

LAW SOCIETY OF ALBERTA

IN THE MATTER OF THE *LEGAL PROFESSION ACT*;

AND

**IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF JOANNE HEMING
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

Single Bencher Hearing Committee:

Robert Harvie, QC - Bencher

Appearances:

Counsel for the Law Society – Karl Seidenz

Joanne Heming - Self-represented

Hearing Date:

September 11, 2017

Hearing Location:

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

HEARING COMMITTEE REPORT

Jurisdiction, Preliminary Matters and Exhibits

1. On September 11, 2017, a Single Bencher Hearing Committee (Committee) convened at the office of the Law Society of Alberta (LSA) to conduct a hearing regarding Statement of Facts and Admission of Guilt dated May 25, 2017.
2. The member and counsel for the LSA were asked whether there were any objections to the constitution of the Committee. There were no objections to the identity of the Bencher hearing the submissions, on the grounds of bias or otherwise and the hearing proceeded.

3. The hearing was held in public.
4. The jurisdiction of the Committee was established by Exhibits 1 through 4, consisting of the letter of appointment of the Committee, the Notice to Solicitor pursuant to section 60 of the *Legal Profession Act*, the Notice to Attend to the Member and the Certificate of Status of the Member with the Law Society of Alberta.

Statement of Facts and Admission of Guilt

5. The Statement of Facts and Admission of Guilt is attached hereto as Exhibit "A" (the "Agreed Statement"). This Agreed Statement has been found to be in an acceptable form by a Conduct Committee Panel on June 14, 2017 and therefore this hearing was convened by a single bencher pursuant to section 60(3) of the *Legal Profession Act*.
6. Pursuant to section 60(4) of the *Legal Profession Act*, after a statement of admission of guilt is accepted by the Conduct Committee, it is deemed to be a finding of the Hearing Committee that the lawyer's conduct is conduct deserving of sanction. After hearing submissions by counsel for the LSA and Joanne Heming and confirming Joanne Heming understanding that the Bencher was not bound by the Joint Submission on Sanction, the Bencher confirmed the Agreed Statement of Facts and the Admission of Guilt constituted a finding of conduct deserving of sanction on one citation pursuant to s. 49 of the *Legal Profession Act*.
7. The only question for determination by this Committee is one of appropriate sanction.

Discussion on Sanction

8. The LSA sought a fine of \$6,000.00, a reprimand and fixed hearing costs of \$1,500.00. The LSA made the following submissions on sanction:
 - a. It is necessary in order to protect the public and protect the legal profession that there be elements of specific and general deterrence which should be considered in sanction.
 - b. Several cases were presented relating to the appropriate sanction in similar fact situations for consideration by this Committee.
9. The member, Joanne Heming, made no further submissions on sanction, beyond affirming her agreement with the representations of counsel for the LSA, and acknowledging responsibility for her conduct giving rise to this sanction.
10. Both the Law Society and Joanne Heming rightly noted that Joanne Heming in mitigation had freely admitted her error after reporting the matter. The approach taken by both Joanne Heming and the LSA in dealing with this matter through a Single Bencher hearing

avoided an unnecessary contested hearing, witness inconvenience, and process costs. This is commendable.

Concluding Matters

11. It is acknowledged, firstly, that upon consideration of a joint submission by counsel for the LSA and the member, such submissions are to be given deference, and while not binding upon this Committee, should be accepted unless it appears that such submissions are clearly contrary to the interests of the public and the interests of the profession.
12. In considering this matter, and the submissions of the parties, this Committee can see no fact or basis upon which to interfere with the recommendations set out in the joint submission and accordingly, there is a determination that upon the member Joanne Heming being found guilty of the citation herein, there shall be a fine in the sum of \$6,000.00, a reprimand and an award of costs against her in the sum of \$1,500.00.
13. With respect to the reprimand, a verbal reprimand was given to the member, a copy of which is appended hereto as Exhibit "B".
14. The member requested time to pay the fine and costs directed herein of one year, which was not opposed by the LSA, and accordingly, it is directed that the fine and costs are to be paid within one year of receipt of the Statement of Costs herein.
15. Hearing exhibits and the transcript shall be made available to the public, with the exception that they shall be redacted to prevent the disclosure of confidential or privileged information, and of any personal information relating to third parties.
16. There shall be no Notice to the Profession issued.
17. There will be no Notice to the Attorney General.

