



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 Wayne Allan Thomas Coultry
a Member of The Law Society of Alberta

INTRODUCTION

1. On September 19, 2007, a Hearing Committee of the Law Society of Alberta (“LSA”) convened at the Law Society offices in Calgary to inquire into the conduct of Wayne Allan Thomas Coultry (the "Member"). The Committee was comprised of John Prowse, Q.C., Chair, Vivian Stevenson, Q.C., and Norma Sieppert. The LSA was represented by Lindsay MacDonald, Q.C. The Member was present for the hearing. The Member was represented by his counsel, Graham Price, Q.C.

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 the jurisdiction of the Committee.
3. There was no objection by the Member’s counsel or counsel for the LSA regarding the composition of the Hearing Committee.
4. The Certificate of Exercise of Discretion and an Affidavit of Service were entered as Exhibit 5.
5. The hearing was held in public as there was no application by counsel for the Member to hold the hearing in private.

BACKGROUND AND CITATIONS

6. At the date of the hearing the Member was under an interim suspension arising as a result of the citations he faced in this hearing.
7. The Member faced the following citations:

Citation 1: IT IS ALLEGED that you misappropriated or wrongfully converted trust funds, and thereby breached the *Code of Professional Conduct*, and that such conduct is conduct deserving of sanction.

Citation 2: IT IS ALLEGED that you attempted to interfere with the investigation by the Law Society, and thereby breached the *Code of Professional Conduct*, and that such conduct is conduct deserving of sanction.

Citation 3: IT IS ALLEGED that you misled or attempted to mislead the auditor employed by the Law Society, and thereby breached the *Code of Professional Conduct*, and that such conduct is conduct deserving of sanction.

Citation 4: IT IS ALLEGED that you withdrew funds from trust before rendering statements of account, and thereby breached the Rules of the Law Society, and that such conduct is conduct deserving of sanction.

8. Counsel provided the Hearing Committee with an Agreed Statement of Facts and the Member confirmed in sworn testimony that the contents thereof were true. The Member admitted that the conduct described in the Agreed Statement of Facts was conduct deserving of sanction. The Hearing Committee determined that the Agreed Statement of Facts and admission was satisfactory to it, and that document was entered as Exhibit 6 in these proceedings.
9. The full text of Exhibit 6, being the Agreed Statement of Facts, is as follows:

GENERAL BACKGROUND

1. *The parties agree on the following facts.*
2. *The member is facing a hearing on the following citations:*
 1. *It is alleged that you misappropriated or wrongfully converted trust funds and thereby breached the Code of Professional Conduct and that such conduct is deserving of sanction.*
 2. *It is alleged that you attempted to interfere with the investigation by the Law Society and thereby breached the Code of Professional Conduct and that such conduct is deserving of sanction.*
 3. *It is alleged that you misled or attempted to mislead the auditor employed by the Law Society and thereby breached the Code of Professional Conduct and that such conduct is deserving of sanction.*
 4. *It is alleged that you withdrew funds from trust before rendering statements of account and thereby breached the Rules of the Law Society and that such conduct is deserving of sanction.*
3. *Wayne Coultry was a practising member in the Province of Alberta during 2001. During July, 2001, Law Society audit staff received information from the office manager of the firm Coultry LeClair, indicating she had concerns relating to the accounting practices of one member of the firm, Mr. Coultry. It appeared that Mr. Coultry was writing trust cheques against inactive trust ledger accounts.*

