

**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 CYRIL BRIGHT
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

Hearing Committee

Cal Johnson, KC – Chair and Former Bencher
Michael Brodrick – Public Adjudicator
Corinne Petersen, KC – Former Bencher

Appearances

Shane Sackman – Counsel for the Law Society of Alberta
Cyril Bright – Self-represented

Hearing Dates

October 23-24, 2025

Hearing Location

Virtual Hearing

HEARING COMMITTEE REPORT

Overview

1. The following citations were directed to hearing by the Conduct Committee Panel on September 10, 2024:
 - 1) It is alleged that Cyril Bright failed to meet the requirements of the Code of Conduct of the Law Society of Alberta (Code) when entering into a joint retainer and that such conduct is deserving of sanction.
 - 2) It is alleged that Cyril Bright acted in a conflict of interest by preferring the interests of one jointly-retained client over the other and that such conduct is deserving of sanction.
2. Mr. Bright is a member of the Law Society of Alberta (LSA) who practices in Fort McMurray with A. Law Group (ALG). He practices mainly in the areas of family law and real estate. He was called to the Bar in Alberta in 2003 but had practiced in Saskatchewan since July of 2000.

3. Mr. Bright received monies in trust in July 2017 in relation to a couple who had lost their home in the Fort McMurray wildfire and who were replacing that home through the purchase of a modular home. They had arranged a mortgage with a mortgage company (RMG) who placed monies in trust with Mr. Bright in relation to that purchase. The monies were received in trust by Mr. Bright subject to certain specific trust conditions. A dispute arose between the couple and the provider of the modular home prior to the release of all of those monies. The remaining monies sat in Mr. Bright's trust account for several years while that dispute was ongoing and during which time the couple separated. In February of 2021, the husband requested Mr. Bright deliver the monies remaining in trust to him alone. Mr. Bright received an indication from RMG that they had no further interest in the funds as the mortgage had been paid out and Mr. Bright subsequently released them solely to the husband, without consulting the wife.
4. On October 23 and 24, 2025, the Hearing Committee (Committee) convened a hearing into the conduct of Mr. Bright, based on the above citations.
5. After reviewing all of the evidence and exhibits and hearing the testimony and the written arguments of both the LSA and Mr. Bright, for the reasons set out below, the Committee finds Mr. Bright guilty of conduct deserving sanction on both citations pursuant to section 71 of the *Legal Profession Act (Act)*.
6. A further hearing of the Committee will be scheduled for the purpose of hearing submissions on the issue of sanction and costs.

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. Bright's conduct proceeded.

Background

8. Both Mr. Bright and LSA counsel agree on the following facts in relation to these citations:
 - a. JA and PA (the As) purchased a modular home from CH.
 - b. The As were using insurance funds from a home fire to purchase a modular home.
 - c. On July 26, 2017, Mr. Bright received \$258,992.00 (Funds) from RMG for the purchase of the modular home. The monies were provided to Mr. Bright with a letter setting out several trust conditions on the release of those funds (RMG Letter).

- d. Mr. Bright was aware that JA and PA were joint owners of the property in question.
- e. The RMG Letter states the monies were to be provided to ALG in trust for CH on the following terms:
 - I. A drive-by appraisal will be required at the As' cost:
 - II. ALG will release \$220,143.20 to CH once RMG receives a satisfactory appraisal and RMG sends written authorization that the money can be released;
 - III. ALG will release \$38,848.80 to CH once RMG receives an occupancy certificate and RMG sends written authorization to release the funds; and
 - IV. RMG will authorize the release of the remaining \$21,883 to PA and JA once RMG receives an occupancy certificate.
- f. On July 26, 2017, Mr. Bright wrote to counsel for CH and confirmed he was holding the Funds in trust.
- g. The \$220,143.20 was released to CH in accordance with the conditions.
- h. A dispute arose regarding deficiencies and the \$38,848.80 remaining funds (Remaining Funds) continued to be held in trust.
- i. Mr. Bright obtained a limited scope retainer dated August 29, 2018 to start a civil claim which was filed August 31, 2018 (Action) naming the As as co-plaintiffs. The written retainer was signed by PA and witnessed by JA.
- j. A further expanded litigation retainer regarding the Action, dated October 2, 2018, was signed by PA alone.
- k. The disposition of the Remaining Funds held in trust became an integral part of the Action.
- l. MI was Mr. Bright's student-at-law and did some work on the Action in October 2018.
- m. The Remaining Funds sat for several years until PA asked for them to be released to him, alone.
- n. The request to pay funds came from PA on February 2, 2021. The email reads

Hi Cyril. I would like to request all the funds in trust be allocated to me please and thanks at your earliest convenience.

Thanks
[PA]

- o. Mr. Bright replied to PA on February 2, 2021 inquiring whether the lawsuit had settled and flagged that he might need a release from the insurance company. PA, in response to Mr. Bright's email, forwarded an email he had received from RMG. This email was read into the record. Mr. Bright confirmed in cross-examination that this email was not an authorization to pay PA the Remaining Funds. RMG did, however, indicate it had no further interest in the funds and it was a dispute between the As and their builder as follows:

As your mortgage with RMG was paid out last year and transferred to a new lender, we no longer hold an interest [...] The lawyer was holding onto the remaining funds until you were satisfied any deficiencies were resolved, so this is strictly between you, your lawyer and the builder.

- p. On February 3, 2021, Mr. Bright sent PA two trust cheques, one in the amount of the Remaining Funds and the other for \$317.25 for excess retainer funds. The cheques were made out to him alone.
- q. JA's instructions were never sought with respect to the release of the Remaining Funds and she was not told about their release in February 2021.
- r. The Action was not determined until January 25, 2023.
- s. In March 2023, JA attended at Mr. Bright's office to inquire about the Remaining Funds, and she was told they had previously been released.

