LAW SOCIETY OF ALBERTA

IN THE MATTER OF THE *LEGAL PROFFESSION ACT*;

AND

IN THE MATTER OF A HEARING REGARDING

THE CONDUCT OF MICHAEL BRADLEY LEEBODY,

A MEMBER OF THE LAW SOCIETY OF ALBERTA

Hearing Committee

Dennis Edney, Q.C., Chair (Bencher)

Appearances:

Counsel for the Law Society – Nicholas Maggisano
Michael Bradley Leebody – Self Represented

Hearing Date:

August 05, 2016

Hearing Location:

Law Society of Alberta at 800, Bell Tower, 10104 – 103 Avenue, Edmonton, Alberta

HEARING COMMITTEE REPORT

JURISDICTION, PRELIMINARY MATTERS AND EXHIBITS

1. On August 5, 2016 a Hearing Committee (Committee) convened at the office of the Law Society of Alberta (LSA) to inquire into the conduct of Michael Bradley Leebody. The hearing was conducted by Dennis Edney, Q.C., Bencher, as a single bencher hearing. The Law Society of Alberta ("LSA") was represented by Mr. Maggisano. Mr. Leebody was in attendance throughout the hearing and chose to represent himself without the assistance of legal counsel.

2. The jurisdiction of the Committee was established by Exhibits 1 through 4, consisting of the letter of appointment of the Committee, the Notice to Solicitor pursuant to section 56 of the *Legal Profession Act*, the Notice to Attend to the Member and the Certificate of Status of the Member with the Law Society of Alberta.

3. The Chair asked the member and counsel for the LSA whether there was any objection to the constitution of the Committee. There being no objection, the hearing proceeded.

4. The Certificate of Exercise of Discretion pursuant to Rule 96(2)(b) of the *Rules of the Law Society of Alberta* ("Rules") was entered as Exhibit 5. Five individuals were served with private hearing applications. Counsel for the LSA advised that the LSA did not receive a request for a private hearing. Accordingly, the Chair directed that the hearing be held in public**.**

5. The matter proceeded as a single bencher hearing in accordance with the provisions of section 60 of the Act. Section 60(1) of the Act permits a member to submit a statement of admission of guilt of conduct deserving of sanction to the Executive Director. Where the statement of admission of guilt is submitted prior to the appointment of a Hearing Committee, that statement of admission of guilt can only be acted on if it is in a form acceptable to the Conduct Committee of the LSA.

6. The balance of the exhibits was entered by consent, including the Statement of Admitted Facts and Admission of Guilt, referenced above. While only some of these exhibits are referred to in this report, all were considered in arriving at the decisions described below.

CITATION

7. Mr. Leebody faced the following citation:

> [1] It is alleged that you failed to honour an undertaking given to another solicitor, [R.W.N.], and that such conduct is deserving of sanction.

SUMMARY OF RESULTS

8. Mr. Leebody signed a Statement of Admitted Facts and Admission of Guilt to the citation, on the 26th of April, 2016 attached as Appendix "A" to this Hearing Report.

9. On May 25, 2016, the Hearing Committee found that Statement of Admitted Facts and Admission of Guilt was in a form acceptable, pursuant to section 60(3) of the *Legal Profession Act*, and that the conduct noted was conduct deserving of sanction.

10. Pursuant to section 60(4) of the Act, such admissions are deemed for all purposes to be a finding of the Hearing Committee that the member's conduct is deserving of sanction. Guilt having been so determined, the remaining matter to be decided at this hearing is the appropriate sanction on the citation.

11. There was a joint submission by counsel for the LSA and the member regarding sanction. It was jointly submitted that the member receive a reprimand and pay the actual costs of the hearing.

STATEMENT OF ADMITTED FACTS AND ADMISSION OF GUILT

12. The Agreed Statement of Facts is attached as Appendix "A".

13. Mr. Leebody was admitted to the LSA on August 16, 2002.

14. He was an associate in the criminal law practice of "BLA". The law firm dissolved in May 2015, after a deficiency in its trust account was self-reported to the LSA.

15. BLA was S.B.'s law firm. He was also the sole responsible lawyer with signing authority on the trust and general accounts.

16. In the capacity both as a friend and an associate of the law firm, the member agreed to handle the real estate sale of a home belonging to S.B. and his former common law partner.

