

**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 BROOK MISHNA**

A MEMBER OF THE LAW SOCIETY OF ALBERTA

Single Bencher Hearing Committee

Robert Philp, QC – Chair

Appearances

Christine Blair – Counsel for the Law Society of Alberta (LSA)
Brook Mishna – Self-Represented

Hearing Date

November 1, 2018

Hearing Location

LSA office, at 800,10104 - 103 Avenue, Edmonton, Alberta

HEARING COMMITTEE REPORT

Overview

1. Mr. Mishna has been a member of the Law Society of Alberta since 2004. The conduct in question arose in connection with Mr. Mishna's representation of his client, R.A., in a family law matter.
2. On September 18, 2018, the LSA and Mr. Mishna entered into an Agreed Statement of Facts and Admission of Guilt (the Agreed Statement) in relation to Mr. Mishna's conduct. In the Agreed Statement, Mr. Mishna admitted that he failed to serve his client, R.A., and that such conduct is deserving of sanction. The Agreed Statement, appended to this Report, sets out the relevant facts related to this matter.
3. The Conduct Committee found the Agreed Statement acceptable, pursuant to subsection 60(2) of the *Legal Profession Act* (the *Act*).
4. Pursuant to subsection 60(4) of the *Act*, it is deemed to be a finding of this single Bencher Hearing Committee (Committee) that Mr. Mishna's conduct is deserving of sanction. Accordingly, on November 1, 2018, the Committee convened a hearing into

the appropriate sanction related to the conduct of Mr. Mishna.

5. After reviewing all of the evidence and exhibits, hearing the arguments of the LSA and Mr. Mishna, and considering the appropriateness of the parties' joint submission on sanction, for the reasons set out below, the Committee has determined that a reprimand is the appropriate sanction. The reprimand was delivered orally at the hearing. Mr. Mishna must also pay \$446.25 in hearing costs by November 1, 2019.

Preliminary Matters

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 the appropriate sanction proceeded.
7. As provided by subsection 60(3) of the *Act*, once the Agreed Statement was accepted by the Conduct Committee, the hearing into the appropriate sanction could be conducted by a single Bencher. As a result, I was appointed to conduct the sanction hearing.

Submissions on Sanction

8. Counsel for the LSA indicated that the parties had agreed on making a joint submission on sanction of a reprimand and the payment of \$446.25 in hearing costs. Counsel noted that Mr. Mishna had cooperated with the LSA, admitted his mistakes, and had no prior disciplinary record.
9. Mr. Mishna agreed with LSA Counsel's submissions, and further expressed his contriteness to the Committee at the hearing.

Decision on Sanction

10. A Hearing 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.
11. As noted, Mr. Mishna had no prior disciplinary record. Further, he cooperated with the LSA and readily admitted his wrongdoing, which avoided the need for a prolonged investigation and a contested hearing.
12. The approach taken by both Mr. Mishna and the LSA in dealing with this matter through a single Bencher hearing also avoided an unnecessary contested hearing, witness inconvenience, and process costs.

13. After considering the purpose of sanctions, the factors relevant to sanctioning, the facts of this case and the joint submission, the Committee was satisfied that the proposed sanction was appropriate. The Committee accepted the joint submission on sanction.
14. The following reprimand was delivered orally at the hearing:

Mr. Mishna, you admitted to a single citation. You failed to represent your client in a serious family matter. Your conduct had repercussions for your client. Serious repercussions, I might add. This failure is serious, and for these failures, you are here today as I deliver this reprimand.

In making these comments and delivering this reprimand, I urge you to constantly remember what is required of you as your clients place faith in you to represent them competently and efficiently, and the seriousness of any breach of this faith is a matter that you must take responsibility for. You must understand that this conduct should not be repeated.

Mr. Mishna, I wish you well as you move forward from this difficulty, and as I mentioned before the adjournment, I applaud you taking responsibility for this matter and your complete cooperation.

Concluding Matters

15. As agreed between the parties, Mr. Mishna is directed to pay hearing costs in the amount of \$446.25, by November 1, 2019.
16. No Notice to the Profession or the Attorney General is required.
17. 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 Edmonton, Alberta, November 9, 2018.

Robert Philip, QC

Appendix A

IN THE MATTER OF THE *LEGAL PROFESSION ACT*

AND

IN THE MATTER OF A HEARING INTO THE CONDUCT
OF BROOK S. MISHNA

A MEMBER OF THE LAW SOCIETY OF ALBERTA

STATEMENT OF ADMITTED FACTS AND ADMISSION OF GUILT

INTRODUCTION

1. I was admitted to the Law Society of Alberta (“LSA”) on October 1, 2004.
2. I am currently an Active member of the Law Society of Alberta.
3. The following conduct is being referred to a Hearing:

It is alleged that Brook S. Mishna, failed to serve his client, R.A., and that such conduct is deserving of sanction.

FAILURE TO SERVE HIS CLIENT

4. I was retained by R.A. in May 2016 to represent her in a family law matter. A four-way meeting between counsel and the parties was scheduled for August 16, 2016. On August 15, 2016 I cancelled this meeting for legitimate reasons with my client’s agreement.
5. I did not attend for a Court Hearing scheduled for the morning of December [...], 2016. I advised R.A. on the morning of December 5, 2016 that I would be unable to attend Court.
6. I was scheduled to question the opposing party on December 13, 2016. On December 12, 2016 I cancelled that questioning for legitimate reasons.
7. I did not attend for a Court Hearing scheduled for February [...], 2017.
8. I was scheduled to attend the office of opposing counsel on February 17, 2017 to review financial documents. I did not attend for this appointment.
9. On February 22, 2017 I filed a Notice of Withdrawal of Lawyer of Record. Thereafter I continued to work on the file to assist R.A. however I realized at the end of May 2017 that it was in my client’s best interests that I cease acting for her and on May 26, 2017 I verbally

advised the client that I had to remove myself from representation. On June 2, 2017 I provided her a copy of the Notice of Withdrawal.

CONCLUSION

10. For the purposes of section 60 of the *Legal Profession Act*, I admit my guilt to the above conduct.
11. 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.
12. I admit that my conduct set out herein was conduct deserving of sanction. I further admit guilt to the following citation:

It is alleged that Brook S. Mishna failed to serve his client, R.A., and that such conduct is deserving of sanction.

ALL OF THESE FACTS ARE ADMITTED THIS 18th DAY OF September, 2018.

“Brook S. Mishna”
BROOK S. MISHNA