

IN THE MATTER OF THE *LEGAL PROFESSION ACT*
AND
IN THE MATTER OF A HEARING INTO THE CONDUCT OF
RAKESH DEWETT,
A MEMBER OF THE LAW SOCIETY OF ALBERTA

Hearing Committee:

Fred R. Fenwick, Q.C., Chairperson (Bencher)
Kent Teskey, Committee Member (Bencher)
Glen Buick, Committee Member (Lay Bencher)

Appearances:

Counsel for Rakesh Dewett - T.D. Schultz
Law Society of Alberta (LSA) Counsel - S. Hunka

Hearing Dates:

Dates Heard: October 19 to 22, 2015
Decision Date: October 22, 2015

Hearing Location:

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

HEARING COMMITTEE REPORT

Introduction and Summary

1. On November 21, 2013, Mr. Dewett was suspended pending this hearing given complaints relating to:

- a. the purchase, financing, and refinancing of a residential property for Mr. and Mrs. Dewett (Temple Property);
 - b. a land purchase and whether or not Mr. Dewett failed to recognize a conflict concerning the release of deposits from one client to another client;
 - c. a delay in handling the details of a divorce; and
 - d. compliance with undertakings given to the Law Society (LSA) to restrict Mr. Dewett's criminal law and real estate practice while under investigation.
2. After hearing the evidence described in more detail below, the Hearing Committee (Committee) acquitted Mr. Dewett of one of the charges in relation to the Temple Property and of the citations involving procedural errors in the divorce matter. The Committee concluded that Mr. Dewett was guilty of the citations involving failures to his lender client with respect to Temple Property. The Committee further concluded that Mr. Dewett failed to recognize and properly deal with a conflict in relation to the releasing of deposits in the commercial real estate deal and failed to comply with undertakings in relation to the restrictions of his practice. Finally, as a result of those findings, Mr. Dewett was found to be ungovernable and disbarred.
 3. The decision of Committee and the disbarment sanction was rendered on the final day of the hearing (October 22, 2015) after deliberation, and this Report now follows.

Hearing

4. Prior to the hearing, the Committee was given an Agreed Statement of Facts and related documentary material. At the opening of the hearing, the jurisdiction of the Committee was established by the entering of the usual jurisdictional exhibits (the Letter of Appointment, the Certificate of Exercise of Discretion, the Certificate of Status). Counsel for Mr. Dewett and counsel for the LSA conceded jurisdiction and agreed to the composition of the Committee. The Committee found that it had jurisdiction to proceed.
5. Mr. Dewett faced the following citations:
 1. It is alleged that Mr. Dewett purchased a property at an inflated price for an improper purpose and that such conduct is conduct deserving of sanction.
 2. It is alleged that Mr. Dewett knowingly swore a false Affidavit of Transferee and that such conduct is conduct deserving of sanction.
 3. It is alleged that Mr. Dewett, on two different occasions, provided a false letter of employment to a lender knowing the lender would rely on that letter, and that such conduct is conduct deserving of sanction.

4. It is alleged that Mr. Dewett failed to be candid with the Law Society concerning his intention in purchasing the Temple property, and that such conduct is conduct deserving of sanction.
 5. It is alleged that Mr. Dewett failed to properly serve his client and that such conduct is conduct deserving of sanction.
 6. It is alleged that Mr. Dewett failed to be candid with the Law Society and that such conduct is conduct deserving of sanction.
 7. It is alleged that Mr. Dewett failed to properly serve his client and that such conduct is conduct deserving of sanction.
 8. It is alleged that Mr. Dewett failed to respond to his client on a timely basis and such conduct is deserving of sanction.
 9. It is alleged that Mr. Dewett provided improper advice to his client and that such conduct is conduct deserving of sanction.
 10. It is alleged that Mr. Dewett failed to comply with Undertakings given to the Law Society and that such conduct is conduct deserving of sanction.
 11. It is alleged that Mr. Dewett swore two false Statutory Declarations and that such conduct is conduct deserving of sanction.
 12. It is alleged that Mr. Dewett failed to respond to communications from the Law Society in a timely manner and that such conduct is conduct deserving of sanction.
 13. It is alleged that Mr. Dewett's conduct warrants that he be cited for ungovernability.
6. The Agreed Statement of Facts contained the basic facts with regards to the citations but both Mr. Dewett and the LSA retained the right to adduce additional evidence and make submissions.
 7. The Committee heard the following additional evidence from the LSA:
 - Mr. Dewett's employer (another member of the LSA) in relation to Mr. Dewett's real estate practice and his expected remuneration as it related to Mr. Dewett's financing of the Temple Property and the letters of employment used by Mr. Dewett to qualify for his mortgage;
 - Two members of the Crown Prosecutors Office who testified to the discovery of Mr. Dewett operating his criminal practice, potentially, in breach of a restrictive undertaking given to the LSA and dealing with this before the courts;
 - A divorce client of Mr. Dewett's who was materially inconvenienced by procedural errors in the conduct of a divorce; and

