

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 SANDRA HUDSON, a Member of The Law Society of Alberta

**Introduction**

1. On May 3<sup>rd</sup>, 2007 a Hearing Committee of the Law Society of Alberta (LSA) convened at the Law Society office in Edmonton to inquire into the conduct of Sandra Hudson (the "Member"). The Committee was comprised of Vivian Stevenson Q.C. as Chair, Hugh Somerville Q.C., and Dr. Larry Ohlhauser. The LSA was represented by Garner Groome. The Member was present for the Hearing. The Member was represented by Timothy Meagher.

**Jurisdiction And Preliminary Matters**

2. Exhibits 1 through 4, consisting of the Letter of Appointment of the Hearing Committee, the Notice to Solicitor, the Notice to Attend, and the Certificate of Status of the Member, established jurisdiction of the Committee.
3. There was no objection by the Member or Counsel for the LSA regarding the constitution of the Committee.
4. The Certificate of Exercise of Discretion was entered as Exhibit 5. Counsel for the LSA advised that the LSA did not receive a request for a private hearing. Counsel for the Member confirmed that no request for a private hearing was being made. The Hearing was held in public.
5. Counsel for the LSA advised that he had not given notice that he would be seeking a lengthy period of suspension, or a disbarment, but indicated that depending on the findings that were made, there could be the potential for a lesser period of suspension.

**Citations**

6. The Member faced the following citations:
  1. IT IS ALLEGED that you failed to take adequate steps to secure an adjournment of the April 6<sup>th</sup>, 2004 court application, contrary to your client's express instructions, and that such conduct is conduct deserving

of sanction.

2. IT IS ALLEGED that you misled your client's friend on April 5<sup>th</sup>, 2004 when you advised the friend that the April 6<sup>th</sup>, 2004 application had been adjourned, and that such conduct is conduct deserving of sanction.
7. At the Hearing, Counsel for the Member applied for a dismissal of the first citation. Counsel for the LSA did not contest the application and the first citation was dismissed for the reasons set out later in this decision.

### **Evidence and Findings of Fact**

8. There were 28 exhibits marked during the course of the Hearing. These exhibits are as follows:
  - a. A binder was entered by consent of the parties containing Exhibits 1 to 24.
  - b. A memo from the Member's client dated April 22<sup>nd</sup>, 2004 was entered as Exhibit 25.
  - c. A letter from the Member's client dated May 17<sup>th</sup>, 2004 was entered as Exhibit 26.
  - d. An Affidavit of M.T. sworn May 2<sup>nd</sup>, 2007 was entered as Exhibit 27.
  - e. A New Matter Report dated December 8<sup>th</sup>, 2003 was entered as Exhibit 28.
9. In addition to the documentary evidence, Counsel for the LSA called Ms. S.E. and Counsel for the Member called the Member to testify.

### **Agreed Statement of Facts and Exhibits**

10. Exhibit 24 is an Agreed Statement of Facts and Exhibits. A copy of that Agreed Statement is attached as Schedule A. The relevant background facts can be summarized as follows.
11. In January of 2004, the Complainant retained the law firm of Castle Hoffman through a Legal Aid Certificate to represent her with respect to issues arising from the break up of her marriage. Those issues included custody, access, child and spousal support and division of property. The Member was an associate at Castle Hoffman, and she assumed conduct of the matter.
12. On January 14<sup>th</sup>, 2004, the Member obtained a court order *ex parte* granting

interim custody of the child of the marriage to the Complainant and other relief. The Member also obtained an *ex parte* restraining order.

13. The Complainant's husband was served with the orders on January 17<sup>th</sup>, 2004.
14. On February 25<sup>th</sup>, 2004, Harold Hinz, counsel for the Complainant's husband filed a motion returnable March 16<sup>th</sup>, 2004 seeking joint custody and other variations to the *ex parte* orders.
15. Mr. Hinz's application was adjourned to April 6<sup>th</sup>, 2004 by consent.
16. The Member was out of the country on vacation from March 18<sup>th</sup> to March 30<sup>th</sup>. She advised Mr. Hinz of this fact by letter dated March 12<sup>th</sup>, 2004 which letter was copied to the Complainant.
17. On March 23<sup>rd</sup>, 2004, the Complainant wrote a letter requesting that the Member obtain an adjournment of the April 6<sup>th</sup>, 2004 application. The letter was received by fax in the Member's office on March 29<sup>th</sup>, 2004.
18. The Member's first day back in the office following her vacation was March 30<sup>th</sup>, 2004.
19. On April 5<sup>th</sup>, 2004 the Member called Mr. Hinz to request an adjournment. She left him a message to call her. The Member called Mr. Hinz on April 6<sup>th</sup> and left a message at 9:14.
20. Mr. Hinz has advised that if he had been contacted between March 29<sup>th</sup> and April 5<sup>th</sup>, he could not have consented to an adjournment.
21. On April 6<sup>th</sup>, 2004, the Member attended chambers. Mr. Hinz participated in the application by phone. The transcript of the application is Exhibit 17 in these proceedings. The transcript discloses that the Member made a preliminary application to adjourn the application to a Special Chambers application.
22. The application was adjourned except that portion of the application that dealt with the identity of the supervising parties for the supervised access of the Complainant's husband. The Complainant was given the opportunity to re-appear to address any concerns she might have regarding the identity of the proposed supervisors.
23. The Member reported to the Complainant about the application on April 6<sup>th</sup>, 2004.
24. On April 8<sup>th</sup> the Member and the Complainant re-attended before the Chambers Justice regarding the issue of supervised access.
25. On August 24<sup>th</sup>, 2004 the Complainant complained to the Law Society that the

