

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 BRANDON TRALENBERG  
a Member of The Law Society of Alberta

## INTRODUCTION AND SUMMARY OF RESULT

1. On March 30, 2011, a Hearing Committee of the Law Society of Alberta (LSA) convened at the Law Society offices in Edmonton to inquire into the conduct of the Member, Brandon Tralenberg. The Committee was comprised of James Glass Q.C., Chair, Scott Watson Q.C. and Wayne Jacques, Lay Benchers. The LSA was represented by Ms. Tracy Davis. The Member was present throughout the hearing and was represented by Mr. Rodney Gregory.
2. The Member faced one citation:

IT IS ALLEGED THAT you engaged in conduct which brought discredit to the profession and such conduct is conduct deserving of sanction.
3. At the commencement of the hearing, counsel for the LSA and Mr. Tralenberg presented the Hearing Committee with an Agreed Statement of Facts (Exhibit 8). Upon questioning from the Chair, Mr. Gregory, on behalf of Mr. Tralenberg, confirmed that the Agreed Statement of Facts was reviewed and signed by Mr. Tralenberg prior to the commencement of the hearing and that Exhibit 8 was intended to be an Admission of Conduct deserving of Sanction pursuant to s. 60 of the Legal Profession Act.
4. On the basis of the Agreed Statement of Facts and Admission of Conduct Deserving of Sanction, the other evidence received at the hearing, and for the reasons that follow, the Hearing Committee finds that the Citation is proven and the Member is guilty of conduct deserving of sanction.
5. The Hearing Committee concluded that the sanction should be a reprimand.
6. The Hearing Committee concluded that the Member should pay costs in the amount of \$2,352.00, to be paid within 60 days of the date that the Member is served with the Statement of Costs of the hearing.

## JURISDICTION AND PRELIMINARY MATTERS

7. Exhibits 1-4, consisting of the Letter of Appointment of the Hearing Committee, the Notice to Solicitor, the Notice to Attend and the Certificate of Status of the Member, established the jurisdiction of the Hearing Committee. The Certificate of Exercise of

Discretion was entered as Exhibit 5. These Exhibits were entered into evidence by consent.

8. There was no objection by the Member's counsel or counsel for the LSA regarding the constitution of the Hearing Committee.
9. The entire hearing was conducted in public.

### **CITATIONS**

10. The Member faced one citation:

IT IS ALLEGED THAT you engaged in conduct which brought discredit to the profession and such conduct is conduct deserving of sanction.

### **EVIDENCE**

11. As noted above, Exhibits 1-5 (the jurisdictional exhibits) were entered into evidence by consent.
12. Exhibits 6-10 and 13, all relevant to the Citation, were entered into evidence by consent.
13. The Member provided an Agreed Statement of Facts that was signed by him on March 23, 2011 (Exhibit 8). Through his counsel, the Member acknowledged and agreed that the Agreed Statement of Facts was also an Admission of Conduct Deserving of Sanction.
14. The Hearing Committee reviewed the Agreed Statement of Facts and Admission of Conduct Deserving of Sanction, and found it to be in a form acceptable to the Hearing Committee. Accordingly, pursuant to s.60 (4) of the *Legal Profession Act* the admission is deemed for all purposes to be a finding of the Hearing Committee that the conduct of the Member is conduct deserving of sanction. The Agreed Statement of Facts and Admission of Conduct Deserving of Sanction was entered into evidence as Exhibit 8, by consent.

### **FACTS**

15. The key Exhibits with regard to the citations are Exhibits 6, 7, 8, 9, 10 and 13.
16. The Agreed Statement of Facts and Admission of Conduct Deserving of Sanction is reproduced herein:

