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 DAVID STEED A Member of the Law Society of Alberta

INTRODUCTION AND SUMMARY OF RESULT

1. On January 10 to 13, 2011 a Hearing Committee of the Law Society of Alberta (LSA) convened at the Law Society office in Calgary to inquire into the conduct of the Member David Steed. The Hearing Committee was comprised of Sarah King-D'Souza, Q.C., Chair, James Peacock, Q.C., former Bencher, Miriam Carey PhD, Lay Bencher. The LSA was represented by Janet Dixon, Q.C. The Member was represented by Dennis McDermott, Q.C.

2. The Member faced four (4) Citations:

i. IT IS ALLEGED THAT you failed to serve your client, failed to respond to communications from your client on a timely basis and failed to keep your client informed, and that such conduct is conduct deserving of sanction.

ii. IT IS ALLEGED THAT you failed to comply with express trust conditions imposed upon you by another lawyer (P.C.) and that such conduct is conduct deserving of sanction.

iii. IT IS ALLEGED THAT you failed to be candid with another lawyer and that you lied to and misled that lawyer (P.C.) and that such conduct is conduct deserving of sanction.

iv. IT IS ALLEGED THAT you failed to comply with express trust conditions imposed upon you by another lawyer (G.V.) and that such conduct is conduct deserving of sanction.

3. On the basis of the evidence received at the Hearing and for the reasons that follow, the Hearing Committee finds that Citations 1, 2 and 4 are proven and that the Member is guilty of conduct deserving of sanction.

4. With respect to Citation 3, an application was made by Counsel for the Law Society to discontinue this Citation. Counsel for the Law Society took the position that the threshold test had not been met. There was additional information before the Hearing Committee that was not before the LSA Manager of Complaints at the time

she prepared her section 53 report. The additional information was material and could reasonably have had an impact on the decision made by the original panel.

5. The Hearing Committee concluded that the sanction for the remaining Citations should be a reprimand, that the Member should be permitted to practice under conditions and that the Member pay the actual costs of the Hearing. The Chair administered the reprimand.

JURISDICTION AND PRELIMINARY MATTERS

6. For the purpose of establishing jurisdiction, Counsel for the Law Society submitted the following Exhibits:

a. Exhibit "1" – Letter of Appointment.
b. Exhibit "2" – Notice to Solicitor
c. Exhibit "3" – Notice to Attend and Private Hearing Application
d. Exhibit "4" – Certificate of Standing of Member
e. Exhibit "5" – Certificate of Exercise of Discretion.

There was no objection by either Counsel regarding the constitution of the Hearing Committee. The entire Hearing was conducted in public. The Member was present.

CITATIONS

7. The Member faced 4 citations as set out above.

EVIDENCE

8. As noted above, Exhibit 1 – 5, the jurisdictional Exhibits were entered into evidence.

9. Exhibits 6- 72, all relevant to the citations, were entered into evidence.

10. Exhibit 25 – 49 were initially entered into evidence as Exhibits A-1 – A-25 in respect to the discontinuance application made by Counsel for the Member. Thereafter those same Exhibits were re-marked and became Exhibits 25-49 in the Hearing of evidence in respect to the citations.

DISCONTINUANCE APPLICATION

11. Counsel for the Member brought a preliminary application for discontinuance of the citations pursuant to the provisions contained in the Pre Hearing Guideline at page 7, paragraphs 52 – 55.

12. The grounds for the discontinuance application were pursuant to the Threshold Guide at page 5, paragraph 32(b) which states that *"Where new information has arisen, where that information was not before the original panel and where that information is material in the sense that it could reasonably have had an impact on the decision made by the original panel*", a discontinuance application may be entertained.

13. The Hearing Committee heard evidence from the Member in relation to an application for discontinuance of Citation 1.

14. Citation 1 related to a complaint by a Financial Institution (Bank) that the Member had failed to provide a Final Report on Title. The complaint was made to the Law Society on February 12, 2008 by the Bank in relation to a mortgage advanced on February 13, 2006 and registered on behalf of the Bank by the Member on July 13, 2006. The Member, acting for the Purchaser, D.G. and for the Bank, had been unable to provide a Final Report on Title, in part because Counsel for the Vendor had not complied with his undertaking to pay out a mortgage and provide the Member with a Certified Copy of Title evidencing same.

15. In addition, the Member's office had not discharged another mortgage from the title, the circumstances of which were as follows:

i. This transaction had commenced as a sale from the Vendor to M.S. D.G., a client of the Member, purchased from M.S. and arranged for interim financing from an individual named R.F. The property was then resold to S.M.H. S.M.H. was the person who signed the Bank mortgage. The member acted for D.G., S.M.H. and the Bank.

ii. The private mortgage between D.G. and R.F. was registered against the title on June 16, 2006. D.G. was buying other units in the complex. On June 20, 2006, D.G. advised the Member that the mortgage was to be "rolled over" to another condominium unit which was to be sold by D.G. in a few weeks and the mortgage to RF paid out.

iii. The Member's offices re-registered the mortgage on the title to the second unit but failed to attend to discharge of the mortgage on the first unit. By the time of the Bank complaint in 2008, D.G. owed R.F. $4,447.00 relating to the second unit, and R.F. (rightly or wrongly) was not prepared to provide a discharge of mortgage as a result, for the original condo, until this sum was paid.

iv. Upon receiving a letter from the Bank of January 29, 2008 and a letter from new Counsel for the Bank on or about February 8, 2008, the Member realized the mortgages had not been discharged.

v. D.G. instructed the Member to pay this sum from monies held in trust for D.G., on February 13, 2008.

vi. The Member also attended to obtaining discharge of the other mortgage and completion of the final reporting letter to the Bank by February 25, 2008; however by inadvertence, the final reporting letter likely was not sent to the Bank on February 25, 2008, but only to the Complaints Officer at the LSA.

vii. The Bank again requested and received a copy of the final reporting letter and new certificate of title on May 5, 2008.

16. The Member's position in support of discontinuance of Citation 1 included that the Bank had sent the letter to him on January 29, 2008 requesting the Final Report on Title within 15 days, but that notwithstanding, the Bank had retained Counsel and had in addition reported the Member to the Law Society on February 12, 2008.

