

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 DAVID MCBEAN
a Member of The Law Society of Alberta

INTRODUCTION AND SUMMARY OF RESULT

1. On May 20, 2010 a Hearing Committee of the Law Society of Alberta (LSA) convened at the Law Society offices in Calgary to inquire into the conduct of the Member, David McBean. The Committee was comprised of James Glass, Q.C. Chair, Ron Everard, Q.C. and John Higgerty, Q.C. The LSA was represented by Ms. Molly Naber-Sykes. The Member was present throughout the hearing and was represented by Mr. Richard McCrae.
2. The Member faced four citations:
 1. IT IS ALLEGED THAT you failed to file the annual Forms S and T for 2006 to 2008 and failed to file Form T for 2004 and 2005 in breach of the 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 to the Law Society on a timely basis and in a complete and appropriate manner regarding the matters contained in Citation 1, and that such conduct is conduct deserving of sanction.
 3. IT IS ALLEGED THAT you failed to follow the accounting rules of the Law Society of Alberta, and that such conduct is conduct deserving of sanction.
 4. IT IS ALLEGED THAT you failed to respond to the Law Society on a timely basis and in a complete and appropriate manner regarding the matters contained in Citation 3, and that such conduct is conduct deserving of sanction.
3. At the commencement of the hearing, counsel for the LSA and Mr. McBean applied to the Hearing Committee to amend the citations as follows:
 1. IT IS ALLEGED THAT you failed to file the annual Forms S and T for 2006 to 2008 and failed to file Form T for 2004 and 2005 in breach of the Rules of the Law Society of Alberta, and that such conduct is conduct deserving of sanction.
 2. IT IS ALLEGED THAT you failed to follow the accounting rules of the Law Society of Alberta, and that such conduct is conduct deserving of sanction.

3. IT IS ALLEGED THAT you failed to respond on a timely basis and in a complete and appropriate manner to communication from the Law Society that contemplated a reply, and that such conduct is conduct deserving of sanction.
4. The Hearing Committee accepted the application to amend the citations as proposed and the amended citations were entered by consent as Exhibit 15.
5. Also at the commencement of the hearing, counsel for the LSA and Mr. McBean presented the Hearing Committee with an Agreed Statement of Facts and Admission of Conduct Deserving of Sanction (Exhibit 16).
6. On the basis of the Agreed Statement of Facts and Admission of Conduct Deserving of Sanction, the other evidence received at the hearing, and for the reasons that follow, the Hearing Committee finds that the Citations are proven and the Member is guilty of conduct deserving of sanction.
7. The Hearing Committee concluded that the sanction should be a reprimand, with three conditions as follows:
 - (a) the Member will install and use either PCLaw or EsiLaw accounting software in his practice by July 15, 2010;
 - (b) the Member will have his General Ledger account made current by July 15, 2010; and
 - (c) the Member will remedy any GST matters outstanding by July 15, 2010.
8. The Hearing Committee concluded that the Member should pay $\frac{3}{4}$ of the actual costs of the hearing, to be paid within 60 days of the date that the Member is served with the Statement of actual costs of the hearing.

JURISDICTION AND PRELIMINARY MATTERS

9. 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.
10. There was no objection by the Member's counsel or counsel for the LSA regarding the constitution of the Hearing Committee.
11. The entire hearing was conducted in public.

CITATIONS

12. The Member faced three citations:

1. IT IS ALLEGED THAT you failed to file the annual Forms S and T for 2006 to 2008 and failed to file Form T for 2004 and 2005 in breach of the Rules of the Law Society of Alberta, and that such conduct is conduct deserving of sanction.
2. IT IS ALLEGED THAT you failed to follow the accounting rules of the Law Society of Alberta, and that such conduct is conduct deserving of sanction.
3. IT IS ALLEGED THAT you failed to respond on a timely basis and in a complete and appropriate manner to communication from the Law Society that contemplated a reply, and that such conduct is conduct deserving of sanction.

EVIDENCE

13. As noted above, Exhibits 1-5 (the jurisdictional exhibits) were entered into evidence by consent.
14. Exhibits 6-15, all relevant to the Citations, were entered into evidence by consent.
15. The Member provided an Agreed Statement of Facts and Admission of Conduct Deserving of Sanction that was signed by him on May 17, 2010.
16. Paragraph 22 of the Agreed Statement of Facts and Admission of Conduct Deserving of Sanction was amended, by consent, to add the following sentence:

“And the Member admits that the facts that are admitted constitute conduct deserving of sanction.”
17. The Hearing Committee reviewed the Agreed Statement of Facts and Admission of Conduct Deserving of Sanction (as amended), and found it to be in a form acceptable to the Hearing Committee. Accordingly, pursuant to s.60 (4) of the *Legal Profession Act* the admission is deemed for all purposes to be a finding of the Hearing Committee that the conduct of the Member is conduct deserving of sanction. The Agreed Statement of Facts and Admission of Conduct Deserving of Sanction was entered into evidence as Exhibit 16, by consent.

