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 ALEXANDER POZNIAK
a Member of The Law Society of Alberta

INTRODUCTION, CITATIONS AND SUMMARY OF RESULT

1. On April 1, 2011, 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, Alexander Pozniak. The Committee was comprised of James Glass Q.C., Chair, Ron Everard Q.C. and Dale Spackman Q.C.. The LSA was represented by Mr. Garner Groome. The Member was present throughout the hearing and was represented by Mr. Robert Davidson Q.C..

2. The Member faced two citations:

    1. IT IS ALLEGED THAT you as solicitor for B. imposed trust conditions which were inconsistent with the terms of the contract between B. and H. and which were impractical or manifestly unfair, and that such conduct is conduct deserving of sanction.

    2. IT IS ALLEGED THAT you failed to agree to reasonable requests by H.'s solicitor for amendments to your trust conditions, and that such conduct is conduct deserving of sanction.

3. At the commencement of the hearing, counsel for the LSA and Mr. Pozniak presented the Hearing Committee with an Agreed Statement of Facts (Exhibit 6). Upon questioning from the Chair, Mr. Davidson Q.C., on behalf of Mr. Pozniak, confirmed that the Agreed Statement of Facts was reviewed and signed by Mr. Pozniak prior to the commencement of the hearing and that Exhibit 6 was NOT intended to be an admission of conduct deserving of sanction pursuant to s. 60 of the *Legal Profession Act*

4. On the basis of the Agreed Statement of Facts, the other evidence received at the hearing, and for the reasons that follow, the Hearing Committee finds that the Citations were proven and the Member is guilty of conduct deserving of sanction.
on both citations

5. The Hearing Committee concluded that the sanction should be a reprimand together with fines totaling $3,000.00 and that the Member should pay actual costs of the Hearing. The Member was provided with 6 months to pay from the date that the Member is served with the Statement of Costs of the hearing.

JURISDICTION AND PRELIMINARY MATTERS

7. 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.

8. There was no objection by the Member's counsel or counsel for the LSA regarding the constitution of the Hearing Committee.

9. The entire hearing was conducted in public.

EVIDENCE

10. Counsel for the LSA advised the Hearing Committee that he would proper no evidence other than what is before us today.

11. Exhibits 1-5 (the jurisdictional exhibits) were entered into evidence by consent.

12. Exhibits 6-10, all relevant to the Citations, were entered into evidence by consent.

13. The Member provided an Agreed Statement of Facts that was signed by him (Exhibit 6).

FACTS

14. The key Exhibits with regard to the citations are Exhibits 6, 7, 8, 9 and 10.

15. The Agreed Statement of Facts is reproduced herein:

> *IN THE MATTER OF a Hearing by the Law Society of Alberta into the conduct of Alexander Pozniak, a member of the Law Society of Alberta;*
>
> *AND IN THE MATTER OF the allegation that the member, Alexander Pozniak, as solicitor for B imposed trust conditions which were inconsistent with the terms of the contract between B and H and which were impractical or manifestly unfair, and that such conduct is conduct deserving of sanction;*
>
> *AND IN THE MATTER OF the allegation that Alexander Pozniak, the member, failed to agree to reasonable requests by H's solicitor for amendments to his trust conditions and that such conduct is conduct deserving of sanction.*

AGREED STATEMENT OF FACTS

1. The member represented the Vendors and the Complainant represented the purchasers in a residential real estate transaction in the Spring of 2008.

April 29 *The purchase and sale contract between the parties was signed and included the following provisions:*

2.2 provided for a Purchase Price of $355,000.00 (later amended downward to $348,000.00), with New Financing of $125,000.00

4.1 "Completion Day" of June 9, 2008

4.4 "The Seller or the Seller's lawyer will deliver normal closing documents including, where applicable, a real property report pursuant to clause 4.11, to the Buyer or the Buyer's lawyer upon reasonable trust conditions consistent with the terms of this Contract. The Buyer or Buyer's lawyer must have an opportunity to review the real property report, where applicable, prior to submitting the transfer documents to the Land Titles Office and a reasonable period of time before the Completion Day to confirm registration of documents at the Land Titles Office and to obtain the advance of proceeds for any New Financing and Other Value."

4.5 "If the Seller fails to deliver the closing documents according to clause 4.4, the payment of the Purchase Price and late interest will be postponed until the Buyer has received the closing documents and has a reasonable period of time to register them and to obtain the advance of proceeds for any New Financing and Other Value. Notwithstanding the foregoing, if the Buyer is otherwise ready, willing and able to close in accordance with this Contract and desires to take possession of the property, then the Seller shall give the Buyer possession upon reasonable terms which will include the payment of the late interest only on the amount of mortgage being obtained by the Buyer, if any, at the interest rate of such mortgage."

4.6 "In circumstances where the Seller has complied with clause 4.4 but the Buyer is not able to close in accordance with this Contract, then the Seller may, but is not obligated to, accept late payment of the Purchase Price and give the Buyer possession upon reasonable terms. If the Seller agrees in writing to accept late payment of the Purchase Price under this clause then, whether or not possession is granted, the Buyer will pay late interest at the prime lending rate of the Province of Alberta Treasury Branches at the Completion Day plus 3% calculated daily from and including the Completion Day to (but excluding) the date the Seller is paid in full."

4.11 "At least ten (10) Business Days prior to the Completion Day, the Seller will provide the Buyer regarding the matters described in clause 6.1, a real property report reflecting the current state of improvement on the Property… with evidence of municipal compliance…"

4.12 "Notwithstanding the closing provisions in this Contract, the parties instruct their lawyers to follow, if appropriate, the Law Society of Alberta Conveyancing Protocol in the closing of this transaction."

7.1 Time is of the essence.

June 3 *The member sent a trust letter to the Complainant enclosing all the closing documents except the real property report with compliance (the "RPR"). This letter did not provide for a Protocol closing, and relevant excerpts are set out below:*

"I HAVE ORDERED A NEW RPR AND COMPLIANCE, NOTWITHSTANDING NON-RECEIPT OF THE RPR AND COMPLIANCE YOU ARE PERMITTED TO SUBMIT FOR REGISTRATION. YOU ARE NOT REQUIRED TO REQUISITION MORTGAGE MONIES OR SEND THE CASH TO CLOSE UNTIL IN RECEIPT OF A SATISFACTORY RPR AND COMPLIANCE.

