

**LAW SOCIETY OF ALBERTA**

**IN THE MATTER OF THE *LEGAL PROFESSION ACT*;**

**AND**

**IN THE MATTER OF A HEARING REGARDING  
THE CONDUCT OF CHRISTOPHER ZILINSKI  
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

**Hearing Committee**

Dennis Edney, QC - Chair, Benchers  
Linda Maj - Lawyer Adjudicator  
Martha Miller - Public Adjudicator

**Appearances**

Shanna L. Hunka - Counsel for the Law Society of Alberta (LSA)  
Christopher Zilinski – did not attend hearing or make submissions on costs

**Hearing Dates**

January 4, 5 and 6, 2017 – Conduct hearing  
September 20, 2017 – Cost Submissions in writing

**Hearing Location**

LSA Offices, 800, 10104 – 103 Avenue, Edmonton, Alberta

**HEARING COMMITTEE REPORT - COSTS**

**Summary of Decision on Costs**

1. On September 20, 2017, a Hearing Committee (Committee) was presented with the LSA's Estimated Statement of Costs, prepared in accordance with Rule 99 of the *Rules of the Law Society of Alberta* (the Rules), and the LSA's submissions on costs. Mr. Zilinski was provided an opportunity to do so, but did not provide any submissions on costs.
2. After considering the LSA's submissions, the Committee decided that costs of \$51,131.25, as set out in the Estimated Statement of Costs, were reasonable and appropriate.
3. Mr. Zilinski must pay these costs prior to his reinstatement.

### **Summary of Previous Decision on Guilt and Sanction**

4. Mr. Zilinski was found guilty of 41 of the 48 citations levied against him. The Committee issued the Hearing Committee Report on June 29, 2017 (Conduct Hearing Report), which included its order that Mr. Zilinski be disbarred.
5. Mr. Zilinski did not attend the hearing, nor had there been communication from him or from an agent on his behalf prior to the hearing. An earlier disciplinary hearing, scheduled for October 2016, had been cancelled due to concerns Mr. Zilinski had not been properly served with notice. The LSA described its significant efforts to effect service on the Mr. Zilinski, which are summarized in the Committee's Conduct Hearing Report.
6. The conduct hearing proceeded, with the LSA calling numerous witnesses to give evidence in support of the citations.
7. Late in the afternoon on the first day of the hearing, LSA counsel informed the Committee that a faxed medical note had arrived from a Dr. V., requesting an indefinite postponement of the disciplinary proceedings on behalf of Mr. Zilinski.
8. The Committee determined Mr. Zilinski has not acted diligently and honestly in attempting to bring his request forward in a timely manner. It was inferred from the circumstances that he purposely avoided communicating directly with the LSA. The hearing had already been adjourned once. Witnesses had been scheduled to attend and would have been inconvenienced if the hearing were to be rescheduled yet again. The Committee denied the adjournment.

### **The Costs Hearing – Written Submissions**

9. In the Conduct Hearing Report, the Committee indicated that "If the LSA wishes to make submissions with respect to costs, they may make their submissions in writing by November 1, 2017, failing which no order of costs will be made."
10. Mr. Zilinski was personally served with a letter, dated August 29, 2017, which stated:

Further to the above-noted matter, please find enclosed for service upon you, the Hearing Report dated June 29, 2017.

Please note that the Hearing Committee found you guilty of 41 citations and ordered you disbarred, effective immediately.

Submissions on costs may be made to the Hearing Committee in writing by November 1, 2017. The Law Society will be making written submissions seeking costs in the estimated amount of \$51,131.25.

In the event that we do not receive submissions in writing with respect to costs from you by November 1, 2017, we will presume that you do not intend to make any submissions as to costs in this matter.

11. The Committee did not receive a submission with respect to costs from Mr. Zilinski.

### **LSA Submissions**

12. The LSA's submissions on costs, dated September 20, 2017, were provided to the Committee. In its submissions, LSA counsel sought costs of \$52,000.00 (although the Estimated Statement of Costs cites \$51,131.25 as the amount).
13. The LSA argued the amount is on the low side of what would be reasonably expected for hearing costs for a matter of this complexity and involvement. There were three days set aside and used for the hearing, 48 citations at issue spread over 13 complaint files and over a dozen witnesses.
14. The LSA referenced the Alberta Court of Appeal's decision in *C. (K) v. College of Physical Therapists (Alberta)*, 1999 ABCA 253. In that case, the Court stated that the authority to order costs in any particular case will depend on the statute and regulations in question. In determining whether to order full indemnity (i.e., solicitor and client) costs, a tribunal should consider, in addition to success or failure, factors such as the seriousness of the charges, the conduct of the parties, and the reasonableness of the amounts. The Court of Appeal also noted that "costs are not a penalty, and should not be awarded on that basis." (paras. 91 and 94).

