



THE LAW SOCIETY OF ALBERTA
HEARING COMMITTEE REPORT

IN THE MATTER OF THE *Legal Profession Act*, and
in the matter of a Hearing regarding
the conduct of FRANCOISE HELENE BELZIL
a Member of The Law Society of Alberta

INTRODUCTION

1. A Hearing Committee of the Law Society of Alberta (“LSA”) comprised of Carsten Jensen, Q.C., Chair, Shirish Chotalia, Q.C. and Wayne Jacques convened on May 4, 2009 to consider the matter of sanction with respect to the conduct of the Member. The LSA was represented by Janet Dixon, Q.C. The Member was present, and was represented by her counsel, Donald Cranston, Q.C.
2. The Hearing Committee Report with respect to the citations against the Member was issued on February 24, 2009 (The “Report on the Merits”). The Member had faced two citations, as follows:

CITATION 1- IT IS ALLEGED that having previously acted for Company A, you engaged in conduct which was a conflict of interest, and that such conduct is conduct deserving of sanction.

CITATION 2- IT IS ALLEGED that you disclosed confidential Company A information to B, C, D and E, and that such conduct is conduct deserving of sanction.
3. The LSA provided particulars of those two citations, and those particulars are reproduced in full in the Report on the Merits.
4. The Member was found guilty on both citations.
5. With respect to Citation 1, the Hearing Committee found that the Member was in a conflict of interest when she provided her D... statement of account to Mr. Bieganek, when she prepared documents at TP’s request at her home on April 21, 2002, and when she represented TP and others in the L... action, all as outlined in detail in the Report on the Merits.
6. With respect to Citation 2, the Hearing Committee found that the Member disclosed her unpaid D... statement of account notwithstanding the confidential nature of that

document, and that the documents prepared at her home on April 21, 2002 disclosed confidential information of D..., including the identity of a guarantor, and employed a strategy similar to D...'s for acquiring title to V... assets, all as outlined in detail in the Report on the Merits.

EVIDENCE

7. The following exhibits were entered by consent during the sanction phase of the hearing:
 - Exhibit 55- Law Society written submissions on sanction.
 - Exhibit 56- Belzil written submissions on sanction (including letters of reference and good character, attached).
 - Exhibit 57- LSA Pre-hearing Guideline.
 - Exhibit 58- Chronology of events prepared by LSA.
 - Exhibit 59- Letter of No record.
 - Exhibit 60- Estimated Statement of Costs.
8. The Member testified during the sanction phase of the hearing. In her evidence, the Member emphasized that she did not, at the time, consider the D... account to be confidential. Her evidence is that she does now recognize the confidential nature of a solicitor and client account.
9. The Member testified that she completely accepts the findings of the Hearing Committee as outlined in the report on the merits. She feels embarrassed by the events giving rise to the citations in this matter. She acknowledges that she breached solicitor and client privilege, and her only explanation is that, at the time, she did not consider it to be a breach because the parties receiving the privileged information would already have been aware of it.
10. With respect to the listings conflict, she did address her mind to this problem at the time. She did not intend to harm D... by acting in the L... matter.
11. The Member specifically addressed the question of her state of mind at the time of the events in question. Her practice was extremely busy, and stressful, and she did not have much support. The Member testified that she acted completely without malice, and with no intent to harm D....
12. In addition, the Member testified with respect to numerous difficult circumstances in her life at the time in question.
13. The Member testified that TP was a good friend to her during a difficult time. He helped her. The Member now recognizes that she lost her objectivity, did not stand up to TP, and therefore her judgment was impaired.

14. The Member has changed her practice circumstances, she has obtained some personal professional help in dealing with the stresses in her life, and she has resigned her position teaching at the law school. In addition, the Member testified that she has told all of her current clients about the decision in the Report on the Merits. Her evidence is that she has not tried to minimize or debate the findings made by the Hearing Committee in any way.
15. In addition, the Hearing Committee heard evidence from Mr. T.G. Cooke, Q.C., and Mr. P. Lister, Q.C., both of whom testified as colleagues of the Member as to her general good character and high standards of practice.

