

IN THE MATTER OF THE *LEGAL PROFESSION ACT*

AND

IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF KEITH LAWS
A MEMBER OF THE LAW SOCIETY OF ALBERTA

**REPORT OF THE HEARING COMMITTEE
(AS REVISED August 11, 2008)**

1. On November 14, 2007, a Hearing Committee comprised of Julia A. Turnbull, Q.C. (Chair), Shirley Jackson, Q.C. and Dale Spackman, Q.C., convened at the Law Society offices in Calgary, Alberta to inquire into the conduct of Keith Laws. Mr. Laws was not represented by counsel. The Law Society was represented by James Conley. Mr. Laws was present throughout the hearing.

Introduction

2. Mr. Laws is a lawyer in Calgary, carrying on, amongst other things, a solicitor's practice in real estate law.
3. An Agreed Statement of Facts was exhibited before the panel. The panel found the citation to have been made out. The Member was reprimanded, fined \$1,000 and ordered to pay the actual costs of the hearing.

Citation

4. The Member faced the following citation:

It is alleged that you breached your undertaking to the Complainant, and that such conduct is conduct deserving of sanction.

Jurisdiction

5. Jurisdiction was established by entering as exhibits the Letter of Appointment, Notice to Solicitor, Notice to Attend, Certificate of Status and Certificate of Exercise of Discretion. Mr. Laws accepted the jurisdiction and composition of the panel.

Private Hearing

6. No application was made to hold any portion of the hearing in private. However, in these Reasons and for purposes of any transcript, no reference is made to client names or identifying client information.

Other Preliminary Matters

7. There were no other preliminary matters.

Agreed Facts

8. The following facts were agreed to before the panel:
 - Mr. Laws' client, H, was developing a residential condominium project in High River, Alberta.
 - T was a drywall contractor and filed a lien on the project.
 - The builder's lien was filed on the title in April, 2005.
 - The lien was an impediment to H obtaining further financing.
 - A solution was negotiated whereby H would give a mortgage against the title of unit 211.
 - Mr. Hickerson was acting for T and sent over a discharge of lien on conditions that no use would be made of the discharge unless Mr. Laws provided a written undertaking to register a mortgage against unit 211 and pay a hold-back.
 - The trust letter continued that if Mr. Laws was unable to comply with the trust conditions and an amendment was not agreed upon, that the documents were to be returned.
 - The trust condition was that no use be made of the discharge unless Mr. Laws provided his written undertaking to register a mortgage and pay the lien holdback.
 - The condition was to provide the undertaking.
 - Mr. Laws, by letter dated April 28, 2005, advised Mr. Hickerson he was using the discharge and gave the requested undertaking.
 - Mr. Laws was not able to provide the mortgage and offered as an excuse that his client would not provide the mortgage.

Chronology of Events

9. The chronology of the events is as follows:

- On April 22, 2005, Mr. Hickerson wrote to Mr. Laws (exhibit 6, tab 1) enclosing an executed discharge of lien.

- The letter contained the following provision:

“The discharge is provided to you in trust on the condition that you shall make no use of the discharge unless you first provide us with your written undertaking to:

1. Register a mortgage in favour of our client against unit 211 in the property liened, in the form enclosed (with the relevant additions once a legal description is available); and
2. Pay our client’s lien holdback to us out of the holdback for the projects from the lender in respect of the land liened.

In the event that you are unable to comply with the trust conditions set out above and we are unable to agree on a suitable amendment, return the discharge to my office immediately. If you are unable to comply with these conditions by May 1, 2005, return all the Discharge (sic) by noon on the following business day.

I trust the foregoing is in order.”

- Mr. Laws wrote to Mr. Hickerson on April 28, 2005 (exhibit 6, tab 6) providing his written undertaking to register a mortgage as set out in paragraph 1 of Mr. Hickerson’s letter date April 22, 205 (sic) as well as an undertaking to pay the lien holdback in the amount of \$45,028.00 directly out of the holdback funds for the project from the lender in respect of the lands liened.
- Mr. Hickerson left three telephone messages and one letter by fax dated September 15, 2005 (exhibit 6, tab 7) for Mr. Laws in late September as he had order a certified copy of title on the H property and had learned that a mortgage had not been registered in accordance with the trust conditions. (exhibit 6, tabs 7, 8, 9 and 10).
- On December 13, 2005, Mr. Hickerson wrote a letter to the Law Society of Alberta (exhibit 6, tab 1) reporting Mr. Laws to the Law Society of Alberta.

