

**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 JAMES SHEA**  
**A MEMBER OF THE LAW SOCIETY OF ALBERTA**

**INTRODUCTION AND SUMMARY OF RESULT**

1. On June 17, 2013, a Hearing Committee of the Law Society of Alberta (“LSA”) (the “Hearing Committee”) convened at the Law Society offices in Calgary, Alberta, to inquire into the conduct of the Member, Mr. James Shea. The Committee was comprised of Brett Code, Q.C., Chair, Gillian Marriott, Q.C., and Miriam Carey, PhD. The LSA was represented by Ms. Tamara L. Friesen. The Member was present throughout the hearing and was represented by Mr. John Davison, Q.C.
2. The Member faced two Citations (the “Citations”) as set out in the Notice to Solicitor, dated June 11, 2013, namely:
  1. It is alleged that while acting as a director and officer for a not-for-profit society, you acted in such a manner as to bring discredit to the profession, and that such conduct is conduct deserving of sanction.
  2. It is alleged that you failed to respond to the Law Society on a timely basis in the matter of the complaint of C.C., and that such conduct is conduct deserving of sanction.
3. The Member admitted guilt on the two citations by way of a filed, signed Exhibit. The Hearing committee confirmed that his admission of guilt was in a form satisfactory to them, and the Member was found guilty of the two citations.
4. A Joint submission on sanction was made, recommending a reprimand on both counts of guilt, a fine on Citation #2 in the amount of \$1,500.00, and partial costs as agreed by counsel. The Hearing Committee reserved its judgment on sanction, which judgment is delivered by way of this report. As explained below, the Committee disagreed with the appropriateness of the joint submission and substituted its own ruling on sanction, which is that the Member is reprimanded on both counts of guilt, will pay no fine, and will pay partial costs in an amount to be agreed by counsel subsequent to the receipt of this report.

## **Jurisdiction of the Hearing Committee, Exhibits, and a Public Hearing**

5. The jurisdiction of the Hearing Committee was confirmed, and the Member agreed through his counsel that the hearing was properly convened and that he made no objection to the constitution of the Hearing Panel. Certain agreed documents related to the Citations were entered as Exhibits, some for the truth of their contents; some, for convenience, to be spoken to later by witnesses that the parties thought they might call to testify.
6. There was no application to have the whole or any part of the hearing held in private, and, as such, the entire hearing was conducted in public.

## **Admission of Guilt**

7. Exhibit 6 was entered for the truth of its contents. That Exhibit included an Agreed Statement of Facts and an admission of guilt by the Member that the conduct set out in that Exhibit amounted to conduct deserving of sanction. Various paragraphs in Exhibit 6 referred to other Exhibits that were tendered into evidence. We accepted that evidence, accepted the Agreed Statement of Facts, and found that the admission of guilt was in a form that was satisfactory to the Hearing Committee. We therefore accepted the Member's pleas of guilt and found him guilty of the two citations.
8. Exhibit 6 is appended to this Report.

## **Sanction**

9. Law Society counsel presented us with the joint submission on sanction. Counsel jointly recommended to us that the Member be reprimanded on both Citations, that he be fined \$1,500.00 on Citation 2, and that he pay partial costs of the hearing in an amount to be agreed by counsel.
10. The Hearing Committee agrees with the submission on costs.
11. The Hearing Committee agrees with the submission on reprimand. The reprimand of the Hearing Committee is set out below.
12. With respect, the Hearing Committee disagrees with the submission regarding the fine and has decided that a fine would not be an appropriate sanction here. The Member will pay no fine.
13. It is well known that a joint submission on sanction should be given deference by a tribunal such as this. Here, counsel were given the opportunity to speak to the reasonableness of the sanction. Counsel for the Member said nothing, but his silence demonstrated that he did not disagree with Law Society counsel. Law Society counsel dealt with the matter as though a

fine of \$1,500.00 went without saying. We were not provided with case law supporting the appropriate range of fine for failing to respond to the Law Society on a timely basis, nor were submissions made that enabled us to determine that a fine such as that proposed fell into a range of what is fair, reasonable or correct in the circumstances. We were provided with no evidence that provided any kind of explanation for the delay of the Member in responding to the Law Society. Nor, therefore, were we provided with evidence (other than the admission of guilt) that demonstrated that the Member had in fact “failed” to respond. Instead, as though the documents spoke for themselves, we were provided a series of letters from the Law Society to the Member, and we were told that no responses were provided to them. Over a period of many months, letters were sent to the Member, and no response was received. Finally a response was received, but that response was not tendered in evidence. We were also then provided with a transcript of an investigative interview. During that interview, no questions were asked of Mr. Shea demanding an explanation for the delay in responding. The truth is that, based upon the evidence tendered, we have no way of distinguishing here between delay that might be justified in some manner and failure to respond, which cannot. We have the guilty plea, so we may be free to assume that there is no explanation, but, in the interview, and during the hearing, the question was not asked, and no answer is available on the agreed record.

