

LAW SOCIETY OF ALBERTA
HEARING COMMITTEE REPORT

IN THE MATTER OF the *Legal Profession Act*; and

IN THE MATTER OF a hearing (the "Hearing") regarding the conduct of
Gordon Vanderleek, a Member of the Law Society of Alberta

INTRODUCTION

[1] On February 4, 2014 a Hearing Committee (the "Committee") of the Law Society of Alberta ("LSA") convened at the LSA office in Calgary to inquire into the conduct of Gordon Vanderleek, a Member of the LSA. The Committee was comprised of Anthony G. Young, Q.C. Chair, Nancy Dilts, Q.C., Bencher and Gillian Marriott, Q.C., Bencher. The LSA was represented by Gillian Clarke. The Member was in attendance throughout the hearing and was represented by Shane McGurk. Also present at the Hearing was a Court Reporter to transcribe the Hearing.

JURISDICTION, PRELIMINARY MATTERS AND EXHIBITS

[2] Counsel for the Member and Counsel for the LSA were asked whether there was any objection to the constitution of the Committee. There being no objection, the Hearing proceeded.

[3] Exhibits J1 through J4, consisting of the Letter of Appointment of the Committee, the Notice to Solicitor pursuant to section 56 of the *Legal Profession Act*, the Notice to Attend to the Member and the Certificate of Status of the Member with the LSA established the jurisdiction of the Committee.

[4] The Certificate of Exercise of Discretion pursuant to Rule 96(2)(b) of the Rules of the LSA ("Rules") pursuant to which the Director, Lawyer Conduct of the LSA, determined that there were no persons to be served with a Private Hearing Application was entered as Exhibit J5. Counsel for the LSA advised that the LSA did not receive a request for a private hearing. Accordingly, the Chair directed that the Hearing be held in public.

[5] At the outset of the hearing Exhibits 2 through 29 contained in the Exhibit Book which had been provided to the Committee in advance were entered into evidence in the Hearing with the consent of the parties. Further Exhibit 1, (the Agreed Statement of Facts and Admission of Guilt) and Exhibit 30 (the Estimated Statement of Costs) were added to the Exhibit Book as the hearing proceeded.

CITATIONS

[6] The Member faced the following Citations:

1. It is alleged that you failed to comply with the Law Society's accounting rules and that such conduct is conduct deserving of sanction.
2. It is alleged that you failed to respond to the Law Society on a timely basis and such conduct is conduct deserving of sanction.
3. It is alleged that failed to be candid with Law Society staff and such conduct is conduct deserving of sanction.

SUMMARY OF RESULTS

[7] The Member tendered an Agreed Statement of Facts and Admission of Guilt regarding all 3 Citations. The Hearing Committee found that Agreed Statement of Facts and Admission of Guilt was in a form acceptable to it and that the conduct noted was conduct deserving of sanction.

[8] There was a joint submission by counsel for the Member and counsel for the LSA regarding sanction. It was jointly submitted that the Member be suspended for a period of one month. The Hearing Committee agreed with the joint submission.

Agreed Statement of Facts and Admission of Guilt

The Agreed Statement of Facts and Admission of Guilt is as follows:

IN THE MATTER OF THE *LEGAL PROFESSION ACT*

and

IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF **GORDON PETER VANDERLEEK**
A MEMBER OF THE LAW SOCIETY OF ALBERTA

AGREED STATEMENT OF FACTS

1. Gordon Peter Vanderleek is a member of The Law Society of Alberta, having been admitted on the 12th day of March, 2004. He was a member at all times relevant to this proceeding.
2. Gordon Vanderleek faces 3 citations, as follows:

Law Society Complaint (CO20102969)

1. It is alleged that you failed to comply with the Law Society's accounting rules and that such conduct is conduct deserving of sanction.
2. It is alleged that you failed to respond to the Law Society on a timely basis and such conduct is conduct deserving of sanction.
3. It is alleged that failed to be candid with Law Society staff and such conduct is conduct deserving of sanction.

