

LAW SOCIETY OF ALBERTA
IN THE MATTER OF THE *LEGAL PROFESSION ACT*;
AND
IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF NORMAN EWING,
A MEMBER OF THE LAW SOCIETY OF ALBERTA

Single Bencher Hearing Committee:

Darlene W. Scott, Q.C., Bencher

Appearances:

Counsel for the Law Society – Nancy Bains

Norman Ewing – Self Represented

Hearing Date:

October 13, 2016

Hearing Location:

Law Society of Alberta at 500, 919 – 11th Avenue S.W., Calgary, Alberta

HEARING COMMITTEE REPORT

Jurisdiction, Preliminary Matters and Exhibits

1. On October 13, 2016, a Single Bencher Hearing Committee (Committee) convened at the office of the Law Society of Alberta (LSA) to conduct a hearing regarding a number of citations against Norman Ewing.

2. Counsel for the member and counsel for the LSA were asked whether there were any objections to the constitution of the Committee. There were no objections to the identity of the Bencher hearing the submissions, on the grounds of bias or otherwise.
3. The hearing was held in public.
4. The jurisdiction of the Committee was established by Exhibits 1 through 4, consisting of the letter of appointment of the Committee, the Notice to Solicitor pursuant to section 59 of the *Legal Profession Act*, the Notice to Attend to the Member and the Certificate of Status of the Member with the Law Society of Alberta.

Statement of Facts and Admission of Guilt

5. The Statement of Facts and Admission of Guilt is attached hereto as Exhibit "A" (the "Agreed Statement"). This Agreed Statement was found to be in an acceptable form by a Conduct Committee Panel on September 12, 2016, and therefore this hearing was convened before a single bencher pursuant to section 60(3) of the *Legal Profession Act*.
6. Pursuant to section 60(4) of the *Legal Profession Act*, after a statement of admission of guilt is accepted by the Conduct Committee, it is deemed to be a finding of the Committee that the lawyer's conduct is conduct deserving of sanction. After hearing submissions by counsel for the LSA and Mr. Ewing, and confirming Mr. Ewing's understanding that the Bencher was not bound by the joint submission on sanction, the Bencher confirmed the Agreed Statement constituted a finding of conduct deserving of sanction on three citations pursuant to s. 49(1) of the *Legal Profession Act*.
7. The only question for determination is therefore one of appropriate sanction.

Decision on Sanction

8. The LSA and Mr. Ewing made a joint submission on sanction, proposing that Mr. Ewing receive a reprimand and pay the actual costs of the hearing (estimated to be \$1,300). In addition, upon Mr. Ewing's return to practice, there is to be a mandatory referral to Practice Review for a period of 2 years. The Committee agreed this was a reasonable submission in light of Mr. Ewing's cooperation in tendering the Agreed Statement and admitting guilt in response to the three citations.
9. The approach taken by both Mr. Ewing and the LSA in dealing with this matter through a single Bencher hearing avoided an unnecessary contested hearing, witness inconvenience, and process costs.

Concluding Matters

10. The Benchers issued the reprimand to Mr. Ewing, which is reproduced below:

Mr. Ewing, you have admitted that your conduct in this matter is deserving of sanction on three citations –

1. failure to respond promptly and completely to communications from the Law Society (on two different occasions and resulting in two different citations); and
2. failure to act with courtesy and in good faith with another lawyer, GB.

A conduct committee panel has accepted the agreed statement of facts and admission of guilt in respect of these citations. This is deemed to be a finding that your conduct is conduct deserving of sanction on each of the three citations.

Mr. Ewing, you have had a series of issues with the Law Society, and it appears to me that you do not understand the most basic requirements of membership in this profession. You continue to engage in conduct which is below the standards required of members of this profession. You have had a number of opportunities to grow and learn arising from previous complaints – I see you were referred to Practice Review arising out of a complaint in 2012 and that you also had that conduct directed to a Mandatory Conduct Advisory. A Benchers took the time to meet with you and discuss with you your professional obligations, but it seems that you did not learn from that experience (which related to a failure to respond to the Law Society) and again, on two occasions, you have been guilty of the same conduct.

The legal profession (which you are very privileged to be a member of), requires good faith and honesty – and we are specifically required to be candid with other lawyers and provide proper and complete notice of any application – your failure to do so is a serious transgression and breach of your duty to your fellow lawyers and to the courts.

We belong to a profession which enjoys the privilege and the responsibility of self-regulation, and as a result, we have to ensure that members of the profession are candid and provide full and comprehensive replies to their regulator on each and every occasion that such is requested of them. You have admitted guilt to two separate citations in respect of failing to respond to the Law Society of Alberta – it appears that these requests from the Law Society were made repeatedly over a period of years and you repeatedly ignored them.

This behaviour caused the Law Society to have to continue to make attempts to contact you, at the cost of other members of the profession.

Mr. Ewing, I appreciate that you have not been at the bar for a very long period, and I expect that correspondence and demands from the Law Society may have caused you to become fearful and not know how to respond – but I am telling you today this is considered very serious behaviour from the Law Society's point of view.

