

LAW SOCIETY OF ALBERTA  
HEARING COMMITTEE REPORT

IN THE MATTER OF the *Legal Profession Act*; and

IN THE MATTER OF a hearing (the "Hearing") regarding the conduct of  
Susan Hendricks, a Member of the Law Society of Alberta

**INTRODUCTION**

- [1] On June 9, 2010, a Hearing Committee (the "Committee") of the Law Society of Alberta ("LSA") convened at the LSA office in Calgary to inquire into the conduct of Susan Hendricks, a Member of the LSA. The Committee was comprised of Anthony G. Young, Q.C. Chair, Rose M. Carter Q.C., Bencher and Wayne Jacques, Bencher. The LSA was represented by Janet L. Dixon Q.C. The Member was present at the Hearing and represented by C. John Hooker, Esq. Also present at the Hearing was a Court Reporter to transcribe the Hearing.

**JURISDICTION, PRELIMINARY MATTERS AND EXHIBITS**

- [2] The Chair introduced the Committee and asked the Member and Counsel for the LSA whether there was any objection to the constitution of the Committee. There being no objection, the Hearing proceeded.
- [3] Exhibits 1 through 4, consisting of the Letter of Appointment of the Committee, the Notice to Solicitor pursuant to section 56 of the *Legal Profession Act*, the Notice to Attend to the Member and the Certificate of Status of the Member with the LSA established the jurisdiction of the Committee.
- [4] The Certificate of Exercise of Discretion pursuant to Rule 96(2)(b) of the Rules of the LSA ("Rules") pursuant to which the Director, Lawyer Conduct of the LSA, determined that no one was to be served with a Private Hearing Notice was entered as Exhibit 5. The Chair inquired of Counsel for the Member whether he wished to make a Private Hearing Application and he declined. Accordingly, the Chair directed that the Hearing be held in public.
- [5] Exhibits 1 through 17 contained in the Exhibit Book provided to the Committee were entered into evidence in the Hearing with the consent of the parties.
- [6] At the commencement of the Hearing, Counsel for the LSA presented the Committee with a Statement of Facts signed by the Member on June 9, 2010.

With the Consent of the parties, the Statement of Facts was entered into evidence in the Hearing as Exhibit 18.

### **CITATIONS**

[7] The Member faced the following Citations:

(1) IT IS ALLEGED THAT you failed to be courteous and candid in your dealings with others, and that such conduct is conduct deserving of sanction.

(2) IT IS ALLEGED THAT you failed to comply with the direction of a Hearing Committee, and that such conduct is conduct deserving of sanction.

(3) IT IS ALLEGED THAT you failed to respond in a timely and complete and appropriate manner to communication from the Law Society that contemplated a reply, and that such conduct is conduct deserving of sanction.

### **SUMMARY OF RESULTS**

[8] The Member admitted that she was guilty of Citations 2 and 3 and that the conduct complained of pursuant to those citations was conduct deserving of sanction.

[9] The LSA advised that it would not be pursuing Citation 1 as that allegation was caught by Citations 2 and 3. As such Citation 1 was dismissed.

[10] After hearing the evidence and arguments, the Committee determined that Citations 2 and 3 were made out and the conduct complained of was deserving of sanction. As there was no evidence called on Citation 1, that citation was dismissed. The Committee found that a suspension of one month was an appropriate sanction in the circumstances. The Member was also directed to pay the actual costs of the Hearing.

### **ADMISSION OF FACTS AND GUILT**

[11] The Admission of Facts and Guilt is as follows:

#### **“GENERAL BACKGROUND**

1. Susan Hendricks is a member of the Law Society of Alberta, having been admitted to membership on August 13, 1993. At all times relevant to these citations, Ms. Hendricks was suspended.
2. Ms. Hendricks began winding up her law practice in the summer of 2004 and relocated to British Columbia in late September of 2004. She has not become a member of the Law Society of British Columbia.

3. On April 26<sup>th</sup>, 2007 Ms. Hendricks admitted and was found guilty of several citations, in part relating to the subject matter of the current citations. The Hearing Committee made the following Order regarding sanction:
  - i. The Member should be suspended from practice for 12 months,
  - ii. The Member will pay the actual costs of the hearing estimated to be \$6,850.05, which the member will have 6 months to pay.
  - iii. Prior to reinstatement and in addition to whatever requirements may be imposed by the Executive Director of the LSA, the Member must satisfy the Practice Review Committee that she is able to, and has no medical conditions preventing her from carrying out her professional obligations to her clients, the profession and the LSA.
  - iv. The member is directed to forthwith forward to the LSA the files of the Complainant H and the Complainant R.
4. After the April 26, 2007 hearing Ms. Hendricks did not promptly forward to the LSA the files of H and R. The following citations were directed after a review of the failure of Ms. Hendricks to comply with the Hearing Committee direction.
5. Ms. Hendricks tenders these admissions of facts to be relied upon by the Hearing Committee in adjudicating the outstanding Citations.

