



## **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 SAMUEL EATON,  
a member of the Law Society of Alberta.**

### **Introduction**

1. The Hearing Committee of the Law Society of Alberta (LSA) held a hearing into the conduct of Samuel Eaton on February 11 and 12, 2008. The committee was comprised of Shirley Jackson, Q.C., chair, elected Bencher; Brian Beresh, Q.C., elected Bencher and Norma Sieppert, lay Bencher. The LSA was represented by Garner Groome. The Member was present throughout and was represented by Percival E. Odynak.

### **Jurisdiction and Preliminary Matters**

2. Jurisdiction: Exhibits one through four, 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.

### **Composition of the Committee**

3. Composition of the Hearing Committee: There was no objection by the Member's counsel or counsel for the LSA regarding the composition of the committee.

### **Private versus public hearing**

4. Public Hearing: The Certificate of Exercise of Discretion was entered as Exhibit five. Counsel for the LSA advised that the LSA did not receive a request for a private hearing, therefore the hearing was held in public. There was a discussion as to Exhibits 25 to 32 not being open to the public. It was agreed that they would not be open to the public. In the final result these Exhibits were not relied upon in coming to the decision of the Hearing Committee and it was agreed that they would be removed. It was agreed that the names would be redacted.

### **Exhibits**

5. At the Hearing the Committee was given a Book of Exhibits and by consent Exhibits 1 to 32 were entered. As the Hearing proceeded Exhibits 33 to 36 were entered by consent:

Exhibit 33 August 18, 2003 Order of Madam Justice C. Read

Exhibit 34 An Agreed Statement of Facts in the matter of a Hearing regarding conduct of Samuel Eaton A.K.A. Samuel Osbourne A.K.A. William Osbourne

Exhibit 35 November 8, 2002 letter to E..., Attention Mr. Osborne from Alsafe Inspection Agency Ltd re: Safey Codes Act Order

Exhibit 36 May 2, 2003 letter to E..., Attention Mr. Osborne re: Safety Codes Act Order

### **Citations**

6. The Member faced the following citations:

**Citation 1: IT IS ALLEGED** that you made an *ex parte* application on June 30, 2003, before Justice Perras in circumstances which did not warrant proceeding on an *ex parte* basis, and that such conduct is conduct deserving of sanction.

**Citation 2. IT IS ALLEGED** that you failed to inform the Court on June 30, 2003, of all material facts known to you to enable the Court to make an informed decision, and that such conduct is conduct deserving of sanction.

**Citation 3. IT IS ALLEGED** that you acted as counsel in proceedings in which it was likely you would give evidence that would be contested, and that such conduct is conduct deserving of sanction.

**Citation 4. IT IS ALLEGED** that you made representations to the Court at the *ex parte* application on June 30, 2003 which were not supported by evidence, and that such conduct is conduct deserving of sanction.

**Citation 5. IT IS ALLEGED** that you failed to file an affidavit in support of the June 30, 2003 *ex parte* application as directed by Justice Perras, and that such conduct is conduct deserving of sanction.

**Citation 6. IT IS ALLEGED** that you failed to use reasonable efforts to expedite the litigation process, and that such conduct is conduct deserving of sanction.

**Citation 7. IT IS ALLEGED** that you failed to respond on a timely basis and in a complete and appropriate manner to communications from the Law Society which contemplated a reply, and that such conduct is conduct deserving of sanction.

## **Evidence**

7. At the commencement of the Hearing an Agreed Statement of Facts was entered as Exhibit 34. The following is the Agreed Statement of Facts:

*IN THE MATTER OF THE LEGAL PROFESSION ACT*

*AND*

*IN THE MATTER OF A HEARING REGARDING THE  
CONDUCT OF SAMUEL EATON A.K.A. SAMUEL OSBOURNE A.K.A.  
WILLIAM OSBOURNE,  
A MEMBER OF THE LAW SOCIETY OF ALBERTA*

**AGREED STATEMENT OF FACTS**

**GENERAL BACKGROUND**

1. *The Member is a sole practitioner in Edmonton, Alberta. He was admitted to the Bar on December 5, 1986. The Member legally changed his name on or about August 26, 2003. He was administratively suspended on March 31, 2004, for non-payment of fees and remains suspended to date. The Member has not actively practiced since the fall of 2003.*