Dated at the City of Calgary in the Province of Alberta, this 27th day of September 2017.

Robert Harvie, QC

EXHIBIT "A"

IN THE MATTER OF THE *LEGAL PROFESSION ACT*

- AND -

IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF
JOANNE E. HEMING

A MEMBER OF THE LAW SOCIETY OF ALBERTA

STATEMENT OF FACTS AND ADMISSION OF GUILT

A. INTRODUCTION

1. I was admitted as a member of the Law Society of Alberta (the "**Law Society**") on August 20, 2007. My current status is "Active/Practising".
2. I have operated my own firm, Heming & Associates, in Strathmore since December 2009. My practice consists primarily of family law, civil litigation, criminal law, and real estate law.

B. COMPLAINT

3. On November 5, 2014, the Law Society received a complaint from S.W., a lawyer, alleging that I had breached an undertaking.

Tab 1 – Letter (Nov 5, 2014)
(w/o attachments)

C. CITATIONS

4. On November 2, 2016, a panel of the Conduct Committee of the LSA (the "**CCP**") directed that the following conduct be dealt with by a Hearing Committee:

That I registered a Transfer of Land in breach of an undertaking
that I had given to another lawyer.

5. The CCP also directed that I be referred the Practice Review Committee pursuant to section 58 of the *Legal Profession Act* (the "**Act**") to suggest additional measures to help me understand the *Code of Conduct* (the "**Code**") and my professional and ethical obligations.

Tab 2 – CCP Minutes

6. I am still participating in the practice review process.

D. FACTS AND ADMISSIONS

I. Facts

7. I was retained by **R.M.** (“**Client**”) in early 2011 to represent him during proceedings involving **D.A.**, who was represented by **L.W.** My Client and D.A. had previously lived in a marriage-like relationship but were living in the same residence as roommates at the time of the proceedings.
8. Before meeting with their respective lawyers, my Client and D.A. had already agreed about how to separate their property and they were seeking our help in documenting that agreement. Their agreement was driven by the fact that neither could qualify for a mortgage nor raise other funds to buy out the other’s interest in the two properties at issue.
9. The substance of their agreement was formalized in following three documents:
 - a. The Property Division Agreement;
 - b. The Option Agreement; and
 - c. The Residential Tenancy Agreement (Schedule “A” to the Option Agreement).

**Tab 3 – Property Division Agreement
Option Agreement
Residential Tenancy Agreement**

10. The main terms of the Property Division Agreement were as follows:
 - a. The principal assets to be divided were a **Duplex**¹ and a **House**²:
 - b. Regarding the **Duplex**,
 - (1) My Client owned the Duplex and was registered on title as such;³
 - (2) D.A. would live in the Duplex;
 - (3) My Client agreed to lease the Duplex to D.A. for a period of five years pursuant to the terms of the Residential Tenancy Agreement;⁴
 - (4) My Client also agreed to enter into an Option Agreement whereby D.A. could purchase the Duplex under the terms of the Option Agreement;⁵ and

¹ [•]
² [•]
³ Preamble, paragraph B
⁴ Paragraph 3 and Residential Tenancy Agreement
⁵ Paragraph 3 and Option Agreement

- (5) My Client was registered on title as the mortgagor of the Duplex and was responsible to make the regular mortgage payments.

c. Regarding the **House**,

- (1) The House had been previously owned outright by D.A.;
- (2) For reasons about which I am unaware and for which she presumably obtained legal advice, D.A. agreed to split title to the House such that she would hold legal title as the bare trustee for my Client, who was the beneficial owner of the House.⁶
- (3) My Client would live in the House;
- (4) Although D.A. was registered on title as mortgagor of the House, my Client was responsible to make the regular mortgage payments.

