

THE LAW SOCIETY OF ALBERTA
HEARING COMMITTEE REPORT

**IN THE MATTER OF THE *LEGAL PROFESSION ACT*, R.S.A. 2000, C. L-8
AND IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF
CHRISTOPHER VALIANT
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

INTRODUCTION

1. A Hearing Committee (the “Committee”) of the Law Society of Alberta (“LSA”) convened at the Law Society offices, in Calgary, on June 21, 2012 to consider the conduct of Christopher Valiant (hereinafter referred to as the “Member”).
2. The Committee was comprised of Dennis Edney, Q.C., Anthony Young, Q.C. and Amal Umar, Lay Benchler. The L.S.A. was represented by Ms. Tracy Davis. The Member, Christopher Valiant, was unrepresented throughout the hearing having elected to represent himself. Also present at the Hearing was a court reporter to transcribe the proceedings.

JURISDICTION

3. Jurisdiction was established by the introduction of Exhibits 1 through 5, consisting of:
 - Letter of Appointment of the Hearing Committee Exhibit J1,
 - Notice to Solicitor pursuant to section 56 of the *Legal Profession Act* with acknowledgement of service setting out the Citation Exhibit J2,
 - Notice to Attend with acknowledgement of service directing the Member to attend the Hearing Exhibit J3,
 - Certificate of Status certifying the Member is a student at law with LSA, pursuant to section 49 of the *Legal Profession Act*. Exhibit J4,
 - Certificate of Exercise of Discretion pursuant to Rule 96(2) (b) of the Rules of the LSA (“Rules”) by which the Director, Lawyer Conduct of the LSA, determined that no one was to be served with a Private Hearing Notice Exhibit J5,

EXHIBITS

4. Exhibits J1 through J5 were entered into the record with the consent of the parties.
5. Additional Exhibits 1 through 30 were entered into the record, during the course of the proceedings, with the consent of the parties:
 - Exhibit 1 – Memo to File, dated October 14, 2009

- Exhibit 2 – Section 53 of the Legal Profession Act demand dated October 23, 2009
- Exhibit 3 – Memorandum of Complaint
- Exhibit 4 - Letter from Christopher Valiant to LSA dated November 01, 2009
- Exhibit 5 – Memo from Maurice Dumont Q.C. to Conduct Committee Panel dated January 13, 2010
- Exhibit 6 - Conduct Committee Panel Minutes dated March 11, 2010
- Exhibit 7 - Letter to Christopher Valiant dated March 23, 2010
- Exhibit 8 – Letter of Reply from Christopher Valiant dated April 03, 2010
- Exhibit 9 – Letter to Christopher Valiant dated July 06, 2010
- Exhibit 10 – Reporting memo from staff lawyer dated August 03, 2010
- Exhibit 11 – Letter to Christopher Valiant dated August 30, 2010
- Exhibit 12 – Letter to Christopher Valiant dated September 02, 2010
- Exhibit 13 – Letter from Christopher Valiant dated September 15, 2010
- Exhibit 14 – Letter from Christopher Valiant dated October 16, 2010
- Exhibit 15 – Letter to Christopher Valiant dated October 18, 2010
- Exhibit 16 – Email to Christopher Valiant dated November 08, 2010
- Exhibit 17 – Email to Christopher Valiant dated November 16, 2010
- Exhibit 18 – Letter from Christopher Valiant dated November 17, 2010
- Exhibit 19 – Letter from Christopher Valiant dated November 17, 2010
- Exhibit 20 – Memo from Practice Review Panel to Conduct Committee dated December 14, 2010
- Exhibit 21 – Memo from Maurice Dumont Q.C. to Conduct Committee Panel dated December 17, 2010
- Exhibit 22 – Letter to Christopher Valiant dated December 14, 2010
- Exhibit 23 – Conduct Committee Panel Minutes dated February 15, 2010
- Exhibit 24 – Letter from Christopher Valiant dated July 22, 2010

- Exhibit 25 – Statement of Facts and Admission of Guilt
- Exhibit 26 – Letter to Christopher Valiant dated October 27, 2010
 - (a) S62 Application for Discontinuance of Proceedings
 - (b) Letter from Dr. Forbes to Whom It May Concern
 - (c) Chart notes from Program A
 - (d) Email correspondence concerning admission to Program A
 - (e) Materials from Program B
- Exhibit 27 – Memo from LSA to Conduct Committee dated January 31, 2012
- Exhibit 28 – Conduct Committee Panel Minutes dated March 20, 2012
- Exhibit 29 – Letter to Christopher Valiant dated April 03, 2012
- Exhibit 30 – Estimated Statement of Costs dated June 21, 2012

CITATIONS

6. The Member faces one (1) Citation:

IT IS ALLEGED THAT the student engaged in conduct that brought discredit to the profession and such conduct is conduct deserving of sanction.