14. During the sanctioning phase of the hearing, counsel were asked to explain why the joint submission fell within the reasonable range for such misconduct. Neither counsel spoke to the reasonable range. Law Society counsel spoke generally to issues of governability and general deterrence (having conceded that specific deterrence was not an issue with this Member) but was noncommittal in her conviction on this point. The best that can be said of the joint submission is that it was joint.
15. Having been given no reasons why we should agree, nor any as to why such a fine is reasonable or right, we disagree with the joint submission regarding the conviction on failing to respond in a timely manner to the Law Society.

## **Reprimand**

16. Mr. Shea, you have been a member of the Law Society of Alberta since 1973, almost forty full years. You therefore of all members know that you could not have done all that you have done as a barrister and solicitor in this province without the support of the Law Society. You of all members also know therefore that, when your regulator calls, you must answer.
17. That you would not immediately pick up the telephone or your pen and respond immediately to your governing regulatory body in response to the complaint of C.C. is disgraceful. You should be ashamed, as we are ashamed of you. If there was an excuse, you should have provided it. If you had a need for time to respond, you should have requested it, and the staff of the Law Society would have provided you with all the time you needed. To ignore the Law Society even once is a disgrace. To have done so repeatedly is pathetic.

18. Do not repeat this misconduct. You will not be treated so gently the next time.
19. For approximately 15 years, from 1994 to 2008, you worked as a volunteer for Saint Mary's High School, coaching its football team, setting up a two charitable corporate not-for-profit entities, assisting in the operation and management of those entities over those years, and, thus, assisting the school in raising approximately \$750,000. It is likely that you have been thanked for your efforts by the school, by the students, by your players, and by the other participants in these two societies. We also wish to thank you for participating as a volunteer for so many years and for contributing in so many ways to the well-being of that school and of its students. Such is the stuff of a responsible professional, and, as you know, as much is expected of most members of the Law Society, that is, that our members will give of their time and their expertise to their communities. You have done so and in a very large way. We commend you for that, and we thank you.
20. As you also know, Mr. Shea, while we are often thanked for our good deeds, sometimes we are not, and, as has happened here, sometimes the deeds, good or not-so-good, of lawyers come with added expectations, spoken or unspoken, express or not expressed. Lawyers are a privileged group, Mr. Shea, and you have proudly operated as one of that privileged group for nearly four decades. Membership comes with both privileges and burdens. This is a case in which you have admitted that the fact of your membership in the Law Society, the fact of your being a lawyer, resulted in the creation of expectations by other participants in these societies and that you did not live up to those expectations, but breached them. You have agreed that such breach is conduct deserving of sanction by reprimand. Herewith, we so reprimand you.
21. As you know, the Law Society of Alberta's *Code of Professional Conduct*, which has now been replaced but which governed all of us over your time with these societies, placed a premium on the integrity of its members. It stated clearly in its Preface (a crucial part of that document, including as it did an express statement of two fundamental principles underlying the Code and providing its force), the Law Society is empowered to declare any conduct to be deserving of sanction whether or not it is related to a lawyer's practice. The misconduct admitted to here was not conduct that occurred as part of your practice but as part of your personal life, as part of your otherwise free time. The reach of the Code of Professional Conduct extended beyond conduct within solicitor-client relationships and stated "personal behaviour is unlikely to be disciplined unless it is dishonourable or otherwise indicates an unsuitability to practise law." None of the conduct admitted to here indicates the latter, although you may well, in admitting what you have admitted, have determined that such conduct was the former, that is, was dishonourable. For that, we reprimand you.
22. Further, Mr. Shea, as you are well aware Rule 1 of Chapter 3 of the Code of Professional Conduct stated that "A lawyer must refrain from personal or professional conduct that brings discredit to the profession." The commentary on this rule is instructive to all members of the profession. It states that "because of a lawyer's quasi-official position in society, the personal and professional behaviour of a lawyer may attract more attention than that of a non-lawyer

and may directly or indirectly influence the public's perception of the justice system and the profession. It follows that a lawyer has the responsibility to avoid even the appearance of impropriety and to act in a manner that encourages the confidence, respect, and trust of society." The complaint that invited this hearing and the agreed statement of facts both indicate ways in which your action or inaction as a corporate lawyer acting in a volunteer capacity as an officer of a non-profit organization contributed to the discrediting of both yourself and of the profession more generally. It is obviously the view of some and appears to be your own personal view that you have fallen below the special standard of behaviour that attaches to lawyers, regardless of the capacity in which they are acting - - personal or professional. In conducting yourself as you have admitted to having done, and in having admitted that such conduct is conduct deserving of sanction, you seek just sanction for your admitted misconduct. For that, we reprimand you.