The trust conditions are:

Upon receipt of the proceeds of the new mortgage loan… you shall pay… the cash required to close unconditionally together with interest on the said balance due on closing at the rate of 3% OVER THE PROVINCE OF ALBERTA TREASURY BRANCHES PRIME RATE AS PROVIDED IN THE PURCHASE AGREEMENT… calculated from and including the June 9, 2008 until receipt by me for unconditional release…

[provision for tenancy at will agreement, restoration of title to vendors if mortgage not advanced, etc.]

I hereby undertake to…

ENSURE PAYMENT OF 2008 PROPERTY TAXES…
YOU ARE ADVISED THAT I HAVE SUBMITTED TO BE REGISTERED A CAVEAT RE VENDORS LIEN. IT IS A TRUST CONDITION THAT YOU MUST REGISTER THE TRANSFER OF LAND SUBSEQUENT TO THE CAVEAT RE VENDORS LIEN.

AS I HAVE NO EVIDENCE THAT THE TRANSFERBACK WAS EXECUTED PRIOR TO SUBMITTING THE VENDORS LIEN CAVEAT FOR REGISTRATION, I HAVE NOT REGISTERED A CAVEAT RE TRANSFERBACK. ANY ADDITIONAL COSTS AND EXPENSES INVOLVED IN REGISTRATION of the transferback DUE TO THE LACK OF PRIOIRITY OF THE TRANSFERBACK WILL BE BORNE BY YOUR CLIENT. YOU ARE AT LIBERTY TO REGISTER YOUR OWN CAVEAT RE TRANSFER BACK AT YOUR CLIENT'S EXPENSE."

June 3 *The Complainant faxed to the Member:*

- *Requesting a protocol closing trust letter as per the vendor's direction in 4.12 of the agreement;*
- *Requesting the Member's undertaking to provide a clear Tax Certificate upon payment of the property taxes;*
- *Taking issue with the requirement to pay interest on the cash to close at 3% over prime when the vendor had not provided the RPR. The*

Complainant advised that he would not proceed to register the transfer unless the vendor undertook to bear the costs of reconveying the lands if a satisfactory RPR was not produced;

- *Proposing in the alternative that the vendor provide title insurance or that they could close on protocol with the Member's undertaking to produce an RPR later.*

June 5 *The Complainant faxed a handwritten follow-up to the Member.*

June 4 or 5 *The Member faxed a letter to the Complainant dated June 4. The letter refers to the customary practice in Edmonton, with the Member proposing a $1,000.00 holdback pending receipt of the RPR and refusing to provide a Tax Certificate in accordance with such practice. The member advises that a protocol closing is "not appropriate as my clients have no understanding of protocol closings," and goes on to make the following inquiries:*

"3. Are you proposing that possession be delayed no possession no interest??

5. With regards to restoration of title are you registering a caveat with regards to the transferback (as advised in my trust letter) to mitigation restoration of title costs?

8. Do you have mortgage documents? Have your client signed them yet?"

In response to the Complainant's comments on late interest, the Member said, "You have the contract in front of you which is what the purchaser agreed to and which many Edmonton solicitors insist upon."

June 5 *The Complainant faxed to the Member, saying that the Member's fax had not been responsive. He advised that his clients had executed all necessary documents and had provided the closing funds. He repeated his desire to be provided with a Tax Certificate, and advised that the trust conditions were "not in accordance with the agreement not only regards the protocol issue but as well your clients' expectation of the payment of interest. The seller must in a conventional closing provide documents in sufficient time to permit registration and funding of mortgage. We have not received your documents in time nor all that we require. We cannot fund without the RPR or compliance. Therefore, I would suggest that if we are to close late (i.e. when we receive the compliance) that assuming we receive possession interest be payable on the mortgage amount at the rate of the mortgage."*

June 5 *The Member faxed the Complainant a copy of the RPR and advised that he was sending it to the City for express compliance.*

June 5 *The Complainant faxed to the Member saying that he had to have an answer on the interest issue forthwith;*

June 5 *The Member faxed to the Complainant:*

"I have attempted to conduct this matter in accordance with the practice of Edmonton solicitors and my recollection of your practice.
You apparently have some problems with the practice of other Edmonton solicitors.

1. *Who is your mortgagee?*
2. *You state that "there is not much for a seller to know concerning protocol closing other than that they receive closing funds generally on time"*

That statement causes me great concern… Due to your misconceptions once again a protocol closing is not appropriate.

…

4. *Your positions appear to be contradictory with regards to the RPR and compliance. [The Member wonders why the purchaser would want to take the risk of moving in without an RPR, when he won't take the risk of registering the title with either the "100% holdback" originally offered or the $1,000.00 holdback subsequently offered.]*

   We have allowed you to submit for registration on June 2, 2008, which probably would have allowed sufficient time to close on June 9, 2008… Your client has been afforded an opportunity to mitigate his circumstances.

5. *With regards to interest the rate of interest as explained to me by many Edmonton solicitors is agreed to in the contract by your client. Perhaps you should direct your attention to whomever drafted the standard real estate contract for Alberta…*

   Perhaps your client should weigh the costs of title insurance and obtaining possession versus interest at 3% over ATB primes and not obtaining possession…

June 9 *The Complainant faxed to the Member, advising that his clients were needing possession on the closing date, and that he had instructions to pay the interest demanded by the Member "under protest", and asking that the Member authorize the release of keys on the basis of a tenancy at will, and the Complainant having the cash shortfall and all other required documents as executed by the purchasers.*

June 9 *The Member faxed to the Complainant advising that his client has Instructed "no money no keys." "I am surprised in the circumstances that you did not close with title insurance." The Member then extended his client's offer to pay for one half of the cost of title insurance.*

June 10 *On June 10, 2008, the Complainant faxed to the Member, advising that possession on that day was critical to his clients, and that ATB would take at least two days to fund the mortgage. The Complainant also noted that the Member had not responded to the five telephone calls he had made to the Member.*

June 10 *The Member faxed to the Complainant, advising that it was his position that title insurance was the appropriate course, and that in his experience, ATB would fund in one day. "With regards to responses, I will draw your attention to the abusive, insulting and unprofessional nature of your oral communications in the past. Accordingly, all communication will be in writing."*

June 12 *The purchasers obtained possession, but had to use a locksmith because keys had not been released, notwithstanding that funds were paid to the Member at 1:45 p.m.*

Complaint History

2. On June 6, 2008, the Complainant submitted a written complaint to the Law Society. Specifics of the complaint may be summarized as follows:

2.1 The Complainant represented the purchasers in the purchase of a property from the Member's clients that was scheduled to close on June 9, 2008;

