

**IN THE MATTER OF PART 3 OF THE
LEGAL PROFESSION ACT, RSA 2000, c. L-8**

AND

**IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF MARGARET WHEAT
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

Hearing Committee

Kathleen Ryan, QC – Chair and Former Bencher
Michael Mannas – Adjudicator

Appearances

Kelly Tang – Counsel for the Law Society of Alberta (LSA)
Mona Duckett, QC – Counsel for Margaret Wheat

Hearing Date

June 10, 2021

Hearing Location

Virtual Hearing

HEARING COMMITTEE REPORT

Overview and Summary of Result

1. Margaret Wheat (Wheat) is an experienced senior Alberta lawyer practicing in Vermillion, Alberta. She represented her client, RM, respecting estate planning and matrimonial matters in 2018 and 2019. As at November 2018, RM had been married to his wife, MM, for over thirty years; however, their relationship was deteriorating. RM had a brain tumour and a physical disability. In late 2018, RM sought advice and representation from Wheat. RM wanted to preserve for himself and his eldest son, JM, farmland jointly owned by the couple, including the matrimonial home. After exploring options with Wheat, RM instructed Wheat to prepare a lease agreement to lease the farmland to JM.
2. Wheat knew by February 2019 that MM would not consent to the lease of lands she owned jointly with her husband to their son. Wheat also knew that MM's agreement and consent was required to lawfully make the disposition. Wheat's initial draft of the lease agreement had a blank signature line for MM as a party to the lease. RM did not sign that version of the agreement. Instead, he instructed Wheat to revise the agreement drafted to remove MM's signature line and to show that RM was signing the lease agreement on MM's behalf. Despite multiple documented concerns on executing the

agreement without MM's involvement or knowledge, Wheat changed the draft agreement to show that RM was signing the lease to JM on his own behalf and on MM's behalf as well.

3. Wheat then acted as witness while JM and RM executed the agreement. Wheat, RM, and JM knew well that MM had not agreed to the lease and would not agree to the lease. They likewise knew that MM had given RM no authority to sign any such document on her behalf.
4. The Hearing Committee (Committee) finds that Wheat acted without integrity in assisting her client's dishonest conduct as follows:
 - a) Wheat changed the signatory line to remove MM as a signatory to the lease and to falsely state that RM was signing the agreement on "behalf of MM" when Wheat knew that RM had no such authority;
 - b) Following that change, Wheat executed the agreement as witness knowing that the lease stated that MM leased her land to JM, when in fact Wheat knew with certainty that MM did not lease her land to JM.

In so doing, Wheat's conduct was conduct deserving of sanction. We find the LSA has established the single citation on a balance of probabilities under section 71 of the *Legal Profession Act*, RSA (2000) c L-8 (the *Act*).

5. The reasons for this finding and the hearing report details follow below.

Preliminary Matters

6. On June 10, 2021, the Committee convened a hearing into the conduct of Wheat respecting a single citation:

It is alleged that Margaret Wheat acted without integrity by assisting her client, RM, in dishonest or fraudulent conduct and that such conduct is deserving of sanction.

7. The Committee then further caucused on June 18, 2021. At the time of the hearing and the subsequent caucus, the Honourable Judge Sandra Mah had not yet been appointed by the Provincial Court of Alberta. As Judge Mah has now been so appointed, this decision is issued by the two remaining members of the Committee.
8. There were no objections to the constitution of the Committee or its jurisdiction. There was no private hearing requested. A public hearing proceeded.
9. Wheat and the LSA jointly tendered an Admitted Statement of Facts signed by Wheat. The Statement of Admitted Facts, redacted for confidentiality and privacy, is attached to this decision as Schedule 1.

10. Wheat and MM gave evidence at the hearing. Five senior lawyers also provided evidence respecting their positive history with Wheat as a lawyer and her good reputation and character. The first of these, DT, also gave evidence respecting some of the issues in dispute in the matrimonial litigation and the ultimate role of the lease of the farmland in that dispute.

