

**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  
**NICOLA A. DAVIS**  
A Member of the Law Society of Alberta**

**INTRODUCTION AND SUMMARY OF RESULT**

1. On May 4 – 5, 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, Nicola A. Davis. The Hearing Committee was comprised of Sarah King-D'Souza, Q.C. Chair, Dennis Edney, Bencher, and Amal Umar, Lay Bencher. The LSA was represented by Molly Naber-Sykes. The Member was not represented and did not appear in person.
2. The Member faced five (5) citations as follows:
  1. **IT IS ALLEGED THAT** you failed to fulfill your undertaking to forthwith payout and discharge the Scotiabank mortgage and the CIBC mortgage, and that such conduct is conduct deserving of sanction.
  2. **IT IS ALLEGED THAT** you misled or attempted to mislead other lawyers, and that such conduct is conduct deserving of sanction.
  3. **IT IS ALLEGED THAT** you misled or attempted to mislead the Law Society of Alberta, and that such conduct is conduct deserving of sanction.
  4. **IT IS ALLEGED THAT** you failed to respond to the LSA on a timely basis and in a complete and appropriate manner and that such conduct is conduct deserving of sanction.
  5. **IT IS ALLEGED THAT** you breached the Law Society accounting rules by signing a blank trust cheque and by recording a deposit to your trust account when, in fact, no funds were deposited, 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 found as follows:
  - a. Citation 1 is proven and the Member is guilty of conduct deserving of sanction.

- b. Citation 2 is proven and the Member is guilty of conduct deserving of sanction.
- c. Citation 3 is proven and the Member is guilty of conduct deserving of sanction.
- d. Citations 4. The Hearing Committee did not make a finding of guilt on that matter.
- e. Citation 5 is proven and the Member is guilty of conduct deserving of sanction.

## **JURISDICTION AND PRELIMINARY MATTERS**

4. 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 a Private Hearing Application;
  - d. Exhibit "4" Certificate of Standing of Member;
  - e. Exhibit "5" Certificate of Exercise of Discretion.

There was no objection by Counsel for the LSA regarding the constitution of the Hearing Committee. The entire Hearing was conducted in public. Before proceeding on May 4, 2011, the Committee directed that Counsel for the LSA attempt to reach the Member at both telephone numbers that Counsel had for the Member. The Hearing Committee then waited approximately one half hour in case the Member chose to contact Counsel and indicate whether or not she was intending to appear at the Hearing.

## **SERVICE OF NOTICE OF THIS HEARING UPON THE MEMBER**

5. Counsel for the LSA advised of the following efforts on behalf of the LSA to provide the Member with Notice of these proceedings:
6. On December 7, 2010, a Process Server served the Member with the Hearing and Counsel letter which contained Notice of a Prehearing Conference scheduled for December 13, 2010, Citations, Prehearing Guide, Hearing Guide, Pro-bono Counsel list, Notice of Intent to be Represented by Counsel, and Notice of Intention to Act in Person, by delivering the documents personally to the Member at her home (Exhibit "25").

7. On December 21, 2010, a Process Server served the Member with the Prehearing Conference letter containing the Prehearing Conference Report by providing same personally to the Member (Exhibit "26").
8. On January 18, 2011, the Member sent a letter to the LSA, advising that she was under medical care and unable to respond to the letters that had been delivered (Exhibit "27").
9. On February 19, 2011, a Process Server served the Member with 13 letters and documents by posting same at the front door. The Affidavit of Service indicated that the Process Server had attempted personal service on February 15, 2011 at the same address and had noticed 2 dogs outside the residence and that one of the dogs had been present a previous address at which he had served the Member located near Airdrie, Alberta (Exhibit "28").
10. A February 23, 2011, Prehearing Conference Report directed that under Rule 83.2 documents were to be re-served, with Vice Chair approval, documents to be left at the door or posted on the door, this to include all documents previously served on February 19, 2011 along with the minutes from the Prehearing Conference of February 23, 2011. LSA Counsel was also directed to attempt to obtain an Affidavit from a third person confirming that the address where service was effected was the Member's residence, if LSA Counsel was not able to obtain such Affidavit then Service was to be by Process Service as described above. LSA Counsel was directed to deliver the documents in a sealed envelope to R.G., the Member's Counsel on other matters, with an Undertaking that those documents were to be delivered to the Member without being open by a third party and if that was not possible the documents were to be returned to LSA Counsel (Exhibit "29").
11. On February 26, 2011, a Process Server hung a heavy duty plastic bag containing a sealed envelope, enclosing the letters and documents directed by the Vice Chair in the Prehearing Conference report, to the main residence door. The Process Server deposed that he knew that address to be the residential address for the Member because he had previously personally served her on December 7 and 21, 2010 at that address (Exhibit "30").
12. The Prehearing Conference report dated March 24, 2011 provided that further service upon the Member was to be in the same manner as directed by the Vice Chair previously (Exhibit "31").
13. On March 30, 2011 a Process Server delivered a box of documents to the Member by leaving them at the door. The documents delivered were the following:
  - a. A letter dated March 30, 2011 from Molly Naber-Sykes to Ms. Davis:
  - b. A binder entitled "J. K. (Complaint/Member) v Nicky A Davis (Member) C020081819 Volume 1 of 2" containing the October 1, 2009 Section 53 Report of K. W. and Exhibit 1 to 13 (including tabs 1 – 68);

- c. A binder entitled "J. K. (Complaint/Member) v Nicky A. Davis (Member) C020081819 Volume 2 of 2" containing Tabs 69-78 of Exhibit 13 to 21. (The attached Index to Volume 1 and 2 describe the documents contained in these two binders).
- d. Minutes of the Conduct Committee Panel, dated January 14, 2010.
- e. Index to the proposed Exhibit Books.
- f. A letter from G. A. to Ms. Davis dated March 25, 2011, with attached Pre-Hearing Conference Report of March 24, 2011;
- g. A letter from G. A. to Ms. Davis dated March 25, 2011 advising of the Hearing Committee Panel.

(See Exhibit "32").

