



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 Bradley Kempo, a Member of the Law Society of Alberta.

A. Jurisdiction and Preliminary Matters

1. A Hearing Committee of the Law Society of Alberta (LSA) held a hearing into the conduct of Bradley Kempo on September 29, 2010. The Committee consisted of Neena Ahluwalia QC, Chair, Harry Van Harten and Amal Umar. The LSA was represented by Garner Groome. The Member was represented by Stewart Baker QC. Mr. Van Harten was appointed to the Provincial Court of Alberta and did not sign the Hearing Committee Report as it was prepared after his appointment.
2. Exhibits 1 through 4, consisting respectively of the Letter of Appointment of the Hearing Committee, the Notice to Solicitor, the Notice to Attend and the Certificate of Status of the Member, established the jurisdiction of the Committee and were admitted into evidence by consent.
3. There was no objection by the Member's counsel or counsel for the LSA regarding the membership of the Committee.
4. No request for a private hearing had been received and therefore the hearing proceeded in public.
5. The following exhibits were entered by agreement of the parties:
 - Exhibit 6 – Agreed Statement of Facts
 - Exhibit 7 – Email correspondence
 - Exhibit 8 – Affidavit of Bradley Kempo
 - Exhibit 9 – Summary of Arguments of Bradley Kempo
 - Exhibit 10 – Discipline Record of Bradley Kempo
 - Exhibit 11 – Estimated Statement of Costs

B. Agreed Statement of Facts

The Agreed Statement of Facts is attached to this decision. Of particular note are the following excerpts which state:

1. The Member was admitted to the Bar on September 21, 1980 and practiced in Edmonton, Alberta until transferring to the inactive/non-practicing list on January 27, 1993. On September 1, 1993, he was suspended for non-payment of costs ordered to be paid in an unrelated discipline matter.
2. At all material times the Member was aware of his suspended status.
3. Regarding Citations 1 and 2: ... the member always sent his correspondence to his recipients via email adding the designation "Barrister and Solicitor [Alberta, Inactive]" to the signature block on

the covering emails attaching the communications. ...The foregoing references to himself were made by the Member following his suspension by the Law Society of Alberta and concerned, among other things, topics of a legal nature not in terms of practicing law and the giving of legal advice but only academic legal scholarship matters. ...The Member did not respond (to a formal demand to respond to the complaint).

4. Regarding citations 3 and 4 ...correspondence (was received) from the Member in which he described himself as “Brad Kempo, B.A., LL.B” with the following designations:
 - a. Barrister & Solicitor [Alberta, Inactive]; and
 - b. Barrister & Solicitor [Alberta].... The Member did not respond (to a formal demand to respond to the complaint).
5. Regarding citations 5 and 6 ... received via email a letter from the Member ... identifying himself as a “Barrister & Solicitor [Alberta]”. In that letter he indicated that he “represented” certain “clients” to “advance their interests”. The covering email added to the signature block the designation “Barrister & Solicitor [Alberta, Inactive]. The submissions ... were intended to be academic in nature and were neither soliciting nor seeking legal advice. ... The Member did not respond (to a formal demand to respond to the complaint).
6. Regarding citations 7 and 8 ... received a telephone call from the Member..identifying himself as an “attorney” stating that he was contacting (the complainant) on behalf of his “client, the Government of the United States of America”...also sent an email..in which he described himself as “barrister & Solicitor [Alberta, Inactive]...the submissions... were intended to be academic in nature and were neither soliciting nor seeking legal advice...The Member did not respond (to a formal demand to respond to the complaint).

6. Relevant Definitions:

Rules of the Law Society of Alberta

s. 1 (1)(i) “Inactive member (retired) means an inactive member, who has been an active member of the Society, or a Judge described in section 33 of the Act or a Master in Chambers, for a period or periods totalling at least 25 years, who has elected to become an inactive member (retired) pursuant to Rule 68(3), and who has not revoked that election.

s.1 (1) (j) “In good standing” means:

(i) in relation to a member of the Society, that the membership of the member is neither under suspension nor liable to be suspended by reason of a then current default of payment to the Society of a prescribed annual fee, Assurance Fund levy or professional liability insurance assessment or default of compliance with rules 119.30, 119.35 or 119.36

Legal Profession Act

s. 107(4) A member whose membership is under suspension shall not hold out or represent that the member is a member in good standing or a member not under suspension.

s. 102(1) Members of the Society shall be known and designated as barristers and solicitors.

s. 102(2) Active members are officers of the Court of Queen's Bench and all other courts of record in Alberta and have a right of audience in those courts.

