

**IN THE MATTER OF PART 3 OF THE
LEGAL PROFESSION ACT, RSA 2000, c. L-8**

AND

**IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF LUIS MORALES
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

Hearing Committee

Corie Flett – Chair and Benchers
Anthony Young, QC – Former Benchers
Martha Miller – Public Adjudicator

Appearances

Karl Seidenz – Counsel for the Law Society of Alberta (LSA)
Ed Halt, QC – Counsel for Luis Morales

Hearing Date

October 12, 2018

Hearing Location

LSA office, at 500, 919 – 11 Avenue SW, Calgary, Alberta

HEARING COMMITTEE REPORT

Overview

1. Jose Luis Morales Moscoso, more commonly known as Luis Morales, was admitted as a member of the Law Society of Alberta (the LSA) on September 13, 2007. On January 12, 2017, Mr. Morales elected to become an inactive lawyer. On March 15, 2017, he was suspended for the non-payment of membership fees, and currently remains suspended.
2. This hearing arises out of a complaint by the LSA and events that occurred during the pre-hearing phase of a separate disciplinary matter involving Mr. Morales and prosecuting counsel for the LSA (C.R.). The complaint included two citations, that:
 - 1) Mr. Morales recorded conversations with another lawyer, C.R., without first informing C.R. of his intention to do so and that such conduct is deserving of sanction; and
 - 2) Mr. Morales failed to advise another lawyer, C.R., that a third party would be present during their telephone conversations and that such conduct is deserving of sanction.

3. On October 12, 2018, the Hearing Committee (Committee) convened a hearing into the conduct of Mr. Morales, based on the two citations.
4. Based on the evidence before it and considering the submissions on behalf of the LSA and Mr. Morales, Citation 1 was dismissed. Mr. Morales was found guilty on Citation 2 and sanctioned with a reprimand. He was also ordered to pay costs of the hearing, in the amount of \$2000.00, within three months of being reinstated as an active member of the LSA.
5. The decision and reprimand were delivered orally at the hearing, with written reasons to follow. This Report contains the Committee's reasons and the text of the reprimand.

Preliminary Matters and Statement of Admitted Facts and Admission of Guilt

6. There were no objections to the constitution of the Committee or its jurisdiction, and a private hearing was not requested, so a public hearing into Mr. Morales's conduct proceeded.
7. Prior to the hearing, a Statement of Admitted Facts and Admission of Guilt (the Statement) was signed by Mr. Morales. In it, Mr. Morales admitted guilt to the conduct described in Citation 2, and agreed that the conduct deserving of sanction under section 49 of the *Legal Profession Act* (the Act). A redacted version of the Statement is attached as Schedule A, and details the conduct in question.

Submissions on Guilt and Sanction

8. At the oral hearing, LSA counsel indicated that the LSA would be calling no evidence with respect to Citation 1 and submitted that the Committee dismiss that Citation. Mr. Halt, on behalf of Mr. Morales, agreed.
9. With respect to Citation 2, both counsel noted that Mr. Morales has admitted guilt, and has acknowledged that his conduct is deserving of sanction. His admission is set out in the Statement, along with a description of the facts surrounding the conduct.
10. With respect to sanction, the LSA and Mr. Morales provided a joint submission, proposing that a reprimand be issued. In addition, they agreed on costs of \$2000.00, payable within three months of reinstatement.
11. LSA counsel argued that the proposed sanction was appropriate, considering the purposive approach to sanctioning, the specific conduct in question, and Mr. Morales' willingness to enter into an agreed statement of facts and admission of guilt, which

saved time and hearing costs. LSA Counsel also noted that Mr. Morales has no prior disciplinary record.

12. LSA counsel further submitted that the joint submission should be afforded deference, unless it is unfit, unreasonable, or contrary to public interest, or would bring the administration of justice into disrepute, citing *R. v. Anthony-Cook*, 2016 SCC 43 (CanLII). In terms of the appropriateness of the proposed sanction, Mr. Seidenz referred the Committee to the NWT Law Society's *Bayly* decision, 2002 CanLII 53208, in which similar conduct was sanctioned with a reprimand and a fine.
13. Mr. Morales' counsel, Mr. Halt, also submitted that the joint submission on sanction should be accepted. The conduct in question occurred while Mr. Morales was suspended and was a party to the disciplinary proceeding, rather than acting in his capacity as a lawyer. Regardless, Mr. Morales understands that he continued to be bound by the Code of Conduct, and that his conduct in this case contravened Rules 7.2-1 and 7.2-2 of the Code.
14. Mr. Halt noted that Mr. Morales acknowledged that he has made errors in judgement and has taken responsibility for his actions, both in this case and in the other disciplinary matter. Mr. Morales has also been taking proactive steps to get back on track so that he can resume his professional life. In light of all of the circumstances, Mr. Halt argued that the proposed sanction and the costs were appropriate and fair.

