

THE LAW SOCIETY OF ALBERTA  
HEARING COMMITTEE REPORT

IN THE MATTER OF THE *Legal Profession Act*, and  
in the matter of a Hearing regarding  
the conduct of **MICHAEL JOEL BONDAR**  
a Member of The Law Society of Alberta

**INTRODUCTION AND SUMMARY OF RESULT**

1. On October 31, 2011 a Hearing Committee of the Law Society of Alberta (LSA) convened at the Law Society offices in Calgary to inquire into the conduct of the Member, Michael Joel Bondar. The Committee was comprised of James Glass Q.C., Chair, Perry Mack Q.C. and Amal Umar, Lay Benchers. The LSA was represented by Mr. Brian Gifford. The Member was present throughout the hearing and was represented by Mr. Patrick Peacock Q.C.
2. The Member faced twelve citations:
  1. Moved to HE20110040 to be heard separately.
  2. Moved to HE20110040 to be heard separately.
  3. Moved to HE20110040 to be heard separately.
  4. Moved to HE20110040 to be heard separately.
  5. Moved to HE20110040 to be heard separately.
  6. Moved to HE20110040 to be heard separately.
  7. Moved to HE20110040 to be heard separately.
  8. Moved to HE20110040 to be heard separately.
  9. Moved to HE20110040 to be heard separately.
  10. IT IS ALLEGED THAT you breached an undertaking to purchaser's counsel, Ian C. Schofield, and that such conduct is deserving of sanction.
  11. IT IS ALLEGED THAT you threatened another lawyer, Robert A. Homersham, with a complaint to the Law Society and that such conduct is conduct deserving of sanction.

12. IT IS ALLEGED THAT you breached a trust condition imposed upon you by Robert A. Homersham, and that such conduct is conduct deserving of sanction.
3. At the commencement of the hearing, counsel for the LSA and Mr. Bondar presented the Hearing Committee with an Agreed Statement of Facts in relation to all three citations and Admission of Guilt with respect to Citations 11 and 12 (Exhibit 18). Further, counsel for the LSA and Mr. Bondar confirmed that the Agreed Statement of Facts and Admission of Guilt (Exhibit 18) was reviewed and signed by Mr. Bondar prior to the commencement of the hearing and that it was intended to be an Admission of Conduct deserving of Sanction in relation to Citations 11 and 12 pursuant to s. 60 of the Legal Profession Act.
4. On the basis of the Agreed Statement of Facts and Admission of Guilt in relation to citations 11 and 12 (Exhibit 18), the other evidence received at the hearing, and for the reasons that follow, the Hearing Committee finds that:
- a) Citation 10 is not proven and is dismissed; and
  - b) Citations 11 and 12 are proven and the Member is guilty of conduct deserving of sanction.
5. The Hearing Committee concluded that the sanction should be a reprimand and the payment of costs in the amount of \$2,500.00 to be payable within 60 days of the date that the Statement of Costs is received by the Member.

### **JURISDICTION AND PRELIMINARY MATTERS**

6. Exhibits 1-4, consisting of the Letter of Appointment of the Hearing Committee, the Notice to Solicitor, the Notice to Attend and the Certificate of Status of the Member, established the jurisdiction of the Hearing Committee. The Certificate of Exercise of Discretion was entered as Exhibit 5. These Exhibits were entered into evidence by consent.
7. There was no objection by the Member's counsel or counsel for the LSA regarding the constitution of the Hearing Committee.
8. The entire hearing was conducted in public.

### **CITATIONS**

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10. IT IS ALLEGED THAT you breached an undertaking to purchaser's counsel, Ian C. Schofield, and that such conduct is deserving of sanction.
11. IT IS ALLEGED THAT you threatened another lawyer, Robert A. Homersham, with a complaint to the Law Society and that such conduct is conduct deserving of sanction.
12. IT IS ALLEGED THAT you breached a trust condition imposed upon you by Robert A. Homersham, and that such conduct is conduct deserving of sanction.