## CONCLUDING MATTERS

23. The Hearing Committee Report, the evidence, and the exhibits in this hearing are to be made available to the public, subject to redaction to protect privileged communications, the names of any of the Member's clients and such other confidential personal information as is thought necessary by the Law Society of Alberta in the normal course as they concern publication of such records.
24. No referral to the Attorney General of Alberta is directed.
25. There shall be no notice to the profession issued.
26. The partial costs of the hearing are to be paid within 30 days of the agreement of counsel as to the appropriate amount of costs payable. If counsel have difficulty coming to agreement on that amount, they may approach us in writing on the matter, and we shall decide the issue based upon written submissions.

Dated at Calgary, Alberta as of the 17th day of June, 2013.

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W.E. Brett Code, Q.C., Chair

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Gillian Marriott, Q.C.

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Miriam Carey, PhD

**EXHIBIT 6**

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

**AND**

**IN THE MATTER OF A HEARING REGARDING THE  
CONDUCT OF JAMES SHEA,  
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

**AGREED STATEMENT OF FACTS**

**INTRODUCTION**

1. James Shea was admitted to the Bar on December 20, 1973 and practices law in Calgary, Alberta.
2. Mr. Shea is a founding partner of Shea Nearland Calnan LLP. His primary area of practice is corporate and commercial law.
3. Mr. Shea's current status is Active/Practising.

**CITATIONS**

4. On January 31, 2012, the Conduct Committee referred the following conduct to hearing:
  1. IT IS ALLEGED THAT while acting as a director and officer for a not-for-profit society, you acted in such a manner as to bring discredit to the profession, and that such conduct is conduct deserving of sanction; and
  2. IT IS ALLEGED THAT you failed to respond to the Law Society on a timely basis in the matter of the complaint of C.C., and that such conduct is conduct deserving of sanction.

## **FACTS**

5. Mr. Shea's children attended St. Mary's High School, in Calgary, Alberta from 1989 to 1992 and 1996 to 1999. At that time, Mr. Shea was helping coach the football team, a volunteer position he held even after his children were no longer students at the school.

6. In 1994, Mr. Shea, along with various other interested parties, helped incorporate the Friends of the Saints Society (FOSS) and Saints Athletics (SA). FOSS and SA were not-for-profit societies which were intended to provide financial support, primarily through funds obtained from the running of bingos and casinos, to students and families for extra-curricular activities taking place at St. Mary's High School, and for the School itself.<sup>1</sup> Eventually, FOSS also began giving away financial bursaries to graduating students.

7. Mr. Shea's law firm, Shea Nerland LLP, was listed as FOSS' registered office from the date of the Society's incorporation. The law firm did not charge FOSS for that service, but disbursements were paid out to it. The AGLC objected to the firm charging for disbursements. After that, M. Inc., a management company that provides administrative services on contract to Shea Nerland, invoiced FOSS directly for that service for disbursements only (**EX 10 and EX 12, Tab 2**).<sup>2</sup>

8. Mr. Shea was a director of both FOSS and SA from their inception in 1994, until September of 2008. For most of that time he was President, but he also held other positions. During his tenure, Mr. Shea, together with the other directors, failed to comply with various FOSS bylaws. For example, during that time period, no AGMs were called, no minutes were taken, and no audits of the societies' books were performed (**EX 8**).

9. From 1994 to 2008, Mr. Shea shared signing authority with Mr. D. P., who was also a director of FOSS. Mr. P. was, at that time, a teacher at St. Mary's High School and Mr. Shea trusted and relied on him heavily with respect to the appropriate handling of FOSS' finances. Together with Mr. P., Mr. Shea was responsible for preparing the bingo final financial reports which set out the use of profits (**EXs 9, 10, 11**)

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<sup>1</sup> SA was initially started in order to qualify for additional AGLC licenses. Eventually, the AGLC passed regulations which prevented this. At or around the time of the events outlined in this Statement of Facts, Mr. Shea remained associated with SA. SA paid any remaining bingo or casino funds in its bank accounts to the St. Mary's High School Alumni Association on the understanding that the Alumni Association would spend the money in accordance with the AGLC rules.