- Mr. Dewett's (ex) real estate paralegal who testified about Mr. Dewett's real estate practice in relation to allegations that he was conducting it in violation of a restrictive undertaking given to the LSA.

8. Mr. Dewett gave evidence as well.

Credibility of Mr. Dewett

9. It is necessary to comment on the credibility of Mr. Dewett as a witness generally. Mr. Dewett admitted to breaching several undertakings to the LSA over substantial periods of time. He also admitted to swearing deliberately false declarations to the LSA in regard to compliance with his real estate undertakings. At the hearing, Mr. Dewett resiled from certain aspects of his Agreed Statement of Facts regarding communications with his client in relation to the commercial real estate transactions and was generally evasive and not responsive to simple questions from counsel.
10. Finding Mr. Dewett to be not credible is for the most part not a finding that equates to positive evidence against Mr. Dewett in respect to the citations. However, where his evidence conflicts with the other witnesses, or documentary evidence produced at the time of the events in question, the Committee chose to believe those other witnesses and documents. Further, where there were matters that needed explanation (such as the disposition of trust funds or dealing with conflicts) we generally do not accept his explanations. The Committee recognizes the seriousness of this finding.

The Temple Property (Citations 1-6)

11. A numbered company owned by Mr. Dewett's spouse, purchased a residence in the Temple district in Calgary. The property was purchased at arm's length from a previous owner. It was financed in a standard manner through Mr. Dewett's bank client. It was then "flipped" (sold almost immediately) at a higher price in a non-arm's length fashion to Mr. Dewett. This flip was financed at a higher value with the same bank client/lender.
12. The Agreed Statement of Facts states that the numbered company received a payment of \$56,475 as a result of the flip. Mr. Dewett told the LSA investigators that the reason for the transaction was so that he could have "something in his pocket."
13. Mr. Dewett provided employment letters to his bank client to qualify for the purchase mortgage. The letter stated that he was making \$120,000 per year. He was at the time actually making \$42,000 per year.
14. The transaction in itself is suspicious. It bears some of the hallmarks of a classic mortgage fraud, that is to say, a quick flip in a non-arm's length transaction together with a refinancing for a substantially higher amount with questionable qualification documentation (the overstated income letters). It justified the LSA's examination of the transaction.