## **CITATIONS**

### **CITATION 2**

IT IS ALLEGED THAT you failed to comply with the direction of a Hearing Committee, and that such conduct is conduct deserving of sanction.

### **CITATION 3**

IT IS ALLEGED THAT you failed to respond in a timely and complete and appropriate manner to communication from the Law Society that contemplated a reply, and that such conduct is conduct deserving of sanction.

6. Ms. Hendricks was present in person at the Hearing and heard and acknowledged the Order of the Hearing Committee to return the files of H and R promptly.

[Exhibit 7]

7. On January 31, 2008 Ms. Hendricks was personally and concurrently served with the Hearing Committee Report from the April 2007 hearing and the s.53 demand from Ms. Katherine Whitburn, Manager, Complaints, Law Society of Alberta, to

explain why Ms. Hendricks had not complied with the requirement to return the file of H.

[Exhibit 8]

8. On February 14, 2008 Ms. Hendricks responded by a fax letter to Ms. Whitburn indicating she would be forwarding the client files of H and R.

[Exhibit 9]

9. On February 19, 2008 Ms. Whitburn acknowledged the letter of Ms. Hendricks. By letters dated March 20, 2008 and April 16, 2008 Ms. Whitburn inquired as to the status of the files as none had yet been received by the Law Society.

[Exhibits 10, 11 & 12]

10. By letters dated April 20, 2008, but mailed and faxed on May 5, 2008 subsequently, Ms. Hendricks advised the Law Society that both files were mailed to the Law Society.

[Exhibit 13, 14 & 15]

11. The Law Society received the R file but did not receive the H file. As a result by letter dated August 8, 2008 Ms. Whitburn wrote to Ms. Hendricks advising the H file was not received and asking that her immediate attention be brought to the matter. Ms. Hendricks did not respond to this correspondence.

[Exhibit 16]

12. These citations were directed by a Conduct Committee Panel on May 28, 2009. Ms. Hendricks received a letter advising her of the citations dated June 11, 2009.

12. On December 9, 2009 Ms. Hendricks provided the Law Society with a receipt showing two parcels were sent by her to the Law Society on April 30, 2008.

[Exhibit 17]

### **ADMISSION OF GUILT**

14. Ms. Hendricks admits that she did not promptly comply with the direction of the Hearing Committee to return the files of R and H and that she failed to respond in a timely and in a complete and appropriate manner to communication from the Law Society that contemplated a reply.

**THIS ADMISSION OF FACTS AND GUILT IS MADE THIS 9 DAY OF JUNE, 2010.**

**“C. John Hooker”**  
**Counsel for Susan Hendricks”**

## **SUBMISSIONS BY COUNSEL FOR THE LSA**

- [12] Counsel for the LSA stated that the Member was before a LSA Hearing Committee on April 24 and April 26, 2007. At that time a Hearing Committee heard Citations related to H and R. The Complainants indicated that they did not have their files and that they wanted them back.
- [13] On April 26, 2007 The Hearing Committee stated at Page 4 line 2 through line 10 of the transcript of proceedings that:
- “THE CHAIRMAN ...Further, the Panel would direct the Member to transmit to mail to the Law Society as soon as possible the H file and the R file so that they can make those files available to those former clients, if the former clients need them in order to proceed with their divorces. I gather, Ms. Hendricks, that you have those files?
- MS. HENDRICKS: Yes, I do.
- THE CHAIRMAN: Okay. Yes and I think that would be best. ...”
- [14] The Member was served a copy of the Hearing Committee report on January, 31, 2008 with a copy of the Hearing Committee Report for the April 24 and 26, 2007 hearing which stated at paragraph 71 (d) that:
- “The Member is directed to forthwith forward to the LSA the files of the Complainant H and the Complainant R.”
- [15] Between April 26, 2007, the date that the Member was first directed to return the files and February 13, 2008 there was no response from the Member.
- [16] In the last paragraph of her letter dated February 13, 2008, the Member stated, among other things that:
- “I will be sending you the (R) and (H) files ...”
- [17] A follow up letter with respect to receipt of the files was forwarded by the LSA to the Member on February 19, 2008. It stated, in part:
- “I look forward to receipt of the files of (H) and (R) at your very earliest convenience.”
- [18] A further follow up letter with respect to receipt of the files was forwarded by the LSA to the Member on March 20, 2008. The second paragraph of that letter states:

“I would ask that you please forward the (R) and (H) files as soon as possible. It is unfair to your former clients that they still do not have their files after all this time and after so many promises.”