Evidence

11. RM and MM had been married for over thirty years when RM approached Wheat for matrimonial and estate advice. In 2018, the marriage was breaking down, RM had a brain tumour, and the relationship between MM and her son, JM, was strained. RM wanted to take steps to preserve marital assets, particularly the family farm, for himself and also for his eldest son JM. JM's business was intertwined in the family farm. RM and JM were concerned that the tumour may result in RM's early death or render RM incompetent.
12. Over three decades, MM and RM had together built significant matrimonial assets. Likely the most significant asset was the farm, jointly owned by RM and MM, comprising twelve quarter sections of land, one of which included the matrimonial home (collectively, the Farmland).¹ The Farmland included land the couple had accumulated over their marriage, land that MM had inherited from her father, and the matrimonial home. RM wanted to preserve the Farmland for himself in the divorce and, ultimately, wanted the Farmland to be passed to his eldest son. By early 2019, RM wanted the Farmland to be leased for five years to JM. RM did not want to risk the Farmland passing to MM either through divorce proceedings or, in the event of RM's death, under a right of survivorship. He also wanted to avoid the possibility that the Farmland be sold to a non-family third party.
13. Wheat's legal practice style included the commendable practice habit of papering her file with memoranda to document instructions from her client, thoughts on the file, and instructions to her staff. Her counsel described the memo style as "stream of consciousness" dictation.²

¹ RM and MM had previously gifted a quarter section to JM. This quarter section was not part of the Farmland.

² Wheat contemplated in a November 2018 memo to file the filing of a statement of claim and *lis pendens* and noted that the main objective of the retainer is for RM to maintain the Farmland. On February 6, 2019, Wheat dictated a further memo to file. In it, Wheat states that RM went away for the winter to someplace warm and now, on his return, wants to go forward with the divorce. Wheat contemplated the prompt filing of a matrimonial property action and *lis pendens*. She also noted the prospect of a lease agreement between RM and JM. She did not, at that time, identify that MM was an owner and necessary signatory to any lease agreement. On February 21, 2019, Wheat dictated another memo to file. RM and JM wanted to move forward to lease the Farmland. The memo contained some particulars on the terms of the lease. In the memo, Wheat described the fundamental challenge of RM's objective in that MM was an owner on title, but would probably refuse to sign the lease. She considered adding an acknowledgment to the agreement between RM and JM that MM is an owner, but has not signed the lease. On February 28, 2019, there was another memo to file entitled "file review." This had far more

14. Wheat considered options for RM's plan but was aware that MM was on title to the Farmland. Wheat knew, as a matter of law, that the Farmland could not be leased without MM's consent. She was a joint owner with RM. Wheat knew that there was "difficulty" in RM's plan because MM would "probably refuse" to consent to leasing the Farmland to JM. In February 2019, RM instructed Wheat to put the lease agreement in place despite the lack of agreement from MM. On February 21, 2019, Wheat dictated a memo to file that the lease agreement will "be between dad and son and have an acknowledgement that even though mom's name is on title she has not signed it." Wheat noted that she would execute the agreement with RM and JM whether or not MM would sign it. She further noted that she thought MM could not have a legitimate complaint about this "unilateral action" if the rental rate paid was fair.
15. Wheat's file shows that she considered a number of different options for litigation strategy and for how to properly document RM's planned lease of the Farmland to his son. Wheat was a collaborative family lawyer. She knew she would not be the lawyer going to court in the event of litigation. One litigation strategy she considered was the filing of a statement of claim and *lis pendens* without advising MM. When asked why the claim and *lis pendens* would be filed without notifying MM, Wheat said that the litigation might be perceived by MM as aggressive and would undermine the collaborative process. Wheat did, however, acknowledge that MM would have received notice from Land Titles if the *lis pendens* were registered.
16. At one point, Wheat's view, according to her dictated internal memoranda, was that a judge may enforce the deal made between RM and JM regardless of the lack of MM's agreement. She also considered sending MM a copy of the agreement so that MM could not "claim later they did it behind her back." At this time, Wheat intended to have signatory lines for both RM and MM on the agreement. She said she thought that the agreement would come to MM's attention and that the agreement would then be used in negotiations. In the February 26, 2019 memo, Wheat ultimately determined the draft should have both signature lines and that the agreement should be sent to MM with a reference to her procuring independent legal advice and asking if she would agree to sign it or to have her husband sign on her behalf.
17. Wheat attended to drafting the lease agreement. The initial draft of the lease provided signature lines for RM and MM as lessors and JM as lessee. Wheat met with JM and

detail about the instructions JM was providing on behalf of RM. JM told Wheat that the agreement must provide that RM was to sign on behalf of MM. The memo first instructs that the signature line be input for RM on behalf of MM with intent to mail MM a copy of it. In what was described as a "stream consciousness" style memo, Wheat then reverses her first instructions to send MM a copy and instead instructs two signing lines for the lessors, one for RM and one for MM. Wheat then planned to send the draft to MM to determine if MM had questions or wanted independent legal advice. She planned to ask MM if she would sign it or if MM was ok with RM signing it on her behalf. This was the last memo to file in evidence before the March 11, 2019 meeting to execute the lease with RM and JM. In that meeting, RM said there was "no point" in sending the lease to MM because she would not agree to it.

executed the lease agreement with him. Wheat then met with RM on March 11, 2019 to execute RM's part of the agreement. RM said that there was "no point" in sending the lease to MM because he believed his wife would not sign it. He said that he wanted to, instead, change the lease so that it showed RM signing the lease on his wife's behalf.

