THE LAW SOCIETY OF ALBERTA

HEARING COMMITTEE REPORT
(Pt. 1 – Decision)

IN THE MATTER OF THE *LEGAL PROFESSION ACT*,
AND IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF JAMES FRASER MAXWELL,
A MEMBER OF THE LAW SOCIETY OF ALBERTA

Introduction and Summary of Result

1. On December 9 and 10, 2013, a Hearing Committee of the Law Society of Alberta ("LSA") (the "Hearing Committee") convened at the Law Society offices in Calgary, Alberta, to inquire into the conduct of the Member, Mr. James Fraser Maxwell (hereinafter referred to as the "Member" or as Mr. Maxwell). The Committee was comprised of Brett Code, QC, Chair, Ron Everard, QC, and Amal Umar. The LSA was represented by Mr. Rocky Kravetsky. The Member was present throughout the hearing and was represented by Mr. Timothy Meagher.

2. Mr. Maxwell faces three Citations (the "Citations") as set out in the Notice to Solicitor, dated October 2, 2013, namely:

    1. It is alleged that the Member failed to deal with Mr. Kemp with honour and integrity and that such conduct is conduct deserving of sanction.
    2. It is alleged that the member misled Mr. Kemp and that such conduct is conduct deserving of sanction.
    3. It is alleged that the Member failed to agree to reasonable requests made to him by Mr. Kemp and that such conduct is conduct deserving of sanction.

3. The Hearing Committee has come to the conclusion that the first two citations have been proven by the LSA and that therefore Mr. Maxwell is guilty of conduct deserving of sanction. The matter will now move to the sanction phase. The Hearing Committee dismisses the third citation.

Evidence and Findings

4. Several witnesses testified, including Mr. Kemp and Mr. Maxwell. Prior to the hearing, Mr. Maxwell agreed to a Statement of Agreed Facts which assisted in expediting the hearing. He did not admit guilt, so it was necessary for the Hearing Committee to make findings of fact, and we have done so. The essential facts, as either admitted or as found by this Hearing Committee, are recited in the following paragraphs.

5. Mr. Maxwell acted for O. Inc. and provided legal advice to that corporation with regard to a claim of wrongful dismissal by Mr. K. Mr. K. was represented by Clifford Kemp, also a member of the Law Society of Alberta.

6. A Statement of Claim and a Statement of Defence had been filed, and the parties were preparing for a questioning in February of 2011. In advance of the questioning, the parties, through their counsel, believed that they had come to an agreement which settled their dispute, and the questioning was cancelled.

7. The gross cash amount of the settlement was agreed but the manner and detailed terms of payment and of final resolution were never finalized. Both counsel, and through them their clients, understood the terms of the agreement differently, such that further negotiations were required, with the consequence that whatever settlement agreement had been made, if any, was never completed or closed.

8. The initial negotiations took place by email between the two lawyers on the eve of the questioning, which had been scheduled for February 10 and 11 of 2011. The communications exchanged were brief, seeming to contain only what each counsel considered essential, which meant that some important details were not discussed or expressly agreed upon.

9. On February 8, Mr. Maxwell sent a letter to Mr. Kemp, offering on behalf of O. Inc., to settle for "$20,000 all inclusive". The offer contained no other details regarding the terms of the settlement offer.

10. On February 9, Mr. Kemp sent a letter to Mr. Maxwell, on behalf of Mr. K., proposing a counter-offer. The counter-offer offered to settle for "$45,000 all inclusive" and included what Mr. Kemp called "provisos" that allocated various portions of the $45,000 total to such things as prejudgment interest, legal fees and disbursements, a contribution to Mr. K.'s RRSP, and withholding tax. The counter-offer also described the amounts of the three cheques envisioned by Mr. Kemp as the manner of payment of the total counter-offered amount.

11. Both the offer and the counter-offer contained the words "all inclusive" but neither lawyer took the initiative to set out what was meant by that term. It turns out that each, relying exclusively upon his own experience and expertise as long-time employment lawyers,

had quite different notions as to what was to be included in an all-inclusive offer, such that it appears that they, and therefore their clients, were not of like mind as to what details their respective offers and counter-offers included.

12. Later on February 9 at 6:43 p.m., Mr. Maxwell advised Mr. Kemp by email that his client was not prepared to accept Mr. K.'s counter-offer. Mr. Maxwell presented a further counter-offer to settle for "$25,000 all inclusive". Mr. Maxwell provided a deadline, but included no other terms. He did not reference Mr. Kemp's provisos but said only his client was not prepared to accept "that offer".

