

**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 ALLAN G.M. BOTAN
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

ORDER OF THE HEARING COMMITTEE

UPON THE ISSUANCE OF CITATIONS by the Law Society of Alberta (LSA) to Mr. Botan pursuant to section 56 of the *Legal Profession Act* (the *Act*);

AND WHEREAS:

- a) Mr. Botan signed a Statement of Admitted Facts, Exhibits, and Admissions of Guilt (the Statement, attached to this Order) in relation to his conduct on December 21, 2020;
- b) Mr. Botan admits in the Statement that the conduct set out in the Statement is deserving of sanction;
- c) On June 15, 2021, the Conduct Committee found the Statement acceptable, pursuant to subsection 60(2) of the *Act*;
- d) On July 9, 2021 the Chair of the Conduct Committee appointed a single Bencher as the Hearing Committee (Committee) for this matter, pursuant to subsection 60(3) of the *Act*;
- e) Pursuant to subsection 60(4) of the *Act*, it is deemed to be a finding of this Committee that Mr. Botan's conduct is deserving of sanction;
- f) On August 11, 2021, the Committee convened a public hearing into the appropriate sanction related to the conduct of Mr. Botan;
- g) Counsel for the LSA and Mr. Botan have provided a joint submission on sanction for the Committee's consideration, seeking a reprimand;
- h) The Committee has determined that the joint submission is reasonable, consistent with sanctions in similar cases, does not bring the administration of justice into disrepute and is therefore in the public interest;
- i) The Committee has accepted the joint submission on sanction.

IT IS HEREBY ORDERED THAT:

1. The appropriate sanction with respect to Mr. Botan's conduct is a reprimand, which was delivered orally by the Committee to Mr. Botan.
2. The text of the reprimand will be attached to this Order as a schedule prior to the Order being published.
3. Mr. Botan must pay costs in the amount of \$997.50 within one year, that being August 11, 2022, or by the time of his reinstatement, whichever occurs first.
4. No Notice to the Profession or Notice to the Attorney General is to be made.
5. The exhibits and this order 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 Mr. Botan will be redacted and further redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 98(3)).

Dated at Calgary, Alberta, on August 19, 2021.

JIM LUTZ, QC

IN THE MATTER OF THE *LEGAL PROFESSION ACT*

- AND -

IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF
ALLAN G.M. BOTAN
A MEMBER OF THE LAW SOCIETY OF ALBERTA

HEARING FILE HE20200134

**STATEMENT OF ADMITTED FACTS, EXHIBITS,
AND ADMISSIONS OF GUILT**

INTRODUCTION

1. This hearing arises out of one complaint (CO20191682) and relates to the following citation (the "**Citation**"):

It is alleged Allan G.M. Botan breached Rule 105 of the Rules of the Law Society of Alberta when he failed to report a criminal charge and guilty plea to the Law Society and that such conduct is deserving of sanction.

ADMITTED FACTS

Background

2. I was admitted as a member of the Law Society of Alberta (the "**LSA**") on July 18, 2002. Prior to that, I practiced law in Manitoba.
3. On July 1, 2018, I was administratively suspended by the LSA for: (a) being delinquent in providing the LSA with my 2017 Firm Self Report and Accountant's Report, as well as my 2017 electronic trust accounting data (collectively, the "**Trust Documents**"); and (b) failing to pay fees due for professional liability insurance. I subsequently provided the LSA with the Trust Documents and made my insurance levy payment. I was therefore reinstated to active/practicing status on August 16, 2018.
4. On January 2, 2019, I was again administratively suspended for non-payment of professional liability insurance fees.
5. On February 8, 2019, a custodian was appointed to manage my practice.
6. On February 12, 2019, I returned to active/practicing status. I was, however, denied the ability to operate a trust account shortly thereafter.
7. On March 15, 2019, I was once again administratively suspended by the LSA for failing to pay membership fees.

8. I did not pay my outstanding membership fees within three months of the date of my administrative suspension. As such, pursuant to *The Rules of the LSA*, I was required to submit an application for reinstatement to the LSA.
9. On June 23, 2019, I submitted an application for reinstatement to the LSA (the "**Reinstatement Application**"). This application process remains ongoing and, as a result, my practice status remains suspended for non-payment of fees. My practice continues to be managed by a custodian.
10. Prior to my suspension, my practice focused primarily on civil litigation. Specifically, I focused on Hepatitis C Virus tainted blood claims, as well as some personal injury matters.

