

LAW SOCIETY OF ALBERTA
IN THE MATTER OF THE *LEGAL PROFESSION ACT*;
AND
IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF KEVIN PEDDIE
A MEMBER OF THE LAW SOCIETY OF ALBERTA

Single Bencher Hearing Committee:

Adam Letourneau Q.C., Bencher

Appearances:

Counsel for the Law Society – Nancy Bains

Counsel for Kevin Peddie – Peter Royal, Q.C.

Hearing Date:

December 15, 2016

Hearing Location:

Law Society of Alberta at 800 Bell Tower, 10104 – 103 Avenue, Edmonton, Alberta

HEARING COMMITTEE REPORT

Jurisdiction, Preliminary Matters and Exhibits

1. On December 15, 2016, a Single Bencher Hearing Committee (Committee) convened at the office of the Law Society of Alberta (LSA) to conduct a hearing regarding a Statement of Admitted Facts and Admission of Guilt dated November 2, 2016.

2. Counsel for the member and counsel for the LSA were asked whether there were any objections to the constitution of the Committee. There were no objections to the identity of the Bencher hearing the submissions, on the grounds of bias or otherwise, and the hearing proceeded.
3. The hearing was held in public.
4. The jurisdiction of the Committee was established by Exhibits 1 through 4, consisting of the letter of appointment of the Committee, the Notice to Solicitor pursuant to section 59 of the *Legal Profession Act*, the Notice to Attend to the Member and the Certificate of Status of the Member with the Law Society of Alberta.
5. The balance of the exhibits was entered by consent, including the Statement of Admitted Facts and Admission of Guilt, referenced above. All were considered in arriving at the decisions described below.

Citations

6. Mr. Peddie faced the following citations:

[1] It is alleged that between 2011 and 2013 Kevin Peddie failed to provide all legal services to his clients to the standard of a competent lawyer where he failed to complete his clients' matter and that such conduct is deserving of sanction;

[2] It is alleged that Kevin Peddie failed to fully inform his clients of the progress of their matter and that such conduct is deserving of sanction;

[3] It is alleged that Kevin Peddie failed to promptly inform his clients of a material error and that such conduct is deserving of sanction.

Statement of Facts and Admission of Guilt

7. Citation 1 was withdrawn at a pre-hearing conference on November 24, 2016, as a result of submissions made by both LSA counsel and counsel for Mr. Peddie. Kevin Peddie admitted to guilt on citations 2 and 3 in a Statement of Admitted Facts and Admission of Guilt, attached hereto as Exhibit "A" (the "Statement"). The facts will not be repeated here.
8. The Statement was found to be in an acceptable form by a Conduct Committee Panel on December 14, 2016, and therefore this hearing was convened by a single bencher pursuant to section 60(3) of the *Legal Profession Act*.
9. The citations were restated as follows:

[1] That Mr. Peddie failed to fully inform his clients of the progress of their matter and that such conduct is deserving of sanction; and

[2] That Mr. Peddie failed to promptly inform his clients that he had not obtained a discharge and that such conduct is deserving of sanction.

10. Pursuant to section 60(4) of the *Legal Profession Act*, after a statement of admission of guilt is accepted by the Conduct Committee, it is deemed to be a finding of the Hearing Committee that the lawyer's conduct is conduct deserving of sanction, pursuant to s. 49 of the *Legal Profession Act*.
11. The only question for determination by this Committee is one of appropriate sanction.

Discussion on Sanction

12. The LSA and counsel for Mr. Peddie presented a joint submission in favour of a reprimand, a \$3,000 fine and actual hearing costs.
13. Both the LSA and counsel for Mr. Peddie rightly noted that Mr. Peddie in mitigation had freely admitted his error in his response to the complaint. The approach taken by both Mr. Peddie and the LSA in dealing with this matter through a single Bencher hearing avoided an unnecessary contested hearing, witness inconvenience, and process costs. This is commendable.
14. The Committee concurs that a joint submission should not be lightly disregarded and should be accepted unless it is unfit, unreasonable, contrary to the public interest, or there are good and cogent reasons for rejecting it. (*Rault v. Law Society of Saskatchewan*, 2009 SKCA 81 (CanLII))
15. More recently, the Supreme Court of Canada has established the "public interest test" as the appropriate test when determining whether to depart from a joint submission (*R. v. Anthony-Cook*, 2016 SCC 43 (CanLII)). The "public interest test" requires the tribunal to consider whether the joint proposal regarding sentence would bring the administration of justice into disrepute or would otherwise be contrary to the public interest. It is noted that this was a criminal matter, but the Supreme Court has made it clear that "joint submissions on sentence...are vitally important to the well-being of the criminal justice system, as well as the justice system at large."
16. The Committee acknowledges that it is neither the function nor the purpose of disciplinary proceedings to punish anyone (See *Denovan Hill (Re)*, 2011 LSBC 16 (Can LII)). 23). The Hearing Committee is guided by the public interest, which seeks to protect public from acts

