



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 Susan Hendricks, a member of the Law Society of Alberta.

Jurisdiction and Preliminary Matters

1. A Hearing Committee of the Law Society of Alberta (“LSA”) held a hearing into the conduct of Susan Hendricks (the “Member”) on April 24th and 26th, 2007. The Committee was comprised of John Prowse, Q.C., chair, Ron Everard, Q.C. and Julia Turnbull, Q.C. The LSA was represented by Janet Dixon. The Member represented herself.
2. Exhibits 1, 2, 4 and 5, consisting of the Appointment of the Hearing Committee, the Notice to Attend, the Certificate of Status of the Member, and the Private Hearing Application Notice, establish the jurisdiction of the Committee.
3. The testimony of two complainants (referred to herein as Complainant H and Complainant R respectively) was held in private but otherwise the hearing was held in public. The Member participated by telephone from Victoria, British Columbia.

Request for Adjournment Declined

4. The hearing commenced at 9:30 A.M. on Tuesday, April 24, 2007 in the absence of the Member. The Committee decided to proceed in the absence of the Member due to the following facts:
 - a) The hearing had previously been set for a hearing in March of 2006 but was adjourned to May 2, 2006. It was then further adjourned to May 30, 2006 at the request of the member. By May 30, 2006 the Member had signed an Agreed Statement of Facts and Admission of Guilt. However, the Member then withdrew some of the admissions and sought a further adjournment, which was granted, on the basis that the Hearing would proceed peremptorily when it was reconvened.
 - b) The Member had been served with the Exhibit Book proposed to be used in this hearing on July 04, 2006.
 - c) The Member was served with notice of the date of this hearing on March 23, 2007.

- d) Notwithstanding the foregoing, the Member only communicated with LSA counsel by means of an e-mail sent the day prior to the hearing [Exhibit # 44] in which the Member indicated that she was unable to attend the hearing and wished to plead guilty to the citations and to work out an Agreed Statement of Facts.
5. After only a few questions had been directed to the first witness, the Complainant H, the Committee was notified of a telephone call from the Member. The Member was put on a speaker phone and was given leave to apply, via telephone, for an adjournment of the hearing. The application for an adjournment was refused for the reasons set out in the preceding paragraph. The hearing then proceeded with the Member participating by telephone. From the submissions made by the Member and the cross-examination which she conducted it appeared that the Member was capable of representing herself in a proficient manner.

Admission of Guilt

6. After hearing testimony from the Complainant H and the Complainant R, the Committee was advised that the Member had decided to provide an Agreed Statement of Facts and Admission of Guilt. The Committee was provided orally with particulars of the Agreed Statement of Facts and Admission of Guilt with regard to Citations 1, 3 and 4. A written Agreed Statement of Facts and Admission of Guilt was then provided (by means of Exhibit # 47) with respect to Citations 2, 5, 6, 7, 8, 9, and 10. The Committee agreed to accept these Statements of Fact and Admissions of Guilt, and the hearing was then adjourned for two days in order to hear submissions as to sanction.
7. The oral and written Agreed Statements of Fact and Admissions of Guilt have been consolidated and are set out below. Paragraph numbering has been adjusted to accommodate the consolidation.

Agreed Statement of Facts and Admission of Guilt

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, the Member practiced as a sole proprietor.
2. The Member 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 March 31, 2005, the Member was suspended from the Law Society of Alberta for nonpayment of her Law Society fees.

CITATION 1

IT IS ALLEGED THAT YOU failed to respond to serve your client, failed to account to your client, and that such conduct is conduct deserving of sanction.

4. The Member handled a house sale for Complainant H. Some of the sale proceeds remained in trust as a retainer for the Member to continue divorce proceedings which the Member was also handling for the Complainant H. However, the Member thereafter failed to respond to numerous inquiries from the Complainant H. as to the progress of the divorce proceedings. The Member did not advance the divorce proceedings in a satisfactory manner and failed to send to Complainant H. a proper accounting as to what happened with the trust funds. It is not alleged that the Member misappropriated the trust funds, but rather that she failed to render a proper account so that the Complainant H. could verify that the Member had provided legal services to at least the value of the trust funds.

