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 ARTHUR TRALENBERG, a Member of The Law Society
of Alberta

INTRODUCTION

1. On March 26 through 28, 2008, and April 15, 2008, a Hearing Committee of the Law Society of Alberta (LSA) convened at the Law Society office in Edmonton to inquire into the conduct of Arthur Tralenberg. The Committee was comprised of Rodney Jerke, Q.C., Chair, Brian Beresh, Q.C., and Wayne Jacques. The LSA was represented by Lindsay MacDonald, Q.C. The Member was present for the Hearing. The Member was not represented by Counsel and confirmed that he was aware of Counsel willing to act for Members before Hearing Committees on a pro bono basis. He chose to represent himself.

JURISDICTION AND PRELIMINARY MATTERS

2. Exhibits 1 through 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 jurisdiction of the Committee.

3. There was no objection by the Member or Counsel for the LSA regarding the constitution of the Committee.

4. The Certificate of Exercise of Discretion, Affidavit of Service of a letter, and Private Hearing Application Notice on the Complainant, KM, CB, and CS were entered as Exhibit 5. Counsel for the LSA advised that the LSA did not receive a request for a private hearing, and neither Counsel for the LSA nor the Member requested a private hearing, therefore the Hearing proceeded and was held in public.

CITATIONS

5. The Member faced the following citations:

   Citation 1: IT IS ALLEGED that during your attendance upon your female client at the courthouse in Wetaskiwin on September 17, 2004, you made a comment of a sexual nature to your client and in so doing, you engaged in conduct deserving of sanction.

   Citation 2: IT IS ALLEGED that during your attendance upon your female client at the courthouse in Wetaskiwin on September 17, 2004, you made an indecent proposal to her and in so doing you engaged in conduct deserving of sanction.

SUMMARY OF RESULT

6. In the result, on the basis of the evidence entered at the Hearing, and for the reasons set out below, the Hearing Committee dismissed both Citations.

EVIDENCE

7. A Binder with Agreed Exhibits 1 - 14 was entered by consent of the parties.

8. Exhibits 15 – 21 were entered by the Member.

9. The Hearing Committee heard evidence from the Complainant, the Member, and seven other witnesses.

BACKGROUND FACTS

10. At all relevant times, the Member had a criminal defence practice and operated in Wetaskiwin and the surrounding areas. His office staff includes his wife, GT, who has, since 2001, attended Court appearances with the Member to assist him in being organized with his numerous clients and Court appearances, and to assist in conducting interviews. At the office, GT answered almost all calls from clients.

11. Due to a prior allegation of misconduct by the Member, he adopted and maintained a policy that he would never go into an interview room with a female client alone.

12. Approximately one week before September 17, 2004, the Complainant called the Member's office and spoke with GT seeking the Member's assistance in respect of outstanding traffic charges. GT advised the Complainant to attend in Court and that she could then approach the Member and seek his advice and representation.

13. GT then spoke to the Member and convinced him to assist the Complainant for no fee, primarily because the Complainant was the common law wife of TB, a long-time client of the Member.

14. The Member arrived late to Court in Wetaskiwin on September 17, 2004. The conversation which he had with the Complainant there is the subject matter of this Hearing.

EVIDENCE

15. The Complainant testified that the Member was late arriving at the Court House in Wetaskiwin on September 17, 2004. She said she spoke with either Duty Counsel or someone from Native Counselling, and was sitting in the Court Room when the Member gestured at her to come out. She testified that she and the Member went into an interview room, closed the door, and she sat down across from the Member. She testified that the Member said, "every time I see you I get so damn horny". The Complainant testified that this statement made her feel uncomfortable, and she opened the door to leave. She testified that the Member told her to wait, she shut the door, and then he put his hand on the door and said "can I feel your pussy". She said "no" and the Member said "ah come on" while continuing to hold the door. The Complainant testified that someone then knocked on the door, she opened the door, and found it was a Native Counselling worker, likely ML, who advised that her matter was going to be called, at which time the Member advised that the Complainant was his client. The Complainant testified that she saw this as her chance to get out of the interview room and went to the public telephones in the lobby. She testified that the member spoke to her twice while she was on the telephone, and ultimately advised her that she received a $1,700.00 fine as a result of guilty pleas he entered on her behalf.

16. The Member admits that he spoke with the Complainant, but denies that he said the things the Complainant alleges, or that he was in an interview room with the Complainant.

