

LAW SOCIETY OF ALBERTA
IN THE MATTER OF THE *LEGAL PROFESSION ACT*;
AND
IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF STEPHEN KACZKOWSKI
A MEMBER OF THE LAW SOCIETY OF ALBERTA

Hearing Committee:

Kent Teskey, QC - Chair
Sandra Mah - Committee Member
Nick Tywoniuk - Committee Member

Appearances:

Counsel for the Law Society - Nancy Bains
Stephen Kaczowski - self-represented

Hearing Date:

July 18, 2017

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 July 18, 2017, a Hearing Committee (Committee) convened at the office of the Law Society of Alberta in Calgary (LSA) to conduct a hearing regarding a number of citations against Mr. Stephen Kaczowski. Mr. Kaczowski and counsel for the LSA were asked whether there were any objections to the constitution of the Committee. There being no objections, the hearing proceeded.

2. The Parties attended throughout the hearing.
3. 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* (Act), the Notice to Attend to the Member and the Certificate of Status of the Member with the LSA.
4. The Certificate of Exercise of Discretion was entered as Exhibit 5. Under Rule 96(2)(b) of the *Rules of the Law Society of Alberta* (Rules), the Deputy Executive Director and Director, Regulation of the LSA, determined that there were no persons to be served with a private hearing application. Counsel for the LSA advised that the LSA did not receive a request for a private hearing. Accordingly, the Chair directed that the hearing be held in public.
5. At the outset of the hearing, Exhibits 7 through 16 were entered into evidence in the hearing with the consent of the parties. These Exhibits were part of the Exhibit Book provided to the Committee in advance. Exhibit 17, the Member's Record, and Exhibit 18, an estimated Statement of Costs, were added to the Exhibit Book as the hearing proceeded.

Citations

6. As a result of a July 13, 2017 Pre-Hearing Conference, in which Citations 2,3 and 9 were withdrawn and Citation 7 was amended, Stephen Kaczowski faced these remaining Citations:

[1] It is alleged Stephen Kaczowski failed to advance his client's Constructive Trust Claim and that such conduct is deserving of sanction.

[4] It is alleged Stephen Kaczowski failed to attend Court on his client's behalf for the application set for September 16, 2015 and that such conduct is deserving of sanction.

[5] It is alleged Stephen Kaczowski failed to keep his client informed on the status of his legal matter and that such conduct is deserving of sanction.

[6] It is alleged Stephen Kaczowski failed to respond to enquiries from another lawyer and that such conduct is deserving of sanction.

[7] It is alleged that Stephen Kaczowski failed to advance his client's divorce matters and that such conduct is deserving of sanction.

[8] It is alleged Stephen Kaczowski failed to keep his client informed on the status of her legal matters and that such conduct is deserving of sanction.

Agreed Statement of Facts

7. An Agreed Statement of Facts was entered as Exhibit 6 as an Admission of Guilt. It was accepted as constituting conduct deserving of sanction pursuant to Section 49 of the Act with respect to Citations 1, 4, 5, 6, and 8, and to Citation 7 as amended. It is reproduced at Schedule A of this Report.

The Submissions of the Parties

8. The Parties proposed a joint submission of a reprimand and a fine in the amount of \$1500. It was submitted that the proposed sanction recognized the acceptance of responsibility by the member and that the Agreed Statement of Facts and joint submission on sanction avoided the need for a hearing.
9. A joint submission should be giving substantial deference and should not be departed from unless it would be contrary to the administration of justice. See *R. v. Anthony-Cook*, [2016] 2 SCR 204.
10. While the Committee has some concern about the level of remorse expressed by the member for the prejudice caused to his clients by his conduct, it did not render the joint submission improper and the Committee chose to address its concerns through the reprimand.

Decision Regarding Sanction

11. The following reprimand was delivered by the Chair:

We note that this caused real harm to real people. Harm was not simply financial in nature, it caused delay and caused these emotional legal issues to hang over their heads far longer than it should have. Members of the public come to lawyers to solve legal problems and the profession fails when these problems aren't solved in a timely fashion.

We recognize that personal strife will happen over the course of a legal career, but it is the responsibility of the lawyer to ensure that prejudice is not visited on the client's interest either directly through actual harm or indirectly by delay.

Remorse occurs when the member accepts responsibility for the harm caused and treats it as a transformative event which alters conduct going forward. While we accept that some changes have been made to ensure that this harm isn't revisited, it is incomplete. True remorse will be expressed from the full changes in your practice to ensure that these professional failings aren't revisited.

Concluding Matters

12. Fines and the Hearing Costs are made payable within six months of the hearing date.
13. There shall not be a Notice to the Attorney General.
14. There shall not be a Notice to the Profession
15. The exhibits will be available for public inspection, except that identifying information in relation to persons other than Mr. Kaczowski will be redacted and further redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 98(3)).

