

**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 by Written Submissions

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

HEARING COMMITTEE REPORT ON SANCTION

Overview and Summary of Result

1. On September 16, 2021, this Hearing Committee (Committee) found that Margaret Wheat (Wheat) had engaged in conduct deserving of sanction by acting without integrity in assisting her client in dishonest or fraudulent conduct. The background facts of the matter and reasons for the finding are set out in the Hearing Report.¹ The matter now comes before the Committee again respecting sanction.
2. For the reasons that follow, the Committee finds that the proper sanction for Wheat's conduct is a two-month suspension to be served on or before September 29, 2022. Costs were agreed in the amount of \$12,000 and were payable by February 9, 2022. Wheat has already paid these costs. The LSA is hereby directed to refer this matter to the Attorney General.

Preliminary Matters

3. As noted in the Hearing Report, there were no objections to the constitution of the Committee or its jurisdiction. The LSA and Wheat chose to make sanction submissions in writing to the Committee; the Committee caucused on December 9, 2021 following receipt of those written submissions.

Sanction Principles

4. Both Wheat and the LSA are in agreement on the principles of sanction following a finding of conduct worthy of sanction. The LSA Pre-Hearing and Hearing Guideline, October 2021 version (Guideline) sets out the purpose of sanction in conduct proceedings. The fundamental purpose of this process is to ensure the public is protected from acts of professional misconduct. The public's confidence in the integrity

¹*Law Society of Alberta v. Wheat*, 2021 ABLS 27, Report of the Hearing Committee (the Hearing Report).

of the profession is important. As noted in the Guideline, “the fundamental purposes are critical to the independence of the profession and the proper functioning of the administration of justice.”

5. Other specific purposes of sanction include the following:
 - (a) Specific deterrence of the lawyer;
 - (b) Where appropriate to protect the public, preventing the lawyer from practicing law through disbarment or suspension;
 - (c) General deterrence of other lawyers;
 - (d) Ensuring the LSA can effectively govern its members; and
 - (e) Denunciation of the misconduct.
6. The options available to the Committee with respect to sanction include a range of remedies from reprimand through disbarment. Wheat’s sanction must be purposeful, having regard to the factors above.
7. The submissions of the LSA and Wheat respecting sanction are reflected below.

Submissions on Sanction - LSA

8. The LSA seeks a one-year suspension and payment of costs. The LSA submits that the finding of Wheat’s lack of integrity in facilitating an improper and dishonest scheme is serious, particularly in light of the public’s need to have confidence in the profession’s integrity. The LSA notes the Guideline provides the following respecting integrity:

Integrity is the most important attribute of any lawyer. Lawyers must discharge all duties owed to clients, the Court, other members of the profession and the public with integrity. Integrity on the part of lawyers is essential to the effective operation of the legal system and the regulation of the legal profession.

9. The LSA asserts that the factors below are of particular concern in Wheat’s conduct:
 - (a) Wheat’s conduct constituted a risk to a member of the public and resulted in actual, serious, physical, financial and emotional harm to MM, the wife of Wheat’s client;
 - (b) Wheat’s conduct was intentionally dishonest and constitutes a risk to the reputation of the legal profession;
 - (c) Wheat’s conduct impacted the ability of the legal system to function properly in the context of a divorce and matrimonial property claim;
 - (d) The harm to MM, to the profession, and to the administration was reasonably foreseeable to Wheat.

