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 CLIVE LLEWELLYN
A MEMBER OF THE LAW SOCIETY OF ALBERTA

Hearing Committee

Ike Zacharopoulos – Public Adjudicator and Chair
Leighton Grey, QC – Lawyer Adjudicator

Appearances

Karen Hansen – Counsel for the Law Society of Alberta (LSA)
Pat Peacock – Counsel for Clive Llewellyn

Hearing Date

June 14, 2018

Hearing Location

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

HEARING COMMITTEE REPORT - SANCTION

Overview

1. On October 24, 25 and 26, 2017 a Hearing Committee (Committee) held a public hearing at the office of the LSA with respect to five citations against Clive Llewellyn related to his conduct in relation to commercial real estate matters.

2. At the start of that hearing, LSA Counsel advised the Committee that the LSA did not intended to present any evidence with respect to citations 2 and 5 and consented to the dismissal of those citations. The Committee therefore dismissed citations 2 and 5 and the hearing proceeded on Citations 1, 3 and 4.

3. After considering all the evidence and the submission of the parties, the Committee found Mr. Llewelyn guilty on the following citations:

> [1] It is alleged that you failed to serve your client, AL (and/or his corporation), in respect of transactions regarding the property known as the EA, and that such conduct is deserving of sanction.

[3] It is alleged that you acted while in a conflict of interest by acting for both AL and JS (and/or their corporations) and becoming financially involved in JS's (and/or his corporation's) financing and in the subsequent redevelopment of the property and that such conduct is deserving of sanction.

[4] It is alleged that you misled ND, counsel to a mortgage lender, with respect to whether your client JS (and/or his corporation) had $300,000 in equity in the Property known as the EA and that such conduct is deserving of sanction.

4. The Committee issued its written decision and reasons on February 2, 2018. For detailed information about the facts giving rise to the citations and the Committee's findings on guilt, please refer to *LSA v. Llewellyn*, 2017 ABLS 31 (CanLII), and the Statement of Agreed Facts attached to that Report.

5. The sanction phase of the hearing was scheduled for June 14, 2018, at the LSA offices in Calgary.

6. Prior to June 14, 2018, the previous Chair of this Committee, Ms. Dilts, was appointed to the Court of Queen's Bench. An alternative member, Ms. Long, was appointed to replace Ms. Dilts on this Committee. Due to unforeseen circumstances, Ms. Long was not able to attend the sanction phase of the hearing on June 14, 2018. Pursuant to section 23 of the *Legal Profession Act* (the Act), the remaining two Committee members are able to continue and determine this matter. The Committee also notes that the parties were informed in advance and raised no objections to proceeding in this manner.

7. The parties provided a joint submission on sanction to the Committee, seeking reprimands on Citations 1 and 3, and a 30-day suspension, effective July 1, 2018, for Citation 4. They further submitted that Mr. Llewellyn be directed to pay costs of $30,000 to the Law Society, with payments to be made monthly, starting August 15, 2018, in increments of $2,500.

8. After considering the joint submissions on sanction, the deference to be afforded to joint submissions on sanction and the factors to be addressed in sanctioning, the Committee accepted the joint submission, and determined that reprimands on citations 1 and 3 and a 30-day suspension on Citation 4 were appropriate. The Committee orally issued its decision and administered the oral reprimand.

9. This Report reflects that decision and provides the Committee's written reasons, in accordance with section 74 of the Act.

Analysis and Decision on Sanction

10. The Committee is not bound by joint submissions on sanctions. However, the Committee is required to give serious consideration to jointly tendered submissions, and accept, unless they are found to be unfit, unreasonable, contrary to the public interest, or there are good and cogent reasons for rejecting the joint submissions.

11. As noted by LSA counsel, this principle was confirmed by the Supreme Court of Canada in *R. v. Anthony-Cook*.[1] There, it was confirmed that the trier of fact should not depart from a joint submission unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest. This is a high standard:

> Rejection denotes a submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down. (R. v. Anthony-Cook, para 34 Tab 1).

12. The LSA also provided the Committee with the following cases that demonstrate that the sanctions proposed in the joint submission fall within the range of reasonable sanctions:

- *LSA v. Fong*, 2010 ABLS 29 (CanLII), upheld on appeal 2011 ABLS 24 (CanLII);
- *LSA v. Peterson*, 2011 ABLS 10 (CanLII);
- *LSA v. Bright*, 2015 ABLS 5 (CanLII);
- *LSA v. Hallet*, 2017 ABLS 14 (CanLII);
- *LSA v. Condin*, 2010 ABLS 18 (CanLII); and
- *LSA v. Ming*, 2008 LSA 12 (CanLII).

13. The LSA noted that the mitigating factors considered in proposing the sanction included Mr. Llewellyn's lack of disciplinary record, his cooperation in creating an Agreed Statement of Facts, and that his motivation for his conduct was his intention to place his client in a better position. Aggravating factors included Mr. Llewellyn's seniority at the Bar, that his actions were deliberate and that he disregarded his professional obligations in his quest to get the deal done.

14. Based on the facts of this case, the mitigating and aggravating factors identified by the LSA and Mr. Llewelyn, the need for specific and general deterrence, and considering the range of sanctions in similar cases, the Committee accepted the joint submission on sanction as being within the reasonable range of sanctions, such that it would not bring

[1] 2016 SCC 43 (CanLII).

the administration of justice into disrepute nor be contrary to the public interest. Accordingly, the Committee accepted that reprimands for Citations 1 and 3 were appropriate sanctions.

