

**THE LAW SOCIETY OF ALBERTA**  
**RESIGNATION COMMITTEE REPORT**

**IN THE MATTER OF THE *LEGAL PROFESSION ACT*, R.S.A. 2000, C. L-8**

**AND**

**IN THE MATTER OF A RESIGNATION APPLICATION MADE BY**

**MICHAEL BONDAR**

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

**I. INTRODUCTION**

1. Michael Bondar (the “Member”) applies for resignation pursuant to section 32 of the *Legal Profession Act*, R.S.A. 2000, c. L-8 (“LPA”). Because he was the subject of a formal review under section 53 of the LPA, this Resignation Committee (“the Committee”) was constituted to hear the application.
2. The Committee was composed of Dennis Edney, Q.C. Chair, Darlene Scott, Bencher and Glen Buick – Lay Bencher. The Law Society of Alberta (“LSA”) was represented by Mr. Nicholas Maggisano. The Member was represented throughout the hearing by counsel, Mr. Patrick Peacock. Also present at the Hearing was a court reporter to transcribe the proceedings.

**II. JURISDICTION**

3. Jurisdiction is dependent on conduct being the subject matter of proceedings under Part 3 of the *Legal Profession Act* against the Member of the LSA and the appointment of the Resignation Committee under subsection 61(5) of the *Legal Profession Act*.
4. The Resignation Committee found that it had the jurisdiction to hear the resignation application of the Member established through the introduction of Exhibits 1 through 4.
  - Letter of Appointment of the Resignation Committee. (Exhibit 1)
  - Formal Citations. (Exhibit 2)
  - Certificate of Exercise of Discretion pursuant to Rule 96(2) (b) of the Rules of the LSA. (Exhibit 3)
  - Certificate of Status certifying the Member is currently a suspended member of the LSA. Exhibit 4

### **III. EXHIBITS**

5. LSA counsel provided the panel with an Exhibit Book requesting the documents contained therein be entered as Exhibits into the record with the consent of the parties.
6. Exhibits 1 through 4 were entered into the record with the consent of the parties.
7. Additional Exhibits 5 through 7 were entered into the record during the course of the proceedings, with the consent of the parties:
  - Exhibit 5 – Member’s Record
  - Exhibit 6 – Member’s Materials
    - Tab A, Application for Resignation
    - Tab B, Statutory Declaration
    - Tab C, Undertaking
    - Tab D, Statement of Facts
  - Exhibit 7 – Estimated Statement of Costs

### **IV. CITATIONS**

8. The Member faces 32 Citations (which we accept for the purposes of this application), reproduced in the attached Appendix.

### **V1. APPLICATION**

9. The Member applies to resign pursuant to s. 32 of the *LPA* (Exhibit 6, Tab A). He was admitted to the Bar of the Province of Alberta on May 21, 1976.
10. Mr. Bondar has been a member of the LSA since 1984 and is currently under suspension.
11. A statutory declaration sworn by the Member on September 2, 2014 (Exhibit 6, Tab B), an Undertaking dated September 2, 2014 (Exhibit 6, Tab C) a signed Statement of Facts dated September 3, 2014 (Exhibit 6, Tab D) were tendered in support of the application.
12. The Statement of Facts (which we accept for the purposes of this application) is reproduced in the attached Appendix. The Statement contains allegations:
  - (a) The Member acted in a conflict of interest or potential conflict of interest in several real estate transactions;

- (b) The Member breached the instructions of his lender clients in several such transactions;
  - (c) The Member failed in those transactions to serve his purchaser and lender clients;
  - (d) The Member assisted his client E.O. in an improper purpose;
  - (e) The Member in several real estate transactions breached the instructions of his lender clients;
  - (f) The Member assisted his clients S,T, and V in an improper purpose;
  - (g) The Member breached the accounting rules of the Law Society;
  - (h) The Member failed to respond in a timely fashion to communications from the lawyer for a former client;
  - (i) The Member assisted his client S.C.B. in an improper purpose;
  - (j) The Member failed to serve his purchaser clients;
  - (k) The Member failed to conduct himself with integrity and candour;
  - (l) The Member failed to meet a financial obligation incurred in relation to his practice;
  - (m) The Member failed to promptly and completely respond to the Law Society;
  - (n) The Member failed to be candid and act in good faith in his dealings with the complainant;
  - (o) The Member acknowledged he did not keep trust ledger cards, including failing to maintain separate trust ledgers for each client, and, as a result, had numerous shortages in his trust account which he failed to rectify on a timely basis, and failed to report to the Law Society. The shortages were only determined by way of audit or investigation by the Law Society.
13. The Member states that while he made many mistakes and failed to properly represent his real estate clients and lending clients, at no time did he knowingly act improperly. As a result, he denies those citations which state he:
- (a) Improperly removed trust monies from his client's trust account;
  - (b) Brought the administration of justice into disrepute when he wrote an e-mail that implied he had personal influence over a member of the judiciary:
- “ ....I am going to call in a favour from the presiding Justice on Wednesday morning to obtain exemptions from the appeal process who I know and with my long standing connection with the senior court clerk I will be able to arrange a special date in a week or two if she is unable to hear us on Friday”.

