

IN THE MATTER OF THE *LEGAL PROFESSION ACT*
AND
IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF
HORST TYSON DAHLEM, A MEMBER OF THE LAW SOCIETY
OF ALBERTA

REPORT OF THE HEARING COMMITTEE

A. INTRODUCTION

1. On September 18, 2012, a Hearing Committee comprised of Rose M. Carter, Q.C. (Chair), Amal Umar, and Anne Kirker, Q.C. (the Hearing Committee), convened at the Law Society of Alberta (LSA) office in Calgary, Alberta, to inquire into the conduct of Horst Tyson Dahlem (the Member). The Member was represented by Mr. James Lutz, Esq. (Mr. Lutz) and the LSA was represented by Ms. Lois MacLean (Ms. MacLean).
2. This Hearing arose as a result of the Member being cited for allegedly failing to comply with the accounting rules of the LSA and his alleged failure to respond on a timely basis and in a complete and appropriate manner to the communications from the LSA.
3. A Notice to Solicitor was issued on August 10, 2012.

B. JURISDICTION AND OTHER PRELIMINARY MATTERS

4. Exhibits 1 through 4, consisting of Letter of Appointment of the Hearing Committee (*Exhibit 1*), Notice to Solicitor (*Exhibit 2*), Notice to Attend (*Exhibit 3*), and Certificate of Status of the Member (*Exhibit 4*), establish jurisdiction of the Hearing Committee.

C. PUBLIC HEARING

5. The Hearing was held in public.

D. AGREED STATEMENT OF FACTS

6. At the Hearing, the following Agreed Statement of Facts (the Agreed Facts) was jointly proffered by counsel for the LSA and counsel for the Member (Exhibit 12):
 1. Horst Tyson Dahlem is a member of the Law Society of Alberta, having been admitted on November 6, 2003. Mr. Dahlem was a member at all times relevant to this proceeding.
 2. Horst Tyson Dahlem faces two citations, as follows:
 1. It is alleged that you failed to comply with the accounting rules of the Law Society of Alberta, and that such conduct is conduct deserving of sanction.

2. It is alleged that you failed to respond on a timely basis and in a complete and appropriate manner to the communications from the Law Society of Alberta, and that such conduct is conduct deserving of sanction.

Fact Summary

3. On February 26, 2010 a fax and email were sent to Mr. Dahlem by the Audit Department confirming that he was delinquent in filing his Forms S and T for the year 2006 and his Form T for the year 2009 and requesting he file his Forms no later than March 26, 2010. (Exhibit 6, Tab 1).
4. On April 22, 2010 an email, was sent by Bethany Duiker, Audit Assistant requesting an update on the status of his outstanding Forms (Exhibit 6, Tab 2).
5. In May 20, 2010 the Audit Department left a telephone message requesting that Mr. Dahlem respond to the previous correspondence. Her file note is Exhibit 6, Tab3.
6. On June 7, 2010, the Audit Department contacted the Member by telephone. The Member stated that he was in the process of working on his Forms and would be submitting them by the end of the month (Ms. Duiker's file notes are at Exhibit 6, Tab 3). The Member failed to provide the outstanding financial reports.
7. On July 14, 2010 an Internal Law Society Memo was sent from Lisa Atkins of the Audit Department to the Manager of Complaints. That Memo, which is Exhibit 6, summarized the communications to Mr. Dahlem, and his lack of response.
8. On July 16, 2010 a letter was sent to the Member requesting his formal response to the reported complaint from the Audit Department pursuant to Section 53 of the Legal Profession Act (Exhibit 7). The Member failed to respond within the required time.
9. On August 12, 2010 a follow-up letter was sent (Exhibit 8).
10. On August 18th, the member responded. His letter is Exhibit 9. The response is dated August 18, 2009, but was clearly written in 2010. The date of 2009 was a typographical error as the response was written in 2010. The Member's response may be summarized as follows:
 - a. The Member had operated a law firm for 3 weeks during June 2006 and he had incorrectly assumed that the Forms S and T would not be required for such a short period. He enclosed a copy of the trust reconciliation statement for June 2006, dated August 29, 2006 (Exhibit 9, Tab 1);
 - b. He acknowledged the balance of the complaint material was accurately stated by the Law Society. The Member offered no excuse aside from pressures of practice and a tendency on his part to not pay enough attention to the requirements of the Law Society.

- c. He had difficulty with keeping accountants. He had engaged an accounting firm to address all matters regarding the outstanding Forms which would be filed as soon as the accountants were able to produce them.
- 11. On November 4, 2010, the Law Society received the Member's outstanding financial reports for the years ended June 30, 2006, 2009 and 2010 from the accounting firm (Exhibit 10, Tabs 1 through 3). The accountant's reports noted minor exceptions.
- 12. The Member's subsequent Application to Operate a Law Firm was approved (Exhibit 11) subject to a condition that he submit automated data to the Law Society in lieu of an accountant's report based on his past Form T submissions.
- 13. The letter from Glen Arnston to Mr. Dahlem dated June 15th, 2011 specifically noted that the past concerns with the financial records, and said:

My rationale for imposing this condition is largely based upon the timeliness of your Form T submissions to the Law Society over the past 5 years.
- 14. The Audit Department indicated the Member failed to submit the automated data and the required self-report within the time prescribed by the new accounting Rules. The Member is now current with respect to his Law Society accounting obligations, including the handwritten amendments noted thereon.

