

LAW SOCIETY OF ALBERTA  
HEARING COMMITTEE REPORT

IN THE MATTER OF the *Legal Profession Act*; and

IN THE MATTER OF a hearing (the "Hearing") regarding the conduct of  
Thomas C. Lloyd, a Member of the Law Society of Alberta

**INTRODUCTION**

[1] On May 28, 2013 a Hearing Committee (the "Committee") of the Law Society of Alberta ("LSA") convened at the LSA office in Edmonton to inquire into the conduct of Thomas C. Lloyd, a Member of the LSA. The Committee was comprised of Anthony G. Young, QC, Chair, Kathleen Ryan, QC, Bencher and Derek Van Tassell, QC, Bencher. The LSA was represented by Molly Naber-Sykes, QC. The Member was in attendance throughout the hearing and was represented by William J. Tatarchuk, QC. Also present at the Hearing was a Court Reporter to transcribe the Hearing.

**JURISDICTION, PRELIMINARY MATTERS AND EXHIBITS**

[2] The Chair introduced the Committee and asked the Member and Counsel for the LSA whether there was any objection to the constitution of the Committee. There being no objection, the Hearing proceeded.

[3] Exhibits 1 through 4, consisting of the Letter of Appointment of the Committee, the Notice to Solicitor pursuant to section 56 of the *Legal Profession Act*, the Notice to Attend to the Member and the Certificate of Status of the Member with the LSA established the jurisdiction of the Committee.

[4] The Certificate of Exercise of Discretion pursuant to Rule 96(2)(a) and Rule 96(2)(b) of the Rules of the LSA ("Rules") pursuant to which the Deputy Executive Director & Director, Regulation of the LSA, determined that the persons named therein were to be served with a Private Hearing Application was entered as Exhibit 5. Counsel for the LSA advised that the LSA did not receive a request for a private hearing. Accordingly, the Chair directed that the Hearing be held in public.

[5] At the outset of the hearing Exhibits 1 through 47 contained in the Exhibit Book provided to the Committee were entered into evidence in the Hearing with the consent of the parties. Further Exhibits were admitted as the hearing proceeded including:

Exhibit 48 Agreed Statement of Facts;

Exhibit 49 Record of the Member; and

Exhibit 50 Estimated Statement of Costs.

## **CITATIONS**

[6] At the outset of the Hearing the Member faced the following Citations:

1. It is alleged that you breached the Law Society accounting rules, and that such conduct is conduct deserving sanction.
2. It is alleged that you failed to file forms S and T when due, and that such conduct is conduct deserving sanction.
3. It is alleged that you knowingly filed inaccurate Forms S, and that such conduct is conduct deserving sanction.
4. It is alleged that you failed to respond to communications from the Law Society of Alberta and cooperate with the Law Society of Alberta, and that such conduct is conduct deserving of sanction.
5. It is alleged that you failed to respond to communications from the Law Society of Alberta, and that such conduct is conduct deserving of sanction.

## **SUMMARY OF RESULTS**

[7] An Agreed Statement of Facts was proffered to the Hearing Committee. After hearing the submissions of counsel for the Law Society and counsel for the Member regarding the Agreed Statement of Facts, a determination was made by the Hearing Committee that the Agreed Statement of Facts was in a form acceptable to it. Pursuant to section 60 of the *Legal Profession Act* the Agreed Statement of Facts was deemed for all purposes to be a finding of The Hearing Committee and that the conduct of the Member on all five Citations was deserving of sanction.

[8] There was submission by counsel for the Law Society that the matter be dealt with by way of a 60 day suspension. Counsel for the Member argued for a less severe sanction.

[9] The Hearing Committee chose to impose a fine of \$10,000, the maximum allowable, a reprimand and the actual costs of the proceeding. The Chair also administered a reprimand.

## **THE FACTS**

[10] The facts in this matter are largely set out in the Agreed Statement of Facts as set out in Appendix A.

## **FINDING OF CONDUCT DESERVING OF SANCTION**

[11] After hearing the submissions of counsel for the Law Society and counsel for the Member regarding the Agreed Statement of Facts, a determination was made by the Hearing Committee that the Agreed Statement of Facts was in a form acceptable to it. Pursuant to section 60 of the *Legal Profession Act* the Agreed Statement of Facts was deemed for all purposes to be a finding of The Hearing Committee and that the conduct of the Member on all five Citations was deserving of sanction.

