



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 MATTHEW MERCHANT, a Member of The Law Society
of Alberta

INTRODUCTION

1. On April 8, 2008, a Hearing Committee of the Law Society of Alberta (LSA) convened at the Law Society office in Calgary to inquire into the conduct of Matthew Merchant. The Committee was comprised of Rodney A. Jerke Q.C.- Chair, John Higgerty, Q.C., and Vivian Stevenson, Q.C. The LSA was represented by Garner Groome. The Member was present for the Hearing and was represented by James Thornborough.

JURISDICTION AND PRELIMINARY MATTERS

2. Exhibits 1 through 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 jurisdiction of the Committee.
3. There was no objection by the Member or Counsel for the LSA regarding the constitution of the Committee.
4. The Certificate of Exercise of Discretion was entered as Exhibit 5. Counsel for the LSA advised that the LSA did not receive a request for a private Hearing. Counsel for the Member confirmed that no request for a private Hearing was being made. The Hearing was held in public.

CITATIONS

5. The Member faced the following citations:
 1. It is alleged that you failed to respect and uphold the law, and that such conduct is conduct deserving of sanction.

2. It is alleged that you acted in a way that might weaken public respect for the law or justice system, and that such conduct is conduct deserving of sanction.
3. It is alleged that you failed to be courteous and candid with others, and that such conduct is conduct deserving of sanction.
4. It is alleged that you used your position to take unfair advantage of your clients, and that such conduct is conduct deserving of sanction.
5. It is alleged that you failed to provide competent service to your clients, and that such conduct is conduct deserving of sanction.
6. It is alleged that you engaged in conduct such as to bring discredit to the profession, and that such conduct is conduct deserving of sanction.
7. It is alleged that you authored correspondence or made remarks that were unfair, inaccurate and discourteous, and that such conduct is conduct deserving of sanction.
8. It is alleged that you acted when in a conflict or potential conflict with your clients, and that such conduct is conduct deserving of sanction.
9. It is alleged that you acted when your objectivity was impaired such that you were unable to properly and competently carry out your representation of your clients, and that such conduct is conduct deserving of sanction.
10. It is alleged that you gave advice to your clients when the independence of your professional advice was impaired and that such conduct is conduct deserving of sanction.
11. It is alleged that you rendered advice when incompetent, and that such conduct is conduct deserving of sanction.
12. It is alleged that you failed to obtain instructions from your client for matters falling outside his express or implied authority, and that such conduct is conduct deserving of sanction.
13. It is alleged that you failed to be punctual in commitments made to your clients, and that such conduct is conduct deserving of sanction.
14. It is alleged that you failed to keep your clients informed, and that such conduct is conduct deserving of sanction.
15. It is alleged that you failed to inform your clients of an Offer of Settlement, and that such conduct is conduct deserving of sanction.

16. It is alleged that you failed to recommend the Offer of Settlement, and that such conduct is conduct deserving of sanction.
17. It is alleged that you failed to advise your clients of a material error or omission in connection with your representation, and that such conduct is conduct deserving of sanction.
18. It is alleged that you had an obligation to notify and you failed to notify other parties of steps you intended to take in the action, and that such conduct is conduct deserving of sanction.
19. It is alleged that you communicated with the Court without opposing counsel present or without giving prior reasonable notice to opposing counsel, and that such conduct is conduct deserving of sanction.
20. It is alleged that you continued to act where it was likely that you would be giving contested evidence, and that such conduct is conduct deserving of sanction.
21. It is alleged that your dealings with the Court were discourteous and disrespectful, and that such conduct is conduct deserving of sanction.

6. At the Hearing, LSA Counsel:

- a) Advised that he would not be calling evidence with respect to Citations 1, 2, 4, 8, 9, 16, 18, and 20, and applied for dismissal of these Citations;
- b) Applied to roll the particulars of Citations 3, 6, 7, 19, and 21 into one all-encompassing Citation 3, namely:

IT IS ALLEGED that you failed to be courteous and candid with others and that such conduct is conduct deserving of sanction, the particulars of which are as follows:

- i. The Member failed to respond to opposing counsel in a timely fashion in his belated compliance or non-compliance with the Rules of Court.
- ii. The Member was rude and condescending in his communications with his clients.
- iii. The member condescendingly referred to his staff as "minions" in his court submissions.
- iv. The Member of his firm attempted to file late the severed Statements of Claim without affording opposing

counsel the courtesy of notifying them of his intentions beforehand but instead only sent copies of his May 21, 2004 letter [Exhibit 10] to opposing counsel. In the Exhibit 10 letter, the Member thereby made potentially misleading statements to the Clerk of the Court about opposing counsel's position on the late filing of the severed action.

