

IN THE MATTER OF THE *LEGAL PROFESSION ACT*;

AND

**IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF MICHAEL TERENCE LEONARD,
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

Hearing Committee:

Arman Chak, Chair (Bencher)
Sandra Corbett, Q.C., Committee Member (Bencher)
Anthony Young, Q.C., Committee Member (Bencher)

Appearances:

Counsel for the Law Society – Sharon Borgland
Counsel for Michael Terence Leonard - self-represented

Hearing Dates:

June 18, 2015

Hearing Location:

Law Society of Alberta at 500, 919 – 11th Avenue S.W., Calgary, Alberta

HEARING COMMITTEE REPORT

Introduction

[1] On June 18, 2015 a Hearing Committee (“Committee”) of the Law Society of Alberta (“LSA”) convened at the Law Society office in Calgary to inquire into the conduct of Michael Terence Leonard, a member of the LSA (“Member”). The Member was in attendance throughout the Hearing and was unrepresented. There were no objections to the constitution of the Committee and jurisdiction of the Committee was established. LSA Counsel advised that the LSA did not receive a request for a private hearing. Accordingly, the Chair directed that the Hearing be held in public.

Citations

[2] The Member faced the following citations:

1. It is alleged that you failed to serve your client and that such conduct is deserving of sanction.
2. It is alleged that you failed to respond to communications from counsel and that such counsel is deserving of sanction.

Agreed Statement of Facts and Admission of Conduct Deserving of Sanction

[3] LSA counsel tendered an Agreed Statement of Facts and Agreed Exhibits and Admission of Conduct Deserving of Sanction regarding the two citations (“Agreed Statement of Facts and Admission”), attached as Schedule “A”. The Committee reviewed the Agreed Statement of Facts and Admission and determined that in order to make the citations and Agreed Statement of Facts and Admission consistent with the documentary evidence, the second citation be amended to read:

“It is alleged that Mr. Leonard failed to *adequately* respond to communications from counsel and that such conduct is deserving of sanction.”

[4] In addition, paragraph 22 of the Agreed Statement of Facts and Admissions was amended to read:

“Mr. Leonard failed to *adequately* respond to the letters or the telephone messages.”

[5] The Member was given the opportunity to respond to the proposed amendments. Both LSA counsel and the Member consented to the amendments.

[6] The Committee found that the Amended Agreed Statement of Facts and Admission were in a form acceptable to it and that the conduct noted was conduct deserving of sanction.

[7] A joint submission that the Member receive a reprimand was accepted by the Committee.

[8] No additional evidence was led by either Party at this stage of the Hearing

[9] The Member acknowledged to the 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 admission; and
- (d) understood that the Committee was not bound by any submission made jointly by him or counsel for the LSA regarding sanction.

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

Discussion Regarding the Joint Submission on Guilt

[11] The Hearing Committee is guided by Section 49 of the *Legal Profession Act*, RSA 2000 c L-8, which defines conduct deserving of sanction as follows:

49(1) For the purposes of this Act, any conduct of a member, arising from incompetence or otherwise that:

- (a) is incompatible with the best interests of the public or of the members of the Society; or
- (b) tends to harm the standing of the legal profession generally,

is conduct deserving of sanction, whether or not that conduct relates to the member's practice as a barrister and solicitor and whether or not that conduct occurs in Alberta.

[12] In this case, the Member acted both for a lender client, RBC, and a purchaser client, AD, in the purchase of a property in August 2008. The Member received instructions from RBC to discharge prior encumbrances on the property. The result would be the registration of a first mortgage on the property in favour of RBC. Mortgage funds were advanced and received into Trust by the Member on July 25, 2008. The Member advised RBC that a prior mortgage in the principal amount of \$38,400.00 would be discharged. The Member did not register the RBC mortgage until approximately 14 months after he had received the advance from RBC. In addition, he failed to discharge the prior encumbrance. In the result, RBC incurred a loss of \$28,744.67.

[13] Although there were no intervening registrations from July 25, 2008 until September 29, 2009 when the RBC mortgage was registered, the Member left RBC without the protection that the Member was instructed to provide. It is only through good fortune that there were no intervening registrations, which may have resulted in further loss to RBC. In failing to register the mortgage in a timely fashion, the Member clearly failed to serve his client.

