

## THE LAW SOCIETY APPEAL PANEL

### BETWEEN:

**Peter D. Riccioni, a Member of the Law Society of Alberta, Appellant**

**v.**

**The Law Society of Alberta, Respondent**

**Before:** Fred R. Fenwick, QC (Chair)  
Larry Ackerl, QC  
Gillian Marriott, QC  
Cal Johnson, QC  
Robert Harvie, QC  
Wayne Jacques, CA  
Larry Ohlhauser, MD

**Heard:** December 16, 2013

**Counsel:** Simon Renouf, QC, for the Appellant  
Lindsay MacDonald, QC, for the Respondent

## DECISION

### INTRODUCTION:

1. This appeal involves a member being charged with citations arising out his involvement as the conveyancing solicitor in what was alleged to be a mortgage fraud scheme. The transactions involved were not in issue, nor was the fact that the member's actions, inactions and breach of various Law Society rules contributed to the scheme. The Hearing and this Appeal centered around the level of the member's knowledge of the scheme and how the level of that knowledge related to the public protection mandate of the Society and its regulatory processes.
2. As opposed to a hearing about criminal fraud where the level of knowledge would be related to intent or *mens rea* or negligence in a civil law sense where knowledge would be related to assumption of risk, this case involves the Law Society's examination of the behavior of the conveyancing solicitor in the underlying transactional steps in light of his professional and contractual obligations to his purchaser and mortgage lender clients.
3. Arising out of his involvement in the transactions, Mr. Riccioni was cited for specific regulatory failures, as opposed to an overall involvement with the alleged fraud:
  - a. Failing to serve clients who were purchasers – essentially, exposing purchasers of real property to overpriced transactions, mortgage foreclosures and deficiency judgments;

- b. Failing to serve lender clients – failing to give the mortgage companies proper advice regarding the nature of the mortgage security that was being placed by the member on their behalf;
  - c. Improper delegation of duties on real estate files – most of the actual transactions were carried out by a third party mortgage paralegal operating outside of the direct supervision of Mr. Riccioni;
  - d. Assisting clients in an improper purpose – using his position as conveyancing solicitor and solicitor for the mortgage lender to advance the mortgage fraud being perpetrated by the purchaser clients;
  - e. Failing to follow specific accounting rules of the Law Society;
  - f. Permitting the funds to be withdrawn from his trust account without personally signing the cheques;
  - g. Failing to be candid with the Law Society during its investigation of the offences; and
  - h. Generally weakening the public respect of the law and the justice system, bringing discredit to the profession.
4. A twenty-count citation containing the particulars of the conduct alleged to be deserving of sanction was filed (a copy of the citations are attached as Appendix 1 to this decision report) and hearings were heard on 14 days in 2011 and 2012 at the Law Society offices in Calgary, Alberta. Mr. Riccioni was found guilty of 15 of the citations on May 10, 2012, the Law Society electing not to present evidence on the remaining citations.
  5. The Hearing Committee began the sanction hearing May 10, 2012, and adjourned sanction proceedings until after the written report of the Hearing Committee was delivered on November 26, 2012. The Hearing Committee gave its order with respect to sanction and costs January 11, 2013, disbarring Mr. Riccioni and imposing full costs of the hearing in the amount of \$41,449.52.
  6. Mr. Riccioni appeals his conviction on the 15 citations where his conduct was found to be sanctionable and also appeals the sanction of disbarment. The appeal was heard December 16, 2013. The Appeal Panel reserved its decision and now renders its decision, dismissing the appeal and upholding the finding of the Hearing Committee with regards to both findings of guilt and the sanction of disbarment.

#### **JURISDICTION:**

7. Jurisdiction was established pursuant to the Procedure Guidelines in the Member Conduct Appeal Guideline:
  - a. Quorum – a full quorum of seven Benchers was present.
  - b. Hearing Record – the Benchers composing the Hearing Panel confirmed that they had received the Hearing Report and the Hearing Record. Mr. Riccioni and

his counsel confirmed that they as well had received a copy of the Hearing Report and the Hearing Record.

8. Counsel for the Appellant and the Respondent confirmed jurisdiction and raised no objection to the composition of the Panel.

#### **DOCUMENTS:**

9. By consent, materials were circulated to the Appeal Panel prior to the hearing of the Appeal and were referred to at the hearing of the Appeal:

Jurisdictional Documents (containing)

Hearing Report

Sanction Phase Report

Hearing Record

Notice of Appeal (Letter from Mr. Renouf dated February 8, 2013)

Appointment of Appeal Panel

Private Hearing Application Notice

Factums and Authorities of the Appellant

Factums and Authorities of the Law Society of Alberta

#### **OPEN HEARING**

10. Counsel for the Member and counsel for the Law Society confirmed that the hearing of the appeal would be an open hearing.