- v. The Member routinely served unfilled court documents without informing opposing counsel that he had indeed subsequently attended to their filing.
 - vi. In the course of his oral arguments the Member handed out to the Court and opposing counsel new arguments and voluminous irrelevant and unnecessary case law, and made a flippant remark to Justice Sullivan. The Member made unfounded allegations of improper personal conduct on the part of opposing counsel and their witness.
- c) Applied for dismissal of Citation 11 on the basis that it was subsumed in Citation 5;
 - d) Applied to amend Citation 13 to read "It is alleged that you failed to respond to your clients and that such conduct is conduct deserving of sanction";
 - e) Applied to amend Citation 17 to read "It is alleged that you failed to advise your clients of a material error or omission in connection with your representation in a timely fashion and that such conduct is conduct deserving of sanction";
7. The Member supported the LSA's applications, and an Agreed Statement of Facts and Admission of Guilt was entered as Exhibit 26, by consent.
 8. The Member admitted the facts in the Agreed Statement of Facts, and admitted guilt as to the conduct alleged in Citations 3 (as rolled up), 5, 10, 12, 13 (as amended), 14, 15, and 17 (as amended), and admitted that his conduct was deserving of sanction with respect to each of those Citations.

SUMMARY OF RESULT

9. In the result, on the basis of the evidence entered at the Hearing, and upon review of the admissions of guilt and for the reasons set out below, the Hearing Committee:
 - a) Allowed the applications concerning the Citations;
 - b) Dismissed Citations 1, 2, 4, 8, 9, 11, 16, 18, and 20;
 - c) Determined that the written admission of guilt as to the remaining Citations, as amended, was in a form acceptable to it. Accordingly, the Admission of Guilt is deemed, pursuant to S. 60 of the *Legal Professions Act*, to be a finding of this Hearing Committee that the conduct of the Member is conduct deserving of sanction, with respect to the following Citations:

Citation 3, as amended
Citation 5
Citation 10
Citation 12
Citation 13, as amended
Citation 14
Citation 15
Citation 17, as amended
 - d) Made the following Orders concerning sanction:
 - i) An Order that the Member be reprimanded;
 - ii) An Order requiring the payment to LSA of a fine of \$5,000.00 regarding the Member's conduct in respect of Citations 3, 10, 12, 13, 14, 15, and 17;
 - iii) An Order requiring the payment to LSA of a fine of \$5,000.00 regarding the Member's conduct in respect of Citation 5;
 - iv) An Order requiring the payment to LSA by the Member of the actual costs of the Hearing;
 - v) An Order that the Member be referred to the Practice Review Committee;

EVIDENCE

10. A binder was entered by consent of the parties containing Exhibits 1 through 26.
11. A Certificate confirming the Member has no discipline record with the LSA was entered as Exhibit 27, and an Estimated Statement of Costs was entered as Exhibit 28.
12. No *viva voce* evidence was presented at the Hearing.

SUMMARY OF FACTS AND EVIDENCE AS TO SANCTION

13. The particulars of the conduct engaged in by the Member are accurately summarized in Paragraph 4 (a) through (h) of the Agreed Statement of Facts:
 - “a. “With reference to Citation 3, “it is alleged that you failed to be courteous and candid with others, and that such conduct is conduct deserving of sanction”, the Member admits that:
 - i. The Member failed to respond to opposing counsel in a timely fashion in his belated compliance or non-compliance with the Rules of Court.
 - ii. The Member was rude and condescending in his communications with his clients.
 - iii. The member condescendingly referred to his staff as “minions” in his court submissions.
 - iv. The Member of his firm attempted to file late the severed Statements of Claim without affording opposing counsel the courtesy of notifying them of his intentions beforehand but instead only sent copies of his May 21, 2004 letter [Exhibit 10] to opposing counsel. In the Exhibit 10 letter, the Member thereby made potentially misleading statements to the Clerk of the Court about opposing counsel’s position on the late filing of the severed action.
 - v. The Member routinely served unfilled court documents without informing opposing counsel that he had indeed subsequently attended to their filing.

