

**THE LAW SOCIETY OF ALBERTA  
HEARING COMMITTEE REPORT**

**IN THE MATTER OF THE *Legal Profession Act*, and**

**In the matter of a Hearing regarding  
the conduct of BARBARA HERRING**

**A Member of the Law Society of Alberta**

**Hearing Committee:**

Calvin Johnson, Chairperson  
Anthony Young, QC  
Amal Umar

**Appearances:**

Dennis McDermott, QC for Barbara Herring  
Nicholas Maggisano for the Law Society of Alberta

**Introduction and Summary of Result**

1. On February 19, 2015 a Hearing Committee of the Law Society of Alberta (LSA) convened at the Law Society offices in Calgary, Alberta to inquire into the conduct of the Member, Barbara Herring. The Committee was comprised of Cal Johnson Q.C., Chair, Anthony Young, Q.C., and Amal Umar. The LSA was represented by Nicholas Maggisano. The Member was present throughout the hearing and was represented by Dennis McDermott, Q.C.
2. At the commencement of the hearing, counsel for the LSA and counsel for Ms. Herring presented the Hearing Committee with an Admitted Statement of Facts in relation to the citations. This Admitted Statement of Facts is appended to this Hearing Report as Appendix I.
3. On the basis of the Admitted Statement of Facts, and for the reasons that follow, the Hearing Committee found the conduct of Ms. Herring to be deserving of sanction only in respect of Citation 2 referred to below. The Hearing Committee sanctioned Ms. Herring by issuing a reprimand, but made no direction requiring any payment of costs.

**Jurisdiction and Preliminary Matters**

4. Prior to the commencement of the hearing, an Exhibit Book was prepared and exchanged between the parties. By consent, all of the exhibits contained in the Exhibit Book, including the Admitted Statement of Facts marked as Exhibit 6, were entered in the proceedings. The Letter of Appointment of the Hearing Committee, the Notice to Solicitor, the Notice to Attend and the Certificate of Status of the Member, marked as Exhibits 1-4 established the jurisdiction of the Hearing Committee. Included as well within Exhibit 5 was the Certificate of Exercise of Discretion with respect to entitlement to receipt of a Private Hearing Notice.

5. The Chair introduced the Committee and inquired from both the Member and counsel for the LSA whether they had any objection to the composition of the Committee on the basis of bias, a reasonable apprehension of bias or for any other reason. There was no objection by either party as to the composition of the Hearing Committee.

6. There was no application to have the whole or any part of the hearing held in private, and as such, the entire hearing was conducted in public.

### **Citations**

7. The Member faced two citations:

(1) It is alleged that Ms. Herring failed to follow the accounting rules of the Law Society and that such conduct is deserving of sanction; and

(2) It is alleged that Ms. Herring failed to preserve client property that was under her control and that such conduct is deserving of sanction.

### **Evidence**

8. As noted above, the whole of the Exhibit Book was entered into evidence, by consent, including documents establishing jurisdiction of the panel.

9. The Admitted Statement of Facts was included by consent within the Exhibit Book and was tabbed as Exhibit 6. The Admitted Statement of Facts was signed by the Member on February 19, 2015 and the Member acknowledged same.

### **Facts**

10. The Admitted Statement of Facts is reproduced as Appendix 1 to this Report.

11. Admission of Facts:

*Barbara Herring admits, as fact, the statements contained within this Admitted Statement of Facts for the purposes of these proceedings. Ms. Herring admits that all correspondence sent to her was received by her on or about the dates indicated, unless stated otherwise.*

12. Counsel for the LSA called no further evidence, but did provide argument as to the reasons for a determination of conduct deserving of sanction in respect of each Citation.

13. Counsel for Ms. Herring called no further evidence, but provided argument against a determination of conduct deserving of sanction in respect of each Citation.

### **Findings of Hearing Committee**

14. Based upon the Admitted Statement of Facts, and taking into account the submissions of counsel, the Hearing Committee made a determination that the conduct of the Member in respect of Citation 1 did not rise to the level of conduct deserving of sanction. In respect of the second citation the Hearing Committee made a determination of guilt and found that the conduct of the Member in respect of Citation 2 was worthy of sanction in relation to failing to preserve client property.

## **Submissions on Sanction**

15. Counsel for the LSA tendered the record of Ms. Herring, which was marked as Exhibit 13 in the Exhibit Book by consent. The Record indicates that the Member has no prior discipline record with the Law Society of Alberta.

