



## THE LAW SOCIETY OF ALBERTA HEARING COMMITTEE REPORT

IN THE MATTER OF THE *Legal Profession Act*, and  
in the matter of a Hearing regarding  
the conduct of FRANCOISE BELZIL  
a Member of The Law Society of Alberta

### INTRODUCTION

1. On October 14 - 16, 2008, a Hearing Committee of the Law Society of Alberta (LSA) convened at the Law Society offices in Edmonton to inquire into the conduct of the Member, Francoise Belzil. The Committee was comprised of Carsten Jensen, Q.C., Chair, Shirish Chotalia, Q.C. and Wayne Jacques. The LSA was represented by Janet Dixon, Q.C. The Member was represented by her counsel, Donald R. Cranston, Q.C. The Member was present throughout the hearing.

### JURISDICTION AND PRELIMINARY MATTERS

2. Exhibits 1-4, consisting of the Letter of Appointment of the Hearing Committee, the Notice to Solicitor, the Notice to Attend, and the Certificate of Status of the Member, established the jurisdiction of the Hearing Committee. The Certificate of Exercise of Discretion was entered as Exhibit 5. These exhibits were entered into evidence by consent.
3. There was no objection by the Member's counsel or counsel for the LSA regarding the constitution of the Hearing Committee.
4. The entire Hearing was conducted in public. The Hearing Committee made an order excluding witnesses.

### BACKGROUND AND CITATIONS

5. This matter arises from the Member's representation of D...("D...") starting in October of 2001, and her involvement with the complainant BB who was a shareholder of D... and at various times held himself out as its Chairman and Chief Operating Officer.
6. D... was in the business of developing and marketing hardware, software and internet based applications relevant to realtors, and it became interested in a product developed by

an entity referred to as V.... D... came into possession of the source code for V...’s product, and began expending resources to further develop that product, but later became concerned that there may be competing claims to that source code, including potential claims by another entity, L... (“L...”). The Member was retained to deal with these concerns and in particular to clear encumbrances or deal with other claims to the software. The evidence made it clear that this retainer was within the Member’s usual area of practice. Various strategies were considered by the Member with her client for dealing with competing claims, including dealing with a secured creditor.

7. The Member resigned from further representation of D... by email directed to BB on February 5, 2002. It is clear that the Member had some difficulties in her dealings with BB, which alternated between friendly and strained. The Member’s evidence is that BB was very difficult to deal with.
8. After the Member resigned from further representation of D..., she had some involvement with DD, a computer programmer for D.... She also had some ongoing contact with her friend TP, who was previously involved with D... as its president, and who (together with LH and DD) became involved in a new business called L... (“L...”). BB alleges that L... became a competitor to D....
9. In any event, the citations arise from the Member’s conduct after February 5, 2002. Specifically, it is alleged that the Member acted contrary to the interests of D..., and that she disclosed confidential information of D... after her retainer ended. The citations against the Member, with particulars as provided by the LSA, are as follows:

***Citation 1: IT IS ALLEGED that having previously acted for Company A, you engaged in conduct which was a conflict of interest, and that such conduct is conduct deserving of sanction.***

*Particulars of the foregoing are as follows:*

*Having acted previously for D..., you engaged in conduct which was a conflict of interest regarding D... by:*

- (a) giving legal advice to DD with regards to his commencing a legal action against D...;
- (b) giving legal advice to DD, LH, TP or Bieganek after [your] initial referral of DD to Bieganek as follows:
  - (i) advice provided at meetings in respect of the legal action against D...;
  - (ii) providing case law to TP which could assist in the legal action against D...;
  - (iii) preparation of documents relating to the acquisition of property which D... had claims to;
- (c) representing L... in connection with the action by L... against L...;

**Citation 2: IT IS ALLEGED that you disclosed confidential Company A information to B, C, D and E, and that such conduct is conduct deserving of sanction.**

