



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 Jodie Holder, 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 Jodie Holder on February 22, 2007. The Committee consisted of Douglas R. Mah, QC, Chair, Rodney Jerke, QC and Neena Ahluwalia. The LSA was represented by Michael Penny. The Member was represented by Philip G. Lister, QC.
2. Exhibits 1 through 4, consisting respectively 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 the jurisdiction of the Committee and were admitted into evidence by consent.
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 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 14, contained in an exhibit binder provided to the Committee members and the parties, were admitted into evidence by consent. The following additional exhibits were also entered into evidence by consent:
 - Exhibit 15 – Agreed Statement of Facts and Admission of Guilt dated February 22, 2007 and signed by the member;
 - Exhibit 16 – Letter of February 6, 2007 from R. Gregory Bush, Director, Lawyer Conduct, LSA to Michael Penny, counsel for the LSA, certifying that the member has no LSA discipline record as at the date of the letter;
 - Exhibit 17 – Estimated Statement of Costs; and
 - Exhibit 18 – Proposed Practice Review Conditions.

B. Agreed Statement of Facts and Admission of Guilt

6. The Agreed Statement of Facts and Admission of Guilt (Exhibit 15) states as follows:

Introduction and Citations

1. Jodie Holder is a member of the Law Society of Alberta, having been admitted to membership on April 23, 1999. At all times relevant to these Citations he practiced as a sole proprietor.
2. These matters arise as a result of a series of criminal charges against and convictions of Mr. Holder both before and after his admission to the Law Society.

3. The Citations are:

1. IT IS ALLEGED THAT YOU failed to be candid with the Law Society of Alberta, and that such conduct is conduct deserving of sanction;
2. IT IS ALLEGED THAT YOU failed to report the criminal charges laid against you to the Law Society of Alberta within a reasonable time after the charges were laid, and that such conduct is conduct deserving of sanction.

Pre-Admission Criminal Convictions

4. Prior to admission as a member of the Law Society, Mr. Holder was convicted of the following criminal offences:

January 11, 1984: Impaired driving, under section 253(a) of the Code (subject of subsequent pardon);
May 2, 1985: Impaired driving;
October 8, 1992: Dangerous driving, under section 249(1)(a) of the Code; and
March 29, 1999: Impaired driving, after a guilty plea.

5. On April 23, 1999 Mr. Holder was admitted as a member of the Law Society. On his application for membership, Mr. Holder disclosed the details of his criminal record.

2004 Criminal Charges and Convictions

6. In 2004, Mr. Holder faced further charges under the Criminal Code, as follows:

January 23, 2004: Mr. Holder was charged with assault, under section 266 of the Code, and entered into a 6 month peace bond;
January 23, 2004: Mr. Holder was charged with possession of marijuana, under section 4(1) of the Controlled Drugs and Substances Act, which charge was stayed;
December 12, 2004: Mr. Holder was charged with impaired driving and failing to provide a breath sample under sections 253(a) and 254(5) of the Code; and
September 23, 2005: Mr. Holder plead guilty to the impaired driving and failing to provide a breath sample charges, incurring a \$1725 fine, and a year's probation and driving prohibition.

Mr. Holder's Meeting with a Practice Review Panel

7. On May 26, 2005, Mr. Holder met, voluntarily, with a Practice Review Panel. At that meeting, Mr. Holder stated that he did not believe the pre-admission criminal convictions were an issue. He did not disclose the four criminal charges laid in 2004, two of which had been dealt with, but two of which remained outstanding and scheduled for trial four months hence. [Exhibit 12, Tab 1]

Mr. Holder's Rule 105 Notification to the Law Society

8. On August 17, 2005, Mr. Holder wrote to the Law Society to report the 2004 criminal charges, including advising as to the disposition of the assault and marijuana possession charges. He also advised that the impaired driving and failure to provide a breath sample charges were scheduled for trial on September 23, 2005. [Exhibit 6]

9. On August 18, 2005, Ms. Katherine Whitburn, Manager, Complaints, with the Law Society, acknowledged Mr. Holder's letter and requested he report the results of his September 23, 2005 court

appearance (on the impaired driving and failure to provide a sample charges) and otherwise keep her advised as matters developed. [Exhibit 7]

10. On October 13, 2005, Ms. Whitburn, not having heard the results of Mr. Holder's September 23 court appearance on the impaired driving charges, wrote a further letter to follow up. [Exhibit 8]