15. Evidence and argument at the hearing concentrated on whether or not the original purchase was at or “under” market value, and whether or not the second transaction (and the subsequent remortgage) was at the higher but still market value. It was noted in Mr. Dewett’s favour that the lender did not eventually lose money as Mr. Dewett continued to live in the residence and make his mortgage payments.
16. The Committee did not decide this citation on consideration of whether or not this transaction was tainted with the “improper purpose” of actually being a mortgage fraud. Given the circumstances, it may or may not be fraudulent to purchase low and either sell at a higher price or take equity out with a properly qualified refinancing of the mortgage.
17. However, in this situation it is important to note that Mr. Dewett’s lender was his client both in the original (his wife’s numbered company) and the subsequent financing. Mr. Dewett owed a duty of candour to his lender client, especially in circumstances like this where they almost certainly would have wanted to know that the property was quickly flipped in a non-arm’s length transaction at a higher value. If in consideration of this knowledge, the lender wanted to allow Mr. Dewett to take his equity out of the property in such a fashion that would be up to them. However, these are matters which ought not to have been hidden from a lender, and especially when the lender is a client.
18. Similarly, with regard to the employment letters, Mr. Dewett owed his client bank a duty of truthfulness arising out of his position as a borrower, as a member of the LSA whose business practices are required to be of the highest standards, and as the solicitor for the bank in this specific transaction (which now raises his relationship to that of a fiduciary).
19. Argument at the hearing focused on whether Mr. Dewett “could” have hit the income targets set out in the employment letters. Perhaps he could have. However, the letters did not set out possibilities, but “facts” and these were materially false under circumstances where Mr. Dewett knew that his own client would be relying on them for mortgage qualifying purposes.
20. With regard to citation 4, failure to be candid with the LSA in its investigations, we note that Mr. Dewett’s evidence and explanation at the hearing concerned the value of the property and the take out of the equity. These were not the explanations given to the LSA during its investigations. If it was always Mr. Dewett’s position that he was entitled to buy at a low price and take his equity out at a higher price with the knowledge and consent of his lender/client, then the LSA was entitled to that explanation from the start. This is not only a practical matter for the LSA which was put to the time and expense of investigating particulars of an explanation which are materially false but it also relates directly to Mr. Dewett’s responsibilities to the LSA as a member and his general credibility and governability.

21. As such, the Committee finds Mr. Dewett guilty of citations 1 (the inflated price and improper purpose), 3 (letter of employment) and 4 (failure to be candid with the LSA) but finds insufficient evidence to convict him on citation 2 (in relation to the Affidavit of the Transferee). The “improper purpose” underlying these citations need not be an actual mortgage fraud. As a member of the LSA, and given his fiduciary responsibility to his client, Mr. Dewett is held to a higher standard than simply the “street” rules of business conduct. Whatever the nature of the transaction, Mr. Dewett withheld material information from the bank, who was his client. This conduct is sufficiently improper to support citation 1.

The Commercial Real Estate Transaction (Citations 5, 6)

22. Mr. Dewett admitted guilt to citations 5 and 6.
23. Mr. Dewett’s explanation of his conduct was that a paralegal in his office did not recognize and deal with an internal conflict between separate clients and improperly released a \$75,000.00 trust cheque to one client to the detriment of another. Mr. Dewett neither recognized the internal conflict nor properly supervised his paralegal whom he allowed to sign trust cheques. The Committee finds Mr. Dewett guilty of citations 5 and 6.

The Divorce matters (Citations 7, 8, 9)

24. Mr. Dewett made material errors in the processing of a “desk” divorce which delayed his client in relation to her planned next wedding. The divorce was not obtained in time for the wedding but could have been and the client was inconvenienced.
25. The Committee finds that while regrettable and careless, these particulars do not rise to the level of conduct deserving sanction.

Undertakings Given to the Law Society of Alberta (Citations 10, 11, 12)

26. As Mr. Dewett was being investigated for the conduct outlined in the citations, he gave undertakings to the LSA to restrict his criminal practice to summary conviction matters and to restrict his real estate practice to operating in conjunction with a real estate paralegal who was approved by the LSA. Mr. Dewett breached both of these undertakings.
27. Two members of the Crown Prosecutors Office testified in relation to his criminal law practice. Mr. Dewett’s undertaking to restrict his criminal practice eventually became known in the criminal law community. When prosecutors asked Mr. Dewett to remove himself from indictable files, he gave explanations in court which tended to blame the matter on his clients, potentially putting his clients in jeopardy for no apparent reason.

