

**IN THE MATTER OF THE LEGAL PROFESSION ACT**

**AND IN THE MATTER OF A HEARING REGARDING THE  
CONDUCT OF ROBERT P. LEE, A MEMBER OF THE LAW  
SOCIETY OF ALBERTA**

**REPORT OF THE HEARING COMMITTEE CONCERNING SANCTION**

On Monday, August 31<sup>st</sup>, 2009 a Hearing Committee composed of Bradley G. Nemetz, Q.C. (Chair), Neena Ahluwalia, Q.C., and Larry McConnell, Q.C. convened at the Law Society offices in Edmonton to continue with its inquiry into the conduct of Robert Peter Lee with respect to sanctions. The member appeared for himself and Mr. Lindsay MacDonald, Q.C. appeared for the Law Society.

**INTRODUCTION**

1. On May 1, 2009 we issued its decision on the first phase of this hearing and found Mr. Lee guilty of conduct deserving of sanction on three of the seven citations.
  
2. The three citations for which Mr. Lee was found guilty involved making inappropriate comments to a witness during discovery, shouting at opposing counsel and that counsel's client during a meeting, and making unfair, inaccurate and discourteous written comments about another lawyer. This hearing, including the day devoted to submissions concerning the sanction, took all or part of twelve days. The proceedings produced an estimate of recoverable costs of \$53,527.29.
  
3. We made the following rulings with respect to this sanctioning phase:
  - (a) Mr. Lee was fined \$1,500 for each of the three citations for a total of \$4,500.
  - (b) Mr. Lee was responsible to the Law Society for costs of \$10,000.
  - (c) Mr. Lee was given until August 31, 2011 to pay these fines and costs.
  - (d) Mr. Lee was given a reprimand.
  - (e) Mr. Lee was referred to Mandatory Practice Review for a period of two years ending August 31, 2011

- (f) The exhibits and transcripts from these proceedings will only be made available:
  - (i) Upon agreement by Law Society counsel and Mr. Lee concerning redaction to protect clients' identities, confidentiality and privilege.
  - (ii) Such a review and agreement need only be made at the time a member of the public requests a copy of such documents.
  - (iii) Failing agreement between Law Society counsel and Mr. Lee the Chair of Conduct will decide which exhibits and transcripts, or with what redactions, are to be made available to the public.

### **Evidence of Sanctioning Phase**

4. Mr. MacDonald sought to introduce into evidence five documents concerning an incident when Mr. Lee applied to withdraw, during a trial, from representing a party.

Pursuant to s.74(4.1) of the *Legal Profession Act*, the Chair of Conduct accepted a joint submission by Mr. Lee and Mr. MacDonald, and directed that the portion of the Hearing Report Part 2 starting at the end of the first sentence in paragraph 4 and going to the end of paragraph 6 will not be provided, as it relates to the portion of the hearing held in private.

5.

6.

7. We admitted the evidence. In admitting the evidence we were mindful of the admonition of Charron, J., in *R. v. Angelillo*, 2006 SCC 55, paragraph 35 where he stated:

... the court must draw a distinction between considering facts establishing the commission of an uncharged offence for the purpose of punishing the accused for that other offence, and considering them to establish the offender's character and reputation or risk of re-offending for the purpose of determining the appropriate sentence for the offence of which he or she has been convicted.

8. Also admitted into evidence was a certificate that Mr. Lee had no prior disciplinary convictions, Mr. MacDonald's written submission, which attached the evidence referred to, was marked as an exhibit, and Mr. Lee's written submission, on sanction, which included numerous letters of support.

## **SUBMISSION REGARDING SENTENCING**

9. Mr. MacDonald submitted that we should reprimand Mr. Lee, impose fines, order him to pay a portion of the costs of the hearing, that portion being the ratio of the charges for the citations for which he was convicted versus the citations for which he was acquitted. Further, Mr. MacDonald submitted, in light of Mr. Lee's inability to deal with stress and remain in control of his emotions and respond to others professionally, that we should make a mandatory referral to Practice Review under Section 72.2 of the Legal Profession Act and that such a referral be for a period of two years. In connection with the referral Mr. MacDonald submitted that we should order that Mr. Lee:

- (a) Appear when required by the Practice Review Committee;
- (b) Co-operate with any assessments determined advisable by the Practice Review Committee; and
- (c) Accept any conditions that the Practice Review Committee impose upon his practice in the interest of protecting the public.

