

**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 JEFFREY J. CARLSON
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

Hearing Committee

Luigi Cusano, QC – Chair
Glen Buick – Former Bencher
Dr. Alan Kennedy – Adjudicator

Appearances

Karl Seidenz – Counsel for the Law Society of Alberta
William Shores, QC and Kathleen Elhatton-Lake – Counsel for Jeffrey J. Carlson

Hearing Dates

June 8, 2021

Hearing Location

Virtual Hearing

HEARING COMMITTEE REPORT

Introduction and Overview

1. Mr. Jeffrey J. Carlson (“Member”) was admitted as a member of the Law Society of Alberta (“LSA”) on October 22, 2004 and is a lawyer practicing in Alberta. Since 2006, the Member has also been a businessman, operating agriculture and real estate development companies in Alberta and Saskatchewan.
2. Certain individuals and the Member were involved in business dealings. Legal proceedings were commenced in relation to those business dealings, which were ultimately settled. On November 15, 2018, the LSA opened a complaint file regarding the Member concerning an issue that arose during the settlement of the legal proceedings.
3. On September 15, 2020, the Conduct Committee directed that the Member’s conduct be referred to a Hearing Committee in relation to a single citation, which, as amended, reads:

It is alleged that Jeffrey J. Carlson entered into an agreement that resolved litigation which included, among other terms, a commitment from the other parties to withdraw complaints made to the Law Society, without the consent of the Law Society, and that such conduct is deserving of sanction. (*Exhibit 5, Tab 2 - Amended Citation (April 21, 2021)* (“Citation”))

4. On June 8, 2021, this Hearing Committee (“Committee”) convened a hearing into the Member’s conduct based on the Citation.
5. The LSA and the Member jointly submitted a Statement of Admitted Facts, Exhibits, and Admission of Guilt (*Exhibit 5*) (“Statement”) and made a joint submission on sanction.
6. The Committee found the Statement to be in the appropriate form and accepted it pursuant to section 60 of the *Legal Profession Act*, RSA 2000, c.L-8 (“Act”).
7. The Committee also found that it was in the public interest to accept the joint submission on sanction and did so. The LSA and the Member also made a joint submission on costs to be payable by the Member and the time within which to pay the costs, and the Committee found this joint submission on costs acceptable.
8. The Committee determined that, based on the facts of this case, the appropriate sanction was, as jointly recommended by the parties, a reprimand in accordance with section 72 of the *Act*.
9. In addition, pursuant to section 72(2) of the *Act*, the Committee ordered the Member to pay costs in the amount of \$3000, with the Member having until September 8, 2021 to pay the costs.
10. This report provides the Committee’s reasons for its findings on guilt, sanction and costs.

Preliminary Matters

11. The Committee received the following materials:
 - a) Exhibit 1 – Letter of Appointment (May 7, 2021)
 - b) Exhibit 2 – Notice to Attend (May 7, 2021)
 - c) Exhibit 3 – Certificate of Status (May 18, 2021)
 - d) Exhibit 4 – Letter of Exercise of Discretion (May 18, 2021)
 - e) Exhibit 5 – Statement of Admitted Facts, Exhibits and Admission of Guilt, with attached Tabs (May 19, 2021)
 - f) Exhibit 6 – Lawyer Record (May 18, 2021)
 - g) Exhibit 7 – Statement of Costs (June 8, 2021)
12. By consent, these Exhibits were entered into evidence and onto the

record. There was also no objection to the composition of the Committee or its jurisdiction. The Committee determined jurisdiction had been established.

13. A private hearing was not requested. Accordingly, a public hearing into the Member's conduct was held.

Statement of Admitted Facts, Exhibits, and Admission of Guilt

14. The Statement sets out the facts agreed on by the LSA and the Member. For ease of reference, we set out below some of the salient facts.

Summary Timeline

15. On November 11, 2017, the LSA received a complaint from EB about the Member. EB is a former business partner of the Member.
16. On November 14, 2017, the LSA received a complaint from CB and TB about the Member. CB and TB are also former business partners of the Member (EB, CB and TB collectively, the "Complainants") (the complaints of EB, CB and TB, the "Initial Complaints").
17. The conduct complained of in the Initial Complaints was also the subject matter of legal proceedings in Saskatchewan between the Complainants and the Member.
18. On March 15, 2018, a decision was issued by the Court of Queen's Bench for Saskatchewan, which prompted the Complainants and the Member to enter settlement discussions regarding the legal proceedings.
19. The LSA conducted a review of the Initial Complaints and on October 3, 2018, the LSA closed the complaint files regarding the Member and the Initial Complaints.
20. On November 15, 2018, the LSA opened a complaint file regarding the Member concerning an issue that arose during the settlement of the legal proceedings between the Complainants and the Member.

