

**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 JOGINDER KANDOLA  
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

**Introduction**

1. A Hearing Committee composed of Scott A. Watson, Q.C., chair, Frederica L. Schutz, Q.C. and Dr. Larry R. Ohlhauser convened June 9, 2010 at the Law Society office in Edmonton to consider the conduct of Joginder Kandola (the "Member"). The Law Society of Alberta ("LSA") was represented by W. Lindsay MacDonald, Q.C. The Member was represented by Mr. G. S. Bains. The Member was present throughout the hearing and the entire hearing proceeded in public.

**Citations**

2. The Member faced three Citations:

Citation 1: It is alleged that you failed to perform undertakings in a timely fashion and that such conduct is deserving of sanction.

Citation 2: It is alleged that you failed to respond to communications from another lawyer in a timely fashion and that such conduct is deserving of sanction.

Citation 3: It is alleged that you failed to respond to communications from the Law Society as requested and in a thorough and responsive manner and that such conduct is deserving of sanction.

**Jurisdiction and Exhibits**

3. Exhibits 1 through 5 were entered by consent, namely, the Letter of Appointment appointing the Hearing Committee members, the Notice to Solicitor with acknowledgement of service setting out the three citations, the Notice to Attend with acknowledgement of service directing the Member to attend the hearing, the Certificate of Status certifying the Member was on the inactive/non-practising list of the LSA, and the Certificate of Exercise of Discretion. The foregoing exhibits established jurisdiction of the Hearing Committee.

4. Neither party objected to the composition of the Hearing Committee.

5. Remaining Exhibits marked 6 through 10, were entered by consent during the course of the hearing.

6. An agreed statement of facts [Exhibit 6] is attached hereto.

## Decision as to Citations

7. The Hearing Committee accepted the Member's statement of admission of guilt of conduct deserving of sanction contained in the agreed statement of facts as being in an acceptable form.

8. Pursuant to section 60 of the *Legal Profession Act*, the Member's admissions are deemed to be findings of this Hearing Committee that the conduct of the Member is deserving of sanction.

9. Accordingly, the Hearing Committee finds that the Member failed to perform undertakings in a timely fashion, failed to respond to communications from another lawyer in a timely fashion, and failed to respond to communications from the LSA as requested and in a thorough and responsive manner and that all such conduct is deserving of sanction.

## Submissions on Sanction

10. A joint submission of counsel was presented by Mr. MacDonald that the Member had no record with the LSA, had cooperated in the hearing process and had agreed on a statement of facts. On that basis, it was their joint submission that the Member ought not to be fined nor suspended, but rather reprimanded.

11. Mr. MacDonald referred the Hearing Committee to *Rault v. Law Society of Saskatchewan*, 2009 SKCA 81 (CanLII), which supports the principle that a hearing committee has a duty to consider joint submissions and if its decision departs from a joint submission, then they ought to give good or cogent reasons as to why the joint submission was inappropriate. Failure to do so will lead to the inevitable conclusion that the decision of the hearing committee is unreasonable. In describing the rationale for this principle in the conduct hearing process, the Court had this to say, at para. 19:

This process can be time-consuming for Benchers involved in the various stages leading to the final penalty imposed by the Discipline Committee and can involve significant costs for both the member and the Law Society. Therefore, all members and the Law Society have a vested interest in ensuring that matters proceed expeditiously. If the member co-operates with the investigation and hearing process and, as happened in the instant case, pleads guilty, and puts an Agreed Statement of Facts before the Hearing Committee, the Law Society is relieved of the burden of proving the allegations in what could, in some instances, be a complicated and protracted hearing with the usual risks and vagaries that may occur in the course of such hearings. If the parties negotiating compromise agreements cannot expect their efforts will be respected, there is little incentive to attempt to negotiate a resolution. For this reason, joint submissions on sentence should be considered by the Discipline Committee in a principled way similar to the jurisprudence in criminal matters and as applied by discipline committees in the provinces noted above.

12. During the course of submissions, Mr. Bains submitted that it was the Member's intent to continue to keep an office and conduct business such as that of a notary public. Following

questioning by the members of the Hearing Committee as to concerns surrounding the type of future business, the Member submitted his written undertaking [Exhibit 10] confirming that until such time as he may be reinstated by the LSA to practice, he will not engage in the practice of law and that he will fully cooperate with any investigation by the LSA forthwith upon request.

### **Submissions on Costs**

13. There was some divergence between counsel on how costs ought to be dealt with.

14. Mr. MacDonald acknowledged the Member's ailing health and poor financial circumstances, but submitted that an order for actual cost should still be made against the Member. However, he submitted it would be appropriate for the Hearing Committee to defer payment until the time of the Member's application to the LSA for reinstatement to practice. That is, if the Member never sought to practice law again in Alberta, he would never be required to pay the costs.

15. It was Mr. Bains' submission that an order for costs ought not to be imposed at all against the Member but instead be waived entirely as Member could not afford to pay given he was not working due to depression and hepatocellular liver cancer, among other ailments. While the Member's wife was employed, she only earned \$2,000 per month. He submitted that if the Hearing Committee nevertheless made an order for costs, he agreed with Mr. MacDonald that the requirement to pay be deferred until the Member's application to the LSA for reinstatement to practice.

### **Decision on Sanction and Orders**

16. The LSA seeks to take a purposeful approach to sanctioning. In particular, the LSA seeks to protect the public and maintain the reputation of the profession. The sanction ought to discourage future behaviour which will have the effect of protecting the public from similar conduct.

17. The Hearing Committee considered the mitigating factors which included the Member not having a previous disciplinary record with the LSA, the risk of recurrence being low, the Member's acknowledgement of wrong-doing, the Member's poor health, his co-operative attitude toward the proceedings, and the Member's remorse.

18. Based on all the foregoing, the Hearing Committee accepts the joint submission of counsel as to sanction and agreed the Member's conduct deserving of sanction warranted a reprimand.

19. The Chair delivered the following reprimand:

Mr. Kandola, your failure to honour undertakings and trust conditions, your failure to respond to opposing counsel, and your failure to respond to the Law Society on a timely basis are all serious matters. Your conduct is incompatible with the best interests of the public and has harmed the standing of the legal profession generally. I must remind you of the importance of abiding by undertakings and trust conditions, and of the need to

make timely response to opposing counsel and the Law Society. Each is an essential duty to be fulfilled by all members of the profession. Mr. Kandola, you must hold yourself to a higher standard in meeting the professional obligations of a barrister and solicitor, especially if you should ever wish to be reinstated.

20. The Hearing Committee ordered that if the Member should apply to the LSA for reinstatement, the Executive Director examine the impact of the Member's medical condition on his ability to practice.

21. The Hearing Committee ordered the Member to pay actual costs of \$2,493.76 and that payment be deferred until the date the Member applies to the LSA for reinstatement to practice.

### **Concluding Matters**

22. The exhibits will be made available for inspection by the public.

23. No separate notice to the profession is ordered.

24. No referral to the Attorney General is required in this matter.

Dated this 10th day of July, 2010.

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Scott Watson, QC – Chair and Bencher

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Frederica L. Schutz, Q.C. - Bencher

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Dr. Larry R. Ohlhauser - Bencher