Dated at the City of Calgary in the Province of Alberta, this 28th day of November 2017 by:

Kent Teskey, QC

Sandra Mah

Nick Tywoniuk

SCHEDULE A

IN THE MATTER OF *THE LEGAL PROFESSION ACT*

AND

IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF

STEPHEN KACZKOWSKI,

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 in July 2005.
2. My present status with the Law Society of Alberta is Active/Practicing.
3. I have practiced in Calgary, Alberta from 2005 to present.
4. My practice comprises Civil Litigation (70%), Matrimonial/Family Law (15%) Estate Planning & Administration (9%), Corporate (2%), Bankruptcy/Insolvency/Receivership (2%) and Real Estate Conveyancing (2%).

CITATIONS

5. On January 25, 2017, the Conduct Committee Panel (CCP) referred the following conduct, arising out of three complaints, to hearing:

Complaint #1 - CO20153191

1. It is alleged Mr. Kaczowski failed to advance his client's Constructive Trust Claim and that such conduct is deserving of sanction; and
2. It is alleged Mr. Kaczowski failed to perform legal services undertaken on his client's behalf to the standard of a competent lawyer and that such conduct is deserving of sanction.

Complaint #2 - CO20161298

3. It is alleged Mr. Kaczkowski failed to advance his client's legal matter and that such conduct is deserving of sanction;
4. It is alleged Mr. Kaczkowski failed to attend Court on his client's behalf for the application set for September 16, 2015 and that such conduct is deserving of sanction;
5. It is alleged Mr. Kaczkowski failed to keep his client informed on the status of his legal matter and that such conduct is deserving of sanction; and
6. It is alleged Mr. Kaczkowski failed to respond to enquiries from another lawyer and that such conduct is deserving of sanction.

Complaint #3 - CO20160222

7. It is alleged Mr. Kaczkowski failed to advance his client's legal matters and that such conduct is deserving of sanction;
 8. It is alleged Mr. Kaczkowski failed to keep his client informed on the status of her legal matters and that such conduct is deserving of sanction; and
 9. It is alleged Mr. Kaczkowski made misrepresentations to his client about the status of her legal matters and that such conduct is deserving of sanction.
6. On July 13, 2017, Robert Armstrong, QC, Pre-Hearing Conference Chair of the matter, granted withdrawal of Citations 2, 3 and 9 and allowed an amendment to Citation 7, pursuant to his authority under Rule 90.1(8)(e) of the *Rules*. Citation 7 has been amended to:
7. It is alleged Mr. Kaczkowski failed to advance his client's divorce matters and that such conduct is deserving of sanction

ADMITTED FACTS

Complaint #1

7. I represented Ms. [C] from November 2010 to March 2015 on a family litigation matter.
8. On November 15, 2010 I filed a Constructive Trust Claim under the *Family Law Act*, while also seeking the distribution of family assets and the return of personal property for Ms. [C]. The Respondent was Ms. [C]'s former common law partner, Mr. [R].
9. On February 14, 2011 I registered a Certificate of Lis Pendens on title of Mr. [R]'s property.

10. On September 5, 2012 I filed an application seeking a declaration of my client's interest in the family residence and the sale of the residence. This application was adjourned *sine die* by consent with the view to scheduling a Domestic Special. I acknowledge that this was the last legal step taken on the claim.
11. I admit that I was not aware of, nor did I ascertain, the proper procedure for booking a Domestic Special. Although I recall trying to arrange a Domestic Special before then, the records indicate that I did not attempt to set up a Domestic Special until November 2014. I sent a letter to Justice Chambers, rather than the correct procedure to contact Justice Chambers by telephone. In January 2015 I learned that I did it incorrectly. I submit that it is unusual when something in writing is considered insufficient.
12. On February 23, 2015 legal counsel for Mr. [R] filed an application to dismiss the Constructive Trust Claim due to long delay and to discharge the Certificate of Lis Pendens registered on title of the property.
13. On March 17, 2015 the Court granted Mr. [R]'s application and dismissed Ms. [C's] claim due to long delay and ordered the Certificate of Lis Pendens be discharged. Justice Poehlman did not agree with my argument that this matter fell under one of the exceptions to the drop-dead rule which is that there was an agreed intention between the parties.
14. I acknowledge that I failed to advise her to seek alternative counsel.
15. *I admit that I failed to advance my client's Constructive Trust Claim and that such conduct is deserving of sanction.*

Complaint #2

16. Mr. [H], director of [CCD]. retained me in three builder lien matters. 18. I admit that the builder lien matters lingered for some time, although at least one Questioning of Mr. [H] did take place, and that at least two years had passed without any significant steps being taken in Mr. [H]'s action by me. Thus, opposing counsel, Mr. [J], filed an application to dismiss for long delay on August 14, 2015 with a return date of August 24, 2015. At my request the matter was adjourned several times and was set to be heard on September 16, 2015.
17. I submit that the matter was adjourned because in my opinion, neither of the parties had good evidence to support their positions and a negotiated settlement may have been the best possible outcome.
18. Because the matter had been adjourned several times, I confused the day of Court and mistakenly thought the application was to be heard September 17, 2015. I emailed Mr. [H] on September 16, 2015 advising that I would be attending Court for the application the following day and I would advise him of the outcome.