## **EVIDENCE**

10. As noted above, Exhibits 1-5 (the jurisdictional exhibits) were entered into evidence by consent.
11. Exhibits 6 – 18, all relevant to the Citations, were entered into evidence by consent.
12. The Member provided an Agreed Statement of Facts in relation to all the Citations and Admission of Guilt in relation to Citations 11 and 12(Exhibit 18) that was signed by him on October 30, 2011. Through his counsel, the Member acknowledged and agreed that the Agreed Statement of Facts was also an Admission of Conduct Deserving of Sanction in relation to Citations 11 and 12.
13. The Hearing Committee reviewed the Agreed Statement of Facts and Admission of Guilt (Exhibit 18), and found it to be in a form acceptable to the Hearing Committee. Accordingly, pursuant to s.60 (4) of the *Legal Profession Act* the admission is deemed for all purposes to be a finding of the Hearing Committee that the conduct of the Member in relation to Citations 11 and 12 is conduct deserving of sanction. The Agreed Statement of Facts and Admission of Guilt (Exhibit 18) was entered into evidence by consent.

## FACTS

14. The key Exhibits with regard to the citations are Exhibits 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17 and 18.
15. The Agreed Statement of Facts and Admission of Guilt (Exhibit 18) is reproduced herein:

***IN THE MATTER OF THE LEGAL PROFESSION ACT  
AND  
IN THE MATTER OF A HEARING REGARDING THE  
CONDUCT OF MICHAEL J. BONDAR  
A MEMBER OF THE LAW SOCIETY OF ALBERTA***

***AGREED STATEMENT OF FACTS***

### ***INTRODUCTION***

1. *The Member was admitted to the Bar on May 21, 1976, and practiced in Calgary, Alberta as an active member from May 21, 1976 until December 30, 1979 and again from March 01, 1984 until his practice was placed under restrictions pursuant to section 63 of the Legal Profession Act on November 04, 2010.*
2. *The Member's primary area of practice at the time of his restriction was real estate law.*

### ***CITATIONS***

1. *On August 31, 2011, the Conduct Committee referred the following conduct to hearing, which are Citations 10, 11 and 12 of a group of twelve Citations:*
  10. *IT IS ALLEGED THAT you breached an undertaking to purchaser's counsel, Ian C. Schofield, and that such conduct is conduct deserving of sanction.*
  11. *IT IS ALLEGED THAT you threatened another lawyer, Robert A. Homersham, with a complaint to the law society, and that such conduct is conduct deserving of sanction.*
  12. *IT IS ALLEGED THAT you breached a trust condition imposed upon you by Robert A. Homersham, and that such conduct is conduct deserving of sanction.*
2. *The remaining Citations will be heard separately. [Exhibit 2]*

### ***FACTS***

*LSA Complaint – Citation 10*

1. *In 2009, the member Michael J. Bondar (Bondar) acted for xxxxxxxx Canada Inc. (xxxxxxx) in the purchase of forty four (44) condominium units which was the entire complex.*
2. *The vendor for the one unit in question was TD Ltd., represented by member Glenn Warkentin (Warkentin).*
3. *xxxxxxx merely did the conveyancing of a contract that had already been completed by Warkentin's client. The property was not registered in the ownership of xxxxxxxx and registered as a sale from TD Ltd. to SB. Bondar made no mention of his client xxxxxxxx in his trust letter. [Exhibit 6].*
4. *The real estate purchase contract of the TD property was made by Warkentin's client prior to xxxxxxxx acquiring the 44 condominium units and it was closed on that basis.*
5. *The title to the subject condominium unit carried a charge of a Writ from the Canada Revenue Agency (CRA). [Exhibit 6, sub-exhibit 1]*
6. *Bondar confirmed in his trust letter of July 2, 2009, addressed to the complainant that the CRA Writ was a "Non-Permitted Registration" and undertook to "Discharge the non-permitted registrations... and forward to you a Certified Copy of Title evidencing the same within a reasonable period of time." [Exhibit 6],*
7. *Bondar states that he made his undertaking in reliance upon the undertaking given to him by Warkentin, the solicitor for the vendor TD Ltd. [Exhibit 10]*
8. *Warkentin's undertaking was qualified by the phrase "circumstances permitting":*  
  
*"We undertake to utilize the proceeds of sale to pay out the mortgage and request discharges or discharge, as the case may be, the following instruments registered on title:*  
  