PRELIMINARY MATTERS

7. The Chair introduced the Committee and inquired from both the Member and counsel for the L.S.A. whether they had any objection to the composition of the Committee on the basis of bias, a reasonable apprehension of bias or for any other reason. There was no objection by the Member or counsel for the LSA as to the composition of the Hearing Committee.
8. The Chair inquired whether the Member wished to make a Private Hearing application, while recognizing hearings ought to be conducted in public unless a compelling privacy interest requires protection, and then only to the extent necessary. This was declined by the Member.
9. The Chair then directed that the Hearing be held in public.

BACKGROUND:

10. This matter arises out of a complaint regarding the Member's professional conduct that he attended at an Examination for Discovery, advocating on behalf of his client, while under the influence of alcohol.

AGREED STATEMENT OF FACTS AND ADMISSION OF GUILT:

11. At the commencement of the hearing, counsel for the LSA requested the Committee's approval that the Statement of Facts and Admission of Guilt be entered as an exhibit in these proceedings, as complying with s.60 of the *Legal Profession Act*, having been received in a form acceptable to the Committee and deemed an admission of conduct deserving of sanction.
12. For these purposes, the Committee concluded the Statement of Facts failed to contain sufficient information that the grounds for the Member's application are clear, or could reasonably inform the Law Society, or any other law society, as to the Member's alleged misconduct.
13. The Committee invited further submissions to allow the Committee to consider whether to accept or reject the Statement of Facts and Admission of Guilt.
14. Counsel for the LSA proceeded to give an opening statement and led additional evidence in support of the formal citation.
15. The Member gave unsworn evidence and admitted as facts the admissions contained within this Statement of Facts and Admission of Guilt for the purpose of these proceedings. The Member then led additional evidence not inconsistent with the Statement of Facts herein.

CONCLUSION ON CITATIONS

16. The Statement of Facts and Admission of Guilt is reproduced as follows:
 - (1) On October 14, 2009 Mr. Valiant attended an Examination for Discovery at the offices of Carbone & Associates, in Edmonton, Alberta.
 - (2) Mr. Valiant conducted the examination of the defendant and his client was then questioned. Approximately an hour into the proceedings he spilled the contents of the travel mug he had arrived with and it was discovered by opposing counsel during the clean-up effort that the cup contained rum.
 - (3) Mr. Valiant acknowledged that this conduct falls below the standards of the profession and is deserving of sanction.
17. The issue to be determined by the Committee is whether the Member's conduct rises to a level of conduct deserving of sanction. In assessing sanctionable conduct, the Hearing Committee is mindful of the approach discussed in *Re Stevens and Law Society of Upper Canada (1979)*, 55 O.R. (2d) 405 (Div. Ct.), at p. 410:

What constitutes professional misconduct by a lawyer can and should be determined by the discipline committee. Its function in determining what may in each particular circumstance constitute professional conduct ought not to be unduly restricted. No one but a fellow member of the profession can be more keenly aware of the problems and frustrations that confront a practitioner. The discipline committee is certainly in the best position to determine when a solicitor's conduct has crossed the permissible bounds and deteriorated to

professional misconduct. Probably no one could approach a complaint against a lawyer with more understanding than a group composed primarily of members of his profession.

18. On the basis of the Agreed Statement of Facts and Admission of Guilt, other evidence received at the hearing, and for the reasons that follow, the Committee finds that Citation one (1) is made out, as conduct deserving of sanction, pursuant to Section 60 of the *Legal Profession Act* and received in a form acceptable to the Committee.

S. 60(1) Subject to the rules, a member may, at any time after the commencement of proceedings under this Division regarding the member's conduct and before a Hearing Committee makes its findings in respect of the member's conduct, submit to the Executive Director a statement of admission of guilt of conduct deserving sanction in respect of all or any acts or matters that are subject of the proceedings.

(2) A statement of admission of guilt shall not be acted on until it is in a form acceptable to:

(a) the Conduct Committee, if the statement is submitted before the day on which a Hearing Committee is appointed to conduct a hearing respecting the matter, or

(b) the Hearing Committee, if the statement is submitted on or after the day on which the Hearing Committee is appointed.

(3) If a statement of admission of guilt is accepted under subsection (2)(a), the chair of the Conduct Committee shall appoint a Hearing Committee consisting of 3 or more Benchers other than the President or any Benchers disqualified from sitting on the Committee.

