LAW SOCIETY OF ALBERTA

IN THE MATTER OF THE *LEGAL PROFESSION ACT;*

AND

IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF SURINDER RANDHAWA
A MEMBER OF THE LAW SOCIETY OF ALBERTA

Single Bencher Hearing Committee:

Robert Harvie QC, Bencher

Appearances:

Counsel for the Law Society - Nancy Bains

Counsel for Mr. Randhawa - Dennis A. McDermott, QC

Hearing Date:

June 27, 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 June 27, 2017, a Single Bencher Hearing Committee (Committee) convened at the office of the Law Society of Alberta (LSA) to conduct a hearing regarding a Statement of Facts and Admission of Guilt, dated April 25, 2017.

2. Mr. Randhawa 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, and the hearing proceeded.

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 60 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 May 17, 2017, and therefore this hearing was convened by 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 Hearing Committee that the lawyer's conduct is conduct deserving of sanction. After hearing submissions by counsel for the LSA and Mr. Randhawa and confirming Mr. Randhawa's understanding that the Bencher was not bound by the joint submission on sanction, the Bencher confirmed the Agreed Statement of Facts and the Admission of Guilt constituted a finding of conduct deserving of sanction on one citation pursuant to s. 49 of the *Legal Profession Act*.

7. The only question for determination by this Committee was one of appropriate sanction.

Discussion on Sanction

8. The LSA sought a reprimand and fixed hearing costs of $1,500.00. The LSA made the following submissions on sanction:

a. It is necessary in order to protect the public and protect the legal profession that there be elements of specific and general deterrence which should be considered in sanction.

9. Counsel for Mr. Randhawa also made submissions on sanction:

a. That Mr. Randhawa had, in fact, been under a longer *de facto* suspension than would appear from the record, on unrelated citations;
b. That Mr. Randhawa has been cooperative and has admitted his guilt in a timely fashion;

c. That, otherwise, Mr. Randhawa affirmed agreement with the joint submission on sanction, requesting only time to pay the costs in light of significant costs already outstanding from prior discipline proceedings.

10. As referenced, both the Law Society and Mr. Randhawa rightly noted that Mr. Randhawa, in mitigation, had freely admitted his error after reporting the matter. The approach taken by both Mr. Randhawa and the LSA in dealing with this matter through a single Bencher hearing avoided an unnecessary contested hearing, witness inconvenience, and process costs. This is commendable.

Concluding Matters

11. It is acknowledged, firstly, that upon consideration of a joint submission by counsel for the LSA and Mr. Randhawa, such submissions are to be given deference, and while not binding upon this Committee, should be accepted unless it appears that such submissions are clearly contrary to the interests of the public and the interests of the profession.

12. In considering this matter, and the submissions of the parties, this Committee found no fact or basis upon which to interfere with the recommendations set out in the joint submission. The Committee directed a reprimand and further directed that Mr. Randhawa shall pay the costs of the conduct proceedings against him in the sum of $1,500.00.

13. With respect to the reprimand, the following reprimand was given to Mr. Randhawa:

> The matters that give rise to these citations, which have been admitted by Mr. Randhawa, are troubling, obviously, or we wouldn't be here. And the thing that comes to mind for me, in particular, is the fact that we were dealing with a self-represented litigant. And that's a matter of some delicacy these days because that's a growing part of what we do in the profession, particularly in family law.
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> I was recently in the Court of Appeal dealing with an issue relating to the court's treatment of self represented litigants. The week after, the Supreme Court of Canada came out with the *Pintea v. Johns* case, where they talked about how important it is that we treat these people with sufficient understanding and respect. And the concern in the Supreme Court of Canada, at least the representations made before that Court, was that lawyers have a relationship with the administration of justice which is rather unique.
>
> The judges are all former lawyers. The administration of justice, to a great extent, is governed by lawyers. And in the *Pintea v. Johns* case, which was an appeal of our own Court of Appeal, the opening statement of counsel for the appellant in that case was, what this is about is how we treat insiders and outsiders - in that case, the self-represented litigant suggesting that they were an outsider.

