

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
MICHAEL TERRY LEONARD
A MEMBER OF THE LAW SOCIETY OF ALBERTA

INTRODUCTION

1. A Hearing Committee (“Committee”) of the Law Society of Alberta (“LSA”) convened at the Law Society offices, in Calgary, on June 09, 2014 to consider the conduct of Michael Terry Leonard (hereinafter referred to as the “Member”).
2. The Committee was comprised of Dennis Edney, QC, Chair, Ron Everard, QC, Member and Wayne Jacques, Member. The Law Society of Alberta was represented by legal counsel, Ms. Jane Corns. The Member, Michael Terry Leonard, was present throughout the hearing. A court reporter was present 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 Attend with acknowledgement of service directing the Member to attend the Hearing. Exhibit 2;
 - Notice to Solicitor pursuant to Section 56 of the *Legal Profession Act* and the Rules of the Law Society of Alberta; with acknowledgement of service setting out the Citations. Exhibit 3;
 - Certificate of Status certifying the Member as an active member of the LSA. Exhibit 4; and
 - Certificate of Exercise of Discretion pursuant to Rule 96(2)(a) of the Rules of the LSA by which the Deputy Executive Director & Director, Regulation, Lawyer Conduct of the LSA, determined that only Michael Terence Leonard 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 10 were entered into the record during the course of the proceedings with the consent of the parties:
 - Exhibit 6 – Agreed Statement of Facts and Admission of Guilt dated the 14th of April, 2014;
 - Exhibit 7 – Discipline Record of the Member, Letter Michael Terence Leonard dated January 23, 1995;
 - Exhibit 8 – Joint Submission for Sanction;
 - Exhibit 9 – Estimated Statement of Costs; and
 - Exhibit 10 – Undertaking dated the 9th day of June, 2014.

CITATIONS

6. The Member faces five Citations:

Re: G.G. Complainant

- (1) IT IS ALLEGED THAT the Member breached an undertaking and that such conduct is conduct deserving of sanction.
- (2) IT IS ALLEGED THAT the Member failed to respond to counsel on a timely basis and that such conduct is conduct deserving of sanction.

Re: Law Society of Alberta and Bank A Complainant

- (3) IT IS ALLEGED THAT the Member failed to properly serve his lender client and that such conduct is conduct deserving of sanction.
- (4) IT IS ALLEGED THAT the Member failed to comply with the accounting rules of the Rules of the Law Society and that such conduct is conduct deserving of sanction.
- (5) IT IS ALLEGED THAT the Member failed to properly supervise his staff and that such conduct is conduct deserving of sanction.

PRELIMINARY MATTERS

7. The Chair introduced the Committee and inquired whether the Member had any objection to the constitution of the Committee based on bias, a reasonable apprehension of bias or any other reason. The Member expressed satisfaction with the 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 the Member.
9. The Chair directed that the oral hearing proceed in public.

AGREED STATEMENT OF FACTS AND ADMISSION OF GUILT

A- File #CO20092237 – G.G. Complaint

10. In a real estate transaction with a closing date of August 7, 2007, G.G. was the purchaser, represented by Mr. David McGreer (“Mr. McGreer”), and Mr. Leonard represented the vendor (the “Transaction”).
11. On July 23, 2007, Mr. Leonard sent a letter to Mr. McGreer pertaining to the Transaction in which Mr. Leonard undertook to provide a Real Property Report (“RPR”).
12. Mr. McGreer sent Mr. Leonard letters on July 23, 2007, August 3, 2007, June 22, 2008 and July 21, 2008 requesting the RPR. In his July 21, 2008 letter, Mr. McGreer also asked Mr. Leonard about a mortgage discharge that had not yet been registered.
13. On July 28, 2008, staff of Mr. McGreer’s office spoke with a paralegal at Mr. Leonard’s office about the Transaction who advised that she believed that Mr. Leonard’s office was in possession of the RPR but had not yet received the discharge.
14. On July 30, 2008, Mr. McGreer sent Mr. Leonard a letter in follow-up to the July 28, 2008 telephone conversation and asking for Mr. Leonard’s immediate attention to the matter.
15. On August 15, 2008, Mr. McGreer contacted Mr. Leonard to request the RPR. On that date, Mr. Leonard office provided him with the mortgage discharge but not the RPR.
16. On June 12, 2009, Mr. McGreer’s office telephoned and spoke to someone in Mr. Leonard’s office about the Transaction who advised that they would pull the file from storage and get back to them.
17. Mr. Leonard believes that his assistant spoke to Mr. McGreer’s office in response to each of the letters that he sent about the Transaction. Mr. Leonard does not have, or did not

retain, documentation on his file to support this belief. Mr. Leonard is of the view that he did not intentionally ignore Mr. McGreer's requests.