10. Mr. MacDonald also suggested that we recommend that Practice Review obtain a mentor or mentors for Mr. Lee to assist him and that the mentors report to Practice Review during the two-year period.

11. Mr. Lee responded to Mr. MacDonald's submission stating that he stood upon his twenty-four page sanctioning brief, a copy of which had been circulated to us during the week before the hearing. Mr. Lee objected to the referral to Practice Review. He stated that Mr. MacDonald had advised him that he did not expect us to levy cumulative fines exceeding \$5,000. Mr. Lee further objected to the ratio proposed by Mr. MacDonald, which would have produced a cost award of approximately \$21,000, stating that he had been acquitted on the more serious charges and he would have pleaded guilty to the others if they had been the only charges.

## **DISCUSSION ON SANCTION**

12. In considering the sanctions we considered both the behaviour for which Mr. Lee was found guilty and Mr. Lee's submission concerning sanction.

13. With reference to Mr. Lee's behaviour, we noted that the first incident involved the discovery of an elderly former government employee. We have found that Mr. Lee raised his voice and said, "Well this man destroyed a woman's life, and if my emotions get a little bit too much for me, I apologize to Mr. B". We note that during the liability phase Mr. Lee maintained his position that this was in fact an apology. It was not. We found that he raised his voice and uttered these words when he was frustrated and under stress as a result of both the nature of his practice and his adversaries.

14. The second incident for which a conviction was entered involved Mr. Lee writing two letters to a client. In one he described opposing counsel as "a big fat liar". In another he suggested what his client could do to make the other lawyer to "feel dirty" and suggested how his client could go about achieving this goal.

15. The third incident involved a meeting with opposing counsel and that counsel's client, Mr. Lee shouted at opposing counsel at the top of his lungs and said, in part, "have you no soul?"

16. Turning to Mr. Lee's Sentencing Brief, we were particularly struck by its tone and content, which we found germane to its decision on sanction.

17. The written portion of the brief is 23 pages long and runs to 102 paragraphs. The first four paragraphs read as follows:

1. I accept the convictions by the Law Society and do not intend to file any Appeal of the convictions.
2. My actions, which are the subject of the convictions, have been well documented and I do not intend to comment further on my actions.

3. I understand that this hearing was about me and the sentencing is about my behaviour, however, I will once again focus on the actions of the government lawyers in this sentencing portion of my hearing.
  4. I have been given legal advice not to do this as it may demonstrate a lack of understanding on my part that I am the one facing sanctions and it is not the Government lawyers facing sanction. I do recognize my errors but I simply want to put my behaviour into the context of the cases that I am involved in.
18. Paragraphs 12 to 68 are principally taken up with diatribes against his opponents in the government and government lawyers. Later in the brief he criticizes judges. His brief contains such words as, "obscene", "rude", and "horrible". It is replete with statements that the actions of the government and government lawyers "frustrate" him.
19. At page 19 of the brief, paragraphs 87 and 88, he states
87. It is frustrating to be so busy that I do not have adequate time to do research on sentencing principles in Law Society hearings. It is frustrating to be so busy that I do not have adequate time to do a more thorough brief. It is frustrating to not have enough time to obtain more letters of support.
  88. Overall, it is an overwhelming experience to try to sue the Government on behalf of impecunious clients.
20. Concerning the Law Society's brief on the admissibility of additional evidence he states:
89. Mr. Macdonald wishes to submit additional materials for the sentencing. It is my position that those materials are irrelevant to sentencing.
  90. However, I do not have the time or the energy to review the law and to make formal submissions on this application.
21. The concern that Mr. Lee's written submission raises for us, when considering sanction, is that Mr. Lee seems to be unable to recognize the fact that the matter before us is Mr. Lee's behaviour. He deliberately spends his time attacking others rather than addressing the central issue before us. He took the time to write an extensive submission but chooses to spend his efforts and energy attacking others and seeking to use their behaviour to justify his inappropriate and unprofessional conduct.

