

**LAW SOCIETY OF ALBERTA**  
**IN THE MATTER OF THE *LEGAL PROFESSION ACT*;**  
**AND**  
**IN THE MATTER OF A HEARING REGARDING**  
**THE CONDUCT OF JOANNE HEMING,**  
**A MEMBER OF THE LAW SOCIETY OF ALBERTA**

**Hearing Committee:**

Kathleen Ryan, Q.C., Chair (Bencher)

**Appearances:**

Counsel for the Law Society – Loraine Champion

Counsel for the Member – self-represented

**Hearing Date:**

October 27, 2015

**Hearing Location:**

Law Society of Alberta at 500, 919 – 11<sup>th</sup> Avenue S.W., Calgary, Alberta

**HEARING COMMITTEE REPORT**

**JURISDICTION AND PRELIMINARY MATTERS**

1. Jurisdiction of the Committee was established and the parties had no objection to the Bencher hearing the matter.
2. The Hearing was held in public.

## **CITATIONS**

3. The Member faced the following citations:
  1. It is alleged that the Member failed to treat D.A., a fellow solicitor, with courtesy and respect, and that such conduct is conduct deserving of sanction; and
  2. It is alleged that the Member used the threat of a complaint to the LSA in an attempt to gain an advantage, and that such conduct is conduct deserving of sanction.

## **SUMMARY OF RESULT**

4. The Member admitted conduct deserving of sanction. The parties jointly submitted that a reprimand was the proper sanction together with an imposition of costs. The joint submission was fit and reasonable. The reprimand was delivered and costs were imposed with time to pay.

## **THE EVIDENCE**

5. At the Hearing, an Agreed Statement of Facts (“Agreed Facts”) was entered as part of the exhibit binder. It states:
  1. Joanne Heming was admitted to the Law Society of Alberta (“LSA”) on August 20, 2007.
  2. She has a general practice in Strathmore, Alberta.
  3. The following conduct is being referred to a Hearing:
    - 1) It is alleged that Ms. Heming failed to treat [D.A.], a fellow solicitor, with courtesy and respect, and that such conduct is conduct deserving of sanction; and
    - 2) It is alleged that Ms. Heming used the threat of a complaint to the Law Society of Alberta in an attempt to gain an advantage, and that such conduct is conduct deserving of sanction.

### **Introduction**

4. MJ made a complaint to the LSA on November 26, 2013.
5. MJ is the president of a company that was in civil litigation with DH. MJ’s company was represented by DA. DH was represented by Ms. Heming.

6. On May 7, 2013 DA applied for and obtained an Interim Interim Order, which was granted by Justice C.S. Anderson [TAB 1 - Transcript of May 7, 2013 Court date]. DH was present but unrepresented as Ms. Heming was not formally retained until approximately a week later. DH asked for an adjournment in order to retain counsel.
7. The Interim Interim Order was an order restraining DH from attending within a 1km radius of various locations until the matter was heard on June 3, 2013 [TAB 2 - May 7, 2013 Interim Interim Order].

#### **Failure to treat a fellow solicitor with courtesy and respect**

8. Ms. Heming alleged that DA had breached the *Code of Conduct* at the May 7<sup>th</sup> application by deliberately misleading the Court about the existence of relevant adverse case law.
9. In an email on June 4, 2013 [TAB 3 - June 4, 2013 Email] she made the following statements to DA:
  - 1) You did not inform the court of the duplicate action although you were aware of same;
  - 2) There was not proper notice of the application;
  - 3) You failed to grant my client a reasonable adjournment so he could retain counsel;
  - 4) You misdirected the court as to the applicable law and did not direct the court to the applicable law although you advised me that you provided my client with *R.D.W.S.U. v. Pepsi-Cola*. Had you properly directed the court to that case, you would not have been successful.
10. The next Court date in the matter was June 11, 2013. The matter had been adjourned from June 3, 2013 to that date. At the June 11, 2013 Court date, which was in an open and full courtroom, Ms. Heming provided her June 4, 2013 email to Justice C.S. Anderson and made submissions contained in the attached transcript [TAB 4 - June 11 and 14, 2013 Transcript]. The matter was adjourned to June 14, 2013.
11. On June 14, 2013 Justice C.S. Anderson held that the order would continue, with some adjustments, until the matter was heard at a Special Application [TAB 5 - June 14, 2013 Interim Order]. Justice C.S. Anderson also found that DA had not misled the Court and that he had acted professionally throughout [TAB 4 - June 11 and 14, 2013 Transcript].
12. A further order was granted on August 19, 2013 [TAB 6 - August 19, 2013 Order]. It ordered solicitor-client costs to MJ's company, which totalled over \$25,000.

13. DA had provided Justice C.S. Anderson with the *R.D.W.S.U. v. Pepsi-Cola* 2002 SCC 8 case at the May 7<sup>th</sup> application, as well as the *Wild Rose Meats Inc. v. Andres* 2011 ABQB 681 case, and did advise the Court of the “duplicate action,” being the small claims action filed by DH [TAB 1 - Transcript of May 7, 2013 Court date].
14. On June 17, 2013 Ms. Heming sent an email to DA apologizing for the allegation she made against him [TAB 7 - June 17, 2013 Email], stating that she wrongly assumed that the claim was in relation to defamation only. In fact, the claim was much broader, including interference with business relations, and other torts.

