

LAW SOCIETY TRIBUNAL HEARING DIVISION

BETWEEN:

The Law Society of Upper Canada

Applicant

and

David Sylvio Lesperance

Respondent

NOTICE OF MOTION FOR INTERLOCUTORY SUSPENSION OR RESTRICTION

TO THE RESPONDENT:

THE LAW SOCIETY OF UPPER CANADA brings a motion under s. 49.27(1) of the *Law Society Act*, RSO 1990, c. L. 8, seeking to suspend and/or restrict the Respondent's licence on the basis that there are reasonable grounds for believing that there is a significant risk of harm to members of the public, or to the public interest in the administration of justice, if the order is not made and that making the order is likely to reduce the risk.

The order requested, the grounds for the motion and the documentary evidence the Law Society will rely on at the hearing of the motion are set out below.

This Notice of Motion is served together with an Information Sheet that sets out the next steps in the proceeding.

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The motion is for:

1. An interlocutory Order under s. 49.27 of the *Law Society Act* suspending the licence of Respondent.
2. In the alternative, an interlocutory order under s. 49.27 of the *Law Society Act* restricting the manner in which the Respondent may practise law;
3. Costs; and
4. Such further and other relief as the Law Society may request and as the Hearing Division deem just.

The grounds for the motion are:

1. The Law Society has received a complaint that the Respondent mishandled a substantial amount of money. This money had been entrusted to the Respondent by a client.
2. The Law Society has received evidence that the Respondent's client deposited €400,000 into the trust account of the Respondent on 3 April 2012. This money represented legal fees that could only be billed upon the achievement of a certain goal by the Respondent. The Respondent did not achieve the goal and conceded this fact in 2015. The client has asked for the return of the €400,000 that had been entrusted to the Respondent. The Respondent has not returned the money. In his annual report to the Law Society for 2012, the Respondent disclosed that the balance in his trust account, on 31 December 2012 (8½ months after the €400,000 was deposited), was \$401.
3. The Law Society has received evidence that the Respondent's client deposited a further €500,000 into the trust account of the Respondent on 3 April 2012. In his annual report to the Law Society for 2012, the Respondent disclosed that the balance in his trust account, on 31 December 2012 (8½ months after the €500,000 was deposited), was \$401.
4. The client and the Respondent signed a loan agreement on 21 January 2013. The client believed that the €500,000, entrusted to the Respondent, was the subject of the loan agreement. The client agreed to loan the money to a 2-person business partnership called Starnberg Investment Group, regarding which the Respondent is one of the 2 partners. Starnberg appears, in turn, to have transferred money to a company that may be controlled by the Respondent's spouse, who appears to have invested money in an insolvent distillery in Poland. The Respondent's client has asked since 2015 for the return of the money loaned to Starnberg but, to date, the money has not been returned.
5. Although the Respondent appears to have become substantially indebted to his client through the aforementioned loan agreement signed in 2013, the Respondent has reported to the Law Society, in his annual reports since 2013, that he is not indebted to any clients. The Respondent has reported, too, that he is not indebted to any clients through a partnership in which he has a substantial interest.

6. The Respondent is not cooperating with the Law Society's investigation into his professional conduct. Despite repeated requests for the relevant client file and books and records, the Respondent has not produced such documentation.
7. The Respondent recently informed a Law Society investigator that he has left the jurisdiction of Canada and is now residing in Poland. The Law Society does not possess the current business or residential contact information of the Respondent. The Law Society does not know the location of the Respondent's law practice.
8. There are reasonable grounds to believe that there is a significant risk of harm to members of the public and to the public interest in the administration of justice if an interlocutory order is not made regarding the Respondent.
9. An interlocutory order regarding the Respondent is likely to reduce the aforementioned risk of harm.
10. Section 49.27 of the *Law Society Act*,
11. Rules 13 and 21 of the *Rules of Practice and Procedure*; and
12. Such further and other grounds as counsel may advise and as the Hearing Division may permit.

The Law Society will rely on the following documentary evidence at the hearing of the motion:

1. The Affidavit of Karen Gordon, affirmed 3 March 2017;
2. The Affidavit of Allane Andrusko, sworn 2 March 2017; and
3. Such further and other material as the Law Society may advise and the Hearing Division permit.