

THE LAW SOCIETY OF ALBERTA
RESIGNATION COMMITTEE REPORT

IN THE MATTER OF SECTION 32
OF THE *LEGAL PROFESSION ACT*

IN THE MATTER OF A RESIGNATION APPLICATION BY
JOHN CONDIN

The Panel

Neena Ahluwalia, QC - Chair
Robert Harvie, QC - Member
Amal Umar - Member

Counsel Appearances

Rocky Kravetsky - for the Law Society of Alberta (LSA)
James Rooney, QC - for John Condin

Date and Place of Hearing

June 23, 2014, Calgary, Alberta

REPORT OF THE RESIGNATION COMMITTEE

I. INTRODUCTION

1. John Condin applies to resign from the LSA pursuant to Section 32 of the *Legal Profession Act (LPA)*. Because Mr. Condin's conduct is already the subject of formal review under Section 53 of the *LPA*, this Resignation Committee was constituted to hear this application.
2. At the conclusion of the hearing the Committee allowed the application with oral reasons and advised that a decision would follow. This is the written decision.

II. PRELIMINARY MATTERS/EXHIBITS

3. At the time of the hearing, Mr. Condin was an inactive, non-practicing member of the LSA.
4. There was no objection to the composition of the Committee. The Committee determined that it had jurisdiction to proceed with the application.

5. Mr. Condin filed the following materials in support of his application:
 - Exhibit 6(A) Application for Resignation
 - Exhibit 6(B) Statutory Declaration
 - Exhibit 6(C) Undertaking
 - Exhibit 6(D) Statement of Facts
6. The Committee understood that the LSA was not opposed to Mr. Condin's application and, in fact, urged the Committee to accept his resignation.
7. Mr. Condin was admitted to the LSA in 1974. He is 69 years old. In August of 2013, he retired from the practice of law. He does not intend to return to practice.

III. STATEMENT OF FACTS

8. Exhibit 6(D) discloses the conduct of Mr. Condin with respect to the outstanding discipline matters before the LSA.
9. At the time of the application, Mr. Condin had a discipline record. There were 6 prior findings of guilt of conduct deserving of sanction. On all of those findings, Mr. Condin was reprimanded, ordered to pay a fine and costs associated with the hearings. With the respect to the last finding of guilt in February, 2012, he was also directed to the Practice Review Committee for a general review and assessment of his practice.
10. He was facing 10 citations directed by the Conduct Committee resulting from complaints of 3 individuals. These citations included (amongst other matters) assisting a client in an improper purpose, failing to respond to the LSA in a timely fashion, failing to honour an undertaking, failing to conscientiously serve a client and acting while in a conflict.
11. The LSA was also investigating a further complaint. The allegations with respect to that complaint include permitting a client to swear statutory declarations that he knew or ought to have known were false, failing to serve clients, failing to respond to clients and failing to protect the interests of clients.
12. With respect to the first complaint and ensuing citations, Mr. Condin admitted that he was acting for 3 individuals and a corporation associated with them who entered into an agreement to purchase real property.

13. He also acted for M.A. who had been recruited by the first three individuals as straw purchasers. Mr. Condin also acted for the mortgage lender.
14. The real property was “flipped” to show an increase of value of over \$100,000 and a mortgage was secured by a high ratio, *National Housing Act* insured mortgage. The original owner was paid the agreed purchase price and the balance of funds were sent to the straw buyer.
15. Mr. Condin did not advise the straw buyer of the true nature of the transaction or of his obligations under the mortgage. He did not advise the lender of the funds of his conflict of interest and did not obtain informed consent of all parties.
16. Mr. Condin admits that by failing to advise his clients, he unintentionally assisted one of his clients in an improper purpose (defrauding the money lender and the straw buyer).
17. Mr. Condin admits that he failed to recognize the indicators of mortgage fraud such as a “skip” transaction, a significant increase in price for no apparent reason, no money was paid by the straw buyer and instructions coming from the fraudsters only. Thusly, he failed to conscientiously serve the straw buyer and the mortgage lender.
18. Mr. Condin failed to respond to the LSA in its investigation of those complaints.
19. With respect to the second set of citations, Mr. Condin was acting for the vendor in a real estate transaction. Another lawyer was acting for the purchaser.
20. Mr. Condin gave the other lawyer an undertaking with respect to a Real Property Report with Compliance. Despite numerous requests from the other lawyer, no steps were taken to comply for two years. The undertaking was finally satisfied. Mr. Condin did not respond to correspondence from the other lawyer, nor did he respond to the LSA’s request for information regarding this complaint.