18. Wheat then revised the lease as directed. Wheat had the signature line for MM removed, and altered the signature line for RM. The revised document now provided that RM was signing on "his own behalf and on behalf of" MM. RM and JM executed the revised agreement in Wheat's office. Wheat witnessed their signatures.
19. The lease document was titled "Farm Lease Agreement." On the face of it, there were three parties to the agreement: RM, MM, and JM. The "Lessors" were described as both RM and MM. Throughout the agreement, the word "Lessors" was pluralized. Not surprisingly for a lease agreement, the document stated that the "Lessors do hereby lease" to JM the interest in the Farmland as described therein. The lease contained a provision that JM's leasehold interest was caveatable at the Land Titles Office. The Agreement also purported to give JM a right of first refusal to purchase the Farmland. There was no dower consent to the disposition of land despite the fact that the Farmland included the matrimonial home.
20. Wheat knew that MM's agreement was legally required to lease the Farmland. Wheat knew that such agreement did not exist. Wheat understood from RM on March 11, 2019 that MM would not agree and there was no point in sending her the document because she would not sign it.
21. Wheat took steps with RM both directly and through JM to explain that there would have to be an accounting to MM for the farm revenue and that the rate of rent for the lease must be fair. Wheat's evidence was that she did not believe that JM and RM had an intention to deprive MM of any financial interest in executing the lease. However, Wheat also said that she knew that JM and RM may have used the lease to physically deprive MM of possession of the Farmland. She expected that deprivation could later be addressed when MM retained counsel for the litigation.
22. Throughout this time, MM did not know that RM was taking steps to lease the Farmland to JM without MM's consent.
23. On or around March 19, 2019, MM saw an envelope from Wheat's law firm at the matrimonial home. She asked her husband what it was. He said it was nothing. She recognized the "LLP" from Wheat's firm as a legal term. The next morning, MM saw the open letter on a stool and opened it. She confronted her husband on the contents and he asserted to MM that he had leased the Farmland to their son JM.

24. MM immediately disputed the validity of the document. MM's evidence was that she told her husband there's no way a lease could be done without her being present. She said his response was, "Yeah, it can be." He said, "A lawyer did it, so it's done."
25. Around that same time, MM had been taking steps to generate income from the Farmland. The couple had ongoing expenses; RM had a brain tumour and could not work. MM was intent on generating income from the land as the couple had done for decades. She purchased 27 cow calf pairs and they were to be delivered to the Farmland on March 30, 2019. MM gave evidence at hearing that, on that day, JM tried to block the delivery of the cattle. MM said JM assaulted her; the two had a physical altercation and JM tried to forcibly take the keys of the truck MM was driving. MM's evidence of the altercation with her son that day included the following:

"And he was waiving [sic] that lease at me, saying, I've got this land rented. This is my land. I've got this land. These cattle are going to the pound, and you're going to jail. And I said, That lease ain't worth the paper that it's wrote on..."

RM was present at the time of this alleged assault. MM said he did nothing to protect her. MM's evidence was that, going forward from March 19, 2019, the lease agreement allowed her husband and son to do as they pleased. She said they felt they had full authority over the land. After the physical attack by her son, as her husband stood by, she also said there was a factor of fear for her.

26. After the events of March 2019, MM and RM proceeded to litigation. MM stated that she lost significant sums because, although both actions ultimately settled, she incurred \$139,000 in legal fees, including \$74,000 in fees for the action against Wheat, RM, and JM. The \$74,000 was separate and apart from her fees in the divorce itself. MM's view was that she was financially compromised both because of the divorce and because of the conduct of Wheat, her husband, and her son. She testified she had mental distress, physical fatigue, and financial distress.
27. It must be noted that relations between MM and her husband and son were unravelling before Wheat was ever retained. MM stated that JM prevented his children from seeing their grandmother in 2018. MM said that JM was not attending to proper payment of a loan from his parents and that, as early as 2017, JM redirected funds payable to his parents for himself. She said that after the lease agreement was signed, JM stopped repayment of the loan from his parents altogether. Neither RM nor JM gave evidence at the hearing. Wheat's understanding from RM and JM was that the marriage was beyond repair prior to the preparation of the lease agreement. Her understanding preceded any issue with the matter under consideration for this hearing.