- 14. A Process Server attended on April 21, 2011 and on April 26, 2011 to personally serve a letter dated March 30, 2011 and a letter dated April 19, 2011 to the Member and was unable to do so (Exhibit "33").
- 15. A Process Server left a box at the base of the main entrance door on April 29, 2011 containing various letters, documents and binders. The Process Server deposed in an Affidavit that he returned to that address on May 2, 2011 and the box was no longer where it had been placed by him. The Process Server deposed that he was reluctant to personally serve the Member as he had done that previously at the school attended by the Member's children and the Member had become upset and emotional (Exhibit 34").
- 16. J.C., Legal Assistant to R.G., Barrister and Solicitor, swore an Affidavit on May 2, 2011, deposing that R.G. would communicate with the Member by sending correspondence to her post office box in Bragg Creek, Alberta and that J.G. had, as instructed by R.G., forwarded a sealed package of documents to the Member at that post office address and that their law office return address was on the envelope. J.G. deposed that the envelope she sent to the Member containing the LSA sealed package had not been returned to R.G.'s office. Counsel for the LSA advised that R.G. was Counsel for the Member in other matters (Exhibit 35").
- 17. On the basis of the information provided by Counsel for the LSA, supported by the Exhibits reviewed above, the Hearing Committee found satisfactory proof of service of Notice of these proceedings and of this Hearing upon the Member. The Hearing Committee was prepared to proceed with the Hearing in the absence of the Member.

## **EXHIBITS**

- 18. Exhibit 1 – 36 was entered at the beginning of these proceedings. Further Exhibits 37-39 were entered during the course of the proceedings.

## EVIDENCE

### *Evidence of B.O.*

19. Counsel for the LSA called B.O. who has been a forensic investigator with the LSA for 19 – 20 years. B.O. is a Chartered Accountant and Certified Fraud Examiner. B.O. advised that on July 25, 2008 the Director of Lawyer Conduct for the LSA directed that an investigation be performed into the conduct of the Member and specifically into the complaint of J.K. By way of letter dated October 23, 2008 B.O. was assigned to the matter, directed to perform the investigation and report back.
20. In February, 2009, B.O. attended at the Member's offices, reviewed files, interviewed witnesses and his Investigation Report dated March 30, 2009 was provided to the LSA. B.O. attended at the offices of the Member on 3 or 4 occasions as he was investigating a number of matters. With respect to the J.K. matter B.O. attended at the Member's offices once.
21. The purpose of the investigation, which took place between February 4 – March 2 10, 2009, was to investigate the complaint of J.K. a lawyer in Calgary, Alberta who had complained that the Member had appeared to breach an undertaking to forthwith pay out a Scotiabank mortgage on a property the Member had owned and sold. J.K. also complained that the Member had misled him and another lawyer A.A. that the Scotiabank mortgage had been paid when it had not been.
22. Entered in Evidence as Exhibit 7 was the Investigation Report of B.O. with supporting documentation attached as Tabs 1-68. Also entered through this witness were the transcripts of B.O.'s interview with the Member on March 9, 2009. (Exhibit 36), re-creation of the Client trust ledger card compiled by the LSA during its investigation (February 2009), a list of sums payable from the trust account to various persons or entities and a breakdown of when those sums were paid (Exhibit 37) Exhibit 38 was a copy of the PC Law report for the sale transaction on the Property showing which user had posted each transaction.
23. In August 2005 # S. Inc., a corporation owned by W.S., purchased lands in a N.W Calgary subdivision for \$149,000.00 (the "Property"). A CIBC "builder's mortgage" was registered on title for \$416,250.00.
24. In June 2006, # S. Inc. executed a Transfer of Land selling the Property to # Alberta Ltd. for \$875,000.00.
25. On August 17, 2006 a Real Estate Purchase Contract was signed between the Member and # S. Inc. for the Member to purchase the Property for \$779,000.00 with a closing date of September 5, 2006.

26. Entered as Exhibit 36 in this hearing was a Transcript of Proceedings dated March 9, 2009. This is an interview of the Member by B.O. and K.W., who are both investigators with the LSA, pursuant to a section 53 Investigation Order. The Member was not under oath but a court reporter is present. As reviewed in paragraphs 89-91 below, the Member was sent a copy of the transcript in July 2009 and asked to respond to it. The Hearing Committee accepts this transcript as evidence in these proceedings on the basis that it is relevant and reliable. The information provided by the Member during the interview is consistent in many respects with evidence given by other witnesses during the hearing. It assists in setting the context for the events that transpired and in establishing the facts
27. When B.O. interviewed the Member in March, 2009, the Member advised him that she had met W.S. towards the end of 2006. W.S. was a developer from another country with limited English. His corporation, # S. Inc., had an enormous land development project underway in Calgary. He needed legal services of various kinds, as well as a spokesperson for meetings with the City, and retained the member, a lawyer practicing in Cochrane, Alberta. The Member and W.S. worked closely together for months on a daily basis. The Member was thrilled to represent such an important client and wanted to maintain the relationship. She did everything she could to keep the client happy and described him as a highly charismatic person whom she trusted.
28. In 2006 the Member was in the middle of a relationship breakup. She found herself in a position where she had to move out of a home immediately with her children. In August, 2006, W.S. proposed that she purchase the Property from him to live in with her family. The Member's equity in her own home was still tied up. The Member wrote a cheque to # S. Inc. for \$50,000 as a down payment. W.S. agreed to arrange for a mortgage to be placed on the property that she could later assume. It was also agreed that the difference in the cash to close for purchase of the Property by the Member (about \$223,000) would come from the Member working for W.S. on the large land development project. W.S. and the Member calculated how much work the Member would be doing on the project and estimated her likely total fees.
29. The Member only lived in the Property for about six weeks as it did not suit her family's needs. There was substantial work still to be done on the Property which was a new construction. The Member considered the property to be hers as she paid some expenses on the Property although not the mortgage, and was working off the cash difference with legal services to W.S. and his corporation. The Member rented the Property to a friend for a month after she moved out in the fall of 2006.
30. Unknown to the Member, on November 15, 2006, # Alberta Ltd. obtained a mortgage on the Property from the Scotiabank for \$656,250.
31. Unknown to the Member, on July 16, 2007, # Alberta Ltd., transferred the property into the names of E.M. and V.K. for consideration of \$925,000.00. A mortgage with Scotiabank was taken out on the home for \$693,750.