## **SUBMISSIONS OF THE LAW SOCIETY REGARDING SANCTION**

[12] Counsel for the Law Society made reference to s.49(1) of the *Legal Profession Act* which states:

49(1) For the purposes of this Act, any conduct of a member, arising from incompetence or otherwise, that

(a) is incompatible with the best interests of the public or of the members of the Society, or

(b) tends to harm the standing of the legal profession generally,

is conduct deserving of sanction, whether or not that conduct relates to the member's practice as a barrister and solicitor and whether or not that conduct occurs in Alberta.

[13] She stated that the Law Society had concerns with respect to

(a) the Member's governability;

(b) the Member's ability to deal with trust money;

(c) the ability of the Law Society of Alberta to govern its members; and

(d) the truthfulness of the Member.

[14] Reference was made to the fact that the Member failed to respond during an accounting investigation which spanned 2 to 3 years. Counsel argued that there were some points in time when the Member simply did not cooperate. In 2007 he was in breach of the accounting rules. He failed to report himself to the Law Society or to seek help. He filed inaccurate forms S and T.

[15] The Law Society relies upon lawyers to do what they are supposed to do. When they do not, there is risk to the public.

[16] In mitigation, Law Society counsel conceded that the Member:

(a) had a candid interview with Mr. Olesky;

(b) was cooperative through the disciplinary process;

(c) demonstrated remorse;

(d) had given long service to the profession and the public; and

(e) had no disciplinary record.

[17] Counsel for the Law Society argued for a 60 day suspension on the grounds that such a suspension was necessary for general and specific deterrence. She argued that Trust Safety obligations must be taken seriously and that she was concerned with respect to the integrity issues in this matter.

### **EVIDENCE OF THE MEMBER**

[18] That Member indicated that he was 52 years of age and had been practicing for 21 years. He was admitted to the bar in 1991 and practices criminal defense, real estate and corporate law.

[19] In 2007 the Member took on real estate as part of his practice and he got bogged down.

[20] The Member also spoke of his daughter who has cerebral palsy. He stated that in 2007 and 2008 he wanted his child to remain in public school. This occupied a great deal of his emotional energy and time.

[21] The Member did not blame the stresses that he was under as a result of this child's illness as being the cause of his difficulties with the Law Society. Rather, he spoke of being paralyzed. The Member stated that he had a lot going on in his life but that it was his responsibility to comply with Law Society rules.

[22] Under cross-examination the Member was asked why he did not initially tell Mr. Arnston that he was seriously deficient in this trust account reconciliations and that he had filed false S Forms for 3 years. He was also unresponsive to the Law Society requests for prolonged periods. He stated that he had no logical or rational reason why he did not respond. All he wanted to do was to avoid the issue and not "look stupid". In his mind, it was worse to miss the filing of accounting forms than filing inaccurate forms. He stated that part of the reason that he did not respond is that he could not find the appropriate documents.

### **DECISION**

[23] Counsel for the Law Society states that the regulator had concerns with respect to:

- (a) the Member's governability;
- (b) the Member's ability to deal with trust money;
- (c) the ability of the Law Society of Alberta to govern its members; and
- (d) the truthfulness of the Member.

[24] There is no question that the conduct of the Member calls out for a severe sanction. The question is whether it is appropriate to suspend the Member when there is evidence that the conduct complained of has already been remedied and the Member has demonstrated that he is willing to be governed by his regulator.

[25] In the instant case, it is apparent that Mr. Lloyd was under a great deal of stress. This stress had an effect on his behavior. It is not an excuse for Mr. Lloyd's conduct; however it helps explain why he was paralyzed and not able to obtain assistance.

[26] When Mr. Lloyd had his meeting with Mr. Olesky on October 26, 2011, he appeared to realize the true weight and impact of the negative situation that he was in. He stated very early on in the interview that:

“... Essentially my life was a mess from 2007 on.”

[27] This realization was a critical moment for Mr. Lloyd and he thereafter cooperated and acknowledged what he had done wrong.

[28] Mr. Lloyd presented as being an individual who has learned a great deal from the conduct process. He appears to have accepted the governance of his regulator. As such, there is no necessity, in the view of the Hearing Committee, to impose a suspension on Mr. Lloyd as a matter of specific deterrence.

[29] The question then is whether it is necessary to impose a suspension as a matter of general deterrence. The circumstances in this case are unique. There is no question that if Mr. Lloyd had been uncooperative through the disciplinary process, showed disdain for his regulator, had a disciplinary record regarding issues of governance or that if his negative behavior continued through the interview with Brian Olesky, he would have been suspended. It is our view, however, that because of the mitigating factors in this case, the interests of the public and general deterrence can be served by a substantial fine, costs and a reprimand.