28. DT, senior legal counsel, took over RM's matrimonial matter. His evidence was that RM took the position that MM had unilaterally used the couple's joint line of credit to purchase cattle and then, after the cattle were sold and funds were applied to the joint line of credit, MM drew down the line of credit again for her own use.
29. DT stated that, in the matrimonial litigation, the lease agreement was "never followed," but he acknowledged that he was not clear on what JM did respecting the land and assuming authority on it after March 2019 and therefore could not comment on the extent to which JM asserted possession of the Farmland. DT considered the lease agreement to be invalid and hence ignored it. It would not have been helpful for his client if he had tried to rely on it in court.
30. DT was one of five senior counsel who gave evidence respecting Wheat's character and reputation in the legal community. These witnesses stated that Wheat is a lawyer of high integrity. They uniformly stated that she is trustworthy, ethical, and honest. Their evidence was that these events have not changed her reputation in the legal community.

Submissions of the LSA

31. The LSA submits that Wheat's intention was to assist RM and JM to enter into a lease agreement behind MM's back to her detriment, or alternatively, without regard to MM's interests at all.
32. The LSA further submits that the suggestion that the three-party lease was prepared to document the intention of two of the three parties lacks an air of reality. Similar to Wheat's submission below, the LSA says that the internal memoranda prepared by Wheat contemporaneous with events is strong evidence and should be preferred to evidence that is inconsistent with it.
33. The LSA submits that MM suffered economic and other loss as a result of Wheat's conduct in assisting her client's dishonest or fraudulent conduct. In that regard, the LSA submits that it has proven deprivation as set out in *Law Society of Upper Canada v. Ron Allan Hatcher*, 2012 ONLSAP 27, quoting *R. v. Theroux*, 1993 CanLII 134 (SCC). In that regard, the LSA submits that it is no defence to an allegation of criminal fraud, or assisting fraud, that the accused hoped that the deprivation would not occur or that they felt there was nothing wrong with what they were doing. The concept of risk is imputed into deprivation. Deprivation is made out if the accused's dishonest or fraudulent conduct puts the economic or property interests of a third party at risk.
34. In this matter, the LSA submits that Wheat knew that her client was entering into a lease to which MM did not agree. In fact, Wheat knew that MM would have vehemently opposed it. In so doing, Wheat assisted in RM's dishonest or fraudulent conduct that put MM's legitimate economic and property interests at risk.

35. The LSA states JM asked Wheat what would happen if MM did not consent to the deals that JM and RM made. Wheat told JM to make the deal anyway and that a judge would not interfere if it was reasonable and JM was not trying to take advantage of his parents.
36. Regardless, the LSA states there is no way to view the March 11, 2019 agreement other than as dishonest and fraudulent. There has been deprivation as a result of the conduct of Wheat. The LSA submits the citation is therefore made out.
37. The LSA states that the conduct is dishonest because JM and RM, with Wheat's assistance, misrepresented MM's consent to the lease. The LSA states it is fraudulent because the dishonest conduct has resulted in both risk of deprivation and actual loss to MM.
38. In citing the *Act*, the LSA states that Wheat's conduct is deserving of sanction because it is incompatible with the best interests of the public and the members. It further tends to harm the standing of the profession generally. It is incompatible with the best interest of the public if lawyers can assist their clients in making unilateral dispositions of jointly owned land without the knowledge or consent of the other joint owners of the land. This is also contrary to the principles of the Torrens system and contrary to the Code of Conduct in that all lawyers have a duty to act with honesty and integrity.
39. The LSA urged the Committee not to place undue weight on the substantial character evidence adduced by Wheat, especially at the merits phase of the hearing. The LSA contended that character evidence has little weight in determining whether the alleged conduct described in the citation occurred and whether such conduct is deserving of sanction under section 49 of the *Act*.

Submissions of Wheat

40. Wheat submits that this hearing is not about whether what she did was wrong. Wheat acknowledged in her closing submissions that it was wrong. Wheat argues that the issue, closely tied to the language of the citation, was whether Wheat had intent to assist her client in doing something that was dishonest or fraudulent. Wheat denies there was any such intent. She denies that she acted without integrity. In this regard, she states the LSA has failed to prove, on a balance of probabilities, that she intended to assist her client in dishonest or fraudulent conduct.
41. From Wheat's perspective, she did not have the same level of information respecting the history of MM, RM, and JM's relationship that she did after this matter was concluded. Counsel effectively urged caution in viewing these events in retrospect. Likewise, MM testified to evidence at the hearing, some of which was not information available to Wheat in giving advice to RM prior to March 11, 2019.

