

**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 MASON
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

Hearing Committee

Grant Vogeli, KC – Chair
Kene Ilochonwu, KC – Bencher
Levonne Louie – Lay Bencher

Appearances

Karl Seidenz – Counsel for the Law Society of Alberta (LSA)
Dino Bottos, KC – Counsel for Peter Mason

Hearing Date

February 28, 2023

Hearing Location

Virtual Hearing

HEARING COMMITTEE REPORT

Overview

1. The following citation was directed to hearing by the Conduct Committee Panel on December 7, 2021:
 - 1) It is alleged that Peter B. Mason breached an undertaking and that such conduct is deserving of sanction.
2. On February 28, 2023, the Hearing Committee (Committee) convened a hearing into the conduct of Mr. Mason, based on the one citation.
3. After reviewing the Statement of Admitted Facts, Exhibits and Admission of Guilt (Agreed Statement) and hearing submissions of counsel for the LSA and counsel for Mr. Mason, for the reasons set out below, the Committee finds Mr. Mason guilty of conduct deserving sanction on the citation pursuant to section 71 of the *Legal Profession Act* (Act).

4. The Committee also finds that the appropriate sanction is a reprimand, in accordance with section 72 of the *Act*. An oral reprimand was delivered at the hearing.
5. In addition, pursuant to section 72(2) of the *Act*, the Committee orders Mr. Mason to pay costs of these proceeding in the amount of \$1,500.00 by March 31, 2023. It is understood that the costs have been paid in full.

Preliminary Matters

6. There were no objections to the constitution of the Committee or its jurisdiction, and a private hearing was not requested, so a public hearing into Mr. Mason's conduct proceeded.

Agreed Statement of Facts/Background

7. Mr. Mason was admitted to the LSA in June 2017 and is currently a sole practitioner practicing primarily in Real Estate Conveyancing with some corporate and wills and estates work.
8. Mr. Mason and the LSA collaborated on the Agreed Statement. A summary of the background and facts related to the citation is set out below.

Background

9. Mr. Mason acted for the Sellers in a real estate transaction which was scheduled to close on June 14, 2019. The Residential Purchase Contract contained the following clause concerning the provision of a Real Property Report (RPR) by his client prior to closing:
 - 10.2 Closing documents will include an RPR showing the current improvements on the Property according to the Alberta Land Surveyors' Association Manual of Standard Practice, with evidence of municipal compliance or non-conformance and confirming the seller's warranties about the land and buildings...
10. Shortly before the closing date, Mr. Mason was advised by Buyer's counsel that the RPR which had been provided was out-of-date and did not reflect the construction of a new deck on the property. Therefore, the Buyer required an updated RPR pursuant to clause 10.2.
11. Since it was not possible to get an updated RPR before the closing date, Mr. Mason gave a written undertaking on June 13, 2019 to hold back \$5,000.00 (Holdback) pending receipt by counsel for the Buyer of an updated RPR with compliance.

12. On June 14, 2019, counsel for the Buyer confirmed the undertaking.
13. On October 8, 2019, Mr. Mason emailed three documents to counsel for the Buyer including an updated RPR, dated June 27, 2019 and a Compliance Certificate Report from the City, dated July 18, 2019. The Compliance Certificate Report noted that the deck had been built without City approval. It was subsequently determined there was an encroachment issue with the deck.
14. Mr. Mason then sought advice of senior counsel in real estate law and retained him to advise him on how to deal with this matter. The senior counsel acted for Mr. Mason throughout, including trying to negotiate with the Buyer's counsel to resolve paying for the two deficiencies listed on the RPR and the Compliance Certificate Report.
15. The Buyer and Seller agreed that Mr. Mason would attempt to fix the two deficiencies by having the deck contractor attend the property and provide an estimate for fixing the deficiencies in order to perfect compliance with sale of the house and then complete the work once the estimate had been approved.
16. On April 23, 2023, Mr. Mason received permission through the Buyer's counsel to send the deck contractor to the property but when the deck contractor attended the property no one answered the door.
17. In May 2020, Mr. Mason again received permission to send the deck contractor to attend the property. The Buyer's counsel in responding correspondence asked that Mr. Mason confirm that he was going to deal with "the final grade and Lot Grading Certificate which remain outstanding". Mr. Mason did not think this ask was part of the undertaking he had given previously.
18. On September 21, 2020, Buyer's counsel requested Mr. Mason release the Holdback to deal with the outstanding deck issue and noted incorrectly that he had not received the updated RPR.
19. On September 22, 2020 Mr. Mason's counsel wrote to Buyer's counsel to advise that the RPR has been provided, that Mr. Mason had fulfilled his undertaking in so doing and proposed settling the matter by paying \$250.00 of the Holdback to repair the deck.
20. On September 25, 2020, relying on advice from the deck contractor, Mr. Mason's counsel sent a letter to Buyer's counsel seeking to resolve the outstanding compliance issue by having the deck contractor attend the property within the week to confirm whether or not the deck elevation continued to exceed the "permit threshold" and if so, to remove 3.5 inches from the encroaching side. The same day, Buyer's counsel replied that the deck contractor would not be permitted to attend the Buyer's property.

