

**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 LARRY WELLS
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

Single Bencher Hearing Committee

Nathan Whittling – Chair

Appearances

Kelly Tang – Counsel for the Law Society of Alberta (LSA)
Larry Wells – Self-represented

Hearing Date

February 27, 2020

Hearing Location

CARNA Office at 11120 178 Street NW, Edmonton, Alberta

HEARING COMMITTEE REPORT - SANCTION

Overview

1. On August 20, 2019, a Conduct Committee Panel referred the following conduct to hearing:
 1. It is alleged that Larry Wells failed to obtain his client's instructions on matters not falling within his express or implied authority and that such conduct is deserving of sanction.
 2. It is alleged that Larry Wells withdrew money from a trust account to pay disbursements and another party without the authorization of his client, and that such conduct is deserving of sanction.
2. The LSA and Mr. Wells entered into a Statement of Admitted Facts and Admissions (the Statement of Admitted Facts) in relation to Mr. Wells' conduct. That Statement, appended to this Report, sets out the relevant facts. In brief, Mr. Wells authorized a holdback of \$5,000.00 from the sale proceeds of his client's residence, and then directed that that money be paid out of trust for the benefit of the purchaser, and be applied towards his own firm's outstanding disbursements. Mr. Wells did not have his client's

instructions to authorize these payments and, indeed, he was aware that his client would not authorize them.

3. The Conduct Committee found the Statement acceptable. Accordingly, pursuant to subsection 60(4) of the *Legal Profession Act* (the *Act*), it is deemed to be a finding of this Hearing Committee (the Committee) that Mr. Wells' conduct is deserving of sanction in relation to the two citations set out above.
4. On February 27, 2020, the Committee convened a hearing into the appropriate sanction.
5. After reviewing all of the evidence and exhibits, and hearing the submissions of the LSA and Mr. Wells, for the reasons set out below, the Committee has determined that the recommended sanction of a reprimand is appropriate. Mr. Wells will also be liable for costs in the amount of \$1,260.00, and is granted 30 days to pay these costs.

Preliminary Matters

6. 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.

Submissions on Sanction

7. The LSA and Mr. Wells jointly submitted that an appropriate sanction for the conduct outlined in the Statement of Admitted Facts would be a reprimand.

Decision on Sanction

8. In accordance with *R. v. Anthony-Cook*, 2016 SCC 43, which I find to be applicable to this professional disciplinary proceeding by analogy, a joint submission on sanction is to be accorded substantial weight and ought only to be departed from if the proposed sanction would bring the administration of justice into disrepute, or would otherwise be contrary to the public interest. Applying this standard, I do not find any basis to depart from the sanction proposed by the parties in this case. In particular, I have taken into consideration the fact that Mr. Wells has been practising since 1993 and has no prior disciplinary record with the Law Society. There also appears to have been no malicious intent in relation to this transaction.
9. The following reprimand was delivered at the oral hearing of this matter:

Mr. Wells, your conduct in regards to the complaint in this matter is cause for concern. You have a responsibility to the members of the public and to the Law Society to represent their best interest. You did not do so in this case.

This failure represents the type of thing that we at the Law Society strive to avoid. Given the confidence that we need to instill in the public, we have to ensure that they believe and know that they will be treated conscientiously and with integrity. You did not meet that standard in this particular case, and you must do so in the future.

As a Member of the Law Society of Alberta, you will be expected to look at what has occurred on this particular file to determine whether or not you can find better solutions in the future, learn from this particular matter, and move forward.

So, I hope that you can do more for yourself in the future, and we require you to do more for the members of the public that you serve.

Mr. Wells, I wish you the best of luck in your continued work, and I hope you can learn from this particular matter and move forward from it.

Concluding Matters

10. Mr. Wells is also required to pay costs in the amount of \$1,260.00, which is to be paid within 30 days.
11. The exhibits, other hearing materials, and this report will be available for public inspection, including the provision of copies of exhibits for a reasonable copy fee, except that identifying information in relation to persons other than Mr. Wells will be redacted and further redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 98(3)).