42. Wheat argues that the best evidence of her intent is in the memos dictated to file which were tendered into evidence. Wheat states that she was trying to give effect to what she understood as to who would be operating the farm and that there would be a need to account to MM for the proceeds. Although it was wrong and not proper, she says, to draft an unenforceable lease, and then allow it to be signed by someone who had no actual authority to sign it, this does not equate with dishonest conduct.
43. Wheat pointed to the multiple memos on file, many of which contemplated two signature lines and a stated intent to contemporaneously notify MM of JM and RM's plan.
44. Wheat submits this evidence is analogous to a situation where one spouse depletes the contents of a joint bank account without the other's knowledge or consent. The behaviour is wrong, but it is not dishonest or illegal.
45. Wheat says the LSA cannot meet their burden because the evidence in her internal memos shows that she had no dishonest intent. Wheat states that her memos did not simply state that RM and JM could do the deal and go forward. It was contingent upon the deal being fair, that JM could not take advantage of the situation, and that there would be a need to account.
46. Wheat further states that the conduct of RM was not illegal. She states that this was not a patent forgery. She states the LSA has not proven that RM's intent was dishonest.
47. Wheat cautioned the Committee against over reliance on cases involving patent dishonesty and urged the Committee to consider the decision in *Law Society of Upper Canada v. Tariq Tayab Shah*, 2013 ONSLAP 7 (CanLII) respecting the important issue of her intent.

Analysis and Decision

48. The Committee finds that RM, together with JM, intended to deprive MM of the benefits of her ownership and possession of the Farmland prior to litigation and without her consent. On March 11, 2019, when it became clear to RM that the lease agreement required MM's consent, RM instructed his counsel to remove the signature line for MM on the lease and to falsely assert that he had authority to sign the agreement on behalf of his wife. Wheat clearly knew that MM would not have agreed to the lease. RM told her this outright. Wheat also clearly knew that MM's husband had no authority to sign any agreement on behalf of MM purporting to grant a disposition in land to JM at the time of execution of the Farmland Lease Agreement on March 11, 2019.
49. Wheat had full knowledge of RM's intent. Wheat had also extensively documented scenarios in considering options for execution of this agreement in advance of March 11, 2019. While JM conveyed RM's desire to sign the lease and acquire control of the

Farmland, Wheat looked to proper options to give effect to this intent. These included the following options:

- a) commencing a matrimonial property action and filing a *lis pendens*;
- b) having RM and JM alone sign the agreement and leaving MM's signature line blank together with noting on any agreement RM's acknowledgement that MM, as owner, had not agreed to the lease; and
- c) advising MM of the proposed lease, sending a draft or partly executed agreement and recommending independent advice while seeking MM's consent and/or the authority of RM to sign on her behalf.

50. Unfortunately, Wheat's client instructed none of these options. At the critical moment of execution on March 11, 2019, the client instructed something Wheat knew he had no authority to do, something that would render the putative executed agreement to be a misrepresentation at its core. Unfortunately, Wheat capitulated to her client's request. She put in place an agreement that she knew was false on its face to advance her client's dishonest intent.
51. We agree with Wheat that the memos reflect her intent leading up to the execution of the agreement on March 11, 2019. Unfortunately, her actions on March 11, 2019 betrayed and contradicted that intent. Her intent was no longer to find an ethical solution to a thorny problem. Wheat's file history showed she was aware of multiple legitimate paths forward, and instead, at her client's insistence, she took the path that facilitated dishonesty on the face of the agreement to her certain knowledge.
52. RM's conduct was dishonest. The authorities provided demonstrate that the term dishonesty in a civil context has largely the same meaning as fraud. In *Hatcher*, citing *Theroux*, the Law Society Appeal Panel considered both criminal and civil fraud in the context of an allegation that a lawyer assisted in a dishonest or fraudulent series of transactions. In the criminal context, fraud is a dishonest act coupled with deprivation in that the victim's economic or property interests are prejudiced or put at risk.
53. RM represented that he signed the lease on behalf of his wife, when in fact he knew he had no such authority. Wheat likewise knew subjectively of her client's dishonesty. She knew that RM did not have MM's authority to sign the lease; she knew that it was the opposite. Instead of shutting down the request and counselling her client on ethical alternatives, consistent with her prior brainstorming memos on her file where she agonized over the proper approach to the problem, she instead facilitated and assisted this dishonest conduct by revising the agreement to falsely reflect that authority. Then she acted as witness to same. The decision Wheat made to cross the ethical line on March 11, 2019 may only have spanned a brief period, but she did cross that line. In this regard, that strong evidence of RM's intent in her file history only serves to underscore that she knew many options were available to her client, but she instead chose one that compromised her integrity to give effect to her client's improper demands.