CITATION 2

IT IS ALLEGED THAT YOU failed to respond to the Law Society of Alberta, and such conduct is conduct deserving of sanction.

5. On December 6, 2004, Complainant H. contacted Angela Gallo-Dewar, a Complaints Resolution Officer with the Law Society of Alberta and advised that she had been unable to reach the Member. She alleged that she had no idea where her divorce action stood and believed the Member was still holding proceeds from the sale of the matrimonial home. Ms. Gallo-Dewar advised Complainant H. that she would contact the Member.
6. On December 6, 2004, Ms. Gallo-Dewar left a voice mail message for the Member to call her regarding the complaint of Complainant H. The Member did not return the call. **[Exhibit 6]**
7. On December 10, 2004, Ms. Gallo-Dewar sent a letter to the Member asking for a response. The Member did not respond. **[Exhibit 7]**
8. On December 20, 2004, Ms. Gallo-Dewar sent a further letter to the Member asking for a response by December 29, 2004. The Member did not respond. **[Exhibit 8]**
9. On February 9, 2005, the Law Society received a letter of complaint from Complainant H. **[Exhibit 9]**
10. On February 14, 2005, Katherine Whitburn, Manager, Complaints, with the Law Society of Alberta, sent a letter to the Member by registered mail requesting a response pursuant to section 53 of the *Legal Profession Act*. **[Exhibit 10]**

11. On February 17, 2005, Ms. Whitburn received confirmation of registered mail delivery to the Member's address from Canada Post. **[Exhibit 11]**
12. The Member did not respond to Ms. Whitburn's letter of February 14, 2005.
13. On March 8, 2005, Ms. Whitburn sent a reminder letter to the Member requesting a response. **[Exhibit 12]**
14. On March 17, 2005, the Member sent Ms. Whitburn a facsimile message advising that she would provide a response by March 21, 2005. **[Exhibit 133]**
15. The Member did not provide a further response.

CITATION 3

IT IS ALLEGED THAT YOU failed to respond to the Complainant on a timely basis, and that such conduct is conduct deserving of sanction.

16. The Member admits that, for the six months leading up to August 17, 2004, she failed to respond to numerous enquiries made by the Complainant R., both with respect to proceedings commenced arising from the death of the Complainant's son and with respect to divorce proceedings that the Member was supposed to have been advancing on behalf of the Complainant R. Due to this failure to communicate the Complainant R. was unaware that her lawsuit against a physician who had treated her (late) son had been summarily dismissed. What happened after August 17, 2004 with respect to Complainant R is set out in Citation 5.

CITATION 4

IT IS ALLEGED THAT YOU failed to transfer the Complainant's file and failed to respond to successor counsel, and that such conduct is conduct deserving of sanction.

17. The Complainant R retained a new lawyer to handle her litigation, and the new counsel requested the file, but for at least 11 months the Member failed to respond or transfer the file to successor counsel.

CITATION 5

IT IS ALLEGED THAT YOU failed to respond to the Law Society of Alberta on a timely basis and in a complete and appropriate manner and that such conduct is conduct deserving of sanction.

