

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

REASONS FOR DECISION

1. A Hearing Committee was convened to inquire into certain conduct of Jodie Holder, a member of the Law Society of Alberta (the "Member") in Edmonton on May 5, 2010. The Hearing Committee consisted of Steve Raby, Q.C., Chair, Rose Carter, Q.C., and Wayne Jacques. Janet Dixon, Q.C. appeared as counsel for the Law Society of Alberta (the "LSA"). Phil Lister, Q.C., appeared as counsel for the Member and the Member was present throughout the hearing.

Jurisdictional Matters

2. Counsel indicated that they had no objection to the composition of the Hearing Committee. The appointment of the Hearing Committee, notice to solicitor, notice to attend and certification of the Member's status were entered as exhibits 1 through 4. Exhibit 5 was entered, being a private hearing application notice. The Hearing Committee was advised that there was no application to have any portion of the hearing held in private and accordingly the Committee directed that the matter be held in public. With the kind consent of Mr. Lister, exhibits 6 through 10 had been previously provided to the Committee and were entered as exhibits.

The Citations

3. The notice to solicitor referenced two citations, namely that:
 - (i) the Member failed to serve his client in a conscientious, efficient and diligent manner;
 - (ii) the Member failed to respond to communications from his client on a timely basis.

Overview of Citations and Result of Hearing

4. The citations arose out of the Member's representation of a client, R.B., who the Member had acted for at least as far back as 2003. A major matter that the Member was handling for R.B. was a matrimonial matter. In particular, R.B. was having difficulty with child support issues and the enforcement of same through the Director of Maintenance Enforcement. Notwithstanding that the complaint by R.B. made certain references to matters prior to February of 2008, it is clear that the majority of his complaints related to the period from March, 2008 through August, 2008. Indeed, counsel for the LSA confirmed that the hearing panel that directed the citations specifically indicated that the Hearing Committee should be inquiring into the conduct of the Member only for the period between February, 2008 and August, 2008.

5. R.B.'s complaints during the relevant time frame were based on his request to the Member that the Member deal with arrears that R.B. had accumulated with Maintenance Enforcement, that his child support be terminated with respect to two of his children who were now well over the age of 18 and that support be amended with respect to the remaining child of the marriage who had not reached the age of 18. R.B. provided a detailed log of his attempts to have the Member deal with these issues during the relevant time frame. The matter became urgent to R.B. as it was his understanding that he had lost his driver's licence as a result of his arrears under the Maintenance Enforcement Program, which led to a six week period of unemployment and severe financial hardship during this time. R.B.'s log indicated numerous attempts to communicate with the Member that went unanswered and a number of trips by R.B. from his home in Grand Cache, Alberta to Edmonton for meetings with the Member which the Member either cancelled at the last moment or did not complete the tasks that R.B. was anticipating would be completed prior to or during the meeting. Finally, R.B. indicated that as a result of his financial situation, he had no ability to move the file to another lawyer and therefore could not resolve his issues.
6. Ultimately, the Member was suspended in late August of 2008, R.B. was able to get his file from the custodian of the Member's practice and move the file over to another lawyer who resolved the matter in relatively short order.
7. The hearing proceeded by way of the submission of an Agreed Statement of Facts whereby the Member admitted guilt with respect to the second citation. Ms. Dixon indicated to the Hearing Committee that she did not have sufficient evidence to proceed with submissions regarding citation 1 and submitted that citation 1 should be dismissed.
8. The Hearing Committee ultimately dismissed citation 1 and accepted the Agreed Statement of Facts of the Member with respect to citation 2. Ms. Dixon and Mr. Lister were in general in agreement with respect to the appropriate sanction under the circumstances, which was a reprimand, and the Hearing Committee ultimately agreed that that was the appropriate sanction. The Hearing Committee also determined that full costs of the hearing should be paid by the Member, but due to the Member's current financial circumstances, gave the Member two years in which to make payment of those costs.

Citation #1

9. The Hearing Committee noted that the log of R.B. on its face disclosed a number of circumstances that would support the making out of the citation that the Member did not serve R.B. in a conscientious, efficient and diligent manner. The materials however disclosed that the Member had done some work on the file during the relevant period, but his communication as to what he had done seemed inadequate, resulting in the conclusion by R.B. that the Member hadn't been doing anything to advance his cause. In any event, counsel for the LSA made it clear that she did not believe that there was sufficient evidence to pursue Citation #1 and requested that the Hearing Committee dismiss same. Counsel for the LSA acts in a prosecutorial role where a hearing panel requests that citations proceed, and it is therefore the job of LSA counsel to put forward the

appropriate case with respect to those citations. However, where LSA counsel comes to the conclusion that the case simply cannot be made out based on the evidence available, then counsel for the LSA may submit that a dismissal of the citation is in order and a hearing committee should give great deference to such a decision by LSA counsel. It is to be assumed that a decision by LSA counsel to request a dismissal of a citation is not made lightly.

