IN THE MATTER OF THE *LEGAL PROFESSION ACT*

AND

IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF **PAUL MOREAU**,
A MEMBER OF THE LAW SOCIETY OF ALBERTA

REASONS FOR DECISION OF PAUL MOREAU MEMBER HEARING SEPTEMBER 26 AND NOVEMBER 8, 2006

On September 26, 2006, a hearing committee panel comprised of Peter Michalyshyn, Q.C. (Chair), Wilf Willier, and Rod Jerke, Q.C. convened at the Law Society offices in Edmonton, Alberta to inquire into the conduct of Paul Moreau ("The Member"). The Member was represented by Peter J. Royal, Q.C. The Law Society was represented by Garner Groome. The Member was present throughout the hearing. Following a day's evidence the hearing was adjourned for argument and decision to November 8, 2006. On that date the Panel found the Member guilty of one of three citations, imposed a reprimand, and ordered costs.

Jurisdiction

Jurisdiction was established by entering as Exhibits the Letter of Appointment, Notice to Solicitor, Notice to Attend, Certificate of Status and Certificate of Exercise of Discretion. The Member accepted the jurisdiction and composition of the Panel.

Private Hearing

No application was made to hold the hearing entirely in private. However, the Panel acceded to a joint request of Counsel that, owing to concerns for the complainant's security, names tending to identify the complainant be kept private. In particular, the Panel agreed to keep private the name of the complainant, the complainant's counsel, the complainant's two co-accuseds, and the sentencing Judge. The decision to keep names private was made over the objections of media present. The hearing was also closed to the public briefly for purposes of hearing evidence otherwise subject to solicitor-client privilege.

Citations

The Member faced three citations as set in Exhibit 2, as follows:

1. IT IS ALLEGED that you communicated with an accused, knowing that such accused was represented by counsel, and that such conduct is conduct deserving of sanction.

2. IT IS ALLEGED that you sought to influence an accused to retain new counsel knowing that such accused was already represented by competent counsel, and that such conduct is conduct deserving of sanction.

3. IT IS ALLEGED that you sought to influence an accused to take a certain course of action in his defence, for the benefit of your own client who was a co-accused, when you knew or ought to

have known that such course of action would be to the detriment of the accused, and that such conduct is conduct deserving of sanction.

The evidence

The Member was first retained by his client in about January, 2003. The client was charged with second degree murder after a shooting incident in Edmonton. The client had two co-accuseds, one being the complainant.

A preliminary inquiry was set initially for a 4-week period November 17 – December 12, 2003.

The defence of the Member's client was one of identification. In the Member's words, the case was "entirely circumstantial … with regard to [his client's] involvement in the shooting. It was "…principally an identification case". The identity defence was common to all three co-accuseds.

During the investigation the complainant provided a "KGB" statement[1] to police.

At the outset of his retainer the Member was unaware any police statements had been made by either of his client's co-accuseds. The Member only learned the complainant had given a statement on the eve of the 2003 preliminary inquiry. The statement's disclosure at that time by the Crown caused the complainant's counsel to withdraw. As such, the preliminary inquiry was adjourned. At the time of the adjournment, the complainant and each of the co-accuseds were at liberty on bail.

Before the Panel, the Member complained of considerable hardship – in the sense of lost billings – as a result of the adjournment of the four-week 2003 preliminary inquiry.

New preliminary inquiry dates were set on November 28, 2003. By then the complainant had retained new counsel, a fact known to the Member as both counsel had appeared – some 10 days earlier – on November 18, 2003 to speak to the adjournment of the preliminary inquiry.

From that point forward, the Member and the complainant's counsel dealt with each other several times on the file. They met to set new dates after the adjourned preliminary inquiry. They spoke by phone in early December, 2003. At that time, the Member discussed the general outline of the case with counsel, including potential admissibility issues surrounding the complainant's KGB statement. The Member also recalled encountering the complainant's counsel at the Edmonton courthouse, and at that time having a further discussion about the case. Thereafter, the Member did not hear from the complainant's counsel for several months.

