

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

**REPORT OF THE HEARING COMMITTEE**

1. On March 29, 2010, a Hearing Committee comprised of Rose M. Carter, Q.C. (Chair), Anthony G. Young, Q.C. and Miriam Carey (the Hearing Committee) convened at the Law Society of Alberta (LSA) office in Calgary, Alberta to inquire into the conduct of John Condin (Mr. Condin). Mr. Condin was represented by James B. Rooney, Q.C. (Mr. Rooney) and the LSA was represented by Mr. Lindsay MacDonald, Q.C. (Mr. MacDonald).

**I. INTRODUCTION**

2. This matter came to the attention of the LSA in the Autumn of 2007 during a routine Rule 130 audit at which time Mr. Condin advised the auditor that over the course of a 24 month period, he had, on 12 occasions, provided bridge financing to clients he represented in real estate purchase transactions. Following an investigation by the LSA, citations were issued.

**II. CITATIONS**

3. *Exhibit 2*, being the Notice to Solicitor, listed four allegations:
  1. IT IS ALLEGED that you were in a conflict of interest in providing loans to your clients involved in real estate purchase transactions, failed to inform your clients of the potential conflict of interest and failed to recommend to your clients that they seek independent legal advice, and that such conduct is conduct deserving of sanction;
  2. IT IS ALLEGED that you charged certain clients interest at an excessive or criminal rate, and that such conduct is conduct deserving of sanction;
  3. IT IS ALLEGED that you failed to adequately advise your clients with respect to the fees and daily interest on the loans granted to those clients, and that such conduct is conduct deserving of sanction.
  4. IT IS ALLEGED that you exploited the vulnerability of your clients or coerced them into accepting a loan in a real estate purchase transaction, and that such conduct is conduct deserving of sanction.

**III. JURISDICTION**

4. Jurisdiction was established by entering as Exhibits the Letter of Appointment (*Exhibit 1*), Notice to Solicitor (*Exhibit 2*), Notice to Attend (*Exhibit 3*), Certificate of Status

(*Exhibit 4*) and Certificate of Exercise of Discretion (*Exhibit 5*). Counsel for Mr. Condin accepted the jurisdiction and the composition of the Panel.

#### **IV. PRIVATE HEARING**

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

#### **V. OTHER PRELIMINARY MATTERS**

6. At the onset of the Hearing, counsel for LSA and Mr. Condin proffered a proposed Statement of Facts (Statement of Facts) to the Hearing Committee copies of which had been provided to the Hearing Committee members prior to commencement of the Hearing.
7. The Hearing Committee accepted the Statement of Facts and it was entered as *Exhibit 6*. The Statement of Facts which for the exception of client names is reproduced below.

#### **VI. STATEMENT OF FACTS OF JOHN CONDIN**

8. The Statement of Facts of John Condin, while not signed by Mr. Condin, was adopted by him under oath at the Hearing and is reproduced below:
  1. In the course of a routine Rule 130 Audit Mr. Condin advised the auditor that over the course of a 24 month period, Mr. Condin had provided bridge financing to real estate clients on 12 occasions. During the same 24 month period Mr. Condin had acted on 1624 real estate closings.
  2. Typically the financing would be required when a client's purchase proceeds were not received or insufficient, immediately prior to the closing date on the subject transaction. The clients would, in these circumstances, borrow funds from Mr. Condin, pay a transaction fee and a daily interest charge.
  3. In all cases, Mr. Condin was acting on behalf of both purchaser and lender as well as on the sale of their existing property. The clients would execute an Irrevocable Assignment of the Sale Proceeds from which Mr. Condin would obtain repayment of the loan together with fees and interest. Prior to the loan being advanced, the clients were informed of the amount of the transaction fee and the daily interest charge. The ultimate cost of the loan was revealed on the final accounting provided to clients after the transaction closed and the loan was repaid.
  4. Normally Mr. Condin would recommend that his clients attempt to obtain financing through their own financial institutions or other resources. In at least three of the transactions, the clients' financial institutions were unwilling to lend them funds and in two other instances, the clients

determined that Mr. Condin's loan would be similar to or better than those being offered at their financial institutions.