#### **EVIDENCE:**

11. The complaint against Mr. Riccioni began as a complaint/inquiry by another solicitor, proceeded through Law Society written inquiries made of Mr. Riccioni, Practice Advisor and Practice Review involvement, and more formal Law Society investigator interviews with both Mr. Riccioni and others. Mr. Riccioni's files and accounting records were reviewed and assessed. The Hearing Committee heard the full spectrum of this evidence and were able to review a fulsome picture of Mr. Riccioni's conveyancing practice at the time including:

- a. Evidence from purchaser clients
- b. Evidence of instructions from mortgage lender clients
- c. Statements and evidence from the paralegal who handled most of the transactions

- d. Original and forensically reconstructed accounting evidence showing recording of and flow of funds in the transactions
  - e. Conveyancing documents showing the structure of the transactions
  - f. Original cheques purported to be signed by Mr. Riccioni and expert evidence of handwriting analysts as to the signatures
  - g. Mr. Riccioni gave evidence in the form of original statements given to the investigators early in the investigation, later statements given in response to other witness statements and evidence (statements were admitted into evidence), and *viva voce* evidence given by Mr. Riccioni in testimony at the Hearing.
12. In summary, the Hearing Committee was presented with a very thorough review of Mr. Riccioni's conveyancing practice involving documents, financial records, and testimony of the key persons involved.

## FACTS

13. In its decision after hearing the evidence, the Hearing Committee, in the Hearing Report reorganized the citations against Mr. Riccioni into groups as follows:
- a. Citation 1 – Accounting rules not followed
  - b. Citations 3 and 4 – Failure to serve purchaser clients
  - c. Citations 4 and 13 – Failure to serve lender clients
  - d. Citations 5, 12 and 15 – improper delegation of duties on real estate files to D.R. Paralegal Services Ltd. and D.R.
  - e. Citation 6 – Failing to be candid with the Law Society
  - f. Citations 8 and 19 – Assisting clients in an improper purpose
  - g. Citation 9 – Permitting funds to be withdrawn from the trust account when one or more cheques were not signed by Mr. Riccioni or an active member of the Law Society
  - h. Citations 2, 10 and 16 – Weakening public respect for the law and the justice system
  - i. Citations 7, 11, 17, 18 and 20 – Not proceeded with at the hearing.
14. The Hearing Committee delivered a 498 paragraph decision thoroughly reviewing the evidence and setting out its finding of facts and decision with regards to the citations. The Hearing Committee's findings can be summarized:
- a. There was no doubt at all that the transactions testified to had occurred:

- i. Some of Mr. Riccioni's purchaser clients were "straw purchasers" lending their names to the purchases of residential real estate with no intent to ownership in the ordinary sense;
  - ii. The straw purchasers were being paid fees by other persons for their participation;
  - iii. Monies flowed in an irregular fashion in the transaction, for example, the purchasers received a fee for their participation
  - iv. Receipt of funds by Mr. Riccioni was recorded improperly in his trust records;
  - v. The financial transactions were orchestrated by other clients of Mr. Riccioni who were profiting from the transactions by selling property at inflated prices to the straw purchasers who financed the purchase through mortgage security and would bear the legal burden of the mortgage and loan and the risk of a foreclosure and deficiency judgment if the payments on the inflated price could not be paid;
  - vi. Mortgage lender clients were not given the due diligence and reporting that they requested concerning the dangerous nature of the mortgage transactions,
  - vii. A considerable portion of these suspicious transactions were being carried out by an independent paralegal service which had essentially taken over Mr. Riccioni's real estate practice and was not being supervised by him.
- b. For the most part, there was no contest at the Hearing that the transactions had in fact occurred just as the evidence stated,
  - c. A considerable portion of the presentation to the Hearing Committee was taken up with a discussion of the level of intent necessary to support the citations, or the implication of involvement in an overall mortgage fraud scheme.
15. The Hearing Committee found with regards to the various citations:
- a. Citation 1 – Failing to follow the accounting Rules of the Law Society. Mr. Riccioni admitted this citation at the Hearing.
  - b. Citations 3 and 14 – Failing to serve purchaser clients
    - Mr. Riccioni did not meet with his clients but rather mixed them with the independent paralegal practice, losing all control of his practice and exposing his purchaser clients to fraud, foreclosure and bankruptcy.
    - Failing to meet with clients to ascertain instructions in suspicious circumstances led to the conclusion that Mr. Riccioni was reckless or willfully blind to the fraud being perpetrated.