#### **STATEMENT OF FACTS**

1. Brandon Tralenberg is a Student-at-Law of the Law Society of Alberta, having been admitted as such on April 30, 2008.

2. These matters arise from a complaint made by Sergeant Derek Lai of the Edmonton Police Service.
3. On 2010 January 14<sup>th</sup> Mr. Tralenberg attended at the Downtown Front Counter of the Edmonton Police Service wanting to see a client who he believed was incarcerated at that location.
4. Constable Jakubowski was working in a uniformed capacity when he noticed Mr. Tralenberg speaking in a loud voice towards Constable Prabhu who was seated next to Constable Jakubowski at the front counter desk top.
5. Constable Jakubowski heard Mr. Tralenberg state that he had the right to speak with his client and was demanding to see him. Mr. Tralenberg's voice was escalating, so Constable Jakubowski ended the phone conversation he was having with City Bylaw and focused all his attention towards Mr. Tralenberg who was standing 5 feet back from the counter top.
6. As Constable Jakubowski began to listen to Mr. Tralenberg, he noted his face to be turning red and appeared to be angry towards Constable Prabhu.
7. Mr. Tralenberg continued to demand to see his client and was unhappy that the phone number that Constable Prabhu had given him to the cells area was busy. Constable Prabhu had informed Mr. Tralenberg a number of times that he did not know where his client was and questioned if city police had even arrested him and or if he was in other Edmonton Police Service holding cells.
8. At the time of Constable Prabhu's interaction with Mr. Tralenberg, there were a number of members of the public nearby that started to move away from Mr. Tralenberg. Mr. Tralenberg had been given a contact number for the Arrest Processing Unit and was informed that if the phone line was busy he would have to wait.
9. Once he was told this, Mr. Tralenberg started to accuse the officers of preventing him from seeing his clients and this was against his rights. Police attempted to explain to Mr. Tralenberg that there were certain procedures that had to be followed and it wasn't as simple as him walking into the City Police Cells area to speak with this client.
10. Constable Jakubowski attempted to interject and inform Mr. Tralenberg that if the phone line was busy he was going to have to wait just like everyone else or he could make the call from an outside line. Mr. Tralenberg replied that Constable Jakubowski should make the call for

him and that police had to allow him to see his client and continued to state that this was a violation of his client's rights.

11. Constable Jakubowski concluded that Mr. Tralenberg was not going to listen to any information he had obtained from police and would continue to cause a disturbance in the front entrance thereby disrupting police business with other persons.
12. Constable Jakubowski informed Mr. Tralenberg that he had the option of either waiting to use the phone or he was going to be escorted out of the building. Mr. Tralenberg replied that police were going to have to escort him out and he continued demanding to see his client.
13. Mr. Tralenberg was told to leave or he would be trespassing on the premises. Constable Jakubowski placed his left hand on Mr. Tralenberg's right shoulder and then attempted to direct him towards the front door at which time Mr. Tralenberg stated that Constable Jakubowski had no right to touch him and he tried to pull away from the grip that Constable Jakubowski had on his jacket.
14. After Mr. Tralenberg attempted to pull away Constable Jakubowski grabbed a hold of his jacket with both hands and started to walk him towards the front doors. While walking Mr. Tralenberg towards the front entrance he tried again to pull away from the grip Constable Jakubowski had on him.
15. Once inside the partition between the inner and outer doors, Constable Jakubowski attempted to push Mr. Tralenberg out the second set of doors and could feel him trying to push him away.
16. Constable Jakubowski then informed him that he was now under arrest and grabbed a hold of his neck and forced him in down under his left arm and restrained him in a head lock.
17. Constable Jakubowski tightened his grip on his neck and Constable Prabhu placed him into a pair of hand cuffs.
18. Once Mr. Tralenberg was secured into hand cuffs he was escorted to Downtown Holding cells where he was informed of his Charter rights and searched.
19. Once in a holding cell Mr. Tralenberg became compliant.

**ALL OF THESE FACTS ARE ADMITTED THIS 23<sup>rd</sup> DAY OF MARCH, 2011.**

## SUBMISSIONS AND EVIDENCE ON SANCTION

17. Ms. Davis indicated that the Member's conduct on the date in question showed incredibly bad judgment, that was repeated and that could have been redirected upon second sober thought by the Member.
18. Ms. Davis referred the panel to the following provisions of the Code of Conduct:

### **Chapter 1:**

**A lawyer shares the responsibilities of all persons to society and the justice system and, in addition, has certain special duties as an officer of the court and by virtue of the privileges accorded the legal profession, including a duty to ensure that the public has access to the legal system.**

**Commentary 3. A lawyer must not act in a manner that might weaken public respect for the law or justice system or interfere with its fair administration.**

### **Chapter 3:**

**A lawyer has a duty to uphold the standards and reputation of the profession and to assist in the advancement of its goals, organizations and institutions.**

**Commentary 1. A lawyer must refrain from personal or professional conduct that brings discredit to the profession.**

19. Ms. Davis indicated that the conduct of the Member occurred in a public place, in front of members of the public, who believed he was a lawyer. In addition, members of the Edmonton Police Service witnessed the conduct. Ms. Davis described the conduct of the Member as belligerent, abusive, hostile and shocking.
20. Ms. Davis referred the panel to the evidence given by a civilian witness to the event, Mr. M., who indicated in an interview with the LSA Investigator the following:
- Q. So is it fair to say the police were professional and calm in this case?
- A. Yes, they were. They were very professional.
- Q. And how about the lawyer or the person you think is a lawyer?