Testimony relevant to the Citations

9. The LSA called JA as its primary witness. In addition to the agreed facts as stated above, JA's evidence in chief can be summarized as follows:
 - a. In 2017, she and her husband PA retained Mr. Bright to assist with the purchase of a new home, to assist with insurance money from the insurer of a previous home and to assist with dealing with RMG as their mortgagor of the new home;
 - b. PA had first reached out to Mr. Bright on behalf of both her and her husband for this legal assistance. She identified an email chain (Exhibit 35) from July of 2017 around this same time wherein she corresponded directly with Mr. Bright over the course of several emails about the difficulties the As were having in obtaining the mortgage funds from RMG;
 - c. Monies in relation to the new home were forwarded by RMG in trust to ALG for release subject to the conditions as described above. Approximately

\$220,000.00 was released to CH but the Remaining Funds remained in trust as there was an ongoing dispute with CH;

- d. Mr. Bright was further retained by both herself and her husband to protect their interests by assisting with a civil claim, evidenced by a retainer letter (Exhibit 17) that was addressed to PA which she signed as the witness to the signature of her husband;
 - e. A draft unfiled Statement of Claim (Exhibit 19) resulted from that retainer, and it named both she and PA as co-plaintiffs. It lists their various grievances with CH and seeks damages of approximately \$53,000.00. Their claim was ultimately concluded in January of 2024;
 - f. She was not informed by Mr. Bright about the requirements of a joint retainer or the implications of a potential conflict between her and her husband;
 - g. She did not authorize PA to act as her agent or to receive funds on her behalf;
 - h. She attended court regarding the outcome of the lawsuit and the As were awarded \$12,118.46 in a judgment issued on March 1, 2024; and
 - i. She has not received any portion of the Funds released to PA and hopes to retrieve her share in the future.
10. Mr. Bright cross examined JA, and her testimony includes the following:
- a. She had not come to Mr. Bright's office to sign any documents. The retainer letter she signed as a witness was signed at home with her husband;
 - b. Handwritten notations and edits on the draft statement of claim were made by PA as a result of their joint editing though he had been the one to provide the instructions to Mr. Bright on the statement of claim;
 - c. The address for service noted on the Action was the home of her and her husband.
 - d. Mr. Bright's student at law, MI, who had assisted with the drafting had no further involvement after the Action was filed;
 - e. The Action was prosecuted by PA on behalf of both of them at a time when they had separated and PA was the only one to testify at the trial, although she was present in person at the trial and was prepared to testify if necessary;

- f. She acknowledged that she had not reached out directly to Mr. Bright to provide him with information that the couple had separated in September of 2019; and
 - g. She was confident that she had made a retainer payment to Mr. Bright in 2017 at ALG and that she had made it using PA's credit card.
11. Mr. Bright called his former student-at-law, MI, as his first witness. He testified, in summary, as follows:
- a. He was an articling student with Mr. Bright at ALG starting around March or April 2018 and he left to start his own practice in Calgary around April or May of 2020;
 - b. During his time at ALG, MI met PA once, at the courthouse for a pre-trial conference where PA was self-represented. MI attended the meeting for a limited purpose and did not provide legal advice;
 - c. MI did not recall meeting JA and had no communication with her during his service;
 - d. He confirmed that he acted as an agent for the As in the Action, as indicated by his signature on the related documents.
 - e. MI stated that he took instructions from Mr. Bright alone and did not receive any instructions directly from the As;
 - f. He was not aware of any conflict between JA and PA or any separation during his time working on their file; and
 - g. MI confirmed that he was not familiar with the Code of Conduct rules regarding joint retainers at the time he worked on the As' file.
12. Mr. Bright testified on behalf of himself as his only other witness and his evidence in chief can be summarized as follows:
- a. PA approached his firm in July 2017 regarding a dispute with CH over a modular home in Fort McMurray;
 - b. Initially, there was no intention of handling any funds, but the builder required purchase funds to be in a trust account, leading to the As' insurer/lender requesting Mr. Bright's firm to disburse the funds;
 - c. PA was the sole individual who met with Mr. Bright and provided instructions, as JA did not sign any retainer letters;

- d. PA decided against pursuing formal legal action against CH, opting instead for Mr. Bright's firm to draft a statement claim for PA to manage independently;
 - e. Mr. Bright asserted that an email from the law office of a family lawyer acting for JA, dated December 3, 2019, did not indicate any adverse interest between PA and JA or suggest that PA could no longer instruct on behalf of both parties;
 - f. The only instruction Mr. Bright received regarding the Remaining Funds was an email from PA on February 2, 2021, requesting the Remaining Funds be allocated to him alone;
 - g. Mr. Bright stated that he had no reason to believe PA was not speaking on behalf of JA, as he had done throughout their dealings;
 - h. Mr. Bright disputed the claim that JA made a deposit into trust, asserting that the 2017 deposit was made by PA; and
 - i. He clarified that the trust ledger and statements of account were separate documents, with the trust ledger being part of the account on the invoice.
13. LSA counsel cross-examined Mr. Bright and his testimony during that examination included the following:
- a. Mr. Bright confirmed that he did not take any identification from JA in 2017, as she did not visit his office;
 - b. He acknowledged that both of the As were on the title of the property as joint owners, but he did not consider this a joint retainer situation;
 - c. He explained that he was retained by the As to handle the disbursement of funds, but all communications and instructions came from PA;
 - d. He admitted that he did not explain the implications of a joint retainer to JA;
 - e. He assumed PA had the authority to act on behalf of JA based on their course of conduct; and
 - f. He confirmed that he did not make the cheque payable to both PA and JA because PA instructed him to make it payable to him alone.
14. Upon completion of Mr. Bright's testimony, the Committee raised several questions with Mr. Bright:

- a. The trust ledger card referred to receipt of trust monies from the Bank of Montreal as mortgage proceeds, but throughout there had been reference to those as insurance proceeds. When asked for clarification, Mr. Bright indicated that it was not clear to him at the time, nor was it even now, whether RMG was the lender or the insurer or both.
- b. Reference was made by the Committee to the Rules of the LSA (Rules) concerning trust deposits requiring that it be clear as to who the monies were in trust for and asked Mr. Bright who that was. Mr. Bright initially indicated that he didn't think he could answer that but later conceded they were in trust for CH. When asked who then authorized the release of the Remaining Funds, Mr. Bright referenced the RMG email of November 12, 2020 (Exhibit 29) but said he did not take that as an authorization to release the Funds to PA. It was PA who authorized him to release the Remaining Funds held in trust.
- c. Asked about the initial approach to him for legal services, Mr. Bright indicated that it was not with respect to the insurance proceeds, but rather it was concerns with delivery of the modular home and the defects in the home.
- d. Asked about the initial receipt of the trust funds and who his clients were at that time, Mr. Bright confirmed it was both PA and JA, but that they were a "single party " in the subsequent litigation.
- e. Asked why PA was not called to give evidence, Mr. Bright couldn't speak as to the LSA not calling him, but for himself indicated that PA didn't seem very willing to talk to him.
- f. Asked if there was any reason he did not do a retainer agreement when initially contacted by the As, Mr. Bright said "No".
- g. Asked why he had not made out the cheque for the release of the Remaining Funds jointly to the As, he indicated that it was because PA had instructed him to make it payable to PA.

Relevant Documentary Evidence

15. A series of emails (Exhibit 35) occurred on July 17, 2017 as follows:
 - a. PA emailed Mr. Bright, and a conveyancing email address at ALG, providing contact information for himself, JA, RMG and CH;
 - b. Mr. Bright replied asking for the street address for the property in Fort McMurray and PA replied with the address of the property;

- c. Mr. Bright emailed RMG, copying PA, indicating that:
 - i. He has been contacted by the As with respect to their purchase of a mobile home;
 - ii. CH will deliver the home if the mortgage proceeds are in a lawyer's trust account; and
 - iii. "We are willing to act for both RMG and the [As] in this regard".
16. A series of emails, also contained in Exhibit 35, occurred on July 21,2017 as follows:
- a. JA emailed Mr. Bright advising she has left RMG a voicemail regarding the delivery of their modular home "asap";
 - b. Mr. Bright replied directly to JA alone with the subject line: "Re: [J]and [PA]" suggesting she may want to go to another lender;
 - c. RMG emailed Mr. Bright indicating a cheque had been requested in the amount of \$258,992.00 which he should have within 5 business days and attaching a copy of the letter that detailed the conditions for release of those monies;
 - d. JA emailed Mr. Bright expressing frustration at their inability to be able to speak with RMG and advising: "She has our money for our new home";
 - e. Mr. Bright replied to JA alone indicating he thinks the insurance paid off the mortgage and asking if there was money left over;
 - f. JA emailed RMG, Bright and CH with respect to the mortgage stating in part: "We expect the remaining balance to be sent to [J] & [PA], as stated in the letter (which she attached) once the home has been placed on land, as well as the occupancy certificate for the home has been processed"; and
 - g. RMG responds to JA alone attaching a copy of their letter to Mr. Bright.
17. On July 27,2017 Mr. Bright wrote to the lawyer for CH indicating he had "been retained by the [As] so far solely to handle the disbursement of funds", attaching the instruction RMG Letter, and pointing out that there were conflicts between CH's conditions for delivery of the home and RMG's requirement for release of the funds.
18. On October 24, 2017, CH's lawyer emailed Mr. Bright requesting that the Remaining Funds be unconditionally released to his client claiming all of his client's obligations with respect to the modular home installation have been completed. That same day Mr. Bright emailed PA asking how to reply. PA replied on November 15, 2017 indicating that there is still work to be done "and so I might need your services if it is going to be a long delay for repair work to complete".

19. On April 12, 2018 PA emailed RMG, copied to JA, advising that RMG's request for a "letter from [JA] and myself" would not be provided, but indicating the type of letter "we will sign".
20. Exhibit 26 includes a copy of a statement of account dated May 24, 2019, signed by MI and directed to PA for services in relation to the dispute note to the counterclaim of CH. It references [file number]. It attaches what appears to be a portion of a trust ledger card that includes the following:
 - a. Receipt of the \$258,992.00 on July 26, 2017, but indicating "Bank of Montreal – Mortgage proceeds";
 - b. On April 18, 2018, a transfer of the Funds from "[file number] – [A], [P] to [file number] – [A], [P] trust to Trust transfer – move holdback funds";
 - c. On August 31, 2018 a trust transfer of \$3000.00 to pay an account receivable;
 - d. On October 3, "[P] & [JA] – Retainer" for \$2000.00; and
 - e. There are a number of entries for payments on account from PA.
21. On May 22, 2019, PA emailed RMG asking them to release the \$21,883.00 amount that formed the fourth trust condition of the original RMG letter from July of 2017. RMG replied the same day saying that management had agreed to do so and that they would send a cheque out to him by courier. There is no evidence as to whose cheque this was, who the cheque was made out to, nor was any copy of this cheque in evidence.
22. After the request on February 2, 2021 that Mr. Bright release the Funds to PA alone, Mr. Bright responded that he might need a letter from the insurance company authorizing the release. PA emailed him a copy of an email from RMG dated November 12, 2020 indicating that they no longer hold an interest in the property and that the release of the Remaining Funds being held until deficiencies were satisfied, "is strictly a matter between you, your lawyer and the builder". Mr. Bright sent an email in the late afternoon of February 2, 2021 to counsel for CH stating: "Our office received an e-mail today from the Insurer RMG indicating that the funds we hold in trust can be released to [PA]" and that if he didn't hear from them with any objections he was paying it out to Mr. Bright the next day. He in fact did so the next day.
23. There is a further statement account dated September 29, 2020 for a small amount that also includes this same trust ledger card.
24. On May 5, 2025, MI was interviewed by an LSA investigator and questioned as to his involvement in the matters at hand. Among the information provided, MI indicated:

- a. To his best recollection he never met with JA either in person, via email, by phone or by online meeting but he did meet with PA; and
 - b. He was confident both PA and JA were Mr. Bright's clients as both their names were on the statement of claim. JA did not hire a separate lawyer, and because they were both listed as clients in the letter he wrote, acting as Bright's agent.
25. On December 3, 2019, a legal assistant with the law firm acting for JA, in the divorce action between the As, wrote to "Reception" at ALG indicating that they "act on behalf of [JA]" with respect to the "parties family law file" and asking for an update on the Action. That same day a reply came back saying that MI had indicated that PA was self-representing in the matter.