- By taking instructions from someone other than the direct client, Mr. Riccioni failed to protect either himself or his purchaser clients against involvement in fraud.
  - In failing to inform his clients of recent steep increases in the value of the property (which he knew of), Mr. Riccioni expressed no understanding or concern about his obligations to his purchaser clients.
- c. Failing to serve lender clients
- Mr. Riccioni did not follow his mortgage lender's instructions concerning telling them about "flips" and recent sales of the same properties for substantial lower values. He failed to follow specific instructions.
  - Mr. Riccioni failed to actually meet with his purchaser clients in advancing the mortgage money.
  - Mr. Riccioni failed to report to his lender clients as to the true purchase price of the property in question.
- d. Improper delegation of duties
- Mr. Riccioni improperly delegated his duties and responsibilities on real estate files to a paralegal service in circumstances where a few minutes spent with his clients, or review of the financial information would have clearly shown him that something was going wrong in the practice.
- e. Failing to be candid with the Law Society of Alberta during its investigations
- Throughout the investigation of these offences or of these citations, Mr. Riccioni gave detailed statements to the Law Society of Alberta investigators which the Hearing Committee found to be materially false including the fact that he was not signing his own trust cheques, the fact that he was not meeting with his clients, his cooperation in allowing his trust account to be used by the paralegal services, and whether in fact he was acting for one of the mortgage fraud perpetrators profiting from the transactions.
- f. Assisting clients in an improper purpose
- In failing to advise mortgage lender clients of the circumstances surrounding the sales of the properties, Mr. Riccioni was involved in the flow of the funds which allowed the underlying frauds to S.P. Inc. and the "B.'s" to make large sums of money and pay the straw purchaser their "fee".
  - Mr. Riccioni was willfully blind to what was occurring in this practice, not recognizing who his clients were and turning over his practice to the rogue paralegal.
- g. Permitting funds to be withdrawn from a trust account not signed by Mr. Riccioni

- The Hearing Committee found that Mr. Riccioni signed only 22 out of 185 trust cheques examined at the Hearing.
16. In summary, it is clear from the findings of fact made by the Hearing Committee that:
- a. Mr. Riccioni was failing to following trust accounting requirements of the Law Society.
  - b. Mr. Riccioni, improperly, and without supervision, delegated material aspects of his practice to what appears to be a rogue paralegal assisting with mortgage frauds.
  - c. When the Law Society investigators and the Law Society Practice Review questioned Mr. Riccioni on some of these issues before charges were laid, he gave materially false and misleading statements to the Law Society's investigators and Practice Review Committee.
  - d. Mr. Riccioni failed to follow specific instructions given to him by his mortgage lender clients to alert them of danger signals of potential mortgage fraud. This was a key step in the fraud. It allowed inflated mortgage funds to flow through his office to the straw purchasers and the underlying fraudsters. Throughout Mr. Riccioni was acting for the mortgage lenders and failed to give them the factual advice they had requested which would have alerted them of the scheme.
  - e. That a mortgage fraud scheme existed with at least two of Mr. Riccioni's underlying instructing clients, S.P. Inc. and B.
  - f. That Mr. Riccioni's actions, inactions and mis-statements to his clients and the Law Society materially contributed to the mortgage fraud scheme which placed both the mortgage lenders at risk they were demonstrably not willing to take on and put the straw purchaser participants in a mortgage fraud risk they ought not to have taken on and about which ought to have received independent analysis and advice from Mr. Riccioni.

## **GROUNDS OF APPEAL**

17. Mr. Riccioni appeals on the following grounds:
- a. The Hearing Committee misapplied the legal test in finding Mr. Riccioni guilty of conduct deserving sanction. This ground centers around the Hearing Committee's finding that Mr. Riccioni was reckless and "willfully blind" to the mortgage fraud.
  - b. Breaches of procedural fairness including:
    - i. Failing to provide reasons;
    - ii. The Hearing Committee called Mr. Riccioni as a witness.

- c. The sanction was unduly harsh failing to consider mitigating factors including the fact that the conduct complained of was years in the past and Mr. Riccioni had continued in practice without complaint prior to the hearing.

## STANDARD OF REVIEW

18. The Appeal Panel gives deference to the Hearing Committee on findings of fact and mixed fact and law (including sanction), the standard of review being “reasonableness”. On issues of law, which would include issues of procedural fairness, including the important issue of the Hearing Committee calling Mr. Riccioni as a witness, the Appeal Panel owes no deference to the Hearing Committee and reviews on a standard of “correctness”.

