

**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 PATRICIA JOHNSTON, QC
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

Single Bench Hearing Committee

Lou Cusano, QC – Chair

Appearances

Christine Blair – Counsel for the Law Society of Alberta
Thomas P. O’Leary – Counsel for Patricia Johnston, QC

Hearing Date

October 6, 2021

Hearing Location

Virtual Hearing

HEARING COMMITTEE REPORT - SANCTION

Overview

1. The following citation (Citation) regarding Patricia M. Johnston, QC was directed to hearing by a Conduct Committee Panel (CCP) of the Law Society of Alberta (LSA) on August 10, 2021:

It is alleged that Patricia M. Johnston, QC acted in a conflict or potential conflict of interest without obtaining her clients’ consent in the manner required under the Code of Conduct, or in circumstances where it was not in the best interests of her clients, and that such conduct is deserving of sanction.

2. Ms. Johnston is now on the inactive roster of the LSA but is a lawyer with over 30 years of experience, having made a significant contribution to the profession during her career. Ms. Johnston does not have any record of discipline.
3. The circumstances which led to the Citation occurred during Ms. Johnston’s employ with the Alberta Energy Regulator and her involvement with an entity called ICORE Energy Services NFP, generally in 2017 and 2018. It was during this time frame when Ms.

Johnston found herself in a conflict of interest and failed to discharge her obligations to her clients and under the Code of Conduct of the LSA.

4. The LSA and Ms. Johnston entered into a Statement of Admitted Facts and Admission of Guilt (the Agreed Statement) in relation to Ms. Johnston's conduct. The Agreed Statement is appended hereto as Schedule 1 and sets out in detail the relevant facts.
5. The CCP found the Agreed Statement acceptable. Accordingly, pursuant to subsection 60(4) of the *Legal Profession Act (Act)*, it is deemed to be a finding of this Hearing Committee (Committee) that Ms. Johnston's conduct is deserving of sanction in relation to the Citation.
6. On October 6, 2021, the Committee convened a hearing into the appropriate sanction.
7. At the hearing, counsel for the LSA and Ms. Johnston presented a joint submission on sanction.
8. After reviewing all of the evidence and hearing the submissions of counsel for the LSA and Ms. Johnston, for the reasons set out below, the Committee has determined that the sanction of a reprimand and fine of \$5,000 is appropriate and that Ms. Johnston shall, within six months of the date of the hearing, pay the fine and costs in the amount of \$1,706.25.

Preliminary Matters

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

Agreed Statement of Facts/Background

10. On July 13, the Agreed Statement was executed by Ms. Johnston and provided to the CCP on August 10, 2021 for its consideration, as required by section 60(2) of the *Act*.
11. The CCP found the Agreed Statement acceptable on August 10, 2021. Pursuant to section 60(4) of the *Act*, each admission of guilt in the Agreed Statement is deemed to be a finding by this Committee that Ms. Johnston's conduct is deserving of sanction under section 49 of the *Act*.
12. As provided by section 60(3) of the *Act*, once the Agreed Statement was accepted by the CCP, the hearing into the appropriate sanction could be conducted by a single Bencher. As a result, I was appointed to conduct the sanction hearing.

Submissions on Sanction

13. As noted, a joint submission on sanction was presented by counsel for the LSA and Ms. Johnston.
14. Counsel for the LSA noted that Ms. Johnston had admitted guilt, had been cooperative and thereby shortened the disciplinary process, had no prior disciplinary record, was a longstanding member of the LSA and her conduct had not posed any risk to the public.
15. Counsel for Ms. Johnston agreed and supported these submissions but also added that:
 - she had performed her duties as counsel at the highest level for many years;
 - she had a lengthy history of volunteering her time to the profession by writing and instructing, all to the public benefit;
 - her conduct did not pose any risk to the public nor risk of loss to her clients;
 - there was no breach of trust or issues related to her integrity raised by the circumstances under consideration here;
 - the breach of her obligations was unintentional.

