

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

Single Bencher Hearing Committee:

Kathleen Ryan, Q.C., Bencher

Appearances:

Counsel for the Law Society – Candice Ross

Counsel for Uwe Welz – Stewart Baker, Q.C.

Hearing Date:

September 21, 2016

Hearing Location:

Law Society of Alberta at 800 Bell Tower, 10104 – 103 Avenue, Edmonton, Alberta

HEARING COMMITTEE REPORT

Introduction and Summary of Result

1. On September 21, 2016, a Single Bencher Hearing Committee (Committee) convened at the office of the Law Society of Alberta (LSA) to conduct a hearing regarding the conduct of Uwe Welz, a member of the Law Society of Alberta.

A Conduct Committee Panel had determined on August 17, 2016, that the Statement of Facts and Admissions of Guilt (the “Agreed Statement”), which is attached as Appendix “A”, is in an acceptable form. Therefore, this hearing proceeded before a single bencher

pursuant to section 60(3) of the *Legal Profession Act*.

2. The Committee had regard to the Agreed Statement and heard from counsel for the member and counsel for the LSA in respect of sanction. The parties put forward a joint submission on sanction. The proposed sanction, which consisted of a reprimand and a \$2,000.00 fine, was accepted. Mr. Welz was also directed to pay the costs of the hearing.

Jurisdiction, Preliminary Matters and Exhibits

3. 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. The hearing proceeded.
4. The hearing was held in public.
5. The jurisdiction of the Committee was established by Exhibits 1 through 4. These exhibits consisted 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

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 this Committee that the lawyer's conduct is conduct deserving of sanction.
7. On March 2, 2016, the Conduct Committee Panel referred the following conduct to hearing:
 1. It is alleged that Mr. Welz failed to comply with 119.30 of the rules of the Law Society in a timely manner; and
 2. It is alleged that Mr. Welz failed to respond to, or fulfil commitments of the Trust Safety Department in a timely manner. (Appendix A, paragraph 5)

Details of the delay and failures are outlined in the Agreed Statement (Appendix "A") which facts were admitted before the Conduct Committee Panel; these details need not be repeated here.

Discussion and Decision on Sanction

8. The only question for determination by this Committee is one of appropriate sanction. The LSA and Mr. Welz agreed on the appropriate sanction. The parties tendered a joint submission for a reprimand, a \$2,000.00 fine, and hearing costs.

9. In making submissions on sanction, the LSA noted that Mr. Welz was very cooperative throughout these proceedings. The Agreed Statement allowed for the ability to proceed through a single bench hearing which created efficiencies in the hearing process. The LSA did note there was a prior Mandatory Conduct Advisory in 2009 for conduct which is similar to the matter under review. However, in these circumstances, the LSA considered the proposed sanction appropriate.
10. Mr. Welz, through his counsel, made several submissions on sanction. Mr. Welz is 62 years old. He immigrated to Canada from Germany in 1957 with his parents. He has resided in Edmonton since. He is married with two grown sons. He obtained an undergraduate degree at the University of Alberta before also graduating from the University of Alberta from the Faculty of Law in 1977. He was called to the Bar in 1978 and has practiced steadily since that time. He started his legal career as a generalist, but ultimately settled on solicitor's practice.
11. Mr. Welz has a number of long term clients. After his 37 years in practice, he has a record of two instances of conduct matters in the entirety of his career.
12. Mr. Welz is heavily involved in the German community and has done exceptional volunteer work in that community. He has been a long-time volunteer for the German Canadian Cultural Association where he is a legal advisor and lifetime member. He is heavily involved in the Blue Sparks Carnival which the Committee understands is a long-standing tradition in the local German culture.
13. Mr. Welz also has significant photography skill. He provided photography services for the Canadian Soccer Association and has been a national team photographer, notably when the FIFA World Championships were held in Edmonton. He is a board member of the Victoria Soccer Club.
14. It was evident that Mr. Welz very much regrets the failures to comply in a timely manner with the LSA accounting rules and with the requirements of the Trust Safety Department. He had a great deal of stress at the time and relayed that his accounting fell behind when his senior legal assistant left. There is no suggestion made by the LSA of any shortfalls in trust; rather, this is a question of failing to properly report.
15. Both the LSA and Mr. Welz rightly noted that, in mitigation, Mr. Welz had freely admitted his error. The approach taken by both Mr. Welz and the LSA in dealing with this matter through a single bench hearing avoided an unnecessary contested hearing, witness inconvenience, and process costs. This is commendable.