## MR. RICCIONI’S EVIDENCE AT THE HEARING AS AN APPEAL ISSUE

19. The fact that Mr. Riccioni was called by the Hearing Committee to be a witness, is argued to be both jurisdictionally and procedurally incorrect:
  - a. It is argued on appeal that as the Law Society had closed its case without calling Mr. Riccioni and Mr. Riccioni not giving evidence as part of his case, that the Hearing Committee had no jurisdiction to call him at their own request.
  - b. If the Hearing Committee was to call Mr. Riccioni, there ought to have been a limited right of questioning (as opposed to allowing the Law Society counsel to cross examine at large as was their ruling).
20. Once Mr. Riccioni testified, the Hearing Committee found his testimony to be not credible and thus the Member’s evidence was argued to have had an unfair influence on the Hearing.
21. Statements made by counsel at the hearing show that the calling (or not) of Mr. Riccioni evolved as follows:
  - a. Counsel for the Law Society and Mr. Riccioni were, as the Hearing progressed discussing the development of the case, order of witnesses etc. and that the calling of Mr. Riccioni as a witness was discussed as the Hearing proceeded, but inconclusively;
  - b. At the close of the Law Society’s case, Mr. Riccioni’s counsel had still not stated clearly whether he was calling Mr. Riccioni;
  - c. At the start of his case, counsel for Mr. Riccioni announced that he would not be calling Mr. Riccioni as a witness but that Mr. Riccioni would “answer any and all questions which the Hearing Committee had for him”;
  - d. The Hearing Committee made it known that having heard the evidence of the Law Society, that it wanted to hear from Mr. Riccioni;
  - e. Submissions were then made to the Hearing Committee on the procedure to follow. Mr. Riccioni urged that as the Law Society had closed its case, he ought



not to be subject to cross examine at large and that questioning ought to be conducted by the Hearing Committee as if they were asking clarifying questions directed to a witness who had been already been examined and cross examined;

- f. The Hearing Committee ruled that Mr. Riccioni would be called, they asked a very few general questions (eg. did he adopt the statements that he had given to the Law Society investigators?) and the Hearing Committee then ruled that Law Society Counsel could cross examine at large subject to the restriction that there must be a good faith basis for any questions asked and that they must be relevant, not harassing or repetitious;
  - g. Law Society Counsel did cross examine at length, for the most part taking Mr. Riccioni through the transactions and statements that were already put in evidence in front of Mr. Riccioni and had already been subject to his cross examination;
  - h. After the conclusion of Mr. Riccioni's cross, Mr. Riccioni's counsel asked for an adjournment to prepare for re-direct and an adjournment was granted, with the permission for Mr. Riccioni and his counsel to discuss the evidence, without restriction, in preparation for the re direct;
  - i. Mr Riccioni testified in redirect.
22. Throughout, Mr. Riccioni was acknowledged by both sides to be a compellable witness in proceedings before a Hearing Committee pursuant to section 69(1) of the *Legal Profession Act*.
23. Further, the Law Society of Alberta Hearing Guidelines at the time of the Hearing stated at paragraph 17:
- ... the Member is a compellable witness (s. 69(1)). Generally, the Member is called last. If the Member has not voluntarily offered to be a witness, the Chair should order that the Member be called.
24. The Hearing Committee devoted considerable amount of its written decision to an examination of Mr. Riccioni's specific answers in his testimony ending with the finding of fact by the Hearing Committee that Mr. Riccioni's explanations of the transactions were not credible.

### **COMPELLING THE TESTIMONY OF MR. RICCIONI**

25. The *Legal Profession Act* clearly, and sensibly, makes Mr. Riccioni a compellable witness. In enforcing a lawyer's professional obligations to protect the public, there will be things that only the lawyer will know.
26. A conduct hearing under the *Legal Profession Act* is not a criminal law setting, nor a civil, private law setting where the parties have constrained their issues by pleadings which the trier of fact is obligated to respect. It is an administrative law hearing where the Hearing Committee is charged with administering a statutory regulatory scheme whose underlying principle is the protection of the public.