[30] In the circumstances, the Member is ordered to pay a fine of \$10,000, the actual costs of the hearing and will be subject to a reprimand. A copy of the reprimand is attached hereto as Appendix B.

[31] The Member shall have until October 1, 2013 to pay both the fine and costs.

[32] The Member shall provide an undertaking to the Law Society of Alberta to refrain from the practice of law in relation to the purchase and sale of real property with two exceptions:

- (a) the Member may continue to administer oaths as a Commissioner for Oaths and a Notary Public; and
- (b) the Member may complete the real estate files in his office as at May 28, 2013.

[33] There shall be no referral to the Attorney General.

[34] There shall be no notice to the profession.

Dated this 2<sup>nd</sup> day of March, 2014.

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Anthony G. Young, QC (Chair)

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Kathleen Ryan, QC (Bencher)

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Derek Van Tassell, QC (Bencher)

## Appendix A

“IN THE MATTER OF THE *LEGAL PROFESSION ACT*

AND

IN THE MATTER OF A HEARING REGARDING THE  
CONDUCT OF THOMAS C. LLOYD,  
A MEMBER OF THE LAW SOCIETY OF ALBERTA

### AGREED STATEMENT OF FACTS

#### INTRODUCTION

1. Mr. Lloyd was admitted to the Law Society of Alberta on July 19, 1991.
2. Mr. Lloyd’s status with the Law Society of Alberta is active/practicing.
3. Mr. Lloyd has been a sole practitioner since January 15, 2010.
4. The majority of Mr. Lloyd’s practice consists of:
  - (a) 75% commercial;
  - (b) 25% corporate; and
  - (c) 5% real estate transactions.

#### CITATIONS

5. On March 20, 2012, the Conduct Committee Panel referred the following conduct arising from a complaint by the Law Society to hearing:
  1. It is alleged that you breached the Law Society accounting rules, and that such conduct is conduct deserving of sanction.
  2. It is alleged that you failed to file forms S and T when due, and that such conduct is conduct deserving of sanction.
  3. It is alleged that you knowingly filed inaccurate Forms S, and that such conduct is conduct deserving of sanction.
  4. It is alleged that you failed to respond to communications from the Law Society of Alberta and cooperate with the Law Society of Alberta, and that such conduct is conduct deserving of sanction.
6. On March 20, 2012 the Conduct Committee Panel referred the following conduct arising from a complaint by D.L. to hearing:

5. It is alleged that you failed to respond to communications from the Law Society of Alberta, and that such conduct is conduct deserving of sanction.

#### LAW SOCIETY COMPLAINT

7. On September 10, 2009, S.S., Audit Assistant, wrote to Mr. Lloyd requesting his 2006 to 2008 Forms S and T. The deadline of September 25, 2009 was imposed for the Forms S and a deadline of October 9, 2009 was imposed for receipt of the Forms T **(Exhibit 6)**.
8. On October 8, 2009, Mr. Lloyd asked the Law Society to extend the deadlines to October 16, 2009 **(Exhibit 7)**. The extension was granted but Mr. Lloyd did not provide his forms by the deadline.
9. The matter was referred to the Conduct Department on October 20, 2009. On October 26, 2009, Maurice Dumont, QC, Complaints Manager, sent a section 53 letter to Mr. Lloyd demanding a response to the forms issue within 14 days **(Exhibit 8)**. Mr. Lloyd did not respond.
10. On November 17, 2009, Mr. Dumont sent a letter to Mr. Lloyd telling him that he had failed to respond to the October 26, 2009 letter **(Exhibit 9)**. Mr. Lloyd did not respond.
11. On December 7 and December 23, 2009, Mr. Dumont sent follow-up letters to Mr. Lloyd **(Exhibit 10)**. Mr. Lloyd did not respond.
12. On February 3, 2010, Glenn Arnston, then Manager, Audit and Investigations, wrote to Mr. Lloyd requesting him to sign an undertaking freezing his trust account **(Exhibit 11)**.
13. By February 3, 2010 letter, Mr. Lloyd returned the undertaking, signed as requested **(Exhibit 12)**.
14. By February 19, 2010 letter, Mr. Lloyd provided Mr. Arnston with a “preliminary” reconciliation for December 31, 2009 showing an unexplained difference of \$310.97 **(Exhibit 13)**.
15. Mr. Arnston asked Mr. Lloyd on February 28, 2010 to balance his December 2007 trust reconciliations and provide missing pages of his December 2009 trust reconciliation **(Exhibit 14)**.
16. On March 19, 2010, Mr. Arnston wrote to Mr. Lloyd setting due dates for the trust reconciliations **(Exhibit 15)**.
17. By April 9, 2010 letter, Mr. Arnston asked Mr. Lloyd for the remaining trust reconciliations **(Exhibit 16)**.
18. On April 9, 2010, Mr. Lloyd faxed a “preliminary” reconciliation for July 31, 2007 **(Exhibit 17)**.