17. In the course of the real estate transaction, Mr. Leebody gave a written undertaking to legal counsel for the purchaser, that on receiving the cash to close, he would discharge the mortgage and caveat registered against the vendor's house.

18. The transaction closed with the mortgage being paid out from the sale proceeds. Approximately $18,000 remained in trust after the payout of the mortgage, but this was not sufficient to discharge the caveat and it was not discharged. Mr. Leebody relied on S.B. to ensure the caveat was discharged and failed to honour his own undertaking to discharge it.

JOINT SUBMISSIONS ON SANCTION

19. The Committee received oral submissions from counsel for the LSA and from the member, in support of a joint submission, proposing a sanction by way of a reprimand and payment of the actual costs of the hearing.

20. Counsel for the LSA, advised that Mr. Leebody had admitted responsibility immediately upon being contacted by the LSA. He had co-operated in the preparation and signing of the Statement of Facts and Admission of Guilt and had consented to a single Bencher hearing, thus resulting in very brief hearing and estimated costs of $2,186.10.

LAW ON JOINT SUBMISSIONS

21. The Committee concurs that a joint sentencing submission should not be lightly disregarded and should be accepted unless it is unfit, unreasonable, contrary to the public interest, or there are good and cogent reasons for rejecting it. *(Rault v. Law Society of Saskatchewan, 2009 SKCA 81, [2010] 1 W.W.R. 678).* Also, the judgment of the Court in *R. v. Magas,* 2012 ABCA 61, 524 A.R. 98 (para.16) stands for the proposition that rejection of a joint submission is unlikely to warrant appellate

intervention where the sentencing judge demonstrated a thorough appreciation of the relevant facts, their significance, and the proper sentencing principles.

DECISION AS TO SANCTION

22. The Hearing Committee acknowledges that it is neither the function or the purpose of disciplinary proceedings to punish anyone. (See *Denovan Hill (Re),* 2011 LSBC 16 (Can LII)).

23. The Hearing Committee is guided by the public interest, which seeks to protect the public from acts of professional misconduct and to ensure that the public maintains a high degree of confidence in the legal profession. Professional discipline exists to address misconduct but also to restore and maintain public trust in the legal profession.

24. In arriving at the appropriate sanction, the Committee accepted the member was an unknowing participant in any fraudulent activity. He, however, failed to guard against being used as the tool or dupe of an unscrupulous member of the BLA law firm by failing to oversee the real estate file to the standard of a competent lawyer. As a result, Mr. Leebody failed to fulfill an undertaking on a real estate transaction where he guaranteed either to provide clear title, or in the event that could not occur, to return funds received from the purchaser.

25. The Committee was mindful of significant mitigating factors, including the legal career of Mr. Leebody, free from any disciplinary issues, and that the conduct in question had not resulted in any personal gain to him. He also cooperated fully with the LSA in their investigation of the "BLA" law firm while continuing, to assist former clients harmed by the closing down of the law firm.

26. The Committee was assured, from the candour of Mr. Leebody at the hearing, that he well understood the inviolability of lawyers' undertakings being fundamental to the public relying on lawyers in the conduct of transactions and essential to maintaining high professional standards in preserving public confidence in the legal profession.

27. The Committee determined that specific deterrence of Mr. Leebody is not a concern in this matter, and the determination of guilt would be sufficient deterrence in these circumstances.

28. Taking into account all of the foregoing factors, the Hearing Committee concluded that the public interest would be protected and confidence in the profession maintained by acceding to the joint submission, proposing a sanction by way of a reprimand and payment of the actual costs of the hearing.

29. The Chair delivered a reprimand to Mr. Leebody, a copy of which is appended to this Hearing Report as Appendix "B".

30. The exhibits and proceedings will be available for public inspection, which includes copies of exhibits for a reasonable copy fee. The exhibits and transcripts shall be redacted to exclude privileged information and any information that identifies Mr. Leebody's clients or any complainants in this matter.

31. No referral to the Attorney General is required.

33. Mr. Leebody shall pay hearing costs in the amount of $2,186.00, payable within 60 days of service of the statement of costs.

Dated this 30th day of November, 2016.