4. *On receipt of that information an audit was commenced on July 13, 2001 by Ms. Sabrina Capune, an auditor with the Law Society of Alberta. The audit identified serious issues including trust deficiencies involving inactive accounts and trust cheques payable to third parties. In those instances there was no supporting documentation to justify the distribution of funds. Initial examination suggested the member had been issuing trust cheques from unrelated client funds directly to third parties. These cheques appeared to be designed to satisfy the member's own personal obligations or obligations owed to unrelated clients or were payable to third parties.*
5. *On July 20, 2001, Mr. Coultry contacted the Law Society of Alberta and requested a meeting. On July 23, 2001 Mr. Coultry was interviewed by Sabrina Capune and Greg Busch in the presence of his counsel, Graham Price, Q.C. A transcript of that interview is found at Tab 1. In that interview Mr. Coultry admitted to the misappropriation of trust monies held for clients he was representing. Mr. Coultry provided a lengthy explanation of the circumstances and the monies involved and indicated that he had placed \$20,000 in trust with Mr. Price to repay any of the proven deficiencies.*
6. *At the time of the interview Mr. Coultry did admit to specific instances of misappropriation, but also suggested a number of instances where the auditor thought monies had been misappropriated were instead failures to comply with the accounting rules. He indicated several of the instances identified by the audit were actually files where work had been completed and not billed prior to the withdrawing of trust monies. Mr. Coultry went on to explain in those circumstances he had paid monies owed to himself for those files and rather than pay the money into his general account as fees earned, he instead paid the monies directly to third parties. Mr. Coultry acknowledged such activity was a violation of the accounting rules and on the surface an indicator to an auditor of a possible misappropriation.*
7. *Based on that interview and the continued investigation of the files and the trust records, Ms. Capune generated a report July 24, 2001. That report estimated trust deficiencies totaling \$12,962.95. On July 26, 2001, the Benchers of the Law Society of Alberta voted to suspend Mr. Coultry's membership pending a hearing. Mr. Coultry's practice and the various files were assumed by Mr. William LeClair.*
8. *Ms. Capune submitted a final report dated November 27, 2002 indicating that based on the records available there appeared to be a trust fund deficiency totaling \$18,476.40.*
9. *As noted previously in his initial interview, Mr. Coultry admitted to misappropriation of trust funds but also indicated that several of the alleged misappropriations were in fact breaches of accounting rules and that work had been completed, but not billed out. As a result, the files in question were copied and provided to Mr. Coultry to give him the opportunity to generate final statements of account. Those statements of account were then forwarded to the clients with an explanation letter. Each client was requested to respond back to either the firm or to the Law Society if there was a dispute about the final account.*
10. *Further investigation provided information that has cleared the member or raised reasonable doubt with respect to finding Mr. Coultry guilty of misappropriation.*
11. *However, documents in nine files were found to establish breaches of Rule 124, which states, in part:*

124 (1) Money shall not be withdrawn from a trust account except where:

- (a) the money is properly required for
 - (i) a payment to the client for whom the money is held, or
 - (ii) a payment to any other person but only if the law firm does so pursuant to the authorization of the client for whom the money is held;
- (b) the money is properly required for payment of a billing for fees or disbursements, but only if the withdrawal is made in compliance with subrule (2);

....

(2) Money may be withdrawn from a trust account of a law firm pursuant to subrule (1)(b), if not held for a designated purpose, only in accordance with the following conditions:

- (a) money may be paid from the trust account to the law firm to reimburse the firm for a disbursement made by it if the law firm has prepared a billing respecting the disbursement and either delivers the billing to the client before the withdrawal or forwards the billing to the client concurrently with the withdrawal; and
- (b) money may be paid from the trust account to the law firm to pay for the law firm's fees for services if the law firm has prepared a billing for the services, the billing relates to services actually provided and is not based on an estimate of the services, and the firm either delivers the billing to the client before the withdrawal or forwards the billing to the client concurrently with the withdrawal.

