

**IN THE MATTER OF *THE LEGAL PROFESSION ACT***  
**AND IN THE MATTER OF A HEARING REGARDING**  
**THE CONDUCT OF COREY L. GISH**  
**A MEMBER OF THE LAW SOCIETY OF ALBERTA**

**REPORT OF THE HEARING PANEL**

1. On September 15, 2006, a hearing panel comprised of Stephen G. Raby, Q.C. (Chair), Peter Michalyshyn, Q.C. and Wilfred Willier convened at the Law Society Offices in Edmonton to inquire into the conduct of Corey Gish. The Law Society was represented by Garner Groome. The Member was represented by Phillip Lister, Q.C. The Member was present throughout the hearing.

**CITATION**

The Member faced one citation:

IT IS ALLEGED that you swore a false Affidavit of Execution,  
and that such conduct is conduct deserving of sanction.

**JURISDICTION**

Jurisdiction of the Panel was established by introduction of the first four exhibits in an exhibit binder that been circulated in advance to the Panel. Those exhibits are the letter of appointment, notice to solicitor, notice to attend and certificate of standing, respectively. Counsel were asked as to whether there were any objections to the composition of the Panel. No objection was expressed.

**PUBLIC HEARING**

Three parties had been served with a private hearing application notice. None of those parties made a request that the hearing be held in private. The hearing accordingly proceeded as a public hearing.

**EVIDENCE**

The Member gave evidence under oath and during the course of that evidence she adopted to Agreed Statement of Facts and Admission of Guilt which was introduced as Exhibit No. 8. That Agreed Statement of Facts and Admission of Guilt succinctly set forth the grounds for the citation and is included in this decision as follows:

**AGREED STATEMENT OF FACTS AND ADMISSION OF GUILT**

**GENERAL BACKGROUND**

1. The Member is a sole practitioner in Lacombe, Alberta. She was admitted to the Bar on June 21, 1996. She has no prior discipline record.

**CITATION**

2. On April 4, 2006, the Conduct Committee referred the following citation to hearing:

IT IS ALLEGED THAT you swore a false Affidavit of Execution, and that such conduct is conduct deserving of sanction.

3. The facts giving rise to the citation include the following:

- a. On June 29, 2004, the Member swore an Affidavit of Execution saying she saw a husband and wife execute mortgage refinancing documents (Exhibit 6 Tab 5 Tab A).
- b. However, the husband never attended upon the Member to execute the mortgage documentation. After making initial attempts to arrange the attendance of the husband at the Member's office, upon the insistence of the wife the Member let the wife take the mortgage documents home for her husband's signature and when she brought the documents back the Member swore a false affidavit of execution.
- c. The mortgage refinancing was completed during July, 2004, and approximately \$62,000.00 was paid by the Member to various creditors of the husband and wife. The excess funds of \$952.59 were payable to both the husband and wife and returned to the wife by the Member. The Member did not personally benefit.
- d. On or about February 23, 2005, while temporarily estranged the husband discovered that his wife had refinanced the mortgage without his knowledge or consent (Exhibit 6 Tab 3). The wife had forged his signature in an attempt to clear up some matrimonial debts. The husband informed his solicitor, the Complainant.
- e. In addition to the Affidavit of Execution, the Member also improperly commissioned a Statutory Declaration (Exhibit 6 Tab 5 Tab B), improperly witnessed a mortgage commitment letter (Exhibit 6 Tab 5 Tab C), and improperly witnessed a direction to pay (Exhibit 6 Tab 5 Tab D).
- f. On February 24, 2005, the Complainant contacted the Member who readily acknowledged the false Affidavit of Execution. The Complainant urged the Member to self-report (Exhibit 6 Tab 1).
- g. The Complainant again urged the Member to self-report on or about April 22,, 2005 (Exhibit 6 Tab 2 p. 2).
- h. By May 4, 2005, the Complainant felt that no self-report had been made by the Member so he made a complaint to the Law Society and informed the Member of his actions (Exhibit 6 Tab 1).
- i. However, by May 3, 2005, the Member had informed the Law Society that she intended to make a self-report and on May 18, 2005, she did so (Exhibit 6 Tab 2).