11. On November 23, 2005, Ms. Whitburn wrote again to Mr. Holder, this time making a formal request under section 53 of the Legal Profession Act for a "description of the circumstances leading up to your arrest and full information concerning the disposition of the [impaired driving and failing to provide a sample] charges." [Exhibit 9]

12. On December 13, 2005, Ms. Whitburn wrote a further letter to Mr. Holder, warning him of the consequences of his failure to respond to her November 23 letter. [Exhibit 10]

13. On January 5, 2006, Mr. Holder finally answered Ms. Whitburn's letters, and gave the details she had requested. [Exhibit 11]

14. On February 9, 2006, Ms. Whitburn, by this time aware that Mr. Holder's criminal record had been raised at his May 26, 2005 meeting with the Practice Review Panel, wrote to Mr. Holder expressing concern that Mr. Holder had not disclosed the December 12, 2004 impaired driving charges, and requested Mr. Holder's comments. [Exhibit 12]

15. On February 28, 2006, Ms. Whitburn wrote a further letter to Mr. Holder, again warning him of the consequences of his failure to respond, this time to her February 9, 2006 letter. [Exhibit 13]

16. On March 21, 2006, Mr. Holder responded to Ms. Whitburn and the Law Society. [Exhibit 14]

Proposed Amendments to Citation

17. Based on the foregoing facts, Counsel for Mr. Holder and Counsel for the Law Society have drafted an amended citation to propose to the Hearing Committee to replace the two citations set out above:

IT IS ALLEGED THAT YOU failed to report the criminal charges laid against you to the Law Society of Alberta within a reasonable time after the charges were laid, including failing to disclose such charges in a complete and appropriate manner on an inquiry which invited such disclosure, and that all such conduct is conduct deserving of sanction.

Mr. Holder's Admission of Guilt

18. Mr. Holder admits that he is guilty of the amended citation in this matter and acknowledges his conduct is deserving of sanction.

ALL OF THESE FACTS ARE ADMITTED THIS 22ND DAY OF FEBRUARY, 2007.

"original signed"

Jodie Holder

7. Prior to making its decision as to citations, the Hearing Committee asked the member to be sworn to give evidence. The member then responded to questions posed by members of the Hearing Committee.

C. Decision as to Citations

8. The Hearing Committee agreed to substitute the amended citation contained in paragraph 17 of the Agreed Statement of Facts and Admission of Guilt [Exhibit 15] in place of the two citations listed in the Notice to Solicitor [Exhibit 2].
9. The Hearing Committee determined that the Agreed Statement of Facts and Admission of Guilt [Exhibit 15] 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 stipulated in the amended citation, is conduct deserving of sanction.

D. Evidence and Submissions Respecting Sanction

10. The following information was elicited from the member through questioning by the Hearing Committee members:
 - Following the September 23, 2005 convictions, the member was subject to an adult probation order that required him to undergo an assessment in respect of possible alcohol related issues. The member enlisted the services of ASSIST to facilitate the assessment. The member advised that the assessment indicates that the member has a potential alcohol problem.
 - The assessment suggested there are some stressors in the member's life that need to be controlled. With respect to dealing with these various stressors, the member expresses willingness to follow the recommendations of the assessor. The recommendations include limiting the extent of his practice and that, if he feels it is necessary, it would be beneficial for him to meet from time to time with a group of similar professionals in similar situations. The member also indicated that the ASSIST program is available to him.
 - The member intends to continue availing himself of the services of the LSA's Practice Review Committee, regardless of whether Practice Review is imposed by the Hearing Committee as a condition.
 - The member did not view his attendance before the Practice Review Committee on May 26, 2005 as an appropriate forum during which to discuss the four criminal charges laid against him in 2004, and for that reason did not raise them with that committee.
 - The member erroneously believed that Rule 105 did not require him to self-report the criminal charges unless there is a conviction.
 - The member admitted that he could have responded to the LSA sooner with the details and background of the 2004 charges.
 - The member indicated that he is currently in Practice Review.
11. LSA counsel, in speaking to sanction, made the following submissions:
 - As this is a first offence, the usual sanction is a reprimand and costs.