Events underlying the Citation

11. In October 2018, I was charged with operating a motor vehicle having consumed alcohol in such a quantity that the concentration of alcohol in my blood was over the legal limit, contrary to the *Criminal Code* (the "**Criminal Charge**").
12. As set out in further detail below, I discussed the Criminal Charge with a Practice Advisor from the LSA. I have waived confidentiality in respect of these discussions, and documents related to these discussions, for the purposes of this discipline hearing.
13. On October 26, 2018, I contacted the Practice Advisors at the LSA because I understood that I had to report the Criminal Charge to the LSA, but I had questions about the reporting process, and wanted to speak with a Practice Advisor about it first.

Exhibit A – Practice Advisors' Records

14. Shortly thereafter, I received a call from E.A., a Practice Advisor with the LSA. During this call, E.A. advised me of Rule 105(1) of *The Rules of the Law Society of Alberta* and confirmed that I had an obligation to report myself to the LSA.

Exhibit B – Practice Advisor Notes

15. Notwithstanding my conversation with E.A., and E.A.'s explicit advice, I did not report the Criminal Charge to the LSA.
16. My recollection is that I did not understand the specifics of the reporting requirement pursuant to Rule 105(1) of *The Rules of the Law Society of Alberta*. However, I took no further steps to determine or clarify my obligations.
17. In January 2019, I pled guilty to the Criminal Charge (the "**Guilty Plea**") and as a result, my driver's license was suspended for one year.
18. I did not report the Guilty Plea to the LSA.

The Citation

19. In my Reinstatement Application, I answered "no" to the question posed in paragraph 16, which states:

16. I have pleaded guilty to or been found guilty of an offence committed inside or outside Canada other than an offence under a municipal by-law, a Metis settlement council by-law, or an Indian band council by-law, or an offence in respect of which the law permits the offender to voluntarily pay a fine without the need to appear before a court or justice to enter a plea and in respect of which I voluntarily paid the fine.

20. On August 30, 2019, I advised Practice Management Counsel with the LSA about the Criminal Charge and the Guilty Plea.
21. On November 28, 2019, the LSA opened a complaint file to address, among other things, my failure to report the Criminal Charge and the Guilty Plea.
22. On June 16, 2020, a panel of the Conduct Committee directed that the Citation be dealt with by a Hearing Committee.

Exhibit C – CCP Minutes (June 16, 2020)

ADMISSIONS OF FACT AND GUILT

23. I admit as facts the statements in this Statement of Admitted Facts, Exhibits, and Admissions of Guilt for the purposes of these proceedings.
24. I admit that I breached Rule 105 of the Rules of the Law Society of Alberta when I failed to report the Criminal Charge and the Guilty Plea to the LSA.
25. When I admit guilt to the conduct described herein, I admit that the conduct is “conduct serving of sanction” as defined under section 49 of the *Legal Profession Act*.

ACKNOWLEDGEMENTS

26. I have had the opportunity to consult with legal counsel.
27. I have signed this statement freely and voluntarily, without compulsion or duress.
28. I understand the nature and consequences of my admissions.
29. I understand that, although entitled to deference, a Hearing Committee is not bound to accept a joint submission on sanction.

THIS STATEMENT OF ADMITTED FACTS, EXHIBITS, AND ADMISSIONS OF GUILT IS MADE THIS 21st DAY OF DECEMBER, 2020.

“Allan Botan”

ALLAN G.M. BOTAN

Reprimand

Mr. Botan, as I have indicated to you earlier, we as members of the Law Society, have a duty to the public. And that duty to the public ensures that we follow certain rules, and we comply with what we are required to do in order to maintain good standing in the public. And it's not just a question of what we think subjectively how we view our conduct, it's what the public would think of it, and what would a right-thinking member of the public think if, say, in this case, we didn't tell the Law Society, our regulator, that we had other outstanding criminal matters that could affect our ability to represent our clients and the public perception.

So these are very important things to think about. And so I would ask you to consider this: though I appreciate you made some effort to contact the Law Society, you still have an obligation to make sure that you comply fully with the rules of the Law Society and the Code of Conduct. That has to govern us at all times. And if you keep that in mind, it seems -- I have read your discipline record. I'm not concerned that this is a matter or reoccurring theme in your particular practice. I understand the difficulties you have had, and I'm very sympathetic to your situation with your illness, and of course with COVID, and I do appreciate that the circumstances made it difficult. But, again, we have to do better, and we have to make sure that we are complying with those rules.

The Law Society expects, and more importantly the public expects it, so I would ask you to do this, in this situation where your conduct fell below where we would normally expect, I would ask you to take a look at your conduct, ask yourself the question "Can I do better?" We all can ask ourselves that question.

So, please, in the future when you are serving your clients and the public, and the Law Society, try to remember that, and put that in the foremost of your mind.