

IN THE MATTER OF THE *LEGAL PROFESSIONS ACT*
AND IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF
ROY RASMUSEN, A MEMBER OF THE LAW SOCIETY OF ALBERTA

REPORT OF THE HEARING COMMITTEE

I. INTRODUCTION

1. On January 26, 2011, a Hearing Committee comprised of Rose M. Carter, Q.C. (Chair), Anthony G. Young, Q.C., and Dale R. Spackman, Q.C. (the Hearing Committee) convened at the Law Society of Alberta (LSA) office in Calgary, Alberta to inquire into the conduct of Roy Rasmussen (Mr. Rasmussen). Mr. Rasmussen was represented by Mr. J.H. Frank, Esq. (Mr. Frank) via telephone from British Columbia and the LSA was represented by Ms. Janet Dixon, Q.C. (Ms. Dixon).
2. As stated in the letter dated September 7, 2010 from the LSA, Mr. Rasmussen is on the suspended list of the LSA, but will be referred to herein as the "Member".

II. CITATIONS

3. The Member faced the following 11 citations:

1. IT IS ALLEGED THAT

Arising from the Complaint of financial institution A:

Citation 1 It is alleged that you failed to serve your client, A., in connection with the A. K. transaction, contrary to Chapter 9, Rules 13 and 14 of the *Code of Professional Conduct*, and that such conduct is conduct deserving of sanction.

Citation 2 It is alleged that you failed to respond on a timely basis to your client, A., in connection with the A. K. transaction, contrary to Chapter 9, Rule 13 of the *Code of Professional Conduct*, and that such conduct is conduct deserving of sanction.

Citation 3 It is alleged that you failed to respond to the Law Society in connection with your client, A.'s complaint, on a timely basis and in a complete and appropriate manner, contrary to Chapter 3, Rule 3 of the *Code of Professional Conduct*, and that such conduct is conduct deserving of sanction.

Arising from the Complaint of financial institution B:

Citation 4 It is alleged that you failed to serve your client, B., contrary to Chapter 9, Rules 13 and 14 of the *Code of Professional Conduct*, and that such conduct is conduct deserving of sanction.

Citation 5 It is alleged that you failed to respond to the Law Society in connection with your client, B.'s complaint, on a timely basis and in a complete

and appropriate manner, contrary to Chapter 3, Rule 3 of the *Code of Professional Conduct*, and that such conduct is conduct deserving of sanction.

Arising from the Complaint of financial institution C:

Citation 6 It is alleged that you failed to serve your client, C., in connection with the M. S. transaction, contrary to Chapter 9, Rules 13 and 14 of the *Code of Professional Conduct*, and that such conduct is conduct deserving of sanction.

Citation 7 It is alleged that you failed to respond on a timely basis to your client, C., in connection with the M. S. transaction, contrary to Chapter 9, Rule 13 of the *Code of Professional Conduct*, and that such conduct is conduct deserving of sanction.

Citation 8 It is alleged that you failed to respond to the Law Society, in connection with your client, C.'s complaint, on a timely basis and in a complete and appropriate manner, contrary to Chapter 3, Rule 3 of the *Code of Professional Conduct*, and that such conduct is conduct deserving of sanction.

Arising from the Complaint of the Law Society of Alberta

Citation 9 It is alleged that, in connection with five different real estate transactions, you failed to honour the undertakings given to the lawyers acting for the purchasers, contrary to Chapter 4, Rule 10 of the *Code of Professional Conduct*, and that such conduct is conduct deserving of sanction.

Citation 10 It is alleged that you failed to respond on a timely basis to other lawyers, contrary to Chapter 4, Rule 5 of the *Code of Professional Conduct*, and that such conduct is conduct deserving of sanction.

Citation 11 It is alleged that you failed to co-operate with the Law Society of Alberta, contrary to Chapter 3, Rule 3 of the *Code of Professional Conduct*, and that such conduct is conduct deserving of sanction.

