

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

**AND**

**IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF ERNST N.  
HOMBERG, A MEMBER OF THE LAW SOCIETY OF ALBERTA**

**The Hearing Committee:**

**James Eamon, Q.C. (chairperson)**

**Roy Nickerson, Q.C.**

**Amal Umar**

**Counsel appearances:**

**M. Nabor-Sykes and T. Davis, for the Law Society of Alberta (“LSA”)**

**T. Meagher, for the Member (June 24, 2010 only)**

**P. Lister, Q.C., for the Member (November 2, 3, and 19, 2010, March 22, 2010)**

**Date and place of hearing:**

**June 24 - 25, 2010 (Calgary, AB)**

**November 2, 3, and 19, 2010 (Calgary, AB)**

**March 22, 2011 (Calgary and Edmonton, AB by videoconference)**

**WRITTEN REASONS AND REPORT OF THE HEARING COMMITTEE**

***I. Background and citations***

1. Ernst N. Homberg faces the following citations under Part 3 of the *Legal Profession Act*, R.S.A. 2000, c. L-8 (“LPA”):

1. It is alleged that you practiced law in British Columbia when you were not entitled to do so, and that such conduct is conduct deserving of sanction.

2. It is alleged that you made misrepresentations to the Law Society of British Columbia, and that such conduct is conduct deserving of sanction.
  3. It is alleged that you made misrepresentations to the Court, and that such conduct is conduct deserving of sanction.
  4. It is alleged that you made misrepresentations to other counsel in British Columbia, and that such conduct is conduct deserving of sanction.
2. Mr. Homberg was, at the material times, and is a member of the Law Society of Alberta (“LSA”). He is currently suspended in Alberta for non-payment of fees. He is an active member of the Law Society of the Northwest Territories and practicing law in the Northwest Territories.
  3. The matters in issue arose from Mr. Homberg’s move to the Province of British Columbia in 2004 and his efforts to become a member of the Law Society of British Columbia (“LSBC”). During those efforts, Mr. Homberg practiced law in B.C. without authorization and made misrepresentations concerning his professional status. Mr. Homberg pled guilty to all the citations. The main issue in this proceeding is the characterization of his conduct and the appropriate sanction that should be imposed.

## ***II. Jurisdiction and preliminary matters***

4. Jurisdiction and preliminary matters are reported in an interim memorandum issued by the hearing committee. A copy is attached to this report.
5. As noted therein, the hearing was held in public. A direction was made concerning exhibits in order to protect privileged information and personal information of third parties.
6. At the conclusion of argument on November 19, 2010, LSA counsel applied to suspend Mr. Homberg on an interim basis. LSA counsel submitted that this would permit the Law Society of the Northwest Territories to take disciplinary action if it saw fit under the inter-jurisdictional disciplinary provisions of the applicable legislation.
7. The hearing committee refused to make an order for interim suspension. Mr. Homberg was administratively suspended in Alberta and could not practice in Alberta. All of the reports received in evidence indicated that Mr. Homberg is providing valuable service to the public as a criminal defence counsel in the Northwest Territories. There was no evidence that his current practice presents any risk to the public in the Northwest Territories. We did not know whether or not the Law Society of the Northwest Territories is aware of the matters in issue in these proceedings. The onus was on LSA to prove that an interim suspension should be imposed, and it was not shown that there was any necessity for us to impose one. On the other hand, there was a risk of prejudice to Mr. Homberg in imposing such a suspension, arising from the inevitable delay in our providing a written report that would fully inform all concerned, including the Law

Society of the Northwest Territories, of our characterization of the conduct, any mitigating factors, and the reasons why we chose the sanction which we imposed on Mr. Homberg.

### *III. Evidence and fact findings*

#### *a. Evidence considered*

8. The hearing committee received exhibits 1 through 62 into evidence, and marked Exhibits “A” and “B” for identification. Following deliberations and pronouncement of our decision on sanction, Exhibit 63, an estimated statement of costs, was entered in evidence.
9. Counsel were not agreed over the purpose for which all the exhibits were entered. Counsel’s agreements and the hearing committee’s determinations of the use of the exhibits are:
  - a. By agreement of counsel, all exhibits up to and including Exhibit 56, with the exception of Exhibit 19, were entered for proof of the truth of their contents where authored by someone other than Mr. Homberg.
  - b. By agreement of counsel, all exhibits authored by Mr. Homberg, were entered as “prior explanations” provided by Mr. Homberg and subject to the truth of the contents being determined by the hearing committee. We take it that Exhibit 57 was also subject to this stipulation.
  - c. Counsel did not agree over the use of Exhibit 19. This document was a typed record of questioning of a former client of Mr. Homberg by LSBC investigators. Mr. Homberg represented this client in respect of charges for possessing and importing cocaine. LSA argued the transcript should be admitted as proof of the truth of its contents. Counsel for Mr. Homberg argued it should not be admissible. The document was marked as an Exhibit pursuant to the Agreed Statement of Facts (Exhibit 42, para. 25, 38, 51) in respect of the factual admissions that Mr. Homberg appeared as counsel for the client on the charges, that Mr. Homberg was paid \$850 for his legal services, and that Mr. Homberg appeared in the North Vancouver Provincial Court on behalf of the client on these charges. Mr. Homberg made no other admissions in respect of the transcript. We make no use of the transcript in respect of anything other than the specifically admitted facts because we have no information that it is reliable. Indeed, it contains answers to leading questions framed in a manner that were unfavourable to Mr. Homberg and Mr. Homberg had no opportunity to examine the client.
  - d. Counsel did not agree over the use of Exhibit 58 (medical records). We accept them as proof of the truth of the observations made by medical professionals in the course of their duties during routine attendances on Mr. Homberg, however

we find it unnecessary to accept the exhibit as proof of the medical opinions set forth therein.

- e. By agreement of counsel, Exhibits 59 through 61 (character reference letters) are accepted as the opinions of the authors.
10. The hearing committee heard oral evidence from a former client of Mr. Homberg (herein, “LJ”), Mr. Homberg, and Mr. Hugh R. Latimer (a practising lawyer in the N.W.T. who attended to speak to Mr. Homberg’s character).
11. The exhibits included an Agreed Statement of Facts (Exhibit 42) and a Supplemental Agreed Statement of Facts and Admission of Guilt (Exhibit 49). Mr. Homberg admitted that all 4 citations were proved. The hearing committee accepted these admissions of guilt pursuant to s. 60(2)(b) of the LPA.
12. The admissions covered the majority of the primary facts relating to the events in question. LSA contended that the hearing committee should draw inferences as to Mr. Homberg’s state of mind and characterize his conduct as reckless, wilfully blind, or deceitful. The oral evidence was mainly directed to the issue of characterizing Mr. Homberg’s conduct and assessing his character.

***b. Facts***

***i. Practice status in Alberta***

13. Mr. Homberg was admitted as a member of LSA on October 4, 1995. He held the following practice status:

Inactive/non-practicing	October 4, 1995 – March 15, 1996
Active/practicing	March 15, 1996 – March 15, 2001
Inactive/non-practicing	March 15, 2001 – March 15, 2004
Suspended <sup>1</sup>	July 15, 2004 – July 21, 2004
Active/practicing	July 21, 2004 – March 28, 2006
Inactive/non-practicing	March 28, 2006 – March 31, 2008
Suspended <sup>2</sup>	March 31, 2008

14. Mr. Homberg maintained the insurance required of practicing lawyers in Alberta from July 21, 2004 through July 5, 2005. On July 5, 2005 Mr. Homberg filed an Application for Exemption from Professional Liability Insurance dated July 5, 2005 (Exhibit 7) with

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<sup>1</sup> Non-payment of fees.

<sup>2</sup> Administrative suspension.