FACT SUMMARY

3. Mr. Vanderleek completed his law degree at the University of Western Ontario in 1986 and was called to the Bar in Ontario in 1988. He practiced in Ontario until he moved to Alberta in 2001.
4. Mr. Vanderleek was called to the Alberta Bar on March 12, 2004 on which date the law firm Gordon Vanderleek Professional Corporation was also opened.
5. In January, 2010, the Membership Department of the Law Society attempted to contact Mr. Vanderleek on a number of occasions and he returned those phone calls on January 21, 2010. During that telephone call Mr. Vanderleek confirmed that he was operating a trust account and acknowledged that his Forms S, T, and U were outstanding. He further advised the representative of the Membership Department that he had made arrangements with his accountant to complete and remit the outstanding forms and anticipated doing so by the end of January, 2010. **[Exhibit 2]**
6. The Audit Department of the Law Society telephoned Mr. Vanderleek on March 24, 2010 to inquire about the status of the outstanding Forms S, T, and U for 2004 to 2009 (collectively, the "Forms"). Mr. Vanderleek advised the Audit Department that he had not yet sent them in but that they were being finalized, that he was going to speak with his accountant and call the Audit Department back. Mr. Vanderleek did not call back.
7. On April 23, 2010, the Audit Department sent Mr. Vanderleek an e-mail requesting an update on the progress of the outstanding Forms. **[Exhibit 3]**
8. By way of return e-mail, Mr. Vanderleek advised the Audit Department that he was targeting May 17, 2010 to provide the requested Forms. **[Exhibit 4]**
9. By way of e-mail dated June 29, 2010 the Audit Department advised Mr. Vanderleek they had not received his outstanding Forms and requested an update on his progress. **[Exhibit 4]**
10. On July 7, 2010 Mr. Vanderleek replied to the Audit Department by way of e-mail that he had to hire a new accountant, which he hoped to finalize that week or early the following week, after which he would be asking for a timeline to complete the Forms. **[Exhibit 5]**

11. On July 8, 2010 the Audit Department requested Mr. Vanderleek's May, 2010 trust reconciliation, which was received on July 13, 2010. **[Exhibits 6 and 7]**
12. By e-mail dated July 13, 2010 the Audit Department advised Mr. Vanderleek that they would be sending an official letter requesting that he provide the outstanding Forms by no later than July 27, 2010, to which Mr. Vanderleek responded on the same day requesting a July 30, 2010 deadline as he hoped to complete the retainer of his accountant and such extended deadline would give the accountant two weeks to complete the Forms. By way of return e-mail on July 13, 2010 the Audit Department advised Mr. Vanderleek that this was acceptable. **[Exhibit 8]**
13. Consequently, on July 13, 2010, the Audit Department of the Law Society sent Mr. Vanderleek a letter stating the Forms that were outstanding and indicating that they had to be provided by no later than July 30, 2010. **[Exhibit 9]**
14. By e-mail dated July 30, 2010 Mr. Vanderleek contacted the Audit Department and sought a further extension to provide the Forms by August 10, 2010. The Audit Department responded by email dated August 3, 2010 consenting to the extension. **[Exhibit 10]**
15. By e-mail dated August 10, 2010, Mr. Vanderleek contacted the Audit Department to advise he still did not have the completed Forms, apologized for the delay and indicated he would do what he could to keep the matter moving forward. **[Exhibit 11]**
16. The Law Society did not hear back from Mr. Vanderleek and consequently, the matter was referred by the Audit Department to the Manager, Complaints. By letter dated December 1, 2010 the Law Society requested Mr. Vanderleek provide a formal response to the complaint pursuant to Section 53 of the *Legal Profession Act*. The deadline for response was 14 days from Mr. Vanderleek's receipt of the letter. **[Exhibit 12]**
17. Mr. Vanderleek responded to the Law Society by way of letter dated December 15, 2010 pursuant to which he indicated he would strive to have the Forms filed by December 23, 2010. However, having regard to the holiday season, Mr. Vanderleek requested a formal extension to January 7, 2011, which extension was agreed to by the Law Society. **[Exhibits 13 and 14]**
18. Mr. Vanderleek failed to provide the Forms to the Law Society on January 7, 2011. He did not otherwise contact the Law Society by January 7, 2011. By letter dated January 10, 2011, the Law Society advised Mr. Vanderleek that they had not received a response to the letter of December 1, 2010 and was informed that failure to respond could result in both a hearing for failing to respond and an adverse inference regarding the original complaint. **[Exhibit 15]**
19. On February 3, 2011 the Law Society, by way of an investigation order, directed an investigation by investigators Robert Ellergodt and Karen Vanderzweerde in relation to Mr. Vanderleek's failure to respond to the Law Society and to provide the required outstanding Forms ("Investigation Order"). **[Exhibit 16]**

