



THE LAW SOCIETY OF ALBERTA  
HEARING COMMITTEE REPORT REGARDING SANCTION

IN THE MATTER OF THE *Legal Profession Act*, and  
in the matter of a Hearing regarding  
the conduct of B. GARETH PALFY  
a Member of The Law Society of Alberta

**INTRODUCTION**

1. A Hearing Committee of the Law Society of Alberta (“LSA”) comprised of Carsten Jensen, Q.C., Chair, John Prowse, Q.C., and Morris Taylor convened on June 5, 2007 to consider the matter of sanction with respect to the conduct of the Member. The LSA was represented by Garner Groome. The Member was not present for the sanction phase of the hearing. The Member was represented by his counsel W.E. Brett Code.
2. The Hearing Committee report with respect to the citations against the Member was issued by the Hearing Committee on May 24, 2007. The Member was found guilty of two citations, as follows:

Citation 1: IT IS ALLEGED that you engaged in an activity that is incompatible with the best interest of the profession and justice system, and that such conduct is conduct deserving of sanction.

Citation 4: IT IS ALLEGED that you failed to cooperate with the Law Society of Alberta, and that such conduct is conduct deserving of sanction.
3. With respect to Citation 1, the Hearing Committee found that the Member had made deceptive log entries, had sent a deceptive and misleading letter, and that he had taken other steps in furtherance of a scheme devised by the Member to enrich himself at the expense of his employer, all while misleading a member of the public and taking advantage of a colleague. With respect to Citation 4, the Hearing Committee found that the Member had failed to cooperate with the LSA over a long period of time, and specifically the Hearing Committee found that the Member’s cooperation was woefully lacking in this case. With respect to each of these citations, the Hearing Committee found that the Member’s conduct was conduct deserving of sanction.
4. On May 28, 2007, the Hearing Committee convened at the request of counsel for the LSA to hear an application for an interim suspension of the Member based on the findings in the Hearing Committee report of May 24, 2007. After hearing the

submissions of counsel for the LSA and counsel for the Member, the Hearing Committee decided to grant the application for an interim suspension and issued oral reasons on the same date. Accordingly, the Member stood suspended on an interim basis on June 5, 2007 when submissions with respect to sanction were made.

## **EVIDENCE**

5. In addition to the evidence before the Hearing Committee with respect to the citations against the Member, the following exhibits were entered by consent:

Exhibit 68- A letter from R. Gregory Bush, the director of lawyer conduct for the LSA, confirming that the Member has no disciplinary record with the LSA.

Exhibit 69- The Estimated Statement of Costs for the hearing.

## **SUBMISSIONS OF COUNSEL**

6. Counsel for the LSA noted that the Member had no disciplinary record. However, he indicated that the LSA was seeking disbarment in this case. Counsel for the LSA noted that the purpose of sanction in a case such as this is to protect the public and to protect the reputation of the legal profession. The Member's conduct had been found to be deceitful, misleading, and deliberately so.
7. Counsel for the LSA submitted that integrity was completely lacking in the Member's conduct. Further, he indicated that there was a serious question of governability with respect to the Member, who exhibited disdain for the LSA regulatory process. Counsel for the LSA noted that the Member's denial of the facts leading up to his conviction continued up to and through the hearing itself. The Member had not exhibited remorse, and his actions amounted to a breach of trust. Counsel for the LSA submitted that disbarment was the only proper sanction in a case of proven dishonesty of this kind in order to protect the public, the integrity of the profession, and to denounce the conduct of the Member. In addition, counsel for the LSA indicated that the LSA would be seeking an Order directing the Member to pay the actual costs of the hearing.
8. Counsel for the Member noted the Member's absence at the hearing, but indicated that this was due to his advice to the Member.
9. Counsel for the Member argued that the Member had not been engaged in a breach of trust with respect to his employer, R..., as he was not a fiduciary of his employer. He noted that there was no one correct sanction in a case such as this one, and that the Hearing Committee retained a discretion to not disbar the Member. Counsel for the Member asked us to consider whether disbarment was necessary for the protection of the public. In mitigation, counsel for the Member noted that the Member was not practicing law at his place of employment with R..., and that he was coming out of divorce and was in an unsettled place in his life at the time in question, and he was also in the middle of a work transition back to private practice. The Hearing Committee was asked to conclude that the Member was a very minimal risk to the public, and that risk could be controlled or eliminated by a long suspension.

## DECISION AS TO SANCTION

10. The Hearing Committee considered all of the submissions of counsel in its deliberations with respect to sanction. The Hearing Committee noted that the purpose of disciplinary proceedings as set out in Section 49(1) of the *Legal Profession Act* is to protect the best interests of the public (including members of the society), and to protect the standing of the legal profession generally.

11. The Hearing Committee finds that the conduct of the Member in this case with respect to the scheme to divert funds from R... was conduct of the most serious, deceitful and dishonest nature. The Hearing Committee notes the comments in *Bolton v. Law Society*, [1994] 2 All ER 486 at 491-2 (C.A.):

“Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal. Lapses from the required high standard may, of course, take different forms of varying degrees. The most serious involves proven dishonesty, whether or not leading to criminal proceedings and criminal penalties. In such cases the tribunal has almost invariably, no matter how strong the mitigation advanced for the solicitor, ordered that he be struck off the Role of Solicitors.”

12. In addition, the conduct of the Member in responding to the Law Society raised serious questions with respect to the governability of the Member, and the Hearing Committee has found that the Member’s cooperation with the LSA was woefully lacking. In that regard, the Hearing Committee notes the comments in *Law Society of Upper Canada v. Squires*, [1994] L.S.D.D. No. 156, as follows:

“The Solicitor repeatedly breached his duty under Commentary 3 of Rule 13 to reply promptly to communications from the Society. He would appear to have deliberately adopted and maintained over a lengthy period of time a policy of flouting the administrative requirements of the Society. The Society cannot perform its function of governing the profession in the interest of the public if it tolerates such conduct.”

13. In the circumstances, involving dishonesty, deceit, a scheme devised at the expense of the Member’s employer, conduct that mislead a member of the public and took advantage of a colleague, and in the context of the Member’s apparent lack of governability, the Hearing Committee finds that the only satisfactory sanction is disbarment. Notwithstanding the mitigating factors put forward by counsel for the Member, no other sanction would protect the best interests of the public, protect the standing of the legal profession, properly denounce the conduct of the Member, and maintain the integrity of the self governance process.

## CONCLUDING MATTERS

14. The Member is disbarred. The Member is directed to pay the actual costs of the hearing. A notice will be issued to the Attorney General.

15. As previously directed, Exhibits 6-18 in these proceedings are to be kept private. In

addition, Exhibits 47-49 and 53 are directed to be kept private, and the addresses in Exhibit 5 will be redacted prior to any publication of that document. The Hearing Committee also directs that all other exhibits in this proceeding be redacted to remove client names and privileged information before any publication of those documents.

Dated this 20 day of June, 2007

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Carsten Jensen, Q.C., Bencher  
Chair

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John Prowse, Q.C., Bencher

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Morris Taylor, Lay Bencher