LSA. The application was pursuant to Rule 148 (1)(d) of the LSA Rules. Rule 148 provides the exemptions from LSA members' liability to pay the annual insurance levy and thereby participate in the compulsory liability insurance program:

A member is exempt from the requirement to pay an insurance assessment and is not covered under the indemnity program for services rendered during any period in which:

- (a) the member's principal practice of law is carried on outside Alberta;
- (b) subject to subrules (2) and (2.1), the member is a counsel as defined in Rule 135(1)(a);
- (c) the member has been excluded from coverage under the indemnity program by the insurer under the group policy for the program, with the concurrence of the Benchers;
- (d) the member is not engaged in the practice of law in Alberta, where the member has filed with the Society a written undertaking that the member will not engage in the practice of law; or**
- (e) the member is an inactive member.

[bold face emphasis added]

15. Mr. Homberg's application (Exhibit 7) contained an undertaking that Mr. Homberg would not engage in the practice of law in Alberta without first notifying LSA and complying with the professional liability insurance requirements. This application was granted effective July 5, 2005.

16. By application dated March 13, 2006 (Exhibit 8) filed with LSA, Mr. Homberg elected to become an inactive, non-practicing member of LSA. This form contains the following acknowledgment immediately above Mr. Homberg's signature:

I UNDERSTAND THAT I CANNOT PRACTICE LAW WHILE I AM AN  
INACTIVE MEMBER AND I UNDERTAKE NOT TO DO SO

This application was granted by LSA effective March 28, 2006.

17. Mr. Homberg applied to LSA for reinstatement to the active practice list by application sworn January 12, 2008 and received by LSA on February 19, 2008 (Exhibit 9). This application has not been granted, nor refused at this time.

*ii. Practice status and practice in BC*

18. In January 2003 Mr. Homberg's father passed away so Mr. Homberg stayed with his aging mother in Brackendale, B.C. from January 2003 until March 2004. In March 2004

he returned to Calgary to practice law. He sometimes spent time in Brackendale. He decided to permanently relocate to Brackendale as of June 1, 2005. He wanted to practice there as a general practitioner (Exhibit 6).

19. On May 16, 2005 Mr. Homberg applied for admission to LSBC (Exhibit 6).
20. Rules 2-10.1 through 2-10.17 of LSBC's Rules provide for so-called Visiting Lawyer status. Rule 2-10.2 provides that a Visiting Lawyer may provide legal services in B.C. without a permit for a maximum of 100 business days per calendar year if the lawyer is entitled to practice law in a reciprocating jurisdiction. At all times, the Visiting Lawyer must carry professional liability insurance. (The permission is also subject to the Visiting Lawyer not establishing an economic nexus with B.C. Becoming resident in B.C. is one means of establishing an economic nexus: R. 2-10.21 . It was not alleged in this case that Mr. Homberg became resident in B.C. so this limit on the permission was not in issue).
21. As stated above, Mr. Homberg terminated his Alberta professional liability insurance effective July 5, 2005. Following that date, Mr. Homberg was no longer entitled to practice in B.C. as a Visiting Lawyer.

***Retainers undertaken in B.C. before July 5, 2005***

22. Before making application for membership to LSBC in May 2005, Mr. Homberg familiarized himself with the Visiting Lawyer rules and relied on them from time to time in undertaking retainers for clients in B.C. There were 3 such retainers or arrangements:
  - a. He undertook a retainer from LJ and filed a statement of claim for LJ in the B.C. Supreme Court on July 14, 2004 in respect of an automobile accident. LJ and Mr. Homberg agreed to an unwritten contingent fee arrangement.
  - b. He entered an arrangement with a notary corporation ("HNC") in March 2004 whereby he would attend at its offices and provide notarial services to its clients. Exhibit 42 refers to the arrangement as part time employment. Before commencing the employment, HNC required proof that Mr. Homberg was licensed and insured to practice law, and Mr. Homberg provided a March 15, 2004 letter from LSA advising Mr. Homberg was restored to active status and a certificate proving he carried professional liability insurance as an Alberta lawyer. HNC agreed to pay Mr. Homberg a per diem amount for the attendances.
  - c. He undertook to act for his brother's construction company ("SC") in a matter and sent letters in furtherance of the retainer (Exhibits 10, 18, 41). He undertook this retainer without expecting to be compensated.

***Retainers undertaken in B.C. after July 5, 2005***

23. After July 5, 2005, Mr. Homberg continued the retainer with LJ. He negotiated the personal injury claim with opposing counsel and eventually settled it. Mr. Homberg sent

a letter to opposing counsel dated August 14, 2006 which referred to him as a Visiting Lawyer in B.C. (Exhibit 23), and received a settlement cheque payable to LJ by letter from opposing counsel dated August 31, 2006 on his undertaking not to release the cheque to LJ until LJ executed the required form of release and the release was delivered to defendants' counsel (Exhibit 24). During his testimony Mr. Homberg was unwilling to acknowledge that he accepted the undertaking, but he admitted doing so in Exhibit 42, para. 29 and we find that he accepted the undertaking. Mr. Homberg obtained the release and delivered it to opposing counsel and provided the settlement cheque to LJ. In turn, LJ paid a percentage of the settlement proceeds to Mr. Homberg as contemplated by their oral retainer agreement.

24. After July 5, 2005, Mr. Homberg continued to work at HNC on various days (as shown in Exhibit 40). He received a per diem amount for these attendances. The exhibits indicate he notarized a number of documents during the period December, 2005 through September 2006, being 3 mortgages, 3 transfers, and a bill of sale (Exhibits 25, 43 - 48). In doing so, Mr. Homberg used a stamp describing him as a Notary Public, Province of British Columbia. Mr. Homberg was not a member of the Society of Notaries Public of B.C.. A member in good standing of LSBC may act as a notary public (*Legal Profession Act*, S.B.C. 1998, c. 9, s. 1(1), 14(3)). Mr. Homberg was not a member of LSBC.
25. Mr. Homberg and HNC appeared to have assumed that a Visiting Lawyer could also practice as a notary in BC. No issue appears to have been taken by LSA in these proceedings that Mr. Homberg should be guilty of sanctionable conduct for using a notary stamp so long as he qualified as a Visiting Lawyer. However, Exhibits 25 and 43 through 48 were notarized after July 5, 2005. Mr. Homberg admits the representations associated with these notarizations, to the effect that he was a solicitor, notary or other person authorized to take an oath under the *Evidence Act*, R.S.B.C. 1995, c. 124, were false (Exhibit 49, para. 19). We find, based on the admission, that the representations were in fact false.
26. Mr. Homberg continued to act for SC after July 5, 2005 (Exhibit 18).
27. Mr. Homberg did not tell LJ or HNC that his Alberta professional liability insurance was terminated as of July 5, 2005, or that he could no longer practice as a Visiting Lawyer in B.C. The record is not clear whether he told SC about his insurance or practice status.
28. After July 5, 2005 Mr. Homberg commenced providing legal services to other clients in B.C. There were 3 such matters:
  - a. He prosecuted a builders' lien claim for his neighbour ("RB"), by filing a writ of summons and Statement of Claim in the B.C. Supreme Court on October 1, 2005 and signing a Certificate of Pending Litigation on October 3, 2005 (Exhibits 11, 12, and 13). These documents name the claimant's solicitor, or in the case of the Certificate of Pending Litigation the agent, as Homberg Law Office in Brackendale, BC. By letter dated January 8, 2006 Mr. Homberg advised opposing counsel that he was an active member of LSA and appeared in B.C. as

