



The Law Society of Alberta Hearing Committee Report

In the matter of the *Legal Profession Act*, and in the matter of a hearing regarding the conduct of Geoffrey Edgar, a Member of the Law Society of Alberta.

A. Jurisdiction and Preliminary Matters

1. A Hearing Committee of the Law Society of Alberta (LSA) held a hearing into the conduct of Geoffrey Edgar on May 22, 2008. The Committee consisted of Douglas R. Mah, Q.C., Chair, Neena Ahluwalia, Committee member and Wayne Jacques, Committee member. The LSA was represented by Michael Penny. The Member was present and was represented by Robert Davidson, Q.C..
2. Exhibits 1 through 4, consisting respectively of the Letter of Appointment of the Hearing Committee, the Notice to Solicitor with acknowledgement of service, the Notice to Attend with acknowledgement of service and the Certificate of Status of the Member, were admitted into evidence by consent. The admission of these documents established the jurisdiction of the Committee.
3. There was no objection by the Member's counsel or counsel for the LSA with respect to the composition of the Committee.
4. The Certificate of Exercise of Discretion was entered as Exhibit 5. No request for a private hearing had been received and therefore the hearing proceeded in public.
5. Exhibits 6 through 15 were contained in an exhibit binder provided to the Committee members and the parties and were admitted into evidence by consent. The following additional exhibits were also admitted into evidence by consent:
 - Exhibit 16 – Agreed Statement of Facts containing the Member's signed admission of guilt at paragraph 22, dated May 22, 2008 (Agreed Statement of Facts and Admission of Guilt);
 - Exhibit 17 – Book of Documents submitted by counsel for the Member; and
 - Exhibit 18 – letter of May 20, 2008 from R. Gregory Busch, Director, Lawyer Conduct, to Michael Penny, counsel for the LSA, certifying that the Member has no LSA discipline record as at the date of the letter.

B. Citations

6. As indicated in the Notice to Solicitor (Exhibit 2), the Hearing Committee was inquiring into two citations:

Citation 1: It is alleged that on August 22, 2005, you altered a photocopied jurat on an unsworn affidavit with the expectation that it would be acted upon as the

original, thereby breaching the *Code of Professional Conduct*, and that such conduct is conduct deserving of sanction.

Citation 2: It is alleged that you failed to be candid with other members of your firm when questioned about the affidavit, thereby breaching the *Code of Professional Conduct*, and that such conduct is conduct deserving of sanction.

C. Agreed Statement of Facts and Admission of Guilt

7. The Agreed Statement of Facts and Admission of Guilt (Exhibit 16) states as follows:

A. Introduction

1. Geoffrey Edgar is a member of the Law Society of Alberta, having been admitted to membership on August 5, 1999.

2. At the time material to the citations, Mr. Edgar was an associate with the Edmonton law firm, Witten LLP, and was assisting a partner, Mr. Ellery Lew, on a litigation file. Witten LLP's client was A..., the plaintiff in the lawsuit.

[Amended Statement of Claim, Exhibit 6, Tab 3]

3. The lawsuit was set for summary trial, and Mr. Lew prepared an affidavit for V.C., the CEO of A..., to support his client's case.

[Order setting for summary trial, Exhibit 6, Tab 4]

4. During the course of examination of V.C. by Michael Donaldson, the Defendant's counsel, it became clear that there were two versions of the affidavit, both signed and sworn by V.C. V.C., when questioned, answered that he had, in fact, only signed and sworn one affidavit.

5. Mr. Edgar had assisted Mr. Lew in obtaining V.C.'s sworn affidavit, and was instrumental in creating a second version of that affidavit. Despite this, when the two versions of the affidavit were brought to his attention, Mr. Edgar first disavowed knowing how they had come about.

B. Citations

6. The Citations are:

1. It is alleged that on August 22, 2005, you altered a photocopied jurat on an unsworn affidavit with the expectation that it would be acted upon as the original, thereby breaching the Code of Professional Conduct, and that such conduct is conduct deserving of sanction.