The Member stated that disclosure of the complainant's KGB statement changed the landscape of the case. It created the spectre of the complainant's evidence and/or KGB statement being used against the co-accuseds if the complainant pleaded guilty, or if the complainant was severed from the joint indictment. It changed the case from one of identification to one of self-defence. While self-defence had always been in the background, in the Member's estimation it had been very much a secondary issue.

The complainant's KGB statement was not exhibited before the Panel. However, it is understood to have placed the three murder co-accuseds at the scene of the crime, and as such it jeopardized the identification defence. In the Member's words, it "defeated" his client's identification defence, but left open a defence of self-defence. In the Member's estimation, the rise and fall of alternate defences left his client no worse off:

[1] A recorded statement arguably admissible against an accused without the necessity of calling the person giving the statement.

as he testified before the Panel: "…to be acquitted on one basis is just as good as being acquitted on another basis".[2]

In early March, 2004 the Member was informed by his client that the complainant was in back in custody. The Member learned that his own client was "concerned about [the complainant's] welfare". After initially not acting on the inquiry, the Member received a further call from his client a couple of days later. The Member testified before the Panel that his client stated "…he received information that [the complainant] was in custody and he was concerned about whether [the complainant] was all right, whether he was represented, and whether he was being looked after".

In response, the Member testified that he telephoned the office of the complainant's counsel. He testified he left a message, but was never called back. This would have occurred on a Thursday or a Friday, March 11 or 12, 2004.

The following week, on Wednesday, March 17, 2004, the Member found himself at the Edmonton Remand Centre. He stated he intended to see a client entirely unrelated to these matters. In keeping with conventional, though not invariable Remand Centre practice, the Member attended the front desk, completed a form indicating his wish to see his client, and filled out a "chit" with that client's information.

The Member testified that upon entering the Remand Centre on March 17, 2004, he intended to see only *that* client.

The Member testified that he then proceeded through the balance of Remand Centre security checks – through a series of locked doors, finally into the visiting unit. He attended upon the Remand Centre guard in the visiting unit. He asked for his client. Efforts were made to locate the client. Inquiries were made both of the client's unit, and elsewhere within the institution. The client could not be located. That came as something of a surprise, for while the client had been out earlier that day to court outside Edmonton, he ought to have been returned to the Remand Centre in good time before the Member's mid-afternoon visit.

His own client not found, the Member testified that it occurred to him – for the first time – to ask to see the complainant. The Member made this request mindful of his own client's inquiry the week before, "whether [the complainant] was being looked after", and mindful of the call the Member had made the week before, albeit not returned, to the complainant's counsel.

The Member testified he was aware that the complainant was an informant in a major, unrelated criminal law case. As such, the Member was aware the complainant's welfare in the prison system was a live issue.

That aside, the Member stated his *only* concern – at the time he asked to see the complainant on March 17 – was to ensure the complainant had legal representation. The complainant had been on release, then brought back into custody. Something had obviously happened to put him back into custody. The Member testified:

> "It was important that his interests be taken care of. And if he was remaining in custody for a period of time, that caused me to be concerned about whether or not he was represented."

[2] On the other hand, The Member acknowledged it is more difficult to conduct a self-defence case as compared to a defence based on identify, if only as a result of the fact the client must testify in a self-defence case "…and you take the risk that he may self-destruct on the witness stand or not do very well or all of those sorts of things. So it's a more difficult case to litigate just from a tactical or procedural perspective." Moreover, the Accused is unable to advance his defence of self-defence until Trial, whereas based on the defence of identity, potentially the Accused can escape criminal liability at the Preliminary Inquiry stage for a want of evidence. Finally, the Panel questioned the relevance of self-defence in that the complainant's statement exonerated the Member's client from the actual use of a firearm to kill anyone.