17. The Member argued that he began communications with Counsel for Bank within the 15 day time period, secured discharge of the mortgages and prepared the Final Report on Title by February 25, 2008, close to the 15 day deadline imposed by the Bank.

18. The Member also argued that the delay in obtaining one of the discharges of mortgage was the fault of Counsel for the Vendor as the Member needed that Counsel to complete his work before he could report to the Bank on a final basis, which he did on February 25, 2008.

19. Counsel for the LSA argued that new information had arisen but it enhanced the likelihood of conviction. Counsel for the LSA pointed out that the information before the Committee previously was only the October, 2007 and January 8, 2008 requests from the Bank for a Final Report whereas now the evidence made it clear that there were various follow-ups from the Bank.

20. In fact, some of the new information provided related to another transaction being a sale by S.M.H. back to D.G. and an intended assumption of mortgage. Other information related to the overall history of the transaction and to efforts made by the Member in January and February 2008 once it came to his attention that the mortgages had not been discharged.

21. The Hearing Committee's decision was that based on the new information the panel was unable to say that there was not a reasonable prospect of conviction and the discontinuance application was denied. Specifically, the Member's focus in argument related largely to the period of time from January to February 2008 and did not take into account the fact that the Final Report on Title, evidencing discharges of mortgages, ought to have been provided to the Bank 2 years previously and within a few months of the closing of the sale transaction. The file was put away without the discharges being attended to by the Member, or a final Report on Title being prepared for the Bank.

22. At this juncture Counsel for the LSA advised the Hearing Panel that she was seeking discontinuance of Citation 3. From the further information provided by the Member to Counsel for the LSA (telephone logs for April 14 and 28, 2008) it appeared that the Member had been in touch with ALIA as he had represented to the complainant, Paul Caron. Thus the allegation that the Member had failed to be candid with another lawyer and had lied to and misled that lawyer were unlikely to be provable by the LSA. Under Section 32(a) of the Threshold Guide the position of Counsel for the Law Society is entitled to great deference. On the basis of the new information provided and Counsel for the LSA's position, the Hearing Committee discontinued Citation 3.

23. Counsel for the Member then advised that he would not be proceeding with discontinuance applications with respect to Citations 2 and 4. It was agreed that Exhibits A-1 – A-25 would be imported into the Hearing on the Citations as well as Mr. Steed's evidence, without limiting the ability of Counsel for the Member to call him again.

LSA's OPENING STATEMENT AND EVIDENCE

Citation #1

24. Counsel for LSA made an opening statement indicating that with respect to Citation 1 relating to the failure to serve the Bank she would not be calling any further evidence.

Citation #2 – Evidence of Paul Caron

25. Counsel called Paul Caron, Q.C., Barrister and Solicitor. Paul Caron represented a mortgage lender (Lender). In July, 2007, the Lender agreed to lend $550,000.00 to the Member's clients: B.H. and her numbered corporation to acquire a property on Hope Street, Calgary, Alberta. Another property owned by B.H. and her corporation, located at **02 -1*th Avenue S.W. was to be used as collateral security for the purchase of Hope Street property.

26. As security, the Lender wanted to be the second mortgage on both properties. On August 10, 2007, Paul Caron sent a letter to the Member enclosing the sum of $548,300.00 in trust that the Member "immediately" discharge 4 instruments from title to **02 -1*th Avenue S.W., one of those being a mortgage in favor of the Financial Corp. in the principal amount of approximately $4.3 million dollars.

27. A few days later Paul Caron notified the Member that the Lender had sent him a second commitment letter requiring an additional property , **14-1*th Avenue S.W. to be mortgaged and he sent to the Member that mortgage to be registered as well by the Member.

28. The Member wrote to Paul Caron twice in August 2007 in relation to the matter.

29. Paul Caron sent follow up letters to the Member on September 19, 2007, January 14, 2008 and March 28, 2008 asking for evidence of his client's security and discharge of the encumbrances.

30. On March 31, 2008, Paul Caron asked for return of his client's money. On April 25, 2008 Paul Caron wrote again to confirm a discussion wherein the Member told Paul Caron that he had referred the matter to ALIA and indicated that if the money was not returned to Paul Caron by noon, he would be reporting the Member to the LSA.

31. On March 5, 2008, Paul Caron commenced foreclosure on the Lender mortgage.

32. On May 6, 2008, Paul Caron wrote to ALIA. Paul Caron had been advised that there was no record of a claim to ALIA. He asked that a lawyer be assigned to the matter immediately as the foreclosure needed to be addressed.

33. Paul Caron was aware from communications with the Member that the Member had imposed trust conditions on an Edmonton lawyer relating to an unrelated sale of other properties owned by B.H. and her corporation to A.I.L. The Member had advised Paul Caron that he had imposed a trust condition upon the Purchaser's lawyer that A.I.L. was to provide sufficient and suitable security for "Financial Corp." to discharge the collateral mortgage registered against **02-1* Avenue S.W. (and another property.)

34. Paul Caron advised that at one point he had called A.I.L.'s lawyer, Norman Simons, to ask what was going on and had been advised that Norman Simons was unable to comply with the Member's trust conditions. However, Paul Caron also gave evidence that he had never released the Member from the trust conditions that he had imposed upon the Member.

35. Paul Caron advised that the properties owned by the Member's clients on which the $550,000.00 the Lender mortgage had been placed ultimately went into foreclosure and that there was insufficient equity to pay out the Lender.

Citation #4 - Evidence of Grant Vogel

36. Counsel for LSA called Grant Vogel Barrister and Solicitor. Grant Vogel had written a letter to the Manager of Complaints on December 21, 2007 informing the LSA that the Member was in breach of trust conditions imposed upon him on February 14, 2007.

37. Grant Vogel represented the "Financial Corp.". In February 2007 "Financial Corp." advanced approximately $4.3 million dollars by way of a mortgage loan to B.H.'s numbered corporation for purchase of some property located on *1th Street and 17th Avenue S.W. B.H. and her daughter A.H. were the guarantors of the loan to the

numbered corporation. There were various negotiations between Grant Vogel and the Member in relation to the terms of the loan and security for the loan. On February 5, 2007 Grant Vogel sent the documents for execution to the Member via email. The closing date was moved to February 14, 2007.