[14] Failing to discharge the prior mortgage in the principal amount of \$38,400.00 simply compounds the failure of the Member to serve RBC.

[15] Either failure, standing on its own, is conduct deserving of sanction. The Member received instructions to register the mortgage in a timely fashion, and he did not do so. The Member also received instructions to ensure the discharge of a prior encumbrance and secure the RBC mortgage as a first charge against the property. In this, he also failed.

[16] Lawyers are entrusted with transactional work because they have the knowledge and skills necessary to complete transactions while ensuring that all parties are adequately protected. The Member failed in his responsibility to ensure that RBC was protected. This behaviour reflects poorly upon the Member in particular and the profession in general.

[17] With respect to the second citation, there is ample evidence of many requests being made by Warren Benson Amantea LLP ("WBA") for the complete copy of the Member's file. The Committee accepts the evidence of the Member that he had "a recollection of discussing the matter on the telephone with someone from WBA". The Committee also accepts the

Member's acknowledgement that he had "not found any confirmation of a written response to the request from WBA nor did (he) have a notation of the date of (his) telephone conversation with their office."

[18] Even though there were multiple requests made by WBA, the Member has no evidence of replies being made with the exception of his recollection of a single telephone call with "someone" from WBA. It would have been a simple matter for the Member to have made a more substantive reply and to have recorded that reply. The requests being made by WBA called for substantive reply. This was not given. At the very least the Member could have written an explanation with respect to the steps being taken by the Member to locate the file. Simply allowing the requests to pile up, with a minimal attempt to communicate is neither adequate nor responsive and is therefore conduct deserving of sanction.

Joint Submission on Sanction

[19] LSA counsel tendered the record of the Member, which was entered as Exhibit 12 by consent. The record indicates that the Member had a prior disciplinary record as follows:

January 23, 1995:

Guilty, one count of conduct deserving of sanction - failing to pay an account owed to the law firm even in the face of a Judgment obtained by the law firm.

- Reprimand and costs of the hearing

June 9, 2014:

Guilty, one count of conduct deserving of sanction - breaching an undertaking.

Guilty, one count of conduct deserving of sanction - failing to respond to counsel on a timely basis.

Guilty, one count of conduct deserving of sanction - failing to properly serve his lender clients.

Guilty, one count of conduct deserving of sanction - failing to comply with the accounting rules of the Law Society of Alberta.

Guilty, one count of conduct deserving of sanction - failing to properly supervise his staff.

- Three month suspension, reprimand and costs of the hearing

[20] LSA counsel and the Member jointly submitted that an appropriate sanction for the Member would be a reprimand and a fine.

Decision as to Sanction

[21] The *Hearing Guide* refers to the purposeful approach in sanctioning. It quotes Gavin McKenzie in *Lawyers & Ethics: Professional Responsibility and Discipline*, and states at paragraph 58 that:

The purposes of the Law Society discipline proceedings are not to punish offenders and exact retribution, but rather to protect the public, maintain high professional standards, and preserve public confidence in the legal profession.

In cases in which professional misconduct is either admitted or proven, the penalty should be determined by reference to these purposes ...

The seriousness of the misconduct is the prime determinant of the penalty imposed. In the most serious cases, the lawyer's right to practice will be terminated regardless of extenuating circumstances and the probability of recurrence. If a lawyer misappropriates a substantial sum of the client's money, that lawyer's right to practice will almost certainly be determined, for the profession must protect the public against the possibility of a recurrence of the misconduct, even if that possibility is remote. Any other result would undermine public trust in the profession.

[22] LSA counsel submitted that the public interest could be protected in this matter by reprimanding the Member. It was noted that this matter arises from a concurrent period in which the Member was found guilty and suspended from practice for a period of three months in *Law Society of Alberta v Leonard*, 2014 ABLS 31 (CanLII). There the Member admitted guilt to citations which included:

- (a) Breaching an undertaking;
- (b) Failing to respond to counsel;
- (c) Failing to properly serve his lender client;
- (d) Failing to comply with the accounting rules of the *Law Society*; and
- (e) Failing to properly supervise staff.