18. Mr. Leonard states that Mr. McGreer's client, G.G., made the G.G. Complaint, not Mr. McGreer himself, suggesting that Mr. McGreer himself may not have been concerned about any delay in providing the RPR.
19. Mr. Leonard did not provide the RPR to Mr. McGreer until January 27, 2010, which was approximately two and a half years after his undertaking to do so.

B. File #CO20071586 – LSA and Bank A Complaint

20. In May 2006, the LSA commenced a Rule 130 audit of Mr. Leonard's practice and concerns were noted with respect to his accounting practices and his handling of real estate files (the "Initial LSA Audit"). The results of the Initial LSA Audit are contained in an audit memo dated June 7, 2007.
21. In August 2007, the LSA launched an investigation into the matters arising from the LSA Audit (the "LSA Investigation"). The LSA also began a follow-up Rule 130 audit in May 2009 (the "Follow-Up Audit", and referred hereinafter collectively with Initial LSA Audit as the "LSA Audits") and an audit report was issued on May 10, 2010 wherein concerns with Mr. Leonard's accounting practices were again noted.
22. On June 24, 2010, Bank A, who Mr. Leonard represented in four (4) real estate transactions (the "4 Transactions"), complained to the LSA, alleging that Mr. Leonard failed to inform of all material facts surrounding the 4 Transactions.
23. The 4 Transactions had been identified in the LSA Investigation prior to June 24, 2010.
24. The LSA Investigation was completed and a report issued on December 17, 2010 wherein Part "A" details the results of investigation into accounting irregularities identified in the LSA Audit and Part "B" details the results of investigation into mortgage irregularities identified in the LSA Audit (the "LSA Investigation Report").
25. The LSA Investigation included a review of Mr. Leonard's real estate files, on a sample basis, between 2007 and 2010 and the LSA Investigation Report relates to twelve (12) of Mr. Leonard's real estate files, which include the 4 Transactions (the "Sample 12 Transactions").

26. During, or as part of, the LSA Investigation, real estate irregularities were discovered upon review of Mr. Leonard's legal software records, namely PC Law (the "PC Law Records". The PC Law Records were used in the LSA Investigation to conclude that the Sample 12 Transactions were part of a mortgage fraud scheme. Katherine Whitburn's Section 53 Report stated that there is insufficient evidence that Mr. Leonard was aware of any fraudulent activities.

Failure to Serve Lender Clients

27. During 4 Audited/Investigated Years, Mr. Leonard represented two clients, M.A. and M.H., as well as represented the "straw purchasers", and the lenders on a number of "flip" real estate transactions (the "M.A./M.H Flip Transactions").
28. During 4 Audited/Investigated Years, Mr. Leonard represented the "straw purchasers" and the lenders on several other real estate transactions involving AE-S (the "AE-S Flip Transactions"). AE-S was represented by David Steed ("Mr. Steed"), who enlisted Mr. Leonard to act for the "straw purchasers". AE-S has since been convicted of mortgage fraud and sentenced to 9 years in prison.
29. The M.A./M.H Flip Transactions and the AE-S Flip Transactions are hereinafter collectively referred to as the "Flip Transactions", and the lender clients in such Flip Transactions are hereinafter collectively referred to as the "Lenders".
30. On at least some of the Flip Transactions, Mr. Leonard acted for multiple parties without completing conflict letters or recommending to such parties that they obtain independent legal advice.
31. At the time Mr. Leonard acted on the Flip Transactions, Mr. Leonard was of the view that "flipping" property was a legitimate business practice and that any profit realized between the initial purchase of the property and the subsequent sale was due to a combination of the rapidly escalating house prices in the Calgary area at the time and improvements that the "flippers" made to the properties.
32. The LSA concluded that the Flip Transactions were part of what is commonly referred to as a "value fraud scheme" whereby:
 - a) a "flipper" purchases property and immediately sells it to a "straw purchaser" for a higher price;
 - b) the transaction is usually completed as a skip transfer, being a transaction wherein two transactions, namely the purchase by the "flipper" and the concurrent sale to the "straw purchaser", close on the same day;