16. Sanctioning in professional disciplinary proceedings is to take a purposeful approach. Pursuant to Section 49(1) of the *Legal Profession Act*, the purpose of sanctioning is to protect the public interest, including the members of the Society, and to protect the standing of the legal profession generally. In *Regulation of Professions in Canada*, James T. Casey stated the following:

“Given that the primary purpose of the legislation governing professionals is protection of the public, it follows that the fundamental purpose of sanction sentencing for professional misconduct is also to ensure that the public is protected from acts of professional misconduct”. (p. 14-4)

17. As the Alberta Court of Appeal noted in *Adams v. The Law Society of Alberta* 2000 ABCA 240 (CanLII), in paragraphs 5 and 16:

...This public dimension is of critical significance to the mandate of professional disciplinary bodies.

...

...The question of what effect a lawyer’s misconduct will have on the reputation of the legal profession generally is at the very heart of a disciplinary hearing...”

18. The factors to be considered on sanction are as follows:

- a) The need to maintain the public’s confidence in the integrity of the profession, and the ability of the profession to effectively govern its own members;
- b) Specific deterrence of the member in further misconduct;
- c) Incapacitation of the member (through disbarment or suspension);
- d) General deterrence of other members;
- e) Denunciation of the conduct;
- f) Rehabilitation of the member; and
- g) Avoiding undue disparity with the sanctions imposed in other cases.

(Law Society of Alberta Hearing Guide, February 2013, Format Update, April 2016 (paragraph 69) (the “Guide”))

19. Other specific factors include the nature of the conduct, intent, injury, and other special circumstances such as a prior discipline record, the risk of reoccurrence, the length of the time the lawyer has been in practice, the time span of the conduct in issue, the lawyer’s reaction to the discipline process, the lawyer’s character, disclosure, attitude, remorse, and remoteness of prior offences (the Guide, p. 13-15).

20. When taking all these factors into account, there is little doubt in this case that a fine and a reprimand are the appropriate sanction. While Mr. Welz has a past related record and while the timeline for the failures to comply extended over a prolonged period, the past record is relatively remote and there is no suggestion of ongoing issues. No client was harmed by Mr. Welz' conduct. Likewise, Mr. Welz' remorse, longstanding dedication to both the community and to his profession demonstrate that the public interest is served by the sanction jointly proposed.
21. There are some difficult cases where a joint submission may lead to scrutiny from a hearing committee. This is certainly not one of those cases, but it is notable that the Supreme Court of Canada has recently taken the opportunity to set the standard for acceptance of a joint submission in criminal proceedings. A joint submission should be followed unless the proposed sanction would bring the administration of justice into disrepute or would otherwise be contrary to the public interest: *R. v. Anthony-Cook*, 2016 SCC 43, at paragraphs 25-60.
22. I see no reason to depart from this standard in professional disciplinary proceedings.

Concluding Matters

23. Mr. Welz did not require time to pay the fine of \$2,000.00. The reprimand was delivered at the time of hearing and a copy of that reprimand is attached as Appendix "B". It should be noted that the reprimand attached made reference to a joint submission acceptance standard that predated *Anthony-Cook*, which decision was rendered October 21, 2016.
24. 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.
25. Mr. Welz will pay costs in the amount of \$1,754.82.
26. There will be no Notice to the Profession nor notice to the Attorney General.

Dated at the City of Edmonton in the Province of Alberta, this 21st day of February, 2017.

Kathleen A. Ryan, Q.C.

APPENDIX "A"

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

STATEMENT OF ADMITTED FACTS AND ADMISSION OF GUILT

INTRODUCTION

1. I was admitted as a member of the Law Society of Alberta on September 22, 1978.
2. My present status with the Law Society of Alberta is Active/Practicing.
3. I have practiced in Edmonton, Alberta from September 22, 1978 to present.
4. My practice comprises Real Estate Conveyancing (35%), Estate Planning & Administration (20%), Civil Litigation (10%), Corporate (15%), Commercial (10%), and Other (10%).

CITATIONS

5. On March 2, 2016 the Conduct Committee Panel referred the following conduct to hearing:
 1. It is alleged that Mr. Welz failed to comply with 119.30 of the Rules of the Law Society in a timely manner; and
 2. It is alleged that Mr. Welz failed to respond to, or fulfil commitments to the Trust Safety Department in a timely manner.

