

2023

NOVA SCOTIA BARRISTERS' SOCIETY

IN THE MATTER OF: The ***LEGAL PROFESSION ACT***, S.N.S. 2004, c.28 and the Regulations of the Nova Scotia Barristers' Society, as amended.

BETWEEN:

The Nova Scotia Barristers' Society

-and-

Michael Moore, a Barrister and Solicitor of
Halifax, Nova Scotia

CONSENT TO REPRIMAND

Michael Moore, a member of the Nova Scotia Barristers' Society, hereby agrees and consents to the following in accordance with the *Legal Profession Act* S.N.S. 2004, c. 28, as amended by S.N.S. 2010, c. 56, and the Regulations made thereunder, and the *Code of Professional Conduct*.

STATEMENT OF FACTS

1. Mr. Moore was called to the Bar in 1977. He has practiced in association with several small firms over the years and joined Walker Dunlop in 2013. He remains associated with that law firm at this time.

Complaint of IR

2. IR and his sister were the executors of their father's will and retained Mr. Moore as the proctor of the Estate in August 2015. IR contacted the Society in November 2018 to request assistance in getting the Estate finalized, as Mr. Moore was no longer responsive to him.
3. The Society contacted Mr. Moore who advised that he was preparing the final account and that it would be provided to his client in a couple of days.
4. On November 30, 2018, IR filed a complaint against Mr. Moore alleging delay, inactivity and a failure to communicate.

5. The Society contacted Mr. Moore on December 4, 2018 to advise that a complaint had been filed, and Mr. Moore confirmed that the draft final accounts were complete and would be circulated to IR that week.
6. On February 1, 2019 IR advised the Society that he had retained new counsel.
7. The mediation of this matter attempted by the Society was not successful, and Mr. Moore's response to the complaint was requested by letter dated February 13, 2019.
8. In his March 5, 2019 response, Mr. Moore set out the various issues that had resulted in delays in moving the matter forward and advised that he was close to preparing a Final Account that would reconcile with the balance remaining in the Estate bank account.
9. There were further communications between the Society and IR regarding Mr. Moore's ongoing failure to complete this matter.
10. With the Society's intervention, IR's file was provided to new counsel on June 28, 2019.

Section 36(2) Meeting

11. Members of the Complaints Investigation Committee (CIC) met with Mr. Moore on October 15, 2019.
12. Mr. Moore was asked about the delays in moving IR's matter forward and for making promises to the client and the Society that he had failed to keep.
13. Mr. Moore advised the CIC the delays were caused by his inability to reconcile the estate accounts, but that he does not engage in a pattern of delay generally.
14. He further advised that he did not immediately forward the file to new counsel as requested as he wanted to reconcile the accounts himself. He acknowledged that when he was unable to do so, he avoided dealing with the matter entirely.
15. Mr. Moore acknowledged that he should have sought assistance from others in his firm and advised that he has gotten better at delegating work as appropriate to ensure his practice is better managed.

Complaint of NSBS

16. Mr. Moore was subject to a practice review in 2020, and the report provided by the practice reviewer formed the basis of a complaint by the Society.
17. The practice review report made note of a real estate transaction that appeared straightforward. However, the file also included a copy of an unsigned Collateral Agreement that provided that upon completion of the sale, the vendor would pay to the purchaser's director, in his personal capacity, a "performance fee" in the amount of \$300,000.
18. The practice reviewer discussed the Collateral agreement with Mr. Moore, who advised that he prepared the agreement at his client's instructions. When asked if the Collateral Agreement between the parties caused him any concern, Mr. Moore advised that the

agreement was prepared on client instructions and it never crossed his mind that it could be for an improper purpose.

19. Further investigation revealed that there were four other transactions that included Collateral Agreements for the payment of a performance fee to the purchaser's director by Mr. Moore's client.