- c) the property is transferred directly from the initial vendor to the “straw purchaser”, skipping the intervening purchaser or “flipper”;
 - d) the price charged to the “straw purchaser” is usually set so that the net mortgage advance is sufficient for the “flipper” to complete the original purchase from the registered owner and generate some profit for the “flipper”; and
 - e) the “straw purchaser” does not contribute any funds to the purchase price and is usually paid a fee to obtain the mortgage such that the “straw purchaser’s” only role is to obtain mortgage financing.
33. The LSA Investigation identified and reviewed 12 of the Flip Transactions (the “Investigated Flip Transactions”).
34. Mr. Leonard acknowledges that in respect of the Investigated Flip Transactions his related files contained some of the common indicators of mortgage fraud set out in Paragraph 32, more specifically that:
- a) for most of the Investigated Flip Transactions, there were two Residential Real Estate Purchase Contracts (“RREPCs”), each with different purchase prices, one for the purchase and one for the sale of the subject property;
 - b) for all of the Investigated Flip Transactions, there were significant increases in the purchase prices on the closing dates of the second transactions or “flips”. Mr. Leonard states that the significant increases may have been due to construction improvement and upgrades on the property;
 - c) for all of the Investigated Flip Transactions, there was no evidence that the deposits called for in the RREPCs had been paid to realtor; and
 - d) for most of the Investigated Flip Transactions, the “flipper” was usually not the registered owner of the property and the transaction was completed as a skip transfer.
35. Mr. Leonard emphasizes there was evidence on the RREPCs about the deposits but that the same did not evidence deposits going to a realtor.
36. On some of the Flip Transactions, Mr. Leonard received instructions from the Lenders that required him to alert them to indicators of mortgage fraud such as, or similar to, those listed in paragraph 34 above but specifically as set out in their instructions (the “Lender Instructions”).
37. Mr. Leonard acknowledges he failed to follow, in all instances, the Lender Instructions or otherwise did not advise the Lenders that the Flip Transactions may or may not have been indicative of mortgage fraud.

38. Mr. Leonard has been advised (by the LSA) and believes that, because of his failure to follow the Lender Instructions, most of the properties that were the subject of the Flip Transactions were ultimately foreclosed upon causing the Lenders to suffer significant loss.

Failure to Properly Supervise Support Staff

39. During the 4 Audited/Investigated Years, Mr. Leonard:
- a) left the data entry accounting for his law practice primarily to his support staff with minimal supervision;
 - b) did not properly supervise his real estate paralegal by having her prepare all conveyance documentation without checking their accuracy. Mr. Leonard states that on almost all matters he always meets with the client and goes through documents together with the client; and
 - c) allowed his paralegal to meet with his real estate clients to complete conveyance documents and thereafter did not meet with such clients personally. Mr. Leonard states that this is a very rare occasion when he knows who is coming in and what transaction it was about.

Mr. Leonard states that:

- a) he hired a professional accountant to prepare the Form Ts and a bookkeeper to perform the trust reconciliations who was highly recommended by a senior lawyer colleague;
 - b) he hired experienced staff in his office, in some cases with over twenty-four (24) years of experience;
 - c) he gave his staff express instructions not to meet with clients alone;
 - d) on very few occasions, less than five (5) times, he did allow his paralegal to meet (alone) with his clients and in which cases he knew the involved clients well and would have asked if there were any concerns; and
 - e) notwithstanding his express instruction, it later transpired that his (then) paralegal performed many aspects of file management without his authorization.
40. Mr. Leonard acknowledges that during the 4 Audited/Investigated Years, and at all times, it was his responsibility to ensure that his accounting records are accurately maintained and comply with the accounting rules of the LSA.

41. For the purposes of Section 60 of the *Legal Profession Act*, Mr. Leonard admits the truth of the facts set out above for the purposes of these proceedings. He further admits that the conduct in question amounts to conduct deserving of sanction.

CONCLUSION ON CITATIONS

42. Based on the material before the Hearing Committee, which included an Agreed Statement of Facts and Admission of Guilt, Citations 1 through 5 are made out, as conduct deserving of sanction, pursuant to Section 60 the *Legal Profession Act* and received in a form acceptable to the Hearing Committee.