**CITATIONS**

2. *On March 13, 2007, the Conduct Committee referred 7 citations to hearing:*
  1. *IT IS ALLEGED THAT you made an ex parte application on June 30, 2003, before Justice Perras in circumstances which did not warrant proceeding on an ex parte basis, and that such conduct is conduct deserving of sanction;*
  2. *IT IS ALLEGED THAT you failed to inform the Court on June 30, 2003, of all material facts known to you to enable the Court to make an informed decision, and that such conduct is conduct deserving of sanction;*
  3. *IT IS ALLEGED THAT you acted as counsel in proceedings in which it was likely you would give evidence that would be contested, and that such conduct is conduct deserving of sanction.*
  4. *IT IS ALLEGED THAT you made representations to the Court at the ex parte application on June 30, 2003, which were not supported by evidence, and that such conduct is conduct deserving of sanction.*

5. *IT IS ALLEGED THAT you failed to file an affidavit in support of the June 30, 2003, ex parte application as directed by Justice Perras, and that such conduct is conduct deserving of sanction.*
6. *IT IS ALLEGED THAT you failed to use reasonable efforts to expedite the litigation process, and that such conduct is conduct deserving of sanction.*
7. *IT IS ALLEGED THAT you failed to respond on a timely basis and in a complete and appropriate manner to communications from the Law Society which contemplated a reply, and that such conduct is conduct deserving of sanction.*

### **FACTS**

3. *E...("E...") owned certain property in the Town of Vegreville ("the Town"). E... is essentially owned by the Member he being at all material times a director and shareholder of that company. He was also at all material times involved in its business affairs together with his mother G.E.*
4. *After certain legal proceedings respecting a former owner of the property were completed, on January 12, 2002, E... sent a proposal to the Town respecting a renovation of the subject property. Between June, 2002 and November, 2002, E... and the Town exchanged communications respecting the proposal of E... to renovate the subject property and the Town made various responses.*
5. *On November 8, 2002, the Town issued a Safety Codes Act order against E... 's property requiring compliance with certain conditions or demolition by December 15, 2002, failing which the Town would arrange demolition of the property at E... 's expense.*
6. *Subsequent to receipt of the November 8, 2002, notification, E... engaged a structural engineer who prepared a report dated December 9, 2002, and there were a further series of exchanges of reports and communications between E... and/or its engineer and the Town and/or its agents.*
7. *A second Safety Codes Act order was issued by the Town on May 2, 2003, with a deadline to comply with the conditions or demolish by June 4, 2003.*
8. *After receipt of the second Safety Codes Act order of May 2, 2003, E... sent two letters to the Town respecting steps it had taken during the winter to safeguard the property as well as a further proposal regarding the renovation of the property.*

9. *Subsequent events, correspondence and evidence presented at the judicial review of the Town's Safety Codes Act orders showed that notwithstanding the intent of E... to renovate the property and apply for a building permit there were meetings held by the Executive Committee of the Town and that prior to the expiry of the appeal period, a resolution was passed on June 9, 2003, to proceed with the demolition of the building. According to Ms. E., this resolution was passed without notice to her and she did not learn of it until after September 3, 2003 (**Exhibit 15**). All the while, E... was in communication with the Town's agent regarding the issuance of a building permit to allow a structure on the premise to be shored up pending further engineering investigation and renovation.*
10. *On June 24, 2003, a letter was signed by the Town and faxed to E... on June 26, 2003, advising that the Town was proceeding to demolish the structures on the property (**Exhibit 6**).*
11. *On Friday morning, June 27, 2003, the Member attempted to retain Doug Gahn of Duncan & Craig as counsel to act on behalf of the E.... On the afternoon of June 27, 2003, Doug Gahn and Peter Dobbie (Vegreville office of Duncan & Craig) on a conference call advised the Member that due to a conflict of interest they could not act on behalf of E.... Mr. Gahn suggested the Member contact William Shores, Q.C. and the Member says he contacted Mr. Shores. Mr. Shores does not recall nor does he have any record of being contacted by the Member at this time. Duncan & Craig had been involved in proceedings regarding the former owner of the property and Duncan & Craig also, from time to time, at all times material, was regular outside counsel for the Town. Duncan & Craig did in July of 2003 advise the Town that in the event it wished to retain them, it would not be able to act for them either, although this has never been disclosed to the Member.*
12. *On the basis of a suggestion by Duncan & Craig, the Member states that he contacted a representative of the Town to ascertain the timetable for the exercise of the demolition order and was provided with the name of the contractor. According to the Member he contacted the contractor and it was indicated to him that the demolition was to commence on Wednesday, July 2, 2003, or immediately after the Canada Day holiday. According to the Member he advised the contractor that he would be going to court to seek an order prohibiting the demolition (**Exhibit 14**).*
13. *According to the Member he also contacted the Mentor Program of the Law Society and was provided with some guidance by one of the people on the list regarding needing to attend in Court and obtain an injunction to stop any demolition order.*
14. *On June 30, 2003, on behalf of E... the Member appeared ex parte before Perras, J. and obtained an interim injunction with no pleadings or affidavit in support (**Exhibits 7 & 8**). The Member represented to the Court, inter alia, that his client's situation was urgent with demolition to occur on July 2, 2003. The Member also represented to the Court that he had attempted to notify the Town's counsel. The Court, inter alia, ordered the filing of pleadings and a supporting affidavit within 14 days. The Member did not have a form of order prepared and he returned later that day for signature by Perras J.*

