

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 DERIS SPENCER  
a Member of The Law Society of Alberta

**INTRODUCTION AND SUMMARY OF RESULT**

1. On October 7, 2010 a Hearing Committee of the Law Society of Alberta (LSA) convened at the Law Society offices in Calgary to inquire into the conduct of the Member, Deris Spencer. The Committee was comprised of James Glass, Q.C., Chair, Steve Raby, Q.C. and Larry Ohlhauser, MD. The LSA was represented by Molly Naber-Sykes. The Member was not present at any time during the hearing.
2. The Member faced two citations:
  - 1) IT IS ALLEGED that you failed to fulfill a financial commitment and that such conduct is conduct deserving of sanction.
  - 2) IT IS ALLEGED that you failed to respond to the Law Society of Alberta and that such conduct is conduct deserving of sanction.
3. On the basis of the evidence received at the hearing and for the reasons that follow, the Hearing Committee finds that citations 1 and 2 are proven and the Member is guilty of conduct deserving of sanction.
4. The Hearing Committee concluded that the sanctions on the citations should be a suspension of the Member for a period of three months and that the Member pay the actual costs of the hearing.

**JURISDICTION AND PRELIMINARY MATTERS**

5. Exhibits 1, 2 and 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.
6. There was no objection by counsel for the LSA regarding the constitution of the Hearing Committee.
7. The entire hearing was conducted in public.

8. Counsel for the Law Society advised at the commencement that evidence would be called to prove service of the jurisdictional documents upon the Member. The Hearing Committee heard evidence from Ms. Arksey, Conduct Assistant with the LSA that she prepared the letter to the Member dated June 8, 2010, the Notice to Solicitor and Notice to Attend (all found at and marked as Exhibit 2) and forwarded the same to the Member by courier on June 11, 2010. The documents contained in Exhibit 2 were delivered and accepted by the Member as evidenced by her signature on the tracking details slip on June 14, 2010 (Exhibit 3).
9. The Hearing Committee determined that it would proceed with the hearing in the absence of the Member on being satisfied that the Member was personally served with the Jurisdictional documents in accordance with s.70 of the *Legal Profession Act* as detailed above.

### **CITATIONS**

10. The Member faced two citations:
  - 1) IT IS ALLEGED that you failed to fulfill a financial commitment and that such conduct is conduct deserving of sanction.
  - 2) IT IS ALLEGED that you failed to respond to the Law Society of Alberta and that such conduct is conduct deserving of sanction.

### **EVIDENCE**

11. As noted above, Exhibits 1, 2, 4 and 5 (the jurisdictional exhibits) were entered into evidence.
12. Exhibits 3, 6-18, all relevant to the citations, were entered into evidence.

### **FACTS**

13. The key Exhibits with regard to the citations are Exhibits 6, 8, 11, 12, 16, 17 and 18.
14. Counsel for the LSA called D.O., Linda Arksey, Conduct Assistant and Katherine A. Whitburn, Manager, Complaints for the LSA.
15. Ms. Arksey testified that on April 30, 2009, she forwarded the s.53 demand (Exhibit 14) to the Member at the business address provided by the Member to the LSA and the same was returned unclaimed. She then sent it to the Member's home address that was provided to the LSA by the Member, and again, the same was returned unclaimed (Exhibit 15). She then contacted Ms. Edwards, the custodian of the Member's practice (as she was suspended on March 31, 2009 for non-payment of fees) and was advised that she could send the demand to the address for the Member's parents in St. Albert, Alberta.

The Member received the s. 53 demand on June 11, 2009 as confirmed by the Canada Post tracking results (Exhibit 16).

16. D.O., President of C. I. R., testified that they were contracted by the Member to provide a transcript of a motion the Member had before the Federal Court of Canada on January 24, 2008. The transcript was provided to the Member and she was invoiced for same accordingly (Exhibit 6). The Member was sent numerous account reminders and was eventually telephoned about the outstanding balance. According to D.O., the Member did not deny owing the money and did not dispute receiving any of the invoices. D.O. testified that the Member promised payment of the invoice. To date, the invoice remains unpaid.
17. Ms. Whitburn testified that the LSA received the complaint about the Member and the non-payment of the invoice on December 15, 2008 (Exhibit 14).
18. The Member was contacted by the LSA Complaints Intake Officer by fax on January 5, 2009 (Exhibit 9) regarding the complaint. The LSA received a voice mail from the Member on January 7, 2009 indicating that the faxed letter of January 5, 2009 did not come through clearly but that she was aware of the nature of the complaint and had received the Complainant's letters as well. The Member advised that due to mail issues they were having that she did not receive the invoices. She advised that she had called the Complainant to explain and settle the issue and that a cheque covering the costs was being drawn up and that should take care of the matter. The Complaints Intake Officer returned the Member's call and thanked the Member for her call and advised that she would contact the Complainant and would notify her when the matter was resolved (Exhibit 18).
19. The Member was contacted again by the LSA Complaints Intake Officer by fax on February 10, 2009 (Exhibit 10) regarding the complaint as the cheque had not yet been received by the Complainant. The LSA received a voice mail from the Member on February 11, 2009 indicating that she had found the cheque in her outgoing mail and thought it had been sent previously. She said that she would send it that day and fax a copy to the LSA (Exhibit 18).
20. The Member did not forward a copy of the cheque as promised to the LSA nor was the cheque received by the Complainant.
21. Given the non- response by the Member, the matter was referred to a LSA Complaints Resolution Officer. The Member was sent two letters from the Complaints Resolution Officer requesting a response dated March 3, 2009 (Exhibit 11) and March 27, 2009 (Exhibit 12) respectively. The Member did not respond to either letter.
22. The matter was then referred to Ms. Whitburn, Manager, Complaints for the LSA. She testified that she sent two s. 53 demand letters to the Member on April 9, 2009 (Exhibit 13) and April 30, 2009 (Exhibit 14) respectively. It appeared that the Member did not