- [19] A final Follow up letter with respect to receipt of the files was forwarded by the LSA to the Member on April 16, 2008. This letter states:

“I note from a review of my file that I still have not received the (R) and (H) files. Please provide them to me no later than May 5, 2008. In the event that I have not received them by that date, I will have no choice but to proceed to the next step in the discipline process.”

- [20] The files were prepared by the Member for forwarding to the LSA on April 20, 2008 but were not forwarded until April 30, 2008. The R file was received by the LSA. The H file was not.

- [21] By letter dated August 8, 2008 the LSA followed up with the Member regarding the H file. The letters states:

“Further to your letter dated April 20, 2008, please be advised that I still have not received the (H) file.

Your immediate attention to this matter is requested.”

- [22] The Member did not reply to this letter.

- [23] The Member eventually provided a postal receipt for 2 packages forwarded to the LSA.

- [24] Counsel for the LSA states that the Member was to provide the files immediately. It took over one year for one of the files to be received by the LSA. The other file was lost.

### **SUBMISSIONS OF COUNSEL FOR THE MEMBER**

- [25] Counsel for the Member did not take issue with the facts.

### **ACCEPTANCE OF ADMISSIONS OF FACT AND GUILT PURSUANT TO SECTION 60**

- [26] The Hearing Committee was guided by Section 60 of the *Legal Profession Act* which states:

“60(1) Subject to the rules, a member may, at any time after the commencement of proceedings under this Division regarding the member’s conduct and before a Hearing Committee makes its findings in respect of the member’s conduct, submit to the Executive Director a statement of admission of guilt of conduct deserving of sanction in respect of all or any of the acts or matters that are the subject of the proceedings.

(2) A statement of admission of guilt shall not be acted on until it is in a form acceptable to

(a) the Conduct Committee, if the statement is submitted before the day on which a Hearing Committee is appointed to conduct a hearing respecting the matter, or

(b) the Hearing Committee, if the statement is submitted on or after the day on which the Hearing Committee is appointed.

(3) If a statement of admission of guilt is accepted under subsection (2)(a), the chair of the Conduct Committee shall appoint a Hearing Committee consisting of 3 or more Benchers other than the President or any Benchers disqualified from sitting on the Committee.

(4) If a statement of admission of guilt is accepted, each admission of guilt in the statement in respect of any act or matter regarding the member's conduct is deemed for all purposes to be a finding of

(a) the Hearing Committee appointed under subsection (3), or

(b) the Hearing Committee that accepted the statement,

as the case may be, that the conduct of the member is conduct deserving of sanction.

(5) The Hearing Committee appointed under subsection (3) or the Hearing Committee that accepted the statement, as the case may be, shall proceed with a hearing for the purpose of making its determination, if any, under section 71(4), its order under section 72 and its order, if any, under section 73.

[27] The Hearing Committee finds that the Citation 2 and Citation 3 are made out and that the conduct of the Member is conduct deserving of sanction.

[28] There is no question, on the facts, that Citation 2 is made out. The Member was directed to deliver the (R) and (H) files to the LSA "as soon as possible". The Member was present at the hearing and responded that she had the files on April 26, 2007. It was not until almost one year later, after serious prompting by the LSA that the Member took steps to deliver the files. This is not in accord or within the spirit of the direction of the Hearing Committee.

[29] Citation 3 is made out by the lack of response from the Member after she received the letter of August 8, 2008.

## **SUBMISSIONS REGARDING SANCTION**

### **Counsel for the LSA**

[30] Counsel for the LSA referred the Hearing Committee to paragraph 51 of the *Hearing Guide* which states:

“The primary purpose of disciplinary proceedings is found at Section 49(1) of the Legal Profession Act (set out above): (1) the protection of the best interests of the public (including members of the Society) and (2) protecting the standing of the legal profession generally. The fundamental purpose of the sanctioning process is to ensure that the public is protected and the public maintains a high degree of confidence in the legal profession....”

- [31] The Member was a suspended lawyer at the time that these new citations arose. Her conduct remains troubling. As such, the counsel for the LSA states that the proper sanction is a further suspension.
- [32] The governability of the Member is called into question by the Member’s conduct. A Member must be responsive if the legal profession is to govern itself.
- [33] The Member’s last suspension was 12 months. The “step principle” in sanctioning calls for a longer suspension.
- [34] Counsel for the LSA requested that the Member be directed to pay the actual costs of the hearing which were estimated at \$2,824.50.

**Counsel for the Member**

- [35] Counsel for the Member urged the Hearing Committee not to impose any further sanction. He stated that further sanction is not necessary.
- [36] The reasons for the delay in providing the files was that the Member was unrepresented. She was ashamed and humiliated.

Paragraphs #37, #39, #43, #46, #47, #50, and #53 which contain personal information about the member have been removed, pursuant to the Hearing Committee direction in paragraph #65 regarding the redaction of confidential information, and with the consent of the Chair of Conduct.