SUBMISSIONS OF COUNSEL

16. The Hearing Committee received and considered written submissions from counsel for the LSA, and counsel for the Member, on the question of the appropriate sanction in this case. In addition, the Hearing Committee heard oral argument from both counsel.
17. Counsel for the LSA noted that this is a case involving a conflict of interest, and a related disclosure of solicitor and client information. While there are numerous comparable cases dealing with conflicts alone, the related disclosure of solicitor and client information makes the present case exceptional, and warrants consideration of a lengthy suspension or disbarment.
18. Counsel for the LSA noted that the Hearing Committee has specifically found that the Member acted to the disadvantage of a former client, being D.... Further, this activity by the Member went beyond a passive role, and involved the disclosure of information to D...’s detriment, and in facilitating a bankruptcy petition against it. Counsel for the LSA also noted the finding of the Hearing Committee that the Member had sought to shift responsibility to D..., in a pleading prepared by her in the L... matter, when she was acting in a conflict of interest, all of which was again to D...’s detriment. It was also pointed out that the Member’s actions involved multiple acts by her over a long period of time.
19. Counsel for the LSA asked the Hearing Committee to find that the Member’s actions were motivated by malice against D... and its principal, BB. In support of this, the Hearing Committee was referred to the fact that the Member’s firm compromised her account one day, and the Member provided a case in support of the bankruptcy petition against D... on the very next day. In addition, we were referred to a disrespectful e-mail dated April 4, 2002 from the Member to TP, referring to BB.
20. In the submissions of counsel for the LSA, the Hearing Committee was asked to take a purposeful approach to sanctioning, and it was argued that this would lead to the conclusion that the appropriate sanction in this case would be disbarment or a lengthy suspension. It was noted that the Member’s misconduct was a violation of the fundamental relationship between a lawyer and her client, and undermined the reputation of the legal professional and the administration of justice. The Hearing Committee was asked to ensure that the sanction is directed at maintaining a high degree of confidence in

the legal profession, and to make a clear statement that misconduct of this kind is not tolerated by the LSA.

21. The Hearing Committee was referred to a number of cases on the importance of maintaining the reputation of the legal profession, and the fundamental nature of the solicitor and client relationship, and solicitor and client privilege.
22. Counsel for the Member asked the Hearing Committee to note that the disclosure of confidential information, at least with respect to the Member's account, was very limited, and that the actual harm caused to the former client, D..., was minimal. Counsel for the Member submitted that the Member did not ever intend to hurt anyone.
23. With respect to the preparation of documents at her home, at TP's request, counsel for the Member noted that she conveyed or used information that TP already had by virtue of his position with D.... The Member now recognises that this was an error. The Hearing Committee was asked to note that all of this arises from one retainer, which of course ended very badly. The Member recognises her error, and her difficult personal circumstances at the time in question were compelling.
24. Counsel for the Member urged us to note that the Member accepts the findings of the Hearing Committee in the report on the merits, that she has left her teaching position, and disclosed these issues to her clients. We were asked to note that this was an isolated event in an otherwise unblemished career, and the Member has provided full cooperation to the investigation and hearing process throughout.
25. In conclusion, counsel for the Member asked the Hearing Committee to find that there is no need for specific deterrence in this case. General deterrence does not require the Member's career to be ruined, which would be the result of a long suspension or disbarment, and the Hearing Committee was asked to conclude that a reprimand plus costs would be sufficient in all of the circumstances of this case.

DECISION AS TO SANCTION

26. The Hearing Guide outlines the primary purpose of disciplinary proceedings, as found in ss. 49 of the *Legal Profession Act*, being the protection of the best interests of the public, and protecting the standing of the legal profession generally. In determining an appropriate sanction, we are guided by the need to protect the public and to maintain a high degree of confidence in the legal profession, and we are not seeking to punish the Member or to exact retribution.
27. In this case the Hearing Committee is fundamentally concerned with the conflicts of interest and the breaches of solicitor and client privilege described in the Report on the Merits, which happened over a long period of time, and which were actions taken by the Member to the detriment of a former client. This is conduct which cannot be permitted by the LSA, and which harms the public (in this case D... and BB), and which undermines the confidence that the public is entitled to have in members of the legal profession.