III. JURISDICTION AND OTHER PRELIMINARY MATTERS

4. Exhibits 1 through 4, consisting of Letter of Appointment of the Hearing Committee (*Exhibit 1*), Notice to Solicitor (*Exhibit 2*), Notice to Attend (*Exhibit 3*), and Certificate of Status of the Member (*Exhibit 4*), establish jurisdiction of the Hearing Committee.
5. The Certificate of Exercise of Discretion was entered as *Exhibit 5*. There was no objection by the Member's counsel or counsel for the LSA regarding the composition of the Hearing Committee.

IV. PRIVATE HEARING

6. Counsel for the LSA advised that the LSA did not receive a request for a private hearing and neither counsel having made an application for a private hearing, the Hearing was held in public.

V. CITATION

7. At the Hearing, an Agreed Statement of Facts and Admission of Guilt (the “Agreed Statement of Facts”) was proffered by counsel for the LSA and counsel for the Member.
8. Following deliberations, the Chair advised that the Agreed Statement of Facts was acceptable to the Committee and, as such, the Agreed Statement of Facts was entered as *Exhibit 6* and the conduct of the Member is for all purposes considered conduct deserving of sanction.

VI. EVIDENCE AND SUBMISSIONS OF COUNSEL ON SANCTION

9. Counsel for the LSA advised that a prior proceeding against the Member was heard on March 11, 2005 and reported on June 16, 2005. Counsel for the LSA provided the Committee with the reported decision cited as *Law Society of Alberta v. Rasmussen*, [2005] L.S.D.D. No. 45, [which was entered as Exhibit 7] (the “2005 Decision”).

VII. AGREED STATEMENT OF FACTS

Re: Citations 1 – 3

10. Mr. Rasmussen was retained by a financial institution to complete a mortgage transaction. The mortgage of financial institution A was registered against the subject property on September 13, 2002. Mr. Rasmussen accepted an undertaking from counsel for the vendor, to discharge a prior existing charge on title at the time of using the closing documents.
11. Mr. Rasmussen was suspended on March 11, 2005 for unrelated matters. Between March 2002 and March 2005 Mr. Rasmussen did not enforce the undertaking or provide a Final Report to the financial institution notwithstanding repeated demands by the financial institution. Matters were ultimately resolved by the custodian.
12. Mr. Rasmussen failed to respond to inquiries from the LSA in a timely manner.

Re: Citations 4 – 5

13. Mr. Rasmussen was retained by a financial institution to complete a mortgage transaction. The mortgage of financial institution B was registered against the subject property on April 15, 2003. Mr. Rasmussen was to discharge a prior existing mortgage and caveat related to the assignment of rents to ensure the mortgage of financial institution B was first charge on title.
14. At the time of his suspension in March 2005 Mr. Rasmussen had not discharged the prior encumbrances nor provided a Final Report to the financial institution.
15. Mr. Rasmussen failed to respond to inquiries from the LSA in a timely manner

Re: Citations 6 – 8

16. Mr. Rasmusen was retained by a financial institution to complete a mortgage transaction. The mortgage of financial institution C was registered against the subject property on June 24, 2003. Mr. Rasmusen was to discharge a prior existing mortgage and caveat related to the mortgage to ensure the mortgage of financial institution C was first charge on title and to provide a Final Report to the financial institution.
17. At the time of his suspension in March 2005 Mr. Rasmusen had not discharged the prior encumbrances nor provided a Final Report to the financial institution.
18. Mr. Rasmusen failed to respond to inquiries from the Law Society in a timely manner.

Re Citations 9 – 11

19. Upon becoming aware of the concerns identified in Citations 1 through 8, the LSA conducted an investigation into the real estate practice of Mr. Rasmusen. In the course of this investigation concerns were identified on five different real estate files.
20. Mr. Rasmusen admits that he failed to honour undertakings and respond to other lawyers in respect of these five different real estate transactions and that he failed to cooperate with the investigation of the LSA.