By March 17, the Member was aware the complainant had been in custody about a week.

The Member clarified in his testimony before the Panel that his concern was not so much for the complainant, but for his own self interest:

> "…the principal concern was that if he was unrepresented and continued to be unrepresented, that posed a risk to whether the Preliminary Inquiry would go on as scheduled. I had already lost a month of working time when this Preliminary was adjourned the first time. I had no desire to have that happen to me again. Secondly, and very much more in a secondary capacity, there was some concern about if he is in custody and he's not represented and not receiving any legal advice, whether the Police might go and talk to him and who knows what he might say."

The Member also made clear before the Panel that whether the complainant had counsel was "by no means a burning issue". He testified:

Question: So what was the rush then while you were in the Remand Centre, [your client] is not there and you figure, well, I better talk to [the complainant]?

Answer: There was no rush.

Question: In fact, you frequented the Remand Centre quite often in your capacity as a defence lawyer?

Answer: Several times a week, yes.

Question: So you would have been back there another day?

Answer: Absolutely.

Question: So why then was it so important?

Answer: It wasn't so important. There was no rush. It was only because I was there anyway and couldn't do what I had come there to do. I thought I might as well do something else. This issue had been floating around for a week or so by that point. So I thought I'll spend a minute to two, make sure he has counsel, and then I can put that issue away and not worry about it any more.

In sum, as stated by the Member:

> "I wasn't particularly concerned about [the complainant's] welfare. My client was. I was concerned that he was represented which, I suppose, is an aspect of his welfare. But I had a stake in that too. I didn't want this Preliminary to get adjourned again and lose me some more productive court time".

The Remand Center visit

There was no dispute as to the accuracy of records exhibited before the Panel regarding the Member's attendance at the Edmonton Remand Center on March 17, 2004. Records established the following times:

- 3:25 p.m. the Member checked in at the front desk of the Remand Center;
- 3:30 p.m. He attended at the visits area;

- 3:37 p.m. He left the visits area;
- 3:40 p.m. He checked out at the front desk.

The member was in the Remand Center a total of 15 minutes. Of that, he was in the visits area of the Remand Center a total of 7 minutes.

There was some controversy in the Hearing whether in fact the Member asked at the visits area to see his own client. A "professional interview/ledger form" at the front desk notes the Member's wish to see his own client, and no one else. On the other hand, an "interview ledger sheet" kept by staff in the visits area reveals no such request to see the Member's own client; that document shows only that the Member asked to see the complainant.

Evidence of P. N.

Ms. N. was on staff in the visiting area of the Edmonton Remand Centre March 17, 2004. She had no actual memory of the Member's attendance, or of his visit with the complainant.

N. described her invariable practice as follows. A lawyer attending at the visiting area would either hand in a chit (as noted above) or would make an oral request for an inmate visit. In either event, as dictated by policy, she would write down the visit request on the interview ledger sheet. Only after entering that information (e.g., name of interviewer, firm, inmate name) would she then call the inmate's unit to determine his availability. If for any reason the inmate was not available, N. would enter that information on the interview ledger sheet with a notation such as "OTC" (out to court) or "not seen". As such, the interview ledger sheet would comprise a record of all visits *requested*, not just visits which actually occurred.

The relevance of N. evidence emerges from a review of Exhibits 11 and 12:

- Exhibit 11 is a professional interview/ledger sheet, as mentioned above. It shows the Member attending the Edmonton Remand Centre March 17 with a request to see his own client. The Member signs in at 3:25 p.m. Nothing is noted regarding an intended visit with the complainant;

- Exhibit 12 is an interview ledger sheet filled out by N. in the visits area, also mentioned above. There is no reference to a requested visit with the Member's own client. On the other hand – unlike Exhibit 11 – Exhibit 12 *does* note the Member's request to visit with the complainant. And it evidences that visit taking place between 3:30 – 3:37 p.m.

