

**IN THE MATTER OF THE LEGAL PROFESSION ACT  
AND IN THE MATTER OF A HEARING INQUIRING  
INTO THE CONDUCT OF GRANT NICKLESS, A  
MEMBER OF THE LAW SOCIETY OF ALBERTA**

**REASONS FOR DECISION - SANCTIONING PHASE OF HEARING**

1. The Hearing Committee consisting of Steve Raby, Q.C. (Chair), Frederica Schutz, Q.C., and Dr. Larry Ohlhauser convened in Edmonton on December 2, 2010 to consider the sanctioning of the Member who has been found guilty of the 14 citations as referenced in the Reasons for Decision - Citation Phase of Hearing. Garner Groome continued to appear as counsel for the Law Society of Alberta (the "LSA") and Laura Stevens, Q.C. continued to appear as counsel for the Member and the Member was present at the sanctioning phase of the Hearing.

**Exhibits and Case Law**

2. Mr. Groome tendered the certificate of Greg Busch as to the Member's record as Exhibit 25. This disclosed a record of the Member being guilty on one count of professional misdemeanor - placing trust funds on deposit with an institution in which he was not allowed to deposit and guilty on one count of professional misdemeanor - failing to deposit trust funds in a trust account. These citations resulted in a reprimand, costs of \$1,527.63 and a fine of \$300.00 on May 18, 1984.
3. Mr. Groome tendered the LSA's estimated statement of costs with respect to this Hearing which disclosed an aggregate estimated costs of \$11,610.64 and this was entered as Exhibit 26.
4. Ms. Stevens tendered three good character letters. [names removed] These letters were entered as Exhibits 27 through 29, respectively.
5. Mr. Groome also provided the Hearing Committee with copies of four decisions which he referenced in his submission regarding sanction but which were not tendered as exhibits, namely:
  - (a) Law Society of Alberta v. Romanchuk [1999] L.S.D.D. No. 75;
  - (b) Law Society of Alberta v. Elliott [2002] L.S.D.D. No. 53;
  - (c) Law Society of Alberta v. Robert E. Williamson (decided April 24, 2006); and
  - (d) Law Society of Alberta v. McGeachie [2007] L.S.D.D. No. 139.

**Submissions of LSA Counsel**

6. At the outset of his submissions, Mr. Groome indicated that he and Ms. Stevens were jointly submitting that the appropriate sanction in this matter would be an 18 month

suspension with a requirement to submit to Practice Review prior to any application for reinstatement.

7. Mr. Groome reminded the Hearing Committee that there were 14 separate citations in this matter arising from 6 separate complaints, some of which came from court personnel and the judiciary. There was evidence that the Member was involved in criminal activity around the time of the complaints. One matter involved a minor shoplifting charge and the other involved charge of possession of a stolen vehicle. Mr. Groome confirmed that these matters had been completely dealt with by the Courts. Mr. Groome reminded the Committee that the Member misled the LSA and lied to it regarding his substance abuse when the Member was first contacted by the LSA regarding the complaints. Some of the citations involved improperly handling of trust funds and the more significant citation in that regard was the citation that was ultimately proven that the Member had wrongfully converted a portion of funds entrusted to him on behalf of his client R.W., and that as a result of the finding of the Hearing Committee, such wrongful conversion was a deliberate act and not simply negligent or reckless.
8. Countering the foregoing, Mr. Groome reminded the Committee that the evidence before it was that the Member was a well respected and competent counsel when sober, that the Member was very candid in his testimony before the Hearing Committee as to his addiction, the impact his addiction had on the citations in question and that the member had admitted all of the citations with the exception only of Citation No. 11 and that with respect to that particular citation, the Committee panel did not ultimately determine that there was an overt misappropriation of funds, but rather a wrongful conversion of a portion of the funds entrusted to the Member by his client R.W..
9. Mr. Groome indicated that it was the LSA's position that the Member's misconduct regarding all of the citations arose from his incompetence by reason of his addiction to narcotics and prescription drugs. He invited the Committee to make a finding of incompetence and to direct that prior to any readmission application, the Member would be obliged to prove that he was once again competent to practice law and that his competence was not impaired by any physical or mental illness or addiction to drugs or alcohol.
10. Mr. Groome indicated that notwithstanding the fact that the misconduct arose entirely from the incompetence of the Member, a significant suspension was required in the current circumstances in order to confirm the public's confidence in the legal profession and that it was important to denounce the type of conduct giving rise to the citations. Mr. Groome indicated that as a result of these factors and the severity of the citations, it was appropriate that the Member be removed from practice for a significant period of time.
11. Mr. Groome indicated that the Member's record was somewhat linked to a couple of the current citations, namely not handling trust funds in accordance with the LSA's rules

but that notwithstanding the similarity of the record to certain of the current citations, the step-up principle of sanctioning was probably not required to be invoked in this circumstance.