- a Visiting Lawyer (Exhibit 14). The action was eventually discontinued. This retainer was undertaken without expectation of compensation.
- b. He represented an individual (“BF”) on charges for possessing and importing cocaine alleged to have occurred in February 2006. The retainer commenced not later than March 2006 (Exhibit 21). Sometime in or after July 2006, Mr. Homberg appeared for BF in the B.C. Provincial Court (North Vancouver). The services included appearing to request an adjournment, entering a plea, and conducting a preliminary inquiry. BF was committed for trial in the BC Supreme Court. Mr. Homberg did not act for BF in the B.C. Supreme Court proceeding. BF paid Mr. Homberg small amounts for legal services, aggregating \$850 (Exhibit 21; Exhibit 42, para. 25).
- c. He represented an individual (“SW”) in two summary conviction matters in the B.C. Provincial Court (North Vancouver). He appeared for SW in the Court on 4 occasions: July 19, July 27, August 8 and September 13, 2006 (Exhibit 42, para. 49). The record does not indicate whether Mr. Homberg expected to be compensated for these retainers, and there is no evidence that he was compensated for them.
29. Mr. Homberg did not tell the Court in the BF matter that he was not a lawyer permitted to practice in B.C. Mr. Homberg did not tell the Court he was agent for BF and acknowledged in his cross-examination that he knew before 2006 that an agent could not appear for an accused in Court on an indictable offence. He testified he could not recall what he was thinking at the time he appeared for BF other than that his intent was to appear as an agent. We accept that was his subjective (though misguided) intention.
30. Mr. Homberg did not tell the Court in the SW matter that he was not authorized to practice law in B.C. (Exhibit 42, para. 49). Mr. Homberg did not tell the Court that he appeared as an agent for SW (Exhibit 49, para. 23). He testified that he intended to act as agent. We accept that this was his subjective intention at the time.
31. Mr. Homberg testified he told the Justice of the Peace on one occasion on an SW matter that he appeared as agent, and when asked by the Court if he was licensed to practice in B.C. he answered affirmatively. (This occasion was on September 13, 2006). His representation that he was licensed to practice in B.C. was incorrect. He testified that he does not know why he gave this answer, he was just stammering and it was busy there. Some days later, he attended on the same Justice of the Peace to correct this representation, told her that he was not a member of the BC Bar, he was from Alberta, told her about his “real status” [Transcript, 15/22], and apologized to her.
32. Counsel for the LSA submitted that we should not accept that Mr. Homberg told the Court he was an agent on September 13, 2006. Because Mr. Homberg admitted in his Supplemental Agreed Statement of Facts that he did not tell the Court he was an agent, we find that he did not tell the Court he was an agent. (Had we accepted that he did tell



the Court on that single occasion that he appeared as agent, it would not have affected our decision as to sanction).

33. We conclude on the evidence that Mr. Homberg did not tell any of the clients mentioned above for whom he provided legal services after July 5, 2005, nor HNC after July 5, 2005, that he did not carry professional liability insurance or that he was not entitled to practice as a lawyer in B.C.
34. Mr. Homberg was motivated to accept the LJ, RB, BF, SW and SC retainers in order to help out the client. LJ was a friend. RB was a neighbour. BF was a “kid who lives in the neighbourhood” [Transcript, 12/19] who approached Mr. Homberg for help, telling him he had applied for legal aid but it had not come through. Mr. Homberg felt he had the skills to help and agreed to do so. Mr. Homberg was acquainted with SW’s father, who asked Mr. Homberg to help out with SW. SC was a company related to Mr. Homberg’s half brother. Based on the records before us, it is improbable that Mr. Homberg conducted these retainers for the purpose of earning any significant amounts of remuneration. In hindsight, Mr. Homberg’s belief that he was helping these clients by providing unlicensed legal services following July 5, 2005 was incorrect, but we accept that his motivation at the time was to help these clients.
35. In contrast to the other matters, the HNC matter was a commercial arrangement. Mr. Homberg was pursuing business opportunities. He knew that the owner of HNC was aging and perhaps was thinking about selling his practice, so Mr. Homberg followed up on this opportunity by approaching HNC. HNC’s owner mentioned that he sometimes needed the assistance of a notary when he was out of the office and Mr. Homberg may be able to help him on occasion. That was the start of a relationship whereby Mr Homberg was paid to work for HNC. Following July 5, 2005 it occurred to Mr. Homberg that he no longer had professional liability insurance, but he rationalized his continuing work for HNC on the basis that he might be covered under HNC’s insurance. In hindsight he recognizes it was not the correct thing to do.

*iii. Misrepresentations to Counsel regarding practice status*

36. Mr. Homberg made various representations to other lawyers in the course of some of these matters that he was entitled to practice law in B.C.:
  - a. Mr. Homberg admits that his description of himself as a Barrister and Solicitor in the pleadings filed in the RB action in October 2005, was a misrepresentation to opposing counsel (Exhibit 49, para. 25, 32).
  - b. Mr. Homberg represented himself as a Visiting Lawyer in a letter to counsel for the defendants in the RB action dated January 8, 2006 (Exhibit 14).
  - c. Correspondence to opposing counsel in the LJ claim dated August 14, 2006 represented he was practicing as Homberg Law Office in Brackendale, B.C. and that he was a “Visiting lawyer in B.C.” (Exhibit 23).

These representations were inaccurate. In a letter to LSBC dated July 27, 2006 (Exhibit 18), Mr. Homberg did not use the representation “Visiting lawyer in BC” nor refer to Homberg Law Office. Mr Homberg agreed that he did not include the description as a Visiting lawyer in BC on this correspondence because he knew he was no longer entitled to visit in BC (Transcript, 50/18 – 51/2). In contrast, Mr. Homberg used the description as a Visiting Lawyer in the letterhead for the August 14, 2006 letter to opposing counsel in the LJ matter because he wanted them to continue to deal with him as LJ’s counsel (Transcript, 51/21-26).

37. LSA contends that Mr. Homberg made a misrepresentation concerning his practice status during a discussion with Crown Counsel on the SW matter on August 8, 2006 (Exhibit 22). The Agreed Statement of Facts recites that Crown Counsel would say Mr. Homberg told him he was a Visiting Lawyer, while Mr. Homberg has a different recollection of the conversation (Exhibit 49, para. 27). Mr. Homberg admits he made a misrepresentation to Crown Counsel on that occasion but the misrepresentation is not explicitly particularized (Exhibit 49, para. 32). We find that the misrepresentation on that occasion was the failure to be completely forthcoming with the material facts concerning his practice status.

*iv. Misrepresentations to LSBC concerning practice status*

38. During these events, Mr. Homberg had various communications with LSBC concerning his status to practice in B.C. and either failed to correct information which was correct when provided but had become incorrect due to subsequent events, or made representations of fact which were not correct:
- a. By letter dated June 23, 2005 (Exhibit 10), Mr. Homberg advised LSBC that he was an active practising and insured member of LSA. He did not tell LSBC of the subsequent changes to his status which occurred on July 5, 2005 and March 28, 2006.
  - b. Mr. Homberg’s letter to LSBC dated July 27, 2005 (Exhibit 30) indicated Mr. Homberg is a “Visiting lawyer in BC”. He did not tell LSBC that his status in Alberta had changed or that he was no longer entitled to be a Visiting Lawyer because his Alberta professional liability insurance was terminated.
  - c. Mr. Homberg’s letter to LSBC dated December 1, 2005 (Exhibit 31) indicates he is a “Visiting lawyer in BC”, when he did not have the insurance required to qualify as a Visiting Lawyer .
  - d. A letter dated June 19, 2006 sent by an Alberta lawyer on behalf of Mr. Homberg to LSBC requesting a report on the status of Mr. Homberg’s application for membership in LSBC (Exhibit 32) did not disclose that Mr. Homberg was no longer an active member of LSA. Mr. Homberg admits this was a misrepresentation (Exhibit 42, para. 47).