Tab 3 – Property Division Agreement

11. Pursuant to paragraph 4 of the Property Division Agreement, I undertook to hold on my file a signed and registerable Transfer of Land for the House until (a) my Client could obtain financing to assume the mortgage in his name or (b) the Option Agreement came to an end:

4. ... [D.A.] shall deliver to the solicitor for [R.M.] a registerable transfer of the House to be held in trust by [R.M.]’s solicitor until such time as either [R.M.] can mortgage the property in sufficient amount to payout and discharge the mortgage currently registered against the title to the House or, the expiration date of the Option Agreement, hereto attached, whichever shall first occur. ...

Tab 3 – Property Division Agreement

12. On May 16, 2011, I wrote to L.W. enclosing the documents to be signed by D.A. In that letter, I stated the following:

...
Therefore, enclosed please find the following:

3. Transfer of land for [the House] for execution by [D.A.], to be held in trust by myself pursuant to clause 4 of the Property Division Agreement.

Tab 4 – Letter (May 16, 2016)
(w/o attachments)

13. On May 19, 2011, I received the signed Transfer of Land, which I placed in my file.

Tab 5 – Letter (May 19, 2016)
(w/o attachments)

⁶ Preamble, paragraph A and paragraph 4

14. On May 26, 2011, I submitted a caveat to the Land Titles Office on behalf of my Client claiming an interest as the beneficial owner of the House pursuant to the Property Division Agreement. The caveat was registered on May 30, 2011.

Tab 6 – Caveat (May 30, 2011)

15. On June 21, 2011, L.W. registered a caveat with the Land Titles Office claiming an interest in the Duplex pursuant to the terms of the Option Agreement.
16. On November 30, 2011, Canada Revenue Agency (“CRA”) registered a writ against title of the House in the amount of \$28,155.00 for unpaid taxes owed by D.A. (the “Writ”). My Client was unaware of the existence of the Writ until August 2013.

Tab 7 – Land Title Certificate

17. In March 2012, my Client received a telephone call from CIBC Mortgages Inc. (“CIBC”), the holder of the mortgage on the House, advising him that the Town of Strathmore had charged outstanding fees for utility bills to the House’s property tax roll at the direction of D.A. However, the Town would not discuss the matter with him because he was not the legal owner of the House. On March 20, 2012, I wrote to the Town in an attempt to resolve the situation. On March 23, 2012, a representative of the Town responded noting that the House was owned legally by D.A. and that the unpaid bills would be charged to the tax roll.

**Tab 8 – Letter (Mar 20, 2012)
Letter (Mar 23, 2012)**

18. On March 28, 2013, D.A. renewed the mortgage on the House with a 7-year closed mortgage without notice to my Client. My Client learned about this renewal several months later, in August 2013.

Tab 9 –Fixed Rate Mortgage Agreement

19. In August 2013, my Client learned about the Writ and advised me that he wanted to have the Transfer of Land registered to avoid any further title issues. I advised him that he would first have to qualify for a mortgage before the Transfer of Land could be registered. He had already spoken to CIBC about paying out the mortgage and was told that he would have to pay a hefty payout penalty. He had also discussed the possibility of assuming the mortgage and was told that CIBC required D.A.’s consent to do so.
20. On August 20, 2013, I wrote to CRA as follows:

Further to the above noted matter please be advised that I represent [R.M.] in a Property Division matter with [D.A.]. I have enclosed for your review the following documents:

...

2. Copy of Transfer of Land, transferring the property to [R.M.] from [D.A.]; and

...

As you will note, [R.M.]’s caveat pre-dates the writ placed on the property

by Canada Revenue Agency. It is our intention to register the transfer of land, therefore we request that your office discharge the writ forthwith and provide my office with confirmation of same, failing which, we will be proceeding with legal action.

...

Tab 10 – Letter (Aug 20, 2013)

21. On September 5, 2013, I received a telephone call from a CRA representative who advised me that CRA would discharge the Writ as soon as the title to the House was transferred. I spoke to R.M. and explained the risk of registering the Transfer before the Writ was discharged. R.M. elected to proceed despite this risk. I then intended to notify L.W. that my client wished to proceed with registration of the Transfer of Land for the House. However, before doing so, I noticed that it contained an incorrect legal description.
22. On September 11, 2013, I wrote to L.W., stating the following:

Further to the above, please be advised that there was an error in the legal description on the Transfer of Land when it was drafted in 2011. I have made the necessary changes, but require your initials to approve same prior to registration with Land Titles.

