

IN THE MATTER OF THE LEGAL PROFESSION ACT  
AND IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF  
JESSIE A. DAVIES, A MEMBER OF THE LAW SOCIETY OF ALBERTA

Report of the Hearing Committee

On May 1<sup>st</sup> 2008 a Hearing Committee of the Law Society of Alberta (LSA) convened at the Law Society offices in Edmonton to inquire into the conduct of the Member, Jessie A. Davies. The Committee was comprised of John Higgerty, Q.C., Chair, Bradley G. Nemetz, Q.C., and Shirish Chotalia, Q.C.

The LSA was represented by Michael Penny. Jessie Davies was present and represented throughout by Laura Stevens, Q.C.

## INTRODUCTION

[1] Ms. Davies was admitted to the Bar in 2002 and has worked for Duncan and Craig, LL.P since then. That same year she took on a litigation file involving an application under Dependant Adult Act. In the course of that litigation Ms. Davies did not disclose important documents to opposing counsel, believing them to have no legal force and effect. Undeniably, however, it was her clear obligation to do so.

[2] An agreed Statement of Facts (including an admission of guilt) was filed and accepted by the Hearing Committee. The Committee found that the citation was made out. The Chair issued a reprimand on behalf of the Committee and costs of \$1,876.88 were imposed.

## CITATIONS

[3] The member faced the following citations:

1. It is alleged that you mislead another member of the Law Society of Alberta by failing to disclose documents which ought to have been disclosed to them, thereby breaching the *Code of Professional Conduct*, and such conduct is conduct deserving of sanction.
2. It is alleged that you mislead the Court of Queen's Bench of Alberta, by failing to disclose documents to the Court that ought to have been disclosed, thereby breaching the *Code of Professional Conduct*, and that such conduct to conduct deserving of sanction.
3. It is alleged that you knowingly tendered an affidavit that omitted or misrepresented material facts, thereby breaching the *Code of Professional Conduct*, and that such conduct is conduct deserving of sanction.

[4] At hearing, the following single citation was substituted:

1. "It is alleged that you failed to disclose documents to another lawyer, which you were clearly obliged to disclose, and thereby breached the Code of Professional Conduct and that such conduct is deserving of sanction."

## **JURISDICTION**

[5] Jurisdiction was established by entering as exhibits the Letter of Appointment, Notice to Solicitor, Notice to Attend, Certificate of Status and Certificate of Exercise of Discretion. Further, the member accepted the jurisdiction and composition of the panel.

[6] No application was made to hold any portion of the hearing in private. However, upon conclusion of the hearing, the Chair directed that any reference to the actual names of the clients be redacted.

## **EVIDENCE**

[7] Counsel entered 13 exhibits in the hearing. The most important is Exhibit 11, the "Statement of Facts." It contains an admission of guilt signed by Jessie Davies on May 1, 2008.

[8] These matters arise as a result of a dispute between the five children of J.B., which came to a head in court proceedings under the Dependent Adults Act, commenced by originating notice on December 6, 2002. Davies acted for three of J.B.s' children: W.B., E.B., and I.C.. Anne de Villars represented a fourth, C.S.. The fifth, D.B., acted for herself.

[9] In 1997, J.B. signed a will, enduring power of attorney, personal directive, and a bank's form of power of attorney to manage J.B.'s bank account.

[10] The enduring power of attorney required a medical certification that J.B. was unable to manage her own affairs before it could come into effect. As this certificate was not sought, this power of attorney never became effective.

[11] In 2002, with the assistance of an Edmonton lawyer, Stephen Gawlinski, J.B. signed a new will, enduring power of attorney, and personal directive ("Gawlinski Documents") the effect of which, if valid, was to revoke the 1997 documents. In particular, the 1997 enduring power of attorney was replaced by the 2002 enduring power of attorney ("2002 EPA") which named W.B. and C.S. as joint attorneys.

[12] After these documents were signed, Gawlinski gave the originals to J.B. and W.B.. C.S. was not told the new documents had been signed, and continued to act under the bank's power of attorney.

[13] Davies found out about the Gawlinski Documents at a meeting she attended with W.B., along with a senior lawyer in her firm. At that meeting, she and the senior lawyer

reviewed medical evidence and concluded that at the time the Gawlinski Documents were signed, J.B. lacked capacity. As a result, the senior lawyer advised W.B. not to act on the Gawlinski Documents, and W.B. accepted this advice. Also based on this advice, Davies believed that the Gawlinski Documents had no legal effect.

