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 ARNOLD PIRAGOFF, Q.C.
a Member of The Law Society of Alberta

INTRODUCTION AND SUMMARY OF RESULTS

1. On October 8, 2010 a Hearing Committee composed of Fred R. Fenwick, Q.C., Bencher, (Chair), Neena Ahluwalia, Q.C., Bencher, and Miriam Carey PhD, Bencher, convened at the Law Society of Alberta offices in Edmonton to inquire into the conduct of Arnold Piragoff, Q.C. (the member). The Law Society of Alberta was represented by Garner Groome. The member was present throughout and was represented by counsel, Mr. Alex Pringle, Q.C.

2. The Member is an experienced criminal practitioner and at all material times was counsel for an accused person charged with assault for whom a trial date of May 8, 2009 had been set at an Alberta Provincial Court circuit point.

3. When the client did not fulfill required retainer arrangements (including instructions) the Member did not attend at the trial date, apply to formally remove himself for the record or give the Crown or the Court advance notice of this. The Complainant was the presiding Provincial Court Judge. The Member was charged with five citations arising out of the Complaint. Prior to the Hearing, the Member (and his counsel) and Law Society counsel agreed on an Agreed Statement of Facts which included a consolidated one count citation.

4. At the Hearing, with the consent of the Hearing Panel, counsel for the Law Society and counsel for the Member, the citation was amended, the Member pled guilty and the Hearing Committee imposed a sanction consisting of a reprimand, a fine of $2,500.00 and actual costs of the Hearing.

JURISDICTION AND OTHER PRELIMINARY MATTERS

5. Exhibits 1 - 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. These Exhibits were entered into evidence by consent.

6. There was no objection by the Member or counsel for the LSA regarding the constitution of the Hearing Committee.

7. The entire hearing was conducted in public.

CONSOLIDATED CITATION

8. At the Hearing, with the consent of the Hearing Committee, and counsel for the Member and the LSA, the citations were consolidated and amended as follows:

    (i) IT IS ALLEGED THAT as counsel of record you failed to be courteous to the Court and the Crown by failing to attend Court on May 8, 2009, and June 12, 2009, thereby impeding the administration of justice, and in so doing brought the legal profession into disrepute and failed to serve your client D.N. in a conscientious, diligent and efficient manner, and that such conduct is deserving of sanction.

EVIDENCE AND AGREED STATEMENT OF FACTS

9. The evidence and Agreed Statement of Facts was entered as Exhibit 6 at the Hearing. A copy of the Agreed Statement of Facts is attached as Appendix A to this Report.

10. In addition to the Agreed Statement of Facts, the Member gave sworn evidence in response to questions from his own counsel, questions from the LSA and questions from the Hearing Committee.

11. A summary of the relevant facts includes:

    (a) The Member is a senior criminal practitioner with a total of 44 years of practice in Manitoba, Saskatchewan and Alberta. Significantly, the Member was a senior Crown prosecutor between 1976 and 1998 in Alberta. Since 1998, the Member has been in private practice as a criminal defence lawyer.

    (b) The Member practices as general counsel with an established Edmonton firm of criminal defence lawyers. He maintains an Edmonton office but focuses his time approximately 60% in the Red Deer area (including circuit points).

    (c) The case in question arose out of the Alberta Provincial Court circuit point at Coronation, Alberta, approximately a two hour (one way) drive from the Red Deer Judicial Centre.

    (d) The Member was counsel of record for the person accused of assault. The Member appeared on a remand date July 25, 2008, and a bail application September 12, 2008 and set a trial date for Coronation, Alberta, May 8, 2009.

    (e) The client eventually failed in his retainer arrangements with the Member, which included failing to give the Member comprehensive instructions for the conduct of the case and the Member informed the accused client that he would not attend at the May 8, 2009 trial date, although he gave the client a list of dates that he could be available in the future.

(f) Significantly, the Member did not inform the Crown that he would not be appearing to get off the record and that there would likely be an adjournment application by the soon to be unrepresented client.

(g) The accused client attended on his own on May 8, 2009, the trial was adjourned and witnesses who had attended for the trial had to be excused. An adjournment to June 12, 2009, peremptorily on the accused was given (this was the very next sitting date for the circuit point at Coronation), which was a date that was not on the list of the member's available dates.

(h) The presiding Provincial Judge lodged a complaint with the Law Society as a result of the member's non-appearance May 8, 2009.

(i) The accused client did not show up for the peremptory trial date on June 12, 2009 and a warrant was issued.

12. The Member acknowledged at the Hearing that he could have or ought to have given notice of his intention to remove himself from the record in order that the Court and prosecution be informed of the possibility of an upcoming adjournment. The Member also acknowledged that although there was no formal procedure in the Provincial Court for removing oneself from the record, that some form of reasonable letter or telephone notice, bringing forward to another circuit point to speak to an adjournment, etc. ought to have been considered.

13. The Member informed the Committee that although he was a Senior Crown Prosecutor for many years, he did not have a criminal defence practice early in his career and that his training concerning keeping track of retainer arrangements for the purposes of staying on or removing oneself from the record was not well developed. He also stated that he now intended to be more proactive in obtaining practice advice and assistance from the firm he is currently associated with to replace this early training.

14. The Member admitted guilt to the amended single citation at the Hearing Committee and assumed responsibility for his actions.

15. The Member also noted that he had written a formal letter of apology to the presiding Judge and had been taking steps to repair his relationship with the Court.

