

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

Single Bencher Hearing Committee:

Donald R. Cranston QC, Bencher

Appearances:

Counsel for the Law Society – Nicholas Maggisano

Guy Lacourciere

Hearing Date:

January 10, 2017

Hearing Location:

Law Society of Alberta at 500, 919 – 11th Avenue S.W., Calgary, Alberta

HEARING COMMITTEE REPORT

Jurisdiction, Preliminary Matters and Exhibits

1. On January 10, 2017, a Single Bencher Hearing Committee (Committee) convened at the office of the Law Society of Alberta (LSA) to conduct a hearing regarding two citations:

- a. It is alleged Guy Lacourciere failed to honour trust conditions and that such conduct is deserving of sanction; and
 - b. It is alleged that Guy Lacourciere failed to respond on a timely basis to communications from another lawyer, J.S., and that such conduct is deserving of sanction.
2. The member and counsel for the LSA were asked whether there were any objections to the constitution and jurisdiction of the Committee. There were no objections to the single Bencher 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.

Statement of Facts and Admission of Guilt

5. Mr. Lacourciere and counsel for the LSA entered into a Statement of Facts and Admission of Guilt agreement which is attached to this decision as Exhibit "A" (the "Agreed Statement"). This Agreed Statement has been found to be in an acceptable form by a Conduct Committee Panel on September 28, 2016, and therefore this hearing was convened before a single bencher pursuant to section 60(3) of the *Legal Profession Act*.
6. Pursuant to section 60(4) of the *Legal Profession Act*, when 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.
7. The only question for determination by this Committee is one of appropriate sanction.

Sanction

8. Counsel for the LSA and Mr. Lacourciere made a joint submission on sanction. The joint submission was that Mr. Lacourciere should be sanctioned as follows:
 - a. a reprimand;
 - b. a \$7,000 fine;
 - c. a referral to practice review; and

d. payment of costs

- 9.** Counsel for the LSA and Mr. Lacourciere jointly agreed that the time for payment of the \$7,000 fine and costs should be by September 30, 2017.
- 10.** I am required to give careful consideration to a joint submission, and deviate from the joint submission only in circumstances where I consider that there are extraordinary circumstances justifying that I do so. In that event, I am obliged to let the parties know that I do not accept the joint submission, and to give an opportunity to both parties to make further submissions on sanctioning.
- 11.** In this case, I have carefully considered the joint submission and I find that the joint submission is acceptable.
- 12.** The record of a member is a relevant and important consideration in arriving at an appropriate sanction. In this case, Mr. Lacourciere has the following record:
 - a.** In June 1988, he was found guilty of conduct deserving of sanction for failing to follow accounting rules, and conduct deserving of sanction for breaching a trust condition. He received a reprimand.
 - b.** In October 1990, Mr. Lacourciere was found guilty of five citations:
 - failing to adequately maintain books and records;
 - failure to follow accounting rules;
 - failing to report to a client;
 - delaying the distribution of estate funds; and
 - failing to account for \$1,000 of the estate funds.

He received a reprimand, a \$1,900 fine and was ordered to pay costs.

- c.** In December 1994 Mr. Lacourciere was found guilty of conduct deserving of sanction for failing to reply promptly to the Law Society of Alberta, and failing to meet financial obligations arising from his law practice. He received a reprimand and was ordered to pay costs.
- d.** In July 2015, Mr. Lacourciere was found guilty of conduct deserving of sanction for misleading or failing to be candid with his clients, and for failing to keep his clients informed as to the progress of their matters. He received a reprimand, a \$10,000 fine, and was ordered to pay costs.

13. While I found it appropriate in all of the circumstances to accept the joint submission of the LSA counsel and Mr. Lacourciere in this case, it must be observed that his record is of concern, and should Mr. Lacourciere come before the Law Society again in the future, it may be that more severe sanctioning will be required.
14. It is to be observed that Mr. Lacourciere was frank in his admission of his error in this matter, and his admission avoided the need for an unnecessary contested hearing, witness inconvenience and process costs.

Concluding Matters

15. It is accordingly the decision of this Committee that Mr. Lacourciere is sanctioned as follows:
 - a. a reprimand, as set out below, and which was delivered in person to Mr. Lacourciere at the hearing;
 - b. there shall be a payment of a fine in the amount of \$7,000;
 - c. there shall be payment of the costs of this hearing;
 - d. the payment of the fine and the costs shall be made on or before September 30, 2017;
 - e. there shall be a referral of Mr. Lacourciere to Practice Review.
16. The 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.
17. There shall be no notice to the profession issued, and there is no need for a notice to the Attorney General.