- (e) Wheat has demonstrated no remorse nor has she apologized to MM. Accordingly, while not argued to be an aggravating factor, the LSA states the otherwise mitigating apology or remorse is absent here.
10. On the other hand, the LSA recognizes that Wheat has no record of discipline despite a very lengthy career in an area of law known for its sometimes contentious nature.
 11. The LSA further notes that Wheat has tendered multiple character references, including in-person testimony at the hearing and letters. Despite the glowing nature of this evidence respecting Wheat's character and integrity, the LSA states this evidence is of limited value. Citing *Bolton v. Law Society* [1994] 1 W.L.R. 512 at paragraph 519, the LSA states that a lawyer will frequently be able to tender such evidence. The evidence, the LSA says, did not speak of Ms. Wheat's reputation beyond the legal community. The LSA states that the evidence must therefore be discounted.
 12. The LSA cited multiple authorities in support of its submission for a twelve-month suspension. They are briefly summarized below. In *Law Society of Alberta v. Persad*, 2020 ABLs 27, the lawyer created a fake divorce document to show his girlfriend that he was divorced when he was not. He also impersonated his wife in text messages from a fake number to corroborate the false divorce story. There was a joint submission for a six-month suspension. Persad and the LSA agreed that the circumstances required a referral to the Attorney General.
 13. In *Law Society of Alberta v. Torske*, 2016 ABLs 27, the lawyer became addicted to painkillers after an injury. The lawyer created a false prescription and forged a physician's signature to obtain prescription medication improperly. His employer, the Crown, discovered his conduct and reported him to the LSA. The lawyer was criminally convicted for his conduct and received a nine-month conditional sentence. The lawyer was suspended for eighteen months.
 14. In *Law Society of Alberta v. Shustov*, 2014 ABLs 23, the lawyer fabricated a court order, made false statements to a client, misrepresented the status of the divorce to the client, and created a false divorce document and provided it to the client. The lawyer admitted guilt and was suspended for eight months. The matter was referred to the Attorney General. The lawyer was young and inexperienced, cooperated fully, showed significant remorse, and had support from his prior employer.
 15. In *Guttman v. Law Society of Manitoba*, 2010 MBCA 66, the lawyer overstated his legal accounts and created fake bills to reduce his client's obligation to repay unemployment insurance. The lawyer was initially disbarred; however, the disciplinary committee rejected the lawyers' evidence of his circumstance without providing reasons for its rejection. On appeal, the Court of Appeal allowed evidence from a psychiatrist. Despite the lawyer's prior record of sanction, the disbarment was replaced with a one-year suspension on appeal and other directions, including repayment to the government agency. The Court of Appeal in that case agreed with counsel for the lawyer. The counsel was quoted at paragraph 76:

...Examples of cases in which suspensions have been imposed have been summarized by MacKenzie, and include cases where lawyers have participated in attempts to fabricate transactions and destroy documents, made false

submissions to courts and tribunals, falsified documents and lied to clients in attempts to cover up inaction, and uttered forged documents among other things.

16. In *Law Society of Alberta v. Woollard* [1996] L.S.D.D. No. 272, the lawyer fabricated court orders in a guardianship action, falsified documents, and went to the clerk's office to stamp them as though they had been filed. The hearing panel considered disbarment, but ultimately considered that a suspension was proper. The lawyer was suspended from practice for three years and the matter was referred to the Attorney General.
17. In *Law Society Saskatchewan v. Martens*, 2016 SKLSS 12, the junior lawyer failed to submit documents to the corporate registry on time and created a false letter and fax transmission sheet to make it appear as though the lawyer had filed the records when the lawyer had not. There was no loss suffered and the lawyer, although normally facing a suspension, undertook not to practice as a sole practitioner. The lawyer received a reprimand and costs.
18. In *Law Society of British Columbia v. Strandberg*, [2001] L.S.D.D. No. 36, the lawyer fabricated a court document and provided it to a client to cover up the status of work the lawyer had not undertaken. The lawyer subsequently admitted his guilt to a hearing committee and, noting that the lawyer was in a small community who assisted clients that would not otherwise have legal representation, the hearing panel held that the practice would be ruined by a suspension of more than a month, and that disadvantaged people in the community would be in need without his assistance. The panel ordered a suspension of one month.
19. Having regard to the following facts, the LSA seeks a one-year suspension:
 - (a) There was no admission of guilt;
 - (b) There was no joint submission on sanction;
 - (c) The misconduct occurred while discharging professional duties to a client;
 - (d) The conduct seriously harmed an unrepresented opposing litigant;
 - (e) Wheat is a senior lawyer with 40 years of experience.
20. The LSA also seeks a referral to the Minister of Justice on the basis that the evidence falls within sections 321 and 366 of the *Criminal Code of Canada*.
21. The LSA seeks costs in the amount of \$12,000.