*Particulars of the foregoing are as follows:*

*You disclosed confidential D... information to DD, LH, TP and Bieganek by:*

- (a) disclosing information at meetings;*
- (b) providing copies of [your] Statements of Account rendered to D... to TP and Bieganek;*
- (c) preparing documents using D... information.*

10. Both of these citations were contested by the Member.

## **SUMMARY OF RESULT**

11. On that basis of the evidence received at the hearing, and for the reasons outlined below, the Hearing Committee finds that citations 1 and 2 are both proven and the Member is guilty of conduct deserving of sanction with respect those citations. The Hearing Committee will reconvene to hear evidence and argument with respect to the question of sanction on both citations.

## **SUMMARY OF EVIDENCE AND FINDINGS OF FACT**

- 12. As noted above, Exhibits 1-5 (the jurisdictional exhibits) were entered into evidence by consent.
- 13. Exhibits 6- 51 were entered into evidence by consent or through witnesses during the course of the proceedings.
- 14. The Hearing Committee heard oral evidence from the complainant BB, as well as DD, the Member and TP. The Hearing Committee also heard evidence from another lawyer involved in these matters, Darren R. Bieganek.
- 15. In considering the evidence, the Hearing Committee was mindful of the background of competing claims, civil litigation, hostilities and shifting allegiances among some of the witnesses.
- 16. At the conclusion of the evidence of the Member, the Hearing Committee heard argument as to whether the conduct of the Member with respect to Citations 1 and 2 is conduct deserving of sanction. The Hearing Committee then adjourned the hearing on the basis that it would provide written reasons with respect to the Member's conduct regarding Citations 1 and 2, and specifically whether that conduct was conduct deserving of sanction.

## **I. The Conflict of Interest Citation**

### **(a) Did the Member act in a Conflict of Interest by Giving Legal Advice to DD Regarding an Action Against D...?**

17. After the Member ceased acting for D..., she was contacted by DD, a software programmer who had contracted to D..., and who claimed he was owed a significant amount of money from D.... DD was concerned about collecting these funds as he was told by TP that there was no money left in the company. TP suggested that DD contact the Member to assist him.
18. When DD contacted the Member, his evidence is that the Member suggested that he retain Mr. Bieganek. DD's evidence was that the Member was agitated with BB, and said unflattering things about him, and she then referred DD to Mr. Bieganek and said that Mr. Bieganek would advise him what to do.
19. The Member's evidence was that she told DD, in this telephone call, to contact Mr. Bieganek for legal advice. Her evidence is that she said nothing else during this call.

### **(b) Did the Member act in a Conflict of Interest by Giving Legal Advice to DD or others after Referring DD to Bieganek?**

20. Subsequent to the telephone call between the Member and DD, the Member attended at one or more informal meetings with DD and others where the advice provided by Mr. Bieganek was discussed. Mr. Bieganek had advised DD to petition D... into bankruptcy.
21. DD's recollection is that TP attended the initial appointment between DD and Mr. Bieganek. He recalls three informal meetings with the Member following his discussions with Mr. Bieganek, and he recalls at least two of those informal meetings taking place in a pub. DD recalls the Member expressing some surprise that a bankruptcy was suggested, and she discussed options with DD. DD recalls that the Member did support the bankruptcy option, and in response to a suggestion that other D... bills be used to support the petition, she agreed to provide her own unpaid statement of account for legal services rendered. DD understood from these informal discussions with the Member that more unpaid bills would strengthen the petition.
22. In general terms, DD was confident in the bankruptcy approach because he had two lawyers giving him the same direction. DD understood that the Member was a friend of TP, and that she had some animosity towards BB, and he recalls that she was unflattering towards BB in their various discussions.
23. The Member's evidence was that she did attend two informal pub discussions with her friend TP regarding D... in this timeframe, and that DD was present. She recalls DD being nervous about the process, which she described in general terms with specific reference to the D... situation. The Member is adamant that she provided no legal advice during these meetings, and in the second meeting she described herself as having been a passive listener.