21. With respect to the last set of citations, Mr. Condin acted for a vendor in a real estate transaction. Another lawyer acted for the purchaser. The transaction was to close in July, 2011. Mr. Condin gave an undertaking to obtain a Certificate of Title confirming discharges of all Non-Permitted Registrations. A complaint that the undertaking was not complied with was registered with the LSA nearly a year later. The LSA sent letters to Mr. Condin that remain unanswered. The undertaking was completed May, 2013.
22. Finally, with respect to the outstanding investigation, there are concerns with 13 instances identified with mortgage fraud.
23. One mortgage lender had an employee who was taking payments from the fraudsters that Mr. Condon was acting for. The employee accepted and processed fraudulent mortgage documents.
24. Mr. Condin failed to recognize signs of mortgage fraud. He failed to follow the instructions of the mortgage lender. For instance, he failed to inform them of “skip” transfers, thereby not informing them that the vendor was not the registered owner when the purchase contract was executed. He failed to inform them of “special circumstances” including deposits and balances to close were not paid by the borrowers through his trust account.
25. Mr. Condin took statutory declarations from clients that he ought to have known were false.
26. The ultimate loss to the various lenders was in excess of \$1.85 million.
27. Mr. Condin admits that his conduct described in the Statement of Facts constitutes conduct deserving of sanction as described in the 10 citations he was facing. Further, he admits that his conduct regarding the allegations that are currently being investigated also constitute conduct deserving of sanction.
28. The Statement of Facts is in a form acceptable to the Committee.

IV. ANALYSIS

29. Mr. Condin is 69 years old. He has been a practicing lawyer for nearly 40 years. In August of 2013, he informed the LSA that he was changing his status to inactive, non-practicing. His statutory declaration indicates that all trust funds and client property for which he was responsible have been accounted for and paid over or delivered to the persons entitled.

30. There are a number of claims against him in his professional capacity and in respect to his practice.
31. The amount of the losses as a result of Mr. Condin's actions are staggering.
32. There is no evidence that Mr. Condin benefitted personally from the fraudulent transactions beyond legal fees. He was candid and cooperative in the investigation.
33. Section 32 of the *LPA* does not contemplate a deemed disbarment as Section 61 does.
34. The issue to be determined by the Committee is whether it is in the best interest of the public to permit Mr. Condin to resign prior to the hearing of his pending conduct matters. The public interest includes maintaining confidence of the public in the legal profession and its disciplinary process. The Committee must also consider whether its decision will deter other members of the profession from similar conduct.
35. The Law Society is not opposed to the application and Mr. Kravetsky characterized its position as a joint recommendation.
36. We are urged to consider that if this matter was to go further, the LSA would incur significant costs in further investigation and prosecution. The outcome would not be inevitable. Mr. Kravetsky candidly admitted that the witnesses for the LSA in its prosecution of Mr. Condin are not attractive and given the number of years ago that the events occurred, may not even be available.
37. Both counsel also characterized Mr. Condin's actions as a failure to abide by the Rules of the Law Society. They urge the committee to accept their submissions that Mr. Condin did not intend to defraud the money lenders and did not benefit (other than fees paid). His failure to abide by the Rules led to unintended consequences.
38. Not all conduct matters need to proceed to hearing if the public interest is served through alternative routes. It is clear to this Committee that Mr. Condin should not be practicing law. His conduct on these and prior matters demonstrate that he is not serving the public competently. It is clear that by his resignation application, he will not be practicing law again and that the public will be protected.

V. DECISION

39. This Resignation Committee has before it, yet another member of the Law Society, that upon the Agreed Statement of Facts, submissions of counsel and the member, effectively abdicated a portion of his practice. By his inattention, reliance of unsupervised staff and the fraud of others, devastating losses were occasioned on unsuspecting members of the public.
40. What causes this Committee even more dismay is that it appears that this particular member has been before the Law Society, not only before these actions, but at the times these transactions were taking place. It causes us no small discomfort to know that the LSA's interventions (or lack thereof) had no effect on how these matters were handled by Mr. Condin.
41. It has been suggested that if the Rules of the Law Society had been properly heeded by Mr. Condin, these matters would not be before us. How then does the Law Society respond to this failure?
42. It has also been suggested that the resignation application under Section 32 would serve the interests of both the Law Society and the public because it includes an undertaking to not reapply for membership again. This protects the members of the public from Mr. Condin. This is in the interest of the public.
43. The other question is this resignation a general deterrent to other members of our Society? This is more difficult for this Committee. We are not sure that this would serve as a deterrence. Mr. Condin, resigning at the age of 69, would appear to have had all the benefits of membership without the responsibilities.
44. However, other factors must be considered. If this matter were to continue to hearing, significant difficulties in terms of witnesses, time and costs may not resolve this matter.
45. Ultimately, our decision is determined by the fact that this is a joint application. We have given deference to the joint agreement reached by Counsel and appreciate the various considerations that were part of the negotiation.
46. The Committee allows Mr. Condin's application to resign pursuant to Section 32 of the *LPA*.

47. The estimated Statement of Costs was marked as Exhibit 7. The Committee directs that Mr. Condin pay the first three estimated costs (costs of the June 23, 2014 application for resignation) upon receipt of the costs order and that the other costs be paid prior to any application to be relieved of his undertaking.

48. Exhibits shall be available to the public with the redaction of client names to protect Solicitor Client privilege.

DATED THIS 27th DAY of OCTOBER, 2014

Neena Ahluwalia, QC - Chair

Robert Harvie, QC - Member

Amal Umar - Member