

IN THE MATTER OF THE *LEGAL PROFESSIONS ACT*  
AND IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF  
**ANAND SARA**, A MEMBER OF THE LAW SOCIETY OF ALBERTA

**REPORT OF THE HEARING COMMITTEE**

1. On October 5, 2009, a Hearing Committee comprised of Rose M. Carter, Q.C. (Chair), Frederica Schutz and Anthony G. Young (the Hearing Committee) convened at the Law Society of Alberta (LSA) office in Calgary, Alberta to inquire into the conduct of Anand Sara (Mr. Sara). Mr. Sara was represented by Allan G.P. Shewchuk, Q.C. (Mr. Shewchuk) and the Law Society of Alberta was represented by Ms. Lois J. MacLean.

**I. INTRODUCTION**

2. Mr. Sara was charged with failure to honour an Undertaking given to opposing counsel during the course of a residential real estate transaction. By documentation entitled, "Complaint about Someone Else's Lawyer" and received by the LSA on June 28, 2007, the Complainant advised the LSA that, in spite of his Undertaking, Mr. Sara had not had a lien removed from the Complainant's property. The Complainant asked for the LSA's assistance in having the lien removed.

**II. CITATIONS**

3. The citation against Mr. Sara is that:
  - a. IT IS ALLEGED that you failed to honour an Undertaking given, thereby breaching Chapter 1, Rule 3 and Chapter 4, Rule 1 of the *Code of Professional Conduct* and that such conduct is conduct deserving of sanction

**III. JURISDICTION**

4. Jurisdiction was established by entering as Exhibits the Letter of Appointment, Notice to Solicitor, Notice to Attend, Certificate of Status and Certificate of Exercise of Discretion. Also, counsel for Mr. Sara accepted the jurisdiction and the composition of the Panel.

**IV. PRIVATE HEARING**

5. No application was made to hold any portion of the Hearing in private.

**V. OTHER PRELIMINARY MATTERS**

6. At the onset of the Hearing, counsel for LSA and Mr. Sara proffered a proposed Agreed Statement of Facts (Proposed Agreement) to the Hearing Committee. This Proposed Agreement had been provided to the Hearing Committee members prior to commencement of the Hearing.

## REPORT OF THE HEARING COMMITTEE

### In the Matter of ANAND SARA

#### Page 2

7. The Hearing Committee refused to accept the Proposed Agreement proffered by counsel. Mr. Sara gave sworn evidence before the Hearing Committee. A further Agreement was proposed and agreeable to the Hearing Committee (the Agreement). The Agreement was entered as *Exhibit 17* and its contents are set out under the Facts section below.
8. The Notice to Solicitor stated, in part, that the citation is that "it is alleged that you failed to honour all Undertakings given, and that such conduct is deserving of sanction". During the course of the Hearing, it became clear that while Mr. Sara had given more than one Undertaking at the material time, the citation should more properly read that Mr. Sara failed to honour "an Undertaking". As such, the citation was amended as reflected in the Agreement.

#### VI. FACTS

9. Mr. Sara is a member of the Law Society of Alberta, having been admitted in 1992. Mr. Sara was a member at all times relevant to this proceeding.
10. Mr. Sara faces one citation, as follows:
  1. It is alleged that you failed to honor an Undertaking given, and such conduct is conduct deserving of sanction,
11. The complaint arises from a file in which Mr. Sara represented a builder who was selling a residential real estate property. The Complainant had separate counsel.
12. In a letter dated December 10, 2004, Mr. Sara, on behalf of the builder forwarded to counsel for the Complainant a Transfer of Land and other closing documents on trust conditions. In the letter, Mr. Sara made Undertakings as follows:

Provided all of the balance due on closing is paid to us from the proceeds of this sale, we undertake to obtain and register the discharges of the following encumbrance(s):

[information removed] - Caveat  
[information removed] – A...  
[information removed] – Certified Statement of WCB  
[information removed] - Builder's Lien  
[information removed] – W...Ltd.  
[information removed] – B...Ltd.

and further, we undertake to deliver to you a Certified Copy of the Certificate of Title evidencing registration of the appropriate discharges.