2.2 On June 3, 2008, he received the transfer of land, trust letter and statement of adjustments from the Member. The Real Property Report and compliance certificate were not provided. It was noted that the trust letter and documents were not provided in sufficient time to enable the registration and funding of a new mortgage;

2.3 The transaction could have been concluded on time but the Member refused to conclude the sale based on a protocol closing notwithstanding the terms of the purchase contract (4.12) in which the sellers authorized their solicitor to close on protocol;

2.4 Pursuant to the contract, in order for the transaction to have closed on a conventional basis the seller was to have provided documents in a time frame sufficient to enable registration and funding of the new mortgage (4.4) and interest was to commence running at ATB prime plus 3% only once adequate time had been given (4.6). However, if the documents were not provided on time, possession was to be given on the payment of late interest at the mortgage rate and amount and on reasonable terms (4.5);

2.5 The Complainant received the Member's trust letter on June 3, 2008, which was only 6 days before the scheduled closing. In response, he requested an amendment to the Member's trust conditions and called the Member twice requesting his response to same. The Member responded by fax on June 5, 2008, which was only two business days before the scheduled closing;

2.6 On June 5, 2008, the Complainant sent the Member a fax in which he reminded the Member that his trust letter and response were not in accord with the contract. On June 5, 2008, he received the Real Property Report, without compliance.

2.7 The Complainant believed that the Member was in breach of a number of rules, including a disregard for trust conditions and a failure to provide a timely response.

3. On June 10, 2008, the Complainant faxed the following additional documentation to the Law Society and asked that it be included with his complaint:

3.1 The Complainant's June 9, 2008 letter to the Member advising that as his clients required possession on the closing date he had instructions to pay the interest demanded by the Member "under protest." He also asked that the Member authorize the release of keys on the basis of a tenancy at will and that he would hold the cash shortfall and all other require documents as executed by the purchasers.

3.2 The Member's June 9, 2008 fax to the Complainant advising that it was his position that title insurance was the appropriate course and that in his experience, ATB would fund in one day. "With regards to responses, I will draw your attention to the abusive, insulting and unprofessional nature of your oral communications in the past. Accordingly, all communication will be in writing."

3.3 The Complainant's June 10, 2008, fax to the Member advising that possession on that day was critical to his clients and that ATB would take at least two days to fund the mortgage. The Complainant also noted that the Member had not responded to the five telephone calls he had made to the Member.

4. The Complaint was referred to a Complaints Resolution Officer. On June 12, 2008, the Complainant provided the following further information:

4.1 As a result of the Member's conduct, the Complainant's clients were unable to take possession on the closing date to which they were entitled. The work that they had scheduled had to be postponed and they had to make arrangements with their mover for the delay in closing and, as a result, were responsible for the additional costs. His clients also paid interest on the cash to close at a rate that exceeded their mortgage and they had to incur costs on title insurance.

4.2 The Complainant provided copies of the remaining correspondence between himself and the Member;

4.3 It was very difficult to explain to clients that although they had abided by the terms of a contract the seller; and his lawyer, were able to ignore those terms and create their own demands. It was his belief that the Member's actions brought disrespect to the legal profession.

5. The matter was referred to the Manager, Complaints and a letter went to the Member by registered mail on Juno 18, 2008, requesting his response pursuant to Section 53 of the Legal Profession Act.

6. On July 7, 2008, the Member requested an extension of time to reply and asked that this matter be referred to the Calgary office. The Law Society responded to the Member on July 10, 2008, and confirmed that this tile had been forwarded to the Calgary office and that his time to respond had been extended to July 28, 2008.

7. The Law Society received the Member's response on July 28, 2008, which may be

summarized as follows:

7.1 With regard to the allegation that he did not follow the terms of the contract "by which the sellers authorized their solicitor to close on protocol", he made reference to the Law Society's website which stated, "Following of the Protocol is not mandatory and therefore a lawyer cannot be compelled to follow it," which was out of date and was applicable to a previous form of standard real estate contract which did not contain a term for covenant by parties to instruct their solicitors to use their Protocol where appropriate. The Member also noted that the contract stated "..if appropriate..." The Member further believed that it could hardly be appropriate for clients to provide instructions that they did not understand or were not aware of;

7.2 He informs his clients that he does not and will not close on protocol and if they wished to do so they were free to use another solicitor;

7.3 The Complainant made a frivolous, spurious, and vexations complaint against him. According to the Law Society's website, a Real Property Report and certificate of compliance was not required for a lender under this protocol. However, the Complainant insisted that as part of the protocol closing that he undertake to provide an APR and compliance. Also, the Complainants client never signed a waiver although information found on the Law Society's website stated, If the transaction is to close without an RPR and compliance, then the buyer is to sign a waiver."

7.4 The Complainant had not properly advised his clients with respect to Protocol closings as this transaction was not an appropriate one to close under protocol;

7.5 On June 1, 2008, he faxed the Complainant his standard letter which requested the purchasers' description and confirmation of the Member's address for the forwarding of documents . The Member never received a response. The complaint alleged that he had not responded to a fax of June 3, 2008 until June 5, 2008. The Member stated that he faxed his response on June 4, 2008 although the Complainant may not have read the fax until the following day;

7.6 With regard to the allegation that he failed to respond to the Complainant's voice message the Member stated that the Complainant was rude, insulting and offensive and provided events surrounding a previous transaction. For that reason the Member chose to conduct all future communications In writing;

7.7 The Member had previous dealings with the Complainant. On one occasion it was alleged that the Complainant was rude, insulting and offensive after yelling a profanity at him during a phone call. Moreover, a realtor had informed him that the Complainant made negative comments about him, Including that he caused "trouble on transactions" and that the Complainant would not work on a transaction in which the Member had been retained;

7.8 In his complaint the Complainant made reference to specific clauses in the contract, however he made no such specific references in the

correspondence between counsel;

7.9 He had at least three discussions with Mr. Hilborn of the Law Society with regards to interest. In regard to a recent transaction, Mr. Hilborn stated "that a lawyer could not be required to agree to Interest rate mortgage amount with possession or no interest no possession". The Member provided an excerpt from the Code of Professional Conduct which stated, "A lawyer may seek an opinion from the Law Society with respect to a proposed course of conduct which, if followed, will generally protect the lawyer against subsequent disciplinary action."