Would you kindly attend to initialing the changes and deliver same to my office no later than the close of business on Thursday September 12, 2013.

Tab 11 – Letter (Sep 11, 2013)

23. I received the initialed Transfer of Land shortly thereafter, which I filed on September 18, 2013.

Tab 12 – Instrument 131236692 (Transfer of Land)

Tab 13 – Land Title Certificate

24. On September 25, 2013, I wrote to CIBC about the possibility of my Client assuming the mortgage that was in the name of D.A. On October 7, 2013, a representative of CIBC wrote back and stated that my Client would have to apply in person to assume the mortgage.

Tab 14 - Letter (Sep 25, 2013)

Handwritten Response (Oct 7, 2013)

25. I advised my Client that he would have to attend in person to apply for the assumption. I did not follow up with my Client about this.
26. Sometime between September 2013 and May 2014, D.A. learned about the Transfer of Land having been registered.
27. On October 2, 2014, I received a letter from S.W., a lawyer who had been retained by D.A. regarding the filing of the Transfer of Land, which stated in part:

... My client recently discovered that the title of [•] was improperly transferred from my client to yours despite remaining responsible for the

mortgage payments. The parties agreed in the Property Division Agreement that your office would hold in trust a registerable transfer until your client was able to obtain a mortgage sufficient to payout and discharge the mortgage currently registered on title, or at the expiration date of the Option Agreement.

I acknowledge that you advised me that Canada Revenue Agency required the transfer to be registered in your client's name. However, my client advises that CRA never told her that title was supposed to be transferred to remove the writ. Even if CRA required the title to be transferred, your client has failed to obtain approval from the bank and take over the mortgage.

...

Tab 15 – Letter (Oct 2, 2014) (w/o attachments)

28. I responded to this letter on October 24, 2014, stating in part:

... Firstly, with respect to the transfer of [•], I can advise that my client attended CIBC to enquire about assuming the mortgage on the property in October 2013 after he discovered your client had wrongfully allowed the property to be encumbered with her debt to CRA (see attached copy of title). He was advised there would be no problem but that [D.A.] would need to consent to the assumption which apparently she did not. My client attended again this month at CIBC as he believed the assumption had been completed to find that not only has your client refused to consent to the assumption but you have notified them that no information with respect to the mortgage that your client has had no responsibility for nor has she made payment of any money whatsoever toward is to be released to him nor is he allowed to assume the mortgage. Therefore your client's claim that there has been a breach is unfounded. My client is in the process of remortgaging the property and will be paying your client's mortgage out. In addition, as your client has renewed the mortgage under terms with which he does not agree without consulting my client who is the beneficial owner of same, he will be looking to your client for repayment of the payout penalty.

...

Tab 16 – Letter (Oct 24, 2014)

2. Involvement of the Law Society

29. On November 5, 2014, S.W. submitted a letter of complaint to the Law Society, the crux of which was that "... the Transfer of Land that was to be held in trust by M. Joanne Heming, counsel for [R.M.] (pursuant to paragraph 4 of the Property Division Agreement) was improperly registered....".

**Tab 1 – Letter (Nov 5, 2014)
(w/o attachments)**

30. On December 30, 2014, I provided an initial response to the Law Society, in which I discussed my initial representation and my involvement in dealing with the Town and with CRA. Regarding the trust condition, I responded as follows:

... The transfer of land was returned to me with [L.W.'s] initials endorsed thereon without cover letter of any kind. ... It is my position that [D.A.] was notified of registration of the transfer and there were no trust conditions placed upon me regarding use of same and therefore I have breached no trust condition.

...

**Tab 17 – Letter (Dec 30, 2014)
(w/o attachments)**

31. On March 25, 2015, S.W. advised the Law Society that she was no longer acting for D.A., who eventually submitted a Lawyer Complaint Form on her own behalf.

