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 DANA CARLSON
A MEMBER OF THE LAW SOCIETY OF ALBERTA

Hearing Committee

Schuyler Wensel, QC – Chair and Lawyer Adjudicator
Louise Wasylenko – Bencher
Lori Plater – Lawyer Adjudicator

Appearances

Shanna Hunka – Counsel for the Law Society of Alberta (LSA)
Dana Carlson – self-represented

Hearing Date

May 23, 2019

Hearing Location

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

HEARING COMMITTEE REPORT

Overview

1. Dana Carlson has been a member of the Law Society of Alberta (the "LSA") since August 1995. He currently practices as a sole practitioner in Red Deer, Alberta, in the areas of family law, criminal law and civil litigation.

2. On May 23, 2019, the Hearing Committee (Committee) held a hearing into the conduct of Mr. Carlson, based on five citations:
    1) It is alleged that Dana I. Carlson failed to sign a Court Order and a Consent Judgment granted in the Court of Queen's Bench and that such conduct is deserving of sanction;

    2) It is alleged that Dana I. Carlson failed to respond to communications from opposing counsel and that such conduct is deserving of sanction; and

    3) It is alleged that Dana I. Carlson failed to finalize and file an Order on behalf of his client, K.M., and that such conduct is deserving of sanction.

4) It is alleged that Dana I. Carlson failed to respond to communications from his client, K.M., in a timely manner and that such conduct is deserving of sanction.

5) It is alleged that Dana I. Carlson failed to respond to requests from the Law Society to provide his client file in a timely manner and that such conduct is deserving of sanction.

3. The citations above arise in connection with Mr. Carlson's family law practice. The facts in relation to the citations are set out in the Statement of Admitted Facts (Statement), a redacted version of which is attached as Appendix A to this Report. In the Statement, Mr. Carlson admitted guilt on all five citations, and admitted that the conduct was deserving of sanction.

4. The citations can be grouped into the following areas and stem from issues arising from:
   1) Mr. Carlson's clients, such as failing to respond and report;
   2) Mr. Carlson's dealings with other lawyers, such as not signing an Order of the Court and not responding in a timely manner;
   3) Mr. Carlson's management of his practice, such as inadequate accounts receivable management and diarizing steps to be taken on a file in time;
   4) Mr. Carlson's dealings with LSA, such as failing to respond.

5. Pursuant to subsection 60(2)(b) of the *Legal Professional Act* (the *Act*), the Committee found that the Statement was in an acceptable form. As a result, each admission is deemed to be a finding of this Committee that Mr. Carlson's conduct is deserving of sanction.

6. The Committee was provided with, and accepted, a joint submission on sanction by the parties. The Committee found that, based on the facts of this case, the appropriate sanction was a suspension of one month, from July 1 to July 31, 2019, inclusive.

7. In addition, pursuant to subsection 72(2) of the *Act*, the Committee ordered Mr. Carlson to pay hearing costs in the amount of $8,800.00, in payments of $1000.00 per month beginning September 15, 2019, and continuing until the costs are fully paid.

8. The Committee issued its decision orally at the hearing, with written reasons to follow. This Report contains those reasons.

Preliminary Matters

9. There were no objections to the constitution of the Committee or its jurisdiction.

10. While one person had inquired with LSA counsel about a private hearing, no application was made to the Committee for a private hearing. Further, in light of the LSA's practice to redact personal or identifying information of third-parties prior to providing public

access to any hearing materials or this Report, and the absence of any member of the public at the oral hearing, the Committee determined that a private hearing was not necessary. Accordingly, the hearing was held in public.

11. Mr. Carlson was one hour late for the commencement of the hearing but his assistant sent a message to LSA advising he would be late, which email was entered as Exhibit 1 in the proceedings. Mr. Carlson's apology for being late was accepted by the Committee. The Hearing Exhibit Binder was entered as Exhibit 2 in the hearing and added to it as Tab 5(a) was the LSA letter of July 21, 2016 to Mr. Carlson regarding Practice Assessment. The Estimated Statement of Costs in the amount of $8,806.88 was also added to Exhibit 2 as Tab 7.