The Supreme Court of Canada overturned the Alberta Court of Appeal in making an *ex parte* order against the interests of a self-represented litigant and affirmed the Canadian Judicial Council statement on how we treat self-represented litigants.

And I raise that because, when we send a message to people that don't have lawyers that we can be somewhat tolerant of ignoring rules of procedure because we're "on the inside" or we're "club members", to use a vernacular, that's a dangerous thing in terms of respect for our profession and of the administration of justice.

And, obviously, as counsel for the Law Society has pointed out, the integrity of the profession and respect for the profession is a significant issue. And so, obviously, that is a matter that you've admitted and taken responsibility for, Mr. Randhawa.

And it's a serious matter.

And I commented in an earlier proceeding, and I'm going to comment on it again. Sometimes, as a profession, we see our ethical obligations as an impediment to do the work we do or something that we have to do. And in some recent discussions I had at a Bencher's convocation, I commented that perhaps we don't teach ethics the way we ought to and that the ethics that we hold, as a profession, should not be seen as something that we have to "tolerate."

Our ethical obligations should be seen as a badge of honour that we hold, because we have a privileged place in society.

We are a profession that separates democracy from totalitarianism. And I don't think we can overstate that. And I hold that dear, and I think our members need to hold that dear, that our ethical obligations, Mr. Randhawa, are not something that you should feel get in the way of you doing your job. They should be something you feel proud of, that, as lawyers, we're doing more than just a "job".

When we let down our ethical obligations, we let ourselves down, and we tarnish that badge of honour that we carry as members of the profession. In this case, you've let yourself and your profession down – and you can do better.

14. Mr. Randhawa requested time to pay the costs directed herein of one year from the hearing date, which was not opposed by the LSA, and accordingly, it is directed such costs are to be paid on or before June 27, 2018.

15. 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.

16. There shall be no Notice to the Profession issued.

17. There will be no Notice to the Attorney General.

Dated at the City of Calgary in the Province of Alberta, this 18th day of August, 2017.

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Robert Harvie, QC

EXHIBIT A

IN THE MATTER OF *THE LEGAL PROFESSION ACT*

AND

IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF SURINDER S. RANDHAWA,

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 October 11, 1990.

2. My present status with the Law Society of Alberta is Suspended, since May 8, 2014.

3. I have practiced in Calgary, Alberta since October 1990.

4. My practice, at the time I was practicing, comprised of: Matrimonial/Family (40%), Real Estate Conveyancing (30%), Immigration (25%) and Civil Litigation (5%).

CITATIONS

5. On January 27, 2016 the Conduct Committee Panel referred the following conduct to hearing:

    1. It is alleged that Mr. Randhawa failed to adequately supervise his support staff in the matrimonial file of JM in 2013 in that

        a) his assistant filed an online Notice of Adjournment on September 27, 2013 in respect of a Notice to Disclose Application which stated that consent had not been obtained from the opposing party;

        b) his assistant did not notify the opposing self-represented party, RM, that the application had been adjourned

        and that such conduct is deserving of sanction.

FACTS

6. I represented JM on a Legal Aid certificate in family law proceedings. I appeared in court on several dates in 2013. JM's estranged husband, RM, was self-represented.

7. Notices to Disclose were filed by each party and were returnable on September 30, 2013 if the parties did not produce their documents to each other by Friday, September 27, 2013. RM attended in Chambers on September 30, 2013 but no one from my office appeared. RM stated that he had delivered his disclosure to my office but that he did not receive JM's disclosure.

8. The transcript from the September 30, 2013 proceedings indicate that Madam Justice Strekaf and the Clerk discussed the fact that an online Notice of Adjournment filed by my office indicated "No" to the question of whether consent had been obtained. Both the Justice and the Clerk stated their belief that a lawyer could not use the online adjournment form to adjourn an application without the consent of the other side.