10. Accordingly, the Hearing Committee dismissed Citation #1.

Citation #2

11. As indicated, the Member executed an Agreed Statement of Facts that was introduced as Exhibit 11. Section 6 of that Statement is an admission by the Member that during the time period of March to August 2008, he failed to respond to communications from R.B. on a timely and appropriate basis and that his conduct is deserving of sanction.
12. Section 7 of the Statement contained specifics of a number of telephone and fax messages that were left by R.B. or his girlfriend with the Member or his staff. There were 19 such messages between March 19, 2008 and August 13, 2008, many of which were marked as "urgent".
13. By way of some explanation for his actions, the Member submitted Exhibit 12 which was a letter from opposing counsel to him dated April 22, 2003 which, while written long before the relevant time period, did provide some indication that R.B. was causing some of the difficulties in moving the matrimonial action along. In particular, that correspondence quoted from a Memorandum of Decision issued by Justice Sanderman, which, on its face, was very critical of R.B.'s conduct during the proceedings.
14. The Member also produced an account that was created by his custodian in September of 2008 that covered the time period from January 9, 2007 through August 29, 2008. That account, which was introduced as Exhibit 13, would appear to show that telephone calls were made from the Member's office (either by the Member or one of his staff) to either R.B. or his girlfriend on April 18, 2008, June 10, 2008, June 13, 2008 and July 21, 2008. From the disbursement charges for the long distance calls, most of these calls appeared to be relatively short, with the call of June 10, 2008 perhaps taking as long as half-an-hour.
15. The conclusion from Section 7 of the Statement of Facts and the Member's account is that while the Member wasn't completely silent during the period from March, 2008 through August, 2008, calls from R.B. and his girlfriend, some of which were urgent calls (especially when R.B. thought that his driver's license had been suspended) were not returned for lengthy periods of time by the Member.
16. Although the Hearing Committee notes that, as a generalization, it is more difficult for a member to promptly return messages and phone calls where a member carries on a busy matrimonial practice than perhaps is the case in other practices, Citation #2 was in fact made out by the Statement of Facts in this case because the Member did not return a number of urgent phone calls and messages in a manner that was either timely or appropriate under the circumstances.

17. LSA counsel urged the Hearing Committee to accept the admission of guilt on Citation #2. From a pragmatic perspective, counsel for the LSA indicated that it was important that in this case, there be an admission of guilt on the part of the Member, that the Member acknowledged that the conduct was inappropriate and that some remorse was shown. This is important given the Member's initial responses to the complaint, which didn't acknowledge any wrongdoing or remorse that the actions of the Member may have caused R.B. some difficulties and financial distress. LSA counsel also made the point that although a failure to communicate in certain circumstances can become a failure to properly serve a client, in this case it was clear that there was some communication initiated by the Member or his office to R.B. or his girlfriend and accordingly, in this circumstance, LSA counsel was of the view that the admission of guilt as to Citation #2 could not be tantamount to an admission of guilt with respect to Citation #1.
18. There was some suggestion by Mr. Lister that the complaint of R.B. was really driven as a result of a fee dispute and that the complaint might have potentially been withdrawn had the Member not pursued the collection of his account. Mr. Lister attempted to make the connection between the issuance of accounts and the movement of the file to another lawyer. Ms. Dixon strongly suggested that this connection could not be made and that the only reason that R.B. was finally able to move the file to a new lawyer was as a result of the suspension of the Member.
19. On the basis of the foregoing, the Hearing Committee was satisfied that Citation #2 was made out.

Sanction

20. During the sanctioning phase of the hearing, counsel for the LSA tendered Exhibit 14, which was the Member's record, Exhibit 15 which is a hearing committee report regarding a 2007 hearing and Exhibit 16, which is a 2009 hearing report.
21. The result of the February 2007 hearing was the finding of guilt on one count of conduct deserving of sanction, namely that the Member failed to report that criminal charges had been laid against him. The result of that hearing was a reprimand, a fine of \$500.00 and payment of one-half of the actual costs of the hearing.
22. The 2009 hearing report indicated that the Member was guilty on a number of citations, namely, failing to respond in a timely manner to communications from a client, failing to respond in a timely manner to communications from another lawyer, failing to cooperate with a successor counsel and failing to respond in a timely manner to the LSA. The result of that hearing was a reprimand, a fine of \$2,500.00 and payment of the actual costs of the hearing.
23. Counsel for the LSA also submitted Exhibit 17, which is an estimated statement of costs of this hearing of \$1,632.75.
24. Counsel for the LSA noted that Exhibit 4 confirmed that the Member is a suspended member of the LSA, having been suspended automatically by virtue of the *Legal Profession Act* in that the Member had been incarcerated in August of 2008. It appears

that the incarceration was as a result of a criminal conviction on the Member's third impaired driving conviction.

