

**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 MARILYN P. ADSIT
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

Hearing Committee

Cal Johnson, KC – Chair and Bencher
Stacy Petriuk, KC – Bencher
Grace Brittain – Public Adjudicator

Appearances

Shanna Hunka – Counsel for the Law Society of Alberta (LSA)
Marilyn P. Adsit – Appearing for herself

Hearing Date

September 21, 2022

Hearing Location

Virtual Hearing

HEARING COMMITTEE REPORT

Overview

1. The following citations were directed to hearing by a Conduct Committee Panel (CCP) on January 18, 2022:
 - (a) It is alleged that Marilyn P. Adsit breached Rules 105 of the Rules of the Law Society of Alberta and that such conduct is deserving of sanction; and
 - (b) It is alleged that Marilyn P. Adsit failed to be candid with the LSA on her Applications for Reinstatement and that such conduct is deserving of sanction.
2. Ms. Adsit was admitted as a member of the LSA in December 2004 and as a member of the Law Society of Saskatchewan (LSS) in December 2005. Ms. Adsit was an active member of the LSA for approximately 6 months during 2005 – 2006. Since December 2005, Ms. Adsit has been an active member of the LSS as a sole practitioner in North Battleford, with the exception of a period of two months in August 2006 when she was suspended pursuant to an order of a hearing committee of the LSS. For approximately one month between March and April 2012, Ms. Adsit was an active member of the LSA

with a law firm in Sherwood Park. Since March 31, 2014, Ms. Adsit has been administratively suspended by the LSA for non-payment of fees. Ms. Adsit's practice as a sole practitioner was described as litigation, split between family law and criminal law.

3. In May 2009, pursuant to divorce proceedings in which Ms. Adsit was personally involved, the Saskatchewan Court of Queens' Bench ordered that neither Ms. Adsit nor her spouse could remove their child from the province without a further court order or a written agreement of the parties (2009 Order). A subsequent court order awarding joint custody provided that the primary residence of the child would be with Ms. Adsit in North Battleford, but if she moved, the child would then reside with her former spouse (2011 Order). In November 2011, Ms. Adsit moved to Alberta with her child without varying either Order or obtaining the consent of her spouse.
4. In April 2013 Ms. Adsit was charged under the Criminal Code in relation to her operation of a motor vehicle. She was subsequently convicted of failing to provide a breath sample as required by the Criminal Code. Neither circumstance was reported to the LSA as required by the Rules of the LSA (Rules).
5. In June 2016, Ms. Adsit was found guilty by a hearing committee of the LSS of conduct unbecoming a lawyer, for attempting to imitate the signature of another LSS member as a witness and Commissioner for Oaths on an affidavit that Ms. Adsit had prepared, failing to discharge her responsibilities to the Court with honour and integrity by filing that affidavit and deceiving the LSS in her responses to a complaint made against her. She received a two-month suspension from practice. Again, Ms. Adsit did not report this suspension to the LSA as required by the Rules.
6. A March 2013 decision of the Saskatchewan Court of Appeal noted that Ms. Adsit had deliberately ignored both the 2009 Order and 2011 Order, which the Court described as "clear and unequivocal". Notwithstanding the two Orders, Ms. Adsit applied in 2012 for reinstatement to the LSA but responded "No" to a question as to whether she had disobeyed an order of the court. Similarly, in 2019 when she applied for reinstatement with the LSA, she once again similarly responded "No" to that same question, notwithstanding the comments of the Saskatchewan Court of Appeal.
7. On September 21, 2022, a Hearing Committee (Committee) convened a hearing (Hearing) into the conduct of Ms. Adsit based on the two Citations referenced above. On the date of the Hearing, Counsel for the LSA introduced a Notice to Admit Facts and Exhibits (Notice) which had been served on Ms. Adsit pursuant to the provisions of the LSA Pre-Hearing and Hearing Guideline (Guideline). The Notice included the applicable provisions from the Guideline which required Ms. Adsit to reply in writing within 21 days of service and either admit or deny each fact or the authenticity of each document for which the admission was requested. Ms. Adsit did not do so, although she did send one email to the LSA in reference to the Notice. At the Hearing Ms. Adsit was advised by the Chair of the Committee that her failure to respond to the Notice constituted an admission

of the truth of the facts, or the authenticity of the documents, as provided in the Notice, although not an admission of the truth of the contents of any such document. The Chair further advised that if she now wished to deny any of those facts or any such authenticity it was open to her to make an application to this Committee to do so. After some discussion and consideration, Ms. Adsit said she did not wish to contest the Notice and the Hearing proceeded accordingly, with the Committee treating the Notice as effectively a Statement of Admitted Facts.

