004 and that she was planning to see a lawyer that afternoon. Exhibit 41 Tab 5 p. 3

30. The Member's notes and testimony indicated that after returning to the office there was a voice mail from LS that she had consulted her lawyer and he indicated the next step was for her to obtain a letter from the Member explaining what happened to her shares. Exhibit 41 Tab 5 p. 5 There is another handwritten note to this effect at Exhibit 41 Tab 7.

31. There is a note that his assistant put on the file with the contact information for RH, LS's lawyer, which is not the pink note indicating a telephone message and is not dated nor a time noted. Exhibit 41 Tab 2.

32. The Member testified that he did not recall nor did he have notes regarding a telephone message or conversation that he would only send the documents to her lawyer and being given the lawyer's name.

33. The Member testified that at the time he left the voicemail for LS on September 21, 2004 he did not know the name of her lawyer but he was unaware of exactly when he became so aware. When the Member sent the faxed letter to Richard Horne on September 21, 2004 at 4:48pm he knew the Complainant's lawyers name from his assistant's note.

Decision as to Citations

34. Amended Citation 1: Failing to uphold the law

35. The burden of proof for Citation 1 is a higher burden of proof than for some other citations which is a balance of probabilities.

36. When the amalgamation documents were filed and completed the Member knew and had advised the accountant and KW that all the shares must be transferred and was assured by KW and the accountant that everyone was prepared to transfer their shares to the parents. LS was aware of the request to transfer her shares and the Member's name on the reverse of the shares but only advised her sister and parents that she was not prepared to transfer her shares. No one advised the Member that one of the shareholders was not prepared to transfer her shares. We find that he had an honest belief that all the shareholders had agreed to transfer and were going to sign over their shares to the parents. The Member was not retained to deal with the transfer of the shares.

37. Citation 1 is not made out.

38. Citation 2: Failing to be courteous and candid

39. The LSA was not proceeding on this Citation and offered no proof. Citation 2 is not made out.

40. Citation 3: Contacting a party represented by a lawyer

41. The burden of proof for Citation 3 is on a balance of probabilities.

42. September 20, 2004 KW advised LS that the Business C was being sold and gave her the name of the Member as the lawyer for the sale. LS phoned the Member and was told she was not a shareholder and if there was an issue her remedy was against her parents who had signed the Directors Resolution transferring her shares. She told him she was seeing a lawyer that afternoon. (Exhibit 41 Tab 5). LS called and left a

voicemail that she met with her lawyer and her lawyer suggested she obtain a written explanation from the Member of what happened with the shares. (Exhibit 41 Tab 7)

43. In the morning of September 21, 2004, LS called the Member and was told that he would only send the explanation to her lawyer. This is confirmed in the Member's notes. (Exhibit 41 Tab 6) She testified she gave him the name RH. This name appears on a slip of paper that is not a telephone message and not in the Member's handwriting on the Member's file. (Exhibit 41 Tab 2)

44. LS called KW and spoke about resolving it or going to the RCMP.

45. KW phoned the Member and he noted it. He thought this conversation might be extortion and told KW he would contact LS's lawyer. (Exhibit 41 Tab 6)

46. The Member contacted LS directly and left her a voice mail telling her to contact her lawyer and that her remarks may amount to extortion. This is confirmed in the Member's notes (Exhibit 41 Tab 6) and by the transcription of the voice mail (Exhibit 15 Tab 3) and the Member's faxed letter to LS's lawyer dated September 21, 2004, and received September 21, 2004 at 4:48pm (Exhibit 15, Tab 1). In the letter the Member states that RH acts for LS and that she made remarks to his client that could constitute extortion. He stated he left a message on RH's clients answering machine that LS contact him.

47. There is no evidence that LS contacted the Member after the voice mail was left even though he left his phone number and stated she could contact him, twice. There is no evidence that Richard Horne contacted the Member concerned that the Member had contacted his client.

48. It is found on a balance of probabilities that the Member knew that LS had a lawyer and that he contacted her which is conduct deserving of sanction and this Citation has been made out.

Sanction and Orders

49. The Code of Professional Conduct, Chapter 4 Rule 6: 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.

50. With respect to Citation 3 the Hearing Committee directed one half of the actual costs of the one and one half day hearing to be paid within a week of receiving notice of the actual costs , plus a reprimand which occurred on September 21, 2006.

Concluding Matters

51. Any transcript of these proceedings shall refer to the Complainants and other names by their initials. All the exhibits will be accessible to and may be copied by the public except that initials will be substituted for the names.

52. There will be no notice to the profession and no referral to the Attorney General.

Dated this __21st__ day of __Nov__, 2006.

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Shirley Jackson, Q.C. – Chair and Bencher

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Dale Spackman, Q.C. – Bencher

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Rod Jerke, Q.C. - Bencher