

**IN THE MATTER OF PART 3 OF THE
LEGAL PROFESSION ACT, RSA 2000, c. L-8**

AND

**IN THE MATTER OF AN APPEAL
REGARDING GEOFFREY GREEN
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

Appeal Panel

Jim Lutz, KC – Chair
Ryan Anderson, KC – Bencher
Glen Buick – Lay Bencher
Levonne Louie – Lay Bencher
Sharilyn Nagina, KC – Bencher
Sandra Petersson, KC – Bencher
Margaret Unsworth, KC – Bencher
Grant Vogeli, KC – Bencher

Appearances

Shanna Hunka – Counsel for the Law Society of Alberta (LSA)
Alain Hepner, KC – Counsel for Geoffrey Green

Hearing Date

June 16, 2023

Hearing Location

Virtual Hearing

APPEAL PANEL DECISION

Overview

1. Geoffrey Green is a 30-year practitioner from Edmonton.
2. Mr. Green and Shawn Beaver met in law school, where they became close friends. Mr. Green sought Mr. Beaver's input and advice on various files through

his law practice and in due course, Mr. Beaver became one of Mr. Green's closest confidants.

3. Mr. Green suffered personal setbacks throughout his life, starting with the death of his father, followed by a battle with addiction. By 1998 he was homeless, but by late 2002 and early 2003, Mr. Green had turned his life around and returned to the practice of law. He credited Mr. Beaver with assisting in this rehabilitation. In subsequent years, Mr. Green continued his relationship with Mr. Beaver. They conferred about files, referred work to each other, and maintained a close and supportive relationship. In late 2014 into early 2015, Mr. Green lent Mr. Beaver \$25,000.00, a debt Mr. Beaver worked off by providing legal services for Mr. Green's law practice.
4. On May 28, 2015, Mr. Beaver was suspended by the LSA, and subsequently disbarred on February 15, 2017. A Notice to the Profession was issued February 16, 2017. Mr. Green was aware that Mr. Beaver lost the right to practice law in Alberta. Nonetheless, he continued a working relationship with Mr. Beaver, paying him for his services. Mr. Beaver worked on at least 55 client files in the years following his suspension. That engagement meant Mr. Green disclosed confidential client information to Mr. Beaver. Mr. Green knew his conduct was wrong but did so because he felt obliged to help his friend.
5. Once LSA investigators became involved, Mr. Green ceased contact with Mr. Beaver and terminated their working relationship. Mr. Green cooperated with the LSA investigation, providing the investigators with all correspondence and file material as required.
6. A Hearing Committee convened an inquiry into the conduct of Geoffrey Green, on July 7, 2022, based on two citations:
 - 1) It is alleged Geoffrey Green knowingly assisted a disbarred lawyer to practice law and that such conduct is deserving of sanction.
 - 2) It is alleged Geoffrey Green breached solicitor-client privilege when he shared client information with a third party without client consent.
7. Mr. Green consented to an Agreed Statement of Facts being tendered, which shortened the time needed for the hearing, spared counsel additional

preparation, and reduced costs. He also expressed remorse, shame and disappointment in himself for maintaining a working relationship with Mr. Beaver during the latter's suspension and disbarment. He apologized to those involved - clients, Crown Prosecutors, the LSA.

8. The Hearing Committee found Geoffrey Green guilty of knowingly assisting a disbarred lawyer to practice law and breaching solicitor-client privilege by sharing client information with a third party without the client's consent. The conduct was found to be deserving of sanction. Mr. Green's entitlement to practice law was suspended for 12 months and he was ordered to pay costs in the amount of \$12,810.63 prior to making an application for reinstatement.
9. The Hearing Committee's full decision and its reasons are detailed in its October 4, 2022 Hearing Committee Report at *Law Society of Alberta v Geoffrey Green 2022 ABLs 20*.
10. Pursuant to section 75 of the *Legal Profession Act (Act)*, Geoffrey Green appealed the Hearing Committee's decision on the following grounds:
 - a. By placing undue emphasis on general deterrence, the Hearing Committee committed an error in principle that impacted the sanction imposed.
 - b. The sanction imposed was unreasonable.
11. On June 16, 2023, a panel of Benchers (Appeal Panel) heard Mr. Green's appeal. After reviewing the Hearing Committee Report, the hearing record, and considering the representations made on behalf of the LSA and Mr. Green, the Appeal Panel confirmed the Hearing Committee's decision on sanction.

