

THE LAW SOCIETY OF ALBERTA
HEARING COMMITTEE REPORT

**IN THE MATTER OF THE *LEGAL PROFESSION ACT*, R.S.A. 2000, C. L-8
AND IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF
JOHN CONDIN
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

INTRODUCTION

1. A Hearing Committee (the “Committee”) of the Law Society of Alberta (“LSA”) convened at the Law Society offices, in Calgary, on February 06, 2012 to consider the conduct of John Condin (hereinafter referred to as the “Member”).
2. The Committee was comprised of Dennis Edney, Chair, Dr. Larry R. Ohlhauser and Brett Code. The LSA was represented by Ms. Molly Naber–Sykes. The Member was present throughout the hearing and represented by Mr. Jim Rooney. Also present at the Hearing was a court reporter to transcribe the proceedings.

JURISDICTION

3. Jurisdiction was established by the introduction of Exhibits 1 through 5 consisting of:
 - Letter of Appointment of the Hearing Committee Exhibit 1,
 - Notice to Solicitor pursuant to section 56 of the *Legal Profession Act* with acknowledgement of service setting out the two Citations Exhibit 2,
 - Notice to Attend with acknowledgement of service directing the Member to attend the Hearing Exhibit 3,
 - Certificate of Status certifying the Member was an active member of the LSA Exhibit 4,
 - Certificate of Exercise of Discretion pursuant to Rule 96(2) (b) of the Rules of the LSA (“Rules”) by which the Director, Lawyer Conduct of the LSA, determined that no one was to be served with a Private Hearing Notice Exhibit 5,

EXHIBITS

4. Exhibits 1 through 5 were entered into the record with the consent of the parties.
5. Additional Exhibits 6 through 15 were entered into the record during the course of the proceedings with the consent of the parties:
 - Exhibit 6 - Certificate of title, dated October 28, 2003

- Exhibit 7 - Letter from John Condin to R. and L. C. dated January 27, 2004
- Exhibit 8 - Complaint About My Lawyer dated September 3, 2009
- Exhibit 9 - Letter from John Condin to LSA dated November 20, 2009
- Exhibit 10 - Letter from R.C. to Mr. Morris, undated
- Exhibit 11 - Letter from John Condin to LSA dated February 4, 2010
- Exhibit 12 - Letter from LSA dated December 12, 2011 to Mr. C., Notice to attend and private hearing application notice and proof of service on Mr. C.
- Exhibit 13 - Agreed statement of facts and admission of guilt
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- Exhibit 14 - Discipline record of Mr. Condin
- Exhibit 15 - Estimated statement of costs

CITATIONS

6. The Member faces two Citations:

IT IS ALLEGED THAT you failed to render competent services to your client or to properly advise your client and that such conduct is conduct deserving of sanction.

IT IS ALLEGED THAT you failed to be candid with the Law Society of Alberta, and that such conduct is conduct deserving of sanction.

PRELIMINARY MATTERS

7. The Chair introduced the Committee and inquired of the Member's counsel if there is any objection to the membership of the Committee based on bias, a reasonable apprehension of bias or any other reason. Counsel, on behalf of the Member, expressed satisfaction with composition of the Committee.
8. The Chair inquired whether the Member wished to make a Private Hearing application, while recognizing hearings ought to be conducted in public unless a compelling privacy interest requires protection, and then only to the extent necessary. This was declined by counsel on behalf of the Member.
9. The Chair directed that the Hearing be held in public.

BACKGROUND:

10. This matter arises from the Member's handling of a real estate purchase on behalf of the clients. He failed to remedy a City of Calgary zoning violation with regards to the eaves

of the clients' garage and was not candid in his dealings both with the clients and the Law Society of Alberta.