- A. Well, let me put it this way. I consider myself to be a professional. If one of my employees had acted like that, when he got back to home base he would have got a serious butt-kicking.
- Q. So you felt that the conduct of the lawyer was unprofessional, is that correct?
- A. Very much so.
21. Ms. Davis indicated that the relationship between the police and the criminal defence bar can be strained at times and that situations like the one in question in this hearing do nothing to improve that relationship.
22. Ms. Davis referred the panel to paragraph 60 of the Hearing Guide and suggested the following factors were the most relevant for the panel to consider:
- a) The need to maintain the public's confidence in the integrity of the profession, and the ability of the profession to effectively govern its own members.
  - b) Specific deterrence of the member in further misconduct.
  - d) General deterrence of other members.
  - e) Denunciation of the conduct.
  - f) Rehabilitation of the member.
23. Ms. Davis also referred the panel to paragraph 61 of the hearing Guide and suggested the following factors were the most relevant for the panel to consider:
- a) The nature of the conduct:
    - (ii) Does the conduct raise concerns about maintaining public confidence in the legal profession?
    - (iii) Does the conduct raise concerns about the ability of the legal system to function properly? (e.g., breach of duties to the court, other lawyers or the Law Society)
24. Ms. Davis indicated that the moral blameworthiness of the Member in this circumstance was high. She noted that the Member has struggled with this type of behavior and has taken steps to address it. This indicated maturity and acceptance of responsibility on behalf of the Member.

25. Ms. Davis indicated that in mitigation, the Member attended counseling with a recognized professional and that the Member accepted his responsibility and was earnest to learn to redirect his energies. The report is found at Exhibit 7.
26. Ms. Davis noted that the letters of reference suggest that the Member is and will be very good counsel to the public and that they had no concerns with his competence, professionalism or abilities. The reference letters are found at Exhibits 9, 10 and 13.
27. Ms. Davis noted that Mr. Tralenberg's admission to the bar has been delayed close to 11 months as a result of the conduct of the Member and which is the subject of this citation.
28. Ms. Davis tendered the record of the Member, which was entered as Exhibit 11 by consent. The Record indicates that the Member has no discipline record.
29. Ms. Davis submitted that the Hearing Committee should impose a reprimand as the appropriate sanction.
30. Ms. Davis submitted that the Member should also be directed to pay the costs of the hearing and tendered an Estimate of Costs that was entered as Exhibit 12 by consent.
31. Mr. Gregory submitted that he and the Member agreed with the submissions of counsel for the LSA as it related to the reprimand and costs. Mr. Gregory submitted that the Member was contrite and had not tried to minimize his responsibility in this matter. The Member has worked very hard to gain insight into his behavior.
32. Mr. Gregory referred the panel to the report of the counselor (Exhibit 7) and noted that the Member did not try to whitewash his behavior and that the counselor is a very experienced individual providing counseling to individuals subject to professional disciplinary matters and to the RCMP.
33. Mr. Gregory submitted that the Member is a passionate and diligent advocate for his clients, and that it was only his youth and inexperience which resulted in his perception that the police were trying to prevent him from accessing his client.
34. Mr. Gregory directed the Hearing Committee to Exhibit 13 and noted that the Honourable Judge Philp was fully conversant with Agreed Statement of Facts and met personally with the Member to counsel him regarding the respect that is required in all facets of the justice system. The Honourable Judge Philp noted that the Member has been diligent, courteous, prepared, competent and cooperative with both the Court and other counsel. Similar comments are made in the letters from the Honourable Judge Matchett (Exhibit 9) and Mr. Mackenzie, a senior Crown Prosecutor with Alberta Justice (Exhibit 10).
35. Mr. Gregory indicated that the Member has excellent prospects as a lawyer, that he has learned from this process about conducting himself in appropriate ways in given circumstances, that the Member cooperated fully with the LSA throughout the investigation and that this matter has had a significant impact on the Member.

## DECISION AS TO SANCTION

36. In determining an appropriate sanction, the Hearing Committee is guided by the public interest, which seeks to protect the public from acts of professional misconduct. The primary purpose of disciplinary proceedings is the protection of the best interests of the public and protecting the standing of the legal profession generally. The fundamental purpose of the sanctioning process is to ensure that the public is protected and that the public maintains a high degree of confidence in the legal profession.
37. In *McKee v. College of Psychologists (British Columbia)*, [1994] 9 W.W.R. 374 at page 376, the British Columbia Court of Appeal articulated the following principles, which are equally applicable to the disciplinary process for the legal profession:

“In cases of professional discipline there is an aspect of punishment to any penalty which may be imposed and in some ways the proceedings resemble sentencing in a criminal case. However, where the legislature has entrusted the disciplinary process to a self-governing professional body, the legislative purpose is regulation of the profession in the public interest. The emphasis must clearly be upon the protection of the public interest, and to that end, an assessment of the degree or risk, if any, in permitting a practitioner to hold himself out as legally authorized to practice his profession. The steps necessary to protect the public, and the risk that an individual may represent if permitted to practice, are matters that the professional’s peers are better able to assess than a person untrained in the particular professional art or science.”

