

THE LAW SOCIETY OF ALBERTA

HEARING COMMITTEE REPORT (Part 2 – Sanction)

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

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, Q.C., Chair, Ron Everard, Q.C., 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. By way of a written Hearing Committee Report, dated March 14, 2014, the Hearing Committee found Mr. Maxwell guilty of two of the three Citations alleged against him, namely, that he:
 1. failed to deal with Mr. Kemp with honour and integrity and that such conduct is conduct deserving of sanction; and
 2. misled Mr. Kemp and that such conduct is conduct deserving of sanction.
3. After delivery of the Hearing Committee Report, counsel for the LSA and counsel for the Member agreed to a joint submission on sanction (the “Joint Submission”). The Hearing Committee agrees with the Joint Submission and hereby:
 - a. Reprimands the Member; and
 - b. Orders that the Member immediately pay full costs of the hearing and investigation in the amount of \$5,166.00.
4. Counsel for both parties jointly submit that the purposes of sanctioning are met by the Joint Submission: the public is protected; and the reputation of the profession is vindicated. We agree.
5. The Member’s conduct here constituted a breach of his duty of honour and integrity but did not indicate in any way that he was incorrigible or ungovernable or that there was even a remote likelihood of recurrence. We consider the misconduct, in the words of LSA counsel, as an aberration, the Member having an otherwise unblemished record over all of his 13 years of *practice*. This was a single incident that developed in unique circumstances.

6. We agree also with counsel for the LSA that it is reasonable to conclude that the member, even if he were still in active practice, is not in danger of falling into a pattern of such misconduct. We expect that he is embarrassed by our prior findings and that he has been satisfactorily chastened by the combination of the reasons set out in the original Hearing Report and by the reprimand delivered here.
7. Counsel for the LSA provided us with a series of prior decisions that demonstrate that the recommended sanction is within the range of reasonable sanctions in such circumstances.
8. In light of the above, the Hearing Committee is unanimously of the view that we must defer to the Joint Submission and impose the jointly recommended sanctions on the Member. The test to be applied in such circumstances is well known, that is, that a sanctioning body such as this should defer to a jointly recommended sanction unless it is demonstrably unfit or unreasonable and therefore contrary to the public interest, a situation that inevitably means that there are cogent reasons for rejecting it. There being no such reasons here, we confirm and impose the jointly recommended sanctions.
9. There shall be no publication of a notice pursuant to Rule 107.
10. The Exhibits shall be made available for inspection in accordance with the usual practice regarding the protection of privacy and privilege.

Reprimand:

Mr. Maxwell, you are hereby reprimanded.

Dated at Calgary, Alberta, the 2nd day of June, 2014

W.E. Brett Code, Q.C., Chair

Ron Everard, Q.C.

Amal Umar