According to N. invariable practice, had the Member asked to see his own client, that request would have been noted in the interview ledger sheet, whether or not the client could be located.

On the other hand, N. was unable to deny the possibility that a fellow correctional officer in the visits area on March 17, 2004 may have dealt with the Member's request to see his own client, and failed to enter that request in the interview ledger sheet.

In support of this possibility, it was the evidence of Edmonton Remand Centre official I. L. that while the process described by N. was in fact "protocol", there were occasions on which protocol was not followed so far as entering unsuccessful visit requests in the interview ledger sheet.

The impugned conversation

As noted, it was not in dispute that the Member spoke with the complainant at the Remand Centre visits

area between 3:30 – 3:37 p.m.

Regarding the visit itself, the Member gave the following evidence before the Panel:

> "He was brought down I believe almost immediately. I don't believe I waited very long. So we went into the interview room and I introduced myself. I believe I asked if he remembered me and explained that I was (my client's) lawyer. I asked him, as I recall, at first whether he still had a lawyer and he said he did. I asked him who. He said (his Counsel). I believe I then asked him why he was in. He advised me that he had been arrested on a breach."

The Member testified that once informed the complainant had Counsel, he kept up conversation as to "why he was in" out of a concern whether the complainant continued to be represented by [his Counsel]. Once satisfied there was such contact, the Member testified he got up to leave.

However, according to the Member, at that moment the complainant asked whether the Member's client or his co-accused were upset with the complainant for having provided the KGB statement. That question having been asked, the Member testified he decided to sit back down in the visits area with the complainant. He then testified he told the complainant that no, "they" weren't upset. Because on the one hand, he said, the complainant's statement was not evidence against the co-accuseds. And on the other, it didn't do "us" any harm. And further, the statement might be excluded in any event. As the Member stated:

> "So there was really no reason to worry about it and I said words to the effect of we'll fight it out and chin up or something along those lines. And I believe I wished him luck and left him with my card, which is something I would routinely do, and words to the effect of, if I can do anything for you, call me."

The Member acknowledged it was possible he asked if the complainant was happy with his counsel's representation. At the hearing, he gave the following evidence:

> Question Why would you make that inquiry?
>
> Answer It may have been along the lines of is that going alright or is it okay, I suppose, just to ensure again the point that he has counsel that he's going to stick with. If he is going to change counsel, he needs to get on with it, get moving."

It was also in evidence that the Member agreed he could have said words to the effect "we want to all fight this together", in connection with the potential use of the complainant's KGB statement should anything happen to him. And the Member acknowledged in his July 21, 2004 letter to the Law Society of Alberta that he urged the complainant to "continue to fight it out" or words to that effect

Later in his evidence, the Member testified he certainly could have left the Remand Centre just as soon as he learned his own client was not to be found. He certainly could have phoned the complainant's counsel repeatedly and continued those attempts until he heard back from that counsel. He didn't do any of those things. He phoned counsel once, and left one message. Asked why he failed to do more, he testified:

> "Frankly it didn't occur to me to phone again, having phoned once and left a message. If, in fact, [the complainant] was no longer her client, then returning phone calls concerning him would not be her top priority."

Evidence of complainant's counsel

Complainant's counsel testified before the Panel that she was "shocked" when told the Member had visited her client at the Remand Centre. She testified she at first didn't believe it. After meeting with her client in relation to the visit, she then contacted police, then confirmed the visit occurred.

Counsel called the visit "unprecedented" in the experience of both herself and her partners, all of whom are long-time criminal law practitioners. She testified that her concern focused not only on the ethical implications of the visit, but also on the effect of the visit on the complainant's safety in that as noted, the complainant was an informant in other proceedings. She denied the incident was relevant to the complainant's decision to undertake a certain plea negotiation, but agreed the visit was relevant to the sentence he could expect, particularly with regard to the conditions of his expected incarceration. According to the complainant's counsel, the Member's visit underscored the concern that the complainant was not an unknown, that his whereabouts were and would be known if he served a jail sentence, and as such, that he needed to be kept out of jail. In sum, the entire episode "highlighted [the complainant's] vulnerability in a prison setting".