### **Threatening a complaint to the LSA**

15. In her June 4, 2013 email, she stated that “It is my experience that the foregoing constitutes a number of breaches of the Code of Professional Conduct which could attract a personal cost award and Law Society Sanction. May I please hear from you with a comprehensive settlement offer.” [TAB 3 - June 4, 2013 Email] Although she did not intend to threaten to report DA to the LSA in order to gain an advantage for her client, specifically a favorable settlement for her client, she acknowledges that her June 4, 2013 email was unfortunately worded and likely would have been interpreted in that manner.
16. No complaint was made to the LSA about DA.

### **Conclusion**

17. Ms. Heming admits as fact the statements contained within this Statement of Admitted Facts and Admission of Guilt for the purposes of these proceedings.
18. Ms. Heming admits that her conduct set out herein was conduct deserving of sanction, being incompatible with the best interests of the public and tending to harm the standing of the legal profession generally. She further admits that:
  1. She failed to treat [DA], a fellow solicitor, with courtesy and respect, and that such conduct is conduct deserving of sanction; and
  2. She used the threat of a complaint to the Law Society of Alberta in an attempt to gain an advantage, and that such conduct is conduct deserving of sanction.
6. No additional evidence was led by either party.
7. The Agreed Facts was acceptable and was an admission of guilt of conduct deserving of sanction in accordance with section 60 of the *Legal Profession Act*, RSA 2000 c L-8 (“Act”).

## SANCTION

8. The primary purpose of the Act and the *Code of Conduct* is to protect the public. The corollary to that is that the public must also be protected from acts of professional misconduct: Gavin MacKenzie, *Lawyers and Ethics: Professional Responsibility and Discipline* (looseleaf ed current to 2008) (Toronto: Carswell, 1993), p 26-1.
9. The primary purpose of sentencing in professional misconduct matters is to ensure that the public is protected from acts of professional misconduct: James T Casey, *The Regulation of Professions in Canada* (looseleaf ed current to 2008) (Toronto: Thomson, 2003) at p 14-4.
10. The parties presented a joint submission respecting sanction. A joint submission is to be accepted provided that it is not unfit, unreasonable or contrary to the public interest: *R v Tkachuk* 2001 ABCA 243, 293 AR 171; *Law Society of Alberta v Pearson* 2011 ABL 17.

### Decision Regarding Sanction

11. The parties agreed to a reprimand and payment of costs (within 90 days) by the Member. The joint submission was both fit and reasonable.
12. In this case, the Member was charged with representing a client, a contractor engaged in a litigation dispute who engaged in secondary picketing not only of the complainant's business, but the businesses of others.
13. The Member's client was in need of sound practical advice. Whether that advice was provided is unclear. However, what is clear is that the Member's unfounded personal attack on the ethics of the opposing lawyer in the case fanned the flames of what appears to have been an unreasonable client with an unreasonable objective. In the end, DA's reputation and the other party's reputation were unjustly tarnished. The complainant was put to great expense and the Member's client was ultimately ordered to pay \$25,000.00 in solicitor-client costs.
14. It should be noted that the Court found DA's conduct to be professional at all times.
15. The Member has no prior discipline record, has apologized twice, and has recognized her conduct as wrong. Further, the Member's client continued an unreasonable course of conduct even in the face of existing Court orders. Accordingly, it is not entirely certain that the Member could have changed her client's conduct.
16. Having regard to the nature of the misconduct, the Member was reprimanded and ordered to pay the costs of the Hearing, which costs may be paid within 90 days (January 25, 2016). Counsel for the LSA tendered an estimated Statement of Costs at Exhibit 23.

17. The following reprimand was delivered:

Ms. Heming, in the course of your representation of this client in 2013, you were obliged to conduct yourself in a professional manner. You were obliged to behave professionally with the Court, your client, and opposing counsel. You failed.

You instead chose to use the *Code of Conduct* as a weapon for use in litigation in a manner that appears to be conceived to gain a litigation advantage for your client. In doing so you made false allegations against a Member of the Bar in open Court. You wrongly tarnished the reputation of a lawyer and another party in these court proceedings. You lost your objectivity to further the unrealistic objectives of an apparently difficult client.

Whether the client is difficult or not, your integrity as counsel must remain intact. The Court, the opposing counsel, your client and the public deserve better from you. And your Law Society demands better from you.

Your apology after the fact is an indicator that you acknowledge your failing as is your acceptance of guilt today. You will now have a record with your regulator. We trust that you will not conduct yourself in this fashion again.

## **CONCLUDING MATTERS**

18. In the event of any requests for public access to the evidence in these proceedings, the exhibits and the transcript of the proceeding shall be redacted to protect the identity of the Member's former client and any information subject to proper claims of privilege.
19. There shall be no referral to the Attorney General directed.
20. There shall be no Notice to the Profession issued.
21. Costs of the hearing shall be paid by January 25, 2016.

**Dated at the City of Calgary, in the Province of Alberta, this 17th day of February, 2016.**

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Kathleen Ryan, Q.C.