19. By May 10, 2010 letter, Mr. Dumont advised Mr. Lloyd that unless he provided the Law Society with all Forms by May 19, 2010, consideration would be given to an interim suspension **(Exhibit 18)**.
20. Mr. Lloyd forwarded the trust reconciliations and trust liability listings to Mr. Arnston on May 19, 2010 **(Exhibit 19)**. Upon review of Mr. Lloyd's documents, further information was requested with a deadline of May 28, 2010 for Mr. Lloyd's response **(Exhibit 20)**.
21. On May 28, 2010, Mr. Lloyd provided the Law Society with trust reconciliations for the new trust account. Mr. Lloyd indicated that he had deposited \$10,700.00 of his personal funds into trust **(Exhibit 21)**.
22. By letter dated August 31, 2010, Mr. Dumont reminded Mr. Lloyd of the many attempts the Law Society had made to obtain the outstanding forms from him **(Exhibit 22)**.
23. On January 28, 2011, an Investigation Order was issued to investigate Mr. Lloyd's failure to comply with the accounting rules of the Law Society **(Exhibit 23)**.
24. On October 20, 2011, Mr. Dumont wrote to Mr. Lloyd about his failure to cooperate with the Law Society's investigation and his failure to respond to the Law Society **(Exhibit 24)**.
25. On October 21, 2011, Mr. Olesky sent a letter to Mr. Lloyd asking for information **(Exhibit 25)**.
26. Mr. Olesky interviewed Mr. Lloyd on October 26, 2011 **(Exhibit 26)**. Mr. Lloyd admitted he had not reconciled his trust account from April 2006 to May 2010. Mr. Lloyd also admitted he had filed false form S's for 2006, 2007 and 2008. He stated his trust accounting records were current and had been reconciled when in fact they were not current and had not been reconciled. Mr. Lloyd provided some of the requested information from the October 21<sup>st</sup> letter to Mr. Olesky during the interview.
27. Mr. Olesky sent an email to Mr. Lloyd on October 25, 2011 asking him to review a ledger card prepared by the Law Society and identify the difference(s) from Mr. Lloyd's manual ledger card. Mr. Lloyd did not respond **(Exhibit 27)**.
28. Mr. Olesky sent a further email to Mr. Lloyd on November 8, 2011, asking for a response **(Exhibit 27)**. Mr. Lloyd did not respond.
29. On November 8, 2011, Mr. Olesky sent a letter to Mr. Lloyd requesting his response to the outstanding items from his October 21, 2011 letter **(Exhibit 28)**. Mr. Lloyd did not respond.
30. A letter was sent to Mr. Lloyd on November 22, 2011 requesting a response to Mr. Olesky's October 21, 2011 letter and October 25, 2011 email **(Exhibit 29)**. Mr. Lloyd did not respond.

31. By letter of November 25, 2011, Mr. Olesky asked Mr. Lloyd for information (**Exhibit 30**). Mr. Lloyd did not respond.

#### **D.L. COMPLAINT**

32. In November, 2008, the Law Society received a complaint from D. and G. L. against Mr. Lloyd (**Exhibit 31**). Inter alia, the complaints alleged they purchased a property in 2007 from C.P. and signed over their vehicle, an Infiniti FX35 worth \$45,000, as a deposit on their purchase. Mr. Lloyd acted on this purchase. The complainants later discovered that Mr. Lloyd was driving the Infiniti they had paid as a deposit on the property.

33. On June 26, 2010, Mr. Olesky sent a letter to Mr. Lloyd requesting information and documentation about D. and G.L.'s complaint. Mr. Lloyd was asked to provide information in regards to his possession of the Infiniti (**Exhibit 32**). Mr. Lloyd did not respond.

34. Mr. Olesky wrote Mr. Lloyd on July 19, 2010 requesting his response by July 21, 2010 (**Exhibit 33**).

35. By letter dated July 20, 2010, Mr. Lloyd responded to Mr. Olesky's June 28 letter (**Exhibit 34**).

36. On July 21, 2010, Mr. Olesky sent a letter to Mr. Lloyd requesting additional information and available dates for an interview (**Exhibit 35**).