- vi. In the course of his oral arguments the Member handed out to the Court and opposing counsel new arguments and voluminous irrelevant and unnecessary case law, and made a flippant remark to Justice Sullivan. The Member made unfounded allegations of improper personal conduct on the part of opposing counsel and their witness.
- b. With reference to Citation 5, “It is alleged that you failed to provide competent service to your clients, and such conduct is conduct deserving of sanction”, the Member admits that:
- i. This file was not handled with an acceptable degree of competence.
 - ii. The Member had one of the Plaintiffs, a non-lawyer with some law office experience, make a first draft of the original Statement of Claim.
 - iii. The Member attempted to have one of the Plaintiffs, who happened to be a Commissioner for Oaths, commission the Affidavit of Records of the other Plaintiffs.
 - iv. The Statement of Claim that was ultimately filed by the Member, based on a claim of misrepresentation, was poorly drafted, lacked essential allegations, and was an inadequate pleading for the nature of the claim.
 - v. The Member was careless and cavalier in complying with the terms of the Consent Order severing the action.
 - vi. The Member failed to have any controls in place to ensure the filing deadline was not missed and his file management was disorganized.
 - vii. The Member lacked the requisite skill and experience to handle a multi-partied claim of this nature and did not seek assistance from credible resources to enable him to competently take carriage of this particular litigation matter.
 - viii. The Member left on vacation without ensuring there was adequate supervision or instructions to make sure the filing deadline was not missed, the effect of which was that a student tried to remedy the situation.

- c. With reference to Citation 10, “It is alleged that you gave advice to your clients when the independence of your professional advice was impaired, and that such conduct is conduct deserving of sanction”, the Member admits that:
 - i. In a letter to his clients the Member recommended his clients accept an Offer of Settlement, although he also recommended that they obtain independent legal advice, after costs had been ordered against him personally, a fact which was known to the Plaintiffs. The Member accepts that his objectivity in the circumstances regarding the merits of the offer may have been questionable due to the personal benefit in settling on the terms proposed and that by recommending, but not insisting upon, independent legal advice, the Members questionable objectivity influenced his clients’ course of conduct in settling the action.
- d. With reference to Citation 12, “It is alleged that you failed to obtain instructions from your client for matters falling outside his express or implied authority, and that such conduct is conduct deserving of sanction”, the Member admits that:
 - i. The Member entered into a Consent Order on behalf of his clients, effectively severing their action into ten separate actions, without their prior knowledge or instruction.
- e. With reference to Citation 13 (as amended), “It is alleged that you failed to respond to your clients, and that such conduct is conduct deserving of sanction”, the Member admits that:
 - i. The Member failed to respond on numerous occasions to client communications that contemplated a reply.
- f. With reference to Citation 14, “It is alleged that you failed to keep your clients informed, and that such conduct is conduct deserving of sanction”, the Member admits that:
 - i. The Member did not obtain his clients’ instructions or advise them of the Consent Order requiring them to file separated claims or the consequences of non-compliance with this Order or otherwise keep his clients properly informed as to the urgency and significance of the various stages and proceedings in the action.

- g. With reference to Citation 15, "It is alleged that you failed to inform your clients of an Offer of Settlement, and that such conduct is conduct deserving of sanction", the Member admits that:
 - i. An Offer of Settlement was made by the Defendants on one day which was to expire the following day at noon. The Member had a letter delivered the following day, however the offer had expired before the Plaintiffs received the Member's communication.
- h. With reference to Citation 17 (as amended), "It is alleged that you failed to advise your clients of a material error or omission in connection with your representation in a timely fashion, and that such conduct is conduct deserving of sanction", the Member admits that:
 - i. The clients were not informed of the failure to comply with the Consent Order of April 22, 2004 until two months after the fact and the Member's unsuccessful attempts to correct his failure exacerbated his clients' situation.

14. Master Waller made the following comments about the Member:

- a) Master Waller, November 4, 2004 (Exhibit 17) –

"Mr. Merchant has acknowledged in his argument that he bears the responsibility for the actions of his employees. In fact, he referred to them in his oral argument as his "minions," which I found to be a somewhat ungracious term." (Page 6)

"Suffice it to say that on consideration of the net effect of both affidavits, that I have concluded that the approach of the plaintiffs' solicitor to this critical deadline was at best cavalier, and at worst, terribly slipshod." (Page 7)

"While the plaintiffs' solicitor undoubtedly had the intention of filing his split claims on a timely basis, that intention was not interrupted by an unforeseen or uncontrollable event. The intention was frustrated by a sloppy approach in his office, where proper controls and directions were lacking." (Page 9)