Analysis

21. The LSA investigation resulted in the 11 citations referenced in *Exhibit 6*. During the material time the Member was a sole practitioner with a very busy real estate practice of approximately 1400 transactions per year.
22. At the time of this Hearing, the six months of suspension ordered by the March 11, 2005 Hearing Committee (the “2005 Committee”) commencing on March 18, 2005 was long since at an end. However, the Member had not applied for reinstatement as member of the LSA. This Hearing Committee noted that in the 2005 Decision, in addition to the suspension, there are five other sanctions or conditions, including a fine, payment of actual costs of the Hearing, prior to reinstatement the Member must satisfy the Practice Review Committee on the terms set out therein; upon reinstatement, the Member is subject to mandatory practice review and, finally, the Member was required to submit his completed Form T by March 31, 2005. No custodian was required.
23. Counsel for the LSA and counsel for the Member agreed that the conduct before this Hearing Committee coincided with the investigations that resulted in the 2005 Decision. The citations set out in *Exhibit 6* arose from three complaints from financial institutions and from information brought to the attention of the LSA by the custodian who had conduct of the Member's practice. In summary, the citations set out in *Exhibit 6* allege failure on the part of the Member to serve three clients; failure to honour undertakings given to lawyers; failure to respond on a timely basis to lawyers; failure to respond and to cooperate with the LSA; and failure to discharge prior encumbrances.
24. As set out in *Exhibit 6*, the Member admitted that he failed to honour undertakings and respond to other lawyers in respect of these five different real estate transactions and that he failed to cooperate with the investigation of the LSA.

25. Counsel for the Member advised the Hearing Committee that the Member's failure to cooperate with the LSA arose from the LSA's initial allegation of dishonesty on the part of the Member, which was ultimately withdrawn. Counsel for the LSA pointed out that a finding of dishonesty may be found in a case of recklessness and does not necessarily require advertence.
26. The Member did not give evidence.

IX. DECISION REGARDING SANCTION

27. The Chair invited argument on sanction from counsel. Counsel made a joint submission that a suspension of six months be imposed by the Hearing Committee. Counsel submitted that had the March 11, 2005 Hearing Committee had the additional citations the subject of this Hearing before them, the period of suspension imposed by that Committee could reasonably have been expected to be for a period of one year.
28. After due deliberation, the Chair, on behalf of the Hearing Committee, delivered the sanction and reasons.
29. In imposing sanctions, the Hearing Committee was mindful of the need to maintain public confidence in the integrity of our profession and to protect the public.
30. It is noted that the Member cooperated with the LSA and the requirements facing the Member prior to reinstatement are still in effect as set out in the 2005 Hearing Report. This Hearing Committee noted that the Member has stood suspended from the LSA for a period now approaching six years. In addition to the conditions imposed by the 2005 Decision, on any application for reinstatement, the Member would be required to satisfy a Panel of the Credentials and Education Committee that he continues to possess entry level competence to practice law in Alberta. In the circumstances and given the fact that the matters before this Hearing Committee occurred during the same period of time that resulted in the 2005 Decision, we find that an additional six month suspension is unnecessary.
31. The conduct subject to this Hearing is serious misconduct on the part of the Member and warrants a notice to the profession. It is the finding of this Hearing Committee that a one day suspension commencing on January 26, 2011 is the appropriate sanction. This Hearing Committee is satisfied that the interests of the public are served and protected by such a sanction.

X. COSTS

32. The Member was ordered to pay the actual costs of the Hearing within 30 days from receipt by him of the statement of actual costs.

XI. CONCLUDING MATTERS

33. With the exception of *Exhibit 5* which shall remain private, the remaining Exhibits in these proceedings shall be available to the public with redaction of client names to protect solicitor-client privilege.

34. The usual Notice to the Profession shall be issued.

35. There shall be no referral to the Attorney General.

DATED this 6th day of May, 2011.

ROSE M. CARTER, Q.C.
Chair

ANTHONY G. YOUNG, Q.C.
Member

DALE R. SPACKMAN, Q.C.
Member