

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

**AND**

**IN THE MATTER OF A HEARING REGARDING**

**THE CONDUCT OF RYAN MCCALL,**

**A MEMBER OF THE LAW SOCIETY**

**Hearing Committee**

**Chair: Walter J. Pavlic, Q.C.**  
**Member: Anthony Young, Q.C.**  
**Member: Robert Dunster**

**APPEARANCES:**

**L. MACLEAN - LAW SOCIETY**

**R. MCCALL - MEMBER**

**HEARING REPORT:**

1. This matter proceeded to hearing on September 5, 2014 before a Hearing Committee consisting of W.J. Pavlic, Q.C. Chair, Anthony Young, Q.C., and Robert Dunster. The Law Society was represented by Lois MacLean and the member represented himself.

**Jurisdiction**

2. The Law Society established jurisdiction in this matter through the entry of the following exhibits: Exhibit J-1 being the Notice of Appointment of a Hearing Committee, Exhibit J-2 Notice to the Solicitor, Exhibit J-3 Notice to Attend, Exhibit J-4 Certificate of Status and Exhibit J-5 Certificate of Exercise of Discretion re Private Hearing Application Notices.

**Citations:**

3. On the 24<sup>th</sup> of June 2014, the conduct committee panel directed the following citations:
  1. It is alleged that you failed to serve your client A.B. and that your conduct is conduct deserving of sanction.
  2. It is alleged that you misled or attempted to mislead your client A.B. and that such conduct is conduct deserving of sanction.
4. At the hearing, the parties jointly agreed that citation (2) should be amended as follows
  2. It is alleged that you failed to provide accurate and/or complete information to your client A.B. concerning the status of a filing of a Statement of Claim on behalf of your client A.B. and such conduct is conduct deserving of sanction.

5. The Hearing Committee was presented with an Admitted Statement of Facts and Admission of Conduct Deserving of Sanction which is attached as Appendix "A" to this document.

### **Factual Background**

6. In March of 2009, Mr. McCall met with Mr. B. At that time they discussed commencing an action against another lawyer who had missed a limitation date. Following that meeting, Mr. McCall did not take any steps to pursue Mr. B.'s claim. Mr. McCall admits that it was his intention to file a Statement of Claim however due to his heavy workload, he failed to do so. Mr. McCall subsequently contacted Mr. B. and advised Mr. McCall that a Statement of Claim had been prepared and was going to be served. This was untrue as at no time had a Statement of Claim been prepared by Mr. McCall.
7. It was submitted that an appropriate sanction in this case would be a reprimand and payment of the costs of the hearing. The Hearing Committee accepted that submission and the Chair then issued a reprimand. The Chair identified that Mr. McCall's misconduct negatively impacted not only his personal reputation but also the reputation of the legal profession. The Chair identified that it was no excuse that Mr. McCall had a heavy workload and identified that Mr. McCall's obligations extended beyond that workload and beyond any personal inconvenience. The Chair also noted that the Practice Review Committee had identified that Mr. McCall had taken steps to improve his practice. The Chair concluded by stating that such a reprimand is a public expression of the profession's denunciation of Mr. McCall's conduct and is a very serious matter as the reprimand will stay on Mr. McCall's file for the remainder of his career.
8. Mr. McCall was then ordered to pay costs of \$4,432.03. These costs are to be paid on or before March 5, 2015 failing which Mr. McCall is immediately suspended and stands suspended until payment is made.

Dated this 07<sup>th</sup> day of April, 2015.