7.10 The Member queried why this complaint had not been forwarded forthwith to his offices in accordance with the Legal Professions Act, and why there had been no attempt made to mediate the complaint;

7.11 He made two reasonable offers to the Complainant so that this transaction could be closed. One option offered was a 100% holdback until a satisfactory APR and compliance were delivered. A second offer was made in which there would be a $1,000 holdback if upon receipt of the APR no identifiable defects were readily apparent. Both offers were refused by the Complainant;

7.12 With regards to interest, the Member asked the Complainant whether he was proposing "no possession no interest" in his faxes of June 4 and June 9, 2008, but the Complainant declined to confirm. He certainly would have advised his client that no possession no interest would be reasonable. However, he noted that the contract did not state "no possession no interest". It merely stated that payment of Interest was postponed, which he interpreted to mean that payment, but not accrual, of interest was postponed;

7.13 The Member recently represented a purchaser in a transaction where documents were not sent in sufficient time to permit registration and the mortgagee did not accept protocol closings. In that transaction he proposed "no possession, no interest" and that the vendor pay for title insurance. In the end, his client paid interest at 3% over ATB prime and paid the full cost for title insurance;

7.14 The purchase contract stated that "...the seller shall give the buyer possession upon reasonable terms..." With his trust letter of June 3, 2008 he provided a reasonable tenancy at will agreement. The Complainant refused to accept those reasonable terms. His agreement stated that "the Purchaser will not make any alterations or changes to the improvements or the lands." The Complainant's form of tenancy was not acceptable nor was it reasonable;

7.15 The Complaint alleged that his Clients had to postpone the work that they had scheduled. The Member directed the Law Society's attention to reasonable tenancy at will's which prohibit the purchaser from renovations and further alleged that the Complainant concealed the fact that his clients intended on doing renovations to the subject property;

7.16 Moreover, reasonable terms for a tenancy agreement included the requirement that a purchasers solicitor had submitted for registration.

However, the Complainant refused to submit for registration;

7.17 The Real Estate Purchase Contract stated that "...if the Buyer is otherwise ready, willing and able to close in accordance with this contract and desires to take possession..." However, it was his belief that the buyer was not ready, willing and able to close. He was not aware that the Complainant received the mortgage instructions, received the shortfall, received the insurance confirmation or saw his clients;

7.18 It was the Member's position that the purchasers were not ready, willing and able to dose the transaction on time. It was his belief that the Complainant had not received mortgage instructions in time to close on a conventional basis (and enclosed a registered copy of the mortgage showing that it had been executed on June 5th), and that since the Complainant was taking the position that he had not received the conveyancing documents in sufficient time to close in a conventional manner (as opposed to on protocol), the Complainant could not say, "that his clients were ready, willing and able to complete the purchase";

7.19 The Complainant failed to provide him with the name of the purchasers' mortgagee when this information was requested on June 5, 2008;

7.20 On the scheduled closing date, June 9, 2008, he waited for the cash to close. There was no advice from the Complainant that the funds would not be forwarded that day. He received a request for tenancy at 3 p.m. however his client's instructions were "no money no keys."

7.21 The following day the compliance was faxed to the Complainant together with an offer to pay for half the cost of title insurance. He also provided the Complainant with direct deposit information to facilitate the transfer of funds. He was advised that even with title insurance it would take two days for the Complainant to process the mortgage funds;

7.22 On June 11, 2008, the Member received the closing funds and immediately contacted the realtor and authorized the release of keys. He understood that the purchasers had problems and that the keys were released immediately;

7.23 The Complainant's refusal to submit for registration promptly was not reasonable;

7.24 The Complainant refused to register a caveat with regard to the transfer-back although the contract stated that "The Buyer Will pay the costs to prepare, register and discharge any Buyer's caveat based on this contract and to register the transfer of land."

7.25 Although he made repeated attempts to reach reasonable terms for closing the Complainant refused and insisted on a protocol closing. If he had been acting for the purchasers, they would have moved in on time to mitigate their circumstances;

7.26 The Complainant allowed his personal dislike for him to interfere with his professional obligations to his clients.

8. The Member's response was forwarded to the Complainant on August 20, 2008.

9. On September 3, 2008, the Law Society received the Complainant's further comments which may be summarized as follows:

9.1 He disagreed with many of the Member's assertions. In his view there was an agreement between the parties that contained terms which should have been respected in the Member's trust conditions;

9.2 A number of the terms of the agreement were ignored in the Member's trust conditions and in their dealings, even though the Member was reminded that his position was inconsistent with the agreement

9.3 The Member denied ever telling a realtor that he would not act on a file where the Member was acting for the other side. He did recall dealing with the Member several years ago and in exasperation making an intemperate remark, but not the remark attributed to him by the Complainant

10. The Complainant's further response was provided to the Member on September 3, 2008 and he was asked for his comments on the same.

11. As no response was received a reminder letter was mailed to the Member on September 25, 2008.

12. The Law Society received the Member's further comments on October 8, 2008, which may be summarized as follows:

12.1 The Complainant failed to respond to the Law Society as he did not specifically address any of the Member's responses;

12.2 The Complainant had misled the Law Society as he had told realtors that he would not act on a file if the Member was representing the other party;

12.3 In the original complaint, the Complainant stated, "The transaction could have been concluded on time based on a protocol closing…" However, it was quite clear that this was not the case as evidenced by the material that was supplied to the Law Society;

12.4 As the Complainant had "further compounded his offences by making misrepresentations to the Law Society of Alberta, realtors, other lawyers (and) clients" the Member asked that he be immediately suspended.

13. The Member's further comments were forwarded to the Complainant on October 9, 2008. On October 23, 2008, the Complainant indicated that he had no further comment and asked that the subject matter be considered.

14. This Agreed Statement of Facts is not exhaustive and the Member may lead additional evidence not inconsistent with the stated facts herein. The Member acknowledges that the Law Society is not bound by this Statement of Facts and that it may cross-examine the Member, adduce additional evidence, or otherwise challenge any point of fact it may dispute in this statement.

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ALEXANDER POZNIAK

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ROBERT HUGH DAVIDSON
Counsel for Alexander Pozniak

16. The Member was sworn, examined by Mr. Davidson Q.C. and provided the following evidence relevant to the citations:

(a) The Member met B's mother when articling as she was a conveyancing secretary at the firm;

(b) The Member was contacted by B's mother sometime in April 2008 and advised that the Member would be acting for B on the sale of her home. At that time, the Member recalled asking B's mother about the RPR and compliance and was assured all was in order;

(c) Following receipt of the purchase and sale contract, the Member continued to follow up with B and her mother about the need for the Member to receive and review the RPR. He was assured that there were no problems. As the closing date neared (May 30, 2008), the Member determined that all B had was a lot grading certificate and not an RPR with compliance.

