

**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 DALE ELLERT
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

Single Bench Hearing Committee

A. Danielle Bourgeois – Chair

Appearances

Will Cascadden, KC – Counsel for the Law Society of Alberta (LSA)

Dale Ellert – Self-represented

Hearing Date

April 2, 2025

Hearing Location

Virtual Hearing

HEARING COMMITTEE REPORT - SANCTION

Overview

1. Mr. Ellert was admitted as a member of the LSA on June 26, 1980 and is currently active and practicing. Mr. Ellert does not have a prior disciplinary record with the LSA. On April 20, 2020, the LSA received a complaint about Mr. Ellert, which was subsequently investigated.
2. The following citation was directed to hearing by the Conduct Committee Panel on January 16, 2024:
 - 1) It is alleged Dale Ellert acted in an inappropriate manner with one or more employees and that such conduct is deserving of sanction.
3. The LSA and Mr. Ellert entered into a Statement of Admitted of Admitted Facts and Admission of Guilt (Agreed Statement) in relation to Mr. Ellert's conduct. The Agreed Statement sets out the relevant facts.
4. The Conduct Committee found the Agreed Statement acceptable on December 17, 2024. Accordingly, pursuant to section 60(4) of the *Legal Profession Act (Act)*, it is

deemed to be a finding of this Single Bench Hearing Committee (Committee) that Mr. Ellert's conduct is deserving of sanction in relation to the above citation.

5. On April 2, 2025, the Committee convened a hearing into the appropriate sanction.
6. After reviewing all of the evidence and exhibits, and hearing the submissions of the LSA and Mr. Ellert, for the reasons set out below, the Committee has determined that a reprimand is appropriate and that costs of \$1,000.00 shall be payable within 6 months.

Preliminary Matters

7. 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

8. After the commencement of proceedings in relation to Mr. Ellert's conduct, LSA counsel submitted the Agreed Statement. The Conduct Committee found the Agreed Statement acceptable on December 17, 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 Mr. Ellert's conduct is deserving of sanction under section 49 of the *Act*.
9. 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 Bench. As a result, I was appointed to conduct the sanction hearing.
10. To summarize the Agreed Statement, I note the following:
 - The Complainant was a contractor who worked for Mr. Ellert;
 - On one occasion, Mr. Ellert patted the Complainant on the back of her head while she was working at her desk in Mr. Ellert's office (the Incident);
 - The Incident did not cause any physical harm to the Complainant, however it did cause the Complainant to be upset as the Incident was not consensual;
 - Mr. Ellert acknowledges that the Incident was inappropriate, and unequivocally admits guilt to the essential elements of the citation and that such conduct is deserving of sanction; and
 - In September of 2024, Mr. Ellert completed workplace anti-harassment training voluntarily and at his own cost.

Submissions on Sanction

11. Counsel for the LSA and Mr. Ellert agreed by way of joint submission on sanction that a reprimand was the appropriate sanction.

12. In support of the joint submission, counsel for the LSA relied on the decisions of the LSA in: *Law Society of Alberta v. Abbi*, [1995] L.S.D.D. No. 291, *Law Society of Alberta v. Randhawa*, 2014 ABLS 41, and *Law Society of Alberta v. Rauf*, 2022 ABLS 1. Counsel for the LSA noted that all of the aforementioned authorities resulted in a reprimand and, in some cases a fine, for conduct that was of a more egregious nature than that of Mr. Ellert.

Decision on Sanction

13. Counsel for the LSA and Mr. Ellert 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, also referred to the public interest test as set out in *R. v. Anthony-Cook*, 2016, SCC, 43 at paragraphs 29 – 34.
14. The LSA's Pre-Hearing and Hearing Guideline (Guideline) at paragraph 98 notes that the prime determinant of the appropriate sanction is the seriousness of the misconduct and that the seriousness of the misconduct may be determined by various factors, some of which include: the degree to which the misconduct constitutes a risk to the public and a risk to the reputation of the legal profession, the harm caused by the misconduct, the number of incidents involved, and the length of time involved.
15. In this case, Mr. Ellert's conduct while relatively serious as it involved physical contact with a co-worker, was a single isolated incident that did not pose ongoing risk to the public or the reputation of the legal profession.
16. There were no aggravating factors found. In terms of mitigating factors, the approach taken by both Mr. Ellert and the LSA in dealing with this matter through the Agreed Statement avoided a contested hearing, witness inconvenience, and process costs. Mr. Ellert further attended workplace anti-harassment training voluntarily and at his own cost.
17. I agree with counsel for LSA that the aforementioned cases contain conduct that was more egregious than that of Mr. Ellert as set out in the Agreed Statement, although I note that the earlier cases, particularly the *Abbi* decision from 1995, came about in a different sociocultural landscape than where we are at some 30 years later.
18. The Committee finds that a reprimand is the appropriate sanction and satisfies the public interest test. In accepting the joint submission, the Committee delivered an oral reprimand as follows:

Mr. Ellert, the Hearing Guide of the Law Society requires that the Hearing Committee take a purposeful approach to sanctioning a member who has been found guilty of conduct deserving of sanction. The fundamental purpose of sanctioning is the protection of the best interests of the public and the protection of the reputation and standing of the legal profession generally.