Submissions on Sanction – Wheat

22. Wheat states that a fine or reprimand would be sufficient sanction; in the alternative, Wheat states that a short suspension of 14 to 30 days, together with a Notice to the Profession, can achieve the goals of sanctioning.
23. Wheat acknowledges her responsibility for costs. Wheat submits that she was cooperative with the conduct process, responsive to the regulator, admitted facts in advance of hearing, and acknowledged that her conduct was wrong. She focused her

issues at hearing on the question of her intent which she sought to explain. Wheat submits that the career facts which outline her personal and practice history and circumstances support her position on sanction. In addition to the multiple witnesses who gave evidence respecting her character at the hearing, Wheat tendered letters from three very senior lawyers in Alberta who are highly respected. Each of these lawyers, as noted above, speak in glowing terms of Wheat's character and integrity, long career of service, her ethical strength as a lawyer, and her competence in serving her clients and community.

24. In her submissions on sanction, Wheat states, as she did at hearing, that she expected the lease would be reviewed very quickly and that the use of land would be negotiated or reviewed in court in the context of the pending divorce. Wheat notes that MM, the complainant in this matter, received the lease along with divorce papers in April 2019.
25. Wheat states the public is adequately protected from the repetition of this misconduct and accordingly that is not a live issue. Wheat has acknowledged that she would not comply with such client instructions again. This process has been impactful on her personally and professionally. Wheat says that it is "profoundly impactful" on a lawyer's reputation to have had a finding that the lawyer acted without integrity. Wheat states she is at very low risk to reoffend.
26. Wheat states as follows respecting the factors which are to be considered on sanction:
 - (a) Risk to the public: Wheat states that there was no risk to the public at large from what she described as an invalid lease, but acknowledges that there was an express risk to the joint owner. Wheat denies that there was serious actual physical harm to MM.
 - (b) Risk to reputation to the profession: Wheat recognizes that "capitulating to the unethical request of a client risks harming the reputation of the profession." Wheat notes that "this case involves a single, spontaneous occurrence, for no personal gain, acknowledged after the fact to be wrong, by a lawyer of unusually high integrity, established over a 40 year career". Such conduct can be effectively addressed by a short suspension without impacting the reputation to the profession.
 - (c) Risk to the legal system: Wheat acknowledges the theoretical risk that the lease could have been registered at Land Titles; however, the commencement of the divorce and matrimonial property action resulted in engagement of lawyers immediately. Wheat denies that the lease impacted the ability of the legal system to function because, as the husband's counsel said, the document was ignored in the subsequent action and, further, no one tried to keep MM off the land.
 - (d) Breach of trust: Wheat states there is no breach of trust involved. She states there is no issue of governability with respect to this lawyer. She acknowledges that there was harm caused, but that it was caused in the context of a complex and emotional history of family conflict, both before and after these events. There was no evidence, Wheat states, that MM was removed from her home, nor that she was punched. Wheat says that although MM gave the impression that the lease document cost her a divorce, the divorce instructions and the breakdown of the marriage occurred before it was executed.

