

# 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 Thomas Pontin, a Member of the Law Society of Alberta

### A. INTRODUCTION

1. On March 11, 2014, a Hearing Committee of the Benchers convened at the Law Society of Alberta offices in both Edmonton and Calgary, via videoconference, to inquire into the conduct of Thomas Pontin. The Hearing Committee was comprised of Anne L. Kirker, QC (Chair), Walter Pavlic, QC, and Miriam Carey, PhD. The Law Society of Alberta ("LSA") was represented by Ms. Molly Naber-Sykes, QC. Mr. Pontin was present for the hearing and was represented by Ms. Laura Stevens, QC.

### B. JURISDICTION AND PRELIMINARY MATTERS

2. Exhibits 1 through 5 consisting of the following were admitted by consent and established the jurisdiction of the Hearing Committee:

EXHIBIT 1	Letter of Appointment of Hearing Committee - January 13, 2014
EXHIBIT 2	Notice to Solicitor - March 4, 2014
EXHIBIT 3	Notice to Attend - March 4, 2014
EXHIBIT 4	Mr. Pontin's Certificate of Status - December 18, 2013
EXHIBIT 5	Certification of the Exercise of Discretion regarding Private Hearing Application Notices - December 18, 2013

3. The parties were aware that Ms. Kirker, in her capacity as Vice Chair of the LSA Conduct Committee, had been party to two pre-hearing conferences where matters of scheduling were discussed. They confirmed, however, that they had no objections to the composition of the Hearing Committee.

4. No applications for a private hearing were made. The Chair therefore directed that the Hearing proceed in public.

5. The following Exhibits 6 through 21 were then admitted by consent. Those exhibits consisted of the following:

EXHIBIT 6	Email from Len Zalapski to Thomas Pontin - June 5, 2007
EXHIBIT 7	Email from Len Zalapski to Thomas Pontin - June 7, 2007
EXHIBIT 8	Email from Thomas Pontin to A.F. - June 7, 2007
EXHIBIT 9	Email from Thomas Pontin to A.F. - June 11, 2007

- EXHIBIT 10 Application to F.O. from Thomas Pontin - June 14, 2007
- EXHIBIT 11 Letter from Thomas Pontin to C.O.S. Inc. -June 23, 2007
- EXHIBIT 12 Email from Thomas Pontin to Len Zalapski - July 17, 2007
- EXHIBIT 13 Complaint About My Lawyer from L.R. - January 26, 2011
- EXHIBIT 14 Letter from Thomas Pontin to the Law Society - February 16, 2011
- EXHIBIT 15 Response from L.R. - Undated
- EXHIBIT 16 Letter from Thomas Pontin to the Law Society - April 1, 2011
- EXHIBIT 17 Letter from Thomas Pontin to the Law Society - July 8, 2011
- EXHIBIT 18 Conduct Committee Panel Minutes - November 15, 2012
- EXHIBIT 19 Letter from the Law Society to Thomas Pontin - November 22, 2012
- EXHIBIT 20 Letter from Thomas Pontin to the Law Society - December 3, 2012
- EXHIBIT 21 Statement of Admitted Facts and Guilt - December 15, 2013

### C. CITATIONS

- 6. On January 11, 2013, a Conduct Committee Panel referred the following conduct to hearing:
  - a) It is alleged that you were less than candid with the LSA, and that such conduct is conduct deserving of sanction.

### D. AGREED STATEMENTS OF FACTS AND ADMISSION OF CONDUCT DESERVING OF SANCTION

- 7. The Statement of Admitted Facts and Admission of Guilt (Exhibit 21) was signed by Mr. Pontin on December 15, 2013 and stated as follows:

#### **FACTS:**

##### My Relationship with the Rs

- 1. L.R. worked in my office as a paralegal from 2006 to 2010.
- 2. L.R. and her husband (the "Rs") owned property that could be accessed only by using a bridge on their neighbour's ("S.C.") land. However, the bridge was in poor condition and unsafe to use. Len Zalapski represented S.C. and I represented the Rs.
- 3. On June 5, 2007, Mr. Zalapski e-mailed me and concluded he would "await advice as to your clients (sic) position and status of permits". (Exhibit 6)
- 4. On June 7, 2007, Mr. Zalapski asked me whether my clients had received the permits. I responded by e-mail that day to update Mr. Zalapski. (Exhibit 7)
- 5. On June 7, 2007, A.F. of F.O. confirmed by e-mail our telephone conversation during which I told her I represented the Rs. (Exhibit 8)

6. By June 11, 2007 e-mail, I confirmed to A.F. that I represented the Rs. (Exhibit 9)
7. I submitted an Application to F.O. on behalf of the Rs on June 14, 2007 in which I refer to the Rs as my clients. (Exhibit 10)
8. On June 23, 2007, I sent C.O.S. Inc. an indemnification agreement executed by the Rs. The cover letter refers to my file number. (Exhibit 11)
9. In my July 17, 2007 e-mail to Mr. Zalapski, I refer to the Rs as “my clients”. (Exhibit 12)
10. By January 26, 2011 complaint, the Complainant L.R. told the Law Society of Alberta that I represented her and her husband in a dispute with their neighbors about access to their property. (Exhibit 13)