20. By letter dated February 6, 2011 Mr. Vanderleek contacted the Law Society to explain he had not responded to the January 10, 2011 correspondence because it was inadvertently misplaced with other documents to be filed and he did not see it for the first time until February 6, 2011. He also advised he was going to be out of the country until February 22, 2011, at which time he would be in touch regarding the status of his late filings, which he hoped to have completed in the week of his return. **[Exhibit 17]**
21. By letter dated February 7, 2011 the Law Society advised Mr. Vanderleek that he had to provide his response to the Law Society Complaint by March 4, 2011. **[Exhibit 18].**
22. On February 7, 2011 Investigator Ellergodt personally attended at Mr. Vanderleek's office and hand delivered a copy of the Investigation Order and another letter, also dated February 7, 2011, providing notice to Mr. Vanderleek that he was required to attend a formal interview at the offices of the Law Society of Alberta in Calgary on March 4, 2011. In this letter Mr. Vanderleek was asked to confirm his attendance at the meeting by no later than February 25, 2011. **[Exhibit 19]**
23. Mr. Vanderleek was out of the country from February 7 to 22, 2011.
24. By February 28, 2011, Mr. Vanderleek had not responded to Investigator Ellergodt's letter dated February 7, 2011 nor had he responded to the February 7, 2011 letter from the Law Society.
25. On February 28, 2011 Investigator Ellergodt left a voice message for Mr. Vanderleek to call and confirm his attendance for the interview on March 4, 2011. No reply was received.
26. Investigator Ellergodt personally attended at Mr. Vanderleek's office at 11:30 am on March 1, 2011 and Mr. Vanderleek was not present. The Investigator asked Mr. Vanderleek's receptionist to provide Mr. Vanderleek with the Investigator's business card and to have him call the Investigator that afternoon.
27. When he did not hear back from Mr. Vanderleek, Investigator Ellergodt attended again at Mr. Vanderleek's office late in the afternoon of March 1, 2011 at which time the receptionist confirmed that Mr. Vanderleek was provided with the Investigator's earlier message. Investigator Ellergodt then left a letter for Mr. Vanderleek directing him to attend at the Law Society of Alberta offices on March 4, 2011. **[Exhibit 20]**
28. On March 1, 2011, Mr. Vanderleek was in court during the morning and with a client in the afternoon.
29. By e-mail dated March 2, 2011 Mr. Vanderleek responded to Investigator Ellergodt's letter requests regarding the interview advising that he wished to seek legal counsel but would not have time to do so before the scheduled date of March 4, 2011. He requested that the interview be re-scheduled and also indicated that he had contacted an accountant to assist him in completing his outstanding filings. **[Exhibit 21]**
30. By way of further e-mails on March 2 and 3, 2011, Investigator Ellergodt provided Mr. Vanderleek with several alternate dates for the interview and reminded him that the

current investigation did not preclude the fact that he was obliged to file his Forms for the missing years and reply to the correspondence sent to him by the Law Society. Eventually the parties agreed on an interview date of April 12, 2011. [Exhibits 22 and 23]

31. Mr. Vanderleek attended his formal interview with the Investigators at the Law Society of Alberta, Calgary offices on April 12, 2011. Mr. Vanderleek provided the following information during his interview and admits the same to be true and accurate (the interview transcript is provided as **Exhibit 24**):
- i. Mr. Vanderleek opened a trust account in 2004 (page 5, lines 5-8). Prior to opening his trust account in 2004 Mr. Vanderleek did not review the Law Society of Alberta accounting rules (page 6, lines 15-20);
 - ii. Mr. Vanderleek admitted that he never submitted a Form U to the Law Society in 2004 when he opened his practice. He also acknowledged that, nevertheless, he had been operating a trust account from the start of his practice in 2004. He was unaware of the requirement to file a Form U (page 15, lines 19 to 27 and page 16, line 1 to 17).
 - iii. Mr. Vanderleek advised he first became aware that he had to file Forms S and T in the early part of 2010 (page 44, lines 19 to 27).
 - iv. At the date of the interview, Mr. Vanderleek had not filed the following:
 - 2004 Form S (page 17, lines 6 to 17)
 - 2004 Form T (page 17, lines 13 to 27 and page 18 lines 1 to 8)
 - 2005 Form S (page 22, lines 10 to 16)
 - 2005 Form T (page 22, lines 10 to 16)
 - 2006 Form S (page 22, lines 20 to 24)
 - 2006 Form T (page 22, lines 20 to 24)
 - 2007 Form S (page 22, lines 25 to 27 and page 23, lines 1 to 4)
 - 2007 Form T (page 22, lines 25 to 27 and page 23, lines 1 to 4)
 - 2008 Form S (page 23, lines 7 to 12)
 - 2008 Form T (page 23, lines 7 to 12)
 - 2009 Form S (page 23, lines 13 to 18)
 - 2009 Form T (page 23, lines 13 to 18)
 - 2010 Form S (page 23, lines 19 to 24)
 - 2010 Form T (page 23, lines 19 to 24).
 - v. Mr. Vanderleek acknowledged he received correspondence from and provided correspondence to the Law Society Audit Department between April and November, 2010 dealing with his outstanding Form S's and Form T's. (page 27, lines 19 to 23).
 - vi. Mr. Vanderleek admitted that even though he had advised the Audit Department that steps were being taken to complete his Forms, Form S's and Form T's, he actually took no such steps. (page 27, lines 24 to 27 and page 28, lines 1 to 24).

