

IN THE MATTER OF THE *Legal Profession Act*,
and
In the matter of a Hearing Regarding the Conduct of
JOHN L. SPARLING, QC
A Member of the Law Society of Alberta

Hearing Committee:

Sarah King-D'Souza, QC – Chair
Brett Code, QC – Member
Dr. Miriam Carey, PhD – Member

Appearances:

Jane A. Corns – for the Law Society of Alberta (**LSA**)
Elizabeth Aspinall – for the Member

Hearing Date: February 4, 2014– 9:30 a.m.
Hearing Location: 500, 919 - 11th Avenue SW, Calgary, AB
Report: March 27, 2014

REPORT OF THE HEARING COMMITTEE

I. INTRODUCTION AND SUMMARY

1. On February 4, 2014, a Hearing Committee of the Law Society of Alberta (LSA) convened at the Law Society Offices in Calgary to inquire into the Conduct of the Member, John L. Sparling QC. The Member was present throughout the hearing.
2. At the commencement of the Hearing, Counsel for the Law Society and for the Member presented the Hearing Committee with an Agreed Statement of Facts in relation to the citation. The Citation directed against the Member was that he had sexually harassed his client T.H. and that such conduct was deserving of sanction.
3. Upon reviewing the materials the Hearing Committee indicated to both counsel that in the Hearing Committee's opinion the Agreed Statement of Facts, and the admissions of the Member contained in it, did not support a finding of guilt on the proposed citation.

4. Following some discussions and an adjournment, the Hearing Committee was presented with an amended Agreed Statement of Facts and Admissions wherein the Member admitted that the conduct in question as articulated in paragraph 8 of the amended Agreed Statement of Facts and Admissions amounted to sexual harassment and conduct deserving of sanction.
5. On the basis of the amended Agreed Statement of Facts and Admissions, and the Member's admission of guilt, the Hearing Committee found the conduct of the Member to be conduct deserving of sanction.
6. For the reasons set out below, the Hearing Committee did not accept the following proposed joint submission for sanction:
 1. That the Member receive a reprimand; and
 2. That the Member take no new clients; and
 3. That the Member pay costs of this hearing in the amount of \$1000.00 to be paid by the end of this business day, being February 4, 2014; and
 4. That pursuant to section 72(2)(a) of the Act the Member shall have imposed the following conditions and requirements:
 - a. The Member shall forthwith and for greater certainty on February 4, 2014 immediately after close of these conduct proceedings, participate and tender any necessary supporting documents for a resignation application pursuant to section 32 of the act and Rule 69 of the Rules of the Law Society of Alberta, with an effective resignation of July 31, 2014.
 - b. The Member shall, in anticipation of any client files not being concluded or closed by July 31, 2014, facilitate the transfer of such files to a new Lawyer as soon as possible; and
 - c. The Member shall immediately take steps to properly dispose of all closed client files older than 10 years old and undertake to manage all other files, including (without limitation) culling and arranging secure storage, failing which, and if the Law Society of Alberta need to appoint a custodian to perform such file management tasks, the Member will be responsible for the fees of same.
7. The Hearing Committee sanctioned the Member by issuing a reprimand and directed that the Member would pay the costs of the Hearing in the amount of \$1,000.00 to be paid by the end of the day, February 4, 2014.

II. CITATIONS

8. The Member faced one citation as follows:

THAT the Member sexually harassed his client, T.H., and that such conduct is conduct deserving of sanction.

III. JURISDICTION AND PRELIMINARY MATTERS

9. There were no objections by the Member's Counsel or Counsel for the Law Society with respect to the constitution of the Hearing Committee. There was no application to have the whole or any part of the Hearing in private and as such, the entire Hearing was conducted in public.

