



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 John Sinclair, a Member of the Law Society of Alberta.

A. Jurisdiction and Preliminary Matters

1. A Hearing Committee of the Law Society of Alberta (LSA) held a hearing into the conduct of John Sinclair on March 20, 2008. The Committee consisted of Douglas R. Mah, Q.C., Chair, Brian Beresh, Q.C., Committee member and Wayne Jacques, Committee member. The LSA was represented by Lois J. MacLean. The Member was present and was represented by Glenn McAllister.
2. Exhibits 1 through 4, consisting respectively of the Letter of Appointment of the Hearing Committee, the Notice to Solicitor with acknowledgement of service, the Notice to Attend with acknowledgement of service and the Certificate of Status of the Member, were admitted into evidence by consent. The admission of these documents established the jurisdiction of the Committee.
3. There was no objection by the Member's counsel or counsel for the LSA regarding the membership of the Committee.
4. The Certificate of Exercise of Discretion was entered as Exhibit 5. No request for a private hearing had been received and therefore the hearing proceeded in public.
5. Exhibits 6 through 11 were contained in an exhibit binder provided to the Committee members and the parties. The following additional exhibits were also entered into evidence by consent:
 - Exhibit 12 – Agreed Statement of Facts and Admission of Guilt dated January 30, 2008 and signed by the Member;
 - Exhibit 13 – letter dated July 5, 2007 from R. Gregory Busch, Director, Lawyer Conduct, LSA to the Member;
 - Exhibit 14 – letter dated February 25, 2008 from R. Gregory Busch, Director, Lawyer Conduct, to Lois J. MacLean, counsel for the LSA, certifying that the Member has no LSA discipline record as at the date of the letter;
 - Exhibit 15 – Estimated Statement of Costs; and
 - Exhibit 16 – Proposed Directions re: Practice Review Committee.

B. Citations

6. As indicated in the Notice to Solicitor (Exhibit 2), the Hearing Committee was inquiring into two citations:

Citation 1: It is alleged that you failed to be courteous in dealing with the complainant and the crown prosecutor, thereby bringing discredit to the profession, and that such conduct is conduct deserving of sanction.

Citation 2: It is alleged that you failed to respond to the Law Society of Alberta on a timely basis and in a complete and appropriate manner, and that such conduct is conduct deserving of sanction.

C. Agreed Statement of Facts and Admission of Guilt

7. The Agreed Statement of Facts and Admission of Guilt (*Exhibit 12*) states as follows:

1. Mr. Sinclair is a member of the Law Society of Alberta, having been admitted in 1990. Mr. Sinclair was a member at all times relevant to this proceeding.
2. Mr. Sinclair faces two citations as follows:
 - (a) It is alleged that you failed to be courteous in dealing with the complainant and the crown prosecutor, thereby bringing discredit to the profession, and that such conduct is conduct deserving of sanction.
 - (b) It is alleged that you failed to respond to the Law Society of Alberta on a timely basis, and in a complete and appropriate manner, and that such conduct is conduct deserving of sanction.
3. The complaint arises out of a file in which Mr. Sinclair acted for an individual facing criminal charges which were to be dealt with in Stony Plain Provincial Court on November 27, 2006.
4. The Crown Prosecutor on that occasion was Mr. Kerry Hart of the Edmonton Crown Prosecutor's office.
5. A meeting occurred in the Crown Prosecutor's office in the Court House in Stony Plain with Mr. Hart, Mr. Sinclair and Cst. Travis Lindemann present.
6. During that meeting there was a verbal exchange between Mr. Sinclair and Cst. Lindemann. Following that date, Inspector Blake of the RCMP wrote a letter to the Law Society dated December 19, 2006, setting out the complaint against Mr. Sinclair (*Exhibit 6*). The letter of complaint summarized the charges before the Court and set out the concerns of the RCMP relating to the verbal exchange.
7. The key paragraph from Inspector Blake's complaint letter reads as follows:

As the discussion continued Mr. Sinclair wanted Crown to withdraw the breach charges from Cst. Lindemann's file because the accuseds (*sic*) common law wife was not in court. The Crown advised Mr. Sinclair that he would have to consult with Cst. Lindemann first. Mr. Sinclair's response was that he didn't care what the Police had to say because they were not the lawyers. Cst. Lindemann reminded both Mr. Sinclair and Mr. Hart that there was an independent witness who was present in court. It was at this point that Mr. Sinclair rose out of his seat to face Cst. Lindemann, pointing his finger and screaming "You little Prick!" Fuck you! Fuck this! His final words before leaving the room was to say, "We'll run everything from now fucking on!"
8. Mr. Rick Hilborn, Q.C. of the Law Society's Edmonton office then spoke with Inspector Blake and asked him to provide Cst. Lindemann's notes with respect to the

incident on November 27, 2006. The call was confirmed in Inspector Blake's letter of January 3, 2007. (*Exhibit 7*)