(d) The Member then ordered an RPR on a rush basis (June 2, 2008-Exhibit 6, Tab B);

(e) Upon review of the purchase and sale contract, it was clear to the Member that B has to provide an RPR with appropriate compliance. The Member indicated that counsel for the purchaser never waived the requirement of B to provide an RPR with compliance;

(f) The Member sent the purchasers counsel his standard trust letter on June 2, 2008 (Exhibit 6, Tab C). It was the Members position that his trust letter was general enough that it would not preclude closing the transaction on a protocol basis, on a conventional basis or even on the basis of purchasing title insurance. It was the Members position that the transaction could not be concluded on a protocol basis given the absence of the RPR and compliance;

(g) The Member received correspondence from counsel for the purchaser on June 3, 2008 (Exhibit 6, Tab D). Purchasers counsel opined that the transaction could not be closed on a conventional basis given the time constraints – the Member did not agree with this opinion. The Member believed that it was premature to begin speaking about the payment of interest by the purchaser where the vendor had not provided an RPR and compliance, as he believed the transaction could still be closed on a timely basis. The Member was opposed to the purchasers solicitors request that the Member provide an undertaking that he provide the RPR and compliance at a later date to permit closing on a protocol basis because solicitors should not be granting undertakings that are beyond their control and he believed this was such a case. He was not prepared to underwrite the seller's obligations. In addition, the Member did not believe the transaction could be closed on a protocol basis given the lack of waiver of the RPR and compliance by the purchasers;

(h) The Member wrote counsel for the purchasers back on June 4, 2008 (Exhibit 6, Tab E). He indicated that while the purchase and sale contract provided for closing on a protocol basis, his client had no understanding of same. B entered

the contract without the benefit of having informed consent regarding what protocol was. He discussed closing the transaction with his client on a protocol basis, and for the reasons given earlier; they were not prepared to agree to closing on such a basis;

(i) The Member sent the RPR to the City of Edmonton for rush compliance and also sent the RPR to counsel for the purchaser on June 5, 2008 (Exhibit 6, Tabs F and G respectively);

(j) The Member sent another letter to counsel for the purchasers on June 5, 2008 indicating, amongst other things, that the transaction could be closed on the basis of the purchasers acquiring title insurance (Exhibit 6, Tab H);

(k) The Member received a response to his letter on the same day from counsel for the purchaser (Exhibit 6, Tab I). The Member did not agree with the purchasers counsel's position that the matter could close on protocol as the purchasers could fund the mortgage if they purchased title insurance. The Member opined that if the lender would not accept closing on title insurance, then it would likely not accept closing on protocol;

(l) Further letters were exchanged between counsel with no resolution on the closing of the transaction;

(m) On June 9, 2008 (the closing date of the transaction) the Member receives correspondence from counsel for the purchaser agreeing to pay interest and requesting possession (Exhibit 6, Tabs L and M). The Member indicated that until receipt of this letter, he was not aware that the purchaser's required possession as there had been no previous requests. The Member spoke with his client about the risks involved with a tenancy agreement. There was significant concern that the purchasers wanted possession to begin making renovations to the home. His instructions from his client were to not permit possession without payment of the purchase price. He was authorized to contribute ½ the cost of the title insurance (Exhibit 6, Tab N);

(n) The Member was not aware at this time that counsel for the purchaser's had reported him to the LSA;

(o) Counsel for the purchaser again requested possession, however, the Member could not agree as his clients were not in agreement with the form of tenancy agreement (Exhibit 6, Tabs O and P);

(p) The RPR and compliance were received by the Member of June 10, 2008 and forwarded to counsel for the purchaser (Exhibit 6, Tab Q);

(q) Funds sufficient to complete the transaction are sent to the Member's office on June 11, 2008 (Exhibit 6, Tab S). The Member saw the letter later in that afternoon, authorized the release of keys with the realtor and then left the office for an appointment;

(r) On June 12, 2008, the Member notified the purchaser's lawyer that B's mortgagee changed their mind on paying the taxes, so the Member arranged for payment of same (Exhibit 6, Tabs T and U);

(s) For reasons unknown to the Member, the realtor refused to release the keys until she spoke to the Member and this resulted in the delay of possession to the purchaser (Exhibit 6, Tabs V and W).

17. The Member was then examined by Mr. Groome and provided the following evidence relevant to the citations:

(a) The Member was asking his clients for the RPR to ensure there would be no problems with closing;

(b) The Member admitted that he did not like protocol closings as there were significant problems with them in his opinion;

(c) The purchase and sale contract was already unconditional by the time he received it, therefore there was no opportunity to try and renegotiate the protocol clause in the contract. In addition, the Member agreed that at this early stage, he did not really discuss closing the sale on protocol;

(d) The Member agreed that he did not discuss the interest provisions of the contract and waiver of same in the early stages of the transaction;

(e) The Member received the instructions for the sale on May 20, 2008. He was more focused on the RPR and compliance at that time and did not discuss closing on a protocol basis with client. He acknowledged that he had not discussed a protocol closing with B prior to his trust letter being sent to the purchaser's lawyer. He acknowledged that the discussed protocol closing with B after receipt of the purchasers lawyers letter requesting same. He advised his client that he (the Member) was not prepared to close on protocol because of the undertaking being requested of him. He advised his client that if they wanted to close on protocol that they would have to retain someone else.

(f) The Member acknowledged that his trust letter had been used by him for years and he believed that it permitted closings on a conventional, protocol or title insurance basis. He did not believe that one could close on protocol in relation to this transaction as the purchaser was not prepared to waive the requirement for the production of an RPR and compliance;

(g) The Member acknowledged that he never explained to the purchaser's lawyer why he was opposed to a protocol closing;

(h) The Member referred to Exhibit 7, being the paper posted on the LSA website regarding protocol closings. It was the Member's understanding that protocol had to be strictly complied with otherwise there would be no title insurance coverage. The sample trust letter clearly required an RPR and compliance;

(i) The Member acknowledged that he and the purchaser's lawyer converse in writing as opposed to phone calls given past dealings. The Member was not really sure what the purchaser's lawyer's position was regarding the closing apart from demanding a protocol closing. When the purchaser's lawyer relented on that issue, the Member had no idea what he was proposing to close the transaction. The Member acknowledged that the purchaser's lawyer offered to pay interest on the closing date to obtain possession; however, the Member's focus was on the RPR and tenancy agreement issues. The Member further opined that even though the purchaser's lawyer was suggesting his client had done everything they could to close the deal, he had previously indicated that they couldn't fund on the closing date, thus they weren't ready to close.