14. The Member denies citation 9, that he was deceitful in the matter of several real estate transactions, including the S.W. purchase from U and others.
15. The Member denies citation 13, alleging he swore false affidavits and made other false representations.
16. The Member denies citation 19, that he was deceitful in making untruthful or misleading statements to the title insurers, lenders and the Law Society.
17. The Member states that while he made many mistakes and failed to properly represent his real estate clients and lending clients, at no time did he knowingly act improperly. In particular, the Member denies he was aware of any mortgage frauds or of the complicity of the straw buyers in the transactions.
18. Having regards to the above denials, the Member states:
  - (a) Where I deny the facts I acknowledge nonetheless that evidence in support of those facts is available to the Law Society which, if accepted would prove them.
  - (b) Where I admit the facts but deny that they would support a finding (of) conduct deserving of sanction I acknowledge nonetheless that a Hearing Committee could find the contrary.
19. The Member has undertaken and agreed with the LSA to cooperate in respect of any claim against the Member or the Assurance Fund.
20. The application to resign was made while proceedings were pending pursuant to Part 3 of the *Legal Profession Act*. The Member faced thirty two (32) citations that are detailed in the Statement of Facts.
21. The Member has a disciplinary record with the LSA as disclosed in Exhibit 5.

#### **IV. DECISIONS AND REASONS**

22. The issue to be determined by the Committee is whether it is in the best interest of the public and the members of the Law Society of Alberta to permit the Member to resign prior to the resolution of his pending conduct matters. In its assessment, the Committee is guided by considerations of public interest, which include maintaining the confidence of the public in the legal profession. If the application for resignation under section 32 of the *LPA* is accepted, the Law Society loses jurisdiction over the Member and the conduct proceedings are terminated.
23. The LSA took no position on the matter.
24. The Committee is required to consider, among other matters, whether the conduct which is potentially deserving of sanction is properly investigated or the record is sufficiently detailed for later review by the LSA or any other Law Society, on any potential application for reinstatement by the Member.

25. The LSA has cited the Member's conduct as that of someone who knowingly acted improperly, who improperly removed trust monies and was deceitful in making untruthful or misleading statements amongst other characterizations. The Member states that while he made many mistakes and failed to properly represent his real estate clients and lending clients, at no time did he knowingly act improperly. The Member acknowledges nonetheless that evidence in support of those facts is available to the Law Society which, if accepted, would prove them.
26. It is the finding of the Resignation Committee that the Member has admitted to serious misconduct in the discharge of his professional duties. The nature of the Member's acknowledged conduct falls far short of the complete and unqualified integrity, probity, honesty and trustworthiness required of a lawyer. The Member knew or ought to have known he was participating in mortgage fraud while failing to advise his lender clients of obvious sham straw purchasers. The disputed citations are of sufficient seriousness to require further enquiry in the public interest.
27. Having regard to the whole of the record, the submissions of counsel for the Member and LSA counsel, the Committee declined to accept the application to allow the resignation of the Member in the face of discipline, pursuant to Section 32(1) of the *Legal Profession Act* not being in the public interest. The following facts are important:
- (a) The matter has been investigated by the LSA.
  - (b) The disputed facts would have the effect of preventing this Committee from ensuring the "whole of the evidence" would be available to the members of the public and the members of the Society, a result which we consider would not be in the public interest.
28. The Committee makes the following orders:
- (a) The Statement of Facts is in a form satisfactory to the Committee;
  - (b) The application to resign pursuant to section 32 of the *LPA* is dismissed, effective September 3, 2014;
  - (c) The decision, transcript and Exhibits in this hearing are to be made available to the public with the names of complainants, clients, third parties or other employees to be redacted.

Dated: September 3, 2014 at Calgary, Alberta.

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DENNIS EDNEY, Q.C. (Chairperson)

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DARLENE SCOTT, BENCHER

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GLEN BUICK, LAY BENCHER

## APPENDIX

**IN THE MATTER OF *THE LEGAL PROFESSION ACT*  
AND  
IN THE MATTER OF A RESIGNATION APPLICATION  
BY MICHAEL BONDAR,  
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

### **STATEMENT OF FACTS**

#### **IN THE MATTER OF THE LEGAL PROFESSION ACT**

#### **IN THE MATTER OF A HEARING INTO THE CONDUCT OF MICHAEL J. BONDAR,**

#### **A MEMBER OF THE LAW SOCIETY OF ALBERTA**

### **STATEMENT OF FACTS**

#### **INTRODUCTION**

1. I was admitted to the Law Society of Alberta on May 21, 1976.
2. I practiced law in Calgary, Alberta as an active member from May 21, 1976 until December 30, 1979 and again from March 1, 1984 until my practice was placed under restrictions pursuant to section 63 of the *Legal Profession Act* on November 4, 2010. The restrictions essentially were that there would be two signatures on each trust cheque in my practice, and that I would not practice real estate law.
3. My primary area of practice at the time of this restriction was collections, litigation and insolvency. This has been the essential practice since March of 1984. Until approximately 2006 I did not carry on a real estate practice. I did occasional real estate transactions for employees of Bank A, friends and relatives. I acted for Bank A on the preparation of security documents including mortgages for commercial loans. I did not have a real estate practice per se, and did not have a real estate paralegal or assistant at any time in my practice. Commencing in the mid 2000's, I began getting mortgage instructions primarily from Bank A and Bank B, in conjunction with real estate transactions that were referred to me, such that my real estate practice grew substantially.
4. I admit the contents of this Statement of Facts.
5. I face 4 citations directed by a Conduct Committee Panel on July 27, 2010 as a result of complaints S.B. and J.K. Those 4 citations are:
  1. IT IS ALLEGED THAT you were in a conflict of interest in the matter of several real estate transactions, including the S.B. and J.K. purchases from E.O., and that such conduct is conduct deserving of sanction.

