

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 KEVIN GUBBINS
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

SANCTION PHASE REPORT

M. SANCTION PHASE REPORT

423. On June 29, 2012 LSA Counsel and the Member, on his own behalf, made submissions in respect of sanction and collateral matters.

Law Society of Alberta Submissions

424. LSA Counsel advised that she had had a brief opportunity to speak to the Member about the matter of sanction and submits that a reprimand is a suitable punishment in these circumstances, the content of which reprimand is already encompassed in the Hearing Report.

425. LSA Counsel indicated that the Member has no prior disciplinary record as at a date just prior to the commencement of this hearing in June of 2011.

426. In respect of costs, LSA Counsel submitted that all evidence essentially went to the citation of failing to serve a client and, irrespective of the dismissal of Citation 2, the evidence given over two days of hearings was linked to the finding of guilt in respect of Citation 1.

Member's Submissions

427. While the Member indicates that he refutes the conclusion reached, he is accepting of the finding of guilt and advised that since the hearing he has altered his professional behaviour and now offers no casual advice and more frequently uses retaining letters when it is not a Legal Aid matter.

428. The Member does not disagree that a reprimand would be the appropriate sanction in this case.

429. In terms of costs, the Member pointed out that he had to devote two days to the hearing of this matter and the evidence primarily relating to Citation 2 which was ultimately dismissed. The Member submits, therefore, that a more appropriate costs order would be in the range of two-thirds of total costs, the total being (Exhibit 17) \$6,394.50.

430. When asked about an appropriate time to pay costs, should the costs be assessed against the Member, the Member submitted that a four month period to pay would be suitable.

431. The Member also asserted that the hearing Report ought to be fully redacted as it relates to the discussion of Citation 2 which was dismissed and not simply a redaction of any personal identifiers of members of the public involved in this hearing.

Law Society of Alberta's Rebuttal

432. In a brief rebuttal, LSA Counsel indicated that it would not be appropriate to remove all of the Hearing Committee's decision in respect of the dismissed citation but, rather, to simply redact the personal identifiers of members of the public.
433. To complete the Exhibit record the following Exhibits were marked and entered:
- Exhibit 16 – Member's Disciplinary Record dated May 11, 2011;
 - Exhibit 17 – Estimated Statement of Costs.

N. SANCTION DECISION

434. This Hearing Committee is well aware that its decision must be supported by tenable reasons which are grounded in the evidentiary foundation.
435. This Hearing Committee, too, is keenly aware of the gravity of its undertaking: to decide upon a reasonable and appropriate sanction and fully understands the potential impact its decision will have on the Member, the legal profession, the Law Society of Alberta and the public.
436. It is noted that Mr. Gubbins has no disciplinary record.
437. The Hearing Committee has considered the submissions of the LSA through its counsel and has also considered the submissions of Mr. Gubbins.
438. Various factors that come into play in making this decision and in deciding how the public interest ought to be protected, include:
- (a) The nature and gravity of the proven misconduct;
 - (b) Whether the misconduct was deliberate;
 - (c) Whether the misconduct engaged the Member's honesty or integrity;
 - (d) The impact of the misconduct on the client affected;
 - (e) General deterrence of other members of the legal profession;
 - (f) Specific deterrents of the Member from engaging in further misconduct;
 - (g) Punishment of the Member;
 - (h) Whether the Member has incurred other serious penalties or financial loss as a result of the circumstances;
 - (i) Preserving the public's confidence in the integrity of the profession's ability to properly supervise the conduct of its members;
 - (j) The public's denunciation of the misconduct;
 - (k) The extent to which the offensive conduct is clearly regarded within the profession as falling outside the range of acceptable conduct; and
 - (l) Imposing a penalty that is consistent with the penalties imposed in similar cases.

439. Mitigating circumstances must also be considered and in this case include:
- (a) The Member's attitude since the misconduct occurred;
 - (b) The prior disciplinary record of the Member including whether this is a first offence; and
 - (c) The Member's record of professional service to the community as a criminal law practitioner.
440. Taking all of the aforementioned factors into account, and in consideration of the citation of failing to serve his client and the finding of guilt in respect of that citation, it is the unanimous opinion of this Hearing Committee that a reprimand and the payment of some costs is in order.
441. Frederica Schutz, Q.C., Chair of the Hearing Committee delivered the following reprimand:

Mr. Gubbins: Despite the reality that initial contact with persons facing criminal charges may be somewhat casual and informal, the standard of care owed to these persons, as admitted by you, is no less onerous than in any other legal matter, whether a civil matter or otherwise.

It is your duty as a practising lawyer to ensure, at all times, that no person with whom you have contact is left with the impression that you are protecting their best interests and are representing them in your professional capacity – as a lawyer – with their legal problems.

If you are not retained, Sir, make that clear. Perhaps a simple form setting out that fact could be used to create a record of what you told that person and what you communicated to them about your inability or unwillingness to take on their case.

We understood you to say, today, that you have altered your practice with respect to giving summary legal advice and we trust that you will not find yourself in this type of situation again.

Section 49 of the *Legal Profession Act* requires us to consider, as paramount, the best interests of the public. It is essential to underscore that when you are dealing with members of the public you must clearly and simply set out the boundaries of your professional relationship with that person.

This concludes the reprimand.

O. CONCLUDING MATTERS

442. The Member is directed to pay costs totaling \$5,000.00, payable within four months of today's date.
443. There will be no notice issued to the Attorney-General.
444. The Hearing Committee Report and the Exhibits in this matter will be available to the public, subject to redaction to protect third party names and identities, to protect confidential information and to protect solicitor-client privilege.

DATED this 6th day of July, 2012.

Frederica Schutz, Q.C. (Chair)

Wayne Jacques (Member)

Sarah King-D'Souza, Q.C. (Member)