

**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 HARRY GOUGH**

A Member of the Law Society of Alberta

INTRODUCTION AND SUMMARY OF RESULT

1. On April 8, 2013 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, W. Harry Gough. The Committee was comprised of Robert Harvie Q.C., Chair, Anne Kirker, Q.C., and Larry Ackerl, Q.C. The LSA was represented by Ms. Tamara L. Friesen. The Member was present throughout the hearing and was represented by Dale O. Ellert.
2. At the commencement of the hearing, counsel for the LSA and Mr. Gough presented the Hearing Committee with an Agreed Statement of Facts in relation to the citation. Further, as set out in paragraphs 19 and 20 of the Agreed Statement of Facts, the Member admitted that his conduct was deserving of sanction, pursuant to Section 60 of the *Legal Profession Act*.
3. On the basis of the Agreed Statement of Facts, the admission of guilt referred to above and for the reasons that follow, the Hearing Committee found the conduct of Mr. Gough to be deserving of sanction. The Hearing Committee sanctioned Mr. Gough by issuing a reprimand, a fine of \$2,500.00 and directed the payment of costs in the amount of \$750.00.

JURISDICTION AND PRELIMINARY MATTERS

4. Prior to the commencement of the hearing, an Exhibit Book was prepared and exchanged between the parties. By consent, the whole of the Exhibit Book, including the Agreed Statement of Facts, was marked as Entered as Exhibit 1 in the proceedings, including the Letter of Appointment of the Hearing Committee, the Notice to Solicitor, the Notice to Attend and the Certificate of Status of the Member, establishing the jurisdiction of the Hearing Committee. Included as well within Exhibit 1 was the Certificate of Exercise of Discretion with respect to entitlement to receipt of a Private Hearing Notice.
5. There was no objection by the Member's counsel or counsel for the LSA regarding the constitution 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 one citation:

IT IS ALLEGED THAT you assisted your client in an improper transaction, and that such conduct is conduct 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 Agreed Statement of Facts was included by consent within the Exhibit Book (Exhibit 1) and was tabbed as Exhibit 6. The Agreed Statement of Facts was signed by the Member on April 5, 2013 and the Member acknowledged same.

FACTS

10. The Agreed Statement of Facts is reproduced herein:

*IN THE MATTER OF THE LEGAL PROFESSION ACT
AND
IN THE MATTER OF A HEARING REGARDING THE
CONDUCT OF W. HARRY GOUGH
A MEMBER OF THE LAW SOCIETY OF ALBERTA
AGREED STATEMENT OF FACTS*

1. *Mr. Gough was admitted to the Alberta Bar on June 8, 1976. He practices in Drumheller, Alberta at Schumacher, Gough & Co.*
2. *Mr. Gough's primary area of practice is as a Barrister and Solicitor in general practice.*

Citations

3. *On January 31, 2012, the Conduct Committee referred the following conduct to hearing:*
 1. *IT IS ALLEGED THAT you assisted your client in an improper transaction, and that such conduct is conduct deserving of sanction.*
 4. *The Complainant, Ms. M.K., and her former husband, Mr. C.K. were involved in difficult divorce and matrimonial property proceedings. Mr. Gough represented Mr. K. during part of those proceedings, until November of 2008 [Exhibit 6].*

5. On April 20, 2006, an Order was made in relation to the matrimonial dispute which provided, among other things, that Mr. K was to make "no personal or corporate expenditures in excess of \$10,000.00" without Ms. K's advance consent.

6. Mr. Gough approved the form of this Order and was served with a filed copy of it on April 28, 2006 [Exhibit 6, Tab 1].

7. On July 17, 2007, Mr. K executed a "Memorandum Charging Lands" with repayment of loan(s) not to exceed \$70,000.00. This agreement had the potential to affect the matrimonial assets [Exhibit 6; Tab 2].

8. Mr. Gough signed as witness to the Memorandum and swore an Affidavit of Execution [Exhibit 6; Tab 2].

9. Ms. K became aware of the Memorandum sometime in 2008 through communications with the Bank A.

10. Ms. K complained to the Law Society, alleging, among other things, that Mr. Gough had assisted Mr. K by signing loan documents which included encumbering matrimonial property in violation of the Order [Exhibits 7 and 8].

11. Mr. Gough provided a written response, dated December 21, 2009, which included the following information:

i. The documentation referred to by Ms. K had been prepared by Bank A. It was his understanding that this was for a loan whereby Mr. K was assisting the parties' sons who were required to cover a shortfall for an oil well servicing truck which they were constructing. He stated that the \$70,000.00, as he recalled and Mr. K confirmed, was the shortfall amount. He advised that he had not acted on behalf of Bank A and had not prepared nor registered any of the documentation rather he had simply accommodated Mr. K and the parties' sons by witnessing the documentation [Exhibit 9].

ii. To further assist the sons, Mr. K had lent money to them which loans had been secured by promissory notes, personal guarantees and a general security agreement in order to provide protection to Mr. K. Mr. Gough believed that the Complainant and her lawyer were well aware of this and he referred to the Complainants' registration of a Certificate of *lis pendens* [Exhibit 9, Tab 1, p.4].

iii. He acknowledged that he had approved the April 2006 order and, while he should have been aware of it, he assumed that he had not given it any thought when he had witnessed the execution of the Bank A documentation. Mr. Gough thought the transaction was to help the sons and was not a direct loan to Mr. K [Exhibit 9].

