



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 Darius Aperochó, 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 Darius Aperochó on July 15, 2008. The Committee consisted of Douglas R. Mah, Q.C., Chair, Stephen Raby, Q.C., Committee member and Wayne Jacques, Committee member. The LSA was represented by Michael Penny. The Member was present and was represented by Tchupa Chibambo.
2. Exhibits 1 through 4, consisting respectively of the Letter of Appointment of the Hearing Committee, the Notice to Solicitor with acknowledgement of service, the Notice to Attend with acknowledgement of service and the Certificate of Status of the Member, were admitted into evidence by consent. The admission of these documents established the jurisdiction of the Committee.
3. There was no objection by the Member's counsel or counsel for the LSA with respect to the composition of the Committee.
4. The Certificate of Exercise 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 10 were contained in the exhibit binder provided to the Committee members and the parties and were admitted into evidence by consent. The following additional exhibits were also admitted into evidence by consent:
 - Exhibit 11 – Statement of Facts agreed upon between LSA counsel and counsel for the Member and containing the Member's signed admission of guilt with respect to Citation 1 at paragraph 15 dated July 15, 2008 (Agreed Statement of Facts and Admission of Guilt);
 - Exhibit 12 – letter dated December 10, 2007 from Glen Arnston, Manager, Audit and Investigation, to the Member; and
 - Exhibit 13 – letter of July 10, 2008 from R. Gregory Busch, Director, Lawyer Conduct, to Michael Penny certifying that there is no discipline record; and
 - Exhibit 14 – Estimated Statement of Costs.

B. Citations

6. As indicated in the Notice to Solicitor (Exhibit 2), the Hearing Committee was inquiring into two citations:

Citation 1: It is alleged that you failed to follow the accounting rules of the Law Society of Alberta, contrary to the *Rules of the Law Society of Alberta*, and that such conduct is conduct deserving of sanction.

Citation 2: It is alleged that you failed to respond on a timely basis and in a complete and appropriate manner to a communication from the Law Society of Alberta that contemplated a reply, thereby breaching the *Code of Professional Conduct*, and that such conduct is conduct deserving of sanction.

C. Agreed Statement of Facts and Admission of Guilt

7. The Agreed Statement of Facts and Admission of Guilt (Exhibit 11) states as follows:

A. Introduction

1. Darius Aperocho is a member of the Law Society of Alberta, having been admitted to membership as an active practitioner on October 1, 1993.
2. At the time material to the citations, Mr. Aperocho was a single practitioner, practising in the City of Calgary.
3. The citations concern exceptions noted during the course of an audit conducted under Rule 130 of the *Rules of the Law Society of Alberta*, and Mr. Aperocho's subsequent failure to provide a response as to why those exceptions occurred.

B. Citations

4. The Citations are:
 1. It is alleged that you failed to follow the accounting rules of the Law Society of Alberta, contrary to the *Rules of the Law Society of Alberta*, and that such conduct is conduct deserving of sanction.
 2. It is alleged that you failed to respond on a timely basis and in a complete and appropriate manner to a communication from the Law Society of Alberta that contemplated a reply, thereby breaching the *Code of Professional Conduct*, and that such conduct is conduct deserving of sanction.

C. The Circumstances Giving Rise to the Citations

5. On June 1, 2006, an audit of Mr. Aperocho's general and trust account was conducted at the request of the Director of Audit of the Law Society, pursuant to Rule 130(2)(f).

6. That Rule 130 audit resulted in a report by way of a letter to Mr. Aperocho, dated September 27, 2006. This letter sets out fourteen exceptions, including twelve breaches of the *Rules of the Law Society of Alberta* which govern the maintenance and operation of lawyer's accounts. [Exhibit 6, Tab 6]

7. At the request of the Law Society, Mr. Aperocho provided a reconciliation statement for his trust account for the month of May 2006. This statement showed a shortfall of \$2.77. [Exhibit 6, Tab 4]

8. On September 15, 2006, the Law Society wrote to the Canada Revenue Agency to request information regarding Mr. Aperocho's GST account. [Exhibit 6, Tab 5]

9. The Canada Revenue Agency replied on October 18, 2006, confirming that Mr. Aperocho's last GST filing was December 31, 2003, and that there were outstanding arrears. [Exhibit 6, Tab 7]

10. On January 10, 2007, Mr. Glen Arnston, Manager, Audit and Investigations for the Law Society, sent a memo to Ms. Katherine Whitburn, Manager, Complaints with the Law Society, and provided her with copies of the audit report [Exhibit 6, Tab 6] and the letter from Canada Revenue Agency [Exhibit 6, Tab 7] with a recommendation that Mr. Aperocho be charged with failing to follow accounting rules. [Exhibit 6]

11. On February 1, 2007, Ms. Whitburn wrote to Mr. Aperocho, advising him that she regarded the information provided by Mr. Arnston to be a formal complaint, and requiring his response within 14 days, a deadline extended at Mr. Aperocho's request to the end of March 2007. [Exhibit 7]

12. Despite follow up letters from Ms. Whitburn on April 4 and April 26, 2007, Mr. Aperocho has provided no direct and substantive response prior to the citations issuing against him on January 15, 2008. [Exhibits 8 and 9]

13. Mr. Aperocho did, however, provide a letter on April 18, 2007, accepting that he must pay the audit costs, and providing a partial explanation for his failure to follow the Law Society's accounting Rules. [Exhibit 10]

14. The Conduct Committee Panel which issued the citations for this hearing also directed that Mr. Aperocho pay \$1,043.25, the costs of Rule 130 audit, and Mr. Aperocho has paid such costs. [Exhibit 10]

Mr. Aperocho's Admission of Guilt

15. Mr. Aperocho admits that Citation No. 1 is made out and that his conduct is deserving of sanction.

ALL OF THESE FACTS ARE ADMITTED THIS 15TH DAY OF JULY, 2008.