*(e) xxx xxx xxx-Writ in favour of her Majesty the Queen in Right of Canada*  
  
*and provide you with a Certified Certificate of title evidencing same within a reasonable period of time, circumstances permitting; [Exhibit 10, sub-exhibit 1]*
9. *Bondar placed two calls into Warkentin requesting the Transfer of Land and was advised during the first telephone communication he was negotiating with CRA to obtain the discharge of its Writ.*
10. *During the second conversation with Warkentin, Bondar was advised that he was waiting for written confirmation from CRA and when he received it he would forward the Transfer.*
11. *The Transfer arrived and was sent to Schofield.*
12. *The complainant Ian C. Schofield (Schofield) relied on the members undertaking and on July 7, 2009 he tendered the cash to close the purchase. [Exhibit 7]*

13. *A copy of title was not received within 90 days and Schofield learned that CRA had not provided a discharge of its Writ. [Exhibit 8]*
14. *CRA reneged on its undertaking to provide a discharge of its Writ and Bondar, upon receiving the complaint from Schofield filed a complaint against Warkentin. The complaint's officer advised that Warkentin was not at fault and dismissed the complaint of Bondar.*
15. *Schofield filed his complaint with the Law Society on November 12, 2009. [Exhibit 7]*
16. *Warkentin continued to seek discharge of the Writ by CRA. [Exhibit 10, sub-Exhibit 2]*
17. *The Writ was finally discharged in April 2010 as a result of a letter from J. Patrick Peacock, Q.C. to CRA. [Exhibit 10, sub-Exhibit 3]*
18. *The subject real estate transaction circumstances involve other complications, including, identity theft and misrepresentation of identity regarding the purchaser SB, but which complications do not relate directly to the issues upon which the citation must be decided, and Bondar, not representing the Purchaser has no knowledge of these issues. [Exhibit 5, sub-exhibits 2 and 3]*

*LSA Complaint – Citations 11 and 12*

1. *The member Michael J. Bondar (Bondar) was retained by the client TR to defend the foreclosure of an investment property owned by a numbered company owned solely by TR.*
2. *The complainant Robert A. Homersham (Homersham) was involved in a business relationship with TR and others in the S. project. Homersham acted for TR and her numbered company for the purchase and mortgaging the development of the Strathmore property and continued to act as her legal counsel with respect to the S. project.*
3. *Because of financial difficulties with respect to the S. project there was a breakdown in the relationship between Homersham, TR and others. Evidence of that breakdown from TR will be introduced at the hearing, subject to the presiding Bencher's permission to hear the same.*
4. *Upon TR retaining Bondar, the member required a \$15,000 retainer from TR.*
5. *TR asked Homersham for a loan to cover the retainer.*
6. *In February 2009 Homersham provided \$15,000 for Bondar's retainer on behalf of TR on condition that Bondar provide him with an irrevocable assignment that \$25,000 would be paid to Homersham from funds expected on settlement of the foreclosure action.*
7. *Bondar provided a draft assignment to Homersham by e-mail dated October 6, 2009, which draft assignment Homersham confirmed was acceptable to him by return e-mail. Funds were sent to Bondar, releasable on Bondar's undertaking to provide Homersham with a duly executed original of the assignment. [Exhibit 11]*

8. *On July 29, 2009 Homersham e-mailed Bondar to ask for an update on the settlement of funds and confirmation that he would be paid \$25,000 in accordance with the irrevocable assignment. [Exhibit 12]*
9. *In reply Bondar stated that he was going to pay the \$25,000 into court and let the court decide whether it is appropriate for Homersham to receive \$25,000 as repayment of the \$15,000 loan as "...usurious and contrary to the Interest Act." [Exhibit 12]*
10. *A draft complaint against Homersham to the Law Society was written on behalf of TR by Bondar and sent on September 30, 2009 to Homersham's lawyer ME\_on a without prejudice basis. Bondar stated in that letter as follows:  
  