2. It is alleged that you failed to be candid with other members of your firm when questioned about the affidavit, thereby breaching the Code of Professional Conduct, and that such conduct is conduct deserving of sanction

C. The Circumstances Giving Rise to the Citations

7. V.C.'s affidavit went through at least two drafts – a shorter preliminary draft, with 19 paragraphs, and a longer final draft which was 42 paragraphs long. This final draft was emailed to V.C., who was in Australia at the time, for his comments. V.C. was scheduled to be in Calgary to be cross-examined on his affidavit, and travelled to Calgary, with a prior stop in London, England.

[Shorter version, Exhibit 6, Tab 6, and Longer version, Exhibit 6, Tab 7]

8. On August 5, 2005, V.C. responded with comments on some of the first 15 paragraphs of the affidavit. Mr. Lew asked Mr. Edgar to follow up, make V.C.'s requested changes, and then forward the affidavit to him to swear.

[Email with responses, Exhibit 7, Tab 2; Email from Lew to Edgar, Exhibit 7, Tab 5]

9. Mr. Edgar was unaware that the electronic file contained the earlier, shorter version of the affidavit. On August 10, 2005, Mr. Edgar emailed V.C. that shorter version of the affidavit for him to print and swear. V.C. signed this shorter affidavit, had a notary public in London attest to his signature, and then returned the affidavit to Mr. Edgar. Mr. Edgar did not know of the existence of the two (short and long) versions of the V.C. affidavit until August 29, 2005.

[Email of shorter affidavit, Exhibit 6, Tab 6]

10. The sworn copy of the (shorter) V.C. affidavit was faxed to Mr. Donaldson by Mr. Edgar's assistant. A Court Order required that any affidavit be served by August 10 and by August 10, 2005, Witten LLP had not received the sworn affidavit from V.C. despite follow-up emails setting forth the urgency of receiving it. At the last possible moment, an unsworn copy of the affidavit was faxed to Mr. Donaldson and the next day (August 11), Mr. Edgar's assistant advised him that the sworn V.C. affidavit had arrived and without examining it, Mr. Edgar instructed her to fax it to Mr. Donaldson's office.

[Fax to Donaldson, Exhibit 7, Tab 10, and Order setting August 10 deadline, Exhibit 6, Tab 5]

11. Mr. Edgar was not present at V.C.'s Monday, August 22, 2005 examination. When the opposing counsel began his examination, it became clear to Mr. Lew that Mr. Donaldson had only the shorter affidavit. Mr. Lew then contacted Mr. Edgar during a break in the examination. Mr. Edgar said that he was holding a sworn copy of the longer affidavit, and could fax it immediately to Mr. Donaldson's office.

[Lew's email, Exhibit 7, Tab 11 and Fax to Donaldson, Exhibit 7, Tab 10]

12. Mr. Edgar did not have a sworn copy of the longer V.C. affidavit in front of him but did have that longer version on his computer screen in front of him. He photocopied a draft of the longer affidavit, superimposing the sworn jurat from the shorter affidavit in such a way that it appeared the longer affidavit had been sworn.

13. As a result, Mr. Lew and Mr. Donaldson had both the shorter and longer versions of the V.C. affidavit, both apparently sworn. V.C., however, testified that he was certain he had sworn only one affidavit, although he was unsure as to which version. The issue became the subject of undertakings by V.C. to explain, through his counsel, this circumstance.

[V.C. transcript, Exhibit 7, Tab 26]

14. On Wednesday, August 24, 2005, Mr. Lew returned to his office and asked Mr. Edgar to begin preparing answers to the undertakings given by V.C. At this point, the transcript had not been produced, but on that day Mr. Lew had written to his client, listing the undertakings given by V.C. on his examination, including: "Explain inconsistencies in the affidavit – I have asked Geoff Edgar to attempt to answer." Mr. Edgar began work on the answers to undertakings, based on Mr. Donaldson's letter of August 24, 2005 given to Mr. Edgar on August 25, 2005 by Mr. Lew.

[Donaldson letter, Exhibit 7, Tab 13]

15. By Friday, August 26, 2005, after Mr. Lew had spoken again with V.C. about the circumstances of his swearing the affidavit, Mr. Lew began investigating how the two V.C. affidavits came into existence, and discovered for the first time that there were electronic versions of both a short and long form of the affidavit. Mr. Lew questioned Mr. Edgar's assistant, asking her if she had done this, and she said she had not, and otherwise knew nothing about it.