22. We are mindful of the letters of support Mr. Lee has obtained, the people he has helped and continues to help, many of whom find it difficult to obtain lawyers. Mr. Lee's clients are mostly impecunious and marginalized. He is, in many cases, their only hope. Our concern is that unless Mr. Lee is able to control his emotions, focus his legal talents on matters central to the issues at hand, he will continue, by his outbursts, to bring the profession into disrepute, to do disservice to his clients, and to become the subject of further complaints that put his legal career in jeopardy. As we expressed, in the reprimand we gave Mr. Lee, Mr. Lee needs to learn from this experience. He must learn to control his emotions and his conduct. If he cannot do this while practicing in the area he has chosen he may need to change that area of practice. In all the circumstances we concluded that the submission of Mr. MacDonald concerning Practice Review is appropriate.

23. We also note that the complaints brought against Mr. Lee arise out of contentious litigation with one litigant defendant who, at times, made similar statements about Mr. Lee, for example asserting that Mr. Lee's arguments were being advanced improperly (see main decision paragraphs 144 and following). We also note that certain citations that we dismissed were reactions to steps and positions taken by his adversary. Our decision in this matter should be taken as "an encouragement for all those involved in these activities to exercise reason and restraint in dealing with each other" and as a caution against expanding the disputes in the litigation from applications before the Court to applications to the Law Society.

24. We selected \$1,500 per citation for fines taking into account the fact that Mr. Lee has no prior convictions, the nature of each of the incidents, and the nature of Mr. Lee's practice.

25. As to the costs we award \$10,000 having regard to the ratio of convictions to acquittals, but we have also taken into account the fact that the time taken for the evidence associated with those citations upon which convictions were entered was proportionately less than the time taken on those citations which were dismissed. We also considered, with respect to the costs order, Mr. Lee's practice and the financial burden of the costs award it has made.

## **DISPOSITION**

26. Accordingly, and to summarize, we order that:
- (a) Mr. Lee is fined \$1,500 for each of the three citations for a total fine of \$4,500.
  - (b) Mr. Lee is responsible to the Law Society for costs of \$10,000.
  - (c) Mr. Lee is given two years (expiry August 31, 2011) to pay these fines and costs.
  - (d) Mr. Lee is to receive a reprimand (reprimand given at hearing).
  - (e) Mr. Lee is referred to Mandatory Practice Review for a period of two years (expiry August 31, 2011) and that, in connection therewith:
    - (i) This Committee's decisions regarding guilt, sanction, and a transcript of the reprimand, together with Mr. Lee's written submission on sanction, is to be provided to the Practice Review Committee and to any mentors Practice Review Committee assigns to Mr. Lee.
    - (ii) Mr. Lee is to appear when required to do so by the Practice Review Committee.
    - (iii) Mr. Lee is to co-operate with any assessments requested by the Practice Review Committee.
    - (iv) Mr. Lee is to abide by any conditions that the Practice Review Committee imposes upon him and his practice in the protection of the public interest.
    - (v) The Practice Review Committee should attempt to find mentors to assist Mr. Lee in his practice.

## **CONCLUDING MATTERS**

27. The exhibits and transcripts from these proceedings will only be made available:
- (a) Upon agreement by Law Society counsel and Mr. Lee concerning redaction to protect clients' identities, confidentiality and privilege.
  - (b) Such a review and agreement need only be made at the time a member of the public requests a copy of such documents.
  - (c) Failing agreement between Law Society counsel and Mr. Lee the Chair of Conduct will to decide which exhibits and transcripts, or with what redactions, are to be made available to the public.

Dated at Calgary, Alberta, this 23rd day of September, 2009.

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Bradley G. Nemetz, Q.C. (Chair)

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Neena Ahluwalia, Q.C.

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Larry McConnell, Q.C.