Submissions of the LSA

Citation 1

26. LSA counsel refers to section 3.4-5 of the LSA Code of Conduct (Code) which states as follows:

Joint Retainers

3.4-5 Before a lawyer acts for more than one client in the same matter, the lawyer must:

- (a) obtain the consent of the clients following disclosure of the advantages and disadvantages of a joint retainer;
 - (b) ensure the joint retainer is in the best interests of each client;
 - (c) advise each client that no information received in connection with the matter from one client can be treated as confidential so far as any of the others are concerned; and
 - (d) advise each client that, if a conflict develops that cannot be resolved, the lawyer cannot continue to act for both or all of them and may have to withdraw completely
27. JA confirmed that neither Mr. Bright nor anyone at ALG had explained a joint retainer to her, the advantages or disadvantages of same nor what would happen in the event of a conflict between the As. LSA counsel asserts that Mr. Bright did not comply with any of his clear positive Code obligations regarding a joint retainer, whether at the initial stage when the As sought assistance with the modular home purchase, or during the litigation phase of the matter.

28. The Code definition of a "Client" includes "a person who reasonably believes that a lawyer-client relationship exists, whether that is the case at law". LSA counsel argues that the ceremony of a signed retainer agreement is not required to create a solicitor-client relationship.
29. The obligations when acting on a joint retainer should have been addressed initially when Mr. Bright was retained to hold and disburse the Funds to be used to purchase a home in the name of both of the As and then again when a statement of claim was drafted with the As as co-plaintiffs.
30. Mr. Bright's assertions throughout that the As were a single entity and not separate clients is refuted by comments from one of the LSA authorities as follows:

As counsel for the Plaintiffs argued, marriage does not of itself create an agency relationship between spouses. Indeed, the courts, have clearly stated that it is a fundamental legal concept that spouses have separate legal identity and that caution must be taken in relying on inferences to find agency between spouses as "marriage and/or cohabitation cannot, without more, give rise to an agency relationship."¹

31. LSA counsel referred to a number of authorities relevant for the purposes of citation 1, including the following:
 - a. In *Law Society of Upper Canada v Thomas*², the member acted for two clients, one of whom he had a personal relationship with. The two clients were joint lenders. When the property owners had financial difficulty, they entered into a creditor proposal and the member transferred the property to one client's name alone with the other client having a first charge mortgage on the title. There was no clear loss, but the complainant's ownership entitlements were varied without his consent. The panel found this to be conduct deserving of sanction highlighting that it created an impermissible preference to one client over the other.

The Chair stated the following at the outset of *Thomas*:

Spouses, friends, and business partners often come to lawyers with common goals, and have one person speak on their behalf. This case is a reminder that it is essential to obtain instructions from each independently and to advise them about the nature of joint retainers and possible conflicts of interest. A lawyer must never treat a group of individual clients as a unit. The discipline Stan Thomas is now receiving results, first, from his failing to follow the clear guidance in the Rules of Professional Conduct about what to do when taking on a joint retainer. Second, it results

¹ *Mráz v Herman*, 2015 ABQB 573 at paragraph 15, quoting with approval from *Swift v Tomecek Roney Little & Associates Ltd.*, 2014 ABCA 49 at paragraph 32.

² *Law Society of Upper Canada v Thomas*, 2018 ONLSTH 32.

from his taking instructions from one of his two clients without consulting the other when it turned out the relationship between them was breaking down. He therefore failed to serve one of the two clients and preferred the interests of one over the other.

- b. In *Law Society of Alberta v Broadhurst*³, the member was found guilty of acting in a conflict of interest and failing to get instructions when they acted solely on the instructions of a single co-accused with no proper attempts to obtain authorization from the wife or ensure the husband could act for both. The member similarly operated on assumptions that the husband and wife were speaking as a single unit. The panel highlighted that it was improper for the member to simply rely on the husband's instructions.
- c. In *Law Society of Alberta v Fong*⁴, the member was found guilty of a conflict of interest when he acted for both vendors and a purchaser on a home sale. There was a signed written retainer letter in place outlining the potential for a conflict. The member, acting solely on instructions from the seller, transferred the property to a third party "T". Months later the property was transferred from T to the purchaser. There was no loss to the purchaser, but a conflict was found because the purchaser had a beneficial interest in the property, and it was transferred to a third party without their authorization. This was determined to be conduct deserving of sanction, even though the purchaser suffered no loss as the house eventually was transferred to the purchaser.

Citation 2

- 32. LSA counsel argues that the Funds began as joint monies of the As, used to buy a joint asset that was subject to a release condition that could be authorized by a third party. The third party (RMG) walked away from the situation and asserted no further interest. Mr. Bright then moved the Remaining Funds from the initial joint retainer to a litigation dispute retainer purportedly involving "one party" (notwithstanding that both PA and JA were named as co-plaintiffs) and then paid out the Remaining Funds to one half of the original clients with no clear authorization.
- 33. LSA counsel argues that the evidence is clear that Mr. Bright was acting for both of the As in receiving the Funds and to the extent retained in the Action. He further argues that Mr. Bright's position that PA was authorized to act for JA in a sweeping manner in all capacities on all issues is not borne out by the evidence.
- 34. Mr. Bright was confused about the circumstances of the receipt of the trust monies in his trust account and his lack of attention to his obligations under the Rules complicated the situation. He failed to turn his mind to critical questions as to on what terms, and on whose behalf, he was receiving the trust funds and he failed to seek any direction or

³ *Law Society of Alberta v Broadhurst*, 2022 ABLs 18

⁴ *Law Society of Alberta v Fong*, 2010 ABLs 29.

clarity on the release of the Remaining Funds beyond wholly relying on the instructions of PA. JA never at any time assigned the Funds to her husband nor renounced any entitlement to same.