5. In all instances the loans were made from Mr. Condin's personal line of credit.
6. Attached at Tab 1 is Mr. Condin's December 19, 2007, correspondence to the Law Society dealing with the loans. The members response and his interview evidence advised of the following:
  - (a) The contents of the Law Society's Investigation Report were fair and accurate;
  - (b) At the time of the audit he had already ceased providing loans to clients;
  - (c) The loans were made in good faith and in all instances were made when interim financing was urgently required and the clients were unable or unwilling to borrow funds elsewhere;
  - (d) At all times he believed he was diligent when offering assistance to his clients. Five of the clients were former clients and all clients had previous real estate experience and they appeared competent in their decision making;
  - (e) He made every attempt to make the loan transaction readily understood by the clients;
  - (f) The loan process involved minimal risk of conflict given he was acting on both sides of the transaction.
  - (g) He explained to each client how the costs were determined.
  - (h) The loans were short term, averaging less than 13 days and were never intended to be long term interest bearing loans.
  - (i) The fees charged to his clients were lower than those which would have been charged by last minute financing institutions.
  - (j) In one instance he suggested Independent Legal Advice ("ILA") but regretted not insisting that all of the clients seek ILA.
  - (k) To his knowledge no client ever complained with respect to the loans except Mr. and Mrs. M. In that regard, it is noted that the Investigation Report concluded that Mr. Condin had acted appropriately on the M's file.

7. The audit revealed in each instance the number of days the loan was outstanding and the “effective” annualized rate of the loan and fees, as indicated on Tab 2. Five of the twelve loans effective annualized rate exceeds 60%.

**A. SUMMARY OF THE INVESTIGATION OF THE CLIENT FILES**

***Client No. 1***

8. The clients received a loan from Mr. Condin in the amount of \$77,130.58. Mr. Condin charged a fee of \$750.00 and \$15.00 interest per day, for four days.
9. Mr. Condin suggested the clients obtain financing through their own financial institution. He did not recommend that they consult with independent legal counsel. The clients believed that the fees charged by Mr. Condin would have been less than those charged by a mortgage broker and therefore accepted the loan.
10. Attached at Tab 3 is the investigator’s summary of his telephone interview with the clients.
11. Attached at Tab 4 is Mr. Condin’s reporting correspondence and documents to the clients.

***Client No. 2***

12. The client obtained a loan from Mr. Condin the amount of \$20,607.90. Fees of \$400.00 and daily interest of \$6.50 for 11 days was paid.
13. Mr. Condin suggested to the clients they obtain financing through their own financial institution. He did not advise them to consult with independent legal counsel.
14. Attached at Tab 5 is the investigator’s summary correspondence to Mr. B.
15. Attached at Tab 6 is Mr. Condin’s report to the client following the transaction.

***Client No. 3***

16. The clients obtained a loan from Mr. Condin in the amount of \$79,200.00. Mr. Condin charged a fee of \$500.00. There was no daily interest.
17. Mr. Condin did not suggest that the clients obtain financing through their own financial institution because the client had indicated that he had

previously attempted to obtain financing but was declined. Mr. Condin did not recommend ILA.

18. Attached at Tab 7 is the investigator's summary correspondence to the client following the interview.
19. Attached at Tab 8 is Mr. Condin's reporting correspondence of documentation to the clients.

***Client No. 4***

20. The clients obtained a loan from the member in the amount of \$14,717.19. A fee of \$200.00 was charged together with \$4.03 daily interest for 13 days.
21. The member suggested to the clients that they obtain financing through their own financial institution. ILA was not recommended. The clients advised that they had inquired with their financial institution but chose to accept Mr. Condin's offer of the loan.
22. Attached at Tab 9 is the investigator's summary correspondence to the client following the interview.
23. Attached at Tab 10 is Mr. Condin's reporting correspondence of documentation to the clients.

