

**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 GEORGE FIXLER, Q.C.
a Member of The Law Society of Alberta

INTRODUCTION AND SUMMARY OF RESULTS

1. On October 20, 2010 a Hearing Committee of the Law Society of Alberta convened at the Law Society Office in Calgary to enquire into the conduct of the member, George Fixler, Q.C. The Committee was comprised of Fred R. Fenwick, Q.C., Chairman, J. R. Nickerson, Q.C., and Dr. Larry Ohlhauser. The LSA was represented by Garner Groome. The member was present throughout the hearing and was represented by Donald W. Dear.
2. The Member is a senior, sole practitioner who has a substantial real estate practice. He has been in variously in non-compliance with Law Society accounting rule since 2004 as revealed in Rule 130 audits in 2004, 2007 and 2008. The Member signed an undertaking with the Law Society in 2007 to maintain his law firm books and records in compliance with the accounting rules but continued to not comply. These citations arise.
3. Generally speaking, the various accounting matters were reconciled by the Member with the assistance of the Law Society, and the Member is now substantially in compliance. There is no evidence of or allegation of dishonesty and the Member is taking active steps to improve his accounting processes including the installation of a computer accounting system. The fact that these citations were brought at all under these circumstances is indicative of frustration by the Law Society with the Member's continued failure to comply with Rules notwithstanding the inordinate amount of attention and assistance that he has received from Law Society staff.
4. At the Hearing, the Member agreed to an Agreed Statement of Facts and Admission of Guilt, and admitted responsibility.
5. The Hearing Committee accepted that the member's pattern of non-compliance with the accounting rules was sanctionable conduct, assessed fines totalling \$3,000.00 plus hearing costs. A reprimand was delivered by the Chair.

JURISDICTION AND OTHER PRELIMINARY MATTERS

6. 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.

7. There was no objection by the Member or counsel for the LSA regarding the constitution of the Hearing Committee.
8. The entire hearing was conducted in public.

CITATIONS

9. At the Hearing the Member faced the following citations:
 - (i) It is alleged that you breached your undertaking to the Law Society of Alberta dated November 13, 2007, to maintain your law firm books and records in compliance with the accounting rules, and that such conduct is conduct deserving of sanction.
 - (ii) It is alleged that you failed to follow the accounting rules of the Law Society of Alberta, contrary to the *Rules of the Law Society of Alberta*, and that such conduct is conduct deserving of sanction.
 - (iii) It is alleged that you failed to file your GST returns on a timely basis, or at all, thereby failing to comply with your statutory obligations, and that such conduct is conduct deserving of sanction.

EVIDENCE AND AGREED STATEMENT OF FACTS AND ADMISSION OF GUILT

10. An Agreed Statement of Facts and Admission of Guilt was entered as Exhibit 6 (Appendix A to this Hearing Committee Report).
11. In addition to the Agreed Statement of Facts and Admission of Guilt, the Member gave sworn evidence and was questioned by counsel for the Law Society and members of the Committee.
12. A summary of the relevant facts includes:
 - (a) The Member was admitted to the Bar in 1978 and has practiced since then as a sole practitioner (now in a two member firm) in Calgary. His practice is largely real estate conveyancing.
 - (b) The Member was subject to a Rule 130 audit November of 2004 and arising out of non-compliances was required to sign a compliance confirmation.
 - (c) A further Rule 130 audit was conducted January 18, 2007 and again there were instances of non-compliance. Prior to review by a Conduct Committee Panel, the Member, on November 13, 2007, signed a Compliance Confirmation that he would maintain his books and records in compliance with the Rules of the Law Society. This time there was a referral made to the Conduct Department

regarding the non-compliances and a Mandatory Conduct Advisory was directed. The Complaint was dismissed by the Conduct Committee on the understanding that, arising out of the Mandatory Conduct Advisory, the Member understood the need to maintain his trust accounts in accordance with Law Society Rules.

- (d) A further Rule 130 audit was commenced April 23, 2008. Many more instances of non-compliance were found including:
- Books and records not current
 - Trust shortages
 - Trust fund accidentally withdrawn and not replaced forthwith
 - Deficiencies in GST filings
 - Late form S
 - Late form T
- (e) The Member, after requests for extension was able to bring himself within substantial compliance of the Rules. His 2008 form S was filed 2 ½ months late in May 1, 2009 and his form T for 2008 which contained a “minor exception” was filed 1 ½ months late in May of 2009.

13. At the Hearing and within the Agreed Statement of Facts and Admission of Guilt, the Member acknowledged that his conduct was conduct deserving of sanction.