We undertake to pay any outstanding installment of municipal taxes which are shown as the Vendor's responsibility on the Statement of Adjustments, the payment of which is the Vendor's responsibility at

**REPORT OF THE HEARING COMMITTEE**

**In the Matter of ANAND SARA**

**Page 3**

the time of closing. Your client is responsible for the payment of supplementary tax levy.

We undertake to provide you with the Real Property Report with Certificate of Compliance, or to use best efforts to apply for any Encroachment Agreement/Relaxation Permits necessary, (*Exhibit 6, Tab 1*)

13. The Builder's Lien which subsequently became an issue with respect to the Undertaking was the document registered as Instrument No. [information removed] above. It is referred to in the correspondence as the Builder's Lien (H...)
14. On December 13, 2004, Mr. Sara and counsel for the Complainant spoke on the telephone. It appears that during that conversation there was a verbal authorization to amend the Statement of Adjustments which would reflect a credit to the vendor for a supplementary assessment from December 5, 2004 and it was agreed that Mr. Sara would pay property taxes for the year 2004 in the amount of \$1,320.82, (*Exhibit 9*).
15. On December 20, 2004, counsel for the Complainant forwarded cash to close in the amount of \$139,346.89 to Mr. Sara along with a cover letter confirming the previous Undertakings and the telephone conversation (*Exhibit 9, Tab 2*).
16. Also on December 20, 2004, Mr. Sara paid out the following funds:
  - \$117,750.00 to Jeffrey H. Larson, solicitor for B... (the A...) (*Exhibit 9, Tab 5*);
  - \$10,454.71 to the Workers' Compensation Board regarding Encumbrance [information removed] (*Exhibit 9, Tab 6*).
17. The Law Society has not been provided with a copy of the Title indicating all of the encumbrances which were originally registered against it, however there is no issue that the above noted funds were paid out pursuant to the Undertakings contained in Mr. Sara's letter of December 10, 2004.
18. On June 30, 2005 Mr. Sara paid out the following:
  - \$1,320.82 to the City of Calgary with respect to the Builder's share of the 2004 property taxes and penalties (*Exhibit 9, Tabs 7 and 8*)
19. On December 20, 2006, counsel for the Complainant wrote to Mr. Sara reminding him of the Undertakings made in the trust letter (of December 24, 2004). Mr. Dewett indicated that the Undertakings to discharge the instruments had not been fulfilled. He indicated that the delay had caused problems for the Complainant in obtaining new financing and asked that Mr. Sara fulfill the Undertakings by January 10, 2007 (*Exhibit 9, Tab 3*).

**REPORT OF THE HEARING COMMITTEE**

**In the Matter of ANAND SARA**

**Page 4**

20. On June 28, 2007, the Complainant forwarded the "Complaint About Someone Else's Lawyer" form to the Law Society outlining his complaint against Mr. Sara. (*Exhibit 6*).
21. On June 29, 2007, the Law Society staff wrote to the Complainant indicating that Mr. Boyd Hiltz, a Complaints Resolution Officer would be in contact with him (*Exhibit 7*).
22. On July 3, 2007, Mr. Hiltz wrote to Mr. Sara forwarding the Complaint, and asking for his written response by July 23, 2007. Mr. Hiltz noted that the complaint was being dealt with at the informal stage of the complaint process, and that the written response would be provided to Mr. G. (*Exhibit 8*).
23. On July 3, 2007, counsel for the Complainant sent a fax to Mr. Hiltz of the Law Society which indicated that it was further to Mr. Bagga's conversation with Mr. Hiltz of June 29, 2007. The fax attached copies of the letters containing Undertakings and documents indicating that Mr. Sara had paid out some of the charges (*Exhibit 9 and attachments*).
24. Only July 23, 2007, Mr. Sara wrote to the Law Society. In his letter (*Exhibit 10*), he indicated that he had acted for the Builder for some time. With respect to the particular file, he indicated that because of cost over-runs, the Builder had been slow to complete construction, and as a result a number of creditors filed caveats, writs, and liens on the property. He indicated that he was concerned that if he did not act for the Builder, there was a risk that the purchasers could lose their deposit. With respect to the failure to pay out encumbrances, his letter included the following:

The balance of the cash to close was not enough for completing the construction and discharge the encumbrances. However, out of compassion, I undertook to complete the file and sent my trust letter along with the Undertakings to discharge a number of encumbrances. I have successfully discharged all of them except for the one filed by H..., which I knew was not only filed for excessive amount but was also filed after the expiration of the Builder's Lien period. The matter has been in active litigation and I have been expecting an amicable resolution of same, which unfortunately has not happened so far. The builder is being represented by Mr. Martin Zimmerman. I have been in constant contact with Mr. Zimmerman and am enclosing copies of the correspondence in this regard. The last Examinations for Discoveries were held on June 26, 2007 but nothing has emerged out of that either. I understand that the next scheduled date for discoveries is in August, 2007.

...

As far as the complainant's allegation that I didn't respond to [counsel for the Complainant], I strongly object to such allegation as I have always been in contact with [him], have advised him on numerous times as to the status of the litigation, as to my desire to refer the matter to Alberta Lawyers Insurance Association (ALIA).

**REPORT OF THE HEARING COMMITTEE**

**In the Matter of ANAND SARA**

**Page 5**

I had spoken with ALIA as recently as May 2007 and had in fact prepared the letter on May 4, 2007 but had held off sending same as I was waiting for the outcome of Examinations for Discoveries in June 2007.

I am now forwarding the matter to ALIA as well,..

25. Attached to that letter were copies of a series of letters from Mr. Sara to Zimmerman & Company with respect to the litigation between [numbered company] Ltd., and H... Ltd.
26. On January 8, 2008, the Law Society forwarded a further letter to Mr. Sara asking for his formal response pursuant to Section 53 of the *Legal Profession Act*. The letter from Ms. Whitburn indicated that Mr. Sara had the option of adopting the response which had previously been provided (*Exhibit 12*).
27. On the same date, the Law Society wrote to the Complainant forwarding a copy of the letter to Mr. Sara of January 8 and enclosing materials explaining the procedures followed by the Law Society in reviewing complaints (*Exhibit 12, Tab 1*).
28. On January 24, 2008 Mr. Sara responded to the Law Society in which he indicated that he had already submitted his response in the matter. He went on to say the following:

I have requested ALIA to intervene in this matter as between the Plaintiff and Defendant the litigation may keep on going for a while. Along with the Complainant, I am also a victim of slow moving litigation in this matter. I am hoping that my insurers will be able to resolve this matter sooner. I have not had a paid claim against myself in all these years of practice. It is unfortunate that despite knowing that the lien is filed for an excessive amount and is filed after the expiration of the lien period, I have to request my insurers to intervene, which may lead to eventual payout to a Plaintiff an unjust amount (*sic*) (*Exhibit 13*).
29. On April 2, 2009, counsel for ALIA advised counsel for Mr. Sara that the Builder's Liens had been discharged.
30. On September 23, 2009, Mr. Ray Wong of Field LLP (Mr. Wong) wrote to counsel for Mr. Sara confirming that the Builders Lien had been removed from the Certificate of Title. He noted that Mr. Sara had been very cooperative throughout the process as was his duty as an insured. (*Exhibit 14*)
31. The current title as at August 17, 2009 (*Exhibit 15*) confirms that the builder's liens in issue have been discharged.
32. A chronology of events was attached to the Agreement as Schedule "A" and listed the following events:

## **REPORT OF THE HEARING COMMITTEE**

### **In the Matter of ANAND SARA**

#### **Page 6**

1. On December 10, 2004, Mr. Sara did undertake to discharge the encumbrances on the title of a residential property in Calgary, including a Builder's Lien of H... being the instrument registered on that title.
2. On December 20, 2004, Mr. Sara paid out the previous mortgage and a WCB encumbrance in furtherance of satisfying his Undertaking.
3. On June 30, 2005, Mr. Sara paid out the City of Calgary property tax encumbrance.
4. On December 20, 2006, the purchaser's counsel wrote to Mr. Sara requesting that the Undertaking to discharge encumbrances be completed by January 10, 2007.
5. On June 28, 2007, the purchaser makes a written complaint to the Law Society of Alberta concerning the failure of Mr. Sara to fulfill his Undertaking to discharge encumbrances.
6. In July, 2007, Mr. Sara self-reported to ALIA that he had not been able to discharge the H...Builder's Lien as he had undertaken to do.
7. By September 2009, ALIA confirmed that repair counsel had removed the H... Builder's Lien from the title.

