

**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 PETER B. MASON  
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

**Hearing Committee**

Deanna Steblyk, QC – Chair  
Jodi Edmunds – Adjudicator  
Cal Johnson, QC – Bencher

**Appearances**

Karl Seidenz – Counsel for the Law Society of Alberta (LSA)  
Kenneth Fitz – Counsel for Peter Mason

**Hearing Date**

December 20, 2021

**Hearing Location**

Virtual Hearing

**HEARING COMMITTEE REPORT**

**Introduction and Overview**

1. Peter B. Mason is an Alberta lawyer with a solo practice in real estate, corporate, and wills and estates law. He was called to the bar in June 2007.
2. After identifying shortages in Mr. Mason's firm trust account, the LSA Trust Safety Department referred a complaint to the Conduct Department in June 2019. The Conduct Department directed an investigation, which resulted in a referral to the Conduct Committee.
3. On December 15, 2020, the Conduct Committee directed that a Hearing Committee (Committee) be appointed to consider the following conduct (collectively, Citations):
  1. It is alleged that Peter B. Mason failed to comply with Rules 119.21(2) and 119.21(3) by not confirming the certifications he deemed to give upon signing trust cheques were in place, and that such conduct is deserving of sanction;
  2. It is alleged that Peter B. Mason failed to comply with Rule 119.24(1) by failing to maintain money on deposit in his trust account in an aggregate amount

sufficient to meet all trust obligations, and that such conduct is deserving of sanction;

3. It is alleged that Peter B. Mason failed to comply with Rule 119.24(3) by failing to immediately notify the Law Society that a deficiency in an amount greater than \$2,500.00 existed in his trust account, and that such conduct is deserving of sanction;
  4. It is alleged that Peter B. Mason failed to comply with Rules 119.36(1), 119.36(2), 119.36(3), and 119.36(4) by failing to maintain his firm's prescribed financial records, and that such conduct is deserving of sanction;
  5. It is alleged that Peter B. Mason failed to comply with Rule 119.36(4)(d) by failing to conduct and maintain monthly bank reconciliations of his trust account, and that such conduct is deserving of sanction;
  6. It is alleged that Peter B. Mason failed to comply with Rule 119.40 by failing to conduct monthly bank reconciliations of his general account, and that such conduct is deserving of sanction; and
  7. It is alleged that Peter B. Mason failed to properly supervise his staff and that such conduct is deserving of sanction.
4. By way of a Statement of Admitted Facts, Exhibits, and Admissions of Guilt (Statement), Mr. Mason admitted his guilt in respect of the Citations.
  5. On December 20, 2021, the Committee convened a hearing to determine whether the Statement was in the appropriate form, and to determine the appropriate sanction for Mr. Mason's conduct based on the Citations and the Statement.
  6. The Statement was entered into the hearing record as an exhibit, and the parties made joint submissions on sanction and costs.
  7. The Committee found that based on the facts of this case, the appropriate sanction was, as jointly recommended by the parties, a one-month suspension. In accordance with section 72 of the *Legal Profession Act (Act)*, the Committee ordered that Mr. Mason be suspended for one month commencing on December 24, 2021 and concluding on January 23, 2022.
  8. In addition, pursuant to section 72(2) of the *Act*, the Committee ordered Mr. Mason to pay the LSA \$10,000 in costs. He was ordered to pay the costs within four months of his reinstatement as a member of the LSA.
  9. This report provides the Committee's reasons for the sanction and costs orders.

## **Preliminary Matters**

10. There were no objections to the constitution of the Committee or its jurisdiction, and a private hearing was not requested. Accordingly, a public hearing into Mr. Mason's conduct proceeded.
11. There were no other preliminary matters raised.