Reprimand

Mr. Lacourciere, you have admitted guilt to two citations described above. Undertakings are a fundamental part of a lawyer's practice. The profession and the public must be able to rely on a lawyer scrupulously honouring undertakings given. Our profession and the public are harmed when a lawyer fails to do so. You are reprimanded for your failure to do so in this case.

In much the same way, failing to respond to another lawyer is a serious problem that goes to public confidence in our profession, and the efficient operation of our legal process. You are reprimanded for your failure to do.

I do not know if there are underlying issues of a personal nature or practice management issues for you. I am gratified you have agreed to participate in the Practice Review program and strongly urge you to take full advantage of that program to assist you in avoiding difficulties in the future. It is my hope that working constructively with the Practice Review program will lead to no further hearings concerning your conduct.

Dated at the City of Calgary in the Province of Alberta, this 18th day of May, 2017.

Donald Cranston, QC

Exhibit "A"

IN THE MATTER OF THE LEGAL PROFESSION ACT
AND
IN THE MATTER OF A HEARING INTO THE CONDUCT
OF GUY LACOURCIERE,
A MEMBER OF THE LAW SOCIETY OF ALBERTA

STATEMENT OF ADMITTED FACTS AND ADMISSION OF GUILT

INTRODUCTION

1. I was admitted to the Law Society of Alberta ("LSA") on July 15, 1983.
2. I practice in Calgary. I have a general practice that is primarily civil litigation, corporate/commercial law, and real estate conveyancing.
3. The following conduct is being referred to a Hearing:
 1. It is alleged that Guy Lacourciere failed to honour trust conditions and that such conduct is deserving of sanction; and
 2. It is alleged that Guy Lacourciere failed to respond on a timely basis to communications from another lawyer, J.S., and that such conduct is deserving of sanction.

FAILURE TO HONOUR TRUST CONDITIONS

4. On January 14, 2016 J.S. submitted a complaint to the LSA concerning my conduct [EXHIBIT 1].
5. J.S. represented a lender ("Lender") in relation to a mortgage loan on a phased condominium development ("Loan") to my client ("Borrower"). The security for the

Loan was to be on two properties, hereafter called the Primary Security and Secondary Security.

6. As part of the transaction J.S. forwarded \$2,009,009.49 to me on July 29, 2013 in trust that I would, within a reasonable period of time, provide her with a number of items ("Trust Conditions"). I requested revisions to the Trust Conditions and they were slightly amended on the same day [EXHIBIT 2].
7. I met a majority of the Trust Conditions on April 16, 2015. The following Trust Conditions were not satisfied:
 1. The discharge of a Certificate of Lis Pendens ("CLP"), in favor of S. Inc. from the Secondary Security ("Discharge of CLP"); and
 2. A Certified Copy of Title for the Secondary Security confirming that a mortgage in favor of S. Inc. had been postponed to the Lender's mortgage and Caveat re Assignment of Rents and Leases ("Postponement").
8. I understood that an agreement had been reached that S. Inc.'s mortgage would be postponed and their CLP discharged from the Secondary Security upon receiving payment of \$20,828.49 from my client. On June 15, 2013 my client provided S. Inc. with a letter of intent (the "Letter of Intent") which included the following terms:
 - No additional debt, mortgage, or mortgagor will be placed in front of S. Inc.'s position.
 - The S. Inc. mortgage, legal fees and interest will be paid in full should new financing be placed in front of the S. Inc. position.
9. On July 8, 2013 S. Inc.'s counsel, J.R., wrote to me confirming his client's agreement with the terms of the Letter of Intent.
10. On July 30, 2013 I forwarded a trust cheque in the amount of \$20,828.49 to J.R. on the trust condition that he forward the Discharge of CLP and Postponement. I did not receive the requested documents from J.R.
11. On September 10, 2013 J.R. wrote to advise me that "we may have a problem" as the Letter of Intent provided that no additional mortgage would be placed in front of his client's interest. He asked for confirmation that his client's position

would not be disturbed by the refinancing, and that a prior mortgage on the Secondary Security was being discharged. He further stated that the trust funds I had provided remain in his trust account and would be returned if required.

