

**IN THE MATTER OF THE LEGAL PROFESSION ACT
AND IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF SHELLEY N. PHILLIPS, A MEMBER
OF THE LAW SOCIETY OF ALBERTA**

1.0 INTRODUCTION

1.1 A Hearing Committee of the Law Society of Alberta (“the Hearing Committee”) comprised of Ronald (Ron) J. Everard, Q.C. (Chair), James A. Glass, Q.C., and Ms. Amal Umar, convened at the Law Society offices in Calgary, Alberta, on June 16, 2010, for the purposes of a Hearing (“the Hearing”) to inquire into the conduct of Shelley N. Phillips, a Member (“the Member”) of the Law Society of Alberta (“LSA”).

1.2 The LSA was represented by Ms. Molly Naber-Sykes and the Member, although afforded an opportunity by the Hearing Committee to apply for an adjournment and to seek the assistance of counsel, chose to proceed with the hearing and to represent herself, although she was assisted in the proceedings by her friend and former assistant, Ms. Sharon Langevin.

1.3 The Member faced three Citations:

1. IT IS ALLEGED that you failed to report your criminal matters to the Law Society and thereby breached the requirements of Rule 105 of the Rules of the Law Society, and that such conduct is conduct deserving of sanction.
2. IT IS ALLEGED that you engaged in conduct that impaired your capacity to provide competent service, and that such conduct is conduct deserving of sanction;
3. IT IS ALLEGED that you engaged in conduct that brings discredit to the profession, and that such conduct is conduct deserving of sanction.

2.0 JURISDICTION

2.1 Neither counsel for the LSA or the Member had any objection to the composition of the Hearing Committee.

2.2 There was no application to have the matter heard in private and accordingly the Hearing proceeded in public.

2.3 Jurisdiction of the Hearing Committee was established through the following Exhibits:

- 1 - Letter of Appointment;

- 2 - Notice to Solicitor;
- 3 - Notice to Attend;
- 4 - Certificate of Status;
- 5 - Letter of Exercise of Discretion re Private Hearing Application Notices;
- 42 - Affidavit of Personal Service of Norm Jones, sworn May 4, 2010.

3.0 SUMMARY OF RESULT

- 3.1 In accord with Section 71(1) of the Legal Profession Act (“the LPA”), the Hearing Committee accepted the Member’s Statement of Guilt on the three Citations and also agreed to accept the joint submissions of counsel for the LSA and the Member that a three month suspension of the Member would be an appropriate sanction.
- 3.2 The Hearing Committee further directed that the following conditions would have to be satisfied before the Member would be reinstated to active practice:
- a) the Member would attend for an Assessment by the Practice Review Committee of the LSA, and the Member would cooperate with the Practice Review Committee and satisfy any further conditions which may be imposed upon the Member by the Practice Review Committee, and further;
 - b) the Member would provide the LSA with a Certificate from a qualified Medical Examiner or Examiners (such person or persons to be satisfactory to the LSA), and who could attest that the Member was physically, mentally, and psychologically fit to practice law;
 - c) there would be no costs of the Hearing.

4. AGREED STATEMENT OF FACTS

- 4.1 Counsel for the LSA and the Member worked throughout the morning, and ultimately an Agreed Statement of Facts and a Statement of Admission of Guilt was tendered and was marked as Exhibit 43 in the Hearing.
- 4.2 Some of the material facts agreed upon by the LSA and the Member are as follows:
- The Member was admitted to the Alberta Bar on January 13, 1984, and upon her admission, she practiced with several Calgary firms, and then in 1995 she became a sole practitioner;
 - On January 16, 2006, the Member was suspended for nonpayment of the second installment of her 2005 – 2006 insurance levy and she was administratively suspended as at the date of the Hearing;