"My clients have been attempting to obtain a resolution from your client for well over a month. In the event that we do not have an affirmative response from you by Wednesday noon on October 7, 2009 the complaint and the letter to ALIA will be forwarded on the Statement of Claim issued and served upon your office."  
[Exhibit 13]*
11. *Bondar repeated his remarks regarding the Law Society complaint in letters dated November 2, 2009 and December 8, 2009, and in an e-mail dated November 2, 2009 [Exhibit 14]*
12. *On December 14, 2009 Homersham filed his complaint with the Law Society against Bondar. The complaint is twofold. Firstly, he complained it is improper for Bondar to threaten a complaint to the Law Society. Secondly, he complained that Bondar breached his undertaking to provide a fully executed copy of the assignment. [Exhibit 15]*
13. *The Undertaking was signed by TR but Bondar inadvertently failed to send it to Homersham.*
14. *The settlement was effected but the solicitor's for the settling party refused to pay the \$50,000.00 and the money was paid into Court. Bondar brought an application seeking an Order for payment out of Court and the solicitor's for the settling party raised a triable issue before Master J. Prowse, Q.C. The money remains in Court.*
15. *The letter was sent by the Law Society to Bondar on December 15, 2009 requesting his response. Bondar replied, inter alia, that the allegations against him "... on their face are true." [Exhibit 16, para. 2]*
16. *Homersham reviewed Bondar's response and noted that he did not agree with certain factual allegations and in particular noted that TR was not his client at the time he loaned the \$15,000. [Exhibit 17]*
17. *A copy of Homersham's reply was provided to Bondar, who was not required to and did not provide any further response.*

**ADMISSION OF FACTS AND GUILT**

*1. The Member admits as fact the statements contained within this Agreed Statement of Facts for the purposes of these proceedings. The Member admits that all correspondence sent to him was received by him on or about the dates indicated, unless stated otherwise.*

*2. For the purposes of Section 60 of the Legal Profession Act the Member admits his guilt to Citations 11 and 12 as particulars of conduct incompatible with the best interests of the public and conduct which tends to harm the standing of the legal profession generally.*

*3. This Agreed Statement of Facts is not exhaustive and the Member may lead additional evidence not inconsistent with the stated facts herein. The Member acknowledges that the Law Society is not bound by this statement of facts and that it may cross-examine the Member, adduce additional evidence, or otherwise challenge any point of fact it may dispute in this statement.*

**THIS AGREED STATEMENT OF FACTS IS MADE THIS 30<sup>th</sup> DAY OF OCTOBER, 2011.**

**“MICHAEL J. BONDAR”**  
**MICHAEL J. BONDAR**

16. No other evidence was called by either counsel for the LSA or the Member in relation to the three Citations.

**SUBMISSIONS OF LSA ON CITATION 10**

17. In 2009, the Member represented a purchaser of a condominium development. One of the condominiums in the development had been previously sold to TD. The condominium owned by TD was sold to SB (represented by Mr. Schofield).
18. TD was represented by Mr. Warkentin. The unit owned by TD was subject to a Writ filed by the Canada Revenue Agency (CRA) (Exhibit 6, Tab 1).
19. Mr. Warkentin provided an undertaking to the Member to discharge the Writ from CRA “within a reasonable period of time, circumstances permitting”. (Exhibit 10, Tab 1).
20. The Member, relying upon the undertaking of Mr. Warkentin, provided an undertaking to Mr. Schofield to discharge the Writ from CRA within a reasonable period of time.
21. Mr. Warkentin relying on the representations of CRA to discharge the Writ forwarded the transfer of the condominium unit to the Member. The Member in turn sent it to Mr. Schofield.
22. CRA had agreed to provide a discharge of the release to Mr. Warkentin and for reasons unknown, delayed, and eventually refused to provide the discharge.



23. Mr. Schofield, as a result of previous experience and advice received from ALIA, reported the Member for breach of his undertaking.
24. CRA eventually provided the discharge of the Writ and clear title was provided.
25. Counsel for the LSA submitted that Citation 10 was made out given that Mr. Warkentin's undertaking was qualified by the words "circumstances permitting", and the undertaking provided by the Member was not so qualified.

#### **SUBMISSIONS OF MEMBERS COUNSEL ON CITATION 10**

26. Mr. Warkentin advised the Member that he was negotiating with CRA to get their Writ discharged and would forward the transfer of land when he had that resolved. The transfer of land was forwarded to the Member.
27. The CRA reneged on their agreement with Mr. Warkentin to discharge their Writ.
28. Counsel for the Member was retained by ALIA to deal with an apparent negligence matter and following his intervention, CRA provided the discharge of the Writ.
29. Counsel for the Member submitted that it would be unfair to find the Member had engaged in conduct deserving of sanction on the basis that he did not provide a "hedged" undertaking to Mr. Schofield as Mr. Warkentin had provided to the Member. The matter had eventually been resolved without any harm to any party.
30. Counsel for the Member that this conduct fell short of conduct unbecoming or calling the profession into disrepute.

