

**IN THE MATTER OF PART 3 OF THE  
LEGAL PROFESSION ACT, RSA 2000, c. L-8**

**AND**

**IN THE MATTER OF A HEARING REGARDING  
THE CONDUCT OF DANIEL HARDER  
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

**Single Bencher Hearing Committee**

Cal Johnson, QC – Chair

**Appearances**

Karen Hansen – Counsel for the Law Society of Alberta (LSA)  
Christy Lee – Counsel for Daniel Harder

**Hearing Date**

September 26, 2018

**Hearing Location**

LSA office, at 500, 919 - 11 Avenue SW, Calgary, Alberta

**HEARING COMMITTEE REPORT**

**Overview**

1. On September 26, 2018, a Single Bencher Hearing Committee (Committee) convened at the office the LSA to conduct a hearing regarding the conduct of Mr. Daniel Harder, a member of the LSA. Prior to this hearing, a Conduct Committee Panel had determined that the Agreed Statement of Facts and Admission of Guilt dated July 30, 2018 (Agreed Statement) and executed by both Mr. Harder and the LSA, was in an acceptable form. A redacted version of the Agreed Statement is attached as Schedule A to this Report.
2. In the Agreed Statement, Mr. Harder had admitted guilt to a citation that he applied trust monies, intended for his client's mortgage payment, towards his fees instead. He also agreed that such use was in breach of Rule 119.21(4) of the Rules of the Law Society of Alberta and that such conduct is deserving of sanction.
3. After reviewing all of the evidence and exhibits, and considering the Joint Submission on sanction put forward by counsel for Mr. Harder and counsel for the LSA, and hearing the testimony and arguments of the LSA and counsel for Mr. Harder, the Committee accepted the joint submission and imposed a sanction consisting of a reprimand, a fine

of \$1,000 and a direction to pay costs of the hearing in the amount of \$1,552.50.

### **Preliminary Matters**

4. There were no objections to the constitution of the Committee or its jurisdiction, and a private hearing was not requested, so a public hearing into the appropriate sanction proceeded.
5. The sole question for determination by this Committee is as to the appropriate sanction for the admitted conduct.

### **Agreed Statement of Facts/Background**

6. Pursuant to subsection 60(4) of the *Legal Profession Act* (the *Act*), the acceptance of the Agreed Statement by the Conduct Committee Panel is deemed to be a finding of this Committee that Mr. Harder's conduct is deserving of sanction in relation to the citation referenced in paragraph 2 above.

### **Submissions on Sanction**

7. Counsel for the LSA and counsel for the member jointly sought a sanction by way of a reprimand, a fine in the amount of \$1,000 and hearing costs in the estimated amount of \$ 1,552.50.
8. Counsel for the LSA noted that in matters involving trust funds, the factor of deterrence in terms of the member, and the profession more generally, was important. That was both in terms of emphasizing the need for LSA members to deal with trust funds with scrupulous adherence to the applicable rules, and in terms of maintaining public confidence in the profession through a public denunciation of such conduct.
9. As mitigating factors, counsel for the LSA noted
  - (i) that the parties agreed upon the Agreed Statement, which avoided the costs, time and inconvenience associated with a contested hearing;
  - (ii) Mr. Harder did not have a disciplinary record despite his extensive time at the bar;
  - (iii) the cooperation and candour of Mr. Harder throughout the proceeding; and
  - (iv) the inadvertent nature of the use of the funds that resulted in the citation.
10. LSA counsel argued that the proposed sanction was in line with prior sanctions and referenced prior hearing committee reports and the sanctions imposed in hearings involving similar conduct: *Law Society of Alberta v. Welz*, 2016 ABLS 47 and *Law Society of Alberta v. A. Stephen W. Stiles*, [2006] L.S.D.D. No. 18.

11. Counsel for Mr. Harder also emphasized Mr. Harder's 24-year record without any prior disciplinary record. In addition, Ms. Lee argued that there was no intent to misappropriate, that Mr. Harder had fully and readily accepted responsibility and that he supported the sanction comments and position put forward by LSA counsel. Ms. Lee also referenced a recent Conduct Committee Hearing Report, *Law Society of Alberta v. Jensen*, 2018 ABL 5, which involved two citations, one relating to a failure to file trust reports and the other involving failing to respond promptly and completely to the LSA. The sanction in that case was very similar to the joint submission on sanction in this proceeding.

### Decision on Sanction

12. Counsel for the LSA and Mr. Harder confirmed their understanding that the Committee is not bound by a Joint Submission on Sanction. However, a Committee is required to give serious consideration to a Joint Submission, should not lightly disregard it and should accept it unless it is unfit or unreasonable, contrary to the public interest, or there are good and cogent reasons for rejecting it. In this circumstance, the Committee found no basis on which to reject the Joint Submission.
13. It was clear from the evidence and information provided to the Committee that Mr. Harder had acted with candour and timeliness in this matter, had been cooperative throughout and was genuine in his remorse for his actions, even if inadvertent. Taking all of the factors and submissions into account, and in particular his lack of a discipline record and his forthright reaction to the discipline process, the Committee was satisfied that the Joint Submission was an appropriate sanction.
14. Accordingly, the Committee ordered that Mr. Harder be sanctioned as follows:
  - a. a reprimand as set out below, and which was delivered in person to Mr. Harder at the hearing;
  - b. a fine in the amount of \$1,000; and
  - c. payment of the costs of the hearing, estimated to be \$1,552.50.
15. Mr. Harder did not request any delay in time for payment of his fine and costs.
16. The following reprimand delivered at the hearing:

I would like to thank all parties participating in this hearing for their expeditious handling of this matter. The parameters for disciplinary proceedings such as this are set out in Section 49 of the *Legal Profession Act*. There are two principal concerns: protection of the public and protection of the standing of the legal profession. This matter engages both of those protections. I accept the Joint Submission as meeting the relevant sanctioning issues of (i) deference to the Joint Submission, (ii) maintaining public confidence in the profession, (iii) deterrence of both the

member and other members of the profession, and (iv) consistency with prior sanctioning decisions.

