

**LAW SOCIETY OF ALBERTA**  
**IN THE MATTER OF THE *LEGAL PROFESSION ACT***  
**AND**  
**IN THE MATTER OF A HEARING REGARDING**  
**THE CONDUCT OF RYAN MACKAY,**  
**A MEMBER OF THE LAW SOCIETY OF ALBERTA**

**Hearing Committee:**

Donald Cranston, QC – Chair, Bencher

**Appearances:**

Counsel for the Law Society of Alberta – Karl Seidenz  
Counsel for Ryan MacKay – Self-represented

**Hearing Date:**

June 16, 2016

**Hearing Location:**

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

**HEARING COMMITTEE REPORT**

**Jurisdiction and Preliminary Matters**

1. On June 16, 2016 a hearing was conducted at the Law Society of Alberta's office in Calgary for the purposes of considering the conduct of Ryan MacKay ("Mr. MacKay"). The hearing was conducted by Donald Cranston, Q.C., Bencher, as a single bencher hearing. The Law Society of Alberta ("LSA") was represented by Mr. Seidenz, and Mr. MacKay was present at the hearing without counsel.

**Citations**

2. The LSA issued two citations against Mr. MacKay. They relate to a real estate transaction in which Mr. MacKay acted for the vendor. An undertaking was given with respect to a hold-back for funds for landscaping. The citations are:

1. That Mr. MacKay failed to comply with the undertaking by releasing the holdback to his client in the face of assertions that the landscaping had not been completed, and
  2. That Mr. MacKay failed to comply with an undertaking, contrary to Rule 6.02(13) of the Code of Conduct which, therefore constituted conduct deserving of sanction as defined in that section 49 of the *Legal Profession Act* (the "Act").
3. The citations both arise from the same conduct.

### **Proceedings**

4. This matter proceeded as a single bench hearing in accordance with the provisions of section 60 of the Act. Section 60(1) of the Act permits a member to submit a Statement of Admission of Guilt of conduct deserving of sanction to the Executive Director. Where the Statement of Admission of Guilt is submitted prior to the appointment of a hearing committee, that Statement of Admission of Guilt can only be acted upon if it is in a form acceptable to the Conduct Committee of the LSA.
5. The Statement of Facts and Admission of Guilt was signed by Mr. MacKay on March 3, 2016. On April 13, 2016, the Conduct Committee Panel determined that the Statement of Facts and Admission of Guilt was in a form acceptable as contemplated by section 60(3) of the Act. Following that decision, the Chair of the Conduct Committee appointed me as a single Bencher to conduct the hearing pursuant to section 60(3) of the Act.
6. Pursuant to section 60(4) of the Act, such admissions are deemed for all purposes to be a finding of the Hearing Committee that the member's conduct is deserving of sanction. Guilt having been so determined, the remaining matter to be decided at this hearing is the appropriate sanction on the citations.

### **Sanction**

7. The parties tendered a joint submission on sanction, recommending that the Hearing Committee issue a reprimand and an order that Mr. MacKay pay one-half of the cost of these proceedings.
8. It is well established that where a submission on sanction is made jointly, a Hearing Committee should give serious consideration to the joint submission and should accept it unless it is unfit, unreasonable or contrary to the public interest.
9. In sanctioning a member, a Hearing Committee must always take a purposeful approach, recognizing that the overarching purpose of the sanctioning process is to protect the public, preserve high professional standards and preserve public confidence in the legal profession: *Law Society of Alberta v Mackie*, 2010 ABLS 10, at paragraph 41. The purpose of sanctioning is not to punish offenders and exact retribution.
10. Mr. MacKay appeared before the Hearing Committee as a member of the LSA with no disciplinary record. LSA counsel advised that Mr. MacKay had been co-operative throughout the process, and provided a quick response and admission of guilt. He pointed out the LSA wants to encourage such behaviour where appropriate, and for that reason has recommended that only one-half of the costs be payable by Mr. MacKay.
11. Mr. MacKay said that he has always taken trust conditions very seriously. Since this event happened, he has reflected on the matter considerably. He notes that his practice is largely a real estate practice with matters moving quickly. He sees how he made an error in this case, but wanted to emphasize that at the relevant time he thought he was doing the correct thing. There was no intent to take advantage of anyone. His client was pressing for release of the hold-back

amount, and having questioned his client on a number of occasions, felt that he was satisfied that the terms of the undertaking were satisfied and he could release the funds. In hindsight he recognizes his error, and is committed to never having this experience in his practice again. Mr. MacKay's submissions were heartfelt, and were not challenged in any way by LSA counsel. I accept Mr. MacKay's submissions in their entirety.

12. Having considered all of the relevant factors and the joint submission, the Hearing Committee concludes that a reprimand and an order to pay one-half of the costs in the fixed amount of \$1,300 is an appropriate sanction.

### **Reprimand**

13. At the end of the hearing on June 16, 2016, a reprimand was delivered to Mr. MacKay. Mr. MacKay's co-operation with the LSA was acknowledged, and the Hearing Committee accepted his heartfelt statement of his acknowledgment of the serious nature of lawyers' undertakings. The Hearing Committee accepts there was no malice or dishonesty whatsoever, and there was no attempt to take advantage of any person or avoid the responsibilities of an undertaking. The Hearing Committee accepts Mr. MacKay's advice that at the time he was under the honest belief that the funds could be released.
14. Mr. MacKay has acknowledged with the benefit of hindsight there was a failure to ensure compliance with the undertaking he gave. Undertakings are a fundamental part of the practice of law, and there must always be complete trust among practising lawyers that undertakings will be honoured without exception, and without question. The public interest depends upon that foundation.
15. Mr. MacKay has, with this matter, had the unfortunate experience of having this brought home to him. This Hearing Committee expects this will be the last time Mr. MacKay will find himself in this position.

### **Concluding Matters**

16. In the event of any requests for public access to the evidence heard in these proceedings, the exhibits and the transcript of proceedings shall be redacted to protect the identity of the member's former client, and any information subject to proper claims of privilege.
17. There shall be no referral to the Attorney General.
18. There shall be no notice to the profession.

Dated at the City of Calgary, in the Province of Alberta this 9th day of September, 2016.

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Donald R. Cranston, Q.C., Chair