16. On Sunday, August 28, 2005, Mr. Edgar prepared a memo to assist in the drafting of answers to the undertakings as set out in Mr. Donaldson's letter, and left it on Mr. Lew's desk. The memo did not disclose that Mr. Edgar had photocopied the jurat from the shorter form onto the longer form.

[Memo, Exhibit 7, Tab 16]

17. On Monday, August 29, 2005, V.C. had properly sworn the longer affidavit, and this had been delivered to Mr. Donaldson. On this day, however, Mr. Edgar was at the hospital where his son was undergoing tests for a serious neurological disorder. Mr. Lew reached Mr. Edgar at the hospital, and Mr. Edgar said he would look into the issue concerning the affidavits.

[August 29 affidavit, Exhibit 6, Tab 8]

18. In the evening of Monday, August 29, 2005, Mr. Edgar went to his office and spent approximately an hour there prior to returning to the hospital. While in the office, Mr. Edgar discovered for the first time the two different electronic (short and long) versions of the V.C. affidavit. Mr. Edgar's wife, H., had left the hospital to go home, so Mr. Edgar returned to the hospital and spent the rest of the night watching over his son, B. to ensure the telemetry leads did not come off his head.

19. On Tuesday, August 30, 2005, Mr. Edgar was at the hospital all day getting news about his son and discussing treatment options.

20. On Wednesday, August 31, 2005, Mr. Edgar met with Mr. Lew and two other Witten LLP partners. Mr. Lew pointed out that it appeared the V.C. affidavit had been tampered with and by someone in the Witten LLP office. Mr. Edgar did not, on this occasion, advise Mr. Lew and the other partners of the steps he had taken concerning the V.C. affidavit on August 22.

21. Mr. Edgar's wrongdoing, however, troubled him, and on Monday, September 5 or Tuesday, September 6, 2005, he spoke first with Mr. Appelt, Witten's managing partner, and then to Mssrs. Lew, Nesbitt, and Little, telling them what he had done.

Mr. Edgar's Admission of Guilt

22. The Member admits that the citations are made out and that his conduct is conduct deserving of sanction.

ALL OF THESE FACTS ARE ADMITTED THIS 22 DAY OF MAY, 2008.

"original signed"

Geoffrey Edgar

D. Oral Evidence

The Member

8. The Member is currently employed in the Edmonton office of Miller Thomson, working in the receivership and bankruptcy area under the supervision of partner Rick Reeson, Q.C.
9. The Member is married to H.E. The couple had a son, B., in 2002. Their son unfortunately suffers from a serious degenerative genetic disease...
10. Some rather complex commercial litigation forms some of the factual background to the citations. Without delving into specific detail, it is noted that the court had basically ordered a summary trial of a fraud action, with the evidence to be taken by way of affidavit and cross-examination thereon. The subject affidavit was therefore central to the disposition of the fraud action.
11. When told on the morning of V.C.'s cross-examination on affidavit (August 22, 2005) that only a copy of the sworn shorter, 19 paragraph version of the affidavit was in the discovery room (as opposed to the longer, 42 paragraph version), the member says he was perplexed. At that point, he did not know that V.C. had actually only sworn the shorter version and that the sworn affidavit transmitted to opposing counsel (Mr. Donaldson) was only the shorter version. The Member says he did not know the shorter version even existed at the time.