27. A lawyer's responsibilities under the *Legal Profession Act* and the *Code of Conduct* make clear in many respects that he is not an ordinary litigant in this regulatory scheme. For example, during the investigation stage, there is no right of silence, a lawyer must answer questions from the Law Society full and candidly, at a Hearing a lawyer is a compellable witness (s. 69 *LPA*), and at a decision stage, issues dealing with trust monies will be resolved with the lawyer bearing the burden of proof of proper dealing (s. 67 *LPA*).
28. In addition, a Hearing Committee has an expanded jurisdiction to hear evidence and control its procedure as it considers proper as in common in regulatory and administrative hearing legislation (s. 68 *LPA*). It is noted that the statute clearly gives this discretion to the Hearing Committee itself, which is charged with the conduct of the hearing in the first instance.
29. The Benchers composing the Hearing Committee are chosen because of their expertise in the area being regulated, again a common feature of administrative tribunals.
30. In this particular hearing, it can be seen that Mr. Riccioni's testimony evolved, naturally out of the development of the case:
  - a. The *Legal Profession Act* clearly makes Mr. Riccioni a compellable witness.
  - b. The Hearing Guide available at the time of the hearing suggested strongly that Mr. Riccioni would be called by the Hearing Committee.
  - c. Mr. Riccioni, through his counsel, offered to answer any and all questions.
  - d. The "scope of knowledge/intent" issue was known by all concerned to be the key disciplinary issue from the start of the hearing.
  - e. This is clearly one of those cases (dealing with the intricacies of trust accounting) where Mr. Riccioni would be the only person who had the most important and relevant answers.
31. Under all of the circumstances including the general regulatory scheme, the specific legislative provisions, the development of this particular case, and the procedural flexibility given to a Hearing Committee by s. 68 of the *LPA*, this Hearing Committee was entitled to want to hear from Mr. Riccioni. Their decision was reached after hearing days of evidence that the transactions had occurred exactly as alleged by the Law Society and a declaration that Mr. Riccioni would answer any of their questions. After all of that, the Hearing Committee had grounds, in the exercise of its statutory discretion, to inquire as to an explanation.
32. Founded as it is in the conduct of the Hearing in question and authorized by statute, an Appeal Panel ought to accord such a decision considerable deference, with appellate interference only being warranted on the clearest grounds, and in this case we defer to the discretion of the Hearing Committee.
33. Having made the decision to hear from Mr. Riccioni that seemed inevitable throughout, the Hearing Committee was still under an obligation to proceed with

procedural fairness and the Appeal Panel finds that the Hearing Committee set a procedure where the matter of his testimony could be handled fairly:

- a. Mr. Riccioni was not put on the stand to answer unsubstantiated allegations, but was questioned after the transactions were well documented by the evidence disclosed, produced in evidence at his hearing and cross examined upon;
  - b. Mr. Riccioni stated that he would answer any questions that the Committee had but rather than structuring the questioning themselves (and thereby risking “descending into the fray”), the Hearing Committee asked a very general opening question and then let Law Society counsel cross-examine as they wished. It gave no specific direction to the Law Society counsel and let Law Society counsel develop his case without interference, except that the questions be fair and relevant;
  - c. After the cross-examination by Law Society counsel, the Committee allowed Mr. Riccioni and his counsel an adjournment with permission to prepare in an unrestricted fashion for any re-examination;
  - d. Mr. Riccioni was re-examined by his counsel.
34. The Hearing Committee ultimately found Mr. Riccioni’s evidence to not be credible. This finding of fact by the Hearing Committee was certainly unfortunate for Mr. Riccioni but cannot be said to be “unfair” in any legal sense:
- a. Mr. Riccioni had notice of the citations against him and disclosure of evidence;
  - b. The Hearing Committee was acknowledged to be unbiased;
  - c. Mr. Riccioni had representation by counsel and was able to examine witnesses against him and call evidence on his behalf;
  - d. Adjournments were requested and given when appropriate.
35. The Appeal Panel acknowledges the able argument of counsel for Mr. Riccioni that a judge in a trial has a very limited jurisdiction to call witnesses outside of the case the parties have chosen to present and that although the *Legal Profession Act* makes a lawyer a compellable witness, it makes no specific provision for the Hearing Committee itself to issue Notices to Attend.
36. The Panel finds cases and analogy from criminal and civil law of little relevance to the administrative law principles governing the Hearing Committee’s broad statutory discretion in administering the Law Society’s regulatory responsibility. In the end, a member is a compellable witness and the legitimate regulatory objectives of the *Legal Profession Act* require this provision to be given a large and liberal interpretation consistent with the regulatory objective of public protection.
37. The Appeal Panel is unwilling to “read down” the broad discretion of a Hearing Committee to control its own procedure, either generally, or in the specific circumstances of this case.