### **The Complaint**

11. The Law Society asked me to respond to the complaint. By February 16, 2011 letter, I denied ever being retained by the Rs on any matter. I stated I was never retained to assist with L.R.’s problems with the bridge and because I am not a barrister, I would not commence an action on L.R.’s behalf. (Exhibit 14)
12. L.R.’s reply to my response was that it was inaccurate for me to deny having represented her. (Exhibit 15)
13. By April 1, 2011 letter, I said L.R. solicited my assistance as a friend on numerous occasions during 2006 and 2007 but I never opened a file and did not charge her a fee. (Exhibit 16)
14. By July 8, 2011 letter, I told the Law Society that although I did assist L.R. on several matters and quoted several file numbers, I did not charge her a fee. (Exhibit 17)
15. On November 15, 2012, a Conduct Committee Panel reviewed the complaint and asked for more information about my candour with the Law Society. (Exhibit 18)
16. The Law Society’s November 22, 2012 letter asked me to explain whether I was candid with the Law Society. (Exhibit 19)
17. By December 3, 2012 letter, I explained I did not try to deliberately mislead the Law Society with my responses and apologized for any misunderstandings. (Exhibit 20)

### **Admission of Facts and Guilt**

18. I admit as fact the statements in this Statement of Admitted Facts for the purposes of these proceedings.
19. I admit my guilt to the citation directed against me on January 11, 2013 in accordance with Section 60(2)(b) of the Legal Profession Act. I understand that if this statement of guilt is accepted by the Hearing Committee, my conduct will be deemed for all purposes to be a finding of the Hearing Committee that my conduct is conduct deserving of sanction.

## E. DECISION REGARDING ADMISSION OF CONDUCT DESERVING OF SANCTION

8. The Hearing Committee concluded that the Statement of Admitted Facts and Guilt was consistent with the evidence provided and was in a form acceptable to the Committee pursuant to section 60 of the Legal Profession Act.

9. Mr. Pontin confirmed that he:

- a) unequivocally admitted his guilt to the citation;
- b) understood the nature and consequences of the admission he was making; and,
- c) understood the Committee was not bound by any joint submission on sanction.

## F. DECISION REGARDING SANCTION

10. Counsel were then invited to make submissions on sanction. A joint submission on sanction was indeed received, along with a December 18, 2013 Certificate confirming Mr. Pontin has no discipline record and an estimated Statement of Costs which were entered as exhibits 22 and 23, respectively, by consent.

11. Counsel submitted that a reprimand, coupled with a fine of \$2,000 and an obligation to pay actual costs of the hearing was appropriate in this case given that Mr. Pontin had practiced for decades with no history of complaints and had expressed his remorse and acknowledged responsibility for the conduct deserving of sanction which resulted from his lack of diligence in responding to the LSA which led to certain misstatements of fact. He recognizes that his duty of candor and accountability requires greater diligence in reviewing any file in his practice which requires a response to the LSA to ensure the response is accurate and complete.

12. In determining an appropriate sanction the Hearing Committee is required to take a purposeful approach. The overarching objectives of the sanctioning process are to protect the public and to preserve high professional standards and public confidence in the legal profession: *Law Society of Alberta v. Mackie*, 2010 ABLS 10.

13. In *Lawyers & Ethics: Professional Responsibility and Discipline*, author Gavin McKenzie (at page 26-1), states:

*The purpose of law society discipline proceedings are not to punish offenders and exact retribution, but rather to protect the public, maintain high professional standards, and preserve public confidence in the legal profession.*

*In cases in which professional misconduct is either admitted or proven, the penalty should be determined by reference to these purposes...*

14. The Hearing Committee also considered the authority set out in the Hearing Guide that a joint submission on sanction must be given serious consideration and accepted unless it is unfit, unreasonable, or contrary to the public interest: *R. v. Tkachuk*, 2001 ABCA 243; *Law Society of Alberta v. Pearson*, 2011 ABLS 17.

15. In this case, the Hearing Committee determined that the sanction proposed in the joint submission was entirely appropriate for the reasons articulated by counsel.

16. It is to be noted that a reprimand is a public expression of the profession's denunciation of the lawyer's conduct intended to deter future misconduct by the lawyer and within the profession as a whole:

*A reprimand has serious consequences for a lawyer. It is a public expression of the profession's denunciation of the lawyer's conduct. For a professional person, whose day-to-day sense of self-worth, accomplishment and belonging is inextricably linked to the profession, and the ethical tenets of that profession, it is a lasting reminder of failure. And it remains a lasting admonition to avoid repetition of that failure. Deterrence and the future protection of the public interest are therefore served accordingly.*

*Law Society of Alberta v. King*, 2010 ABLS 9

17. The Hearing Committee ordered that Mr. Pontin be reprimanded and pay a fine of \$2,000 along with the actual costs of the hearing within 30 days of his counsel being served with the LSA statement of the hearing costs.

18. The Chair of the Committee then issued the following reprimand to Mr. Pontin:

*Lawyers belong to an independently regulated profession; and with the privilege of that independent regulation and with the privilege we all enjoy to practice law as members of the profession, we have an obligation to be diligent, timely, and accurate in all of our communications with the Law Society -- our regulatory body.*

*Unfortunately, your failure to do so in this case reflects poorly on you and on the profession. That you didn't mean to misstate certain facts is not the point. By your failure to take the time to address the complaint carefully and completely, you, unfortunately, breached your obligations as a professional here.*

*We commend you for your years of service with no record, Mr. Pontin, and we wish you many more years of success; but we ask, as a Hearing Committee, that you please don't let this happen again.*

*Thank you.*

## G. CONCLUDING MATTERS

19. The Committee ordered that the Exhibits be made public after redaction of confidential third party information.

Dated at Calgary, Alberta, May 9, 2014.

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Anne Kirker, QC

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Miriam Carey, PhD

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Walter Pavlic, QC