

**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 JOANNE HEMING  
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

**Hearing Committee**

Ken Warren, QC – Chair  
Corinne Petersen, QC – Bencher  
Michael Mannas – Adjudicator

**Appearances**

Karl Seidenz – Counsel for the Law Society of Alberta (LSA)  
Elena Semenova – Counsel for Joanne Heming

**Hearing Date**

July 28, 2020

**Hearing Location**

Virtual Hearing

**HEARING COMMITTEE REPORT – SANCTION PHASE**

**Overview**

1. Joanne Heming was retained by PS in April 2010 with respect to problems he was having with his farm neighbors. Ms. Heming was a relatively inexperienced lawyer running a practice in Strathmore, Alberta. She initiated proceedings on behalf of PS and his wife HS that in hindsight were ill-advised and eventually resulted in significant costs awards and enforcement proceedings against PS and HS and without them gaining the remedy PS had sought. The facts for the most part were not contentious. Four citations were issued that generally speaking related to Ms. Heming's failure to obtain consent and instructions from HS to represent her in legal matters, failing to provide competent, conscientious and knowledgeable service to her clients, failing to advise her clients properly in relation to her mistakes and failing to promptly notify ALIA of her errors in handling her clients' litigation matter.
2. After hearings on December 11 and 12, 2019 and for the reasons set out in its decision dated June 15, 2020 (the "Merits Decision"), the Hearing Committee (the "Committee") found Joanne Heming guilty of conduct deserving of sanction in relation to three citations

and dismissed the fourth citation.

3. After reviewing all of the evidence and exhibits, and hearing the testimony and arguments of the LSA and Ms. Heming, for the reasons set out below the Committee finds that, based on the facts of this case, the appropriate sanction is a one-week suspension and payment of costs.

### **Preliminary Matters**

4. As noted in the Merits Decision, there were no objections to the constitution of the Committee or its jurisdiction and a public hearing proceeded. No objections or private hearing applications were made during the sanction phase of the hearing, so the hearing continued before this Committee in public.
5. Near the conclusion of the sanction phase hearing, the Committee discussed with counsel the issue of costs. There was the possibility of a creative solution that would allow relief to be provided to HS and PS with respect to the liability for costs they had incurred due to Ms. Heming's conduct. The Committee agreed with the parties that it would not finalize its decision respecting costs until it was determined whether Ms. Heming and HS and PS were able to negotiate a payment agreement satisfactory to those clients. The LSA indicated that in the event such a settlement could be reached, it would seek payment only of the hard costs incurred with respect to this matter. The Committee was advised on December 22, 2020 that a satisfactory settlement had been reached between Ms. Heming and her clients. That enabled the Committee to finalize this report. The delay in issuing this report was longer than anticipated but in the Committee's view was justified by the benefits to all parties concerned, most importantly Ms. Heming's former clients, if a satisfactory resolution could be reached between Ms. Heming and them. The Committee commends Ms. Heming, counsel and the LSA for their collaborative approach to dealing with this issue.

### **Submissions on Sanction**

6. The facts related to the sanctionable conduct are set out in the Merits Decision. This phase of the hearing is to consider the appropriate sanction for that conduct found deserving of sanction.
7. There was no joint submission respecting sanction. LSA counsel submitted that the appropriate sanction was a one to two-week suspension and the payment of costs. Ms. Heming's counsel submitted that a suspension was not necessary and the appropriate sanction was a reprimand. She submitted that any costs payable to the LSA ought to take into consideration any settlement that may be reached between Ms. Heming and HS and PS regarding their costs liability to their judgment creditor.
8. LSA counsel submitted that Ms. Heming had been found guilty of conduct deserving of sanction on three of the four citations, including guilty findings on several particulars

within the three citations. LSA counsel referred the Committee to the following findings from its June 15, 2020 Hearing Report:

- Ms. Heming appeared to be oblivious to the fact that she required instructions in order to act (para. 38);
  - Ms. Heming's conduct fell well short of that expected of a competent lawyer, with eight instances of that misconduct particularized (para. 42);
  - The evidence showed a pattern of misconduct, through incompetence, in her representation of PS and HS (para. 43);
  - Ms. Heming's conduct from the time in late 2011 when she realized she had made a mistake through to her acceptance of a new retainer from PS in the spring of 2013 demonstrated a complete lack of understanding of the obligations of a lawyer who finds themselves in a conflict of interest with a client due to a mistake by that lawyer (para. 47); and
  - Ms. Heming did not think that she had ever advised PS that as a result of her error, he may have a claim against her and that he should seek independent legal advice respecting a claim against her (para. 50).
9. LSA counsel also referred to three prior discipline matters involving Ms. Heming. The first complaint arose from conduct in 2009 and was resolved by Ms. Heming undergoing a Mandatory Conduct Advisory ("MCA"), together with a referral to Practice Management/Review. The MCA was conducted in April, 2012. Ms. Heming was involved with Practice Management/Review from January 2012 until January 2013. She gave a number of undertakings in June 2012 that included enrolling in and successfully completing the complementary education modules developed by LESA (Legal Education Society of Alberta) pertaining to the then new Code of Conduct and using best practices in her file management and conduct, including:
- ensuring that reporting letters to clients provide sufficient details as to the outstanding rights and remedies available to the clients;
  - ensuring that Ms. Heming was properly retained before advising opposing counsel; and
  - ensuring that written memos, notes to file or copies of email communications with clients confirming advice given and instructions received are maintained on the file.
- In June 2012, Ms. Heming completed the Code of Conduct course.
10. The second complaint involved conduct in June 2013 and resulted in a reprimand and the payment of costs. Ms. Heming admitted the facts and her guilt.
11. The third complaint involved conduct in September 2013. Ms. Heming again admitted the facts and her guilt. The Committee accepted a joint submission on sanction calling for a reprimand, a fine of \$6,000 and payment of costs. Ms. Heming was also referred

again to Practice Management/Review. She participated in that program from December 2016 until March 2018.