24. TP's evidence was that he did refer DD to the Member after she had ceased acting for D.... He understood that the Member declined to represent DD, and that she had referred him to Mr. Bieganek. He also acknowledged attending at least the first meeting between DD and Mr. Bieganek. TP did not specifically recall the informal pub meetings with DD and the Member. He did acknowledge that he would have a drink with the Member from time to time and also that he would drop by her office from time to time.
25. The Hearing Committee concludes that there was at least one, and there were probably more informal meetings in which the Member participated, involving TP and DD, where the advice provided by Mr. Bieganek was discussed. The Hearing Committee finds that the Member gave general advice to DD regarding bankruptcy processes, including examples specific to D..., and that she supported the advice provided by Mr. Bieganek.
26. On March 26, 2002 the Member's account was compromised by her firm for \$1,000, as evidenced by a handwritten notation on that account by a senior lawyer in the Member's firm. The next morning, March 27, 2002, the Member sent an abstract of a bankruptcy case to TP, who forwarded that on to DD. The case dealt with the circumstance of a bankruptcy petition where one of the debts supporting the petition was subsequently paid.
27. Counsel for the LSA asks us to note the timing of the provision of the relevant bankruptcy case to TP, and suggests that this reflects on the active role that the Member was taking adverse to the interests of her former client, D.... The Member's evidence was that the timing was coincidental, and that she sent out the case as part of her regular work in preparing an email legal newsletter, and she says she did not do it with "malice". The Member's counsel urges us to conclude that the provision of a relevant case in circumstances such as this is not conduct deserving of sanction in any event.
28. On the evening of Sunday April 21, 2002, the Member was contacted at home and asked by TP to draft certain documents relevant to V... and the assignment of a security interest in the same software previously sought by D.... These documents involved a guarantor of V... in favour of a secured creditor. It was contemplated that the guarantor would pay an amount (borrowed from TP or his company for that purpose) to the secured creditor, in exchange for a release on his guarantee and an assignment of the security, which security would then be assigned to TP's company, which would repay or forgive the loan.
29. The Member's evidence is that the information for the preparation of these documents, including the involvement and identity of the guarantor, was information provided to her by TP, and that she did not do anything in conflict with the interests of D.... In hindsight the Member acknowledges that she regrets doing this work, but denies that it is conduct deserving of sanction.
30. Counsel for the LSA asks us to find that the documents prepared by the Member on April 21, 2002 involved confidential information obtained from D..., including the identity and involvement of the guarantor, and the general strategy for acquiring control over the V... software, and this placed the Member in a conflict of interest.
31. The Hearing Committee finds, on the preponderance of evidence including our review of

the Member's D... file, that the involvement of the V... guarantor was information disclosed to her during her work for D... when D... was her client. The involvement of the guarantor was a strategy for acquiring rights to the V... software and source code, similar to the earlier strategies she had employed, and the work that she undertook on the evening of April 21, 2002 had an identical purpose to her earlier work for D..., but was work for a competitor seeking title to the same assets. The Hearing Committee notes the Member's position that the information was all provided to her again by TP, but is not persuaded that this is relevant to our determination given her prior involvement with D... and her knowledge that TP was also previously involved with D....