Analysis and Decision

Citation 1

15. As no evidence was called with respect to Citation 1, the Committee dismissed the Citation.

Citation 2

16. The Statement contains an admission of guilt on Citation 2. Once the Committee accepts the Statement, it is a deemed finding of the Committee that Mr. Morales is guilty of conduct deserving sanction on Citation 2. The Committee accepted the form of the Statement, and accordingly, Mr. Morales was found to be guilty of Citation 2.
17. Hearing Committees are not bound to accept joint submissions on sanction. However, the Committee agreed with counsel that a joint submission on sanction should be given serious consideration and should be accepted, unless it would bring the administration of justice into disrepute or is otherwise contrary to public interest.
18. Based upon the facts of this case, and considering the sanction in a similar case, the Committee accepted the joint submission on sanction as being within the reasonable

range of sanctions such that its acceptance would not bring the administration of justice into disrepute nor be contrary to the public interest.

19. The Committee orally issued the following reprimand to Mr. Morales:

In giving this reprimand, I am going to make reference to the *Law Society of Alberta v. Barry King*, which is found in CanLII at 2010 ABLS 9, and I'm just going to quote.

A reprimand has serious consequences for a lawyer. It is a public expression of the profession's denunciation of the lawyer's conduct. For a professional person, whose day-to-day sense of self-worth, accomplishment, and belonging is inextricably linked to the profession, and the ethical tenets of that profession, it is a lasting reminder of failure. And it remains a lasting admonition to avoid repetition of that failure.

You have admitted guilt with respect to failing to advise Law Society counsel that a third party would be present during your telephone conversations. Your conduct in this matter offends your duty of courtesy and good faith, not only to Law Society counsel but to all those who are present on the telephone call.

It also offends your duty not to mislead another lawyer. It is a common courtesy that you would advise counsel, and others, that you are accompanied by a third-party during telephone calls. Not only is it common courtesy to advise of this, but it is also misleading not to advise. You must take care, in the future, not only to refrain from actively misleading others, you must also take care not to mislead others by omission. This reprimand will remain a reminder to you to do that.

20. The Committee further agreed to the joint submission that costs of \$2000.00, payable within three months of reinstatement, were reasonable, and so ordered.

Concluding Matters

21. Costs in the agreed amount of \$2000.00 are payable by Mr. Morales within three months of reinstatement.
22. No Notice to the Attorney General or to the profession is required.
23. The exhibits and this report will be available for public inspection, including providing copies of exhibits for a reasonable copy fee, although redactions will be made to

preserve personal information, client confidentiality and solicitor-client privilege (Rule 98(3)).

Dated at Calgary, Alberta, October 19, 2018.

Corie Flett – Chair and Benchers

Anthony Young, QC – Lawyer Adjudicator

Martha Miller – Public Adjudicator

IN THE MATTER OF THE *LEGAL PROFESSION ACT*

AND

IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF
LUIS MORALES MOSCOSO
A MEMBER OF THE LAW SOCIETY OF ALBERTA

HEARING FILE HE20180161

STATEMENT OF ADMITTED FACTS

AND ADMISSION OF GUILT

INTRODUCTION

1. This hearing arises out of a complaint by the Law Society of Alberta (the “**LSA**”).

BACKGROUND

2. I was admitted as a member of the LSA on September 13, 2007. On January 12, 2017, I elected to become an inactive lawyer. On March 15, 2017, I was suspended for the non-payment of membership fees. I remain a suspended member of the LSA.

ADMISSION OF FACTS

3. I admit as facts the statements contained in this Statement of Admitted Facts and acknowledge that they shall be used during these proceedings.

ADMISSION OF GUILT

4. When I admit guilt to the conduct described herein, I agree that the conduct is “conduct deserving of sanction” as defined under section 49 of the *Legal Profession Act* (the “**Act**”).

NO DURESS/INDEPENDENT LEGAL ADVICE

5. I agree that I have had the opportunity to consult with legal counsel and confirm that I have signed this Statement of Admitted Facts and Admission of Guilt voluntarily and without any compulsion or duress.

THIS STATEMENT OF AGREED FACTS AND ADMISSION OF GUILT IS MADE THIS “12” DAY OF OCTOBER 2018.

“L. MORALES”
LUIS MORALES MOSCOSO

STATEMENT OF AGREED FACTS

1. Procedural Background

6. On June 19, 2018, a panel of the Conduct Committee of the LSA "**LSA**") directed that the following conduct be dealt with by a Hearing Committee:
 1. It is alleged that Jose Luis Morales Moscoso recorded conversations with another lawyer, C.R., without first informing C.R. of his intention to do so and that such conduct is deserving of sanction; and
 2. It is alleged that Jose Luis Morales Moscoso failed to advise another lawyer, C.R., that a third party would be present during their telephone conversations and that such conduct is deserving of sanction.
7. These allegations arose out of events that occurred during the pre-hearing phase of a separate matter (the "**Original Proceedings**") involving me and the LSA. The pseudonym "C.R." in the citations refers to counsel for the LSA in the Original Proceedings.