"Can the Plaintiffs' solicitor, having voluntarily mounted the charette and placed his head on the block, now complain that what he hears is the swoosh of the blade and the cackling of the tricoteuses". (Page 9)

b) Master Waller, Written Memorandum of Decision (Exhibit 20) –

“Although Mr. Merchant sought to characterize the failure to file the split claims as a clerical slip, I have found his conduct in the face of the order to be almost cavalier. I was astounded at the hearing of the special application in the matter that he claimed to be entitled to costs of the application because of other counsels unreasonableness in refusing to consent to the late filing of the split claims.” (Page 3)

“My whole impression of the conduct of Mr. Merchant in this matter is one of helpless ineptitude and disorganization rather than deceit. I say this for many reasons a few of which I will set out. The statement of Claim which is based on misrepresentation fails to plead what representations were made by what party to what party. It is a hopeless pleading incapable of standing in its present form. The surprising admission by Mr. Merchant that his clients were unaware of the steps he was taking on their behalf. The poor quality of the material submitted by the [Plaintiffs] on their application and the fact that the submissions in oral argument bore little resemblance to the brief filed. Mr. Merchant’s surprising submissions at the cost hearing that I had no jurisdiction to determine costs as he had appealed my decision. My general impression having read the “B” and “T” affidavits that there were no controls in place to ensure the important filing deadline was met. The fact that Mr. Merchant arrived approximately 15 minutes late to receive my oral reasons for judgment even though all of the defendants counsel were present and ready to proceed at a set time.” (Page 4)

15. The Court ordered the Member, personally, to pay costs in the sum of \$20,600.00.
16. The Member graduated from the University of Dundee, Scotland. He was admitted to the Alberta Bar during 2004 when he was twenty-five years old. He had been admitted to the Saskatchewan Bar approximately one year and a half before. Since the time these complaints arose, the Member has established a relationship with two Senior Calgary Practitioners who have acted as his Mentors in respect of ethical matters. He has also completed an Ethics Course at the University of Calgary Law School.
17. The Member has no discipline record.

SUBMISSIONS RE SANCTION

18. Counsel for the LSA submitted that the Member's incompetence, as admitted in Citation 5, was transactional rather than general or chronic, and while that conduct should attract sanction, it was not incompetence of a nature that would give rise to Orders under Section 73 of the *Legal Profession Act*. LSA Counsel submitted that while the fundamental purpose of the sanctioning process is always to ensure that the public is protected and that the public maintains a high degree of confidence in the Legal Profession, the primary focus of this case relates to the impact of the Member's conduct on the reputation of the Profession and, hence, the public's confidence in the Legal Profession. LSA Counsel submitted that this was an appropriate case for a reprimand and a fine, and suggested ~~that~~ a global fine in the order of \$4,000.00 to \$6,000.00. LSA Counsel also submitted that a Remedial Order by way of a mandatory referral to the Practice Review Committee was appropriate.
19. Counsel for the Member argued that while the Member's comments were intemperate and ill-conceived, they should be considered in light of his youth and inexperience at the time. The Member's Counsel argued that in light of the Member's guilty pleas well in advance of the scheduled Hearing date, his real acknowledgement of his misbehaviour, and his bona fide attempts to take corrective action, that this was an appropriate case for a reprimand and a fine in the order of \$5,000.00.
20. With respect to the Member's incompetence, Member's Counsel argued that the Member was relatively inexperienced, handling a reasonably complex and significant matter. Member's Counsel argued that the Member got into difficulties by missing a deadline, and that his subsequent incompetent conduct sprang from that initial error, resulting in a series of mistakes and errors in judgement, however, all restricted to this one file. The Member's Counsel agreed that this was a case of transactional incompetence, not general or chronic incompetence.

