



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 ROBERT CHRISTENSEN, a Member of The Law Society
of Alberta

INTRODUCTION

1. On January 10, 2007, a Hearing Committee of the Law Society of Alberta (LSA) convened at the Law Society office in Edmonton to inquire into the conduct of Robert Christensen. The Committee was comprised of Rodney A. Jerke, Q.C., Chair, Michelle Crighton, Q.C., and Norma Sieppert. The LSA was represented by Janet Dixon, Q.C., and the Member was represented by Philip Lister, Q.C. The Member was present for the Hearing.

JURISDICTION AND PRELIMINARY MATTERS

2. Exhibits 1 through 4, 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.
3. There was no objection by the Member's Counsel or Counsel for the LSA regarding the constitution of the Committee.
4. The Certificate of Exercise of Discretion was entered as Exhibit 5. Counsel for the LSA advised that the LSA did not receive a request for a private hearing and Counsel for the Member confirmed no such request was being made. The hearing was held in public.

CITATIONS

5. The Member faced the following citations:

Citation 1: IT IS ALLEGED THAT YOU failed to respond on a timely basis to communications from another member which contemplated a response, and that such conduct is conduct deserving of sanction.

Citation 2: IT IS ALLEGED THAT YOU proceeded to file Praecipes to Note in Default without notice to opposing counsel, and that such conduct is conduct deserving of sanction.

6. At the Hearing, LSA Counsel sought to substitute an amended Citation 1 as follows:

IT IS ALLEGED THAT YOU failed to treat opposing counsel with courtesy and respect in that you failed to respond to some of his communications in a timely manner and you noted his client in default without providing any courtesy or other notice, and that such conduct is conduct deserving of sanction.

7. LSA Counsel submitted that the Amended Citation was meant to simplify the proceedings, and to allow a consideration of the Member's conduct on an analytical basis. LSA Counsel applied for the withdrawal of the two original Citations. Counsel for the Member supported this application. Counsel for the Member offered an Agreed Statement of Facts, which was consented to by LSA Counsel and marked as an Exhibit. In the Agreed Statement of Facts, the Member admits that he failed to treat the Complainant with courtesy and respect in this matter, and acknowledges that his conduct is deserving of sanction.
8. At the hearing, the Member admitted guilt as to the conduct alleged in the Amended Citation, and admitted that it is conduct deserving of sanction.

SUMMARY OF RESULT

9. In the result, on the basis of the evidence entered at the Hearing, and upon review of the admission of guilt, and for the reasons set out below, the Hearing Committee:
 - a) allowed the application to substitute amended Citation 1 and withdraw the original two Citations;
 - b) determined that the Admission of Guilt was in a form acceptable to it, and accordingly, the Admission of Guilt is deemed, pursuant to S. 60 of the *Legal Profession Act*, to be a finding of this Hearing Committee that the conduct of the Member is conduct deserving of sanction

and made the following orders concerning sanction:

- a) that the Member be reprimanded;

- b) that the Member pay a fine in the sum of \$2,300.00;
- c) that the Member be referred to the Practice Review Committee;
- d) that the Member was not ordered to pay any of the costs of the hearing.

EVIDENCE

- 10. A binder with agreed exhibits 1 through 22, was entered by consent of the parties.
- 11. Exhibit 23 was entered by Counsel for the Member with the consent of LSA Counsel.
- 12. Exhibits 24, 25, and 26 were entered by Counsel for LSA.
- 13. The Hearing Committee heard evidence from the Member.

SUMMARY OF FACTS AND EVIDENCE AS TO SANCTION

- 14. The Citations arise from matrimonial litigation proceedings. The Member was Counsel for the wife and filed and served a Petition for Divorce in 1996. The husband was represented by Counsel and Examinations for Discovery of both the husband and wife were conducted in April of 1997, notwithstanding that Counsel for the husband did not file a formal response to the Petition for Divorce and Statement of Claim. The matter lay dormant and, in the Fall of 2003, the husband retained the Complainant, Douglas Skovberg, to act on his behalf.
- 15. Between October 28, 2003, and December 2, 2003, Mr. Skovberg placed four calls to the office of the Member and, in each case, left a message asking his call be returned and identifying the file to which the call related. The Member admits he received the four messages and acknowledges that some of the four messages from Mr. Skovberg were not answered, or not answered in a timely manner.
- 16. On November 4, 2003, Mr. Skovberg sent a letter to the Member, which included the following comment:

“As of the date of dictating this letter you have been unable to return my telephone call, nor by [my] subsequent calls.”

