

THE LAW SOCIETY OF ALBERTA

Resignation Committee Report

IN THE MATTER OF the *Legal Profession Act*, RSA 2000, c.L-8
and
IN THE MATTER OF a Resignation Application made by
Michael J. Bondar
a Member of the Law Society of Alberta.

I. INTRODUCTION

1. Michael J. Bondar, (the "Member") applies for resignation pursuant to Section 61 of the *Legal Profession Act*, RSA 2000 c.L-8 (the "LPA"). As the Member was the subject of a formal review under Section 53 of the LPA, a resignation committee (the "Committee") was constituted to hear the application.
2. The Committee was comprised of Stephen G. Raby, Q.C., Chair, Douglas Mah, Q.C. and Amal Umar, Lay Benchler. The Law Society of Alberta ("LSA") was represented by Nicholas Maggisano. The Member was represented by Patrick Peacock, Q.C.

II. DISPOSITION

3. The Committee determined to accept the resignation of the Member effective February 28, 2015. Pursuant to Section 61 of the LPA, such a resignation is tantamount to a disbarment.

III. JURISDICTION

4. Jurisdiction is dependent on the conduct of the Member being the subject matter of proceedings under Part 3 of the LPA and the appointment of a resignation committee under Section 61(5) of the LPA.
5. Neither counsel for the LSA nor counsel for the Member had any objection to the constitution of the Committee and the Committee accordingly found that it had jurisdiction to hear the resignation application of the Member established through the introduction of Exhibits 1 through 5, consisting of the following:
 - (a) Letter of Appointment of the Resignation Committee signed by the President of the LSA dated January 15, 2015 (Exhibit 1);
 - (b) List of outstanding formal citations against the Member (Exhibit 2);
 - (c) Confirmation that Private Hearing Applications have been sent to the Member, complainants and interested parties (Exhibit 3);
 - (d) Certificate of Status dated January 23, 2015 certifying that the Member is currently a suspended member of the LSA (Exhibit 4); and
 - (e) Confirmation of the Member's disciplinary record with the LSA dated January 14, 2015 evidencing one finding of conduct deserving sanction (Exhibit 5).

IV. EXHIBITS

6. The Committee had been previously provided with an Exhibit Book with the consent of counsel containing Exhibits 1 through 7 inclusive. In this Exhibit Book, the Member's Admitted Statement of Facts at Exhibit 6 Tab (d) was unexecuted. At the Hearing, the executed Admitted Statement of Facts was tendered.
7. Exhibits 1 through 7 were entered into the record with the consent of the parties. Exhibits heretofore not mentioned were the following:

Exhibit 6 - Member's Materials

- Tab A - Application for Resignation;
- Tab B - Statutory Declaration of the Member;
- Tab C - Undertaking of the Member;
- Tab D - Admitted Statement of Facts;
- Tab E – Letter to and from VE; and

Exhibit 7 - Estimated Statement of Costs.

V. APPLICATION AND FACTS

8. The Member applied to resign pursuant to Section 61 of the LPA. He was admitted to the Bar of the Province of Alberta on May 21, 1976.
9. The Statutory Declaration of the Member at Exhibit 6 Tab B, the Undertaking of the Member at Exhibit 6 Tab C and Admitted Statement of Facts at Exhibit 6 Tab D were tendered in support of the application.
10. The Admitted Statement of Facts together with Exhibit 2 confirm that the Member was currently facing 32 separate citations. The Admitted Statement of Facts also confirm that the Member had engaged in practice in violation of restrictions placed upon him pursuant to an interim suspension application on November 4, 2010. Counsel for the LSA indicated that absent this application for resignation, the LSA would have been making a further interim suspension application based upon these admitted breaches.
11. Counsel for the Member, notwithstanding the number and severity of the existing citations and the admitted breach of practice restrictions, requested that the resignation be effective February 28, 2015, based upon the Member's Undertaking at Exhibit 6, Tab C, and in particular Section 6 of that Undertaking wherein the Member undertook that he would not practise law between the date of the granting of the resignation application and February 28, 2015, with the sole exception that, assuming his status is reinstated to active/practising, he may prepare for and conduct a hearing until its conclusion on behalf of a client, V.E., scheduled for February 23, 2015, but on the basis that if the hearing is adjourned, continues beyond February 28, 2015 or is otherwise delayed, this would in no way permit the Member to practise law in relation of the client's hearing or in any other manner beyond February 28, 2015.