13. Some 20 or 25 minutes later, Mr. Kemp replied with what was called "a new offer in the amount of $32,000 all inclusive". No other terms were referenced by him.

14. Three hours later, at 10:13 p.m., Mr. Maxwell sent an email that said only this: "Your offer at $32,000 all inclusive is accepted. Please cancel the court reporter."

15. On February 10 in the morning, Mr. Maxwell sent a letter to Mr. Kemp advising that he would have his client forward a single cheque in the amount of $32,000, "less applicable statutory withholdings" and "with a form of Release and Discontinuance".

16. Later that day, without making a specific reference to Mr. Maxwell's earlier communication, Mr. Kemp responded that the scheme of distribution outlined in his February 9 counteroffer still applied, "but with modifications to take into account the reduced amount of the settlement". He provided a new scheme of distribution, including the amounts of each of three cheques needed to complete the transaction.

17. The two lawyers thus disagreed on certain terms that were essential if the settlement was to be finalized. Neither lawyer sought clarification from the other as to the meaning of "all inclusive" in advance of purporting to conclude the deal. Both made silent assumptions as to the nature and content of the remaining terms of the settlement.

18. By email on February 11, Mr. Maxwell asserted that Mr. Kemp could not insist on the scheme of distribution he had proposed because he had not mentioned it in the specific counter-offer that was accepted by O. Inc. Mr. Maxwell imposed terms of his own, even though those specific terms were not expressly referenced in the agreement to settle for "$32,000 all inclusive". Specifically, Mr. Maxwell said he would provide, and did provide under trust conditions, a cheque in the amount of $22,400. He explained that the difference was the consequence of statutory deductions.

19. Also on February 11, Mr. Maxwell sent a settlement package to Mr. Kemp. In it, he included a cheque for $22,400 under trust conditions that the money not be released to Mr. K. until Mr. Maxwell had been provided with a fully executed Release and a filed Discontinuance, in the form included in Mr. Maxwell's package. That settlement package was sent after Mr. Maxwell's email of February 11 but before he received Mr.

Kemp's letter of the same date. Neither the release nor the discontinuance had formed part of the express settlement terms.

20. Mr. Kemp's response, by way of letter on February 11, disputed Mr. Maxwell's position, essentially asserting that the tax-efficient terms he had proposed were so common that they "go without saying" during the negotiation stage. He compared them to other terms that were not offered or accepted in this negotiation but that essentially go without saying in every negotiation, namely for example that, trust conditions may be imposed to close the deal and that as yet non-existent documents such as releases and discontinuances can be created and negotiated in good faith as part of the deal afterwards.

21. On the next business day, Monday, February 14, Mr. Maxwell responded to Mr. Kemp's letter. He disagreed with Mr. Kemp's view and asserted that any such scheme of distribution must form an express part of an accepted offer. Absent express terms, Mr. Maxwell's position was that O. Inc. was under no compulsion to benefit Mr. K.'s personal tax situation. Mr. Maxwell advised Mr. Kemp that the person giving him instructions had left for a two-week vacation but that he would seek her instructions upon her return. He cautioned that his client was not happy with Mr. K. and so, for that and other reasons, he could not assure Mr. Kemp that his client would agree to Mr. Kemp's terms.

22. Mr. Maxwell had already sought and received instructions on the latter issue three days earlier. By email at 8:25 a.m. on February 11, Mr. Maxwell advised his client of the terms being sought by Mr. Kemp. His advice to her was that she had a choice since the terms had not been made an express part of the final counter-offer and acceptance. To her, he said:

> "As far as I'm concerned, there was no agreement to the payment terms. That said, these type of payment terms are not uncommon, and simply affect the way in which you issue the payment."

23. On February 11, at 9:31 a.m., Mr. Maxwell's client instructed him as follows:

> "To change now would be way too onerous for our accounting group for what it's worth and they tell me it's really not a huge deal anyways from a tax perspective and that Mr. K. can sort this out on his own. So, I say tell them we're done."

24. Intervening events took over, and Mr. Maxwell never had the chance to ask her to revisit the issue, as he had told Mr. Kemp he would do.

25. On February 18, Mr. Maxwell's partner, Andrew Robertson, served a Garnishee Summons on O. Inc. It was served on behalf of another client of the firm, who was a judgment creditor of Mr. Kemp's client.