Preliminary Matters

12. There were no objections to the constitution of the Appeal Panel or its jurisdiction. A private hearing was not requested so a public hearing was held.
13. The documents establishing jurisdiction, filed by consent, were:

Exhibit 1 - October 4, 2022 - Hearing Committee Report

Exhibit 2 - October 4, 2022 - Email from Law Society to Alain Hepner, KC serving the Hearing Committee Report

Exhibit 3 - October 13, 2022 - Notice of Appeal with attached Covering Email

Exhibit 4 - March 7, 2022 - Email from Law Society to Alain Hepner, KC serving the Hearing Record

Exhibit 5 - April 25, 2023 - Letter of Appointment

Exhibit 6 - April 25, 2023 - Notice to Attend

Exhibit 7 - April 25, 2023 - Email & Cover Letter serving Notice to Attend, with attachments.

Exhibit 8 - May 8, 2023 - Letter of Exercise of Discretion

The Submissions of the Parties

Mr. Green's Position

14. Counsel for Mr. Green contended that a one-year suspension exceeded the term needed to protect the public interest and maintain public confidence in the legal profession. He urged the Appeal Panel to substitute a six-month suspension, in light of Mr. Green's age of 68 years, health condition, past rehabilitative efforts, and because there was no further need for specific deterrence or denunciation in these unique circumstances.
15. Mr. Green's counsel emphasized that this appeal was specific to Mr. Green; it was not Mr. Beaver's appeal. The Hearing Committee, he argued, over-emphasized deterrence and a need to send a strong message about Mr. Beaver and his relationship with Mr. Green without properly considering the factual context of the relationship - that constituted an error in principle justifying a review of the Hearing Committee's sanction imposed. Imposing an exemplary sanction on Mr. Green artificially elevated the seriousness of the citations and effectively eliminated an accurate assessment of Mr. Green's conduct.
16. Mr. Green's counsel acknowledged that general deterrence was warranted but contended that individual deterrence was unnecessary: it was wrong to impose a disproportionate sanction simply to send a message. He urged the Appeal Panel

to temper denunciation and deterrence with proportionality and restraint to achieve an appropriate sanction.

17. On Mr. Green's behalf, his counsel asserted that the Hearing Committee failed to give sufficient weight to the following mitigating factors in Mr. Green's case:
 - i. his contribution to assist marginalized clients on access to Legal Aid;
 - ii. his goal was to help his clients, using Mr. Beaver's legal knowledge;
 - iii. the absence of a dishonest or selfish motive;
 - iv. cooperation with the investigation;
 - v. admissions made before the Hearing Committee;
 - vi. his personal circumstances were compelling;
 - vii. he offered no excuse for his conduct; and
 - viii. numerous letters of support were filed on his behalf.
18. In these unique circumstances, including that the citations related to helping a disbarred lawyer practice, and breaching confidentiality of client information, imposing an exemplary punishment was an error.
19. The jurisprudence on point reflects no comparator case to the matter at bar. The closest is that of *Law Society of British Columbia v. Singh*, [2021] LSDD No 52, which imposed a two-year suspension on more egregious facts and more citations. That case led the Hearing Committee to a 12-month suspension.
20. In sum, counsel for Mr. Green argues that if there is no need for individual deterrence, the Hearing Committee committed an error by imposing an exemplary or crushing sentence that was not necessary in all the circumstances.
21. Mr. Green asked the Appeal Panel to impose a six-month suspension with costs.

Position of the Law Society

22. LSA counsel pointed to Mr. Green's disciplinary history, noting on March 11, 1999, disciplinary proceedings were held by the LSA in relation to the conduct of Mr. Green, which resulted in Mr. Green being found guilty of the following:
 - a. Breaching undertakings given to the LSA;