## INTENT (MR. RICCIONI'S KNOWLEDGE OF THE EVENTS)

38. The facts as found by the Hearing Committee (and not challenged at the Hearing or the Appeal) established that the underlying transactions did in fact occur as presented and that as the conveyancing solicitor acting in most cases for both the purchaser and the mortgage lender, that Mr. Riccioni played a pivotal role in the completion of the transactions.
39. Monies had been advanced by mortgage lenders in suspicious circumstances and the lenders had not been given this information by their solicitor (Mr. Riccioni) even in circumstances where their instructions specifically requested this sort of information. Clients were not met with, cheques were not signed by Mr. Riccioni, trust account entries were not made accurately, and when asked about these things early on by Law Society investigators, Mr. Riccioni had not told them the truth. Mr. Riccioni's knowledge and intent were therefore at the heart of the regulatory issue before the Hearing Committee.
40. At its theoretical worst, Mr. Riccioni may have been a full, knowledgeable party to the whole mortgage fraud scheme (and the Panel notes that the citations do not read this way) and thus sanctionable, or taken at its best, he may have been an innocent dupe or guilty of a singular moment of negligence or lapse of judgment which (although potentially actionable at law as negligent) may not be sanctionable as a regulatory matter.
41. And between those two extremes, depending upon the Hearing Committee's view of the evidence, there exists a continuum of potential findings of fact going from (for example) negligence to gross negligence, carelessness, recklessness and willful blindness each of which will establish a different regulatory response. As there was no question that the transactions did in fact happen, the placing of Mr. Riccioni, on this continuum of knowledge or intent was a key fact finding task for the Hearing Committee.
42. As for the level of intent or knowledge charged, the citations against Mr. Riccioni do not allege a specific level of intent. For example, they do not allege "recklessly", "negligently", "willfully" or other indications of intent. Read as a whole, they read that Mr. Riccioni was involved in certain actions (and failures to take actions) and that such conduct under the circumstances was worthy of sanction.
43. Further, in his opening submissions to the Hearing Committee, counsel for the Law Society made it clear that the Law Society's theory of the case was that although the Hearing Committee might conclude that the Member knew about the mortgage frauds, or that he was reckless in proceeding, or willfully blind, that a level of intent was not necessary to prove the citations.
44. The Hearing Committee, having heard all of the evidence (including but not limited to Mr. Riccioni) did in fact find that Mr. Riccioni was, at various times both reckless and willfully blind with regard to transactions being handled by his office.
45. Argument at the appeal tended to parse the level of intent and the evidence supporting it at the hearing on criminal and occasionally civil concepts of fraud,

especially the criminal concept of “willful blindness” which it was said would ordinarily require an actual suspicion and a failure to make inquiries.

46. Argument further was directed to the effect of Mr. Riccioni’s disbelieved testimony on the findings of knowledge or intent.
47. Regarding findings about specific intent, the Appeal Panel finds there to be sufficient evidence reflected in the findings of fact of the Hearing Committee including:
  - a. The deliberate flouting of Law Society accounting rules;
  - b. The improper recording of financial information;
  - c. Not meeting clients;
  - d. Not signing trust cheques;
  - e. Improper delegation and lack of supervision of a paralegal;
  - f. The willful refusing to give the mortgage lender clients the specific advice that they had asked for;
  - g. Misleading the Law Society’s investigators during the investigative stage;

to support findings of sanctionable recklessness even without the testimony of Mr. Riccioni.

48. The evidence given by Mr. Riccioni to explain the organization of his practice which had put his clients at such risk was found by the Hearing Committee to be not credible but it is clear that the findings of the Hearing Committee concerning the sanctionability of Mr. Riccioni were not made simply on the basis of his disbelieved evidence.
49. In the circumstances of this case, the fact that the Hearing Committee disbelieved Mr. Riccioni’s explanation was only indicative of the absence of exculpatory evidence, not primary evidence of culpability, which the findings of fact by the Hearing Committee set out at length.
50. The Appeal Panel agrees that while the Hearing Committee was entitled to find, as a fact, that Mr. Riccioni’s actions evidenced recklessness and willful blindness (in other words, a high level of responsibility, as opposed to a singular moment of inattention or negligence), that a finding of “willful blindness” on a criminal law basis was not necessary to support the citations most especially in consideration of the Law Society’s overriding public protection responsibility.
51. Having taken all of the steps that he did to isolate himself from any real knowledge or control over his conveyancing practice (all of which was in contravention of specific Law Society rules and practice requirements), it is no defense for Mr. Riccioni in this regulatory hearing to parse the criminal law definition of “willful

blindness” and say that there was no evidence or finding of a specific suspicion about a specific transaction that he failed to follow up on.

52. Going beyond ignoring the dangers inherent in the specific transactions and clients put at risk examined at the Hearing, it bears stating, that the public interest, and Mr. Riccioni’s lack of professional care illustrates a more general, systemic risk to the underlying system of law, transactional practice and confidence in the ability of the legal profession to deliver reliable and honest transactions.
53. Cote JA in *Carling Development Inc. v. Aurora River Tower Inc.* (2005) ABCA 267, stated as follows about the function of trust conditions in transactional practice in Alberta:

[64] Alberta solicitors have built a handsome high bridge quickly crossed every day by thousands of clients with valuable transactions. To remove any struts from the structure now would wreck the bridge, flinging down into the deep valley all the clients now crossing. It would also condemn all future clients to a long decent down one side of the valley and a laborious climb up the other.

Although this quote was about the centrality of the close observance of trust conditions to transactional matters in Alberta, the concept translates to the professional obligations of solicitors in transactional matters which is the underlying theme of this Riccioni matter.