54. Wheat said in evidence that her client would be obligated to account for the unilateral disposition of Farmland by a lease to his son. She described that RM was “almost in a position of a trustee... in the nature of a fiduciary obligation.” While accountability would logically flow as part of the damages from this conduct, the availability of damages for the misconduct does not create a license to engage in it. Wheat knows this as an experienced lawyer. Wheat should have told her client from the outset that he could not make a disposition of the Farmland without the joint owner’s agreement or court order. From there, options could be considered including documenting the intentions of RM and JM. Litigation counsel could then have tendered them in an interim possession application or in alternative dispute resolution. Wheat had actual knowledge that the agreement showing RM as signing the lease “on behalf of MM” was false and that the agreement portrayed a consensus amongst three parties that did not exist.
55. It is trite law that consensus is necessary for an agreement. Here, on the face of the “Farm Lease Agreement,” there were three requisite parties to the agreement: the two owners of the Farmland and the son who intended to lease the Farmland. A joint owner of land cannot facilitate the removal of the other owner’s interest in that land by falsely asserting that owner’s agreement to it. We note that this purported disposition also included the matrimonial home and would otherwise engage the obligations of the *Dower Act*, RSA 2000 c D-15.
56. As amended and executed, the “Farm Lease Agreement” did not reflect the agreement of one of the named parties to it. Indeed, the lawyer amended the agreement for the very purpose of bypassing the joint owner’s agreement. RM, JM, and Wheat all knew that MM would not agree to the lease. So alternative wording was concocted to falsely show agreement and then the false agreement was executed. This is conduct deserving of sanction.
57. The Committee rejects the joint bank account analogy. A joint bank account can be lawfully drawn down to zero by any joint account holder. Land jointly owned, particularly land encompassing the matrimonial home, cannot be subject to disposition in this manner without consent of the joint owners or court order. Wheat knew this. The Committee finds this to be the reason that Wheat agonized to find ethical options in the weeks prior to March 11, 2019 to give effect to RM’s plan.
58. It is not an answer for Wheat to say that the document was not intended to be used or that negotiations were imminent. Were that the case, it need not, and should not, have been altered or executed. Wheat’s evidence that she never intended for it to be used or registered at Land Titles is inconsistent with the content of the document itself and her internal memos that stated a judge may give effect to the “deal” despite the absence of MM’s consent. On its face, the document purports to provide a caveatable interest in the Farmland and a right of first refusal for its purchase.

59. JM was the intermediary for the relay of instructions and advice for his father because of RM's brain tumour and disability. RM and JM understood from Wheat that a judge may uphold the agreement. Counsel has admitted that the fact that Wheat advised her client that the deal may be upheld does not excuse her conduct if the Committee finds that the conduct of her client was otherwise dishonest. Further, at or around the time this advice was given, the format of the agreement was bilateral between JM and RM only and was to expressly acknowledge that MM's consent was absent.
60. It was entirely foreseeable that the lessee would try to assert his newly acquired false entitlement under the lease. Wheat may not have foreseen the severity of the outcomes, but Wheat knew that she was assisting in creating a risk that may immediately and improperly cause MM to be dispossessed of land she owned jointly with her husband in the absence of her agreement or court order. The lease appears to have directly led to a series of bad outcomes, including a very physical confrontation between JM and his mother with him waving the lease at her and telling her she was going to jail. It is hardly surprising that JM would assert entitlement to the lands when JM and RM intentionally bypassed MM's consent in executing the lease, all done entirely with Wheat's knowledge and assistance. Accordingly, although we agree with Wheat that the proper lens of inquiry is the knowledge and intent Wheat had leading up to and during the execution of the March 11, 2019 lease, even viewed through that lens, Wheat's conduct clearly crosses the line.
61. Wheat knew RM and JM intended to make a disposition of MM's land and remove her from her home, all without prior negotiation, without her foreknowledge or agreement, and without prior court order. This was an improper and dishonest scheme and Wheat facilitated it.
62. The Committee stresses that lawyers frequently draft proposals, orders, agreements, and other documents that reflect their client's intent with knowledge that the other party may not, or indeed will not, agree. There is generally no misconduct or mischief in drafting such documents. They may form a useful platform for negotiation and problem solving.
63. That is not what happened here. Had the lease stayed in its original form, with a blank signature line for MM's consent, with JM and RM executing it with Wheat for their respective parts, that would not be conduct deserving of sanction. Indeed, it would have given effect to RM's intentions and memorialized them at a time when RM feared illness might shorten his life or compromise his competence. Doing this would not have improperly impacted MM's rights as joint owner of the Farmland. It would have instead reflected the true state of affairs, that is, that JM and RM were entirely *ad idem* as to how to move forward with the Farmland during the divorce. Importantly, it also would have reflected that the agreement did not have the requisite consent from MM, the other joint owner of the Farmland.