## **Findings on Liability**

12. According to the Statement, the Citations arose from Mr. Mason's conduct as the Responsible Lawyer for his firm. His firm used three different software tools for its real estate transactions. They were not used correctly, and his firm's general and trust accounts were not correctly reconciled.
13. In June 2018, Mr. Mason hired a bookkeeper to provide services to his firm and review its accounts since it was founded in August 2016. In September 2018, he replaced the bookkeeper with an accountant who had auditing experience. The accountant was of the view that the work to date had not been done correctly.
14. On March 19, 2019, the accountant alerted Mr. Mason to potentially significant trust shortages in the firm trust account. Mr. Mason did not immediately report this to the LSA because he wanted to understand the cause of the problems and the extent of the shortages before doing so.
15. On June 19, 2019, due to independent concerns identified by LSA staff, the Trust Safety Department imposed conditions on Mr. Mason's ability to continue operating his firm trust account. He was required to submit month-end bank reconciliations for March, April, and May 2019 by June 26, 2019, and to acknowledge the conditions by June 21, 2019. He returned the letter acknowledging the conditions on June 19, 2019.
16. Mr. Mason's accountant remitted the requested information to the Trust Safety Department under cover of a letter from Mr. Mason describing some of the issues with the firm trust account and his plan to remedy them.
17. On June 27, 2019, the Trust Safety Department identified a total trust deficiency of \$473,278.99 as of May 31, 2019, spread over 441 clients. The shortages ranged from \$0.01 to \$15,600.
18. On July 15, 2020, in response to a request from the LSA, Mr. Mason provided documents outlining the history of this matter and summarizing the issues that led to the trust deficiencies. The details are set out in the Statement. Mr. Mason implemented his accountant's recommended solutions to the identified issues.

19. Between June 25, 2019 and July 15, 2019, Mr. Mason made several deposits to his trust account to replace the missing funds. As of July 15, 2019, all deficiencies in the trust account had been rectified.
20. According to the Statement, Mr. Mason did not misappropriate funds from his trust account. The issues were caused by poor accounting and record-keeping practices over several years. However, he admitted that he failed in his duties as Responsible Lawyer and admitted the Citations.
21. For an admission of guilt to be acceptable, the admission must have the following elements:
  1. the admission must be made voluntarily and free of undue coercion;
  2. the lawyer must unequivocally admit guilt to the essential elements of the citations;
  3. the lawyer must understand the nature and consequences of the admission; and
  4. the lawyer must understand that the hearing committee is not bound by any submission advanced jointly by the lawyer and the LSA.
22. At the outset of the hearing, the Committee accepted the Statement as being in the appropriate form pursuant to section 60 of the *Act*. Since the admissions in the Statement were accepted, each admission was deemed to be a finding of this Committee that Mr. Mason's conduct was conduct deserving of sanction.
23. According to the LSA Investigation Report, Mr. Mason was very cooperative. He provided his accounting records and worked with staff to resolve the trust account deficiencies. The investigator stated, "It is reasonably apparent that with the able assistance of his accountant, [Mr.] Mason has identified the problems giving rise to the deficiency, he has quantified and repaid that deficiency, and he has implemented controls to ensure the proper maintenance of his law firm accounts going forward."
24. The Committee accepted that the issues with Mr. Mason's firm accounts were the result of inadequate processes and controls, and poor bookkeeping and accounting practices, rather than the result of any intentional or fraudulent acts, for personal gain or otherwise. The Committee further accepted that while the total amount of the trust shortfall was large, it reflected many small amounts incurred over a large number of small residential real estate transactions. The Committee also accepted that no actual harm to the public resulted.

### **Joint Submission as to Sanction and Sanction Principles**

25. As mentioned, the parties agreed that the appropriate sanction was a one-month suspension, and that Mr. Mason should be ordered to pay \$10,000 in costs.

26. While hearing committees are not bound to accept joint submissions as to sanction, such submissions carry significant weight. The case authorities indicate that they should be accepted unless they are demonstrably unfit and contrary to the public interest. In *Law Society of Alberta v. Llewellyn*, 2018 ABLS 11, for example, the hearing committee described this as a "high standard" (at paragraph 11). The committee also noted (at paragraph 10):

The Committee is not bound by joint submissions on sanctions. However, the Committee is required to give serious consideration to jointly tendered submissions, and accept, unless they are found to be unfit, unreasonable, contrary to the public interest, or there are good and cogent reasons for rejecting the joint submissions.

