

IN THE MATTER OF THE *LEGAL PROFESSION ACT*

AND

IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF **WAYNE LEDREW**,
A MEMBER OF THE LAW SOCIETY OF ALBERTA

REPORT OF THE HEARING COMMITTEE

On January 26, 2006, a hearing committee comprised of Peter Michalyszyn, Q.C. (Chair), Stephen Raby, Q.C., and Wilf Willier convened at the Law Society offices in Edmonton, Alberta to inquire into the conduct of Wayne Ledrew. Mr. LeDrew was represented by David Ross. The Law Society was represented by Janet Dixon, Q.C.. Mr. LeDrew was present throughout the hearing.

Introduction

Mr. Ledrew is a sole practitioner in the Hamlet of Sherwood Park, carrying on amongst other things a practice in real estate law.

In May, 1994, Mr. LeDrew was retained by M, vendors of a property in Sherwood Park. The transaction closed on July 25, 1994. As a part of the closing, Mr. Ledrew agreed to undertake to provide the purchaser with a Real Property Report (RPR) subsequent to the completion of a subdivision relating to the subject lands. The RPR was to be provided not later than September 15, 1994. Mr. Ledrew further undertook to hold in his trust account the sum of \$6,000.00 pending finalization of the subdivision and RPR.

The subdivision and RPR contemplated in the undertaking were not provided until just short of 9 years later, on July 20, 2003. The events of that 9-year period are a story of breached undertakings and, in 1996, breached trust conditions. It is a story of significant delays, at times unforeseen events compounding the breaches and delays, and the involvement of not fewer than 10 lawyers on behalf of a variety of purchasers, neighbouring landowners, subsequent purchasers and ultimately, the Law Society of Alberta.

As acknowledged by Mr. Ledrew before the Panel:

“My single biggest error in this matter was in giving an undertaking to provide something [namely a subdivision Plan and a Compliance Certificate] to a fellow practitioner over which I lost control.”

Put even more plainly, Mr. Ledrew’s error was giving an undertaking to provide something over which he had *no* control in the sense of guaranteeing a result. Then, having given the undertaking, Mr. Ledrew’s next error was attempting to “manage” compliance with it, rather than seek to be relieved of it, or alternatively to involve other counsel.

In the end, the original undertakings were complied with but not before significant expense personally to Mr. Ledrew and more importantly, not before Mr. Ledrew’s actions brought discredit both to himself and to the legal profession.

An Agreed Statement of Facts and Admission of Guilt were exhibited before the Panel. The Panel found 2 citations to have been made out. Fines were levied in the total sum of \$3,500.00, together with actual costs of the hearing in the sum of \$2,668.32, for a total of \$6,168.32. A referral to the Practice Review Department was directed, and a reprimand was given.

Citations

The Member originally faced the following Citations:

1. It is alleged that you failed to honour, within a reasonable period of time, your undertaking to another member, as contained in your letters dated July 21, 1994 and July 25, 1994, and that such conduct is conduct deserving of sanction;
2. It is alleged that you failed to honour the trust conditions imposed upon you by letter dated October 29, 1996, and that such conduct is conduct deserving of sanction;
3. It is alleged that you failed to honour trust conditions imposed upon you by letter dated January 8, 2003, and that such conduct is conduct deserving of sanction;
4. It is alleged that you failed to be punctual in fulfilling commitments made to other lawyers, and that such conduct is conduct deserving of sanction;
5. It is alleged that you failed to respond on a timely basis to communications from other lawyers that contemplated a reply, and that such conduct is conduct deserving of sanction;
6. It is alleged that you failed to serve your clients in a conscientious, diligent and efficient manner, and that such conduct is conduct deserving of sanction; and
7. It is alleged that you failed to respond on a timely basis and in a complete and appropriate manner to communications from the Law Society that contemplated a reply, and that such conduct is conduct deserving of sanction.

By consent, the Panel agreed to amend Citations 1-5 in the following manner: paragraph 100 of the 38-page Agreed Statement of Facts comprises the amended Citation 1 as follows:

1. Mr. Ledrew admits that over the period July 1994 through January 2003 he failed to honour the following undertakings and breached the following trust conditions, and that this conduct is deserving of sanction:
 - a. Undertakings given to lawyer B.M. contained in his letter to Mr. M dated July 21, 1994;
 - b. Undertakings given to B.M. contained in his letter to Mr. M dated July 25, 1994;
 - c. Trust condition imposed upon him by the letter from lawyer G.V dated October 29, 1996; and
 - d. Trust condition imposed upon him by the letter from lawyer L.C. dated January 8, 2003 (referred to in letter of Ms. C. dated June 6, 2003).