12. Of the 32 citations, 26 arise in respect of mortgage fraud transactions where the Member acted for the fraudster vendor, the complicit straw purchaser and the defrauded mortgage lender where the mortgage lender was induced to advance funds beyond the value of the property placed as security. With respect to most of these citations, the Member admitted that he was in a conflict of interest, that he failed to serve his clients in these transactions, that he breached the instructions of his lender clients and that he assisted the fraudulent vendor in an improper purpose. Two citations involve failure to meet financial obligations, failure to promptly and completely respond to the Law Society, and failure to be candid and act in good faith in dealings with complainants, all of which are admitted. One citation relates to false representations and false affidavits which the Member denies. One citation relates to unauthorized taking of trust funds which the Member denies. One citation relates to failing to respond to another lawyer in a timely fashion which is admitted.
13. The Member acknowledged at the Hearing that he was aware that a resignation under Section 61 of the LPA is tantamount to a disbarment.
14. The Member has undertaken and agreed with the LSA to:
 - (a) co-operate with the LSA in the future in respect to any claim made against the Member or the Assurance Fund;
 - (b) pay to the LSA, on demand, the amount of claims paid on his behalf by the Law Society Assurance Fund or any deductible with respect to any claim paid on his behalf by the LSA's insurer; and
 - (c) not to reapply to become a member of the LSA or any other law society.
15. The Member's counsel tendered into evidence a letter that his counsel had written to V.E., the client of the Member to which the February 23, 2015 hearing relates. That letter, dated January 6, 2015, properly discloses to the client the nature of the resignation proceedings and the effect thereof. The Member's counsel also tendered into evidence an e-mail response from the client indicating that the client strongly desired to have the Member continue to represent him and did not wish any other counsel to represent him in respect of the hearing. The letter and e-mail response were entered as Exhibit 6, Tab E.

VI. DECISION AND REASONS

16. The issue to be determined by the Committee is whether it is in the best interest of the public to permit the Member to resign prior to resolution of the pending conduct matters and notwithstanding the severity of the citations facing the Member. In its assessment, the Committee is guided by considerations of public interest, which include maintaining the confidence of the public in the legal profession.
17. Counsel for both the LSA and the Member confirmed that it was a joint submission by them that the resignation application should be granted.
18. Counsel in their joint submission urged the Committee to accept the resignation application as being in the public interest for the following reasons:

- (a) to avoid a lengthy hearing into the citations. It is recognized that the majority of the citations relate to mortgage fraud issues. It was clear to the Committee that the investigation into the mortgage fraud citations was lengthy and complicated based on the portion of the estimated costs attributed to such investigation, and accordingly, that the hearing would likely be lengthy and complicated;
- (b) to avoid issuing new citations in relation to the Member's breach of the restrictions imposed by the interim suspension panel;
- (c) to avoid inconveniencing witnesses; and
- (d) to bring the conduct proceedings to a prompt conclusion.

The acceptance of the application is tantamount to a disbarment and the Member will no longer be entitled to practice law after February 28, 2015. The Committee concluded that this was in the public interest and that there would be little to be gained by forcing the matter to a hearing.

- 19. There were two matters that gave the Committee pause in its deliberations as to whether or not to accept the resignation application.
- 20. The first relates to some of the contents of the Admitted Statement of Facts. The Committee questioned whether certain of the statements in the admission were accurate. For example, at paragraph 131, the Member acknowledged that he had made many mistakes and failed to properly represent his real estate clients and lending clients, but at no time did he knowingly act improperly. This statement appears to be in clear contravention of the admission that the Member had knowingly taken on real estate clients after the interim suspension application and in direct contravention to the restrictions imposed upon him at that application. Nonetheless, the Committee recognized that this was not an agreed statement of facts, but rather only an admission of the facts by the Member and that the facts that the Member did admit were sufficient to support the resignation application.
- 21. The second matter relates to having the resignation effective at a future point in time, namely February 28, 2015, but subject to very tight restrictions on the part of the Member. Firstly he is required to put himself in a position where he is once again an active/practicing member of the LSA and his only client representation that could occur after the date of the resignation hearing to and including February 28, 2015 was in respect of his client, V.E., at the February 23, 2015 hearing as referenced above. It seemed clear that V.E. desired the Member to represent him at this hearing and that if the Member was not allowed to do so, it would have placed V.E. in a difficult position in that he would have had to have retained new counsel to deal with the hearing, that counsel would have to have brought himself or herself up to speed in respect of the matter and there was a possibility that the hearing would have to be adjourned to allow such new counsel sufficient opportunity to prepare for the hearing. The Committee was cognisant of the fact that the Member had previously shown that he was capable of ignoring restrictions placed on his practice in accordance with the Member's Admitted Statement of Facts, but based upon his counsel's advice that he had no other active files at present, the Committee was prepared to accept the resignation application such that the resignation is effective February 28, 2015, subject to the restrictions in effect pursuant to the Member's undertaking.

VII. FORMAL ORDERS

22. The Committee makes the following orders:
- (a) the Admitted Statement of Facts is satisfactory to the Committee; and
 - (b) the application to resign pursuant to Section 61 of the LPA is accepted, effective February 28, 2015, which resignation is tantamount to disbarment.
23. The Committee also makes the following ancillary orders:
- (a) the Member shall surrender his certificate of enrolment to the LSA if the Member is in possession of same;
 - (b) the Member shall pay the costs of this hearing in the estimated amount of \$194,921.41. The full amount of these costs are to be paid prior to any application by the Member to vary or relieve him of his undertaking not to apply for readmission to the LSA or any other law society;
 - (c) notice of this decision will be published in accordance with the publishing and hearing outcomes guideline with the names of complainants, clients, third parties or other employees to be redacted on the basis that the production of same would breach solicitor/client privilege;
 - (d) the Member's roll will reflect the resignation of the Member in the face of discipline pursuant to Section 61 of the LPA and shall reflect the outstanding citations facing the Member at the time of resignation; and
 - (e) there will be no referral to the Attorney General of Alberta.

DATED January 23, 2015 at Calgary, Alberta.

Stephen G. Raby, Q.C.
(Chairperson)

Douglas Mah, Q.C.

Amal Umar, Lay Bencher