2. IT IS ALLEGED THAT in the matter of several real estate transactions, including the S.B. and J.K. purchases from E.O., you breached the instructions of your lender clients, and that such conduct is conduct deserving of sanction.
  3. IT IS ALLEGED THAT in the matter of several real estate transactions, including the S.B. and J.K. purchases from E.O., you failed to serve your purchaser and lender clients, and that such conduct is conduct deserving of sanction.
  4. IT IS ALLEGED THAT you assisted your client E.O. in an improper purpose, and that such conduct is conduct deserving of sanction.
6. The next 5 citations were directed by the Conduct Committee Panel on October 26, 2010. The complainant was the Law Society of Alberta. They are:
5. IT IS ALLEGED THAT you were in a conflict of interest in the matter of several real estate transactions, including the S.W. purchase from U... and others, and that such conduct is conduct deserving of sanction.
  6. IT IS ALLEGED THAT in the matter of several real estate transactions, including the S.W. purchase from U... and others, you breached the instructions of your lender clients, and that such conduct is conduct deserving of sanction.
  7. IT IS ALLEGED THAT in the matter of several real estate transactions, including the S.W. purchase from U... and others, you failed to serve your purchaser and lender clients, and that such conduct is conduct deserving of sanction.
  8. IT IS ALLEGED THAT you assisted your clients U... and others in an improper purpose, and that such conduct is conduct deserving of sanction.
  9. IT IS ALLEGED THAT in the matter of several real estate transactions, including the S.W. purchase from U... and others, you were deceitful, and that such conduct is conduct deserving of sanction.
7. The next 5 citations were directed by the Conduct Committee Panel on July 21, 2011, as the result of a complaint by Gregory Reid, another solicitor. They are:
10. IT IS ALLEGED THAT you assisted your clients C.S., S.T. and others, in an improper purpose, and that such conduct is conduct deserving of sanction.
  11. IT IS ALLEGED THAT you breached the accounting rules of the Law Society as discovered in the investigation of the matter of your role in several real estate transactions involving C.S., S.T., and others, and that such conduct is conduct deserving of sanction.
  12. IT IS ALLEGED THAT you failed to serve your purchaser and lender clients in the C.S., S.T., and other matters, and that such conduct is conduct deserving of sanction.

13. IT IS ALLEGED THAT you swore false affidavits and made other false representations in the matters of K.R., S.T., and F..., and that such conduct is conduct deserving of sanction.
  14. IT IS ALLEGED THAT you failed to respond in a timely basis to communications from Gregory Reid, another solicitor, and that such conduct is conduct deserving of sanction.
8. The next 5 citations were directed by the Conduct Committee Panel on April 10, 2012 as the result of a complaint by a Canadian Bank. They are:
15. IT IS ALLEGED THAT you were in a conflict of interest in the matter of several real estate transactions, including the W.R. purchases from S.C.B., and that such conduct is conduct deserving of sanction.
  16. IT IS ALLEGED THAT you assisted your client, S.C.B., in an improper purpose, and that such conduct is conduct deserving of sanction.
  17. IT IS ALLEGED THAT in the matter of several real estate transactions, including the W.R. purchases from S.C.B., you breached the instructions of your lender clients, and that such conduct is conduct deserving of sanction.
  18. IT IS ALLEGED THAT in the matter of several real estate transactions, including the W.R. purchases from S.C.B., you failed to serve your purchaser and lender clients, and that such conduct is conduct deserving of sanction.
  19. IT IS ALLEGED THAT in the matter of several real estate transactions, including the W.R. purchases from S.C.B., you were deceitful in making untruthful or misleading statements to the title insurers, the lenders, and the Law Society, and that such conduct is conduct deserving of sanction.
9. Also on April 10, 2012 the Conduct Committee Panel directed 3 additional citations. The complainant was the Law Society of Alberta. They are:
20. IT IS ALLEGED THAT you were in a conflict of interest in the matter of several real estate transactions, including those which involved P.T., C.H.S., and others as intervening purchasers/vendors, and that such conduct is conduct deserving of sanction.
  21. IT IS ALLEGED THAT in the matter of several real estate transactions, including those which involved P.T., C.H.S., and others as intervening purchasers/vendors, you failed to serve your purchaser and lender clients, and that such conduct is conduct deserving of sanction.
  22. IT IS ALLEGED THAT you assisted your clients, P.T., C.H.S., and others, in an improper purpose, and that such conduct is conduct deserving of sanction.
10. Also on April 10, 2012 the Conduct Committee Panel directed an additional citation as a result of another complaint by the Law Society of Alberta. It was:



23. IT IS ALLEGED THAT you repeatedly failed to comply with the accounting rules of the Law Society as discovered by a follow up audit commenced in December 2009, and that such conduct is conduct deserving of sanction.
11. The next 4 citations were directed by the Conduct Committee Panel on August 8, 2013. The complainant was the Law Society of Alberta. They are:
    24. IT IS ALLEGED THAT you acted in a conflict of interest or potential conflict of interest in the matter of several real estate transactions involving S.C.B., related entities and B..., X ..., and R..., and that such conduct is conduct deserving of sanction.
    25. IT IS ALLEGED THAT in the matter of several real estate transactions, including those which involved S.C.B., and others as intervening purchasers/vendors, you failed to serve your lender clients B..., X ..., and R..., and related purchaser clients, and that such conduct is conduct deserving of sanction.
    26. IT IS ALLEGED THAT in the matter of several real estate transactions involving B..., X ..., and R... you assisted your client S.C.B. and related entities in an improper purpose, and that such conduct is conduct deserving of sanction.
    27. IT IS ALLEGED THAT in the matter of several real estate transactions involving S.C.B., B..., X..., and R... you failed to conduct yourself with integrity and candour, and that such conduct is conduct deserving of sanction.
12. The next two citations were directed to the Conduct Committee Panel on January 28, complainant was JH Ltd. They are:
    28. IT IS ALLEGED THAT while acting for your client JH Ltd. You improperly removed trust monies from your client's trust account;
    29. IT IS ALLEGED THAT while acting for your client JH Ltd. You brought the administration of justice into disrepute when you wrote an email to your client that implied you had a personal influence over a member of the judiciary.
13. The final three citations were directed by the Conduct Committee Panel on August 5, 2014. The complainant was Karen McDougall, a member of the Law Society. They are:
    30. IT IS ALLEGED THAT you failed to meet the financial obligations In relation to your practice and such conduct is conduct deserving of sanction;
    31. IT IS ALLEGED THAT you failed to promptly and completely respond to the Law Society and such conduct is conduct deserving of sanction;
    32. IT IS ALLEGED THAT YOU failed to be candid and to act in good faith in your dealings with the Complainant and such conduct is conduct deserving of sanction.

## OVERVIEW

14. Of the 32 citations, 26 arise from my involvement in mortgage fraud transactions. In these cases I typically acted for the fraudster vendor, the complicit straw purchaser and the defrauded mortgage lender in "flips" of real estate or similar schemes by which the mortgage lender was induced to advance funds beyond the value of the property placed as security.
15. Individual transactions involved several variations but in the typical mortgage fraud transactions in which I was involved:
  - a) The fraudster client purchased property from a legitimate vendor;
  - b) The fraudster then entered into an arrangement to flip the property to a straw purchaser for a greatly inflated price;
  - c) The straw purchaser obtained a mortgage from the lender based on the inflated price.
16. Some transactions involved flips to genuine purchasers, but nevertheless involved conflicts of interest and breaches of my duties to some of my several clients.
17. 2 of the citations involve breaches of the accounting rules.
18. There is one citation relating to false representations and false affidavits, which I deny, and one citation for failing to respond to another lawyer in a timely fashion.
19. One citation relates to unauthorized taking of trust funds which I deny.
20. One citation is for bringing the administration of justice into disrepute.
21. I admit some, but not all of the citations. In particular, I deny that I was aware of any mortgage frauds or of the complicity of the straw buyers in the transactions.
22. Where I deny the facts I acknowledge nonetheless that evidence in support of those facts is available to the Law Society which, if accepted would prove them.
23. Where I admit the facts but deny that they would support a finding a conduct deserving of sanction I acknowledge nonetheless that a Hearing Committee could find the contrary.
24. I acknowledge that as a result of the citations which I admit I would face a severe sanction and that those citations which I admit could, on their own, result in a sanction of a lengthy suspension.

## CITATIONS 1-4

25. I admit these 4 Citations, which is to say that I admit:
  - a. That I was in a conflict of interest in several real estate transactions;
  - b. I breached the instructions of my lender clients in several such transactions;

- c. I failed in those transactions to serve my purchaser and lender clients; and
  - d. I assisted my client E.O. in an improper purpose.
26. I acted as counsel on several real estate transactions which I now know involved mortgage fraud. I acted for the fraudsters in a purchase of a condominium complex and on the subsequent resales, in which I also acted for the subsequent purchasers and the lenders.
27. I was aware, or should have been aware, that:
- a) The properties were being flipped to a straw purchaser such that the intervening fraudster vendor was never registered on title;
  - b) The properties increased significantly in value;
  - c) Property appraisals were apparently not obtained by the lender. I did not obtain property appraisals nor was I instructed to;
  - d) Realtors were not used on most of the transactions;
  - e) No deposits or the cash to close the real estate transactions were paid into my trust account. The purchases were funded completely by high ratio mortgages;
  - f) My fees and disbursements were paid from the mortgage proceeds.
  - g) On 6 of the 7 real estate transactions, no Statements of Adjustments were prepared.
28. I acted for the vendor, the straw purchaser and the lender on these transactions. I did not disclose my potential conflict of interest or obtain the consent of all parties to act despite it. I also did not advise my clients to obtain independent legal advice.
29. At no time did any of the straw purchasers ever inform me of their participation in the fraud of that they were receiving monies for their participation in these transactions.
30. I breached the lenders' instructions in that I did not advise that I was acting for all parties on the real estate transactions, and I did not advise the lenders or the purchasers of the indicia of mortgage fraud on the transactions, that I should have recognized.
31. I did not provide any reporting to the purchasers. The purchasers say that I did not advise of their potential liability under a high ratio mortgage. It was my practice to purchasers of their potential liability under a high ratio mortgage but on these transactions there is no written advice to that effect. I also did not confirm that the purchasers were using their personal funds or that the property was to be their principal residence.
32. My failures allowed the mortgage frauds to continue.