**(c) Did the Member act in a Conflict of Interest by representing L....?**

32. On January 30, 2003, L... commenced an action as against L..., D..., TP, LH, BB and DD. L... alleged, in its Statement of Claim, that the software held by D... and L... was, in fact, its intellectual property. By this time TP had left D... and apparently formed L... as a potential competitor.
33. The Member was contacted by TP, and she filed a Statement of Defence to the L... action on his behalf, and she filed separate Statements of Defence for LH and L....
34. The Member's conduct in accepting this retainer was described by counsel for the LSA as perplexing. When the Member filed Statements of Defence in the L... action, she was aware that D..., a former client, was a co-defendant, as was BB, who had previously provided her instructions on behalf of D.... She would have known from the pleadings that L... was at least potentially a competitor to D..., and she knew that TP had previously had a falling out with BB.
35. Further, the Statement of Defence filed by the Member on behalf of TP specifically indicated that at all times during his employment with D..., TP acted in his capacity as an employee, and he acted at all times within the scope of his authority. This is clearly a pleading which seeks to shift responsibility, if any, from TP individually to D..., being the Member's former client. This takes place in circumstances where the L... action is about title to the intellectual property underlying the business of both D... and L..., which was precisely the issue that the Member had dealt with for D... during her retainer.
36. Counsel for the Member urged the Hearing Committee to find that this was not a conflict of interest. He asked us to rely on the Member's evidence that she had been re-assured that this was a different matter from her previous retainer, and that in any event there was no formal claim over as against D....

**(d) Conflict of Interest - Conclusions**

37. In considering both of the citations in this matter, the Hearing Committee was mindful that the burden of proof throughout is on the LSA, and there is no burden of proof on the Member.

38. The Hearing Committee notes that Section 49 (1) of the *Legal Profession Act* provides as follows:

49 (1) for the purposes of this Act, any conduct of a member, arising from incompetence or otherwise, that:

(a) is incompatible with the best interests of the public or the members of the Society, or

(b) tends to harm the standing of the legal profession generally,

is conduct deserving of sanction, whether or not that conduct relates to the member's practice as a barrister and solicitor and whether or not that conduct occurs in Alberta.

39. The standard of proof in proceedings such as this is "a fair and reasonable preponderance of credible testimony...on a balance of probabilities" as outlined in *Ringrose v. College of Physicians and Surgeons of Alberta*.<sup>1</sup> There is no sliding scale standard of proof depending on the seriousness of the charges.<sup>2</sup>

40. The LSA *Code of Professional Conduct* includes Chapter 6, which deals with Conflicts of Interest.<sup>3</sup> Chapter 6, Rule 3 states:

Except with the consent of the client or approval of a court... a lawyer must not act against a former client if the lawyer has confidential information that could be used to the former client's disadvantage in the new representation.

41. The Commentary in Chapter 6 includes the following at G.3, and at C.3.2:

G.3 *General*: The term "conflict of interest" is usually employed in the sense of competing client interests; however, a personal interest, loyalty, belief or feeling of a lawyer may also clash with an interest of the client or otherwise interfere with the lawyer's professional judgment...

C.3.2 "*Confidential information*" means all information concerning a client's business, interests and affairs acquired in the course of the lawyer/client relationship (see Chapter 7, Confidentiality). A lawyer's knowledge of personal characteristics or corporate policies that are notably unusual or unique to a client will bar an adverse representation if such knowledge could potentially be used to the client's disadvantage. An example is the knowledge that a client will not under any circumstances proceed to trial or appear as a witness. However, a lawyer's awareness that a client has a characteristic common to many people (such as a general aversion to testifying) or a fairly typical corporate policy (such as a propensity to settle rather than proceed to litigation) will not generally preclude the lawyer from acting against that client...

A lawyer's duty not to use confidential information to the disadvantage of a former client continues indefinitely. However, the passage of time may mitigate

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<sup>1</sup> *Ringrose v. College of Physicians and Surgeons of Alberta*, [1978] 2 W.W.R. 534 (Alta. C.A.)

<sup>2</sup> See: *K.V. v. College of Physicians and Surgeons of Alberta* (1999), 74 Alta. L.R., (3<sup>rd</sup>) 373 (C.A.)

<sup>3</sup> The *Code of Professional Conduct* has been amended from time to time since the matters giving rise to the citations here. However, counsel have advised the Hearing Committee that those amendments do not go to the substance of the citations in this matter.

the effect of a lawyer's possession of particular confidential information, and may permit the lawyer to eventually act against a former client when the information becomes outdated or irrelevant to the point that it no longer has the potential to prejudice the former client.