18. On August 17, 2004, the Law Society received a complaint from Complainant R. **[Exhibit 14]**

19. Between September 3, 2004 and September 16, 2004, Rolf Stengl, a Complaints Resolution Officer employed by the Law Society at the time, made efforts to resolve the complaint. The Member participated in those efforts. **[Exhibit 15, 16, 17 & 18]**
20. On May 19, 2005, Complainant R. contacted Mr. Doug Morris, a Complaints Resolution Officer with the Law Society and advised that she had still not received her files from the Member and nor had the Member returned her messages. Mr. Morris left telephone messages for the Member at the number in British Columbia provided to the Law Society by the Member. **[Exhibit 19]**
21. The Member did not respond.
22. On June 1, 2005, Ms. Whitburn sent a letter to the Member by registered mail requesting a response pursuant to section 53 of the *Legal Profession Act*. **[Exhibit 20]**
23. The Member responded by way of correspondence dated June 15, 2005. She indicated that she had responded to the complaint in her letter to Mr. Stengl of September 9, 2004. She advised that she had spoken with a lawyer that wanted to review the fatality inquiry file and she had volunteered to hand over all three of Complainant R's files to him. She attached a letter from the lawyer dated May 31, 2005, requesting only the fatality inquiry file. The Member indicated that she would not provide the file to the lawyer without the authorization of the Law Society. **[Exhibit 21]**
24. On June 17, 2005, Ms. Whitburn wrote to Ms. Hendricks and advised that authorization of the Law Society to release or transfer files was unnecessary and inappropriate. Ms. Whitburn confirmed that the recent complaint was in relation to the Member's failure to transfer the file and respond to Complainant R's messages. **[Exhibit 22]**
25. The Member did not respond.
26. On July 18, 2005, Ms. Whitburn sent a reminder letter to the Member. **[Exhibit 23]**
27. The Member did not respond.
28. On July 22, 2005, Ms. Whitburn received correspondence with attachments from Complainant R's successor counsel indicating that he had still not received the fatality inquiry file. He attached correspondence to the Member dated July 16, 2005, in which he expressed concern that the Member's failure to respond may be prejudicing Complainant R. **[Exhibit 24]**
29. Subsequently the Member provided the file to successor counsel but the Member never responded to Ms. Whitburn.

CITATION 6

IT IS ALLEGED THAT YOU failed to respond to the Law Society of Alberta on a timely basis and that such conduct is conduct deserving of sanction.

30. On March 31, 2005, the Member was suspended from active membership by the Law Society of Alberta for non-payment of fees. On April 1, 2005, Ms. Tanya McCullough, Manager, Membership Department, advised the Member by telephone that she was suspended and explained the reinstatement procedure. **[Exhibit 25]**
31. On April 1, 2005, Ms. McCullough sent an e-mail to Ms. Hendricks attaching the application for reinstatement and invoice. **[Exhibit 26]**
32. On April 6, 2005, Ms. McCullough sent a letter to the Member by registered mail confirming again that she had been suspended for non-payment of fees and advising her of the requirements to close her practice and report to the Law Society. **[Exhibit 27]**
33. On April 11, 2005, Ms. McCullough received confirmation of registered mail delivery to the Member's address from Canada Post. **[Exhibit 28]**
34. The Member did not respond.
35. On May 26, 2005, Ms. McCullough spoke with the Member regarding the closing of her practice and returning a file to a client, Complainant R. **[Exhibit 29]**
36. On May 26, 2005, Ms. McCullough sent a letter by e-mail to the Member confirming the telephone discussion earlier that day and confirming that the Member would report promptly in writing to the Law Society as to the disposition of her practice and the final trust account reporting required. **[Exhibit 30]**
37. The Member did not respond.
38. On June 8, 2005, Katherine Whitburn, Manager, Complaints, with the Law Society of Alberta, sent a letter to the Member by registered mail requesting a response pursuant to section 53 of the *Legal Profession Act*. **[Exhibit 31]**
39. On June 13, 2005, Ms. Whitburn received confirmation of registered mail delivery to the Member's address from Canada Post. **[Exhibit 32]**
40. The Member did not respond to Ms. Whitburn's letter of June 8, 2005.
41. On June 29, 2005, Katherine Whitburn sent a reminder letter to the Member requesting a response. **[Exhibit 33]**
42. The Member did not respond.

CITATION 7

IT IS ALLEGED THAT YOU failed to cooperate with the Auditor so that the Rule 130 Audit could not be completed and that such conduct is conduct deserving of sanction.

CITATION 8

IT IS ALLEGED THAT YOU failed to follow the Accounting Rules of the Law Society and that such conduct is conduct deserving of sanction.

CITATION 9

IT IS ALLEGED THAT YOU failed to file Forms S & I for 2002 and 2003 and thereby breached the Rules of the Law Society.

CITATION 10

IT IS ALLEGED THAT YOU failed to respond on a timely basis and in a complete and appropriate manner to communications from the Law Society and that such conduct is conduct deserving of sanction.