## CITATIONS 5-9

33. I admit citations 5-8, which is to say that:
- a. I acted in a conflict of interest in several real estate transactions;
  - b. In these transactions I breached the instructions of my lender clients;
  - c. I failed to serve my purchaser and lender clients in several real estate transactions; and
  - d. I assisted my clients S, T and V in an improper purpose; but I deny citation 9 which alleges that I was deceitful.
34. I acted as counsel on several real estate transactions which I now understand involved mortgage fraud. I acted for fraudsters, S, T and V in a purchase of a condominium complex. These clients granted a blanket vendor take-back mortgage to the original vendor for essentially the entire purchase price. There was a health hazard caveat registered on title. I knew that it was on title and that it would remain on title subsequent to the purchase, but was assured by the clients that work had been conducted and that the health hazard caveat would be discharged. Immediately after the purchase of the condominium complex units of the complex were sold at a significantly increased price and without removing the health hazard caveat. I was retained to act on the sales of units of the condominium complex for the fraudster vendors, subsequent purchasers and the three lenders.
35. I was aware, or should have been aware that:
- a) The properties were being flipped at a significantly increased value within 1 to 5 months of the original purchase;
  - b) Property appraisals were not obtained by the lender. I did not obtain property appraisals nor was I instructed to;
  - c) Realtors were not used on the transactions;
  - d) No deposits or the cash to close the real estate transactions were paid into my trust account. The purchases were funded completely by high ratio mortgages;
  - e) My fees and disbursements were paid from the mortgage proceeds;
  - f) No Statements of Adjustments were prepared;
  - g) Broker fees were paid from the mortgage proceeds; and
  - h) A straw purchaser had obtained two CMHC mortgages within 9 days.
36. I acted for the fraudster vendors, the straw purchaser and the lender on these transactions. I did not disclose my potential conflict of interest or obtain the consent of all parties to act despite it. I also did not advise my clients to obtain independent legal advice.

37. I breached the lenders' instructions in that I did not advise that I was acting for all parties on the real estate transactions, I did not advise the lenders or the purchasers of the health hazard caveat or of the indicia of mortgage fraud on the transactions. I also failed to take reasonable steps to verify that the transactions were legitimate. I did not arrange to confirm discharge of the health hazard caveat as I had been told by the vendors that work was being completed to obtain discharges.
38. I did not confirm discharge of the health hazard caveat but relied on the vendors who told me that work was being completed to obtain discharges.
39. I did not provide any reporting to the purchasers. The purchasers say that I did not advise them of their potential liability under a high ratio mortgage. It was my practice to advise them of their potential liability under a high ratio mortgage but in these transactions there is no such advice in writing. I also did not confirm that the purchasers were using their personal funds to complete the transaction or that the property was to be their personal residence.
40. I did not disclose material information about the true nature of the real estate transactions to that my purchaser and lender clients were entitled to know.
41. My failures allowed the mortgage frauds to continue.
42. It is alleged that I preferred the interests of the fraudster vendors to the detriment of my purchaser and lender clients. I admit that this was the effect of my failures but deny that I did so intentionally or that I intended to deceive.

#### **CITATIONS 10-14**

43. I admit Citations 10-12 and 14, which is to say that:
  - a) I assisted my clients in an improper purpose;
  - b) I breached the accounting rules of the Law Society; and
  - c) I failed to serve my purchaser and lender clients; and
  - d) I did not respond in a timely fashion to communications from the lawyer for a former client, but I deny Citation 13, which is to say the allegation that I swore false affidavits and made other false representations.
44. I acted as counsel on several real estate transactions which I ultimately determined involved mortgage fraud. As a result of the mortgage fraud my lender clients suffered significant losses. I was aware, or should have been aware that:
  - a) The properties were being flipped at a significantly increased value;
  - b) I received my instructions from the fraudster vendor;
  - c) No Statements of Adjustments were prepared; and

- d) No deposits or the cash to close the real estate transactions were paid into my trust account. The purchases were funded completely by high ratio mortgages.
45. I did not keep proper trust ledger cards, including failing to maintain separate trust ledgers for each client, and, as result, had numerous shortages in my trust account that I failed to rectify on a timely basis and failed to report to the Law Society. The shortages were only determined by way of audit or investigation by the Law Society.
46. I acted for the fraudster vendor, the straw purchaser and the lender on these transactions. I did not disclose my potential conflict of interest or obtain the consent of all parties to act despite it. I also did not advise my clients to obtain independent legal advice.
47. I did provide any reporting to the purchasers and the purchasers say that I did not advise of their potential liability under a high ratio mortgage.
48. At no time did any of the straw purchasers ever inform me that they were receiving monies to act as purchasers in these transactions. It was my practice to advise them of their potential liability under a high ratio mortgage but in these transactions there is no written advice to that effect.
49. I breached the lenders' instructions in that I did not advise that I was acting for all parties on the real estate transactions, and I did not advise the lenders or the purchasers of the indicia of mortgage fraud on the transactions. I also did not confirm that the purchasers were using their personal funds or that the property was to be their principal residence,
50. My failures allowed the mortgage frauds to continue.
51. I did not respond to a request from the lawyer for a former client for their file in a timely manner and until the Law Society intervened.
52. In connection with a mortgage granted by K.R. I swore an affidavit saying that I had witnessed the signing of the mortgage. K.R. says that I did not witness his signature. I deny this.
53. I did not respond to a request from the lawyer for a former client for their file in a timely manner and until the Law Society intervened.
54. Citation 13 alleges that I swore false affidavits and made false representations. The particulars of this Citation and my position as to each are as follows:
- a) In connection with an application for title insurance the underwriter noted that I told him that I knew the applicant personally and that he was part owner of a restaurant. I knew only that the applicant's family owned a restaurant. I deny making the statement alleged.
- b) In connection with this another transaction I completed an application for title insurance. In answer to the question as to whether any portion of the purchase price was paid directly to the vendor I answered no even though I had not collected or disbursed the full purchase price. I say this was an error and not intentional.