2. Facts

8. On November 14, 2017, the Conduct Committee in the Original Proceedings referred six citations of conduct to be dealt with by the Hearing Committee.
9. On December 14, 2017, I participated in the first Pre-Hearing Conference ("**PHC**") by telephone conference. C.R. represented the LSA. The Chair of the PHC was K.T.
10. On January 8, 2018, C.R. and I had a telephone conversation. Although [a third party] was present and listened in to the call, I did not advise C.R. of that fact. [The third party] took notes by shorthand, which were later transcribed.

Exhibit 6 – Tab 1
Exhibit 6 – Tab 2
11. On January 17, 2017, I participated in the second Pre-Hearing Conference with C.R., also chaired by K.T.
12. On February 14, 2018, at 11:00 a.m., C.R. and I had a second telephone conversation. [A third party] was again present and listened in to the call, but I did not advise C.R. of that fact.
13. Later that day, at 2:00 p.m., I participated in the third PHC in this matter by telephone conference with C.R., again chaired by K.T. [A third party] was present during call and listened in, but I did not advise C.R. or K.T. of that fact. [The third party] took notes by shorthand, which were later transcribed.

Exhibit 6 – Tab 3
Exhibit 6 – Tab 4
14. Between February 14 and March 20, 2018, I participated in a mediation session with C.R., chaired by K.T. and exchanged a few emails with C.R. to discuss possible sanction with her.

15. On March 20, 2018, I sent an email to C.R., in which I noted the following:

... [A third party] was present through all the pre-hearing calls and is willing to testify under oath that that was your offer. Aside from that, the calls were recorded to ensure accuracy.

Exhibit 6 - Tab 5

16. C.R. responded shortly thereafter.

Exhibit 6 - Tab 6

17. Later that day, on March 20, 2018, [the third party] sent a letter to C.R. by email in which [the third party] stated the following:

...
A revision of the transcripts from January to February 14th, 2018 at 11: AM demonstrates clearly [C.R.] stating on three separate occasions that the Law Society of Alberta only thought to implement a fine and a reprimand for any alleged wrong-doing (given this is provable). However, at 2:00 PM on the same date [C.R.] informed Luis in a tense conversation over a telephone conference, that the Law Society of Alberta now sought complete disbarment. She claims this change in direction resulted from a consideration of new information - [M's] allegations against Luis. However, the transcript shows [C.R.] already knew about this complaint on the day of their phone-call in January 2018. Having been present during that time, I can additionally verify this to be true. ...

...
Respectfully, I will not take lightly the repercussions if something happens to [Mr. Morales]. ...

Exhibit 6 – Tab 7

18. On March 21, 2018, I sent an email to C.R., K.T., and [the third party], in which I stated the following:

...
Lastly, you were rude and condescending to me from the outset of these proceedings. That is also objective. [The third party] will testify to your inflection and lack of candour.

Exhibit 6 – Tab 8

19. Following a response from C.R., [the third party] sent an email later that day to C.R., with a copy to K.T. and me, in which she stated the following:

...
I have witnessed your antagonistic, disrespectful and condescending attitude to Mr. Morales from the beginning of these telephone calls.

...
I witnessed that in more than one occasion you told Luis that this was the position of the Law Society. You repeated this on February 14th of this current year, around 11:00 a.m., and by the 2:00 p.m. telephone call, you told [K.T.] that the Law Society is looking at disbarment. ...

Exhibit 6 – Tab 8

20. On March 23, 2018, the LSA opened a complaint file pursuant to section 85 of the *Act*.

21. On March 23, 2018, I sent an email to C.R., copied to K.T., which I stated the following:

...
(a) at first instance you indicated on at least two occasions that you would be looking at a "reprimand and a fine" for my alleged infractions which, [the third party] indicated to you were recorded. ...

- ...
- (e) you seemed surprised, reading into your correspondence, that [the third party] would have had information as to your representations regarding sanction(s) attributed to the allegations about me. Specifically, the fact that you, in two or more occasions indicated that I was only subject to a "reprimand and a fine;
- ...
- (f) According to your words, again, recorded, you indicated that such records only indicated I was an "alcoholic".

Exhibit 6 – Tab 9

22. On March 24, 2018, C.R. responded by email.

Exhibit 6 – Tab 10

3. Admission of Guilt

23. I understand that the LSA will not be calling any evidence with respect to the first citation.
24. Regarding the second citation, I admit the following:
- a. On January 8, 2018, I failed to advise C.R. that a third party, [REDACTED], would be present during our telephone conversation;
 - b. On February 14, 2018, at 11:00 a.m., I failed to advise C.R. that a third party, [REDACTED], would be present during our telephone conversation; and
 - c. On February 14, 2018, at 2:00 p.m., I failed to advise C.R. and K.T. that a third party, [REDACTED], would be present during our telephone conference.

all of which is contrary to Rules 7.2-1 and 7.2-2 of the *Code of Conduct*.