Member had mismanaged her file by “not following my instructions or my requests”.

### **Evidence of the Complainant**

26. The Complainant decided to separate from her husband and obtained a Legal Aid Certificate with respect to her divorce. In January of 2004 the Complainant was advised that the Member would be handling this matter on her behalf. The divorce involved the usual issues of property, access and support. There was a 2 year old child of the marriage.
27. The Complainant testified that during the course of the retainer she had a friend named Ms. S communicate instructions to the Member from time to time.
28. Sometime in March or April of 2004, the Complainant travelled to California to attend her mother’s funeral. On March 6<sup>th</sup>, before she left, she asked the Member to obtain an adjournment of an application scheduled for April 6<sup>th</sup>. She conceded that she would have known at that time that the Member was away until March the 29<sup>th</sup>.
29. On April 4<sup>th</sup>, not having heard back from the Member, the Complainant telephoned Ms. S and asked her to get confirmation from the Member that the matter had been adjourned.
30. The Complainant says that on April 5<sup>th</sup> she again called Ms. S and that Ms. S advised her that court would not be proceeding the next day. The Complainant says that she thanked her friend and concluded the discussion.
31. The Complainant’s evidence was that she could not contact the Member herself on the 5<sup>th</sup> because she was spreading her mother’s ashes that day and would be out on the ocean.
32. By letter dated May 19<sup>th</sup>, 2005 (Exhibit 21) the Complainant raised for the first time in the complaint process the fact that the Member had not requested an adjournment prior to attending in court on April 6<sup>th</sup>. That complaint is raised as item 2(A) in Exhibit 21. In testifying about this letter, the Complainant testified that she had made an error in saying that Ms. S called her in California, because it was the Complainant who had called Ms. S on the 5<sup>th</sup> of April. She has no records of these calls, but says she distinctly remembers her sister-in-law being with her when she made the call on the 5<sup>th</sup>.
33. The Complainant testified that she returned to Calgary on the evening of April 6<sup>th</sup> (around 11:30 or midnight) and was met at the airport by Ms. S. Ms. S drove her home. The Complainant says that once she got home, Ms. S advised that court had proceeded that morning, contrary to what the Member had told her on the

5<sup>th</sup>.

34. The Complainant says she spoke to the Member on April 7<sup>th</sup> and the Member advised that the application had to proceed. The Complainant agreed that she did not indicate to the Member that the Member had told Ms. S something different on April 5<sup>th</sup>.

### **Evidence of Ms. S**

35. Ms. S is a close friend of the Complainant who has known her since 1993. She had not dealt with the Member other than when she called the Member at the Complainant's request.
36. Ms. S testified that the Complainant called her one night from out of the country and asked her to contact Ms. Hudson to get confirmation that there was going to be an adjournment of the April 6<sup>th</sup> application. The Complainant was concerned because she had not heard back from the Member regarding the adjournment. Ms. S said that she assumed that the Complainant was unable to make the call herself.
37. Ms. S says she called the Member's office a few times on April 5<sup>th</sup> and heard back from the Member later in the day. She says that the Member told her that there was an adjournment of the application. She cannot recall anything else being discussed. She thinks that she told the Member that she would pass this information on to the Complainant and that the Complainant would be in touch upon her return.
38. According to Ms. S she received a call from the Complainant on the 5<sup>th</sup>. She told the Complainant not to worry, because there was an adjournment. She cannot recall exactly what she discussed with the Complainant other than that and the details of her return flight.
39. Ms. S testified that on April 6<sup>th</sup> she received a call from the Member who advised that she had some documents for the Complainant regarding the application that morning. Ms. S says that she was flabbergasted because she thought that the matter had been adjourned. The Member faxed the documents to the office of Ms. S's daughter. Ms. S said that she knew the Complainant would be devastated that the matter had gone ahead. Ms. S says she thinks she said something to the Member about their conversation the day before, but could not recall the Member's response. She was so taken aback that she could not really ask about what was going on and she felt that she had let her friend down.
40. According to Ms. S, she picked the Complainant up at the airport, gave her the documents and told her that the hearing had not been adjourned. She says that the Complainant asked her how that could be when Ms. S had told her the

hearing was adjourned.