FACTS

6. I was contacted by the S.P. of the Trust Safety Department of the Law Society of Alberta on February 11, 2014 and advised that a number of required filings had not been made. These filings were as follows:
 - 2012 Law Firm Self Report which was due on February 29, 2012;
 - 2013 Law Firm Self Report, which was due on February 28, 2013;
 - 2012 Annual Accountant's Report, which was due on May 31, 2012;
 - 2013 Annual Accountant's Report, which was due on May 31, 2013.
7. I stated to S.P. that my accountant had advised me that I could file electronically rather than have an Accountant's Report and that I would contact my accountant. I further advised

- S.P. that I would attend to the Law Firm Self Reports as soon as I returned from vacation and by no later than March 6, 2014.
8. The Law Society contacted me on February 19, 2014 to advise that my 2012 Accounting Data had been located and had been uploaded on July 16, 2012, but that no other Accounting Data had been received by the Law Society. S.P. also advised me at that time that my 2014 Law Firm Self Report and Accounting upload would be due on February 28, 2014.
 9. On March 5, 2014, S.P. again emailed me and requested that my delinquent accounting information be provided by March 7, 2014.
 10. On March 18, 2014, S.P. called me to inquire as to the status of the requested reports. I advised her that I had been away but that I should have everything to the Law Society by the following week.
 11. On March 28, 2014, I filed the delinquent Trust Safety accounting uploads for 2013 and 2014.
 12. On April 7, 2014, S.P. left a message for me asking me to call her to advised when the remaining outstanding Trust Safety filings could be expected by the Law Society.
 13. I returned S.P.'s call on April 9, 2014 advising that I had been busy and that I would submit all outstanding reports by April 22, 2014.
 14. I did not submit all outstanding reports to the Law Society by April 22, 2014.
 15. On May 14, 2014, I received an email from S.P. advising that all delinquent filings must be received by the Law Society on May 16, 2014.
 16. On May 16, 201[4], the Manager, Trust Safety for the Law Society, L.A., called me to advise me of the seriousness of my failure to provide my outstanding filings to the Law Society. I advised her that I would not "promise again" but would "just do it".
 17. On July 31, 2014, I received an email from the L.A. who issued a final deadline of August 8, 2014 to provide the outstanding filings to the Law Society.
 18. I finally provided the outstanding filings to the Law Society on August 25, 2014.

ADMISSION OF FACTS AND GUILT

19. I admit as facts the statements in this Statement of Admitted Facts and Admission of Guilt for the purposes of these proceedings.
20. I admit that I failed to comply with 119.30 of the Rules of the Law Society in a timely manner, and that such conduct is conduct deserving of sanction.
21. I admit that I failed to respond to, or fulfil commitments to the Trust Safety Department in a timely manner, and that such conduct is conduct deserving of sanction.

22. For the purposes of section 60 of the *Legal Profession Act*, I admit my guilt to the above conduct.
23. 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.

THIS STATEMENT OF ADMITTED FACTS AND ADMISSION OF GUILT IS MADE THIS 21ST DAY OF JUNE, 2016.

"Uwe Welz"

UWE WELZ

APPENDIX "B"

Reprimand

Mr. Welz, for a second time in the past decade, you have neglected your reporting obligations respecting trust accounting. While the issue here was clearly one of reporting only and there is no suggestion of misappropriation, these are paramount obligations of every barrister and solicitor in Alberta with a trust account. The public must be fully confident that every lawyer in the Province of Alberta with a trust account is not only accountable to their clients but is responsible and compliant with the obligations of his or her regulator. This is a critical aspect of our profession, and it cannot be overlooked at any time and in any circumstance.

I have carefully listened to your counsel's submissions on sanction, and I see plainly that you have treated both these citations and this failing very seriously. Your commitment to both your clients, particularly the German community, and your community at large demonstrates an immense dedication to the practice of law and the public interest.

In many ways, I expect this failure created an upheaval in your personal life which can't then help but impact your practice, and this impacts the public that you serve so well.

You are now approaching almost 40 years of practice. You are responsible for your legacy and your reputation in the law as you reach the most senior part of your career. I am gratified that there have been no issues with reporting since 2014. However, if there is another, a third set of these delinquencies, I do not anticipate that a reprimand and fine would be the logical outcome. Having regard to your dedication to the law, to your clients, and the community that you serve so well, another instance such as this would be very unfortunate. I trust that you will see that this never happens again.