



The Law Society of Alberta Hearing Committee Report

**In the matter of the *Legal Profession Act, (LPA)*
and in the matter of an application pursuant to s. 75(6) of MATTHEW MERCHANT,
a member of the Law Society of Alberta .**

Jurisdiction and Preliminary Matters

1. The Hearing Committee of the Law Society of Alberta (LSA) heard an application for a further stay of the sanction imposed against the Member, Matthew Merchant, pursuant to s. 75(6) LPA on November 12, 2008. The committee was comprised of James Peacock, QC, chair, Shirley Jackson, QC and Yvonne Stanford (by telephone). The LSA was represented by Garner Groome, by telephone. The member was represented by James Rooney, QC, in person.
2. Jurisdiction: Matthew Merchant, through his counsel has provided written intent to appeal to the Benchers the original sanction imposed, and under s. 75(6) is making application for a further stay of the sanction until such time as the appeal can be scheduled and heard.
3. Objections to composition of committee: Counsel made an application to recuse James Peacock, QC and Mr. Peacock, QC and the panel agreed. The Committee continued with two members pursuant to s. 66(1) LPA and Shirley Jackson, QC acted as the Chair. Counsel agreed to the composition of the committee.
4. There was no request to hold the application in private.

Citations

5. The Member had been sanctioned on the following citations:

Citation 1: It is alleged that you applied for *ex parte* garnishee orders when you knew the Complainant had been retained to act on behalf of B.F. and J.H., and that such conduct is conduct deserving of sanction.

Citation 2: It is alleged that in applying for *ex parte* garnishee orders, you misled the Court and failed to disclose all of the material facts, and that such conduct is conduct deserving of sanction; this included the particular that the Member misled or attempted to mislead the court when he swore his affidavit that the fact of criminal wrongdoing had arisen in his discussion with an employee of one of the lenders.

Citation 3: It is alleged that in applying for *ex parte* garnishee orders, you lied in

your affidavit, and that such conduct is conduct deserving of sanction, and included the particular set out in Citation 2.

Citation 4: It is alleged that you failed to respond to the Complainant on a timely basis, and that such conduct is conduct deserving of sanction.

Citation 5: Not made out

Citation 6: It is alleged that you threatened B.F. and J.H., and that such conduct is conduct deserving of sanction and included the particular that the Member threatened criminal proceedings to induce the Clients to pay money that was paid to them by mistake.

Citation 7: Withdrawn

Citation 8: It is alleged that you failed to render your Statement of Account and trust accounting to your clients B.F. and J.H. on a timely basis, and that such conduct is conduct deserving of sanction.

Citation 9: Dismissed

Citation 10: Was included as a particular in Citation 2 and Citation 3

Citation 11: It is alleged that you lied to B.F. and J.H. that the loan agency was threatening them with criminal charges, and that such conduct is conduct deserving of sanction.

Evidence

6. Oral argument was made by Counsel for the Member that the application for a further stay of the sanction should be granted on the grounds that:
 - A. This Committee should consider that the Queen's Bench application for the stay was granted by Mr. Justice P. Chrumka on the basis of a three part test:
 - i. the serious issue to be tried which was the reasonable apprehension of bias
 - ii. whether there will be irreparable harm to the Member if the stay is not granted; a notice to the profession announced the disbarment of the Member and once Mr. Justice Chrumka granted the stay he has rehabilitated some of his reputation in the legal community
 - iii. a balancing of the convenience between the two parties; it is important that the public see that a Hearing Committee proceeds in a neutral and unbiased way and that the public is protected as the stay order was granted in February 2007 and the Member has been practicing law and there have been no complaints to the LSA on any issues.