- c) In connection with the second application for title insurance the underwriter noted that I told him that the purchaser would be bringing in the shortfall due on closing prior to distribution of mortgage funds when I had already received and disbursed those funds. I deny making that statement.
- d) In connection a certain mortgage executed by K.R. I swore an affidavit of execution saying that I had witnessed the deponent sign the mortgage. It is alleged that I did not witness the execution of the mortgage. I deny this.

## **CITATIONS 15-19**

55. I admit Citations 15-18, which is to say that I:

- a) Was in a conflict of interest in several real estate transaction;
- b) Assisted my client S.C.B. in an improper purpose;
- c) Breached the instructions of my lender clients;
- d) Failed to serve my purchaser clients, but I deny Citation 19, which is to say the allegation that I was deceitful in making untruthful or misleading statements to the title insurers, lenders and the Law Society.

56. I acted as counsel on several real estate transactions which I now know involved mortgage fraud. As a result of the mortgage fraud the lenders involved in the transactions suffered significant losses. I was aware or should have been aware that:

- a) On 2 out of the 3 transactions, the properties were being flipped to a straw purchaser such that the intervening fraudster vendor was never registered on title;
- b) The properties increased significantly in value;
- c) My fees and disbursements were paid out of the mortgage proceeds;
- d) No Statements of Adjustments were prepared;
- e) Excess funds were paid to the fraudster vendor, despite there being no Direction to Pay that authorized this payment;
- f) Most of the instructions I received were from the fraudster vendor;
- g) No deposits or the cash to close the real estate transactions were paid into my trust account. The purchases were funded completely by high ratio mortgages. In one circumstance when the cash to close was paid it was paid by the fraudulent vendor from his profits on another flip; and
- h) In one transaction, a statutory declaration provided that the straw purchaser would reside in one of the properties notwithstanding that it was his third

purchase transaction within a period of a few months, each of which required the straw purchaser to reside in the property.

57. I acted for the vendor S.C.B, and the straw purchaser, W.R. and the lenders on these transactions. I did not disclose my potential conflict of interest or obtain the consent of all parties to act despite it. I also did not advise my clients to obtain independent legal advice.
58. At no time did any of the straw purchasers ever inform me of their participation in the fraud of that they were receiving monies to act as straw purchasers in these transactions.
59. I breached the lenders' instructions in that I did not advise that I was acting for all parties on the real estate transactions or obtain a conflict acknowledgment, and I did not advise the lenders of the indicia of mortgage fraud on the transactions, that I should have recognized.
60. I did not provide any reporting to the purchasers. The purchasers say that I did not advise them of their liability under a high ratio mortgage. It was my practice to advise them of their potential liability under a high ratio mortgage but in these transactions there is no such advice in writing. I also did not confirm that the purchasers were using their personal funds or that the property was to be their principal residence.
61. My failures allowed the mortgage frauds to continue.
62. In one transaction I did not confirm that the straw purchaser paid the full purchase price from his resources. In another transaction I was instructed to search for outstanding judgments against the straw purchaser and to verify that fire insurance was in place on the property. I did not search for outstanding judgments and the fire insurance I received showed the insured as the fraudulent vendor, not the straw purchaser. In another transaction I did not ensure that property tax arrears were paid, despite the fact that tax arrears would have taken priority to the lender's mortgage.
63. It is alleged I made untruthful or misleading statements. I deny that I did so intentionally. I did make the following statements that were not true:
  - a. To title insurers when applying for title insurance advising that the straw purchaser had provided funds, that there were no fraud concerns and that the vendor and purchaser had real estate agents when these were not the case;
  - b. To a lender when I provided a statement of receipts and disbursements that was not consistent with my trust lender and was misleading in that it suggested that funds had been paid by the straw purchaser towards the purchase of a property and that I had paid funds to prior encumbrances to clear title;
  - c. To a lender when I advised that moneys on a real estate transaction had gone through my office when they had not;
  - d. To the Law Society when I said that I had provided a lender with requested materials but I had not.



64. My position is that when I provided misinformation to title insurers, lenders or the Law Society, this was as a result of a misunderstanding of what had occurred on the files and not as a result of any intention to mislead or be anything but candid.
65. I signed documents as a witness and as a commissioner for oaths in connection with these transactions were forged and untrue. My position is that at no time did I witness or commission any statement that I knew were untrue or forged.
66. I signed, acting as agent for the fraudulent vendor, a caveat and registered it claiming an interest as purchaser under a purchase contract and swore in the Affidavit of Caveator that the fraudulent vendor had a legitimate interest in the lands and then registered the caveat. I did not have a copy of the purchase contract and simply signed and filed the caveat on the fraudulent vendor's instructions. I was aware that the property had just been sold to a straw purchaser.
67. I say that the problem with these real estate fraud files was that I did not exercise due diligence or treat these matters with the care that I should have.