12. At this time my client was selling condominium units in the Secondary Security, and I thought they would be sold within a month, so I did not pay much attention to the fact that I did not have the required documents from J.R.
13. It was not until February 2014, when my client called to let me know that it was selling some of the condominium units in the Secondary Security, that I reviewed the file and realized that I still did not have the documents from J.R. On February 20, 2014 I wrote to J.R. and explained my client's understanding that there was never any agreement that that prior mortgage was going to be paid out, but that the new mortgages would not affect his client's position as a result of postponements.
14. I did not hear anything from J.R. but sometime later I came to the belief that J.R. had sent the documents to my office, and that they were lost. This was supported by the fact that the trust money I had sent to J.R. had not been returned.
15. I instructed my staff to attend to the matters raised by J.S. On April 16, 2015 I sent a letter to J.S. meeting a majority of the Trust Conditions, and noted that I had not been provided with the Discharge of CLP yet, and that we needed to locate the Postponement. On April 20, 2015 I wrote a letter to J.S. providing some additional documents, but not the Discharge of CLP or Postponement.
16. I asked my staff to contact J.R. to obtain replacement documents. On October 1, 2015 my assistant wrote an email to J.R. stating that we were not able to locate the Discharge of CLP and Postponement and asking that he provide them again. J.R. responded on October 3, 2015 indicating that he didn't understand my assistant's request. My assistant emailed him on October 27, 2015 asking again for the Postponement as the original had been misplaced.
17. Unfortunately I did not follow up to make sure J.R. provided the Discharge of CLP and Postponement. After reviewing the file I believe I never received these documents from J.R.
18. In January 2016 the Borrower advised the Lender that a foreclosure order had been granted on the Secondary Security and it had been sold. Neither the

Lender nor K.S. were notified of the foreclosure action due to an error by another lawyer. As a result of the foreclosure and sale, the two outstanding Trust Conditions are now unable to be satisfied.

19. I responded to the complaint on March 8, 2016 [EXHIBIT 3] and May 25, 2016 [EXHIBIT 4]. In my responses I admitted that I was in breach of the Trust Conditions and apologized to J.S. for my conduct of this matter.

FAILURE TO RESPOND

20. On October 18, 2013 J.S. sent a letter to me requesting outstanding items as soon as possible. I did not respond.
21. On May 14, 2014 J.S. sent a letter to me requesting the courtesy of a reply. I did not respond.
22. On September 24, 2014 J.S. sent a letter to me requesting the outstanding items immediately. I did not respond.
23. On March 5, 2015 J.S. sent a letter to me requesting the outstanding items immediately. I did not respond.
24. J.S. called me on March 25, 2015 regarding her concern about my lack of action in relation to the Trust Conditions. I indicated to her by telephone on March 30, 2015 that I would take action immediately.
25. On April 2, 2015 J.S. sent a letter to me requesting the outstanding items immediately. I did not respond.
26. J.S. called me again on April 13, 2015. I called her back on April 16, 2015 indicating that my assistant had not completed the report and that the documents necessary to satisfy the trust conditions would be sent to her by overnight courier.
27. On April 16, 2015 I sent a letter to J.S. which enclosed documents necessary to meet a majority of the Trust Conditions. On April 20, 2015 I wrote a letter to J.S. providing some additional documents, but the requirement that I provide the Discharge of CLP and Postponement remained unsatisfied.

28. On April 22, 2015 J.S. sent a letter to me requesting that I meet the balance of the Trust Conditions as quickly as possible. I did not respond.
29. On May 11, 2015 J.S. sent a letter to me requesting that I meet the balance of the Trust Conditions as soon as possible. I did not respond.
30. On September 28, 2015, J.S. sent a letter to me requesting that I meet the balance of the Trust Conditions as soon as possible. In a telephone conversation on that day I indicated that I believed a document was lost but I would do whatever it took to satisfy the outstanding Trust Conditions.
31. On December 3, 2015, J.S. sent a letter to me requesting that I meet the balance of the Trust Conditions as soon as possible. J.S. also left a voicemail with me on December 3, 2015 requesting immediate action to satisfy the Trust Conditions. I did not respond.

CONCLUSION

32. I admit as fact the statements contained within this Statement of Admitted Facts and Admission of Guilt for the purposes of these proceedings.
33. I admit that my conduct set out herein was conduct deserving of sanction, being incompatible with the best interests of the public and tending to harm the standing of the legal profession generally. I further admit guilt to the following citations:
 1. It is alleged that Guy Lacourciere failed to honour trust conditions and that such conduct is deserving of sanction; and
 2. It is alleged that Guy Lacourciere failed to respond on a timely basis to communications from another lawyer, J.S., and that such conduct is deserving of sanction.

ALL OF THESE FACTS ARE ADMITTED THIS 15TH DAY OF AUGUST, 2016.

“Guy Lacourciere”

GUY LACOURCIERE