54. People do not meet each other at the Land Titles Office with bags of money and armed guards to conduct house purchases. We take it for granted in Alberta that this (most often the single largest and riskiest transaction of an individual’s lifetime) can be done reliably and for a modest price. This is possible only if the underlying regulatory and professional obligations are observed by the solicitor conducting the conveyance:
- a. Mortgage lenders advance large sums of money originally based on the good faith and credit of the parties to the transaction but additionally (at the point that the funds leave their control), backed up by the due diligence of the solicitor placing the mortgage.
  - b. The solicitor for the purchaser may also act for the mortgage lender, thus saving time and expense for all concerned, but only if that conveyancing solicitor recognizes and fulfills his underlying fiduciary obligations to each of those clients.
  - c. One would expect that from time to time third parties to transactions (developers, realtors, financiers, relatives) might be involved in giving limited advice and direction to a transaction but the conveyancing solicitor can never lose sight of his underlying obligation to identify his client and act to protect him/her.
  - d. Any system of trust accounting involving dealing with the flow of other people’s money must have at its heart an “honest set of books” where the transactions recorded truly reflect the transactions as they occur.

- e. The Rules of the Law Society concerning operation of trust accounts, signing of cheques, and proper delegation of tasks, all of which were developed to protect the public, must be treated as “Rules” and not merely inconveniences to be brushed aside.
- 55. In all of these respects, Mr. Riccioni’s reckless practice failed to serve his mortgage lender clients who were not told about the suspicious nature of the transactions (information which they specifically asked for), his purchaser clients who were doing something inherently dangerous and deserved independent advice were allowed to become the pawns of the ultimate fraudsters, and the public respect for the practice of law has been damaged.
- 56. The “handsome high bridge” referred to by Justice Cote and the more general confidence in the profession necessary to transactional practice can be put in jeopardy by the kind of recklessness exhibited by Mr. Riccioni, with or without a specific intent.

### FAILURE TO PROVIDE REASONS

- 57. Mr. Riccioni as Appellant argues that the reasons given in the Judgment of the Hearing Committee with respect to Citations 8 and 19 (assisted clients in an improper purpose) and Citations 2, 10 and 16 (weakening public respect for law, and the justice system, and engaging in conduct that brings discredit to the profession) were not sufficiently set out.
- 58. The Appeal Panel adopts the statement of Chief Justice Fraser in *Moll v. College of Alberta Psychologists*, 2011 ABCA 110, as quoted in the Law Society’s Factum:

“Assessing the sufficiency of reasons should be done having regard to the three purposes that reasons serve: (1) to tell the parties why a decision was made; (2) to provide public accountability for that decision; and (3) to permit effective Appellant review ...

However, reasons are not to be read in a vacuum but rather in context: *Walsh v. Counsel for Licensed Practical Nurses*, 2010 NLCA 11; NFLD and PEIR 222 at para. 28. That context necessarily includes the totality of the evidence lead during the proceedings, the issues raised and the arguments advanced in counsel’s submissions: R.E.M. *supra* at para 17; and *Johnston v. Alberta (Energy & Utilities Board)*, (1997), 200 A.R. 321 at para. 10.
- 59. The Panel also notes the test set out in *Law Society of New Brunswick v. Ryan*, 2003 SCC 20, [2003] 1 SCR 247:

(55) A decision will be unreasonable only if there is no line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived. If any of the reasons that are sufficient to support the conclusion are tenable in the sense that they can stand

up to a somewhat probing examination, then the decision will not be unreasonable and a reviewing court must not interfere (see *Southam*, at para. 56). This means that a decision may satisfy the reasonableness standard if it is supported by a tenable explanation even if this explanation is not one that the reviewing court finds compelling (see *Southam*, at para. 79). The Appeal Panel notes that the Hearing Committee sat for 14 days of evidence and produced a 400 plus paragraph Hearing Report setting out its findings of fact and reasoning in particular detail.

60. A reading of the Hearing Report in context shows that the Hearing Committee made specific findings of fact concerning the improper purpose (the mortgage fraud), the relationship of Mr. Riccioni's failures to follow rules and procedures to the assistance in the transactions, and the discredit to the profession caused by the assistance, the underlying recklessness, carelessness and improper delegation of legal tasks throughout.
61. Taken as a whole, the reasons set out in the Hearing Report provide findings of fact and reasons supporting their decisions.

