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 Patrick Flynn, a Member of the Law Society of Alberta

A. Introduction

1. On December 12, 2013, a Hearing Committee of the Benchers convened at the Law Society of Alberta office in Calgary to inquire into the conduct of Patrick Flynn. Mr. Flynn was represented throughout by Mr. James Lutz. The LSA was represented by Ms. Molly Nabour-Sykes. The Panel initially included Anne Kirker, Q.C. (Chair), Miriam Carey, Ph.D. (Lay-Bencher), and Anthony Young, Q.C. However, shortly after the commencement of the hearing, Dr. Carey recognized that she had had involvement at an earlier stage in the proceeding (as explained further below). This was disclosed to the parties and Dr. Carey recused herself. Ms. Kirker and Mr. Young proceeded as a quorum of two pursuant to section 66(3) of the *Legal Profession Act*, R.S.A. 2000, c. L-8.

2. The hearing arose from the following citations against Mr. Flynn:

    1. Providing consent to the Crown to proceed summarily on August 13, 2010, without his client's instructions;

    2. Making inadequate efforts to communicate with his client to advise him that his criminal trial dates had been set on January 24, 2011 and March 4, 2011, respectively.

B. Jurisdiction and Preliminary Matters

3. Exhibits 1 through 4, consisting of the Letter of Appointment of the Hearing Committee (Exhibit 1); the Notice to Solicitor issued on May 27, 2013 and acknowledged by Mr. Lutz (Exhibit 2); the Notice to Attend (Exhibit 3); and the Certificate of Status (Exhibit 4) were entered by consent and established the jurisdiction of the Hearing Committee.

4. A Certificate confirming that the Complainant had received a Private Hearing Application Notice and that the Deputy Executive Director had exercised her discretion pursuant to Rule 96(2)(b) and determined that just one other individual was to be served with a Private Hearing Application Notice was entered by consent as Exhibit (5).

5. The Hearing Committee was advised that no party intended to apply to have the hearing held in private. As a consequence, the hearing proceeded in public.

6. At the commencement of the hearing, an Agreed Statement of Facts and Admission of Guilt (Exhibit 9) was proffered by counsel for the LSA and for Mr. Flynn. A preliminary issue then arose when Dr. Carey recognized the facts. It was determined that Dr. Carey had been a member of the panel which

decided an appeal in relation to the complaint against Mr. Flynn at an earlier stage in the proceedings. This was immediately disclosed. The hearing was adjourned so that counsel could consider their respective positions.

7. When the hearing reconvened, it was agreed that Dr. Carey would recuse herself to avoid any apprehension of bias and that the hearing would proceed with a quorum of two Benchers in accordance with section 66(3) of the *Legal Profession Act*.

C. Agreed Statements of Facts and Admission of Conduct Deserving of Sanction

8. The Agreed Statement of Facts and Admission of Guilt (Exhibit 9) stated as follows:

FACTS:

1. *On November 27, 2009, the Complainant R.H was charged with an offence under the Animal Protection Act (Alberta).*

2. *On December 4, 2009, R.H. appeared before a Justice of the Peace. R.H. pled not guilty and a trial date was set.*

3. *By April 27, 2010 letter, the Crown Prosecutor told R.H. he had decided to upgrade the charge to one under the Criminal Code, which would affect R.H's jeopardy in terms of the penalty and would give him the right to elect trial by jury. (Exhibit 6)*

4. *On June 23, 2010, the Crown Prosecutor told Judge Ogle the replacement information was sworn outside the six month deadline and the file had been adjourned to give to R.H. time to consider whether he would consent to a crown election to proceed summarily failing which the Crown would decide to proceed by indictment. Judge Ogle agreed R.H. probably needed legal advice on this election and adjourned the matter to August 13, 2010. (Exhibit 7)*

5. *On June 25, 2010, Legal Aid appointed me to defend R.H.*

6. *On August 13, 2010, I consented to the criminal charge being laid outside the six month period as a summary office. I consented without having discussed this with R.H. and without R.H.'s instructions (Exhibit 8)*

7. *On August 23, 2010, I set R.H.'s trial for January 24, 2011. R.H. asserts he learned of the trial date by calling the court. My normal practice is to call the client within 24 hours of setting a trial date, if my client is not in court with me. To the best of my recollection, R.H. called me after August 23, 2010. I have no notes on my file to support my recollection nor did I write to R.H. to tell him of the trial date.*

8. *The Crown brought R.H.'s file forward on September 23, 2010 to set a new date of March 4, 2011 to which I consented.*

Thereafter I called 403-201-1111 and asked the man who answered to have R.H. call me. R.H. did not call me before January 24, 2011 and therefore I did not tell him the trial had been adjourned from January 24 to March 4. R.H. Drove from BC to Calgary and was at the court house on January 24 when he learned the trial had been adjourned to March 4.

9. On March 2, 2011, I ceased acting for R.H.

ADMISSION OF FACTS AND GUILT:

10. I admit as fact the statements in this Agreed Statement of Facts for the purposes of these proceedings.

11. For the purposes of Section 60 of the Legal Profession Act, I admit my guilt to Citations 1 and 2 directed December 13, 2012.

D. Decision

9. No additional evidence was led by either party. The Hearing Committee concluded that the Agreed Statements of Facts and Admission Guilt was acceptable to it in accordance with section 60 of the *Legal Profession Act*.

10. Mr. Flynn acknowledged to the Hearing Committee that he:

1. made the admissions voluntarily;
2. unequivocally admitted his guilt to the essential elements of the citations;
3. understood the nature and consequences of the admissions; and
4. understood that the Hearing Committee was not bound by any submission made jointly by his counsel and counsel for the LSA regarding sanction.