38. The Hearing Guide for the LSA, at paragraphs 60 and 61, articulate the relevant factors to be considered in determining the appropriate sanction:
60. A number of general factors are to be taken into account. The weight given to each factor will depend on the nature of the case, always keeping in mind the purpose of the process as outlined above.
- a) The need to maintain the public’s confidence in the integrity of the profession, and the ability of the profession to effectively govern its own members.
  - b) Specific deterrence of the member in further misconduct.
  - c) Incapacitation of the member (through disbarment or suspension).
  - d) General deterrence of other members.



- e) Denunciation of the conduct.
- f) Rehabilitation of the member.
- g) Avoiding undue disparity with the sanctions imposed in other cases.

In one way or another each of these factors is connected to the two primary purposes of the sanctioning process: (1) protection of the public and (2) maintaining confidence in the legal profession.

61. More specific factors may include the following:

- a) The nature of the conduct:
  - (i) Does the conduct raise concerns about the protection of the public?
  - (ii) Does the conduct raise concerns about maintaining public confidence in the legal profession?
  - (iii) Does the conduct raise concerns about the ability of the legal system to function properly? (e.g., breach of duties to the court, other lawyers or the Law Society)
  - (iv) Does the conduct raise concerns about the ability of the Law Society to effectively govern its members?

39. The Member did not engage in any deliberate or reckless misconduct, and was honest. His error in conduct arose from inexperience and a passionate desire to represent his client.

40. The Member has learned from his experience and was contrite. During the Hearing, he did not attempt to minimize his conduct and that he should have conducted himself differently.

41. The Hearing Committee was influenced in its decision as to sanction by the following factors:

- (a) the Member's co-operation with the LSA;
- (b) the Member had no prior discipline record;
- (c) that specific deterrence of the Member will be achieved with a reprimand in these circumstances;

- (d) the significant efforts made by the Member to remedy the difficulties he encountered with his behaviour; and
  - (e) that from a general deterrence perspective, that it is important for all Members of the LSA that compliance with the Code of Conduct are important not only to the Bar, but also to maintain the public's confidence in the legal profession.
42. Taking into account all of the foregoing factors, the Hearing Committee concluded that the public interest would be protected and confidence in the profession maintained through a reprimand.
43. In addition, the Member is directed to pay of costs of \$2,352.00. The Member was given time to pay the costs of 60 days from the receipt by the Member of the Statement of Costs.
44. The Chair delivered the reprimand to the Member, which expressed denunciation for the conduct of a Member that brought discredit to the profession. A copy of the reprimand is appended to this Hearing Report.
45. The Hearing Committee also noted that the Hearing Committee has no concerns about Mr. Tralenberg's integrity, competence or governability.

### **CONCLUDING MATTERS**

36. 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 communications, the names of any of the Member's clients and such other confidential personal information.

Dated this 30<sup>th</sup> day of June, 2011.

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James A. Glass, Q.C., Bencher  
Chair

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Scott A. Watson, Q.C., Bencher

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Wayne Jacques, Lay Bencher

## **REPRIMAND**

Your conduct, Mr. Tralenberg, is incompatible with the best interests of the public and brings discredit on the profession. Lawyers have the privilege of being a self-governing profession; and to maintain that privilege, it is critical that we all as lawyers comply with the Code of Conduct to the very best of our ability. There is no doubt that the importance of an independent Bar and members of that Bar being able to fearlessly defend or advocate on behalf of their clients is a cornerstone of our profession.

However, so too is the manner in which we conduct ourselves at all times a cornerstone of our profession and being viewed by members of the public in the highest regard. As a barrister and solicitor, we are required to hold ourselves out to a higher standard than most members of the general public. In this one instance, you failed to do so.

What is clear to this Panel is that you have taken steps to deal with this issue. It has had a significant impact upon you, your family, and your life. We are pleased to note that you have the support of respected members of the Bar, your principal, and members of the Bench.

We trust that this type of behaviour, based upon what we've seen and heard from you and the material provided to us, won't occur again.