[23] LSA counsel submitted that had they been discovered, the citations at issue would have been subsumed in the citations set out in the previous case. The present complaint however, was made subsequent to the hearing of the previous complaints.

[24] The Committee is mindful that the Member has served a suspension for three months on the previous citations.

[25] Had this matter been brought forward at the time that the previous matters were heard, it is likely the Hearing Committee as then constituted would have turned their minds to whether the additional citations would have resulted in a greater sanction. While not attempting to determine what the previous Committee may have done, it would have been open to them to treat all of the citations including the ones presently before this Committee on a global basis. It is not open for this Committee to speculate on what may have occurred. However, the concurrence of the present citations with the previous ones is certainly a factor in this Committee's decision on a sanction.

[26] The Committee is of the view that the matters in the instant case arose during the same time period and were the result of similar behaviour for that which the Member was sanctioned

in 2014. As such, it is not appropriate to use the “step up principle” to now impose a greater sanction than that imposed previously.

[27] We have heard from LSA counsel that the Member has responded positively to practice review, is rehabilitating his practice, and has cooperated with the LSA with respect to this investigation. These are factors which mitigate in favour of a less severe sanction. Had these citations arisen for conduct subsequent to the Member’s suspension, the Committee’s determination on sanction would have yielded the opposite result.

[28] A joint submission on sanction from the Member and the LSA is also a factor that must be considered. A Hearing Committee should accept joint submissions except where the Committee concludes that a joint submission is outside a range of sanctions that is reasonable in the circumstances

[29] For the reasons noted above, the Committee finds that the joint submission is within the acceptable range.

Concluding Matters

[30] The Member was reprimanded, and a copy of the reprimand appears as Schedule “B” to this Decision.

[31] The Member shall pay costs in the amount of \$1,000.00 on or before October 1, 2015.

[32] There shall be no Notice to the Attorney General.

[33] There shall be no Notice to the Profession.

[34] LSA counsel is directed to provide a PDF and Word copy of the Agreed Statement of Facts and Admission for incorporation into this decision.

[35] There will be a redaction of the Exhibits as may be necessary to protect solicitor/client privilege or confidentiality.

Dated this 3rd day of February, 2016, at the City of Calgary, in the Province of Alberta.

Arman Chak, Chair

Sandra Corbett, QC

Anthony Young, QC

SCHEDULE "A"

IN THE MATTER OF THE *LEGAL PROFESSION ACT*;

**AND IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF MICHAEL TERENCE LEONARD
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

LAW SOCIETY HEARING FILE HE20140037

AGREED STATEMENT OF FACTS AND AGREED EXHIBITS
AND ADMISSION OF CONDUCT DESERVING OF SANCTION

1. Michael Terence Leonard ("Mr. Leonard") was admitted as a member of the Law Society of Alberta (the "Law Society") on July 14, 1976.
2. Mr. Leonard has practiced law in Calgary, Alberta as a sole practitioner since June 5, 1982.
3. Mr. Leonard's practice currently consists of real estate, estate planning and administration, family, civil litigation and corporate law.

CITATIONS

4. Mr. Leonard faces two citations as follows:

Tara L. Petersen Complaint (CO20132329)

1. It is alleged that Mr. Leonard failed to serve his client and that such conduct is deserving of sanction; and
2. It is alleged that Mr. Leonard failed to respond to communications from counsel and that such conduct is deserving of sanction.