26. As of February 18, Mr. Maxwell had not been informed about the existence of the Garnishee Summons. He learned of it on the morning of February 22 when he received a phone call from the President and CEO of O. Inc. The President also informed Mr. Maxwell that the $22,400 cheque sent to Mr. Kemp had not yet been cashed. On Mr. Maxwell's legal advice, O. Inc. and Mr. Maxwell then agreed that Mr. Maxwell would attempt to discover whether Mr. Kemp intended to cash that cheque. If not, it was agreed that Mr. Maxwell would advise O. Inc. of Mr. Kemp's intentions regarding the cheque, and O. Inc. would then proceed to put a stop payment on the cheque. The funds that they then thought to be owing to Mr. K. by O. Inc. would subsequently be paid into Court in response to the Garnishee Summons.

27. Mr. Maxwell then spoke to Mr. Kemp on February 22. Immediately after that phone call, instructions were given to stop payment on the cheque that remained in Mr. Kemp's hands and remained subject to trust conditions which had not been revoked. Mr. Maxwell did not revoke the trust conditions. A new cheque was issued by O. Inc., and the amount of $22,400 was paid into Court pursuant to the Garnishee Summons.

28. By a letter dated February 22, O. Inc., under the signature of the President and CEO, appears to have sent a letter directly to Mr. K. We have no evidence on whether that letter was actually mailed or when, and we were not told why the letter was sent directly from O. Inc. to Mr. K., to the exclusion of legal counsel. The letter says, among other things, the following:

> "In accordance with the Garnishee Summons, we have paid $22,400 to the Court of Queen's Bench. We have also remitted the applicable statutory withholdings, in the amount of $9,600, to the Canadian Revenue Agency. The sum of the above noted amounts represent the total settlement owed to you by O. Inc.

That letter was not copied to Mr. Kemp, and a copy of it was not sent to him until March.

29. On February 28, Mr. Kemp wrote a letter to Mr. Maxwell, which he said was "further to" his telephone conversation with Mr. Maxwell on February 22. On February 28, that is, six days after the stop payment and the payment into Court, Mr. Kemp advised Mr. Maxwell, in anticipation of the conversation he was expecting Mr. Maxwell to have with his client upon her return from vacation, that Mr. K. continued to insist on a payment structure that would avoid the payment of withholding tax. In furtherance of those instructions, he set out the proposed amounts in the newly proposed payment structure. He also said:

> "As requested, we are returning the cheque in the amounts of $22,500 that accompanied your letter of February 11, 2011.
>
> I gather that you will be speaking to your client once she returns from vacation. Please get back to me after you do."

30. More than a full week later, on March 8, Mr. Maxwell replied to Mr. Kemp's February 28 letter. For the first time, Mr. Maxwell advised Mr. Kemp of the existence of the Garnishee Summons, by saying, "Mr. K. may have informed you by now that O. Inc. received a Garnishee Summons …". He advised of the amounts paid to Court and to CRA, then advised that: "As a consequence of this development, no further monies will be paid to Mr. K." He then put forth his view that the settlement had been concluded by the payments under the Garnishee Summons and requested that Mr. Kemp have his client sign the Release and that he file the Discontinuance.

31. On March 11, Mr. Maxwell sent Mr. Kemp copies of the Garnishee and payment documentation. From that material, Mr. Kemp learned, for the first time, that the Garnishee Summons had been served by Mr. Robertson, Mr. Maxwell's partner at Macleod Dixon.

32. On March 21, the $22,400 was paid out of Court to Mr. Robertson's client.

Citations 1 and 2

33. Legal events that affect the parties' rights so fundamentally should never occur to the complete ignorance of one of the lawyers to a dispute if it is in the power of one of the lawyers to inform the other, particularly when, as here, such ignorance is the consequence of the statements and conduct of a fellow member of the bar.

34. In this case, Mr. Maxwell had a positive obligation, during the February 22 telephone conversation or immediately thereafter, to dispel Mr. Kemp's misunderstanding regarding the possibility of further negotiations on the manner of payment, a misunderstanding created by Mr. Maxwell's own statements, by informing him not only that his client, on his advice, had no further intention of negotiating, but also that his client, also on his advice, had no intention of permitting the funds to be paid to Mr. K., at least without first being paid into Court pursuant to the Garnishee Summons.

35. On February 22, Mr. Kemp continued to believe that the negotiations were on hold pending the return of Mr. Maxwell's client, and he continued to believe that he could protect his client's interests by acting in accordance with the trust conditions that had been imposed upon him by Mr. Maxwell.

