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 ROBERT DE VRIES
A MEMBER OF THE LAW SOCIETY OF ALBERTA

Single Bencher Hearing Committee
Deanna Steblyk, QC – Chair

Appearances
Erica Pridham – Counsel for the Law Society of Alberta (LSA)
Simon Renouf, QC – Counsel for Robert de Vries

Hearing Date
May 31, 2022

Hearing Location
Virtual Hearing

HEARING COMMITTEE REPORT - SANCTION

Overview

1. On May 31, 2022, a Single Bencher Hearing Committee (Committee) convened via videoconference to conduct a hearing concerning the conduct of Robert H. de Vries, a member of the LSA.

2. By way of a Statement of Admitted Facts and Admission of Guilt signed by Mr. de Vries on January 10, 2022 (Statement), Mr. de Vries admitted his guilt with respect to the following two citations (Citations):

    1. It is alleged that Robert H. de Vries failed to draft a Court order fairly and accurately and that such conduct is deserving of sanction; and

    2. It is alleged that Robert H. de Vries failed to be accurate, candid and comprehensive in his submissions to the Court and that such conduct is deserving of sanction.

3. On February 15, 2022, a panel of the LSA Conduct Committee found the Statement to be in acceptable form. Accordingly, pursuant to section 60(4) of the *Legal Profession*

Act, the Conduct Committee's acceptance of the Statement was deemed to be a finding of this Committee that Mr. de Vries' conduct was deserving of sanction in relation to the Citations. The sole remaining issue for the Committee's determination was sanction.

4. After reviewing all of the evidence and exhibits and hearing the submissions of counsel for the LSA and counsel for Mr. de Vries, the Committee determined that the sanction jointly recommended by the parties was appropriate. Mr. de Vries was therefore reprimanded and ordered to pay the LSA's costs. The Committee's reasons for this decision are set out below and the reprimand is appended as Schedule 1.

Preliminary Matters

5. There were no objections to the constitution of the Committee or its jurisdiction. A private hearing was not requested, so a public hearing into the appropriate sanction proceeded.

Agreed Statement of Facts/Background

6. Mr. de Vries was admitted as a member of the LSA in October 2005. Since September 2007, he has been practicing at Robert H. de Vries Professional Corporation in Red Deer, Alberta.

7. On behalf of his client LS, Mr. de Vries filed an application seeking a declaration that LS had primary care of the three children of her marriage to AE, and requesting either supervised parenting for AE, or a no-contact order until AE could produce a clean drug test (Application). The Application was made on an emergency basis due to concerns regarding AE's alleged drug use and living situation.

8. The Application was heard on July 25, 2018. AE requested an adjournment to seek counsel and provide an affidavit in response to the allegations against him. The Court granted an adjournment to August 10, 2018, and on a without prejudice basis, granted a temporary order directing that the children would stay with LS until the matter could be heard.

9. Rule 9.4(2)(c) of the Alberta *Rules of Court* was invoked, and Mr. de Vries prepared and filed the order (July 25 Order). The July 25 Order as drafted indicated that the children were to remain in LS's care until further order of the court, and provided for AE to have limited access.

10. The matter did not return to Court until August 20, 2018. At that appearance, AE's legal counsel argued that LS had not been granted primary care of the children on July 25, 2018, and that the matter had simply been adjourned to allow AE time to retain counsel and provide evidence. Mr. de Vries argued that LS had been granted primary care on July 25, and that the Court should not "overturn" the July 25 Order. The Court decided to order that AE would have parenting time for 40% of each month until the matter could be

considered fully. The terms of the order were finalized on August 24, 2018 (August 24 Order).

11. On April 8, 2019, AE appealed both the July 25 Order and the August 24 Order to the Alberta Court of Appeal. The appeal was allowed and personal costs in the amount of $2000 were ordered against Mr. de Vries because he had failed to draft the July 25 Order fairly and accurately, which in turn led the Court to err in issuing the August 24 Order. The Court of Appeal stated:

> On a plain reading of the transcript, the [July 25] Order was expressly time limited and, therefore, any decision about who the children resided with expired on August 10th – subsequently adjourned to August 20th – to counsel's certain knowledge. Instead of reflecting that the children would stay with the mother temporarily until August 10, 2018, the [July 25 O]rder says: 'The children shall remain in [LS's] primary care until further order of the court'. Appellant's counsel tried to argue this when the matter returned to morning chambers on August 20, 2018, but respondent's counsel, relying on the [July 25] Order he drafted, was adamant that primary care had been decided . . .
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> . . . [Respondent's] counsel . . . could not have failed to understand that the [July 25] Order was only intended to bind the parties until August 10th. While the second chambers application would have been necessary in any event, this appeal would not have been. It was only necessary because counsel wrongly represented to the second chambers judge that primary parenting care had been decided. . .
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> More egregious, though, is that even with the benefit of the transcript, respondent's counsel deflected the blame on the clerk of the court for the drafting error he made and he continued to advance the untenable argument that because primary parenting had been decided earlier, the second chambers judge correctly found that he was precluded by the [July 25] Order from further considering the issue of parenting.