***Client No. 5***

24. The client obtained a loan from Mr. Condin in the amount of \$46,260.77. Mr. Condin charged fees of \$600.00 plus \$15.00 interest per day for 14 days.
25. The member did not suggest that the client obtain financing through her own financial institution nor did he recommend that she obtain ILA.
26. Attached at Tab 11 is the investigator's summary correspondence following the interview of the client.
27. Attached at Tab 12 is Mr. Condin's reporting correspondence of documentation to the client.

***Client No. 6***

28. The client obtained a loan from Mr. Condin in the amount of \$21,091.37. Fees of \$600.00 were charged together with \$5.20 interest per day for 16 days.

29. Mr. Condin suggested the client obtain financing through her own financial institution. He did not recommend ILA. The client had inquired with their financial institution but was turned down and therefore chose to accept Mr. Condin's offer of the loan.
30. Attached at Tab 13 is the investigator's summary of correspondence following the interview.

***Client No. 7***

31. The client obtained a loan from Mr. Condin in the amount of \$145,251.04, with fees of \$300.00 and daily interest of \$15.90, for 4 days.
32. Mr. Condin suggested the client obtain financing through her own financial institution. He did not recommend ILA. The client advised that she believed the fees to be insignificant and therefore chose to accept the loan from Mr. Condin.
33. Attached at Tab 14 is the investigator's summary correspondence following the client interview.
34. Attached at Tab 15 is Mr. Condin's reporting correspondence and concluding documentation to the client.

***Client No. 8***

35. The clients obtained a loan from Mr. Condin in the amount of \$26,000.00. Fees of \$250.00 and daily interest of \$3.35 was charged for 10 days.
36. The member suggested the clients obtain financing through their own financial institution and they had an option to consult with independent legal counsel.
37. Attached at Tab 16 is the investigator's summary correspondence to the client following interview.
38. Attached at Tab 17 is Mr. Condin's reporting correspondence and concluding documentation to the client.

***Client No. 9***

39. The client obtained a loan from Mr. Condin in the amount of \$30,000.00. Fees of \$400.00 and daily interest of \$15.00 was charged for 4 days.
40. This client was not interviewed.

41. Attached at Tab 18 is Mr. Condin's concluding correspondence and documentation to the client.

***Client No. 10***

42. The client obtained a loan from Mr. Condin in the amount of \$67,500.00 with a flat fee of \$1,000.00 for 14 days. The client was not interviewed.
43. Attached at Tab 19 is Mr. Condin's reporting correspondence and final documentation to the client.

***Client No. 11***

44. The client obtained a loan from Mr. Condin in the amount of \$60,500.00. Fees of \$800.00 and daily interest of \$16.58 was charged for 21 days. The client was not interviewed.
45. Attached at Tab 20 is Mr. Condin's reporting correspondence and concluding documentation to the client.

***Client No. 12***

46. The clients received the loan from Mr. Condin in the amount of \$21,000.00. Mr. Condin charged fees of \$300.00 and daily interest of \$15.00 for 7 days. Both the clients and Mr. Condin were interviewed at length regarding their concerns. The investigator concluded that the clients were confused regarding the amounts of loans, requirements of their Purchase Agreements and their obligation in the process.
47. The fees charged on the loan were objectionable to the clients. As a result of their complaints, Mr. Condin refunded the loan fee and daily interest charges.
48. The investigator concluded that Mr. Condin had acted appropriately on the real estate transaction.

**VII. ACKNOWLEDGMENT**

9. In relation to Citation No. 1, Mr. Condin acknowledges that he should have, in all cases, recommended that his clients receive independent legal advice but did not do so. As a result, Mr. Condin agrees that his failure to recommend independent legal advice constitutes conduct deserving of sanction.

**VIII. DECISION AS TO CITATION**

10. The Hearing Committee accepts Mr. Condin's acknowledgement that Citation No. 1 is deserving of sanction and so finds.