The hearing proceeded on the basis of the amended Citation 1, and original Citations 6 & 7.

Jurisdiction

Jurisdiction was established by entering as Exhibits the Letter of Appointment, Notice to Solicitor, Notice to Attend, Certificate of Status and Certificate of Exercise of Discretion. Mr. Ledrew accepted the jurisdiction and composition of the Panel.

Private Hearing

No application was made to hold any portion of the hearing in private. However, in these Reasons and for purposes of any transcript, no reference is made to client names or identifying client information.

Other Preliminary Matters

There were no other preliminary matters.

Evidence

The evidence of the hearing consisted of 60 Exhibits entered by agreement. The most significant evidence was contained in the following Exhibits:

1. Exhibit 47 being the Agreed Statement of Facts and Admission of Guilt;
2. Exhibit 41 Tab 4 being the original undertakings given to the purchasers' solicitor July 21, 1994; and
3. Exhibit 41 Tab 43 being the trust condition imposed upon Mr. Ledrew by the purchasers' solicitor October 29, 1996.

Mr. Ledrew was retained by the vendors in May, 1994. Years earlier, the vendors had constructed a garage on the property. The garage was built too close to the property line of a then-vacant adjoining property. This was confirmed as early as 1989/1990 in a survey completed by Walker Consultants. In April, 1994 the vendors retained Walker to apply for a subdivision to redraw the boundary line between the vendors' property and the adjoining property. As understood by Mr. Ledrew, this was going ahead with the adjoining property owners' consent and was well underway at the time he was retained in May, 1994.

As part of the otherwise unremarkable real estate transaction, Mr. Ledrew undertook to counsel for the purchaser to provide a subdivision Plan and Compliance Certificate by September 15, 1994. That undertaking amongst others¹ was given by Mr. Ledrew in his July 21, 1994 and July 25, 1994 letters to counsel for the purchasers. Mr. Ledrew testified he gave the undertakings on the basis of assurances from his vendor clients and from the vendors' surveyor that the matter had been cleared with the appropriate municipal authorities and would be approved upon application.

¹ Mr. Ledrew acknowledged he was also in breach of an undertaking given to hold back the sum of \$6,000 pending compliance with undertakings, whereas in fact the \$6,000 was used well in advance of the ultimate July 20, 2003 completion and in part for purposes entirely unrelated to the subject real estate transaction.

Having given the undertaking, Mr. Ledrew acknowledged in evidence before the Panel that he took no further steps before September 15, 1994 to ensure its compliance. Indeed, the subdivision application was submitted by the surveyor only on October 27, 1994. It was rejected November 23, 1994.

Mr. Ledrew was less than forthcoming in his communications with counsel for the purchasers regarding compliance with undertakings. According to Exhibits before the Panel, the first written correspondence from Mr. Ledrew to purchasers' counsel after July 25, 1994 was April 13, 1995. (There is some reference to Mr. Ledrew's August 15, 1994 letter to purchasers' counsel but no such letter was in evidence before the Panel.)

On April 13, 1995, after correspondence and telephone calls urging a response, Mr. Ledrew faxed to apologize for his "oversight" in failing to keep purchasers' counsel advised of the status of the subdivision application. It was in the April 13, 1995 letter that Mr. Ledrew brought to the attention of counsel for the purchasers that the subdivision application was submitted October 27, 1994 and rejected November 23, 1994. The application was rejected on the basis that no final approval would be given until certain encroaching sheds were moved off the new proposed property line. The sheds, also referred to as chicken coops, were located along the proposed subdivision plan property boundaries. The existence of the sheds came as no surprise: that they could create a problem was in the mind of purchasers' counsel as early as August 15, 1994. However, Mr. Ledrew gave assurances to purchasers' counsel that the existence of the sheds had already been taken into account in the subdivision application and that if need be, the vendors and neighbouring property owners had agreed the sheds could be moved.

Also in his April 13, 1995 letter Mr. Ledrew advised that no action had been taken until the spring, 1995 and that even by then, the vendors and adjoining property owners had yet to agree to move the sheds. Mr. Ledrew then proposed that the vendors, the purchasers and the adjoining property owners make a joint submission to the municipal development office proposing the buildings stay in place and to allow the subdivision. It was hoped that step could be completed "within a couple of weeks."