15. *During the said ex parte application before Perras J. in open chambers the Member did not reveal that he was a director and shareholder of E..., nor did he advise the Court that the Safety Codes Act appeal period had expired on or about June 12, 2003, with no appeal by E.... The Member did advise he was not familiar with the area of law and was not entirely sure how to proceed.*
16. *Due to the fact that the Member did not have a form of order ready for his appearance in open chambers the Member, with the concurrence of Perras J., re-attended in Perras J.'s private chambers on the afternoon of June 30, 2003. According to the Member he and Perras J. had an extended conversation regarding the circumstances surrounding the property, including identifying the previous owner of the property, the Member's involvement as a shareholder and director of E..., and Ms. E. attempts to renovate the property and comply with the stipulations of the Town in the preceding months.*
17. *On or before July 2, 2003, the Member served, in accordance with the June 30, 2003, order, a facsimile copy of the injunction order on the Town. The demolition did not proceed on July 2, 2003.*
18. *On July 14, 2003, the Member made a second ex parte application to extend the time for filing his pleadings and affidavit. In that application's supporting affidavit no mention was made by the Member, who swore it, to any facts submitted to the Court during the June 30, 2003, ex parte application. An extension to July 18, 2003, was granted.*
19. *The Member filed an originating notice on July 18, 2003, and an affidavit in support (Exhibit 9) sworn by Ms. E. which essentially provided the factual underpinning to E...'s dispute with the Town. The affidavit also makes reference to the Member's ill health and his involvement with E... as Ms. E. son. However, the affidavit did not contain sworn evidence establishing the Member's representations of his attempts to notify the opposing party or of the emergent nature of the intended demolition. The returnable date on the originating notice was November 19, 2003.*
20. *On July 14, 2003, counsel for the Town, Ivan Bombak ("the Complainant"), learned of the interim injunction. On July 23, 2003, he filed a motion to set it aside and strike the originating notice. The Complainant's motion was returnable July 28, 2003.*
21. *On July 24, 2003, the Member filed a motion returnable the next day for an adjournment of the Complainant's motion so he could cross-examine on affidavit.*
22. *The Member and Complainant appeared in court on July 25, 2003, where the Complainant's application was put over to August 18, 2003. Any cross-examinations by the Member were ordered to be completed by August 13, 2003.*
23. *On July 28, 2003, the Member contacted William Shores, Q.C., who was prepared to act for E... on the strength of a referral from Duncan & Craig. However, he was leaving immediately on a one-month vacation and would not be available until after August.*

