

**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 MATTHEW MOWBREY  
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

**Single Bencher Hearing Committee**

Edward R. Feehan, KC – Chair

**Appearances**

Miriam Staav – Counsel for the Law Society of Alberta (LSA)

Matthew Mowbrey – Self-represented

**Hearing Date**

July 11, 2022

**Hearing Location**

Virtual Hearing

**HEARING COMMITTEE REPORT - SANCTION**

**Overview**

1. On July 13, 2021, a Conduct Committee Panel directed that the following citation be referred to hearing:

It is alleged that Matthew Mowbrey (Mowbrey) failed to provide legal services to the standard of a competent lawyer, including failing to perform all functions competently, conscientiously and in a diligent manner and that such conduct is deserving of sanction.

2. On April 1, 2022, Mowbrey freely and voluntarily executed a Statement of Admitted Facts, Exhibits and Admission of Guilt (the Admission). Consequently, after review of the Admission by a Conduct Committee Panel, the matter was referred to Single Bencher Hearing Committee (this Committee).

3. The Single Bencher Hearing (the Hearing) was heard on July 11, 2022, at which time Mowbrey and LSA counsel jointly submitted that an appropriate sanction would be a reprimand and costs.
4. For the reasons that follow, the joint submission on sanction was accepted by this Committee.

### **Preliminary Matters**

5. There were no objections to the constitution of this Committee or its jurisdiction, and a private hearing was not requested, so a public hearing into the appropriate sanction proceeded.

### **Procedure**

6. The procedure leading up to the Hearing was as follows:
  - (a) After the commencement of disciplinary proceedings in relation to Mowbrey's conduct, LSA counsel and Mowbrey negotiated the Admission, which Mowbrey freely and voluntarily executed on April 1, 2022.
  - (b) On May 17, 2022, LSA counsel and Mowbrey jointly submitted the Admission to a Conduct Committee Panel for consideration as required by section 60(2) of the *Legal Profession Act* (the *Act*). The Conduct Committee Panel reviewed the Admission and determined that the Admission was in a form acceptable to the Conduct Committee Panel.
  - (c) As provided by section 60(3) of the *Act*, once an Admission is accepted by a Conduct Committee Panel, the hearing into the appropriate sanction may be conducted by a single Bencher. As a result, this Committee was appointed, on June 7, 2022, to conduct the sanction hearing.
  - (d) The Hearing was conducted on July 11, 2022. Pursuant to section 60(4) of the *Act*, each admission of guilt in the Admission is deemed to be a finding by this Committee that Mowbrey's conduct is deserving of sanction under section 49 of the *Act*.

### **Statement of Facts/Background**

7. A summary of the material facts admitted by Mowbrey in relation to the citation are as follows:

- (a) Mowbrey was admitted as a member of the Alberta Law Society on August 7, 2015. At the relevant time, Mowbrey was practicing in Red Deer, Alberta in the areas of corporate and commercial law, civil litigation, wills and estates, real estate, and family law.
- (b) On January 11, 2018, Mowbrey was retained by HL and her husband, ML, to negotiate and facilitate the sale of a business to their business partner, CS. HL held 100% of the legal and beneficial shares (the Shares) issued by the corporation which operated the business (the Corporation). She was not, however, involved in day-to-day operations, which had been jointly conducted by ML and CS.
- (c) Mowbrey obtained instructions on this matter from ML with HL's consent.
- (d) CS retained another lawyer in Mowbrey's firm, KG, to represent him with the Share purchase transaction. An ethical wall was enacted within the law firm.
- (e) On February 7, 2018, HL, CS, and the Corporation reached an agreement wherein CS agreed to purchase all of the outstanding Shares held by HL in the Corporation for the sum of \$10,000.00. In addition, the agreement was conditional on the Corporation agreeing to repay "their shareholder loan owed to the Vendor in the amount of \$35,000.00" (the Condition).
- (f) On February 22, 2018, Mowbrey met with HL to arrange for her to execute the Share Purchase Agreement (the SPA) and related resolutions. During the meeting, HL advised Mowbrey that she had not reviewed nor approved the 2017 financial statements for the Corporation (which would have reported the amounts owing to the shareholders pursuant to any shareholders' loans).
- (g) After Mowbrey's meeting with HL, he was advised by KG, counsel for CS, that the \$35,000.00 shareholder loan had already been repaid to HL. According to CS, the shareholders' loan was an internal accounting adjustment within the Corporation, and there was no actual cash owing on the loan.
- (h) As a result of this disclosure, Mowbrey engaged in communications with ML in relation to the financial statements for the corporation, the Director's Resolutions of the Corporation and the shareholder loan owed by the Corporation. As a result of the exchange of information, Mowbrey believed that ML understood that the shareholder loan had already been repaid and that no cash would be advanced by CS in relation to the loan. However, Mowbrey did not confirm this belief with HL or ML.
- (i) On February 23, 2018, KG delivered fully executed documents to Mowbrey and undertook to provide a trust cheque in the amount of \$10,000.00 for HL.
- (j) Late in the evening of February 23, 2018, ML advised Mowbrey to close the transaction without waiting to see the financial statements for 2017. Accordingly, Mowbrey