12. Mr. Groome further suggested that suspension was required as a result of the deceit by the Member of the Law Society, the intentional wrongful conversion of trust funds and the engagement in criminal activities.
13. As mitigating factors with respect to the foregoing, Mr. Groome noted that the Member had admitted guilt to 13 of the 14 citations, that he was very candid in his testimony to the Hearing Committee regarding his behaviour and that the best information that the LSA has at the current time is that the Member has been clean and sober since October of 2006.
14. Mr. Groome indicated that in his view, there was no single correct sanction for specific conduct and while the severity of the citations in this case indeed was such that the normal sanction might well be disbarment, the mitigating factors as well as the Member's prospect of rehabilitation led him to conclude that the public interest and the integrity of the profession would be served by a suspension of 18 months.
15. Mr. Groome then referred to the 4 cases that he provided to the Hearing Committee and concluded as follows:
  - (a) Elliott was a situation where there was a finding of wrongful conversion rather than misappropriation, but that the wrongful conversion did not occur as a result of the Member's incompetence. In that case a three year suspension was ordered;
  - (b) McGechie was a situation where again the Hearing Committee found that a wrongful conversion had occurred but concluded that the Member in fact was incompetent as a result of severe depression and in this case ordered an 18 month suspension;
  - (c) Romanchuk was a circumstance where there was a wrongful conversion of funds and a two year suspension was ordered. Mr. Groome indicated that this decision should be discounted somewhat as it was rendered pre-Philion; and
  - (d) Williamson was a situation where, although there was a finding of wrongful conversion, the Member was disbarred, but the Hearing Committee made much of the fact that the Member's testimony at the Hearing lacked credibility and that there was some element of ungovernability.
16. Mr. Groome suggested that while the Hearing Committee shouldn't be too reliant on these cases, he felt that they were instructive in that in cases of wrongful conversion where the Member had been cooperative through the process and candid in testimony before the relevant Hearing Committee and where the wrongful conversion arose from

incompetence, a suspension in the order of 18 months to two years seems to have been relatively consistent.

### **Submissions of Counsel for the Member**

17. Ms. Stevens confirmed that she joined in the submission of Mr. Groome that an 18 month suspension would be in order in the circumstance.
18. Ms. Stevens reminded the Committee that at the peak of the Member's practice, he did nothing but prosecute homicide trials. She indicated that there is only a small group of lawyers who do these types of trials and that she can advise from personal experience that there is a very significant pressure brought to bear on both the Crown prosecutor and defence counsel in homicide cases. The stakes are high for the accused and victim rights are becoming more and more significant. Ms. Stevens advised that the Member carried a high volume of these trials and that it was nothing short of astonishing that he could manage these cases in circumstances where he was addicted to narcotics.
19. Ms. Stevens indicated that it is her view that the legal profession is behind the times when dealing with addictions in the conduct process and that it would serve the profession well if we were to emulate the practices and procedures of the medical profession where their emphasis is on rehabilitation as opposed to punishment. She strongly indicated that it was her view that as a profession, the legal profession is vulnerable to addiction and that if the LSA continues to react solely on a punitive basis, we won't solve the problem, we will simply push it further underground.
20. She indicated that as a result, it is her view that it is not in the best interest of the public or the legal profession to focus on the punitive nature of sanctioning and it would serve the profession well in the future if members suffering from physical or mental illness were able to be honest and forthcoming to its governing body so that help could be provided and that members could continue to serve the public without being a risk to them, rather than having members who are struggling with illness and addictions deceiving everyone around them for fear of punitive measures being imposed.
21. In this case, Ms. Stevens reminded the Committee that all of the citations essentially arose from the Member's addictions and although the effect of the addiction on his practice and the impact of his "pathetic conduct" (in Ms. Stevens' words) cannot be overlooked and must be denounced in the public interest, the Member has already paid a great price arising from this conduct and that the prospects of rehabilitation should be an essential factor in the sanctioning process.
22. Ms. Stevens advised the Hearing Committee that the Member had no current intention to apply for reinstatement but that it was something that was important to the Member so that he would know that the potential for reinstatement existed. She referenced the three good character letters to confirm that the Member appears to be currently clean and sober.