24. *The Member swore an affidavit on August 6, 2003, setting forth the particulars of his attempts since July 29, 2003, to engage the services of Mr. Shores to act on behalf of E... in support of an application to further adjourn the application set for August 18, 2003.*
25. *On August 8, 2003, the Member applied for an adjournment of the Complainant's application; it was denied and set over to the standing date set of August 18, 2003.*
26. *On August 18, 2003, the Member disclosed to the Court for the first time on the record that he is a director and shareholder of E.... He further advised that he had ceased to act as counsel, and that E... would be represented by new counsel Mr. Shores. The Member sought an adjournment and a variance of the July 25, 2003, order. The Court subsequently set the matter over to the special chambers list and prohibited any further ex parte applications by either side (**Exhibit 12**). The Court at that time also settled the minutes of the July 25<sup>th</sup> and August 8<sup>th</sup> orders that Member refused to approve as required by Rule 323 of the Alberta Rules of Court.*
27. *The Member also did not approve the form of the August 18<sup>th</sup> order which required the Complainant to appear before the Court on August 21, 2003, to settle the minutes. At that time the Member was scolded by the Court for the "huge waste of the court's time and huge waste of all the people's time who have been sitting here listening to this" (**Exhibit 13**). E... was also sanctioned with a \$100.00 costs award as result of the Member "wasting" the Court's time.*
28. *On September 5, 2003, the Member swore and Mr. Shore filed an affidavit setting out the Member's attempts to retain Duncan & Craig and his conversations on June 27, 2003, with the Town's contractor regarding the demolition order (**Exhibit 14**). Mr. Shores also filed a supplemental affidavit by Ms. E. (**Exhibit 15**) setting out certain aspects of the Town's handling of the matter.*
29. *On September 12, 2003, the Complainant's application to set aside the interim injunction was heard and granted. Mr. Shores' application to amend pleadings and to obtain an injunction was granted with respect to the house on the subject property but not the garage, and the said injunction was granted subject to strict conditions. The injunction was granted notwithstanding the expiry of the appeal period under the Safety Codes Act. During this hearing the Court opined that the ex parte application of June 30, 2003, was "completely improper" and that the Member failed in his duty to inform Perras J. that he was essentially acting for himself (**Exhibit 16**).*
30. *None of the Justices referred any complaints against the Member to the Law Society.*
31. *On October 1, 2003, the Complainant filed a complaint with the Law Society concerning the Member's conduct (**Exhibit 17**).*
32. *Informal attempts to mediate a resolution of the complaint were unsuccessful and on September 5, 2004, a formal demand letter was sent by the Law Society to the Member, which demand was received on September 8, 2004 (**Exhibit 18**). The Member was asked to respond within 14 days.*



33. *On September 28, 2004, a message was left by the Member indicating he would respond to the complaint that week.*
34. *The Law Society sent a reminder letter to the Member on October 1, 2004 (**Exhibit 19**).*
35. *In what appears to have crossed in the mail with the Law Society's reminder letter the Member responded by letter dated October 1, 2004, making a counter-complaint against the Complainant (**Exhibit 20**). The counter-complaint was eventually dismissed by the Executive Director on August 8, 2005. In that portion of the October 1<sup>st</sup> letter responsive to the complaint, the Member's position was that the subject ex parte application was an emergency situation, that he tried unsuccessfully to retain someone to bring the application, that he tried to give notice to the Town, that he did disclose all relevant information to Perras J., and that he made full disclosure of his personal interest in E... in Perras J.'s private chambers prior to the granting of the June 30<sup>th</sup> ex parte order.*
36. *Except for the letter dated June 24, 2003, expressing the Town's intention to proceed to demolition, the only evidence of an emergent event as of June 30, 2003, is the Member's own evidence eventually sworn in his September 5, 2003, affidavit. There is sworn evidence from the Member that he attempted to give notice to the Town through the contractor of his intentions to get an injunction (**Exhibit 14**). There is no evidence substantiating the Member's assertion that he informed Perras J. of his connection to E... "off the record".*
37. *On February 28, 2005, the Law Society wrote the Member asking for further comments on certain specified issues within 14 days (**Exhibit 21**). This was received by the Member on March 15, 2005. The Member did not respond.*
38. *On April 19, 2005, the Member wrote the Law Society seeking an extension until mid-September of 2005 due to illness (**Exhibit 22**).*
39. *The Member did write the Law Society on July 4, 2005, but it was non-responsive to Exhibit 21 (**Exhibit 23**).*
40. *On July 7, 2005, the Law Society advised the Member that it cannot grant the Member's request for extension of time and the Member was advised that a report to the Conduct Committee would be made whether or not a reply from the Member is received (**Exhibit 24**). Nothing further was received from the Member.*
41. *The report of the Law Society Complaints Manager was completed on January 5, 2007, and the matter was referred to hearing by the Conduct Committee on March 13, 2007.*
42. *The Member had been diagnosed with a chronic medical illness of a life-threatening nature in February of 2001 and had been under medical care since that time. In the spring of 2003, the Member experienced rapid physical deterioration and was advised to substantially reduce his workload in the ensuing months because of poor health (**Exhibits 25 - 32**).*