- In this case, the member has been cooperative and reasonable, so the Hearing Committee should consider capping the costs at half of the actual amount.
 - The Hearing Committee may wish to consider imposing a fine. Counsel referred to the *Law Society of Alberta v. Groves*, [2005] L.S.D.D. No. 96 (December 1, 2005) and suggested the conduct in the present case was not as serious as that in *Groves* and therefore, the fine should not be as high as that imposed in *Groves* (which was \$1,000).
 - The Committee should consider imposing Practice Review conditions as authorized by section 72(2)(a) of the *Legal Profession Act*.
12. The member's counsel made the following submissions with respect to sanction:
- The member's counsel essentially agreed with the recommendations made by LSA counsel. In essence, it is a joint submission.
 - The primary concern in this case is the member's alcohol use, and the member has taken steps to address it.

E. Decision Regarding Sanction

13. The Chair thanked both counsel and the member for allowing the proceedings to take place in an expeditious manner.
14. The Hearing Committee decided to accept the joint recommendation of counsel. Accordingly, the sanction consists of the following:
- a reprimand;
 - costs payable by the member in an amount equal to 50% of the actual costs of the hearing, capped at \$1,500;
 - a fine of \$500; and
 - imposition of the Practice Review conditions outlined in Exhibit 18, namely that:
 - The member shall cooperate with the Practice Review Committee, including, but not limited to the following:
 - The member shall:
 - Participate in a general review and assessment of his conduct, including participating with any subcommittee appointed by the committee to conduct the review and assessment;
 - Follow any recommendations made by the Practice Review Committee arising from its review and assessment of his conduct that the committee considers will, if followed, improve his conduct in relation to his practice as a barrister and solicitor;
 - Provide any undertakings sought by the Practice Review Committee respecting restrictions on his practice as a barrister and solicitor; and
 - Satisfy any other conditions which may be imposed upon him by the Practice Review Committee.

15. The Hearing Committee felt it was necessary to impose a fine in order to adequately reflect the public interest and preserve the reputation of the profession.
16. The Chair then issued the reprimand.

F. The Reprimand

17. All lawyers in Alberta are deemed to know the contents of the *Rules of the Law Society of Alberta* and it is no excuse for any lawyer to say that he or she did not know the Rules. Further, the Hearing Committee is cognizant of the presumption of innocence, but *Rule 105* is clear that it is not the conviction that is required to be reported, but rather the fact of the charge itself.
18. The facts disclose that *Rule 105* was breached. The first set of criminal charges, an assault charge and a charge of possession of marijuana, occurred on January 24, 2004 and the LSA was not notified of those charges until August 17, 2005. The second set of charges, consisting of an impaired driving charge and a refusal to provide breath sample charge, occurred on December 12, 2004, and the LSA was not notified of these matters until August 17, 2005.
19. In addition, the member had an opportunity on May 26, 2005 when he appeared before the Practice Review Committee to make disclosure of these matters. The issue of his past criminal record was discussed during that meeting and it should have occurred to the member at that time to raise the issue of his more recent criminal charges.
20. Even after the member self-reported the criminal charges on August 17, 2005, the member displayed reticence in providing particulars as requested by the LSA Conduct Department. It took no less than four further letters from the LSA in order to get the responses that were required. While the member has not been charged with failure to respond, nonetheless, the Hearing Committee is entitled to look at the member's entire course of conduct in the issue of a sanction.
21. *Rule 105* clearly contemplates an honour system. In engaging in the conduct that has been admitted to, the member has brought discredit to himself and the profession.
22. The Hearing Committee members hope that the member will look upon the entire experience of these conduct proceedings as a personal opportunity. Evidence was heard with regard to personal issues, such as stressors in the member's life and possible alcohol abuse problems. The Hearing Committee sincerely hopes the member will take stock of himself and decide that if he wishes to continue in the profession, that he will also have to decide what changes to make in his life to allow that to happen.
23. The Practice Review Committee will be receiving a copy of these written reasons and it is the Hearing Committee's expectation that the member will cooperate fully with Practice Review with respect to any conditions imposed by that committee.

G. Concluding Matters

24. There will be no referral to the Attorney General.
25. There will be no notice to the profession.
26. With regard to time to pay, both the fine and the costs payable shall be paid 45 days from the date of receipt of the costs invoice by the member's counsel.
27. The exhibits and proceedings will be available for public inspection, including the provision of copies of exhibits for a reasonable copy fee.
28. Copies of the transcript will be provided to the Practice Review Committee and the member.

Dated this _____ day of _____, 2007.

Douglas R. Mah, QC – Chair and Bencher

Rodney Jerke, QC – Bencher

Neena Ahluwalia – Bencher