27. This is consistent with the leading authority, *R. v. Anthony-Cook*, 2016 SCC 43, in which the Supreme Court of Canada held that a joint submission should be accepted unless the proposed sanction "would bring the administration of justice into disrepute or is otherwise contrary to the public interest" (at paragraph 32). *Anthony-Cook* is a criminal law case, but it has been applied in other LSA conduct matters.
28. According to paragraph 187 of the LSA Pre-Hearing and Hearing Guideline, October 1, 2021 (Guideline), the "fundamental purposes of sanctioning are to ensure the public is protected from acts of professional misconduct and to protect the public's confidence in the integrity of the legal profession". The Guideline sets out a number of factors that may be taken into account when determining sanction, including, among others, the goals of specific and general deterrence and denunciation of the misconduct (at paragraph 188).
29. Paragraph 200 of the Guideline indicates that "[t]he prime determinant of the appropriate sanction is the seriousness of the misconduct". It then suggests that in determining the seriousness of the misconduct, a hearing committee may consider a list of nine factors, including the degree to which the misconduct constitutes a risk to the public or to the reputation of the legal profession, the harm or potential harm caused by the misconduct, the number of incidents involved, and the length of time involved.
30. Paragraph 206 of the Guideline indicates that a hearing committee may also consider additional factors that have either an aggravating or mitigating effect on the appropriate sanction. These may include whether the lawyer has a prior discipline record, whether the lawyer acknowledged their wrongdoing, any expression of remorse, the lawyer's level of cooperation with the LSA's conduct process, whether restitution has been made, and the extent to which the lawyer benefited from the misconduct.

## LSA Submissions

31. After summarizing the facts of this matter, counsel for the LSA noted that there was no defalcation of funds. While the total amount of the trust shortage was large, Mr. Mason repaid it in full. In addition, he spent tens of thousands of dollars on bookkeeping and

accounting services to try and remedy the issues, then changed his accounting practices to ensure these issues do not occur again.

32. LSA counsel submitted that there are both aggravating and mitigating circumstances in this matter. In his view, the aggravating considerations include:
  1. that Mr. Mason was trained to operate a trust account but did not implement the training;
  2. that Mr. Mason did not report the trust shortages to the LSA upon discovery as required; and
  3. the large amount of money involved.
33. According to LSA counsel, the mitigating considerations include that Mr. Mason:
  1. has no prior discipline history with the LSA;
  2. cooperated with LSA staff and admitted the facts and his guilt; and
  3. received no personal benefit from his misconduct – to the contrary, he repaid the entire trust shortage and spent additional amounts to rectify the situation.
34. In addition, LSA counsel pointed out that no client harm occurred.
35. To demonstrate that the proposed sanction is proportional to the sanctions ordered in similar past cases, LSA counsel referred to five comparable past decisions involving admitted conduct, including:
  1. *Law Society of Alberta v. Venkatraman*, 2013 ABLIS 29 (allegations included failure to serve several clients, supervise an employee, and follow the LSA's accounting rules; the lawyer was suspended for one month and ordered to pay costs of \$10,481.63);
  2. *Law Society of Alberta v. Vanderleek*, 2014 ABLIS 19 (allegations included failure to comply with the LSA's accounting rules, respond to the LSA on a timely basis, and be candid with LSA staff; the lawyer was suspended for one month and ordered to pay the actual costs of the hearing on reinstatement);
  3. *Law Society of Ontario v. Senthoooran*, 2020 ONLSTH 66 (allegations included failing to maintain proper books and records, and mishandling trust funds; the lawyer was suspended for one month, ordered to participate in a spot audit at her own expense, and ordered to pay costs of \$7500);
  4. *Law Society of Upper Canada v. Kaminski*, 2017 ONLSTH 200 (allegations included failure to serve a client, trust fund issues, failure to notify his insurer of a potential claim, and failure to cooperate with the law society; the lawyer was suspended for one month and directed to continue therapy, engage in a

mentorship relationship, and participate in a practice review at his own expense; he was also ordered to pay costs of \$6500); and