Misappropriation -- The Estate of X File

12. *Mr. Coultry represented the X family on an estate matter as well as on a corporate file. During the course of the audit, Ms. Capune identified three amounts totaling \$5,721.57 that were paid from the residual balance of the estate funds by Mr. Coultry.*
13. *The three transactions paid out appeared to have no relationship to the estate file. One cheque totaling \$1,723.69 was paid to the City of Calgary for an unrelated outstanding tax matter. Two other trust transfers for \$3,022.88 and \$975.00 were paid to the X corporate file. Those two amounts were subsequently paid out by cheque to an unrelated third party for charitable purposes.*
14. *The member lied to the auditor and said he had been authorized by the executor of the X estate to make the three payments. The auditor told the member she would be following up with the executor to verify the authorization.*
15. *The executor provided a copy of a document entitled, "Receipts and Disbursement of Funds" (undated) that indicated all monies had been properly disbursed. That document is reproduced at Tab 2.*
16. *Included among the disbursements was one for funeral expenses of \$5,129.49.*
17. *But In fact, the Alberta Government paid \$5,129.49 for the funeral in May of 1996.*

18. *The executor indicated as far as he was concerned all monies had been distributed during 1997, he had no knowledge that monies remained in trust and were ultimately disbursed some four years later.*
19. *In an interview on July 23, 2001 (the transcript is reproduced at Tab 3.) the executor said that he had lived two doors away from the member, had known him for 25 years, considered him to be a “fairly close friend” and to be “squeaky clean”.*
20. *He advised that at no time had he provided Mr. Coultry with the authority to pay trust monies from the estate for the purpose of paying outstanding City of Calgary taxes for an unrelated file. Further, he advised at no time had he provided Mr. Coultry with the authority to transfer trust funds from the estate file to his corporate file and then have them subsequently paid to a third party.*
21. *The executor further stated that he was contacted by Mr. Coultry prior to being contacted by Ms. Capune. The member had told him that he had paid funds out of the estate file to the benefit of other parties. The member had told him that he would be receiving a telephone call from Ms Capune and he asked the Executor to lie to her and tell her that he, the executor, had authorized the payment of these trust funds.*

Tab 3, Interview of the executor on July 23, 2001, pages 2 and 5.

22. *The member was also interviewed on July 23, 2001 concerning his handling of the estate file. He admitted to utilizing the trust funds from the estate, without authorization, to pay the tax account of an unrelated client. He did so to cover a shortfall on the other file.*

Tab 1, Interview of the member on July 23, 2001, page 14.

23. *He further admitted to having funds transferred to the X corporate file and then to an unrelated party, Y, without the authority of the executor.*

Tab 1, Interview of the member on July 23, 2001, pages 12 to 14.

24. *In another admitted coverup related to the payments to Y, the member admitted to creating a phony letter addressed to a fictitious person and placing it in the estate file.*

Tab I Transcript of interview of member on July 23, 2001, pages 12 and 13.

25. *The phony letter said “pursuant to our telephone conversation, I confirm that all parties are now in agreement as to the final distribution of funds, and accordingly, we enclose two cheques in the sum of \$975.00 and \$3022.88”.*
26. *The auditor had to investigate to find out the truth. She found out from the office manager of Coultry LeClair that although the full name of that person was unknown to her, the surname was known to her. A person with the same surname and first initial was the daughter of a person suffering from a terminal illness and the member had organized a fundraiser for her. The auditor called the daughter and learned that she had received the two cheques. The payee on them was shown as her first initial and surname.*

Misappropriation -- Wayne Coultry File

27. *During the audit Ms. Capune identified a file in the name of Wayne Coultrey that had contained \$2,374.40, monies that for a variety of reasons couldn't be identified as belonging to any file or client. Mr. Coultrey admitted in his interview that he was aware that monies held in that account were funds from dormant accounts or interest payments and that the monies in that account should have been forwarded to the Law Society. He further admitted that he had written a cheque on those monies to pay for his share of operations in a company in which he was a shareholder.*
28. *Unattributed trust money is paid to the Law Society under the authority of section 117 of the Legal Profession Act, which reads, in part, as follows:*

Unattributed trust money

117(1) If money has been held by a member in the member's capacity as a barrister and solicitor in a trust account or separate account referred to in section 126 for a period of not less than 2 years and either

- (a) the member has been unable during that period to locate the person entitled to the money after reasonable efforts to do so, or
- (b) in the case of trust money in the member's trust account, the member is unable to attribute the money to any particular client or other person,

the member may apply to the Executive Director for permission to pay the money to the Society.