27. Wheat acknowledges there was potential harm flowing from the misconduct; she states, however, that this occurred in the context of a disputed matrimonial property matter. Wheat says she took steps to mitigate reasonably foreseeable harm. Wheat argues that the lack of apology must be considered in light of the fact that a civil lawsuit followed the conduct and placed Wheat and MM in adversarial positions in which they were independently represented. Wheat had no occasion to communicate with MM other than the LSA hearing. Wheat states that although seniority can be an aggravating factor in sanctioning, Wheat's seniority should be viewed in context. A lawyer of any vintage should know they must not capitulate to a client's unethical instructions; however, Wheat recognized that her conduct was wrong and her seniority also shows a lengthy career without any prior discipline record.
28. In respect of the authorities on sanction, Wheat submits the following:
- (a) The Committee is not bound by precedent. There is no presumptive sanction of a suspension for lack of integrity. The false swearing of an affidavit is one category of a significant integrity failure that has had mixed outcomes on sanction.
 - (b) In *Law Society of Alberta v. Gish*, [2006] L.S.D.D. No. 132, the lawyer practicing in a small community swore a false affidavit of execution on a mortgage financing which was then used without consent. The lawyer also improperly witnessed or commissioned three additional documents. The lawyer was eight years at the bar. Gish admitted the conduct was deserving of sanction. She had no prior discipline record and presented strong character evidence, including a letter from the mayor of the small city where she practiced. The lawyer received a \$10,000 fine.
 - (c) In *Law Society of Alberta v. Bittner*, [2002] L.S.D.D. No. 52, the junior lawyer witnessed a transfer of land and swore a false affidavit of execution saying he saw the signature in person when he had not. The lawyer believed that the spouse had signed but did not physically witness the signature. The husband had forged the wife's signature. Bittner received a fine of \$2500 and a reprimand.
 - (d) In *Law Society of Alberta v. Amantea*, 2020 ABLS 14, the lawyer falsely swore an affidavit of execution regarding quit claims where the lawyer did not personally witness signatures, but honestly believed the witness had signed the documents. The lawyer was also in a conflict of interest. The lawyer had no prior discipline record and was 40 years at the bar with good evidence of character, including from his law partner. He personally paid \$160,000 in restitution. The lawyer received a one-month suspension for what was submitted to be an isolated error in judgment. Of particular note was the lawyer's lengthy career with no personal benefit coming from the misconduct.
 - (e) In *Law Society of Alberta v. Geisterfer*, 2009 LSA 15, the lawyer received a fine for failing to comply with an undertaking and for continuing to act for a month after the lawyer became aware there was a forged letter in his file.
 - (f) In *Law Society of Alberta v. Bontorin*, 2021 ABLS 13, the lawyer was suspended for one week following a joint submission after failing to withdraw in the face of a conflict of interest on a joint client representation. The lawyer then continued to take instructions from one client knowing the other would object. The lawyer had

remorse and cooperated with the LSA. She was experiencing a series of serious personal stressors during the events.

- (g) In *Law Society of Alberta v. Goldenberg*, [1999] L.S.D.D. No. 73, there was a six-month suspension for what Wheat's counsel rightly described as a "lengthy and calculated course of multiple deceptions." These included the creation of false documents, a false affidavit for a client, deceit after the uncovering of the false documents, and continued deceit with the LSA. The lawyer finally acknowledged this wrongdoing. He was 20 years at the bar, was under financial distress, and was otherwise of good character.
29. Wheat submits that the authorities put forward by the LSA are not analogous to the matter at hand. She states that *Persad* involved a scheme of fake phone numbers and impersonation and *Persad* was a Crown Prosecutor whose conduct also breached his prosecutorial oath. Wheat states that *Torske* likewise involved criminal conduct and the deceit was for personal gain to feed an addiction. Wheat states that *Shustov* involved chronic failures to a client over 18 months with repeated false promises, lies and preparation of a fake divorce judgment. *Guttman* involved a lawyer with a serious prior discipline history. The conduct involved deliberately lying to a government agency with intent to deprive it of funds.
30. Wheat further states that *Woollard* involved fake court orders and the sanction engages questions of public protection and deterrence. Wheat states that the hearing committee in *Martens* recognized that suspensions are generally warranted for falsifying documents, but ultimately accepted a joint submission of a reprimand. Wheat states that in *Strandberg*, a one-month suspension was appropriate for a lawyer who failed to serve a client over eleven months. Records had been changed and the client was misled. The lawyer had also lied repeatedly to the LSA.
31. Wheat states that in light of all of these authorities on close review, the imposition of a significant fine with a reprimand would be sufficient to meet the principles of sanction. In the alternative, Wheat states there is no basis to impose more than a short suspension, not exceeding thirty days.