C. Argument Regarding Citations

7. Mr. Groome, as counsel for the Law Society, submitted that statements regarding the Member's status as lawyer were important to the people that he corresponded to. In this case, it was submitted that it lent credence to Mr. Kempo's academic status and the weight of his submissions to the various complainants. It was submitted that the designation of Barrister and Solicitor should be reserved for members "in good standing" as defined in the Rules of the Law Society (s. 1 (j) (i)). He submitted that the public relies on that status and that if they find out that the member is not "in good standing", they feel misled and complaints are filed with the Law Society.
8. Further, Mr. Groome submitted that the status of a member is so important that s. 107(4) places a positive obligation on the member to not hold out that he is a "member in good standing" if under suspension.
9. Mr. Groome also drew the committee's attention to the Law Society of Alberta v. Burchak decision. In that decision, the hearing panel said "Despite what his intent may have been, his conduct did have the effect of misleading both the court and members of the public.
10. Mr. Baker made submissions on behalf of Mr. Kempo.
11. The **LPA** does not define a "suspended member". There is a limitation that restricts court appearances to "active" members (s. 102(2)). The Act does not say anything that inactive members must designate themselves as such (s. 107). The member is not obligated to do something. The member is obligated *not* to do something (ie. 107(4) A member whose membership is under suspension shall not hold out or represent that the member is a member in good standing or a member not under suspension.)
12. Mr. Baker submitted that there was no evidence before the committee that the member in this case held himself out as a member "in good standing". Mr. Kempo is entitled to use the law as it is written to his benefit. If the behaviour is not proscribed, then it is allowed.

13. Mr. Baker submits that the recipients of Mr. Kempo's correspondence would have taken his status into the context of the nature of the material. It was "academic" in nature and neither sought nor solicited legal advice.

D. Decision as to Citation

14. The Hearing committee found Mr. Kempo guilty of conduct deserving of sanction on all counts before it. The citations were duplicitous in terms of the actual conduct (ie—misrepresenting his professional status and failing to respond to the Law Society), and were separated individually by complainants and dates.
15. The Hearing committee accepted the argument that by asserting himself as a Barrister and Solicitor and by adding the term "inactive" the Member misrepresented his professional status. As stated in *Burchak*:
"This is an issue of governability. When a member represents himself or herself as active and practicing when in fact he or she is not, the LSA's ability to govern its members is compromised. Such conduct does a disservice to both the public and the profession."
16. This conduct is more egregious when the member is suspended by the Law Society. The public is entitled to know the true status of a member and to assert that he is merely inactive, rather than suspended according to the rules of the Society is disingenuous. The wording of s. 107 (4), in the opinion of the Committee, does place an obligation on a suspended member to "not hold out or represent that the member isa member not under suspension."
17. There are rules regarding being placed on the inactive list of the Law Society of Alberta. Mr. Kempo is well aware of them as he sought that status in January of 1993. After failing to pay costs in a discipline matter, he lost that status and gained the status of being a "suspended" member. He will remain a suspended member until certain obligations are met.
18. The Hearing Committee also found that Mr. Kempo's failure to respond to Law Society correspondence was also conduct deserving of sanction. If what Mr. Kempo sought to do was to argue about the meaning and observation of the sections of the Legal Profession Act and the Rules of the Law Society of Alberta, that should have been communicated to the Law Society. He did not do so until this Hearing. The Law Society's ability to govern its members is important to the public interest and to protect reputation of the profession.

D. Decision Regarding Sanction

19. With respect to sanction, Mr. Groome submitted that nothing other than disbarment would be a sufficient sanction. He submitted that anything short of this would allow the

member to continue as he has in the past. Mr. Groome submitted that the issue in this case is one of governability of the profession. Mr. Kempo refused to stop referring to himself as merely inactive and refused to communicate with the Law Society of Alberta when requested to do so.

20. Mr. Baker, on behalf of Mr. Kempo submitted that the complaints in this hearing did not refer to the context of Mr. Kempo's correspondence to the complainants. They were works of an academic nature and there was no personal gain or benefit derived from the correspondence. Mr. Kempo was merely attempting to assist decision makers in their decision making process. Mr. Baker asserts that Mr. Kempo had an honest argument to be made before the Hearing Committee.
21. The Hearing Committee accepts the argument of Mr. Baker and Mr. Kempo's affidavit with respect to the Member's conduct, but must make it perfectly clear that this conduct is not to be repeated again.
22. The Hearing Committee imposes a reprimand and levies a fine on each count in the amount of \$250.00.
23. The Hearing Committee also orders full costs to be paid for the hearing as set out in Exhibit 11.
24. If there are to be further citations with respect to similar conduct, this Committee directs that the next Hearing Committee be fully informed of the decision of this Committee.