42. The Courts have, of course, commented on the duty of lawyers to avoid conflicts of interest. *MacDonald Estate v. Martin*, [1990] 3 S.C.R. 1235 involved a lawyer moving from one firm to another. Sopinka J., speaking for the majority of the Supreme Court of Canada, referenced the Canadian Bar Association's *Code of Professional Conduct*, which included a commentary that:

A lawyer who has acted for a client in a matter should not thereafter act against him (or against persons who were involved in or associated with him in that matter) in the same or any related matter, or place himself in a position where he might be tempted or appear to be tempted to breach the Rule relating to Confidential Information. It is not, however, improper for the lawyer to act against a former client in a fresh and independent matter wholly unrelated to any work he has previously done for that person.

43. Sopinka J. noted that codes of conduct are designed as a guide for lawyers and can be referenced in disciplinary matters, where appropriate, as distinguished from the authority of the courts which comes from their inherent jurisdiction to remove solicitors from the record where a conflict of interest arises. In that context Sopinka J. found that the statement regarding conflicts in the Canadian Bar Association's *Code of Professional Conduct* should be accepted as an expression by the profession in Canada that it wishes to impose a very high standard on a lawyer who finds himself or herself in a position where confidential information might be used against a former client.
44. The Hearing Committee notes that the LSA *Code of Professional Conduct* similarly imposes a very high standard on lawyers in this province who find themselves in a position where confidential information might be used against a former client. This is entirely consistent with Section 49 of the *Legal Profession Act* which proscribes conduct that is incompatible with the best interests of the public or the members of the LSA, or which tends to harm the standing of the legal profession generally. The Hearing Committee emphasizes that the misuse of confidential information of a former client is clearly contrary to the best interests of the public and the members of the LSA, and also would tend to harm the standing of the legal profession generally.
45. *R. v. Neil*, [2002] S.C.J. No 72 is a case involving a conflict of interest to a current client. The Supreme Court of Canada noted that duties to existing clients go beyond avoiding an abuse of confidential information, and extend to a broader duty to avoid conflicts of interest, including a general duty of loyalty. It is common ground that the broader duty of loyalty owed to existing clients is not engaged by the citations faced by the Member here, as the citations arise from the Member's conduct after she ceased acting for D....
46. *Neil* is helpful in that it sets a high standard for lawyers to meet in order to properly serve the interests of their clients. In *Neil*, the Supreme Court notes, at para. 13, that: "The value of an independent bar is diminished unless the lawyer is free from conflicting interests." The Hearing Committee agrees, and notes that the public interest is well

served by an explicit prohibition on lawyers using a former client's confidential information to the disadvantage of the former client, as stated in the LSA's *Code of Professional Conduct*.