9. With that letter of January 3, 2007, Inspector Blake provided the Law Society with a copy of Cst. Lindemann's statement and his handwritten notes. The statement is attached at (*Exhibit 7, Tab 1*), and the handwritten notes are (*Exhibit 7, Tab 2*).
10. On February 12, 2007, Mr. Maurice Dumont, Q.C. couriered a letter to Mr. Sinclair asking for his formal response to Constable Lindemann's complaint. (*Exhibit 9*)
11. No reply was received to that letter.
12. On March 6, 2007, Mr. Dumont, Q.C. sent a further registered letter to Mr. Sinclair noting that no response to the first letter had been received, and asking for Mr. Sinclair's written response. (*Exhibit 10*)
13. No reply was received to that letter.
14. No reply was received by the Law Society to the date when the citations were directed to Hearing.
15. Subsequent to the citations being directed, Mr. Sinclair's counsel, Glenn McAllister, provided Law Society counsel with the original of a letter from John Sinclair to Maurice Dumont, Q.C. dated March 10, 2007. The letter was prepared by Mr. Sinclair, but was never sent.
16. Mr. McAllister noted that Mr. Sinclair had reviewed the draft letter with him in March, 2007.

All of these facts are agreed to and admitted, and I agree that the facts as set out above constitute conduct deserving of sanction. This Agreement is dated the 30 day of January, 2008.

"original signed"

John Sinclair

D. Decision as to Citations

8. During the course of the hearing, counsel for the LSA made an application to the Hearing Committee to amend citation 1 so as to delete reference to the crown prosecutor. The Member's counsel consented to the amendment and, accordingly, the Hearing Committee granted the application. Citation 1 was therefore amended to read:

It is alleged that you failed to be courteous in dealing with the complainant, thereby bringing discredit to the profession, and that such conduct is conduct deserving of sanction.

9. The Hearing Committee determined that the Agreed Statement of Facts and Admission of Guilt (*Exhibit 12*) was in an acceptable form. Consequently, it is deemed for all purposes to be a finding of the Hearing Committee that the conduct of the Member, as stated in the amended citation 1 and in citation 2, is conduct deserving of sanction.

E. Decision Regarding Sanction

10. The Member responded under oath to questions posed by counsel and by the Hearing Committee members. The Hearing Committee also heard submissions regarding sanction from both counsel.

11. The Member stated that he had prepared the March 10, 2007 letter to the LSA (*Exhibit 11*) on or about that day and had thought that he had sent it. He discovered at a later date that, through accident or inadvertence, the letter had never been sent. He stated that upon making this discovery, he “froze” and took no further action to contact the LSA until the present citations were launched. The Member did indicate that any issues relating to office systems that may have caused this inadvertence or accident have been addressed.
12. The Hearing Committee determined that the appropriate sanction is that a reprimand be issued to the Member and that the Member be required to pay the actual costs of the hearing. The Hearing Committee declined to accept LSA counsel’s recommendation that the Member be referred to the Practice Review Committee on a mandatory basis. The Hearing Committee could not find any evidence to suggest that there was a systemic problem with the Member’s practice or that clients were not being well served. However, there was some evidence that the Member has issues relating to stress management. The Hearing Committee imposed a condition that the Member enter into an undertaking to make a self-referral to the ASSIST Program.
13. Pursuant to the undertaking, the Member is required to meet with a counsellor within 60 days or such time as may be arranged with the ASSIST Program. The purpose of the self-referral is to address issues of stress management, whether that stress arises by reason of the practice of law or otherwise. Part of the undertaking will be that the Member remain in counselling for so long as the counsellor deems it appropriate. The Member was advised that since the LSA does not receive reports from the ASSIST Program, the Member would essentially be governing himself with regard to completion of the undertaking.

F. The Reprimand

14. As a regulator, the LSA is responsible for prescribing and enforcing standards of conduct. It is one of the privileges and obligations of self-regulation. Common courtesy is not only a professional standard, it is also a standard of everyday life and normal human relations.
15. The Hearing Committee well recognizes that colourful language is acceptable or at least not objectionable in certain settings, but certainly the precincts of the courts of law would not be one of them. The complainant, a police officer, was clearly taken aback by the language used and the demeanour of the Member. It was pointed out to the Hearing Committee that the door to the room was open and members of the public could have overheard the Member’s inappropriate language. There is no doubt that in this case the reputation of the profession has been diminished.
16. The Member has recognized for himself that the conduct was inappropriate and has indicated that he feels ashamed and embarrassed by it.

17. As to the second citation, the Hearing Committee is of the view that the failure of a member to respond to the Law Society speaks to governability. If members do not cooperate by responding when required, the privilege of independence and self-governance is itself jeopardized. Accordingly, by not responding in a timely manner, the Member has done a disservice to both the profession and the public whom it serves.

G. Concluding Matters

18. There will be no referral to the Attorney General.
19. There will be no notice to the profession.
20. With regard to time to pay, the costs payable are the actual costs of the hearing when determined and they shall be paid within one month of the date of service of the final Statement of Costs upon the Member or his counsel.
21. The actual wording of the undertaking to be entered into by the Member will be agreed to between counsel.
22. The exhibits and proceedings will be available for public inspection, including the provision of copies of exhibits for a reasonable copy fee, except that the identity and other identifying information about the client will be redacted from those exhibits.

Dated this 2nd day of June, 2008.

Douglas R. Mah, Q.C. – Chair and Bencher

Brian Beresh, Q.C. – Bencher

Wayne Jacques – Lay Bencher