## **SANCTION**

62. The Appellant appealed against the sanction of disbarment, the key arguments being:
  - a. Insufficient weight was given to Mr. Riccioni's diagnosis of ADHD and the effects that this had on both his behavior at the time and his ability to give convincing testimony.
  - b. Insufficient weight given to the fact that after the laying of the charges, Mr. Riccioni practiced in a conveyancing area for a matter of years without further complaint.
63. Keeping in mind the deference due to the Hearing Committee for a sanction decision (being mixed fact and law), the Appeal Panel finds the sanction of disbarment to be within the reasonable range of sanctions, supported by the analysis of the Hearing Committee (especially their finding of recklessness and willful blindness) therefore appellant interference is not called for.
64. The Appeal Panel refers back to its analysis of the "continuum" of knowledge or intent possible in these circumstances. Once the threshold of more than a simple or isolated act or negligence or inadvertence was passed, it matters less and less from a public protection perspective, exactly what specific level of intent Mr. Riccioni had and whether the Hearing Committee's decision of willful blindness accorded fully with a criminal law version.
65. There is a wealth of fact found by the Hearing Committee that Mr. Riccioni's conveyancing practice was negligent and reckless on a wholesale basis, that part of the organization of the conveyancing practice included specific breaches of Law Society Rules and procedures which had the effect of enhancing the viability of the mortgage fraud scheme and that Mr. Riccioni was specifically untruthful to the Law Society's investigators during their initial investigation of complaints. Even "some" of this would be



sufficient to justify disbarment as a reasonable sanction to protect the public and the public confidence in the profession.

66. The appeal is dismissed in its entirety and pursuant to s. 77(1)(a)(i) of the *LPA*, the Hearing Committee's findings are confirmed.
67. In closing, the Appeal Panel acknowledges the assistance of counsel for the Law Society and for Mr. Riccioni. The materials and presentations were of the highest quality and assisted the Panel greatly in its review of this complex matter.

WRITTEN REASONS delivered this 5<sup>th</sup> day of March, 2014.

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Fred R. Fenwick, QC, Chair

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Larry Ackerl, QC

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Gillian Marriott, QC

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Cal Johnson, QC

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Robert Harvey, QC

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Wayne Jacques C.A.

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Larry Ohlhauser, M.D.

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## Appendix 1

### CITATIONS

#### PETER RICCIONI

1. IT IS ALLEGED that you failed to follow the accounting rules of the Law Society of Alberta, and that such conduct is conduct deserving of sanction.
2. IT IS ALLEGED that you acted in a manner that might weaken public respect for the law or the justice system and that such conduct is conduct deserving of sanction.
3. IT IS ALLEGED that you failed to serve your clients, the purchasers and that such conduct is conduct deserving of sanction.
4. IT IS ALLEGED that you failed to serve your clients, the mortgage lenders and that such conduct is conduct deserving of sanction and that such conduct is conduct deserving of sanction.
5. IT IS ALLEGED that you improperly delegated your duties and responsibilities on real estate files to D.R. Paralegal Services Ltd. and DR and that such conduct is conduct deserving of sanction.
6. IT IS ALLEGED that you failed to be candid in your written and verbal communications with the Law Society and that such conduct is conduct deserving of sanction.
7. IT IS ALLEGED that you misled another lawyer or failed to correct the misapprehension of another lawyer and that such conduct is conduct deserving of sanction.
8. IT IS ALLEGED that you assisted one or more clients in an improper purpose and that such conduct is conduct deserving of sanction.
9. IT IS ALLEGED that you permitted funds to be withdrawn from your trust account by one or more cheques which were not signed by you or by any active member of the Law Society and that such conduct is conduct deserving of sanction.
10. IT IS ALLEGED that you engaged in conduct that brings discredit to the profession and that such conduct is conduct deserving of sanction.
11. IT IS ALLEGED that you failed to deal with trust money in a manner required by the *Rules of the Law Society* and that such conduct is conduct deserving of sanction.

12. IT IS ALLEGED that you improperly delegated your duties and responsibilities on real estate matters to DR Paralegal and Ridley and that such conduct is conduct deserving of sanction.
13. IT IS ALLEGED that you failed to serve your client, M. Trust Company and that such conduct is conduct deserving of sanction.
14. IT IS ALLEGED that you failed to serve your clients, A. D. and A. L. and that such conduct is conduct deserving of sanction.
15. IT IS ALLEGED that you improperly delegated your duties and responsibilities on real estate matters to DR Paralegal and Ridley and that such conduct is conduct deserving of sanction.
16. IT IS ALLEGED that you acted in a manner that might weaken public respect for the law or justice system or in a manner that brought discredit to the profession and that such conduct is conduct deserving of sanction.
17. T IS ALLEGED that you misled another lawyer or failed to correct the misapprehension of another lawyer and that such conduct is conduct deserving of sanction.
18. IT IS ALLEGED you failed to respond to another lawyer on a timely basis and that such conduct is conduct deserving of sanction.
19. IT IS ALLEGED that you assisted one or more clients in an improper purpose and that such conduct is conduct deserving of sanction.
20. IT IS ALLEGED that you failed to respond to the Law Society on a timely basis and in a complete and appropriate manner and that such conduct is conduct deserving of sanction.