28. Instead of “throwing his client under the bus” in court, Mr. Dewett should have been truthful and explained his undertaking given to the LSA, thereby allowing his client to seek new counsel. This is yet another occasion which demonstrates that Mr. Dewett seriously misconstrued the relationship between his personal interests and the paramount interests of his client.
29. Although the focus of the evidence and the discussion at this hearing was with respect to whether or not Mr. Dewett was aware or fully understood the complicated practicalities of the nature of the undertaking itself (the differences between all criminal cases, cases prosecutable by indictment, “hybrid” cases etc.), the Committee finds Mr. Dewett not only breached the undertaking, but did so in an egregious fashion by not being candid with either his clients or the courts when confronted with the situation.
30. Mr. Dewett gave an undertaking to the LSA to only practice real estate in conjunction with a paralegal approved by the LSA. For a period of time Mr. Dewett had such an approved paralegal. However, she became pregnant and eventually stopped her employment with Mr. Dewett. He continued to practice real estate law without an approved paralegal for approximately 6 months. The Committee only mentions Mr. Dewett’s paralegal’s pregnancy (otherwise a private matter) because it was obvious that the paralegal would be leaving him. Not only did Mr. Dewett operate in breach of the undertaking, and file a false declaration with the LSA in regard to the undertaking, but his paralegal’s fully known upcoming absence was never prepared for. Did Mr. Dewett ever fully intend to obtain an approved replacement?
31. This question is unnecessary to decide. While operating his real estate practice without an approved paralegal, Mr. Dewett signed two Statutory Declarations that he was in compliance with his undertakings. These were obviously and completely false.
32. The Committee further finds Mr. Dewett guilty of citation 12 as he failed to respond to the communications of the LSA with regard to the now known to be false undertakings. Frankly there could be no excuse, and ignoring the LSA may well have been the last and only alternative open to Mr. Dewett.

Ungovernability (Citation 13)

33. Citation 13 deals with Mr. Dewett’s governability. This is the most serious count, and arises out of a combination of the matters set out in the other citations. We find that Mr. Dewett’s conduct was deliberate and protracted and reflects a lack of honesty and integrity. There is a serious record of deliberate lack of compliance with undertakings, false sworn declarations, and we find that he was deliberately dishonest with the Committee throughout the hearing.
34. Mr. Dewett has disregarded every regulatory mechanism at the disposal of the LSA which we have to protect to ensure the public interest. Mr. Dewett’s conduct shows that

he either does not know or deliberately disregards: conflicts of interest between clients; conflicts between clients and his own pecuniary interests (the refinancing of his residence); and his obligation to be honest in all regards with his clients, the LSA and the courts.

35. A review of Mr. Dewett's conduct during the years he was under investigation leads to the unmistakable conclusion that he is incapable of being controlled by the LSA and that he is in fact ungovernable.

Sanction

36. After hearing from the member and his counsel who basically pleaded for another chance, it is the unanimous decision of the Committee that there is no reason to depart from the usual punishment for ungovernability which is disbarment. We find that Mr. Dewett lacks honesty and integrity and as such, the disbarment sanction is necessary in order to protect the public.
37. Notable for the Committee is that in many of the situations faced by Mr. Dewett, the truth would have served well. For example, in his employment letters to his lender/client, he could have expressed his income as a reasonable expectation as opposed to a fact. He could have spoken candidly with the prosecutors and court while getting off of a case, or asked for an extension (or even help) to obtain a qualified paralegal. Unfortunately, falsehood seemed to be the default option for Mr. Dewett in these situations.
38. The practice of law rests upon a foundation of honesty and integrity which we find that Mr. Dewett does not possess in sufficient quantities to ensure the protection of the public.

Concluding Matters

39. In the matter of costs, in light of our finding that the LSA had not proven citations 2 (the Affidavit of Transferee) and 7, 8, 9 (the Delayed Divorce) the Committee ordered that Mr. Dewett be assessed 2/3 of the costs of these proceedings. The full costs of the proceedings were \$47,599.72 and the Committee assesses the amount of \$31,733.14.
40. This report and exhibits entered at the Hearing shall be accessible to the public after redaction to remove names and other identification of clients.
41. There will be a Notice to the Profession.
42. There will not be a report to the Attorney General.

Dated at the City of Calgary, in that Province of Alberta this 13th day of March, 2016

Fred R. Fenwick, Q.C.

Kent Teskey

Glen Buick