Section 36(2) Meeting

20. Members of the CIC met with Mr. Moore and his counsel on April 25, 2023.
21. The CIC asked Mr. Moore whether he had turned his mind to the purpose for which these very significant payments were made (the performance fees totaled almost \$2 million).
22. Mr. Moore advised the CIC that he asked his client how he planned to treat the performance fees for income tax purposes and was told that they would be treated as expenses.
23. Mr. Moore indicated that based on the representations of his client, he had assumed that the purchaser's principal would claim the performance fee as income for income tax purposes.
24. Mr. Moore acknowledged that he did not ask further questions about this arrangement, as he was dealing with two sophisticated parties. He noted that "just because something is unusual doesn't make it wrong."
25. Mr. Moore agreed that he had not considered that these payments could be facilitating mortgage fraud, money laundering or other illegal or unethical conduct by a potentially unscrupulous client and did not ask any questions. Mr. Moore states that he was not aware of any evidence of mortgage fraud, money laundering, or other illegal or unethical conduct.
26. Mr. Moore acknowledged that he made no inquiries of his client despite the red flags that included: the very large value of the "performance fees" being paid, the lack of involvement of the purchaser's counsel in the creation and execution of the Collateral Agreement, the failure to disclose the Collateral Agreement to the purchaser's counsel, the lack of reference to the Collateral Agreement in either the Agreement of Purchase and Sale or Statement of Adjustments, and the payment of the "performance fees" from funds related to other transactions.

DISPOSITION

Complaint of IR

The Complaints Investigation Committee reviewed this matter on November 24, 2022, and concluded that the evidence on file that could reasonably be believed supported a finding of professional misconduct. The Committee agreed that charges against Mr. Moore could include the following:

1. Michael Moore failed to apply relevant knowledge, skills and attributes in a manner

appropriate to the matter undertaken on behalf of a client, contrary to rule 3.1 and failed to provide courteous, thorough and prompt service to clients in manner that is timely, conscientious, diligent, efficient and civil contrary to rule 3.2-1 of the *Code of Professional Conduct*. In particular, he:

- (a) failed to return his clients calls or emails for several months;
 - (b) repeatedly promised to take steps to move the client's matter forward but failed to follow through;
 - (c) finally provided the client with documents only after the Society intervened, and those documents included errors.
2. Michael Moore failed in his duty to answer with reasonable promptness all professional letters and communications from other lawyers that required an answer, and failed to be punctual in fulfilling all commitments contrary to rule 7.2-5 of the *Code of Professional Conduct*. In particular, he:
 - (a) failed to respond to communications from his client's new counsel;
 - (b) failed to transfer the client's file following requests to do so from new counsel.
3. Michael Moore failed in his duty to reply promptly and completely to any communication from the Society contrary to rule 7.1-1 of the *Code of Professional Conduct*. In particular, he:
 - (a) failed to cooperate with the Society's attempt to mediate the concerns that had been raised by his client;
 - (b) failed to address his delays and inactivity on this client file in his response to the Society.

Pursuant to section 36(2)(c) of the *Legal Profession Act*, the Complaints Investigation Committee agrees that Mr. Moore be issued a Reprimand with his consent.

Complaint of NSBS

The Complaints Investigation Committee reviewed this matter on September 21, 2023, and concluded that the evidence on file that could reasonably be believed supported a finding of professional misconduct. The Committee agreed that charges against Mr. Moore could include the following:

1. Michael Moore failed to comply with his duties under rule 3.2-7(b) of the *Code of Professional Conduct*, as informed by the Commentary thereunder. In particular, he
 - (a) failed to be on guard against the possibility of becoming the tool or dupe of an unscrupulous client or others; and
 - (b) failed to make reasonable inquiries to obtain information about the client or others including failing to clarify the nature and purpose of an unusual transaction where the purpose is not clear.

ADMISSIONS

Mr. Moore admits that he breached the Rules in the manner set out above, and that his conduct constitutes professional misconduct.

COMPLAINTS HISTORY

Mr. Moore has a prior discipline history that includes a Reprimand and fine by a Hearing Panel in 2005.

INDEPENDENT LEGAL ADVICE

Mr. Moore confirms that he has had independent legal advice regarding the terms of this Reprimand, prior to its execution.

CONSENT TO REPRIMAND

Mr. Moore hereby consents to a Reprimand.

EFFECTIVE DATE

This Reprimand shall only become effective upon its acceptance by the Complaints Investigation Committee.

This **CONSENT TO REPRIMAND** is made as of the 20th day of December, 2023.

(Signed) _____
WITNESS

(Signed) _____
Michael Moore

ISSUED BY:

The Complaints Investigation Committee, this 20th day of December, 2023.

(Signed) _____
Scott Campbell
Chair, Complaints Investigation Committee