- vii. Mr. Vanderleek admitted he received correspondence in December, 2010 from the Manager, Complaints of the Law Society. He stated that when he received it he did not read it. He admitted he did not read this December, 2010 correspondence until April 11, 2011 (the day before the Investigation interview). (page 30, lines 23 to 27 and page 31, lines 1 to 17).
 - viii. Mr. Vanderleek admitted that as of the date of the interview all of the Forms were still outstanding (page 36, lines 17 to 22).
 - ix. Mr. Vanderleek admitted that he did not take any actual steps regarding completion of the Forms until the second week of April, 2011 when he contacted an accountant for the first time in that regard (page 39, lines 8 to 21).
 - x. Mr. Vanderleek advised he did not know why he acted in the manner he did other than he felt paralyzed and avoided dealing with these issues with the Law Society. Mr. Vanderleek wondered if his conduct may have been the result of an undiagnosed medical condition, but as of the date of the interview with the Investigator had not consulted with a doctor. (page 39, lines 8 to 21)
 - xi. As of the date of the interview Mr. Vanderleek admitted he had not provided the Manager of Complaints with a written explanation concerning his conduct in relation to the complaint to the Law Society and the Investigation Order (page 49, lines 15 to 20).
32. On April 12, 2011 Mr. Vanderleek contacted the Law Society of Alberta requesting blank copies of Form T for his accountant. The Trust Safety Group provided Mr. Vanderleek with blank copies of Forms S and T by e-mail and on April 13, 2011, at the request of the Investigator, the Trust Safety Group provided Mr. Vanderleek, by e-mail, with a blank copy of Form U.
33. By e-mail dated April 18, 2011, P.S., Chartered Accountant with C.S., advised Investigator Ellergodt that Mr. Vanderleek first contacted her on April 6, 2011 by e-mail indicating that he needed assistance to get caught up on his filings. A.K., a manager at C.S., attended at Mr. Vanderleek's office on approximately April 11 or 12, 2011 to start the audit process. **[Exhibit 25]**
34. All outstanding Forms for the period 2004 to 2010 were completed and filed as follows:
- | | | | |
|----------|-------------------|----------------------|-----------------|
| Form U: | due July 29, 2004 | filed May 2, 2011 | 2,468 days late |
| Forms S: | due June 14, 2005 | filed April 29, 2011 | 2,145 days late |
| | due June 14, 2006 | filed April 29, 2011 | 1,780 days late |
| | due June 14, 2007 | filed April 29, 2011 | 1,415 days late |
| | due June 14, 2008 | filed April 29, 2011 | 1,049 days late |
| | due June 14, 2009 | filed April 29, 2011 | 684 days late |
| | due June 14, 2010 | filed April 29, 2011 | 319 days late |
| Forms T: | due July 29, 2005 | filed May 2, 2011 | 2,103 days late |
| | due July 29, 2006 | filed May 2, 2011 | 1,738 days late |
| | due July 29, 2007 | filed May 2, 2011 | 1,373 days late |
| | due July 29, 2008 | filed May 2, 2011 | 1,007 days late |
| | due July 29, 2009 | filed May 2, 2011 | 642 days late |

due July 29, 2010 filed May 2, 2011 277 days late

35. By letter dated May 10, 2011 a copy of the Final Investigation Report was sent to Mr. Vanderleek requesting his formal response pursuant to Section 53 of the *Legal Profession Act*. **[Exhibit 26]**
36. By letter dated May 25, 2011 Mr. Vanderleek responded indicating he had not had sufficient time to review the Investigation Report or seek counsel on his response and requested a two week extension of time to reply to the Law Society. **[Exhibit 27]**
37. By letter dated May 26, 2011 the Law Society approved the requested extension of time. **[Exhibit 27]**
38. By letter dated June 13, 2011 the Law Society once again requested a response to the Investigation Report. **[Exhibit 29]**
39. Mr. Vanderleek never provided a formal response pursuant to Section 53 of the *Legal Profession Act* to the December 1, 2010 letter from the Law Society nor to the May 10, 2011 letter from the Law Society.