Statement of Admitted Facts and Sanction

12. The Statement contains details of the conduct subject to sanction and admissions of guilt on all five citations. As noted above, the Committee found that the Statement was in an acceptable form. As the Committee accepted the Statement, each admission of guilt is deemed to be a finding of the Committee that Mr. Carlson's conduct is deserving of sanction. Accordingly, the focus of much of the hearing was on the appropriate sanction.

13. The parties provided the Committee with a joint submission on sanction, seeking a one-month suspension, commencing July 1, 2019. The month of July was suggested as it would minimize impacts on clients and scheduling issues.

14. They also requested an order for the payment of hearing costs. An Estimated Statement of Costs was provided to the Committee for its consideration.

15. As noted by LSA counsel, the Committee is not bound by a joint submission on sanction. However, a Committee is required to give serious consideration to a joint submission, should not lightly disregard it and should accept it unless it is unfit or unreasonable, contrary to the public interest, or there are good and cogent reasons for rejecting it.

16. LSA counsel cited the Supreme Court of Canada's decision in *R. v. Anthony-Cook*, [2016] 2 SCR 204, in relation to the deference owed to joint submissions on sanction.

17. LSA counsel submitted that the five citations involve either a failure to serve clients or a failure to communicate. LSA counsel provided the Committee with three cases for its consideration, all of which involved situations of a failure to serve clients combined with a prior disciplinary record: *LSA v. Elgert*, 2012 ABLS 9 (CanLII), *LSA v. Elgert*, 2014 ABLS 2 (CanLII) and *LSA v. Fair*, 2012 ABLS 1 (CanLII).

18. In LSA counsel's view, the 2012 *Elgert* case was the most relevant to the current case. In that case, as in this one, there was a prior disciplinary record, a failure to serve, an admission as to facts and guilt, and a long period of practice prior to the first disciplinary

hearing. The Hearing Committee in that case determined that the appropriate sanction was a 15-day suspension, and ordered hearing costs to be paid.

19. Counsel also submitted that the other two cases provide the Committee with an idea of the range of sanctions in similar cases. In the *Fair* decision, the lawyer was sanctioned with a $2000.00 fine, whereas in the 2014 *Elgert* decision, the lawyer was suspended for 18 months, and directed to Practice Review.

20. LSA counsel noted the following aggravating and mitigating factors:
    1) Mr. Carlson has a prior disciplinary record;
    2) Mr. Carlson had undergone a practice assessment in July 2016, just prior to when these matters arose, and should therefore have been more aware of potential issues in communicating with clients and managing receivables;
    3) Mr. Carlson had a long period of practice, 17 years, prior to the first disciplinary hearing arising;
    4) The current citations do not involve issues of governability or integrity, and had there not been a prior disciplinary record, would likely have attracted a sanction of a reprimand rather than a suspension;
    5) Mr. Carlson has accepted responsibility, and admitted guilt to the citations;
    6) The admissions of guilt obviated the need to call witnesses and saved process time and costs;
    7) Mr. Carlson has attempted to effect restitution with his clients through fee reductions and other attempts to minimize the impacts to his clients;
    8) The failures to finalize court orders did not leave the impacted parties with no remedy – the orders could be finalized through an application to Court;
    9) There are explanations available for some of the instances related to the failures to communicate, including uncertainty about the receipt of certain emails (Citation #5), and disputes about fees with clients, which impacted the willingness to respond to clients. While these do not absolve Mr. Carlson from responsibility, the explanations provide some additional context to the conduct; and
    10) Mr. Carlson acknowledged his responsibility for practice management issues and has taken steps to implement new systems to prevent similar issues from arising in the future.

21. Mr. Carlson agreed with the submissions of LSA counsel. In response to questioning by the Committee, he also stated that he accepts full responsibility for the conduct. He has taken steps to address the issues, including ensuring that no emails are erased, his assistant flags any emails for his review, and that he reviews everything personally so that he is aware of everything that is happening on a file. He also noted that, rather than paying less attention to the file or not communicating with a client who is not paying his fees, he would instead take steps to remove himself from a file if there were to be an issue with accounts receivable.

