

THE LAW SOCIETY OF ALBERTA
HEARING COMMITTEE REPORT – PART 2 OF 2

**IN THE MATTER OF THE *Legal Profession Act*,
and in the matter of a Hearing regarding the conduct of
LAURIE HNATIUK, a Member of the Law Society of Alberta**

1. This matter was heard by a Hearing Committee on May 15 and 16, 2013 arising from six separate complains against Ms. Hnatiuk.

2. The Hearing Committee found sufficient evidence on the balance of probabilities that Ms. Hnatiuk had engaged in conduct deserving of sanction with respect to seven citations as follows:

With respect to her client N.J.:

Ms. Hnatiuk failed to serve her client N.J. by failing to provide conscientious service, failing to implement her client’s instructions, and failing to respond to client communications within a reasonable time.

With respect to her client H.J.:

Ms. Hnatiuk failed to provide conscientious service including any of the following: failing to implement her client’s proper instructions, failing to be punctual in fulfilling commitments, failing to reasonably respond to client communications, and failing to keep the Complainant informed as to the progress of the client matter.

With respect to her client L.J.:

Ms. Hnatiuk failed to provide conscientious service and failed to implement her client’s proper instructions.

Ms. Hnatiuk failed to be punctual in fulfilling commitments made to the Complainant and failed to reasonably respond to communications.

With respect to her client K.C.:

Ms. Hnatiuk failed to serve her client and failed to respond to her client on a timely basis.

With respect to her client D.P.:

Ms. Hnatiuk failed to serve her client and failed to respond to her client on a timely basis.

With respect to her client N.Z.:

Ms. Hnatiuk failed to serve, and failed to respond to communications from her client N.Z. on a timely basis.

3. The Hearing Committee reconvened on September 30, 2013 to hear submissions of the parties on sanction and to deliver its decision in that regard. Between the delivery of the Hearing Committee's decision on sanction and the writing of these written reasons, Hearing Committee member Frederica Schutz, was appointed to the Court of Queen's Bench of Alberta. The remaining Hearing Committee members remain a quorum and these written reasons are authored by those remaining Hearing Committee members.

SUBMISSIONS REGARDING SANCTION

4. Counsel for the LSA tendered four additional exhibits relating to sanction, including confirmation from the Deputy Executive Director of the LSA that Ms. Hnatiuk has no prior disciplinary record. Other exhibits speak to the involvement of Ms. Hnatiuk with Practice Review in 2004 and again in 2011. The latter report resulted in a series of recommendations to assist Ms. Hnatiuk in meeting her obligations and duties to her clients and balancing those responsibilities with her efforts to earn a reasonable and fulfilling living.

5. Counsel for the LSA sought the suspension of Ms. Hnatiuk for a period of 30 to 90 days. LSA counsel argued that a suspension was necessary to protect the public and to maintain the reputation of the profession. Pointing to aggravating factors that would support a suspension, LSA counsel emphasized Ms. Hnatiuk's general lack of accountability and attitude of disregard in the face of largely vulnerable clients. She noted that in a number of instances, Ms. Hnatiuk only completed the work for which she was retained after the intervention and sometimes repeated intervention of the LSA. Notably, she also raised concern with Ms. Hnatiuk's governability. A temporary suspension, she argued, would send a clear message to the profession and to the public that the level of disregard displayed by Ms. Hnatiuk will not be tolerated.

6. Counsel for the LSA also noted a number of mitigating factors that might influence the Hearing Committee's decision on sanction, including that Ms. Hnatiuk was a senior experienced practitioner with no prior disciplinary record. She also noted that at the time the complaints arose, Ms. Hnatiuk was a sole practitioner and now practices within Davis LLP.

7. In his submissions on behalf of Ms. Hnatiuk, Mr. Lutz argued that weighing all of the factors, a reprimand along with a fine was a sufficient and appropriate sanction. He noted that the complaints arose during a discreet period of time and that the LSA and the public have the assurance that the actions that gave rise to the various complaints will not arise again given the very structured environment at which Ms. Hnatiuk now practices. Those changed circumstances in essence provide protection to the public and to the profession by compelling Ms. Hnatiuk to practice in a more disciplined way.

8. Ms. Hnatiuk gave evidence at the hearing. Her evidence was that following her involvement with Practice Review in 2011, she began implementing their recommendations in her practice, including a commitment to return phone calls within 72 hours, providing her clients email updates on their files, and changing her billing practices to include more detail in her Statement of Accounts. She utilized technology more efficiently to maintain her calendar and to communicate.

9. Ms. Hnatiuk also gave extensive evidence as to the practice environment at Davis LLP. Her evidence, paraphrased, was that it was almost impossible for a failure of service to occur because of the structures and supports within the firm. In addition, Ms. Hnatiuk gave evidence that she has narrowed her practice to family law and can rely on the expertise of others within the firm to manage other files. Finally, she referred to being able to rely on the assistance of articling students, paralegals and support staff to fill gaps she is not able to meet herself.

10. In addition to this evidence regarding practice management, Ms. Hnatiuk addressed the complaints giving rise to these proceedings. She offered no excuses with respect to what occurred. When questioned by a member of the Hearing Committee, Ms. Hnatiuk showed vulnerability and embarrassment.