Analysis and Decision on Sanction

32. In our view, based on a review of the authorities above and the principles of sanction, a suspension is necessary. The Committee is particularly concerned that Wheat knowingly capitulated to a client's instructions that created the risk, both foreseeable and realized, of harm to MM. The harm to MM happened on multiple levels, including a serious altercation with her son, additional cost, and an escalation in a complicated matrimonial matter. Wheat was not duped by her client into changing the agreement; the husband did not forge a signature or mislead Wheat. Instead, Wheat assisted her client in creating a false agreement on its face for the purpose of improperly achieving the ends of her client. For a collaborative lawyer, the direct results of Wheat's conduct undermined the collaborative process. Neither a fine nor reprimand will achieve the principles of sanction.
33. We are not persuaded, however, that the authorities demonstrate that a very lengthy suspension is warranted here. We find these authorities, particularly those where a lawyer engaged in misconduct for the lawyer's own advancement or to cover the

lawyer's mistakes, are not analogous to this case. Wheat did not engage in this conduct for her own benefit.

34. We largely agree with Wheat's counsel's submission that Wheat's conduct was a single occurrence for no personal gain, urged upon her by her client, which conduct was acknowledged to be wrong. We are not concerned, given Wheat's history, about the lack of community reference. We further agree that the evidence shows that Wheat is, other than this instance, a lawyer of high integrity and competence, both well established by a previously unblemished 40-year career. She serves an important role in providing legal services to the public in a small community in Alberta.
35. Wheat's lack of guilty plea is not an aggravating factor in sanction. Contesting a conduct citation does not justify the imposition of a more severe penalty. The fact that Wheat challenged the technical nature of the citation regarding intent does not alter this principle. Wheat recognized that her conduct was wrong. However, she took the position that the requisite element of intent could not be made out. Although the Committee did not agree with counsel's able submissions on the evidence, we cannot and should not find that contesting the citation should increase the penalty in this case.
36. An admission of guilt can be a mitigating factor, but the lack of it is not an aggravating factor. In support of this, we note the longstanding principles set out in *College of Physicians and Surgeons of Ontario v. Boodoosingh (H.C.J.)*, 1990 CanLII 6686 (ON SC), affirmed in *College of Physicians and Surgeons of Ontario v. Boodoosingh* 1993 CanLII 8655, and *College of Physicians and Surgeons of Ontario v. Gillen (Div. Ct.)*, 1990 CanLII 6710 (ON SC), affirmed in *College of Physicians and Surgeons of Ontario v. Gillen* 1993 CanLII 8641 (ON CA).
37. We are somewhat troubled by Wheat's continuing contention that she did not intend to engage in facilitating dishonest conduct on the part of her client. The evidence shows otherwise. In the context of the principles of sanction, it does create a residual concern that Wheat still does not fully grasp her role in this outcome. If litigation was indeed imminent, there was no need to create the lease, false on its face, to falsely show consent that Wheat knew did not exist. Likewise, although MM was served with divorce papers in April 2019, by this time, MM had uncovered the fact of the false lease and had already had a serious altercation with her son wherein he wrongly asserted entitlement to MM's jointly owned land.
38. The evidence showed that MM was unrepresented. Wheat's information from the husband and son was that this unrepresented litigant, MM, might also be suffering from a medical condition. This raises the additional risk that she could therefore be in a more vulnerable position. Although there could be imminent representation on behalf of MM, Wheat could have no assurance that this would happen quickly. Instead, Wheat was aware that the document may be used to, at least temporarily, deprive MM of her jointly owned land. Wheat knew all this when she capitulated to her client's improper request. Ultimately, MM stood up for herself and her rights, but the events could have ultimately unfolded in a very different way. As noted by the LSA, the lease was not formally set aside until 18 months after its execution.
39. It is neither in the public interest nor the profession's interest to, in any way, give retroactive license to a lawyer or a lawyer's client to short-circuit the legitimate processes available through Alberta law and the justice system to achieve one's ends.