8. There were no objections to the constitution of the Committee or its jurisdiction, and a private hearing was not requested. Accordingly, a public hearing into Ms. Adsit's conduct proceeded.
9. After reviewing all of the evidence and exhibits and hearing the testimony and arguments of the LSA and Ms. Adsit, for the reasons set out below, the Committee finds Ms. Adsit guilty of conduct deserving of sanction on both Citations, pursuant to section 71 of the *Legal Profession Act (Act)*.
10. The Committee also finds that the appropriate sanction is a reprimand and costs. In accordance with section 72 of the *Act*, the Committee orders that Ms. Adsit must pay costs in the amount of \$11,401.55. The costs are to be paid within one year from the date of this decision.

Citation 1 - It is alleged that Marilyn P. Adsit breached Rules 105 of the Rules of the Law Society of Alberta and that such conduct is deserving of sanction.

Analysis and Decision

11. Both Ms. Adsit and the LSA agree on the facts as set forth in paragraphs 2 through 5 of the Overview above and, as a result of the Notice, all of the facts contained therein and the authenticity of the documents referred to therein.
12. Rule 105(1) requires a member of the LSA who is charged with an offence under any Act of Parliament of Canada where the offence was prosecutable either as an indictable offence or as a summary conviction offence; or a regulatory offence in any jurisdiction in which the individual is subject to the regulation of any regulatory body, including the legal profession, to give a written notice to the LSA within a reasonable period of time after the charge is laid with particulars of the charge and forthwith notify the LSA of the disposition of the charge thereafter.
13. Ms. Adsit did not report either of the criminal charges that she was subject to, or their disposition, as required by Rule 105(1). In her testimony at the Hearing, Ms. Adsit indicated that because she had moved to Saskatchewan to practice there, she did not think that she had to report her charges and conviction under the *Criminal Code* to the LSA. In terms of her failure to report her suspension by the LSS in Saskatchewan, she advanced a similar argument as to a lack of awareness of her reporting responsibilities

to the LSA and assumed that, since she was an administratively suspended member, those obligations did not apply.

14. SB, an investigator with the LSA (Investigator), prepared an Investigation Report at the request of the LSA. Mr. SB interviewed Ms. Adsit in relation to the Citations. His report was dated June 4, 2020. In his testimony at the Hearing, Mr. SB indicated that Ms. Adsit described her failure to report as simply an oversight on her part. In her cross-examination of Mr. SB, Ms. Adsit noted an error in the Background section of the Investigation Report in that it indicated that she was admitted to the Saskatchewan Bar in January 2005, when she noted that in fact it was December 2005.
15. Ms. Adsit was provided with a copy of the Investigation Report for review and comment and responded to her review in an email to the LSA of October 13, 2020. In that email she indicated that she agreed with Mr. SB's summary on page 22 of that report wherein he summarized that there was evidence to support the Citations.
16. As a witness for the LSA, Mr. SB noted in his evidence in chief that the LSA only became aware of the criminal charge and conviction, and the regulatory suspension, as a result of routine inquiries made of the LSS pursuant to the Application for Reinstatement made by Ms. Adsit in 2019. Ms. Adsit had made a visiting lawyer application to the LSA in 2016 which referenced her discipline issues with the LSS but simply directed the reader to the LSS website in relation to any details. At the time of the visiting lawyer application, she had not been formally convicted and suspended by the LSS. That particular visiting lawyer application did not proceed as the LSA advised Ms. Adsit that she would be required to make an application for reinstatement since she was a suspended member of the LSA.
17. Counsel for the LSA argued that the Notice was conclusive of the relevant facts in relation to Citation 1, that the Notice establishes this Citation and that the only issue in question was whether this was conduct deserving of sanction. Counsel pointed out that Rule 105 is a critical component of self-regulation by the LSA and accordingly there are no exceptions for inactive or administratively suspended members. Counsel for the LSA conceded that there are few prior authorities on any similar matter that are particularly relevant or helpful, but that the admissions of Ms. Adsit through the Notice and through her response to the Investigation Report were more than sufficient. The LSA must be able to rely on its members reporting such important matters as a matter of public interest.
18. The Committee finds Ms. Adsit guilty in respect of Citation 1. This is not an offence in which the LSA must prove intent, and accordingly Ms. Adsit's argument of inadvertence is not persuasive. Ms. Adsit was a member of the LSA for a material time before her relocation to Saskatchewan. As such, she was required to be familiar with the Rules and the Code of Conduct of the LSA (Code) and that, as a suspended member, she

nevertheless had ongoing obligations, including her reporting obligations under Rule 105.

