

**Michael Grosh  
Law Society of Alberta Disciplinary Hearing  
October 19, 2009**

**Hearing Committee Report**

**In the matter of the *Legal Professional Act*,  
and in the matter of a hearing regarding the conduct of  
Michael Grosh, a Member of the Law Society of Alberta  
HE 20080009**

**A. Jurisdiction and Preliminary Matters**

1. A Hearing Committee of the Law Society of Alberta (“LSA”) held a hearing into the conduct of Michael Grosh on October 19, 2009. The Committee consisted of Frederica Schutz, Chair, Jim Glass, Committee Member, and John Higgerty, Q.C., Committee Member. The LSA was represented by Janet Dixon, Q.C. The member was neither present nor represented by counsel.
2. Concerning service of Exhibit 1 (Letter of Appointment), Exhibit 2 (Notice to Solicitor), Exhibit 3 (Notice to Attend), Exhibit 4 (Certificate of Status), and Exhibit 5 (Certificate of Exercise of Discretion), counsel for the LSA submitted that it would be appropriate for the Hearing Committee to commence the hearing, hear evidence in respect of five (5) Citations and hear evidence pertaining to service but to reserve its decision as to whether service of the mentioned Exhibits is sufficiently good so as to permit the Hearing Panel to render its decisions on the five citations.
3. The Hearing Committee decided to assume jurisdiction and thereafter decide if the Member had sufficient notice so as to render its decisions on the citations.
4. There was no objection by counsel for the LSA regarding the membership of the Committee and the Member was not present. Therefore, the Hearing Panel proceeded as constituted.
5. No request by counsel for the LSA was made for a private hearing, the Member not being present; therefore, the hearing proceeded in public.
6. Exhibits 6 through 8, contained in an Exhibit Binder provided to the Committee Members, were admitted into evidence. The following additional Exhibits were also entered into evidence during the course of the hearing:
  - Exhibit 9 - Timeline of Events;
  - Exhibit 10 - Affidavit of Attempted Service sworn by Norm Jones on January 28, 2009;
  - Exhibit 11 - Affidavit of Norm Jones sworn on April 1, 2009.

**B. Citations**

7. As indicated in the Notice to Solicitor (Exhibit 2), the Hearing Committee is inquiring into five (5) Citations as follows:
1. IT IS ALLEGED that you conducted yourself in such a way as to prevent the Law Society from regulating you as a member of the Law Society of Alberta, and that such conduct is conduct deserving of sanction.
  2. IT IS ALLEGED that you failed to respond to communications from the Law Society that contemplated a reply, and that such conduct is conduct deserving of sanction.
  3. IT IS ALLEGED that you conducted yourself in such a way as to prevent the Law Society from regulating you as a member of the Law Society of Alberta, and that such conduct is conduct deserving of sanction.
  4. IT IS ALLEGED that you failed to respond to communications from the Law Society that contemplated a reply, and that such conduct is conduct deserving of sanction.
  5. IT IS ALLEGED that you conducted yourself in such a way as to prevent the Law Society from regulating you as a member of the Law Society of Alberta, and that such conduct is conduct deserving of sanction.

**C. Summary of the Evidence and Findings of Fact Regarding Service Upon the Member**

8. The Member was served by the LSA with notice of this Hearing by the LSA having the materials sent to the Member's UPS mailbox number, located at Macleod Trail, in Calgary, Alberta. The specific mailbox address to which notice of this hearing was sent to the Member, namely [address removed], is the same mailbox address furnished by the Member to the LSA and has been the address used by the Member since at least 2004. Although the Member did indicate in some communications to the Law Society of Alberta that he was not receiving some of the mail sent to that address, it is noted and this Hearing Panel so finds that the Member's own correspondence to the LSA - on several occasions - used this specific mailbox address as the Member's return address. In particular, this Hearing Panel finds that the Member referred to this specific address as the Member's address in: an Application for Reinstatement dated May 24, 2006 (Exhibit 6, Tab 20) and in correspondence to Mr. Don Procyk of the Law Society of Alberta, dated August 1, 2006 (Exhibit 6, Tab 24).
9. The Hearing Committee was referred to the previous Order of the Chair of Conduct directing that service be affected upon the Member by serving the Member's last known and Roll address, again being the UPS mailbox address at Macleod Trail, in Calgary, Alberta.