AGREED STATEMENT OF FACTS AND ADMISSION OF GUILT

11. An Agreed Statement of Facts and Admission of Guilt signed by the Member was admitted as Exhibit 13 at the hearing.
12. The Member admitted as fact the statements contained in the Agreed Statement of Facts for the purposes of these proceedings.
13. The Statement of Facts and Admission of Guilt is reproduced as follows:
 - (1) In the fall 2003, A and B agreed to purchase a residential property from C.
 - (2) A and B retained the Member to act for them on the purchase of their new home.
 - (3) Title to the new home issued in the name of A and B as joint tenants on October 28, 2003
 - (4) By January 27, 2004 letter to A and B, the Member reported, inter alia:
 - a) Title to the A and B home had issued in A and B's names as joint tenants; and
 - b) C's solicitor has undertaken to provide the Real Property Report with compliance.
 - c) Consistent with his practice, the member did not hold back funds to deal with any issues arising out of the Real Property Report or any inability by C's solicitor to provide the Real Property Report.
 - d) C's lawyer informed the member the Real Property Report revealed that a garage encroached on the lane by .10 meters. As the garage and eave were constructed after July 1996, the City was not prepared to grant an Encroachment Agreement. The City required the eave to be removed from the lane.
 - e) C's lawyer proposed two resolutions to the member: his client would either remove the offending eave or would pay A and B cash in lieu of an updated Real Property Report. C's solicitor asked the member to discuss these alternatives with the clients.
 - f) A and B state the member never discussed the Real Property Report, the encroaching eave or C's solicitor's proposed resolution with them.
 - g) The Member has no correspondence or notes on his file regarding the Real Property Report, offending eave or the vendor's proposed solutions.

- h) A and B say they first learned of the offending eave when they sold their home in 2008. At that time, the solicitor for the purchasers from them held back funds.
- i) By September 3, 2009 complaint, A notified the Law Society that the member did not obtain or provide him with an updated Real Property Report.
- j) The Member responded to A's complaint by November 20, 2009 letter.
- k) A responded to the Member's November 20, 2009 letter in undated notes.
- l) By February 4, 2010 letter, the Member further responded to the Law Society of Alberta.

ADMISSION OF FACTS AND GUILT

14. After thoroughly reviewing his file in preparation for this hearing and based on discussions with counsel, the Member's earlier recollections as expressed in his letters to the Law Society were not candid as his then expressed recollection of his discussion with A and B regarding the encroachment were not accurate and did not conform with the lack of information on his file.

CONCLUSION ON CITATIONS

15. Based on the material before the Hearing Committee, which included an Agreed Statement of Facts and Admission of Guilt, Citation 1 and 2 are made out, as conduct deserving of sanction, pursuant to Section 60 of the *Legal Profession Act* and received in a form acceptable to the Hearing Committee.

S. 60(1) Subject to the rules, a member may, at any time after the commencement of proceedings under this Division regarding the member's conduct and before a Hearing Committee makes its findings in respect of the member's conduct, submit to the Executive Director a statement of admission of guilt of conduct deserving sanction in respect of all or any acts or matters that are subject of the proceedings.

(2) A statement of admission of guilt shall not be acted on until it is in a form acceptable to:

(a) the Conduct Committee, if the statement is submitted before the day on which a Hearing Committee is appointed to conduct a hearing respecting the matter, or

(b) the Hearing Committee, if the statement is submitted on or after the day on which the Hearing Committee is appointed.

(3) If a statement of admission of guilt is accepted under subsection (2)(a), the chair of the Conduct Committee shall appoint

a Hearing Committee consisting of 3 or more Benchers other than the President or any Benchers disqualified from sitting on the Committee.

(4) If a statement of admission of guilt is accepted, each admission of guilt in the statement in respect of any act or matter regarding the member's conduct is deemed for all purposes to be a finding of

(a) the Hearing Committee appointed under subsection (3), or

(b) the Hearing Committee that accepted the statement, as the case may be, that the conduct of the member is conduct deserving of sanction.

(5) The Hearing Committee appointed under subsection (3) or the Hearing Committee that accepted the statement, as the case may be, shall proceed with a hearing for the purpose of making its determination, if any, under section 71(4), its order under section 72 and its order, if any, under section 73.

SUBMISSIONS ON SANCTION AND COSTS

16. The Record of the Member and an Estimated Statement of Costs were entered into the record as Exhibits 14 and 15 respectively.

17. It was noted the Member had a previous disciplinary record as follows:

(a) A reprimand, costs and a fine dated March 26, 1986.

(b) A reprimand, costs and a fine dated November 01, 2004.

(c) A reprimand, costs and a fine dated March 29, 2010.

18. By way of joint submission on sanction, the Hearing Committee was urged to impose:

(a) With regards to Citation 1, a fine of \$1500.00 and a reprimand.