We find that this conduct, in this context, and given the relevant authorities, has to be met with a suspension. This is necessary both for the protection of the public and as a matter of general deterrence so others are aware that facilitating improper efforts to bypass a spouse's agreement and consent on disposition of land jointly owned will be met with strong sanction by the lawyer's regulator.

40. This was not a case of innocent intent. This was a case where a husband, with full knowledge that he could not dispose of land in the absence of his wife's consent, instructed a lawyer to alter a draft lease to falsely represent such consent which was then executed with the lawyer herself as witness. The sanction necessary, on the particular facts of this case, goes beyond reprimand or fine.
41. Lawyers must uphold the law and they must be seen to be upholding the law. It would be a significant concern for the profession and public if a lawyer could assist a client to wrongly dispossess a land owner, a spouse, to gain an illegal advantage at the outset of a matrimonial property dispute. Even if Wheat considered litigation to be imminent, this conduct cannot be excused by reprimand or fine.
42. The evidence shows Wheat had thought on her client's objectives at length. She had considered multiple other options. The Committee accepts that, but for the client's insistence on her changing the documents, she would not have done so nor counselled it. That does not excuse her conduct; indeed as noted in the Hearing Report, that is exactly when the profession must prove its mettle. However, it does mean that it was a singular occurrence that, in the Committee's view, is unlikely to be repeated in future.
43. Further, although the Committee agrees that lawyers will often have letters of reference, lawyers in conduct proceedings rarely have this calibre of character reference. Those who stand by Wheat are individuals who are fully alive to the nature of Wheat's conduct and yet, knowing her for her usual professionalism, have not changed their high opinion. They know her to be of long-standing high character. We do not find that the lack of such references from the community is of significant issue because the nature of the character references and the history of this lawyer in her personal life and professional practice, unchallenged by the LSA, shows a person whose judgment and honour is ordinarily beyond repute. We accept this character evidence in its entirety.
44. It is a cautionary tale, however, that even the most honourable lawyers can, in some unfortunate circumstances, cross the line to an integrity breach. The public requires the profession to have a uniformly high code which cannot be compromised even in challenging circumstances.

Referral to Attorney General

45. The LSA sought a referral under section 78 of the *Legal Profession Act*. Wheat did not make submissions opposed to such a referral. The *Criminal Code*, RSC [1985], c.C-46 at section 321 defines a false document as including a document that purports to be made by or on behalf of a person who did not make it or authorize it be made. MM did not authorize the lease nor consent to it. Nor did she consent to her husband making the agreement on her behalf. Wheat knowingly assisted her client in creating the false document and then witnessed its execution knowing that was false on its face.

46. In light of the circumstances of the conduct, the definition of a false document in the *Criminal Code*, the precedent cited for such referral, and the findings made in the Hearing Report, the Committee finds that the referral should be made. In our view, there are reasonable and probable grounds to believe the lawyer has committed an offence. The Committee directs the referral to the Attorney General pursuant to section 78(5-8) of the *Legal Profession Act*.

Concluding Matters

47. In light of all of the above, we find that a two-month suspension is proper. The suspension must be served by September 2022. The parties agreed on costs. Costs are payable to the LSA in the amount of \$12,000. The Committee is advised the costs have been paid. The Notice to the Profession will be issued. The matter is referred to the Attorney General.
48. 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, March 9, 2022

Kathleen Ryan, QC Chair

Michael Mannas