- e. By letter dated February 22, 2006, LSBC inquired of Mr Homberg whether he was practising law in B.C. Mr. Homberg did not respond. LSBC renewed its inquiry by letter dated June 20, 2006. Mr. Homberg responded by letter dated July 27, 2006 (Exhibits 18, 33). Mr. Homberg disclosed the LJ file, the SC file, and the RB file. He said he had not earned any income from practising in B.C. since 2004. Mr. Homberg did not disclose the BF retainer or that he had issued receipts to BF in 2006 for payments for “legal services”. Mr. Homberg did not disclose the SW retainer, though he had attended with SW in the North Vancouver Provincial Court on the same day as the letter to LSBC.
39. Mr. Homberg signed an undertaking to LSBC on September 26, 2006 not to act as a lawyer in expectation of a fee, gain or reward (Exhibit 28). He withdrew his application to become a member of LSBC.

*v. Misrepresentations to the Court concerning practice status*

40. As stated above, Mr. Homberg appeared before the B.C. Provincial Court on 6 occasions after July 5, 2005 for 2 clients and did not tell the Court he was not licensed to practice in BC. Mr. Homberg admits these constituted misrepresentations to the Court (Exhibit 49, para. 23, 24, and 31).
41. On one of these occasions (September 13, 2006), Mr. Homberg stated he was licensed to practice in B.C. He corrected this misrepresentation a few days later and apologized. (See paragraph 31, above).

*vi. Dealings with LSA staff*

42. Mr. Homberg admits that on February 14, 2006 he told an employee of LSA he had not practised law since July 5, 2005 (Exhibit 42, para. 22). We cannot put much weight on this admission because we do know the context of the conversation or whether he was referring or intending to refer to practice of law in Alberta.
43. Mr. Homberg applied to LSA to be restored to active status by letter dated February 12, 2008 (Exhibit 58). The sworn application form (Exhibit 9) represented that Mr. Homberg was, from August 1, 2005, a non-practicing resident of B.C. on “sabbatical”. The application disclosed that Mr. Homberg has been the subject of an undertaking imposed by direction of a governing body of a legal profession in a jurisdiction other than Alberta. The undertaking was not provided, however, there is no evidence that anyone was or was not misled by the failure to provide the undertaking.
44. Mr. Homberg testified that he used the term “sabbatical” in Exhibit 9 because he did not consider himself a full time practicing individual, did not have an office and did not have a trust account. Although Mr. Homberg generally agreed in cross-examination that sabbatical means a period to take time away from work and do something else, we accept that Mr. Homberg did not intend to mislead by using the term in Exhibit 9, having regard

to the sporadic, low volume, mainly unpaid services that Mr. Homberg provided while in Brackendale.

45. By letter dated February 28, 2009 (Exhibit 41), Mr. Homberg made several statements to Maurice Dumont, Q.C. of LSA. This letter responded to Mr. Dumont's letter dated February 13, 2009. Mr. Homberg's letter contains a lengthy recitation of many of the events that occurred in B.C. described above, though there are some minor misrepresentations. For example, Mr. Homberg said he used his B.C. notary stamp on 1 or 2 occasions, whereas the evidence contains 7 examples of its use. Another example is that Mr. Homberg stated that he told the Court on the SW appearance on September 13, 2006 that he appeared as agent for SW, whereas he signed an agreed statement of facts for this hearing that he did not do so (Exhibit 49, para. 23).
46. We note that Mr. Homberg's sworn evidence in this proceeding was consistent with his statement to Mr. Dumont that he told the Court on the SW appearance on September 13, 2006 that he appeared as agent for SW. When confronted in cross-examination with his admission, Mr. Homberg did not argue the point. Mr. Homberg believes, rightly or wrongly, that he did make such a statement on September 13, 2006 but was prepared to concede the point. We do not conclude that his admission that he did not tell the Court that he appeared as agent is evidence that he intended to mislead Mr. Dumont.

*vii. The conversation with LJ about confidentiality*

47. Some time after Mr. Homberg delivered the settlement cheque to LJ, Mr. Homberg telephoned LJ. Neither Mr. Homberg nor LJ have notes of the call. According to LJ, the call was most likely the Spring 2007 but could have been the Fall 2006. She testified that Mr. Homberg told her that should anyone call her and inquire about his representing her, including about her paying fees to him, she should not say anything. In cross-examination, LJ testified Mr. Homberg's words probably were that she was "entitled not to answer". LJ testified that she felt she was being asked to lie, and felt uncomfortable. She testified that Mr. Homberg did not use the word "lie". LJ did not testify that Mr. Homberg mentioned the matter was under investigation or identify who might be asking questions about the matter. According to Mr. Homberg, he called LJ and told her that her case is confidential and she did not have to disclose the settlement, his fee, or her medical information. He described this as a standard conversation he had with clients. He did not know when this conversation occurred. Nothing prevented him from providing this advice to LJ when he delivered the settlement funds to her on an earlier occasion, but he did not do so and did not explain why he did not do so at that time.
48. We are unable to conclude that Mr. Homberg intended to make the call to encourage LJ to conceal the facts from LSBC (or other) investigators. He had already disclosed the existence of the LJ retainer to LSBC. On September 26, 2006 he undertook to LSBC not to practice law in B.C. We conclude that Mr. Homberg intended to provide his standard advice, and did advise LJ that if contacted she was entitled not to answer questions about the matter, such as the retainer, the settlement, the fees or the medical reports. We also

find that Mr. Homberg knew this could benefit his personal situation in the event investigators contacted LJ.

*c. Characterization of Mr. Homberg's conduct*

49. LSA submits the hearing committee should find that Mr. Homberg is an individual who will say whatever he needs to say to accomplish his goals, lacks integrity, and is ungovernable.
50. The applicable standard of proof was recently described by the Supreme Court of Canada in *F.H. v. McDougall*, 2008 SCC 53, as follows:

[40] Like the House of Lords, I think it is time to say, once and for all in Canada, that there is only one civil standard of proof at common law and that is proof on a balance of probabilities. Of course, context is all important and a judge should not be unmindful, where appropriate, of inherent probabilities or improbabilities or the seriousness of the allegations or consequences. However, these considerations do not change the standard of proof. I am of the respectful opinion that the alternatives I have listed above should be rejected for the reasons that follow.

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[45] To suggest that depending upon the seriousness, the evidence in the civil case must be scrutinized with greater care implies that in less serious cases the evidence need not be scrutinized with such care. I think it is inappropriate to say that there are legally recognized different levels of scrutiny of the evidence depending upon the seriousness of the case. There is only one legal rule and that is that in all cases, evidence must be scrutinized with care by the trial judge.

[46] Similarly, evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test. But again, there is no objective standard to measure sufficiency. In serious cases, like the present, judges may be faced with evidence of events that are alleged to have occurred many years before, where there is little other evidence than that of the plaintiff and defendant. As difficult as the task may be, the judge must make a decision. If a responsible judge finds for the plaintiff, it must be accepted that the evidence was sufficiently clear, convincing and cogent to that judge that the plaintiff satisfied the balance of probabilities test.

[47] Finally there may be cases in which there is an inherent improbability that an event occurred. Inherent improbability will always depend upon the circumstances...

[48] Some alleged events may be highly improbable. Others less so. There can be no rule as to when and to what extent inherent improbability must be taken into account by a trial judge. As Lord Hoffmann observed at para. 15 of *In re B*:

Common sense, not law, requires that in deciding this question, regard should be had, to whatever extent appropriate, to inherent probabilities.

It will be for the trial judge to decide to what extent, if any, the circumstances suggest that an allegation is inherently improbable and where appropriate, that may be taken into account in the assessment of whether the evidence establishes that it is more likely than not that the event occurred. However, there can be no rule of law imposing such a formula.