23. Ms. Stevens indicated that in her view, an 18 month suspension was sufficient to denounce the Member's conduct and that the public interest could be protected by conditions imposed on the Member at the time of reinstatement if ever that were to occur and that this length of suspension would be a signal to the public and the profession that the LSA recognizes that addiction is a problem that needs to be dealt with in a more upfront and humane manner and that disbarment would be sending the wrong message to both the public and the profession.
24. Ms. Stevens indicated that given the Member's current financial circumstance where his income was in the order of \$2,000 per month, and that as a result of some fixed obligations such as maintenance, his ability to pay costs was limited. She suggested that it would be reasonable in the circumstances that the Member be required to pay only 50% of the costs and that he should be entitled to pay over the full 18 months of his suspension.
25. There was discussion between the Hearing Committee and counsel as to what type of conditions should be imposed on any suspension order to protect the public. There was discussion that Section 73 of the *Legal Profession Act* allowed the Hearing Committee to impose an order that, prior to any reinstatement, the Member would have to appear before a Board of Examiners and satisfy such Board that the Member was competent to practice law in the general sense and at that time had no physical or mental impairment or addiction to drugs or alcohol that would preclude him from being able to practice. However, it was concluded by the Hearing Committee that although these conditions would be appropriate in this circumstance, subsection 5 of Section 73 requires that the Committee immediately appoint a Board of Examiners for this purpose and that this would be problematic given that the suspension is for 18 months and given that the Member has no current intention to apply for reinstatement.
26. Mr. Groome indicated to the Hearing Committee that they would have the authority to order that prior to reinstatement, the Member would have to satisfy the Practice Review Committee of the LSA that his ability to practice would not be impaired by any physical or mental disability nor impaired by addiction to drugs or alcohol and that the order could specifically suggest to the Practice Review Committee that they consider making it a condition of reinstatement that the Member either practice with other members, or if the Member wishes to be a sole practitioner, that his practice be supervised by another active Member of the LSA. Mr. Groome further indicated that the issue of the Member's ability to practice law generally as a result of his inactive status since 2006 which would automatically be a matter that would be referred to the Credentials and Education Committee as a result of the fact that the Member would not have practiced in 12 of the last 48 months which requires a referral to the Credentials and Education Committee under Rule 118.

## Sanctioning Decision

27. The Hearing Committee determined that it would accept the joint submission of counsel with respect to length of suspension. The Hearing Committee concluded that as a result of the number and gravity of the citations, the fact that there was wrongful conversion of public monies, that there were 4 separate incidents where the Member's ability to properly represent clients was impaired by his drug use and that those incidents were public and in a court house setting and the complaints came from court house personnel and the judiciary and that the fact the Member initially deceived the Law Society with respect to his impairment, were all factors that necessitated a lengthy suspension.
28. The Committee noted that there were indeed mitigating factors in the current circumstances which did not require the ultimate sanction of disbarment. The Committee specifically noted that there were no elements of ungovernability or credibility at the Hearing unlike the situations in Williamson and Elliott. The Committee concluded that indeed all of the citations arose from the Member's incompetence by reason of his addiction to narcotics and the Committee indicated that they agreed with the submissions of Ms. Stevens that a pure punitive sanction of disbarment would not be in the public interest nor in the interest of the profession, and that indeed that the Law Society, in the public interest, should focus more on rehabilitation of members in circumstances where their ability to practice is impaired by mental illness or addictions. It was noted that the Law Society is taking steps in this regard by reason of the establishment of its Lawyers at Risk Task Force. The Committee concluded that the public would be properly protected if sufficient conditions were imposed upon the Member's reinstatement to practice if that were ever to occur.
29. With respect to costs, the Committee was prepared to give the Member a small break on the total costs due to the lack of success by the LSA in proving misappropriation and fixed the costs at \$8,500.00. Recognizing the Member's financial circumstances, the Committee concluded that the costs should be paid prior to any application for reinstatement and this would allow the Member to pay over time if that were his preference.

## Sanctioning Decision

30. Accordingly, the Hearing Committee ordered the following:
  - (a) that the Member stand suspended from December 2, 2010 for a period of 18 months;
  - (b) that the Member pay costs in the sum of \$8,500.00 which shall be due and payable prior to any application by the Member for readmission to the LSA;
  - (c) that prior to any application by the Member for readmission to the LSA, the Member shall satisfy the Practice Review Committee that his ability is not

impaired by a physical or mental disability or impairment by virtue of an addiction to drugs or alcohol and that in the course of any such determination by the Practice Review Committee, they be strongly urged to:

- (i) consider conditions as to mandatory periodic testing for drugs or alcohol; and
- (ii) if the Member does not practice with other members in a firm setting, that the Member's practice be supervised by one or more active Members of the LSA,

but that such conditions are to be in the discretion of the Practice Review Committee depending upon the circumstances presented to the Committee at that time and that the suggested conditions set forth herein would not be deemed to be exhaustive;

- (d) that there is no requirement of notice to the Attorney General of Alberta;
- (e) that there be a Notice to the Profession of the suspension;
- (f) that counsel for the LSA be entitled to electronically transmit the Agreed Statement of Facts to the Chair of the Hearing Committee; and
- (g) that all references to clients or any other member of the public in the transcript of the hearing decision or any of Exhibits tendered at the hearing be redacted.

31. The Chair thanked counsel for the manner in which the hearing was conducted and their submissions to the Hearing Committee.

Dated this 6<sup>th</sup> day of December, 2010

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Steve Raby, Q.C. - Chair

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Frederica Schutz, Q.C.

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Dr. Larry Ohlhauser