Tab 18 – Lawyer Complaint Form (Aug 25, 2015)

32. On May 28, 2015, I provided a supplemental response to the LSA, which provided in part:

[D.A.] was represented by [L.W.] and as such I could not contact [D.A.] directly to advise of [R.M.'s] intention to use the Transfer of Land. I would have assumed at that time that [L.W.] would obtain her client's instructions in that regard. As the Transfer of Land was returned to me by [L.W.] without any trust conditions, I assumed the responsibility to notify the mortgage company of the change in ownership. It was up to [R.M.] and [D.A.] to make arrangements for the assumption of the mortgage. I advised [R.M.] to make those arrangements.

It is acknowledged that the parties' original intention was for [R.M.] to obtain a new mortgage and that is what was contained in the property division agreement. However, I assumed the parties' were proceeding with assumption of the mortgage in order to remedy [D.A.'s] breach of the contract by allowing the CRA writ to be registered against [R.M.'s] home.

...

With respect to expiry of the option agreement, which is the other reason the transfer of land could be used, I believe [D.A.] still retains her rights under the option agreement and that the discharge of the writ by CRA places her in a better position to exercise that option. I have received from [D.A.] notice that she intends to exercise the option agreement. I have been unable to obtain instructions from my client and assume that [D.A.] is communicating directly with [R.M.] in this regard as I have heard from neither [R.M.] nor [D.A.] for a few months.

Given the foregoing, I had no reason to believe I was placed under any trust condition with respect to use of the transfer of land at the time it was registered and could only assume that [D.A.] was notified by her counsel that the transfer was being used and that she was in agreement with same

as a result.

Tab 19 – Letter (May 28, 2015)

3. Admission of Guilt

33. I admit to the following:

- a. I gave an undertaking not to register the Transfer of Land until the conditions precedent in paragraph 4 of the Property Division Agreement had been satisfied;
- b. At no time before the registration of the Transfer of Land had the conditions precedent in paragraph 4 of the Property Division Agreement been satisfied;
- c. My letter dated September 11, 2013, to L.W. was not adequate notice of my intention to register the Transfer of Land;
- d. L.W.'s initialing of the Transfer of Land was not a waiver of my undertaking; and
- E. The registration of the Transfer of Land was a breach of my undertaking and was contrary to section 6.02(13) of the *Code of Conduct* in effect at the time and is conduct deserving of sanction.

E. **DISCIPLINE HISTORY**

1. 2011: Mandatory Conduct Advisory (“MCA”) and Practice Review

34. On October 20, 2011, a CCP referred me to a Mandatory Conduct Advisory regarding the following citation:

The member misled the Court and failed to inform the Court of all material facts known to the Member in the absence of the Complainant and without proper notice.

35. The CCP also referred me to the Practice Review Committee pursuant to section 58 of the *Act* to carry out a general review and assessment of the Member’s conduct and practice.

36. The MCA concluded successfully in April 2012.

37. I participated in the Practice Review process and my file was closed in April 2013.

2. 2015: Single Bencher Hearing

38. On October 27, 2015, I appeared before a single bencher with respect to the following citations:

1. It is alleged that the Member failed to treat D.A., a fellow solicitor, with courtesy and respect, and that such conduct is conduct

deserving of sanction; and

2. It is alleged that the Member used the threat of a complaint to the LSA in an attempt to gain an advantage, and that such conduct is conduct deserving of sanction.

39. I admitted to the citations and, pursuant to a joint submission, was sanctioned to a reprimand and payments of costs.

F. ADMISSION OF FACTS

40. I admit as facts the statements contained in this Statement of Facts and acknowledge that they shall be used for the purpose of these proceedings.

G. INDEPENDENT LEGAL ADVICE

41. I agree that I have had the opportunity to consult legal counsel and that I have signed this Statement of Facts and Admission of Guilt voluntarily and without any compulsion or duress.

THIS STATEMENT OF FACTS AND ADMISSION OF GUILT IS MADE THIS 25TH DAY OF MAY 2017.

“Joanne E. Heming”

JOANNE E. HEMING

Exhibit “B”

Reprimand

With regard to the reprimand, this is an official reprimand, Ms. Heming, resulting from your failure to perform your obligations as a lawyer and as a Member of the Law Society of Alberta; specifically, for your failure to comply with an undertaking acknowledged under the terms of the agreement between your client and the opposing party.