[49] In the result, I would reaffirm that in civil cases there is only one standard of proof and that is proof on a balance of probabilities. In all civil cases, the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred.

51. About the beginning of 2003, Mr. Homberg was diagnosed with mild depression. He felt anti-social, tired and unhappy. He was prescribed a medication for depression, but felt it was not helping. He sought treatment from a psychologist. Mr. Homberg testified that around perhaps 2006 or 2007, he could not recall when, he stopped taking the medication. Mr. Homberg testified:

“...So when I finally came off this medication, it was almost like a fog had been lifted from my mind, so to speak, and once I was off this medication, I became energetic again and social and physically active in sports again on a regular basis, which I was used to always”. [Transcript, 7/18-23]

52. Mr. Homberg’s medical chart (Exhibit 57) generally describes Mr. Homberg’s complaints as relayed to his physician during the events in question and the physician’s observations of Mr. Homberg. Entries during the period reference Mr. Homberg’s reports of occasional panic, low mood, low or poor motivation, lethargic condition, anxiety, feeling down, and diminished concentration. One report indicates protracted bereavement over the death of his father.

53. LSA counsel observed that Mr. Homberg’s medical conditions should be rejected as explanatory of his conduct. She submitted that Mr. Homberg did not testify that these events affected his performance. She also submitted that Mr. Homberg’s dishonesty (now manifested through his communications with LSA in 2008 and 2009) continued after he said he stopped taking the medication.

54. We do not agree. Mr. Homberg said that when he stopped taking the medication, it was as if a fog was lifted from his mind. Also, we are not persuaded that Mr. Homberg was dishonest in his representations to LSA in 2008 or 2009. We are not persuaded that Mr. Homberg intended to mislead LSA by leaving out a few details in his letter to Mr. Dumont (Exhibit 41), particularly as we do not have a copy of Mr. Dumont’s inquiry letter and therefore lack the context in which Mr. Homberg’s response was made. It is unwise to infer dishonesty without an adequate understanding of the relevant context in which the statements were made. Also, we are not persuaded that the minor mis-statements in the letter were intentional. When the letter is taken as a whole, it is apparent

that Mr. Homberg disclosed the substance of his conduct. He could not have reasonably hoped to avoid discipline or other consequences by actively concealing a few minor details.

55. The hearing committee received in evidence many letters from colleagues who knew or know Mr. Homberg, including from the Chief Judge of the Northwest Territories Territorial Court. They generally describe him as a man of integrity, who is diligent and genuinely concerned for the welfare of his clients.
56. The reference letters paint a far different picture of Mr. Homberg than do the observations made by his physicians during the events in question. Having regard to this evidence, together with Mr. Homberg's evidence of his mental state when he stopped taking the medication, we are satisfied on a balance of probabilities that the quality of Mr. Homberg's professional performance was probably impaired during the events in question by his depression and the problems with his mood and motivation. Under these conditions, Mr. Homberg probably rationalized his continuation as a Visiting Lawyer even though he ought to have realized that he could no longer rely on this status once his Alberta professional liability insurance lapsed.
57. We also conclude that as time went on, Mr. Homberg must have realized that he was not entitled to practice as a lawyer in B.C. Mr. Homberg signed an undertaking to the Law Society of Alberta in March, 2006 (Exhibit 8) which plainly indicated he could no longer practice law. The undertaking appears prominently just above Mr. Homberg's signature:

I UNDERSTAND THAT I CANNOT PRACTICE LAW WHILE I AM AN  
INACTIVE MEMBER AND I UNDERTAKE NOT TO DO SO

58. Mr. Homberg's use of different styles of letterhead in late July and August 2006 as described in paragraph 36 demonstrates that he knew he did not qualify as a Visiting Lawyer at that point and he admitted that knowledge in cross-examination [Transcript, 50/22 – 51/2].
59. Having regard to all the evidence and particularly the content of Exhibit 8 and the admission described in paragraph 58, we conclude that following Mr. Homberg's election to go on the Alberta inactive list in March 2006, he knew he could not provide legal services in BC for compensation or hold himself out as a Visiting Lawyer or a lawyer. Nevertheless, he continued to do so in his dealings on LJ's file and with HNC. We accept that Mr. Homberg convinced himself that he could appear as agent for SW and was motivated to help out SW's father, and that he similarly convinced himself he could appear as agent in the Provincial Court for BF.

#### ***IV. Whether conduct is deserving of sanction***

60. Mr. Homberg admitted the conduct is deserving of sanction and his admissions were accepted pursuant to s. 60 of the LPA. The conduct at issue in each of the 4 citations is deserving of sanction: LPA, s. 60(4).

## ***V. Sanction and costs***

61. LSA submits that we should disbar Mr. Homberg.
62. The legislative purpose of this proceeding is regulation of the profession in the public interest. The issues in this proceeding include what effect the misconduct will have on the reputation and integrity of the profession. Preservation of the integrity of the legal profession is largely dependent on the honour of the members of the Law Society of Alberta. *LSA v. Anderson*, [1996] L.S.D.D. No. 302 (Bencher appeal committee). The public and other lawyers must be able to rely on the honesty and integrity of a lawyer. If they cannot do so, the profession is at risk. *LSA v. Cattermole*, [2008] L.S.D.D. 168 (hearing committee). In appropriate cases, a lawyer can be disbarred on the basis that he or she is not governable. *LSA v. Enge*, December 21, 2009 (hearing committee); *LSA v. Broda*, [2009] L.S.D.D. 164 (hearing committee). If necessary in the public interest, a member can be disbarred notwithstanding that he or she has no prior disciplinary record. *Adams v. Law Society of Alberta*, [2000] 11 W.W.R. 280 (Alta. C.A.).
63. The Hearing Guide lists several general and specific factors that may be considered in determining sanction, always keeping in mind the purpose of the proceeding. The general factors include (but are not limited to) the need to maintain public confidence in the profession and the ability of the profession to effectively govern its members; deterrence (specific and general); denunciation of the conduct; rehabilitation of the Member; and, avoiding undue disparity with other cases. The specific factors include (but are not limited to) the nature of the conduct; the level of intent; the impact or injury; injury that could have foreseeably resulted from the conduct; the number of incidents; the length of time over which the conduct occurred; breach of trust; and special circumstances including prior record, risk of recurrence, acknowledgment of wrongdoing, general character, dishonest or selfish motives, personal or emotional problems, cooperation in the proceedings, physical or mental disability or impairment, interim rehabilitation, and remorse.
64. Every case is dependent on its facts. For example, a person of good character who was overwhelmed and behaved inappropriately without her fundamental character being corrupted, was not removed from the profession. *Cattermole*, above, at para. 39. A past course of dishonest conduct or a past dishonest event are not necessarily sufficient to attract the sanction of disbarment. *LSA v. Nicholson*, [2010] L.S.D.D. No. 43 (hearing committee); *LSA v. Rigler*, [2008] L.S.D.D. No. 126 (hearing committee); *LSA v. Geisterfer*, [2008] L.S.D.D. No. 126 (hearing committee); *LSA v. Smith*, [2007] L.S.D.D. 142 (hearing committee); *LSA v. Gish*, [2006] L.S.D.D. No. 132 (hearing committee); *LSA v. Bittner*, [2002] L.S.D.D. No 52 (hearing committee).
65. We have considered all the cases provided to us: *LSA v. Gish*, above; *LSA v. Piragoff*, [2005] L.S.D.D. No. 47 (hearing committee); *LSA v. Bittner*, above; *LSA v. Philion*, [1999] L.S.D.D. No. 59 (Alta. C.A.); *LSA v. Stephan*, [1994] L.S.D.D. No. 218 (hearing committee); *LSA v. Marullo*, [1996] L.S.D.D. No. 290; *LSA v. G.M.*, December 17, 1993



(hearing committee). We agree with counsel for the LSA that each of these cases is distinguishable. As we have noted, fashioning a proper sanction is a highly fact sensitive exercise that must account for all the relevant circumstances.

