

**THE LAW SOCIETY OF ALBERTA**  
**IN THE MATTER OF THE *LEGAL PROFESSION ACT*;**  
**AND**  
**IN THE MATTER OF A HEARING REGARDING**  
**THE CONDUCT OF EDMUND SCHUSTER,**  
**A MEMBER OF THE LAW SOCIETY OF ALBERTA**

**HEARING COMMITTEE:**

Rob W. Armstrong, Q.C., Chairperson  
Amal Umar (Lay Bencher)

**COUNSEL APPEARANCES:**

Counsel for the Law Society - Shanna L. Hunka  
Counsel for Edmund Schuster - Ivan J. Derer, Q.C.

**HEARING COMMITTEE REPORT**

**INTRODUCTION**

1. On November 30, 2015 a Hearing Committee of the Law Society of Alberta (LSA) convened to inquire into the conduct of Edmund Schuster. Mr. Schuster was charged with 6 citations. Following a 5 day hearing and the submission of written argument, Mr. Schuster was found to have engaged in conduct worthy of sanction on a single citation: failing to inform his client of a material error or omission. The remaining 5 citations were dismissed.
2. On June 21, 2016, Mr. Schuster appeared before the Committee for a hearing as to the appropriate sanction. Prior to the hearing on sanction, one of the Committee members ceased being a Bencher of the Law Society as a result of an appointment to the Court of Queen's Bench. The Committee continued with the two remaining members pursuant to section 66(3) of the *Legal Profession Act*, R.S.A. 2000, c. L-8.
3. At the commencement of the sanctioning hearing, two exhibits were tendered on behalf of the LSA with the consent of Mr. Schuster. Exhibit 115 was the discipline record of Mr. Schuster confirming that he had no prior disciplinary record. Exhibit 116 was the Estimated

#### Statement of Costs of the Hearing.

4. The Committee heard submissions from the LSA as to an appropriate sanction. The LSA urged the Committee to impose a sanction consisting of a reprimand, a fine of \$3,000 and costs equal to 1/3 of the Estimated Statement of Costs.
5. In support of its submission, the LSA provided 3 cases for the Committee's consideration. While all of the cases are unique in terms of their facts and the constellation of citations at issue, the cases were of assistance in providing guidance as to an appropriate range of sanctions under the circumstances. The range of sanctions in the LSA's case law went from a reprimand alone at the low end, up to a reprimand plus a fine of \$7,500 at the high end. The LSA argued that a reprimand plus a moderate fine of \$3,000 was appropriate in the circumstances, given the seriousness of any conduct deserving of sanction involving trust funds.
6. The LSA argued that costs in the amount of 1/3 of the Estimated Statement of Costs would be appropriate. The LSA argued that while there were 6 individual citations levied against Mr. Schuster, they really fell into 3 categories and 2 out of 3 of those categories of citations were dismissed. According to the LSA's argument, Mr. Schuster should therefore be responsible for 1/3 of the costs.
7. Mr. Schuster urged the Committee to impose no sanction. He further argued that the Estimated Statement of Costs was high and that no more than 1/12 of the Estimated Costs should be borne by him. Mr. Schuster suggested that had the LSA only proceeded with the single citation on which he was found guilty of conduct deserving of sanction, the whole matter could have wrapped up with no more than a ½ day hearing.
8. In support of the argument in favor of no sanction, Mr. Schuster cited a number of mitigating factors including his 40 year practice history without a discipline record, the finding of the Committee in relation to his candour at the hearing, the fact that no loss to the client occurred as a result of Mr. Schuster's conduct and the fact that the main witness on behalf of the LSA described him as an honourable and trustworthy man. Mr. Schuster also argued that the whole complaint process was simply an attempt by an opposing party, in related civil litigation, to gain some advantage over him through the conduct process.
9. Taking into account all of the circumstances of this matter, the Committee determined that Mr. Schuster shall be given a reprimand and shall pay costs in the amount of \$5,000, that being roughly equal to 1/6 of the total Estimated Statement of Costs. Mr. Schuster sought one month to pay the costs and the Committee granted that time to pay. No notice to the profession was directed.
10. In coming to the decision on sanction, the Committee was very mindful of the significant mitigating factors, including the long career of Mr. Schuster, free from any disciplinary

issues. In addition, the conduct in question did not result in any personal gain to him or loss to his client.

11. Despite the presence of the significant mitigating factors, the Committee was not prepared to impose no sanction. Imposing no sanction would not properly address the seriousness of the failure of Mr. Schuster to advise his client, even though the client took a passive role in the development, of the error that occurred in the trust account. The error was a significant one and while Mr. Schuster was able to eventually rectify the error, the dollar amounts involved were substantial. The client had a right to know what had happened and to have a say in how the matter would be rectified. For this reason, Mr. Schuster deserves to be sanctioned, and a reprimand ensures the public interest is properly considered and the conduct that tends to harm the standing of the legal profession generally is denounced.
12. With respect to costs, the Committee rejected the argument of the LSA. The LSA cannot levy 6 citations against Mr. Schuster, all of which were taken very seriously by him and which required defending and then suggest, after 5 of the citations were dismissed, that really there were only 3 types of citations, therefore he should pay 1/3 of the costs. The LSA must carefully consider the citations it directs and live with the consequences when the majority of the citations are dismissed. Given that Mr. Schuster was found guilty of 1 out of the 6 citations, costs of \$5,000 are appropriate, that being approximately 1/6 of the total Estimated Statement of Costs.
13. The following reprimand was delivered by the Chair of the Committee to Mr. Schuster:

You have enjoyed a long career, free from disciplinary sanction. That is to be commended. It is imperative now that you not become complacent with respect to the Code of Conduct and the Rules that govern all members of the Law Society. The public's trust in the profession is at stake, particularly so when the handling of trust funds is in question.

Academics and courts at all levels have articulated the special duties that are placed on those entrusted to handle their client's money. The public must be confident in the understanding that funds held in trust by a lawyer will be dealt with appropriately and in accordance with the restrictions placed on those trust funds at all times.

When mistakes occur, as will happen from time to time, it is the lawyer's duty – your duty – to advise your client with clarity and candour. The preservation of the public trust demands this level of candour and transparency. Clients are entitled to know if there has been an error in the handling of their trust funds and this is where your conduct was found to be deserving of sanction. You had a fiduciary obligation to your client that you could not contract out of. That obligation requires you to be forthright in

respect of all facts that may affect your client. You failed your client in not disclosing a trust accounting error that occurred.

It is not sufficient for you to take matters into your own hands to try and rectify the problem. Your client is entitled to know what happened. If you have a plan to address the error that occurred, you must discuss that plan with the client who ultimately may decide to continue to work with you or to seek alternate counsel.

Early in a lawyer's career, fear often causes a member to hide errors from clients and the Law Society. In later years, following many years of successful practice, complacency and conceit must be guarded against. Now more than ever you must remain vigilant with respect to adherence to your duties and obligations to your clients and we trust this experience will highlight the importance of your continued vigilance and adherence to the code of conduct.

14. Following the reprimand the hearing was concluded.

Dated at the City of Calgary, in the Province of Alberta this 9th day of August, 2016.

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Rob W. Armstrong, Q.C.

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Amal Umar