

**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 DONNA GEE
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

Hearing Committee

Bill Hendsbee, QC – Chair
Kene Ilochonwu – Benchers
Corinne Petersen, QC – Former Benchers

Appearances

Shanna Hunka – Counsel for the Law Society of Alberta (LSA)
Ed Halt, QC – Counsel for Donna Gee

Hearing Date

November 8, 2021

Hearing Location

Virtual Hearing

HEARING COMMITTEE REPORT

Overview

1. Donna Gee was admitted as a member of the LSA in 2005. She practises in Calgary in several areas of law, including wills & estates, elder law, and adult guardianship & trusteeship.
2. In 2018, Ms. Gee became involved in a contentious matter involving the legal capacity of an elderly man, which eventually resulted in the following citations being issued by the LSA:
 1. It is alleged that Donna Gee acted for clients R.L. and B.M. while there was a conflict of interest, and that such conduct is deserving of sanction; and
 2. It is alleged that that Donna Gee failed to disclose a change in an expert's opinion to opposing counsel as soon as possible, and that such conduct is deserving of sanction.

3. On November 8, 2021 a Hearing Committee (Committee) convened to determine the conduct of Ms. Gee.
4. After reviewing all of the evidence, exhibits, and hearing the submissions of Counsel for Ms. Gee, Counsel for the LSA and from Ms. Gee herself, for the reasons set out below, the Committee finds Ms. Gee guilty of conduct deserving sanction on citation 2 pursuant to section 71 of the *Legal Profession Act* (the *Act*).
5. The Committee also finds that, based on the facts of this case, the appropriate sanction is a reprimand in accordance with section 72(1) of the *Act*.
6. In addition, pursuant to subsection 72(2) of the *Act*, the Committee orders Ms. Gee to pay a fine of \$5,000 as well as costs in the agreed amount of \$12,500 for a total amount payable of \$17,500. This amount is payable on or before November 8, 2022.

Preliminary Matters

7. There were no objections to the constitution of the Committee or its jurisdiction, and a private hearing was not requested so a public hearing into Ms. Gee's conduct proceeded.
8. The following materials were received by the Committee and were entered into evidence by agreement:
 - a. Exhibit 1 - Letter of Appointment (August 11, 2021)
 - b. Exhibit 2 - Notice to Attend (August 11, 2021)
 - c. Exhibit 3 - Certificate of Status (September 29, 2021)
 - d. Exhibit 4 - Private Hearing Application Notices (October 13, 2021)
 - e. Exhibit 5 - Statement of Admitted Facts with attached tabs (June 10, 2021)
 - f. Exhibit 6 - Lawyer Record (September 29, 2021)
 - g. Exhibit 7 - Estimated Statement of Costs (September 29, 2021)

Statement of Admitted Facts and Admission of Guilt

9. The LSA called no evidence on citation 1 and that citation is therefore dismissed.
10. Counsel for the LSA and Counsel for Ms. Gee made a joint admission of guilt in relation to citation 2. That admission was accepted by the Committee. The Statement of Admitted Facts is briefly summarized in relation to citation 2 below.
11. RL was 85 years of age. He was concerned that his Enduring Power of Attorney (EPOA), which named his daughter, LS, as his attorney, had allegedly been triggered after LS obtained declarations of his incapacity from two medical doctors.
12. RL retained Ms. Gee to contest the alleged triggering of his EPOA.

13. In the subsequent litigation, the court appointed Dr. AP, a psychologist, to perform an independent assessment of RL.
14. Ms. Gee retained Dr. JQ, a psychiatrist, to assess RL's capacity. His September 24, 2018 report concluded that RL lacked the capacity to make healthcare decisions; that his capacity to handle finances, accommodation and testamentary capacity was "borderline;" that he had the capacity to manage his own finances and that his EPOA did not need to be triggered; and that he had the capacity to create a new EPOA and that he retained testamentary capacity as well as the capacity to retain and instruct counsel.
15. On October 9, 2018, Dr. AP provided his independent assessment, which found that RL lacked capacity in relation to finances, testamentary decisions, health decisions, choice of accommodation and legal capacity.
16. On November 7, 2018, Ms. Gee filed Dr. JQ's report with the court and then served the report on counsel for LS.
17. On November 14, 2018, Ms. Gee sent Dr. AP's report to Dr. JQ.
18. On July 4, 2019, after reviewing additional evidence, Dr. JQ provided Ms. Gee's office with an addendum to his prior report (Dr. JQ's revised opinion), which concluded that he was now of the view that RL lacked the capacity to manage his finances, to create a new EPOA or personal directive and that he lacked both testamentary capacity and the capacity to instruct counsel.
19. Ms. Gee was on vacation at the time Dr. JQ's revised opinion was received. It was sent to her via email on July 26, 2019 following a discussion about the contents of the report between her and another lawyer at her firm.
20. Upon reviewing Dr. JQ's revised opinion, Ms. Gee elected not to forward that opinion to counsel for LS. Instead, Ms. Gee elected to internally refer to the revised opinion as "preliminary." After reviewing further evidence forwarded to him by Ms. Gee, Dr. JQ wrote a letter to Ms. Gee dated October 2, 2019 which endorsed the same conclusions outlined in his revised opinion of July 4, 2019.
21. On October 4, 2019, Ms. Gee forwarded Dr. JQ's October 2, 2019 letter to counsel for LS. Dr. JQ's revised opinion of July 4, 2019 was never forwarded.