- b. Failing to be candid with the LSA;
 - c. Three instances of misappropriation of trust funds; and
 - d. Failure to follow the Accounting rules of the LSA.
23. Mr. Green admitted guilt to all the above citations and was suspended for 16 months, reprimanded and fined, and compelled to abide by numerous conditions related to maintaining his sobriety.
24. Counsel for the LSA acknowledged the record and citations were dated but contended they are still relevant as the discipline history relates to governability, although maintaining sobriety since 1999 is mitigating. On the other hand, a letter of support sent on behalf of Mr. Beaver at the time of his disciplinary hearing by Mr. Green was misleading, and therefore undermined the character and governability of Mr. Green.
25. In support of the propriety of the 12-month suspension imposed by the Hearing Committee, LSA counsel relied on the facts as set out in the Hearing Committee Report in *Green*, in particular at paragraph 14.
26. The circumstances in the appeal before this Appeal Panel show a senior practitioner in a working relationship with a suspended, and later disbarred lawyer which is something the LSA submits cannot be countenanced. Nor did Mr. Green end that relationship on his own: his financial arrangement with Mr. Beaver continued until LSA investigators questioned Mr. Green. The fact that Mr. Green knew of Mr. Beaver's suspension and ultimate disbarment aggravate his conduct. Mr. Green's remorse was considered by the Hearing Committee, but that merely reinforced what he already knew or should have known about working with Mr. Beaver in such circumstances.
27. The breach of solicitor-client privilege on dozens of files over a four-and-a-half-year period was another serious concern. Whether or not the clients were harmed by disclosing their confidential information was irrelevant because such conduct harms the public trust, which is paramount.
28. There were no apparent medical or mental health issues related to the current citations which might justify a lesser sanction. In fact, Mr. Green was not duped or coerced, nor did he simply make a mistake – his actions were intentional.

29. LSA counsel submitted that Mr. Green failed to point to any error in principle that would justify setting aside the Hearing Committee’s sanction decision. The 12-month suspension was less than the 24 months sought by LSA counsel at the Hearing Committee stage. It was a proper and balanced result, responsive to general deterrence without overemphasizing it. To buttress that point, LSA counsel cited paragraph 60 of the Hearing Committee’s decision, “That said, the Committee does not wish to overemphasize general deterrence.” The Appeal Panel should not therefore intervene in this case.

Standard of Review

30. Counsel for both Mr. Green and the LSA agreed the appropriate standard of review is set out in *Yee v. Chartered Professional Accountants of Alberta*, 2020 ABCA 98 at paragraph 35:

When reviewing the decision of a discipline tribunal, the appeal tribunal should remain focused on whether the decision of the discipline tribunal is based on errors of law, errors of principle, or is not reasonably sustainable. The appeal tribunal should, however, remain flexible and review the decision under appeal holistically, without a rigid focus on any abstract standard of review: ***Halifax (Regional Municipality) v Anglican Diocesan Centre Corporation***, 2010 NSCA 38 at para. 23, 290 NSR (2d) 361. The following guidelines may be helpful:

- (a) findings of fact made by the discipline tribunal, particularly findings based on credibility of witnesses, should be afforded significant deference;
- (b) likewise, inference drawn from the facts by the discipline tribunal should be respected, unless the appeal tribunal is satisfied that there is an articulable reason for disagreeing;
- (c) with respect to decisions on questions of law by the discipline tribunal arising from the profession’s home statute, the appeal tribunal is equally well positioned to make the necessary findings. Regard should obviously be had to the view of the discipline tribunal, but the appeal tribunal is entitled to independently examine

the issue, to promote uniformity in interpretation, and to ensure that proper professional standards are maintained;

(d) with respect to matters engaging the expertise of the profession, such as those relating to setting standards of conduct, the appeal tribunal is again well-positioned to review the decision under appeal. The appeal tribunal is entitled to apply its own expertise and make findings about what constitutes professional misconduct: **Newton** at para. 79. It obviously should not disregard the views of the discipline tribunal, or proceed as if its findings were never made. However, where the appeal tribunal perceives unreasonableness, error of principle, potential injustice, or another sound basis for intervening, it is entitled to do so;

(e) the appeal tribunal is also well-positioned to review the entire decision and conclusions of the discipline tribunal for reasonableness, to ensure that, considered overall, it properly protects the public and the reputation of the profession;

(f) the appeal tribunal may also intervene in cases of procedural unfairness, or where there is a reasonable apprehension of bias.