Decision on Sanction

16. As the parties are aware, the Committee is not bound by a joint submission on sanction. However, a Committee is required to give serious consideration to a joint submission, should not lightly disregard it and should accept it unless it is unfit or unreasonable, contrary to the public interest, or there are good and cogent reasons for rejecting it.
17. Counsel agreed that a reprimand and a fine of \$5000 was an appropriate sanction in the circumstances.
18. The approach taken by both Ms. Johnston and the LSA in dealing with this matter through the Agreed Statement also avoided a contested hearing, witness inconvenience, and process costs.
19. Considering all the circumstances, including the evidence and submissions of counsel, I concluded that it was in the public interest to accept the joint submission on sanction and I did so.
20. Ms. Johnston was therefore reprimanded at the hearing. The reprimand is appended hereto as Schedule 2.
21. Ms. Johnston shall, within six months of the date of the hearing, pay the fine and in addition, costs in the amount of \$1,706.25.

22. Notice to the profession or referral to the Attorney General (Alberta) is not required.

Concluding Matters

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. Johnston will be redacted and further redactions will be made to preserve client confidentiality and solicitor-client privilege, all in accordance with Rule 98(3) of the Rules of the LSA.

Dated at Calgary, Alberta, October 22, 2021.

Lou Cusano, QC

IN THE MATTER OF THE *LEGAL PROFESSION ACT*

**AND IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF PATRICIA M JOHNSTON, QC
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

LAW SOCIETY HEARING

**STATEMENT OF ADMITTED FACTS
AND ADMISSION OF GUILT**

BACKGROUND

1. I, Patricia M Johnston, was admitted as a member of the Law Society of Alberta (“LSA”) on June 30, 1988.
2. Prior to entering into Inactive status on February 22, 2019, I practiced law at the Alberta Energy Regulator (“AER”), commencing on February 5, 2008, in Calgary, Alberta.
3. As of today’s date my status with the LSA is Inactive.
4. I do not have any discipline record with the LSA.

CITATION

5. I am facing one citation arising from complaint CO20200549 as follows:

It is alleged that Patricia M. Johnston, QC acted in a conflict or potential conflict of interest without obtaining her clients’ consent in the manner required under the *Code of Conduct*, or in circumstances where it was not in the best interests of her clients, and that such conduct is deserving of sanction.

ADMITTED FACTS

6. I was General Counsel for AER and its predecessor, the Energy Resources Conservation Board, between February 5, 2008, and August 31, 2018.
7. In March 2015 the concept of operating the Centre of Regulatory Excellence (“CORE”) arose in the AER as an internal means of training AER employees and enabling the AER to achieve regulatory excellence which had been endorsed by the AER Board as a Key Strategic Objective.
8. In July 2016 CORE was taken external to AER, at which time the name was changed to International Centre of Regulatory Excellence (“ICORE”) and the first ICORE Energy

Services NFP (“ICORE NFP No. 1”) was incorporated. The corporation was never active and was dissolved in May 2018.

9. In May 2017, a second ICORE Energy Services NFP (“ICORE NFP No. 2”) was established to provide regulatory training to AER staff and to international organizations. This entity received third party funds and support from AER, which became the sole governing and operating member of ICORE NFP, giving it control of the corporation. It was always intended that other entities and jurisdictions would become members of the corporation. The then CEO of AER initiated the creation of these entities and concurrently acted as both CEO of AER and director of ICORE NFP No. 2. I was not involved in the creation of the above entities.
10. On May 15, 2017, a Memorandum of Understanding (“MOU”) was developed between ICORE NFP No. 2 and the AER. The former CEO of the AER signed the MOU on behalf of ICORE NFP No. 2. I signed on behalf of the AER. The MOU contained terms that ICORE NFP No. 2 would compensate the AER either by reimbursement in cash or provision at no charge of training to AER staff in amounts equal to or exceeding the monetary value of in kind contributions by the AER. Soon after, in May 2017, an ICORE project was started at the AER, called the ICORE Development Project (“ICORE DP”) and ICORE related work was brought internal to the AER. The former CEO of the AER had oversight of ICORE DP and was also the director of ICORE NFP No. 2.
11. Staff resources from the AER were used by ICORE NFP No. 2. I provided legal services to ICORE NFP No. 2 between May 2017 and April 2018 while concurrently providing legal services to the AER. On one occasion during that time I acted for the AER and ICORE NFP No. 2 in respect of the same matter: a Training Course Licence Agreement dated April 17, 2018 (“Licence Agreement”).
12. I informed the former CEO of the conflict in my acting for both the AER and ICORE NFP No. 2 in connection with the Licence Agreement on April 13, 2018. However, I failed to obtain consent to act for both parties in the manner required by section 1.1-1 of the *Code of Conduct*. Given the circumstances, obtaining consent from the AER in the manner required by the *Code of Conduct* would have been in the AER’s best interests.
13. The Ethics Commissioner, the Auditor General and the Public Interest Commissioner each examined the actions of the former CEO of the AER in relation to ICORE. Those reports concluded that ICORE NFP No. 2 was in a conflict and potential conflict with the AER as AER resources were used to establish and operate ICORE NFP No. 2 in a way that was inconsistent with the AER mandate concerning public funds and its statutory authority.
14. Regarding my actions in respect of the conflict of interest found by the Ethics Commissioner during her investigation, page 30 of the Commissioner’s June 14, 2019 report states:

Patricia Johnston was used by the former CEO . . . to do ICORE NFP legal work, thereby putting her in a conflict of interest. When the AER law branch staff balked at doing the work, she was left to do it. . . . She should have refused to do the work earlier than she ultimately did but she was in a difficult position, faced with a demanding and authoritarian superior. . . . In fairness to her, [JE] misled her by stating that he was not going to ICORE in the future.
15. The AER ended its association with ICORE NFP No. 2 in December 2018. The AER commenced litigation against ICORE NFP to recover funds and resource costs provided

to ICORE NFP No. 2 in reliance on the provisions of the MOU. The AER obtained a default judgment against ICORE NFP No. 2 and received \$2,680,637.37 pursuant to a garnishee summons.

ADMISSION OF FACTS AND GUILT

- 16. I, Patricia M. Johnston, QC admit as facts the statements contained in this Statement of Admitted Facts and Admission of Guilt for the purposes of these proceedings.
- 17. For the purposes of s. 60 of the *Legal Profession Act*, I, Patricia M. Johnston, QC admit that I acted in a conflict or potential conflict of interest without obtaining my clients' consent in the manner required under the *Code of Conduct*, or in circumstances where it was not in the best interests of my clients.
- 18. When I admit guilt to the conduct described herein, I admit that the conduct is "conduct deserving of sanction" as defined under section 49 of the *Legal Profession Act*.

ACKNOWLEDGEMENTS

- 19. I have had the opportunity to consult with legal counsel.
- 20. I have signed this statement freely and voluntarily, without compulsion or duress.
- 21. I understand the nature and consequences of my admissions.
- 22. 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 and Admission of Guilt is dated the 13th day of July, 2021.

Witness

"Patricia Johnston"
Patricia M. Johnston, QC

Reprimand

Ms. Johnston, 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 interests 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.

Although you are no longer on the active roster of the Law Society, you are an experienced lawyer, having practiced for over 30 years. You have had a long and principled career with significant contributions to the profession without blemish. In other words, you have no record of discipline with the Law Society and I have no doubt that having to deal with this citation at this point in your career must be a disappointment.

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 failure to act in the best interests of your clients by placing yourself in a conflict of interest was contrary to your professional obligations as counsel, and more specifically, contrary to the Code of Conduct.

Your conduct reflects poorly on you and the profession, and we would have expected more from you as a lawyer with such breadth of experience. I note, however, that you have taken full responsibility for your conduct, and I'm satisfied that you understand the reasons why your conduct was unacceptable.

I note that you have cooperated with the Law Society, and this citation has been dealt with by you admitting guilt and by proceeding with a single Bencher hearing. Your admissions have permitted this citation to be resolved on a more efficient basis, which is not just a benefit to you, but to the public and to the Law Society.

Your cooperation in proceeding with the process in this way helped to avoid unnecessary hearing costs, avoid time and inconvenience to various parties and witnesses, and as well, minimized process costs.

A joint submission on sanction is to be given deference. I conclude that in light of all of these circumstances, it is in the public interest to accept the joint submission on sanction, which your counsel and Ms. Blair have presented, and I do so.

I reprimand you, Ms. Johnston, for the conduct outlined in Exhibit 5, and order you to pay a fine of \$5,000 and costs... all within six months of today's date. I wish you good luck in your future endeavours, Ms. Johnston.