25. The Hearing Committee noted that both Ms. Dixon and Mr. Lister made some references to the Member's addiction to alcohol, but there did not seem to be a significant emphasis placed on this other than to note that the Member continues to deal with health issues.
26. Ms. Dixon submitted that in the ordinary circumstance, the step principle as outlined in the Hearing Guide would mean that the sanction to be imposed against the Member would increase each time there is a finding of guilt with respect to a similar breach of professional conduct. In this case, the 2009 matter is similar to Citation #2 before this Hearing Committee, being a failure to communicate with clients on a timely and appropriate basis.
27. Ms. Dixon however, indicated that in her view, there was a higher principle as outlined in the Hearing Guide, namely that a sanction imposed upon a member shouldn't be prohibitive to steps that a member is entitled to take under the Legal Profession Act, in this case to make an application to be reinstated. Ms. Dixon indicated that the Member had in fact made an application for reinstatement but that that application was not being actively pursued at the present time.
28. Ms. Dixon indicated that there would be little to be gained by suspending the Member given that the Member is already suspended. In the normal circumstance, a fine would be an appropriate sanction and the fine would presumably be a significant fine in accordance with the step principle. In this case, however, Ms. Dixon indicates that a significant fine would in fact be a bar to reinstatement. Mr. Lister advised the Hearing Committee that the Member is essentially unemployed and is living off modest savings and some income he receives when accounts that the custodian issued are ultimately paid.
29. Ms. Dixon indicates that given the balance that needs to be made between the objectives of the step principle and the inability to prohibit a reinstatement application, she would take the pragmatic approach and conclude that a reprimand is sufficient in these circumstances. Firstly, there is a record of the Member's guilt in respect of Citation #2. Secondly, there is a denunciation of that conduct. Thirdly, there is an admission by the Member that his conduct is deserving of sanction and that his record will disclose such an admission, and finally, the Member's admission of guilt as to Citation #2 did reduce the hearing costs, the length of the hearing and avoided the requirement to have R.B. attend from Grande Cache.
30. With respect to costs, Ms. Dixon's view is that costs should be paid and that notwithstanding Citation #1 was dismissed, the estimated statement of costs for this matter is still such that the costs of prosecuting this matter is highly subsidized by the LSA. Mr. Lister submitted that since Citation #1 was dismissed, only one-half of the costs should be paid. Ms. Dixon drew a distinction between the circumstance where the LSA leads evidence and the citation is not made out where it may be appropriate that the costs be reduced, and a circumstance where the LSA does not pursue a citation at the hearing.

31. Ms. Dixon indicated that while it might be tempting to make payment of costs a pre-condition to reinstatement, in the current circumstances we don't know if the Member will pursue reinstatement or when he will do that and accordingly it is appropriate to fix a date for payment. Mr. Lister indicated that if a fixed date was required, due to the Member's financial situation, that date should be well into the future.
32. The Hearing Committee concluded that the estimated statement of costs was not out of line, even in the circumstance where only one of two citations was pursued, and on balance concluded that the full costs should be paid. The Committee noted that the Member had certain options to deal with outstanding costs and fines in the course of a reinstatement application and accordingly determined that a fixed date was required for payment of the costs, but in order to properly allow the Member to pursue reinstatement should he so require, the date for payment of the actual costs would be set as May 5, 2012, albeit a reinstatement condition may require payment at an earlier date.

The Reprimand

33. The Chair delivered the reprimand to the Member. The Chair indicated that lack of proper communication with clients is clearly the most significant root cause of complaints to the LSA. Even if the Member was properly completing certain work on the file, if the client is unaware that that work is being completed, the client obviously concludes that the work is not done. Even if the client is a demanding client in an acrimonious matrimonial situation, the failure to maintain adequate lines of communication brings the profession into disrepute. In this particular case, subjectively, if not objectively, the client felt abandoned and blamed the Member for his plight. In some of the correspondence, the client went so far as to indicate that the Member had ruined his life.
34. The Chair indicated that the Member would have a very difficult road ahead of him in order to become reinstated. He would have to convince the LSA that his health issues are behind him and he would have to deal with all of the outstanding fines and costs owed to the LSA. The Chair indicated that if the Member were to overcome all of these significant hurdles, it could potentially all be for naught if the Member did not learn the valuable lesson of ensuring proper and timely communication with his clients in the future.

Other Matters

35. There is no requirement for a notice to the profession in this matter.
36. There is no requirement for a notice to the Attorney General in respect of this matter.
37. All exhibits with respect to this hearing will be public, but the names of the client and other members of the public shall be redacted. Notwithstanding this, the Hearing Committee specifically directed that a copy of the Agreed Statement of Facts could be provided to R.B. in an unredacted format.

DATED this 7th day of July, 2010.

Steve Raby, Q.C. - Chair

Rose Carter, Q.C.

Wayne Jacques