#### **DECISION OF HEARING COMMITTEE ON CITATION 10**

31. The Hearing Committee recognized the importance of the use of undertakings and that they were fundamental in the practice, particularly in real estate. The importance of stringently adhering to ones undertakings cannot be underscored. Undertakings are built on trust, which are fundamental to the legal profession.
32. The Hearing Committee found that this was a breach of an undertaking but that it was not as a result of any conduct on behalf of the Member that approached the threshold of conduct unbecoming as defined in s. 49 of the Legal Professional Act.
33. The Member was unfortunately the last man in a chain of undertakings that were breached as a result of CRA reneging on its agreement to discharge the Writ.
34. As a result, the Hearing Committee finds that Citation 10 is not made out and accordingly is dismissed.

**SUBMISSIONS AND EVIDENCE ON SANCTION**

35. Counsel for the LSA referred the Hearing Committee to the Alberta Court of Appeal decision in *Carling Development Inc. v. Aurora River Tower Inc.*, 2005 ABCA 267.
36. Counsel for the LSA submitted that a breach of an undertaking by a solicitor was a very important issue for the legal profession. Undertakings need to be scrupulously honoured and should always be in writing, unambiguous and if amended, should always be amended in writing.
37. Counsel for the LSA submitted that the Member accepted a trust condition and did not ask for any amendments to it. The Member then offered an unqualified undertaking and breached it. He submitted that to breach an undertaking is repugnant. That to permit same threatens the use of undertakings in the legal profession.
38. Counsel for the LSA suggested that an appropriate sanction would be a reprimand, a significant fine and costs of the hearing.
39. The Member was sworn and provided the following evidence:
  - (a) Acknowledged that the facts and circumstances outlined in the Agreed Statement of Facts was accurate;
  - (b) In relation to Citation 12, the Member in fact had the Assignment of Settlement proceeds on February 6, 2009 by his client, put them on his file and then inadvertently did not send them to Mr. Homersham. A copy of the signed Assignment was entered as Exhibit 19 by consent ;
  - (c) Mr. Homersham never requested the Assignment of Settlement proceeds from the Member or inquired of its status;
  - (d) A settlement was reached and the monies owed to Mr. Homersham pursuant to the Assignment of Settlement proceeds were paid into Court. A trial in regards to entitlement to this money is pending;
  - (e) In relation to Citation 11, the Member acknowledges that he should not have threatened Mr. Homersham with legal action and reporting him to the LSA, and stated that the threatening letter (Exhibit 12) was sent out of emotion and not logic;
  - (f) The Member stated that he was frustrated in dealing with Mr. Homersham in relation to what has been referred to in this Hearing as the S. Property. The Members' frustration began when his client advised that she and Mr. S. were to be shareholders with Mr. Homersham in a company that was acquiring the S. Property. The shares were never issued to his client or Mr. S. In addition, there were no trust agreements in place regarding Mr. Homersham holding the other party's shares' in trust for them. The shares in the company were eventually sold to a third party and there was a \$400,000.00 payment remaining. Mr. Homersham claimed to be solely entitled to the \$400,000.00 to the exclusion of the Members client and Mr. S. Given that the client had not

received any shares, she was unable to rely upon the shares as security to obtain financing to keep the project going. As a result, she subsequently lost her home and a second property. The Member felt aggrieved because this would not have happened but for the position taken by Mr. Homersham.

- (g) The Member stated that he regretted sending Exhibit 12 and suggested that he should have simply filed the Statement of Claim and submitted the complaint to the LSA and agrees that threatening to do so was inappropriate;
- (h) The Member stated that the complaint to the LSA regarding Mr. Homersham was submitted eventually by his client and that to his knowledge no action has been taken on it.