41. Ms. S conceded that she had limited experience with lawyers or court procedures. On cross-examination she remained adamant that she had spoken to the Member on the 5<sup>th</sup> and 6<sup>th</sup> and that on the 5<sup>th</sup> she had been told by the Member that the hearing had been adjourned.

### **Evidence of the Member**

42. The Member attended law school in the United States. She moved to Calgary in 1998, started articles in 1999 and was called to the Bar in October of 2003. By the time of the events giving rise to this complaint she had been practicing as a lawyer for about half a year. At the time of the hearing she was not working. She had gone on maternity leave in September of 2005 and gone on the inactive list at that time.
43. The Complainant became a client of the firm starting in January of 2004. The New Matter Report for the file (Exhibit 28) showed that the Complainant had provided a cell number and the phone number of Ms. S as contact numbers.
44. The Member obtained 2 *ex parte* orders on behalf of the Complainant in January of 2004; a restraining order and a custody/access/support order. The latter order provided for supervised access, but did not provide details regarding the supervisors.
45. Harold Hinz, counsel for the Complainant's husband then applied to vary the orders, and that application was adjourned to April 6<sup>th</sup> at her request. She said that April 6<sup>th</sup> was a date that both she and Mr. Hinz were available and she thinks that the Complainant was also available because she would generally not choose a date that the client was not available.
46. The Member testified that in her experience, sooner or later the access parent would apply for more liberal access.
47. The Member went on holidays to Germany in March. She does not recall telling the Complainant this by phone, but there is a letter dated March 12<sup>th</sup>, 2004 to Mr. Hinz and copied to the Complainant advising that she would be out of the country from March 18<sup>th</sup> to March 30<sup>th</sup> inclusive (Exhibit 10).
48. When the Member returned from holidays on March 30<sup>th</sup> she found out that the complainant wanted a further adjournment. She said that she was pretty sure that Mr. Hinz would not consent to an adjournment when she saw that request. She says that she intended to try to get an adjournment from him, knowing this was unlikely, but that she thought that if she attended court to ask for an adjournment she was confident it would be adjourned to a Special Chamber

Application since Mr. Hinz was asking for a change from supervised to unsupervised access.

49. The Member has no recollection of a phone call with Ms. S on April 5<sup>th</sup>. Her time entries say “telephone call with client re: adjournment of application requested. The Member said that she thought she would have called the Complainant and spoken to her, or left a message. The time codes used at the firm were the same for a conversation and a voicemail message.
50. Based on her time docket, the Member said that it appeared that she tried to reach Mr. Hinz on April 5<sup>th</sup>, but did not reach him until the following day. Her records show that she called Mr. Hinz again on April 6<sup>th</sup>.
51. The Member’s time records also show a telephone call “re: faxing of documents” on April 6<sup>th</sup>. The Member could not recall a discussion with Ms. S on April 6<sup>th</sup>.
52. The Member testified that she attended in court on April 6<sup>th</sup> because she did not have consent to an adjournment. She says that she made a preliminary application before the Chambers Justice for an application and obtained that adjournment with respect to the request to change from supervised to unsupervised access. The Chambers Justice did make an Order regarding the supervisor and the amount of access time, and since the Complainant had expressed concern about one of the supervisors, another time was set for the Complainant to address that issue.
53. The Member drafted a form of order arising from the chambers application. She believes that she contacted Ms. S and asked her to get the information to the Complainant as soon as possible because she wanted the Complainant to know about the date set for the re-attendance in Chambers.
54. The Member vaguely remembers a discussion with Ms. S during which she told Ms. S that she would be requesting an adjournment of the application but there was no guarantee that she would get one. She has no notes of the discussion. She fairly conceded that she was very optimistic about getting the adjournment, that she might have relayed this optimism to Ms. S during their conversation, and that Ms. S might have misunderstood her and thought the matter had been adjourned.

## **Decision**

### Citation 1

55. As noted previously, Counsel for the Member applied to dismiss Citation 1 on the basis of the Agreed Statement of Facts. Counsel for the Member argued that the agreed facts established that the Member learned of her client’s desire to have a

further adjournment of the application on March 30<sup>th</sup>, and that she called Mr. Hinz to request that adjournment on April 5<sup>th</sup>. There was also uncontroverted evidence that Mr. Hinz would not have agreed to an adjournment requested between March 30<sup>th</sup> and April 5<sup>th</sup> in any event. Finally, the Member applied for and obtained an adjournment with respect to the relevant issues.

