

**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 CHARNOCK,  
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

1. On February 13, 2014, a Hearing Committee (the “Committee”) of the Law Society of Alberta (the “LSA”) convened at the offices of the LSA in Calgary, Alberta, to conduct a hearing regarding two citations that had been asserted by the LSA against the Member, Mr. James Charnock. The Committee included Brett Code, QC, as Chair of the Committee and Ms. Amal Umar and Kathleen Ryan, QC, as members of the Committee. The LSA was represented by Mr. D.A. Cranna, and the Member was represented by Mr. L.J. Thornborough, QC.
2. The Member faced two citations:
  1. The Member engaged in conduct that impaired his capacity or motivation to provide competent services, and such conduct is conduct deserving of sanction; and
  2. The Member breached an undertaking given to the Law Society Practice Review Committee, and such conduct is conduct deserving of sanction.
3. The LSA called no evidence on the second citation, and the Committee dismissed it.
4. Mr. Charnock signed an Agreed Statement of Facts and admitted guilt to the first citation. The Committee accepted the Agreed Statement of Facts and the guilty plea, and the Committee then found Mr. Charnock guilty of conduct deserving of sanction pursuant to s. 49 of the *Legal Profession Act*
5. Counsel presented a written Joint Submission Respecting Sanction. That document was entered as Exhibit 8 and is appended to this Report.

6. The Committee was advised that the Joint Submission was prepared by both counsel in conjunction with the LSA's Practice Review Committee, and the expertise of the people involved in Practice Review was evident in that submission.
7. After considering the oral submissions of both parties, and after having adjourned for the purpose of reviewing extensive material regarding the history of the interactions of Mr. Charnock with the LSA and with Practice Review, the Committee gave its unanimous decision on sanction, as follows:

THE CHAIR: The Hearing Committee has made its decision on sanction, and I will deliver the reasons orally at this time.

Mr. James Charnock faced two citations. First was that he engaged in conduct that impaired his capacity or motivation to provide competent services and such conduct is conduct deserving of sanction and that he breached an undertaking given to the Law Society Practice Review Committee and such conduct is conduct deserving of sanction.

We were provided with an agreed statement of facts and an admission of guilt on the first citation. We found that agreed statement of facts to be in a form satisfactory to us, and we accepted the member's admission of guilt on that issue.

The Law Society called no evidence on the second citation, and we have dismissed that citation.

The first citation refers to conduct that impaired Mr. Charnock's capacity or motivation to provide competent services. The evidence is that the impairment was due to intoxication from alcohol and that Mr. Charnock was an untreated alcoholic at that time, a period in 2011. We accepted those admissions of fact, and we accepted the plea of guilt in relation to that citation.

With regard to sanction for that finding of guilt, we were provided with a joint submission which included a reprimand, several paragraphs related to practice-review and practice-management issues that will be undertaken in an ongoing way, and a submission on costs as well.

The Hearing Committee was cautioned to grant deference to joint submissions and was made aware of, and agreed with, the legal principle that such a joint submission should be rejected by such a Committee only if the proposed

sanction is unfit or unreasonable in the circumstances or if the proposed sanction is contrary to the public interest.

We were provided with able, balanced submissions by both counsel in support of the joint submission. We were also provided with extensive evidence of rehabilitation, diligence, good faith, expense, and sacrifice in support of treatment for the last almost three years by Mr. Charnock. We therefore agree with and accept, without qualification, the joint submission on sanction. Far from being contrary to the public interest, we find that this joint submission on sanction is in the public interest; and we, therefore, apply those sanctions, the details of which are known to the parties here and will be appended to the written version of these reasons when they are published.

Actual costs, as determined by counsel later, will be payable over 36 months.

There will be no notice to the profession, and the exhibits will not be made available to the public [Other than Exhibit 8, the Joint Submission Regarding Sanction, which will be appended here.].

### **Reprimand**

Mr. Charnock, I am required at this time, as part of the sanction, to reprimand you, and I do.

You have admitted to engaging in conduct that impaired your capacity or motivation to provide competent services, and you have admitted that that conduct is conduct deserving of sanction. The evidence in support of your admission of guilt and in support of that citation does not show loss to your clients, financial or otherwise. The evidence provided to us further does not show harm to your clients. The evidence does demonstrate that while purporting to meet with clients and to interact with other counsel on legal matters, you were intoxicated. Lawyers cannot provide legal advice when they are intoxicated. Lawyers cannot practice when they are intoxicated.