10. Counsel for the Law Society of Alberta referred to s. 114 of the *Legal Profession Act*, Rule 83(2)(b), Rule 39(1), Rule 42(2) and Rule 42(3), and submitted that in respect of the formal demands made by the LSA upon the Member [namely, on May 30, 2006, a formal demand for an interview (Exhibit 6, Tab 21); a formal demand made on June 26, 2006 for a interview (Exhibit 6, Tab 23); and a formal demand made on February 4, 2008 for an interview (Exhibit 7, Tab 38)], that it was a reasonable inference for the Hearing Committee to find as a matter of fact that the Member did receive these demands, in the absence of any evidence that any of these demands were returned to the LSA. It was further submitted by counsel for the LSA that it is an essential element of both Citations 2 and 4 (“failure to respond”) that the Hearing Committee find that the Member did receive these demands. Counsel for the LSA submits that the Member did not furnish an alternate address to the LSA; rather, on occasion, handwritten notations on mail returned to the LSA noted suggestions as to where the Member might be located. The author of the handwritten notes was not established. It is a finding of this Hearing Panel that the notice of this hearing and all related documents were in fact sent to the specific mailbox address for the Member, as proven by the affidavits of Norm Jones (Exhibits 10 and 11), that the LSA has not had these documents returned to it, and that that address is both the Roll address of the Member and the last known mailing address of the Member.
11. Counsel for the LSA submits that the Member relied upon the UPS mailbox for over five (5) years and has never given any notice of a different address. While the Member or someone on his behalf had made suggestions about where the LSA may look for him, there is a positive obligation and duty imposed upon the Member to furnish the LSA with an address for service and to notify the LSA of any change in connection with that address for service.
12. There was some mail sent by the LSA to the UPS mailbox “returned”. The returned envelopes are Exhibit 6, Tab 25 and Exhibit 6, Tab 27. After the second of these communications was returned to the LSA, Mr. Procyk went to the mailbox outlet and investigated and reported his findings. At Exhibit 6, Tab 29, Mr. Procyk reports that he attended at the address and states:

“As you may be aware, this was a MailBoxes Etc. drop box and is now a UPS Store, conducting the same sort of business. They have some 600 client mail boxes, Mr. Grosh’s being [address removed], as confirmed by an employee. I spoke with Sylvia, who prepares all client mail. She could not identify the handwriting on the returned envelope, however, it does not belong to anyone on staff. Sylvia advises that Mr. Grosh still maintains that mailbox, someone picks up the mail, after hours, and she is not aware of who that might be. She notes that the mail is picked up about every 2 weeks. Nobody has ever come to the counter to pick up Mr. Grosh’s mail. So, the bottom line here is that someone, picking up his mail, placed that writing on the envelope and “returned to sender”. The employees do not have occasion to return any mail from an active mailbox and, therefore, would not have made any notes on the envelope.”

The report goes on to say:

“As previously noted, I do believe that Mr. Grosh has been in Calgary from time to time, perhaps even within the past 6 months.”

**D. Decision in Respect of Service of the Demands**

13. This Hearing Committee finds, on a balance of probabilities and having considered all of the evidence before it, that the Member did in fact receive the demands sent by the LSA to the Member and further finds that there is no evidence to the contrary; accordingly, service as set forth in the affidavits of Norm Jones (Exhibit 10 and 11) be and the same is hereby deemed good and sufficient service upon the Member of the documents referred to therein, namely:

- The original of a letter dated January 13, 2009 to Michael Grosh from R. Gregory Busch “Re: COUNSEL AND HEARING COMMITTEE – MICHAEL GROSH”;
- NOTICE OF PER DIEM HEARINGS EXPENSES & ADJOURNMENT RATES;
- CITATIONS MICHAEL GROSH;
- NOTICE OF INTENTION TO BE REPRESENTED BY COUNSEL;
- NOTICE OF INTENTION TO ACT IN PERSON;
- PRO BONO COUNSEL LIST;
- PRE-HEARING GUIDELINE;
- HEARING GUIDE 2005 VI;
- The original of a letter dated December 30, 2008 to Michael Grosh from R. Gregory Busch “RE: Michael Grosh – LAW SOCIETY HEARING – Edmonton – March 20, 2009 – 9:30 a.m. each day”;
- The original of NOTICE TO SOLICITOR;
- The original of NOTICE TO ATTEND;
- A copy of NOTICE TO SOLICITOR;
- A copy of NOTICE TO ATTEND;
- The original of NOTICE TO COUNSEL/MEMBER;

- PRE-HEARING GUIDELINE;
- HEARING GUIDE 2005 VI;
- The original of a letter dated January 21, 2009 to Michael Grosh from R. Gregory Busch “RE: Michael Grosh – LAW SOCIETY HEARING – Edmonton – 9:30 a.m. – March 20, 2009”.