- On December 20, 2005, the Law Society provided Mr. Laws with Mr. Hickerson's letter of complaint and requested a response (exhibit 8).
- Mr. Laws responded to the Law Society on January 9, 2006, indicating that the matter was now being addressed and he believed that it would be resolved. (exhibit 9)
- Mr. Laws did not provide a response. A second letter was sent to him on January 25, 2006 from the Law Society (exhibit 11).
- A third letter was sent to Mr. Laws on February 16, 2006 from the Law Society (exhibit 12).
- Mr. Laws responded to the Law Society by courier and fax on February 23, 2006 (exhibit 13) acknowledging that the undertaking was outstanding and indicating that he was continuing to work to obtain the mortgage for Mr. Hickerson's client and to resolve the undertaking.
- On February 23, 2006, Mr. Laws wrote to the Alberta Lawyers Insurance Association (exhibit 14, tab 2) advising of a potential insurance claim. Of note, the letter disclosed that the condominium plan was registered on May 17, 2005 and that the mortgage could not be registered until this was done.
- On February 22, 2006, Mr. Laws wrote to Mr. S, President of H to advise him of his "professional duty to fulfill this undertaking" and he called on his client to "fulfill their agreement to the settlement, and their promise to me as their lawyer in this matter, to provide the subject matter mortgage" (exhibit 14, tab 2).
- On February 24, 2006, the Law Society of Alberta wrote to Mr. Laws (exhibit 15) seeking a report concerning the status of the matter. A further letter was sent by the Law Society of Alberta on March 29, 2006 (exhibit 16) requesting Mr. Laws' response to the specific allegations that he had failed to comply with his undertaking and requesting the formal response before the close of business on April 17, 2006.
- On April 12, 2006, Mr. Laws wrote to the Law Society of Alberta (exhibit 17) requesting an extension to April 24, 2006 as he has provided Mr. Hickerson with a proposal to resolve the issue. That proposal, which is embodied in a letter to Mr. Hickerson dated April 12, 2006 (exhibit 17, tab 1) proposes that Mr. Laws put a mortgage on his own residence and pay reasonable legal charges, provided

the H mortgage, once executed is substituted for the mortgage on Mr. Laws' residence and discharged from his residence and, further, that the Law Society complaint be withdrawn.

- On May 10, 2006, the Law Society of Alberta wrote once again to Mr. Laws (exhibit 18) requesting his response to the complaint by May 25, 2006.
- On May 25, 2006, Mr. Laws wrote to the Law Society of Alberta (exhibit 19) and advised that he and Mr. Hickerson had come to an agreement as to settling the matter.
- On June 19, 2006, the Law Society of Alberta wrote to Mr. Laws (exhibit 20) advising that they had received Mr. Hickerson's telephone message and Mr. Laws' telephone call advising that an agreement in principle had been reached. The Law Society was requesting confirmation as to the current status of the matter. (exhibit 20)
- On June 12, 2006, Mr. Hickerson advised Mr. Laws that he was seeking instructions on his documents and would provide a response in due course (exhibit 21, tab 1). This letter is then provided to the Law Society of Alberta by fax on June 26, 2006 (exhibit 21).
- The Law Society next wrote to Mr. Laws on August 3, 2006, requesting an update as to the current status (exhibit 22). On August 28, 2006, Mr. Laws faxes a letter to both Mr. Hickerson and the Law Society (exhibit 23 and exhibit 22, tab 1). The letter essentially disputes the terms of the mortgage that Mr. Laws had proposed to be placed on his residence in substitution to the mortgage on the lands held by H (exhibit 23, tab 1).
- On September 29, 2006, Mr. Laws wrote a letter to Mr. Hickerson (exhibit 24, tab 1) raising an issue of the hostile relationship between Mr. S, the President of H and Mr. G, the President of T. He uses this hostility between their respective clients as the "causal element" or justification for the reason why the undertaking had not been complied with.
- Mr. Hickerson responds to Mr. Laws' letter on October 5, 2006, (exhibit 25) indicating that the reasons as outlined in exhibit 24, tab 1 did not justify breaching an undertaking.