66. We concluded that there came a time when Mr. Homberg knew that he could not practice as a Visiting Lawyer in B.C. This time was March 13, 2006. Thereafter, Mr. Homberg rationalized his appearances in the criminal matters and his non-disclosure of the criminal matters to LSBC on the basis they were mere agency matters. These rationalizations are concerning to us, but even more concerning is that some matters could not be rationalized. Mr. Homberg wanted to finish the retainer for his friend LJ so he did not disclose his change in status to opposing counsel on that file even when he knew he was not a Visiting Lawyer. He continued his commercial relationship with HNC when he knew he could not notarize documents. He did not disclose the changes to his Alberta status to LSBC while his application for admission to LSBC was pending.
67. Some of this conduct stemmed from a motivation, albeit misguided, to help fellow citizens. That was the case with SC, RB, BF, SW and LJ. In contrast, in his dealings with HNC and LSBC following March, 2006 we cannot conclude other than that there were elements of self interest to his conduct. These interests were to earn income or maintain commercial relationships (in the case of HNC), or facilitate processing of his application by LSBC. There was also an element of self interest to the last telephone call to LJ (paragraphs 47 - 48, above).
68. Mr. Homberg's conduct after March 2006 consisting of misrepresentations to other counsel about his practice status, failing to disclose his Alberta practice status to LSBC and continuing work for HNC were very serious matters that go to the heart of maintaining confidence in the legal profession. Mr. Homberg's numerous misrepresentations prior to March 2006, though we have not found Mr. Homberg intended to mislead, were also serious errors. Other lawyers, clients, law societies and the Courts must be able to rely on a lawyer's word and lawyers must be governable by their self-regulatory body. Otherwise, the profession is at risk. The hearing committee is concerned that so many misrepresentations were made by Mr. Homberg about his professional status during the events in question.
69. On the other side of the equation are mitigating factors. Mr. Homberg corrected his misrepresentation to the B.C. Provincial Court within a few days and apologized, on his own initiative. Mr. Homberg was depressed and was having problems with his mood and ability to concentrate. He operated under a fog of some sort until he stopped taking the anti-depression medication. Without additional medical evidence it is difficult for us to gauge the impact of the medication, but we accept that it played a role in the conduct. He has taken responsibility for his conduct by admitting his guilt on all the citations. He has no previous disciplinary record with LSA. He understands what occurred was wrong and why it was wrong. Colleagues currently working with him have spoken to his integrity and skill in his practice in the Northwest Territories. In our view, Mr. Homberg is at a very low risk of finding himself in similar circumstances again or behaving as he did in

the events under consideration. These factors do not excuse the conduct, but must be considered in deciding what sanction ought to be imposed.

70. We listened and watched Mr. Homberg closely during his evidence and carefully considered all the circumstances. In our view, his essential good character is intact now and he is governable. Therefore, we decided not to disbar Mr. Homberg. However, a significant sanction is required to denunciate the conduct, protect the public confidence in the legal profession, and reaffirm the importance of a lawyer's word. In our view, a suspension is the appropriate sanction because it denunciates the conduct more than a fine or a reprimand would. Mr. Homberg is presently practicing in the Northwest Territories and not in Alberta. A suspension would not have as drastic an impact on Mr. Homberg as it would on a lawyer in active practice in Alberta. This must also be taken into account in determining the length of the suspension.
71. Having regard to all the foregoing considerations, the suspension was set at 9 months.
72. The hearing committee heard submissions on costs. The LSA's claim was set forth in Exhibit 63, subject to reduction to reflect actual hearing time on March 22, 2011. The hearing committee decided to make an additional reduction for the following reasons. The draft proposed agreed statement of facts was provided to Mr. Homberg's counsel on June 14, 2010. The hearing was scheduled to, and did, commence on June 24, 2010. With the panel's permission, the parties continued to negotiate after the scheduled start time for the hearing. The statement was completed while the panel, court reporter, and staff waited. They waited for much of the hearing day. No doubt Mr. Homberg's counsel and LSA's counsel also waited while the other considered his or her position during the negotiations. The completed statement was lengthy and the panel adjourned to read it, leaving counsel to wait. Making an agreed statement of facts is desirable for both LSA and the Member and should not be discouraged. However, the hearing committee concluded that where the statement was presented so late in the process and appeared to lead to inefficiencies, the entire costs burden associated with counsel fees, court reporter charges, and per diem charges for the first hearing day should not be borne by Mr. Homberg.

## ***VI. Concluding matters***

73. We directed that Mr. Homberg be suspended for a period of 9 months commencing March 22, 2011.
74. We did not appoint a custodian because none was necessary. Mr. Homberg has no practice in Alberta. His Alberta practice files were transferred to another lawyer many years ago.
75. The hearing committee made the following direction regarding the exhibits and transcript of proceedings: that the names and identifying information of any clients must be redacted from the transcript and exhibits, and from hearing reports in the event any appear in such reports, before such materials are made available to the public.

76. The hearing committee fixed the costs payable by Mr. Homberg to the LSA in the amount of \$9500. Mr. Homberg asked for and was granted 12 months to pay. It was further directed that he will pay 4 equal instalments. Mr. Homberg asked for 30 days to pay the first instalment. Therefore, the instalments will be due on the following dates: April 21, 2011; August 21, 2011; December 21, 2011; and, April 21, 2012. This schedule is based on the expectation that LSA will deliver a statement of costs to Mr. Lister's office within 30 days of March 22, 2011.

77. We did not direct a referral to the Attorney General.

Dated at Calgary, Alberta on March 24, 2011.

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James Eamon, Q.C. (Chairperson)

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J. Royal Nickerson, Q.C.

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Amal Umar

**IN THE MATTER OF THE *LEGAL PROFESSION ACT***  
**- AND -**  
**IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF ERNST N. HOMBURG,**  
**A MEMBER OF THE LAW SOCIETY OF ALBERTA**

**The Hearing Committee:**

**James Eamon, Q.C. (chairperson)**

**J. Royal Nickerson, Q.C.**

**Amal Umar**

**MEMORANDUM OF THE HEARING COMMITTEE RE ADJOURNMENT AND RELATED  
PROCEDURAL MATTERS**

**I. INTRODUCTION, CITATIONS AND APPEARANCES**

1. Ernst N. Homberg (sometimes referred to as the “Member”) is subject to conduct proceedings under the *Legal Profession Act*, R.S.A. 2000, c. L - 8 (“LPA”) on the following citations:
  1. IT IS ALLEGED THAT you practised law in British Columbia when you were not entitled to do so, and that such conduct is conduct deserving of sanction.
  2. IT IS ALLEGED THAT you made misrepresentations to the Law Society of British Columbia, and that such conduct is conduct deserving of sanction.
  3. IT IS ALLEGED THAT you made misrepresentations to the Court, and that such conduct is conduct deserving of sanction.
  4. IT IS ALLEGED THAT you made misrepresentations to other counsel in British Columbia, and that such conduct is conduct deserving of sanction.
2. The hearing commenced June 24, 2010. During the matters dealt with on June 24, 2010 (jurisdiction of the hearing committee, private hearing application matters, entry of exhibits including the agreed statement of facts, and the partial admission of guilt), the Member was present at the hearing and represented by Mr. Timothy S. Meagher, Barrister and Solicitor.
3. Upon reconvening on June 25, 2010, in the presence of the Member, Mr. Meagher indicated he was unable to continue to act for the Member and sought leave to withdraw. Mr. Meagher was granted leave to withdraw to the extent he required it. The Member then represented himself on his adjournment application.