19. In addition, at the time of each Reinstatement Application, it was incumbent upon her to be conversant with her obligations as a prospective active member, including these reporting obligations. As Counsel for the LSA argued, "not turning your mind" to your obligations does not constitute an excuse. Ms. Adsit should, at the very least, have sought advice or informed input if there was any confusion in respect of those obligations.
20. In the interests of preserving public respect for the profession, and the profession's respect for its regulator, it is important that the LSA be seen to be assiduously enforcing its own rules in applicable cases. In her opening remarks at the Hearing, Ms. Adsit indicated that her only arguments would be that the admitted conduct was not conduct deserving of sanction.
21. Consequently, the Hearing Committee finds Ms. Adsit to be guilty of conduct deserving of sanction in respect of Citation 1.

Citation 2 - It is alleged that Marilyn P. Adsit failed to be candid with the Law Society of Alberta on her Applications for Reinstatement and that such conduct is deserving of sanction.

Analysis and Decision

22. Both Ms. Adsit and the LSA agree on the facts as set forth in paragraphs 2 through 5 of the Overview above and, as a result of the Notice, all of the facts contained therein and the authenticity of the documents referred to therein.
23. This Citation references two different Applications for Reinstatement made by Ms. Adsit to the LSA – one in February 2012 (2012 Application) which resulted in Ms. Adsit being briefly reinstated as a member of the LSA in March - April of 2012, and again in May 2019 (2019 Application) which was unsuccessful and which ultimately led to these proceedings. Both applications were subject to answers or responses from Ms. Adsit which the LSA has characterized as misleading and lacking in candour.
24. The principal candour issues related to her answering "No" in each application as to whether she had disobeyed a court order. By the time of the 2012 Application, Ms. Adsit had removed her child from Saskatchewan contrary to both the 2009 Order and 2011 Order (collectively, Court Orders). By the time of the 2019 Application she had further been subject to the excoriating comments of the Saskatchewan Court of Appeal concerning her breach of those two Court Orders.
25. The language of the Court Orders was unequivocal and their interpretation was not difficult. At the Hearing, and notwithstanding her earlier admissions during the

Investigation Report, Ms. Adsit continued to put forward an explanation of her breach of the 2009 Order based upon her view that the Order was not binding on her since it had been appealed and seemed to think this was also a defense to the breach of the 2011 Order. Clearly, and particularly as a lawyer, she displayed a fundamental misunderstanding of, or lack of respect for, the substance of the Court Orders. Lawyers, of all people, must respect and protect the rule of law. Court orders must necessarily appear at the top of any list of such matters. The Committee found her explanations to lack consistency, cogency and cohesiveness.

26. Counsel for the LSA conceded that this particular Citation involved at least some level of intention to be considered in assessing the conduct in question. The Committee determined that Ms. Adsit was quite intentional in her failures to respond to the questions and, indeed, in her responses to the Investigator conceded that "it was hard for her to answer that question" on the issue of having ever breached an order of the court. This is particularly so considering the comments of the Saskatchewan Court of Appeal.
27. As with the other Citation, Ms. Adsit's only substantive argument was that Citation 2 did not engage conduct deserving of sanction. The Committee considered the Citation to engage fundamental questions of integrity, candour and honesty that go to the heart of the relationship between the LSA and its members.
28. Accordingly, the Committee finds Ms. Adsit guilty of conduct deserving of sanction in relation to Citation 2.