22. As evident through its questions, the Committee had some concerns about Mr. Carlson's appreciation of his responsibility to directly oversee and properly manage his files, attend to issues that arise, and be proactive in his practice, rather than delegating to his assistant and relying on others to bring matters to his attention. The Committee was also concerned with the manner in which Mr. Carlson discharged his responsibility to implement the recommendations arising from the 2016 Practice Assessment, particularly regarding the need for timely updates and communication with clients and to address poor client relationships in a professional manner that does not prejudice the interests of his client.

23. Notwithstanding the above concerns, the Committee determined that the joint submission should be accepted. The proposed sanction falls within the range of sanctions set out in the three cases that were submitted to it. The Committee also accepts that a high level of deference is to be afforded joint submissions.

24. While Mr. Carlson's past disciplinary record would suggest a need for additional specific deterrence (in accordance with the step-up principle), the Committee agrees with the parties that the proposed sanction falls with the range of sanctions, even in light of the past disciplinary record. The prior citations related to more serious conduct and were significantly different than what is currently before this Committee.

25. In coming to its conclusion that the proposed sanction was appropriate, the Committee also gave particular weight to the following:

    1) The joint recommendation of LSA Counsel and Mr. Carlson regarding sanctions and there being no circumstances that would justify the Committee not accepting such recommendation after careful consideration of the principles described in *R. v. Anthony-Cook* cited above.

    2) The joint recommendation is in conformity with the sanctions imposed previously in the *LSA v. Elgert* and *LSA v. Fair* cases cited above.

26. The approach taken by Mr. Carlson and the LSA in dealing with this matter through an agreed statement and admission of guilt also avoided an unnecessary contested hearing, witness inconvenience, and process costs.

Costs

27. LSA counsel submitted an Estimated Statement of Costs. The costs in the Estimate are $8,806.88, however, LSA counsel submitted that these were the estimated costs and she would like the Committee to order actual costs, although actual costs were not yet known. When further questioned by the Committee on the anticipated amount of the actual costs, LSA counsel indicated that the actual cost should be very close to the Estimate. She agreed that a global amount of $8,800.00 would be satisfactory.

28. Mr. Carlson did not object to the amount being sought, but did request time to pay those costs, given that he is still dealing with some accounts receivable issues and that he will be suspended for a month.

29. After some discussion about timing and amounts to be paid, the parties agreed that a periodic payment plan of $1000.00 per month, commencing September 15, 2019 until the costs were fully paid, would be satisfactory. Accordingly, the Committee issued that order.

Concluding Matters

30. The Hearing Committee ordered that Mr. Carlson be suspended for one month, from July 1 to July 31, 2019, inclusive.

31. The Committee further ordered Mr. Carlson to pay hearing costs in the amount of $8,800.00, in payments of $1000.00 per month beginning September 15, 2019, and continuing until the costs are fully paid.

32. The LSA was directed to issue a Notice to the Profession regarding the suspension.

33. No notice to the Attorney General is required.

34. The exhibits and other hearing materials, transcripts, 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, May 27, 2019.

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Schuyler Wensel, QC

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Louise Wasylenko

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Lori Plater

Appendix A

IN THE MATTER OF THE *LEGAL PROFESSION ACT*
AND
IN THE MATTER OF A HEARING INTO THE CONDUCT
OF DANA I. CARLSON,
A MEMBER OF THE LAW SOCIETY OF ALBERTA

STATEMENT OF ADMITTED FACTS

INTRODUCTION

1. I have been a member of the Law Society of Alberta (the "LSA") since August 1995.

2. There are 5 citations directed to a hearing by a Conduct Committee Panel as follows:

Citation 1: It is alleged that Dana I. Carlson failed to sign a Court Order and a Consent Judgment granted in the Court of Queen's Bench and that such conduct is deserving of sanction;

Citation 2: It is alleged that Dana I. Carlson failed to respond to communications from opposing counsel and that such conduct is deserving of sanction; and

Citation 3: It is alleged that Dana I. Carlson failed to finalize and file an Order on behalf of his client, K.M., and that such conduct is deserving of sanction.