Evidence of the complainant

The complainant testified before the Panel and was cross examined extensively by the Member's counsel. A police statement by the complainant was also in evidence before the Panel. Of most consequence, the complainant's evidence was that during the impugned visit, the Member offered that "we'll" find and pay for new counsel if the complainant was unhappy with his own counsel. For reasons which follow, it is unnecessary to dwell further on the complainant's evidence for purposes of this Hearing Report.

Decision

The Panel convicted the Member on Citation 1 and dismissed Citations 2 and 3.

Issues of credibility arose in the evidence before the Panel as it related to some but not all of the citations facing the member.

Counsel were agreed that the recent case of *Law Society of Upper Canada* v. *Neinstein*[3] generally sets out the proper test for assessing credibility in hearings such as this:

(a) If the panel believes the evidence of the Member, assuming it is exculpatory, the particular must be dismissed;

(b) If the panel disbelieves the testimony of the Member, but the Member's evidence leads the Panel to conclude they cannot find clear and convincing proof of the particular, based on cogent evidence, the particular must be dismissed. In so doing, the Member's evidence must be considered in the context of the evidence as a whole; and

(c) Even if the Panel disbelieves the Member's evidence in its entirety, the Panel must ask itself, on the basis of the evidence it does accept, and disregarding the Member's evidence, whether the facts substantiating the particular were made out by clear and convincing proof, based on cogent evidence? If not, the particular must also be dismissed.

[3] [2005] LSDD. No. 3, a decision of an Appeal Panel of the Law Society of Upper Canada

It was also agreed that in one sense the test must be modified, as in Alberta the burden and standard of proof is "a fair and reasonable preponderance of credible testimony…on a balance of probabilities" (*Ringrose v. College of Physicians and Surgeons of Alberta*[4]) rather than the standard of "clear and convincing proof, based on cogent evidence" (which test was rejected in *K.V. v. College of Physicians and Surgeons of Alberta*[5]*).*

In argument the Panel was asked to consider whether on the citations as drafted, it needed to find a mental element of *knowledge* – knew or reasonably ought to have known -- versus *recklessness or wilful blindness.* To eliminate any doubt on the point, the Panel proceeded on the basis that it should find the Member had the mental element of knowledge.

Citation #1

This citation alleges that the Member communicated with an accused, knowing that such accused was represented by counsel, and that such conduct is conduct deserving of sanction.

There was no disputing that the Member communicated with an accused, knowing that such accused was represented by counsel. As much was admitted by the Member, and indeed had been admitted long before the Hearing.

That said, the Panel had concerns for two aspects of the Member's evidence: that he had no plan to visit the complainant before he walked into the Remand Centre on March 17, 2004; and that he realized the complainant continued to be represented by counsel only after being informed of that early in the impugned interview.

The Panel rejected both of these aspects of the Member's evidence. The Panel found that taken as a whole, the evidence led to the conclusion the Member intended from the outset to visit the complainant. The Panel rejected the Member's evidence that he formed the intention to visit the complainant only after his own client could not be found.

The Panel was troubled by the facts surrounding the failed visit with the Member's own client. For example:

- Exhibit 11 shows the Member signed in at the front counter of the Remand Centre at 3:25 p.m. The Member then moved through a series of security checks to gain access to the visits area. On the Member's evidence, he asked to see his own client. He was eventually told that his own client could not be found. By the Member's evidence, as an afterthought he asked verbally to see the complainant. In response to that request, the complainant was found. The complainant was down from his unit by 3:30 p.m.

- All of the events described in the preceding paragraph would have had to occur within the 5 minutes between 3:25 – 3:30 p.m.