Dated at Edmonton, Alberta, March 6, 2020.

Nathan Whiting

IN THE MATTER OF THE *LEGAL PROFESSION ACT*

- AND -

**IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF
LARRY WELLS
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

HEARING FILE HE20190223

STATEMENT OF ADMITTED FACTS AND ADMISSIONS

INTRODUCTION

1. This hearing arises out of one complaint comprising of two citations.

BACKGROUND

2. I was admitted as a member of the Law Society of Alberta on September 22, 1993.
3. My present status with the Law Society of Alberta is Active/Practising.
4. I practice in the areas of corporate, commercial, estate and real estate law. I also mediate when required in the Court of Queen's Bench and the Provincial Court.

CITATIONS

5. On August 20, 2019, the Conduct Committee Panel referred the following conduct to hearing:
 1. It is alleged that Larry Wells failed to obtain his client instructions on matters not falling within his express or implied authority and that such conduct is deserving of sanction.
 2. It is alleged that Larry Wells withdrew money from a trust account to pay disbursements and another party without the authorization of his client, and that such conduct is deserving of sanction.

FACTS

6. On August 24, 2017, J.G. retained me to represent him with respect to the sale of his home in [S].
7. My office was advised that J.G. was working in a remote area in Manitoba.

8. J.G. entered into a Residential Purchase Contract (the "Contract") to sell his home on August 14, 2017 for a price of \$290,000. The closing date was August 31, 2017.
9. Given JG's location in remote Manitoba it was a concerted effort on behalf of my office to ensure that I secure an agent near JG's location and furthermore produce the documentation in a very timely manner and have them couriered to the agent in Manitoba.
10. It was difficult for our office to communicate with JG given his locale.
11. As part of the conditions of the sale, J.G. was required to provide to the purchasers a Real Property Report ("RPR"). In response to the herein complaint, I advised the LSA that J.G. had provided our office a RPR respecting the home which was prepared in 2001, well over the 10 year standard. J.G. advised that he accepted the RPR when he purchased the home 8 years ago and that no changes had been made to the property since.
12. I further advised the LSA that I discussed the matter with the conveyancers on both sides of the transaction and confirmed a new RPR was required. The survey was completed on August 31, 2017, which was the closing date. It was not until after my meeting with JG on a weekend (the one and time I met him) that our office, on September 12, 2017, received a Compliance Letter which revealed numerous deficiencies.
13. The purchasers' lawyer wrote to me on September 13, 2017 demanding a \$10,000 holdback from J.G. due to the RPR not having a certificate with compliance. I negotiated a holdback of \$5,000.00 given that all that remained in trust was just a few dollars over \$5,000.00 from the sale proceeds after accounting for all payouts.
14. I did not discuss the purchasers' demand for a holdback with J.G. or seek instructions prior to agreeing to the \$5,000 holdback. In my email to the LSA of March 20, 2018, I indicated that I advised J.G. about the holdback after the fact by a phone call.
15. I indicated to the LSA that I advised J.G. on numerous occasions as to the reasons for the holdback and that it was unlikely the funds would be returned to him due to deficiencies. It appeared to me that J.G. was unwilling to accept that it was his responsibility as the seller to remedy the deficiencies. As a result of a breakdown of our client-solicitor relationship, I determined that I could no longer act for him and withdrew from representing him.
16. On November 8, 2017, I advised the purchaser's lawyer that I had withdrawn my services on this file. I further advised that I obtained an inspection from the City of [S] that revealed a non-compliant veranda that would need to be renovated in order to become compliant. I stated that I hired an engineer and two contractors to inspect the veranda and provide estimates for the required upgrades. Lastly, I advised that if J.G. did not retain new counsel by December 21, 2017, I would seek directions from the LSA with respect to the holdback funds.