18. The Member was then examined by a Hearing Committee member and provided the following evidence relevant to the citations:

(a) The purchase and sale contract was unconditional when he received it;

(b) The Member did not agree with the suggestion that the contract presumed a closing on a protocol closing (s. 4.12 of the contract); rather, it was the client's option to do so or not;

(c) The Member acknowledged that he did not enquire of B's bank (BNS) as to whether it had a current RPR and did not enquire of B's lawyer that assisted her with purchase of home some years earlier either;

(d) The Member stated his recollection that in 2008, the turnaround time for registration of documents by the Land Titles office was approximately five days, even though his own vendor's lien caveat took over two weeks to get registered;

(e) The Member acknowledged that he did not inquire of B as to whether she had made any modifications to the property since her purchase of it in 2005. His practice was not to do so until he received the RPR and reviewed it with client at that time;

(f) The Member acknowledged that he finds protocol closings problematic. He believes it increases the risk to the lawyer, that there were issues regarding disclosure and confidentiality and was unclear as to whether any problems with closing on protocol would in fact be covered by lawyers insurance. In relation to this transaction, the Member was not prepared to take on the client's obligation to provide an RPR and compliance as it was outside of his control.

SUBMISSIONS ON CITATIONS BY COUNSEL FOR THE LSA

19. This hearing should not be about whether the protocol is a good thing or not, but rather whether the Member cross the line of being a facilitator of an efficient closing of a transaction or had become an obstacle. Were the trust conditions imposed by the Member unfair or impractical to close the transaction? Was the Member's refusal to amend the trust conditions unreasonable?

20. The Member was late in delivering the closing documents that resulted in an inability to close on a conventional basis. The Member required the payment of interest, which was really penalty interest, as the purchaser could not close on time due to the late delivery of the closing documents. The purchaser had no choice but to pay interest. This was not professional conduct.

21. The Member refused to have productive discussions with the purchaser's lawyer and simply dug his heals in. The Member's trust letter was inconsistent with the purchase and sale contract. The Member refused to vary the trust conditions.

22. Counsel for the LSA referred the Hearing Committee to the following excerpts from Exhibit 7:

> *The Protocol contemplates a new conveyancing practice, which is designed to expedite the residential mortgage process for lenders, to ensure consumers have continued access to independent legal advice and to preserve the integrity of the Torrens land registration system in Western Canada.*

The Protocols reflect minor jurisdictional distinctions in law and procedure, but are consistent in their fundamental purposes, which are:

1. to allow for the release of Mortgage proceeds and other purchase funds on Closing, for the mutual benefit of Buyers, Sellers and Lenders;

2. to encourage the continued exercise of due diligence by Buyers in matters of survey and zoning;

3. to enable lawyers to satisfy the unique security requirements of Lenders without the expense of obtaining a Real Property Report unless there is a known defect; and

4. to provide a short form Solicitor's Opinion to Lenders.

23. Counsel for the LSA referred the Hearing Committee to the following excerpts from Exhibit 8:

Question:

5. What should a Lawyer do if another Lawyer in the transaction will not agree to adopt the Protocol even though the transaction is one that qualifies for the Protocol.

Answer:

Following of the Protocol is not mandatory and therefore a Lawyer cannot be compelled to follow it. It should be clear however that the general positive effect of the Protocol in the conveyancing field is diminished if the Protocol is not followed wherever possible.

24. Counsel for the LSA referred the Hearing Committee to the following excerpts from the Code of Conduct:

In relation to Citation 1:

CHAPTER 4
RELATIONSHIP OF THE LAWYER TO OTHER LAWYERS

STATEMENT OF PRINCIPLE

A lawyer has a duty to deal with all other lawyers honourably and with integrity.

11. The following rules govern the use of trust conditions:

> *(b) No trust condition imposed by the entrustor may be inconsistent with the terms of the clients' agreement.*
>
> *(c) Subject to paragraph (b), the entrustor must not impose any trust condition that is impractical or manifestly unfair.*
>
> *In relation to Citation 2:*
>
> *4. A lawyer must agree to reasonable requests by another lawyer for extensions of time, waivers of procedural formalities and similar accommodations unless the client's position would be materially prejudiced.*

Counsel for the LSA submits that the Member failed on all accounts. There was nothing that the purchaser's failed to do that resulted in a late closing. In addition, the requirement to pay interest was not appropriate where the seller provided the closing documents late.

25. The Member's position is a universal rejection of protocol closings. This is not appropriate. The contract resulted in binding legal obligations on the client. The Member should have declined to act. Rather, the Member tried to change clear contractual terms by the imposition of inconsistent trust conditions. Accordingly, his conduct was unreasonable and the Member should be found guilty of both citations.

SUBMISSIONS ON CITATIONS BY COUNSEL FOR THE MEMBER

26. The Member acted with the honest belief that the trust conditions were neither unfair nor impractical. The Member provided objective reasons why a protocol closing would not work in relation to this transaction.

27. Counsel submitted that should the Hearing Committee find a mistaken but honest belief by the Member in relation to the availability of closing this transaction on a protocol closing, then the Member should be given the benefit of that belief and not be found guilty of the citations.

28. Counsel submitted there was no evidence that the Member was mean spirited or that there was a deliberated attempt by the Member to frustrate a real estate closing. Further, the purchase and sale contract by its own terms required the parties to instruct their lawyers to close on protocol, if appropriate. The Member was not instructed by his client to close on this basis and in fact was instructed not to.

29. Counsel referred the Hearing Committee to the following excerpts from Exhibit 7:

> ***PART D: DUTIES OF THE SELLER'S LAWYER***
>
> *Before proceeding on a Protocol Closing, be sure the Buyer and the Seller have accepted the use of a Protocol Closing.*

Before Closing

1. Conduct a Title Search

a) If there is any issue as to whether the Title encompasses the Land, conduct further investigations which may include review of registered plans and a Real Property Report, through discussions with the Seller and, if necessary, consultation with an Alberta Land Surveyor.

On Closing

Note: The Closing shall be in accordance with this Protocol unless otherwise agreed to in a timely manner by the parties and their respective lawyers.

In some circumstances, a party may initially commit to a Protocol Closing, but later be unable to satisfy the conditions precedent to such a Closing, as prescribed by the Protocol. In such case, notice should be given to the other party's Lawyer, as soon as possible, that the Closing cannot occur on the basis of the Protocol.