- By the Member's evidence, during that same 5 minutes he would have had to deal with 2 different correctional officers, the first being a person who failed to follow protocol by failing to enter the attempted 'own client' visit request in the interview ledger sheet. Only thereafter would the Member have dealt with Ms. N., as evidenced by her handwriting in connection with the visit with the complainant.

[4] [1978] 2 W.W.R. 534 (Alta. C.A.)

[5] (1999) 74 Alta. L.R. (3d) 93 (C.A.)

- Exhibits before the Panel established that the Member's own client should have long been back to the Remand Centre from his out-of-town appearance earlier that day; so it was unusual, though not unprecedented, that the Member's own client could not be found.

There is certainly some evidence that the Member asked *only* for the complainant, and that references to his own client were merely a ruse. That is consistent with Exhibit 12, which fails to mention the Member's own client. And the passage of only 5 minutes from entering the Remand Centre to the start of the impugned meeting, is inconsistent with any effort being made during the same 5 minutes to search the Remand Centre for the Member's own client.

At the end of the day, however, the Panel did not find sufficient evidence to conclude the Member entered the Remand Centre *only* to see the complainant.

With regard to the issue of communicating with an accused *knowing that such accused was represented by counsel,* the Panel found on all the evidence that the Member knew or ought to have known that the complainant had Counsel when the Member walked in to the Remand Centre on March 17, 2004.

The Panel rejected as implausible the Member's evidence that he was uncertain the complainant was represented. The Member's belief was founded on three factors: one un-returned telephone call to the complainant's counsel 5-6 days earlier; a lack of contact between the Member and complainant's counsel for several months – keeping in mind, however, that the preliminary inquiry would not start for many more months down the road; and the fact the complainant remained in the Remand Centre about a week after being taken into custody. The Panel found no one or combination of those factors logically supported the Member's stated belief the complainant was no longer represented.

The final element of Citation #1 is whether, in all the circumstances, the Member's communication and knowledge was conduct deserving of sanction.

Chapter 4, Rule 6 sets out the ethical standard at issue:

> If a lawyer is aware that a party is represented by counsel in a particular matter, the lawyer must not communicate with that party in connection with the matter except through or with the consent of its counsel."

The importance of the Rule was commented on by a Hearing Committee in the *Law Society of Alberta v. Lacey* [2002] L.S.D.D. No. 77:

> The Committee also regarded the rule against direct communication with an opposing party without the knowledge or consent of counsel as a serious matter. There would be very few circumstances in which such communication could be justified. The Committee agreed that such direct communications undermine the relationship between the opposing party and that party's counsel. Such conduct and the breach of this Rule is inimical to the best interests of the legal profession and constitutes conduct deserving of sanction.

Two factors independently lead the Panel to conclude the Member's conduct was indeed deserving of sanction:

- on the one hand, as noted, the Panel concluded the Member entered the Remand Centre intending to speak with the complainant when he knew or ought to have known he was represented by counsel;

- equally, the Member's ongoing conversation with the complainant after he was "told" the complainant had counsel, was not trivial or inconsequential. To the contrary, the discussion went on some 7 minutes -- almost half the entire time the Member was in the Remand Centre itself -- and as more fully set out below under the discussion of Citation #3, involved discussion of the case against the complainant and his co-accused.

Citation #2

This citation alleges that the Member sought to influence an accused to retain new counsel knowing that such accused was already represented by competent counsel, and that such conduct is conduct deserving of sanction.

The Panel did not convict on this Citation owing to its inability to accept the complainant's evidence where it varied from the evidence given by the Member. The Panel had regard for the complainant's testimony vis-à-vis his statements exhibited before it, between which there was at least some inconsistency; answers given by the complainant during Member counsel's examination of him; the complainant's criminal record exhibited before it including convictions for offences of dishonesty; and finally the very implausibility of the complainant's evidence that the Member offered to hire a lawyer for him at his client's own expense.