CONCLUSION

40. Mr. Vanderleek agrees and admits to all of the facts described above in paragraphs 1 to 39 and admits that all correspondence sent to him was received by him on or about the dates indicated, unless stated otherwise.
41. Regarding the citations, Mr. Vanderleek admits the following:

- **Citation 1:**

It is alleged that you failed to comply with the Law Society's accounting rules, and that such conduct is conduct deserving of sanction.

Admission:

Contrary to Rules 120 and 126 of the Rules of the Law Society of Alberta I failed to file my:

- Form U due July 29, 2004 until May 2, 2011;
- Form S's due June 14 for each of the years 2005 to 2010, inclusive, until April 29, 2011;
- Form T's due July 29 for each of the years 2005 to 2010, inclusive, until May 2, 2011.

I admit that I thereby failed to comply with the Rules of the Law Society that were in effect at the time.

- **Citation 2:**

It is alleged that you failed to respond to the Law Society on a timely basis, and that such conduct is conduct deserving of sanction.

Admission:

I admit that I failed to respond on at least 4 occasions to communications from the Audit Department of the Law Society unless and until the Audit Department followed up on each of those occasions with further communications. I also admit that I failed to respond to the Manager, Complaints, of the Law Society of Alberta on a timely basis, thereby necessitating the issuance of an Investigation Order and I also agree that I never did provide my comments to the Investigation Report forwarded to me on or about May 10, 2011.

I admit that I thereby failed to respond to the Law Society on a timely basis in breach of the Code of Professional Conduct.

- **Citation 3:**

It is alleged that you failed to be candid with the Law Society staff and that such conduct is conduct deserving of sanction.

Admission:

Between January 20, 2010 and November 20, 2010 I consistently advised the Audit Department of the Law Society that I was working with my accountant or was in the process of retaining a new accountant in response to inquiries about when I would have my forms completed and submitted and I provided the same response to the Manager, Complaints. This was not candid as I did not take any steps to retain an accountant until April, 2011 after learning that an Investigation Order had been issued and being informed I was required to attend the Law Society offices to be interviewed by the Investigator.

I admit that I thereby failed to be candid with the Law Society staff in breach of the Code of Professional Conduct

This Agreement and Admission is dated the 4th day of February, 2014.

“Shane McGurk”

WITNESS

“Gordon Vanderleek”

GORDON PETER VANDERLEEK

Decision

[9] No additional evidence was led by either party at this stage of the Hearing.

[10] Mr. Vanderleek acknowledged to the Hearing Committee that he:

- (a) made the admissions voluntarily;
- (b) unequivocally admitted his guilt to the essential elements of the citations;
- (c) understood the nature and consequences of the admissions; and
- (d) understood that the Hearing Committee was not bound by any submission made jointly by his counsel and counsel for the LSA regarding sanction.

[11] The Hearing Committee was asked to consider the joint submission of guilt and make a determination that it was acceptable and that the conduct outlined therein was conduct deserving of sanction.

Discussion

[12] The Hearing Guide, Paragraph 77, provides:

“The ability of the Law Society to govern the profession is essential. Without that ability, the self-governing aspect of the profession is put at risk. Various types of conduct undermine the ability to govern the profession. These include (but are not limited to):

- failing to respond to those involved in the Law Society process
- failing to be candid with those involved in the Law Society process
- failing to cooperate with those involved in the Law Society process
- breaching an undertaking given to those involved in the Law Society process”.

[13] These types of conduct are often evidenced by the following badges of ungovernability.

These include:

1. Persistent failure to comply with the Rules;
 - (a) Lack of interest or concern over rules and regulations;
 - (b) Procrastination or avoidance;
 - (c) Inability or refusal to understand the Rules;
2. Failure to communicate effectively or at all;
 - (a) Failure to respond to communication from the regulator;
 - (b) Providing inadequate responses;
 - (c) Providing inaccurate responses;
3. Defiance;

- (a) Failure to cooperate in the investigative process;
 - (b) Failing to be truthful, straightforward and frank; and,
4. Loss of control.

This list is not intended to be exhaustive but it is illustrative of what should be considered ungovernable behaviour.

Citation 1

[14] In the present case, the seeds of misfortune were sown by Mr. Vanderleek when he first came from Ontario to Alberta. The Member practiced with the Law Society of Upper Canada from 1988 until 2001. He was admitted to the Alberta bar in 2004. It is remarkable, however, that the Member presented no evidence that he took steps to acquaint himself with the accounting rules of the Law Society of Alberta when he started practicing in Alberta. In fact, there is no evidence that the Member took any steps to ensure that he was in compliance with the trust safety regime. The Member simply opened a trust account and began practicing. The opening of the trust account went unnoticed until January 2010 when the Membership Department of the Law Society confirmed that Forms U had not been filed by Mr. Vanderleek upon commencement of his trust account and forms S and T had not been filed by Mr. Vanderleek for the previous 6 years.