36. Simultaneously, Mr. Maxwell knew fully not only that there was no hope for those negotiations, but that the money that was being held by Mr. Kemp pursuant to trust conditions was going to slip out of Mr. Kemp's control and be paid out to another person with a claim on them. He did not tell Mr. Kemp what he knew, denying Mr. Kemp the ability to serve his client.

37. A lawyer has a duty to deal with all other lawyers honourably and with integrity.[1] If a lawyer becomes aware during the course of a representation that he or she has misled another lawyer, inadvertently or otherwise, or that he or she has made a representation, albeit true or accurate at the time it was made, that has become untrue or inaccurate through the course of events, which events may well include fulfilling the instructions of the client, he or she has a positive obligation to correct the other lawyer's misapprehension -- immediately[2].

38. That positive obligation provides for no real exception. While the obligation to correct the misapprehension is subject to the lawyer's obligation not to disclose his or her client's confidential information, the latter obligation does not permit the lawyer to refuse to disclose and to leave the other lawyer in the dark. To the contrary, the obligation to disclose is paramount. Confidential information cannot be disclosed without consent of the client, but, if such confidential information must be disclosed in order to disabuse the other lawyer of his or her misapprehension, created by the lawyer in question, then that lawyer has a positive obligation to seek client consent to such disclosure and, if such consent is denied, that same lawyer has a positive obligation to withdraw from the retainer.[3]

39. On the morning of February 22, the two lawyers believed that they had a settlement agreement for their clients, but they both knew that certain terms of the settlement were in dispute. Mr. Kemp then believed that the negotiations were on hold pending the return from vacation of Mr. Maxwell's client, Mr. Maxwell having told him specifically that he would make the request for altered terms of payment upon her return.

40. As stated above, Mr. Maxwell had already specifically had exactly that communication with his client, back on February 11, and he knew that the response was negative. On February 14, he did not tell Mr. Kemp about that communication. At that moment, he had no positive obligation to disclose because he had advised Mr. Kemp that he would communicate with her on that subject upon her return. So long as he did that, his communication of February 14, in which he did not advise Mr. Kemp of his prior communication, was not a misrepresentation and did not trigger the obligation under Chapter 4, Rule 2. It is trite that lawyers are not required to divulge communications with their clients when those communications are for the purpose of giving legal advice and obtaining instructions. Such communications are protected by solicitor-client privilege, and the communication of February 11 was one such communication.

[1] Chapter 4, Code of Professional Conduct, The Law Society of Alberta: "Relationship of the Lawyer to Other Lawyers"

[2] Chapter 4, Rule 2, Code of Professional Conduct, The Law Society of Alberta

[3] Chapter 4, Rule 2, as qualified by Chapter 7, Rule 7, Code of Professional Conduct, Law Society of Alberta.

41. That said, from February 14 through February 22 and likely right up until March 8, Mr. Kemp believed that the negotiations were ongoing but on hold, and that belief was properly held in reliance upon the representations made by Mr. Maxwell on February 14. Mr. Maxwell knew that that was Mr. Kemp's state of awareness on February 22.

42. In his correspondence of March 8, Mr. Maxwell said that he thought that Mr. Kemp's client might by then have informed him of the Garnishee Summons, so Mr. Maxwell believed that Mr. Kemp likely knew of it prior to March 8, but he could not be certain. Certainty on that issue could only have been had by him communicating with Mr. Kemp directly on the issue, which he expressly and intentionally did not do, until March 8.

43. During the morning of February 22, Mr. Maxwell heard about the Garnishee Summons and spoke to his client, advising him, obtaining instructions, and developing a plan to proceed, as described above. Mr. Maxwell then knew of Mr. Kemp's misunderstanding regarding the state of negotiations, and, if he did not know before based on his instructions of February 11, he knew as a result of the February 22 instructions that there was no longer any possibility of further negotiation. His plan, on behalf of his client, was to discover whether the cheque (still subject to trust conditions) had been cashed. If it had not, he would advise his client, who would then proceed to stop payment and pay the amount of that cheque into Court rather than to Mr. Kemp's client. Part of the plan, later executed by Mr. Maxwell, was that he would not tell Mr. Kemp about the Garnishee Summons and that he would not tell Mr. Kemp that there would be no further negotiations.