"original signed"

Darius Aperocho

D. Additional Evidence

8. The Member testified that his default in observing the accounting rules had several causes. As a sole practitioner, the Member operated an extremely busy practice from his home. The Member indicated that at the material time he was suffering from high blood pressure and depression. Although he was taking medication for his high blood pressure, the dosage was insufficient and he was hospitalized for his medical condition during 2007. He described these circumstances as leading to "temporary burn out" on his part. These factors had led to him neglecting the accounting aspects of his practice and resulting in the deficiencies identified in the two audit reports (Exhibit 6, Tab 6 and Exhibit 12).
9. In his evidence, the Member told the Hearing Committee that he now fully appreciates the LSA's accounting requirements and has enlisted the services of a bookkeeper/accountant, who has experience doing the books for lawyers, to remain compliant. He has converted from using a manual accounting system to a computerized legal accounting program. He now manages the stress of legal practice by limiting the number of files that he takes on. The Member advised the Hearing Committee that he remains under active treatment for his depression and that dosage adjustments in his medication have enabled him to better manage his medical condition.
10. It was noted that all trust shortages have been rectified. It was also noted that there are some 30 to 35 clients affected by undisbursed trust funds in a total amount between \$6,000 and \$7,000. The Member was now taking steps to disburse those trust funds or turn them over to the LSA. The Member is actively involved with the Practice Review Committee, indicated that he is fully cooperative and is prepared to accept any recommendations made or conditions or undertakings imposed.
11. The Member's April 18, 2007 letter (Exhibit 10) was intended to be his response to the section 53 demand. It was noted that the Member paid the assessed audit costs of \$1,043.50 on two separate occasions. The LSA had mistakenly requested payment a second time. The second payment was ultimately refunded to the Member.

E. Submissions Respecting Guilt

12. LSA counsel noted for the Hearing Panel that the 14 exceptions indicated in the first audit report had essentially gone unchallenged by the Member. Indeed, the April 18, 2007 letter appears to be an admission of guilt. The Member also admitted guilt with regard to Citation No. 1 through the concluding paragraph of the Agreed Statement of Facts and Admission of Guilt.
13. With regard to Citation No. 2, LSA counsel conceded that the April 18, 2007 letter was an attempt to respond to the section 53 demand, although the response may not have been entirely complete or appropriate. LSA counsel requested the Hearing Committee to dismiss Citation 2.
14. Counsel for the Member essentially endorsed the submissions of LSA counsel. He explained that the Member's difficulties arose from the fact that he practices in isolation and does not have peer support. He advised that the Member has been responsive in rectifying the systemic deficiencies in his practice. He also indicated that the Member has taken steps to more adequately address his medical issues.

F. Disposition of the Citations

15. Having heard the evidence at the Hearing and the submissions of counsel, the Hearing Committee concluded that the Agreed Statement of Facts and Admission of Guilt is in an acceptable form. Consequently, it is deemed for all purposes to be a finding by the Hearing Committee that the Member's conduct as particularized in Citation No. 1 is conduct deserving of sanction.
16. The Hearing Committee also determined that with regard to Citation No. 2, the April 18, 2007 letter, while not entirely appropriate or complete, was indeed an attempt by the Member to respond to the section 53 demand and provide an explanation for the conduct. As such, the Hearing Committee dismisses Citation No. 2.

G. Sanction

17. Counsel for the LSA applied for an adjournment of the sanctioning phase of the Hearing. Counsel advised that the Member is currently undergoing a process with the Practice Review Committee and that the outcomes of that process would not be known for several months. Counsel submitted that these outcomes are relevant to the eventual sanction that the Committee would impose. The Member's counsel agreed with the adjournment application.

18. The Hearing Committee adjourned the sanctioning phase of the Hearing to a date to be agreed upon between counsel. It is anticipated that the Practice Review process will be completed and the parties in a position to resume the Hearing in approximately six months.

Dated at Edmonton, this 17th day of July, 2008.

Douglas R. Mah, Q.C. – Chair and Bencher

Stephen Raby, Q.C. – Bencher

Wayne Jacques – Bencher

DECISION ON SANCTION

On May 25, 2009 the Hearing Committee reconvened to decide the appropriate sanction. After hearing evidence and argument the Hearing Committee directed the member be reprimanded and pay the actual costs of the hearing, estimated at the time to be in excess of \$2,600. The Hearing Committee will be providing written reasons for its decisions. The reasons will be published when released.