I understand that you have no prior record and have cooperated fully with the Law Society of Alberta in concluding this matter once you began to deal with the matter and that is a credit to you.

I have accepted the joint submission on sanction and have administered this reprimand.

It is my sincere hope that this conduct will not be repeated, for the benefit of both your own reputation and also that of our entire profession.

11. Mr. Ewing will have 6 months from the date of this hearing within which to pay the actual costs of the hearing.
12. Hearing exhibits shall be made available to the public, with the exception that they shall be redacted to prevent the disclosure of confidential or privileged information, including that contained in Exhibits 16 and 17.
13. There shall be no Notice to the Profession issued.
14. There will be no referral to the Attorney General.

Dated at the City of Calgary, in the Province of Alberta, this 22nd day of February, 2017.

Darlene W. Scott, Q.C.

EXHIBIT A

IN THE MATTER OF *THE LEGAL PROFESSION ACT*

AND

IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF NORMAN EWING,

A MEMBER OF THE LAW SOCIETY OF ALBERTA

STATEMENT OF ADMITTED FACTS AND ADMISSION OF GUILT

I. INTRODUCTION

1. I was admitted as a member of the Law Society of Alberta on January 22, 2010.
2. My present status with the Law Society of Alberta is suspended.
3. From 2010 to 2014, I practiced law in Calgary, Alberta.
4. Since January 2015, I have not practiced law.
5. The herein Statement of Admitted Facts and Admission of Guilt will address two separate complaints.

II: COMPLAINT #1

Citations

6. On January 27, 2016, the Conduct Committee Panel referred the following conduct to hearing:
 1. **It is alleged that Mr. Ewing failed to respond promptly and completely to communications from the Law Society and that such conduct is conduct deserving of sanction;**
 2. **It is alleged that Mr. Ewing failed to act with courtesy and in good faith with another lawyer, [G.B.], and that such conduct is deserving of sanction;**

3. It is alleged that Mr. Ewing failed to be candid with the Court and that such conduct is deserving of sanction.

Facts

7. [G.B.], the Complainant lawyer, represented the tenants in a residential tenancies dispute. [G.B.] and the landlord's previous lawyer entered into a Consent Order, granted by Justice Jeffrey on March 13, 2013 ("the Consent Order"). The Consent Order required the landlord to file and serve its brief by July 26, 2013, failing which the appeal would be struck without further recourse by the landlord. The landlord failed to file his written brief by July 26, 2013, and the appeal was struck.
8. I was not provided a copy of the Consent Order nor advised of its existence by my client. As the landlord's new lawyer, I obtained an *ex parte* Order on July 26, 2013 granting the landlord an extension to file the brief. I knew that the tenants were being represented by [G.B.], and I reached out to his office for the purpose of giving him notice of the application for an extending order but was advised by his assistant that he was out of office for a few days. I admit that I did not give proper notice of the application for a court order.
9. On July 31, 2013, I then obtained a further *ex parte* Order on July 31, 2013 reinstating the struck appeal and granting a further extension for the filing of the written brief because of an error in the original *ex parte* Order. For both *ex parte* Orders, I did not advise the court of the Consent Order as I was not aware of it.
10. At an application to set aside the *ex parte* Orders, I advised the Court that my client did not advise me of the existence of the Consent Order.
11. I acknowledge that I did not give the Complainant notice of my applications.
12. I also acknowledge that I was first provided with notice of this complaint on September 12, 2013. However, I did not provide a response until November 24, 2013, after being reminded by the Law Society on November 14, 2013.
13. Further, a section 53 letter was sent to me on February 10, 2014. On March 3, 2014, I sought an extension to March 7, 2014 to provide my response. Ms. Whitburn advised that she would expect my response on March 7, 2014 and would not consider any request for a further extension of time. It was not until March 13, 2014 that I wrote to the Law Society advising that I adopted my previous response.
14. On March 19, 2014, I spoke to a staff member at the Law Society and advised

that I would be forwarding a revised response to the complaint. The revised response was provided on April 8, 2014 following further reminder from the Law Society.

15. Law Society staff made numerous attempts in 2014 and 2015 to contact me with respect to this complaint. After April 8, 2014, I failed to communicate with the Law Society regarding this complaint.

Conduct - Admissions

16. I admit that I failed to respond promptly and completely to communications from the Law Society and that such conduct is conduct deserving of sanction.
17. I admit that I failed to act with courtesy and in good faith with another lawyer, [G.B.], and that such conduct is deserving of sanction.

III. COMPLAINT #2

1. Citations

18. Also on January 27, 2016, the Conduct Committee Panel referred the following conduct to hearing:
 4. It is alleged that Mr. Ewing failed to respond promptly and completely to communications from the Law Society and cooperate with the Law Society and that such conduct is conduct deserving of sanction.