11. The Hearing Committee finds that Citation No. 2 is not deserving of sanction and is dismissed.
12. The LSA evidence did not support Citations Nos. 3 and 4 and the Hearing Committee dismisses those.

#### **IX. DECISION REGARDING SANCTION**

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

#### **X. REPRIMAND**

14. In arriving at the sanction, the Hearing Committee is mindful of the purpose of the sanction is not to punish Ms. Condin but rather as a reminder that lawyers must be vigilant and maintain high professional standards. The Hearing Committee is also mindful that, as stated in *R. v. Shropshire* (1995), 102 C.C.C. (3d) 193 at paragraph 48 (S.C.C.), there is no single correct sanction.
15. Lawyers & Ethics: Professional Responsibility and Discipline, by Gavin McKenzie (at pages 26-1):

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

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

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

16. As stated in *Bolton v. Law Society*, [1994] 2 All ER 486 at 492 (C.A.), per Sir Thomas Bingham MR for the court:

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



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

17. The Hearing Committee is mindful of Mr. Condin's voluntary advice to the LSA investigator of the occasions on which he provided bridge financing and that this practice had ceased prior to any audit by the LSA.
18. Of the 12 clients referenced in the Statement of Facts, Mr. Condin advised 6 of those that they obtain financing through their own financial institutions. Of the 12, Mr. Condin did not suggest to 2 clients that they should obtain financing through their own financial institutions. Of the 12 clients, 3 were not interviewed by staff of the LSA. In one transaction, after the clients were interviewed by the LSA investigator, he concluded that these clients were confused regarding the amounts of loans, requirements of their purchase agreements and their obligations in the process. In that instance, the clients objected to the loan fee and Mr. Condin voluntarily refunded the loan fee and daily interest charges to the clients.
19. The Hearing Committee finds that Mr. Condin did not, in any way, act dishonestly. However, he ought to have in each of the investigated incidences insisted that his clients seek independent legal advice. While the Hearing Committee finds that Mr. Condin, in all instances, believed that he was acting in the best interests of his client in assisting them with bridge loans, the Hearing Committee is aware that lawyers are held to a very high standard and as such, in this instance, Mr. Condin experienced a lapse in not insisting that his clients seek independent legal advice and if they refused to do so, secure such refusal in writing.
20. The Hearing Committee is impressed that in all instances, Mr. Condin was acting in the best interest of his clients to assist them in not having their real estate deals collapse and certainly in 6 instances, where his clients were told by him to seek financing from their own financial institutions such financing requests were denied and it appears the only course of action for these clients was to accept bridge financing from Mr. Condin. As a lawyer, Mr. Condin is not conversant in the lending of monies and this ignorance resulted in certain clients being charged interest in excess of what they might have secured at a financial institution. However, in the circumstances of all the evidence heard and documentation reviewed by the Hearing Committee, such is not deserving of sanction.
21. In summary, as readily acknowledged by Mr. Condin, while no clients of his complained to the LSA, he exhibited a lapse of judgment in not advising his clients to seek independent advice prior to the provision by him of bridge loans. Had Mr. Condin not provided bridge loans, the Hearing Committee finds that it is highly probable these clients would have suffered a collapse of their real estate contracts with possible financial consequences to them.

## **XI. COSTS**

22. At the close of the Hearing, the LSA produced an estimated Statement of Costs which totaled \$4,156.69, entered as *Exhibit 7*. Mr. Condin made no submissions concerning the

costs or the amounts. The Hearing Committee finds the costs of the items reasonable and orders Mr. Condin to pay one quarter of the costs as finalized by the LSA and forwarded to Mr. Condin by registered mail or served personally.

**XII. ANCILLARY ORDERS**

23. The Hearing Committee directs that any documents that comes from or were entered as Exhibits during the Hearing are a matter of public record and are available to the public.
24. The Profession shall not be notified of the reprimand.
25. There shall not be a referral to the Attorney General.

DATED this 23rd day of July, 2010.

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

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**ANTHONY G. YOUNG, Q.C.**  
**Member**

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**MIRIAM CAREY**  
**Member**