12. In the Statement, Mr. de Vries agreed that he failed to draft a Court order fairly and accurately and that he failed to be accurate, candid, and comprehensive in his submissions to the Court.

Submissions on Sanction

13. In advising the Committee that the parties were making a joint submission on sanction, counsel for the LSA submitted that the proposed sanction was appropriate, would effect the necessary specific and general deterrence, and was in line with three previous decisions: *Law Society of Alberta v. Adelowokan*, 2020 ABLS 3; *Law Society of Alberta v. Dudelzak*, 2019 ABLS 2; and *Law Society of Alberta v. Roszler*, 2017 ABLS 5. In counsel's view, the conduct at issue in those three cases was more serious than the conduct in this matter, and each was resolved with a reprimand and costs in an amount similar to that agreed here.

14. LSA counsel noted that Mr. de Vries' conduct was serious, and that as senior counsel, he should have known better. In addition, his conduct had a negative impact on his client's case because the matter had to be taken to the Court of Appeal.

15. Against these aggravating factors, however, LSA counsel submitted that there were also mitigating factors: that Mr. de Vries had no disciplinary history, was cooperative with the LSA throughout, had changed his processes for drafting Court orders, was publicly criticized by the Court of Appeal, and was ordered to pay costs personally.

16. Mr. de Vries' counsel noted his agreement with the LSA's submissions and emphasized that Mr. de Vries had already faced serious consequences for his behaviour at the Court of Appeal. He also argued that Mr. de Vries had learned from this experience and pointed out that Mr. de Vries "plead guilty" at the earliest opportunity.

Decision on Sanction

17. Counsel for the LSA and Mr. de Vries confirmed their understanding that the Committee was not bound by their joint submission on sanction.

18. That said, a Committee is required to give significant deference to a joint submission and should not depart from a joint submission on sanction unless it would bring the administration of justice into disrepute or is otherwise contrary to the public interest.

19. On the facts of this case, the Committee agreed with the submissions of the parties concerning the relevant factors to be considered, and was satisfied that the jointly-proposed sanction was in the public interest and would not bring the administration of justice into disrepute. In combination with the public disapprobation of the Court of Appeal, the Committee was satisfied that the jointly-proposed sanction would deter Mr. de Vries from acting in a similar manner in the future, and that other members of the LSA would understand that serious consequences will flow from misleading the Court.

20. In addition, the conduct in the decisions cited by LSA counsel was comparable to that in this matter, and each resulted in a similar sanction. Both the *Adelowokan* case and the *Roszler* case involved a lawyer's failure to be candid with an adjudicator, and the *Dudelzak* case involved inadvertent misstatement to a Court that was denounced by the Court. In each case, the lawyer was reprimanded and ordered to pay costs in a comparable amount. The Committee was therefore satisfied that the jointly proposed sanction was reasonable and proportionate.

21. The approach taken by the parties in dealing with this matter through an agreed statement and admission of guilt also avoided an unnecessary contested hearing, witness inconvenience, and process costs.

22. In the result, the Committee delivered a reprimand and ordered Mr. de Vries to pay $2047.50 in costs to the LSA no later than October 31, 2022.

Concluding Matters

23. There will be no notice to the Attorney General, nor will there be notice to the profession.

24. 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 Mr. de Vries will be redacted and further redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 98(3)).

Dated June 15, 2022

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Deanna Steblyk, QC

Schedule 1

Reprimand

Mr. de Vries, you are a fairly senior member of the Bar of Alberta, and you should be aware that as your regulator, the Law Society has high expectations with respect to matters of conduct and professional ethics.

You are aware that you failed to meet those expectations in this instance. Your misconduct was very serious. As you know, the Courts are busy and rely on counsel appearing before them, especially senior counsel, to make representations on which they can rely without hesitation.

All counsel must be certain they are conveying the truth in all respects to the Courts and are careful in their understanding of all of the details of the matters in which they appear.

To cite from the reprimand given to Mr. Dudelzak in the case cited, which is indeed similar to your own, the members of the judiciary rely on our profession to be scrupulous and diligent in our representations that we make to the Court. As a result, public confidence and the reputation of the profession are also inextricably linked to the quality and comprehensiveness of those representations

That said, as in Mr. Dudelzak's case, I have no doubt that the comments of the Alberta Court of Appeal have had a significant impact on you and have caused you much personal and professional embarrassment and regret. Their comments and the costs awarded against you by the Court were a significant reprimand in themselves. As a result, I am sure you will strive to be better in the future. You must strive to be better in the future, as your regulator, the Courts, the Bar and the public expect.

I expect not to see you before us again on a matter like this, and hopefully not at all. Please remain mindful of this experience as you continue with your practice into the future. The Law Society wishes the best of luck to you as you do so.