<sup>2</sup> Mr. Shea is a Director of Manus, and his wife has a financial interest in the company.

10. Mr. Shea maintains that he did not act in a professional capacity as a lawyer, or as legal counsel for FOSS or SA at any time.

11. The FOSS membership consisted of teachers, graduates, friends, parents and grandparents of children attending St. Mary's High School who wanted to raise money for the school and its students. The Alberta Liquor and Gaming Commission (AGLC) granted FOSS a bingo license in 1994 and a casino license in 1996. From 1994 to 2008, FOSS earned well over a million dollars through the running of bingos and casinos, as well as through other events, such as an annual silent auction.

12. AGLC licensees such as FOSS, are expected to comply with the policies set out in the Charitable Gaming Policies Handbook (CGPH) (**EX 24**). On March 10, 2006, as a result of compliance issues raised regarding the unapproved use of gaming proceeds for student bursaries, the AGLC began an audit investigation of FOSS. The audit focused on the time period from 2003 to 2006. Prior to the commencement of the audit the financial reporting made by FOSS to the AGLC had not been questioned.

13. On March 22, 2007, the AGLC sent FOSS a letter detailing the auditor's findings regarding various unapproved or disallowed gaming fund disbursements. The end result of the audit was a requirement that FOSS repay \$267,956.53 of gaming funds from *non*-gaming sources. (**EX 15**)

14. During the audit, FOSS was unable to provide certain receipts required in order to support the distribution of gaming funds. FOSS, through Mr. Shea, was given from July 2006 to the date of the hearing to provide the AGLC with that supporting documentation. A hearing date was set for June 5, 2008, with respect to 9 alleged contraventions of the CGPH discovered during the audit.

15. It was at this point, after a hearing date had been set, that Mr. Shea and Mr. P. advised their membership of the AGLC investigation.

16. Mr. Shea called an emergency meeting for FOSS. At that meeting, Mr. Shea told attendees about the AGLC audit investigation. He indicated he wanted to bring a motion to change the bylaws in order to meet the AGLC requirements. After fielding questions from the membership, he indicated that he did not yet have the wording of the motion to amend the bylaws in order to comply with the AGLC rules. While he stated it would be, the meeting was never rescheduled.

17. The hearing before the AGLC with respect to 9 contraventions of the CGPH commenced on June 5, 2008. Mr. Shea stated at the beginning of the hearing that he was appearing on behalf of FOSS, acting in his capacity as Past-President, and not in his capacity as a lawyer. (**EX 27**)



18. The AGLC hearing was adjourned for 30 days in order to allow Mr. Shea time to provide additional documentary evidence of un-receipted expenses. Mr. Shea failed to respond during that 30 day time period and a “Resumption of Hearing” notice was issued to FOSS. The hearing reconvened on August 27, 2008. Mr. Shea did provide some additional supporting documentation at that time. During the hearing, Mr. Shea admitted that FOSS’ accounting procedures were deficient, and that FOSS had contravened the policies set out in the CGPH. **(EX 16)**

19. The hearing panel found that FOSS had contravened the CGPH in nine (9) ways. One of those contraventions involved “redeeming bingo credits for cash bursaries.” **(EX 16)**

20. Mr. Shea initially indicated bingo funds were disbursed to “people in need” **(EX 22 at p. 9, lines 15 – 27)**. He elaborated that the bursaries were provided based on the student or student’s family’s or friend’s membership in FOSS and need **(EX 22, p. 10, lines 16 – 27)**. Apparently, while anyone could apply for the bursaries only the members and workers were aware of this fact **(EX 23, p.13, lines 1 – 7)**.

21. The members of FOSS understood that they could earn “credits” by working at bingos and casinos and that upon application to FOSS, these credits could be redeemed for cash bursaries to be used by a student of the member’s choice to attend a post-secondary program **(EX 18)**.