4. The purpose of this memorandum is to record and report the procedural matters, primarily the terms and reasons for the adjournment of the hearing and the directions concerning confidentiality of portions of the exhibits.

## **II. JURISDICTION**

5. Exhibits 1 (Letter of Appointment), 2 (Notice to Solicitor), 3 (Notice to Attend), and 4 (Certificate of Status) established the jurisdiction of the hearing committee. Neither party objected to jurisdiction. Each party was asked whether there were any objections to the members of the Hearing Committee, and none were made. The Hearing Committee found it had jurisdiction.

## **III. PRIVATE HEARING ISSUES AND CONFIDENTIALITY DIRECTION**

6. The Certificate of Exercise of Discretion was entered as Exhibit 5.
7. The Chairperson invited applications to have all or a part of the hearing heard in private (*LPA*, s. 78(1) and Rules of the Law Society of Alberta, Rule 98).
8. No application to have all or part of the hearing held in private was made and the hearing proceeded in public.
9. The exhibits contain names of clients and descriptions of their matters. The descriptions include sensitive matters which if disclosed, could affect the well being of a client such as records of criminal proceedings. As an example, see Exhibit 41. These clients did not receive the private hearing notice. Some of the matters would have been of public record, but it does not follow that the details should be republished by a hearing committee which has received privileged information in the conduct process (*cf. Code of Professional Conduct*, Chapter 7, Rule 1: a lawyer must not disclose confidential information whether or not it is a matter of public record). The Hearing Committee was concerned that these client names should not be published and that there were compelling privacy interests associated with the matters.
10. The Hearing Committee therefore directed that the names and identifying information of any clients must be redacted from the transcript and exhibits, and from hearing reports in the event any appear in such reports, before such materials are made available to the public.

## **IV. ADJOURNMENT APPLICATION**

11. The hearing commenced on June 24th, 2010. It was scheduled for two days, and it has been scheduled for some time. At the commencement of the hearing on June 24th, 2010, Mr. Homberg was represented by counsel, Mr. Meagher. There was a lengthy adjournment on June 24, 2010, which included the vast majority of the morning. The hearing commenced in the afternoon, at which time a number of exhibits were tendered before the Hearing Committee including Exhibit 37 (a timeline) and Exhibit 42 (an Agreed Statement of Facts).

12. On the afternoon of June 24, 2010, Ms. Nabor-Sykes for the Law Society of Alberta began her opening statement. The Hearing Committee, upon being provided the Agreed Statement of Facts, adjourned at the suggestion of counsel to review the Agreed Statement of Facts. Upon resuming, Mr. Meagher indicated that a matter had arisen and he required an adjournment. Ms. Nabor-Sykes consented to the adjournment and the hearing was adjourned for the day.
13. The hearing recommenced on June 25, 2010, at which time Mr. Meagher indicated that he could not continue to act for Mr. Homberg and that Mr. Homberg wanted to seek an adjournment to find new counsel. The Hearing Committee directed that, to the extent Mr. Meagher required leave to withdraw, he was granted that leave.
14. The Hearing Committee then heard submissions with respect to the adjournment. Ms. Nabor-Sykes indicated on behalf of the Law Society that the Law Society would consent to the adjournment if there were three conditions:
  - First, an interim suspension pursuant to Section 63(3) of the LPA be imposed on the Member;
  - Second, that the adjournment be to a date certain, and the suggestion was that dates would be available in late September or early October; and,
  - Third, that Mr. Homberg provide an address for service.
15. During the course of her submissions, she indicated that Mr. Homberg was currently suspended under Rule 165(2) for nonpayment of fees and that the matters which the Law Society is concerned about came up during the reinstatement process which resulted when Mr. Homberg applied to the Law Society of Alberta to be reinstated to active practice.
16. Mr. Homberg indicated in response that he does not know much about administrative law and these types of hearings. He has now been practicing criminal law in the Northwest Territories for about a year and a half. He is without a lawyer and requires legal advice to answer any issues that come out in the hearing. He submits that he is already suspended and it is not necessary to have any other suspension and that he is not seeking to practice law in Alberta. With respect to a fixed date, he submits that he needs to speak with a lawyer and that it may be difficult to set a date now and he observes that there are only a few pro bono lawyers available.
17. The application for an adjournment is pursuant to Rule 97(2) which permits the Hearing Committee to adjourn on such terms and conditions as it may direct.
18. Mr. Homberg has been practicing in the Northwest Territories for approximately 1.5 years. He has been suspended in Alberta for nonpayment of fees since sometime before his reinstatement application and he has not carried insurance in Alberta since July 5, 2005. The application for reinstatement was made on February 12, 2008, and it was on October 9, 2009, that the Conduct Committee of the Law Society of Alberta referred the four citations at issue to a hearing committee.
19. It is the Hearing Committee's duty to protect the public interest and to protect the public against, among other things, practitioners who are providing legal services who ought not to be doing so. Against that, we must balance considerations of fairness to the member whose proceedings are ongoing and we must consider that, in this case, the first phase of the hearing, being the determination of conduct deserving of sanction, is not completed. Our understanding from

submissions made during the hearing on June 24, 2010 was that Mr. Homberg intended to give evidence with respect to issues of sanctionable conduct (that is, during the first phase of the hearing). He has admitted to certain conduct in the Agreed Statement of Facts, and during the course of the hearing on June 24, 2010, Mr. Homberg, through his then counsel, Mr. Meagher, made the following admissions of guilt:

(a) He admitted that Paragraph 38 of the Agreed Statement of Facts made out Citation No. 1;

(b) Paragraph 48 of the Agreed Statement of Facts made out Citation No. 2;

(c) Paragraph 50 of the Agreed Statement of Facts made out Citation No. 3; and,

(d) Paragraphs 56, 60 and 61 of the Agreed Statement of Facts made out Citation No. 4.

20. The Hearing Committee accepted the admission of guilt pursuant to section 60 of the LPA. The statute provides, among other things, that a statement of admission of guilt shall not be acted on until it is in a form acceptable to the Hearing Committee if the statement is submitted on or after the day on which the Hearing Committee is appointed. On June 24, 2010 the Hearing Committee determined that a statement was submitted and that the statement was in a form which was acceptable to the Hearing Committee.
21. In this case, we are mindful that Mr. Homberg requires time to locate new counsel to represent him in these proceedings. Counsel for the Law Society has indicated that, during the sanctioning phase, she will be seeking either a lengthy suspension or disbarment.
22. In our view, it is appropriate that an adjournment should be granted. Ms. Nabor-Sykes has submitted that there should be an interim suspension because that would then enable the Law Society of the Northwest Territories under applicable legislation to suspend the membership of a bi-jurisdictional member where the Law Society of Alberta has made a direction for an interim suspension. She also emphasizes that there is a national protocol under which the Law Society of Alberta would advise the other Canadian Law Societies that an interim suspension has been granted here, which would then place those societies in a position to protect the public interest by taking such steps as they see fit.
23. We are mindful that during the hearing on June 24, 2010, we received into evidence a total of 42 exhibits, which include the Agreed Statement of Facts and some of the documentation underlying the matters at issue before us. To the extent the Agreed Statement of Facts incorporates other documents by reference, they appear to be included in the exhibits which were received into evidence before the Hearing Committee.
24. During the course of the hearing, we addressed the question of private versus public hearing, and it was directed that, before the exhibits and the transcript and any hearing report be published, the names of clients should be redacted from those documents.
25. Accordingly, the Hearing Committee does not see that there is any impediment at this time to the Law Society of Alberta in providing or communicating the content of those exhibits to such other regulatory bodies as it sees necessary in carrying out its responsibility to protect the public interest. For that reason, in our view, if there is a concern that the Law Society of the Northwest Territories should take some steps as a result of what has occurred here, then nothing prevents the Law Society of Alberta from communicating what has occurred in these public proceedings to the Law Society of the Northwest Territories or other regulators.