The handling of trust monies is a very serious matter. The fact that we speak about putting money "in trust" speaks to that seriousness. The Rules of the LSA in the matter of trust funds are both very clear and very specific. Rule 119 must be assiduously adhered to in all of its particulars. We have the privilege of being a self-governing profession. In order to maintain that very special privilege, as members of the legal profession we must hold ourselves to the highest standards.

Mr. Harder, you have clearly fallen below that mark in this instance. However, I accept that this is an isolated and singular instance. You have no disciplinary record and that weighed heavily in your favour, as does your ready support for the Joint Submission on sanction. You have obviously taken this matter very seriously, both through your candid acknowledgement of the facts, and your willingness to retain counsel to represent you today and assist you and the LSA in arriving at this appropriate resolution of the matter.

I trust, and am confident, that we will not see you again in conduct matters and that the citizens of Central Alberta will be able to confidently rely on your integrity and professionalism going forward. I accept your contrition in this matter and wish you all the best going forward. This concludes your reprimand.

### **Concluding Matters**

17. The Committee directed that there be no notice to the Attorney General and no notice to the profession in respect of this matter.
18. The exhibits and other hearing materials, transcripts, and this report will be available for public inspection, including providing copies of exhibits for a reasonable copy fee, although redactions will be made to preserve personal information, client confidentiality and solicitor-client privilege (Rule 98(3)).

Dated at Calgary, Alberta, October 30, 2018

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Cal Johnson, QC

IN THE MATTER OF *THE LEGAL PROFESSION ACT*  
AND  
IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF  
DANIEL C. HARDER  
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 on October 21, 1994.
2. My present status with the Law Society of Alberta is active and practising.
3. I have practiced in [REDACTED], Alberta from 1994 to date. I practice with six other lawyers in a firm known as “[M]”.
4. I have no disciplinary record with the Law Society of Alberta.

CITATIONS

5. On January 16, 2018, the Conduct Committee Panel referred the following conduct to hearing:
  1. It is alleged that Daniel C. Harder used trust monies that were intended for his client’s mortgage payment and applied those monies towards his fees in breach of Rule 119.21(4) of the *Rules of the Law Society of Alberta* and that such conduct is deserving of sanction; and
  2. It is alleged that Daniel C. Harder failed to respond to opposing counsel’s communications or advise his client of those communications and that such conduct is deserving of sanction.
6. On July 24, 2018, [RP], Pre-hearing Conference Chair granted an application to withdraw Citation 2.

## FACTS

7. I was retained by W.L. and C.L. with regard to claims by a Bank on outstanding mortgage arrears.
8. I was out of the office for much of February 2016 undergoing [REDACTED] treatment. While not intended to excuse my actions, my health concerns posed a distraction from my legal practice at the time.
9. On February 10, 2016, because I was out of the office, W.L. provided my assistant with instructions regarding a bank draft in the amount of \$2,401.66 which he had delivered to my office (the "**Bank Draft**"). The Bank Draft was intended to replace a cheque dated August 1, 2015, for the same amount, which had been provided to the Bank for a July mortgage payment and which had been returned NSF.
10. My assistant deposited the Bank Draft into my firm's trust account.
11. Upon my return to the office and my review of W.L.'s instructions, the purpose of the Bank Draft was not apparent to me. The amount of the Bank Draft was not an amount that I recognized as being the monthly payment amount owing under the mortgages. Furthermore, I had been advised by counsel for the Bank in January 2016 that the mortgage payments were current to November 2015. I had also sent the Bank mortgage payments on behalf of W.L. for December 2015 and January 2016.
12. The Bank Draft remained in my firm's trust account until September 2016, when W.L. advised me that he and C.L. were ending their relationship with [M]. By that time, W.L. and C.L. had failed to pay four accounts from [M] dating back nearly a year to November 2015. W.L. and C.L. had also failed to provide a requested retainer in the amount of \$5,000.00.
13. At that time, W.L. was advised that his account must be paid.
14. On September 23, 2016 I applied the funds held in my trust account, including the Bank Draft, towards partial payment of W.L. and C.L.'s outstanding account with [M]. The application of the funds held in trust to W.L. and C.L.'s outstanding account was detailed in a letter to W.L. and C.L. W.L. paid the balance.

## ADMISSION OF FACTS AND GUILT

15. I admit as facts the statements in this Statement of Admitted Facts and Admission of Guilt for the purposes of these proceedings.

16. I admit that I used trust monies that were intended for my clients' mortgage payment and applied those monies towards my fees in breach of Rule 119.21(4) of the *Rules of the Law Society of Alberta* and that such conduct is deserving of sanction. In doing so, I did not intend to contravene my clients' instructions.
17. For the purposes of section 60 of the *Legal Profession Act*, I admit my guilt to the above conduct.
18. 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.

THIS STATEMENT OF ADMITTED FACTS AND ADMISSION OF GUILT IS MADE THIS 30<sup>th</sup> DAY OF July, 2018.

"D. Harder"

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DANIEL C. HARDER