

## 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 KELLY KRISTENSEN, A MEMBER OF THE LAW SOCIETY OF ALBERTA

1. On June 29, 2015, a Hearing Committee (the “Committee”) of the Law Society of Alberta (the “LSA”) convened at the offices of the LSA in Edmonton, Alberta, to conduct a hearing regarding two citations that had been asserted by the LSA against the Member, Ms. Kelly Kristensen.
2. Just before the hearing was to commence, a pre-hearing conference was held. Minutes before the hearing was about to commence, Mr. Edney, who had been appointed to the Committee by the Chair of Conduct telephoned from London, England. He was unable to attend. Counsel for the LSA and counsel for Ms. Kristensen unhesitatingly agreed that the hearing should proceed with the two remaining members alone. Thus, the Committee’s members included Brett Code, Q.C., as Chair, and Glen Buick. The LSA was represented by Ms. S. Borgland, and the Member was represented by Mr. P. J. Royal, Q.C.
3. Ms. Kristensen faced two citations:
  1. That she failed to serve her client and that that was conduct deserving of sanction; and
  2. That she failed to be candid with the Law Society or failed to respond on a timely and complete basis to the Law Society and that that was conduct deserving of sanction.
4. The LSA called no evidence on the second citation, and the Committee dismissed it.
5. Ms. Kristensen signed a document, dated June 29, 2015, entitled, Agreed Statement of Facts and Agreed Exhibits and Admission of Conduct Deserving of Sanction. That document is attached as Schedule “1” to this Hearing Report. In it, Ms. Kristensen admitted guilt to the first citation. After hearing submissions by both counsel, the Committee accepted the Agreed Statement of Facts and the guilty plea, and the Committee found Ms. Kristensen guilty of conduct deserving of sanction pursuant to s. 49 of the *Legal Profession Act*
6. Counsel orally presented a joint submission on sanction. The Committee was cautioned to grant deference to joint submissions and was made aware of, and agreed with, the legal principle that such a joint submission should be rejected by such a Committee only

if the proposed sanction is unfit or unreasonable in the circumstances or if the proposed sanction is contrary to the public interest.

7. We were provided with able, balanced submissions by both counsel in support of the joint submission. In essence, Ms. Kristensen was a young lawyer, serving well a community in need of the kind of legal counsel she provides. She cooperated fully in what turned out to be an extensive investigation that appears to have turned up only a couple of mistakes made by her.
8. With regard to the conduct at issue here, she was swept up in the practice of Blott and Company with the result that she made those mistakes. Based upon the evidence and submissions made, we unhesitatingly agreed that a reprimand was the most serious sanction her conduct deserved. Fully presented and understood as we were made to understand it, we believe that a different decision might have been made by the Conduct Panel that sent this to hearing and that they might well have opted for a Mandatory Conduct Advisory rather than a full hearing. The decision made by the Conduct Panel was within its jurisdiction and not obviously incorrect, however, so this hearing proceeded.
9. We therefore agree with and accept the joint submission on sanction: reprimand and costs.
10. The LSA submitted an Estimated Statement of Costs which included \$5,000 in investigation costs. That amount had already been drastically reduced from the amount that would have been charged had all of the investigation time been included. The LSA advised that 172.5 hours of investigation time went into this investigation at \$100 per hour, for a total of \$18,112.50. We assume the investigation was so extensive because the matter complained of was a Residential Schools file being performed under contract to Blott and Company, which firm we understand also to have been subject to an extensive LSA investigation. We therefore understand why the investigation was extensive.
11. As extensive as it was, the investigation of Ms. Kristensen turned up only the facts set out in Schedule "1". While the investigation was likely necessary, given the background and relationship to the conduct of Blott and Company, and therefore while the investigation was surely justified and was time and money well-spent by the LSA, it should not fall to Ms. Kristensen to pay for that investigation.
12. We attempted to estimate the amount of investigation time that went into the development of the actual citation and evidence presented to us, and we came up with 5 hours. We therefore awarded investigation costs of \$500.