40. The Member was cross-examined by counsel for the LSA and provided the following evidence:

- (a) The Member acknowledged receipt of the \$15,000.00 representing his retainer. He was unsure if it came directly from Mr. Homersham or was paid to him by his client who would have received it from Mr. Homersham;
- (b) The Member used the retainer and clearly understood that he was to have forwarded the Assignment of Settlement proceeds to Mr. Homersham;
- (c) The Member acknowledged that the threat outlined in Exhibit 12, were repeated by correspondence to Mr. Homersham's counsel on November 2, 2009 and December 8, 2008 and that these were inappropriate;
- (d) The Member acknowledged that he did not abide by his undertaking and trust condition regarding Citation 12.

41. The Member was examined by a member of the panel and provided the following evidence:

- (a) The Member was referred to Exhibit 15 wherein Mr. Homersham indicates that he made repeated requests for the Assignment of Settlement proceeds and reiterated that he had never been asked for a copy of the executed Assignment of Settlement proceeds and noted that nowhere was there any evidence of same.

42. Counsel for the LSA submitted that the conduct of the Member was egregious and thus the submission for a fine and reprimand was warranted. Mr. Gifford suggested the fine should be significant but was reluctant to provide an amount to the panel and left that determination to the Panel.

43. Counsel for the Member submitted that the Member admitted his guilt and his conduct was far from egregious. Citation 12 resulted from inadvertence and was not as a result of any overt action by the Member. The Member had the Assignment signed and simply neglected to forward it to Mr. Homersham. In relation to Citation 11, the Member acknowledged that he should not have threatened Mr. Homersham in the manner that he did. In all the circumstances, counsel for the Member believed that a reprimand was a sufficient sanction.

44. Counsel for the LSA tendered the record of the Member, which was entered as Exhibit 20 by consent. The Record showed no previous convictions.
45. Counsel for the LSA submitted that the Member should also be directed to pay the costs of the hearing and tendered an Estimate of Costs that was entered as Exhibit 21 by consent.
46. Counsel for the Member submitted that there was some divided success and that the Member should only pay 2/3 of the Estimate of Costs.

## DECISION AS TO SANCTION

47. In determining an appropriate sanction, the Hearing Committee is guided by the public interest, which seeks to protect the public from acts of professional misconduct. The primary purpose of disciplinary proceedings is the protection of the best interests of the public and protecting the standing of the legal profession generally. The fundamental purpose of the sanctioning process is to ensure that the public is protected and that the public maintains a high degree of confidence in the legal profession.
48. In *McKee v. College of Psychologists (British Columbia)*, [1994] 9 W.W.R. 374 at page 376, the British Columbia Court of Appeal articulated the following principles, which are equally applicable to the disciplinary process for the legal profession:

“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 or risk, if any, in permitting a practitioner to hold himself out as legally authorized to practice his profession. The steps necessary to protect the public, and the risk that an individual may represent if permitted to practice, are matters that the professional’s peers are better able to assess than a person untrained in the particular professional art or science.”

49. The Hearing Guide for the LSA, at paragraphs 60 and 61, articulate the relevant factors to be considered in determining the appropriate sanction:
  60. A number of general factors are to be taken into account. The weight given to each factor will depend on the nature of the case, always keeping in mind the purpose of the process as outlined above.

- a) The need to maintain the public's confidence in the integrity of the profession, and the ability of the profession to effectively govern its own members.
- b) Specific deterrence of the member in further misconduct.
- c) Incapacitation of the member (through disbarment or suspension).
- d) General deterrence of other members.
- e) Denunciation of the conduct.
- f) Rehabilitation of the member.
- g) Avoiding undue disparity with the sanctions imposed in other cases.

In one way or another each of these factors is connected to the two primary purposes of the sanctioning process: (1) protection of the public and (2) maintaining confidence in the legal profession.

61. More specific factors may include the following:

- a) The nature of the conduct:
  - (i) Does the conduct raise concerns about the protection of the public?
  - (ii) Does the conduct raise concerns about maintaining public confidence in the legal profession?
  - (iii) Does the conduct raise concerns about the ability of the legal system to function properly? (e.g., breach of duties to the court, other lawyers or the Law Society)
  - (iv) Does the conduct raise concerns about the ability of the Law Society to effectively govern its members?
- b) Level of intent: the appropriate sanction may vary depending on whether the member acted intentionally, knowingly, recklessly or negligently. In some cases, the need to protect the public or maintain the public confidence in the legal profession may require a particular sanction regardless of the state of mind of the member at the time.

