



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 Aperocho, a Member of the Law Society of Alberta.

A. Background

1. A Hearing Committee of the Law Society of Alberta ("LSA"), consisting of Douglas R. Mah, Q.C., Chair, Stephen Raby, Q.C. and Wayne Jacques, met in the Calgary offices of the LSA on May 25, 2009 to continue its hearing into the conduct of Darius Aperocho ("the Member"). The LSA was represented by Michael Penny, Esq. The Member, who was present at the hearing with his spouse, was represented by Tchupa Chibambo, Esq.
2. At its earlier hearing on July 15, 2008, the Hearing Committee had found the Member guilty of one count of conduct deserving of sanction as follows:

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.
3. Counsel jointly requested at that time, and the Hearing Committee granted, an adjournment of the sanctioning phase of the hearing in order that the Member complete his involvement with the LSA's Practice Review Committee.

B. Exhibits

4. In the continuation of the hearing, the following exhibits were entered into evidence by consent:
 - Exhibit 15: the Member's updated discipline record with the LSA, indicating that there is no record;
 - Exhibit 16: Estimated Statement of Costs; and
 - Exhibit 17: letter of February 9, 2009 from the Practice Review Committee to the Member.

C. Submissions

5. LSA counsel submitted for reference the following cases:
 - *Law Society of Alberta v. Tralenberg* [2002] L.S.D.D. No. 58;
 - *Law Society of Alberta v. Berman* [1998] L.S.D.D. No. 144; and
 - *Law Society of Alberta v. Collins* [1999] L.S.D.D. No. 69.

6. It was submitted by LSA counsel, and agreed to by counsel for the Member, that owing to the absence of aggravating factors as found in the authorities cited above and the presence of some rather significant mitigating factors, the appropriate sanction is a reprimand and costs.
7. The Hearing Committee was advised by LSA counsel that the Member had accepted the advice of the Practice Review Committee to voluntarily go on the inactive list. Exhibit 17 contains this recommendation and also lists a number of significant steps, as recommendations, the Member ought to undergo prior to reinstatement to the active list.

D. Sanction

8. The Hearing Committee determined that the appropriate sanction in this case is a reprimand and costs. The Hearing Committee accepts that the LSA regards breaches of trust accounting rules seriously, as reflected in the three authorities cited, all of which indicated monetary fines as opposed to a reprimand only. However, LSA counsel also fairly pointed out that those cases each featured one or more aggravating factors that justified the fines and that no such aggravating factors are in the present case. In particular, the Member has a clear record apart from the present conviction and there was no suggestion in this case of any deceit or motive in the failure to comply with accounting rules, nor was there any failure to cooperate with the LSA exhibited.
9. The Hearing Committee did take note of some rather significant mitigating factors. First of all, the Member pleaded guilty to the citation at the earliest opportunity. Second, the Hearing Committee is cognizant of the fact that the unfortunate events underlying this case were precipitated by the Member's health issues. Third, the Member was fully cooperative during the audit and discipline processes, and in fact was commended by the LSA's auditor for making progress with some of the accounting issues. To the Member's credit, he came to the realization that the problems with his practice are overwhelming, and albeit with some prompting from the Practice Review Committee, he has voluntarily agreed to go on the inactive list. Thus the Member, by his own action, has addressed for this Hearing Committee the issue of protection of the public. The letter from the Practice Review Committee (Exhibit 17) indicates that should the Member decide to seek reinstatement, there are some rather significant hurdles for him to meet.

E. Reprimand

10. Even recognizing all of the Member's health issues, the Hearing Committee states that the Member, by breaching the accounting rules, has let down the profession and his own clients. It should be impressed upon the Member that the LSA takes such breaches seriously and, but for the mitigating factors that were touched upon, there may well have been a fine to express denunciation of the conduct.

11. Proper accounting is key to the solicitor and client relationship and is a necessary cornerstone of the trust that clients repose in lawyers. If and when the Member does decide to seek reinstatement, it is this Hearing Committee's expectation that he will have due regard to his accounting obligations.

F. Concluding Matters

12. There will be no referral to the Attorney General.
13. There will be no notice to the profession.
14. With regard to costs, the Member is ordered to pay the full costs of the hearing within 12 months of the date on which the final Statement of Costs is served upon the Member's counsel, but in the event the Member makes an application for reinstatement prior to the expiry of 12 months, then the costs are to be paid in full prior to that application.
15. In the event that any client names or personal information appears in the record, those names and that information will be redacted from the transcript and the exhibits.

Dated this 8th day of July, 2009.

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

Stephen Raby, Q.C. – Bencher

Wayne Jacques – Bencher