[15] In order for the Law Society to effectively govern its Members, it must be able to rely upon those Members to comply with any published rules, practices and regulations. The obligation to comply is with the Member. The Rules of the Law Society in force at the time clearly indicated what the reporting requirements were.

[16] The Preface to the Code of Conduct states:

“The legal profession is largely self-governing and is therefore impressed with special responsibilities. For example, its rules and regulations must be cast in the public interest, and its members have an obligation to seek observance of those rules on an individual and collective basis.”

[17] The Member failed to comply with the rules regarding the opening and operating a trust account. This failure persisted over an extended period of time. The fact that the Member took no steps to acquaint himself with the Rules over the period from 2004 until 2010, in the view of the Hearing Committee, demonstrates a lack of interest or concern over the rules and regulations.

[18] Reference is made to a Hearing Committee Report of the Law Society of Alberta regarding the conduct of George Fixler, Q.C. (*Law Society of Alberta v. Fixler, 2010 ABLS 35 (CanLII)*) which states:

“15. The Hearing Committee notes that compliance with the Law Society accounting rules is not a matter of convenience for the members but a matter of fundamental importance In the absence of the control systems arising out of accurate accounting, even an honest practitioner can still fall prey to errors and worse, to unscrupulous clients and dishonest employees.

16. A careful observance of the Law Society Rules is fundamental to providing the safety of a Member’s trust funds for the benefit of his clients, other members of the Law Society and their clients who act in reliance of the safety of those trust funds. Further, careless practice can affect the financial security of the Member’s own practice, and at long arms length, other members of the Law Society who would have to pay through assurance and insurance fees to provide protection to the public including the Member’s clients.”

[19] In *Law Society of Alberta vs. Michael Grosh, 2009 LSA 21 (CanLII)* the Hearing Committee stated at paragraph 26 that:

"... the right to practice law carries with it obligations to the LSA and to its members. The minimum obligations in our view are compliance with rules and communication with the Society as might reasonably be expected."

[20] In this Hearing Committee’s view, lawyers have a positive obligation to ensure compliance with the rules of their regulator. This obligation extends to responding to any inquiries from the regulator and doing what is reasonably expected by that regulator to ensure compliance with the Rules.

[21] The failure of Mr. Vanderleek to file necessary accounting forms at the outset of operating a trust account and for over 6 years is clearly conduct deserving of sanction for the reasons noted above.

Citation 2

[22] Once the Law Society confirmed that the requisite forms had not been filed there were many attempts made to ensure compliance. Requests for compliance went substantially unanswered by the Member. Concern about the Member increased. The litany of requests and inadequate responses from Mr. Vanderleek is clearly set out in paragraphs 5 through 31 and paragraph 39 of the Agreed Statement of Facts and Admission of Guilt.

[23] This matter moved from the Membership Department through the Audit Department to the Complaints Department culminating in an Investigation Order being issued. From January 2010 until April 2011 the Member simply let the matter escalate. There was no regard by Mr. Vanderleek for the enormous amount of effort and expense that the Law Society was put to. Most difficulties in this matter could have been avoided by Mr. Vanderleek simply engaging the help that he eventually acquired at an early date in January 2010. All could have been avoided if Mr. Vanderleek had cared to be compliant from 2004.

[24] It is telling that even after the requisite accounting and reporting was complete, Mr. Vanderleek never cared to provide a formal response pursuant to Section 53 of the *Legal Profession Act*.

[25] The Member failed to communicate effectively with the Law Society. The Member provided inaccurate (even misleading responses) and inadequate responses. In at least one circumstance no response was provided at all.

[26] In the result, Mr. Vanderleek's actions (and inaction) effectively impeded the Law Society from ensuring that he was in compliance and that the public was adequately protected.

[27] There is no question that Mr. Vanderleek failed to respond to the Law Society on a timely basis and that such conduct is conduct deserving of sanction.

Citation 3

[28] The most serious citation before this Hearing Committee is Citation number 3; the failure of Mr. Vanderleek to be candid with his regulator. This failure erodes the root of the relationship between a lawyer and the Law Society. The Law Society must be able to rely upon the representations of its members. The relationship of regulator to lawyer necessarily demands that communications be truthful, forthright and frank. There is no room for artful deceit or even the slightest untruth or intended misinformation.