17. The Member agrees that he arrived at Court late, and testified that while he was in the lobby outside the Court Room, the Complainant approached him and, in a manner and using words which the Member considered to be aggressive, stated to the Member "I am ready to go to jail". The Member testified that he had forgotten that GT had convinced him to act on behalf of the Complainant for no fee, and because of what he perceived to be her aggressive conduct, and his perception that this was "just another person taking advantage of me", he lost his temper. The Member testified that he stated to the Complainant "don't be such a pussy. Quit your god damn whining. Just give me a god damn chance to talk to the Crown and I will see where this is going".

18. The Member testified that it was not his practice to in any way be condescending or speak to clients in pejorative terms. He testified that he does take control of clients and does not believe it is disrespectful to bring a client under control. The Member testified that he had never used the phrase "quit being such a pussy" before this event, and has not done so since then, and stated that he was upset with himself for saying what he did because the phrase could be taken the wrong way. The Member agreed that his was a bad choice of words, but that he did not intend his statement to be taken in a bad way rather, in his mind, he was telling his client to quit "being a wuss" or "being a wimp". As a result of his comments, the Member immediately, i.e. that afternoon, made changes to his practice (putting more matters over, not carrying on with abusive clients, advising clients to use Duty Counsel and that he could not act for them unless he was paid). He never tried to contact the Complainant to apologize for his language, even though he saw her outside the Court House after Court on the day in question.

19. EB, a former employee of the Member, testified that when the Member met with female clients in his office (which was a few feet away from her desk) his office door was never shut. She testified that the Member never swore, and when the statements that the Member claims to have made were put to her, she testified that she would be surprised to hear the Member make those statements.

20. EL testified that she knew the Member professionally, and her office had often referred criminal matters to the Member. She testified that the Member always acted in a very professional manner, and never made any inappropriate or derogatory comments to clients.

21. GT testified that it was the Member's policy never to go into a courthouse interview room with a female client alone, and she would often sit in on interviews with female clients. On checking various records (Exhibits 20 and 21), GT concluded that she was with the Member on the day in question. Although she could recall the conversation with the Complainant about one week before, she did not have any recollection of the events on the day in question.

22. DL knew the Member in the context of her practice of Aboriginal law. In that regard, she referred criminal law matters to the Member and considered that his conduct toward Aboriginal people, and Aboriginal women in particular, was always respectful. When the statements that the Member claims to have made were put to her, she testified that those were not words that she would have attributed to the Member.

23. NC was a Court worker with Native Counselling Services from March, 2003 to September, 2007, and had interaction with the Member throughout that period of time. She testified that she never saw the Member in a room alone with a female client, and that often the Member would ask her to sit in on such an interview. She testified that she has seen the Member angry on a few occasions, but has never heard him swear. She testified that she would see him get upset when "he got ripped off by a client" or "when the client was right in his face", i.e. right up to him and yelling.

24. ML was a Court worker with Native Counselling Services from August, 2002 to April, 2006, and had dealings with the Member throughout that period. She testified that when she first met the Member she "felt he was arrogant, an ass hole". As she got to know him better, she found that he had compassion for his clients, liked to joke with the people, and was there for the people. She found him to be a bit stern with his clients, but testified that he showed them respect and was not obnoxious. She testified that she had seem him in a bad mood and sometimes he would swear at clients saying "god damn" or "fuck off", or "oh for Christ's sake". She testified that such terms were used by other actors in the Court proceedings, including herself, Crown, and police. She testified that the Member asked her on a number of occasions to sit in on interviews he was conducting with female clients.

25. ML testified that she would have been the Court worker present in Traffic Court in Wetaskiwin on September 17, 2004. She testified that she had never seen the Member in a room by himself with a female client, and that if she saw such a thing, it would be memorable to her. She testified that she did remember being in the lobby of the Court House when the Member had angry words with a client, however, she had no specific recollection.

26. LJ testified that she worked as a Court worker for Native Counselling from July, 2001 to the Fall of 2002, and thereafter continued as a Court worker for the Band's Justice Society, and has known the Member throughout that period. She testified that she knew the Complainant and recalled being in Court in Wetaskiwin when the Complainant approached the Member in the lobby in an aggressive fashion. She testified that she heard the Member tell her to "settle the hell down". She heard the Member tell the Complainant to "quit being a pussy and to give him a god damn chance to find out with the Crown what to do".

She testified that the Member walked away from that conversation and that the Complainant proceeded to the public telephones. She felt the Complainant was under the influence of drugs on the occasion in question, and her behaviour was pretty aggressive. She testified that the Complainant was "pissed off", "all up in his face", and she was being loud and was yelling. She did not recall whether the Complainant was present in Court at the time the guilty pleas were entered.