Nothing happened "within a couple of weeks". Indeed, the Exhibits before the Panel reveal multiple demands by counsel for the purchasers that Mr. Ledrew comply with the original undertakings. Counsel for the purchasers proposed a new deadline of July 25, 1995 for compliance. That date came and went without result. Thereafter, counsel for the purchasers raised the spectre of Law Society involvement regarding the breached undertaking. That too failed initially to elicit any response from Mr. Ledrew. A more specific overture – this time in the form of an October 5, 1995 draft letter to the Law Society – prompted Mr. Ledrew to respond with an October 12, 1995 fax to counsel for the purchasers. At that time amongst other things Mr. Ledrew urged that his vendor clients, the purchasers and the adjoining property owners – each with the assistance of counsel – provide the necessary consents to leave the sheds as is. These consents would then be provided to the municipal authority in the hope the subdivision application could proceed. Those consents did in fact materialize by December, 1995 and a formal request of the Deputy Registrar of the Land Titles Branch was made January 16, 1996.

The Deputy Registrar of Land Titles objected to the form of consents, leading to a further brief delay to February 29, 1996, when partial discharges of lender caveats were provided to Mr. Ledrew in trust. These too were deficient although not apparently owing to any fault of Mr. Ledrew's. What then followed was a further lengthy delay ending with a fax of May 30, 1996 from Mr. Ledrew to the surveyor. Owing to the discharges having been rejected by the Land Titles office, Mr. Ledrew directed the surveyor to deliver the partial discharges back to counsel for the purchasers, to be corrected to comply with Land Titles Office requirements.

By August 9, 1996, purchasers' counsel had obtained the necessary discharges. Before providing the discharges to Mr. Ledrew, however, purchasers' counsel wrote to Mr. Ledrew seeking his consent in advance to proposed trust conditions to attach to the discharges. That was followed by a period of further delay during

which Mr. Ledrew failed to respond to the proposed trust conditions. Then in correspondence October 21, 1996, purchasers' counsel delivered an ultimatum to Mr. Ledrew that owing to his failure to respond to 3 prior written requests – and mindful of previous delays in responding – again a report to the Law Society was being contemplated.

Again the spectre of Law Society involvement prompted a reply some 3 days later, on October 24, 1996, wherein Mr. Ledrew faxed purchasers counsel apologizing for his “oversight and inattention to this matter over the past number of weeks”. In the same brief letter he agreed to be bound by the proposed trust conditions set out in counsel's August 9, 1996 letter.

Purchasers counsel then imposed trust conditions upon Mr. Ledrew in correspondence dated October 29, 1996 in respect of certain partial Discharges of Caveats, and requiring an updated Real Property Report and Compliance Certificate. These conditions were to be completed by November 22, 1996.

In response, in a November 5, 1996 letter Mr. Ledrew objected to the trust condition sought in respect of a Compliance Certificate. Mr. Ledrew objected on the basis of an earlier agreement the sheds would remain encroaching upon the new property line and that as such there would be no compliance sought by the parties, nor given by the municipal authority. None of the other August 9, 1996 trust conditions were objected to.

Notwithstanding the nascent dispute regarding the Compliance Certificate condition, the November 22, 1996 deadline for compliance with even the agreed-upon trust conditions came and went without compliance.

That resulted in correspondence from purchasers' counsel of February 25, 1997 noting “it again appears that the completion of this file has stalled...” Further correspondence to Mr. Ledrew from purchasers' counsel of March 12, 1997 noted the utter lack of any response from Mr. Ledrew. The same correspondence demanded the return of the partial Discharges forwarded October 29, 1996, and noted counsel could see no alternative but to report the matter to the Law Society.

Once again Mr. Ledrew responded in relatively short order to the spectre of Law Society involvement by replying March 19, 1997 to purchasers' counsel's March 12, 1997 fax. In his March 19, 1997 reply, Mr. Ledrew referred to a December 10, 1996 fax he had intended to provide to purchasers' counsel, but which was apparently never received. In any event, the December 10, 1997 fax fails to address the November 22, 1996 deadline for compliance with even the agreed upon October 29, 1996 trust conditions.

With regard to the objected-to October 29, 1996 trust condition of a Compliance Certificate, an accommodation was reached that instead of a Compliance Certificate Mr. Ledrew would prepare encroachment agreements. However, it took until the end of May, 1997 for the encroachment agreement to be provided. A further lengthy delay followed to mid-September, 1997 with no effective steps taken by Mr. Ledrew to see the matter advance. Finally by mid-October, 1997, executed encroachment agreements were provided to Mr. Ledrew from purchasers' counsel in trust. A further period of delay followed, ending in late February, 1998. At that time, Mr. Ledrew faxed a letter February 25, 1998 to purchasers' counsel, thanking her for her advice she had conducted of “this elderly file”, and advising he would “be reviewing the file within the next week to determine the next step.”