Mr. Ellert, I acknowledge your co-operation with the Law Society leading up to today in resolving this complaint by admitting guilt and by proceeding with a single Benchers hearing. Your admission has permitted this citation to be resolved on a more efficient basis, which is not just a benefit to you, but is a benefit to the public and to the Law Society.

Mr. Ellert, you are an experienced lawyer, having practiced for over 40 years. It is clear to me that you have a long and principled career having made significant contributions to the administration of justice in Alberta. Your career has been exemplary until this citation.

I expect that facing this citation now, at this stage of your career, is an enormous disappointment. You have admitted guilt on the single citation before me. This citation was serious, it involved physical contact that the complainant did not consent to, and caused the Complainant to be upset. By engaging in this conduct, you put your professional reputation and integrity at risk and brought into question the safety of those with whom you work with.

I note that since this complaint was made in 2020, you completed a course on Workplace Violence and Harassment: A Practical Guide to the Prevention of Psychological Incidents. I trust that you have learned from this incident, from being involved in this complaint process, as well as from the course you completed.

In making these comments today and in expressing this reprimand today, I urge you to constantly have at the forefront of your mind and your practice the integrity required of all of us as members of this profession and the diligence that we all must demonstrate to uphold our reputation and the reputation of this profession.

In concluding, I wish you the best as you move forward from the conclusion of this disciplinary process and thank you for your attendance today.

Concluding Matters

19. The Estimated Statement of Costs at Exhibit 7 detailed total estimated costs of \$8,506.23 incurred by the LSA for the complaint lodged against Mr. Ellert.
20. While not explicitly taking a zero costs position, LSA counsel meaningfully stated that Mr. Ellert's cooperation with the LSA, his admission of guilt, and overall professionalism displayed allowed for the complaints process to move as efficiently as possible.
21. The Committee was referred to the decision of the *LSA v. Farrell*, 2024 ABLS 11, which considered at length the Alberta Court of Appeal's (ABCA) approaches to costs in disciplinary proceedings involving professionals including:
 - Application of the "K.C. factors" as set out in *K.C. v. The College of Physical Therapists of Alberta*, 1999 ABCA 253 applied by the Alberta Court of Appeal (ABCA) in *Alsaadi v. Alberta College of Pharmacy*, 2021, ABCA 313 and *Tan v. Alberta Veterinary Medical Association*, 2022 ABCA 2021;
 - The principle in *Jinnah v. Alberta Dental Association and College*, 2022 ABCA 336, whereby the ABCA held that a professional should not be charged with a significant portion of the costs of an investigation and hearing unless one or more of four enumerated compelling reasons applied.
22. In noting Justice Khullar's comments in *Alsaadi*, the ABCA panel in *Jinnah* reiterated, at paragraphs 131 – 135, that:

A costs problem presents a number of related questions that if posed in the correct order increase the likelihood that the most defensible answer will be produced.^[182] A defensible answer is one that is principled and predictable.

As Justice Khullar observed, the first question is whether a hearing tribunal or an appeal panel should make a costs order against a regulated member.

A number of considerations are at play in answering this question.

It is the profession as a whole, not just the disciplined member, that benefits from the privilege of self-regulation. A regulator's decision adjudging a member to have committed unprofessional conduct communicates an unequivocal message to the public that the regulator protects the public's interest. This, in turn, increases the public's belief that the utilisation of professional services will protect their health and best interests. This positive evaluation of the profession probably increases the public's utilization rate of dental services. Arguably, the professional found to have committed misconduct does not receive a benefit from this determination.

Costs are an inevitable part of self-regulation:^[183]

[Emphasis added]

23. Mr. Ellert admitted in the Agreed Statement that his conduct was inappropriate, and 'unequivocally' admitted guilt to the essential elements of the citations describing the conduct deserving of sanction. The evidence before the Committee as well as the submissions by LSA counsel and Mr. Ellert indicated that Mr. Ellert was remorseful for the Incident and was as cooperative as possible throughout the complaints process.
24. As per the ABCA in *Jinnah*, "costs are an inevitable part of self-regulation". Given the statement and the above-noted factors in this case, the Committee has determined that a significant reduction in costs is warranted. Costs of \$1,000.00 are ordered, payable within 6 months.
25. There will be no notice to the Attorney General and no Notice to the Profession.
26. 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. Ellert will be redacted and further redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 98(3)).

Dated April 15, 2025.

A. Danielle Bourgeois