_____

Dennis Edney Q.C., Bencher
Chair

APPENDIX "A"

IN THE MATTER OF THE LEGAL PROFESSION ACT

AND

IN THE MATTER OF A HEARING INTO THE CONDUCT

OF MICHAEL B. LEEBODY,

A MEMBER OF THE LAW SOCIETY OF ALBERTA

STATEMENT OF ADMITTED FACTS AND ADMISSION OF GUILT

INTRODUCTION

1. Michael B. Leebody ("Leebody") was admitted to the Law Society of Alberta ("LSA") on August 16, 2002.

2. Leebody practices criminal law. He was an associate of ["BLA"] until the firm essentially dissolved in May 2015 after a deficiency in its trust account was self-reported to the LSA by [SB]. After that Leebody started his own firm, Leebody Lloyd LLP.

3. On April 13, 2016 the following citation was directed to a hearing by a Conduct Committee Panel:

   1. It is alleged that Mr. Leebody failed to honour an undertaking given to another solicitor, [RWN], and that such conduct is deserving of sanction.

FAILURE TO HONOUR UNDERTAKING

4. BLA was [SB]'s firm. He was the Responsible Lawyer and the only person with signing authority on the trust and general accounts. Only he and his office manager, [JB], had access to the banking records of the firm.

5. [SB] and his former common law partner [CF] sold their house on January 1, 2015, with the deal closing March 16, 2015. There was an RBC mortgage ("Mortgage") and a BMO caveat ("Caveat") on title which had to be paid out to complete the sale [EXHIBIT 1].

6. The house was sold for $620,000. The amount needed to payout the Mortgage in first place was $569,641.84. The amount needed to payout the Caveat in second place was about $128,000.

7. Leebody was friends with [SB] and [CF]. As a favor to them he agreed to notionally handle the sale of their home. The purchaser's counsel was [RWN]. Leebody signed a letter giving an undertaking to [RWN] to payout the Mortgage and Caveat [EXHIBIT 2]. [JB] and [SB] in essence handled the balance of the matter. [SB] handled all the trust transactions as he was solely in control of the firm's trust account.

8. Although he undertook to payout the Mortgage and Caveat, Leebody was unaware of the amounts owing and relied on [SB] to ensure they were discharged. Leebody states that he asked [JB] whether there were sufficient funds to cover the transaction and she told him there was. Leebody did not ask for or obtain a payout statement in relation to the Caveat, and there is no indication that [SB] or [JB] obtained one either.

9. The transaction closed on March 16, 2015. The Mortgage was paid out from the proceeds of sale, but no payments were made towards the Caveat and the purchaser took title subject to it [EXHIBIT 3].

10. Approximately $18,000 remained in trust after the payout of the Mortgage and other disbursements. Leebody states that he was not told about these funds. [SB] ultimately released the funds to himself.

11. Leebody believes that [SB] was actively trying to cover up the failure to payout the Caveat, and states that he did so by continuing to make monthly payments towards the Caveat after the transaction closed. Leebody states that ultimately those payments stopped and in August 2015 he, the purchaser and [RWN] learned for the first time that the Caveat had not been paid out in full.

12. On August 5, 2015 [RWN] sent a complaint to the LSA alleging Leebody failed to honour an undertaking.

13. On August 19, 2015 Leebody responded to the complaint [EXHIBIT 4].

14. The LSA investigated the matter, and a report was produced [EXHIBIT 5]. Leebody accepts the report as true, subject to the comments made in his response to the report [EXHIBIT 6].

CONCLUSION

15. Leebody admits as fact the statements contained within this Statement of Admitted Facts and Admission of Guilt for the purposes of these proceedings.

16. Leebody admits that his conduct set out herein was conduct deserving of sanction, being incompatible with the best interests of the public and tending to harm the standing of the legal profession generally. He further admits guilt to the following citation:

    1. It is alleged that Mr. Leebody failed to honour an undertaking given to another solicitor, [R.W.N.], and that such conduct is deserving of sanction.

ALL OF THESE FACTS ARE ADMITTED THIS 26 DAY OF APRIL, 2016.

"Michael B. Leebody"
MICHAEL B. LEEBODY

APPENDIX "B"

MICHAEL BRADLEY LEEBODY
REPRIMAND

It is clear from the record that you are a man of integrity. You're well respected in the Bar, and that you made an error of judgment that you have acknowledged. You have, of course, let yourself down and your fellow lawyers and the public in your failure to oversee and ensure that your undertaking took place. You've gone to extraordinary lengths to remedy the harm that has occurred -- harm that lies at the door of an unscrupulous former colleague. The Committee strongly believes you have learned from this experience, and we wish you the very best in your future endeavours.