of professional misconduct and to ensure that the public maintains a high degree of confidence in the legal profession. Professional discipline exists to address misconduct but also to restore and maintain public trust in the legal profession.

17. The joint submissions on sanction are acceptable to the Committee in that they acknowledge that Mr. Peddie did not take the necessary and appropriate steps to inform his clients and to correct an error regarding the obtaining of a discharge, and that such conduct is deserving of sanction. They also acknowledge the mitigating factors of Mr. Peddie's exemplary legal career of over 30 years without any previous disciplinary record. Further, the oral submissions by Mr. Peddie personally at the hearing demonstrate that Mr. Peddie takes these breaches of his duty as a lawyer seriously, and recognizes the importance of protecting the public interest. He also sincerely apologized to his former clients who attended the hearing.
18. The Committee determined that deterrence is not a concern in this matter and that the determination of guilt would be sufficient deterrence in this instance.

Concluding Matters

19. The parties agreed on a reprimand, a fine of \$3000 and the actual costs of the hearing and the Committee accepted this joint submission. The following reprimand was issued to Mr. Peddie at the hearing:

It is noted from the record in this matter that you, Mr. Peddie, have a very long history of unblemished service as a member of the Law Society of Alberta, here in Edmonton, going back to 1983, without any previous discipline record. Further, it is noted that you have cooperated fully with the Law Society in this matter towards entering an Agreed Statement of Facts and Admission of Guilt. Both of these factors are commendable and we thank you.

Mr. Peddie, despite these commendable factors, in this case, through your admitted blindness to the serious risks faced by your clients, you have shown a disregard for the safety and interests of members of the public, which is paramount in our profession. You made an error in judgment that you have acknowledged. You had a duty to fully inform your clients at all times about their matter and to inform your clients promptly of a material error. You failed in that important duty.

I trust that you have learned from this experience, and that you will meet these duties going forward.

Thus ends the reprimand.

20. The member must pay the imposed fine of \$3000 and the actual costs of the hearing within 30 days of receiving notice of the actual costs of the hearing.
21. Hearing exhibits shall be made available to the public, with the exception that they shall be redacted to prevent the disclosure of confidential or privileged information.
22. There shall be no Notice to the Profession issued.
23. There will be no notice to the Attorney General.

Dated at the City of Edmonton in the Province of Alberta, this 23rd day of February, 2017.

Adam Letourneau, Q.C.

EXHIBIT "A"

IN THE MATTER OF *THE LEGAL PROFESSION ACT*

AND

IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF KEVIN PEDDIE,
A MEMBER OF THE LAW SOCIETY OF ALBERTA

STATEMENT OF ADMITTED FACTS AND ADMISSION OF GUILT

INTRODUCTION

1. I was admitted as a member of the Law Society of Alberta in June 1983.
2. My present status with the Law Society of Alberta is Active/Practicing.
3. I have practiced in Edmonton, Alberta from 1983 to present.
4. My practice comprises Civil Litigation (65%), Matrimonial/Family Law (10%) Real Estate Conveyancing (9%), Corporate (6%), Commercial (2%) and Estate Planning and Administration (2%).

CITATIONS

5. On March 2, 2016 the Conduct Committee Panel referred the following conduct to hearing:
 1. It is alleged that between 2011 and 2013 Kevin Peddie failed to provide all legal services to his clients to the standard of a competent lawyer where he failed to complete his clients' matter and that such conduct is deserving of sanction;
 2. It is alleged that Kevin Peddie failed to fully inform his clients of the progress of their matter and that such conduct is deserving of sanction;
 3. It is alleged that Kevin Peddie failed to promptly inform his clients of a material error and that such conduct is deserving of sanction.