### **Legislation, Rules, Guidelines**

15. Paragraph 72(2)(c) of the *Legal Profession Act*, RSA 2000, c. L-8 (the Act), creates the following statutory discretion in a Hearing Committee:
  - 72(2) In addition to an order under subsection (1), the Hearing Committee may make one or more of the following orders:  
[ . . . ]
    - (c) an order requiring the payment to the Society of all or part of the costs of the proceedings within the time prescribed by the order.
16. The Rules regarding costs are set out in Rule 99 and applied throughout these proceedings. Rule 99 provides:
  - 99(1) Unless the Hearing Committee directs that there will be no order for costs, or the member is found to be not guilty of conduct deserving of sanction on all citations, the Executive Director shall, as soon as possible after the conclusion of its hearing, prepare a statement of

costs showing the following charges, costs and expenses incurred in connection with the proceedings against the member to that time:

- (a) investigators' and audit professionals' fees and expenses incurred in carrying out any inquiries or investigations;
- (b) hearing charges at a rate prescribed by the Benchers or by the Audit and Finance Committee, per day or half day of hearing, or part thereof;
- (c) any other expenses incidental to the hearing including, without limitation:
  - (i) fees and expenses of all witnesses, including experts,
  - (ii) fees and expenses incurred in preparing and serving any documents on any person pursuant to Division 1 of Part 3 of the Act,
  - (iii) court reporter fees and charges for transcripts;
- (d) fees and expenses of the counsel for the Society, other than the Society's Discipline Counsel,
- (e) reasonable costs for the indemnification of the Society for the cost of services performed by the Society's Discipline Counsel in connection with proceedings, other than those referred to in clause (g),
- (f) adjournment charges at a rate or rates prescribed by the Benchers or by the Audit and Finance Committee; and
- (g) if the Hearing Committee has directed the Executive Director to include them in the statement, any costs and expenses incurred by the Society in connection with all or any proceedings respecting the member's conduct under section 54, 56, 58, 60, 61 or 63 of the Act, including reasonable compensation for the indemnification of the Society for the cost of services performed by investigators, audit professionals, the Society's Discipline Counsel or other counsel for the Society in connection with those proceedings.

(2) A Hearing Committee's order for costs

- (a) may be made on the basis of the statement of costs prepared by the Executive Director or may be otherwise referable to that statement and
- (b) in a case where the Committee orders payment of the costs of the proceedings,
  - (i) shall be based on the costs and expenses referred to in subrule (1)(a) to (f), and
  - (ii) may, where the Committee so directs, include all or part of the costs and expenses described in subrule (1)(g).

17. The Committee has also referred to the appropriate sections of the Hearing Guide.

## Decision Regarding Costs

18. The Committee has determined that Mr. Zilinski is responsible for paying \$51,131.25, the estimated costs of the conduct hearing, which was the amount indicated in the LSA's letter to Mr. Zilinski. The Committee notes that the Estimated Statement of Costs cites \$51,131.25 as the amount as well, even though the LSA's written submissions cite \$52,000.00 (and without explaining the rationale for the difference).
19. Costs are not intended to penalize the investigated member. Costs are actual expenses incurred by the governing organization, which would not have been incurred but for the investigated member's conduct.
20. The citations in this case were numerous and serious. Mr. Zilinski was found guilty of 41 of the 48 citations, which involved multiple instances of misappropriation, failure to account for trust funds, failure to serve and be candid with clients, and failure to respond in a timely and accurate way to the LSA. The seriousness of his conduct is reflected in the sanction he received — disbarment.
21. As noted by the Alberta Court of Appeal, Mr. Zilinski's conduct during the appeal process is relevant to the question of costs. This hearing was made more complicated by Mr. Zilinski's failure to appear or to accept service, causing the LSA to go to extraordinary lengths to ensure the proper delivery of notices and hearing documents.
22. Mr. Zilinski's lack of communication also removed the opportunity to come to an Agreed Statement of Facts related to some or all of the citations. This resulted in the LSA having to present many witnesses, which increased the duration and cost of the hearing due to witness *per diems*, counsel time spent preparing the witnesses, and time at the hearing devoted to questioning those witnesses.
23. Further, the untimely request for an indefinite adjournment, received by fax from his doctor on the first day of hearing, and ultimately denied, resulted in additional time and resources being spent to address this late request. This could have been avoided had Mr. Zilinski participated in direct communications with the LSA.
24. The conduct hearing was complex. It involved consideration of 48 serious citations spread over 13 complaint files, the testimony of over a dozen witnesses, and submissions from counsel over three days. The costs are properly borne by the member whose conduct has been found wanting, and not the other members of the profession.
25. The costs are actual expenses incurred by the LSA, which would not have been incurred but for Mr. Zilinski's conduct, including his failure to accept service, appear at the hearing and communicate with the LSA. The Committee finds that these costs were reasonable, given the circumstances.

26. Mr. Zilinski must pay these costs prior to reinstatement.

Dated at Edmonton, Alberta, January 17, 2018.

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Dennis Edney, QC - Chair

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Linda Maj - Lawyer Adjudicator

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Martha Miller - Public Adjudicator