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**Walter J. Pavlic, Q.C. – Bencher and Member  
Hearing Committee  
The Law Society of Alberta**

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**Anthony Young, Q.C. – Bencher and Member  
Hearing Committee  
The Law Society of Alberta**

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**Robert Dunster – Lay Bencher and Member  
Hearing Committee  
The Law Society of Alberta**

## Appendix A

In the Matter of the *Legal Profession Act*  
**And In the Matter of A Hearing Regarding**  
**The Conduct of Ryan McCall**  
A Member of the Law Society of Alberta  
Law Society Hearing file: #HE20120036

### ADMITTED STATEMENT OF FACTS

#### And ADMISSION OF CONDUCT DESERVING OF SANCTION

1. Ryan McCall is, and was at all times relevant to this proceeding, a member of the Law Society of Alberta, having been admitted in 2005.
2. Mr. McCall was an associate at Litwiniuk & Company in Calgary, Alberta from September 2005 until September 2009. He is currently working as a sole practitioner.
3. Ryan McCall faces two citations, as follows:
  1. It is alleged that you failed to serve your client A.B. and that such conduct is conduct deserving of sanction.
  2. It is alleged that you misled or attempted to mislead your client A.B., and that such conduct is conduct deserving of sanction.
4. The complainant, Mr. A.B., was a client of Litwiniuk & Company.
5. Mr. B. met with Ryan McCall in March of 2009, at which time they discussed a potential action against another lawyer, Mark Freeman, who had allegedly missed a limitation date.
6. Mr. McCall did not take any steps to pursue Mr. B.'s claim against Mr. Freeman.
7. In November of 2009, Mr. B. was advised by a member of Litwiniuk & Company that Mr. McCall was no longer with the firm.
8. Mr. B. asked Litwiniuk & Company to continue with the litigation against Mr. Freeman.
9. On November 19, 2009, Mr. B. filed a complaint with the Law Society of Alberta (*Exhibit 6*) asserting that Mr. McCall agreed to sue Mr. Freeman on Mr. B.'s behalf and to prepare and file a Statement of Claim for that purpose.

10. On January 27, 2010, a Complaint Resolution Officer with the Law Society of Alberta contacted Mr. McCall and requested a written response to the complaint.
11. On February 22, 2010, Mr. McCall wrote to the Complaint Resolution Officer providing his written response (*Exhibit 7*).
12. In that response, Mr. McCall acknowledges that he met with Mr. B. He indicates that he discussed possible contingency rates for pursuing the claim against Mark Freeman. His letter includes the following statement:

I did mention the possibility of opening a file to Todd Litwiniuk once in passing, however I was never able to speak to Larry Litwiniuk personally about Mr. B.'s matter and as such a contingency fee agreement was never signed with Mr. B. and a file was never opened. I do remember speaking to Mr. B. via telephone, in approximately June 2009 and informing him I had spoke (sic) with Todd Litwiniuk briefly and it was my intention to file a Statement of Claim and serve it on his previous lawyer, however due to heavy workload, I was never able to get around to opening Mr. B.'s file and filing his claim.

13. On March 25<sup>th</sup>, 2010, Mr. McCall confirmed the contents of his previous response.
14. Mr. McCall's response was provided to Mr. B. who provided a letter to the Law Society on April 16, 2010 (*Exhibit 9*), which states in part:

In our telephone conversation in June of 2009 he did not tell me that he had spoken to Todd Litwiniuk but rather that everything was fine and he was going to serve Mark Freeman with a statement of claim, which he had made already.

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15. Mr. McCall admits all of the facts set out in paragraphs 1 through 14 above.
  16. Mr. McCall disputes the allegation in Citation #2 that he misled or attempted to mislead his client with respect to this matter, but he acknowledges that he failed to provide accurate and/or complete information to Mr. B. concerning the status of the filing of the Statement of Claim.
  17. The parties jointly agree and respectfully submit that Citation #2 should be amended as follows:
    2. It is alleged that you failed to provide accurate and/or complete information to your client A.B. concerning the status of filing a Statement of Claim on behalf of your client A.B. and that such conduct is conduct deserving of sanction.

I acknowledge that the facts as set out above constitute conduct deserving of sanction within the meaning of the *Legal Profession Act of Alberta*, with respect to Citation #1 and Citation #2 subject to the proposed amendment to Citation #2.

This Agreement is dated the 25<sup>th</sup> day of June, 2014.

“Witness Signature”

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Witness

“Ryan McCall”

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Ryan McCall