All of these facts are agreed to and admitted.

- 7. Following deliberations, the Chair advised that the Agreed Facts were acceptable to the Committee and the conduct of the Member is for all purposes considered conduct deserving of sanction.

E. EVIDENCE

- 8. The Member testified that he was called to the Alberta Bar in 2004. As of the date of the Hearing, the Member is in an office share arrangement with another Member. The two Members share the cost of an assistant. Another part-time staff attends the office as necessary to maintain the account books of each Member which are dealt with separately.
- 9. At the material time, the Member practiced exclusively in Canmore and continued there from October 2003 to September 2010. Due to difficulties which arose between the Member and the Member with whom he practiced, their arrangement came to an end in the summer of 2006.
- 10. From July 1, 2006 to September 10, 2006, the Member practiced as a sole practitioner. During this period of time the Member moved to a criminal practice.
- 11. The Member was under the impression that it was not necessary for him to file Form S and T (Forms) with the LSA for the period prior to July 1, 2006 as he did have a trust account. The Member now understands that he was required and should have filed the required Forms with the LSA.
- 12. During the material time and prior to commencing his current practice, the Member faced serious personal challenges. A member of the Member's family, who was very ill, was

living with him. Her illness required a great deal of time from the Member and was very distracting to the Member's practice. The Member testified, at length, how the illness of this family member, the collapse of the economy in Canmore, and the stresses on his practice piled up and distracted him from his need to respond to the communications from the LSA.

13. The Member testified that he is very happy with his current practice situation. The Member assured the Hearing Committee that he is aware of his obligations to respond promptly to communications from the LSA and to file documentation required by the LSA in a timely fashion.
14. Counsel for the LSA proffered the Member's record, which shows no discipline record. With the consent of the Member, it was entered as Exhibit 13.

F. DECISION REGARDING SANCTION

15. The Member pled guilty to the citations against him.
16. In considering the appropriate sanction, the Panel took into account the purpose of discipline proceeding. *Lawyers & Ethics: Professional Responsibility and Discipline*, by Gavin McKenzie (at pages 26-1):

The purposes of law society discipline proceedings are not to punish offenders and exact retribution, but rather to protect the public, maintain high professional standards, and preserve public confidence in the legal profession.

In cases in which professional misconduct is either admitted or proven, the penalty should be determined by reference to these purposes...

The seriousness of the misconduct is the prime determinant of the penalty imposed. In the most serious cases, the lawyer's right to practice will be terminated regardless of extenuating circumstances and the probability of recurrence. If a lawyer misappropriates a substantial sum of clients' money, that lawyer's right to practice will almost certainly be determined, for the profession must protect the public against the possibility of a recurrence of the misconduct, even if that possibility is remote. Any other result would undermine public trust in the profession.

17. As stated in *Bolton v. Law Society*, [1994] 2 All ER 486 at 492 (C.A.), per Sir Thomas Bingham MR for the court:

If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends on trust.

18. After due deliberation, the Chair, on behalf of the Hearing Committee, accepted the recommendation of both counsel that a reprimand is appropriate in this matter. This Hearing Committee is satisfied that the interests of the public are served and protected by such a sanction.
19. In determining that a reprimand was appropriate, the panel took into consideration the Agreed Facts which resulted in no witnesses, other than the Member, being called to give evidence. That step shortened the Hearing, thus, saving time and costs. The Committee is also cognizant of the Member pleading guilty to the citations. While the Agreed Facts was dated September 18, 2012, the Committee Members were provided with the Agreed Facts prior to the Hearing date.
20. The Chair delivered the reprimand to the Member stressing the importance of timely dealings with staff of the LSA.

G. COSTS

21. Counsel for the LSA proffered an Estimated Statement of Costs (the Cost Estimate). With the consent of the Member, the Cost Estimate was entered into evidence as Exhibit 14.
22. After deliberation, the Member was ordered to pay half the actual costs of the Hearing within 30 days from receipt by him of the statement of actual costs.

H. CONCLUDING MATTERS

23. The Exhibits in these proceedings shall be available to the public with redaction of client names to protect solicitor-client privilege.
24. No Notice to the Profession shall be issued.
25. There shall be no referral to the Attorney General.
26. There shall be no referral to Practice Review.

DATED this 4th day of November, 2012.

ROSE M. CARTER, Q.C.
Chair

AMAL UMAR
Member

ANNE KIRKER, Q.C.
Member