Mr. Laws' Evidence

10. Mr. Laws gave evidence before the panel. He apologized that his conduct had made this hearing necessary. He said that in his 31 years of practice it was his first time being personally involved in a conduct hearing. He advised that it was his view that there were two parts to the citation. Firstly, did he breach his undertakings to the Complainant. He admitted that he did breach the undertaking. The second part, in his submission, was whether or not the conduct was deserving of sanction. He then posed two questions. Are undertakings a strict liability matter? He argued that yes they could be as they protect the public. On the flip side he asked, "who protects lawyers from the public?" He indicated that his client reneged on the promise to provide the mortgage and he relied on his client's word to provide that mortgage. He suggested that one should look at justice and equity and other circumstances as opposed to viewing undertakings as a strict liability offence. He indicated that he did not believe his conduct was deserving of sanction, although he stated that he would plead guilty to breaching his undertaking. He then tendered three additional exhibits, exhibit 26 being hand-written notes from a meeting with H on August 2, 2005; a letter from Mr. Hickerson's office dated August 1, 2006; another letter from himself to Mr. Hickerson dated November 1, 2007; exhibit 28 enclosing a different settlement proposal; and, finally, a letter from Mr. Hickerson to Mr. Laws dated November 12, 2007 (exhibit 29) indicating that Mr. Hickerson's client would not accept the offer.

11. In his testimony, Mr. Laws, acknowledged that he has not yet been able to deliver on the undertaking. He acknowledged that Mr. Hickerson never advised him that he was releasing him from his undertaking either verbally or in writing. He acknowledged that the balance of T's lien in the approximate amount of \$40,000.00 has not been paid. He advised that he resigned as legal counsel for H in August, 2005. He acknowledged that he filed the discharge of the lien in April, 2005. He acknowledged that it was necessary to discharge the lien because HSBC would not advance funds to his client unless the lien was discharged. He acknowledged that he knew there were some difficulties in the latter part of June, 2005 between their respective clients on a different project. He acknowledged that there were steps he could have taken to secure this mortgage, but he did not do so. He indicated that Mr. Hickerson's client was a contributing factor to the problem as he had a volatile temper and there was a major blow-up between the two clients. He stated that there was no major disagreement between himself and Mr. Hickerson. He acknowledged that this matter was not a major priority and that he could have done more, but he did not. He stated that "if you can't rely on your client it makes doing business very difficult." He indicated that fifty percent of his practice is real estate development and that he will be more careful in the future.

12. On cross-examination by Mr. Conley, he acknowledged that the mortgage could have been registered after May 17, 2005 when the condominium plan was registered. He acknowledged that he could have obtained an irrevocable direction from his client and had the mortgage signed in advance of May 17, 2005. He acknowledged that he did not contemplate those things before giving his undertaking and did not review the Code of Conduct prior to giving his undertaking. He advised that he paid \$5,000.00 of his own personal funds to Mr. Hickerson in partial settlement of the outstanding monies.

Mr. Hickerson's Evidence

13. Mr. Hickerson briefly gave evidence as to the substance of the caveat registered against the certificate of title by his client in October, 2005. Mr. Hickerson had difficulty recalling what type of interest in land was claimed by the caveat, but believed it was perhaps an equitable mortgage.

Decision

14. The panel found that Mr. Laws' conduct was conduct deserving of sanction.
15. The conduct complained of is addressed at Chapter 4, Rule 10 of the *Code of Professional Conduct*. Chapter 4 obliges a lawyer to deal with all other lawyers honorably and with integrity. Rule 10 specifically obliges that "a lawyer must honour all undertakings given by the lawyer regardless of their form or the matter in which they have been communicated."
16. Mr. Laws did not contest that on the evidence he was in breach of Rule 10 of Chapter 4 of the *Code*, but he was not in agreement that his conduct was deserving of sanction.
17. Counsel for the Law Society made a submission in favor of a reprimand, a fine, \$500.00 and payment of the estimated costs of the hearing. The panel issued a reprimand, a \$1,000.00 fine and payment of the actual costs of the hearing.
18. Mr. Laws has been a member of the Law Society of Alberta for some 31 years. He has no previous discipline record.
19. In all of the circumstances, the panel imposed a reprimand upon Mr. Laws together with a \$1,000.00 fine and actual costs of the hearing.
20. The Chair delivered the reprimand.

Time to Pay

21. The member has two weeks to pay the fine and the actual costs of the hearing.

Exhibit Order, other matters

22. Exhibits will be available for inspection upon request. Should a request be made, the names of individuals will be reduced to initials, in the interest of privacy.
23. No order was sought, nor made, for a practice review referral. A Notice to the Profession will not be published and there will be no referral to the Attorney General.

Dated this 11th day of August, 2008.

Julia A. Turnbull, Q.C.

Dale Spackman, Q.C.

Shirley Jackson, Q.C.