47. The Hearing Committee finds that the Member acted in a conflict of interest in this case.
48. The Member was entirely justified in declining to act for DD in his debt collection matter involving D..., and in referring DD to Mr. Bieganek. However, her subsequent actions, when viewed in their totality, placed her in a clear conflict of interest involving the misuse of confidential D... information to the disadvantage of her former client.
49. The Hearing Committee notes that the Member supported Mr. Bieganek's plan to petition D... into bankruptcy. This support went beyond a passive or explanatory role, and involved her providing her unpaid statement of account to assist with the petition. The D... statement of account clearly contained confidential information of D..., and D... was entitled to expect that its former solicitor would not disclose this confidential information to its disadvantage. The Hearing Committee finds that the Member was not authorized to disclose these accounts; this issue is discussed in more detail under Citation 2.
50. The provision of the bankruptcy case to TP by email on March 27, 2002 was not, in and of itself, a conflict of interest on the part of the Member. The Hearing Committee finds this act by the Member, the day following the compromise of her statement of account by her firm, to be very poor judgment on her part. In the context of the entire circumstances of this case, providing case law to TP also placed her in a conflict of interest as it may reasonably be viewed as her attempt to facilitate the bankruptcy petition.
51. The preparation of documents at TP's request, at the Member's home, on the evening of April 21, 2002, did place the Member in a grave conflict of interest. In completing these draft agreements the Member was using a similar strategy to that which she had pursued for D..., and she was using information originally learned through her representation of D... (including the involvement and identity of the guarantor). The Member was doing this to help TP or his assignees to acquire title to the very same assets that had been sought by the Member's former client, D..., and this was clearly to D...’s detriment.
52. The Member was similarly in a conflict of interest in representing TP and others in the L... action. This is particularly so given that the action dealt with the very same assets that the Member had sought to secure for her former client D..., and the defence she filed for TP sought to shift responsibility from TP to D... by advancing the position that TP's actions were all in his capacity as an employee of D.... That pleading specifically engages confidential information received by the Member from D..., and is to D...’s detriment. It is inconceivable that the defence of TP, and the defence of the Member's other client's in the L... action, would not involve confidential information of D... in the Member's possession. It is not material to the existence of a conflict that the L... action does not seem to have progressed beyond the pleadings stage, although that may be relevant in the next phase of this proceeding.

53. In summary, the Member was in a conflict of interest when she provided her D... statement of account to Mr. Bieganek, when she prepared documents at TP's request at her home on April 21, 2002, and when she represented TP and others in the L... action. The Hearing Committee finds that the Member's conduct with respect to these matters is conduct deserving of sanction.

## **II. The Disclosure of Confidential Information Citation**

### **(a) Did the Member Disclose Confidential D... Information at Meetings?**

54. The Hearing Committee has found, as noted above, that there was at least one, and there were probably more informal meetings involving the Member and TP, together with DD. The advice provided by Mr. Bieganek was discussed.
55. There is controversy as to exactly what else transpired during these meetings. However, the Member specifically denies providing any confidential information of D... during these meetings.
56. It was DD's evidence, and the Hearing Committee finds, that the Member agreed during one of these meetings to provide her unpaid D... statement of account to Mr. Bieganek as support for his bankruptcy petition. This is discussed further below. The Hearing Committee does not find that any other confidential D... information was disclosed by the Member at these meetings.

### **(b) Did the Member Disclose Confidential Statements of Account rendered to D...?**

57. As a result of the meetings discussed above, the Member provided her unpaid statement of account to Mr. Bieganek for use in the bankruptcy petition against D.... The Member indicated that she did not believe the accounts to be of a confidential nature, and she emphasized that the accounts were sent after the decision to seek to bankrupt D... had already been made by DD.
58. Counsel for the LSA urged the Hearing Committee to conclude that it is incompatible with the best interests of the public and the members of the LSA for a lawyer to disclose confidential information, including an unpaid statement of account, and that it is a paramount obligation of a lawyer to protect all confidential client information.
59. The Member's evidence is that she provided the unpaid statement of account because she was instructed to do so by TP, who was one of the principals of D.... This is consistent with TP's evidence at the Hearing, but directly contradicts his earlier statement provided to the LSA. It is clear that the Member was aware at this point of a dispute between TP and BB, being the two principals of D....
60. Counsel for the Member asked the Hearing Committee to conclude that the Member was properly authorized to release the account by TP on behalf of D..., and that we should

not look behind the ostensible authority of TP as president of D... to provide such an instruction notwithstanding the dispute between TP and BB, and notwithstanding our obvious difficulty in understanding how the provision of the statement of account for use in bankrupting D..., after the Member had ceased acting for D..., could be in D...’s best interests.