- c) Impact or injury caused by the conduct.
- d) Potential injury, being the harm to a client, the public, the legal system or the profession that is reasonably foreseeable at the time of the lawyer's misconduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer's misconduct.
- e) The number of incidents involved.
- f) The length of time involved.
- g) Whether and to what extent there was a breach of trust.
- h) Any special circumstances (aggravating/mitigating) including the following:
  - prior discipline record
  - risk of recurrence
  - member's reaction to the discipline process (acknowledgement of wrongdoing, guilty plea, self-reporting, refusal to acknowledge wrongdoing, etc.)
  - restitution made, if any
  - length of time lawyer has been in practice
  - general character
  - whether the conduct involved taking advantage of a vulnerable party
  - a dishonest or selfish motive
  - personal or emotional problems
  - full and free disclosure to those involved in the complaint and hearing process or cooperative attitude toward proceedings
  - physical or mental disability or impairment
  - delay in disciplinary proceedings
  - interim rehabilitation
  - remorse
  - remoteness of prior offences.

50. The Member has learned from his experience and was contrite. During the Hearing, he did not attempt to minimize his conduct and that he should have conducted himself differently.

51. The Hearing Committee was influenced in its decision as to sanction by the following factors:
- (a) the Member's co-operation with the LSA;
  - (b) the Members lack of a prior discipline record; and
  - (c) that from a general deterrence perspective, that it is important for all Members of the LSA that compliance with the Code of Conduct are important not only to the Bar, but also to maintain the public's confidence in the legal profession.
52. Taking into account all of the foregoing factors, the Hearing Committee concluded that the public interest would be protected and confidence in the profession maintained through a reprimand. The reprimand was delivered by the chair and is attached hereto as Schedule A.
53. The Hearing Committee directed that the Member should pay the costs of the Hearing in the amount of \$2,500.00 within 60 days of the receipt of the Statement of Costs by the Member.

#### **CONCLUDING MATTERS**

54. No referral to the Attorney General is required in this matter.
55. No notice to the profession is required in respect of this matter.
56. The decision and the transcript in this hearing are to be made available to the public with the names of the complainant, clients, third parties or other employees to be redacted.

Dated this 17 day of November, 2011.

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James A. Glass, Q.C., Bencher  
Chair

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Perry Mack, Q.C., Former President  
of the LSA and Bencher

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Amal Umar, Lay Bencher

## SCHEDULE "A"

1 Proceedings taken at a Conduct Hearing, The Law Society of  
2 Alberta, 500, 919-11 Avenue SW, Calgary, Alberta.

3 -----

4 October 31, 2001

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6	J. Glass, Q.C.	The Chair
	P. Mack, Q.C.	President/Former Bencher
	A. Umar	Public Member

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	B. Gifford	For the Law Society of Alberta
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9	P. Peacock, Q.C.	For the Member, Michael Joel Bondar
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	Kim Morosse, CSR(A) RPR	Official Court Reporter
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13 THE CHAIR: Mr. Bondar, the Law Society  
14 governs the profession and the public interest. Self  
15 regulation through an independent Law Society is a privilege  
16 which our profession enjoys. That privilege is only  
17 preserved if lawyers firmly commit to and honour the ethical  
18 tenants of our profession.

19 We are obligated to serve our clients diligently,  
20 conscientiously, and with a selfless regard for the client's  
21 interest.

22 Here you have failed in your ethical obligations.

23 Mr. Bondar, your failure to honour undertakings and trust  
24 conditions and sending threatening correspondence to another  
25 member are serious matters. Your conduct is incompatible  
26 with the best interests of the public and has harmed the  
27 standing of the legal profession generally.

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1 I must remind you of the importance of abiding by  
2 undertakings and trust conditions. Each is an essential  
3 duty to be fulfilled by all members of the profession.  
4 Mr. Bondar, you must hold yourself to a higher  
5 standard in meeting with the professional obligations of a  
6 barrister and solicitor.

7 The public interest we serve demands more of you.

8 Your standard of conduct fell short; as a consequence, you  
9 invited public derision of you and your profession.

10 That loss of confidence is not easily regained.

11 Your professional colleagues, quite frankly, expected more  
12 of you.

13 (End of Reprimand)