



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 ANDREW GEISTERFER  
a Member of The Law Society of Alberta

**INTRODUCTION**

1. A Hearing Committee of the Law Society of Alberta (“LSA”) comprised of Carsten Jensen, Q.C., Chair, Neena Ahluwalia, Q.C. and Norma Sieppert convened on June 17, 2009 to consider the matter of sanction with respect to the conduct of the Member. The LSA was represented by Garner Groome. The Member was present, and was represented by his counsel, Patrick J. McAllister.
2. The Hearing Committee Report with respect to the citations against the Member was issued by the Hearing Committee on February 18, 2009. The Member had faced three citations, as follows:

CITATION 1- IT IS ALLEGED that you engaged in conduct that brought discredit to the profession by:

- (a) Failing to advise AC on a timely basis of the forgery of a letter purportedly written by you; and/or
- (b) Participating in inappropriate behaviour, including without limitation:
  - (i) Failing to determine any legitimate rationale for funds to be paid into and out of your trust account under the circumstances; and/or
  - (ii) Participating in a joke which caused AC to believe that you had funds in your trust account to the credit of AC when such was not the case,

and that such conduct is conduct deserving of sanction.

CITATION 2- IT IS ALLEGED that you breached an undertaking given to James H. Song, another member of the Law Society, and that such conduct is conduct deserving of sanction.

CITATION 3- IT IS ALLEGED that on a single real estate transaction you deliberately misled two members of the Law Society in another firm, and that such conduct is conduct deserving of sanction.

3. The Member was found guilty of all three citations. However, one of the particulars of Citation 1, being that the Member had failed to determine any legitimate rationale for funds to be paid into and out of his trust account under the circumstances, was found to be not proved.
4. Accordingly, with respect to Citation 1, the Hearing Committee found that on learning of the forgery of a letter, purportedly on his letterhead, it was not acceptable for the Member to do nothing for approximately 1 month. The Hearing Committee found that he had a positive obligation to act, and that a number of options were open to him. Further, the Hearing Committee concluded that it was simply not acceptable for the Member to do nothing, and as a result of the Member's inaction AC lost valuable time in pursuing KK for his lost funds. The Hearing Committee found that it was inappropriate for the Member to participate in the supposed "joke" being played by KK on AC, and that KK's explanation with respect to this supposed joke was completely incredible, and should not have been accepted at face value by the Member.
5. The Hearing Committee was aware from the evidence that the Member had contacted the Practice Advisor of the Law Society with respect to the forged letter. Those discussions remained confidential, but it was made clear to the Hearing Committee, by counsel for the LSA and counsel for the Member, that we should draw no conclusions from those contacts, and that those contacts are not exculpatory for the Member, and the Member's course of conduct with respect to the forged letter was not blessed by the Practice Advisor. The Hearing Committee proceeded on that basis.
6. With respect to Citation 2 and 3, the Member had admitted guilt, and it is undisputed that he breached an undertaking given to another member of the Law Society, and that he deliberately misled two other members of the Law Society, all with respect to a single real estate transaction and a holdback amount that he was to have maintained in his trust account.

## **EVIDENCE**

7. In addition to the evidence before the Hearing Committee with respect to the citations against the Member, the following exhibits were entered by consent:

Exhibit 24- A letter from R. Gregory Busch, the director of lawyer conduct for the LSA, confirming that the Member has no disciplinary record with the LSA.

Exhibit 25- The estimated statement of costs for the hearing, in the total amount of \$9,951.38.

Exhibit 26- A number of letters of reference and good character tendered on behalf of the Member.

## **SUBMISSIONS OF COUNSEL**

8. Counsel for the LSA noted that the Member has no disciplinary record. He noted that the purpose of sanction is not to punish the Member, rather the purpose is to protect the public and the reputation of the profession. The Hearing Committee was urged to avoid disparity with other cases.
9. Counsel for the LSA indicated that an important factor for consideration is the need to denounce the Member's conduct, and that is particularly so because the Member's conduct was imprudent and incautious, and (with respect to Citations 2 and 3) was deliberate. We were urged to conclude that a reprimand would not suffice in these circumstances.
10. Counsel for the LSA did note, by way of mitigation, that the Member had admitted numerous facts, and he had admitted guilt with respect to Citations 2 and 3.
11. After reviewing a number of prior decisions with the Hearing Committee, counsel for the LSA proposed the following sanction: on Citation 1 - a 30 day suspension, plus a fine in the range of \$2,500 to \$5,000; on Citation 2 - a reprimand, plus a fine in the range of \$1,000; on Citation 3 - a 30 day suspension (concurrent with the suspension on Citation 1); all plus actual costs of the hearing and a mandatory referral to practice review.
12. Counsel for the Member noted that the Member was not found guilty with respect to one of the particulars under Citation 1, being the misuse of his trust account. Accordingly, he noted that the Member should not be sanctioned for that.
13. With respect to the rest of Citation 1, counsel for the Member suggested that the Member had been foolish, and had been a dupe of KK, but that the Member was not the author of this fraudulent scheme, and he had gained nothing from it.
14. With respect to Citations 2 and 3, counsel for the Member noted that all of this arose from the Member's release of a holdback amount, in breach of an undertaking given by him, but that this breach arose because the Member had given into the emotional condition of his client, who was in dire need of the money involved. Further, counsel for the Member noted that the Member's client had ultimately been vindicated in her entitlement to those holdback funds, and that the Member had in the meantime, in any event, replaced those funds in his trust account. Again, we were urged to consider that the Member did not gain in any way from his misconduct.
15. The Hearing Committee was urged by counsel for the Member to consider the positive character references provided, and the Member's involvement in his community and church, as well as his lack of a disciplinary record.
16. After reviewing a number of prior decisions counsel for the Member urged the Hearing Committee to conclude that a suspension was not required in these circumstances, and that the matter can be appropriately addressed with modest fines and a reprimand.