64. On March 11, 2019, Wheat capitulated to an entirely improper client request and, in so doing, abandoned her usual high integrity to assist in the creation and the execution of an agreement she knew to be false on its face and falsely executed. It was more than just unenforceable; it was a misrepresentation of the fundamental prerequisites of any agreement: consensus and execution.
65. Lawyers are required to uphold the law and act with integrity, even when their clients direct them to do otherwise. This is where the profession proves its mettle. In fact, it is precisely when circumstances are the most challenging that it is most important for lawyers to stand their ethical ground. The administration of justice and all participants in that system of justice are entitled to nothing less from this profession. Sometimes lawyers have to save their clients from themselves. This was such an occasion.
66. In revising the agreement to ostensibly depict an agreement that Wheat knew did not exist, in falsely reflecting that RM had MM's authority to execute the agreement, and then in executing it as witness with RM and JM, she assisted her client in dishonest conduct. It is not necessary to consider the continuum of misconduct in this matter as was considered in *Shah*. The Committee finds Wheat had actual knowledge of her client's dishonest conduct. We find the LSA has proven the citation on a balance of probabilities. Dishonest conduct and deprivation have been established as has been Wheat's integrity breach in assisting it. Wheat's conduct is worthy of sanction.

Concluding Remarks

67. The next phase of these proceedings is sanction and other steps necessary to the conclusion of this matter, including costs. We direct that the hearing on sanction and the necessary concluding matters be scheduled with the parties.
68. The exhibits, other hearing materials, and this report will be available for public inspection, including the provision of copies of exhibits for a reasonable copy fee, except that identifying information in relation to persons other than Wheat will be redacted and further redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 98(3)).

Dated at Edmonton, Alberta, September 16, 2021

Kathleen Ryan, QC

Michael Mannas

IN THE MATTER OF THE *LEGAL PROFESSION ACT*
AND
IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF
MARGARET WHEAT
A MEMBER OF THE LAW SOCIETY OF ALBERTA
HEARING FILE NO. HE20200239

STATEMENT OF ADMITTED FACTS

INTRODUCTION

1. This hearing arises out of one complaint resulting in one citation.

BACKGROUND

2. I was admitted as a member of the Law Society of Alberta (the "LSA") on July 6, 1979. My current status is Active/Practising.
3. I practice law in Vermilion, Alberta in the following areas: estate planning and administration, family law, real estate conveyancing, and corporate and commercial law.

CITATIONS

4. On October 20, 2020, the Conduct Committee Panel directed the following citation:
 1. It is alleged that Margaret Wheat acted without integrity by assisting her client, R.M., in dishonest or fraudulent conduct and that such conduct is deserving of sanction.

FACTS AND EXHIBITS

5. In November 2018, [RM] ("[RM]") retained me to represent him in relation to issues arising out of his separation with his former spouse, [MM] ("[MM]").

Letter to LSA, dated July 24, 2019

6. During my representation, I communicated with [RM] through his son, [JM] ("[JM]"), at [RM]'s request. [RM] has a brain tumor and is largely dependent on [JM] because of the physical disability caused by the tumor and also because [JM] was farming on some of the land. [RM] did not correspond by email so all emails went to [JM].

**Letter to LSA, dated July 24, 2019
Dictation Memo, dated November 19, 2018**

7. Initially, [RM] indicated that he preferred to resolve the issues arising out his separation by negotiating a settlement with [MM], rather than initiating Court proceedings.

Letter to LSA, dated July 24, 2019

8. At my first meeting with [RM] and [JM] on November 13, 2018, [RM] gave me some information about his and [MM]'s assets and property, which included 12 quarter sections of land in Alberta (the "Farmland"). The Farmland was owned by [RM] and [MM] as joint tenants. One of the quarter sections of the Farmland was mortgaged in support of a loan to a haying corporation owned by [JM]. [RM] and [MM] had also gifted an additional quarter section of land, not part of the Farmland, to [JM].