Citation 4: It is alleged that Dana I. Carlson failed to respond to communications from his client, K.M., in a timely manner and that such conduct is deserving of sanction.

Citation 5: It is alleged that Dana I. Carlson failed to respond to requests from the Law Society to provide his client file in a timely manner and that such conduct is deserving of sanction.

C020170711

The following is a summary of the conduct:

3. In 2016, I represented Ms. [T]'s husband in divorce proceedings. Ms. [T] was represented by Ms. [D]. On December […], 2016, Justice [SN] granted an Interim Consent Variation Order and a Final Matrimonial Property Consent Judgment, based on an agreement between the parties and the verbal submissions of myself and Ms. [D]. Opposing counsel and I were in the process of finalizing the Order and Judgment when I was advised by Mr. [T] that he no longer agreed to the terms of the Order and Judgment, I advised Ms. [D] of the situation and it was her position that the terms had been agreed to in Court and on the record and her client would not consent to any amendments. Ms. [D] requested that I sign and file the documents, but I did not do so, nor did I respond to her communications to resolve the issue.

4. Subsequently in May, 2017, Ms. [D] brought the matter back to Court to have the Order and Judgment signed on an ex-parte basis and Ms. [T] was granted $500.00 in costs for the application. I did not attend that application and the Order and Judgment were signed solely by Justice [SY] on behalf of Justice [SN] before being filed by opposing counsel.

Regarding Citations 1 & 2: failed to sign a Court Order and a Consent Judgment and failed to respond to communications from opposing counsel

5. On December […], 2016, based on submissions from myself and Ms. [D], and by agreement of the parties, Justice [SN] granted an Interim Consent Variation Order and a Final Matrimonial Property Consent Judgment. The Variation Order directed Mr. [T] to pay Ms. [T] monthly child support and reimburse her 89% of section 7 expenses, including child care expenses incurred as a result of Ms. [T]'s employment. The Consent Judgment directed Mr. [T] to pay Ms. [T] the entire amount of his locked in retirement account and in exchange, Ms. [T] would provide a registerable Release of Dower allowing Mr. [T] exclusive ownership of the matrimonial home.

6. I drafted the "DRAFT" Order and Judgment and provided them to Ms. [D] for review and amendment on December 18, 2016. By January 16, 2017 she had returned them to me with minor amendments for finalization and filing. On January 7 and 17, 2017, Mr. [T] informed me that he no longer agreed with the Variation Order as he did not want to pay his wife for child care expenses while she was working (at that time there was no evidence that Ms. [T] was in fact working). On February 2, 2017, I discussed the matter with Mr. [T]. In addition to the child care expenses, he also no longer wished to give Ms. [T] the locked in retirement account, stating it was the only matrimonial asset due to the home being in a negative equity position. That same day, I advised Ms. [D] of my client's change of position via e-mail.

7. Ms. [D] responded to me on February 7, 2017, stating the terms agreed to had been read into the court record and therefore could not be changed without a further appearance in

court. She indicated she would not consent to any amendments and suggested proceeding with signing and filing of the documents. I did not respond to her communication as I felt I was in a conflict position and remained hopeful that Mr. [T] would hire new counsel.

8. On February 17, 2017, Mr. [T] advised me that he did not want me to sign or file either the Variation Order or the Consent Judgment. I advised him it was likely impossible to make amendments or back out of the agreed terms and he would have to retain new counsel if he chose to maintain his opposition in relation to me signing the same. I also advised Mr. [T] that costs would likely be awarded against him if I did not endorse and file the Order and Judgment.

9. On February 22, 2017, Ms. [D] sent me a follow up letter requesting my response and indicating if no response was received from me by February 27, 2017 she would bring the matter back before the Court and would seek costs. I did not respond to this communication as I felt I was in a conflict position. Ms. [D] sent a further letter on February 27, 2017, along with leaving a voice mail message, indicating that since I had not responded, she would proceed with the matter.

10. Ms. [D] scheduled the matter to be heard on May […], 2017. On May […], 2017, after being advised of the re-scheduled court date, my assistant informed Ms. [D] that I had suffered a concussion at the beginning of April 2017 and was away from the office due to ongoing side effects.

