



**THE LAW SOCIETY OF ALBERTA
APPEAL PANEL REPORT**

**IN THE MATTER OF AN APPEAL TO THE BENCHERS OF THE LAW SOCIETY OF
ALBERTA BY TERESINA BONTORIN,
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

**Pursuant to section 75 of the *Legal Profession Act*
from the sanction imposed by the Hearing Committee in a report dated
August 27, 2014**

Appeal Panel:

Darlene Scott, Chairperson
Robert Armstrong
Glen Buick
Arman Chak
Robert Dunster
Adam Letourneau
Amal Umar

Appearances:

J. D. D. Steele for Teresina Bontorin
Shanna Hunka for the Law Society of Alberta (LSA)

Introduction

1. On April 24, 2015, a quorum of seven Benchers (the "Appeal Panel") convened at the Law Society of Alberta ("LSA") office in Calgary to consider the appeal made by Teresina Bontorin of a Hearing Committee decision dated August 27, 2014. Shanna Hunka appeared for the LSA, and J.D.D. Steele represented the Member.
2. Before the Hearing Committee, and after some discussion and revisions to Citation #2, Ms. Bontorin agreed to the facts appended to the Hearing Committee Report and admitted conduct deserving of sanction in relation to the following citations:
 1. It is alleged that you failed to conscientiously serve your client, a banking institution.

2. It is alleged that you failed to attend to a purchase of real property for yourself in the manner expected of a lawyer experienced in real estate transactions.
3. The Member and the LSA made a Joint Submission on sanction to the Hearing Committee which proposed a reprimand, a \$5,000.00 fine and payment of the actual costs of the Hearing (the "Joint Submission").
4. The Hearing Committee, in a decision dated August 27, 2014, imposed a two month suspension, a \$10,000.00 fine and payment of the costs of the Hearing.

Grounds of Appeal

5. The Member appeals the decision of the Hearing Committee on the grounds that:
 - a. the Hearing Committee erred in departing from the Joint Submission on Sanction without advising counsel of its intention to do so and without giving counsel an opportunity to make further submissions; and
 - b. The sanction is excessive and does not fall within the range of reasonableness and should be replaced by the sanction proposed by the Joint Submission.

Jurisdiction and Preliminary Matters

6. The following constituted the Record of Appeal received by the Appeal Committee:
Exhibit A - Hearing Committee Report dated August 27, 2014.
Exhibit B – Transcript of Proceedings.
Exhibit C – Exhibits from Original Hearing, including:
 - a) Exhibits 1 - 5 – Hearing Committee Jurisdictional Documents
 - b) Exhibit 6 – Agreed Statement of Facts and Admission of Guilt
 - c) Exhibit 7 – Items 1-8, including, *inter alia*, summary of transactions, instructions from and reports to Bank and summary of purchase transaction
 - d) Exhibit 8 – Discipline Record of the Member
 - e) Exhibit 9 – Estimated Statement of Costs
7. The following Exhibits establishing jurisdiction of the Appeal Committee were entered by consent:
Exhibit J1 – Hearing Committee report dated August 27, 2014
Exhibit J2 – Notice of Appeal dated September 18, 2014

Exhibit J3 – Letter of Appointment dated February 26, 2015

Exhibit J4 - Notice to Attend dated March 2, 2015. The Notice showed the time and place of the appeal hearing and made Ms. Bontorin aware of her rights under s. 78(2) of the *Legal Profession Act*, R.S.A. 200, c. L-8 (the “LPA”) to apply to have the hearing held in private.

Exhibit J5 - Letter signed by the Deputy Executive Director & Director, Regulation, of the LSA dated March 30, 2015, confirming the exercise of discretion by the Executive Director not to issue private hearing notices pursuant to Rule 96(2)(b) of the Rules of the LSA (the “Rules”).

8. Ms. Bontorin’s counsel acknowledged receipt of a copy of the Hearing Committee Report and the Hearing Record in accordance with s. 76(4)(b) of the LPA.
9. The Parties both agreed the Appeal Panel had jurisdiction to hear Ms. Bontorin’s appeal and that they had no concerns with the composition of the Appeal Panel. As no party applied to have the appeal held in private, it was held in public.