AGREED FACTS

5. The Law Society received a written complaint dated October 9, 2013 in respect of Mr. Leonard from Ms. Tara Petersen of Warren Benson Amantea LLP (“WBA”). **(Exhibit 7)**
6. Ms. Petersen advised that WBA represented the Royal Bank of Canada in a foreclosure action against an individual mortgagor, A.D., regarding a property located at 437 – 34 Avenue N.W. Calgary, Alberta (the “Property”).
7. Mr. Leonard acted for both RBC and A.D. in the purchase of the Property on or about August 1, 2008.
8. RBC instructed Mr. Leonard to discharge any prior encumbrances on the Property and register a first mortgage on the Property in favour of RBC.
9. Mortgage funds in the principal amount of \$326,400 were advanced by RBC (the “RBC Mortgage”) and received into trust by Mr. Leonard on July 25, 2008. **(See Exhibit 11, pg. 4)**
10. Mr. Leonard’s reporting letter to RBC advised that a prior mortgage on title to the Property registered on February 26, 2008 in favour of Shaelynn Capital Inc. in the principal amount of \$38,400 (the “Shaelynn Mortgage”) would be discharged. **(See Exhibit 8, Registration 081071738)**
11. Mr. Leonard failed to register the RBC Mortgage on title to the Property until September 29, 2009. **(See Exhibit 8, Registration 091289986)**
12. Mr. Leonard failed to discharge the Shaelynn Mortgage.
13. In November 2011, RBC commenced foreclosure proceedings on the Property. The mortgagor resumed payments and the foreclosure was put on hold.
14. On May 14, 2012, the Shaelynn Mortgage was transferred to Crossroads – DMD Mortgage Investment (“DMD Mortgage”). **(See Exhibit 8)**
15. In January 2013, DMD Mortgage commenced foreclosure proceedings on the Property.
16. In March 2013, DMD Mortgage contacted RBC and advised it was owed \$42,000.

17. RBC conducted a title search and discovered that the DMD Mortgage had priority over the RBC mortgage.
18. On March 22, 2013, RBC wrote to Mr. Leonard requesting a complete copy of his file on the Property. **(See Exhibit 7)**
19. Mr. Leonard failed to respond to the letter from RBC. **(See Exhibit 7)**
20. Second, third and fourth requests were sent by letter from RBC to Mr. Leonard on April 11, 2013, July 4, 2013 and September 5, 2013 respectively. **(See Exhibit 7)**
21. RBC also left telephone messages for Mr. Leonard on July 4, 2013 and September 5, 2013.
22. Mr. Leonard failed to respond to the letters or the telephone messages.
23. RBC wrote a complaint to the Law Society regarding Mr. Leonard on October 9, 2013. **(See Exhibit 7)**
24. On October 24, 2013, RBC wrote to the Law Society and advised that DMD Mortgage had a court application set for October 29, 2013 and intended to accept an offer for the sale of the Property. **(Exhibit 9)**
25. Mr. Leonard did not provide the file to RBC until December 4, 2013.
26. On December 31, 2013, RBC wrote to the Law Society and advised that it had incurred a loss of \$28,744.67 as a result of Mr. Leonard's conduct. **(Exhibit 10)**
27. On January 8, 2014, Mr. Leonard provided a written response to the complaint. **(Exhibit 11)**

ADMISSION OF FACTS

28. Mr. Leonard admits the facts contained in this Agreed Statement of Facts for the purposes of these proceedings.

ADMISSION OF CONDUCT DESERVING OF SANCTION

Citation 1: It is alleged that Mr. Leonard failed to serve his client and that such conduct is deserving of sanction.

29. For the purposes of s. 60 of the *Legal Profession Act*, Mr. Leonard admits that he failed to serve his client, RBC, and that such conduct is deserving of sanction.

Citation 2: It is alleged that Mr. Leonard failed to respond to communications from counsel and that such conduct is deserving of sanction.

30. For the purposes of s. 60 of the *Legal Profession Act*, Mr. Leonard admits that he failed to respond to communications from counsel and that such conduct is deserving of sanction.

This Agreed Statement of Facts and Admission of Conduct Deserving of Sanction is dated the 18th day of June, 2015.

'Michael Terence Leonard'

WITNESS

Michael Terence Leonard

SCHEDULE "B"

Mr. Leonard, you've been found guilty of two citations deserving of sanction.

One, you failed to serve your client and that conduct is deserving of sanction; two, you failed to adequately respond to communications from counsel and that conduct is deserving of sanction.

We have heard about the background of the real estate transaction, and I will not comment more on that.

It is the responsibility of the Law Society to ensure that we protect the public interest. We also ensure that the standing of the legal profession is maintained.

There is no question that your actions resulted in an economic loss to your client. Your activity also your actions also reflected poorly on the profession generally.

The Panel is encouraged by the fact that you are presently co-operating with Practice Review. You are rehabilitating your practice and are co-operating fully with the Law Society specifically to address the two citations and the conduct behind it. We are satisfied that you know what steps to take and encourage you to continue to complete those steps.

That is the Panel's decision. Thank you.