22. FOSS was fined a total of \$500 for the contraventions; ordered to repay any non-receipted amounts and any non-approved amounts from its non-gaming bank account; and ordered to provide proof by Nov. 1, 2008 that FOSS had strict financial controls and accounting procedures in place to prevent future misuse of gaming funds. The gaming funds currently in the FOSS bank account were frozen. The AGLC further ordered that if FOSS did not comply within the specified time period, its AGLC eligibility would be suspended. **(EX 16)**

23. The panel further directed that “none of the current Executive of FOSS serve on the Executive in any capacity for a 2 year period and mandates that FOSS cannot appoint the law firm Shea Nerland Calnan LLP or James Shea as its solicitor for a 2 year period.” **(EX 16)**

24. A FOSS meeting was called on September 18, 2008. It was not described as an AGM, but rather, as a fundraising meeting. Although the membership was not notified of the AGM in compliance with the FOSS bylaws, the meeting proceeded as an AGM. **(EX 18, Tab 2)**

25. Mr. Shea told the membership that \$330,000.00 of the gaming money FOSS held in its bank account had been frozen by the AGLC and that the FOSS was being financially reviewed by the AGLC.

16. When asked where the non-gaming money was held, Mr. Shea indicated there were not any non-gaming bank accounts, and the non-gaming funds – mainly, the silent auction funds - had been given to the school. No financial statements were presented to the membership.

27. The remainder of the agenda for the meeting was tabled and the membership proceeded with an election. Ms. C.C., complainant in this matter, was elected President, with all other positions elected through acclamation (**EX 18, Tab 2**). A motion was then passed that all documents and items that were property of FOSS be turned over within seven days to the newly elected board, including information on any and all bank accounts containing funds raised by FOSS, and further, that signing authority over those accounts be relinquished.

28. In an attempt to locate the silent auction funds, the new executive of FOSS phoned various banks in Calgary. Two non-gaming bank accounts were discovered, and the FOSS address listed on one of these accounts was Mr. Shea's law firm address. The funds in these accounts were insufficient to repay the approximately \$220,000.00 for which St. Mary's school was unable to provide receipts satisfactory to the AGLC. On September 28, 2008, the AGLC suspended the FOSS gaming license.

29. On August 23, 2009, Ms. C. filed a complaint with the LSA regarding Mr. Shea's conduct while acting as a director of FOSS. She complained that it was his conduct while director of FOSS, that led to FOSS having to relinquish its AGLC bingo and casino licenses. (**EX 18**)

30. Ms. C. complained that Mr. Shea had failed to ensure that FOSS was acting in compliance with the CGPH, had misdirected AGLC funds and had failed to keep the FOSS membership informed about FOSS finances. She specifically faulted Mr. Shea for filing incorrect financial statements with the Corporate Registry, and various other failings relating to appropriate bookkeeping. She pointed out that the parents who had volunteered over the years at bingos and casinos had lost their volunteer "credits" because of Mr. Shea's conduct and that they had no recourse for the loss they had suffered. (**EX 18**)

31. In total, Mr. Shea's children received approximately \$27,000.00 in bursaries from FOSS over the time period that Mr. Shea acted as a director. (**EX 10, EX 12, Tab 1**)

32. On August 28, 2009, the LSA sent Mr. Shea a letter via registered mail, asking him to respond to the complaint. That letter was delivered on September 2, 2009. Mr. Shea did not respond. (EX 19)

33. Two further letters were sent by ordinary mail, one on October 19, 2009 and another on November 19, 2009 seeking a response. (EX 19, Tab 1 and 2) Again, Mr. Shea did not respond.

34. In part due to Mr. Shea's non-response to these letters, an Investigation Order was issued (EX 20). The investigator sent Mr. Shea a letter on January 20, 2010 seeking documentation (EX 21, Tab 1). Mr. Shea did not respond.

35. The investigator sent a follow-up letter on February 25, 2010 (EX 21, Tab 2). Mr. Shea's office responded to say he was away until March 4, 2010. Mr. Shea did not respond to the letter upon his return. Another letter was sent on May 4, 2010 (EX 21, Tab 3).

36. On May 14, 2010, Mr. Shea responded, and provided the material requested and on July 16, 2010, Mr. Shea was interviewed as part of the investigation. (EX 22)

37. On January 18, 2011 Mr. Shea provided a letter of response to the Law Society. (EX 23)

### **ADMISSION OF FACTS AND GUILT**

38. Mr. Shea admits as fact the statements contained within this Agreed Statement of Facts for the purposes of these proceedings.

39. For the purposes of Section 60 of the *Legal Profession Act*, Mr. Shea admits his guilt to Citations 1 and 2, and that the conduct in question amounts to conduct deserving of sanction.

**THIS AGREED STATEMENT OF FACTS IS MADE THIS 17<sup>th</sup> DAY OF JUNE 2013.**

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**James Shea**

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**Witnessed by**