15. Further, in relation to Citation 4, the Committee had previously found that Mr. Llewellyn misled another lawyer. This finding goes to issues of integrity and protecting the proper functioning of the legal system. The Committee agreed that the misleading of a fellow solicitor requires strong denunciation, both for the future behaviour of Mr. Llewellyn, as well as acting as a general deterrent for other members. The Committee found Mr. Llewellyn's intent of assisting his client to be a mitigating factor, as it was with respect to Citations 1 and 3. In summary, upon consideration of all the factors, the need for specific and general deterrence and the level of intent of Mr. Llewellyn, the Committee decided that a suspension of 30 days, effective July 1st, was a fit sanction for Citation 4.

16. A reprimand that jointly addressed Citations 1 and 3 was delivered orally at the hearing. It has been reproduced here, with minor edits:

> With respect to the reprimand, I am going to deal with Citations Number 1 and Number 3 jointly, because I expect counsel would agree that there is much overlap between Citation 1 and 3; Citation 1 being failure to serve a client, and Number 3 being acting while in a conflict of interest. In the context of providing that joint reprimand, I want to preface by speaking of the concept of a reprimand. In referencing previous decisions, it becomes clear that although a reprimand is at the lower end of the scale in terms of the sanctioning tools that are applicable, a reprimand is no trifling thing, especially for someone who is a lawyer, and indeed for any professional person. In this respect, there is a very useful quotation that I found in the materials. It derives from the *Law Society of Alberta v. David Westra*, February 25th, 2011, Hearing Committee Report, at paragraph 155, and reads as follows:
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> > A reprimand has serious consequences for a lawyer. It is a public expression of the profession's denunciation of the lawyer's conduct. For a professional person, whose day-to-day sense of accomplishment, self-worth and belonging is inextricably linked to the profession, and the ethical tenets of that profession, it serves as a lasting reminder of failure. Additionally, it remains a permanent admonition to avoid repetition of that failure. Deterrence, public confidence, and rehabilitation are therefore served.
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> I think that this is very well put, and so it is the Panel's intention today to serve the purposes stated above in *Westra*.

Turning to the present case, respecting Citation Number 1, failing to serve his client, the Committee has found that the member's conduct fell materially short of the expectations of a lawyer. The Committee found that Mr. Llewellyn did not adequately advise his client of the risks of a strategy to acquire the property, and that he often acted unilaterally, substituting his own judgment for that of his client. He thereby allowed his client to rely on two cheques that were unreliable, rather than ensure that the client's interests were properly secured. That conduct is deserving of sanction and is specifically reprimanded today. We understand it to be acknowledged that Mr. Llewellyn's seniority and experience as a seasoned lawyer experienced in commercial matters is an aggravating factor, and that he ought to have exercised better professional conduct. In that context, however, a mitigating factor is his motivation to assist his client, and his lack of a discipline record in the context of a very long legal career.

Regarding Citation Number 3, while acting in a conflict of interest, the Committee has found that Mr. Llewellyn provided insufficient disclosure of that conflict, and that informed consent was not given. It also found that he became more focused on "making the deal happen" than upon the discharge of his professional duties and obligations as counsel. The aggravating factor here again is Mr. Llewellyn's seniority at the Bar, which suggests that he ought to have known better. Mitigating factors include his lack of a discipline record and his motivation to assist the client. In that respect, I was struck by something noted in the related *Fong* decision, which is cited at page 14 of 24 of the Ming Fong Appeal Committee Report of February 15th, 2012. At paragraph 76 thereof, it refers to comments made at paragraphs 61 to 64. This was an appeal decision that references paragraphs 61 to 64 of the original decision. At paragraph 62:

> The Hearing Committee has observed Mr. Fong's demeanor throughout these proceedings. He has presented himself as a reasonable person who wants to do right by his clients.

The Panel finds that this comment applies equally to Mr. Llewellyn. He always had in mind, at least in some fashion, that he was trying to do right by his clients, and that he was well intentioned. However, paragraph 63 also particularly applies:

> The purpose of a lawyer is not to simply smooth legal transactions between friends and business associates. Those relationships are transitory. The public rightfully expects lawyers to vigorously protect the interests of their clients within the law and the ethics of the profession. By his actions, Mr. Fong deliberately ignored these duties.

The Panel finds that those comments apply equally here. Although Mr. Llewellyn was well intentioned, he looked past his professional duties in order to "get the deal done." And that really led to the two citations for which he is being reprimanded.

In conclusion, the Panel finds that a reprimand, which is a public expression of the profession's denunciation of Mr. Llewellyn's conduct, will serve as a general and specific deterrence. We expect that Mr. Llewellyn understands that he has been found outside of the rules which govern the profession, and that in the future, he will make better decisions. It is hoped that he will take the reprimand to heart. We conclude from listening to both he and his lawyer throughout this process, that Mr. Llewellyn is now more mindful of his professional duties as a lawyer, and understands that can and must do better in the future.

Concluding Matters

17. The Committee was provided and accepted the joint submission on costs, including the proposed payment schedule. As noted by LSA counsel, while the Statement of Estimated Costs (Exhibit 94) was somewhat higher than the agreed-upon costs, the LSA agreed to a lesser amount as a result of the LSA not proceeding with two citations. The Committee views this as reasonable, and noting Mr. Llewellyn's agreement, accepted the proposal. Accordingly, Mr. Llewelyn was directed to pay costs totaling $30,000 to the Law Society. Payments of $2,500/month are to be made, starting on August 15, 2018.

18. The Committee further directed that Notice to the Profession be provided with respect to Mr. Llewelyn's suspension.

19. No notice to the Attorney General was required in these circumstances.

20. 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, June 26, 2018

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Ike Zacharopoulos – Public Adjudicator and Chair

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Leighton Grey, QC – Lawyer Adjudicator