**ADMISSION OF FACTS**

43. *The Member admits as fact the statements contained within this Agreed Statement of Facts. However, he does not admit that these facts amount to conduct deserving of sanction.*

*THIS AGREED STATEMENT OF FACTS IS MADE THIS \_\_\_\_\_ DAY OF FEBRUARY, 2008.*

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*Samuel Eaton*

8. The LSA closed its case.
9. The Member was called by the Member's Counsel.
10. The Member testified as to the statements in the Agreed Statement of Facts.

**Further Findings of Fact**

11. It appears from the Agreed Statement of Facts that the Town hired outside counsel from time to time and when the Member learned of the demolition order and contacted the Town he was told to contact the contractor. There is no evidence that the Town had regular counsel. In the Agreed Statement of Facts para 14, it states that the Member tried to notify the Town's counsel.
12. When the Member spoke to the contractor he learned the demolition was scheduled for July 2, 2003 and he advised the contractor that he would be taking legal action.

### **Decision as to Citations**

13. Citation 1: The Committee found that the ex parte application was accepted by the Court as an emergent application and the application was granted. The Town made the order for demolition on June 9<sup>th</sup> and did not prepare a letter to notify the Company until June 24<sup>th</sup>. It was received by the Company on June 26<sup>th</sup>. The Member was further advised of the Order when he contacted someone at the Town on Friday, June 27<sup>th</sup>. Prior to making the application the Member did attempt to hire counsel and was told that that particular firm acted for the Town from time to time. This occurred on the Friday and he made the application on the Monday. Thus the Committee found that this application was an emergency and not conduct deserving of sanction.
14. Citation 2: From the transcript of the Member's ex parte application on June 30, 2003 the Member did not advise the Court that he was a director or shareholder of the Company but the Member testified that he did so advise the Justice when he appeared in his private chambers with the Order which was then signed. The Committee accepted the evidence of the Member and thus finds that although it would have been preferable to have had this on the record, the Member did advise the Justice and thus this is not conduct deserving of sanction.
15. Citation 3: The Member did attempt to hire counsel to appear on June 30, 2003 and was unable to secure counsel on such short notice. The Member recalls contacting another lawyer but that lawyer does not have a record of this contact. The Member did hire a lawyer and was aware that he should not be acting on the matter. The Committee finds that this conduct is not conduct deserving of sanction in this situation.
16. Citation 4: There is a transcript of what occurred in Court but there is no transcript of the conversation with the Justice when the Order was signed. We do not find the conduct complained of to be conduct deserving of sanction in this situation.

17. Citation 5: The Member was to file the affidavit two weeks after the Order was obtained. The Member asked for and was granted an extension. Counsel for the Town then brought a Notice and a hearing date was set. We do not find, because of the Order and the intervening circumstances, that this is conduct deserving of sanction.
18. Citation 6: The Committee finds that the Member had hired counsel and that this counsel was not available for the date set by counsel for the Town. The new counsel had planned a vacation and was not available that date. We would have expected counsel for the Town to be more accommodating. We do not find that the Member failed to use reasonable efforts to expedite the litigation process and find that this conduct is not conduct deserving of sanction.
19. The Member had replied to the LSA and made a counter-complaint. The matter was not resolved. The LSA then sent a s. 53 demand that was received by the Member on March 15, 2005. The Member wrote April 19, 2005 to the LSA and requested an extension until mid-September due to illness. The Member wrote the LSA on July 4, 2005 but it was non responsive to the s. 53 demand. The LSA advised the Member July 7, 2005 that this extension was refused and yet took a year and a half to refer this matter to a Conduct Committee. The Committee finds that due to the illness of the Member and the fact that he had previously responded to the LSA that his conduct was not conduct deserving of sanction.
20. On all the Citations the Committee found that the conduct of the member was not conduct deserving of sanction.

**Concluding Matters**

21. Exhibits 25 to 32 are not open to the public.

Dated this 20th day of January, 2009.

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Shirley Jackson, Q.C.– Chair and Bencher

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Brian Beresh, Q.C. – Bencher

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Norma Sieppert - Lay Bencher