19. Accordingly, I did not attend Court on September 16, 2015 on Mr. [H]'s behalf for the defence's application to dismiss the action for long delay. The Order was granted to dismiss.
20. I drafted my own affidavit in response to the application which was sworn on September 16, 2015 and filed on September 17, 2015.
21. Once I learned that the Order had been granted, I failed to advise my client about my non-attendance at the court hearing.
22. I did intend to make an application to set aside the Order but I admit that I did not follow through.
23. I was served with a copy of the Order granted on September 16, 2015 but I did not provide a copy of the Order to Mr. [H], nor did I inform Mr. [H] that his action had been dismissed and the funds held in Court had been released to the defendant. I understand that Mr. [H] only learned of the outcome of his matter when Ms. [S], Mr. [H]'s new lawyer, contacted defence counsel in April 2016.
24. On May 10, 2016, Ms. [S], Mr. [H]'s new counsel, sent me correspondence requesting clarification on the circumstances of Mr. [H]'s legal matter and the application heard on September 16, 2015. Ms. [S] requested a response by May 17, 2016. I acknowledge that I did not reply to her correspondence.
25. *I admit that I failed to attend Court on my client's behalf for the application set for September 16, 2015 and that such conduct is deserving of sanction.*
26. *I admit that I failed to keep my client informed on the status of his legal matter and that such conduct is deserving of sanction.*
27. *I admit that I failed to respond to enquiries from another lawyer and that such conduct is deserving of sanction.*

Complaint #3

28. In May 2015 Ms. [G] retained me to represent her in divorce and foreclosure proceedings.
29. On April 29, 2015 Ms. [W], counsel for the creditor, the Royal Bank of Canada ("RBC"), filed a Statement of Claim naming Ms. [G] and her former spouse Mr. [L], as defendants. In Ms. [G]'s divorce matter, I filed a Statement of Claim for Divorce and Division of Matrimonial Property on June 10, 2015. After this, until the Fall of 2015, I did not update Ms. [G] on her two matters.

30. In the meantime, Ms. [W], counsel for the creditor in the foreclosure matter, filed an Application on October 2, 2015, set to be heard on October 14, 2015, seeking Orders of Foreclosure, Possession, Transfer of Title, and Summary Judgement against Ms. [G] and Mr. [L]. I requested that the matter be adjourned to a later date but failed to communicate the matter of the Application to Ms. [G] promptly. It was only when Ms. [G] discovered directly from Ms. [W] about the impending Application and contacted me that I did communicate with her.
31. On the Divorce matter, on October 23, 2015 I obtained an Order for Substitutional Service to allow the Statement of Claim for Divorce and Division of Matrimonial Property to be served on Ms. [G]'s former spouse, Mr. [L], by leaving the documents at his address. The Application had been supported by my Affidavit sworn on October 20, 2015.
32. On December 3, 2015 I emailed Ms. [G] and advised I was going to file Affidavits of Service in both matters and Note Mr. [L] in Default on the divorce matter. I advised these actions would occur in the next week or so and I would advise her when it was completed.
33. I acknowledge that I did not follow-up with Ms. [G] as I had stated. Ms. [G] then emailed me on January 20, 2016 requesting a status update. I emailed Ms. [G] on January 29, 2016 forwarding her the documents I had received in the foreclosure matter.
34. I understand that Ms. [G] eventually made a complaint to the Law Society. On October 18, 2016 the Law Society requested a complete copy of my client file for Ms. [G]. I sent the same to the Law Society November 16, 2016.
35. The Law Society's review confirmed what actually happened in the matters. The Law Society confirmed that the Statement of Claim for Divorce and Division of Matrimonial Property was filed and an Order for Substitutional Service was obtained. Further, based on documentation I only recently provided to the Law Society, it is confirmed that my office made two attempts to serve the Statement of Claim and Notice to Disclose/Application in October and November 2015. I do acknowledge that I took no other steps, such as noting her former spouse in default, to advance Ms. [G]'s divorce matter.
36. *Accordingly, I admit that I failed to advance my client's divorce matters and that such conduct is deserving of sanction.*
37. *I further admit that I failed to keep my client informed on the status of her legal matters and that such conduct is deserving of sanction.*

ADMISSIONS OF FACT AND GUILT

38. I admit as facts the statements in this Statement of Admitted Facts and Admission of Guilt for the purposes of these proceedings.

39. 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.
40. For the purposes of Section 60 of the *Legal Profession Act*, I admit my guilt to Citations 1, 4, 5, 6 and 8 as directed on January 25, 2017 and to Citation 7 as amended.

THIS AGREED STATEMENT OF FACTS AND ADMISSION OF GUILT IS MADE THIS 18th DAY OF JULY, 2017.

“Stephen Kaczowski”

STEPHEN KACZKOWSKI