

**IN THE MATTER OF PART 3 OF THE  
LEGAL PROFESSION ACT, RSA 2000, c. L-8**

**AND**

**IN THE MATTER OF A HEARING REGARDING  
THE CONDUCT OF BEVERLY BROADHURST  
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

**Hearing Committee**

Grant Vogeli, QC – Chair and Bencher  
Grace Brittain – Adjudicator  
Walter Pavlic, QC – Adjudicator

**Appearances**

Kelly Tang – Counsel for the Law Society of Alberta (LSA)  
C. John Hooker – Counsel for Beverly Broadhurst

**Hearing Date**

July 26, 2022

**Hearing Location**

Virtual Hearing

**HEARING COMMITTEE REPORT**

**Overview**

1. The following citations were directed to hearing by the Conduct Committee Panel (CCP) on May 12, 2020:
  - (a) It is alleged that Beverly Broadhurst acted while in a conflict of interest and that such conduct is deserving of sanction;
  - (b) It is alleged that Beverly Broadhurst failed to seek instructions from her client and that such conduct is deserving of sanction; and
  - (c) It is alleged that Beverly Broadhurst failed to be candid with the Law Society of Alberta or, in the alternative, failed to be candid with the Court, and that such conduct is deserving of sanction.
2. Beverly Broadhurst executed a Statement of Admitted Facts, Exhibits and Admissions of Guilt (Statement) on February 14, 2022. Ms. Broadhurst admitted that:

- (a) she acted while in a conflict of interest, contrary to Rules 3.4-1 and 3.4-5 of the Code of Conduct;
- (b) she failed to seek instructions from her client, contrary to Rule 3.2-4 of the Code of Conduct; and
- (c) she failed to be candid with the LSA or, in the alternative, failed to be candid with the Court, contrary to Rules 5.1-1 and 7.1-1 of the Code of Conduct;

all of which is conduct deserving of sanction.

- 3. The Statement was accepted by the CCP pursuant to section 60 of the *Legal Profession Act (Act)* on March 15, 2022. Pursuant to section 60(4) of the *Act*, each admission of guilt in the Statement is deemed to be a finding by this Hearing Committee (Committee) that Ms. Broadhurst's conduct is deserving of sanction under section 49 of the *Act*.
- 4. On July 26, 2022, as provided by section 60(3) of the *Act*, the Committee convened a hearing into the appropriate sanction with relation to the above citations.
- 5. The Committee finds, based on the facts of this case, that the appropriate sanction is a reprimand. In accordance with section 72 of the *Act*, the Committee orders that Beverly Broadhurst be reprimanded.
- 6. In addition, pursuant to section 72(2) of the *Act*, the Committee orders that Ms. Broadhurst shall:
  - (a) pay a fine of \$3,500.00;
  - (b) pay costs of \$4,173.75; and
  - (c) pay the fine and costs not later than July 26, 2023.

### **Preliminary Matters**

- 7. There were no objections to the constitution of the Committee or its jurisdiction, and a private hearing was not requested.

### **Statement of Facts/Background**

- 8. Beverly Broadhurst was admitted to the LSA in 1982. She practices primarily in the area of criminal defence.
- 9. In the fall of 2013 Ms. Broadhurst was jointly retained by a married couple to represent them in criminal proceedings. They had each been charged with related serious offenses.
- 10. The Crown made an offer to withdraw the charges against the wife if the husband pled guilty. Ms. Broadhurst advised the husband of the offer and his instructions were to reject it. Ms. Broadhurst did not make the wife aware of the offer or seek her instructions about it.

11. The case proceeded to trial and the husband and wife were both convicted. The husband and wife engaged new counsel and appealed their conviction and sentencing, advancing two grounds of appeal:
  - (a) that Ms. Broadhurst acted in a conflict of interest;
  - (b) that Ms. Broadhurst's assistance as counsel was ineffective which resulted in a miscarriage of justice requiring a new trial.
  
12. The wife bought an application to admit fresh evidence that was needed to advance her appeal. In support of that application the wife swore an affidavit that included the following statements about Ms. Broadhurst:
  - (a) she never met with the wife alone or spoke with her on phone;
  - (b) she never explained the meaning of solicitor/client privilege to the wife;
  - (c) she never discussed the Crown's offer to withdraw the charges against the wife;
  - (d) she never gave the wife a copy of the Crown's disclosure;
  - (e) she never asked the wife for her side of what happened prior to her arrest;
  - (f) other than general discussions about the case, she did not discuss the wife's evidence with her prior to her taking the stand at trial;
  - (g) she never told the wife there was a difference between the strength of the Crown's evidence against her and the strength of the Crown's evidence against her husband;
  - (h) she never told the wife she could seek independent advice in relation to the conflict issue about acting for both husband and wife or about or her case generally; and
  - (i) she presented the wife with an Agreed Statement of Facts on the first day of trial that she had never seen before and did not want to sign. Ms. Broadhurst advised her that she had to sign it.
  