13. As to the other usual line items in the Estimated Statement of Costs, we awarded actual costs, to be determined and agreed by counsel, and to be submitted to the Committee later for confirmation.
14. Counsel for Ms. Kristensen sought 6 months to pay, and we agreed. The eventual amount of costs is to be paid 6 months from the date that Mr. Royal receives notice that we have confirmed the amount by way of a signed statement of costs
15. The Chair then reprimanded Ms. Kristensen, reminding her of the importance to society, to the Courts, to other adjudicative bodies and to the public of documentation that, after being prepared and signed by a lawyer, is correct and that may be relied upon by those who seek to rely on it.
16. The Chair also thanked Ms. Kristensen, on behalf of the LSA, for her participation in the process for the compensation of the victims of abuse in the Residential Schools and wished her well.

Dated at Edmonton, Alberta, the 29th day of June, 2015.

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W. E. Brett Code, Q.C.

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Glen Buick

## Schedule "1"

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

### AND IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF KELLY A. F. KRISTENSEN A MEMBER OF THE LAW SOCIETY OF ALBERTA

### LAW SOCIETY HEARING FILE HE20140038

#### **AGREED STATEMENT OF FACTS AND AGREED EXHIBITS AND ADMISSION OF CONDUCT DESERVING OF SANCTION**

1. Kelly A. F. Kristensen ("Ms. Kristensen") was admitted as a member of the Law Society of Alberta (the "Law Society") on February 6, 2004.
2. Ms. Kristensen has practiced law in Tofield, Alberta as a sole practitioner since her admission.
3. Ms. Kristensen's practice consists of real estate, wills and estates and family law.

#### **CITATIONS**

4. Ms. Kristensen faces two citations as follows:
  1. It is alleged that Kelly Kristensen failed to serve her client and that such conduct is deserving of sanction.
  2. It is alleged that Kelly Kristensen failed to be candid with the Law Society or failed to respond on a timely and complete basis to the Law Society and that such conduct is deserving of sanction.

#### **BACKGROUND**

5. In an effort to compensate former students for abuses suffered while attending Indian Residential Schools, the Government of Canada set up a claim process (the "Independent Assessment Process" or "IAP") whereby former students could claim compensation by submitting an application which detailed the abuse suffered ("Claimants").
6. It was common for Claimants to have "form-fillers" assist them with their applications. HWL was a company that located and provided form-filler services to Claimants. HWL referred Claimants exclusively to Blott & Company.

7. If a Claimant was represented by a lawyer, the lawyer was required to "certify" that he or she had thoroughly reviewed the application with the Claimant to determine its accuracy. A sample certification is attached as **Exhibit 7**.