43. On June 30, 2004, a Rule 130 audit was commenced by the Law Society on the firm of the Member. On July 8, 2004, Ms. Sabrina Capune, a Senior Auditor at that time employed by the Law Society, sent correspondence to the Member regarding outstanding items arising from the rule 130 audit. The Member's trust and general accounting records were not up to date and Ms. Capune requested them in order to complete the audit. The letter also included a number of specific questions that required response. **[Exhibit 34]**
44. By way of correspondence dated August 30, 2004, the Member responded to Ms. Capune regarding the outstanding items arising from the rule 130 audit. The letter indicated that she had requested from the ATB copies of all deposits made to trust for the years 2001 - 2004 in order to complete her records. **[Exhibit 35]**
45. On September 28, 2004, the Member sent further correspondence to Ms. Capune indicating that the ATB had sent the wrong information. The Member's letter attached her correspondence to the ATB urgently requesting the deposit receipts. **[Exhibit 36]**
46. On October 14, 2004, Ms. Capune wrote to the Member at her new British Columbia address reminding her that she was still waiting for her records to complete the audit. Ms. Capune's letter indicated that she had tried to contact the Member by telephone without success. Ms. Capune's letter requested that the Member telephone her no later than October 29, 2004, failing which she would refer the matter to the Conduct department. **[Exhibit 37]**
47. The Member provided no further response.

48. On June 2, 2005, Ms. Capune issued her rule 130 audit report. The Report indicates that the member failed to cooperate to complete the rule 130 audit, failed to follow the accounting rules and failed to file Forms S & T for 2002 and 2003. **[Exhibit 38]**
49. The member has not filed Forms S & T for the years 2002, 2003 and 2004, including her final Forms S & T after winding up her practice.
50. On June 8, 2005, Mr. Gregory Busch, Director, Lawyer Conduct, sent a letter to the Member advising of her ethical obligations to respond to the Law Society audit and to fulfill her obligations relative to the closing down of her practice. **[Exhibit 39]**
51. On June 9, 2005, Ms. Katherine Whitburn sent correspondence to the Member by registered mail attaching material from the Audit Department of the Law Society and requesting her response pursuant to section 53 of the *Legal Profession Act*. **[Exhibit 40]**
52. On June 13, 2005, Ms. Whitburn received confirmation of registered mail delivery to the Member's address from Canada Post. **[Exhibit 41]**
53. The Member did not respond to Ms. Whitburn's letter of June 9, 2005.
54. On July 4, 2005, Katherine Whitburn sent a reminder letter to the Member requesting a response. **[Exhibit 42]**
55. The Member did not respond.

ADMISSION OF FACTS AND ADMISSION OF GUILT

56. The Member admits Citations 1 through 10 and acknowledges her conduct is conduct deserving of sanction. The Member makes this admission as an admission of guilt as contemplated by Section 60 of the *Legal Profession Act*.

Background Including Prior Conviction

57. The Member provided a lengthy written submission concerning her career as a lawyer **[Exhibit 57]**. It indicates that the Member was a sole practitioner practicing criminal and family law in Calgary. She was admitted to the bar in 1993 and was successful in both practice and volunteer activities until 2001, when she fell into a depression which affected her health and her ability to practice law.
58. On June 14, 2004 a hearing was convened to hear prior charges against the Member (referred to herein as the "Prior Charges"), which were that the Member had:
 - a) Failed to serve her client in a timely fashion.
 - b) Failed to respond to her client in a timely fashion.

- c) Failed to avoid prejudice to her client, and failed to cooperate with successor counsel.
59. The Prior Charges were adjourned to August 11, 2004, at which time the Member pled guilty to the charges. Sentencing on the Prior Charges was adjourned to September 15, 2004.
60. On September 15, 2004 a sanction hearing was held with respect to the Prior Charges, at which time the following facts were mentioned:
- a) Commencing in early 2002, due to her personal circumstances, the Member's practice suffered and she began receiving complaints from clients.
 - b) The complainant with respect to the Prior Charges made his complaints in May of 2003. Following that complaint the successor counsel for the complainant was forced to go to Court to obtain the complainant's file and an accounting of the funds which the Member held in trust for the complainant.
 - c) By April of 2003 the Member was well enough to begin taking new cases and attending to them.
 - d) The Member stopped taking new files in April of 2004.
 - e) The Member only had about 30 files left to conclude and was distributing them to new lawyers so that she could move to Victoria on September 30, 2004.