35. LSA counsel contested Mr. Bright's characterization of an agency relationship between the As arguing that, as a regulatory proceeding under the Code, the matter must be addressed in the context of the Code but that a general agency analysis is informative in LSA disciplinary matters. He distinguished the Court of Appeal decision in *Mraz v Herman*⁵, relied on by Mr. Bright, noting that the court made findings of fact that Ms. Mraz was aware of and consented to all matters and took no issue until a negative result occurred. The Court drew extensive attention to the fact that Ms. Mraz's evidence was not credible when she denied "authorizing the acceptance of the Adams bid". Ms. Mraz was, essentially, attempting to backtrack to avoid a negative result that had occurred and her evidence was taken as such.
36. LSA counsel suggested that the Committee focus on the representations made by Mr. Bright to JA, and Mr. Bright's own evidence, indicating he barely, if ever, spoke to JA, explained little to nothing to her and made no attempts to establish PA's scope of authority to speak on her behalf. Mr. Bright had little to no recollection of any correspondence from JA and strongly refuted even her attendance at his office. He made no efforts to explain any of her entitlements to the Remaining Funds or how he intended to disperse the Remaining Funds.
37. LSA counsel referred to a number of authorities including *Thomas, Broadhurst and Fong* and the references already referred to in paragraph 31 are applicable to citation 2 as well. He also referred again to the *Swift*⁶ decision, this time as it is discussed in *Mraz*:

The trial judge relied on the following in finding an agency relationship between the Swifts: they are spouses; Ms. Swift was "on board" with the project; they are joint tenants; it was typical of the Swifts' family arrangements that Mr. Swift would sign on Ms. Swift's behalf; Ms. Swift was aware of the Agreement and had relied on her husband.

There are several problems with the trial judge's inferences. First, marriage and/or cohabitation cannot, without more, give rise to an agency relationship. To do so anachronistically ignores the separate legal identity of each spouse, a fundamental legal concept that courts in the 21st century should not easily trample upon or dismiss. The same is true of joint tenants. As stated in *Griffiths v Zambosco* (2001), 2001 CanLII 24097 (ON CA), 54 OR (3d) 397 at para 43 (CA): "[o]ne joint tenant is not, by the existence of the joint tenancy, the agent of the other ... Joint tenants have a separate, albeit indivisible, interest in the jointly held asset."

⁵ *Mraz v Herman*, 2016 ABCA 313, affirming the decision below.

⁶ *Swift v Tomecek Roney Little & Associates Ltd.*, 2014 ABCA 49.

That Ms. Swift was “on board” with the project cannot equate to authorizing Mr. Swift to bind her to a contract. Similarly, the fact that Ms. Swift knew about the Agreement does not establish that she represented to anyone, let alone her husband, that he had the authority to legally bind her to the Agreement.

38. Mr. Bright’s transfer of the Remaining Funds from a joint pool to one client required significantly more authorization and discussion than Mr. Bright had in these circumstances. Mr. Bright fell into a conflict by abdicating any responsibility to JA and preferring PA’s interest when he paid out to him alone.

Submissions of Mr. Bright

39. Mr. Bright argues that JA misled the Committee in her stating that she thought Mr. Bright was assisting on the purchase of their new home, pointing out that he was only retained because CH refused to deliver the new home unless the purchase funds were placed and held in a lawyer’s trust account and PA chose ALG to satisfy that condition. He further argues that no retainer agreement was required by their insurance company.
40. Mr. Bright points to a number of what he describes as inconsistencies and problems in JA’s evidence, which he suggests indicate that some of her evidence is false for factual inconsistencies. He states that her instruction to her family law lawyer to reach out to ALG for information on the status of the Action evidences insufficient interest on her part to do it herself; that she admitted the evidence given at the civil trial by PA on behalf of them both indicated that they did not have any conflict with each other for the purposes of that litigation, that she did not attend the pre-trial conference with PA and “did not bother to contact MI throughout his assistance with the [CH] matter”.
41. Mr. Bright references the commentary to section 3.4-5 of the Code and argues that the examples of potential conflicts suggest that the section can only apply where there are two or more separate parties who are at arm’s length to each other, which he asserts spouses are not. According to Mr. Bright, the As were one party in a single action and the commentary reference to “possible differences” are those that arise within the particular matter for which the lawyer represents them, which in this case was their dispute with CH.
42. Saying he would not concede that the As were co-plaintiffs, Mr. Bright argues that the Code does not require a lawyer acting for co-plaintiffs “as a single party” to inquire about any other kinds of relationships the parties may have or all other dealings a couple may have with each other.
43. Mr. Bright notes that neither of the As bothered to inform him of their separation, suggesting that: “[p]erhaps they (JA) was (sic) too embarrassed by the breakdown of their marriage to provide notification to [ALG]”. The email from JA’s counsel in the divorce matter “was never sent to or brought to the attention of [Mr. Bright]” and referred to only to a “family file” which should not be taken as an indication of the separation but

rather was indicative of [JA]'s "disinterest in the proceedings" and it was clear that she never did intend to provide any notice of her separation until well into those proceedings. He further points out that these events took place during COVID-19 and JA had a lot of other issues on her mind "(as well as a new baby)".