[29] The Member admits that from January 2010 he consistently advised the Law Society that he was working with his accountant or was in the process of retaining a new accountant. In fact, he did not take any steps to retain an accountant until April 2011. This is a case of a lawyer giving the answer that he expects his regulator wants to hear. In giving such an answer, taking no action within a reasonable time to ensure compliance and thereafter compounding the deception with further untrue representations, Mr. Vanderleek corroded his relationship with his regulator.

[30] The Supreme Court of Canada made some relevant statements regarding the importance of the integrity of lawyers and the legal profession in *Hill v. Church of Scientology of Toronto*, 1995 CanLII 59 (SCC), 1995 CanLII 59 (SCC), [1995] 2 S.C.R. 1130. At 1178, Cory J. said:

“The reputation of a lawyer is of paramount importance to clients, to other members of the profession and to the judiciary. A lawyer's practice is founded and maintained upon the basis of a good reputation for professional integrity and trustworthiness. It is the cornerstone of a lawyer's professional life. Even if endowed with outstanding talent and indefatigable diligence, a lawyer cannot survive without a good reputation.”

[31] Unfortunately, Mr. Vanderleek failed to maintain his integrity and trustworthiness. This will, no doubt, have an effect on what otherwise would have been a good reputation.

[32] It is not necessary for this Hearing Committee to make any finding regarding whether Mr. Vanderleek has been defiant by failing to be truthful, straightforward and frank. The fact that Mr. Vanderleek has admitted that he was not “candid” is sufficient to make out the 3rd citation.

[33] The Hearing Committee therefor concluded that the Agreed Statements of Facts and Admission Guilt was acceptable to it in accordance with section 60 of the *Legal Profession Act*.

[34] Having found that the agreed Statement of Facts and Admission of Guilt was in acceptable form and that, pursuant to section 60(4) of the *Legal Profession Act*, the conduct of Mr. Vanderleek as described in Citations 1, 2 and 3, was conduct deserving of sanction, the Hearing Committee invited counsel to address sanction. The Committee was then advised that counsel for the LSA and counsel for Mr. Vanderleek had prepared a joint submission on sanction.

[35] Prior to hearing argument on the joint submission on sanction, with the consent of the Hearing Committee and counsel, Mr. Vanderleek gave evidence.

The Member’s Evidence on Sanction

[36] The Member is married with five adopted children 18 to 26 years of age. All of the children have a disability. Three of the children are on Assured Income for the Severely Handicapped (“AISH”). The other two children have learning disabilities but are not disabled.

[37] When asked by counsel why he did not respond to the Law Society, the Member stated that the demands were growing in his practice and that he did not handle those responsibilities well. The Member apologized for his conduct. He stated that he viewed the problem as being too big and things “snowballed”. Mr. Vanderleek stated that the LSA was generous in granting extensions but that he had an inability to solve the problem. He suffered from paralysis, avoidance and an inability to deal with the problem.

[38] When asked by counsel about misleading the LSA the Member stated that “candour is important; it goes to the heart of integrity”. Mr. Vanderleek then stated that these are principles that he wants to live by. He admitted that he did not meet the standards but stated by way of explanation, not excuse, that the stresses of his family, his own diagnosis with type II diabetes and the growth of his practice played a role in his behavior.

[39] The Member stated that he has taken the online accounting course offered by LESA. He has also hired professionals to help him with his accounting.

[40] The Member stated that he was aware that he could be suspended. When asked by counsel what steps he has taken to prepare for this eventuality, Mr. Vanderleek responded that he had reached out to a colleague to help him in such an event. He revealed that there were four or five cases that he had on the docket for February. Four were to be heard on February 10, 2014. There was also a significant tax motivated closing scheduled for February 28, 2014. Mr. Vanderleek advised the Hearing Committee that he was of the view that it would be difficult for

other counsel to come up to speed on this matter. In furtherance of this view he stated that “there was no way anyone can come in”.

[41] Mr. Vanderleek summed up by saying that he was deeply sorry, embarrassed and ashamed. He stated that he did not intend to be disrespectful. He never thought he would end up here (before a Hearing Committee).

[42] When cross-examined by counsel for the Law Society, the Member admitted that he had not received any medication for stress and that his diabetes did not affect his ability to work.

Joint submission on sanction

[43] Mr. Vanderleek’s counsel and counsel for the Law Society made a joint submission regarding sanction. It was jointly submitted that the Member be suspended for a period of one month. The only point of departure between counsel was the proposed commencement date for the suspension. Counsel for the Law Society argued for an earlier date citing that a custodian would be appointed for the Member’s practice that could be up to speed very quickly. Member’s counsel argued for the suspension to start on March 1, 2014 for the reasons noted in Mr. Vanderleek’s testimony regarding the matters on docket and the closing.