17. On November 30, 2017, the purchasers' lawyer wrote in response to my November 8, 2017 letter as well as a subsequent telephone conversation we had. The purchaser's lawyer confirmed that during the telephone call, I advised that the cost to repair the veranda to obtain compliance would be upwards of \$5,000.00. He asked that I release the holdback immediately.
18. I replied to the purchaser's lawyer on November 30, 2017, stating that J.G. had not yet retained new counsel. I indicated that I was unable to release the funds held in trust, and that if J.G. did not retain new counsel within 90 days, I would be obliged to make an application to pay these funds into court.
19. J.G. did not retain new counsel within 90 days. Despite my indication to the purchasers' lawyer that I would be obliged to pay the holdback funds into court, I did not bring an application to do so, nor did I seek advice from the LSA.
20. On February 16, 2018, I wrote to the purchasers' lawyer offering to forward him the balance of the holdback, less my unpaid disbursements of \$2,245.85. After some negotiation, I made a subsequent offer to resolve the matter for payment of \$4,000.00, immediately releasable to the purchasers, with the remaining \$1,000.00 to go toward my disbursements. The purchasers' lawyer accepted this offer and the funds were released accordingly.
21. I did not obtain J.G.'s instructions prior to negotiating the release of the holdback with the purchaser's lawyer. In his email to the LSA of June 7, 2018, I indicated that I had no correspondence with J.G. addressing the release of the holdback funds and that I had stopped all communication with him.
22. I did not advise J.G. that funds had been released from my trust account.
23. The Retainer Agreement that J.G. had executed with me did not provide me with authority to pay my fees or disbursements from money held in trust on his behalf.
24. Further, I released the funds despite knowing that J.G. would not agree to the holdback. In my email to the LSA dated March 20, 2018, I indicated that in hindsight, I am not confident that the release of the monies was done properly. I just know that I would have never received J.G.'s permission to either pay into court or to the purchasers.
25. Despite my indication to the purchaser's lawyer that I would seek directions from the LSA with respect to the holdback, I felt uncertain whether the LSA had to be consulted regarding the release of the funds given that the \$5,000.00 would unquestionably be directed to the purchasers had the matter been before the court. In hindsight, I acknowledge that I may have handled the release of the funds differently, but at the time was concerned about incurring more costs for JG (him having to make an application to court to have the funds released and defending a small claims action against him for payment of my account which I

was prepared to do but decided against), myself for costs to make an application to pay the monies into court, and the purchasers' lawyer to make a cross application to obtain the funds as it was the buyers monies as the seller could not provide a compliance as agreed and required for the matter to properly close.

26. On October 18, 2019, I was advised by the purchaser's lawyer that the purchasers were required to remove the veranda pursuant to the direction of the municipality, and that they oversaw the removal without any involvement from J.G.

27. I was never paid any legal fees whatsoever on this file. The \$1,000.00 I directed from trust to myself was partial payment for the disbursements which I was never paid for.

ADMISSIONS OF GUILT

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

29. I admit that I failed to obtain my client's instructions on matters not failing within my express or implied authority, contrary to section 3.2-4 of the Code of Conduct. In particular, I failed to obtain my client's instructions to:

- a. Agree to the \$5,000.00 holdback; and
- b. Release the holdback funds to pay part of his disbursements and to pay the balance to the purchasers.

30. I admit that I withdrew money from a trust account to pay my disbursements and another party without the authorization of my client contrary to Rule 119.21(3)(a) and (b) of the Rules of the Law Society of Alberta.

31. I further admit that the conduct described in paragraphs 29 and 30 herein is conduct deserving of sanction as defined under section 49 of the *Legal Profession Act*.

NO DURESS AND INDEPENDENT LEGAL ADVICE

32. I have had the opportunity to consult with legal counsel and confirm that I have signed this statement voluntarily and without any compulsion or duress.

THIS STATEMENT OF ADMITTED FACTS AND ADMISSION OF GUILT IS MADE THIS 6th DAY OF DECEMBER, 2019.

"Larry Wells"
LARRY WELLS