31. The determination of sanction involves questions of mixed law and facts. The standard of review is reasonableness, so that “a sanction decision should only be disturbed if it is demonstrably unfit or was based on an error in principle.”
32. The Appeal Panel agrees this is the correct standard of review.
33. Counsel for LSA provided authorities indicating a range of sanctions of between six months (*Law Society of Upper Canada v. Seif* [2018] LSDD No 9) and 24 months (*Law Society of British Columbia v. Singh* [2021] LSDD No 52) for allowing a disbarred lawyer to practice law.
34. Cases concerning the sharing of confidential client information by a lawyer resulted in a sanction range from a reprimand in *Law Society of Alberta v. Belzil*, [2008] LSDD No 167, *Law Society of Upper Canada v. A. Member 2005* CanLII 16408 to a brief suspension or fine, *Law Society of British Columbia v. McLeod*, 2015 LSDD No. 15 et al.

35. Prior decisions may be persuasive and useful guidelines for the sanctioning process, to assist in uniformity and consistency, but they are not binding. The cases submitted to this Appeal Panel were of assistance and helped in considering the matter.

Analysis

36. The Hearing Committee identified that the primary purpose of disciplining lawyers is to protect the public interest and maintain public confidence in the legal profession. Sanction orders should therefore seek to achieve both specific and general deterrence to ensure the LSA can govern its members and denounce the conduct at issue.
37. A hearing committee should also consider additional factors when determining sanction, which include:
- a. Prior discipline record;
 - b. Length of time the lawyer has been in practice;
 - c. Acknowledgment of wrongdoing including self-reporting and admission of guilt;
 - d. Level and expression of remorse;
 - e. Level of cooperation during the Conduct Proceedings such as attendance at PHCs, adherence to the pre-hearing Rules, etc.;
 - f. Medical, mental health, substance abuse or other personal circumstances that impacted the lawyer's conduct;
 - g. Restitution made, whether partial or in full;
 - h. Rehabilitation since the time of the misconduct;
 - i. The extent to which the lawyer benefitted from the misconduct; and
 - j. Whether the misconduct involved taking advantage of a vulnerable party.
38. Counsel for the LSA urged the Appeal Panel to consider these factors in the context of Mr. Green's appeal, and emphasized:

- a. The prior discipline record – though dated, it is relevant;
 - b. Mr. Green is a senior practitioner as distinct from a young or inexperienced one;
 - c. The acknowledgement of wrongdoing is mitigating;
 - d. Mr. Green’s expression of remorse was accepted by the Hearing Committee as significant;
 - e. The degree of cooperation was not expressly argued but it appears Mr. Green was cooperative with investigators and the investigative process. Signing the Amended Statement of Admitted Facts reflected a significant expression of remorse and responsibility;
 - f. Evidence of medical, mental health, substance abuse or other personal circumstances were viewed by the Hearing Committee as mitigating on sanction;
 - g. Restitution was not a relevant sanction consideration here;
 - h. Mr. Green’s rehabilitation occurred prior to these citations issuing;
 - i. The extent to which Mr. Green benefited was considered at paragraph 53 of the Hearing Committee Report without any conclusion being reached on the evidence; and
 - j. The conduct involved taking advantage of a vulnerable party – the uninformed clients whose files were made available to Mr. Beaver.
39. All the above noted factors were considered by the Hearing Committee and argued by LSA counsel on this appeal.
40. The twin fundamental purposes of sanction are specific and general deterrence. Mr. Green’s counsel submitted that the Hearing Committee overemphasized deterrence by imposing an exemplary sentence, whereas counsel for the LSA conceded specific deterrence was not in issue.
41. Mr. Green’s chief complaint is the Hearing Committee elevated general deterrence to a position of ultimate primacy. Doing so, he said, would sacrifice any meaningful consideration of Mr. Green’s rehabilitation, governability and ability to assist a marginalized population.