SCHEDULE III

SAMPLE TRUST LETTERS

1. Sample of Trust Letter to Buyer's Lawyer:

We enclose the following:

3. Real Property Report with Compliance Certificate;

30. Counsel referred the Hearing Committee to the following excerpts from Exhibit 8:

Question:

5. What should a Lawyer do if another Lawyer in the transaction will not agree to adopt the Protocol even though the transaction is one that qualifies for the Protocol.

Answer:

Following of the Protocol is not mandatory and therefore a Lawyer cannot be compelled to follow it. It should be clear however that the general positive effect of the Protocol in the conveyancing field is diminished if the Protocol is not followed wherever possible.

31. It was submitted that the reference above in Exhibit 8 at a minimum creates confusion for any Member as it seems inconsistent with the standard purchase and sale contract. A Member could be left with the honestly held belief that by not adopting the protocol that he would not be in breach of any ethical obligation or that his conduct would be seen to be unreasonable. The Member here was not prepared to take on B's obligation to provide an RPR and compliance.

32. Counsel referred the Hearing Committee to the following excerpts from Exhibit 10:

> ***7. What if there is a Change in Instructions***
>
> *If a client, be it a purchaser, seller or lender, determines part way through the transaction that they have changed their mind and do not wish to proceed with the Protocol closing, then the client would be free to make this decision, subject to the transaction not having proceeded to the point where it is too late to reverse the process. It is always possible for the lawyer, in unusual circumstances, to determine that the transaction should not close on a Protocol basis. An example of this might be where the lawyer discovers that the purchaser has filed for bankruptcy shortly before closing.*
>
> ***C. EFFECT OF PROTOCOL ON OTHER PARTS OF THE TRANSACTION***
>
> ***7. Transfers Back and Tenancy at Will Agreements***
>
> *We would suggest that only in circumstances where the keys are being released prior to the actual receipt of funds by the seller's lawyer due to couriering or wiring issues, would there ever be a necessity for a tenancy at will agreement.*
>
> ***8. Real Property Reports***
>
> *(b) Can a Purchase ever Close without a Real Property Report on a Protocol Transaction – If a buyer insists on receiving an actual real property report with a certificate of compliance as is required by the current AREA form of Real Estate Purchase Contract, then, notwithstanding the protections provided by the Protocol to a lender, the transaction cannot close if the real property report is not in hand on the completion date. However, there may be circumstances where the buyer is prepared to rely on certain undertakings of the seller or holdbacks to allow the transaction to complete on time, and subject to disclosure of known defects to the lender, the lender's funds may be capable of being advanced on the completion date, thus allowing for a*

completion to occur subject to the seller's covenants or the undertakings of the seller's lawyer regarding survey issues.

(e) Purchaser's Waiver – As indicated above, there may be circumstances where the buyer is willing to proceed with closing without a real property report and certificate of compliance in circumstances where the buyer is prepared to rely on the seller's covenants contained in the purchase contract or on the seller's lawyer's undertakings regarding survey deficiencies. In such circumstances, it would then be possible to complete the transaction, subject to any arrangements made between the seller and the buyer or their respective solicitors, but it is recommended that the buyer's lawyer get a specific waiver from the buyer confirming that they have elected to proceed on this basis notwithstanding their contractual rights under the Real Estate Purchase Contract. This is especially the case where the buyer is agreeing to complete the transaction without having seen any survey evidence at all.

33. Counsel submitted that the above references confirmed some difficulties with protocol closings, and that it was not necessarily a universal template to be used on every real estate transaction. The contract left some discretion on both parties to close the deal.

34. It was submitted that in fact it was the Member that was proposing different options to close the transaction. None of these suggestions were met with any acceptance. Thus, even if the Member's belief that a protocol closing was unavailable in these circumstances was mistaken, the Member should not be saddled with the perception that he was mean spirited or obstructionist.

35. It was submitted that considering the totality of the evidence, neither of the citations have been proven on the balance of probabilities and the Member should not be found guilty of them.

CONCLUSION OF THE HEARING COMMITTEE ON THE CITATIONS

36. The Law Society governs the profession in the public interest. To protect the public and the reputation of the profession generally, the Benchers and the LSA are vigilant about ensuring the integrity and competence of the LSA's members. Lawyers must be honest, as well as conscientious and diligent in the service of their clients' interests. A failure to maintain those standards reflects poorly on the entire profession, undermines public confidence, and puts the public at risk.

37. In assessing allegations of misconduct, the primary concern is with conduct that reflects poorly on the profession or that calls into question the suitability of the individual to practice law. A lawyer's intentions and the willfulness of conduct are relevant, but not

always determinative. Ethical misconduct does not necessarily correspond to the legal rules governing negligence. An isolated incident or inadvertent error may constitute negligence and be legally actionable without amounting to incompetence or another form of ethical breach. Conversely, conduct that evidences gross neglect in a particular matter, or a pattern of neglect or mistakes in different matters, may be regarded as an ethical breach, even though it has not resulted in loss or damage to a client: *Code of Professional Conduct*, Interpretation Section at paragraph 3, and Chapter 2 at paragraph G.2 of the Commentary.

38. The Hearing Committee finds the Member guilty of citation #1 in imposing conditions that were inconsistent with the terms of the contract between the parties. The purchase and sale contract clearly provided that the transaction was to close on a protocol basis (s. 4.12) and it was not open to the Member or the client to decide not to close on a protocol basis absent special circumstances. Special circumstances did not exist here. It was readily apparent to the Hearing Committee that the Member did not like protocol closing and was not prepared, under any circumstances, to close on this basis. This was not appropriate conduct on behalf of the Member.

39. The Hearing Committee finds the Member guilty of citation #2 agreeing to reasonable requests to amend his trust conditions. Even if both parties had agreed to a conventional closing, the trust conditions imposed by the Member were inconsistent with the contract and the Member did not exercise the requisite amount of cooperation with counsel for the purchaser to amend those trust conditions or engage in any productive discussions to resolve any perceived closing issues so as to facilitate an orderly closing of the transaction.

SUBMISSIONS AND EVIDENCE ON SANCTION

40. Mr. Groome submitted that in sanctioning a Member, the Hearing Committee must utilize a purposeful approach, keeping in mind that the protection of the best interests of the public and to protect the standing of the legal profession generally.

41. Mr. Groome submitted that the LSA was not seeking a suspension or disbarment of the Member (even though notice had been given that it may), but rather upon reflection of all of the circumstances of this case that a reprimand and fine would be appropriate.