G. Concluding Matters

25. There will be no referral to the Attorney General.
26. There will be no notice to the profession.
27. With regard to time to pay, both the fine and the costs payable shall be paid 45 days from the date of receipt of the costs invoice by the member's counsel.

Dated this 3 day of October , 2011.

Neena Ahluwalia, QC – Chair and Bencher

Amal Umar, Bencher

APPENDIX

IN THE MATTER OF *THE LEGAL PROFESSION ACT*

AND

IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF BRADLEY KEMPO, A MEMBER OF THE LAW SOCIETY OF ALBERTA

AGREED STATEMENT OF FACTS

INTRODUCTION

1. The Member was admitted to the Bar on September 21, 1990, and practiced in Edmonton, Alberta until transferring to the inactive/non-practicing list on January 27, 1993. On September 1, 1993, he was suspended for non-payment of costs ordered to be paid in an unrelated discipline matter.
2. At all material times the Member was aware of his suspended status.

CITATIONS

3. On May 22, 2009, and August 27, 2009, panels of the Conduct Committee referred the following conduct to hearing:
 1. IT IS ALLEGED THAT you misrepresented your professional status in communication(s) with the Law Society of British Columbia and others, including but not limited to Senators and Members of Parliament, other law societies, mayors, bar associations, and educational facilities, and that such conduct is conduct deserving of sanction.
 2. IT IS ALLEGED THAT you failed to respond to the Law Society of Alberta in a complaint made to it by the Law Society of British Columbia, and that such conduct is conduct deserving of sanction.
 3. IT IS ALLEGED THAT you misrepresented your professional status in communication(s) with the Law Society of Manitoba, and that such conduct is conduct deserving of sanction.
 4. IT IS ALLEGED THAT you failed to respond to the Law Society of Alberta in a complaint made to it by the Law Society of Manitoba, and that such conduct is conduct deserving of sanction.
 5. IT IS ALLEGED THAT you misrepresented your professional status in communication(s) with C..., and that such conduct is conduct deserving of sanction.

6. IT IS ALLEGED THAT you failed to respond to the Law Society of Alberta in a complaint made by it in the matter of your communication(s) with C..., and that such conduct is conduct deserving of sanction.
7. IT IS ALLEGED THAT you misrepresented your professional status in communication(s) with the Government of Canada's Department of Foreign Affairs and International Trade, and that such conduct is conduct deserving of sanction.
8. IT IS ALLEGED THAT you failed to respond to the Law Society of Alberta in a complaint made to it by the Government of Canada's Department of Foreign Affairs and International Trade, and that such conduct is conduct deserving of sanction.

FACTS

Law Society of British Columbia Complaint – Citations 1 and 2

4. On August 14, 2007, and September 19, 2007, the Law Society of Alberta received from the Law Societies of British Columbia and Yukon, respectively, copies of correspondence from Senator Robert Peterson concerning various correspondence and communications by the Member sent to that senator and others, including but not limited to Members of Parliament, other law societies, mayors, bar associations, educational facilities and generally on the internet, containing references to himself as "Brad Kempo, B.A. LL.B.". The Member always sent his correspondence to his recipients via email adding the designation "Barrister & Solicitor [Alberta, Inactive]" to the signature block on the covering emails attaching the communications. He used one of the following designations in the attachments themselves or on the internet:
 - a. Barrister & Solicitor [Alberta];
 - b. Barrister & Solicitor;
 - c. Barrister & Solicitor [Called to the Alberta Bar];
 - d. Barrister & Solicitor, Member of the Alberta Bar 1990; and
 - e. Called to the Alberta Bar 1990.
5. The Member also contacted the assistant to Senator Peterson by telephone and identified himself as a "lawyer".
6. The foregoing references to himself were made by the Member following his suspension by the Law Society of Alberta and concerned, among other things, topics of a legal nature not in terms of practicing law and the giving of legal advice but only academic legal scholarship matters.
7. On October 12, 2007, the Law Society of Alberta advised by way of letter to the Member that he was to cease using the designation "Barrister & Solicitor [Alberta, Inactive]" after his name (**Tab A**).
8. The Member continued to use the designator "Barrister & Solicitor [Alberta, Inactive]" in communications with the public after having received the foregoing warning from the Law Society of Alberta.

9. On January 29, 2008, the Member was sent a formal demand to respond to the complaint (**Tab B**). He received this demand but did not respond.