11. The Variation Order and Consent Judgment were signed by Justice [SY] on behalf of Justice [SN] on May […], 2017 and then filed by Ms. [D] on June 15, 2017. The Court granted Ms. [T] $500.00 costs to be paid by Mr. [T].

12. In response to this complaint, I stated I was aware of my obligation to sign the Order and Judgment once I had agreed to their terms on the Court record on December 16, 2016. I explained that I found myself in a conflict due to my client's change of position. I remained hopeful that my client would either change his mind or retain new counsel but he did neither. I conveyed to Ms. [D] the position in which I had been placed and appreciated that the situation was frustrating to both her and Ms. [T]. I believed it was better for Ms. [D] to proceed with filing the Order and Judgment without my formal consent than potentially invite a complaint by my client for approving them against his objection. I felt it more professional to remain on the record to accept service of Ms. [D]' application.

13. I stated that I had sustained a concussion at the beginning of April 2017 and continued to suffer symptoms from that injury, which prevented me from working full-time in May and

June, 2017. As a result, I was unable to attend the application brought forward by Ms. [D]. I agreed to personally pay the $500.00 costs awarded against my client.

14. The Order and Judgment verbally granted by Justice [SN] became effective once read out in Court on December […], 2016. It was my duty to either endorse the Order and Judgment in a timely manner or withdraw as the lawyer of record. My basis for not signing the documents, for fear Mr. [T] would submit a complaint against me, was not a reasonable or sufficient basis for my refusal to take decisive action. I could, as I did, have advised my client that I was obligated to endorse the Order and Judgment with an option to apply for a variation.

15. I failed to respond to opposing counsel's written and telephone communications on February 7, 22, and 27, 2017 regarding requests to finalize and file the Order and Judgment. This lack of action and response led to opposing counsel having to bring the matter forward to have the Court sign the Order and Judgment directly.

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The following is a summary of the conduct:

16. I represented Mr. [M] on various family law matters between 2015 and 2017. A Special Chambers Hearing was held on December […], 2016 which addressed child support and reduced Mr. [M]'s payments of spousal support. I drafted the Order and provided it to opposing counsel, Mr. [H], for review. Mr. [M] tried several times to contact me for a status update but he alleges that his enquiries were ignored, and the Order was not finalized and filed until September 20, 2018. This prevented Mr. [M] from providing the Order to the Maintenance Enforcement Program ("MEP") and allegedly resulted in serious professional and financial consequences for him.

17. I also failed to respond to the Law Society's requests that I provide my file for review, until an Investigator was sent to retrieve the file from me.

Regarding Citation 3: failure to finalize and file an Order on behalf of his client

18. On December […], 2016, Madam Justice [B] granted a Variation Order regarding child support and a reduction of spousal support to be paid by Mr. [M].

19. On February 7, 2017, I emailed opposing counsel a draft form of Order and the clerk's notes. I indicated that transcripts had not been ordered due to Mr. [M]'s lack of finances. Mr. [H] responded the next day indicating he would get back to me once he had reviewed the draft Order and had consulted with his client.

20. Mr. [M] stated I had told him that the draft Order was with opposing counsel, who had 90 days to amend the Order. Mr. [M] stated he contacted me following the 90 day period and was told the Order would be filed the following day. Despite requests, he was unable to obtain a copy of the filed Order. When Mr. [M]'s wife contacted the Courthouse to obtain a copy of the Order, she was informed that no Order had been filed by myself or opposing counsel.

21. I was aware that Mr. [M] needed a copy of the filed Order to provide to MEP so his support payments could be properly processed. On January 17, 2017 Mr. [M] sent me a copy of correspondence from MEP outlining the situation.

22. Mr. [M] e-mailed me on March 7 and 13, 2017, requesting a status update and enquiring why it was taking so long to prepare the Order. I was again reminded that MEP was harassing Mr. [M]'s employer and had on occasion frozen Mr. [M]'s bank account. No response was received from myself and the only response from my assistant was to request payment from Mr. [M] on his outstanding account.