14. This Hearing Panel further finds that there was a positive duty imposed upon the Member to furnish an alternate address and he did not. And, there is clear and cogent evidence that the Member did, in fact, receive written communications from the LSA at this specific address. We find that the jurisdictional documents served at this address were not returned to the LSA.

**E. Decision as to Citations**

15. The Hearing Committee found the Member guilty of all Citations, that is Citations 1 through 5, and declined to direct that any or all of the Citations be combined. The Hearing Committee found that the conduct of the Member, as stated in the Citations, is conduct deserving of sanction.

**F. Decision Regarding Sanction**

16. The Hearing Committee disbarred the Member, by reason that the Member is ungovernable.

**G. Summary of Evidence and Findings of Fact: Citations 2 and 4 (“Failure to Respond”)**

17. This Hearing Committee finds that the Member did fail to respond to communications from the LSA and deemed received by the Member that contemplated a reply, and that such conduct is conduct deserving of sanction. This finding is borne out by the evidence and, in particular, the compilation of contact attempts found at Exhibit 8, Tab 74 comprising 10 (ten) pages.

**H. Summary of Evidence and Findings of Fact: Citations 1, 3 and 5 (“Conduct Preventing Regulation”)**

18. Citations 1, 3, and 5 allege that the Member conducted himself in such a way as to prevent the LSA from regulating him as a member of the LSA, and that such conduct is conduct deserving of sanction.

19. The foundation for these Citations are three (3) separate complaints, involving different transactions and different complainants. The portions of the LSA audit and investigations department reports which were entered as Exhibits 6, 7, and 8, respectively, describe the alleged participation by the Member in impugned investments and an investment program that was alleged by the R.C.M.P. to be a ponzi scheme. In the course of attempting to investigate one of the complaints against the Member, the LSA identified documents from

other investigations that indicated the Member was involved in over \$1,000,000.00 USD in transactions relating to the alleged ponzi scheme. The investigators concluded that the full extent and nature of the Member's involvement could not be determined because the Member refused to be interviewed by the LSA and he stopped responding to communications from the LSA.

20. Another complaint received by the LSA concerned a complaint from a lawyer in Ontario, who advised that his client had sold a farm property in Ireland for \$4,150,000.00 EU and then authorized the Member to take the net sale proceeds of \$3,215,500.00 EU and invest that money in an off-shore tax structure in order to avoid a large tax assessment in Canada. The complainant's lawyer claimed that his client now wanted his money back but had been unable to get it back. This lawyer further claimed that the Member set up a trust for the money but for unknown reasons the Member was 95 percent beneficial owner and the affected client was only 5 percent beneficial owner. The lawyer further claimed that the Member defrauded the affected client in his representation about the amount of the tax assessment, about where the funds were invested, about the parties with whom the Member was working and about the security of the investment. The LSA investigators wanted to interview the Member on this and the two other investigations but the Member has refused to be interviewed. The Member is not responding to letters and emails the LSA has sent him. At one time, it is reported that the Member wrote to the LSA and asked to resign but then later changed his mind and wanted to remain an inactive lawyer. The investigators concluded that in the end, this investigation could not be completed because the Member refused to be interviewed and refused to cooperate with the investigation.
21. The third complaint involves another complainant claiming that he paid \$82,000.00 USD to the Member and instructed the Member to invest \$62,000.00 USD in an investment program operated by a company which is identified in the audit and investigations department report. The Complainant decided not to invest the other \$20,000.00 USD and asked for a refund from the Member, which he received. The corporation identified by the complainant in this complaint is no longer operating and is under investigation by the R.C.M.P. The LSA investigator further reports that the Member has generally not been cooperating with the investigation but in one correspondence to the LSA, the Member claimed he was not acting as a lawyer when he received the funds. The Member claimed that he was just an intermediary who invested the funds on behalf of the complainant and the Member claimed he and members of his family also lost their money in the investment program. The investigation report reveals that the Member has not been cooperating with the LSA. The Member has refused to be interviewed, has apparently left the province (perhaps the country), has not responded to emails or letters from the LSA since August, 2006 (in this instance) and has not provided current contact information to the LSA. The investigator concludes that the LSA is unable to investigate further because the Member is not cooperating.
22. The crux of this hearing is the ability of the LSA to regulate this Member. It is the finding of this Hearing Committee that the primary complaints set out at Exhibits 8, 7, and 6 and summarized above could not be investigated. Moreover, these complaints could not proceed to formal reviews because the Member would not cooperate. It must be underlined that the