(b) With regards to Citation 2, a fine of \$5,000.00

DECISION REGARDING SANCTION and COSTS

19. The Committee must consider all of the evidence in arriving at an appropriate sanction.

20. In doing so, the Hearing Committee is mindful that the primary purpose of disciplinary proceedings found in *S.49 (1) Legal Profession Act* is the protection of the public interest and the standing of the legal profession generally.

21. The objective of the *Act* is not about punishing the offender and exacting retribution but rather imposing a sanction which is just and measured to the conduct committed. Each case stands alone.

22. In *McKee v. College of Psychologists (British Columbia)*, [1994] 9 W.W.R. 374 at page 376, the British Columbia Court of Appeal articulated the following principles, which are equally applicable to the disciplinary process for the legal profession:

“In cases of professional discipline there is an aspect of punishment to any penalty which may be imposed and in some ways the proceedings resemble sentencing in criminal cases. However, where the legislature has entrusted the disciplinary process to a self –governing professional body, the legislative purpose is regulation of the profession in the public interest. The emphasis must clearly be upon the protection of the public interest, and to that end, an assessment of the degree of risk, if any, in permitting a practitioner to hold himself out as legally authorized to practice his profession. The steps necessary to protect the public are matters that professional peers are better able to assess than a person untrained in the particular professional art or science.

23. The Committee is mindful that submissions on sanction and costs are by way of joint submission.

24. The use of joint submissions is a concept well known in criminal law and not unknown in administrative law cases. While a hearing panel is entitled to decline to accept a joint submission presented by the parties, there is a high threshold to be met for rejecting a joint submission. Taking into account the existing jurisprudence and the public interest, only a joint submission which is truly unreasonable or unconscionable should be rejected.

25. In *Nguyen*, reference was made to the Manitoba Court of Appeal’s judgment in *R. v. Chartrand*, (1998), 131 C.C.C. (3d) 122 where Kroft J.A. stated the following:

[8] A sentencing judge is not bound to accept the recommendation, but it should not be rejected unless there is good cause for so doing.

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See also, *Law Society of Upper Canada v. Stephen Alexander Cooper* 2009 ONSLAP (CANLII), 2009 ONSLAP.

26. The Hearing Committee notes that the legal profession is self–governing. It is therefore impressed with special responsibilities. Primary amongst those obligations is the requirement that all lawyers must act with integrity in their dealings dealing with the public and the LSA.

27. The evidence demonstrates the Member was fixed with the knowledge that the clients required his assistance to remedy a matter arising from his handling of a real estate transaction on their behalf. The Member chose to disregard their plight and placed his own self-interest first. In doing so, the Member demonstrated a lack of integrity in his dealings with the clients.

28. The Member further compounded his misconduct by failing to be candid in his response to the LSA that he had no documentary support for his recollection of events on his file.

29. The Member has to be commended for acknowledging his guilt and co-operating with the LSA. He assisted in acknowledging his shortcomings and accepted responsibility

with his Agreed Statement of Facts and Admission of Guilt. This is a necessary step in developing better practices in future dealings with clients.

30. While acknowledging his guilt, the Member obviated the need for witnesses to be called to testify and avoided their further inconvenience. The LSA also avoided additional expenditure of time and costs with the guilty plea. This is to be commended.
31. The Member has a previous disciplinary record. Any sanction imposed must be cognizant of that fact.
32. Having regards to all the foregoing factors and evidence, the Hearing Committee concludes that the protection of the public interest and the standing of the legal profession generally, can be satisfied with the following sanctions:
 - (a) With regards to Sanction 1, a fine of \$1,500.00 will be imposed along with a reprimand.
 - (b) With regards to Sanction 2, a fine of \$5,000.00 will be imposed.
 - (c) The Member will pay the actual costs of the Hearing along with the cumulative \$6,500.00 in fines, within 3 months of receipt of confirmation of the hearing costs.
 - (d) The Member is directed to the Practice Review Committee for a general review and assessment of his practice.

CONCLUDING MATTERS

33. No referral to the Attorney General is required.
34. No Notice to the Profession is required.
35. There will be a redaction of exhibits.

Dated February 27, 2012 at Calgary, Alberta.

DENNIS EDNEY, Q.C. (Chairperson)

BRETT CODE, Q. C.

LARRY OHLHAUSER, MD