Procedural Fairness

10. The Appellant submitted that the Hearing Committee breached procedural fairness and the rules of natural justice by failing to provide notice to counsel that it contemplated departing from the Joint Submission prepared by counsel for the Member and the LSA, and without providing the Member or the LSA with the opportunity to make further submissions on sanction. The LSA concurred with this submission.
11. The Transcript of the original hearing reveals that, prior to issuing their decision, the Chair of the Hearing Committee inquired with counsel as to “...whether there was anything further that you wished to – add to the submissions that you’ve already made before we make our decision on sanction?” (Transcript, p.99). Other than this very general inquiry, there was no indication from the Hearing Committee that they were considering departing from the Joint Submission.
12. The criminal case law is clear on this point. Where presented with a Joint Submission on sentence,

“(iii) If the sentencing judge is disinclined to impose the sentence recommended, the judge should so advise counsel and permit them to make further submissions in support of their original position and against the suggestion that the submission be departed from. This would provide counsel an opportunity to

answer any concerns the sentencing judge may have for departing from the recommended sentence.”¹

This principle was approved and affirmed by the Alberta Court of Appeal in *R v Beal*², where the Court stated,

“ ...if the sentencing judge is inclined to depart from the joint submission, the judge must so advise counsel and permit them to submit further submissions in support of the joint submission to address the judge’s concerns.”

13. In *Law Society of Upper Canada v. Stephen Alexander Cooper*³, the Supreme Court of Canada affirmed the general common law principle that a duty of procedural fairness rests on every public authority making administrative decisions which affect the rights, privileges or interests of an individual and that decision makers should act fairly in coming to their decisions.
14. In *Cardinal v Kent Institution*,⁴ this fundamental principle was invoked by the Supreme Court of Canada who stated that the failure to afford a party a fair hearing “must always render a decision invalid, whether or not it may appear to a reviewing court that the hearing would likely have resulted in a different decision.”
15. This Appeal Committee finds that the Hearing Committee did not afford the parties the opportunity to speak to the possibility of a harsher sentence than that proposed in the Joint Submission. In failing to do so, the Hearing Committee did breach the rules of natural justice. The Appeal is allowed and the decision of the Hearing Committee is therefore overturned.

Disposition

16. The Member’s counsel submits that the Hearing Committee was under an obligation to defer to the judgment of the LSA and its counsel in supporting Ms. Bontorin’s admission of guilt as well as the proposed sanction...” (Appellant’s brief at para 11).
17. This Appeal Committee accepts that Joint Submissions play an important role in disciplinary proceedings in that they facilitate the expeditious resolution of matters without the need for long hearings and inconveniencing witnesses. This results in the saving of time and expense and increases certainty, all of which are desirable goals. However, a hearing committee has no obligation to accept a Joint Submission and in fact has an obligation to consider whether a Joint Submission is reasonable in the circumstances and is in the public interest.

¹ *R v Tkachuk*, 2001 ABCA 243 at para 32.

² 2011 ABCA 35 at para 12.

³ 2009 ONLSAP 7 at para 20.

⁴ [1985] OJ 2 SCR 643at661.