38. Security for the mortgage loan was to consist of a first mortgage on the purchased lands and collateral mortgages on three other properties, all of which had existing encumbrances that needed to be removed. Property #3 was 2102, **3-1*th Street S.W. Calgary, Alberta.

39. Grant Vogel emailed a trust letter to the Member on February 14, 2007 advising that upon receipt of a signed copy of the letter, mortgage funds would be directly deposited into the Member's bank account. In the letter, Grant Vogel imposed various trust conditions upon the Member in relation to each of the three Properties.

40. Specifically at paragraph 8 the trust letter stated that:

"*you [the Member] use the enclosed funds to pay out in full the non-permitted encumbrances and within 60 days of the day hereof (unless an extension is granted by this office), you provide this office with a copy of Title evidencing discharge of the following registrations: …*

Property 3

**** 111 155 Mortgage (to be discharged)*
**** 111 156 Caveat re: Assignment of rents and Leases (to be discharged)*
**** 457 418 Certificate of Lis Pendens (to be discharged)*

If the foregoing is acceptable to you, please provide on the space provided returning and acknowledged copy of this letter to this office electronically or via fax:"

41. The wording of the Statement of Acknowledgement on the third page of the letter was as follows:

"*The foregoing trust conditions are acknowledged and agreed to this ___ day of February, 2007.*

Z. & COMPANY

*Per:*_____
N. David Steed

42. On February 14, 2007, the Member endorsed his signature acknowledging and agreeing to the trust conditions and returned the signed page to Grant Vogel. Grant

Vogel indicated in evidence that it was a precondition to the advance of funds that the acknowledgment be signed by the Member.

43. Grant Vogel confirmed that the breach of undertakings related only to Property 3 and that none of the 3 non-permitted encumbrances were discharged from that property within 60 days as per the trust conditions.

44. On May 9, 2007, Grant Vogel wrote to the Member for a status update re outstanding trust conditions including discharge of four non-permitted instruments.

45. On May 10, 2007, the Member responded, and in relation to the mortgage and Caveat stated that: "*The collateral Mortgage Instrument *** 111 155 and Caveat Instrument *** 111 156 have been restructured and are coming off title to the property at 2102, **3 1*th Street. I will follow up on receipt of same."*

46. In relation to the Certificate of Lis Pendens, the Member's letter stated: "*The Certificate of Lis Pendens against A.H. is currently being discussed for settlement and we anticipate that this should be concluded prior to the end of this month".*

47. The Member also advised Grant Vogel that the property had been sold.

48. On December 19, 2007, Grant Vogel wrote to the Member indicating that he had not yet received copies of title evidencing all of the discharges required under paragraph 8 of the enclosed letter and that no extension had been granted.

49. On December 21, 2007, Grant Vogel wrote to the Law Society of Alberta.

50. On January 7, 2008, the Member contacted Grant Vogel by telephone to advise that the claim with respect to the Certificate of Lis Pendens had been paid out and that he would be receiving a discharge of the Lis Pendens, and proposing a postponement of the mortgage and caveat.

51. On January 10, 2008, Grant Vogel wrote to the LSA enclosing a transcription of the voice mail message left for him by the Member on January 7, 2008, and advising that the proposed postponement was unacceptable to his client.

52. In cross examination, Grant Vogel confirmed that the actual loan from "Financial Corp." was approximately $4.3 million dollars, that the sum of approximately $152,000.00 was held back and the balance wired to the Member's bank account after the Member signed the acknowledgement of trust conditions. Grant Vogel acknowledged being aware that the Member's wife was expecting a baby around the time of the transaction and his evidence was that he had made every effort to accommodate this event. Grant Vogel acknowledged that the real estate market was busy in 2007. He indicated that lenders were required to provide discharges within 30 days but did not always do so his practice was to extend the time line to 60 days in his

trust letters. He felt that this was reasonable in light of the market conditions at the time.

53. Grant Vogel advised that the discharge of the Lender mortgage on property #3 did eventually occur, but not while he had the file.

54. This completed the case for LSA.

MEMBER'S OPENING STATEMENT AND EVIDENCE

55. Counsel for the Member then made his opening statement. Counsel for the Member asked that the Committee consider the citations, viewing them not through the lens of the "temporal issue" and whether or not there was a length of time more than "immediate" or "within 60 days" by which trust conditions were complied with but rather look at them in terms of the "achievement issue": In other words, assess whether the deal had been done and, in the case of Citation 4, matters were resolved without any foreclosure. In terms of protection of the public, Counsel for the Member suggested that these were commercial transactions, that the protection of the public aspect was not as significant and that, at the end of the day, only one of the trust conditions was not eventually fulfilled by the Member.

Evidence of the Member

56. The Member graduated from the University of Alberta Law School in 2002 and articled with the same person he was working with at the time the events leading to the citations took place.

Citation #1

57. The Member indicated that his client signed the Lender mortgage at the end of June 2006 and the mortgage was registered on July 9, 2007 with the funds sent to the Vendor's lawyer. Due to it taking in excess of 3 – 6 months to receive discharges from bank lawyers at that point in time, follow-up usually occurred about 3 months later so this would be why the preliminary report on title to the Bank would have been sent out in October, 2006.

58. With respect to the lack of communications or further reporting to the Bank between October 30, 2006 and January 29, 2008, the Member attributed this to a diarization short-coming. Upon receiving the fax from Bank on January 29, 2008 requesting the Final Report on Title, the Member's offices contacted the Vendor's lawyer asking him to comply with the trust condition requiring him to discharge one mortgage.

59. The Member indicated that he had responded by dealing with the matter and getting things going but was reported to LSA on February 12, 2008 by the Bank. At that point he had also been in communications with counsel for the Bank. He felt that he should not be in any further communications with the Bank.

60. On February 25, 2008 the Member attached the Final Report on Title to a letter to the complaints officer at LSA and the Member believed that it also went on that date to the Bank. It appears that the February 25, 2008 Final Report on Title was not received at the Bank and on May 5, 2008 the Member re-sent the Final Report to the Bank.