56. Counsel for the Member submitted that given those facts there was no possibility of a finding of conduct deserving of sanction. Counsel for the LSA agreed that although the Member could have asked for an adjournment on the 30<sup>th</sup> and did not do so until the 5<sup>th</sup>, at best this was a technical, trivial breach. He did not oppose the application for dismissal.
57. The Committee granted the dismissal on the basis that it did not view the failure to ask for the adjournment for 5 days as conduct deserving of sanction.

#### Citation 2

58. Counsel for the LSA took the position that the evidence was clear with respect to the events that occurred from March 30<sup>th</sup> to April 6<sup>th</sup> with respect to the application, except for the evidence regarding the discussion between the Member and Ms. S. Although there was no question that there was a discussion, there was a divergence in the evidence with respect to what occurred during that discussion and there were no contemporary records. According to Ms. S, the Member told her the matter had been adjourned. The Member could not recall exactly what was said.
59. Counsel for the LSA indicated that this was not a credibility issue since the Committee had the evidence of Ms. S as to what was said, and the Member had no recollection. He argued that the evidence of Ms. S was reliable and credible that the Member had told her that the application had been adjourned. If this statement had been made, it was clearly misleading because the application had not been adjourned. Being confident that the matter would be adjourned was different from having an adjournment in hand.
60. Counsel for the LSA indicated that if the Committee accepted the evidence of Ms. S, then the Member's conduct was conduct deserving of sanction because it was conduct that tended to bring the reputation of the legal profession into disrepute. When a lawyer says something to their client as a matter of fact that turns out to be incorrect, then that is harmful to the reputation of the profession. The fact that the Complainant got her adjournment in any event is irrelevant to the consideration.
61. Counsel for the LSA referred to Chapter 9 Rule 1 – A lawyer must not lie to or mislead a client. He submitted that the Member did the latter and that her misleading statement was not merely trivial or technical because it impaired her relationship with the Member, and lowered the reputation of the profession



62. Counsel for the Member argued that it was open to the Committee to find that the April 5<sup>th</sup> conversation that Ms. S testified about never occurred. The only contemporaneous records seemed to suggest that the Member left a message for the Complainant on the 5<sup>th</sup> and spoke to Ms. S on the 6<sup>th</sup>.
63. Counsel for the Member submitted that if the Committee was prepared to find that the discussion between Ms. S and the Member occurred on April 5<sup>th</sup>, that consideration should be given to the fact that the first suggestion that the Member had made a misleading statement during that discussion was first raised 13 months after the event and that Ms. S's letter confirming the conversation was 21 months later. He indicated that he was not suggesting that Ms. S was being dishonest, but that the details could have gotten lost over time. Mr. Meagher also argued that it is possible that Ms. S mistakenly concluded from the discussion that there was an adjournment, even though the Member had not gone that far. He suggested that it did not make sense that the Member would have said there was an adjournment when there was not, and pointed out that the situation was ripe for misunderstanding given the fact the client was out of town and communicating through an intermediary.
64. The Committee was satisfied based on the evidence before it that a phone conversation took place between Ms. S and the Member on April 5<sup>th</sup>. However, the Committee had more difficulty with the question of what had occurred during the conversation.
65. The Committee was satisfied that Ms. S was a credible witness and that she understood from her discussion with the Member that the application had been adjourned. However, Ms. S quite fairly conceded that she could not recall exactly what had been said during the conversation, and that she did not have much familiarity with court procedure. Given the lack of clarity surrounding the April 5<sup>th</sup> discussion, the Committee was not prepared to find that the Member had deliberately or recklessly made a misleading statement. In effect, the Committee accepted the submission of Counsel for the Member that the situation was ripe for misunderstanding and that a misunderstanding occurred.
66. Accordingly, Citation 2 was dismissed.

### **Concluding Matters**

67. Counsel for the LSA and Counsel for the Member agreed that certain Exhibits should be kept private and requested an order in that regard. The Committee ordered that the addresses and personal information contained on Exhibit 5 are to be redacted; that Exhibits 13, 15, 16, 18, 25, 26 and 28 are subject to solicitor-client privilege and are to be kept private; and finally that Exhibits 10 and 11 are also to be kept private on the basis of privacy interests.

68. The Committee ordered that any other documents would be made available to the public on request, subject to any necessary redaction of client names or other identifying information.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

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Vivian Stevenson, Q.C., Bencher  
Chair

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Hugh Somerville, Q.C., Bencher

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Dr. Larry Ohlhauser, Bencher