#### **CITATIONS 20-22**

68. I admit these Citations, which is to say that I
  - a) was in a conflict of interest in several real estate transactions;
  - b) failed to serve my purchaser and lender clients; and
  - c) assisted my clients in an improper purpose.
69. I acted as counsel on several real estate transactions which I now understand involved mortgage fraud. As a result of the mortgage fraud the lender involved in the transactions suffered significant losses. I was aware or should have been aware that:
  - a) On most of the transactions, the properties were being flipped to a straw purchaser such that the intervening fraudster vendor was never registered on title;
  - b) The properties increased significantly in value;
  - c) When the properties were flipped, no realtors were involved;
  - d) No deposits or the cash to close the real estate transactions were paid into my trust account. The purchases were funded completely by high ratio mortgages;
  - e) My fees and disbursements were paid out of the mortgage proceeds;
  - f) There were significant mortgage funds remaining after the purchase price had been paid and that these funds were paid to the fraudster vendors;
  - g) Brokerage fees were paid from mortgage proceeds;
  - h) When properties were flipped, no Statements of Adjustments were prepared;

- l) My instructions were received from the fraudster vendors; and
  - j) In most cases I did not have Directions to Pay.
70. I acted for the fraudulent vendor (the C.S group), the straw purchasers, and the lender on these transactions. I did not disclose my potential conflict of interest or obtain the consent of all parties to act despite it. I also did not advise my clients to obtain independent legal advice.
71. At no time did any of the straw purchasers ever inform me that they were receiving monies to act as purchasers in these transactions.
72. I breached the lenders' instructions in that I did not advise that I was acting for all parties on the real estate transactions, and I did not advise the lenders or the purchasers of the indicia of mortgage fraud on the transactions, which I should have recognized.
73. I did not provide any reporting to the purchasers. The purchasers say that I did not advise of their potential liability under a high ration mortgage. It was my practice to advise them of their potential liability under a high ratio mortgage but there is no such advice in writing as to these transaction. I also did not confirm that the purchasers were using their personal funds or that the property was to be their principal residence.
74. My failures allowed the mortgage frauds to continue.
75. The effect of these failures was that the interests of my fraudster vendor clients were preferred to the detriment of my purchaser and lender clients.

### **CITATION 23**

76. I admit this Citation, which is to say that I failed to comply with the accounting rules of the Law Society.
77. On December 15, 2009, the Law Society began a Rule 130 follow-up audit of my financial records. I had previously been audited in 2006 and 2008, and a number of exceptions were noted each time, including a failure to reconcile the trust accounts monthly, trust shortages (arising mainly from overpayments or late deposits) and late filings of Forms S and T.
78. The follow-up audit noted that many of the same problems continued to occur, including:
- a) Trust reconciliations were prepared late and there were no bank statements for the May and June 2009 trust reconciliations;
  - b) Trust shortages were identified. Of the 4 trust shortages, 3 related to the same file. I had paid out more than was held to the client's credit, and the funds were replaced by three deposits made over the course of three weeks. The fourth shortage arose as a result of the bank putting a hold on a recent deposit, which created a \$200,000 trust shortage when I wrote a cheque against the deposit. The hold was released a few days later; and

- c) I filed the 2009 Form S 39 days late and the 2009 Form T 121 days late.
79. I thereafter implemented a reminder system as to Forms S and T and I addressed the other exception directly with the audit department and converted my accounting system to PC Law. No one suffered any loss as a result of my accounting deficiencies. Since the restrictions on my practice were imposed I have ultimately closed my trust account and all trust funds have been accounted for.

#### **CITATIONS 24-27**

80. I admit these Citations, which is to say that I
- a) acted in a conflict of interest or potential conflict of interest in several real estate transactions;
  - b) failed to serve my lender and purchaser clients;
  - c) assisted my client, S.C.B. and related entities in an improper purpose; and
  - d) failed to conduct myself with integrity and candour.
81. I acted as counsel on several real estate transactions which involved mortgage fraud. As a result of the mortgage fraud, the lender involved suffered significant losses. I was aware or should have been aware that:
- a) on most of the transaction the properties were being flipped to a straw purchaser such that the intervening fraudster vendor was never registered on title;
  - b) the properties increased significantly in value;
  - c) No deposits or cash to close the transactions was paid into my trust account. The purchases were funded completely by high ratio mortgages. When payment was received it was from the fraudster vendor, not the stray purchaser.
  - d) My fees and disbursements were paid by the fraudster vendor;
  - e) in most cases, no Statements of Adjustment were prepared;
  - f) My instructions were received from the fraudster vendor;
  - g) Funds were paid to the fraudster vendor when he had no right to the funds, by a Direction to Pay or otherwise; and
  - h) The real estate transaction was inconsistent with the Real Estate Purchase Contract.
82. I acted for the vendor, S.C.B, the straw purchasers and the lender on these transactions. In all of these transactions, the mortgage officer was complicit in the mortgage frauds. I did not disclose my potential conflict of interest or obtain the consent of all parties to act despite it. I also did not advise my clients to obtain independent legal advice.

83. I breached the lenders' instructions in that I did not advise that I was acting for all parties on the real estate transactions, and I did not advise the lenders or the purchasers of the indicia of mortgage fraud on the transactions. I also failed to take reasonable steps to verify that the transactions were legitimate.
84. I failed to comply with mortgage instructions to obtain fire insurance and Real Property Reports and to ensure that property taxes were current. In some cases the lender instructed me to pay cash back to the borrower, and instead I paid it to the fraudster vendor.
85. In one transaction I, in breach of the lender's instructions, did not advise the lender of the assignment of the Real Estate Purchase Contract and did not confirm that a credit card account had been brought within its credit limit. I also advised the lender that fire insurance was in place, although I received no evidence that was the case.
86. I did not provide any reporting to the purchasers. The purchasers say that I did not advise of their potential liability under a high ratio mortgage. I say that it was my practice to advise them of their potential liability under a high ratio mortgage there is such advice in these transaction there is no such advice writing. I also did not confirm that the purchasers were using their personal funds or that the property was to be their principal residence.
87. On one transaction I received and disbursed mortgage funds before having had the borrower sign the mortgage, before fire insurance had been put in place, and 15 days before the vendor signed the Transfer of Land into the name of the borrower. I acknowledge that if the vendor had not signed the Transfer of Land I would have been unable to register the mortgage.
88. On 2 occasions I gave misleading information to title insurance underwriters in that indicated there was a realtor involved for the vendors when there was not and that deposited had not been paid directly to the vendors when they had been.
89. In two instances I acted for both the transferor and transferee and signed the affidavit of transferee deposing that the consideration was cash and assumption of mortgage when that was not the case.
90. In two instances I prepared and filed a Transfer of Land to transfer a property from one straw purchaser to another or from a straw purchaser to a company owned by the fraudster vendor, despite the fact that a company was not eligible for a high ratio mortgage. In those cases I acted for both the transferor and the transferee and signed the Affidavit of Transferee deposing the consideration was cash and assumption of mortgage. I did not open a file and I did not advise the mortgagee of the transfer.