61. Of note, the Final Report on Title was a reproduction of the October 30, 2006 Interim Report on Title with the date February 25, 2008 endorsed below the original date and with the box "Final" crossed off; however, the exceptions section was not amended in the Final Report to reflect discharge of the 2 mortgages in question.

62. With respect to the R.F. mortgage, the Member indicated that in 2006 there was nothing owed between R.F. and D.G. and the Member could have received a discharge from R.F.'s lawyer at the time.

Citation #2

63. The Member advised that his client B.H. was purchasing a residence in Calgary, AB and some of the mortgage funding was to come from the Lender. The Lender wanted to be in second position with respect to that property. The Lender also wanted a collateral second mortgage on another title owned by B.H. The Member indicated that initially the Lender wanted a collateral mortgage on one other property and then it was requested on two other properties.

64. There was no issue with respect to the Member meeting the trust conditions as relating to the Lender Mortgage being registered as second mortgage on the residential property that his client was purchasing, albeit that due to an issue with non-compliance of the Real Property Report, there was a delay in closing for some 5 months or so. Paul Caron was informed of these circumstances at the time.

65. With respect to the trust condition that the Member was unable to comply with, namely, discharge of the $4.3 million dollars mortgage to "Financial Corp." from title to the collateral property, there was a somewhat complicated situation respecting this, as follows:

66. The Member advised that in May, 2007, B.H. and her numbered corporation sold an unrelated property to A.I.L. On May 21, 2007 the Member had sent documents to Counsel for A.I.L. and believed he had imposed trust conditions on counsel for A.I.L. that would result in A.I.L. making arrangements with their lenders to have the "Financial Corp." mortgage transferred off title to the collaterally charged properties,

one of which was one of the collateral properties used for purchase of the Hope Street property by B.H.

67. The Member's letter of May 21, 2007, read as follows:

"The enclosed documents are forwarded to you on the following express trust conditions, namely: …

1. That you make no use of same until you have confirmed with T.C.C. that your client is authorized to assume the mortgage maintained by the Lender the "Financial Corp." and administered by T.C.C.

*2. That your client provide sufficient and suitable security for the lender in order to discharge the collateral mortgage registered against my client properties located at 2102, **3- 1*th street SW, Calgary, AB and **14, **16, and **02, 1*th Ave. SW, Calgary AB .(Titles enclosed)*

3. That upon confirmation of the authority to proceed with the assumption you will proceed with registration of the transfer…"

68. The Member indicated that he had advised Paul Caron that he had imposed trust conditions on another Solicitor in relation to discharge of the "Financial Corp." mortgage from one of the collateral properties used as security for the Lender mortgage. The Member indicated that he was in regular contact with counsel for A.I.L. with respect to discharge of the collateral mortgage and continued to be in contact until ALIA appointed counsel for the Member at which time he ceased. To the Members recollection he did not have further contact with counsel for A.I.L. after May 2008.

69. The Member thought that he had reported Counsel for A.I.L. to LSA for breach of the trust condition by way of a letter dated May 22, 2008, to the Manager, Complaints to which the Member had attached his letter to Counsel for A.I.L. in which he stated: "*We regret that we are now obligated to in turn report this matter to the Law Society of Alberta as a complain regarding the failure to comply with the Trust condition contained in our letter of May 21, 2007".*

70. The Member indicated that title to his client's property had been transferred to A.I.L. during the course of the transaction and that had A.I.L. assumed the "Financial Corp." Mortgage, as the Member's trust letter has intended to secure in May 2007, then by August 2007 the Member could have met Paul Caron's trust conditions.

71. In the Member's view, counsel for A.I.L. had not distinguished between trust conditions imposed upon him personally and those imposed upon his client and he was trying to get his client to satisfy the obligation. The Member had no recollection

that counsel for A.I.L. had ever indicated that he was not personally bound by trust condition #2 of the Member's May 21, 2007, letter to him.

Citation #4

72. The Member's evidence was that in February 2007 his client, B.H. and her numbered corporation had entered into a contract to purchase lands on 17th Avenue SW, Calgary, AB for $4.3 million dollars. The Lender, "Financial Corp.", wanted to be a first charge on title to the lands, and to be in second position with respect to three other properties.

73. The Member indicated that he signed the acknowledgement of Grant Vogel's trust conditions on February 14, 2007 and that when he did so he thought he could meet the trust conditions. Grant Vogel did not contact him at the 60 day point and the Member did not seek an extension of the 60 day deadline because he forgot to do so. The transaction was completed on May 29, 2007.

74. The Member indicated that the mortgage to be discharged from Property 3 was a collateral mortgage. The Members evidence was that the Lender had previously granted B.H. mortgage funding in the amount of $300,000.00 for purchase of lands on 15th Ave and 8th Street. This mortgage was registered against the lands on 15th Ave and 8th Street as a first charge. In addition the mortgage was registered as a collateral mortgage on 2210, ***3 -1*th Street S.W. By June 2008 the amount owing on this mortgage was $361,000.00. On or about June 18, 2008, in exchange for $320,000.00, and other consideration, the Lender discharged the mortgage.

75. The Member indicated that at the time of the transaction with Grant Vogel, he had in his trust account $200,000.00 and had also anticipated using some of the funds from the "Financial Corp." $4.3 million dollar mortgage to deal with some of the instruments affecting title. The shortfall of funds received created an issue. The Member indicated that the $200,000.00 remaining in trust had been used to pay out a writ and close the transaction.

76. In addition, in previous iterations of the funding commitment the Member thought that that the encumbrances on Property #3 were going be permitted. The client advised him of this as well. On the Funding Checklist dated February 4, 2007, all three were listed under "permitted Encumbrances", albeit each with the words "(to be discharged)" also indicated.

77. The Member acknowledged that he had overlooked that "change" to the trust conditions relating to Property 3 when he acknowledged and agree to the trust conditions on February 14, 2007. The Member indicated that this was in part because his wife was in labor; he had come into the office to acknowledge the trust conditions so the funds could be send to his trust account and had been rushed.