12. The Member testified that he assumed, wrongly as it turns out, that there had been some kind of photocopying error of the sworn longer version of the affidavit, resulting in the sworn shorter version affidavit that was sent to opposing counsel. The Member was not aware on August 22, 2005 that a sworn longer version of the affidavit did not exist.
13. By using the photocopier to create what appeared to be a sworn longer version of the affidavit, the Member believed he was simply "correcting" an earlier photocopying error.
14. The Member made the point that the "sworn" longer version of the affidavit that he had created was no different in content than the longer draft that V.C. had previously reviewed and approved and was no different than the longer version that was eventually truly sworn. The Member disagreed with LSA counsel that the "sworn" longer version of the affidavit created by the member had been fabricated because the content was always true.
15. It was pointed out that the first page of the truly sworn shorter version of the affidavit had also been photocopied and attached to the front of the "sworn" longer version of the affidavit created by the member on August 22, 2005.
16. At the time these events were transpiring at the Member's work, his son's condition was becoming more serious. [Medical information concerning the son omitted.]
17. [Medical information concerning the son omitted.]
18. [Medical information concerning the son omitted.]
19. The Member testified that, at the time, he was short tempered and frustrated. The workload at the Witten firm was busy. He indicates that he billed 154 hours in July and 191 hours in August. He was the most senior associate at the firm, the next most senior being five years junior to him. As a result, many demands were placed upon him. He described August 2005 as "crunch" time at the firm, due to poor vacation scheduling. He described his day at the office as consisting of "constantly putting out fires".
20. The Member admitted that he had no good explanation for why he was not forthcoming during the meeting on August 31, 2005 about how the "sworn" longer version of the affidavit came into existence on August 22, 2005. He indicates that he had not slept for several days (owing to work and hospital visits with his son) and was scared and confused.
21. The following Sunday, ridden with anxiety and sleeplessness, the Member decided to come clean with the firm. This led to the meeting on the Monday or Tuesday during which he ultimately revealed to the partners what he had done.
22. The Member indicated that the events surrounding the V.C. affidavit led to he and the Witten firm parting ways. He is aware that A... discharged the Witten firm and there may

be some issue about the payment of fees. Witten has also filed an ALIA claim in relation to these events.

23. The Member advised that he has sought professional counselling from a psychologist, Dr. Robyn Mott, to help him deal with stress. He says that Dr. Mott has equipped him with tools to address stress and to assist him in exercising sound judgment during stressful situations.
24. The Member reported increased support for his son in 2008, including family visits and provincial government funding for an in-house caregiver, who has now been hired.
25. The Member self-reported the events of the V.C. affidavit to the LSA, through counsel.

Dr. Robyn Mott

26. Dr. Mott is the Member's treating psychologist. She holds an M.A. (1985) and a Ph.D. (1989) in educational psychology from the University of Alberta. She has been in active practice as a psychologist since 1985 and is a member of the College of Alberta Psychologists and the Psychologists' Association of Alberta. Dr. Mott has been treating the Member on a regular basis since October 2005.
27. The witness described that period of the Member's life preceding the incident in question as a four year process of one traumatic event after another concerning his son... [Medical information omitted]
28. During this period leading up to the incident, Dr. Mott described the Member... [Medical information omitted]
29. The Member was also influenced by family principles, namely a belief that he couldn't let anyone down and that he must keep forging ahead. He was also experiencing a crisis of faith at the time.
30. With respect to the Member's state of mind at the time of the incident and his reticence in coming forward afterward, Dr. Mott stated that the Member... [Medical information omitted] Dr. Mott testified that the Member had no dishonest intention and believed he was recreating a document already in existence. The lack of forthrightness could be explained by the despair and confusion the Member was experiencing at the time. It was only over the course of days that the Member started to think more clearly and came to the realization that he had to confess to what he had done.
31. Dr. Mott described the incident as completely out of character for the Member. The Member was not thinking and acting in the usual way. As the treating psychologist, Dr. Mott believes that the future risk of aberrant behaviour on the Member's part is low. [Medical information omitted] He now feels safe about going to mentors. He has re-

established confidence in himself and feels valued. Most importantly, the Member has committed to ongoing professional help.

32. The Hearing Committee heard from Dr. Mott that the Member is sincerely concerned about the harm his actions may have caused to others. He stated that the Member has agonized over atonement and one should not underestimate the profound impact the incident has had on the Member's life.

Rick Reeson, Q.C.

33. Mr. Reeson, a senior lawyer in Edmonton, was called to give evidence in the nature of character evidence on behalf of the Member. He advised that the Member had articulated at Mr. Reeson's previous firm, Nesbitt Wensel and Reeson. When that firm merged with Witten, the Member joined Witten as an associate.
34. According to the witness, the Member joined Mr. Reeson's current firm, Miller Thomson, following the Member's departure from Witten. A telephone call had occurred between the Member and Mr. Reeson that resulted in Mr. Reeson inviting the Member to join Miller Thomson. Mr. Reeson was aware in general terms of the incident concerning the V.C. affidavit and described it as an error of judgment on the Member's part.
35. Mr. Reeson advised the Hearing Committee that the circumstances relating to the Member's departure from Witten had been disclosed to Miller Thomson's managing partner, Mr. Kenny, Q.C.. The firm was also advised of the Member's limitations due to his family situation. Mr. Reeson is the Member's supervisor in the firm's receivership and insolvency practice group.
36. Mr. Reeson opined that the Member has always shown honesty, integrity, professionalism and competence in his work. The witness agreed with the statement that reputation is all that a lawyer has, and that in a sense he has put his own reputation on the line by hiring the Member. Having said that, Mr. Reeson expressed no regret whatsoever in bringing the Member to Miller Thomson.