The Member explained her delay by saying she was scared to report herself and had hoped the matter would go away.

### **ADMISSION OF FACTS AND ADMISSION OF GUILT**

4. The Member admits the citation within this Agreed Statement of Facts and the facts contained herein. The Member further acknowledges her conduct as contained in the within Agreed Statement of Facts is conduct deserving sanction. The Member makes this admission as an admission of guilt within the meaning of Section 60 of the *Legal Profession Act*.

Counsel for the Law Society did not introduce any additional evidence. The Member was examined by Mr. Lister, cross-examined by Mr. Groome and responded to questions of the Panel.

### **DECISION**

The Panel accepted the admission of guilt by the Member and accordingly concluded that the citation as made out.

### **SANCTION**

Mr. Groome introduced into evidence the discipline record of the Member as Exhibit 9 which indicated that the Member has no discipline record and he also introduced the estimated Statement of Costs which was introduced as Exhibit 10. The estimated costs are \$2,453.90.

Mr. Lister introduced as Exhibit 11 a letter from Kenneth Cruikshank, a practising lawyer in Lacombe, Alberta which letter testifies as to the good character, honesty and ethical behaviour of the Member.

Mr. Lister called Ms. Judy Gordon who gave evidence to the Panel under oath as to the character, reputation and integrity of the Member. Ms. Gordon's CV was introduced as Exhibit 13. Ms. Gordon is the current mayor of the Town of Lacombe and previously served three terms as the MLA for Lacombe-Stettler.

Mr. Lister also called Alexander Kenneth Hugh Rose, a member of the LSA who practised for many years in Lacombe and sold a portion of his practice to the Member. Mr. Rose gave similar evidence under oath as to the integrity, honesty and professionalism of the Member.

### **LSA's SUBMISSION AS TO SANCTION**

Mr. Groome submits that under the circumstances of this matter, a suspension is necessary. He takes this position by reason of the following:

1. That this is a very serious matter as it goes to the integrity and the honesty of the Member and *prima facie* involves the commission of an act contrary to the Criminal Code;

2. That the purpose of sanctioning for a breach of ethical conduct is not punitive, rather its purpose is to be deterrent in nature so that the Law Society, as a self-governing profession can be seen to be upholding the reputation of the legal profession in the community and in the eyes of the public and that the falsification of affidavit evidence is so serious that nothing short of a suspension will be demonstrative of the upholding of the reputation of the legal profession in the eyes of the public;
3. Mr. Groome relies on *Law Society of Alberta v. Bittner* wherein the hearing panel in that matter determined that the swearing of a false affidavit as a general matter requires a suspension for the reasons as aforesaid and only exceptional mitigating circumstances would allow a panel to conclude that a significant fine would be an appropriate sanction; and
4. Mr. Groome referred the Panel to *Law Society of Alberta v. Philion* where a false affidavit was sworn and the Member was suspended by a hearing panel for a period of one year, which one year suspension was ultimately reduced by the Court of Appeal to a six month suspension.

Mr. Groome did acknowledge that there were certain mitigating factors, as follows:

1. Once the Member determined to self-report the matter, she did so and was cooperative throughout the Law Society investigation of the matter and with this Hearing;
2. She offered no excuses for the transgression other than that she had knowingly sworn the false affidavit on the belief that the husband had in fact signed the mortgage documents, that it would be an inconvenience to her clients to have the husband attend upon her office to execute the documents or to confirm that the signature on the documents was his, and that she was essentially trying to help clients quickly receive the release of the mortgage proceeds;
3. She has no discipline record; and
4. All evidence regarding honesty, character and integrity were extremely positive and were from well respected Members of the Lacombe community, such that it appears clear that this was an isolated incident and not part of a pattern of practice.