DECISION REGARDING SANCTION

11. In determining an appropriate sanction, the Hearing Committee is to take a purposeful approach to sanction. The overarching purpose of the sanction process is to protect the public, preserve high professional standards, and preserve public confidence in the legal profession: *Law Society of Alberta v. Mackie*, 2010 ABL 10. The purpose of sanctioning is not to “punish offenders and exact retribution”: *Lawyers & Ethics: Professional Responsibility and Discipline*, by Gavin McKenzie (at page 26-1).

12. The *Legal Profession Act*, Section 72(1) requires that a Hearing Committee, on finding a member guilty of conduct deserving of sanction, disbar, suspend or reprimand the member. Unlike disbarment or suspension, a reprimand does not limit a member’s right to practice. It is, however, a public expression of the profession’s denunciation of the lawyer’s conduct and is to deter future misconduct by the member and within the profession: *Law Society of Alberta v. Westra*, 2011 CanLii 90716.

13. When deciding how the public interest should be protected through the sanction process, the Hearing Committee is invited to take into account various factors, including a) the nature and gravity of the misconduct, b) whether the misconduct was deliberate, c) whether the misconduct raises concerns about the lawyer’s honesty or integrity, d) the impact of the misconduct on the client or other affected person, e) general deterrence of other members of the profession, f) specific deterrence of the particular lawyer, g) whether the lawyer has incurred other serious penalties or other financial loss as a result of the circumstances, h) preserving the public’s confidence in the integrity of the profession’s ability to properly supervise the conduct of its members, i) the public’s denunciation of the misconduct, j) the extent to which the offensive conduct is clearly regarded within the profession as falling outside the range of acceptable conduct, and k) imposing a penalty that is consistent with the penalties imposed in similar cases. In addition, the Hearing Committee considers mitigating circumstances that may temper the sanctions that may be imposed including the lawyer’s conduct since the misconduct, the lawyer’s prior disciplinary record, the age and experience of the lawyer and whether the lawyer entered an admission of guilt, thereby showing an acceptance of responsibility: *Law Society of Alberta v. Elgert*, 2012 ABL 9.

14. Considering the nature of Ms. Hnatiuk’s conduct in this matter, the Hearing Committee agrees with LSA Counsel that Ms. Hnatiuk demonstrated a remarkable lack of accountability and an attitude of disregard towards her clients. Ms. Hnatiuk’s clients, the Complainants, turned

to her with personally difficult matters. Many were in vulnerable circumstances. All had reasonable expectations and were reasonable people.

15. However, the Hearing Committee notes the significant change in practice environment for Ms. Hnatiuk since joining Davis LLP and accepts that the structures and supports within that firm environment effectively stand as a front line defence against a failure to diligently serve the clients of that firm, including Ms. Hnatiuk's clients. For that reason, accepting that events like those that gave rise to the complaints are not likely to occur again in the context of Ms. Hnatiuk's current practice, the Hearing Committee concludes that the sanctioning principles of ensuring the protection of the public and maintaining the high standards of the profession can be maintained by delivering a reprimand and ordering Ms. Hnatiuk to pay a fine.

16. Counsel for the LSA tendered an Estimated Statement of Costs. The Hearing Committee orders that Ms. Hnatiuk pay the actual costs of the hearing.

17. As a result, having regard to all of the factors discussed above, the Hearing Committee makes the following order:

- a) Ms. Hnatiuk shall receive a reprimand to be delivered by the Chair of the Hearing Committee;
- b) Ms. Hnatiuk is ordered to pay a fine of \$1,000, payable on or before December 31, 2013;
- c) Ms. Hnatiuk is order to pay actual costs of the proceedings on or before December 31, 2013.

REPRIMAND

18. A reprimand was delivered by the Chair at the conclusion of the hearing, reminding Ms. Hnatiuk that the paramount duty of a member of the Law Society is to provide conscientious service to the public. The *Code of Conduct* gives guidance to its members as to their responsibilities. It provides that a lawyer has a duty to communicate effectively with her clients. The Chair noted that what is effective communication will depend on the nature of the retainer, the needs and sophistication of the client and the need for the client to be able to make fully informed decisions and to provide instructions.

19. The Chair encouraged Ms. Hnatiuk to internalize the structures, processes and support she now works within and to recognize, accept and understand that client service is not just a job or technical systems, but is her responsibility as a member of the LSA.

20. The Hearing Committee hopes that Ms. Hnatiuk has learned from her clients and from her involvement with Practice Review what is expected of her. The Hearing Committee urges Ms. Hnatiuk to learn from the message from this Hearing Committee and from the commitment to client service demonstrated by those with whom she now works that her responsibility to serve the public is of highest importance.

CONCLUDING MATTERS

21. In the event of any request for public access to the evidence heard in these proceedings, the Exhibits and the transcript of proceedings shall be redacted to protect the identity of the Member's former clients, and any information subject to proper claims of privilege.
22. No referral to the Attorney General is directed.
23. There shall be no Notice to the Profession.

Dated at Calgary, Alberta this 30th day of September, 2013.

Nancy Dilts, QC, Chair

Dennis Edney, QC