E. Decision as to Citations

37. Having heard the evidence, the Hearing Committee has decided that the Agreed Statement of Facts containing the Member's signed admission of guilt (Exhibit 16) is in an acceptable form and is therefore deemed for all purposes to be a finding of this Hearing Committee that the conduct of the Member, as described in the two citations, is deserving of sanction.

F. Sanction

38. LSA counsel referred the Committee to paragraph 35 of *Law Society of Alberta v. Diana Rutschmann*, 2007 LSA 1 (CanLII):

The Committee was provided with a number of authorities from other LSA discipline proceedings, in which similar conduct involving the swearing of false affidavits had attracted a variety of sanctions from reprimand to disbarment. Clearly the circumstances of the transgressions and the circumstances of the Member can have a considerable affect on determining an appropriate sanction.

39. It was contended by LSA counsel that there is no doubt that the Member had fabricated the sworn version of the longer affidavit and that he had failed to admit to his wrongdoing in a timely manner. Were these transgressions indicative of a lack of integrity on the Member's part, the imposition of a suspension might be warranted. However, LSA counsel indicated that he would not make the argument that the Member had exhibited a lack of integrity. LSA counsel suggested that the Member genuinely thought he was simply recreating a document that already existed.
40. While accepting that the Member's actions and omissions could be characterized as an error in judgment, LSA counsel pointed out that the events were not without negative consequences for the Witten firm and the client itself. He suggested that the Hearing Committee could, if it wished, consider a fine to express the regulator's denunciation and disapproval of the conduct. On the other hand, LSA counsel also fairly conceded that a reprimand and costs might achieve the same end. He suggested that this case was not typical given the Member's personal circumstances and noted that in the three years since the incident, there have been no complaints about the Member.
41. The Member's counsel told the Hearing Committee that this case presented a unique fact pattern. As the evidence suggested, the confluence and constellation of catastrophic stressors created a perfect storm that allowed the incident to occur. The Member's counsel suggested that the Member had committed an error of judgment in traumatic and extraordinary circumstances.
42. The Member's counsel also pointed out that there was no malevolence or evil intent in the Member's actions and omissions. Indeed, no benefit or advantage whatsoever accrued to either the client or the Member as a result of this conduct. There was no planning or deliberation on the Member's part and the conduct was impulsive.
43. It was urged upon the Hearing Committee that the conduct itself was at the lower end of the scale. The Member's counsel reminded the Hearing Committee that the Member had self-reported his conduct. Accordingly, in the Member's counsel's submission, the appropriate sanction was a reprimand and costs.

G. The Decision as to Sanction

44. As the *Diana Rutschmann* case instructs, in the case of uttering a false affidavit, the sanction must be customized to fit the circumstances. The Hearing Committee accepts

