

**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 MARK HILLENBRAND
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

Hearing Committee

Robert Philp, KC – Chair
Levonne Louie – Bencher
Michael Mannas – Adjudicator

Appearances

Shanna Hunka – Counsel for the Law Society of Alberta (LSA)
Dana Christianson – Counsel for Mark Hillenbrand

Hearing Date

September 12, 2023

Hearing Location

Virtual Hearing

HEARING COMMITTEE REPORT

Overview

1. The following citation was directed to hearing by the Conduct Committee Panel on November 15, 2022
 - 1) It is alleged that Mark E. Hillenbrand signed a document on behalf of R.C. without her knowledge or authority and that such conduct is deserving of sanction.
2. Mark E. Hillenbrand is lawyer who was called to the bar in 2002.
3. On September 12, 2023, a Hearing Committee (Committee) convened a hearing into the conduct of Mark Hillenbrand, based on the one citation.
4. After reviewing all of the evidence and exhibits and hearing the testimony and arguments of the LSA and Mr. Hillenbrand, for the reasons set out below, the Committee finds Mr. Hillenbrand guilty of conduct deserving sanction on one citation pursuant to section 71 of the *Legal Profession Act (Act)*.

5. The Committee also finds that, based on the facts of this case, the appropriate sanction is a reprimand and a fine. In accordance with section 72 of the *Act*, the Committee orders that Mr. Hillenbrand be reprimanded and pay a fine of \$4,000.00.
6. In addition, the Committee also orders Mr. Hillenbrand to pay costs of the hearing in the amount of \$6,500.00. Mr. Hillenbrand has until November 30, 2023 to pay the costs and the fine.

Preliminary Matters

7. 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. Hillenbrand's conduct proceeded.

Merits – Submissions, Analysis and Decision

8. A Statement of Admitted Facts and Admission of Guilt (Agreed Statement) was submitted to the Committee wherein Mr. Hillenbrand admitted to facts as outlined below.
9. Mr. Hillenbrand was assisting his client, C.H. when he filed a caveat on the property to protect R.C.'s interest in the property, which was to be built. This caveat was filed at the instruction of C.H. Additionally, on June 21, 2018, Mr. Hillenbrand filed a Postponement of Caveat on behalf of R.C., postponing her rights in the property to the rights of B.C.M.C. The signature line indicates that Mr. Hillenbrand signed on behalf of R.C. as a "partner of the law firm" H.K. LLP, her "authorized solicitor and agent". Mr. Hillenbrand did not seek instructions from R.C. or her counsel and did not inform her of the execution or registration of the postponement. Mr. Hillenbrand acknowledged that he signed a document on behalf of R.C. without her knowledge or authority. R.C.'s rights were detrimentally affected. The property went on to foreclosure and the property was lost.
10. Mr. Hillenbrand has unequivocally admitted his guilt to the citation and acknowledged that his conduct was deserving of sanction. The Committee therefore accepts the Agreed Statement and therefore finds Mr. Hillenbrand guilty of the one citation and his conduct to be deserving of sanction.

Sanction – Submissions, Analysis and Decision

11. The parties made a joint submission on sanction of a reprimand and a fine of \$4,000.00. They also jointly proposed that Mr. Hillenbrand pay costs of \$6,500.00.

12. Counsel for the LSA confirmed that Mr. Hillenbrand does not have a disciplinary record with the LSA.
13. Mr. Hillenbrand's counsel highlighted that Mr. Hillenbrand admitted that he fell short of what was required of him, expressed deep regret, and has taken steps to ensure that such conduct is not repeated.
14. LSA counsel referred the Committee to five cases with similar conduct:
 - 1) *Law Society of Alberta v. Mullen*, 2014 ABLs 62
 - 2) *Law Society of Alberta v. Engelking*, 2016 ABLs 30
 - 3) *Law Society of Alberta v. Wells*, 2020 ABLs 8
 - 4) *Law Society of Alberta v. Malcolm*, 2016 ABLs 19
 - 5) *Law Society of Alberta v. Collins*, 2008 LSA 1
15. In all five cases, undertakings were given which were breached or there was a failure to take instructions from clients and the lawyers that were subject of the hearing were given reprimands and or fines and paid costs.
16. Counsel for Mr. Hillenbrand referred the Committee to three cases with similar conduct:
 - 1) *Law Society of Alberta v. Ingimundson*, 2014 ABLs 52
 - 2) *Law Society of Alberta v. Mason*, 2023 ABLs 14
 - 3) *Law Society of Alberta v. Warnock*, 2010 ABLs 2
17. In all three cases there was a failure to take instructions from clients or there were undertakings which were breached. The lawyers that were the subject of the hearings were given reprimands and or fines and costs.
18. A hearing committee is not bound by a submission but should give it significant deference. The leading authority, which has been referred to regularly in other LSA conduct matters, is *R. v. Anthony-Cook*, 2016 SCC 43, wherein 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" (paragraph 32).
19. The Committee was satisfied that the joint submission was an appropriate sanction based on the circumstances of the case. Accordingly, pursuant to section 72 of the *Act*, the Committee orders a reprimand and fine of \$4,000.00. Further, the Committee orders the costs of \$6,500.00.
20. The Chair of the Committee delivered the reprimand orally at the hearing as follows:

Now, this matter does call for a reprimand. And Mr. Hillenbrand, as your regulator, the Law Society of Alberta has two principal duties that we must be constantly aware of. Firstly, the need to protect the interests of the public and secondly, the need to protect and maintain the reputation of the legal profession. Your conduct in this matter engaged both of those considerations.

As lawyers we have a great privilege of being members of a self-regulating profession, but that privilege could be lost if we are not vigilant about our governance.

Your conduct as relayed in the Agreed Statement of Facts raised some serious issues, but we note those concerns were mitigated in part by your admission with respect to the conduct, the fact that you have no prior disciplinary records, and that you were working cooperatively with the Law Society to conclude this matter.

The joint submission on sanction is to be given deference. You have admitted guilt to the citations, which in our view are serious; however, your cooperation in proceeding with this process today helped to avoid unnecessary hearing costs, avoid time and inconvenience to parties and witnesses, and we conclude that in light of all of those circumstances and considerations, it is in the public interest to accept the joint submission.

Your conduct in this matter failed to meet the high standards required, but you have been at the bar for nearly 20 years. It is our view that this is a one-off. It had very serious consequences to those involved. We are pleased that you cooperated throughout, and this reprimand ought not to be taken lightly by you, Mr. Hillenbrand.

Concluding Matters

21. The payment of the fine and costs will be made on or before November 30, 2023.
22. There will be no referral to the Attorney General.
23. There will be no notice to the profession.
24. 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. Hillenbrand will be

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

Dated October 3, 2023.

Robert Philp, KC

Levonne Louie

Michael Mannas