FACTS

18. The key Exhibits with regard to the citations are Exhibits 6, 7, 8, 9, 10, 11, 12, 13 and 14.
19. The Agreed Statement of Facts and Admission of Conduct Deserving of Sanction (as amended) is reproduced herein:

INTRODUCTION

1. Mr. McBean was admitted to the Bar on November 19, 1984, and practices in Calgary, Alberta.
2. Mr. McBean’s primary areas of practice are corporate law and tax.

CITATIONS

3. On May 26, 2009, the Conduct Committee referred the following conduct to hearing:
 1. IT IS ALLEGED THAT you failed to file the annual Forms S and T for 2006 to 2008 and failed to file Form T for 2004 and 2005 in breach of the 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 to the Law Society on a timely basis and in a complete and appropriate manner regarding the matters contained in Citation 1, and that such conduct is conduct deserving of sanction.
4. On October 9, 2009, the Conduct Committee referred the following conduct to hearing:
 3. IT IS ALLEGED THAT you failed to follow the accounting rules of the Law Society of Alberta, and that such conduct is conduct deserving of sanction.
 4. IT IS ALLEGED THAT you failed to respond to the Law Society on a timely basis and in a complete and appropriate manner regarding the matters contained in Citation 3, and that such conduct is conduct deserving of sanction.

FACTS

Form T

5. Mr. McBean's Form T:
 - a. for the year ending February 28, 2004 was due May 29, 2004
 - b. for the year ending February 28, 2005 was due May 28, 2005
 - c. for the year ending February 28, 2006 was due May 28, 2006
 - d. for the year ending February 28, 2007 was due May 28, 2007
 - e. for the year ending February 28, 2008 was due May 28, 2008.
6. Mr. McBean failed to file his Form T for the years 2004 to 2008 as required by Rule 126 of the Law Society of Alberta.

Form S

7. Mr. McBean's Form S:
 - a. for the year ending February 28, 2006 was due April 14, 2006
 - b. for the year ending February 28, 2007 was due April 14, 2007
 - c. for the year ending February 28, 2008 was due April 14, 2008.
8. Mr. McBean failed to file his Form S for the years 2006 to 2008 as required by Rule 126 of the Law Society of Alberta.

Failure to Respond to the Law Society of Alberta

9. Ms. Lor of the Law Society wrote to Mr. McBean on April 27, 2005 (**Exhibit 6**)
10. Ms. Lor of the Law Society wrote to Mr. McBean on June 10, 2005 (**Exhibit 7**)
11. Ms. Atkins of the Law Society wrote to Mr. McBean on June 23, 2008 (**Exhibit 8**)

12. Ms. Whitburn of the Law Society wrote to Mr. McBean on July 30, 2008 (**Exhibit 9**)
13. Ms. Whitburn of the Law Society wrote to Mr. McBean on August 20, 2008 (**Exhibit 10**)
14. Mr. Arnston of the Law Society wrote to Mr. McBean on December 19, 2008 (**Exhibit 11, Tab 1**)
15. Ms. Whitburn of the Law Society wrote to Mr. McBean on January 5, 2009 (**Exhibit 12**)
16. Ms. Whitburn of the Law Society wrote to Mr. McBean on January 21, 2009 (**Exhibit 13**)
17. Mr. McBean received but did not respond to any of the letters described in paragraphs 9 through 16. All of these letters from the Law Society to Mr. McBean required a response.

September 2008 Rule 130 Audit

18. Francine Leroux, CA, conducted an audit of the financial records, accounts and trust money maintained by Mr. McBean on September 9, 2008. The results of her audit are set out in the audit report dated December 19, 2008 issued by Glen Arnston, CA. (**Exhibit 11, Tab 1**)

19. In addition to the outstanding Forms S and T detailed above, Mr. Arnston identified the following ways in which Mr. McBean failed to follow the accounting rules of the Law Society:

- a. the general journal was last posted in 2003
 - b. the trust receipt journal was not properly maintained
 - c. the firm's letterhead identified David McBean Professional Corporation, but Mr. McBean no longer registered a professional corporation with the Law Society.
20. Mr. McBean admits:
- a. his general journal was not up to date
 - b. he did not properly maintain his trust receipt journal
 - c. his firm letterhead incorrectly identified David McBean Professional Corporation when he no longer registered a professional corporation with the Law Society.

ADMISSION OF FACTS AND GUILT

21. David McBean admits as fact the statements in this Agreed Statement of Facts for the purposes of these proceedings.

22. For the purposes of Section 60 of the *Legal Profession Act* the Member admits his guilt to Citations 1 and 2 directed May 26, 2009 and Citations 3 and 4 directed October 9, 2009. And the Member admits that the facts that are admitted constitute conduct deserving of sanction.

THIS AGREED STATEMENT OF FACTS IS MADE THIS _____ DAY OF MAY, 2010.