receive either letter despite being sent to the addresses that the Member had given to the LSA (Exhibit 15).

23. Ms. Whitburn was provided an address to send correspondence to by the custodian of the Members practice. The s. 53 demand was delivered and confirmed received by the Member (Exhibit 16). The Member did not respond. The Member was provided with a reminder letter to respond on June 30, 2009. The Member did not respond.
24. Ms. Whitburn testified that the Member has not responded to any of the Law Society's correspondence even to the date of this hearing.
25. Ms. Whitburn testified that the Member had been administratively suspended on March 31, 2009 for failure to pay her fees.

### **SUBMISSIONS ON CITATIONS**

26. Counsel for the LSA submits that the uncontradicted evidence of D.O., Linda Arksey and Katherine Whitburn and the other evidence referred to in the hearing clearly confirms that the Member is Guilty of Citations #1 and #2. The Member clearly ordered the transcript, received the transcript and failed to pay the account that was rendered by the Complainant. Further, the evidence clearly establishes that the Member failed to respond to any of the LSA correspondence from March 3, 2009 on.

### **CONCLUSIONS ON CITATIONS**

27. The Hearing Committee agrees with the submissions of Counsel for the LSA and finds the Member Guilty on both citations and that such conduct is deserving of sanction.

### **SUBMISSIONS ON SANCTION**

28. Counsel for the LSA indicated that the Member had no disciplinary record and entered a certificate confirming same as Exhibit 19.
29. Counsel for the LSA entered an estimated statement of costs as Exhibit 20.
30. Counsel for the LSA submitted that pursuant to s.49 of the LPA, the Hearing Committee was obligated to use a purposeful approach to sanctioning.
31. Counsel for the LSA submitted that a suspension was appropriate to protect the public and to impress upon the Member that she would be meticulous in her future compliance with required standards. The Hearing Committee was referred to *Bolton v. Law Society*, [1994] 2 All ER 486 for support.
32. Counsel for the LSA submitted that the Hearing Committee should have regard to:

- (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; and
- (b) Specific deterrence of the member in further misconduct.

Counsel for the LSA submitted that a lawyer's word is her bond and the public must be entitled to rely upon same without question and the fact that the account remained unpaid, even at the date of the hearing, were aggravating factors warranting suspension.

- 33. The Hearing Committee was also referred to paragraph 81 of the Hearing Guide and specifically the case of *Law Society of Upper Canada v. Squires*, [1994] L.S.D.D. No. 156, where the Member in that case was disbarred for failing to respond to written and telephone communications from the Law Society.
- 34. Counsel for the LSA submitted that disbarment of the Member was not called for in this matter; however, that a suspension of the Member was in order. She suggested a three month suspension would be appropriate.
- 35. Counsel for the LSA submitted that the Member should pay the actual costs of the Hearing.

#### **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.
- 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. Taking into account all of the foregoing factors and evidence, the Hearing Committee concluded that the appropriate sanction be suspension of the Member for a period of three months. The Member's governability is certainly at issue in this matter and the Hearing

Committee has concerns regarding her integrity given the evidence of D.O. and Ms. Whitburn and her promises to both D.O. and the LSA that the account would be paid. As indicated, the account remains unpaid even to this date.

39. In addition, the Member is directed to pay the actual costs of the hearing within 30 days of the date of the issuance of these reasons.

#### **CONCLUDING MATTERS**

40. A separate notice to the profession of the Member's suspension is required in respect of this matter.
41. The decision, transcript and Exhibits in this hearing are to be made available to the public.
42. The Member is given time to pay the costs of 30 days from receipt of the Notice as to the actual costs by the Member.
43. No referral to the Attorney General is required in this matter.

Dated this 14<sup>th</sup> day of October, 2010.

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James Glass, Q.C., Bencher  
Chair

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Steve Raby, Q.C., Bencher

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Larry Olhauser, MD  
Public Representative Bencher