Overlap between prior charges and current charges

61. At the time of the sentencing for the Prior Charges on September 15, 2004:
- a) The complaint of Complainant R had come to the attention of the LSA but the LSA Complaints resolution officer thought he had resolved Complainant R's complaint by means of informal resolution [**Exhibits 16 and 17**].
 - b) The LSA had not yet received the complaint from Complainant H.
62. In retrospect, it appears that the failure of the failure of the Member to respond to Complainant R and Complainant H (the basis of current Citations 1, 3 and 4) largely occurred prior to the disposition of the Prior Charges.
63. However, the bulk of the Member's behaviour which led to the current citations occurred after the disposition of the Prior Charges. In particular, the repeated failure of the Member to answer enquiries from the LSA regarding the complaints of neglect from Complainant R and Complainant H occurred after the Member had already been disciplined by the LSA for failure to serve and respond to a client.

Sanction - general considerations

64. The primary goal of the sanctioning process is to ensure that the public is protected and that the public maintains a high degree of confidence in the legal profession. The Hearing Committee considered the general factors and specific factors described in the Hearing Guide and, in particular, paragraphs 60 and 61, and it considered particularly relevant the following:
- a) The need to maintain the public's confidence in the ability of the profession to effectively govern its own Members.
 - b) The nature of the conduct, particularly as it relates to public confidence and governance of Members.
 - c) The impact of the misconduct occurred on the two Complainants.
 - d) The fact that the bulk of the conduct in question occurred shortly after the Member had been sanctioned for failing to serve and respond to a client.
65. The Hearing Committee was particularly concerned that the Member failed, on many occasions and over a long period of time, to respond to the Law Society. The connection of that misconduct to the fundamental principles underlying the sanctioning process, are set out in *Law Society of Alberta v. Ryan*, [2000] L.S.D.D. No. 46:
- “In addition, while the Committee does not make the qualitative judgment that the failure to respond to the Law Society is more serious than ignoring a client or another lawyer, which failure does go to the heart of the process of self-government. A self-regulating profession relies and must be able to rely on the professionalism and the governability of its members.”
66. The seriousness of ignoring the LSA in its efforts to assist the complainants gives rise the following concerns:
- a) The ability of the LSA to effectively govern its Members;
 - b) Public confidence in the legal profession;
 - c) The inability of the LSA to address valid complaints raised by the public; and
 - d) The LSA's efforts to assist its Members to remediate practice concerns is defeated.
67. All of these factors impact on the public's confidence in the legal profession, which is at the foundation of self-governance. This misconduct brings into jeopardy independence of the legal profession and therefore endangers the public interest.

68. In *Law Society of Upper Canada v. Squires*, [1994] L.S.D.D. No. 156, the following comments, equally applicable in this case, were made:

"The Solicitor repeatedly breached his duty under Commentary 3 of Rule 13 to reply promptly to communications from the Society. He would appear to have deliberately adopted and maintained over a lengthy period of time a policy of flouting the administrative requirements of the Society. The Society cannot perform its function of governing the profession in the interest of the public if it tolerates such conduct."

69. Here, the Member ultimately responded to the notice of this Hearing, but only one day prior to the Hearing. She then participated in the Hearing by telephone and tendered guilty pleas.

70. The Hearing Committee considered all of the circumstances and found that the Member's activities on the day prior to the Hearing and at the Hearing itself could be considered in mitigation and that, absent these and other mitigating factors, the circumstances would be indistinguishable from those in *Law Society of Upper Canada v. Squires*, where disbarment was ordered.

Sanction - decision

71. After hearing submissions as to sanction, the Hearing Committee's decision is that:

- a) The Member should be suspended from practice for 12 months,
- b) 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.
- c) 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.
- d) The Member is directed to forthwith forward to the LSA the files of the Complainant H and the Complainant R.

Concluding Matters

72. There will be a Notice to the Profession regarding the suspension.

73. There will be no notice to the Attorney-General.

74. If a request is made by the public for access to the record of these proceedings then the transcript and exhibits will be redacted to prevent disclosure of the names of the complainants.

DATED the 8th day of May, 2007.

John Prowse, Q.C. - Chair

Ron Everard, Q.C.- member of panel

Julia Turnbull, Q.C. - member of panel