61. It is relevant here to note that the Member was taking instructions from BB throughout her representation of D.... The Member described her primary point of contact at D... as being TP. However, her file clearly indicates, and the Hearing Committee finds, that her D... instructions came from BB, and that TP’s involvement was secondary to BB throughout. On the preponderance of the evidence, the Hearing Committee does not find that the Member was instructed by TP on behalf of D... to provide the unpaid statement of account to Mr. Bieganek.
62. Further, the Hearing Committee finds that the Member’s actions in relying on such purported instructions, if she did so, were entirely unreasonable and unjustified. This is so because any such instructions from TP came after the Member had ceased acting for D..., where her previous primary point of contact had always been BB, and knowing that there was an active dispute between BB and TP, and given the obvious potential prejudice to D... of providing the accounts.

**(c) Did the Member Prepare Documents for others using D... Information?**

63. As noted above in the discussion involving conflicts of interest, the Member did prepare documents at her home on the evening of April 21, 2002, at TP’s request, the purpose of which was to acquire title to V... assets using a similar strategy to that which she had pursued as counsel to D....
64. The LSA urges the Hearing Committee to conclude that these documents contained confidential D... information, including the identity of the guarantor, which the Member had learned during her representation of D.... The Member indicates that the information in the documents, which were described as being very standard release and assignment documents, was provided to her by TP. Counsel for the Member reminded us that the Member had prepared these documents at home, and without her D... file.
65. The Hearing Committee notes that TP was clearly in a new and different role on April 21, 2002, and the Member must have been aware that TP was now proposing to compete with D... in acquiring title to V... assets. At this point the D... strategy and the identity and involvement of the guarantor were all important pieces of information learned by the Member from her involvement with D..., and which D... would expect her to keep in confidence. Any proposed use by the Member of this information (even if she did not herself remember, and she was reminded of this information by TP), for any party other than D..., engaged the Member’s duties of confidentiality.

**(d) Disclosure of Confidential Information - Conclusions**

66. The LSA *Code of Professional Conduct* includes Chapter 7, which deals with Confidentiality. Chapter 7, Rule 5 provides that a Lawyer must continue to hold a

client's information in confidence despite the conclusion of a matter or the termination of the lawyer/ client relationship. The commentary states, at G.1:

G.1 Frank and unreserved communication between lawyer and client encourages people to seek early legal assistance and facilitates the full development of facts, which in turn enables a lawyer to render effective professional service. The maintenance of confidentiality is central to the credibility of the profession and the trust that must be reposed in a legal advisor. As a result, a lawyer's professional duties with regard to confidentiality are defined largely in terms of the lawyer/client relationship.

67. These provisions can be seen as another example of the profession setting a very high standard of conduct for itself, consistent with the best interests of the public and the standing of the legal profession generally.
68. In this case there is significant overlap between the conflict of interest citation, and the citation involving disclosure of confidential information, as acknowledged by counsel for the LSA during the Hearing. The Hearing Committee finds that the Member did improperly disclose confidential information in this case.
69. Specifically, the Member disclosed her unpaid D... statement of account, notwithstanding the confidential nature of this document. Further, the documents prepared at her home at TP's request on April 21, 2002 disclosed confidential information of D..., including the identity of the guarantor, and employed a strategy similar to D...'s for acquiring title to V... assets.

## **CONCLUDING MATTERS**

70. As noted above, the Hearing Committee finds that Citations 1 and 2 are proven and the Member is guilty of conduct deserving of sanction with respect to those Citations.
71. The Hearing Committee will reconvene to hear evidence and argument with respect to the question of sanction.

Dated this 24th day of February, 2009

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Carsten Jensen, Q.C., Bencher  
Chair

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Shirish Chotalia, Q.C., Bencher

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Wayne Jacques, Bencher

#### **DECISION ON SANCTION**

On May 4, 2009 the Hearing Committee reconvened to decide the appropriate sanction. After hearing evidence and argument the Hearing Committee directed the member be reprimanded, pay a fine of \$10,000 and pay the actual costs of the hearing, estimated at the time to be in excess of \$8,000. The Hearing Committee will be providing written reasons for its decisions. The reasons will be published when released.