DECISION ON SANCTION

21. The Hearing Committee agreed that the purpose of the sanctioning process was satisfied in this case by a reprimand, the imposition of a fine, the referral of the Member to the Practice Review Committee, and an Order that the Member pay the actual costs of the Hearing. The Panel had more difficulty in determining the appropriate amount of the fine.
22. With respect to Citations 3, 10, 12, 13, 14, 15 and 17, the Hearing Committee was of the view that a fine of \$5,000.00, in light of the mandatory referral to the Practice Review Committee and the Order that the Member pay the actual costs of the Hearing, was sufficient to address the most important factors which were raised, namely:

- a) The need to maintain the public's confidence in the Legal Profession;
 - b) General deterrence of other Members;
 - c) Denunciation of the conduct;
 - d) Rehabilitation of the Member; and
 - e) Avoiding undue disparity with the sanctions imposed in other cases.
23. The Hearing Committee was of the view that such a sanction also took into account the specific factors articulated in Paragraph 61 of the Hearing Guide. The Hearing Committee considered *Law Society of Alberta v. Knight*, [2001] L.S.D.D. No. 80, however, it was noted that that case involved fewer allegations against the Member, (only one Citation upon which the Member was found guilty of conduct deserving of sanction), and resulted in a reprimand and a fine of \$1,500.00.
24. The Hearing Committee also considered *Law Society of Alberta v. Moodie*, [1998] L.S.D.D. No. 142 where the Member was found guilty of conduct deserving of sanction for failing to treat a fellow Solicitor with courtesy and respect, and failing to treat the Courts with courtesy and respect, charges very similar to those in this case. There, the Hearing Committee concluded that a reprimand and a fine of \$5,000.00 on each of the Citations was appropriate, plus the actual costs of the Hearing.
25. With respect to Citation 5, the determination of the appropriate sanction requires the Hearing Committee to use a purposeful approach based on the fundamental purpose of the sanctioning process – to ensure that the public is protected and that the public maintains a high degree of confidence in the Legal Profession. The Committee was not referred to any case where a Member was sanctioned for “transactional incompetence”, as is the situation here.
26. As concerns general or chronic incompetence, as it was referred to in this Hearing, the *Legal Profession Act*, Section 71(3) provides as follows:
- “If the Hearing Committee makes a finding under subsection (1) that the member is guilty of conduct deserving of sanction, the Committee,
- (a) on application by the counsel for the Society, shall receive the report of the Executive Director showing the record, if any, of the member relating to previous proceedings against the member under this Part or the predecessors of this Part, and

- (b) if the Committee is requested to do so by a member of the Committee, by the member or the member's counsel or by the counsel for the Society, shall hear representations as to whether the member's conduct arose from incompetence."

A finding of incompetence gives rise to the possibility of various Orders under Section 73 of the *Legal Profession Act*. That form of incompetence was not alleged in these proceedings.

27. The decision of *Law Society of Alberta v. Wilson*, [2000] L.S.D.D. No. 48 is instructive in considering the relationship of the role of the Law Society in connection with the competence of Members. There, the Hearing Committee stated, at Paragraph 30:

"Thus, the Committee used a purposive approach to interpreting "incompetence" under s. 70 of the Legal Profession Act. It drew from the sub-sections in their fuller context an indication of the purposes of the Alberta Legislature related to this enactment. The Committee concluded that the purposes included an effort to balance rehabilitation and public protection in relation to the competent provision of legal services".

28. The more specific form of incompetence, "transactional incompetence", as it was referred to in this Hearing, is described in *Law Society of Alberta v. Anderson*, [1996] L.S.D.D. No. 302, at Paragraph 24:

"In any event, we agree with the Hearing Committee that the conduct complained of did not arise from incompetence. The question of competence in the context of the Legal Profession Act deals with the ability of the Member to practise law. To be incompetent, the Member must either lack the knowledge or skill to carry on the practice of law, or must be prevented from applying that knowledge or skill because of a mental or physical disability which would include a disability caused by addiction. The determination of incompetence in disciplinary proceedings is always made in the context of the conduct deserving of sanction and accordingly, the finding may be with respect to a specific area or certain conduct on the part of the Member, as opposed to the practice of law generally. In any event, this is not a case of incompetence. Indeed, this Member is a very able practitioner and the fact that some illness may have contributed to his aberrant behaviour does not mean he was or is incompetent."

29. It may be that the role of Regulators in relation to the matter of competence of the Members is evolving. Gavin McKenzie, in *Lawyers and Ethics: Professional Responsibility and Discipline*, states at 24.8:

"Perhaps because of increased public scrutiny and heightened public expectations, it has become evident in recent years that incompetent legal service can be as damaging to clients and third parties as unprofessional conduct of other kinds. The

legal profession has done an appreciably better job of protecting the public from lawyers who have acted dishonestly than it has of protecting the public from lawyers who have acted incompetently. Lawyers in both categories bring discredit upon the profession. Both the public interest and the self-interest of the profession demand that law societies redouble their efforts to improve the competence of their members and protect the public against lawyers who are unwilling or unable to provide legal services of an acceptable quality.”