17. The Member did send a letter to Mr. Skovberg on November 10, 2003, but subsequent telephone calls were not responded to by the Member.
18. Instead, on November 14, 2003, the Member served upon Mr. Skovberg a Notice to Disclose requiring financial disclosure by the husband.
19. On December 22, 2003, Mr. Skovberg served upon the Member a Notice of Motion returnable January 7, 2004, to strike the divorce and matrimonial property actions, on the grounds that more than five years had elapsed without anything being done in the matrimonial property action, which would materially advance it to trial. The Member was on vacation and, on December 22, 2003, someone from his office directed correspondence to Mr. Skovberg requesting an adjournment, which was agreed to by Mr. Skovberg on January 5, 2004.
20. On January 7, 2004, having just returned from vacation, the Member wrote to Mr. Skovberg and requested further adjournment of the motion stating:

“I need an adjournment to give me time to respond”
21. On January 8, 2004, the Member and Mr. Skovberg had a telephone discussion, at which time an adjournment of the motion to January 21, 2004, was agreed to. Mr. Skovberg wrote to the Member confirming in writing the agreed date for the adjournment, and sent a separate letter that same date advocating the formal Offer for Settlement he had made to the Member on behalf of the husband, December 22, 2003. In that letter, Mr. Skovberg also outlined his view of aspects of, and the merits of, his application under Rule 244.1. Later that day, Mr. Skovberg wrote the Member and confirmed that he had attended in Chambers and adjourned the motion to January 21, 2004, as agreed.
22. On January 15, 2004, Mr. Skovberg wrote the Member requesting a response to the January 8, 2004, letter dealing with the settlement offer. Unknown to him, the Member had, on January 9, 2004, without any notice to Mr. Skovberg that he required the husband to file a Statement of Defence or answer in the proceedings, or that he intended to note the husband in default, noted the husband in default in both the divorce and matrimonial property actions.
23. On January 19, 2004, the Member sent a letter to Mr. Skovberg enclosing the Praecipis to Note in Default, advising “without prejudice [the wife] indicates that she is willing to consent to an Order allowing [the husband] to file an answer in the divorce action and a Statement of Defence in the matrimonial property action.”

24. The Member is about 70 years old and was admitted to the LSA in 1979. He practices as a sole proprietor and has had some association with another practitioner for about the last 15 years. He has always practiced in Edmonton, Alberta.
25. The Member's discipline record is not attractive, and includes the following convictions:
 - 1982 – Breach of trust condition
 - 1983 – Breach of trust
 - 1983 – Failing to treat a fellow lawyer with courtesy
 - 1988 (January) – Failing to respond to client and in the manner in which he subpoenaed the client
 - 1988 (June) – Failing to reply to fellow practitioner, Failing to report, Breach of trust, Failing to reply to the Deputy Secretary
 - 1992 – Incompetence for failing to serve a client
26. The Member's practice is a store front type of practice located in the West end of Edmonton, and while the practice is busy, it is not lucrative. The Member serves many Legal Aid clients and many clients of limited means. The Member testified that he has never turned away a client for financial reasons.
27. A review of the Hearing Reports in his past discipline cases reveals significant similarities in the type of conduct the Member has previously demonstrated, with that now under scrutiny. The January 1988 Investigating Committee Report states "thereafter Mr. S. attempted to contact the Member on no fewer than ten occasions between March 17 and March 25, 1987, explaining to the Member's secretary why he wished to speak with him, however none of his telephone calls were returned by the Member". The Report of the June 1988 Investigating Committee showed that the conduct complained of included a failure to return numerous telephone messages left for the Member by a fellow solicitor, and failure to respond to correspondence. In 1992, part of the sanction included a referral of the Member to the Conduct Review Committee (the equivalent of the current Practice Review Committee). The Member testified that he found the referral to the Conduct Review Committee to be of assistance in his practice. The Member testified that he was searching for ways to retire from the practice of law.

SUBMISSIONS RE SANCTION

28. Counsel for the LSA argued that, while the conduct complained of was troubling, there was not sufficient evidence to demonstrate that the Member was incompetent. Counsel argued that while the Member's discipline record was not attractive, it was relevant that the Member's last conviction was in 1992. Counsel also argued that the Member should be

referred to Practice Review, as that procedure had yielded positive results in the past. Counsel argued that the delay in prosecution of this matter (the complaint was made in January, 2004) may be a mitigating factor in the sanctioning process.