(4) If a statement of admission of guilt is accepted, each admission of guilt in the statement in respect of any act or matter regarding the member's conduct is deemed for all purposes to be a finding of

(a) the Hearing Committee appointed under subsection (3), or

(b) the Hearing Committee that accepted the statement, as the case may be, that the conduct of the member is conduct deserving of sanction.

(5) The Hearing Committee appointed under subsection (3) or the Hearing Committee that accepted the statement, as the case may be, shall proceed with a hearing for the purpose of making its determination, if any, under section 71(4), its order under section 72 and its order, if any, under section 73.

SUBMISSIONS ON SANCTION AND COSTS

19. By way of a joint submission on sanction, the Committee was urged by counsel for LSA to reprimand the Member; to impose conditions which would assist the Member in his treatment and recovery from alcohol dependence, including imposing a restriction on the Member's practice of law.
20. An Estimated Statement of Costs was admitted into evidence. (Exhibit 30).

DECISION REGARDING SANCTION and COSTS

21. Section 49 of the *Legal Profession Act* defines conduct deserving of sanction:

49 (1) for the purposes of this Act, any conduct of a member, arising from Incompetence or otherwise, that

- (a) is incompatible with the best interests of the public or of the members of the Society, or
- (b) tends to harm the standing of the legal profession generally,

is conduct deserving of sanction, whether or not that conduct relates to the member's practice as a barrister and solicitor and whether or not that conduct occurs in Alberta.

22. The Committee must consider all of the evidence in arriving at an appropriate sanction.
23. In doing so, the Committee is mindful that the primary purpose of disciplinary proceedings found in *S.49 (1) Legal Profession Act* is the protection of the public interest and the standing of the legal profession generally.
24. In *McKee v. College of Psychologists (British Columbia)*, [1994] 9 W.W.R. 374 at page 376, the British Columbia Court of Appeal articulated the following principles, which are equally applicable to the disciplinary process for the legal profession:

"In cases of professional discipline there is an aspect of punishment to any penalty which may be imposed and in some ways the proceedings resemble sentencing in criminal cases. However, where the legislature has entrusted the disciplinary process to a self-governing professional body, the legislative purpose is regulation of the profession in the public interest. The emphasis must clearly be upon the protection of the public interest, and to that end, an assessment of the degree of risk, if any, in permitting a practitioner to hold himself out as legally authorized to practice his profession. The steps necessary to protect the public are matter's that professional peers are better able to assess than a person untrained in the particular professional art or science.

25. While acknowledging the primary purposes of the sanctioning process is the protection of the public and maintaining confidence in the legal profession, the objective of the *Act* is not about punishing the offender and exacting retribution but rather imposing a sanction which is just and measured.

26. The Committee is mindful that alcoholism is a disease in itself – a disease from which someone can recover when personal accountability is acknowledged and steps are taken to seek out medical and psychological help. Principles, which flow from case law suggest that Law Societies, in general, recognize the effect of substance abuse on lawyers and, where possible, support for recovery should be offered.

27. The Committee acknowledges that submissions on sanction are by way of a joint submission.

28. The use of joint submissions is a concept well known in criminal law and in administrative law cases. While a hearing panel is entitled to decline to accept a joint submission presented by the parties, there is a high threshold to be met for rejecting a joint submission. Taking into account the existing jurisprudence and the public interest, only a joint submission which is truly unreasonable or unconscionable should be rejected.

29. In *Nguyen*, reference was made to the Manitoba Court of Appeal's judgment in *R. v. Chartrand, (1998), 131 C.C.C. (3d) 122* where Kroft J.A. stated the following:

[8] A sentencing judge is not bound to accept the recommendation, but it should not be rejected unless there is good cause for so doing.

See also, *Law Society of Upper Canada v. Stephen Alexander Cooper* 2009 ONSLAP (CANLII), 2009 ONSLAP.

30. The Hearing Committee heard evidence that the Member, on being confronted about his intoxication in the course of an Examination for Discovery, acknowledged his problem with alcohol. The Examination for Discovery was cancelled by consent allowing the Member to inform both the client and his employer of his personal circumstances. He then sought out treatment for his alcohol abuse.

31. There is no suggestion the Member acted other than in a competent manner in the course of conducting an Examination for Discovery, notwithstanding his alcohol abuse.

32. The Member impressed the Hearing Committee by his “matter of fact” dealings with this Complaint. From the first instance there was no attempt by the Member to subvert the processes of the LSA. It is our view that he attempted to comply with the requests of the LSA as best he could. These attempts initially fell short of what was expected by the LSA. The Member was slow to respond in a fulsome way to LSA suggestions and directions. This failure, in the course of time, however, was eventually remedied.

33. The Committee noted the following submissions made by counsel, on behalf of the LSA, although not binding are persuasive:

(a). “I think that Mr. Valliant has shown more insight than any other Member that I’ve dealt with in my career....”.