9. Madam Justice Strekaf then set the matter over until October 15, 2015 rather than October 14, 2013, the date indicated by me in my online adjournment, because October 14, 2013 was Thanksgiving Day and not a juridical day. Madam Justice Strekaf stated that I would have to explain myself to the presiding Chambers Justice on October 15, 2013. She awarded costs against me of $500 to RM.

10. I presented myself in Madam Justice Strekaf's courtroom the same day, on the afternoon of September 30, 2013 on a different matter and Madam Justice Strekaf addressed the JM and RM matter with me. The transcript from this proceeding indicates that I stated that my office had provided RM with notice that I was adjourning my application on Friday, September 27, 2013. I stated that the application set for that morning was my application and that I had adjourned it. I stated that I had confirmed the adjournment by email with RM after I had filed the adjournment request. I then said that I was not aware that RM was going to come to court on the morning of September 30, 2013. However, my client's disclosure had not been provided in response to RM's Notice to Disclose and the online adjournment filed by my office could not adjourn RM's application.

11. I acknowledge that the transcript confirms that the following discussion ensued:

> The Court: [RM] tells me that he provided his disclosure. Your client did not provide her disclosure. You confirmed to me that she did not provide all of her disclosure. You unilaterally contacted the Clerk's Office, as I understand, and adjourned the application without the courtesy of having his agreement not to show up, correct?
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> Mr. Randhawa: We did not get his agreement, but we—you know, right at 5:00 we got his package—

> The Court: And, in that—and, Mr. Randhawa, would you do that to a lawyer? If Would—if you had a lawyer that was supposed to be here at—on a Monday, and they were coming from out of town, and on Friday afternoon at 5:00, would you send them a letter or an e-mail saying I'm not going to go ahead, and you don't hear anything back, and then you don't show up in court today?
>
> Mr. Randhawa: I feel very sorry over that and I will—
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> The Court: Well, you will have to explain that—
>
> Mr. Randhawa: Yeah
>
> The Court: --to the other judge. I—that conduct is absolutely unacceptable…

12. In my response to the Law Society, I acknowledge that I provided a slightly different explanation. I stated that I decided to adjourn the Application in respect of the Notice to Disclose to allow the parties more time to collect their financial statements. I stated that I gave instructions to my assistant to advise RM that we wished to adjourn the Application and that we wanted his consent to do so. However, I stated that my assistant adjourned the application via the online adjournment system and that while my assistant recalled that I told him to obtain the consent of RM, the assistant could not recall whether he actually did so or not.

13. I advised the Law Society that after I became aware of the costs award, I asked my assistant if RM's consent had been obtained prior to adjourning the application. I advised that my assistant could not recall if consent was obtained but that my assistant recalled receiving instructions from me to obtain consent before adjourning the application. I did not explain why my office filed an online Notice of Adjournment that indicated that consent had not been obtained when this process is only for consent adjournments.

14. I admit that the fact that the Notice of Adjournment stated that consent had not been obtained supports the conclusion that my office did not obtain Mr. [M]'s consent to the adjournment.

15. I passed the bill for costs of $500 on to my client JM, who was on Legal Aid. She paid the costs although she was successful in getting reimbursed for them by Legal Aid.

16. I admit that I allowed my assistant to file online adjournments without understanding that adjournments can only be obtained with either consent or by court order.

17. I admit that I failed to directly supervise my support staff in seeking an adjournment of the Notice to Disclose Application.

ADMISSIONS OF FACT AND GUILT

18. I admit that I failed to adequately supervise my assistant in the course of handling the matrimonial file of JM in 2013, specifically with regard to not properly filing a Notice of Adjournment on September 27, 2013 and failing to notify the opposing self-represented party that I was seeking an adjournment.

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 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.

21. For the purposes of Section 60 of the *Legal Profession Act*, I admit my guilt to Citation 1 (a) and (b), directed on January 27, 2016.

THIS AGREED STATEMENT OF FACTS AND ADMISSION OF GUILT IS MADE THIS 25th DAY OF APRIL, 2017.

"Surinder S. Randhawa"

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SURINDER S. RANDHAWA