Settlement Discussions

21. The facts regarding the settlement discussion are as follows. On March 24, 2018, the Complainants and the Member met at his counsel's office in Calgary.
22. Between March 27, 2018 and April 3, 2018, communications between counsel for the Member and the LSA and CB and TB and the LSA occurred which consisted of:

- 1) the Member's counsel inquiring as to whether a settlement among the Complainants and the Member could contain a term whereby the Complainants

would withdraw the Initial Complaints or request that no investigation be done by the LSA;

- 2) the LSA indicating that such a withdrawal request would not impact the LSA's ability to review complaints regarding the Member's conduct and that such a term in the settlement was not advisable as the LSA was not bound by any such agreement and related withdrawal requests;
 - 3) counsel for the Member being provided with the relevant provisions of the Code of Conduct (section 3.2-12), which was in turn provided to the Member;
 - 4) CB and TB inquiring of the LSA seeking direction as to the inclusion of the complaint withdrawal term in the settlement; and
 - 5) CB and TB being informed by the LSA that if the LSA determined there was conduct deserving of sanction, a complaint would continue despite a withdrawal by the Complainants. Conversely, in the event the LSA determined there was no conduct deserving of sanction, then a resolution between the parties could result in a file being closed as "resolved".
23. Ultimately, on April 13, 2018, a settlement agreement regarding the legal proceedings was signed and exchanged (the "Settlement Agreement") among the Complainants and the Member.
24. Article 4 of the Settlement Agreement reads as follows:

Article 4 – Indemnification of Carlson

4.01 Indemnification

[PFI and Complainants] (the "Indemnitors") hereby agree to indemnify Carlson and CAE for legal costs, damages, penalties, or other losses that he may sustain or be required to pay as a result of any actions, claims, suits that are in any way related to his position as a Director of [PFI], or any business that he conducted for, or in any way related to, [PFI], specifically including but not limited to, the Law Society of Alberta Complaints #CO20172578 and #CO20172566 and This indemnification shall be of no force and effect in regard to any Law Society of Alberta disciplinary action that may arise as a consequence of the provisions of para 4.04 hereof.

In addition, this indemnification shall, in regard to the Law Society of Alberta Complaints #CO20172578 and #CO20172566, be limited to payment of the actual costs, charges, legal fees, expenses and penalties of any kind up to a maximum of \$50,000.00. Should the costs, charges, legal fees, expenses and penalties of any kind exceed the sum of \$50,000.00, Carlson and the Indemnitors

agree to share equally said costs on an equal, 50/50, basis. Should Carlson also be suspended by the Law Society of Alberta, the Indemnitors shall pay \$25,000.00 per month prorated on a weekly basis, for every month of said suspension.

...

4.04 Letters to Law Society of Alberta

[Complainants] agree to write letters to the Law Society of Alberta advising that they have settled the Action and are satisfied that their Law Society of Alberta Complaints #CO20172578 and #CO20172566 were without merit and that they do not wish to see them proceed with them.

Closing of Initial Complaints Files and the November 2018 Complaint

25. On July 19, 2018, LSA counsel emailed CB and TB as follows:

Further to your March 29, 2018 email and my April 3, 2018 response (below), please confirm whether you wish to withdraw your complaint. If you no longer wish to pursue your complaint, we can cease involving you in the file. In the event my review indicates no inappropriate conduct by Mr. Carlson, then we would close the file as “resolved”. However, if my review indicates conduct on the part of Mr. Carlson that breaches our Code of Conduct, then the Law Society will proceed with conduct proceedings.

26. At the request of the Complainants, on October 3, 2018, the LSA closed both Initial Complaint files.

27. As noted in paragraph 2 herein, on November 15, 2018, the LSA opened a new complaint file regarding the Member and on December 11, 2018, the LSA received a response from the Member to the LSA’s allegations regarding the complaint.

28. On January 2, 2019, LSA counsel requested that the Member provide copies of the executed Settlement Agreement and any other written settlement negotiations and on January 3, 2019, the Member emailed LSA counsel with additional information.

29. On April 8, 2020, the LSA Complaint was brought before a panel of the Conduct Committee and, after further investigation, on September 15, 2020, the Conduct Committee directed that the Member’s conduct be referred to a Hearing Committee based on the Citation.

Member’s Admissions

30. Among other things, the Member admits:

- a) It was not the Member's intent to disregard his obligations as a lawyer in entering the Settlement Agreement. He considered Rule 3.2-12 and believed that he complied with it, as in his view no consideration flowed from the withdrawal of the complaints.
- b) The Member realizes his error and accepts that he should have obtained the permission of the LSA before entering into the Settlement Agreement that included the indemnity with respect to the allegations related to the Initial Complaints.
- c) The Member admits that he entered into an agreement that resolved litigation (the Settlement Agreement) which included, among other terms, a commitment from the other parties to withdraw complaints made to the LSA, without the consent of the LSA, and that such conduct is deserving of sanction.