Analysis and Decision on Sanction

29. Although Counsel for the LSA and Ms. Adsit did not submit a joint submission on sanction at the outset of the Hearing, the discussions and submissions of both parties at the commencement of the sanction phase of the Hearing made it quite clear that, in fact, they were in full agreement on the issue of sanction. Simply put, that joint submission was for a reprimand and an award of costs against Ms. Adsit, with a one-year period to pay such costs. The submissions of both parties in relation to sanction after that clear agreement were very brief. It was acknowledged that Ms. Adsit had no prior discipline history, had willingly participated in the investigation conducted by the LSA and had generally cooperated during the process.
30. Paragraph 207 of the Guideline requires the Committee to give significant deference to a joint submission on sanction. Paragraph 209 of the Guideline details the many ways in which a joint submission on sanction can benefit both the member of the LSA and the LSA itself. Having reviewed those potential benefits, the Committee determined that the de facto joint submission on sanction contained favourable elements of each of those prospective benefits.

31. In addition, the Committee is required to take into consideration provisions of paragraph 210 of the Guideline dealing with the "public interest" test for acceptability arising from *R v. Anthony-Cook* (2016 SCC 43) and subsequent cases. This test provides that a joint submission on sanction should be accepted unless it would bring the LSA or the profession into disrepute or is otherwise contrary to the public interest. In applying the public interest test, the Committee should consider:
- (a) whether the joint submission is so markedly out of line with the expectations of a reasonable person aware of the circumstances of the offence and the offender, or so unhinged from those circumstances that it would be viewed by that reasonable person as a breakdown of the LSA regulatory system; and
 - (b) whether the joint submission would cause an informed and reasonable public to lose confidence in the LSA as a regulatory institution.
32. In determining whether to accept the joint submission, the Committee must determine the appropriateness of the proposed sanction in protecting the public from acts of professional misconduct and preserving its confidence in the integrity of the profession. Sanctioning must be purposeful in the sense that it must satisfy these fundamental purposes as well as other applicable purposes of sanctioning as detailed in paragraph 186 of the Guideline to the extent they are relevant to the circumstances at hand.
33. The factors which the Committee considered as particularly relevant to its acceptance of the joint submission included the following:
- (a) Denunciation and Deterrence. The Committee found much of the conduct evidenced by the Notice and the Investigation Report to demonstrate serious issues in terms of compliance by Ms. Adsit with her obligations under the Rules and the Code in relation to her candour with the LSA. Counsel for the LSA acknowledged that there was no need to limit Ms. Adsit's right to practice given the necessity for her to successfully complete an application for Reinstatement before she could practice in Alberta as a member of the LSA. Counsel for the LSA further suggested that a suspension would not add anything helpful at this time, given Ms. Adsit's ongoing administrative suspension. Counsel for the LSA referenced a number of prior decisions, while admitting that each of them lacked some elements, or contained some elements, not found in this case. She did stress that mitigating factors in this case were that there was no public harm, the clean conduct record in Alberta and the cooperation of Ms. Adsit throughout.
 - (b) The Committee was persuaded that the substantial costs award reflected a denunciation of the careless and evasive behaviour of Ms. Adsit and an apparent basic lack of understanding of the importance of strict compliance with court orders. The Committee also determined that the requisite element of deterrence was satisfied, given Ms. Adsit's difficult road ahead for any reinstatement and the

likelihood of significant conditions being imposed in relation to any such reinstatement.

34. Taking into consideration all of the above, the Committee concludes that a reprimand from this Committee is within the range of reasonable sanctions that will satisfy the purposes of the sanctioning process. The Committee also orders costs in the amount of \$11,401.55 with payment of full by September 21, 2023.
35. An oral reprimand was delivered to Ms. Adsit at the Hearing as follows:

Ms. Adsit, you have been charged and convicted on two very serious citations. The Committee has highlighted a number of our concerns in the Decision we have rendered in respect of these Citations. We are a self-regulating profession and the LSA has to be able to rely on the governability and candour of its members in all their dealings. The evidence at the Hearing demonstrated a very concerning and fundamental misunderstanding, or avoidance of your obligations that are the same as required of all members of the LSA. You will necessarily have to proceed with an Application for Reinstatement where issues of candour and integrity will once again be in the forefront. We heartily recommend that you take away from this experience not only the absolute importance of integrity and candour, but also the obligation to fully inform yourself of your obligations prior to any dealing with the LSA.

We wish you the best with your further efforts.

Concluding Matters

36. After hearing the submissions of Counsel, the Committee determined that there will be no Notice to the Profession and no Notice to the Attorney General in respect of this matter.
37. 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. Adsit will be redacted and further redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 98(3)).

Dated November 9, 2022.

Cal Johnson, KC – Chair and Bencher

Stacy Petriuk, KC – Bencher

Grace Brittain – Public Adjudicator