

**LAW SOCIETY OF ALBERTA**  
**IN THE MATTER OF THE *LEGAL PROFESSION ACT***  
**AND**  
**IN THE MATTER OF A HEARING REGARDING**  
**THE CONDUCT OF RICHARD D. SMITH**  
**A MEMBER OF THE LAW SOCIETY OF ALBERTA**

**Single Bencher Hearing Committee**

Sandra Corbett, QC - Bencher

**Appearances**

Candice Ross – Counsel for the Law Society of Alberta (LSA)

Peter Royal, QC – Counsel for Richard D. Smith

**Hearing Date**

Tuesday, December 12, 2017

**Hearing Location**

LSA offices, 800 Bell Tower, 10104 – 103 Avenue, Edmonton, Alberta

**HEARING COMMITTEE REPORT**

**Jurisdiction and Preliminary Matters**

1. On December 12, 2017, a Single Bencher Hearing Committee (Hearing Committee) convened at the Edmonton office of the LSA. Jurisdiction of the Hearing Committee was established through Exhibits 1 to 4. Both LSA counsel and Mr. Smith’s counsel agreed that the Hearing Committee had requisite jurisdiction to hear and decide this matter. The Hearing Committee determined that it did have such jurisdiction.
2. Exhibit 5 constituted a “Private Hearing Application” dated November 27, 2017 outlining that certain individuals were served with a Private Hearing Application, and further indicating that no interested party had applied to have the hearing held in private. Both counsel for the LSA and Mr. Smith agreed that the hearing should be held in public. Based on the foregoing, the Hearing Committee determined that the hearing would be held in public.

3. Counsel for both LSA and Mr. Smith were asked whether they had any objection to the composition of the Hearing Committee based on apprehension of bias, or for any other reason. No objections were made.

### **Statement of Facts and Admission of Guilt**

4. The parties submitted a Statement of Facts and Admission of Guilt, dated October 18, 2017 (Exhibit 6). Exhibit 6 was found to be in an acceptable form, as contemplated in section 60(2) of the *Legal Profession Act* (the *Act*), by a Conduct Committee Panel on October 25, 2017. Accordingly, this hearing was convened by a single bencher pursuant to section 60(3) of the *Act*.
5. Pursuant to section 60(4) of the *Act*, if a statement of admission of guilt is accepted by the Conduct Committee, each admission of guilt in the statement is deemed to be a finding of the Hearing Committee that the member's conduct is conduct deserving of sanction.
6. The conduct deserving of sanction, which was admitted to in this case, is that Mr. Smith failed to follow the instructions of his client by executing a Matrimonial Property Judgment without her consent, and that he failed to bring the matter back before the court pursuant to his client's instructions, and that such conduct is deserving of sanction.
7. The Hearing Committee confirmed with Mr. Smith that:
  - a. he was making the admission voluntarily and free of undue coercion;
  - b. he unequivocally admitted guilt to the essential elements of relevant citation describing the conduct deserving of sanction;
  - c. he understood the nature and consequences of his admission; and
  - d. he understood that the Hearing Committee was not bound by any submissions on sanction advanced jointly by him and LSA counsel.
8. As a result, the only question for determination by this Hearing Committee is one of appropriate sanction.

### **Submissions on Sanctions**

9. The Hearing Committee was provided with Mr. Smith's discipline record (Exhibit 9), and an estimated statement of costs (Exhibit 8). Joint submissions on sanctions were provided to the Hearing Committee. LSA counsel specifically highlighted Mr. Smith's cooperation with LSA counsel, and his agreement to have the matter proceed by a Single Bencher Hearing. LSA counsel further noted that Mr. Smith had no prior discipline record with the LSA.
10. LSA counsel sought a reprimand, and an Order that Mr. Smith agree to pay the costs of the hearing, as estimated in Exhibit 8, in the sum of \$1 260.00.

11. LSA counsel submitted for authorities in support of the proposed sanctions including:
  - a. *Law Society of Alberta v. Warnock*, 2010 ABLs 2 (CanLII);
  - b. *Law Society of Alberta v. Botan*, 2016 ABLs 8 (CanLII);
  - c. *Law Society of Alberta v. Maurice*, 2016 ABLs 22 (CanLII);
  - d. *Law Society of Alberta v. Bright*, 2015 ABLs 5 (CanLII).
12. Mr. Smith's counsel agreed with the submissions of LSA counsel, and further confirmed agreement with the proposed sanctions of a reprimand and payment of the costs of the hearing in the sum of \$1 260.00. He noted that Mr. Smith was a very fine lawyer with a very good reputation, and that this incident was an unfortunate oversight. The Hearing Committee asked Mr. Smith whether he wished to address the appropriate sanction, and he declined to do so.

### **Decision on Sanctions**

13. The Hearing Committee thanked and commended counsel for LSA and Mr. Smith for working together to resolve not only the complaint against Mr. Smith, but also to expedite the sanctioning process by cooperating with one another such that the LSA was able to address the appropriate sanction by way of a Single Bench Hearing.
14. The Hearing Committee noted that Mr. Smith had no prior discipline history, and that this complaint arose out of an unfortunate incident, which the Hearing Committee hoped would not occur again.
15. Section 72(1) of the *Act* provides three alternatives to the Hearing Committee:
  - a. to order disbarment;
  - b. to order a suspension; or
  - c. to order a reprimand.
16. Section 72(2)(a) further permits a Hearing Committee to order conditions on a member's suspension or practice, or other penalties.
17. The Hearing Committee carefully considered the joint submissions on sanctions. The Hearing Committee recognized that it is required to give serious consideration to jointly tendered submissions, should not lightly disregard them and should accept them unless they are unfit or unreasonable, contrary to the public interest, or there are good and cogent reasons for rejecting the joint submissions.
18. The Hearing Committee determined that the joint submissions on sanctions were appropriate in this case, were both fit and reasonable, and was prepared to accept the same.

19. Accordingly, it was the decision of the Hearing Committee that the following sanctions be imposed:
- a. that Mr. Smith be reprimanded;
  - b. that Mr. Smith pay costs of \$1 260.00; and
  - c. that Mr. Smith pay those costs by January 1, 2018.
20. The Hearing Committee delivered the following reprimand:

Mr. Smith, you have admitted guilt to one citation deserving of sanction. This citation has to do with failing to follow your client's instructions. This citation is a serious matter. All members of the Law Society of Alberta are responsible for protecting the public interest, and maintaining the public's confidence in the legal profession. You have admitted that your actions failed to do that. This is your first disciplinary involvement with the Law Society of Alberta, and the Hearing Committee hopes that it is your last.

### **Concluding Matters**

21. The Hearing Committee directs that that the transcript and Exhibits be redacted to protect confidentiality, where appropriate, and solicitor-client privilege prior to any publication or public access.
22. There will be no Notice to the Profession issued.
23. No referral is required to the Attorney General.

Dated at Edmonton, Alberta, January 9, 2018.

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**Sandra Corbett, QC**