78. The Member acknowledged that he knew that the $300,000.00 mortgage had to be discharged from title. His client advised him that she could make arrangements with a lender that would not require full payment out of the mortgage by her but would result in discharge of the mortgage from title to Property 3. The assignment of rents and leases was associated with the $300,000.00 mortgage.

79. The Member understood that B.H. was working with her contacts at the Lender to finalize some restructuring in order that the $300,000.00 could be removed from title to Property 3. The Member indicated that the collateral mortgage and caveat on Property 3 were eventually paid out from a restructuring that occurred much later. On August 18, 2008 he notified counsel for EMC by email that EMC was in the correct position on title.

80. With respect to the discharge of the Certificate of Lis Pendens on Property 3 the Member advised that the lawyer he worked with was dealing with that particular Litigation matter and that it did eventually occur.

81. The Member indicated that on the Grant Vogel matter he collected no fees because he was concerned to use the monies in trust to discharge encumbrances. It was an expensive file in hindsight and the Member had paid a lot to register the various instruments. The Member indicates that he understands the importance of trust conditions and the expectation that they must be satisfied. He went into the transaction with the expectation that they would be.

82. At the time he was reported on the Grant Vogel matter he was attempting to offer solutions and hounded his client to make the arrangements to complete the matter. He was relying on his client whom he would not represent at this juncture. The Member acknowledged that with hindsight he would have taken a different approach and not have been so willing to take the risk of accepting a series of trust conditions that in the best of times could not be fulfilled.

83. With respect to the Paul Caron matter, the Member thought he had an ability to rely on the trust conditions he had imposed on other counsel in the unrelated transaction. His evidence was an effort to explain the events and parties he was trying to get to resolve things. The Member thought that he was doing what he could to meet the trust conditions and felt he had made every effort to complete the transaction. The Member indicated that there was no question that now he would address such onerous conditions differently. The Member attributed his willingness to accept the trust conditions due to the pressures of the transaction and his experience at the time that transactions do manage to get done.

84. The Member indicated that he is much more cautious about accepting trust conditions at this time and is also careful to impose the right trust conditions.

Cross examination

85. In cross examination with respect to Citation 1, the Member acknowledged that provision of the interim report on title on October 30, 2006 could be considered unsatisfactory service to a client. He acknowledged that he knew that he needed to discharge the private mortgage from the property. That mortgage had in fact been transferred to a different property and the $4,400.00 allegedly owing by D.G. to R.F. related to that property. The Member acknowledged not reporting to the Bank from the time of the preliminary report October 26, 2006 until he sent the Final Report on Title on February 25, 2008.

86. The Member advised that in relation to the Grant Vogel matter, Property 3 was a condominium property, the residence of his client B.H. and that on February 14, 2007 he had undertaken to discharge 3 items from that property. The Member acknowledged that other than communications with his client and pursuing his client to attend to arranging for financing to get the mortgage and assignment of rents and leases off the title, he had taken no other steps to discharge those encumbrances.

87. The Member indicated with respect to the Certificate of Lis Pendens (CLP) on that property that another lawyer in his office was handling the related litigation and that it was the Member's understanding that the client had the ability to discharge the CLP but was hoping to settle for less. The Member acknowledged that monies could have been tendered into court and acknowledged his personal responsibility to attend to prompt discharge of the CLP and that he had violated the trust condition in respect to the CLP within the time frame provided in the trust conditions.

88. The Member advised that it had been his expectation that counsel for A.I.L. would not use the land transfer until the replacement security had been provided.

89. In cross examination, the Member confirmed that by August 2007 he knew that Counsel for A.I.L. had not had the "Financial Corp." mortgage discharged from titles and that prior to accepting Paul Caron's trust conditions to remove the "Financial Corp." mortgage the Member made no further inquiries of Counsel for A.I.L. The Member indicated that he spoken with Paul Caron on August 8th and this may have been in respect to varying the quantum of monthly payments being made on the Lender mortgage by his client.

90. The Member indicated that he had spoken to Counsel for A.I.L. on August 9th. The Member indicated that he based his expectation that he could discharge the "Financial Corp." mortgage on his discussions with Counsel for A.I.L. that there was a reasonable expectation that it would be, and also on the basis that he had notified Paul Caron of the problem. The Member acknowledged that the unrelated property had been transferred to A.I.L. by August 2007 so that he knew that Counsel for A.I.L. was in breach of the trust conditions that the Member had imposed upon him.

91. The Member acknowledged that he never complied with the trust conditions to have the "Financial Corp." mortgage discharged as he was personally unable to comply with that trust condition. At the time the trust condition was imposed by Paul

Caron the Member thought he had the mechanism in place to comply but he was unable to get Counsel for A.I.L. to cooperate and comply with the trust conditions imposed upon him.

.

Evidence of C.S.

92. Counsel for the Member called C.S., a real estate paralegal employed by the Member. C.S. indicated that she had been employed from 2003 with Z. and Company and that sometime in early 2010 the Member took over the practice.

93. C.S. has a University education including some law courses taken in Australia. She has resided in Canada for 14 years. She was employed at another Calgary law firm for some years working in the areas of real estate and immigration. Since 2003 she has been employed at the same law office as the Member.

94. C.S. was familiar with the events relation to Citation 1. With respect to this sale, C.S. attended to execution of the purchase documents with the S.M.H. and provided a document outlining the process she uses when meeting with a client to execute documents respecting a purchase.

95. C.S. indicated that when she started working at Z. and Company there were no procedures in place and she began instituting procedures at the office. C.S. discussed what the process was supposed to be when a letter came in from a bank requesting a report. C.S. indicated that when the January 29, 2007 letter came in from the Bank it would have gone into the reporting slot and an assistant was supposed to pull the letter, locate the file and bring it to her to prepare the required report.

96. In terms of interim reporting, C.S. was supposed to receive the file once title was registered to do the reporting letter to the bank, but the files were being put into cabinets instead. C.S. acknowledged that the interim reporting should have occurred before October 2006. C.S. identified some letters from the Bank that had been entered as exhibits that requesting information relating to an assumption of the condo and indicated that this pertained to a different transaction but due to lack of due care and attention it had been placed on the wrong file.