(2) On an application under subsection (1), the Executive Director shall have regard to

- (a) the nature of the trust and the circumstances in which it arose, and
- (b) in the case of an application based on circumstances described in subsection (1)(a), whether the member has made reasonable efforts to locate the person entitled to the money and whether there is any reasonable prospect that the person can be located.

(3) If permission is given under subsection (1) and the money is paid by the member to the Society, the trust liability of the member with respect to that money is extinguished.

....

29. *Pursuant to Rule 130(5), a Conduct Committee panel directed Mr. Coultrey to pay audit costs of \$1,250.00, representing 10 hours of work in reviewing files dated from 1997 to 2001 to identify trust deficiencies.*

DATED AT Calgary, Alberta this — day of September, 2007

Wayne A. T. Coultrey

(signed) _____
Lindsay MacDonald, Q.C.
Counsel for the Law Society

SUMMARY OF RESULT

10. As a result of the Agreed Statement of Facts and admission, the Hearing Committee found that all four citations had been made out. The only issue was then as to sanction, with counsel for the LSA seeking disbarment and counsel for the Member submitting that a lengthy suspension (along with an undertaking by the Member never to apply for readmission to the LSA) would be appropriate. After hearing argument on the question of sanction, the Hearing Committee directed that the Member be disbarred.

EVIDENCE

11. Exhibits 1 - 12 were entered by counsel for the LSA with the consent of counsel for the Member.
12. The Hearing Committee heard the testimony of the Member and of Dr. Patrick Clarke, a psychologist called by the Member. The Committee generally did not find Dr. Clarke's evidence to be of much assistance to it in dealing with the issue of sanction.

DECISION AND ANALYSIS REGARDING SANCTION

13. The purpose of a sanction in cases such as this is dealt with in the Hearing Guide and in a number of previous decisions cited to the Committee by counsel. They can be summarized as follows:
 - The purpose of a sanction is not so much to punish a member but to demonstrate to the public that the LSA is serious about protecting them from being mistreated by their lawyer
 - There is no set tariff of sanctions. So, for example, not every misappropriation must result in disbarment. Having said that, stealing trust funds from one's client is obviously one of the most flagrant abuses to which a lawyer can subject a client, and disbarment often results.
14. Following are the factors tending to indicate the appropriateness of a more severe sanction:
 - (a) The Member stole trust funds from his client
 - (b) The Member lied to the auditor of the LSA to cover up the theft
 - (c) The Member contacted the client and asked it to lie to the LSA's auditor in order to conceal the theft
 - (d) The Member placed a forged document on his file in order to mislead any subsequent auditor

- (e) While not as serious as theft, the Member on a number of other occasions had withdrawn funds from trust without first rendering accounts, as is required by the LSA rules.
15. Following are the factors tending to indicate the appropriateness of a less severe sanction:
- (a) The Member had no prior record
 - (b) The Member made restitution of the funds stolen
 - (c) The Member had a record of humanitarian aid and assistance to his local community.
 - (d) The Member appeared to be genuinely remorseful.
16. Based on the factors set out above, and particularly in the need for the Law Society to uphold the reputation of the profession, the Committee's decision was to disbar the Member.

CONCLUDING MATTERS

17. The Hearing Committee disbarred the Member and directed the Member to pay the actual costs of the hearing within six months.
18. The Hearing Committee directed that a report be sent to the Attorney General with respect to the conduct of the Member in this matter, and that a Notice to the Profession be circulated.
19. The Hearing Committee directed that only exhibits 1 to 5 and Exhibit # 6 (without tabs 1 through 4) be made available to the public upon request, and that the rest of the Exhibits remain private as those exhibits contained confidential client information and personal details regarding the Member and his health condition.

Dated this ____ day of September, 2007

John Prowse, Q.C., Bencher
Chair

Vivian Stevenson, Q.C., Bencher

Norma Sieppert, Bencher

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