Pursuant to the terms of that agreement, it was acknowledged that the title would not be registered in favour of your client until such time that your client could pay out and discharge the existing mortgage or until expiration of the option agreement set out in the attachments to the Agreed Statement of Facts. Neither of these events occurred prior to your use of the transfer.

In response to that reality, you initially raised certain issues that caused your client risk and difficulty, including a registration of a writ on title by Canada Revenue Agency; failure of the other party to pay utilities, which were added to the tax account; and a renewal of a mortgage on terms that would have resulted in a significant payout penalty to your client.

The difficulty and the concern that arises from those responses, and I understand those are the initial responses, are two. First of all, those difficulties were all foreseeable when the agreement was drafted, and yet, none of those potential problems were contemplated in the agreement. So in hindsight, the agreement not providing your client perhaps the clearest remedies resulted in you feeling pressure to assist your client by registering title in contravention to your undertaking.

Secondly, at such time as it became apparent that your client had these difficulties, there were remedies of law that your client could have asserted without you having to breach your trust condition, but which you chose not to pursue, and instead, as indicated, I ignored that trust condition.

Those are matters of significant importance because the promise of a lawyer is their bond, and it means something unique to our profession separate from any other profession.

When we promise or undertake to do something, there is a solemnity and a significance that goes to the core of what we do. And you breached that, and that's not acceptable.

That being said, I'm not completely unsympathetic to your difficulty. As a practicing family lawyer myself for some 30 years, I understand only too well the desire to assist clients and the frustration

with the reality that, many times, what they need and what they can afford to have us do are two different things. You commented to that effect in your submissions.

Perhaps the continued negotiation of that agreement and the steps required to protect your client from all future eventualities would have resulted in added legal costs that your client may have had difficulty affording. Perhaps the effort to seek court direction and compensation for your client, when the breaches on the part of the other party became apparent, would again have resulted in added legal costs that your client could ill afford.

Unfortunately, your regulator, the Law Society of Alberta, cannot allow its Members to shortcut legal and ethical obligations in favour of allowing a client an easier or perhaps less expensive course of resolution.

In saying this, I can also advise that, in reviewing the initial complaint, I was not overly impressed with the conduct of the Complainant herself. It is ironic that you were sanctioned for threatening a Law Society complaint to facilitate an outcome, but in the letter of Complainant, implicit in that letter is the same suggestion. And I was concerned by that.

And I'll be clear for counsel for the Law Society. Ms. Wong suggests that, when she couldn't get what she wanted, which was her client getting the equity in the home to which he was not prima facie entitled to, it was then that she reported the matter to the Law Society. I'm somewhat concerned about that, but that doesn't vitiate against your obligation to comply with an undertaking, Ms. Heming.

Now, this questionable conduct, as indicated, while I have some sympathy, doesn't absolve you from your guilt and sanctions to which you've admitted. It does, however, illustrate that I understand the problem that plagues family law practitioners generally: trying to deliver more for less and occasionally allowing their ethical obligations to lapse.

That is something you need to be on guard of, and it sounds like Practice Review is assisting you with that.

I have to be cognizant, however, that this is your second reprimand. I should indicate, for the record, and it should not come as a complete surprise to you when I advise that further sanctionable conduct is not likely to result in a mere reprimand and a fine, and you are looking, potentially, at suspension or disbarment. So you should consider that as you move forward in your practice.

My final comment in this reprimand would be a word of advice coming from another family lawyer. Your client's problems are not your problems. The crisis of access to justice, while real, does not rest on your shoulders to solve.

Sometimes we're pressed, in feeling empathy for our client, to do things to assist them, when the reality is that you didn't create the problem, and you certainly can't solve it by skirting ethical and legal obligations. And my sense is that, to some extent, that's what you did.

It is my hope and my expectation that, having been through this process, really over two sanctionable issues in a relatively short period of time, looking at the previous finding for which you were reprimanded, that it would be unlikely that you would find yourself here, and I would wish you the best as you continue to work in a difficult area, but would hope that this experience has impressed upon you the need not to cut corners when it comes to our obligations as Members of the Law Society.