97. To her recollection, S.M.H. subsequently sold the property back to D.G. The Member's office received a purchase contact and opened a file. Issues arose between S.M.H. and D.G. and the Member's office did not proceed with the sale and assumption.

98. Having seen the letter from the Bank sometime after January 29, 2007, C.S. contacted the vendor's lawyer who did provide the Certified Copy of Title to the Member's offices. C.S. believes that she may also have called the Bank to advise that steps were being taken.

99. With respect to the private mortgage with R.F., C.S. indicated that it had been agreed that the mortgage would be rolled over to another property and a discharge provided for the mortgage registered against the unit purchased by S.M.H.. The additional $4,400.00 owed to R.F. by D.G. in 2008 was additional associated costs and interest accrued and in her view, did not pertain to the property on which the Bank mortgage had been registered, but rather to the unit to which the mortgage was transferred. At the time these transactions were occurring there were 80 - 100 real estate files in the office at a time.

100. Under cross examination C.S. acknowledged that it was the Member's responsibility to accept the trust conditions. He was also responsible to comply with the trust conditions. She had concerns respecting procedures not being followed in the firm. She had designed new systems that were not, in her view, being followed.

SUBMISSIONS ON CITATIONS

Submissions of LSA Counsel

101. With respect to Citation 1, Counsel for the LSA submitted that it was clear from the documents and had been admitted by the Member and his paralegal that the member was retained by the Bank, had a duty to Bank to complete the mortgage transaction, including removing the 2 exceptions on title.

102. Counsel submitted that although the Member had provided an explanation as to the circumstances of the breach that was relevant to sanction, the failure to serve the Bank had been established on the evidence. Counsel for the LSA invited the Hearing Committee to find that there had been a clear failure to serve and a clear failure to keep the Bank informed on the transaction for a period of 19 months. The consequence of the Member's failure to serve was that new Counsel for the Bank, in addition to taking the normal foreclosure steps on the property, was also obliged to take action to ensure that the encumbrances were discharged.

103. With respect to Citations 2 and 4 Counsel for the LSA submitted that the obligation on a Lawyer to deal with trust conditions is fundamental. If a Lawyer accepts a trust condition it personally binds that Lawyer. If a Lawyer is unable to comply with a trust condition for any reason Chapter 4, Rule 11 provides that the Lawyer must return the entrusted property or reach agreement with the entrustor to amend or clarify the trust conditions. A trust condition creates a real trust and the recipient of the document or money is a trustee for the sender. Thus the member became a trustee for Grant Vogel and he was also a trustee for Paul Caron.

104. With respect to the Paul Caron matter, the breach was neither technical nor trivial and, in fact, the properties went into foreclosure.

105. With respect to the Grant Vogel matter, Counsel for the LSA pointed out that there was no explanation for the Member's failure to comply with that trust condition between the time of accepting it in February 2007 and the subsequent developments that occurred in May of that year.

Submissions of Counsel for the Member

106. With respect to Citation 1, Counsel for the Member acknowledged that a 19 month delay in providing a Final Report on Title was not appropriate communication to a client and that in the 19 month period there was a failure to inform the client as to what was transpiring. Counsel pointed out that there was a mechanism in place at the office and it worked in the sense that eventually Counsel for the Vendor did comply with the trust conditions imposed upon him. Counsel submitted that Citation 1 did not have the gravity of the other 2 matters and it was unlikely that LSA would bring that citation forward as a single citation.

107. With respect to Citations 2 and 4, Counsel for the Member pointed out that in the case of Citation 2 the word "immediately" was used in respect to performance of trust conditions and with respect to Citation 4 the phrase "within 60 days" was used. Counsel for the Member suggested that perhaps the 60 day point was not the point to start to calculate the time of the breach but possibly a later point due to there having been communications between Counsel. Eventually, the trust conditions were met.

108. In the Grant Vogel matter, the trust condition was eventually satisfied albeit not within the 60 day time frame of the trust condition. With respect to the Paul Caron matter, there were some shorter delays in relation to removal of other encumbrances, the Member kept Paul Caron apprised and Paul Caron did not take issue with those delays. Furthermore, Counsel pointed out that even if the Lender had been in second position on title to the collateral property, there would still have been no recovery at time of foreclosure.

109. Counsel pointed out that this was not a question of the Member being dishonest. Counsel further pointed out that what had occurred here is that the Member failed to comply with trust conditions on both matters in relation to mortgages on collateral properties.

110. Counsel pointed out that Citation 1 differed in kind from Citations 2 and 4 in that the Member endeavored to keep Grant Vogel and Paul Caron apprised of what was happening.

DECISION ON CITATIONS

111. The relevant sections of the LSA Code of Conduct are:

"Chapter 2 COMPETENCE

STATEMENT OF PRINCIPLE
A lawyer has a duty to be competent and to render competent services.

Rules
1. A lawyer, to be competent, must possess the skills and attributes relevant to each matter undertaken on behalf of a client and must apply them in a manner appropriate to that matter.
…
4. A lawyer may assign to support personnel only those tasks that they are competent to perform and must ensure that they are properly trained and supervised. "

and

"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

Rules
…
10. A lawyer must honour all undertakings given by the lawyer regardless of their form or the manner in which they have been communicated.

11. The following rules govern the use of trust conditions:
…
(e) If one or more of the trust conditions imposed on a lawyer is:
(i) unclear or ambiguous;
(ii) inconsistent with the terms of the clients' agreement; or
(iii) impractical or manifestly unfair,
or if that lawyer is unable or unwilling to honour one or more of the trust conditions for some other reason, then that lawyer must forthwith:
(A) return the entrusted property to the entrustor, or
(B) reach agreement with the entrustor to amend or clarify the trust conditions.
…
(f) If the parties agree on an amendment to or clarification of the trust conditions, the amendment or clarification must be confirmed in writing.

(g) When a trust condition falling within subparagraph (e)(i), (ii) or (iii) above has not been amended or clarified by agreement within a reasonable time of the entrustee's receipt of the entrusted property, the entrustee must return the entrusted property to the entrustor.

(h) When a trust condition that the entrustee is unable or unwilling to honour for reasons other than those described in subparagraphs (e)(i), (ii) and (iii) above has not

been amended by agreement within a reasonable time of the entrustee's receipt of the entrusted property, the entrustee must either:
(i) return the entrusted property to the entrustor, or
(ii) accept the trust conditions as originally stated by the entrustor."