32. In July or August 2007 the Member decided to sell the Property and listed it for sale with a realtor. The realtor did a title search and discovered that the Property was owned by E.M. and V.K. with several non-assumable mortgages registered on title. Although the Member did not know these persons, she came to learn that E.M. was a person who sold homes for W.S. and she later met him.
33. The Member was very upset and met with W.S. to sort things out. W.S. told her he had put title in the names of E.M. and V.K. to get financing on the Property. W.S. also told the Member that his sister was in charge of mortgaging aspects, that it was not supposed to have happened that way and perhaps his sister had misunderstood. The Member chose to accept this explanation.
34. W.S. and the Member agreed that her fees to that time for work on the land development project equaled the cash difference on the Property. The Member agreed to pay E.M. \$3000 per month to compensate E.M. for the mortgage payments he was making on the Property. It was agreed that the Member would bill W.S. for legal services thereafter and be paid in the normal course. W.S. and the Member agreed that there was no point in putting an assumable mortgage on the property for the Member. W.S. would be responsible to directly pay off the mortgages on title and the Member would pay to W.S. a portion of the sale proceeds. W.S. agreed to have his trades complete some repairs on the Property that were affecting its saleability.
35. In November 2007 the Member entered into a contract to sell the Property but the deal fell through. The Property was still not in her name but she was expecting the transfer and for that the paperwork to be sorted out. The Member continued to cut cheques to E.M. on her assumption that when W.S. paid out the mortgages she could adjust with him for any overpayments she had made to E.M.
36. On February 6, 2008 the Member sold the property for \$852,000.00 to Mr. and Mrs. I with a closing date of April 1, 2008. Mr. I is a lawyer practicing in Calgary Alberta.
37. On February 7, 2008 ownership of the Property was registered in the name of the Member. The Property was valued at \$925,000.00. Registered against title to the property were 2 mortgages, the CIBC mortgage registered in August 17, 2005 in the amount of \$416,250.00 and the mortgage registered on behalf of Scotia Mortgage Corporation on July 16, 2007 in the amount of \$693,750.00.
38. On March 7, 2008 the Member sent a Trust Letter to the attention of Mr. I at his firm, with the Transfer Documents and her undertaking to discharge the CIBC mortgage and the Scotiabank mortgage and remove the Vendors Lien Caveat. Specifically in her letter the Member undertook to: *“forthwith payout all non permitted registrations and, within a reasonable period thereafter obtain and forward to your office an updated Certificate of Title confirming the discharge of all “non permitted*

*encumbrances*". The non permitted registrations consisted of the caveat the CIBC mortgage and the Scotiabank mortgage.

39. On March 14, 2008 the Member requested a payout statement for the Scotiabank mortgage.
40. On March 31, 2008 the Property was registered in the names of Mr. and Mrs. I at Land Titles. On April 1, 2008, A.A., lawyer for Mr. and Mrs. I, paid \$811,955.19 to the Member's Law Office as Cash to Close subject to the Member's undertakings. A.A.'s letter to the Member stated: "*Please be advised that all funds which you have received from us in respect of the this transaction are now fully releasable to your client subject to the undertakings you have given to date and specifically subject to your undertaking to discharge caveat #, CIBC Mortgage – #, and Scotia mortgage – # and provide us with a Certified Copy of Title evidencing the successful discharge of same at your earliest opportunity*". The Member's Law Office deposited the funds into trust to the credit of the Member's file.
41. On April 1, 2008 the Member wrote a trust cheque paying out the real estate commissions on the sale. On that date the Member also transferred \$86,241.03 from her file to another file for purchase of the Member's new home. Between April 1 and June 20, 2008, the Member paid out \$166,323.34 from the monies in trust for personal expenses leaving a balance of \$548,352.82 in trust.
42. The Member was informed by W.S. in April 2008 that he had paid out the Scotia bank mortgage.
43. On June 10, 2008, C.H., a lawyer acting for W.S. on other matters, paid out the CIBC mortgage registered against the Property. The discharge was registered by land Tiles on August 13, 2008.
44. C.H. advised B.O. during the investigation that he did not recall speaking to the Member and did not undertake to her to pay out the CIBC mortgage. C.H. indicated that the Member had requested a letter from him that the mortgage would-be paid and discharged. A file memo indicated that his assistant spoke to the Member in March, 2008. The Member was advised C.H. would not provide such a letter until the mortgage was paid out.
45. In her Interview with B.O. in March 2009 the Member indicated that she had received two letters from C.H. relating to this transaction, one of which she relied on to close the deal. She was unable to locate the letter for B.O. Transcript Tab 76, Page 168 Lines 21 to page 169 Line 10.
46. In June, 2008 it came to the attention of Mr. I that the mortgages had not been discharged from title to the Property. Mr. I notified A.A. who spoke to the Member's assistant and was informed that the mortgages had not been paid. On June 25,



2008 A.A. wrote to the Member asking that she contact him immediately and requesting proof of payment of the mortgages.

47. On June 25, 2008 the Member called Scotiabank who confirmed that their mortgage had not been paid out. The Member then faxed a letter to Scotiabank requesting a payout statement for the mortgage as at July 2, 2008.
48. The Member advised B.O. in her interview that she spoke to W.S. who confirmed he had not paid out the Scotiabank mortgage. The Member indicated that she called her sister in the U.K. for a short term loan so the Member could pay off the mortgage herself. Her sister agreed to wire money to the Member. Although the Member needed about \$300,000, the sister indicated she would send \$725,000.
49. On June 26, 2008 the Member sent an email to A.A. stating: *"I confirm that the mortgages are paid out as far as I know," "CIBC mortgage # was paid out by C. H..."* and *"Scotia mortgage # has also been paid out. Funds were held after closing in my trust account until a dispute on the payout penalty had been resolved...."* The Member acknowledged in her interview with B.O., that she knew this information was not true but in her mind it was done because the money would come in from her sister.
50. On June 26, 2008 A.A. emailed the Member asking that she fax confirmation that Scotiabank had received the funds. The Member did not respond to A.A.'s email.
51. On June 27, 2008 J.K., a colleague of Mr. I's, emailed a letter to the Member advising that the mortgages had not been discharged.
52. On June 27, 2008, the Member emailed J.K. a letter that stated *".....I note that the mortgages are paid off. C. H. of P. H. has paid out the CIBC mortgage and our office the Scotia mortgage and I await the discharge for the Scotia Bank. It is not unusual for some time to pass before these are received. I have also noted that the Scotia mortgage was paid off recently from trust funds due to a dispute on the payout penalty."*
53. In her interview with B.O. the Member indicated that she was not trying to deceive J.K. or A.A. in making the above statements. She was *"just trying to make everyone happy and get it fixed."* She *"honestly believed that [she] was going to get money within a day or two from [her] sister."*
54. On June 30, 2008 the Member paid a further \$19,500 from the trust funds, \$10,000 of which was to correct trust shortages on other client trust ledger cards.
55. On July 2, 2008, the Member emailed A.A. offering to fax to him the cheque and payout as proof that the Scotiabank mortgage had been paid out. A.A. confirmed

he wanted this verification. The Member indicated she would do so at the end of the day.