12. The CRO forwarded Mr. Gough's response to Ms. K. on January 11, 2010 and advised the Complainant that it was his view that the conduct of Mr. Gough might not be considered as conduct deserving of sanction [Exhibit 10]

13. In a letter dated January 15, 2010, Ms. K disagreed with the CRO's assessment and provided additional information to the LSA [Exhibit 11]. This included the fact that Mr. Gough had incorporated her sons' business on November 29, 2006 and Mr. Gough's law firm address was listed as the business' registered office [Exhibit 11, Tab 1]. She also expanded her complaint to allege a failure to disclose by Mr. Gough.

14. The additional "failure to disclose" complaint was later dismissed by the Conduct Committee Panel.

15. The matter was then referred to the Manager, Complaints. Mr. Gough provided his written response to the complaint, pursuant to section 53 of the Legal Profession Act on February 11, 2010, adopting his previous response of December 21, 2009 [Exhibit 12].

16. Ms. K provided an additional response on April 16, 2010 [Exhibit 13]. On May 14, 2010, Mr. Gough again replied that he had no further comments to add and was again exercising his option to adopt his response as previously provided [Exhibit 14].

17. Ms. K provided her final response on May 26, 2010 this time including copies of correspondence between Mr. Gough and Ms. K's lawyer regarding the Bank A loan documentation which lead to discovery of the signed Memorandum [Exhibit 15].

18. The matrimonial property issues were settled in September 2010 when the parties executed Minutes of Settlement.

Admission of Facts and Guilt

19. W. Harry Gough admits, as fact, the statements contained within this Agreed Statement of Facts for the purposes of these proceedings. Mr. Gough admits that all correspondence sent to him was received by him on or about the dates indicated, unless stated otherwise.

20. For the purposes of Section 60 of the Legal Profession Act, W. Harry Gough admits he committed the conduct set out in the Citation, and he agrees that it is conduct deserving of sanction.

THIS AGREED STATEMENT OF FACTS IS MADE THIS 5th DAY OF APRIL, 2013

"W.HARRY GOUGH"

W. HARRY GOUGH, Q.C.

11. Counsel for the LSA called no further evidence.

12. Counsel for Mr. Gough called no evidence, and with respect to the Citation in question, Mr. Gough confirmed a plea of guilty to the Hearing Committee.

FINDINGS OF HEARING COMMITTEE

13. In response to further questions from the Hearing Committee, Mr. Gough confirmed that he:

- i) made his admission voluntarily and free of coercion;
- ii) that he made his admission unequivocally admitting his guilt to the citation;
- iii) that he made his admission, knowing the nature and consequences of his admission and of the potential sanctions which might be imposed upon him as a result; and
- iv) that he made his admission, knowing that the Hearing Committee was not bound by any joint submission regarding sanctions that might have been made between counsel for the Law Society and his Counsel.

14. Based upon the Agreed Statement of Facts, and taking into account the responses of Mr. Gough referred to above, the Committee accepted the Member's admission, and made a finding of guilt respecting the sanction against him, finding that Mr. Gough's conduct was worthy of sanction in relation to the Citation for assisting his client in an improper transaction, contrary to an Order of the Courts.

SUBMISSIONS ON SANCTION

15. Counsel for the LSA tendered the record of Mr. Gough, which was marked as Exhibit 16 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 Mr. Gough were not in agreement with the appropriate sanction relating to the citation.

17. Counsel for the Law Society acknowledged Mr. Gough's previous lack of any disciplinary record, and that this conduct appeared to be a very anomalous action for Mr. Gough. Also recognized was the entry of a plea of guilty to what was acknowledged as a triable issue.

18. Counsel for the Law Society conceded that it was unlikely that specific deterrence of Mr. Gough was necessary to protect the public. However, at the same time, Counsel asserts that the nature of the conduct is sufficiently serious – namely, assisting a client in the breach of a Court Order – that general deterrence and the need to assure respect for the legal profession. As such, they submit that a reprimand alone would not be sufficient sanction, referring the panel to the decision of *Bolton v. Law Society*, [1994] 2 All ER 486 at 492 (C.A.). The Bolton case illustrates the potential injury to the public as a whole should the reputation of the profession be injured. In this light, counsel for the Law Society recommended a sanction by way of fine and costs.

19. Counsel for Mr. Gough expressed the position that a reprimand was more than sufficient sanction in the circumstances. He too pointed to the admission of guilt, to the absence of any prior discipline record on the part of the Mr. Gough and to the fact that to the extent that Mr. Gough may have assisted his client in obtaining the financing contrary to a court order, it was inadvertent and in a very peripheral fashion – simply signing a guarantee. Further, the transaction occurred in circumstances where he had assumed his client's estranged spouse would not have opposed the financing, being to assist the business venture of the parties' sons.