30. The Benchers of the LSA have focussed attention on the matter of competence of Members in their adoption of the following goals and objectives:

“Goal 1: To serve the public interest by promoting and ensuring high ethical standards and high standards of competence on the part of all those seeking admission to and practising law in Alberta.”

“To develop programs to ensure the continuing competence of lawyers practising in Alberta;”

“To identify lawyers with underlying problems that can affect ethical conduct and competence;”

“To foster and promote competence, ethical practice and civility among lawyers;”

31. Flowing from this goal and these objectives, the Benchers recently approved the LSA’s Continuing Professional Development Program which requires lawyers to regularly take time to consider and plan their professional development in a wide range of activities which meet the definition of continuing professional development.

32. The Code of Professional Conduct devotes an entire Chapter to competence, with the rather unsurprising statement of principle that “a lawyer has a duty to be competent and to render competent services”. Where a Member engages in the conduct admitted to here, it is likewise not surprising that the Member would go further and admit that he failed to provide competent services to his clients, and that such conduct is conduct deserving of sanction. It is only logical that a significant sanction be imposed for such conduct, which is clearly incompatible with the best interests of the public (particularly the Member’s clients and the clients of the other parties involved in this litigation), is incompatible with the members of the Society (specifically the opposing lawyers in this matter), and such incompetence harms not only the reputation of the Member, but tends to harm the standing of the Legal Profession generally.

33. Taking into account, in particular:
- a) the need to maintain the public's confidence in the Legal Profession;
 - b) general deterrence of other Members; and
 - c) denunciation of the conduct;

the Hearing Committee determined to impose a fine with respect to Citation 5 of \$5,000.00.

34. The Hearing Committee, in imposing a fine in respect of Citation 5, fully appreciated that the sanction somewhat exceeded that proposed by both Counsel. While proceedings under the *Legal Profession Act* are different than criminal proceedings (for example, once Citations are issued, LSA Counsel has no discretion to withdraw them), the situation is somewhat akin to a joint submission in criminal proceedings. The Hearing Committee therefore carefully considered the matter of sanction in light of the joint submission, and determined that it was necessary to impose a specific sanction with respect to Citation 5. Incompetence, as demonstrated by this Member, raises concerns with respect to protection of the public, and harms the reputation of the Profession and, hence, the public's confidence in the Profession, which lies at the heart of the Profession's independence.

SANCTIONS AND ORDERS

35. In the circumstances, the Committee made the following orders concerning sanctions:
- a) An Order that the Member be reprimanded;
 - b) An Order requiring the payment to LSA a fine of \$5,000.00 regarding the Member's conduct in respect of Citations 3, 10, 12, 13, 14, 15, and 17;
 - c) An Order requiring the payment to LSA a fine of \$5,000.00 regarding the Member's conduct in respect of Citation 5;
 - d) An Order requiring the payment to LSA by the Member of the actual costs of the Hearing;
 - e) The Member was allowed time of nine months from the date of the Hearing to pay the fines and the actual costs of the Hearing;

- f) An Order that the Member be referred by way of mandatory referral to Practice Review as follows:
 - a) The Practice Review Committee is directed to carry out a general review and assessment of the Member's practice generally;
 - b) The Member is to cooperate with the Practice Review Committee and to satisfy any conditions which may be imposed upon the Member by the Practice Review Committee;
 - c) The Member may make application to the Benchers for review of the Practice Review conditions imposed by this Hearing Committee, or as subsequently imposed by the Practice Review committee.

CONCLUDING MATTERS

- 36. The Exhibits (except Exhibits 5, 6, 7, 13, 23, and 24 which shall be kept private) and proceedings will be available for public inspection, which includes copies of Exhibits for a reasonable copy fee. The Exhibits and proceedings shall be redacted to exclude the names of any clients.
- 37. No referral to the Attorney General is required.
- 38. No Notice to the Profession is ordered.
- 39. The Chair delivered a reprimand which expressed the Committee's astonishment that a Member could make so many bad ethical choices, and so consistently demonstrate incompetent conduct, in so many ways in respect of one file.

Dated this 27th day of July, 2008.

Rodney A. Jerke, Q.C., Bencher
Chair

John Higgerty, Q.C., Bencher

Vivian Stevenson, Q.C., Bencher