(b). “Mr. Valliant, from the beginning, has been willing to accept facts that the Law Society wouldn’t have been able to prove but for his admissions”.

(c). "If there is anyone in the room that most believes that this is conduct deserving of sanction and seriously so, it's Mr. Valliant".

34. The Member gave unsworn evidence before the Committee. He expressed shame and remorse for his misconduct. He described the rehabilitative steps undertaken to assist him from relapsing back into alcohol usage. He also stated of his intentions of continuing to attend Program A. The Committee noted the honest and forthright manner in which the Member expressed himself.
35. The Member has to be commended for acknowledging his guilt and co-operating with the LSA with his Agreed Statement of Facts and Admission of Guilt. This is a necessary step in maintaining public confidence in the legal profession. The need for witnesses to be called to testify was avoided by the Member acknowledging his guilt. The LSA also avoided additional expenditure of time and costs with the guilty plea. This is to be commended.
36. There is no dispute the Member has been open and forthright in his dealings with the LSA. He has acted with integrity while demonstrating his concern for the public interest and the reputation of the Law Society.
37. The Committee heard evidence that the Member, as a student, had been subjected to a very difficult articling period. From the outset of his articles, he was required to manage 168 files. This is an inordinate amount of files by anyone's standard, not the least for a student. This heavy workload placed the Member under enormous pressure throughout his articles. While not excusing the Member's misconduct, it provides context to the pressure placed on a young vulnerable student leading to his attendance before this Committee.
38. There is little doubt that the Member saw many barriers to the practice of law ahead of him not the least of which was his addiction and the successful completion of his education and training. The Member's view of these barriers may have seemed insurmountable. He saw, no doubt, little likelihood of success. In the result, the Member did not completely respond to LSA overtures through the Practice Review Process. He appeared to have governance issues. This hearing was the inevitable response to the issue of governability.
39. The ability to govern members is at the root of self-regulation. Members must resolutely receive suggestions and directions from their regulator. They must be earnest and genuine in their desire to do what is necessary to ensure the protection of the public. If a member is unwilling or unable to do so, then adequate measures to ensure that the public is protected should and must be taken.
40. It is now known that the Member had personal issues that affected his ability to initially comply with all LSA directions and requests. The Member's inability to fully comply may have been rooted in his illness and addiction. The Hearing Committee is satisfied that the Member eventually recognized the gravity of the discipline process and responded appropriately. For this the Member is commended.
41. The Member has no previous disciplinary record. Any sanction imposed must be cognizant of that fact.

42. Having regard to all the foregoing factors and evidence the Committee concludes that the protection of the public interest and the standing of the legal profession generally can be satisfied with the following conditions:

- (a) The Member will receive a reprimand.
- (b) The Member is directed to the Practice Review Committee for a general review and assessment of his practice.
- (c) The Member will cooperate with the Practice Review Committee and will satisfy any conditions which may be imposed by the Practice Review Committee, which includes the following conditions:
 - (1). The Member is to participate in counseling and treatment as required to ensure his ongoing recovery from alcohol.
 - (2). The Member is to make arrangements to seek the services of a physician, of his choice, to oversee his physical well-being.
 - (3). The Member is to practice in a setting where collegiality and mentorship is available.
 - (4). The Committee directs that the fulfilment of these conditions is not to be a barrier to the Member being admitted as a member of the LSA.

CONCLUDING MATTERS

- (e). No referral to the Attorney General is required.
- (f). No Notice to the Profession is required.
- (g). There will be a redaction of exhibits.
- (h). There will be no hearing costs awarded against the Member.

Dated July 10, 2012, at Calgary, Alberta.

DENNIS EDNEY, Q.C. (Chairperson)

ANTHONY YOUNG, Q.C.

AMAL UMAR

REPRIMAND

REPRIMAND

THE CHAIR: As Chair, Mr. Valiant, on behalf
of the committee, I'm required to reprimand you and make
certain comments, and I'll be very brief.

I've listened to the reasons and the
well-articulated submissions of legal counsel, Ms. Tracy
Davis for the Law Society, and also your open and honest
forthright submissions to us today. I concur that the
protection of the public and the reputation of the Law
Society and this profession are inextricably linked to your
misconduct. We hope that you will view this hearing as a
new start leading you to a healthier lifestyle and a
promising future as a lawyer; you have all the makings of
becoming one. You've also shown that you're someone who is
concerned for the public interest and the reputation of the
Law Society by your honesty and forthrightness in your
dealings with the Law Society. So we wish you well, and we
look forward to seeing you as a fellow colleague in the days to
come. Thank you.