

**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 J. Grahame Loader,
a member of the Law Society of Alberta**

Report of the Hearing Committee

I. On Friday, July 28, 2006, a Hearing Committee consisting of Vaughn Myers, Q. C., chairman, Ron Everard, Q. C., and John Prowse, Q. C., was convened at Calgary to inquire into citations pertaining to the conduct of J. Grahame Loader (hereafter referred to as “the member”), a member of the Law Society of Alberta. The member was present and represented by John Bascom, Q. C. and the Law Society of Alberta was represented by Lindsay MacDonald, Q.C. No objection was taken to the composition of the Committee.

Jurisdiction and Preliminary Matters

II. Jurisdiction of the Hearing Committee was established by jurisdictional Exhibits 1 to 5 and by the submissions of counsel for the Law Society as accepted by counsel for the member. They are as follows:

1. Letter of appointment authored by Perry Mack, Q. C., Chair of Conduct, dated May 8, 2006
2. Notice to Solicitor with Acknowledgment of Service
3. Notice to Attend with Acknowledgment of Service
4. Certificate of Status
5. Certificate of Exercise of Discretion

Preliminary Applications

III. No application had been made to have the Hearing in private, and none was made at the opening of the Hearing.

Citations

IV. The member faced the following seven citations:

1. It is alleged that you failed to spend sufficient time briefing your client (hereinafter referred to as “M”) on the morning of the trial, and that such conduct is conduct deserving of sanction.
2. It is alleged that you lied or misled “M” about the election for type of trial, and that such conduct is conduct deserving of sanction.
3. It is alleged that you erred in advising your client about the election for type of trial, and that such conduct is conduct deserving of sanction.
4. It is alleged that you failed to obtain or obey your client's instructions concerning the

- election for type of trial, and that such conduct is conduct deserving of sanction.
5. It is alleged that you failed to advise your client with respect to certain strategies (such as the Member's desire to avoid putting "M"'s character in issue during the trial), and that such conduct is conduct deserving of sanction.
 6. It is alleged that you failed to locate and interview potential witnesses, and that such conduct is conduct deserving of sanction.
 7. It is alleged that you failed to properly examine of the detective about the tape-recorded confession, and that such conduct is conduct deserving of sanction.

Evidence

- V. A binder containing 22 exhibits was marked. Exhibit 19 was an Agreed Statement of Facts. The following is a summary of the conduct as set out in the Agreed Statement of Facts.
 1. In his trial testimony (Exhibit 8, pages 60 to 85), "M" said he had been drinking from fairly early in the morning of May 8, 2002, until an hour or so before his arrest. He also said he had not eaten anything during the day.
 2. "M" testified that, while he was walking home, he wanted something to eat, but did not have enough money to pay for it. He stopped at a Mac's Convenience store with the idea of attempting to persuade the store clerk to hold his driver's license as security for a "Hoagie and a Coke". His plan was to pay for these items the next day and take back his drivers license. He claimed that he had successfully made this kind of arrangement in the past with clerks in other stores, when he was short of funds;
 3. "M" testified that the store clerk misunderstood what he wanted and believed "M" wanted to rob him. Just before "M" left the store, a delivery person for the Sun newspaper came into the store. "M" realized that the store clerk did not understand what he wanted and left the store, with the store clerk following him to lock the door behind him. The store clerk had set off a silent alarm before "M" left.
 4. A few minutes later, a police officer saw "M" come out of an alley a few blocks away from the store and arrested him.
 5. "M" was interviewed by Detective Howland. The interview was tape-recorded. At one point, the detective left the room and turned off the tape recorder. "M" testified that upon his return and before turning the tape recorder back on, the detective promised him that if he just confessed, they would both be able to go home to bed. He then confessed. He was later processed and released.
 6. There were errors in the member's representation of "M" and in his responses to the Law Society:
 - a. The member stated to the Law Society that the Crown had elected to proceed summarily on a robbery charge and therefore a jury trial was not available to "M" as he desired. However, robbery is a strictly indictable offense so that a jury trial could have been elected. As well, endorsements of the information show that on July 25, 2002, the member elected trial by provincial court judge and set a trial date (Exhibit 15, Tab 18).
 - b. The member agreed to let into evidence a transcript of "M"'s statement to Detective Howland (Exhibit 15,Tab 13) without a voir dire in circumstances where the Detective

was suggesting to him (page 10) that..." we can try and help you..." before he confessed. The member did not cross examine Detective Howland about that nor make any argument that such an inducement should result in the exclusion of the confession.

c. Also, the member did not cross-examine Detective Howland about the other alleged inducement that "M" testified about (Exhibit 8, page 66), which he said occurred during the unrecorded break in the interview ("... if you admit to this, we can all be home in our beds within the hour...").

d. The member did attempt to raise the issue of the latter inducement in closing argument, but was precluded from doing so by the court because he had not questioned the detective about the incident when the detective was giving his evidence (Exhibit 8, page 103, lines 20-27, page 104, lines 1-10).

e. The member then breached solicitor-client privilege and undermined the defense of his client by advising the Court he had not questioned the detective because his client had not given him the necessary information until after the detective testified (Exhibit 8, page 104, lines 11-14).

f. The member advised the Law Society in his letter of June 4, 2004 (Exhibit 11) that the break in the interview took place after the client confessed, when the transcript of the interview clearly showed this to be incorrect (Exhibit 50, 13, page 7, line 13 to page eight, line one).