26. On the other hand, if we interim suspend Mr. Homberg under Part 3 of the LPA for conduct reasons, that may cause him considerable harm in trying to earn his living through his profession. We are told that he has practiced criminal law in the Northwest Territories for approximately 1.5 years. There has been no indication before us as to whether or not the Law Society of the Northwest Territories is concerned with that practice, whether there is a complaint history in the Northwest Territories, or whether the services provided by Mr. Homberg are adequate or inadequate in the Northwest Territories.
27. It appears to us that the need for an interim suspension would primarily be a concern or a matter for which the Northwest Territories Law Society would be responsible. We do not say that we would shirk any responsibility in that regard, but we simply do not know at this time whether or not Mr. Homberg's continuation to practice in the Northwest Territories, which has continued for approximately 1.5 years, presents a risk to the public.
28. Accordingly, our decision was to grant the adjournment on the following conditions, which are imposed:
- (a) Mr. Homberg will accept service of notices from the Law Society of Alberta at Box 702 Yellowknife, Northwest Territories, X1A 2N5, and if he changes that address for service to another address, then that address must also be in the Northwest Territories or in Alberta and he must notify the Law Society of Alberta within seven days before the change. In addition, if Mr. Homberg changes his current residence from 1430 Gitzel Street, Yellowknife, Northwest Territories, then he will give ten days' advance notice to the Law Society of Alberta. Those notices are to be in writing, and to the attention of Ms. Nabor-Sykes.
  - (b) A date certain is to be fixed for the continuation of this hearing.
  - (c) Mr. Homberg shall use his best efforts to obtain counsel in these proceedings as soon as possible and advise the Law Society of Alberta of that name as soon as it is available and, again, to the attention of Ms. Nabor-Sykes in writing.
  - (d) Without further leave of this Hearing Committee, Mr. Homberg will not seek to use his status in the Law Society of Alberta under the National Mobility Agreement.
  - (e) If Mr. Homberg seeks to provide legal services outside the Northwest Territories, he will provide the Law Society of Alberta ten days' advance notice of that intention.
  - (f) Either party is at liberty to apply to the Hearing Committee to modify these conditions.
29. The Hearing Committee concluded that the above conditions will adequately protect the public interest and refused to direct an interim suspension. In respect of condition (b), Mr. Homberg was advised by the Chairperson that we intend to select a date that will allow Mr. Homberg a reasonable time to retain counsel, and forewarned by the Chairperson that if an application is made to us to change that date in the future, the reasons should be that the counsel is not reasonably available. It would not be the Hearing Committee's intention to grant adjournments other than for the purpose of obtaining legal counsel. Condition (e) was imposed because Mr. Homberg indicated to us that his current intention is not to practice elsewhere. If his intention should change, then it may be that the Law Society of Alberta may wish to renew an application



before us. Condition (f) was imposed because the Hearing Committee was mindful that circumstances might change and that Mr. Homberg was without legal counsel on the adjournment application.

30. Following discussion with counsel for the Law Society and Mr. Homberg, the hearing was adjourned to September 21st, 2010, at the offices of the Law Society of Alberta in Calgary at 9:30 a.m.

**V. CONCLUSION**

31. The hearing is adjourned to **September 21, 2010 at the offices of the Law Society of Alberta in Calgary at 9:30 a.m.** on the terms and conditions set forth in paragraph 28 above.
32. The exhibits and transcript are subject to the directions set forth in paragraph 10 above.
33. A copy of this memorandum should be sent to the Member and the Law Society of Alberta. The Hearing Committee has not imposed any confidentiality restrictions on this memorandum.

Dated at Calgary, Alberta on July 21, 2010.

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James Eamon, Q.C. (Chairperson)

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J. Royal Nickerson, Q.C.

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Amal Umar

IN THE MATTER OF THE *LEGAL PROFESSION ACT*

- AND -

IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF ERNST N. HOMBURG,  
A MEMBER OF THE LAW SOCIETY OF ALBERTA

**The Hearing Committee:**

**James Eamon, Q.C. (chairperson)**

**J. Royal Nickerson, Q.C.**

**Amal Umar**

**MEMORANDUM (SECOND) OF THE HEARING COMMITTEE RE ADJOURNMENT AND  
RELATED PROCEDURAL MATTERS**

1. The Hearing Committee convened by conference call on September 15, 2010 to hear Mr. Lister's application to adjourn the hearing from September 21, 2010 to a new date.
2. Present on the call were the Panel, Ms. Nabor-Sykes for the Law Society of Alberta ("LSA"), Mr. Lister, Q.C. for Mr. Homberg, and Ms. Arsenault, Conduct Assistant/Interim Hearing Coordinator of the Law Society of Alberta.
3. Mr. Lister explained that he has been retained to act for Mr. Homberg, he did not realize a hearing date was set until recently, and he is not available on the currently scheduled date.
4. Ms. Nabor-Sykes does not oppose the request, but reserves LSA's submissions regarding length of adjournment and adjournment conditions.
5. The Panel therefore initiated a discussion on potential hearing dates and indicated that matters of conditions could be discussed once the length of adjournment was known.
6. After discussion, the hearing was rescheduled to November 2 - 3, 2010.
7. Both counsel agreed that the current adjournment conditions set forth in the Interim Memorandum previously provided by the Panel be continued, and it is so directed.
8. Ms. Nabor-Sykes sought a condition that Mr. Lister provide a letter confirming Mr. Homberg has complied with the conditions in para. 28 (d) and 28(e) of the Interim Memorandum. Mr. Lister did not object to this condition. The Panel directs that a letter be provided, leaving it to counsel to work out the timing of the letter. If the letter cannot be provided for some reason, counsel can ask to reconvene the Panel.

9. Ms. Nabor-Sykes sought a direction that the LSA can send the exhibits and admission of guilt (which is recorded on the hearing transcript) with solicitor client information redacted to the Law Society of the North West Territories. Mr. Lister submitted that the matter should be governed by the usual practice concerning exchange of information among law societies, whatever it is. After discussion, the Chairperson noted there may be an issue whether the Panel has jurisdiction to make the direction sought before any finding is made under section 73 of the *Legal Profession Act*, R.S.A. 2000, c. L-8, given the wording of section 85 of the *Legal Profession Act* and Rule 107. All the Panel has done at this point is make a determination under section 60 of the Act. It would be useful to have particulars on the nature of the LSA's usual practice and any policies in place governing release of information among law societies. The Chairperson inquired whether Ms. Nabor-Sykes wished to pursue the application today, in which case the Panel would deal with it, or whether she wished to seek additional information in response to Mr. Lister's position. Ms. Nabor-Sykes advised she will withdraw the application; if LSA concludes it can share the information without further direction she will so advise Mr. Lister and through him, Mr. Homberg; she may renew her application if so advised.

10. Accordingly, the Panel has directed that the hearing is adjourned to November 2, 2010 at 10 a.m. in the offices of the Law Society of Alberta, Calgary, Alberta, to proceed on November 2 and (if required) November 3, 2010; the existing adjournment conditions are continued; an additional condition is imposed that Mr. Lister will confirm compliance with the conditions set forth in para. 28(d) and 28(e) of the Interim Memorandum; counsel may arrange further conferences with the Panel before November 2 if required to address any issues that may arise from the foregoing.

Dated September 15, 2010

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James Eamon, Q.C. (Chairperson)

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J. Royal Nickerson, Q.C.

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