42. Mr. Groome referred the panel to paragraph 60 of the Hearing Guide and suggested the following factors were the most relevant for the panel to consider:

    a) The need to maintain the public's confidence in the integrity of the profession, and the ability of the profession to effectively govern its own members.

    b) Specific deterrence of the member in further misconduct.

    d) General deterrence of other members.

e) Denunciation of the conduct.

f) Rehabilitation of the member.

43. Mr. Groome submitted that an aggravating factor was the Members continued use of a trust letter that was outdated and not in compliance with current practice.

44. Mr. Groome submitted that mitigating factors were the Members provision of the Agreed Statement of Facts, which resulted in compressing the time needed for the hearing and avoided the need of calling witnesses. In addition, it was apparent that the Member was now closing transactions on a protocol basis.

45. Mr. Groome submitted that fines should be in the range of $3,000.00 - $5,000.00 in total and that the Member should be responsible to pay the actual costs of the hearing.

46. Mr. Groome tendered the record of the Member, which was entered as Exhibit 11 by consent. The Record indicates that the Member had two prior convictions in 2001 and 2002, both resulting in reprimands.

47. Mr. Groome submitted that the Member should also be directed to pay the costs of the hearing and tendered an Estimate of Costs that was entered as Exhibit 12 by consent.

48. Mr. Davidson Q.C. submitted that the appropriate sanction should be based upon the facts as found by the Hearing Committee.

49. Mr. Davidson Q.C. submitted that the record of the Member was very dated and should not be seen to be an aggravating matter. Further, the conduct that the Member was found Guilty of then was completely unrelated to the conduct in this matter.

50. Mr. Davidson Q.C. noted that the costs that the LSA was seeking were considerable and suggested that a sharp fine and a reprimand was more than sufficient for the Hearing Committee to meet its obligation in sanctioning.

51. Mr. Davidson Q.C. referred the Hearing Committee to two previous decisions that supported his submission that a reprimand was appropriate in these circumstances:

- LSA v. Forsyth-Nicholson [1999] L.S.D.D. No. 58; and
- LSA v. Philion [1994] L.S.D.D. No. 198.

DECISION AS TO SANCTION

52. In determining an appropriate sanction, the Hearing Committee is guided by the public interest, which seeks to protect the public from acts of professional misconduct. The primary purpose of disciplinary proceedings is the protection of the best interests of the public and protecting the standing of the legal profession generally. The fundamental

purpose of the sanctioning process is to ensure that the public is protected and that the public maintains a high degree of confidence in the legal profession.

53. In *McKee v. College of Psychologists (British Columbia)*, [1994] 9 W.W.R. 374 at page 376, the British Columbia Court of Appeal articulated the following principles, which are equally applicable to the disciplinary process for the legal profession:

> "In cases of professional discipline there is an aspect of punishment to any penalty which may be imposed and in some ways the proceedings resemble sentencing in a criminal case. However, where the legislature has entrusted the disciplinary process to a self-governing professional body, the legislative purpose is regulation of the profession in the public interest. The emphasis must clearly be upon the protection of the public interest, and to that end, an assessment of the degree or risk, if any, in permitting a practitioner to hold himself out as legally authorized to practice his profession. The steps necessary to protect the public, and the risk that an individual may represent if permitted to practice, are matters that the professional's peers are better able to assess than a person untrained in the particular professional art or science."

54. The Hearing Guide for the LSA, at paragraphs 60 and 61, articulate the relevant factors to be considered in determining the appropriate sanction:

> 60. A number of general factors are to be taken into account. The weight given to each factor will depend on the nature of the case, always keeping in mind the purpose of the process as outlined above.
>
> a) The need to maintain the public's confidence in the integrity of the profession, and the ability of the profession to effectively govern its own members.
>
> b) Specific deterrence of the member in further misconduct.
>
> c) Incapacitation of the member (through disbarment or suspension).
>
> d) General deterrence of other members.
>
> e) Denunciation of the conduct.
>
> f) Rehabilitation of the member.
>
> g) Avoiding undue disparity with the sanctions imposed in other cases.

In one way or another each of these factors is connected to the two primary purposes of the sanctioning process: (1) protection of the public and (2) maintaining confidence in the legal profession.

61. More specific factors may include the following:

a) The nature of the conduct:

(i) Does the conduct raise concerns about the protection of the public?

(ii) Does the conduct raise concerns about maintaining public confidence in the legal profession?

(iii) Does the conduct raise concerns about the ability of the legal system to function properly? (e.g., breach of duties to the court, other lawyers or the Law Society)

(iv) Does the conduct raise concerns about the ability of the Law Society to effectively govern its members?

55. The Hearing Committee was influenced in its decision as to sanction by the following factors:

(a) the Member's co-operation with the LSA;

(b) the Member's prior discipline record;

(c) that specific deterrence of the Member will be achieved with a reprimand in these circumstances;

(d) that the Member now closes transactions on a protocol basis; and

(e) that from a general deterrence perspective, that it is important for all Members of the LSA that compliance with the Code of Conduct are important not only to the Bar, but also to maintain the public's confidence in the legal profession.

56. Taking into account all of the foregoing factors, the Hearing Committee concluded that the public interest would be protected and confidence in the profession maintained through a reprimand. In addition, the Member directed to pay fines of $2,000.00 in relation to Citation 1 and $1,000.00 in relation to Citation 2. The Member was provided with 6 months to pay the fines from the date that the Member is served with the Statement of Costs of the hearing.

57. In addition, the Member is directed to pay the actual costs of the hearing. The Member was given time to pay the costs of 6 months from the receipt by the Member of the Statement of Costs.

58. The Chair delivered the reprimand to the Member, which expressed denunciation for the conduct of a Member that brought discredit to the profession. A copy of the reprimand is appended to this Hearing Report.

59. The Hearing Committee also noted that the Hearing Committee has no concerns about Mr. Pozniak's competence. integrity or governability. No direction to the Practice Review Committee was warranted.

CONCLUDING MATTERS

60. The Hearing Committee Report, the evidence and the Exhibits in this hearing are to be made available to the public, subject to redaction to protect privileged communications, the names of any of the Member's clients and such other confidential personal information.

Dated this 17th day of June, 2011.

James A. Glass, Q.C., Bencher
Chair

Ron Everard, Q.C., Bencher

Dale Spackman, Q.C., Bencher

REPRIMAND

Mr. Pozniak, we in the legal profession enjoy the privilege of self-regulation; and with that comes high standards of conduct expected not only by all members of the profession but, most importantly, members of the public expect that from us. We find, Mr. Pozniak, your conduct fell short of that required of the Code and expected by the profession and expected by members of the public.