The complainant's own evidence was the only evidence before the Panel -- other than the Member's exculpatory evidence -- on which it could rely to convict on Citation #2. As such, the burden of proof was not satisfied and the Citation was dismissed.

Count #3

This citation alleges that the Member sought to influence an accused to take a certain course of action in his defence, for the benefit of his own client who was a co-accused, when he knew or ought to have known that such course of action would be to the detriment of the accused, and that such conduct is conduct deserving of sanction.

The Panel narrowly declined to convict on this Citation.

The elements of the Citation are that the Member (1) sought to influence the complainant to take a certain course in his defence; (2) for the benefit of the Member's client; (3) when the Member knew or ought to have known that course of action would be to the detriment of the complainant; (4) and that such conduct was conduct deserving of sanction.

Flowing from its findings above in relation to Citation #1, the Panel of course concluded the Member's purpose for seeing the complainant was about more than just confirming the complainant had Counsel. The Panel concluded it was the Member's intention more generally to see what was going on with the complainant when he learned the complainant was in the Edmonton Remand Centre.

In support of that conclusion, the Panel relied in particular on the Member's own evidence, for example, his statement to Police, and his July 21, 2004 letter to the Law Society, in which he acknowledged he urged the complainant to "continue to fight it out" and that he used words to the effect "we want to all fight this together". The Panel concluded these words would not have been said but for at least a suspicion or fear by the Member that the complainant was considering some other defence strategy, most obviously a guilty plea to reduced charges. In this regard, the Panel was mindful of the Member's evidence in the Hearing that once back in Remand, and at least potentially unable to secure his release, conceivably the complainant would consider changing his course in the second degree murder defence.

The Panel concluded that the above-noted communications -- all of which emerge from the Member's own evidence -- were consistent with the initial wording in Citation #3, in that the Member "sought to influence an accused to take a certain course of action in his defence". The Panel was also satisfied the course of action the Member urged upon the complainant would in fact have benefitted the Member's own co-accused client. In saying this, the Panel was not persuaded that the loss of identification defence was of as little consequence as the Member suggested.

Regarding the balance of Citation #3, however, the Panel was not satisfied on the evidence before it that the Member's communication to the complainant was made in circumstances in which he knew or ought to have known the course of action would be to the *complainant's* detriment. There was no evidence why it would be to the complainant's detriment that he "continue to fight it out" along with his co-accuseds. As such, Citation #3 was not made out.

Sanction

The Member had no prior discipline record.

A series of positive references was exhibited before the Panel.

Other exhibits established the notoriety surrounding this case, including press coverage of the original proceedings before the Justice, and before this Panel itself. The local criminal bar is well versed with the incident, and with the Member's then-impending hearing.

At the end of the day, the Panel accepted what was essentially a joint submission of Counsel in favor of a reprimand and one-third the actual costs of the Hearing, based on the Law Society's success on one of three citations facing the Member. The Panel was persuaded that the effect of the publicity and the reprimand in this case were sufficient to address issues of the public interest as it concerned the reputation of the legal profession

That said, at least some Members of the Panel would have considered a more severe sanction but for the fact of the joint submission, and but for the publicity attendant upon these proceedings both before and during the Law Society's involvement.

The Chair delivered a reprimand.

Other Matters

The Panel ordered that exhibits be made available for inspection and copying, subject to redacting of names mentioned earlier, and subject to those portions of the hearing which were closed to the public.

The Panel further orders that no part of Exhibit 7, TAB 1, be available for public scrutiny.

The Member was given 30 days time to pay from the determination of actual costs of the Hearing.

No referral to the Attorney General was ordered, mindful of the fact the Member was subjected to a thorough criminal law investigation prior to this hearing, in the result of which no charges were laid against him.

Dated this ___ day of May, 2007.

Peter Michalyshyn, Q.C. (Chair)

Rod Jerke, Q.C.

Wilf Willier