[14] Instead, W.B. was advised to bring an application in the Surrogate Court for an order appointing her and I.C. as J.B.'s trustees and D.B. as her guardian. The application also sought an accounting from C.S. as to her dealings with J.B.'s bank account.

[15] Davies acted for W.B. (and two of her siblings) on this application and de Villars acted for C.S..

[16] The Notice of Motion for this application stated that there was an existing attorney under an enduring power of attorney, and that person was C.S.. This is consistent with the 1997 power of attorney. The 2002 EPA was not specifically disclosed.

[17] W.B., in her December 5, 2002 affidavit in support of the application, said:

“32. I am aware of various ... Powers of Attorney being signed by my mother, [but] I am not aware that any of them have been brought into effect. I do not have copies of every document, and my concern is that these documents may have been signed by my mother when she did not have proper capacity.....

34. I believe from correspondence from C.S.'s previous lawyer that C.S. is to be the Attorney under a Power of Attorney ... I do not believe C.S. is the appropriate person to act as Attorney for my mother.

42. ... The [financial] information I have is not comprehensive due to the fact I have no access to my mother's accounts.

[18] Davies prepared and commissioned this affidavit.

[19] The Dependent Adults Act, RSA 2000, c. D-11, s. 35(3) says that the Court, in deciding whether or not to make an order for the appointment of a trustee, “shall have regard to the existence of any enduring power of attorney given by the person in respect of whom the application is made.”

[20] The Practice Notes issued under the Surrogate Rules require an applicant to disclose whether or not “the proposed dependent adult [has] signed an enduring power of attorney” and, if so, to give details.

[21] Davies and de Villars discussed the possibility of settlement of the issues raised by the Dependent Adults Act applications, but on February 6, 2003, Davies wrote to de Villars saying:

“[Davies’ clients] have discussed the fact that there are Personal Directives and Powers of attorney that are in existence and have been for several years. However, they are concerned with the validity of these documents.”

[22] By November, 2003, de Villars had become aware of the Gawlinski Documents, and she and her associate, Lois MacLean, contact Davies to ask about it. Davies initially responded that she would have to check her file. Subsequently, Davies did confirm that she did have a copy of the 2002 EPA.

[23] de Villars then enquired as to when Davies had obtained that copy and, in due course, Davies admitted that she had seen a copy prior to the preparation of W.B.’s two affidavits and her February 6, 2003 letter to de Villars.

[24] In the end, the litigation between the B. children was settled on terms which acknowledged the Gawlinski Documents.

## **FINDING OF GUILT**

[25] The Committee concluded that Jessie Davies was guilty as charged concerning the substitute citation contained in Exhibit 11. The failure of Davies to disclose the Gawlinski Documents breaches the standard of disclosure required by the Dependent Adults Act and the Surrogate Court Practice Note. In turn, this is a breach of Davies’ obligation to disclose relevant facts and documents to her opposing counsel. This conduct is worthy of sanction.

## **SANCTION**

[26] Counsel for the Law Society submitted the case of **Law Society of Alberta v. Trawick** (2002). That case also involved the concealment of documents and the unfair taking advantage of opposing counsel. The Committee saw no reason to diverge from the sanction imposed in Trawick.

[27] As in **Trawick**, Jessie Davies comes before the Committee with an unblemished record. Of particular note were the character references entered collectively as Exhibit 13 by Laura Stevens, Q.C.

Duncan and Craig LL.P stands behind Ms. Davies, and continues to employ her. The senior partners who authored the letters clearly express the view that inexperience played the crucial role in the facts before the Committee. This is entirely consistent with paragraph 21 of Exhibit 11, the “Statement of Facts” agreed to by Counsel for the LSA.

[28] The concealment of facts and documents from opposing counsel in a litigation matter is always serious. On the first page of her letter of complaint to the LSA (Exhibit 6), Ms. De Villars alludes to the harm done to her client. The Hearing Committee shares the concerns of Ms. De Villars. Moreover, the orderly progression of cases through the

court system cannot take place unless there is mutual confidence that all the facts are on the table. The public interest is thereby compromised.

[29] Nevertheless, the Hearing Committee was impressed by the submissions of Laura Stevens, Q.C. and the obviously heartfelt remorse of Jessie Davies. The Committee was satisfied that the need for individual and general deterrence could be met by a reprimand and the imposition of an order for costs, and this was so ordered. The reprimand was delivered by the Chair.

[30] The Hearing Committee further ruled that a Notice to the Profession and report to the Attorney General were not required.

Dated this 29th day of September, 2008.

---

John Higgerty, Q.C., Chair

---

Bradley A. Nemetz, Q.C.

---

Shirish Chotalia, Q.C.