IV. EXHIBITS

10. Prior to the commencement of the Hearing and added to during the Hearing an Exhibit Book was created by consent and Exhibits entered as follows during the course of the proceedings:

Exhibit 1–	Letter of Appointment
Exhibit 2 –	Notice to Solicitor
Exhibit 3 –	Notice to Attend
Exhibit 4 –	Certificate of Status
Exhibit 5 –	Certificate of Exercise of Discretion, re Private Hearing Application Notices
Exhibit 6 -	Agreed Statement of Facts
Exhibit 7 -	Amended Agreed Statements of Facts and Admission
Exhibit 8 -	Redline Version of Amended Agreed Statement of Facts and Admission
Exhibit 10 -	Certificate showing the Member has no discipline record with the Law Society of Alberta
Exhibit 11 -	Estimated Statement of Costs.

V. FINDINGS OF FACT – CONDUCT DESERVING OF SANCTION

11. The Amended Agreed Statement of Facts and Admissions provides the following Facts:

“PART I: INTRODUCTION

1. *John L. Sparling QC (“Mr. Sparling”) was admitted to the Law Society of Alberta (the “LSA”) on June 8, 1976, and practices law in Drumheller, Alberta as a sole practitioner.*
2. *Mr. Sparling’s primary area of practice is civil litigation.*
3. *Mr. Sparling’s current status is Active/Practicing.*

PART II: CITATIONS

4. *On December 21, 2012, as a result of a complaint against Mr. Sparling by T.H., LSA file xxxxxxxxxx, the Conduct Committee (of the LSA) directed the matter to a hearing and issued an allegation that the Member sexually harassed his client.*
5. *On the afternoon of August 24, 2011 T.H. had an appointment, and met, with Mr. John Sparling, QC (the “Meeting”). The Meeting was approximately an hour.*
6. *T.H. attended the Meeting as a potential client of Mr. Sparling, and Mr. Sparling participated in the Meeting as potential legal counsel. The Meeting was scheduled as a consequence appointment by Legal Aid to act for T.H., who was facing criminal charges regarding an alleged fraudulent insurance claim and with a Court date set in the next two (2) days, namely August 26, 2011 (the “Charges”).*
7. *During the Meeting various matters were discussed and various actions occurred, the nature of which, in certain cases, are disputed or recalled differently by T.H. and Mr. Sparling.*
8. *T.H. and Mr. Sparling do not dispute and recall similar that, during the Meeting:*
 - a) *Mr. Sparling hugged T.H. at least twice,*
 - b) *The hugging noted in above paragraph 8 (a) was unwanted physical contact and constituted sexual harassment;*
 - c) *Mr. Sparling asked T.H.’s age and stated to T.H. that he has a daughter about T.H.’s age;*

- d) *Mr. Sparling asked T.H. the identity of her mother;*
 - e) *Mr. Sparling sat next to T.H. when they listened to an audio compact disk that formed part of the Crown's disclosure in T.H.'s criminal proceedings (the "CD");*
 - f) *T.H. was upset during the meeting, particularly at the point when Mr. Sparling read from the police report and while they listened to the CD;*
 - g) *At one point, while T.H. was speaking, Mr. Sparling interrupted by raising his hand;*
 - h) *No other individual, apart from T.H. and Mr. Sparling, participated in or attended the Meeting or any part of the Meeting; and*
 - i) *If one of Mr. Sparling legal assistants did enter the room where the Meeting was held, it would have only been very briefly and for the purpose of having Mr. Sparling sign a document or deed unrelated to the Meeting or the Charges.*
9. *On August 25, 2011, T.H. spoke with one of Mr. Sparling's legal assistants and advised her that she did not want Mr. Sparling to be her lawyer.*
10. *T.H. did not attend the office of, or communicate with, Mr. Sparling after the Meeting for the purposes of furthering legal representation for the Charges, or at all.*
11. *On September 8, 2011 the LSA received a complaint from T.H.*
12. *On October 21, 2011 and November 14, 2011, Mr. Sparling provided written responses to the Complaint.*
13. *On January 17, 2012 an Investigation Order was issued by the LSA and an investigation was conducted by the LSA from February to June 2012 (the "LSA Investigation").*

14. *During the LSA Investigation Mr. Sparling admitted that it was inappropriate for him to hug T.H. during the Meeting and that such hugging was unwanted physical touching by Mr. Sparling of T.H.*