#### **VII. DECISION AS TO CITATION**

33. The Hearing Committee determined that the Agreement (*Exhibit 20*) was in an acceptable form. Consequently, it is deemed for all purposes to be a finding of the Hearing Committee that the conduct of Mr. Sara, as stated in the citation, is conduct deserving of sanction.

#### **VIII. DECISION REGARDING SANCTION**

34. Mr. Sara responded under oath to questions posed by counsel and by the Hearing Committee members. The Hearing Committee also heard submissions regarding sanction from both counsel. Following the submissions and deliberation, the Hearing Committee advised Mr. Sara that the sanction was one of reprimand and the payment of costs.

#### **IX. REPRIMAND**

35. As noted in the last paragraph of the Agreement, Mr. Sara has not only agreed to the facts set out in the Agreement, but agrees that his conduct is deserving of sanction within the meaning of Section 60 of the *Legal Professions Act*. With Mr. Sara's admission, all that remained was for the Hearing Committee to consider and adjudicate on any sanction to be imposed.

**REPORT OF THE HEARING COMMITTEE**

**In the Matter of ANAND SARA**

**Page 7**

36. When this Hearing Committee considered the question of sanction, it was mindful that the range of sanctions available to it also included an award of costs, reprimand, fine, period of suspension and disbarment. It asked itself if there was any sanction short of disbarment which would appropriately protect the public and the profession.
37. The LSA has long recognized that trustworthiness is the cornerstone upon which the profession is built. The preface to the Alberta *Code of Professional Conduct* states:
- Two fundamental principles underlie this Code and are implicit throughout its provisions. First, a lawyer is expected to establish and maintain a reputation for integrity, the most important attribute of a member of the legal profession. Second, a lawyer's conduct should be above reproach.
38. In considering the sanction it should impose, the Hearing Committee considered the seven facts comprising Schedule "A" to the Agreement. Those facts are that:
1. On December 10, 2004, Mr. Sara undertook to discharge the encumbrances on the title of a residential property in Calgary, including a Builder's Lien of H... being the instrument registered on that title.
  2. On December 20, 2004, Mr. Sara paid out the previous mortgage and a WCB encumbrance in furtherance of satisfying his Undertaking.
  3. On June 30, 2005, Mr. Sara paid out the City of Calgary property tax encumbrance.
  4. On December 20, 2006, the purchaser's counsel wrote to Mr. Sara requesting that the Undertaking to discharge encumbrances be completed by January 10, 2007;
  5. On June 28, 2007, the purchaser makes a written complaint to the LSA concerning the failure of Mr. Sara to fulfill his Undertaking to discharge encumbrances.
  6. In July, 2007, Mr. Sara self-reported to ALIA that he had not been able to discharge the H... Builder's Lien as he had undertaken to do.
  7. By September, 2009, ALIA confirmed that repair counsel had removed the H... Builder's Lien from the title.
39. As noted in Item 6 in Schedule "A", it was not until approximately one month after the Complainant brought the matter to the attention of the LSA that Mr. Sara self reported to ALIA that he was unable to discharge the H... Lien as he had undertaken to do as part of

**REPORT OF THE HEARING COMMITTEE**

**In the Matter of ANAND SARA**

**Page 8**

a number of Undertakings set out in his letter of December 10, 2004 to counsel for the Complainant. Further, it was not until September 2009 that ALIA confirmed that repair counsel had removed the H... Lien from the Complainant's title. Thus, it was approximately 4 years and 3 months before the Complainant had a clear title to his property which Mr. Sara had undertaken on December 10, 2004 to clear.