16. Counsel for the Law Society and Counsel for Ms. Herring were not in agreement with the appropriate sanction relating to the Citation 2.

17. Counsel for the Law Society acknowledged (i) Ms. Herring's previous lack of any disciplinary record; (ii) that in light of the Member's retirement that there was no risk to the public and no risk of reoffending; and (iii) that a reprimand would be the appropriate penalty without any suspension or fine imposed. In respect of costs, counsel for the LSA argued for actual costs in accordance with an Estimated Statement of Costs entered as Exhibit 12, which was entered in the Exhibit Book by consent. Counsel's argument was that the LSA had been put to investigative costs in the matter but further acknowledged that the Member was not in a financial position to pay and accordingly argued for imposition of these costs only in the event of the Member applying for readmission to the Law Society of Alberta.

18. Counsel for Ms. Herring expressed the position that a reprimand was more than sufficient sanction in the circumstances. He too pointed to the absence of any prior discipline record on the part of the Member, her particular financial circumstances and that the Member has been retired for approximately 4 years. As to costs, Mr. McDermott argued that in the unlikely event Ms. Herring wished to return to practise, it would be inappropriate to impose an impossible financial impediment to that return.

## **Decision as to Sanction**

19. In determining an appropriate sanction, the Hearing Committee is guided by the public interest, which seeks to protect the public from acts of professional misconduct. The primary purpose of disciplinary proceedings is the protection of the best interests of the public and protecting the standing of the legal profession generally. The fundamental purpose of the sanctioning process is to ensure that the public is protected and that the public maintains a high degree of confidence in the legal profession.

20. The Hearing Guide for the LSA, at paragraphs 60 and 61, articulate the relevant factors to be considered in determining the appropriate sanction:

60. A number of general factors are to be taken into account. The weight given to each factor will depend on the nature of the case, always keeping in mind the purpose of the process as outlined above.

- a) The need to maintain the public's confidence in the integrity of the profession, and the ability of the profession to effectively govern its own members.
- b) Specific deterrence of the member in further misconduct.
- c) Incapacitation of the member (through disbarment or suspension).
- d) General deterrence of other members.

- e) Denunciation of the conduct.
- f) Rehabilitation of the member.
- g) Avoiding undue disparity with the sanctions imposed in other cases.

In one way or another each of these factors is connected to the two primary purposes of the sanctioning process: (1) protection of the public and (2) maintaining confidence in the legal profession.

21. The Hearing Committee was influenced in its decision as to sanction by the following factors:

- (a) the Member's co-operation with the LSA;
- (b) that specific deterrence of the Member is not a major concern in this case, and the determination of guilt would most likely be more than sufficient deterrence for this Member in these circumstances;
- (c) that from a general deterrence perspective, however, it is important for all Members of the Law Society of Alberta to understand the seriousness of the role that they play as a custodian of client property. Clients must be able to rely upon the assurance that client property entrusted to a lawyer will be handled, dealt with and preserved appropriately. As was noted in the commentary to the Code of Conduct rule applicable at the time, the duty of care is more akin to that of a fiduciary than a simple bailee.

22. Based upon the evidence that the Hearing Committee has read and heard in this proceeding, and considering the submissions of counsel, and taking into account the foregoing, this panel has determined that the circumstances of this case require that the appropriate sanction to be imposed upon the member is a reprimand.

23. As to costs, the Hearing Committee determined not to impose any further sanction on the Member by way of costs in light of her very special and unique circumstances at present.

24. The Chair delivered the reprimand to Ms. Herring, which acknowledged that the client property could have and should have been handled differently. A copy of the reprimand is appended to this Hearing Report.

### **Concluding Matters**

25. The Hearing Committee Report, the evidence and the Exhibits in this hearing are to be made available to the public, subject to redaction to protect privileged communications, the names of any of Ms. Herring's clients and such other confidential personal information.

26. No referral to the Attorney General is required.

27. No Notice shall be sent to the Profession.

Dated this 20<sup>th</sup> day of August, 2015.

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Cal Johnson, Q.C., Bencher (Chair)

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Anthony Young, Q.C., Bencher

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Amal Umar, Lay Bencher

## REPRIMAND

The practice of law and membership in the Law Society of Alberta is not just a job or a profession per se; it is a trust. We are stewards of our clients' interests and any property they entrust to us, in addition to our roles as stewards of the legal profession and the system of justice as a whole.