DECISION AS TO SANCTION

20. 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.

21. In *McKee v. College of Psychologists (British Columbia)*, [1994] 9 W.W.R. 374 at page 376, the British Columbia Court of Appeal articulated the following principles, which are equally applicable to the disciplinary process for the legal profession:

"In cases of professional discipline there is an aspect of punishment to any penalty which may be imposed and in some ways the proceedings resemble sentencing in a criminal case. However, where the legislature has entrusted the disciplinary process to a self-governing professional body, the legislative purpose is regulation of the profession in the public interest. The emphasis must clearly be upon the protection of the public interest, and to that end, an assessment of the degree or risk, if any, in permitting a practitioner to hold himself out as legally authorized to practice his profession. The steps necessary to protect the public, and the risk that an individual may represent if permitted to practice, are matters that the professional's peers are better able to assess than a person untrained in the particular professional art or science."

22. 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.

23. 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 an officer of the Court - and for a member to in any manner suggest indifferences or lack of respect for an Order of the Court is of the utmost concern. The Court - to a great extent, rely not only upon the inherent authority of their position and the laws that surround their role - but perhaps as importantly, they rely upon the assurance that lawyers appearing before them will impose upon their clients the absolute need for respect for Court process and Court orders. To undermine that respect - even if inadvertent, undermines not only respect for the profession, but it undermines the efficacy of the Judicial System as a whole;
- (d) related to the issue of general deterrence - and for many of the same reasons - is the absolute necessity of assuring the public respect for, and confidence in, the legal profession and the system of justice. Again, to suggest to a client - even inadvertently - that Court orders are not required to be obeyed encourages a disrespect for the very foundation of the rule of law which is the bedrock of our democratic system.

24. 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 some sanction be imposed upon the member beyond a reprimand - as suggested by counsel for Mr. Gough.

25. Taking into account all of the foregoing factors, the Hearing Committee concluded that the public interest would be protected and confidence in the profession maintained through a reprimand combined with a fine, which the panel has levied in the sum of \$2,500.00.

26. In addition, Mr. Gough is directed to pay costs of the hearing in the sum of \$750.00. He is given time to pay the costs within 9 months from the receipt by Mr. Gough of the Hearing Committee's written decision.

27. Mr. Gough is directed to pay a fine in the amount of \$2,500.00. He is given until June 30, 2013 within which to pay the fine and costs.

28. The Chair delivered the reprimand to Mr. Gough, which expressed denunciation for the conduct of a Member that brought discredit to the profession. A copy of the reprimand is appended to this Hearing Report.

CONCLUDING MATTERS

29. 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 Mr. Gough's clients and such other confidential personal information.

Dated this 8th day of July, 2013.

Robert Harvie, Q.C., Bencher (Chair)

Larry Ackerl, Q.C.

Anne Kirker, Q.C.

REPRIMAND

The practice of law and your 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, but, beyond that, each one of us who are Members of the Law Society of Alberta are stewards of the legal profession and in fact the system of justice as a whole.

Mr. Gough, the court order in question was not simply an order that was granted perhaps through prior counsel that you inherited, but it was an order that you signed; and in that order, it stated quite clearly that your client was prohibited from making expenditures in excess of \$10,000 without consent of the plaintiff; and in that order, it was required, if there were any dealings or transactions involving any property interests, that that required notice given to the plaintiff. The provisions in that regard were not complied with by your client, and through what appears clearly to be inadvertence, you facilitated to that extent a breach of that order.

When that order was granted, Mr. Gough, particularly an order that you signed and participated in, it is expected that that order is to be followed, and it's extremely important that the public have respect for a court order; and if counsel, if Members of the Law Society evidence any conduct that suggests that that order does not require respect, that's something that we can't countenance here, and it's for that reason that the sanctions have been imposed here today.

We are a profession of self-regulators. That's a sacred trust. It's something that is becoming very rare in the world. Canada is more and more becoming unique in that respect, and it's a belief that we in the Law Society and in the practice of law believe is important to secure our independence from government and to assure the interests of the system of justice, broadly speaking. To ensure the continued ability to self-regulate, it's manifestly important for us to ensure respect for the rule of law and to respect the authority of our judicial bodies. On this matter, Mr. Gough, and in this case, while you may have done this by inadvertence, you have, unfortunately, put the reputation of the profession at risk.

Now, that being said, Mr. Gough, again, having regard to your history and all the representations made, we have no doubt that this is an aberration, and this is not something that is typical of your conduct; and we have no doubt that all the future work that you do as a lawyer will hold the profession in good stead. So we make the comments and your reprimand in that light, that it's not expected for any reason you would be back here again today, sir. We appreciate your timely guilty plea. We appreciate greatly your cooperation in allowing this matter to be concluded, and those are the representations I would make here today in that regard, sir.