56. On July 3, 2011 A.A. emailed the Member and asked her to fax the documents to his attention. The Member responded that she had the cheque stub only, and other supporting documents.
57. On July 3, 2008 J.K. wrote to the LSA to advise of his concerns with respect to the transaction. J. K. was also advised by C.H. that the CIBC mortgage had been paid out.
58. On July 4, 2008 Scotiabank faxed to the Member's office a payout statement as at July 2, 2008 in the amount of \$686,553.27. On that day, the Member posted to her accounting system a \$725,000 receipt from A.A.'s law firm back-dated to June 25, 2008. On July 4, 2008 the Member also posted to her accounting system a payment to Scotiabank for \$686,553.27 backdated to June 25, 2008.
59. On July 4, 2008 the Member faxed a letter to A.A. attaching a copy of a letter from the Member to Scotiabank dated June 27, 2008, a copy of the cheque stub dated June 25, 2008 payable to Scotiabank for \$686,553.27 and a copy of the July 2, 2008 payout statement from Scotiabank.
60. On July 4, 2008 the Member paid out a further \$28,580.98 from the trust funds and went on vacation until July 15, 2008.
61. On July 7, 2008 the Member's office received \$216,520.36 in net sale proceeds from sale of a property in B.C. owned by W.S.'s wife. Applying some of those funds to the Member's sale to Mr. and Mrs. I., her offices paid out the Scotiabank Mortgage in the amount of \$695,772.83, on July 8, 2008, using a trust cheque that the Member had pre-signed and left at her offices for use while she was away on vacation.
62. On July 7, 2008 Mr. I was informed by the Scotiabank manager that the P.O. Box address on the member's letter of July 4, 2008 to Scotiabank enclosing funds was incorrect.
63. On July 10, 2008 the LSA wrote to the Member and asked that she respond. On July 25, 2008 the first investigation order was issued.
64. Ultimately the CIBC Mortgage was discharged at Land Titles on August 13, 2008 by C.H. and the Scotia Bank Mortgage was discharged at Land Titles by the Member on August 14, 2008.
65. Between July 17, 2008 and January 5, 2009 the Member reversed and paid amounts from remaining funds in the trust account (approximately \$24,019.37) bringing the balance to zero.

66. The conclusions of B.O. were set out in his Summary of Findings on page 60 of his Report (Exhibit 7 ) and are summarized as follows:

- a. The Member had undertaken to payout the Scotia Bank Mortgage forthwith but it had taken her over 3 months to pay it out. The Member provided reasons for this. She did not admit breaching the undertaking.
- b. The Member admitted telling J.K. she has paid the mortgage when she knew she had not, but claimed she was not trying to mislead J.K.
- c. The Member admitted advising A.A. when she knew she had not, but claimed she was not trying to mislead A.A. The Member admitted faxing to A.A. a cover letter and cheque stub she knew she never sent to the bank as proof of payment.
- d. The Member admitted that she did not provide a full and complete explanation to the Law Society. She did not tell the LSA that she had told J.K. and A.A. that the mortgage had been paid when it had not or that she had provided documents as proof payment when she knew they were not used to pay the mortgage.

### ***Evidence of J.K.***

67. Counsel for the LSA called J.K. who is a lawyer practicing in Calgary, Alberta in the area of commercial litigation.

68. J.K. indicated that in 2008 he had been consulted by Mr. I, a lawyer at his firm, in relation to a holdback of \$20,000 for repairs on the Property. The repairs were to have been completed by the Member by June 30, 2008 failing which Mr. and Mrs. I could retain the holdback and have the repairs completed themselves. The Member had requested an extension and Mr. and Mrs. I were reluctant to agree to this.

69. Mr. I advised J.K. in late June that title to the Property did not show that the two mortgages had been discharged but the Member had advised that they had been paid out.

70. J.K. wrote to the Member on June 27, 2011 to inform her that her request for an extension was denied and to advise that the two mortgages had not been discharged.

71. On June 27, 2008 the Member responded to J.K., in part, as follows: *“.....I note that the mortgages are paid off. C. H. of P. H. has paid out the CIBC mortgage and our office the Scotia mortgage and I await the discharge for the Scotia Bank. It is not unusual for some time to pass before these are received. I have also noted that the Scotia mortgage was paid off recently from trust funds due to a dispute on the payout penalty.”*

72. J.K. and the Member spoke by telephone on June 27, 2008. The Member advised J.K. that the Scotiabank mortgage had just been paid off and there had been a payout penalty. On June 27, 2008 via email J.K. on behalf of Mr. and Mrs. I made one final proposal to the Member in relation to the holdback issue. The Member did not agree to one of the conditions proposed. J.K. was then advised by Mr. I that the Scotiabank had informed him via email that the mortgage had not been paid out. J.K. sent an email to the Member withdrawing all offers respecting the holdback.
73. On July 2, 2008 A.A. advised the Member via email that he would release the holdback to his client. The Member replied by email that she would litigate as his clients had agreed to an extension. The Member advised that she would fax over to A.A. at the end of the day a copy of the cheque and letter to Scotiabank. A.A. emailed his clients for instructions. On July 2, 2008 the Scotiabank wrote to Mr. I confirming that the mortgage payout had not been received.
74. On July 3, 2008 J.K. wrote to the Law Society.
75. Upon reviewing the Member's response to his complaint to the LSA, J.K. responded to the LSA on October 23, 2008 to provide clarification and additional facts that had subsequently come to his attention that:
- a. The Member had advised A.A. that the mortgages had been paid out.
  - b. The Member had informed J.K. that the mortgages had been paid out and when he challenged that, ceased communications with him.
  - c. The Member had provided A.A. with documentation that made it appear the Scotiabank mortgagee had been paid out.
  - d. A bank investigator indicated that a fictitious address was on the cover letter to Scotiabank dated June 27, 2008.
  - e. The actual payment was not tendered to Scotiabank until July 2008.
  - f. The Member's paralegal had confirmed this.
  - g. No agreement had been reached on an extension for the holdback on repairs but the Member had represented to A.A. that this was the case and had threatened Mr. and Mrs. I with frivolous litigation.
  - h. Mr. and Mrs. I had suffered inconvenience and emotional duress.

### ***Evidence of K.W.***

76. K.W. is the Manager of the LSA Complaints Department in Calgary.
77. J.K.'s July 3, 2008 letter to the LSA came to her attention shortly after that date and a new formal complaint file was opened.
78. Serious complaints come to K.W. and section 53 of the LPA is engaged.