12. LSA counsel stressed that several of the particulars of which Ms. Heming was found guilty in this matter occurred during or after her first practice review referral, after her MCA, after she had provided undertakings in the practice review program to improve her practice management and after her completion of the course on the Code of Conduct.
13. LSA counsel referred the Committee to several authorities, all of which were distinguishable. One decision, *Elgert*, resulted in a 15 day suspension while the other decisions, most of which were based on the acceptance of joint submissions on sanction, included various combinations of a reprimand, a fine, restrictions on practice, referral to practice review and payment of costs. The decisions submitted by LSA counsel and reviewed by the Committee were:
  - *Law Society of Alberta v Elgert*, 2012 ABLS 9
  - *Law Society of Alberta v Crisfield*, 2012 ABLS 17
  - *Law Society of Alberta v Moughel*, 2016 ABLS 38
  - *Law Society of Alberta v Walia*, 2016 ABLS 54
  - *Law Society of Alberta v Waite*, 2014 ABLS 8
  - *Law Society of Alberta v Michaels*, [1996] L.S.D.D. No. 284
  - *Law Society of Alberta v Yarshenko*, 2018 ABLS 18
  - *Law Society of Alberta v Makuch*, 2013 ABLS 10
  - *Law Society of Alberta v Matthew Merchant*, 2008 LSA 6 (CanLII)
14. Counsel for Ms. Heming, Ms. Semenova, noted that a hearing committee's sanction is not intended to be primarily punitive. Rather, the sanction is intended to protect the public, maintain high professional standards and preserve public confidence in the legal profession. Ms. Semenova noted that Ms. Heming was still a relatively junior lawyer when the conduct occurred, there was no deliberate intent by Ms. Heming to benefit herself at her clients' expense, Ms. Heming had been cooperative with the LSA in dealing with this matter and the impugned conduct flowed from what may be characterized as negligence or incompetence.
15. Ms. Semenova brought to the Committee's attention very difficult personal circumstances that had impacted Ms. Heming in 2020. While 2020 was a challenging year for everyone, Ms. Heming faced misfortunes, unrelated to these proceedings, that were particularly cruel. Ms. Semenova also noted that Ms. Heming's conduct had not been called into question for several years, indicating that her practices have improved. A reprimand, rather than a suspension, was proposed as the appropriate sanction.
16. With respect to costs, both counsel were interested in seeing money paid by Ms. Heming to her clients PS and HS to relieve them in whole or in part of their liability for

costs due to Ms. Heming's conduct. The LSA was not in a position to transfer to PS and HS directly monies paid by Ms. Heming to it. LSA counsel confirmed that the LSA would generously forego any claim to costs, other than its hard costs, from Ms. Heming if a satisfactory arrangement could be worked out between her and her clients.

### **Analysis and Decision on Sanction**

17. The Law Society of Alberta Hearing Guide requires that the sanctioning process should involve a purposeful approach. The most fundamental purpose is protection of the public interest. The sanctioning process is also to further the maintenance of high professional standards and to preserve public confidence in the legal profession, and in the ability of the LSA to regulate the profession in this jurisdiction.
18. The Hearing Guide sets out a number of general factors and specific factors to be considered in the sanctioning process. It is anything but a formulaic exercise. Decisions of prior hearing committees are not binding on this Committee but are relevant to ensure relative consistency between decisions, both as a matter of fairness and predictability. The Committee is called upon to apply its experience, common sense and judgement to the particular facts of the case before it.
19. In this case, the Committee found that the evidence shows a pattern of misconduct through incompetence in Ms. Heming's representation of PS and HS. Ms. Heming's failings were numerous and significant, as summarized in paragraph eight above and in more detail in the Merits Decision. Ms. Heming appeared to lack insight into the obvious deficiencies in the services she provided to her clients, the conflicts that arose from those deficiencies and her obligations to her clients when she knew or ought to have known of those deficiencies and conflicts.
20. While the Committee is encouraged that Ms. Heming has apparently improved her practices, it is also apparent that the earlier MCA, reprimand and referrals to Practice Management/Review did not have an immediate impact. As noted in the Hearing Guide, penalties imposed for conduct deserving of sanction are cumulative and future offences will attract progressively more severe penalties. The application of that approach is demonstrated by Ms. Heming's previous sanctions: initially an MCA; then a reprimand and payment of costs; and then a reprimand, fine and payment of costs. If the misconduct found in the Merits Decision had appeared in Ms. Heming's first discipline proceeding, a reprimand may have been appropriate. However, at this stage of Ms. Heming's discipline history, the misconduct requires more than a reprimand.
21. The Committee finds that a suspension of one week, to be served within 90 days of the decision, is appropriate in all of the circumstances. The Committee was advised that Ms. Heming served her one-week suspension from October 10 to 16, 2020, having been advised of that sanction at the conclusion of the hearing on July 28, 2020. No fine is assessed. With respect to costs, Ms. Heming is required to pay to the LSA its hard costs in the amount of \$3,544.12, representing the court reporter costs for the two hearings, within one year of her receipt of the Statement of Costs.

### **Concluding Matters**

22. A Notice to the Profession pursuant to section 85 of the *Legal Profession Act* is required in the circumstances of a suspension. It was published on October 2, 2020.

23. 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. Heming will be redacted and further redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 98(3)).

Dated at Calgary, Alberta, January 4, 2021.

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Ken Warren, QC - Chair

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Corinne Petersen, QC

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Michael Mannas