

**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 HEATHER MCCUAIG
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

Single Bencher Hearing Committee

Jim Lutz, KC – Chair

Appearances

Henrietta Falasinnu – Counsel for the Law Society of Alberta (LSA)
Heather McCuaig – Self-represented

Hearing Date

July 9, 2024

Hearing Location

Virtual Hearing

HEARING COMMITTEE REPORT - SANCTION

Overview

1. Ms. McCuaig was admitted as a member of the LSA on September 9, 2005 and her practice was predominantly in the area of family law.
2. On July 1, 2022, Ms. McCuaig was administratively suspended as she failed to file a Trust Safety Annual Report and nonpayment of the lawyer deductible. She currently remains administratively suspended.
3. The following citation was directed to hearing by the Conduct Committee Panel on July 18, 2023:
 - 1) It is alleged that Heather McCuaig practiced law while administratively suspended and that such conduct is deserving of sanction.
4. The LSA and Ms. McCuaig previously submitted a Statement of Admitted Facts, Exhibits and Admissions of Guilt (Agreed Statement) in relation to Ms. McCuaig's conduct to the Conduct Committee for acceptance. The Agreed Statement contains details of the conduct and Ms. McCuaig's admissions to the citation.

5. On March 12, 2024, a panel of the Conduct Committee found the Agreed Statement acceptable.
6. Accordingly, a single Bencher Hearing Committee (Committee) was appointed in this matter. Based on the Conduct Committee's acceptance of the Agreed Statement, it is deemed to be a finding of this Committee that Ms. McCuaig's conduct is deserving of sanction in relation to the above citations. The Committee convened a hearing into the appropriate sanction on July 9, 2024.
7. After reviewing all of the evidence and exhibits and hearing the submissions of the LSA and Ms. McCuaig, for the reasons set out below, the Committee ordered a reprimand. The Committee also ordered costs of \$3,591.57, which were ordered to be paid by October 1, 2024.

Preliminary Matters

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

Agreed Statement of Facts/Background

9. After the commencement of proceedings in relation to Ms. McCuaig's conduct, Ms. McCuaig submitted the Agreed Statement.
10. The Agreed Statement sets out the instances where Ms. McCuaig practiced law while suspended.
11. Ms. McCuaig effectively offered legal advice and acted as counsel for a client, J.T. in the course of a divorce proceeding. In consideration of the advice and assistance to J.T., she sought remuneration for a total of \$650.00.
12. Ms. McCuaig also provided legal assistance to another individual, D.C., who was dealing with a matter in mediation but simply had a few questions prior to mediation. Ms. McCuaig reviewed the mediation brief and provided legal services at a rate of \$250.00 per hour.
13. Ms. McCuaig then agreed to further assist D.C. in reviewing the mediation agreement and prepare a mediation brief.
14. On November 13, 2022, Ms. McCuaig witnessed D.C.'s signature in an arbitration agreement and identified herself as a Barrister and Solicitor. Ms. McCuaig received a total of \$950.00 for legal services.

15. Ms. McCuaig admitted as part of the Agreed Statement that she practiced law while she was administratively suspended contrary to sections 106 and 107 of the *Legal Profession Act (Act)* and that such conduct is deserving of sanction. Ms. McCuaig signed the Agreed Facts on May 13, 2024.
16. The Conduct Committee found the Agreed Statement acceptable on March 12, 2024. 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. McCuaig's conduct is deserving of sanction under section 49 of the *Act*.
17. As provided by section 60(3) of the *Act*, once the Agreed Statement was accepted by the Conduct Committee, the hearing into the appropriate sanction could be conducted by a single Bencher. As a result, I was appointed to conduct the sanction hearing.
18. To summarize the Agreed Statement of Facts, Ms. McCuaig practiced law and received remuneration while she was suspended by the LSA.

Submissions on Sanction

19. Counsel for the LSA argued the absence of a record, the cooperation and admission of responsibility early in the proceedings and the amounts involved (\$950.00 and \$650.00) being minimal amounts, the signing of the Agreed and the cooperation Ms. McCuaig has shown that the appropriate sanction would be a reprimand plus costs in the reduced amount of \$3,591.57.
20. Ms. McCuaig on her own behalf agreed to the suggested disposition noting she had signed the Agreed Statement and that the submission for the sanction would be a joint submission pursuant to the decision of *R. v. Anthony-Cook*, 2016 SCC 43 and the Alberta Court of Appeal in *R. v. Belakziz*, 2018 ABCA 370. Ms. McCuaig also agreed to the costs amount put forward by LSA counsel but sought time to pay.

Decision on Sanction

21. Counsel for the LSA and Ms. McCuaig confirmed their understanding that the Committee is not bound by a joint submission on sanction. 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.
22. In consideration of the above noted mitigating and aggravating circumstances, LSA counsel provided a number of cases outlining the appropriate sanction position for individuals in these circumstances. Again, all sanction decisions are used as a guideline for what the disposition may or may not be. The Committee is not bound by the caselaw, but it is helpful in assessing what similar sanctions would be for similar citations.

23. The approach taken by both Ms. McCuaig and the LSA in dealing with this matter through an Agreed Statement and admission of guilt also avoided an unnecessary contested hearing, witness inconvenience, and process costs.
24. It is the decision of this Committee that a reprimand be imposed, and the reduced Bill of Costs be imposed on the member. Counsel for the LSA and Ms. McCuaig sought time to pay and time to pay was set for October 1, 2024, to which both parties agreed.
25. The Committee delivered the following oral reprimand to Ms. McCuaig at the hearing:

Ms. McCuaig, we all have a responsibility, as lawyers, to the public, not only to maintain the confidence of the public, but the administration of justice, and if the Law Society cannot manage its members, then we have a problem. We need to know that we need to do more to instill confidence in the public and to ensure that they trust what we do. And those sorts of things are best met through, again, complying with the Law Society and its regulations, ensuring we're following what our rules are, and, of course, not practicing law when we are not allowed to do so.

Given that you were told not to practice law and you did anyways is, of but we bounce against that. The fact that you have had 17 years of unblemished conduct, you have had a good practice, you have nothing that would cause anyone concern that you would not listen to this reprimand and take heed from it.

So I ask you this: Do more and do better. The public expects it, and we expect it. But having said that, I appreciate the fact that you have cooperated with the Law Society. You have done everything you can to mitigate the circumstances, and, again, with all the circumstances that you have before us, I think a reprimand and telling you that we can – that you can do better, and you will do better is enough.

I wish you the best of luck, Ms. McCuaig, on whatever practice you determine, to come back to practice, or your new occupation, whatever it is, I think you will do very well and I wish you the very best.

Concluding Matters

26. The Committee considered the above noted conduct and agreed with both parties that no notice to the Attorney General was required.
27. No Notice to the Profession is required given the nature of the conduct involved.

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

Dated October 11, 2024.

Jim Lutz, KC