79. On July 10, 2008, the complaint of J.K. was sent to the Member with a formal request for a full response within 15 days. On August 19, 2011 the Member requested an extension as the file was with the Audit Department. On September 3, 2008 K.W. wrote to the member advising that the file had been returned to her on August 22, 2008 and asking for a response by September 19, 2008.
80. On September 19, 2008 the Member sent a cover letter enclosing her responses and enclosures, an Index and the documents referred to in the Index other than item 2, the "Detailed response to the letter of J.K."
81. On September 26, 2008 K.W. wrote to the Member and asked for Item 2, the "Detailed response to the letter of J.K."
82. On October 3, 2008 the Member sent Item 2 and advised it has been inadvertently omitted from the package.
83. The Member's response to LSA indicated that she had purchased a property from a builder/Vendor (W.S.) and sold it to Mr. and Mrs. I. There were two mortgages on the Property the Member sold to Mr. and Mrs. I that they were to have been paid off by the builder/Vendor. One had been paid off by C.H. She had paid of the other eventually. The mortgages had been placed on title without the Member's permission through C.H. after the property had been sold to her.
84. The Member indicated that she had relied on C.H. and the builder/Vendor's representations and had based her undertakings to the purchasers' lawyer on this representation. The Member indicated that she never sought to mislead anyone.
85. With respect to the hold back and repairs, the Member advised that builder/Vendor had assured her they would be done. The Member indicated that there was an agreement with J.K.'s clients to extend the time within which she was to get the repairs done. The Member suggested that lawyers A.A. and J.K. were not communicating between them very well.
86. In reading the Member's response, K.W. advised the Hearing Committee that she understood that the Member believed that W.S. had paid out the mortgages and only told A.A. and J.K. what she had been told. The Member did not advise K.W. that when she had told A.A. and J.K. the mortgages were paid out, she knew this was not true. K.W. was of the view that the Member knew the mortgages had not been paid out when she made the representations to A.A. and J.K.
87. K.W. asked for and received J.K.'s response to the Member's response to LSA. J.K. advised that the Member had sent to A.A. documents that made it appear that the Scotiabank Mortgage had been paid out.

88. K.W. asked the Member to respond to J.K.'s comments. The Member did not admit to K.W. that she had falsified paperwork. The Member was given two opportunities to tell K.W. what had happened. She did not. K.W. learned the whole story later on, but not from the Member. K.W. was not comfortable with the information she received from the Member and this led to her asking for the investigation. K.W. does expect material issues to be addressed by a Member and most do so. The Member's explanation had misled her.
89. The Member was interviewed by B.O. in March 2009 and was candid with him. In April 2009 K.W. sent the Member a copy of B.O.'s Investigation Report and asked for her comments. On May 22, 2008 a follow up letter was mailed to the Member. On June 12, 2008 K.W. emailed the Member as the May 22, 2009 letter had come back "Moved/Unknown". On June 18, 2009 the Member emailed K.W. advising that she had not been receiving emails and wanted an opportunity to respond to the Investigation Report but for various reasons including having been in a car accident, she would not be able to respond until July or August.
90. On July 29 2009 K.W. emailed the Member back with a response deadline of July 24, 2009. The Member emailed K.W. back and provided a P.O. Box number. On July 6, 2008 the LSA mailed out a copy of the materials by Xpresspost. The Member accepted delivery of the letter on July 28, 2009 but never responded to K.W.
91. K.W. indicated that the purpose of the LSA asking the Member to respond to the Investigation Report was so the Member could indicate whether she disagreed with it or not, and that section 53 of the LPA requires the Member to give a response of some kind.
92. This concluded the evidence of the LSA.

## **SUBMISSIONS ON CITATIONS**

### ***Submissions of LSA Counsel***

93. Counsel for the LSA argued that all five citations had been made out. Counsel provided a concordance table that aligned portions of the evidence with each citation.

## **DECISION**

94. The Hearing Committee notes the following Chapters and Rules from the Code of Professional Conduct:

95. Section 3 (c) of the Interpretation Chapter of the Code of Conduct states as follows:  
*“Although the word “knowingly” does not generally appear in the rules, a lawyer’s intentions and the willfulness or deliberateness of the conduct are relevant to whether a breach of this Code will be sanctioned.”*

96. CHAPTER 3 Rule 3 of the Code of Conduct, Relationship of the lawyer to the Profession provides that: *“A lawyer must respond on a timely basis and in a complete and appropriate manner to any communication from the Law Society that contemplates a reply.”*

97. Chapter 4 Rule 1 of the Code of Conduct, Relationship of the Lawyer to Other Lawyers provides that: *“A lawyer must not lie to or mislead another lawyer.”*

98. Chapter 4 Rule 10 of the Code of Conduct, Relationship of the Lawyer to Other Lawyers 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.”*

99. Chapter 4 Rule 11(k) of the Code of Conduct , Relationship of the Lawyer to Other Lawyers provides that :

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

*(k) A lawyer who has agreed, expressly or impliedly, to trust conditions or amendments is bound by them, whether or not they have been recorded in writing as required by this rule, and whether the lawyer is dealing with another lawyer or with a third party.”*

The commentary to that Rule states that:

*“C.11.1 General: The use of trust conditions is a mechanism that enables lawyers to implement a transaction agreed upon by their respective clients. If a transaction is jeopardized because the lawyers are unable to agree on trust conditions, the clients’ opinion of those lawyers in particular and the profession in general will be adversely affected.”*

100. The Hearing Committee notes Section 53(3) of the Legal Profession Act R.S.L. 2000 Ch L-8 which provides as follows: *“53(3) The Executive Director, in the course of a review under subsection (1), may do either or both of the following: (a) require the complainant or the member concerned to answer any inquiries or to furnish any*

records that the Executive Director considers relevant for the purpose of the review;...”

101. The Hearing Committee notes the following Rules of the Law Society of Alberta (June, 6 2008 Version) which provide as follows:

### ***Withdrawing and Transferring Trust Money***

**124 (1)** *Money shall not be withdrawn from a trust account except where:*

*(a) the money is properly required for*

*(i) a payment to the client for whom the money is held, or*

*(ii) a payment to any other person but only if the law firm does so pursuant to the authorization of the client for whom the money is held;*

*(b) the money is properly required for payment of a billing for fees or disbursements, but only if the withdrawal is made in compliance with subrule (2);*

**(2)** *Money may be withdrawn from a trust account of a law firm pursuant to subrule (1)(b), if not held for a designated purpose, only in accordance with the following conditions:*

*(a) money may be paid from the trust account to the law firm to reimburse the firm for a disbursement made by it if the law firm has prepared a billing respecting the disbursement and either delivers the billing to the client before the withdrawal or forwards the billing to the client concurrently with the withdrawal; and*

*(b) money may be paid from the trust account to the law firm to pay for the law firm's fees for services if the law firm has prepared a billing for the services, the billing relates to services actually provided and is not based on an estimate of the services, and the firm either delivers the billing to the client before the withdrawal or forwards the billing to the client concurrently with the withdrawal.*

...