## DECISION AS TO SANCTION

17. The Hearing Committee considered all of the submissions of counsel in its deliberations with respect to sanction. The Hearing Committee noted that the purpose of disciplinary proceedings as set out in section 49(1) of the *Legal Profession Act* is to protect the best interests of the public, and to protect the standing of the legal profession generally. The Hearing Committee considered all of the mitigating factors. The Hearing Committee noted that those factors are not in any way an answer to the citations, but they do lead to the conclusion that a suspension is not warranted in this case. The Hearing Committee came to that conclusion notwithstanding the deliberate nature of the Member's conduct giving rise to Citations 2 and 3.
18. The Hearing Committee concluded that the Member is at a very low risk to re-offend on integrity related matters. Having said that, the Hearing Committee found it necessary to send a strong message denouncing the Member's conduct, and a message of general deterrence with respect to this kind of misconduct. The Hearing Committee is concerned that members not allow their offices to be abused by those who would take advantage of others. Further, the Hearing Committee was concerned that members' undertakings must be respected and followed, even where this may cause hardship to worthy clients.
19. The Hearing Committee notes that the matters giving rise to Citation 1 (failing to act on a forged letter purportedly written by the Member, and participating in a supposed "joke" connected with that letter) constitute serious misconduct by the Member. Not surprisingly, there is very little in the way of prior decisions to guide the Hearing Committee in determining an appropriate sanction for Citation 1. In determining the sanction for this Citation, the Hearing Committee carefully considered the submissions of counsel and the factors outlined in the Hearing Guide.
20. With respect to Citation 2, the Hearing Committee is aware that in some prior decisions a breach of an undertaking has resulted in the imposition of a modest fine alone (see for example *Law Society of Alberta v. Knight* [2000] L.S.D.D. No. 47). However, in this case the undertaking breach had a deliberate aspect to it which was troubling to the Hearing Committee.
21. With respect to Citation 3, the Hearing Committee notes that deliberate deception connected with the practice of law would ordinarily give rise to a suspension, at minimum (as was the case, for example, in *Law Society of Alberta v. Smith* [2007] L.S.A. 24). Honesty and integrity are fundamental to the practice of law, and instances of deception will usually involve the need for a clear general and specific deterrent, and the denunciation of the misconduct. However, as noted above, the mitigating factors weigh against a suspension in this case.
22. In the end result, the Hearing Committee directs the following sanctions:
  - (a) With respect to Citation 1, a \$4,000.00 fine and a reprimand;
  - (b) With respect to Citation 2, a \$2,500.00 fine and a reprimand; and

- (c) With respect to Citation 3, a \$2,500.00 fine and a reprimand.
23. In addition, the Member is directed to pay the full actual costs of the hearing. The Hearing Committee did not reduce the hearing costs based on the one unproved particular in Citation 1, as that issue did not substantially extend or complicate matters. Further the Hearing Committee notes that allegation relates to the Member's use of his trust account, which was not found to be conduct deserving of sanction, but which was nevertheless found to be imprudent and incautious.
24. After hearing submissions from counsel with respect to time to pay, the Member is directed to pay the actual costs of the hearing within 6 months of being notified of those costs through his counsel, and to pay the fines in this matter within 12 months of June 17, 2009.
25. The Chair issued the reprimand to the Member.

### **CONCLUDING MATTERS**

26. The Member was fined a total amount of \$9,000.00 on three citations. The Member is directed to pay the actual costs of the hearing within 6 months of being notified of those actual costs through his counsel. The Member is directed to pay the fines within 12 months of June 17, 2009. There will be no notice issued to the Attorney General.
27. The exhibits in this matter will be available to the public, subject to redaction to protect third party names and identities, and to protect confidential bank information.

Dated this 2nd day of July, 2009

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Carsten Jensen, Q.C., Bencher  
Chair

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Neena Ahluwalia, Q.C., Bencher

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Norma Sieppert, Bencher