Findings on Guilt

- 31. For an admission of guilt to be acceptable, the admission must have the following elements:
 - a) the admission must be made freely and voluntarily;
 - b) the lawyer must unequivocally admit guilt to the essential elements of the citations;
 - c) the lawyer must understand the nature and consequences of the admission; and
 - d) the lawyer must understand that the Committee is not bound by any submission advanced jointly by the lawyer and the LSA (section 47, LSA's *Pre-Hearing and Hearing Guideline* (April 15, 2021) ("Guideline")).
- 32. The Committee accepted the Statement as being in the appropriate form pursuant to section 60 of the *Act*, having satisfied itself that the elements listed in paragraph 31 herein were established. As a result of the Committee's acceptance of the Statement, each admission in the Statement was deemed to be a finding of this Committee that the Member's conduct was deserving of sanction.

Sanction

- 33. The LSA and the Member jointly submitted that the appropriate sanction was a reprimand. In addition, they agreed and jointly submitted that the Member should be ordered to pay \$3000 in costs.
- 34. While hearing committees are not bound to accept a joint submission on sanction, such a submission carries significant weight and is entitled to deference. In other words, a joint submission is to be accepted unless it is demonstrably unfit and contrary to the public interest.

35. In *Law Society of Alberta v. Llewellyn* (2018 ABLS 11), the hearing committee there put it this way at paragraph 10:

The Committee is not bound by joint submissions on sanctions. However, the Committee is required to give serious consideration to jointly tendered submissions, and accept, unless they are found to be unfit, unreasonable, contrary to the public interest, or there are good and cogent reasons for rejecting joint submissions.

36. This principle comports with the Supreme Court of Canada's decision in *R. v. Anthony-Cook* (2016 SCC 43), where it was confirmed that the trier of fact should not depart from a joint submission unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest.

37. Further, as outlined in section 187 of the *Guideline*:

The fundamental purposes of sanctioning are to ensure the public is protected from acts of professional misconduct and to protect the public's confidence in the integrity of the profession. These fundamental purposes are critical to the independence of the profession and the proper functioning of the administration of justice.

38. The Committee is also mindful of the factors for consideration in determining an appropriate sanction, as set out in the *Guideline* starting at paragraph 200.

39. Here, the Committee found the following factors to be particularly relevant to the inquiry into the appropriate sanction regarding the Member's conduct:

- a) the potential impact on the LSAs ability to effectively govern its members by such misconduct;
- b) the need for deterrence;
- c) the risk to the public;
- d) the harm or lack thereof caused by the misconduct;
- e) the lack of any prior discipline record on the part of the member;
- f) an acknowledgment of wrongdoing and admission of guilt;
- g) an expression of remorse;
- h) cooperation during the conduct proceedings resulting in avoiding costs and inconvenience; and
- i) lack of intent on the part of the member to disregard his obligations as a lawyer.

40. In consideration of the relevant factors and in light of all the circumstances of the case, the Committee concluded that it was in the public interest to accept the joint submission on sanction and the Committee did so. A reprimand was issued to the Member during the course of the hearing as follows:

Mr. Carlson, as your regulator of a self-regulated profession, the Law Society has two principal duties by which it must be guided: the need to protect the interest of the public, and the need to protect and maintain the reputation of the legal profession. Your conduct in the matter before us engages both considerations.

The expectation of a lawyer, and you, in this case, is that you will be guided by and adhere to our Code of Conduct. Here, the attempt, as genuine as your belief in the propriety of doing so may have been, to bargain away complaints to the Law Society of Alberta was inappropriate, and in effect, was an attempt to usurp the jurisdiction of the Law Society of Alberta to deal with these complaints on their merits and in the public interest. This conduct was contrary to the Code of Conduct, and reflects poorly on you and the profession.

We note, however, that you have taken full responsibility for your conduct, and are satisfied that you understand the reasons why your conduct was unacceptable. We also accept ... that you had no intent to disregard your obligations as a lawyer in entering into the settlement agreement that formed the basis for the complaint before us. Further, it is noted that you have no prior disciplinary record.

Concluding Matters

41. In addition to the reprimand referenced in paragraph 40 herein, pursuant to section 72(2) of the *Act*, the Committee ordered the Member to pay costs in the amount of \$3000. The Member shall have until September 8, 2021 to pay the costs.
42. A Notice to the Profession is not required and will not be issued, nor is a reference to the Attorney General required and will not be made.
43. 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 the Member will be redacted and further redactions will be made to preserve client confidentiality and solicitor-client privilege.

Dated June 23, 2021.

Luigi Cusano, QC

Glen Buick

Dr. Alan Kennedy