44. Mr. Maxwell justified his approach upon his own assessment of the law, which assessment underlay his advice to the President and CEO of O. Inc. He believed that O. Inc. had an obligation to pay the amount owing to Mr. K. under the settlement into Court pursuant to the Garnishee Summons. He believed that the negotiated amount, less statutory deductions, was an amount "owing" and that the Summons took priority such that O. Inc. had no choice but to pay it into Court in substitution for the payment out to Mr. K. He justified not telling Mr. Kemp any of this as the result of his fear that, if he told Mr. Kemp about the Garnishee Summons, Mr. Kemp might do what he was entitled to do under the extant trust conditions and cash the cheque, thus creating the risk that his client might be under an obligation to pay doubly, first to Mr. K., then into Court under the Garnishee Summons. He did not conduct any legal research but acted and advised based upon his understanding of the effect of the Garnishee Summons, upon his understanding of the nature of negotiable instruments, his understanding of the certainty of the settlement terms, and his understanding of his obligation to his client, among other things. He did not consider that he had any obligation to advise Mr. Kemp, as he considered any such obligation to be overridden by his obligation to protect his client's interest.

45. Mr. Maxwell called Mr. Kemp, and they spoke. Certain aspects of the conversation are disputed, although they both took notes. Most of what is disputed does not matter here,

because what is not disputed is that Mr. Maxwell did not disabuse Mr. Kemp of his misunderstanding regarding the ongoing negotiations, did not tell Mr. Kemp of the Garnishee Summons, and did not tell Mr. Kemp that the $22,400, once payment had been stopped on the cheque payable in trust to Mr. Kemp, would be paid into Court and, once so paid, that both he and his client would consider that the payment obligation under the settlement agreement would be fulfilled, such that Mr. K. would receive no cash but would be expected to sign the Release and cause the Discontinuance to be filed.

46. Knowing that Mr. Kemp still believed they were waiting for the return from vacation of Mr. Maxwell's client, Mr. Maxwell had a positive obligation (subject to Chapter 7, Rule 7 as described above) to inform Mr. Kemp that there was no further hope for negotiation of the payment terms and that, in his view, that part of the funds owing to Mr. K. himself (the $32,000 less statutory deductions) were required to be paid into Court.

47. That he did not so advise resulted in Mr. Kemp being professionally neutered. The advice Mr. Kemp had given and the instructions he had received from Mr. K. relied fundamentally on Mr. Maxwell's statements that the payment terms remained open to negotiation, albeit with a warning that his client was not inclined to agree to them for various reasons. On the basis of that information, Mr. Kemp's instructions were to try to renegotiate the payment terms but, if Mr. Maxwell's client came back from vacation adamant that there would be no change, to accept the extant terms of settlement.

48. Had Mr. Kemp known, not only that the negotiations were never going to proceed, but also that O. Inc. planned to disburse the cash elsewhere, he could have, and likely would have, done several things differently. For example:

    a. He could have cashed the cheque and accepted the terms on behalf of Mr. K. as set out in the trust conditions created and never revoked by Mr. Maxwell.
    b. He could have cashed the trust cheque, held the funds in trust, and disputed Mr. Maxwell's view of the legal consequences of the Garnishee Summons, putting the matter on hold until Mr. Maxwell had provided him with underlying information, such as a copy of the Summons itself. Negotiations might have ensued, and Mr. Kemp might well have been persuaded to Mr. Maxwell's view of the law, such that the entire matter would have been resolved for all parties – the money paid into Court, the Release signed, the Discontinuance filed, and the litigation brought to a negotiated end.
    c. He could have cashed the cheque and interpleaded the funds, thus permitting arguments over entitlement and priority to be determined by the Court, with the likely result that all matters, including the litigation, whether it had been settled, what was owed and how it was to be paid, would have been resolved definitively.

49. Instead, Mr. Maxwell acted unilaterally, without any further discussions or negotiation with Mr. Kemp and without and advice or direction from the Court. The result is that the litigation remains unresolved, the proposed Release and proposed Discontinuance continue to be held by Mr. Kemp.

50. Those unfortunate consequences are examples of the very purpose behind Chapter 4, Rule 2, and the priority given to that Rule over Chapter 7 confidentiality. Members of the Law Society of Alberta serve their clients but not only their clients. Service of a lawyer's clients can only be done properly when such service is done in accordance with ethical obligations. Ignoring ethical obligations risks converting legal service into legal disservice, and that is what occurred here. The public interest in having members of the Law Society of Alberta provide proper legal service to their clients was undermined by Mr. Maxwell's client-focussed decision-making.