investigation reports were provided for information only and not for the purposes of making any findings in respect of the substance or merits of the particular complaints; rather, the investigation reports are proffered by counsel for the LSA to explain the apparent seriousness of the matters about which complaints have been received. Mr. Brian Olesky, a chartered accountant, was sworn and testified that he is a forensic investigator for the LSA. Mr. Olesky testified that it became clear to the investigation unit that the Member had transactions and involvements in these alleged ponzi and impugned off-shore investment schemes. It was during the course of an investigation of the first allegations of an alleged ponzi scheme, concerning another member, that the investigators were alerted to the potential involvement of the Member.

23. Mr. Olesky testified that the LSA was not able to fully complete the investigation of the Member because part of the obstacle to a complete investigation was that the Member did not make himself available for interviews. Further, the investigation unit was unable to assess the credibility of the Member in respect of matters informally raised by the Member (Member as victim, family members of the Member as victims, Member did not receive the money in his capacity as a lawyer, illness of Member, and so forth) because it is critical to this type of assessment and critical to the investigation overall to interview the Member to obtain information germane to the investigation. This was the evidence of Brian Olesky, CA: that interviewing the Member was necessary to get a full and complete response to the Complaints. Mr. Olesky further testified about the attempts by the LSA to contact the Member, by email and by letter, and including the LSA's delivery of formal demands for an interview, described above. Mr. Olesky testified that Exhibit 6, Tabs 16 and 17, being letters from the LSA to the Member and dated March 21, 2006 and April 18, 2006 were not returned to the LSA. Moreover, Mr. Olesky testified that Exhibit 6, Tab 19, being a transcription of voice mails makes clear that the Member had, in fact, received communications recently sent by the LSA. This transcription relates to voice mail messages left by the Member at the LSA offices on May 24, 2006.
24. The Hearing Committee finds that the failure of the Member to respond to demands made by the LSA to submit to interviews and that the Member's conduct throughout the LSA's efforts to investigate these extremely serious complaints has been such as to prevent the LSA from regulating the Member as a member of the LSA.

**K. Decision As to Citations**

25. To summarize, the Member had a positive obligation to respond to the demands of the LSA in respect of all matters pertaining to the three complaints which form the background of this Hearing. The Hearing Committee finds that the Member, although having been properly and sufficiently served, did not respond to the LSA. In the result, the Member's actions effectively impeded and obstructed the investigation efforts being made in respect of the underlying Complaints. This Hearing Committee finds that the Member conducted himself in such a manner as to compel this Hearing Committee to conclude that this Member is ungovernable. The Member is guilty of Citations 1 through 5.

26. The Member has no record. Notwithstanding, the right to practise law carries with it obligations to the LSA and to its members. The minimum obligations in our view are compliance with rules and communication with the Society as might reasonably be expected. This Member has persistently failed to comply with the rules and to submit to the LSA's reasonable and repeated demands for interviews of the Member.
27. The justification for self-government is at least partly based on the assumption that the Law Society of Alberta will in fact govern its members and that its members will accept this governance. This Member has demonstrated through his conduct that he does not accept governance and we regard this as a very serious matter. Maintaining the confidence of the public in the absolute integrity of members of the Law Society of Alberta is paramount. The conduct of the Member has effectively prevented the full and fair investigation of three separate complaints of private citizens made against the Member. The complaints, in substance, concern the Member's handling of significant amounts of money owned by members of the public and given over to the Member.
28. To maintain the reputation of the profession and in order to sustain public confidence in the integrity of the profession, it is necessary in this case that the Member be disbarred. Our primary obligation is to the people of the Province of Alberta. The Member has, by his actions and inactions, left us in a position where the Law Society of Alberta is unable through its investigatory arm to assure the public that this Member, like all other solicitors, is amenable to our discipline and acts with propriety and acts responsibly. The Law Society of Alberta has been totally frustrated in its attempts to investigate serious allegations of wrongdoing which may well have involved - although we have no idea whether they really did - the Member in defrauding members of the public.
29. Finally, this disbarment is not to punish the Member but to protect the public. The Law Society of Alberta's credibility always depends on being seen to be able to act to discipline its members. In this case, we are no longer able to demonstrate this ability.

DATED this 23rd day of October, 2009.

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Frederica L. Schutz - Chair

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John Higgerty, Q.C.

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James A. Glass