When your client entrusted property to you, the role and duties that you assumed were that of a fiduciary and not a mere bailee. It is important that the public have confidence that the Members of the Law Society will carry out those duties diligently over the course of any particular retainer. The evidence indicated that that the client property was not adequately protected in the circumstances and it is for that reason that a sanction has been imposed here today.

Ms. Herring, you have acknowledged the facts in this matter and that the client property could have been handled differently. You have also expressed appropriate remorse for these circumstances. Having regard to your history and all the representations so ably made by your counsel, we have no doubt that this is an aberration, and this is not something that is typical of your conduct. We make the comments and your reprimand in that light and have no concerns whatsoever with respect to any risk to the public. We appreciate greatly your cooperation in allowing this matter to be concluded.

## Appendix 1

**IN THE MATTER OF THE LEGAL PROFESSION ACT**  
**AND**  
**IN THE MATTER OF A HEARING INTO THE CONDUCT**  
**OF BARBARA J. HERRING**  
**A MEMBER OF THE LAW SOCIETY OF ALBERTA**

### **ADMITTED STATEMENT OF FACTS**

#### **INTRODUCTION**

1. Ms. Herring was admitted to the Law Society of Alberta (“LSA”) on June 21, 1979 and practiced in Edmonton, Alberta until she retired on March 22, 2011. She remains a retired member of the LSA.
2. On October 9, 2014 the Conduct Committee Panel issued the following citations:
  1. It is alleged that Ms. Herring failed to follow the accounting rules of the Law Society and that such conduct is deserving of sanction; and
  2. It is alleged that Ms. Herring failed to preserve client property that was under her control and that such conduct is conduct deserving of sanction.

#### **TRUST ACCOUNTING**

3. In September 2009, during a Rule 130 audit, it was discovered that Ms. Herring had not reconciled her trust account for over two years. She had maintained her trust records on a manual basis until 2007. When she filed her Form S with the LSA that year, she understood that the LSA representative told her that she had to start using a computer for her trust accounting and that manual entries were no longer acceptable. She now acknowledges that she may have misunderstood what the LSA representative told her.
4. She cooperated with the audit and signed an undertaking to cease use of her trust account.
5. Between September 2009 and February 2011, she prepared and submitted the reconciliations for her trust account to the LSA. The account was short a small amount and so she paid this to her trust account. The shortage was due to inadvertence, not as a result of her taking any funds.

## **FAILING TO PRESERVE CLIENT PROPERTY**

6. Ms. Herring was named Executrix in the will of her friend and client, L.B., who died in November 2005. In February 2006 she was given custody of a coin collection taken from L.B.'s residence. Ms. Herring placed the coin collection in an unlocked file cabinet on the main floor of her home-office. The coin collection was not inventoried or appraised because it was expected that it would be distributed in kind by agreement among the beneficiaries. At the time Ms. Herring expected that she would only be storing the coins on a temporary basis, but handling the estate took longer than expected.
7. Between 2006 and 2010, Ms. Herring was away from her home and practice for extended periods of time due to medical treatment for health issues and during remediation and restoration necessitated by 3 separate sewer back-ups. During a period of hospitalization for surgery in 2006, she had a temporary employee. She also had a boarder staying in her home during this period.
8. In 2010, Ms. Herring opened the box containing the coins in the presence of the beneficiaries and they all realized at that time that a portion of the coin collection was missing.
9. Ms. Herring thought that the coins might have been removed by her temporary assistant or by her boarder. Another possibility was that they had been removed or lost during the remediation work necessitated by the sewer backups. The value of the missing coins was undetermined.
10. The coins that remained have been provided to the appropriate beneficiaries.
11. In April 2011 Ms. Herring's home was lost to foreclosure. Five boxes of Ms. Herring's law office records and files were found left in her former residence and were turned over to the LSA. They included one client file and trust accounting records, among other materials. Ms. Herring states that the files were inadvertently left behind when the house was vacated.

## **CONCLUSION**

12. Ms. Herring admits as fact the statements contained within this Admitted Statement of Facts for the purposes of these proceedings. Ms. Herring admits that all correspondence sent to or by her was received or sent by her on or about the dates indicated, unless otherwise stated.

ALL OF THESE FACTS ARE ADMITTED THIS 19<sup>th</sup> DAY OF FEBDRUARY, 2015.

"Barbara J. Herring"  
BARBARA J. HERRING