E. Joint submission on sanction

11. Having found that the agreed Statement of Facts and Admission of Guilt was in acceptable form and that, pursuant to section 60(4) of the *Legal Profession Act*, the conduct of Mr. Flynn as described in Citations 1 and 2, was conduct deserving of sanction, the Hearing Committee invited counsel to address sanction. The Committee was then advised that counsel for the LSA and counsel for Mr. Flynn had prepared a joint submission. The following exhibits were entered by consent:

1. Letter from the Deputy Executive Director certifying that Patrick Flynn has no discipline record (Exhibit 10);
2. Memo prepared by Paule Armeneau, Senior Manager, Regulation, dated July 7, 2013 with enclosed report prepared on behalf of Practice Review dated July 4, 2013 (Exhibit 11); and,

3. Estimated Statement of Costs (Exhibit 12).

12. Counsel agreed that the purpose of sanctioning is to ensure that high professional standards are maintained and public confidence in the legal profession preserved. With those guiding and purposeful principles in mind, it was noted by counsel in their joint submission that disbarment is reserved for the most serious of cases and that suspension is appropriate where, among other things, there is a previous record of conduct deserving of sanction. Because Mr. Flynn had no prior record and had cooperated with the LSA throughout the complaint process, taking responsibility for his conduct and demonstrating a willingness to take steps to avoid any re-occurrence, counsel submitted that a reprimand together with a direction that Mr. Flynn pay the actual costs of the hearing was appropriate.

13. Counsel for the LSA noted that there were no issues with Mr. Flynn's honesty or integrity. Rather, the citations arose from Mr. Flynn's casual approach to the practice of law which had manifested in a lack of understanding and appreciation of his obligation to selflessly serve his client's interests.

F. Decision

14. In determining an appropriate sanction the Hearing Committee is required to take a purposeful approach. The overarching objectives of the sanctioning process are to protect the public and to preserve high professional standards and public confidence in the legal profession: *Law Society of Alberta v. Mackie,* 2010 ABLS 10.

15. In *Lawyers & Ethics: Professional Responsibility and Discipline,* by Gavin McKenzie (at page 26-1): the author states:

> *The purpose of law society discipline proceedings are not to punish offenders and exact retribution, but rather to protect the public, maintain high professional standards, and preserve public confidence in the legal profession.*
>
> *In cases in which professional misconduct is either admitted or proven, the penalty should be determined by reference to these purposes…*

16. Unlike disbarment or suspension, a reprimand does not limit a lawyer's right to practice. It is, however, a public expression of the profession's denunciation of the lawyer's conduct intended to deter future misconduct by the lawyer and within the profession as a whole: *Law Society of Alberta v. Westra,* 2011 CanLii 90716.

17. For a lawyer like Mr. Flynn, with no previous record, it is a permanent record of conduct deserving of sanction. As stated by the Hearing Committee in *Law Society of Alberta* v. *King*, 2010 ABLS 9:

> *A reprimand has serious consequences for a lawyer. It is a public expression of the profession's denunciation of the lawyer's conduct. For*

> *a professional person, whose day-to-day sense of self-worth, accomplishment and belonging is inextricably linked to the profession, and the ethical tenets of that profession, it is a lasting reminder of failure. And it remains a lasting admonition to avoid repetition of that failure. Deterrence and the future protection of the public interest are therefore served accordingly.*

18. The Hearing Committee also considered the authority set out in the Hearing Guide that a joint submission on sanction must be given serious consideration and accepted unless it is unfit, unreasonable, or contrary to the public interest: *R. v. Tkachuk*, 2001 ABCA 243; *Law Society of Alberta v. Pearson*, 2011 ABLS 17.

19. In this case, the Hearing Committee determined that the joint submission on sanction was appropriate, particularly in light of the fact that Mr. Flynn has no prior discipline record and has expressed his remorse and acknowledged his responsibility to his client and to the profession. He has demonstrated a cooperative attitude throughout the proceedings and indeed, has been working with the Practice Review department to ensure the conduct leading to the citations in this case is not repeated.

20. The Hearing Committee ordered that Mr. Flynn be reprimanded and that he pay the actual costs of the hearing. The reprimand was delivered by the Chair at the conclusion of the hearing and is set out below. The actual costs of the hearing totaling $4,782.75 as set out in the Statement of Costs exhibited hereto are to be paid by June 12, 2014.

G. Concluding Matters

21. In the event of any request for public access to the evidence in these proceedings, all exhibits, excepting Exhibit 11, may be made available. The exhibits and transcript of proceedings shall be redacted to protect the identity of Mr. Flynn's client and to protect any information which may otherwise be subject to any claim of privilege.

22. No referral to the Attorney General is required or directed.

H. Reprimand issued

23. The following reprimand was issued by the Chair:

> *Lawyers belong to an independently regulated profession, and with the privilege of that independent regulation and with the privilege we all enjoy to practice law as members of the profession, we have an obligation to serve our clients and the public interest. The public must be served competently.*
>
> *Unfortunately your failure to serve your client and to seek and implement his instruction reflects poorly on you and on our profession. That you*

were doing what you thought was in your client's best interests is not the point.

When a lawyer agrees to represent a client, that lawyer has an obligation to communicate fully with his or her client, and that requires timely and effective communication and appropriate follow-up.

You have a responsibility to communicate with your clients and to receive their informed instructions before proceeding, and you have a responsibility to keep them informed as matters proceed. That did not happen here.

Please don't let it happen again.

Dated at Calgary, Alberta as of January 28, 2014

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Anne L. Kirker, Q.C.

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Anthony Young, Q.C.