David McBean

SUBMISSIONS AND EVIDENCE ON SANCTION

20. Ms. Naber-Sykes indicated that the most serious citation was in regards to the Member's failure to complete and file the Form T's. She submitted that the duty to hold trust funds and deal with them appropriately is one of the most important fiduciary obligations Members have towards the public. While there is no concern regarding misappropriation of any funds in relation to this Member, the completion and submission of the Form T's to the LSA instills trust and confidence in the public.
21. Ms. Naber-Sykes referred to the Trace v. Institute of Chartered Accountants of Alberta decision and the excerpt from that decision located at paragraph 49 of the Hearing Guide.
22. Ms. Naber-Sykes tendered the record of the Member, which was entered as Exhibit 17 by consent. The Record indicates that the Member has no discipline record.
23. Ms. Naber-Sykes submitted that the Hearing Committee should impose sanctions of a reprimand with the following conditions (in lieu of a fine):
 - (a) the Member will install and use either PCLaw or EsiLaw accounting software in his practice by July 15, 2010;
 - (b) the Member will have his General Ledger account made current by July 15, 2010; and
 - (c) the Member will remedy any GST matters outstanding by July 15, 2010.
24. Ms. Naber-Sykes submitted that the Member should also be directed to pay the costs of the hearing. This was particularly so where the Member could have avoided this process had he responded to the LSA on a timely basis and that it was not fair to leave those costs at the feet of the rest of the Members of the LSA. Ms. Naber-Sykes tendered an Estimate of Costs that was entered as Exhibit 18 by consent.
25. Mr. McRae submitted that he and the Member agreed with the submissions of counsel for the LSA as it related to the reprimand and conditions. Mr. McRae submitted that the Member was contrite and had not tried to minimize his responsibility in this matter. The Member has worked very hard to remedy all the issues that he was facing and is now current with all accounting requirements of the LSA. The Member has already paid the costs of the audit.
26. Mr. McRae submitted that there were no issues regarding the Member's competence, service to the public, and no indication that he or his practice was a danger to the public.
27. Mr. McRae submitted to the Hearing Committee a letter that the Member received from the Manager of Practice Review on February 11, 2010 advised that the Practice Review Committee was satisfied with Mr. McBean's efforts and it was closing its file. This letter was entered as Exhibit 19 by consent.
28. Mr. McRae indicated that the Member found himself in this position following a breakdown that he suffered in 1997 and subsequent significant personal events that

resulted, unfortunately, in Mr. McBean utilizing avoidance of the LSA as his coping mechanism.

29. Mr. McRae submitted that the efforts of the Member to remedy the issues, the early admission of facts, had significantly shortened the hearing, and as a result, the payment of costs should be waived.

DECISION AS TO SANCTION

30. The primary purpose of disciplinary proceedings is the protection of the best interests of the public and protecting the standing of the legal profession generally. The fundamental purpose of the sanctioning process is to ensure that the public is protected and that the public maintains a high degree of confidence in the legal profession.
31. The Hearing Committee was influenced in its decision as to sanction by the following factors:
- (a) the Member's co-operation with the LSA;
 - (b) the Member had no prior discipline record;
 - (c) that specific deterrence of Mr. McBean is not required in these circumstances;
 - (d) the significant efforts made by the Member to remedy the difficulties he encountered with his accounting records;
 - (e) that from a general deterrence perspective it is important for all Members of the LSA that compliance with the Rules and the Code of Conduct are important not only to the Bar, but also to maintain the public's confidence in the legal profession.
32. Taking into account all of the foregoing factors, the Hearing Committee concluded that the sanction should be a reprimand with the following conditions:
- (a) the Member will install and use either PCLaw or EsiLaw accounting software in his practice by July 15, 2010;
 - (b) the Member will have his General Ledger account made current by July 15, 2010; and
 - (c) the Member will remedy any GST matters outstanding by July 15, 2010.
33. In addition, the Member is directed to pay of $\frac{3}{4}$ of the actual costs of the hearing. Mr. McBean was given time to pay the costs to 60 days from the receipt by the member of the Statement of Costs.
34. The Chair delivered the reprimand to the Member and specifically noted the importance of Members of the LSA complying with the Rules of the Law Society of Alberta and the Code of Conduct. The Rules regarding the handling of trust accounts is a hallmark of a

self-governing profession and absolute compliance with the Rules in that regard is critical to maintaining the public's confidence in the profession. Further, the Member's failure to respond to the LSA in a timely manner failed to meet the standard required of a Member of the LSA.

35. The Hearing Committee also noted that the Hearing Committee has no concerns about Mr. McBean's integrity or governability.

CONCLUDING MATTERS

36. The Hearing Committee Report, the evidence and the Exhibits in this hearing are to be made available to the public.

Dated this 28 day of May, 2010.

James Glass, Q.C., Bencher
Chair

Ron Everard, Q.C., Bencher

John Higgerty, Q.C., Bencher