23. At the time that Mr. [M] submitted this complaint in October, 2017, the Order was still not finalized or filed. On November 29, 2017, Mr. [M] informed the Law Society that MEP had taken action to suspend his driver's license and as a result, he had lost his job and his vehicle.

24. In my response to this complaint, I stated I had no valid excuse for failing to finalize the terms of the Order. I had not heard back from opposing counsel subsequent to their email communication in February, 2017. However, there were steps I could have taken pursuant to the *Rules of Court* that would have allowed me to finalize and file the Order without opposing counsel's consent. I explained that at the time, my office was transitioning to a different diarization system and finalizing of the Order was not recorded and did not come to my attention until I was contacted by the Law Society. I believed I had completed all the necessary work and simply did not appreciate that the Order had not been finalized.

25. I did not give Mr. [M] much attention after the granting of the said December […], 2016 Variation Order as Mr. [M] was never once, throughout my dealings with him, in compliance with the retainer agreement he signed with my office; Mr. [M] owed my office $5,880.17 (without interest).

26. Throughout I was reminded of the contents of the Practice Assessment's July 21, 2016 letter addressed to me, wherein, heading 5 of that letter titled "Reduce and Manage Your Receivables" states that "...stop working on any file where there outstanding receivables until the account is paid and the retainer is refreshed."

27. I have apologized to Mr. [M] and to the Law Society for the frustration and waste of time caused by my oversight. I advised that I am prepared to write off Mr. [M]'s outstanding account as a partial reflection of my apology and acknowledgement of failing to finalize and file the Order.

28. I explained that when my assistant received Mr. [M]'s requests for a status update, she was not aware that the Order had not been filed and was not aware that the paperwork referred to by Mr. [M] was in fact the December […], 2016 Order. As such, she responded to Mr. [M] regarding his outstanding account and not the Order. I was aware of at least one other occasion where I failed to respond to Mr. [M]'s telephone message in the mistaken belief that the Order had been completed.

29. Upon receipt of this complaint, I contacted opposing counsel and advised him of Mr. [M]'s complaint and we have both taken steps to move towards finalizing and filing the Order. The subject Order was ultimately filed September 20, 2018.

Regarding Citation 4: failure to respond to communications from his client

30. On January 17, 2017, Mr. [M] sent my office an e-mail, including the letter from MEP threatening the revocation of his driver's license.

31. On March 7 and 13, 2017, he emailed me again requesting a status update and enquiring why it was taking so long to prepare the Order. I was again reminded that MEP was harassing Mr. [M]'s employer and had on occasion frozen Mr. [M]'s bank account.

32. No response was received from me and the only response from my assistant was to request payment from Mr. [M] on his outstanding account.

33. If I had taken the time to respond to Mr. [M], I would have been aware that the Order had not been finalized or filed. My failure in not finalizing and filing the Order allegedly contributed to MEP taking action to suspend Mr. [M]'s driver's license and allegedly resulted in his job loss.

Regarding Citation 5: failed to respond to requests from the Law Society to provide his client file

34. A section 53 demand letter was emailed to me on November 15, 2017, requesting my response to the complaint and a complete copy of my file for review. I responded to the complaint by letter of November 30, 2017 but I failed to notice the part of the letter requesting a copy of my file.

35. A follow up e-mail was sent to me on December 7, 2017, requesting that I provide my file by December 15, 2017. I failed to do so and a further e-mail was sent on December 19, 2017, reminding me of my duty to respond to the Law Society. I did not receive either of these e-mails.

36. A Law Society Investigator then contacted me to retrieve my client file. I complied with the Investigator's request immediately and provided a copy of my file on January 8, 2018.

ADMISSIONS

37. I admit guilt to citations 1-5 and admit that such conduct is conduct deserving of sanction.

CONCLUSION

38. I admit as fact the statements contained within this Statement of Admitted Facts for the purposes of these proceedings.

39. I acknowledge that all parties retain the right to adduce additional evidence and to make submissions on the effect of and weight to be given to these agreed facts.

ALL OF THESE FACTS ARE ADMITTED THIS 4th DAY OF APRIL, 2019.

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DANA I. CARLSON