Facts

19. The herein complaint related to my failure to cooperate with Practice Review following a referral from a previous complaint.
20. A complaint against me was referred to the formal complaints process, and on October 2, 2012, a Conduct Committee Panel considered a number of allegations against me.
21. Although the Panel was of the opinion that my conduct would typically be sent to the Hearing Panel, it directed that the conduct be dealt with by a Mandatory Conduct Advisory. Concurrent with its direction to a Mandatory Conduct Advisory, the Panel also directed that the matter be referred to the Practice Review Committee.
22. The Mandatory Conduct Advisory was conducted on December 19, 2012, and the Bencher submitted his report on January 2, 2013. The Bencher reported that he felt that I understood the importance of responding to communications from the Law

Society and believed that I would do so in the future.

23. The Conduct Committee Panel accepted the Benchers' opinion that no further action was necessary on the complaint and directed that it be dismissed and the file closed.
24. After the Conduct Committee Panel referred me to Practice Review, correspondence was sent to me on October 30, 2012 and November 29, 2012. I admit that I did not respond to these letters. As a result, the Practice Review Panel required me to attend an in-person meeting to discuss the referral to Practice Review and my failure to respond to correspondence from Practice Review. Prior to attending the meeting on April 9, 2013, I provided a brief but incomplete response on March 5, 2013.
25. After meeting with me on April 9, 2013, the Practice Review Panel directed a Practice Assessment be conducted. The Panel reviewed the Practice Assessment Report on July 17, 2013, and on July 19, 2013, I was directed to make a reasonable effort to implement and take steps for effective practice management and to undertake to provide a written status report no later than October 31, 2013.
26. I had been requested to give the signed Undertaking by July 31, 2013. I failed to give the requested Undertaking by July 31, 2013, and only provided the Undertaking on August 12, 2013, after receiving a telephone call from Practice Review staff. I did not offer any explanation for my delay in providing the Undertaking.
26. Pursuant to my Undertaking, I was required to provide a written status report no later than October 31, 2013 setting out the details and evidence of the implementation of the Practice Review Panel's recommendations as well as other steps that I was taking to conduct my legal practice in an ethical and effective manner. I did not provide the required status report nor did I contact Practice Review to advise why I have not complied with my Undertaking.
27. I am aware that in January 2014, the Manager, Practice Review, forwarded a Memo to the Manager, Conduct requesting that the matter of my failure to respond to Practice Review in a complete and timely manner, my failure to engage with Practice Review by providing responses to the status of my August 12, 2013 Undertakings, and thereby, my failure to satisfy Practice Review that I am complying with the Undertaking be considered as a complaint against me.
28. A section 53 demand was sent to me on February 5, 2014, and I provided a written response to the complaint on March 13, 2014. In my response, I explained

that I was seeing [●]. I advised that I was taking steps to ensure that I would respond in the future on a timely basis by having the receptionist at my law firm open any communications from the Law Society and ensure that both me and my employer, George Rozier [*sic*], would receive a copy of it. Mr. Roszler would assist in ensuring that I read and responded to all communications.

29. I faced an Interim Suspension application on March 14, 2014. In lieu of suspension, the Special Hearing Panel imposed a number of conditions upon me, as follows:
- Mr. Ewing will fulfill, in a meaningful way, his undertaking to the Practice Review Committee given on August 12, 2012 within 14 days, failing which he will stand suspended without further notice;
 - Mr. Ewing will continue in cooperation with Practice Review including of directed, participation in a Fitness to Practice Assessment;
 - Mr. Ewing will fully and meaningfully respond to any request by the Law Society within the date set by the Law Society;
 - Mr. Ewing will continue to see [●];
 - The conditions would remain in effect and may only be discharged by dismissal of the Executive Director or as dealt with as directed by a Conduct Committee Panel.
30. Pursuant to the conditions, I provided responses on March 26, 2014 and further responses on April 17, 2014. Based upon those responses, Practice Review was of the view that I had provided meaningful responses to my August 12, 2013 Undertaking.
31. On December 22, 2014, I advised Practice Review that my employment with Roszler & Associates would end at the end of December 2014. I further stated that I had not yet found employment for 2015 but was looking in fields outside of law. I believed that maintaining my active status with the Law Society would assist me the employment search so intended to remain active but undertook to not practice law beginning January 1, 2015, unless I had prior written consent of Practice Review.
32. As the Law Society still had two outstanding formal complaints against me, staff members attempted to contact me numerous times in 2015 in an attempt to deal with the complaints. The final attempt by the Law Society to contact me was made by Len Polsky, Manager, Practice Review by correspondence dated June 30, 2015. I admit that I never responded to any of these communications by the Law Society.

Conduct - Admissions

33. I admit that I failed to respond promptly and completely to communications from the Law Society and cooperate with the Law Society and that such conduct is conduct deserving of sanction.

IV. ADMISSION OF FACTS AND GUILT

34. I admit as facts the statements in this Statement of Admitted Facts and Admission of Guilt for the purposes of these proceedings.
35. I acknowledge that I have had the opportunity to consult legal counsel and provide this Statement of Admitted Facts and Admission of Guilt on a voluntary basis.
36. For the purposes of Section 60 of the *Legal Profession Act*, I admit my guilt to Citations 1, 2 and 4, directed on January 27, 2016.

THIS AGREED STATEMENT OF FACTS AND ADMISSION OF GUILT IS MADE THIS 25 DAY OF AUGUST, 2016.

"Norman Ewing"

NORMAN EWING