FACTS

6. In May 2011, I acted for [B.C.], [A.C.], [W.C.] and [K.C.] ("the [C.'s]") and the TD Bank in a real estate refinance matter wherein two private Mortgages were to be paid out with the TD refinance money, resulting in the TD Mortgage being the first charge on title.

7. The mortgagee on the Mortgage in issue was [Dan C.]. The Mortgage read: “[Dan C.] c/o [•]”.
8. I paid out and discharged one Mortgage, leaving the remaining Mortgage to [Dan C.] still to be paid out and discharged. I requested and obtained a payout statement from [•] (“[•]”) with the amount required being \$75,000.00 plus interest.
9. On June 2, 2011, I forwarded \$75,000 plus interest payable to [•] “in trust”, and requested [•] provide a Discharge of Mortgage. [E.F.] was a RECA authorized mortgage broker at the time.
10. At the time that I forwarded the payout amount, I was unaware that the original amount borrowed by [A.C.] and [B.C.] from [Dan C.] was \$220,000.00. I was also unaware that the [C’s] had made arrangements with [•] to discharge the mortgage for \$75,000 but to continue to make payments on the remaining balance. I further was unaware that [Dan C.] had provided a different payout statement to [•] in the amount of \$249,992.55, or that [Dan. C.] was unaware of the \$75,000.00 payout statement provided by [•].
11. On June 29 and 30, 2011, I informed Mrs. [C.] that the [Dan C.] Mortgage had been paid out and I was awaiting the Mortgage Discharge. On or about the same dates, I was informed by Mrs. [C.] of the arrangements with [•] that the [Dan C.] mortgage was to be postponed, not discharged. I advised her that the arrangement may not be satisfactory to TD, and asked if it had been discussed with TD. Mrs. [C.] responded that she would talk to [•] “and see what we need to do”.
12. Subsequently, I then sent numerous communications, by telephone and in writing, to [•] between August 16, 2011 and May 8, 2012. Among those 13 communications were three letters to [•] indicating that unless the Mortgage Discharge was received, I would make a Court application to discharge the Mortgage.
13. Despite no discharge being received from [•], however, I never did follow through with a Court application and the Mortgage remained on title. I admit that I should have proceeded with the application but I perceived the discharge to be an administrative task to which [•] had not attended and I did not have insight into the problems that resulted.
14. On September 26, 2011, I informed the [C.’s] that I was awaiting the Mortgage Discharge and would provide an updated title once it was received. I acknowledge that I provided no further updates to the [C.’s].
15. I further acknowledge that did not attend to the matter any further after my last communication to [•] on May 8, 2012.
16. It was revealed later on that Mr. [F.] did not forward to [Dan C.] the \$75,000 payment made to [•] “in trust”, instead using it for his own purposes.

17. I made no attempt to advise the [C.'s] that I had been unable to effect a discharge of the [Dan C.] Mortgage. The [C.'s] only learned of the extent of my inaction after they were served with notice of the [Dan C.] foreclosure action in April 2013.
18. I reported the claim to the Alberta Lawyers Insurance Association (ALIA) in March/April 2013 and I was directed against making an application for discharge.
19. The [C.'s] and TD Bank commenced action against me, [•] and [Dan C.] in an attempt to rectify the situation and have the [Dan C.] Mortgage discharged from title. Madam Justice Sulyma of the Court of Queen's Bench, in overturning a decision of Master Schlosser, allowed for discharge. In paragraph 50 of the decision, Madam Justice Sulyma states "I find the evidence establishes that the [•] parties had ostensible authority to administer this mortgage for [Dan C.]."

ADMISSIONS OF FACT AND GUILT

20. I admit that I failed to fully inform my clients of the progress of their matter and that such conduct is deserving of sanction.
21. I admit that I failed to promptly inform my clients that I had not obtained a discharge and that such conduct is deserving of sanction.
22. I admit as facts the statements in this Statement of Admitted Facts and Admission of Guilt for the purposes of these proceedings.
23. I acknowledge that I have had the opportunity to consult legal counsel and provide this Statement of Admitted Facts and Admission of Guilt on a voluntary basis.
24. For the purposes of Section 60 of the *Legal Profession Act*, I admit my guilt to Citations 2 and 3 directed on March 2, 2016.

THIS AGREED STATEMENT OF FACTS AND ADMISSION OF GUILT IS MADE THIS 2ND DAY OF NOVEMBER, 2016.

"Kevin Peddie"

KEVIN PEDDIE