

**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 Frank H. Monaghan, a member of the Law Society of Alberta**

**Jurisdiction and Preliminary Matters**

1. The Hearing Committee of the Law Society of Alberta (LSA) held a hearing into the conduct of Frank H. Monaghan on September 11, 2006. The Committee was comprised of Vivian Stevenson, Q.C., Chair, Yvonne Stanford and Shirley Jackson, Q.C. The LSA was represented by Garner Groome. The member was represented by Grant Stapon.
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 the jurisdiction of the Committee.
3. There was no objection by the member or counsel for the LSA regarding the membership 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, therefore the hearing was held in public.

**Citations**

5. At the opening of the hearing, Counsel for the LSA applied to amend the citation faced by the member. The original citation was as follows:  

Citation 1. IT IS ALLEGED that you assaulted the complainant, MM, and that such conduct is conduct deserving of sanction.
6. The proposed amended citation, which was entered as Exhibit 10, was as follows:  

Citation 1: IT IS ALLEGED that you treated your client's opposing litigant, MM, discourteously and that such conduct is conduct deserving of sanction.
7. After reviewing the proposed amended citation in conjunction with the Agreed Statement of Facts which had been entered as Exhibit 9, the Committee was of the view that the citation did not reflect the conduct which was the subject of the hearing. In particular, the Committee felt the citation should reflect the physical nature of the interaction between the member and MM.
8. After expressing this concern to counsel and inviting counsel to reword the citation, LSA counsel submitted, and the Committee accepted the following amended citation, which was entered as Exhibit 11:

- Citation 1. IT IS ALLEGED that you treated your client's opposing litigant, Mr.M, discourteously by using physical force to restrain Mr.M from entering a meeting in your boardroom uninvited, and that such conduct is conduct deserving of sanction

### **Evidence**

9. Exhibits 6 through to 11 were marked and entered. Exhibit 9 consisted of an Agreed Statement of Facts signed by the Member in which he outlined the events giving rise to the citation, admitted those facts and acknowledged that his conduct had contravened the Code of Professional Conduct. There was no other evidence adduced at the hearing.

#### **ADMITTED FACTS:**

10. The member acted for a shareholder in a rather heated shareholders' dispute, more details of which are contained in the exhibits, but which are not particularly relevant to the disposition of the matter. The complainant Mr.M was also a shareholder in the company, and was represented by counsel.
11. During the course of the litigation, a shareholders meeting was scheduled at the member's offices for November 26, 2004. As a result of discussions between counsel for the parties to the dispute on November 25<sup>th</sup>, the member understood that the meeting had been cancelled. However, on the morning of November 26<sup>th</sup>, the complainant Mr.M attended at the member's offices together with another shareholder. Mr.M was taken to a conference room. The other shareholder was taken to a different conference room, where the member's client and another shareholder were present.
12. The member then saw Mr.M walking towards the conference room where his client was meeting with the two other shareholders. The member advised Mr.M that he was not supposed to be there, but Mr.M continued to approach the door to the conference room.
13. The description of what happened next is excerpted from the Agreed Statement of Facts as follows (the name of the complainant in the Agreed Statement of Facts having been replaced with initials):

*There is some issue as to precisely what happened next, however, it is agreed that Mr.M attempted to enter the closed door to the meeting, and that Mr. Monaghan stopped his ingress. Mr. Monaghan acknowledges that as Mr.M pushed forward, Mr. Monaghan pushed Mr.M back approximately one pace from the door of the conference room up against the adjacent hallway wall. In the process, Mr. Monaghan clutched at least one of Mr.M's lapels and placed his other arm across his chest. No physical injury resulted from the contact....*

*Given the heated nature of the mandate, and the suspected fraud, Mr. Monaghan believed that Mr.M's entry into the meeting without an invitation, without the presence of counsel and after being requested not to enter the conference room, could have resulted in a confrontation and/or violence. Mr. Monaghan describes his reaction of pushing Mr.M back as "instinctual".*

*Mr. Monaghan nonetheless acknowledges that it was discourteous to have physical contact with an opposing party and that the incident, however brief, ought not to have occurred.*

14. The matter was reported to the Calgary Police Department. The Committee was advised by counsel for the Member and Counsel for the LSA that the Calgary Police subsequently closed their file.
15. The Committee accepted the Member's admission of guilt with respect to the citation and in accordance with section 60(4) of the *Legal Profession Act* the admission of guilt is deemed to be a finding of the Hearing Committee that the conduct of the member is conduct deserving of sanction.

### **Sanctions**

16. Counsel for the LSA submitted that the appropriate sanction in the circumstances was a reprimand. In making this submission, counsel referred to the previous decision of the Hearing Committee in *Abbi* [1995] LSDD 291. In *Abbi*, the member was reprimanded and given a \$1,000 fine for an assault related matter which resulted in a criminal conviction. Counsel for the LSA submitted that given the relatively small fine in that case, the circumstances in this case did not call for a fine.
17. In addition, counsel for the Member referred to the fact that the Member had provided an admission of guilt and thereby saved a day and a half of hearing costs. Finally, the Committee was advised that Mr. Monaghan had been a member of the LSA since 1987 and had no previous discipline record.
18. The Committee accepted the submissions of LSA counsel and counsel for the Member and ordered a reprimand. In doing so, the Committee was not persuaded by the suggestion that the Member's actions were "instinctual" or that the Member may have legally been entitled to use some degree of force to prevent a trespass.
19. The Committee was of the view that the Member had responded in a physical manner to a situation that could have and should have been handled in a calm, dispassionate and professional manner. Lawyers are frequently faced with confrontational circumstances and have a professional responsibility not to descend into the fray, but to conduct themselves at all times with dignity and decorum.
20. Despite the fact that the Committee felt the Member's behaviour was inexcusable, the Committee regarded a reprimand on the Member's otherwise clear discipline record as sufficient punishment and did not feel that a fine would have had any additional punitive or deterrent significance in the circumstances of this case.
21. The reprimand was delivered by the Chair on September 11<sup>th</sup>.
22. The Committee ordered payment of the actual hearing costs within 60 days of the statement of costs being provided to the Member. The Member asked that the hearing costs be discounted to recognize that he had incurred a significant expense in making travel arrangements from Australia for one of his witnesses. The Committee was not prepared to discount the costs.

23. On the basis of counsels' submissions that the matter had already been referred to the Calgary Police and that their file had been closed, the Committee did not direct a reference to the Attorney General.
24. The Committee did not require notice to be provided to the profession.
25. The hearing having proceeded in public, the public will have access to the exhibits, after the exhibits have been "sanitized".

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

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Vivian Stevenson, Q.C. Chair and Bencher

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Shirley Jackson, Q.C., Bencher

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Yvonne Stanford, Bencher