10. A reminder was sent to the Member on February 26, 2008. He did not respond.

11. To the date of this Agreed Statement of Facts, the Member continues to use the designator “Barrister & Solicitor [Alberta, Inactive]” in his communications with the profession and the public. On the internet the Member continues to refer to himself as “Brad Kempo, B.A. LL.B. (Called to the Alberta Bar 1990)”, “Brad Kempo, B.A. LL.B., Barrister & Solicitor”, and “Brad Kempo, B.A. LL.B. [Alberta, Inactive]”.

Law Society of Manitoba Complaint – Citations 3 and 4

12. On March 10, 2008, the Law Society of Alberta received from the Law Society of Manitoba advice that it had recently received correspondence from the Member in which he described himself as “Brad Kempo, B.A., LL.B” with the following designations:

- a. Barrister & Solicitor [Alberta, Inactive]; and
- b. Barrister & Solicitor [Alberta].

13. The subject matter of the correspondence was the same as referred to in the Law Society of British Columbia complaint above.

14. On March 17, 2008, the Member was sent a formal demand to respond to the complaint (**Tab C**). He received this demand but did not respond.

15. A reminder letter was sent to the Member on April 21, 2008. He did not respond.

C... Complaint – Citations 5 and 6

16. On February 24, 2009, the Law Society of Alberta received a complaint from the General Counsel & Corporate Secretary of C... advising that it had received via email a letter from the Member of the same date identifying himself as a “Barrister & Solicitor [Alberta]”. In that letter he indicated that he “represented” certain “clients” to “advance their interests”. The covering email added to the signature block the designation “Barrister & Solicitor [Alberta, Inactive]”. The submissions to C... were intended to be academic in nature and were neither soliciting nor seeking legal advice.

17. On February 25, 2009, the Member was sent a formal demand to respond to the complaint (**Tab D**). He received this demand but did not respond.

18. A reminder letter was sent to the Member on March 25, 2009. He did not respond.

Department of Foreign Affairs and International Trade Complaint – Citations 7 and 8

19. On March 23, 2009, the Law Society of Alberta received a complaint from a senior staff member of the Government of Canada's Department of Foreign Affairs and International Trade ("DFAIT") advising that she had received a telephone call from the Member the week prior identifying himself as an "attorney" stating that he was contacting DFAIT on behalf of his "client, the Government of the United States of America". The Member also mentioned that he was called to the bar in 1990 but never mentioned he was currently suspended.
20. The Member also sent an email to DFAIT on March 23, 2009, in which he described himself as "Barrister & Solicitor [Alberta, Inactive]".
21. The submissions to DFAIT were intended to be academic in nature and were neither soliciting nor seeking legal advice.
22. On March 25, 2009, the Member was sent a formal demand to respond to the complaint (**Tab E**). He received this demand but did not respond.
23. A reminder letter was sent to the Member on April 16, 2009. He did not respond.

Uncited Particulars

24. On May 21, 2009, the Law Society of Alberta was advised by the City Solicitors' Office for the City of Fredericton, New Brunswick indicating that it had received an email from the Member dated April 20, 2009, identifying himself as "Barrister & Solicitor [Alberta, Inactive]" and referring to matters of interest to him and his "clients". The submissions to the City of Fredericton were intended to be academic in nature and were neither soliciting nor seeking legal advice.
25. On June 25, 2009, the Law Society of Alberta was contacted by the Senior Legal Officer to the Court of Appeal of Ontario advising of an email dated the same date from the Member addressed to the Chief Justice of Canada and all Chief and Associate Chief Justices and Judges in all of the provinces, with the exception of Alberta, British Columbia, and Quebec, with concerns with respect to the Member identifying himself as "Barrister & Solicitor [Alberta, Inactive]". The email was also copied to the executive officers of national justice institutes and academic councils. The email concerned, among other things, topics of a legal nature not in terms of practicing law and the giving of legal advice but only academic legal scholarship matters.
26. Both of these uncited matters were opened as formal complaints in Law Society file CO20091265 and are presently in the review stage under Part 3 of the *Legal Profession Act*.

ADMISSION OF FACTS

27. The Member admits as fact the statements contained within this Agreed Statement of Facts for the purposes of these proceedings.
28. The Member does not admit any guilt to the Citations.

29. This Agreed Statement of Facts is not exhaustive and the Member may lead additional evidence not inconsistent with the stated facts herein. The Member acknowledges that the Law Society is not bound by this statement of facts and that it may cross-examine the Member, adduce additional evidence, or otherwise challenge any point of fact it may dispute in this statement.

THIS AGREED STATEMENT OF FACTS IS MADE THIS _____ DAY OF SEPTEMBER, 2010.

Bradley Kempo