#### **CITATIONS 28 - 29**

91. I deny these Citations, which is to say that I:
  - a) Improperly removed trust monies from my client's trust account; and

- b) Brought the administration of justice in disrepute when I wrote an email that implied that I had personal influence over a member of the judiciary.
92. In February of 2011 I was retained by JH Ltd. who were acquiring property that was the subject of foreclosure proceedings. I prepared and presented an Offer to Purchase.
93. The Order provided for tenders. JH Ltd. forwarded me the necessary funds being 10% of the proposed purchase amount. In addition to JH Ltd.'s tender, three others were received but without the 10% deposit. The Master ordered that the deposit be returned and the property once again tendered. This was the order I was instructed to appeal.
94. The appeal was unsuccessful, and JH Ltd. decided to retender but at a much lower price. This resulted in \$24,226.00 in excess funds. On May 3, 2011 I issued a statement of account to JH Ltd. for the \$24,226.00 and paid the account by transfer of funds from the deposit amount held in trust. My retainer agreement provided for interim billings but I had not been specifically authorized to apply the excess funds to my fees.
95. On May 3, 2011 I wrote to JH Ltd. and made the following statement as to an upcoming court appearance.
- "...I am going to call in a favour from the presiding Justice on Wednesday morning to obtain exemptions from the appeal process who I know and with my long standing connection with the senior court clerk I will be able to arrange a special date in a week or two if she is unable to hear us on Friday."
96. My explanation is that his was unfortunately worded letter. What I meant to convey that due to the short period of time from the order until the deadline for the next tender it would be necessary to obtain a date for the hearing and an order dispensing with the requirement of a transcript. At the time I thought it would be necessary to attend on the Justice hearing the appeal and ask for that relief. I explained the situation to the Chambers clerk who did me a favor and took it upon himself to speak to the Justice and obtain the relief I sought. It was the clerk who did me a favor. Wording of my letter was ill thought out, and should have been read over before it was sent. I did not intend to put the administration of justice in disrepute.

### **CITATIONS 30-32**

97. I admit these citations, which is to say that I:
- a) failed to meet a financial obligation incurred in relation to my practice;
  - b) failed to promptly and completely respond to the Law Society; and
  - c) failed to be candid and to act in good faith in my dealings with the Complainant.
98. In January 2011 I retained K.M., a member of the Law Society to conduct legal research and to prepare a brief for one of my client matters.

99. On March 9, 2011 K.M. completed her work and rendered her account in the amount of \$4,580.39. She also issued another account in the amount of \$573.41 for other work I had retained her to do.
100. Between March 2011 and April 2012 I communicated with K.M. 14 times about this debt and on 7 occasions I promised to make payment to her in full.
101. On several occasions I told K.M. that she would be paid after specific events had occurred, but did not.
102. On April 13, 2012 I told K.M. that I would pay her following the receipt of money I was to receive as a result of a recently pronounced court order.
103. On May 8, 2012 I paid K.M. \$573.41 not the total amount.
104. On May 30, 2012 K.M. caused a claim to be filed against me in Provincial Court and the trial was scheduled for November 2012. Notwithstanding my previous promises to pay in full I filed a defence challenging the amount of K.M.'s account.
105. On the trial date the presiding judge encouraged the parties to settle and adjourned the matter.
106. K.M. and I then agreed that she would take half of the amount claimed, \$2716.90 on condition that payment was made by November 30, 2012. A consent judgment was to issue if payment was not made by the specified date.
107. When the deadline passed K.M. called me and I promised to pay her by December 7, 2012, but did not.
108. On December 11, 2012 I told K.M. that I would pay her by the end of that week, but did not.
109. K.M. then registered a certificate of judgment.
110. On January 21, 2013 I told the Law Society that I would remit payment by the end of February, 2013 but did not.
111. On January 24, 2013 I received a request from the Manager of Conduct that I respond to K.M.'s complaint and to 2 specific questions. I did not respond to that letter nor to 3 subsequent letters and only responded after a 4th letter, 2 months after the Society's initial request.

## **CONCLUSION**

112. I have practiced law in Calgary for a period spanning thirty eight years. I practiced primarily litigation and insolvency and by 2000, the bulk of my practice was for Bank A. My venture into real estate practice was a mistake. It cost me the bulk of my legal practice in litigation and insolvency. While I made many mistakes and failed to properly represent my real estate clients and lending clients, at no time did I knowingly act improperly.

113. I am 64 years old and do not feel that I now have the energy or necessary desire to rebuild a practice. I have decided to retire from the practice of law.

Dated at Calgary, Alberta this 3<sup>rd</sup> day of September, 2014.

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**MICHAEL J. BONDAR**