Nothing occurred within that week, or indeed in writing until July 7, 1998, when Mr. Ledrew corresponded with purchasers' counsel indicating he had reviewed the matter yet again and had faxed the surveyor to determine the next steps necessary to bring the matter to a close. Mr. Ledrew was then again in touch with purchasers' counsel August 4, 1998. At that time he brought to counsel's attention issues arising from the fact the surveyor's company had been merged with another. Mr. Ledrew then advised on August 18, 1998 he had retained a new surveyor from whom he expected a response within “the next couple of weeks.” Mr. Ledrew

promised to advise purchasers' counsel of the surveyor's response and of "the steps which will be taken to conclude this matter."

Thereafter for a period of almost 3 years – from August 18, 1999 to April 18, 2002 -- nothing occurred.

This period of inactivity was ended on April 18, 2002, when the original purchasers' counsel was in touch both by phone and by fax to Mr. Ledrew with news of his clients' intention now to sell the property to a third party. That transaction was to close August 31, 2002.

By this time in 2002, fortuitously the lenders' caveats which had earlier been an issue, had now been discharged for reasons entirely unrelated to the October 29, 1996 trust conditions imposed on Mr. Ledrew. And with regard to the balance of the trust conditions of October 29, 1996 – they were essentially the same as the original undertakings given July 21/July 25, 1994 – Mr. Ledrew indicated he was attempting to get back in touch with the surveyors he had contacted in August, 1998, for purposes of completing the subdivision application. However, those surveyors would not act and as such, Mr. Ledrew needed to deal in yet a third surveyor to complete the subdivision.

Then in June, 2002, Mr. Ledrew learned the sheds in question had now been removed. On the face of it the absence of the sheds should have smoothed the way for the subdivision process. However, yet further complications arose, delaying until July 20, 2003 the registration of a subdivision plan and delivery of a Real Property Report.

Finding of Guilt

On the basis of the Submission of Guilt at Exhibit 47, the evidence contained in the balance of Exhibits, and the evidence of Mr. Ledrew, the Panel concluded that Mr. Ledrew was guilty of citations 1 and 7, and that his conduct was deserving of sanction.

With regard to citation 6, the Panel concluded that insufficient evidence existed to make a finding of guilt. In particular the Panel concluded that any failure of Mr. Ledrew to serve his own client in a conscientious, diligent and efficient manner did *not* amount to conduct deserving of sanction.

(If anything, Mr. Ledrew's client benefited from Mr. Ledrew's unwise assumption of undertakings and trust conditions over which he had no control. Had Mr. Ledrew appreciated this from the outset, it is possible the original 1994 real estate transaction would have collapsed.)

With regard to citation 7, Mr. Ledrew acknowledged receipt of correspondence from the Law Society of Alberta April 7, 2004. That correspondence required a response from Mr. Ledrew pursuant to Section 53 of the *Legal Profession Act* within 14 days. Mr. Ledrew acknowledged receiving the correspondence and had no explanation for his failure to respond, nor could he explain his failure to respond to follow up correspondence from the Law Society of Alberta dated May 11, 2004.

Sanction

Counsel for the Law Society Ms. Dixon urged the Panel to consider a short suspension or alternatively a high fine. Ms. Dixon submitted two cases to the Panel, both involving similar misconduct: *Law Society of Alberta v. Condin* (2004) LSDD No. 48 and *Law Society of Alberta v. Zazula* (2005) LSDD No. 22. Ms. Dixon submitted facts in Mr. Ledrew's case were more grievous than those in *Condin* or *Zazula*.

Ms. Dixon referred to the need for both general and specific deterrence where conduct involves a breach of some trust conditions or undertakings and the failure to respond to colleagues in a timely fashion. Counsel also noted that real estate conveyancing is perhaps one of the areas where most members of the public come into contact with the legal profession than in any other area of practice.

Exhibited before the Panel was Mr. Ledrew's record:

- February 20, 1996 * Guilty of one count of conduct deserving of sanction – breach of trust conditions;
- * Guilty of one count of conduct deserving of sanction – failing to disclose that trust monies had been disbursed
- * Penalty of a reprimand, a total \$250.00 fine and payment of the actual costs of the hearing.

Also before this Panel was the report of the Hearing Committee of April 17, 1996 giving rise to the February 20, 1996 conviction. This Panel was struck by the fact that as of February 20, 1996, Mr. Ledrew was already in breach of the undertaking forming the subject matter of these proceedings.