44. Mr. Bright argues that the commentary to section 3.4-5 of the Code differentiates between an actual conflict and a potential conflict suggesting a lawyer's duty is different if there is no actual conflict. He further suggests that when the commentary refers to co-plaintiffs as an example of a joint representation, that it would not include the As since they resided together and were not at arm's length to each other.
45. Further, Mr. Bright argues that PA was the agent of JA in all matters for which he represented them. Referring to a quote from G. Fridman in *Canadian Agency Law*, 2nd ed (Markham, Ont: Lexis Nexis Canada), 2012 at page 40, Mr. Bright notes an agency relationship may be impliedly created by the conduct of the parties, which was created here by JA relying on her husband to execute the retainer agreements and provide instructions and that JA had a positive duty to advise ALG that the implied agency was terminated.
46. Mr. Bright distinguishes *Fong* on the basis that it involved no question of an agency. He refers to the *Swift* case without comment and does not appear to distinguish it but rather reiterates his early submission that the conduct of the AMos clearly established the agency relationship and JA "was too busy to be directly involved and left all decisions to her husband".
47. Mr. Bright argues that a number of the submissions of the LSA were false based on different interpretations of various factual circumstances in evidence.
48. Mr. Bright concludes by reiterating that PA's evidence was inconsistent and that she made several assertions which she later admitted were wrong and accordingly that her evidence was unreliable and "tainted by her expectation that she might be entitled to financial compensation from Mr. Bright at some point in the future. She had very little regard for the truth."

Analysis and Decision

Citation 1

49. On citation 1, the Committee first addressed the question of whether this was in fact a joint retainer governed by the Code. One of the major issues is the interplay between the Code provisions on Joint Retainers and the extent to which the law of agency is applicable or can inform that context. Section 3.4-5 of the Code is a statement of principle, while the commentary provides further guidance and colour on the interpretation and application of the generally stated principle. The commentary is not, however, fully prescriptive of every situation that may be addressed by the statement of

principle. The section is applicable where a lawyer acts for more than one client in the same matter.

50. Was this a joint retainer? As an initial starting point, the Committee considered Mr. Bright's argument that, while conceding that both husband and wife were clients, they were "a single client" by virtue of their relationship of marriage and not acting at arm's length. Comments from several of the authorities cited to the Committee refute this characterization. *Mraz* (see paragraph 37 above) clearly notes that marriage does not create an agency relationship and the Committee similarly is of the view that it does not create, by the fact of marriage alone, a single client as Mr. Bright suggests. Similarly, in *Thomas*, (see paragraph 31 above), the Court references spouses, and other examples of clients, coming to a lawyer for advice and states that a lawyer should never treat a group of individual clients as a single unit. The Court in *Swift* states that "in the 21st century Courts should not anachronistically ignore this fundamental legal concept".⁷ Mr. Bright's argument seems more in line with the decision of the Trial Judge in *Swift* which was explicitly rejected by the Court of Appeal. Indeed, a number of his comments about JA being too busy, disinterested in the proceedings and not notifying him of the separation because she was too embarrassed by the marital breakdown reflect an archaic and patriarchal characterization of the roles of spouses in a marriage.
51. Section 3.4-5 of the Code mandates a positive duty upon a lawyer accepting a joint retainer to ensure it is in the best interests of the clients, to provide certain advice and to obtain their consent. There were two, possibly three, instances where this duty arose during the course of Mr. Bright's dealings with the As.
52. The first instance occurred when Mr. Bright was initially contacted by the As in relation to their modular home purchase. His evidence that he was contacted by PA to look into a dispute between PA and CH with respect to the modular home. There is no retainer agreement or any other documentary evidence at that time supporting this assertion. The emails, letters and trust ledger suggest that he was initially retained to facilitate finalization of the purchase of the modular home by receiving and disbursing the purchase funds as required by RMG. Importantly, Mr. Bright advised RMG that he was prepared to act for both the As and RMG in the handling the purchase funds. Further, and contradicting his testimony as to the reason for the initial retainer, Mr. Bright wrote CH acknowledging he would be holding money in trust for CH and that he had "been retained by the As so far solely to handle the disbursement of funds". The email and correspondence in Mr. Bright's own words confirm and the Committee finds it as a fact that he was, at least initially, and when the Funds were received and deposited into trust, acting for PA, JA and RMG.
53. Further, Mr. Bright's own lack of clarity about his initial role is further evidenced by his assertion that he was not at all involved in the As' modular home purchase as well as his

⁷ *Ibid.*, note 6.

admission that he did not know whether the funds being sent to him were mortgage monies or insurance proceeds, and by his inability to demonstrate that he had handled the trust monies received in awareness of, or compliance with, the Rules concerning trust deposits.

54. The active involvement of JA at the initial stages by email and Mr. Bright's own characterization that he was acting on behalf of both of the As as well as RMG (a non-arm's length party) should have raised the specter in his own mind that this was a joint retainer obligating him to discharge the requirements of section 3.4-5 of the Code. Mr. Bright's testimony regarding his confusion about the nature of his retainer is inconsistent with the clear documentary evidence and that evidence is accepted over his oral testimony where inconsistent.
55. Mr. Bright's submissions as to the inconsistencies in JA's evidence regarding Mr. Bright's role is understandable given her position as a non-lawyer. It was Mr. Bright's responsibility and duty to make this assessment and to clarify the nature of the retainer, in compliance with the Code requirements, with his clients. The Committee places significant reliance on the documentary evidence and finds the apparent inconsistencies in JA's evidence to be of little consequence and understandable given that her recollections were going back almost eight years and she was speaking of her understandings as a lay person and not a lawyer.
56. The Committee rejects Mr. Bright's interpretation of the Code commentary referenced in paragraph 41 above. He suggests that it indicates that the lawyer's duty is different when there is no actual conflict. On the contrary, the Committee views the commentary as indicating that it would be rare when a lawyer could accept a joint retainer in circumstances of an actual conflict and that the Code requires compliance in both situations of a potential or actual conflict. Mr. Bright did not meet the requirements of section 3.4-5 of the Code when he initially communicated with the As and RMG and deposited the Funds in his trust account.
57. There are two other instances where the question of a joint retainer arises. First, the retainer agreement of August 29, 2018 (Exhibit 17) which was the limited scope retainer for Mr. Bright to draft, file and serve a statement of claim in relation to the Action. As noted, the As were described as co-plaintiffs in the Civil Claim that was filed August 31, 2018 and which throughout refers to "The [As]". Paragraph 4 of the Commentary to the s. 3.4-5 of the Code cites co-plaintiffs as one of the examples of a relationship where a potential conflict exists, even when clients are aligned in interest and there is no dispute among them. Mr. Bright suggests that the As were "one client" or "one party" for the purposes of this retainer. This argument is not accepted by the Committee. Mr. Bright further argues that only PA, on his own behalf and as agent for JA, was his client. The fact that the retainer letter was addressed to and signed by PA and witnessed by JA, does not establish that this was an agency arrangement and not a joint retainer given the evidence of JA that she thought she was a client, that she was named as a co-