DECISION

16. The Hearing Committee notes the following chapter and Rules from the *Code of Professional Conduct:*

- **Chapter 1**

  (a) Statement of Principle

  A lawyer shares the responsibilities of all persons to society and the Justice System and, in addition, has certain special duties as an officer of the Court and by pursue of the privileges accorded the legal profession, including a duty to ensure that the public has access to the legal system.

  (i) Rule 3

  A lawyer must not act in a manner that might weaken public respect for the law or justice system or interfere with its fair administration.

- **Chapter 14**

  Having agreed to act in a matter, a lawyer has a duty not to withdraw without legal or ethical justification.

  (ii) Rule 1

  A lawyer may withdraw upon reasonable notice to the client…

  (iii) Rule 3

  If a lawyer withdraws or is discharged from a matter, the lawyer must endeavour to avoid prejudice to the client…

17. On the evidence produced by the Member, the member would have been ethically entitled to withdraw in representing the client arising out of the lack of a full retainer agreement which included comprehensive instructions as to the conduct of the matter. However in leaving it to days before the trial, the Member put the client in a position where his interests may have been prejudiced in being forced to proceed to a trial (which he was eventually obligated to do at the very next hearing date) without proper preparation or representation.

18. In addition, Courts have consistently upheld their own jurisdiction to allow or not allow a counsel of record to remove themselves from representation depending not only on the ethical standards here under review, but their own inherent jurisdiction. In R. v. Cunningham (2010 SCC 10) the Supreme Court confirmed that a court such as the trial court in this case had the authority to control their process and oversee the conduct of counsel as necessarily implied in the grant of power to function as a court of law. In the case of this member, the failure of the retainer included not only the payment of fees but also comprehensive trial instructions and it is unlikely that a court would order the member to continue to trial, but the trial Court was deprived of the opportunity to make this inquiry and deal openly with what ought to have been a procedural matter.

19. In the peculiar circumstances of this case, especially as the circuit points were heard on one day per month, a month apart, it is not easily apparent what a perfect response of the

Member ought to have been. In an urban setting, the matter could have been brought forward to speak to at a convenient date ahead of the trial but in a circuit point this was more difficult as sitting dates were only once per month. Further, neither is it clear what would have practically transpired had the Member gotten off the record in advance of the trial. It may have been that the trial date and the witnesses subpoenaed for the trial date would have been kept to that date, leaving further consideration of the conduct of the trial up to the presiding Judge on the date of the trial.

20. However difficult to predict a perfect response, the Hearing Committee is of a mind that simply no notice to the Court of the Crown was certainly not appropriate. Although there seems to be no formal process for removing oneself from the record in these circumstances at a circuit point, a phone call, a letter, an email to the prosecutor, etc. all could have been attempted.

21. While the Member testified at the Hearing about his lack of early training in maintenance of retainers, bringing matters forward to speak to being off the record, etc., (which the Committee accepts) the Committee also notes that it is likely that during his years as a prosecutor, the Member may have been from time to time inconvenienced by situations just such as these with late adjournments. It could not have come as a surprise to the member that the prosecutor, the witnesses and the Judge at the trial date would have thought themselves entitled to some advance notice.

22. With respect to the member's reasons, the Hearing Committee finds that although the members lack of diary or other system to keep track of timing his applications to make adjournment or other procedural requests was the initial cause of the difficulty, it is the member's lack of a considered and appropriate response to that difficulty (which could have been as simple as a letter of phone call) that is the issue here.

23. The Hearing Committee notes that the presiding Judge had set the adjourned date for the client's trail for the next circuit point hearing date (one month away), a date that the presiding Judge knew that the member could not attend. The Hearing Committee infers that the presiding Judge intended the accused person to go to trial with a high likelihood of being unable to obtain and instruct counsel in that short period of time. The Hearing Committee finds no fault in the Member being unable to attend on the second trial date, June 12, 2008.

24. The Hearing Committee also notes that an adjournment of the trial may have been inevitable even with notice, that witnesses may have shown up for the first set trial date and be "inconvenienced" in any event. The Member's lack of notice to the Court and prosecutor may not have made any practical difference to the way the adjournment of the trial occurred in any event. Having said all of that, it is likely that everyone in the Courtroom, the prosecutor, the Judge, the witnesses and any public spectators may have thought that the reason for the adjournment and the inconvenience of the witnesses was the behaviour of a member of the Law Society of Alberta. Somebody had to be blamed for all of the public inconvenience and the member by his discourtesy to the Court set himself up to shoulder that blame.

25. In failing to give some sort of notice to the Crown of his intention to remove himself from the record and face the Court with a possibility of an adjournment of the trial, the Member was not treating his opponent the Crown, and the Court with appropriate courtesy and respect and therefore was acting in a manner which "might weaken public respect for the law or justice system or interfere with its fair administration", and is therefore conduct worthy of sanction.

DECISION ON SANCTION

26. The Hearing Committee agreed with the Member and counsel for the LSA, that a fine and a reprimand were appropriate. The Member was fined the amount of $2,500.00 (Two Thousand, Five Hundred) Dollars plus actual costs of the Hearing, and a reprimand which was delivered by the Chair of the Hearing Committee.

27. The Member will have 60 days from the date of receipt of confirmation of the Hearing costs to pay the Hearing costs plus the fine.

CONCLUDING MATTERS

28. No referral to the Attorney General is required.

29. No separate Notice to the Profession is required in respect to this matter.

30. The Decision, the evidence and exhibits in this Hearing are to be made available to the public with the names of the complainants, clients, third parties or other employees to be redacted.

Dated this 4th day of March, 2011.

Fred R. Fenwick, Q.C., Bencher
Chair

Neena Ahluwalia, Q.C., Bencher

Miriam Carey, PhD, Bencher