42. The Hearing Committee took great care to address specific and general deterrence. It accepted that general deterrence weighed more heavily in this case, to caution other Alberta lawyers that assisting Mr. Beaver or other unauthorized individuals to engage in the practice of law will attract severe consequences. Nonetheless, it expressly affirmed the need to temper the sanction in the context of this case, noting, “that said, the Committee does not wish to overemphasis general deterrence.” The Committee noted specific and general deterrence are primary considerations, but “the pursuit of general deterrence does not warrant imposing a crushing or unfit sanction”: *Walton v. Alberta (Securities Commission)*, 2014 ABCA 273 at para 154. (Hearing Committee Decision para 61)
43. The Hearing Committee Report on sanction expressly stated there is little need for specific deterrence as it is highly unlikely Mr. Green would engage in future similar behaviour. LSA counsel in this appeal conceded this point. The Appeal Panel agrees. Mr. Green’s circumstances were unique, and it is unforeseeable that he, given his age, would find himself in a similar situation in future.
44. The Appeal Panel’s reading of the decision of the Hearing Committee reflects significant weight was given to Mr. Green’s personal circumstances and rehabilitative efforts. The suspension was half the duration proposed by counsel for the LSA.
45. The Appeal Panel is not persuaded the Hearing Committee erred or imposed an exemplary sentence. Moreover, the Appeal Panel is of the view that the sanction imposed was not unreasonable, but rather was within the range of acceptable sanctions.
46. Although there were no directly comparable sanction cases, the reported decisions were helpful, but not determinative. Little would be gained by distinguishing them on a case-by-case basis; each hearing is adjudicated on its own merits.
47. The Hearing Committee was in the best position to decide the appropriateness of sanction imposed. The Appeal Panel is not to substitute it with a sanction it might have imposed if it were the hearing committee. In the absence of a reviewable error, the decision of the Hearing Committee should be upheld.

48. In *Law Society of Alberta v. Virk*, 2021 ABLS 16, the majority of that appeal panel in that case noted at paragraph 107:

Although it is the case that a hearing committee must consider whether a contemplated sanction falls within an acceptable range of sanctions, it is also the case that:

Although most participants in the discipline process might agree that similar penalties should be imposed for similar cases of misconduct, the penalties imposed for similar misconduct differ widely, both within and among jurisdictions. This is largely due to the fact that one of the main purposes of the process is to protect the public. It may be entirely appropriate that a lawyer who is proven to be incorrigible be disbarred for the same conduct for which a different lawyer is reprimanded if the discipline hearing panel is reasonably satisfied that the likelihood of recurrence is minimal in the latter case.

G. MacKenzie in [Lawyers & Ethics: Professional Responsibility and Discipline](#), looseleaf ed. (1993 as updated).

49. The Hearing Committee is in the best position to determine what is a just and appropriate sanction and the discretion of the Hearing Committee should be interfered with lightly.
50. None of the cases submitted are sufficiently similar to the one at bar to persuade this Appeal Panel that the Hearing Committee erred in its assessment of the appropriate sanction. That is so even, as argued by Mr. Green's counsel, in the absence of fraudulent duplicity resulting in actual harm which would justify a higher penalty.
51. A lawyer's ability to receive and hold confidential client information is a fundamental tenet of a member's duty to the client and the profession. Breaching that trust imperils the public perception of the duty of a lawyer to a client and undermines the most basic foundation of the solicitor-client relationship.
52. As one of the only constitutionally and jurisprudentially protected privileges, client confidentiality must be safeguarded almost without exception and vigorously defended by the law societies, as aptly stated by counsel for the LSA in their

written argument. It is not just the client who is harmed by the breach. Such misconduct also damages the public's trust in the legal profession and the legal system generally.

53. Mr. Green's decision to allow Mr. Beaver to work on files while suspended or disbarred, regardless of his feeling of indebtedness and his extensive mitigating personal circumstances, fell far below the exacting standards the LSA expects of its senior members. It sets a very poor example for junior members of the bar looking for guidance on how they are to conduct themselves.

Decision

54. The finding of the Hearing Committee regarding Mr. Green's sanction is confirmed and the Appeal Panel dismisses Mr. Green's appeal.

Concluding Matters

55. As ordered at the appeal hearing, costs of the appeal, which the Appeal Panel found to be reasonable, are to be paid by Mr. Green in the amount of \$8,943.38 by February 1, 2025, as per the statement of costs agreed upon by the parties.
56. 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. Green will be redacted and further redactions will be made to preserve client confidentiality and solicitor-client privilege (LSA Rule 98(3)).
57. The Panel thanks both counsel for their excellent submissions.

Dated October 3, 2023.

Jim Lutz, KC

Ryan Anderson, KC

Glen Buick

Levonne Louie

Sharilyn Nagina, KC

Sandra Petersson, KC

Margaret Unsworth, KC

Grant Vogeli, KC