Citation 1

112. The evidence shows that the Member failed to serve his client, the Bank, in a number of ways including:

a. failing to supervise staff who put the file away before it was completed,
b. failing to ensure that the mortgage with R.F. was discharged from title,
c. failing to ensure that the Vendor's lawyer had complied with his Undertaking,
d. failing to provide the Bank with a Final Report on title,
e. failing to keep the Bank informed as to the difficulties the Member was having,
f. failing to conclude the matter for 19 months and until notified by the Bank.

113. With respect to the R.F. mortgage, although the Member attended to transfer of the mortgage to the new title, there was no evidence that he had notified R.F.'s lawyer that this task had been accomplished or that he requested a discharge from her in 2006. When the matter came to the Member's attention in 2008, D.G. owed money to R.F. for other matters, and this debt had to be addressed before R.F. would discharge the mortgage from title.

Citations 2 and 4

114. With respect to Citations 2 and 4, the Member accepted trust conditions and was bound by them. In the case of Citation 2, the Member already knew that Counsel for A.I.L. had not complied with the trust conditions the Member thought he had imposed upon him in May 2007, but the Member still accepted from Paul Caron trust conditions that predicated compliance by Counsel for A.I.L., before the Member himself could meet Paul Caron's trust conditions.

115. With respect to the Paul Caron matter, the breach was neither technical nor trivial and, in fact, the properties went into foreclosure. That the Lender as a second mortgage holder, was unable to recover anything at time of foreclosure does not mitigate the Member's failure to honor trust conditions.

116. With respect to Citation 4, the Member accepted Grant Vogel's trust conditions in February 2007. He knew immediately, due to the mortgage funds being less than anticipated, that he was unable to comply with the trust conditions imposed upon him within 60 days. Instead of sending the mortgage funds back to Grant Vogel, he released them to his client and relied on her advice that she would make

arrangements to sort out funding to discharge the Mortgage and Caveat in a manner that suited her best. This took 18 months.

117. With respect to the CLP, similarly, the Member's evidence was that his client always had the money to pay out the CLP, but she wanted to settle the action for less. Again, instead of returning the mortgage funds to Grant Vogel until such time as his client provided the funds needed to discharge the encumbrance from title, or at the least, making any kind of court application to have the disputed funds paid into court so that Grant Vogel had some re-assurance that the CLP would eventually be removed, the Member did nothing.

118. It is clear that B.H. was desperate to get the mortgage advances as quickly as possible, and the Member bowed to this pressure, rushing to sign the acceptance of trust conditions without catching the alleged change re permitted encumbrances, to his own detriment.

119. The Legal Profession Act sets out the general definition of conduct deserving of sanction at section 49(1). The Members's conduct in relation to all of the above events is incompatible with the best interests of the public, of which banking institutions are part, or of members of the Society, who are put at risk when another member fails to comply with trust conditions imposed upon him. The Member's actions tend to harm the standing of the legal professional generally because in the case of Citation 1, they show a lack of ability to balance the interests of several clients in order for all clients' rights to be protected, informed and to proper completion of the work they have paid for. The facts of Citations 2 and 4 also demonstrate the perils of misguided loyalty to a "valuable" client to the detriment of compliance with trust conditions and professionalism. The Member has violated some very fundamental rules of the Code of Conduct. The Hearing Committee found the Member guilty on Citations 1, 2 and 4.

SUBMISSIONS ON SANCTION

Submissions of LSA Counsel

120. Counsel for the LSA entered a letter from Gregory Busch, Director of Lawyer Conduct, dated December 31, 2010 certifying that the Member has no discipline record with the Law Society of Alberta.

121. Counsel for the LSA entered the estimated Statement of Costs prepared by Law Society Counsel in respect of this hearing.

122. Counsel for the LSA also entered an undertaking entered into by the Member on May 21, 2010 with Practice Review.

123. Counsel for the LSA submitted that the factors in sanction that were relevant in this situation were rehabilitation and that the Member's misconduct could be characterized as due to practice management issues or lack of understanding by a new lawyer of the critical importance of trust conditions, the pressures of a busy practice or lack of threshold understanding of real estate conveyancing.

124. Counsel for the LSA also suggested that there was a deterrence element and that it is a lawyer's option to take fewer files, if unable to discharge their duties to client as result of lack of staff or ineffective office procedures. Counsel for LSA indicated that the personal deterrence aspect is fulfilled by the Member having gone through the hearing process and being responsible for costs of the process.

125. Counsel for LSA advised that the Member had been referred to Practice Review, that his file remains active with Practice Review and invited the Hearing Panel to direct the Member continue to cooperate with Practice Review, and continue to meet his Undertaking to Practice Review. The Undertaking consists of 16 undertakings directed towards the Member's education relating to real estate conveyancing practice, effective use of a mentor, familiarization with accounting rules of the LSA, not making loans to clients and segregating personal business from the Member's legal practice, and general practice management requirements.

126. Counsel for the LSA also suggested that the Hearing Committee impose a condition that the Member be required to submit to automated audits under the new Trust Safety Program, which would allow the LSA to provide continued supervision and feed- back to the Member about his compliance to accounting rules. Counsel for the LSA provided a list of proposed conditions that related to the Member's participation in the Safety of Trust Program.

Submissions of Counsel for the Member

127. Counsel for the Member indicated that the Member would agree to the proposal that he participate immediately in the new Safety of Trust Funds Audit Program and that Counsel for the Member had been assisting him as a senior mentor. Counsel for the Member also indicated that the Member was considering speaking to one of the Practice Assessors and asking that she be a senior mentor for him. Counsel for the Member agreed that a reprimand would be an appropriate sanction and advised the Panel that the Member is still receiving work from the Bank.

DECISION OF THE PANEL ON SANCTIONS

128. 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. The emphasis must be upon the protection of the public interest and assessment of the risk in permitting a Member to practice.