5. *Law Society of Upper Canada v. Burgess*, 2016 ONLSTH 143 (allegations included failing to keep financial records and deliver accounts in a timely fashion; the lawyer was suspended for one month and ordered to pay costs of \$3000).
36. With respect to costs, LSA counsel noted that the LSA's actual costs were \$11,931.19. However, the parties had agreed that costs would be capped at \$10,000.

### **Mr. Mason's Submissions**

37. In support of the jointly recommended sanction, Mr. Mason's counsel emphasized that there was no intentional misconduct or misappropriation of funds, no money was lost, no client harm or other harm to the public occurred, and Mr. Mason accepted responsibility in a timely fashion.
38. Counsel acknowledged that Mr. Mason did not report the trust shortages to the LSA immediately as required. However, like LSA counsel, he emphasized that Mr. Mason not only repaid the full amount, he also spent considerable funds to rectify the problems and put new processes in place to ensure it did not happen again. In addition, counsel stressed that while the total amount of the trust shortage was large, the shortages per file were relatively small.
39. Furthermore, counsel reiterated that Mr. Mason has no prior discipline record and cooperated with the LSA throughout, including during the investigation and by making timely admissions of guilt.
40. With respect to the comparable decisions cited by LSA counsel, Mr. Mason's counsel indicated that he found the *Venkatraman* and *Senthooran* decisions the most similar on their facts. He therefore agreed with LSA counsel that the agreed sanctions were appropriate in this case.

### **Decision on Sanction**

41. In *Anthony-Cook*, the Supreme Court of Canada made it clear that "a joint submission should not be rejected lightly". This is because (at paragraph 34):

[r]ejection denotes a submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down.

42. The Committee was of the view that the joint submission in this case does not fall within that category. To the contrary, the Committee was satisfied that the joint submission was an appropriate negotiated resolution in the circumstances of this case, which involved poor accounting practices rather than an issue of lawyer integrity.
43. That said, the Committee considers problems operating trust accounts to be serious conduct. The public relies on lawyers to handle trust property with the utmost care and concern, and matters such as this run the risk of negatively affecting the public's confidence in the legal profession. While there was no harm to clients or the public, there could have been. Moreover, the Committee was concerned with the fact that Mr. Mason did not report the problems at his earliest opportunity.
44. However, the Committee was satisfied that Mr. Mason does not represent an ongoing threat to the public, and that there is little chance of recurrence. He took the matter and these proceedings seriously, cooperated throughout, and accepted responsibility for what occurred – including by repaying the shortage and implementing improved accounting practices.
45. Accordingly, the Committee was satisfied that the jointly-proposed sanction is proportionate to the circumstances and comparable to prior decisions, and sufficient to effect the necessary specific and general deterrence.

### **Concluding Matters**

46. As indicated, on December 20, 2021, the Committee accepted the jointly-proposed sanction and the jointly-proposed costs order. Accordingly, pursuant to section 72 of the *Act*, Mr. Mason:
  1. is suspended for one month commencing December 24, 2021 and ending January 23, 2022; and
  2. must pay the LSA \$10,000 in costs within four months of his reinstatement as a member of the LSA.
47. A Notice to the Profession shall be issued, as required by section 85 of the *Act* in the circumstances of a suspension.
48. There will be no referral to the Attorney General.
49. 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 Mr. Mason will be redacted and further redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 98(3)).



Dated at Calgary, Alberta, February 23, 2022.

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Deanna Steblyk, QC – Chair

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Jodi Edmunds – Adjudicator

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Cal Johnson, QC – Bencher