- B. This Committee should consider that Madam Justice Kent heard the matter on the argument of reasonable apprehension of bias and found that it existed and the Hearing Committee decision was a nullity.¹
 - C. The Alberta Court of Appeal² found that the appeal to the Court of Queen's Bench did not follow the proper procedural route and did not deal with the issue of reasonable apprehension of bias.
7. Oral argument was made by Counsel for the LSA that the application for a further stay of the sanction should not be granted on the grounds that:
- a. The facts that are the subject matter of the argument on the reasonable apprehension of bias occurred after the Hearing Committee made its decision but before sanctions
 - b. The decision of Mr. Justice Chrumka was an interim application and not a decision on the merits of the decision of the Hearing Committee
 - c. It is the respectful submission of counsel that the decision in the Court of Queen's Bench is wrongly decided.
 - d. The appeal to and the decision of the Court of Queen's Bench was found by the Alberta Court of Appeal to be an error in the matter of procedural jurisdiction and the matter was sent back to follow the appeal route as set out in the LPA.
 - e. The test as to whether a stay is or is not granted is not the three part test but the test set out in s. 75(7) LPA:
'The Hearing Committee may make an order applied for under subsection (6) with or without imposing conditions on the member, but the Committee shall refuse to make the order if it is satisfied that ..., having regard to the nature of the member's conduct, it is proper to refuse to make the order.'
 - f. The serious misconduct set out in the Citations and the finding by the Hearing Committee that the member's conduct demonstrated a lack of integrity should result in the stay not being granted.

Findings of Fact

- 8. The Hearing Committee disbarred the Applicant on the basis of the Member's conduct and the finding of guilt with respect to the above listed Citations.
- 9. The stay application made to Mr. Justice Chrumka was not made on the basis of a s. 75(6) appeal to the Benchers from the sanction imposed by the Hearing Committee but based on the argument of reasonable apprehension of bias. This stay was granted in February 2007.
- 10. The Member has been practicing law since that time and there have been no formal complaints to the LSA on any issues.

¹ Merchant v Law Society(Alberta) 2007 ABQB 658 ABQB, corrigendum incorporated and Merchant v Law Society (Alberta) 2008 ABQB 144 ABQB

² Merchant v Law Society (Alberta) 2008 ABCA 363 ABCA

Decision as to the Stay Application

11. The Hearing Committee determined that the stay should be granted with strict conditions on the basis of all the circumstances including that the stay has been in place for approximately 20 months with no further formal Citations arising and the serious conduct that led to the original sanction of disbarment.
12. In arriving at its conclusion the Hearing Committee considered the three-pronged test as set out by Mr. Justice Chrumka and considered s. 75(7) LPA and the nature of the Member's conduct.

Sanction and Orders

13. The Hearing Committee determined that the stay should be granted with the following conditions:

SECTION 75(7) CONDITIONS OF THE HEARING COMMITTEE

As to Mr. Merchant's practice:

1. He is to have no direct contact with clients either in person or in writing.
2. He is to make no appearances or any filings in any Court.
3. He is to sign no trust cheques or in any way handle trust property.

As to the prosecution of Mr. Merchant's appeal to the Benchers:

1. The stay will expire and a Notice of Disbarment to the Profession will issue unless a Notice of Appeal is filed with the Law Society within 20 days of receipt of the Hearing Committee report.
2. Upon the filing of a Notice of Appeal a pre-hearing conference will be held within 20 days of filing or as soon as the Chair of Conduct may be able to accommodate the parties.
3. As guided by the grounds of appeal, the contents of the Hearing Record will be determined by the Member in consultation with counsel for the Law Society and Mr. Merchant will pay the costs of the record prior to its preparation within 30 days of being advised of the said costs, failing which the stay will be automatically lifted unless a waiver of those costs is granted by the Benchers upon application.
4. Written argument must be provided by Mr. Merchant within 30 days of receipt of the record, failing which the stay will be automatically lifted unless an extension of time is granted by the Chair of Conduct.

5. The scheduling of the appeal before the Benchers will occur as soon as possible once written arguments are completed allowing at least 14 days from receipt of the arguments, record, and report by the Benchers.
6. Such other conditions to move the appeal to an expeditious conclusion as may be imposed by the Chair of Conduct, the non-compliance with which will result in an automatic lifting of the stay.

Concluding Matters

Dated this 24th day of November, 2008.

Shirley Jackson, QC – Chair and Bencher

Yvonne Stanford – Lay Bencher