### **AGREED FACTS**

8. In September 2008, Ms. Kristensen contracted with Blott & Company to certify applications for Claimants in the Independent Assessment Process.
9. In 2009 and 2010, Ms. Kristensen began to conduct IAP hearings on behalf of Claimants. Over the course of 2009, the volume of IAP hearings increased from approximately two per week to two per day. By September of 2009, there were approximately 700 applications to be certified and a database was created to assist in keeping track of the claims. **(Exhibit 8)**
10. On September 27, 2011, Susan Ross, a British Columbia lawyer and an IAP adjudicator, wrote to the Law Society of Alberta to report concerns regarding Ms. Kristensen's certification of Ms. R.B.S.B.'s (referred to hereafter as "Claimant A") application. Ms. Ross also provided a redacted copy of her decision regarding Claimant A. **(Exhibits 9 & 10 respectively)**
11. In the decision dated July 26, 2011, Ms. Ross expressed concern regarding Ms. Kristensen's diligence in certifying Claimant A's application for compensation alleging that Ms. Kristensen failed to confirm the accuracy of its contents.
12. Claimant A gave evidence at the hearing before Ms. Ross that she never met with Ms. Kristensen and had no recollection of anyone at Blott & Company canvassing the accuracy of the application with her.
13. Ms. Kristensen provided a written response to the complaint, which was received on October 26, 2011. Ms. Kristensen advised in her response that she had certified the accuracy of Claimant A's application during a telephone call on April 26, 2009. She included with her response a copy of her notes of that telephone conversation. **(Exhibits 11 and 12)**
14. Ms. Kristensen was interviewed by a Law Society Investigator on August 23, 2012. She gave evidence during her interview that certifications typically took from 45 minutes to an hour, on average, to complete. **(Exhibit 13)**
15. Ms. Kristensen indicated in her interview that some lawyers were conducting certifications in 15 minutes and identified such short certifications as "concerning". **(Exhibit 13)**
16. Ms. Kristensen provided telephone records substantiating her telephone conversation with Claimant A on April 26, 2009. The telephone conversation was 5 minutes in length. **(Exhibit 14)**
17. Claimant A's application for compensation is a 20-page document. **(Exhibit 15)**

18. On October 10, 2012, another lawyer (“A.L.”) provided the Law Society with copies of two claim files (“Claimant B” and “Claimant C”) transferred to him from Blott & Company. **(Exhibits 16 & 17)** He expressed concern to a Law Society Investigator that information certified by Ms. Kristensen in both cases was inaccurate.
19. The applications of Claimant B and Claimant C contain identical or very similar wording with respect to the sections entitled “Harms and Treatments” and “Education and Work History”.
20. Emails provided by A.L. substantiate that the applications of Claimant B and Claimant C were not accurate. The emails also indicate that the claims of Claimant B and Claimant C were ultimately withdrawn and/or unfounded. **(Exhibit 18)**
21. Ms. Kristensen provided notes and telephone records of her telephone conversation with Claimant B on April 26, 2009. The telephone records indicate that her telephone conversation with Claimant B was 8 minutes in length. **(Exhibit 19)**
22. Ms. Kristensen provided notes of an alleged telephone conversation with Claimant C on March 27, 2009. Ms. Kristensen’s telephone records do not substantiate that she had a telephone conversation with Claimant C on or about March 27, 2009. **(Exhibit 20)**
23. Ms. Kristensen’s signature certifying the claims appears to be electronic and none of the certifications are dated.
24. Ms. Kristensen was asked to provide telephone records to substantiate that any of her certifications were in the range of 45 minutes in length. Ms. Kristensen did not provide any such records.

### **ADMISSION OF FACTS**

25. Ms. Kristensen admits the facts contained in this Agreed Statement of Facts for the purposes of these proceedings.
26. Ms. Kristensen admits that she failed to serve her clients, Claimant A, Claimant B and Claimant C, by failing to conscientiously and diligently review the Claimants’ applications before certifying the accuracy of the content of the applications in claims for compensation in the Independent Assessment Process.

### **ADMISSION OF CONDUCT DESERVING OF SANCTION**

**Citation 1: It is alleged that Kelly Kristensen failed to serve her client and that such conduct is deserving of sanction.**

27. For the purposes of s. 60 of the *Legal Profession Act*, Ms. Kristensen admits that she failed to serve her clients, Claimant A, Claimant B and Claimant C, and that such conduct is deserving of sanction.

**Citation 2: It is alleged that Kelly Kristensen failed to be candid with the Law Society or failed to respond on a timely and complete basis to the Law Society and that such conduct is deserving of sanction.**

28. Ms. Kristensen makes no admission in respect of Citation 2.

This Agreed Statement of Facts and Admission of Conduct Deserving of Sanction is dated the 29<sup>th</sup> day of June, 2015.

("Witness Signature") \_\_\_\_\_  
**WITNESS**

("Kelly A.F. Kristensen") \_\_\_\_\_  
**Kelly A.F. Kristensen**