We understand and accept that, when you are sober, you are able counsel. We understand now that you are always sober and that you are, therefore, always able counsel. We commend you and congratulate you for that. Such success in overcoming the disease of alcoholism is rare, and we are proud of you for the steps you have taken.

That said, we are not proud of your conduct in 2011 when you purported to practice law while intoxicated. In several specific circumstances, to which you have admitted, you embarrassed yourself and brought our profession generally into disrepute. We cannot have members of our profession practising while they

are impaired. Had the practice continued, we would be removing you from the profession. We reprimand you for that conduct.

Because, since 2011, you have worked so hard and so diligently at conquering your alcoholism, we are not removing you. We are commending you. We congratulate you for your efforts to date and wish you well as you continue to work with the Law Society of Alberta's Practice Review people in fulfilling the sanctions imposed upon you today.

Unless there are any further submissions... .

MR. THORNBOROUGH: Nothing further, Mr. Chair.

MR. CRANNA: No, Mr. Chair. Thank you.

THE CHAIR: Then we are adjourned. Thank you very much for your attendance today and for your able submissions. We appreciate it.

Mr. Charnock, we wish you well.

MR. CHARNOCK: Thank you.

Dated at Calgary, Alberta, the 10<sup>th</sup> day of March, 2014

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W.E. Brett Code, QC, Chair

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Kathleen Ryan, QC

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Amal Umar

## **APPENDIX**

### **Joint Submission Respecting Sanction**

1. The Member will be given a reprimand for his conduct.
2. The Member shall abstain from alcohol.
3. The Member shall participate in a blood-alcohol monitoring regime, at the Member's expense, the terms and conditions of which to be established by the Manager, Practice Review and reviewed as necessary by the Practice Review Committee.
4. The Member shall attend meetings of Alcoholics Anonymous at least three (3) times weekly, and shall provide evidence of the same to the Manager, Practice Review on a monthly basis. The number of required meetings per week and the reporting of same will be at the ongoing discretion of the Manager, Practice Review, and subject to review as necessary by the Practice Review Committee.
5. The Member shall remain under the care of a physician and be compliant with any medication or treatment prescribed.
6. The Member will immediately make arrangements for the following medical testing, with evidence of said arrangements to be provided to the Manager, Practice Review on or before February 28, 2014:
  - a) An MRI-Brain scan to rule out organic alterations (e.g., cerebral atrophy) to the brain; and
  - b) Examination by a neurologist to help determine the etiology of the Member's motor movement disturbances. The neurologist will be informed of the Member's impaired sense of smell.
7. The Member shall be referred to, and work diligently with, Practice Review to associate himself with a firm or association of lawyers as recommended in the Practice Review Interim Report dated January 27, 2014. Such association shall include physical proximity to other lawyers to ensure that those lawyers are positioned to provide immediate guidance and advice to the Member as may be required.
8. The Member shall obtain and install a voice recognition software program, and implement the consistent use of said program, on or before February 28, 2014.
9. The Member will not conduct more than 30 active civil litigation files at any given time. Those litigation files will be limited to commercial, construction/builder's liens, collections, real estate,

desk divorces and routine criminal law matters. The Member will not conduct any other types of files, particularly where there are significant facts in dispute.

10. The Member will implement the following practices in his file management and conduct:
  - a) preparation of accurate and thorough Notes or Memos to File respecting interviews, conversations with clients, opposing counsel and third-parties, with said notes or memoranda to contain dates and the time spent on the recorded discussions;
  - b) conducting thorough interviews of clients to ensure the Member has full knowledge of all relevant facts, and to satisfy the Member that he understands the nature of the issues to be dealt with and how this impacts and dictates the necessary steps required on the file; and
  - c) making use of reporting letters to clients setting out an reviewing the legal advice provided.

The foregoing documents, notes and memoranda may be requested and reviewed at any time without notice by Practice Review, and the same shall be provided immediately upon request.

11. At all times prior to joining a firm or association of lawyers as directed, the Member shall continue the employment of his current, part-time senior paralegal to assist him in his practice, and he will immediately advise the Manager, Practice Review of any change in personnel.
12. The Member shall provide a status report to the Manager, Practice Review every 3 months, setting out the details and evidence as to the implementation of these Orders, as well as the Member's comments, observations and analysis of the curative and innovative steps he may be taking to conduct his practice more competently, ethically and effectively.
13. The Member acknowledges that a breach of any or all of the foregoing Orders may result in the matter being brought before the Benchers to consider suspension of the Member's membership, without prior notice to him or hearing, pursuant to s. 63 of the *Legal Profession Act*.