Decision Regarding Sanction

[44] The Hearing Guide, Paragraph 51, provides

“The primary purpose of disciplinary proceedings is found in section 49(1) of the Legal Profession Act: (1) the protection of the best interests of the public (including the members of the Society) and (2) protecting the standing of the legal profession generally. The fundamental purpose of the sanctioning process is to ensure that the public is protected and that the public maintains a high degree of confidence in the legal profession.”

[45] At paragraph 27 of the Grosh decision (above) the Hearing Committee stated that:

"The justification for self-government is at least partly based on the assumption that the Law Society of Alberta will in fact govern its members and that its members will accept this governance." ... Maintaining the confidence of the public in the absolute integrity of members of the Law Society of Alberta is paramount.”

[46] The present case centers upon the governability of the Member. For whatever reason, Mr. Vanderleek did not comply with the accounting rules of the Law Society. When requested by his regulator to complete and file the necessary forms, no steps were taken that effectively moved the Member toward compliance until matters were nearly out of hand. Inquiries made by the Law Society were met with a lack of candour. The behaviour of the Member exemplifies the badges of ungovernability. This is of grave concern to the Law Society.

[47] Notwithstanding this concern, a joint submission on sanction deserves deference.

[48] In *Rault v. Law Society of Saskatchewan*, 2009 SKCA 81 (CanLII), 2009 SKCA 81, [2010] 1 W.W.R. 678; *R. v. L.R.T.*, 2010 ABCA 224 (CanLII), 2010 ABCA 224 the Saskatchewan Court of Appeal wrote commentary that has applicability in this case:

“[14] In Ontario, the Discipline Committee of the Law Society of Upper Canada has formally adopted a policy on the approach to be used in considering joint submissions. In *Law Society of Upper Canada v. Paskar*,[\[14\]](#) it stated:

... Convocation encourages Benchers sitting on Discipline Committees to accept a joint submission except where the Committee concludes that a joint submission is outside a range of penalties as reasonable in the circumstances. ...

[15] This was affirmed in *Law Society of Upper Canada v. Orzech*,[\[15\]](#) where the Discipline Committee accepted the joint submission although it was of the view that disbarment was the more appropriate penalty and stated at p. 6:

... joint submissions concerning penalty should not lightly be disregarded by the Committee, particularly when they are the outcome of an extended period of discussions and negotiations through the pre-hearing conference process. Where joint submissions concerning penalty are wholly inappropriate having regard to the nature of the conduct involved then such joint submissions can and should be disregarded; however, when the joint submissions are not inappropriate and when they are responsive both to the type of conduct established and the particular circumstances of the Solicitor, it is the Committee’s view that only in rare circumstances and with considerable caution should the Committee disregard such joint submissions concerning penalty.

[49] It was apparent to the Hearing Committee that Mr. Vanderleek had no interest to find out initially what he needed to do to practice law when he came to Alberta. His inaction demonstrates a lack of understanding of professional governance.

[50] There were multiple instances of a lack of response or no meaningful response to inquiries of the Law Society. Even after meeting with the investigator there was still no demonstration from Mr. Vanderleek of an understanding of the significance of failing to respond to his regulator. The dishonesty and lack of candour is what elevated this matter to a suspension rather than a reprimand or fine. The suspension is the most serious sanction short of disbarment that this Hearing Committee can impose. It is the view of the Committee that Mr. Vanderleek’s behaviour impacts on the ability of the Law Society to meet its responsibility of independent governance and regulation of the profession and therefore this matter calls for such a sanction.

[51] The Hearing Committee is of the view that the joint submission concerning sanction is not wholly inappropriate and falls within the range for conduct of this kind.

[52] As such, the Hearing Committee is satisfied that the joint submission on sanction adequately address the primary purpose of sanctioning as set out in section 49(1) of *The Legal Profession Act*.

[53] The Member will be suspended for a period of one month.

[54] As the Law Society regulates in the public interest and the case has been made that there will be harm, potential harm or inconvenience to Mr. Vanderleek's clients if he is unable to complete his scheduled work and representations for February, the suspension shall commence on March 1, 2014.

[55] There shall be a Notice to the Profession regarding the suspension.

[56] There shall be no notice to the Attorney General.

[57] There shall be such redaction as may be necessary to protect confidentiality and privilege.

[58] The Member shall pay the actual costs of the Hearing. Such costs are payable by the Member upon reinstatement.

Dated at the City of Calgary, in the Province of Alberta this 17th day of February, 2014.

Anthony G. Young, Q.C. (Chair)

Gillian Marriott, Q.C.

Nancy Dilts, Q.C.