**(4)** *Except as provided in subrules (5), (5.1) and (6), money may be withdrawn from a trust account only by a cheque which must:*

*(a) clearly indicate that it is a cheque drawn on a trust account;*

*(b) not be made payable to cash or bearer;*

*(c) be dated, but not post-dated;*

*(d) be signed in compliance with subrule (7); and*

*(e) be completed as to the payee and amount.*

Feb2003

### ***Additional Obligations Related to Trust Money***

**125 (3)** *If a member becomes aware of a deficiency in a trust account of the member's law firm and the law firm does not immediately make good the deficiency, the member*



*must immediately notify the Executive Director of the deficiency and of any relevant information regarding the reason therefore.*

## **Standard of Proof**

102. In *F.H. v. McDougall*, [2008] 3 S.C.R. 41, 2008 SCC 53 ROTHSTEIN J., states at paragraph 31:

*“In Ontario Professional Discipline cases, the balance of probabilities requires that proof be “clear and convincing and based upon cogent evidence” (see Heath v. College of Physicians & Surgeons (Ontario) 1997 CanLII 14524 (ON S.C.D.C.), (1997), 6 Admin. L.R. (3d) 304 (Ont. Ct. (Gen. Div.)), at para. 53).*

and at paragraph 49 as follows:

*“In the result, I would reaffirm that in civil cases there is only one standard of proof and that is proof on a balance of probabilities. In all civil cases, the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred.”*

## **Citation 1.**

103. IT IS ALLEGED THAT you failed to fulfill your undertaking to forthwith payout and discharge the Scotiabank mortgage and the CIBC mortgage, and that such conduct is conduct deserving of sanction.

- a. On March 7, 2008 the Member undertook to forthwith pay out all non-permitted registrations and within a reasonable period of time thereafter forward a Certificate of Title to the Purchaser’s lawyer confirming same.
- b. On April 1, 2008 A.A. deposited the cash to close to the Member’s trust account and confirmed that the funds were releasable subject to the Member’s Undertakings.
- c. When interviewed by B.O. the Member acknowledged that “forthwith” meant “right away”, “usually within a few days of closing.” Transcript Page 103 Lines 5-18.
- d. When interviewed by B.O. the Member acknowledged that she was “very aware of the undertakings I gave in my trust letter, and I’m very aware on [sic] what they mean. I know what that says.” Transcript Page 105 lines 5-7. She then explained what the undertakings meant at Transcript Page 5 lines 10-25.
- e. C.H. sent the funds to CIBC to discharge the first mortgage on June 10, 2008. It was discharged at Land Titles on August 13, 2008.

- f. The Member sent money to Scotiabank to discharge the second mortgage on July 8, 2008 following the events outlined above. It was discharged at Land Titles on August 14, 2008.
- g. The Member acknowledged that at the time she paid various monies from trust for her personal benefit, the Scotiabank mortgage had not been paid out as she believed. The Member was not prepared to acknowledge that she had breached her undertaking. Her view was that she managed to get the Undertaking performed in the end. Transcript page 148 lines 7 to page 150 lines 15.

104. In **Carling Development Inc. v. Aurora River Tower Inc.**, 2005 ABCA 267, the Honourable Mr. Justice Côté states at paragraph 69 that:

*“[69] To use documents sent on trust conditions, is to accept the trust conditions. To do so and not perform them is a clear breach of trust. Almost invariably, the person so entrusted is the solicitor (not his client). Then the solicitor is personally liable for the breach of trust. In some circumstances, his client may be liable for the breach of trust also. The solicitor is never a party to any pre-existing sale contract, and so he or she presumably does not have any set-off rights under it.”*

105. The short answer to the issue is succinctly articulated by McDonald J. in **Witten V. Leung** [1983] A.J. No. 883 at paragraph 18 where he states: *“There being no doubt as to the clarity of the trust conditions, the obligation of the receiving solicitors to comply with them was absolute.”*

106. Where a lawyer makes an undertaking, drafted in their own words, and the undertaking is clear, the obligation to comply is absolute. The Member relied on the promise of a client to pay out the two mortgages. She paid monies from trust for her own use and for her own needs, in priority to complying with her undertakings, on the assumption that this had been done or would be done. C.H. did not pay out CIBC until June 10, 2008. Nor did he undertake anything to the Member in that regard. Yet from April 1 to June 10, 2008 the Member paid out \$166,323.34 from the trust account for personal expenses.

107. On June 25, 2008 the Member discovered the Scotiabank mortgage was still not paid out, not because she had made any efforts to follow up, but because the purchaser’s lawyer found out. Despite knowing the mortgage had not been paid out, the member paid out \$19,500 from the remaining monies in trust on June 30, 2008

for personal use. She also paid out \$28,580.98 from the account on July 4, 2008, of which \$5,000 was for her personal use and the balance was paid to W.S.'s wife who was not involved with the Property in question. This was 3 days before the Member transferred monies from the sale of the B.C. property owned by W.S.'s wife into the trust account and paid off the Scotiabank mortgage.

108. The Member "forthwith" paid out monies from trust to meet her own expenses. She never attempted to forthwith payout and discharge the Scotiabank mortgage and the CIBC mortgage. The Hearing Committee finds that the Member failed to fulfill her Undertaking to forthwith payout and discharge the Scotiabank mortgage and the CIBC mortgage, and that such conduct is conduct deserving of sanction.

## **Citation 2**

109. IT IS ALLEGED THAT you misled or attempted to mislead other lawyers, and that such conduct is conduct deserving of sanction.

## **Misleading J.K**

110. On June 27, 2008 J.K. emailed a letter to the Member stating: "we note that you have not yet discharged the CIBC or Scotiabank mortgages..."

111. On June 27, 2008 the Member emailed a letter to J.K. stating: "*I note that the mortgages are paid off. C. H. of P. H. has paid out the CIBC mortgage and our office the Scotia mortgage and I await the discharge for the Scotia Bank. It is not unusual for some time to pass before these are received. I have also noted that the Scotia mortgage was paid off recently from trust funds due to a dispute on the payout penalty.*"

112. On June 27, 2008 J.K. and the Member spoke on the telephone. J.K.'s notes state in part "*Scotia – just paid off*", "*payout penalty*".

## **Misleading A.A.**

113. On June 26, 2008 the Member emailed A.A. and stated: "*I confirm that the mortgages are paid out as far as I know,*" "*CIBC mortgage # was paid out by C.H....*" and "*Scotia mortgage # has also been paid out. Funds were held after closing in my trust account until a dispute on the payout penalty had been resolved....*"

114. On July 2, 2008, the Member emailed A.A. offering to fax to him the cheque and payout as proof that the Scotiabank mortgage had been paid out. In a second email to A.A. she promised to send the verification.

115. On July 3, 2011 A.A. emailed the Member and asked her to fax the documents to his attention. The Member responded that she had the cheque stub only, and supporting documents.
116. On July 4, 2008 the Member faxed a letter to A.A. attaching a copy of a letter from the Member to Scotiabank dated June 27, 2008, a copy of a cheque stub dated June 25, 2008 payable to Scotiabank for \$686,553.27 and a copy of the July 2, 2008 payout statement from Scotiabank.
117. The Member's offices paid out the Scotiabank mortgage in the amount of \$695,772.83, on July 8, 2008.