51. In good faith, Mr. Maxwell served his client, but he served blindly, ignoring his clear obligation as a professional, with the result that neither the interests of his client nor the public interest were served. His client has paid out an amount of money under the Garnishee Summons, but, having done so, continues to face litigation from Mr. K. in two lawsuits, may well continue to wonder whether the amount so paid out was necessarily due and payable, and may well continue to wonder whether it conducted itself legally. The insolvency of O. Inc. has interrupted the ultimate determination of these matters with the consequence that such uncertainty may be permanent, something that is directly contrary to the public interest. Such uncertainty, created by the failure to perform required professional ethical obligations, undermines the public perception of law and the legal profession, is incompatible with the best interests of the public and tends to harm the standing of the legal profession generally, thus violating s. 49 of the *Legal Profession Act*.

52. On behalf of Mr. Maxwell, his counsel argued before us that the failure to advise Mr. Kemp of the changed circumstances was not a breach of the Code of Professional Conduct and was not conduct deserving of sanction because, he asserted, Mr. Maxwell was right. He attempted to demonstrate that, even if Mr. Kemp had known anything different, he could have done nothing to change the course of events, because, once the Garnishee Summons was served, the money held in the account would of necessity, by definition, and by law be made payable to the Garnishor, such that Mr. Maxwell would have been shown to be right. Being right, the disclosure was therefore not "material" for purposes of the application of Chapter 4, sub-Rule 2(c), and no breach can be found. We disagree.

53. This Hearing Committee cannot decide whether Mr. Maxwell was right. Such dispute resolution is in the sole jurisdiction of our Courts, and the Courts ought to have been asked to resolve those issues. Mr. Maxwell's failure to communicate with Mr. Kemp resulted in the Court not making any determination of these issues, such that the legal issues, which Mr. Maxwell's counsel argues are so certain remain undetermined. We do

not know whether Mr. Maxwell was right. We do know that had he discussed matters with Mr. Kemp, both would have had the ability either to negotiate or to litigate, and the rights and obligations of the parties would have been rendered certain, whether by agreement or Court Order. That there remains an argument, even if it is a very strong argument, solidified in hindsight, does not convert a failure to dispel into an innocent omission. If the argument was so certain, the easiest and surest thing for Mr. Maxwell to do was to explain that to Mr. Kemp.

54. Even if Mr. Maxwell was correct in his assessment of garnishment law, the professional obligation to dispel misrepresentations is not triggered only when it *will* make a difference but is triggered because it *might* make a difference. There may well be, and surely are, representations which have become, even inadvertently, misrepresentations by changed circumstances, that do not need to be corrected. That such facts may exist support the possibility of an argument that the only misrepresentations that could have made a difference need be corrected. But that argument misunderstands the purpose of Chapter 4, Rule 2, which is to make sure that the lawyer who thinks he is right is right. A professional obligation triggered only when the lawyer in question knows, actually knows with something akin to real certainty, that clarification will make a difference would be ineffective. The Code of Professional Conduct is premised, among other things, on the honesty and integrity of its members. It privileges the clarification of misrepresentations over client confidentiality in such circumstances because it counts on and expects its members, on both sides of the dispute, to fulfill their obligations, not to conduct themselves sharply, and not to take advantage of each other, particularly not to take advantage of each other's candour.

55. The Code of Professional Conduct intends that lawyers, serving their clients' interests but remembering their professional obligations, will cause the public interest to be served. The public interest in circumstances such as these is the proper and final resolution, according to law, of all of the extant disputes and all of the extant claims on the funds. As a consequence of Mr. Maxwell's failure to dispel what became misrepresentations, none of those disputes and claims were resolved at all, let alone finally resolved. Had he disclosed the true state of affairs to Mr. Kemp, they would have been resolved, whether by negotiation or by resort to the Court.

56. We therefore find Mr. Maxwell Guilty of Citations 1 and 2.

Citation 3

57. The accommodations requested by Mr. Kemp of Mr. Maxwell were those that were sought on behalf of his client and were intended to benefit his client's tax position. It was the prerogative of Mr. Maxwell's client to refuse to accommodate Mr. K. Mr. Maxwell was obliged to accept his client's instructions, and he cannot be faulted for doing so. He is therefore Not Guilty of the matters alleged in Citation 3.

58. We therefore dismiss Citation 3.

Next Steps

59. We will reconvene at a time convenient to the parties and the members of the Hearing Committee to consider sanction. We ask that the Executive Director cause his staff to communicate with the relevant persons for the purpose of making those arrangements.

Dated at Calgary, Alberta, the 10th day of March, 2014

W.E. Brett Code, QC, Chair

Ron Everard, QC

Amal Umar