- During the period January 17 – February 6, 2006, the Member dealt with various LSA staff members, and also a custodian appointed by the LSA, and the Member was verbally abusive and unprofessional in some of her dealings with those individuals;
- In 2003, the Member began to abuse alcohol as a means to cope with some personal problems;
- The Member's addiction to alcohol physically, intellectually, and emotionally impaired her ability to provide competent legal services to her clients;
- For long periods of time, the Member abdicated her practice to her trusted assistant, Ms. Sharon Langevin, who was able to keep the practice going even during periods when the Member was absent, or was unable to effectively practice law because of her addiction to alcohol;
- On June 10, 2003, the Member was charged with impaired driving contrary to Section 253(a) of the Criminal Code and with refusing to provide a breath sample contrary to Section 254(3)(a) of the Criminal Code;
- On December 22, 2003, the Member was again charged with impaired driving and with refusing to provide a breath sample, and additionally she was charged with operating a motor vehicle in a manner that was dangerous to the public contrary to Section 249(1)(a) of the Criminal Code;
- On January 22, 2004, and again on July 21, 2005, the Member was charged with failing to attend for Court when required to do so contrary to Section 145(5) of the Criminal Code;
- On August 4, 2005, the Member was charged with unlawfully assaulting a Peace Officer contrary to Section 270(1) of the Criminal Code;
- In contravention of Rule 105 of the Rules of the LSA, the Member failed to provide written notice to the Executive Director of the criminal charges facing her;
- The Member pled guilty in the Provincial Court of Alberta to some of the Criminal Code charges, and she was convicted and sentenced on those charges, and she failed to give notice of her convictions to the Executive Director, contrary to Rule 105;
- In August 2005, the Member served eight or nine days in jail on the charges of failing to appear in Court;
- The Member conceded that her public intoxication, the criminal charges, and her rude and abusive conduct, was sufficiently notorious and connected with her known status as a lawyer to bring discredit to the legal profession as a whole.

5.0 EVIDENCE FROM THE MEMBER

5.1 In order to better understand the evidence adduced in Exhibit 43, the Hearing Committee elected to call the Member as a witness at the Hearing pursuant to Section 69(1) of the LPA.

5.2 The Member provided the following additional evidence:

- As a result of a failed personal relationship in 2003, she had turned to alcohol, usually drinking as much as a bottle of wine per day;
- In 2003 – 2004, the Member had a series of encounters with the criminal justice system, which had resulted in fines and short periods of incarceration on the Failing to Appear charges;
- Subsequent to her Criminal Code convictions, the Member had attended AVENTA Center for her addiction issues;
- At the time of the Hearing, the Member continued to attend AADAC meetings on a weekly basis;
- In 2009, the Member had developed seizures as a result of a hematoma on her brain, probably as a result of a slip and fall;
- In April 2009, the Member was hospitalized for six weeks and had craniotomy surgery;
- At the time of the Hearing, the Member was taking anti-seizure medication, including Dilantin;
- The Member had exhausted her savings, and was barely surviving, although she was in the process of applying to the Assured Income for the Severely Handicapped (AISH) program for assistance;
- The Member continued to see her Family Doctor and a Psychiatrist on a regular basis;
- The Member's stated goal was to regain her health and to return to active practice.

6.0 DISCUSSION

6.1 Although LSA counsel and the Member had agreed that a three month suspension would be an appropriate sanction (notwithstanding the Member having no discipline record), given the Member's addiction problems and health issues, the Hearing Committee was of the view that a suspension alone would not adequately protect the public (given the Member's stated intention to return to practice at some future date).

- 6.2 The Hearing Committee was of the view that although neither general nor specific deterrence was a factor in fashioning an appropriate sanctioning result, nevertheless the public interest required that there be appropriate safeguards in place before the Member was permitted to return to practice and, if reinstated, the Member must be subject to regular supervision.
- 6.3 Accordingly, as part of the Sanction, the Hearing Committee directed that the following conditions be imposed:
- a) as a condition of Reinstatement, the Member would attend for an assessment by the Practice Review Committee of the LSA, and the Member cooperate with the Practice Review Committee and satisfy any further conditions which may be imposed upon the Member by the Practice Review Committee, and further;
 - b) the Member would provide the LSA with a Certificate from a qualified Medical Examiner or Examiners (such person or persons to be satisfactory to the LSA), and who could attest that the Member was physically, mentally, and psychologically fit to practice law.
- 6.4 LSA counsel did not vigorously seek costs of the Hearing, and accordingly no costs were awarded.

7.0 ANCILLARY ORDERS

- 7.1 There shall be a Notice to the profession.
- 7.2 All Exhibits shall be open for inspection by the public on the proviso that any client identifiers shall be removed.
- 7.3 No referral to the Attorney General is necessary.

Dated at the City of Calgary, in the Province of Alberta this 31st day of August, 2010.

**RONALD (RON) J. EVERARD, Q.C.
(CHAIR)**

JAMES A. GLASS, Q.C., BENCHER

AMAL UMAR, BENCHER