Dictation Memo, dated November 19, 2018

9. At this same meeting, we discussed the possibility of issuing a Statement of Claim for Divorce and Division of Matrimonial Property without serving it on his wife, in order that an action could be commenced and a Lis Pendens could be filed in case [RM]'s brain tumor rendered him mentally incompetent or caused his death in the future. Then [JM] could carry on the litigation on behalf of [RM]'s estate and ensure that the farm land wasn't lost, in the sense that [MM] (as the sole surviving joint tenant) would gain full control of the Farmland and could sell it to someone other than [JM], who was currently farming on some of the Farmland.

Dictation Memo, dated November 19, 2018

10. On February 5, 2019, I was advised by [JM] during a telephone call that [RM] no longer believed he would be able to resolve the issues arising out of his separation by negotiating with [MM]. [RM] wished to commence divorce proceedings. I do not represent clients at Court proceedings and had advised [RM] of this during our first meeting. As such, I suggested that my colleague, [JK] ("[JK]"), assume conduct of [RM]'s family law matter.

Letter to LSA, dated July 24, 2019

Dictation Memo, dated February 6, 2019

11. During this same telephone call, [JM] advised me that he and [RM] had come to an agreement for [JM] to lease the Farmland and that they wished to have a lease agreement put in place.

Dictation Memo, dated February 6, 2019

12. [JM] asked me what would happen in the event [MM] did not agree to the deal that [RM] and [JM] were making regarding the Farmland. I advised them if they were reasonable and as long as [JM] was not trying to take advantage of his parents, they could go ahead and make a deal, and that a judge may not take issue with it.

Dictation Memo, dated February 6, 2019

13. [RM] decided to retain [JK] to handle his divorce and matrimonial property issues and he retained me to prepare a Farm Lease Agreement to lease the Farmland to [JM].

14. In a memo I did to [JK], I advised him "I have instructions to prepare a farm lease agreement and I will do so and will have it signed by both [JM] (sic) and [RM] whether or not Ms. [MM] signs it. As long as it is a proper management of a matrimonial asset and the rent payable meets the going rate, I don't think that Ms. [MM] can have any ligitimate (sic) complaint about such a unilateral action taken by her husband. However, I would, if

you have any different thoughts on that, or recommend a different course of action, it should be considered.”

File Overview Memo MMW, undated

15. I was advised by [JM] that [MM] would probably refuse to sign the Lease, but that [RM] and [JM] still wished to proceed with having the Lease put in place. In a file memo dated February 21, 2019, I dictated:

The difficulty here is that we want to put a farm lease agreement even though mom probably would refuse to sign it. The agreement will be between dad and son and have an acknowledgment that even though mom’s name is on title she has not signed it.

Dictation Memo, dated February 21, 2019

16. In February 2019, I prepared a Farm Lease Agreement (the “Lease”) in draft which I believe was sent to [RM] for his review. The draft Lease listed both [MM] and [RM] as Lessors and provided that [JM] would farm the land for a five-year period for an annual rent of \$30,000. The draft Lease contained signature lines for both [MM] and [RM].

Letter to LSA, dated July 24, 2019

17. In another file memo dated February 28, 2019, I dictated the following regarding the preparation of the Lease:

- In listing his dad as owner have to say his dad is signing on behalf of both the mom and dad. I am trying to think of a way in which we would notify the mom.
- When we prepare it put the mom and the dad both on as lessors but on the signing line put the dad to sign on behalf of both lessors. Then I will ask for instructions to mail a copy to the mom just so she cannot claim later they did it behind her back. Maybe don’t send her a copy with the dad signing on her behalf, have it with her signing line and if she has any questions on it or wants independent legal advice go ahead, if she wants to sign it go ahead or is she okay with her husband signing on her behalf.

Dictation Memo, dated February 28, 2019

18. The final, signed version of the Lease, dated March 11, 2019 does not have a signature line for [MM], but instead has a signature line for [RM] “on his own behalf & on behalf of [MM]”. I witnessed [RM]’s and [JM]’s signatures on this Lease.

Farm Lease Agreement

19. I did not contact [MM] regarding the Lease and did not send her an executed copy.

Information Concerning a Lawyer Form, dated June 24, 2019

20. On September 17, 2019, [MM] filed a Statement of Claim against, inter alia, [RM], [JM], my law firm, and me, seeking damages for alleged losses caused by the Lease.

21. This lawsuit was subsequently discontinued against me and my law firm.

22. In September 2020, [MM], [RM] and [JM] agreed that the Lease was unenforceable due to [RM] executing same despite not having [MM]'s authority or consent to enter into same, and they agreed to set aside the Lease.

THIS STATEMENT OF ADMITTED FACTS AND EXHIBITS IS MADE THIS 27th DAY OF MAY, 2021.

MARGARET WHEAT