DECISION

14. The Hearing Committee accepts the Member’s Admission of Guilt and finds that continual non-compliance with the accounting rules to be conduct deserving of sanction.
15. The Hearing Committee notes that compliance with the Law Society accounting rules is not a matter of convenience for the members but a matter of fundamental importance arising out of the fact that (and especially with respect to the Member’s conveyancing practice) that real estate practice is built around the reliability of a Member’s trust accounts. In the absence of the control systems arising out of accurate accounting, even an honest practitioner can still fall prey to errors and worse, to unscrupulous clients and dishonest employees.
16. A careful observance of the Law Society Rules is fundamental to providing the safety of a Member’s trust funds for the benefit of his clients, other members of the Law Society and their clients who act in reliance of the safety of those trust funds. Further, careless practice can affect the financial security of the Member’s own practice, and at long arms length, other members of the Law Society who would have to pay through assurance and insurance fees to provide protection to the public including the Member’s clients.

17. The Hearing Committee accepts the Member's partial explanation that Real Estate practice in 2006 to 2008 was unexpectedly and inordinately busy and difficult to keep track of, leading to the potential of getting behind in one's trust accountings. However, a moment's reflection might see that not as an excuse but rather an exacerbation of the Citations. The Hearing Committee, as noted above, considers accurate trust accounting to be fundamental to the Member's conveyancing practice and does not accept a "too busy" excuse anymore than a governing body for surgeons would accept that a surgeon was too busy to wash his hands or that the governing body of engineers would accept that an engineer would be too busy to keep proper notes of fundamental measurements.
18. The Hearing Committee assessed a fine of \$3,000.00, and ordered the Member pay actual costs of the Hearing and delivered a reprimand at the Hearing.

CONCLUDING MATTERS

19. There will be no referral to the Attorney General.
20. There will be no separate Notice to the Profession.
21. With regard to costs, the Member is given 60 days from the date of delivery of notice of the costs to pay them.
22. In any event that any client names or personal information appears in the record, those names and that information will be redacted from the transcripts and the exhibits.

Dated this 21st day of December, 2010.

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

J. R. Nickerson, Q.C., Bencher

Larry Ohlhauser, Dr., Bencher

Attached: Appendix A
Agreed Statement of Facts and Admission of Guilt

APPENDIX A

IN THE MATTER OF *THE LEGAL PROFESSION ACT* **IN THE MATTER OF A HEARING REGARDING THE** **CONDUCT OF GEORGE FIXLER, Q.C.,** **A MEMBER OF THE LAW SOCIETY OF ALBERTA**

AGREED STATEMENT OF FACTS AND ADMISSION OF GUILT

GENERAL BACKGROUND

1. The Member was admitted to the Bar on June 22, 1978. At all material times he practiced as a sole practitioner in Calgary, Alberta with a student-at-law, but currently operates as a two-member firm under the name Fixler Law Office. This matter arises as a result of a Rule 130 follow-up audit conducted in 2008 which revealed a number of exceptions.

CITATIONS

2. The Conduct Committee referred the following citations on November 19, 2009:
1. the Member breached an undertaking to the Law Society of Alberta (the "LSA") dated November 13, 2007 to maintain his law firm books and records in compliance with the accounting rules;
 2. the Member failed to follow the accounting rules of the LSA; and
 3. the Member failed to file his GST returns on a timely basis, or at all, thereby failing to comply with his statutory obligations.

FACTS

3. The key facts in relation to the Member's audit history are as follows:

2004 Rule 130 Audit

- 3.1 On November 1, 2004 a Rule 130 audit report was issued. The Report identified a number of instances of non-compliance with the accounting rules including:
- Trust ledger shortages
 - Books and Records not current

- Payments to the law firm in excess of that billed
- Overbilling a client on a personal injury file

3.2 As a result of the 2004 audit, Mr. Fixler was required to sign a compliance confirmation and would be subject to another Rule 130 audit.

2007 Rule 130 Audit

3.3 On January 18, 2007, the subsequent Rule 130 audit was commenced, at which time it was noted that reconciliation of the Member's trust books and records was three months in arrears. The Member was asked to sign an undertaking agreeing not to use the trust bank account until the reconciliations were brought current. The Member signed the undertaking on January 26, 2007. [Exhibit 7, Tab 4]

3.4 The Member complied with the undertaking and brought the trust reconciliations up to date, corrected any trust shortages and on January 26, 2007 the undertaking was lifted.

3.5 On March 12, 2007 the Rule 130 audit determined that the Member's trust books and records were one month in arrears. The Member was asked to sign an undertaking agreeing not to use the trust bank account until the reconciliations were brought current. The Member signed the undertaking on March 14, 2007. [Exhibit 7, Tab 6]

3.6 The Member complied with the undertaking and brought the trust reconciliations up to date and on March 20, 2007 the undertaking was lifted.

3.7 A Rule 130 Audit was issued on September 17, 2007. Instances of non-compliance were noted, including:

- Books/Records not current
- Trust ledger shortages
- Trust reconciliations not properly completed

3.8 On September 18, 2007 a referral was made to the Conduct Department recommending that the Member be charged with failing to follow accounting rules, the cost of the audit, and overcharging a client on a contingency fee.