129. A Hearing Committee must consider various general and specific factors in determining what sanctions to impose and determine the weight to be given to the factors, (See Hearing Guide paragraphs 60 and 61) keeping in mind that the essential issue is "*to maintain upon members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness."* Bolton v. Law Society [1994] 1WLR 512 at 519 (CA)

130. Having regard to the sanctioning principles outlined above, the Hearing Committee was satisfied that the public interest would be served and the reputation of the profession protected by a reprimand and by conditions imposed upon the member. The Chair administered the reprimand attached hereto as Schedule "A".

132. With respect to the conditions to be imposed upon the Member the Hearing Panel determined as follows:

a. The Member shall continue to cooperate with Practice Review;

b. The Member will comply with the Undertaking made by him to Practice Review as per Exhibit 72;

c. For the purposes of Rule 119.30, the Member's designated filing date shall be February 28, 2011;

d. On or before January 31, 2011, the Member shall ensure that the accounting software for his Law Firm is compatible with the automated data submission process as contemplated by Rule 119.30 (5)(b);

e. Commencing February 28, 2011, the Member shall submit monthly automated data reports to the Law Society of Alberta, which shall include all of the prescribed financial information as defined in the Rules of the Law Society of Alberta.

f. The Member shall pay the actual costs of this Hearing but shall have 2 years to do so from February 15, 2011. He is to provide 24 post-dated cheques to the Law Society of Alberta payable each as to 1/24th of the costs. 12 of the post-dated cheques are to be provided on February 15, 2011 and the remaining 12 post-dated cheques are to be provided by December 21, 2011. The first cheque is to be made payable March 15, 2011.

CONCLUDING MATTERS

133. No notice to the profession is required in respect of this matter.

134. The decision and transcripts of this Hearing are to be made available to the public with the names of the Complainants, Clients and Third Parties to be redacted.

135. There shall be no referral to the Attorney General.

DATED this 5th day of April, 2011 at the City of Calgary in the Province of Alberta.

Per: _____
Sarah King-D'Souza, Q.C.

Per: _____
James Peacock, Q.C.

Per: _____
Dr. Miriam Carey, PhD

SCHEDULE "A"

"…..So, Mr. Steed, With respect to Citation 1, our *Code of Conduct,* Chapter 9, does provide for the obligation of a Lawyer to clients. In particular, Chapter 9, Rule 13 and Rule 14, provide that a lawyer must be punctual in fulfilling commitments made to a client and must respond on a timely basis to all client communications that contemplate a reply. Rule 14 provides that a Lawyer must keep a client informed as to the progress of the client's matter, we did hear from Mr. Steed and C.S. about the situation at your office some years ago and her efforts to put in place processes that weren't necessarily followed by other staff.

But ultimately, whether a client is an organization such as a bank or individual, reporting is a primary obligation of a Lawyer. And U think you will find, and probably have found already, that the most important thing you can do for clients is keep in touch with them and that sometimes it isn't the best Lawyer who doesn't enter…doesn't ….sometimes it's not the best technical Lawyer who is the best person with client communications, and that technical Lawyer can be reported to the Law Society for failing to be in Contact.

On the other hand, you have Lawyers who make it very much a practice to be in constant communications with the client, and those clients - - the clients of these Lawyers are happy. An experientially, from that I do in the practice of family law, clients want to be communicated with, and if there's anything that you can take away from today and implement in your offices across the board is timely, regular contact to the client just so they know that you are aware of their file situation and you are on it. That - - - you know, if you can do anything in your practice that will help you, that would be it., But, you know, I hope -- you've probably - - I hope you've learned that already.

In relation to trust conditions, again, our *Code of Conduct* address this in Chapter 4, which is the relationship of a Lawyer to other Lawyers and the principle that a Lawyer has a duty to deal with all other Lawyers honourably and with integrity. Rule 10 provides that a Lawyer must honour all undertakings given by the Lawyer regardless of their form or the manner in which they have been communicated. And Rule 11 provides that if a Lawyer cannot meet a trust condition for various reasons or if they are unable or unwilling to honour those trust conditions, then there are certain steps they must take. They must return the property, or they must reach agreement to amend or clarify trust conditions.

As the - - as Mr. Justice McDonald indicated in *Witten and Leung*, it is of overarching importance to the practice of law as an honourable profession that Lawyers - - or that Solicitors comply, without reservation or question, with the trust conditions on which documents have been entrusted to them by other Solicitors. And even in times of busyness, as there was in 2006/2007, that's not a reason not to rigorously maintain

this - - - this requirement. It's even more reason. You have numerous transactions occurring in a fast period of time, things changing very quickly. Other Counsel have to be able to rely on your undertakings because - - and particularly in the busiest of times.

Another point that I wanted to just discuss with you in terms of trust conditions is the real need to ensure that you are able to comply with the trust conditions imposed on you by other and reading them carefully and analyzing, can I personally do this? Not, in the best of circumstances, can I do it? But, Can I do this now? And be careful, in your analysis, that you aren't being impacted by other considerations such as demands of clients to move quickly or other external considerations. You really need to analyze what it is you're being asked to do, and if you can't do it, then you need to go back to the other lawyer, and you need to discuss the situation with them and amend, and you need to be in communication with other Counsel.

An I would also say, you know, as a tangential issue, I think possibly something else you've learned from this - - from these events and - - and what -- - the Hearing is, also being analytical in terms of how you impose trust conditions on other people being very careful that what you think you're saying, you're actually saying and just not assume, and be very careful with your wording.

We all - - we all appreciate here that what happened to you was, as Ms. Dixon said, in part a product of being - - let me just - - I'm looking for her words here - - being a young Lawyer, lacking possibly experience, possibly lacking some mentorship. The times that they were, we understand that, and we also appreciate that you are in a different place now. You are four years more senior. You've established your own practice. You've has the benefit of Practice review., So we do appreciate that what happened in 2003 is - - it's very important that we have younger people in this practice - - and encourage you to comply with the conditions that have been imposed upon you today and hope - - to you benefit because, you know, clearly, you're and intelligent, capable young man. And I just wanted to leave those words with you as well, that today - - we understand how devastating today must be for you, and I hope you appreciate why we've done what we've done, but I don't want you to feel despondent or that there isn't a future for you in this practice and in this profession.

So thank you very much….."