28. The Hearing Committee considered the mitigating factors outlined in the evidence, including the Member's lack of a disciplinary record, her remorse, the personal and family difficulties she was suffering at the time, and the fact that she relied on TP as a friend, and this created confusion for her as to where her client loyalties should be. We are satisfied that the Member is at very low risk of reoffending.
29. The Hearing Committee was asked by counsel for the LSA to find that the Member's conduct was motivated by malice toward BB and her former client D.... A finding of this nature would be a serious aggravating factor. We find that the Member was not motivated by malice. We find that the Member's conduct was motivated by a misguided reliance on TP, during a difficult period in her life, and this led her to do things that she would not normally have done. We conclude that the Member failed to step back to consider where her loyalties should be. We find that this was a grave error on her part, but it was not motivated by malice.
30. The Hearing Committee did not have the benefit of many prior sanction decisions. As noted above, there are many prior cases involving conflicts of interest, but this case is quite unusual in that it also involves actual breaches of solicitor and client privilege to the detriment of a former client.
31. In the Report on the Merits, the Hearing Committee relied heavily upon the Supreme Court of Canada decisions in *MacDonald Estate v. Martin*, [1990] 3 S.C.R. 1235, and *R. v. Neil*, [2002] S.C.J. No. 72, in outlining the duties of lawyers to avoid conflicts of interest. The Hearing Committee also relied heavily on the clear statements in the LSA's *Code of Professional Conduct* regarding the need to protect confidential and privileged information. A very high burden is rightly placed on lawyers in these areas, and maintaining this high standard is necessary to protect the public and to protect the standing of the legal profession. These principles were considered by the Hearing Committee in determining an appropriate sanction.
32. The Hearing Committee determined that the purposeful approach to sanctioning could properly be met in this case with the imposition of a large fine and a stern reprimand. The Hearing Committee had no hesitation in saying that conflicts of interest and a breach of solicitor and client privilege that was not an error would almost certainly lead to a suspension, and a breach of solicitor and client privilege driven by malice would likely lead to a long suspension or more probably disbarment.
33. In this case, however, and after considering the general factors in the Hearing Guide, the fact that there is no need for specific deterrence in this case, the fact that the Member did not act with malice and that her conduct arose from misplaced loyalty that was essentially an error, the Hearing Committee concluded that suspension or disbarment were not warranted.
34. In the end result, the Hearing Committee directs the following sanctions:
 - (a) With respect to Citation 1, a reprimand; and
 - (b) With respect to Citation 2, a \$10,000.00 fine and a reprimand

35. In addition, the Member is directed to pay the full actual costs of the hearing.
36. After hearing submissions from counsel with respect to time to pay, the Member is directed to pay the fine and the actual costs of the hearing within 2 weeks of being notified of the actual costs of the hearing through her counsel.
37. The Chair issued the reprimand to the Member. The reprimand included the following:

Ms. Belzil, avoiding conflicts is key to the work we do as lawyers. Solicitor and client privilege is fundamental to the work that we do and to maintaining public confidence in our work as lawyers. Your conduct has brought you into disgrace. You have harmed the profession; you have harmed yourself. We admonish you to do better. We are heartened by the steps you have taken as described to us in your evidence and through your counsel. You obviously have much to give to your clients and to your students, and we urge you to do better.

CONCLUDING MATTERS

38. The Member was issued a reprimand on each of Citations 1 and 2, and a fine of \$10,000 on Citation 2. The Member was directed to pay the actual costs of the hearing. There will be no notice issued to the Attorney General, or to the profession.
39. The exhibits in this matter will be available to the public, subject to redaction to protect solicitor and client privilege.

Dated this 31st day of July, 2009

Carsten Jensen, Q.C., Bencher
Chair

Shirish Chotalia, Q.C., Bencher

Wayne Jacques, Bencher