21. On November 3, 2020 Mr. Mason's counsel wrote to Buyer's counsel advising that the Buyer's recent offer to settle was not accepted and that the Holdback would be released. Mr. Mason's view at the time was that the Buyer was looking to receive holdback monies for something in addition to, and outside of, the undertaking and he was frustrated with the Buyer and his counsel and perceived them to be acting unreasonably. After discussions with his counsel, Mr. Mason released the Holdback funds.
22. Buyer's counsel wrote on November 5, 2020 stating that "[t]he release of holdback funds at this juncture is in breach of Mr. Mason's undertaking." On November 12, 2020 Buyer's counsel submitted a complaint about the release of the Holdback in breach of Mr. Mason's undertaking.
23. The Buyer filed a Civil Claim in the Provincial Court of Alberta (as it then was) claiming \$5,683.00 from the Sellers, Mr. Mason and his Professional Corporation. As part of the eventual settlement of that Civil Claim, Mr. Mason and his Professional Corporation agreed to pay \$1,000.00 to the Buyer.

Decision on Merits

24. Based on the facts outlined in the Agreed Statement, and summarized above, Mr. Mason admits that he failed to comply with Rule 7.2-14 of the Code of Conduct by releasing the Holdback in his trust account before a RPR with a Compliance Certificate Report was provided to Buyer's counsel and compliance for the deficiencies on the deck were perfected. Accordingly, the Committee accepts the Agreed Statement including the admission made therein and finds Mr. Mason guilty of conduct deserving of sanction pursuant to section 71 of the *Act*.

Submissions on Sanction

25. Counsel for the LSA advised that the parties had agreed to a joint submission on sanction. LSA counsel summarized the sanctioning principles as set out in the LSA Pre-Hearing and Hearing Guideline (Guideline) at paragraphs 185 – 187. These paragraphs note that the fundamental purpose of sanctioning is to protect the public and protect the reputation of the profession and that sanctioning must be purposeful. A list of other purposes is set out at paragraph 186 of which three are particularly relevant here according to LSA counsel: specific deterrence, general deterrence for all members of the profession and denunciation of the conduct.
26. LSA Counsel referred the Committee to four cases with conduct similar to this case:

- 1) *Law Society of Alberta v. Andresen*, 2016 ABLs 43
 - 2) *Law Society of Alberta v. Leebody*, 2016 ABLs 44
 - 3) *Law Society of Alberta v. MacKay*, 2016 ABLs 33
 - 4) *Law Society of Alberta v. Thom*, 2019 ABLs 27 and 2020 ABLs 9.
27. In all four cases undertakings were given which were breached and the lawyers that were the subject of the hearing were given reprimands and paid costs ranging between \$1,300.00 and \$2,300.00.
 28. LSA counsel pointed out that while Mr. Mason has an existing disciplinary record, the previous conduct involved unrelated circumstances. Further, a mitigating factor was that Mr. Mason had taken responsibility for his actions in this case and made admissions, leading to an expedient and efficient hearing.
 29. Mr. Mason expressed remorse and addressed the Committee to acknowledge that he understood the importance of undertakings and does not take them lightly. He expressed a commitment to always be diligent when giving undertakings.
 30. LSA counsel and Mr. Mason's counsel submitted that the appropriate sanction for Mr. Mason's conduct was a reprimand, based on the cases cited and the facts of this case. The sanction, according to counsel, is in line with other cases, not unhinged from the circumstances and fulfills the role of protecting the public and the reputation of the profession. They also agreed to costs of \$1,500.00.

Decision on Sanction

31. Pursuant to the Guideline, although a hearing committee is not bound by a joint submission on sanction, it must give significant deference to a joint submission. A hearing committee must not depart from a joint submission unless the proposed sanction would bring the administration of justice into disrepute or is otherwise contrary to the public interest.
32. Based on the Agreed Statement, the admissions, mitigating factors and cases cited, the Committee finds that a reprimand is an appropriate sanction and so accepts the joint submission on sanction. The Committee also orders costs of \$1,500.00, payable by March 31, 2023.
33. The Committee delivered the reprimand at the hearing as follows:

Mr. Mason, in the hearing today, and as you have acknowledged and know, the Code of Conduct requires compliance with all undertakings and trust conditions, and it's important to protect the public and to ensure proper operation of the legal system, particularly real estate transactions, that undertakings and trust conditions can be relied upon. And in order for them to be relied upon, of course, lawyers need to religiously comply with them. And that's why the code is very

clear that all undertakings and trust conditions, whatever they may be, however unreasonable they may ultimately be, when you make an undertaking or accept a trust condition, you must comply with them or have them relieved by the party imposing those trust conditions.

We did note – and the perspective from Mr. Seidenz was helpful – we did note the issues in your previous case, the finding in December of 2021, and it was good clarification that that was more a technical trust condition or trust account matter, but trust accounting, like trust conditions, are also very important to be complied with, and we expect that you will take great care to ensure in the future compliance, both with trust conditions, undertakings and trust accounting.

And finally, and I think I have already said this, undertakings and trust conditions need to be complied with even when the other side might be frustrating or even unreasonable. They must be complied with.

Concluding Matters

34. A Notice to the Profession is not required nor ordered in this case.
35. There will be no referral to the Attorney General.
36. 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 May 25, 2023

Grant Vogeli, KC – Chair and Bencher

Kene Ilochonwu, KC - Bencher

Levonne Louie – Lay Bencher