13. Ms. Broadhurst swore an affidavit in support of the application for fresh evidence admitting the facts contained in the wife's affidavit.
  
14. When the Crown reviewed the application for fresh evidence and the supporting affidavits it conceded that there was not a valid waiver of Ms. Broadhurst's conflict of interest by the wife and consented to a new trial being ordered on the basis of ineffective legal assistance. The Court of Appeal granted a Consent Judgment that set aside the convictions and ordered a new trial.
  
15. Ms. Broadhurst admitted that she provided information to the LSA that was inconsistent with her affidavit in the criminal case and the truth as follows:

- (a) she told the LSA that she told her clients one of them could be referred to another lawyer when in fact she did not do that;
  - (b) she told the LSA that she read conflict letters to her clients and that they told her they understood the letters before signing them when in fact she did not do that;
  - (c) she told the LSA that she spoke to the wife about the Crown's offer for resolution when in fact she did not;
  - (d) she told the LSA she had given her clients the Crown's disclosure and discussed it with them when in fact she did not.
16. Ms. Broadhurst's position is that she did not intentionally mislead the LSA and that the incorrect information was provided to the LSA because she was going from her memory and did not check the contents of her letters to the LSA against her affidavit and client file. Ms. Broadhurst admitted that she should have checked the information provided to the LSA against her affidavit and client file. She explained that she did not do so because of significant adverse personal circumstances she was experiencing. Both Ms. Broadhurst and her husband were very ill at the time. Her husband died shortly after.

#### **Submissions and Decision on Sanction**

17. Counsel for the LSA and counsel for Ms. Broadhurst advised the Panel that they had agreed upon a joint submission on sanction. Both counsel addressed the facts of the case and the factors relevant to sanction. Counsel for the LSA referred the Panel to relevant cases.
18. Hearing committees are required to give significant deference to a joint submission. The Supreme Court of Canada in the *Anthony-Cook* case has set out a test for assessing the acceptability of joint submissions in the criminal law context. The "public interest test" states that a judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest. The judge should consider the following questions in applying the public interest test:
- (a) Is the joint submission so markedly out of line with the expectations of reasonable persons aware of the circumstances of the offence and the offender that the joint submission would be viewed as a breakdown in the proper functioning of the criminal justice system?
  - (b) Would the joint submission cause an informed and reasonable public to lose confidence in the institution of the courts?
  - (c) Is the joint submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down?

19. The Supreme Court of Canada recognized that the test sets an “undeniably high threshold” but held it was justified given the importance of joint submissions to the proper functioning of the justice system. If a hearing committee finds that the test is met, it can reject the joint submission. The public interest test has been widely adopted by professional discipline tribunals across Canada. The case law confirms that the test is appropriate and should be applied in LSA conduct proceedings.
20. In addition to the above, the Committee took into account Ms. Broadhurst’s 40 years as a member of the LSA without any discipline history and the extenuating issues facing her at the time of her inappropriate conduct. The Committee also noted that Ms. Broadhurst admitted her errors and took full responsibility.
21. The Committee also relied upon two somewhat similar cases presented by Counsel in making its decision: *Law Society v. Walia*, 2016 ABLIS 54 and *Law Society of Alberta v. Yarshenko*, 2018 ABLIS 18.
22. The Committee found the joint submission on sanction of a reprimand and payment of a fine of \$3,500.00 to be appropriate and ordered the same. The Committee also ordered payment of the costs of the hearing.
23. The reprimand was delivered to Ms. Broadhurst orally at the hearing as follows:

Ms. Broadhurst you have admitted guilt to the following 3 citations:

1. acting while in a conflict of interest;
2. failing to seek instructions from your client;
3. failing to be candid with the LSA.

Your conduct had serious impact on your clients, the justice system and the public. As a result you are receiving this reprimand.

Your failure to be entirely candid with the LSA is of particular concern. It is imperative that lawyers be honest and forthright in all dealings, but especially with the LSA and the courts. The legal system and the public rely on lawyers being completely honest in all dealings with the courts and the LSA. That is absolutely imperative.

The errors you made should never happen again. We urge you to be very careful with joint retainers and to be completely honest and forthright in all future dealings with the courts, the LSA, clients and the public generally.

Based on the submissions we heard today we trust that you will have no future issues.

This Panel and the LSA wish you all the best as you continue in your practice.

## Concluding Matters

24. A Notice to the Attorney General is not required.
25. A Notice to the Profession is not required.
26. The exhibits, other hearing materials, and this report will be available for public inspection, including the provision of copies of exhibits for a reasonable copy fee, except that identifying information in relation to persons other than Ms. Broadhurst will be redacted and further redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 98(3)).

Dated September 8, 2022

---

Grant Vogeli, QC

---

Grace Brittain

---

Walter Pavlic, QC