29. Counsel for the Member argued that the circumstances presented misconduct which, while not negligible, should be considered to be on the minor side. Counsel argued that the Member's conduct was too adversarial, and while the Member should have given Mr. Skovberg notice of his intentions to note the husband in default, it should be categorized as something like procedural chess. Counsel argued that given the Member's age, the kind of practice he was in, and his financial circumstances, that the imposition of a fine would present a hardship to the Member. Counsel argued that there was no necessity for general deterrence of other Members, and that the public interest was best served by a rehabilitative sanction. Counsel argued that the Member's cooperation with the LSA was relevant, and agreed that the Member should be referred to Practice Review, particularly in light of his intention to retire.

DECISION ON SANCTION

30. Chapter 4 of the Code of Professional Conduct provides:

“A lawyer has a duty to deal with all other lawyers honourably and with integrity”

Commentary G.2 is particularly important:

“Good relations among members of the bar are important from several perspectives. They contribute to the effective and expeditious dispatch of clients' business while enhancing working conditions for lawyers. To the extent that dealings among counsel are observed by the public, polite and professional conduct fosters respect for lawyers on an individual and collective basis. Conversely, rude or offensive behaviour reflects adversely on the lawyer involved, the profession and the administration of justice”.

31. Section 49 of the *Legal Profession Act* states that conduct that:

- “(a) is incompatible with the best interests of the public or of the members of the Society, or
- (b) tends to harm the standing of the legal profession generally,

is conduct that is deserving of sanction.”

32. The Member's conduct, which included a failure to respond to the communications of another lawyer, and demonstrated a lack of civility and lack of respect, was conduct which affects the functioning of our legal system, and when seen by members of the public and by the members of the LSA, tarnishes the reputation of the legal profession as a whole. Protection of the standing of the reputation of the legal profession generally is in the public interest, because it is a foundation for the independence of the legal profession.
33. The Hearing Committee agreed that the length of time between the Member's last conviction and the current conduct is a relevant and mitigating factor. However, as the Member's fresh misconduct had all of the hallmarks of his past misconduct, the Hearing Committee was of the view that a fine was necessary, from the perspective of the public interest. The Committee determined to impose a fine in an amount equal to the total of all fines previously imposed on the Member.
34. The Hearing Committee agreed that the Member would benefit from a referral to the Practice Review Committee, particularly given his stated desire to retire, and found that such referral is both in the public interest, and in the interest of rehabilitation of the Member.
35. The Hearing Committee was concerned about the length of time between the complaint to the LSA (January 20, 2004), and the date of the hearing (January 10, 2007). No explanation was offered for the delay, nor was any blame attributed to the Member for the delay. There was no indication of any further misconduct by the Member during the period of time that the complaint was outstanding.
36. Delay has a negative effect on the Member whose conduct is under scrutiny, because of the stress of professional disciplinary proceedings being extant. Accordingly, delay of prosecution of complaints may be a mitigating factor. Delay has another undesirable effect, and that is the perception that the public takes of the LSA's discipline process. Timely prosecutions are both desirable and expected for a self regulating profession. The Hearing Committee was concerned with a three year delay in prosecuting a relatively straight forward matter. In the circumstances, the Hearing Committee declined to order the Member to pay any of the costs of the hearing.

SANCTION AND ORDERS

37. In the circumstances, the Committee made the following orders:
 - a) The Member be reprimanded;

- b) The Member pay a fine of \$2,300.00;
 - c) There be a mandatory referral of the Member to Practice Review as follows:
 - i) the Practice Review Committee is to carry out a general review and assessment of the Member's practice generally;
 - ii) the Member is to cooperate with the Practice Review Committee and to satisfy any conditions which may be imposed upon the Member by the Practice Review Committee, which conditions should be aimed at, but not limited to:
 - A) profitability of the Member's law practice;
 - B) retirement and succession planning for the Member;
 - C) assisting the Member to respond to communications to him.
38. The Member was given time to pay of six months from January 10, 2007.
39. The Chair delivered the Reprimand, stressing that conduct of this kind is denounced and is not part of the reputation of the legal profession, nor should it stand as an example of acceptable behaviour for other Members of the profession, particularly junior Members.

CONCLUDING MATTERS

40. The Exhibits and proceedings will be available for public inspection, which includes copies of Exhibits for a reasonable copy fee. The Exhibits shall be redacted and initials substituted for the names of anyone other than the Member and the Complainant.
41. No Notice to the Profession is ordered or required.
42. No referral to the Attorney General is required.
43. At the conclusion of the Hearing, the Chair delivered the Reprimand.

Dated this ____ day of _____, 2007.

Rodney A. Jerke, Q.C., Bencher
Chair

Michelle Crighton, Q.C., Bencher

Norma Sieppert, Bencher