- [37]
- [38] The Member was married in 1969. She has 2 children, one of whom is a Certified General Accountant.
- [39]
- [40] During 1979, while raising her children, the Member received a secretarial certificate. Thereafter she received her first University degree and thereafter she went to law school and graduated in 1992.



- [41] The Member articulated with Lord Russell, Barristers and Solicitors.
- [42] The Member was a good lawyer. She was a hard working, highly regarded capable person.
- [43]
- [44] The Member became the President of the Canadian Association of Elizabeth Fry Societies. Her duties included meeting with government officials.
- [45] In 2000 the Member was awarded the Distinguished Service Award for her work with the Elizabeth Fry Society. Jointly presented by the Law Society of Alberta and the Canadian Bar Association (Alberta), this prestigious award shines a light on the outstanding contributions Alberta lawyers make to the community, the legal profession, to *pro bono* service and to legal scholarship.
- [46]
- [47]
- [48] The April 30, 2007 letter “knocked her back again”. She was out of work and living in Victoria, British Columbia.
- [49] Counsel for the Member states that there is a medical or psychological aspect to the behaviour of the Member.
- [50]
- [51] Counsel for the Member states that the sanction should protect the public. In doing so, however, the Hearing Committee was urged to understand that members are human beings as well.
- [52] The Member has not practiced since 2004. She does not plan to practice in the near future. She has spent time agonizing why she let this happen. The Member has pride in being a lawyer. This ordeal has been extraordinarily difficult for her.
- [53] The Member is taking counselling. She has taken herself off antidepressants. She is working to pay off hearing costs.
- [54] In closing counsel for the Member summarized his submissions as follows:
- (a) The Member is of extraordinary character; and
  - (b) She has felt shame, humiliation and over whelming stress.

As such, no further sanction is required. The sanctions have already been imposed.

## **REBUTTAL BY COUNSEL FOR THE LSA**

- [55] Counsel for the LSA stated that the current citations are an outgrowth of previous sanctions.
- [56] It is necessary to “teach the profession” and “teach the public” with respect to the serious consequences that flow from misconduct. The ungovernability of the Member is the issue. It must be made clear that a member must do what a Hearing Committee tells the member to do.
- [57] There must be a sanction.

## **SANCTION**

- [58] A Hearing Committee must strike a difficult balance in the sanctioning process.
- [59] Counsel for the LSA points out, quite correctly, that the primary purpose of disciplinary proceedings is the protection of the best interests of the public and protecting the standing of the legal profession generally. This does not mean, however, that it is the only purpose for disciplinary proceedings. Surely, the Hearing Committee must consider the effect that the process has on the Member and the Member’s governability or future behaviour.
- [60] In the present matter, The LSA asks for a further suspension of one year.
- [61] It is the view of the Hearing Committee that a further lengthy suspension does not answer the issue of governability. All it does is ensure that the Member is unable to apply for reinstatement for a longer period of time. In order to ensure that the Member is governable, it is necessary for the Member to be healed. The factors in her life that have changed her from a capable, caring and award winning lawyer to one facing sanction must be cured. This question is addressed, in part, as a condition in the prior Hearing Committee decision:

“Prior to reinstatement and in addition to whatever requirements may be imposed by the Executive Director of the LSA, the Member must satisfy the Practice review Committee that she is able to, and has no medical conditions preventing her from, carrying out her professional obligations to her clients, the profession and the LSA.”

- [62] The Hearing Committee is mindful of the fact that the Member has suffered a great deal of shame, humiliation and stress as a result of her dealings with the LSA. A balance must be struck between a demonstration of the profession’s and the public’s distain for the conduct of the Member and the sanction that a Member actually requires for the point to be driven home. There is no question that the conduct of the Member requires a serious sanction but the Hearing Committee is unconvinced that a further suspension of one year is necessary to maintain a high degree of confidence in the legal profession. A further

suspension of any length will result in a further notice to the profession and will show on the Member's discipline record with the necessary consequences to the Member's eventual re-entry into the profession if she so chooses. A suspension of any length is a serious matter and demonstrates that the profession will not tolerate a Member ignoring a direction of a Hearing Committee or a failure of a Member to respond to its governing body in a timely, complete and appropriate manner.

- [63] In the result, and considering the effect that a finding of guilt and further sanction will have on the Member, the Hearing Committee has determined that there will be suspension of one month.
- [64] The Member shall pay the actual costs of this hearing to be paid on or before July 1, 2011.
- [65] There shall be an order for the record to be redacted in advance of any public disclosure to protect privileged communications, the identity of the Member's clients, and any other confidential information.
- [66] There shall be no referral to the Attorney General.

Dated this 1<sup>st</sup> day of February, 2011.

---

Anthony G. Young, Q.C. (Chair)

---

Rose M. Carter Q.C. (Bencher)

---

Wayne Jacques (Bencher)