40. Prior to this matter being brought to the attention of the LSA, counsel for the Complainant wrote on December 20, 2006 to Mr. Sara reminding him of the Undertakings in the trust letter of December 10, 2004. Counsel indicated that the Undertakings to discharge the encumbrances had not been fulfilled. He indicated that the delay had caused problems for the Complainant in obtaining new financing and asked that Mr. Sara fulfill the Undertakings by January 10, 2007. The Undertaking in relation to the H... Lien was not fulfilled by Mr. Sara.
41. By letter dated July 23, 2007, Mr. Sara advised the LSA that he was forwarding the matter to ALIA. On April 2, 2009, counsel for ALIA advised counsel for Mr. Sara that the H... Lien had been discharged. On September 23, 2009, Mr. Wong wrote to counsel for Mr. Sara confirming that the H... Lien had been removed from the Certificate of Title. Mr. Wong also noted that Mr. Sara had been very cooperative throughout the process. *Exhibit 15* entered before the Hearing Committee being a Title to the Complainant's property as of August 17, 2009 confirmed the H... Lien has been discharged.
42. Counsel for the LSA put in evidence Mr. Sara's discipline record and submitted that something short of suspension or disbarment was the appropriate sanction.
43. Chapter 1, Rule 3 of the *Code of Professional Conduct* states:
  3. A lawyer must not act in a manner that might weaken public respect for the law or justice system or interfere with its fair administration.

Chapter 4, Rule 1 states:

1. A lawyer must not lie to or mislead another lawyer.
44. *Lawyers & Ethics: Professional Responsibility and Discipline*, by Gavin McKenzie (at pages 26-1):

The purposes of law society discipline proceedings are not to punish offenders and exact retribution, but rather to protect the public, maintain high professional standards, and preserve public confidence in the legal profession.

In cases in which professional misconduct is either admitted or proven, the penalty should be determined by reference to these purposes...

The seriousness of the misconduct is the prime determinant of the penalty imposed. In the most serious cases, the lawyer's right to practice will be terminated regardless of extenuating circumstances and the probability of recurrence. If a lawyer misappropriates a substantial sum of clients' money, that lawyer's right to practice will almost certainly be determined, for the profession must protect the public against the possibility of a recurrence of the misconduct, even if that possibility is remote. Any other result would undermine public trust in the profession.

45. *McKee v. College of Psychologists, etc.*, [1994] 9 W.W.R. 374 at 376 (B.C.C.A.):

In cases of professional discipline there is an aspect of punishment to any penalty which may be imposed and in some ways the proceedings resemble sentencing in a criminal case. However, where the legislature has entrusted the disciplinary process to a self-governing professional body, the legislative purpose is regulation of the profession in the public interest. The emphasis must clearly be upon the protection of the public interest, and to that end, an assessment of the degree of risk, if any, in permitting a practitioner to hold himself out as legally authorized to practice his profession.

46. The privilege of self-governance is accompanied by certain responsibilities and obligations. The impact of any misconduct on the individual and generally on the profession must be taken into account. "This public dimension is of critical significance to the mandate of professional disciplinary bodies." "The question of what effect a lawyer's misconduct will have on the reputation of the legal profession generally is at the very heart of a disciplinary hearing...": *Adams v. The Law Society of Alberta*, [2000] A.J. No. 1031 (Alta. C.A.)
47. It is imperative that our process maintains the public's confidence in the integrity of our profession and the ability of the profession to effectively govern its own members.
48. The two primary purposes of the sanctioning process are: the protection of the public; and maintaining confidence in the legal profession. The Hearing Committee is also mindful that, as stated in *R. v. Shropshire* (1995), 102 C.C.C. (3d) 193 at paragraph 48 (S.C.C.), there is no single correct sanction.
49. As stated at pages 53 and 54 of the article "Integrity Testing of Lawyers: Is it Time?" (1997) by Marvin J. Huberman, the Hearing Committee is mindful that the public rely on lawyers to serve their interests, to carry out tasks required of them, and to do so in a principled fashion.
50. As stated in *Bolton v. Law Society*, [1994] 2 All ER 486 at 492 (C.A.), per Sir Thomas Bingham MR for the court:

If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and

**REPORT OF THE HEARING COMMITTEE**

**In the Matter of ANAND SARA**

**Page 10**

trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends on trust.