g. In his second response to the Law Society (Exhibit 17), the member advised that the timing of the confession was "moot" since "M" was convicted "on the clerk's testimony and not on his confession".

h. The member allowed "M"'s criminal record to be entered without objection (Exhibit 8, transcript of trial, page 71, line 23)

i. In his response to the Law Society (Exhibit 11), the member equated evidence about "M"'s alleged previous history (of getting food on credit by leaving his identification with store owners) with putting character in issue.

j. The member did not attempt to get a witness statement from the Sun delivery person who came into the store at the time "M" was leaving.

k. The member did not interview "M"'s friends who came to court prepared to give evidence, Mr. G.S. and Mr. D.C.

l. The member told Mr. S. and Mr. C. that the reason he could not call them as witnesses was because they had sat through half of the trial when that would go to the weight to be given to their evidence only.

Decision on Guilt

VI. Both counsel for the Law Society and the member agreed that the member's conduct was conduct deserving of sanction. Both counsel submitted that the member should be found guilty of one citation as follows:

It is alleged that you failed to serve "M" in a conscientious, diligent and efficient manner and that such conduct is conduct deserving of sanction. Such conduct includes the conduct listed in Citations 3 to 7, as well as the facts contained in paragraph 10 of the agreed-upon statement of facts (Exhibit 19). The Hearing Committee accepted the submission. Both counsel further agreed that the appropriate disposition would include a

reprimand as well as costs of the hearing.

Issue Before the Hearing Committee

VII. Where counsel's submissions diverged was whether this conduct arose as a result of the members incompetence. Counsel for the Law Society submits that the Hearing Committee should find that the conduct of Mr. Loader resulted from incompetence. Mr. Bascom asks the Hearing Committee to find that this collection of errors is simple negligence and does not equate to incompetence.

The Committee's Findings

VIII. The Committee found the following errors in the members conduct during the defense of "M":

1. He believed that robbery could be preceded with summarily
2. He failed to challenge the admissibility of the statement, which was clearly a cornerstone of the defense
3. He failed to understand that a statement by a person in authority stating "we can try to help you" is an inducement
4. He failed to put his client's version of events to the detective
5. He failed to put his client's version of events to the store clerk
6. He erred in telling the Law Society that the confession happened before the break
7. He erred in telling the Law Society that the confession was moot because the judge believed the clerk and did not rely on the confession
8. He failed to attempt to discover the identity of the Sun delivery person
9. He failed to interview the two character witnesses who attended at the trial
10. He did not understand character evidence

The committee was extremely concerned about the breadth of these errors. Mr. Loader testified as follows with respect to his office and his training:

1. He uses Amicus Attorney.
2. He uses a PalmPilot.
3. He uses PCLaw.
4. He has been a CBA member since law school.
5. He is a member of the CBA's criminal law subsection as well as the family law subsection.
6. He has attended the midwinter meetings of the CBA for the last few years.
7. He takes criminal LESA courses when available.
8. He has attended the National Criminal Law program in 1998, 2001, 2002, 2003, 2004, and 2005.
9. He has further taken a criminal trial lawyers association cross- examination seminar.
10. He indicates he has most of the leading texts on criminal law.

Decision Regarding Competence

IX. Despite Mr. Loader's interest and enthusiasm in the area of criminal law, the

Committee's overriding concern is the protection of the public. Despite the numerous courses Mr. Loader has taken in this area, his mistakes were basic and fundamental. While the Hearing Committee came very close to declaring that this conduct was as a result of incompetence, the committee believed that public could be protected by the following terms, and that a board of examiners would be in a better position to examine Mr. Loader's competence or lack thereof.

Sanction and Orders

- X. The committee's decision is as follows:
 - 1. That Mr. Loader be mandated to contact and work with Practice Review immediately and fulfill any and all requirements set by Practice Review;
 - 2. That Mr. Loader present himself before a board of examiners within 6 months of July 28, 2006, and satisfy that board that he is competent to practice in the area of criminal law.
 - 3. That if Mr. Loader fails to satisfy the board that he is competent to practice in the area of criminal law, he will no longer be permitted to practice criminal law.
 - 4. That Mr. Loader take all of his criminal files within 30 days to his mentor, Mr. Dave Kuzak, (or to any other counsel approved by Mr. Bascom) to review, consult and supervise Mr. Loader's conduct of each and every criminal file until otherwise directed by Practice Review or a board of examiners.
 - 5. Mr. Loader will not conduct a criminal file without the review of a senior practitioner until further order by practice review or a board of examiners.
 - 6. That Mr. Loader be mandated to attend the LESA week long advocacy course in 2007 or equivalent other advocacy course offered by a recognized legal education body.
 - 7. That Mr. Loader be reprimanded. The reprimand was delivered by the chair.
 - 8. Costs in the amount of \$4,291.62 were ordered to be paid. Time to pay was given, said costs to be paid in 10 equal installments commencing September 1, 2006.

Concluding Matters

Exhibits 1 through 5 and Exhibit 19 were ordered released and to be made available for inspection. All other exhibits are not to be released to the public, and no order for publication or referral to the Attorney General was made.

Dated this _____ day of _____, 2006.

Vaughn Myers, Q.C., Bencher

Ron Everard, Q.C., Bencher

John Prowse, QC, Bencher