18. The Panel in *Law Society of Alberta v Pearson*⁵ states that:
- “A hearing committee should give serious consideration to a jointly tendered admission ..., 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.”
19. If a Joint Submission is not contrary to the public interest, or unfit or unreasonable, a hearing committee should not readily reject or substitute the Joint Submission with another penalty.
20. This Appeal Committee has considered the Joint Submission and does not consider it to be unfit or unreasonable in the circumstances, nor to be contrary to the public interest and sees no good or cogent reason for rejecting it.
21. The sanctions jointly proposed by the parties in this situation, being a reprimand, a \$5000 fine and payment of the costs of the matter are not unreasonable or unfit in these circumstances. The conduct to which Ms. Bontorin admitted guilt includes:
- a) a failure to serve in not recognizing and alerting her client, the Bank, to several indicia of fraud which were apparent in the transactions in which she was acting; and
 - b) a failure to attend to a purchase of real property for herself in a manner expected of a lawyer experienced in real estate transactions.
22. The Hearing Committee expressed the view that the jointly tendered sanction would be unconscionable and not in the public interest, due to the serious nature of the offences and the harm to the public, the Bank and the straw buyers.⁶
23. This Appeal Committee considered the nature of the citations, and that there was no evidence of intent or fraud by the Member.
24. The failure to recognize the indicia of fraud in relation to Citation #1 is clearly negligent. Ms. Bontorin failed to read and follow the very express instructions of the Bank to report certain matters to the Bank, but there was no evidence that this failure was fraudulent or purposeful.
25. Ms. Bontorin’s actions in attending to her own transaction were perhaps reckless, but again there was no evidence of any fraudulent motivation or material financial benefit to the member. The fact that Ms. Bontorin was aware that there was personal liability to her in obtaining this mortgage and that she has maintained that mortgage in good standing since its inception are mitigating factors. The only benefit to Ms. Bontorin in this personal transaction was that she may have obtained a mortgage in a higher principal amount than might otherwise have been available, but to date the Bank has not been adversely affected as Ms. Bontorin has maintained that mortgage in good standing.

⁵ 2011 ABLS 17 at para 21.

⁶ Hearing Committee report para 59 and 60

26. The Appeal Committee further considered the seriousness of the conduct which was admitted to, the record of the Member, which was entirely clear over a 20 year period, and the fact that there had been no subsequent complaints or issues with Ms. Bontorin's conduct in the 8 years following this conduct. There is no evidence of governability concerns and there is no requirement to suspend the member for the purpose of protecting the public. There was no evidence of purposeful intent to defraud the Bank and no evidence of personal financial gain to Ms. Bontorin.
27. This Appeal Committee agrees with the comments of counsel for the LSA at the Hearing Committee that "There is carelessness, inattentiveness, perhaps even recklessness, but not anything more than that..."⁷
28. This Appeal Committee agrees with the Appellant's submission that "the fine and suspension meted by the Hearing Committee is not proportionate with Ms. Bontorin's conduct as expressed in the Agreed Statement of Facts. Moreover, the severity of the Committee's suggested sanction is not aligned with the degree of wrongdoing reflected in the agreed upon Citations."⁸
29. Every Hearing Committee must assess the evidence it receives and exercise its best judgment about the likelihood of recurrence in order to protect the public interest and the reputation of the profession as a whole.
30. The fine in the sum of \$10,000 is the maximum fine permitted by the *Legal Profession Act* and is normally reserved for conduct of the most serious nature, such as the misappropriation of funds. In light of the nature of the conduct to which Ms. Bontorin admitted guilt, and the lack of evidence regarding intent to defraud and lack of evidence of personal financial gain, this Appeal Committee is of the view that the maximum fine of \$10,000 is not reasonable. Moreover, the two month suspension is also not reasonable or required to protect the public in all circumstances given the nature of the citations and the Member's record both before and after the misconduct.
31. For the reasons above, the Appeal Committee accepts the Joint Submission and imposes a reprimand, a fine of \$5000 payable within 60 days and payment of the actual costs of the Hearing.
32. The Chair issued a reprimand at the conclusion of the Appeal Hearing and noted that the estimated costs of the Hearing had already been paid by Ms. Bontorin.
33. This report and the exhibits entered in this appeal shall be made available to the public, subject to redaction to protect privileged and confidential personal information.
34. Notice of this decision shall be published by the Executive Director in accordance with Rule 106 of the Rules of the LSA.

⁷ Transcript of Bontorin Hearing, p 63

⁸ Brief of the Appellant, p 15

Dated at Edmonton, Alberta as of September 14, 2015.

Darlene W. Scott (Chair)

Adam Letourneau

Glen Buick, BA

Arman Chak

Amal Umar, MA

Dunster, BA

Robert Armstrong