- that the Member did not exhibit a lack of integrity and accordingly did not entertain the sanction of suspension.
45. The Committee also agreed that on the spectrum of severity, the conduct in question is at the lower end. That does not minimize it; it merely means that the conduct is not as bad as that described in some of the cases that were referred to by counsel.
 46. The Committee debated about whether or not to impose a fine so as to express strong denunciation and disapproval, but there was a sentiment that a reprimand and costs could achieve that purpose.
 47. The point was made with respect to harm. There was a suggestion that the Witten firm and its reputation had been harmed. It is known that an insurance claim has been submitted. The Committee was also left to speculate about the possible loss of fees for the firm and the possible indemnity by the firm of the client for the cost of retaining new counsel.
 48. LSA counsel did remind the Hearing Committee that there are two parts to the transgressions and that they are distinct. First, there is the creation of the document and, second, there is the reticence in owning up to it. The Hearing Committee states that, but for some exceptional mitigating circumstances, a substantial fine would have been imposed. As the Member's counsel quite rightly pointed out, there was no advantage to the Member or the client. The Committee also accepts that the Member truly believed that the sworn short version of the affidavit was the result of a photocopying error and that an actual sworn longer version of the affidavit existed.
 49. The Member suffered a loss of employment and the embarrassment of loss of his own reputation. It is an understatement to say that the circumstances of the Member are sympathetic. These circumstances provide an explanation for what happened, but they do not provide an excuse. The Committee accepts the Member's evidence, and that of the treating psychologist, that in August 2005 the Member was undergoing an unrelenting series of calamities with respect to his son's health. The members of the Committee are left to imagine the kind of anguish that the Member and his wife must have endured at the time.
 50. The Hearing Committee also took into consideration the work culture and environment that the Member was in and how the firm reportedly put undue pressure on him. The Committee also heard evidence from Dr. Mott of certain personality traits that may be familial in origin, i.e., an inability to say no and a desire to do everything that is asked. Sometimes these are positive traits, but sometimes they can work negatively as well.
 51. The Hearing Committee accepts that the combination of these stressors produced a state of cognitive distortion, as referred to by Dr. Mott. This caused the Member to make some rather poor choices and he was unable to appreciate, until too late, the consequences of those choices. The Committee is satisfied that this cognitive dissonance, despair and sleep deprivation led the Member to omit to tell his firm about

the affidavit. The Committee accepts that the Member emerged from this state slowly over the course of a week, realized what he had done, and then had somewhat of a crisis of conscience which ultimately led to the Member making full disclosure to the firm.

52. The Committee is impressed and pleased to hear that the Member has made changes in his life. He is at a new firm and a new work environment where there is support for appropriate work-life balance. The Member now has support systems in place in terms of home care and daily family visits. The Member is in a stable personal environment and is committed to professional help. The Committee is therefore confident that the Member has now acquired the insight and skills to recognize and deal with stressful situations before they become overwhelming. In short, the Member has dealt with the cause of these events.
53. It is the finding of this Hearing Committee that the appropriate sanction is a reprimand and the full costs of the hearing.

H. The Reprimand

54. Counsel for the LSA quite rightly pointed out the importance of affidavits in our system of litigation. If courts and parties cannot rely on the authenticity and integrity of affidavits, then our entire system of litigation is undermined. It is, this Committee suggests, no answer to say the content is true, even though the document is false.
55. Lack of candour is undesirable in a lawyer. It is a negative trait because it means that someone cannot be trusted. In the Member's case, the lack of candour, as demonstrated, was restricted to one week in his life during the month of August 2005.
56. The Member is extremely fortunate to have a respected senior practitioner such as Mr. Reeson vouch for him. Mr. Reeson has thrown the Member a lifeline. This Committee expects that the Member will take every advantage of it to fully rebuild and rehabilitate his own reputation. Mr. Reeson agreed that reputation is all that a lawyer has. He has put his own reputation on the line by bringing the Member into the fold of Miller Thomson. Mr. Reeson expressed no misgivings for doing so and it is the Committee's sincere hope, and expectation, that the Member through his professional word and deed will ultimately prove to the world that this trust has not been misplaced.
57. The Member's actions and omissions have brought disrepute to his former firm, to his former client and to the entire profession. It is this Committee's hope and expectation that the Member will accept this experience as a lesson learned. Indeed, that is what the Committee was told.

I. Concluding Matters

58. There will be no referral to the Attorney General.
59. There will be no publication to the profession.

60. With regard to costs, the costs payable are the actual costs of the hearing when determined and they shall be paid within 30 days of the date of service of the final Statement of Costs upon the Member or his counsel.
61. Except as hereinafter stated, the record will be available for public inspection, including the provision of copies of exhibits, for a reasonable copy fee. The identity of and other identifying information about the client will be redacted from the record. Furthermore, all medical information introduced into these proceedings and referenced in these reasons will remain private.

Dated this 18th day of August, 2008.

Douglas R. Mah, Q.C. – Chair and Bencher

Neena Ahluwalia – Bencher

Wayne Jacques – Bencher