37. On September 8, 2010, Mr. Olesky reminded Mr. Lloyd to respond to his July 21 letter (**Exhibit 36**). Mr. Lloyd did not respond.

38. Mr. Olesky wrote to Mr. Lloyd on October 12, 2010, informing him that because he had not responded to his July 21, 2010 letter, the matter would be referred to Conduct (**Exhibit 37**). Mr. Lloyd did not respond.

39. October 12, 2010, the matter was referred to Conduct for failing to respond (**Exhibit 38**).

40. Mr. Dumont sent a letter to Mr. Lloyd by registered mail on October 25, 2010, requesting his response within 14 days pursuant to section 53 of the *Legal Profession Act* (**Exhibit 39**). Mr. Lloyd did not respond.

41. On November 17, 2010, the Law Society asked Mr. Lloyd to respond to Mr. Dumont's October 25, 2010 letter (**Exhibit 40**). Mr. Lloyd did not respond.

42. On January 31, 2011, the Law Society asked Mr. Lloyd to respond to its October 25 and November 17, 2010 letters (**Exhibit 41**). Mr. Lloyd did not respond.

43. The Investigation Department of the Law Society discovered that Mr. Lloyd may have been working at S.H. in Sherwood Park. On March 24, 2011, Mr. Olesky called S.H. and left a message on Mr. Lloyd's voicemail asking him to return his call. Mr. Lloyd did not respond.

44. On April 4, 2011, Mr. Olesky met with Mr. Lloyd. Mr. Lloyd told Mr. Olesky that he moved his office to S.H., he would cooperate with the Law Society and would provide files and other requested information the following week.
45. On April 11, 2011, the Law Society received three files from Mr. Lloyd (**Exhibit 42**).
46. Mr. Olesky asked Mr. Lloyd by May 16, 2011 letter for further information (**Exhibit 43**).
47. Mr. Dumont sent a letter to Mr. Lloyd by registered mail on May 16, 2011, regarding his failure to respond to the October 25, 2010, November 17, 2010 and January 31, 2011 letters. Mr. Lloyd was given 14 days to respond. (**Exhibit 44**)
48. By letter of June 1, 2011, Mr. Lloyd responded to Mr. Olesky's May 16, 2011 letter (**Exhibit 45**).
49. Mr. Olesky wrote to Mr. Lloyd on October 13, 2011 asking for a response to his July 21, 2010 and May 16, 2011 letters (**Exhibit 46**).
50. During Mr. Lloyd's interview on October 26, 2011, Mr. Olesky made a formal demand of Mr. Lloyd to provide proof he had paid for the Infiniti. On November 1, 2011, Mr. Olesky wrote Mr. Lloyd requesting the proof of payment (**Exhibit 47**). Mr. Lloyd did not respond.
51. November 9, 2011, Mr. Olesky requested a response to his demand during the October 26, 2011 interview and his letter dated November 1, 2011 (**Exhibit 48**). Mr. Lloyd did not respond.

#### **ADMISSION OF FACTS**

52. Mr. Lloyd admits as fact the statements in this Agreed Statement of Facts for the purposes of these proceedings.
53. This Agreed Statement of Facts is not exhaustive and Mr. Lloyd may lead additional evidence not inconsistent with the facts stated in this document. Mr. Lloyd acknowledges that the Law Society is not bound by this Agreed Statement of Facts and that it may cross-examine him, adduce additional evidence, or otherwise challenge any point of fact it may dispute in this document.

THIS AGREED STATEMENT OF FACTS IS MADE THIS 27<sup>th</sup> DAY OF MAY, 2013.

"THOMAS C. LLOYD"

## Appendix B

### Reprimand (paraphrased)

But for your guilty plea and your candid interview with Brian Olesky, you would have been suspended at this hearing. We are of the view that the public interest can be served by a substantial fine, costs, and a reprimand. There will be a fine of \$10,000, payment of the actual costs and a reprimand.

The most troubling factor in this matter is your dishonesty with respect to reporting. You stated to Mr. Olesky at page 37 that:

“I was expecting I was going to catch everything up; and I was afraid if I did that, you know, I get suspended and everything would stop.”

You admitted to deceiving your regulator. The fact is that you would likely not have been suspended, and you may even have received some help. When the public approaches lawyers to deal with their issues, the public has a right to expect that a member is following the rules of the regulator to the letter.

The highest standard is expected.

While the evidence before this panel is that you have not been directly responsible for a trust loss to your clients, the fact is, that your conduct created grave risk for the public and will not be tolerated.