Also exhibited before this Panel was Mr. Ledrew's Practice Review Department closing summary. This summary evidence is that from August 12, 1997 until file closure September 10, 1999, Mr. Ledrew was under the jurisdiction of the Practice Review Department.

Of note, purchasers' counsel, exasperated by Mr. Ledrew's conduct, were in touch with the Law Society as early as July 22 and August 12, 1998 and as soon as August, 1998 Mr. Ledrew himself was in touch with Complaints Officer Maurice Dumont, Q.C., concerning the lack of progress by Mr. Ledrew in finalizing this file. This all occurred at a time Mr. Ledrew was actively within the jurisdiction of the Practice Review Department and at the time it was represented that no formal complaints or insurance claims had been received, and one "mediation call" was received in July, 1999 and resolved appropriately by Mr. Ledrew.

Mr. Ledrew provided references from five fellow Sherwood Park lawyers which while uniformly positive, and which disclosed an awareness of his current difficulties, failed to address his related record for misconduct and thus were of limited assistance to the Panel.

Mr. Ledrew submitted evidence to the Panel of his extensive community involvement. Mr. Ledrew also brought to the Panel's attention that he incurred an out-of-pocket expense of not less than \$11,542.47 including payment of disbursements in relation to the subdivision approval, the accounts of lawyers for other affected purchasers and vendors, and interest on monies held back by a particular purchaser in 2003/2004

At the end of the day, the Panel concluded that no third party remained out-of-pocket as a result of Mr. Ledrew's misconduct. That said, Mr. Ledrew was the author of his own misfortune. But for his breaches and delays, his personal expenditure of some \$11,500 would have been unnecessary. As such his personal expense could hardly be characterized as a mitigating factor in sanctioning.

The Panel was also mindful of the fact Mr. Ledrew's client supplied a \$6,000 holdback for purposes of the subdivision application and compliance certificate. Of that \$6,000 sum, \$443.35 was paid to Mr. Ledrew himself on account of fees for an unrelated real estate transaction. The sum of \$1,500 was paid back to Mr. Ledrew's vendor client in August, 1998. Inexplicably, Mr. Ledrew could recall nothing in connection with the return of that \$1,500 to his client.

To Mr. Ledrew's credit, he finally did complete the task by obtaining subdivision approval and a Compliance Certificate in 2003. He financially made whole the affected third parties.

Ms. Dixon submitted to the Panel aggravating features included a prior record for related misconduct and of course the timing of that misconduct in connection with the within matter. Ms. Dixon noted Mr. Ledrew's failure early on to realize he had accepted an undertaking or trust condition with which he could not possibly comply, and his compounding the problem by deciding to "manage" the breaches rather than seeking professional alternatives, for example reporting himself to the Law Society and engaging counsel to act on his behalf. Ms. Dixon counted as an aggravating feature the multiple lawyers and clients involved in the file over the 9-plus year history of the matter. Finally, she drew to the Panel's attention Mr. Ledrew's criticism of his own vendor client on a variety of levels including the failure to note earlier the non-complying buildings, Mr. Ledrew's implicit criticism of the activity of other lawyers and their failure to cooperate or insure their clients' cooperation, and in general the fact that Mr. Ledrew in his submissions still appeared to be making excuses for delay not occasioned entirely by himself but by circumstances, or by the actions of others.

Granted, it may be that for reasons not entirely revealed in these lengthy reasons, Mr. Ledrew was to a small degree a victim of circumstances beyond his control. But it was only to a small degree. And for the most part those circumstances would not have arisen but for Mr. Ledrew's ill-advised offering of the undertaking he could not comply with, followed by manifest delays.

In all the circumstances the Panel was persuaded to impose a fine upon Mr. Ledrew – a combined fine well more than 10 times the magnitude of the fine he faced in 1996 – together with a reprimand and a mandatory referral to Practice Review.

The Chair delivered the reprimand.

Time to pay

The time to pay was given for one year from January 26, 2006 for both the total fines of \$3,500.00 plus the actual costs of the hearing in the sum of \$2,668.32, for a total of \$6,168.32.

Exhibits Order

The following Exhibits will be available for the public's inspection:

Exhibits 1 - 4, 47, 53 – 61 and 63 -64.

The balance of the Exhibits will be available for inspection by the public but only once solicitor-client information contained therein is vetted appropriately.

Dated this ___ day of November, 2006.

Peter B. Michalyshyn, Q.C., Chair

Stephen Raby, Q.C.

Wilf Willier