### **Member's Explanations**

118. The Member called the Scotiabank in mid to end of June, 2008 and found out the mortgage was not paid. Transcript page 156 lines 13-22
119. She called W.S who was on vacation and he confirmed he had not paid out the mortgage. Transcript page 157 lines 2-9
120. W.S. had told the Member in April, 2008 the mortgage was paid off after she had pursued the issue with him for about three quarters of a year. Transcript page 157 lines 17-23
121. The Member had relied on W.S. The money was coming to her. As soon as she knew it was not coming she tried to fix things. The Member states: *"And my intention was not to deceive him because I honestly believed that I was going to get money from my sister."* Transcript Page 195 lines 12-14
122. The Member was scared. Transcript Page 195 line 20.
123. The Member prepared the cheque and letter to Scotiabank ahead of time as she was expecting money from her sister to cover it. Transcript page 203 lines 1-22.
124. On July 4, 2008 she sent the fax to A.A. (attaching the June 25, 2008 letter and cheque stub) and represented that the mortgage had been paid off. Transcript Page 205 Lines 15- page 206 line 11
125. The Member: *"wasn't intending to deceive them. I was just trying to get everybody placated so it would be okay."* Transcript page 206 lines 17-19.
126. The Member had not really sent the first cheque to the Scotiabank. Transcript page 213 lines 18-25
127. The Member acknowledged that she told the other side that the Scotiabank mortgage had been paid out when she knew it was not and that she provided them

with copies of a cover letter and a cheque stub which would appear to indicate that they were used to pay out the mortgage when she knew they had not. Transcript page 220 lines 8-18

128. The Hearing Committee finds that the Member deliberately misled or attempted to mislead both J.K. and A.A. She did so with the intention of “buying some time” for herself so that one of two things could occur: either money would come in by wire from her sister or the sale in B.C. by W.S.’s sister would close and she could apply money from that sale to the mortgage payout. Such conduct is conduct deserving of sanction.

### **Citation 3**

129. IT IS ALLEGED THAT you misled or attempted to mislead the Law Society of Alberta, and that such conduct is conduct deserving of sanction.

130. On July 10, 2008 K.W. wrote to the Member asking for a response to J.K.’s complaint. On October 3, 2008 the Member replied.

131. The Member did not advise the Law Society that when she made the representation to A.A. and J.K. that the Scotiabank mortgage had been paid out, she knew this was not true as she had spoken to the Scotiabank.

132. The Member did not advise the LSA that on July 4, 2008 she had faxed a letter to A.A. attaching created documents that served to support her representations to A.A. that the Scotiabank mortgage was paid.

133. The Member did not advise the LSA that she had posted a fictitious \$725,000 receipt from A.A.’s law office to her PC Law program in order to create one of those documents (the back dated cheque) or that she had put a fictitious address on the letter to Scotiabank.

134. The Member had an explicit obligation under section 125 (3) of the Rules of the Law Society to inform K.W. that there had been a considerable period of time over the course of these events where as a result of drawing on the trust account for personal use, she had insufficient funds remaining for that transaction to meet her Undertakings without drawing on funds belonging to other clients.

135. In addition, various other salient information was lacking in the Member’s first response to the LSA:

- a. The Member did not advise that the property had transferred from the builder/Vendor to another numbered company and then to two individuals before the Property was put in her name.

- b. The Member's response indicated that C.H. had made representations to her that the CIBC mortgage would be discharged when this was untrue.
- c. The Member did not acknowledge that her undertaking was to forthwith pay out the mortgages.
- d. The Member intimated that a payout penalty issue was holding up the payout of the Scotiabank mortgage by W.S.
- e. The Member did not indicate that she had used funds from another sale transaction to pay out the Scotiabank mortgage.
- f. The Member did not indicate that she had paid out personal expenses from the trust money as a priority to using them to pay out Scotiabank mortgage.
- g. The Member advised the LSA that an agreement to extend the time to complete the repairs had been reached when she had rejected one of the terms proposed to her by J.K.

136. The Member was requested by the LSA to provide more information following J.K.'s response to the LSA about her initial response letter. The Member did not address in her second response the major allegations of J.K. other than to refer back to her earlier letter which did not address them either. The second response focused on the less crucial repairs issue and whether or not an extension had been granted. It was not responsive to the very serious other complaints made against the Member.

137. The Hearing Committee finds that the Member misled or attempted to mislead the Law Society of Alberta. The explanations provided to the LSA avoided the real issues and placed a benign slant on the Member's actions. The Member placed blame variously on her client, on A.A. and J.K., on the purchasers and on C.H. while also explaining her various efforts to sort things out to the satisfaction of all. The second letter was intended to divert the LSA's attention to a less serious issue, the holdback dispute. Such conduct is conduct deserving of sanction.

#### **Citation 4**

138. IT IS ALLEGED THAT you failed to respond to the LSA on a timely basis and in a complete and appropriate manner and that such conduct is conduct deserving of sanction.

139. This complaint relates to the Member's failure to comment on the Investigation Report which is a technical breach of section 53(3) of the LPA.

140. The Member did provide responses in some form or fashion to the actual complaints in two letters. The Member did cooperate with B.O. and submit to a

recorded and transcribed interview on March 9, 2009. She did at later times (Summer, 2009) volunteer to the LSA her new address and advise that the best place to send letters was to her P.O. Box.

141. The April 14, 2009 letter from K.W. to the Member indicated that failure to respond might result in a referral to the Conduct committee.
142. The May 22, 2009 letter from K.W. to the Member indicated that if she failed to respond the failure might result in both a hearing for failing to respond and an adverse inference being drawn against her.
143. The purpose of a reply, other than to strictly comply with Section 53(3) of the Legal Professional Act, would be for the member to provide further explanations that might provide a defense to or explanation for her actions. The Member chose not to respond. The LSA had enough information provided to proceed with the hearing despite the lack of a timely or complete response.
144. The Hearing Committee finds that this is not conduct deserving of sanction as minimal in its impact on the proceedings against the Member and because the elements of failing to provide a “complete and appropriate” response are somewhat related to the same evidence required for Citation 3 in relation to “misleading “the LSA on which the Member has been found guilty.

#### **Citation 5**

145. IT IS ALLEGED THAT you breached the Law Society accounting rules by signing a blank trust cheque and by recording a deposit to your trust account when, in fact, no funds were deposited, and that such conduct is conduct deserving of sanction.