plaintiff and that entitlement to the Remaining Funds, which continued to be held in Mr. Bright's trust account on behalf of CH, PA and JA, was the at the centre of the Action. The Committee concludes, based on the evidence, that this limited retainer was a joint retainer and finds that Mr. Bright did not meet the requirements of the Code when entering into this joint retainer, particularly in circumstances where he continued to hold the Remaining Funds in trust, disbursement of which was anticipated to be determined by the outcome of the Action.

58. The other instance where Mr. Bright may have been obligated to discharge the duties owed pursuant to section 3.4-5 of the Code relates to the retainer agreement of October 2, 2018 (Exhibit18) which speaks primarily to billing and is silent on the nature of the legal work anticipated, other than the subject line at the beginning of the letter: "Re: [PA] and [JA] vs [CH]". A little more detail on this was provided in the testimony of MI both at the hearing and during the interview with the LSA investigator (Exhibit 33). Through this testimony it was very clear that MI considered both of the As as clients and that he was acting as their agent. It was also clear that he provided limited services and that this second retainer seemed to relate to his attending a pre-trial conference to provide some limited assistance on procedural matters. The Committee finds that this was not a new retainer but an expansion of the limited retainer to commence the Action although it did provide a further opportunity to discharge the Code requirements.
59. Having concluded that there are at least two instances of circumstances evidencing a joint retainer for the purposes of the Code, the Committee must also address arguments of counsel on the question relating to the law of agency and its bearing upon the applicability of the Code provisions and the requirements of a lawyer in these circumstances. There was no evidence of a written or verbally communicated agency agreement. Mr. Bright argues that the conduct of the parties at the time created, and the evidence of JA confirmed, an implied agency whereby JA unequivocally relied on her husband to make all decisions necessary to advance their claim against CH and presumably to dictate disposition of the Remaining Funds.
60. The Committee has several problems with Mr. Bright's agency argument as it bears upon this proceeding and citation 1. His argument cites statements from Fridman in Canadian Agency Law to the effect that the assent of the principal in the relationship (i.e. JA) can be taken from a course of conduct indicating the acceptance of the agency relationship and, that relationship having been established, JA had a positive duty to advise Mr. Bright if that was not the case. Mr. Bright relies primarily on the trial and appeal decisions in *Mraz*. *Mraz* did find an agency relationship established in a circumstance where a husband and wife retained a lawyer to represent them in a tendering matter relating to a jointly owned property. When the process ended up in litigation, the Mraz's sued the lawyer claiming that the wife had not consented to the acceptance of a tender and that the lawyer was negligent and breached his fiduciary obligations by accepting the tender without her consent. The trial judge concluded that the wife had given her husband actual authority and it was reasonable for the lawyer to

conclude that the husband was his wife's agent. The Court of Appeal upheld the trial decision and referred to the warning in the appeal decision in *Swift* at paragraph 35 of the judgment that: "courts should be cautious in relying on inferences to find agency between spouses and must recognize the pitfalls of relying on subjective assumptions about marital relationships". In the end, *Mraz* turned largely on the credibility concerns with the wife's evidence.

61. LSA Counsel in their submissions pointed out a number of significant differences between the actions of the wife in *Mraz* and the conduct of the parties in this proceeding. The Court of Appeal in *Mraz* also quotes from Fridman in *Canadian Agency Law* at page 79 where it states:

The onus is on a third party seeking to make a principal liable on a transaction negotiated by an agent said to have acted with apparent authority to prove that the agent had ... apparent or ostensible authority to enter into the transaction on behalf of the principal. To discharge this onus the third party must establish that the principal, deliberately, or intentionally, "held out" the one dealing with the third party as his or her agent. Such a holding out may occur when the agent originally was expressly authorized to act as agent but later had such authority terminated or revoked but continued to act as an agent in the absence of any notification of such termination or revocation by the principal to the third party. [Emphasis added]"

62. The Committee did not find in the evidence any such deliberate or intentional holding out by JA. Much time at the hearing was taken up with whether JA had attended or not at ALG's offices, did or did not pay a retainer, did not expressly deny an agency relationship or notify of a marital breakdown and that she signed the first retainer as a witness to her husband's signature. The Committee found these circumstances to be insufficient to establish an implied agency. In this regard, the Committee agrees with the submission of LSA counsel that Mr. Bright proceeded on an assumption that PA would speak for JA but without having done the requisite inquiries to determine whether that assumption was warranted or justified.
63. Having concluded that (i) at least two circumstances of a joint retainer were present; (ii) Mr. Bright failed to meet the commensurate Code requirements, and (iii) the evidence does not support a conclusion that an agency relationship established such that Mr. Bright was justified in assuming that he only had one client, not two (or three) and therefore not obligated to discharge the requirements of section 3.4-5 of the Code, the Committee then considered the actions of Mr. Bright in that context.
64. The Committee is of the view that the Code mandates that a lawyer must, at the outset of a joint retainer, exercise an appropriate degree of diligence and inquiry to determine the precise nature of the retainer, who the clients are and the implications of the

relationship between those clients. Mr. Bright's own admissions in evidence clearly establish that he did not exercise that requisite level of care. Mr. Bright did not consider that there was a joint retainer at any time and as such none of the requirements of section 3.4-5 of the Code were met.