PART IV: ADMISSION

15. *For the purposes of s.60 of the Legal Profession Act, Mr. Sparling admits the truth of the facts set out above for the purposes of these proceedings. He further admits that the conduct in question, namely that set out above in paragraph 8, amounts to sexual harassment and conduct deserving of sanction.”*
12. Neither Counsel called additional evidence. The Member confirmed his plea of guilty to the Hearing Committee.
13. In response to questions from the Hearing Committee the Member confirmed that he:
 1. Made his admission voluntarily and free of coercion;
 2. That he made his admission unequivocally admitting his guilt to the citation;
 3. That he made his admission, knowing the nature and consequences of his admission and of the potential sanctions which might be imposed upon him as a result; and
 4. That he made his admission knowing the Hearing Committee was not bound by any joint submission regarding sanction that might have been made between Counsel for the Law Society and his Counsel.
14. The Hearing Committee accepted the Member’s admissions, accepted the Amended Agreed Statements of Facts and Admissions as being in a form satisfactory to the Hearing Committee, made a finding of his guilt respecting the citation against the Member, and found that his conduct is conduct deserving of sanction.

VI. JOINT SUBMISSIONS ON SANCTION

15. The Member has no discipline record with The Law Society of Alberta. Counsel for the Law Society and Counsel for the Member made joint submissions on sanction that included requiring the Member to apply on February 4, 2014, immediately after close of the conduct proceedings to resign from the Law Society of Alberta effective July 31, 2014 among other related stipulations.

16. The joint submissions on sanction were clearly intended to segue into a resignation application; however, it created a disconnect between the nature of the events upon which the guilty plea was based and the proposed sanction. It simply was not aligned with the expected sanction for this type of behavior where a Member pleads guilty to a citation and has a 37 year unblemished record with his regulator.
17. The Hearing Committee was only prepared to address the appropriate sanctioning consequences of a guilty plea for this citation, as opposed to accepting joint submissions with conditions that had less to do with this application and more to do with an intended subsequent resignation application on the same day by the Member.
18. The Hearing Committee Chair delivered the reprimand. The Member was ordered to pay costs of the Hearing in the amount of \$1,000.00 payable by the close of business the day of the Hearing.

VII. THE REPRIMAND

19. The Chair delivered the reprimand:

“...Mr. Sparling, your conduct in sexually harassing your client, T.H. is incompatible with the best interest of the public or of other members of the legal profession and tends to harm the standing of the legal profession generally.

A lawyer for any client is a trusted advisor. That duty to work in your client’s best interest with no personal agenda is imperative and cannot be abrogated. A young woman coming to you on a legal-aid certificate for a criminal matter is, by definition, a vulnerable person of extremely limited means. She had few choices of counsel. And particularly in a small community, such as Drumheller, her options for proper legal representation are even more limited. She came to your offices days before a court appearance of huge significance to her. Your actions destroyed her trust in you, and may well have destroyed her trust in the legal profession generally, and potentially impacted her ability to put forward a strong legal defence of the kind she desired. This is not in the public interest.

You have been appointed a Queen’s Counsel. You have been designated somebody learned in the law. What you have done is not the mark of such a person. It is an embarrassment to the profession that someone of your seniority and standing participate in sexually harassing activities.

You have abused the trust that your community placed in you and that this young woman placed in you as a lawyer, and it is reprehensible. “

VIII. CONCLUDING MATTERS

20. The Hearing Committee report, the evidence and the Exhibits in this Hearing are to be made available to the public subject to redaction to protect privileged communication, the names of any of the Member's clients and such other confidential personal information as is thought necessary by the Law Society of Alberta in the normal course.
21. There shall be no Notice to the Profession.
22. The Member is to pay costs in the amount of \$1,000.00 by close of business February 4, 2014.

DATED this 27th day of March, 2014 at the City of Calgary in the Province of Alberta.

Per: _____
SARAH KING D'SOUZA, QC
CHAIR

Per: _____
BRETT CODE, QC
MEMBER

Per: _____
DR. MIRIAM CAREY, PHD
MEMBER