#### **Recording a deposit to your trust account**

146. The Member acknowledged to B.O. during her interview in March. 2009 that she had posted a receipt from A.A.’s law office for \$725,000 to the trust ledger card for this transaction but had not received this money. The Member indicated that she did not know why it had been put down as received from A.A’s law office but it was supposed to be the money she was going to get from her sister. The Member intended to correct the amount when the money came from her sister. The posting was later reversed out on her instructions. Transcript Page 181 Line 14- 183 Line 7.
147. The Member also told B.O. in the interview that she had posted the receipt in part because she needed to post a receipt in order to create a cheque because PC Law does not allow an overdraft. Transcript Page 185 Lines 4-21
148. The obligations of lawyers in relation to trust accounts is highly regulated and monitored under Part 5 of the Rules of the Law Society of Alberta. Even the most

inexperienced of lawyers knows that falsification of trust accounting records is absolutely forbidden. Of note in this case is that the Member herself falsified the records, not anyone on her staff. The Member deliberately posted a fictitious receipt of funds onto her accounting system in order to create a trust cheque in that system to mislead A.A. This was a deliberate, calculated and inexcusable activity on the Member's part.

### **Signing a blank trust cheque**

149. When interviewed in March 2009 by B.O. the Member admitted to B.O. that she had left a pre-signed blank trust cheque. The Member stated: *"Well, I know I did a bad thing, and I left a signed cheque for this to happen, and that you can't do that, but—"* Transcript Page 208, Lines 4-6
150. Section 124(4) of the Rules of the LSA clearly provides that a trust cheque is to be completed in full before it is signed by a lawyer.
151. The Hearing Committee finds that the Member breached the Law Society accounting rules by signing a blank trust cheque and by recording a deposit to your trust account when, in fact, no funds were deposited, and that such conduct is conduct deserving of sanction.

## **SUBMISSIONS ON SANCTION**

### ***Submissions of LSA Counsel***

152. Counsel for the LSA submitted that the appropriate sanction was for the Hearing Committee to disbar the Member. The purpose of sanctioning is to protect the public, maintain a high degree of confidence in the legal profession and maintain high professional standards. In looking at general factors as set out in paragraph 60 of the Hearing Guide, Counsel for the LSA advised that the citations on which this Committee has found the Member guilty are the Member's second set of integrity breaches. On May 12, 2010 the Member was found guilty on citations that she had failed to be candid to clients and to the Law Society.
153. Turning to specific factors, Counsel argued that the conduct raised many of the specific factors as set out in paragraph 61 of the Hearing Guide. Counsel submitted that the Member is ungovernable in that she failed to attend both the hearing in 2010 and this hearing. The Member had misled other lawyers and she had applied trust money for her personal use before fulfilling her undertakings. Putting all the factors together disbarment was the appropriate remedy.



154. In determining an appropriate sanction, the Hearing Committee is guided by a purposeful approach, which seeks to ensure that the public is protected, that high professional standards are preserved, and that the public maintains confidence in the legal profession. Those factors which relate most closely to the fundamental purposes outlined above will be weighted more heavily than other factors. The final sanction must be consistent with the fundamental purposes of the sanction process. [Hearing Guide, pages 9 and 10.]
155. In this case, the Hearing Committee considered all of the general factors set out in Paragraph 60 of the Hearing Guide. All of those general factors are closely aligned to the two primary purposes of the sanctioning process: protection of the public, and that the public maintains confidence in the legal profession. Less weight was given to rehabilitation of the Member in light of there being no indication from the Member that this was something she was interested in.
156. The Hearing Committee considered all of the specific factors set out in Paragraph 61 of the Hearing Guide. Of note in this regard is the Member's level of intent in committing the offense, that there was a breach of trust, and the foreseeable potential injury to the public, the legal system and the profession which could have resulted if, for example, W.S.'s wife had not sold the B.C. property through the Member thus making available to the Member the balance of funds needed to pay out the Scotiabank mortgage in July 2008.
157. Aggravating factors in this case are the Member's failure to acknowledge that she breached her Undertakings, that she used trust monies for her personal use in priority to complying with Undertakings, her lack of boundaries and of fundamental common-sense in acting for a perceived "important" client. It is an aggravating factor that the Member's actions completely lacked integrity. Lack of integrity is at the heart of these proceedings in determining an appropriate sanction in the public interest.
158. Also of concern to the Hearing committee was that the Member's actions were motivated by her unapologetic and firmly held view that she was entitled to the cash to close from the sale of the Property for the work she had done on the development project for W.S. and that her entitlement was a priority to any Undertakings she had made in relation to that money. A final aggravating factor is that the Member failed to participate in the later aspects of the discipline process. Emails from the Member to the LSA in 2009 alluded to health issues but we have no information in that regard that might go to mitigation.

159. The Hearing Committee considered the Member's prior disciplinary record. On May 12, 2010 the Member was suspended for one year and ordered to pay actual costs of the Hearing. The Member was found guilty of four Citations: failing to serve a client, failing to implement a client's instructions and keep the client informed, failing to be punctual in fulfilling commitments made to a client and failing to respond, failing to be candid to clients and to the LSA. The Member has not paid those costs.
160. The Hearing Committee is mindful of the comments made in *Bolton v. Law Society* [1994] 2 All ER 486 at 491-2 (C.A.) that: "*Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanction to be imposed upon him ...The most serious involves proven dishonesty, whether or not leading to criminal processes and criminal penalties. In such cases the tribunal has almost invariably, no matter how strong the mitigation advanced for the solicitor, ordered that he be struck off the Roll of Solicitors.*"
161. Also in *R. V. Manolescu* (July 24, 1997) (Alta P.C.): "*The demand upon, and the standard expected of a lawyer in respect of his or her trust account is very high. The standard is virtually on of perfection. ...Dishonesty in respect of trust accounts is not to occur. In practical terms, other peoples' monies are to be treated by lawyers as a sacred trust.*"

162. Having regard to the sanctioning principles outlined above, the Hearing Committee was satisfied that the public interest would be served by making the following Orders that:

- a. The Member is disbarred.
- b. There shall be a Notice to the Profession.
- c. There shall be no referral to the Attorney-General.
- d. The Exhibits entered in the Hearing shall be available for public inspection with the proviso that any information that may identify a client is to be redacted.
- e. The Member shall pay the actual costs of the hearing within 30 days after substitutional service of notice of the amount is effected upon her.

DATED this 3 day of (~~July~~) August, 2011 at the City of Calgary in the Province of Alberta.

Per:

\_\_\_\_\_  
SARAH KING D'SOUZA, Q.C.  
Chair

\_\_\_\_\_  
AMAL UMAR, LAY BENCHER

Per:

\_\_\_\_\_  
DENNIS EDNEY, Bencher