SUBMISSIONS

27. Counsel for the LSA, in commenting on the burden of proof on the LSA, pointed the Hearing Committee to Paragraph 39 of the Hearing Guide which describes the standard of proof as follows:

> "In Ringrose v. College of Physicians and Surgeons of Alberta, [1978] 2 W.W.R. 534 (Alta. C.A.), Clement J.A. stated:
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> > "The burden of proof…is to establish the guilt charged against a practitioner by a fair and reasonable preponderance of credible testimony, the tribunal of fact being entitled to act upon a balance of probabilities."
> >
> > "…The cogency of the evidence required to satisfy the burden of proof by a preponderance of probability may vary, however, according to the nature of the issue with respect to which that burden must be met."
> >
> > "…The case may be proved by a preponderance of probability, but there may be degrees of probability within that standard. The degree depends on the subject-matter. A civil court, when considering a charge of fraud, will naturally require a higher degree of probability than that which it would require if considering whether negligence were established."

28. LSA Counsel submitted that while the Complainant's memory was not perfect, her evidence could be believed as it was plausible, portions were corroborated by the Member, and that while the Member had vigorously attempted to attack her credibility, much of his cross examination had failed to be effective. He submitted that the words the Member claimed to use did not make much sense in the context of the conversation, and that there was in fact no reason for the Member to be angry in these circumstances (he was not being held up for payment, it was not a high stress situation in the sense that only a few matters were on the docket). LSA Counsel submitted that the witnesses called by the Member fell essentially into two categories:

    a) Those witnesses who could never imagine the Member using the language he claims to have used; and

b) Those witnesses who paint a different picture of the Member and his choice of language in certain settings.

29. LSA Counsel did concede that caution should be exercised given the lack of corroboration for the Complainant's testimony that a Court Worker came to the door of the interview room. None of the Court Workers who testified agreed that they did so.

30. The Member submitted that his version of the events should be preferred over the version provided by the Complainant. He submitted that if the events had occurred as described by the Complainant, it was unusual that she would not speak with one of the Court Workers, particularly in light of her testimony that the comments had made her very uncomfortable. The Member submitted that it was significant that none of the Court Workers called as witnesses by the Member said that they had knocked on the door of the interview room and each of them confirmed that they had never seen the Member alone in an interview room with a female client. The Member submitted that he had been cited for specific comments which the Complainant claimed he made in the interview room, and if those specifics were not proven he was entitled to a dismissal of the Citations. The Member submitted that the LSA had not proven on the balance of probabilities that the event complained of had occurred.

31. LSA Counsel in rebuttal agreed that this was not a case of a Complainant who has misinterpreted specific comments, and that in fairness to the Member, the Citations should not be considered based on comments which may have been made by the Member to the Complainant outside the interview room.

ANALYSIS

32. The Hearing Committee agreed that with Citations of this nature which are both serious and specific, the matter should be decided based on a determination of whether the event complained of has been proven. That requires a careful consideration of the whole body of evidence and, in particular, the evidence and submissions of the Member.

33. On close analysis, the Panel was troubled by some aspects of the Member's testimony and submissions. For example,

- In testimony, the Member stated that he had never used the term "quit being a pussy" before or after the event in question, and he seemed to accept that the phrase was problematic. In submissions, however, he argued in effect that the language he chose was appropriate to the situation or to the circumstances.

- In his testimony, the Member agreed that the phrase he chose could be taken the wrong way and that he was upset with himself for using this language, and took steps immediately to make adjustments to his practice to ensure he did not repeat this conduct. While it is not the task of this Hearing Committee to determine whether in fact the phrase used by the Member was inappropriate, discourteous, or lacking in professionalism given the Citations here, it is at best unusual that the member did not take steps to offer an apology to the Complainant given his own interpretation of his language.

- The Member testified and led other evidence to the effect that he always treats clients with dignity and respect, however, his submissions had overtones of stereotypical thinking, which seemed to the Hearing Committee to be hypocritical and inconsistent.

34. The Hearing Committee weighed all of the evidence, particularly the evidence of the various Court Workers and the lack of any confirmation from them that they knocked on the door of the interview room or saw the Member in the interview room with the Complainant. In the result, the Hearing Committee decided that the LSA had failed to prove on the balance of probabilities that any conversation took place between the Member and the Complainant in the interview room as alleged.

35. The Hearing Committee therefore dismissed both Citations.

CONCLUDING MATTERS

36. The Exhibits (except Exhibit 21 which shall be kept private) and proceedings will be available for public inspection, which includes copies of Exhibits for a reasonable copy fee. The Exhibits and proceedings shall be redacted to exclude the names of any third parties.

Dated this 11th day of September, 2008

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Rodney A. Jerke, Q.C., Bencher
Chair

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Brian Beresh, Q.C., Bencher

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Wayne Jacques, Bencher