

**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 VERONICA DONALD  
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

**Single Bencher Hearing Committee**

Bud Melnyk, QC – Chair

**Appearances**

Karl Seidenz – Counsel for the Law Society of Alberta (LSA)  
Donald McGarvey, QC – Counsel for Veronica Donald

**Hearing Date**

June 7, 2022

**Hearing Location**

Virtual Hearing

**HEARING COMMITTEE REPORT – SANCTION**

**Overview**

1. The following citations were directed to hearing by the Conduct Committee Panel on July 13, 2021:
  - 1) It is alleged that Veronica Donald breached a trust condition to another lawyer and that such conduct is deserving of sanction; and
  - 2) It is alleged that Veronica Donald failed to meet the requirements of the Code of Conduct in disclosing a material error to her client and that such conduct is deserving of sanction.
2. Ms. Donald was admitted to the LSA on September 10, 2007. Since her admission Ms. Donald has practiced primarily in the area of family law, with some real estate conveyancing and wills and estates matters.

**Preliminary Matters**

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

## Agreed Statement of Facts/Background

4. After the commencement of proceedings in relation to Ms. Donald's conduct, LSA counsel referred to the jointly submitted Statement of Admitted Facts, Exhibits and Admissions of Guilt (Agreed Statement). The Conduct Committee found the Agreed Statement acceptable on July 13, 2021. Pursuant to section 60(4) of the *Legal Profession Act (Act)*, each admission of guilt in the Agreed Statement is deemed to be a finding by this Committee that Ms. Donald's conduct is deserving of sanction under section 49 of the *Act*.
5. As provided by section 60(3) of the *Act*, once the Agreed Statement was accepted by the Conduct Committee, the hearing into the appropriate sanction could be conducted by a single Bencher. As a result, I was appointed to conduct the sanction hearing.
6. The material facts relating to the above citations are as follows:
  - (a) Ms. Donald was acting for a husband in a contested family matter.
  - (b) Following a binding Judicial Dispute Resolution, a Divorce Judgment and Corollary Relief Order was granted which contained the following terms:
    - i. The husband was to pay to the wife arrears of child support of \$7,697.98 along with a property equalization payment of \$38,427.14.
    - ii. In order to make this payment the husband was going to refinance the matrimonial home, which he was retaining.
    - iii. If there were insufficient funds from the refinancing to pay out either the equalization payment or the arrears of child support, the parties were to return to court for further directions.
  - (c) The lawyer acting for the wife sent a Transfer of Land and related sale documents to Ms. Donald on trust conditions, including the following two trust conditions:
    - i. That the Transfer of Land only be used for the purposes of completing the refinancing of the matrimonial home.
    - ii. That the wife's lawyer was to approve the Statement of Adjustments and Trust Reconciliation prior to closing.
  - (d) The refinancing was eventually concluded, but that refinancing did not net sufficient proceeds to pay out the equalization amount and the arrears of child support. The husband did tender an amount to top up the equalization amount and this amount was forwarded by Ms. Donald to the other lawyer on July 31, 2019. However, the arrears of child support were not paid. When Ms. Donald

sent the equalization payment to the other lawyer, she failed to address the following:

- i. Ms. Donald did not include a Statement of Adjustments, which resulted in the other lawyer being unaware of the shortfall in the refinancing.
- ii. Ms. Donald did not address the issue of the missing child support arrears payment, which payment was required under the Divorce Judgment.
- iii. Ms. Donald did not address the issue of returning to Court in the event of a shortfall as required by the Divorce Judgment.

(e) Following the letter of July 31, 2019, Ms. Donald and the other lawyer engaged in communications regarding payment of the arrears of child support. Ms. Donald had mistakenly believed that these arrears had been fully paid from a garnishment of her client's tax refund. After a few weeks of ongoing communications between the lawyers it became evident to all concerned that the child support arrears had not been paid. Ms. Donald did eventually send the Statement of Adjustments to the other lawyer on September 4, 2019.

(f) Ms. Donald did advise her client of the failure to provide the Statement of Adjustments, but she failed to advise her client that there was a breach of the Divorce Judgment. Further, the client was not advised that Ms. Donald was in breach of a trust condition and the client was never advised to seek independent legal advice.

7. In accordance with the Agreed Statement Ms. Donald has admitted that she breached Rule 7.2-14 of the Code of Conduct by failing to comply with the trust condition requiring her to provide the opposing lawyer with a copy of the Statement of Adjustments before closing the refinancing and then delaying sending the Statement of Adjustments. Ms. Donald further admits that she failed to fully advise her client that he was in breach of the Divorce Judgment and that Ms. Donald was in breach of her undertaking to the other lawyer. Ms. Donald further acknowledges that she failed to advise her client to seek independent legal advice.

### **Submissions on Sanction**

8. There was a joint submission by the LSA and Ms. Donald for the following sanction:

- (a) A reprimand;
- (b) A fine of \$1,750; and
- (c) Costs to be capped at \$3,000.