#### **SUBMISSIONS ON SANCTION BY THE MEMBER'S COUNSEL**

Mr. Lister asked the Panel to rely heavily on the mitigating circumstances that Mr. Groome outlined. Further, he requested that the counsel use those mitigating factors in determining the application of the test for imposition of the suspension as suggested by the Panel in the *Bittner* matter and he asked the Panel to conclude that there was at least as many mitigating factors in the case before us as there was in *Bittner*. He further argued that the hearing decision in *Law Society of Alberta v. Stephan* is a further example of a situation where the swearing of a false affidavit by a member of otherwise good character resulted only in a significant fine.

Mr. Lister urged the Panel to distinguish the *Philion* matter on the basis that in addition to swearing a false affidavit, the Member was convicted of a citation involving deliberately

deceiving the Law Society investigators. Mr. Phillion personally benefited by his actions (whereas the members in each of *Bittner, Stephan* and the present case did not) and that Mr. Phillion was clearly having an issue with alcohol at all relevant times. Mr. Lister also asked the Panel to rely on *Law Society of Alberta v. Piragoff* where the member in that case was convicted of a citation of deliberately misleading the court. In that case a very substantial fine was ordered in circumstances where it appeared that the transgression was an isolated incident by someone otherwise of good character.

On the basis of the foregoing, Mr. Lister urged the Panel to impose a significant fine rather than a suspension in this matter and indicated that a fine of \$10,000 would be an appropriate amount to satisfy the LSA's obligation in sanctioning as set forth in the Hearing Guide.

### **CONCLUSION OF THE PANEL**

The Panel concurred with the arguments of Mr. Lister with respect to the application of the *Bittner, Stephan* and *Piragoff* decisions and the distinguishability of the *Phillion* decision. The panel recognized that they were not bound by these decisions but found them to be instructive.

The Panel found that the citation was indeed a serious citation which would normally attract a sanction of suspension. However, on the basis of the *Bittner, Stephan* and *Piragoff* decisions and on the basis that the mitigating factors as set forth above involving this Member were at least as compelling as those in any of the aforementioned decisions, a suspension would be unwarranted in the circumstances and that a significant fine would have the effect of deterrence as well as being evidence to the public that the Law Society recognizes the faith that they put in the honesty and integrity of the Members of the Society and any transgression of that trust would be met with serious repercussions, even when mitigating factors exist and even if the Panel is satisfied that the incident is isolated. The Panel therefore levied a fine of \$10,000 together with the full costs of the hearing.

The fine and the costs shall be due no later than 30 days following the date of service of the final costs by the LSA on the Member and in failure of payment, the Member would stand as suspended.

The Panel concluded on the evidence before it that the Member's practice was otherwise operating in an effective manner and that there was no benefit in referring the Member to the practice review committee.

The Panel was of the opinion that there are reasonable and probable grounds to believe that the Member has committed a criminal offence and accordingly shall direct the Secretary of the Law Society to send a copy of the hearing record to the Attorney General pursuant to Section 78(4) of the *Legal Profession Act*. The Panel did note that the test for swearing a false affidavit under the Criminal Code was that the affidavit must be false with the intention to deceive. The Panel was unclear as to the test in the Criminal Code of the formulation of an intent to deceive. While the Panel believed the Member when she stated under oath that she believed that it was the husband's signature on the documentation, nonetheless she clearly took the affidavit that was false and that affidavit would deceive the mortgage lender and the Land Titles Office in concluding that the husband had in fact appeared before the Member. As the provision of

Section 78(4) of the *Legal Profession Act* is mandatory, the Panel concluded that the referral to the Attorney General should be made.

While the Hearing was held in public, the Panel accepted the submissions of Mr. Groome that all of the reports of the investigator listed in Exhibit 6 would not be public documents nor would the mortgage found at Tab 5 of Exhibit 6. Further, in the event that a member of the public desires to review the Hearing decision or a transcript of the proceedings, that the names of members of the public referred to therein would first be redacted.

The Chair then issued a reprimand.

DATED this \_\_\_\_\_ day of September, 2006.

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Stephen G. Raby, Q.C.

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Peter Michalyszyn, Q.C.

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Wilfred Willier