3.9 The Member signed a Compliance Confirmation that he would maintain his books and records in compliance with the Rules of the Law Society on November 13, 2007. [Exhibit 7, Tab 9]

- 3.10 The matter was reviewed by a Conduct Committee Panel which dismissed the complaint following a Mandatory Conduct Advisory with the Member in August, 2008.
- 3.11 The Conduct Committee Panel's reasons for dismissal of the complaint indicated that the Member advised the Panel that 2005 and 2006 were difficult times in his practice as a result of high volumes of real estate work and staffing issues within his firm. The Member advised the Panel that the staffing issues had been corrected and that he had implemented Esi-Law to prevent further accounting issues. The Panel stated that the Member demonstrated "a responsible, concerned and proactive approach to his accounting issues. The Benchers are confident the Member understands the need to maintain his trust accounts in accordance with the Law Society Rules." [Exhibit 16]

2008 Follow-Up Audit

- 3.12 The Citations currently before the Conduct Committee arise from the 2008 follow-up audit (the "2008 audit").
- 3.13 The 2008 audit was commenced on April 23, 2008. On that date it was noted that the Member's books and records were not current. The Member signed an undertaking not to use his two trust accounts.
- 3.14 On April 25, 2008 the trust accounts were brought up to date and the Member was released from his undertaking.
- 3.15 On May 17, 2008 the Member advised the auditor that she could continue with the audit at his offices on May 23, 2008. On May 22, 2008 the auditor left a message at the Member's office to confirm that May 23, 2008 was still an acceptable date to complete the audit. She did not receive a reply, and therefore did not attend on May 23, 2008.
- 3.16 The auditor re-attended the Member's office on the agreed upon date of June 19, 2008. At this time the Member was found to be one month behind on his trust reconciliations. The Member was able to bring them up to date immediately, so an undertaking was not required. A trust shortage was noted which was also corrected immediately. The auditor left a list of items she required from the Member in order to continue with the audit.
- 3.17 Between July 2, 2008 and October 2, 2008 the auditor contacted the Member on a number of occasions in relation to the outstanding items, and did not receive a reply from the Member.
- 3.18 On October 3, 2008 the Member was found to be two months late on his trust reconciliations and signed an undertaking not to use his trust accounts. [Exhibit 7,

Tab 13] A trust shortage was also noted, which was corrected by the Member on October 9, 2008.

3.19 Between October 10, 2008 and December 4, 2008 the auditor and the Member exchanged emails in an attempt to resolve outstanding items.

3.20 The 2008 audit was concluded on March 2, 2009 and revealed a number of findings including:

- Books and Records not current
- Trust shortages
- Trust Fund Accidentally Withdrawn not replaced forthwith
- Deficiencies in GST filings
- Late Form S
- Late Form T

[Exhibit 7, Tab 15]

3.21 This matter was referred to the Manager, Complaints and a letter dated March 5, 2009 went to the Member by registered mail requesting his response to items that remained outstanding following the 2008 audit, pursuant to Section 53 of the *Legal Profession Act* [Exhibit 8].

3.22 After seeking an extension of time to reply to the Law Society's March 2, 2009 letter, the Member provided a formal response to the March 2, 2009 letter on April 20, 2009, answering the outstanding items that remained after the conclusion of the 2008 audit. [Exhibit 13]. The Member advised that:

- The Member made over 10 attempts, via telephone and email, to obtain an explanation from AMEX concerning the activity in his account, which had been rectified. He was unable to obtain an explanation despite these efforts;
- The Member answered the other requests for information, and explained that some of the delay in his reply was due to his outside bookkeeper requiring extra time;
- The Member also apologized for any delay, confirmed that the delay was not due to a willful attempt to ignore the Law Society's requests, and emphasized the fact that no client had been adversely affected by his actions and that the noted deficiencies were in his records, not in the treatment of his clients

3.23 The Member's GST account is currently up to date and in good standing.

4. Pursuant to the findings of the 2008 audit, the Member breached the November 13, 2007 undertaking to the LSA that he would maintain his law firm books and records in compliance with the accounting rules, failed to follow the accounting rules of the LSA, and failed to file his GST returns on a timely basis.

ADMISSION OF FACTS AND ADMISSION OF GUILT

5. The Member admits as fact the statements contained herein. The Member further acknowledges his conduct as contained in the within document is conduct deserving of sanction. The Member makes this admission as an admission of guilt contemplated by Section 60 of the *Legal Profession Act*.

6. The Member's 2008 Form S was filed two and a half months late on May 1, 2009 [Exhibit 14], and his Form T for 2008, which contained "minor exceptions", was filed one and a half months late on May 15, 2009 [Exhibit 15].

**THIS AGREED STATEMENT OF FACTS AND ADMISSION OF GUILT IS MADE
THIS 20th DAY OF OCTOBER, 2010.**