Analysis and Decision on Sanction

22. Counsel for the LSA and Ms. Gee provided a joint submission on sanction consisting of a reprimand, a \$5,000 fine and agreed costs of \$12,500.

23. Pursuant to the LSA Hearing Guide, a hearing committee is not bound by a joint submission, although it is to be given serious consideration. A joint submission should be entitled to deference unless it can be shown to be demonstrably unfit and contrary to the public interest.
24. In her submissions on sanction, Counsel for the LSA referred the Committee to *Law Society of Alberta v. Magnan*, 2014 ABLS 24, which she submitted was the closest case on point. In that case, the member failed to provide opposing counsel with the complete contents of her expert's file notwithstanding that the omitted portions of the file were producible and were potentially damaging to her client. The hearing committee in that case found that a reprimand, a \$2,000 fine and costs was the appropriate sanction.
25. Prior to rendering its decision on sanction, the Committee also heard submissions from Ms. Gee, who accepted full responsibility for her actions and expressed remorse for the manner in which she handled the matters in question.
26. Upon considering Ms. Gee's lack of discipline history, her sincere apology, as well as the joint submission by counsel, the Committee found that it was in the public interest to accept the joint submission. The following reprimand was then given to Ms. Gee by the Chair:

The Hearing Guide of the Law Society of Alberta requires that Hearing Committees take a purposeful approach to sanctioning a member who has been found guilty of conduct deserving of sanction. The fundamental purposes of sanctioning are the protection of the public interest and the protection of the reputation and standing of the legal profession generally.

A joint submission on sanction is to be given deference. Your co-operation in proceeding with a joint submission on guilt and sanction has helped to avoid unnecessary hearing costs as well as well as avoiding further inconvenience and stress to the parties affected by your actions. The Hearing Committee appreciates your expression of remorse and acknowledges that you have taken responsibility for your actions. In light of these circumstances, this Hearing Committee concludes that it is in the public interest to accept the joint submission.

At the time of these events, you were an experienced lawyer, having been called to the Bar in 2005. As such, you should have been aware of the high standards expected of you in relation to expert witnesses. You had a clear duty to take care not to mislead opposing counsel and to have immediately addressed the changed opinion in your expert report.

The Hearing Committee notes that you have no previous discipline record with the Law Society. However, as you are aware, as an independent regulator, it is crucial that the Law Society reinforce the obligation that our members have to the

public we serve. In this instance, you have damaged your reputation as well as the reputation of the Law Society by failing to immediately disclose the change in your expert's opinion to opposing counsel as soon as possible and for that you are hereby reprimanded.

We are hopeful that this process has been of some benefit to you. We thank you for cooperating with the Law Society to resolve this matter without the necessity of a full hearing and we trust that you will apply the lessons learned as a result of this incident throughout the remainder of your legal career. Thank you and good luck.

Concluding Matters

27. In addition to the reprimand outlined in paragraph 26 herein, the Committee also orders that Ms. Gee pay a fine in the amount of \$5,000 and costs in the amount of \$12,500, for a total amount payable of \$17,500. This amount is payable on or before November 8, 2022.
28. No Notice to the Attorney General is required.
29. No Notice to the Profession is required.
30. 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. Gee will be redacted and further redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 98(3)).

Dated at Calgary, Alberta, November 29, 2021.

Bill Hendsbee, QC

Kene Ilochonwu

Corinne Petersen, QC