SUBMISSIONS ON SANCTION AND COSTS

43. The Record of the Member and an Estimated Statement of Costs were entered into the record as Exhibits 7 and 9 respectively.
44. It was noted the Member had a previous disciplinary record of failing to pay an account owed to a law firm even in the face of a Judgment obtained by the law firm as follows:
- a) A reprimand and costs of the hearing dated January 23, 1995.

DECISION ON SANCTION AND COSTS

45. The Hearing Panel must consider all of the evidence in arriving at an appropriate sanction.
46. In doing so, the Hearing Committee is mindful that the primary purpose of disciplinary proceedings found in Section 49(1) of the *Legal Profession Act* is the protection of the public interest and the standing of the legal profession generally.
47. The objective of the *Legal Profession 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.
48. 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 the professional's peers are better able to assess than a person untrained in the particular professional art or science."

49. The Committee is mindful that submissions on sanction and costs are by way of joint submission.
50. 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.
51. In *Nguyen v. Canada (Minister of Citizenship and Immigration)*, 196 F.T.R. 236 (T.D.), 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." ...

See also, *Law Society of Upper Canada v. Stephen Alexander Cooper*, 2009 ONSLAP (CANLII), 2009 ONSLAP.
52. 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 Law Society.
53. The evidence demonstrates the Member was fixed with the knowledge that the complainant G.G. and his lawyer 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 complainant and his lawyer.
54. The Member further compounded his misconduct by failing to serve his lender clients by failing to inform of all material facts pertaining to the transactions.
55. The Member also failed to comply with the accounting rules of the Law Society of Alberta involving numerous trust shortages. These shortages were primarily created because of disbursements being paid from trust prior to depositing funds in trust. It is understood that all trust shortages were repaid.
56. The Member stated he had a limited knowledge of bookkeeping and had delegated the preparation of the trust reconciliations to his staff. He has since put in place a supervisory system.

57. The Member has to be commended for acknowledging his shortcomings and accepting responsibility for his misconduct. This is a necessary first step in developing better practices in future dealings with clients.
58. The Committee was also advised of the various steps the Member had taken to prevent future accounting problems.
59. 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.
60. The Member has a previous disciplinary record, involving a single incident of failing to pay an account, dating back to 1995. Any sanction imposed must be cognizant of that fact.
61. Having regards to all the foregoing factors and evidence, the Hearing Committee accepts the joint submission on sanction and concludes that the protection of the public interest and the standing of the legal profession generally, can be satisfied by the following:
 - a) Three (3) month suspension commencing June 16, 2014;
 - b) Costs of the hearing fixed at \$6,000.00 as per the Estimated Statement of Costs, to be paid on the following terms:
 - \$1,000.00 of the total amount to be paid on the date of this hearing, being June 09, 2014;
 - the balance of the remainder, being the sum of \$5,000.00 to be paid by way of 5 payments in the amount of \$1,000.00 each to be paid on the first business day of each month, commencing the first month after the Member has served the 3-month suspension and has been reinstated, whether active or inactive, to the Law Society of Alberta; and
 - the usual terms of costs payment, as per Section 79 of the *Legal Profession Act*, apply whereby there will be an automatic suspension of the Member for non-payment for any delay in payment and wherein such delay is not rectified within 1 week of the applicable due dates.
 - c) A reprimand.

CONCLUDING MATTERS

62. No referral to the Attorney General is required.
63. There will be a redaction of exhibits.

Dated August 18, 2014 at Calgary, Alberta.

DENNIS EDNEY, QC (Chairperson)

RON EVERARD, QC

WAYNE JACQUES, CA

REPRIMAND

As a lawyer, you will be aware of the expression that our reputation as lawyers is everything. When a Member of our profession, such as yourself, is found guilty of professional misconduct, it is not only your reputation that is harmed but the reputation of all fellow members of the Bar.

But for the joint submission and the mitigating factors provided, we may very well have imposed a more serious sanction.

As a Hearing Committee, we are less interested in punishment and exacting retribution; instead, our focus is on protecting the public interest, maintaining high professional standards, and preserving public confidence in the legal profession.

We expect you to maintain integrity and professionalism in your practice of law. We look forward to having pride and trust in you as a colleague.

We wish you well.