65. The Committee is next mandated to determine whether the conduct, and Code breaches established, evidence conduct deserving of sanction. As expressed in paragraph 180 of the LSA Pre-Hearing and Hearing Guideline (Guideline), the Committee must review the effect of the conduct on the best interests of the public and the profession, and the reputation of the legal profession. The avoidance of client conflicts engages each of these considerations. The Code is held out to the public as a standard of conduct imposed by a self-regulated profession and the identification and appropriate handling of potential and actual conflicts must be appropriately and carefully dealt with so as to serve the public reposing trust in the profession and to preserve that reputation. The conduct of Mr. Bright fell substantially below those requirements and accordingly the Committee finds Mr. Bright guilty of conduct deserving of sanction.

Citation 2

66. Citation 2 relates to Mr. Bright's decision to release the Remaining Funds to PA alone and on PA's instructions alone. Notwithstanding Mr. Bright's initial and ongoing confusion as to whether the Funds represented mortgage proceeds or insurance proceeds, it was very clear from the evidence that these funds were obtained by, and were for the benefit of, both of the As. The series of emails from July 17, 2017 evidence JA clearly confirming that the Funds were "our funds" and Mr. Bright on July 27, 2017 confirms he acts on behalf of both of the As and RMG in relation to the disbursement of those funds.
67. At the hearing Mr. Bright was unable to provide any substantial explanation as to the handling of those funds in his trust account nor as to how he did or did not adhere to the Rules on the handling and release of trust monies. What little other evidence is present comes mainly from the partial trust ledger card that formed part of several of his accounts (Exhibits 26 and 28). These accounts document receipt of mortgage proceeds on July 26, 2017 but no indication that the trust funds were being held on behalf of both the As and RMG, as Mr. Bright indicated would be the case in his July 17, 2017 email, nor that the subsequent trust letter indicated that they would be held on behalf of CH. The Remaining Funds appear to have been subsequently transferred to a different file. There is a notation in April of 2018 of: "Transfer from [account number] – [A], [P] TO [account number] – [A], [P] Trust to trust transfer – move holdback funds". What that other trust account was, who it was for, what conditions it was held for, who authorized the transfer and on what conditions it could be released is not clear. The Committee can only assume that it was moved in relation to a file relating to the Action as the Statements of Account are labelled as being for "Civil Litigation", but nevertheless continue to refer to [account number]. Anomalously, Mr. Bright in his written submissions at paragraph 15,

says that the Funds were in ALG's trust account for only 11 months and not several years. How he arrives at 11 months, or who they were held by or on behalf of, is again unclear and left open to speculation. Indeed, Exhibit 31, which appears to be the cheque stub for the cheque issued to PA for the Funds on February 3, 2021, more than three and a half years after the initial deposit, notes that it is "to return funds held in trust".

68. The trust ledgers also highlight some other apparent inconsistencies. While both Exhibits 26 and 28 in the Statement of Account portion show only PA as the client, the trust ledger shows a payment in June of 2018 of \$3,723.69 as "[PA] MC payment for further retainer", yet several months later in October of 2018 receipt of \$2,000.00 for "[P] & [JA]– Retainer". Similarly, there are a number of entries representing trust transfers to pay "a/r" or which reference specific invoice numbers but none of which seem to pay the statements of account in question.
69. In terms of the case authorities, the Committee draws parallels with the conduct of the lawyers in *Thomas* and in *Fong* where the applicable tribunal, after finding circumstances of a joint retainer, found a breach of the applicable conduct rules by transferring a property to one client without taking the instruction of, or consulting with, the other client. Mr. Bright attempts to distinguish *Fong* on the basis that there was no question of agency, but which argument is without merit based on our agency conclusions above. *Broadhurst* also contains applicable circumstances where the lawyer failed to consult with or seek instructions from a wife where a couple were jointly charged criminally but the lawyer received an offer from the Crown to withdraw charges against the wife if the husband pled guilty. Mr. Bright distinguished this case on the basis that there was an agreed statement of facts and thus no need for an adjudication. The Committee finds this to be an inadequate basis on which to distinguish the case. Each hearing committee is directed by paragraphs 46, 47, and 51-53 of the Guideline as to the procedure when dealing with admitted facts. Each hearing committee must determine whether the admission is in acceptable form and "must include the facts necessary to support a finding of guilt on the essential elements of the citation". Mr. Bright makes a similar argument on the applicability of the *Suberlak*⁸ case where the member released funds to one client over the express objections of his other clients, assuming that he had a signed conflict letter which would have authorized that.
70. Before releasing the Funds to PA, Mr. Bright emailed a lawyer he assumed was still counsel for CH and stated: "Our office received an email today from the Insurer RMG advising that the funds we hold in trust can be released to [PA]". That was obviously not an accurate representation of the RMG email and reinforced that Mr. Bright preferred the interests of one client to another.
71. When RMG indicated that they no longer had any interest in the Remaining Funds which they had subjected to a trust condition for release, Mr. Bright apparently took that to

⁸ *Law Society of Alberta v Suberlak*, 2020 ABL 34.

mean that he could release the Remaining Funds to PA alone, without giving due consideration to the interests of the other client that was the subject of the joint retainer. In doing so, he preferred the interests of one client to another.

72. Further, even if an implied agency could be found with respect to the Action retainer, this would not create, in reverse, any agency with regard to the Remaining Funds. Mr. Bright acknowledged at the outset and was under trust conditions which were clear that the Funds were for the benefit of CH, the As and that remained the case until they were disbursed. Mr. Bright did take steps to satisfy himself that RMG and CH no longer had any interest in the Remaining Funds. He failed to do so with respect to JA.
73. The Committee finds that citation 2 has been proven on a balance of probabilities and the conduct is deserving of sanction.

Concluding Matters

74. A further hearing will be scheduled to determine sanction and costs.
75. 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. Bright will be redacted and further redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 98(3)).

Dated March 9, 2026.

Cal Johnson, KC

Michael Brodrick

Corinne Petersen, KC