



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
HOWARD GOLDFORD,
a member of the Law Society of Alberta.**

Introduction

1. The Hearing Committee of the Law Society of Alberta (LSA) held a hearing into the conduct of Howard Goldford on May 8, 2008. The committee was comprised of Shirley Jackson, QC, chair, Carsten Jensen, QC, and Vivian Stevenson, QC, Benchers. The LSA was represented by Michael J. Penny. The member was present throughout and represented by Philip G. Lister, QC.

Jurisdiction and Preliminary Matters

2. Exhibits one through four, consisting of the Letter of Appointment of the Hearing Committee, the Notice to Solicitor, the Notice to Attend and the Certificate of Status of the Member, established jurisdiction of the committee.

Composition of the Committee

3. There was no objection by the member's counsel or counsel for the LSA regarding the membership of the committee.

Private versus public hearing

4. The Certificate of Exercise of Discretion was entered as exhibit five. Counsel for the LSA advised that the LSA did not receive a request for a private hearing, therefore the hearing was held in public.

Exhibits

5. The panel received an Exhibit Book that included Exhibits 1-13 which was entered as Exhibits 1-13 by consent at the Hearing. Further Exhibits were entered by consent:

Exhibit 14: Statement of Facts

Exhibit 15: Gutierrez v Jeske [2005] AJ No 256

Exhibit 16: January 18, 2007 to October 15, 2007 - 14 letters between P.K. and William P. Ostapek

May 6, 2008 letter to LSA from P.K.

October 24, 2007 letter to Mr. Ostapek from the member

November 8, 2007 letter to the member with a copy to the LSA from William P. Ostapek

November 19, 2007 letter to Mr. Ostapek from the member

November 28, 2007 letter from the Acting FOIP Coordinator from WCB to the member

December 19, 2007 letter to R.E. of WCB from the member

December 21, 2007 letter to the member from William P. Ostapek

February 14, 2008 letter to the member from William P. Ostapek

Exhibit 17: Certification that the member has no discipline record with the LSA

Exhibit 18: Estimated statement of Costs

Citations

6. The member faced the following citations:

Citation 1: IT IS ALLEGED that you failed to respond on a timely basis to communications from the Complainant that contemplated a reply, 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 keep the Complainant informed as to the progress of the subrogated action, thereby breaching the *Code of Professional Conduct*, and that such conduct is conduct deserving of sanction.

Evidence

7. An Agreed Statement of Facts was entered by consent as Exhibit 14 that stated the following:

IN THE MATTER OF THE LEGAL PROFESSION ACT

**IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF HOWARD GOLDFORD
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

STATEMENT OF FACTS

Introduction

1. *Howard Goldford is a member of the Law Society of Alberta, having been admitted to membership on April 24, 1981.*

2. *These citations arise in connection with Mr. Goldford's retainer by P.K., a worker covered by the Workers Compensation Board, to prosecute a personal injury action against a third party.*

Citations

3. *The Citations are:*

1. *It is alleged that you failed to respond on a timely basis to communications from the Complainant that contemplated a reply, thereby breaching the Code of Professional Conduct, and that such conduct is conduct deserving of sanction.*

2. *Its is alleged that you failed to keep the Complainant informed as to the progress of the subrogated action, thereby breaching the Code of Professional Conduct, and that such conduct is conduct deserving of sanction.*

Retainer Letter

4. *Mr. Goldford signed a retainer letter with the WCB, in a standard form drafted by WCB, on July 31, 2001.*

[Exhibit 6, Tabs 1 and 2]

5. *On March 16, 2004, R.M., a Bodily Injury Adjuster in the Legal Services Department of the WCB, requested Mr. Goldford provide a progress report on the personal injury litigation. On March 30, 2004, and April 15, 2004, Mr. M. sent follow-up letters. Mr. Goldford did not reply.*

[Exhibit 6, Tabs 3, 4, and 5]

6. *Mr. M. made further requests for a report on February 7, 2005 and September 2, 2005, without receiving a reply from Mr. Goldford.*

[Exhibit 6, Tabs 6 and 7]

7. *At Mr. M.'s request, on January 10, 2006, William Ostapek, a member of the Law Society and the Director of the Legal Services Department of WCB, followed up, also requesting a written progress report. Mr. Goldford did not reply, except as noted below in the telephone call to Mr. M.*

[Exhibit 6, Tab 8]

8. *On February 15, 2006 Mr. Goldford telephoned Mr. M., advising him of the status of the personal injury lawsuit. He did not, prior to Mr. Ostapek's August 21, 2006 written complaint to the Law Society, reply to Mr. Ostapek.*

[Exhibit 13, Tab 1]

9. *Mr. Goldford had, however, received instructions from Mr. K., who felt that the WCB had unfairly denied him benefits, not to report to WCB.*

[Exhibit 10, Tab 1]

Admission of Guilt to Citation 1

10. *Mr. Goldford acknowledges that he ought to have responded to Mr. Ostapek's request for a written report on a timely basis, and that as a result of his failure to do so, he is guilty of Citation 1 in this matter and acknowledges his conduct is conduct deserving of sanction.*

11. *Mr. Goldford believes, however, that, despite the lack of formal written reports, WCB was aware of the significant steps in the lawsuit, and was not prejudiced by that lack. He has recently sent Mr. Ostapek a written progress report, reporting that Mr. K. was further examined for discovery on April 2, 2008, that the Defendant's Counsel had certain procedural requests, and finally, briefly summarizing a medical assessment of Mr. K.*

ALL OF THESE FACTS ARE ADMITTED THIS 8th DAY OF MAY, 2008.

Howard Goldford

Findings of Fact

8. The Panel accepts the facts as set out in the Agreed Statement of Facts.
9. The member testified that he did not respond to requests from the complainant that required a reply and he did not keep the complainant informed. There was no communication from the member to the complainant regarding the file prior to the complaint to the LSA and there was no reasonable excuse for this lack of communication, nor would this lack of communication result in any dialogue.

Decision as to Citations

10. Based on submissions and the Agreed Statement of Facts the panel finds that admitted facts establish Citation 1.
11. Counsel submitted that Citation 2 was subsumed in Citation 1 and the panel agrees. Citation 2 is dismissed.

Sanction and Orders

12. The member did not have a discipline record, had been practicing for over 30 years, made admissions on the date of the Hearing and explained why he did not respond.
13. Counsel for the LSA submitted that a reprimand and costs of the hearing would be an appropriate sanction. Counsel for the member agreed that a reprimand would be an appropriate sanction but since there was a finding on only one of the citations that there should be an order for half the costs.
14. The Panel agreed that the appropriate remedy was a reprimand and ordered that the member pay half of the actual costs of the hearing.
15. The reprimand was given by the Chair. The member was reminded of the importance of prompt and timely communication with the complainant with whom he had signed a retainer letter.

Concluding Matters

16. The member was to pay the costs within 30 days from notification of the actual costs.
17. The Exhibits are to be open to the public with the redaction of the names.
18. No notice to the profession is required.
19. No reference to the Attorney General is required.

Dated this 17th day of June, 2008.

Shirley Jackson, QC – Chair and Bencher

Carsten Jensen, QC – Bencher

Vivian Stevenson, QC - Bencher