advised KG that his client formally waived the Condition notwithstanding that Mowbrey did not confirm with ML that HL would not be receiving any payments in relation to the shareholder loan.

- (k) On February 28, 2018, HL attended at Mowbrey's office to pick up a fully executed copy of the SPA, and related corporate documents, along with a trust cheque for \$10,000.00. It became apparent that day that neither HL nor ML understood that there would be no funds advanced by CS for the repayment of the shareholder loan.
- (l) On March 1, 2018, Mowbrey contacted KG to request payment of the \$35,000.00 or confirmation of the alleged repayment. In response, KG advised that the shareholder loan had been satisfied by way of a transfer of a boat in 2017, which ML refuted.
- (m) As the dispute relating to the outstanding shareholder loan could not be resolved, Mowbrey withdrew as counsel for HL, who subsequently retained litigation counsel and successfully sued CS under the SPA in relation to the shareholder loan repayment. Unfortunately, HL has been unable to enforce the Judgment.

#### **Submissions on Sanction and Costs**

- 8. On July 11, 2022, this Committee convened a hearing into the appropriate sanction.
- 9. As noted, Mowbrey and LSA counsel and jointly submitted that a reprimand was the appropriate sanction. Counsel for the LSA stated that the sanction was consistent with the principles of specific and general deterrence; in accordance with the public interest; and in line with the decisions of *Law Society of Alberta v. Sobol*, 2020 ABLS 33 and *Law Society of Alberta v. Warnock*, 2010 ABLS 2.
- 10. Finally, LSA counsel observed that Mowbrey had no prior disciplinary history; was cooperative with the LSA; did not act intentionally; did not personally benefit from the conduct; and did not adversely affect any party outside HL and ML.
- 11. LSA counsel and Mowbrey agreed that a partial payment of costs was appropriate in this case.

#### **Decision on Sanction and Costs**

- 12. Counsel for the LSA and Mowbrey confirmed their understanding that this Committee is not bound by a joint submission on sanction. Notwithstanding, this Committee is required to give significant deference to a joint submission and should not depart from a joint submission on sanction unless it would bring the administration of justice into disrepute or is otherwise contrary to the public interest.

13. Based on the facts of this case, this Committee agreed with the submissions of the parties concerning the relevant factors to be considered and was satisfied that the jointly proposed sanction was in the public interest and would not bring the administration of justice into disrepute.
14. Further, this Committee was satisfied that the jointly proposed sanction would deter Mowbrey from acting in a similar manner in the future, and that other members of the LSA would understand that consequences would flow from a failure to properly communicate with, and obtain informed instructions from, the appropriate client.
15. The approach taken by both Mowbrey and the LSA in dealing with this matter through an Admission also avoided an unnecessary contested hearing, witness inconvenience, and process costs.
16. In the result, this Committee delivered the following reprimand to Mowbrey at the hearing:

Mr. Mowbrey, it struck me when I read this Agreed Statement of Facts, that the likely miscommunication between you and [your] client, for which you ultimately bear responsibility, may have stemmed from the fact that you need to know precisely who your client is in all circumstances. We had a husband who seemed to be hands-on, but was not the shareholder. And we have a wife who held the shares, but did not seem to understand the day-to-day business and operations of the particular business being conducted. And that often leads to miscommunication, and, unfortunately, an assumption by counsel that husband and wife are communicating at the level you wish them to communicate at.

And so, in those types of circumstances, I just urge you to understand the various roles played by the clientele, and act as the liaison between them, notwithstanding the fact that they're husband and wife, because they obviously approach this whole business concept with a different mindset, one being labour, and the other one being finance. And so, they obviously did not understand the nuances, and that's why they hire professionals.
17. This Committee further ordered that Mowbrey pay costs in the amount of \$3,005.63 to the LSA no later than 90 days from the date of the Hearing.

### **Concluding Matters**

18. 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 Mowbrey will be redacted, and further redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 98(3)).

19. There shall be no Notice to the Attorney General.
20. There is no requirement for a Notice to the Profession.

Dated October 26, 2022

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Edward R. Feehan, KC