9. In support of the joint submission, counsel for the LSA and for Ms. Donald provided four decisions:

- (a) *Law Society of Alberta v. Luthra*, 2020 ABLs 24;
- (b) *Law Society of Alberta v. Thom*, 2019 ABLs 27;
- (c) *Law Society of Alberta v. Peddie*, 2016 ABLs 49;
- (d) *Law Society of Alberta v. Schuster*, 2015 ABLs 15.

10. Counsel for the LSA made the following submissions:

- (a) The facts in this matter were reasonably similar to the tendered decisions.
- (b) The proposed sanction was consistent with the general and specific sentencing factors as more particularly detailed in the LSA Hearing Guide.

11. Counsel for Ms. Donald made the following submissions:

- (a) Both lawyers were initially confused regarding the payment of the arrears of child support.
- (b) Had the Statement of Adjustments been sent from the beginning, none of the resulting issues would have arisen since the other lawyer would have been aware of the refinancing shortfall.
- (c) Ms. Donald has freely admitted guilt and has been cooperative throughout.
- (d) Ms. Donald has suffered a great embarrassment and has become “hyper vigilant” regarding trust conditions.
- (e) The letter of reference indicates that Ms. Donald is an excellent lawyer and that the current situation was “unique” and not otherwise reflective of Ms. Donald’s professionalism.
- (f) Ms. Donald has no prior disciplinary record with the LSA.
- (g) In accordance with the principles set out in *R. v. Anthony-Cook*, 2016 SCC 43, the court adopted a “public interest test” whereby “a trial judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or would otherwise be contrary to the public interest.”

### **Decision on Sanction**

12. A Committee is required to give significant deference to a joint submission. The Supreme Court of Canada in the *Anthony-Cook* case has set out a test for assessing the acceptability of joint submissions in the criminal law context. The “public interest test”

states that a judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest. The judge should consider the following questions in applying the public interest test:

- (a) Is the joint submission so markedly out of line with the expectations of reasonable persons aware of the circumstances of the offence and the offender that the joint submission would be viewed as a breakdown in the proper functioning of the criminal justice system?
  - (b) Would the joint submission cause an informed and reasonable public to lose confidence in the institution of the courts?
  - (c) Is the joint 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?
13. The Supreme Court of Canada recognized that the test sets an “undeniably high threshold” but held it was justified given the importance of joint submissions to the proper functioning of the justice system. If a Hearing Committee finds that the test is met, it can reject the joint submission. The public interest test has been widely adopted by professional discipline tribunals across Canada. The case law confirms that the test is appropriate and should be applied in LSA conduct proceedings.
14. After reviewing all of the evidence and exhibits, the submissions of the LSA, the submissions of counsel for Ms. Donald and the submitted cases, I have determined that the joint submission is reasonable, consistent with sanctions in similar cases, does not bring the administration of justice into disrepute and is therefore in the public interest. The approach taken by Ms. Donald and the LSA in dealing with this matter through an agreed statement and admission of guilt also avoided an unnecessary contested hearing, witness inconvenience, and process costs.
15. The following sanction is hereby ordered:
  - (a) A reprimand, which was orally delivered at the hearing;
  - (b) Payment of a fine of \$1,750 to be paid in full by July 31, 2022; and
  - (c) Payment of costs of \$3,000 to be paid in full by July 31, 2022.
16. The text of the oral reprimand is as follows:

The Hearing Guide of the Law Society requires that Hearing Committees take a purposeful approach to sanctioning a member who has been found guilty of conduct deserving of sanction. The fundamental purpose of sanctioning is the protection of the best interests of the public and the protection of the reputation and standing of the legal profession generally.

You have admitted guilt on two citations. In these matters, you put your professional reputation and integrity at risk and your clients' interests at risk.

In making these comments today and in expressing this reprimand today, I urge you to constantly have at the forefront of your mind and your practice the integrity required of all of us as members of this profession and the diligence that we all must demonstrate to protect our clients' interests and to maintain our reputation and the reputation of this profession. Trust conditions between lawyers are a fundamental aspect of our obligations to other lawyers. Equally as important is your obligation of candour and honesty with your clients.

Ms. Donald, I acknowledge your co-operation with the Law Society leading up to today and resolving these complaints by admitting guilt and by proceeding with a single Bencher hearing. Your admissions have permitted these citations to be resolved on a more efficient basis, which is not just a benefit to you, but is a benefit to the public and to the Law Society. The letter of recommendation makes it clear to me that you have a long and principled career having made significant contributions to the administration of justice in Alberta.

In concluding, I wish you the best as you move forward from these difficult circumstances and thank you for your attendance today.

### **Concluding Matters**

17. There shall be no Notice to the Attorney General.
18. There is no requirement for a Notice to the Profession.
19. 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 Ms. Donald will be redacted and further redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 98(3)).

Dated June 22, 2022

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Bud Melnyk, QC