51. At the time Mr. Sara gave the Undertaking to the Complainant's counsel, he knew that he could not fulfill his Undertaking by having the H... Lien removed from the title of the Complainant's property. Therefore, he was wrong to give the Undertaking that he did. The giving of this Undertaking resulted in the Complainant's monies being forwarded to Mr. Sara with Mr. Sara knowing that he could not discharge the H... Lien. During his evidence before the Hearing Committee, Mr. Sara stated that he was hopeful, had faith and had a reasonable belief that he would be able to clear title.
52. The Complainant trusted, through his lawyer, that Mr. Sara had given an Undertaking that he could fulfill. Based on that trust and assumption, counsel for the Complainant forwarded closing monies to Mr. Sara. Mr. Sara knew he could not clear title of the H... Lien and, as such, his Undertaking was worthless at the time it was given.
53. Under oath, Mr. Sara assured the Hearing Committee that he would never again give an Undertaking unless he was certain that he could fulfill it at the time it is given. The Hearing Committee was mindful that there was no dishonest or selfish motive involved in the giving the worthless Undertaking.
54. Given the facts before the Hearing Committee, the Hearing Committee held that a reprimand was appropriate and delivered the reprimand to Mr. Sara prior to the conclusion of the Hearing.
55. In issuing the reprimand, the Hearing Committee was mindful of Mr. Sara's prior clear discipline record, the risk of recurrence, Mr. Sara's reaction to the discipline process in that he agreed to and signed the Agreement and voluntarily acknowledged to the Hearing Committee that his conduct was worthy of sanction. The Hearing Committee was also mindful of Mr. Sara's cooperation with the LSA and ALIA. The Hearing Committee is of the view that while such cooperation is fully expected of a member, it is nonetheless noteworthy.
56. As *Carling Development Inc. v. Aurora River Tower Inc.*, [2005] A.J. No. 988 indicates, the importance of trust conditions or solicitors' undertakings to commerce in Alberta cannot be understated. It would be difficult, if not impossible, to conduct commercial transactions in Alberta unless lawyer can be relied upon to honour their obligations in this regard.
57. In this particular instance, Mr. Sara failed to honour an express written Undertaking. Counsel for the LSA pointed out that the breach was not trivial or technical in nature but rather had significant consequences for the vendors. As a result, Mr. Sara put the vendors, the vendors' lawyer and himself through considerable anxiety. He has affected the public perception of our profession. There are now individuals in Alberta who question the integrity of our system of trust conditions and Undertakings and, therefore, the integrity of our profession itself.

**REPORT OF THE HEARING COMMITTEE**

**In the Matter of ANAND SARA**

**Page 11**

**X. COSTS**

58. At the close of the Hearing, the LSA produced an estimated Statement of Costs which totaled \$3,087, entered as *Exhibit 21*. Mr. Sara made no submissions concerning the costs or the amounts. The Hearing Committee finds the items reasonable and orders Mr. Sara to pay the actual costs as finalized by the LSA and forwarded to Mr. Sara by registered mail or served personally.

59. Representations were heard from Mr. Sara's counsel for an extension of time for Mr. Sara to pay the costs. The Hearing Committee directed that Mr. Sara shall have 60 days from October 5, 2009 to pay the costs.

**XI. ANCILLARY ORDERS**

60. The Hearing Committee directs that any documents that comes from or were entered as Exhibits during the Hearing are a matter of public record and are available to the public. All other documents are not available to the public as there is ongoing litigation.

61. The Profession shall not be notified of the reprimand.

DATED this 14<sup>th</sup> day of December, 2009.

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**ROSE M. CARTER, Q.C.**  
**Chair**

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**ANTHONY G. YOUNG**  
**Member**

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**FREDERICA SCHUTZ**  
**Member**