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 THOMAS J. TAYLOR,
a Member of The Law Society of Alberta

INTRODUCTION AND SUMMARY OF RESULT

1. On September 10, 2010 a Hearing Committee of the Law Society of Alberta (LSA) convened at the Law Society offices in Calgary to inquire into the conduct of the Member, Thomas J. Taylor. The Committee was comprised of James Glass, Q.C., Chair, Rose Carter, Q.C. and Wayne Jacques. The LSA was represented by Garner Groome. The Member was present throughout the hearing and was represented by James B. Rooney, Q.C..

2. The Member faced six citations:

    1. IT IS ALLEGED THAT you engaged in one or more business transactions with the Complainants, B.T. and T.T., where the Complainants either did not have independent legal representation or did not consent to dispensing with independent representation, or did consent to dispense with independent representation but the transaction or transactions were not fair and reasonable to the Complainants, and that such conduct is conduct deserving of sanction.

    2. IT IS ALLEGED THAT you failed to adequately clarify to the Complainants, B.T. and T.T., that you were acting only as an officer of R..., and not as their lawyer, in the business transaction or transactions regarding a condominium project, and that such conduct is conduct deserving of sanction.

    3. IT IS ALLEGED THAT you acted in bad faith in assuring the Complainants, B.T. and T.T., they would receive bonuses and other sums owing to them, and that such conduct is conduct deserving of sanction.

    4. IT IS ALLEGED THAT you failed to be candid in your dealings with the Complainant, D.A., and that such conduct is conduct deserving of sanction.

    5. IT IS ALLEGED THAT you used your position to take unfair advantage of the Complainant, D.A., and engaged in a business transaction or transactions with the Complainant without recommending that she seek independent legal advice, and that such conduct is conduct deserving of sanction.

    6. IT IS ALLEGED THAT you failed to adequately clarify to the Complainant, D.A., that you were acting only as an officer of R..., and not as her lawyer, in the

business transaction or transactions regarding a condominium project, and that such conduct is conduct deserving of sanction.

3. Counsel for the LSA and the Member applied to have Citation 1 amended to provide the following:

   1) IT IS ALLEGED that you engaged in one or more business transactions with the Complainants, B.T. and T.T., in circumstances where you should have ensured that the Complainants obtained independent legal representation, and that such conduct is conduct deserving of sanction.

   The Hearing Committee agreed with the application and amended Citation 1 accordingly.

4. At the commencement of the hearing, the Member presented the Hearing Committee with an Agreed Statement of Facts and Partial Admission of Guilt (Exhibit 6) with respect to citations 1 (as amended), 2, 5 and 6.

5. On the basis of the Agreed Statement of Facts and Partial Admission of Guilt with respect to citations 1 (as amended), 2, 5 and 6, the Hearing Committee finds that citations 1 (as amended), 2, 5 and 6 are proven and the member is guilty of conduct deserving of sanction. The Hearing Committee finds that citations 3 and 4 are not proven and they are accordingly dismissed.

6. The Hearing Committee agreed with the joint submission of counsel for the LSA and the Member and concluded that the sanctions on the citations should be a reprimand, fines and that the Member pay 2/3 of the actual costs of the hearing.

JURISDICTION AND PRELIMINARY MATTERS

7. Exhibits 1-4, consisting of the Letter of Appointment of the Hearing Committee, the Notice to Solicitor, the Notice to Attend and the Certificate of Status of the Member, established the jurisdiction of the Hearing Committee. The Certificate of Exercise of Discretion was entered as Exhibit 5. These Exhibits were entered into evidence by consent.

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

9. The entire hearing was conducted in public.

CITATIONS

10. The Member faced six citations:

1. IT IS ALLEGED that you engaged in one or more business transactions with the Complainants, B.T. and T.T., in circumstances where you should have ensured that the Complainants obtained independent legal representation, and that such conduct is conduct deserving of sanction.

2. IT IS ALLEGED THAT you failed to adequately clarify to the Complainants, B.T. and T.T., that you were acting only as an officer of R..., and not as their lawyer, in the business transaction or transactions regarding a condominium project, and that such conduct is conduct deserving of sanction.

3. IT IS ALLEGED THAT you acted in bad faith in assuring the Complainants, B.T. and T.T., they would receive bonuses and other sums owing to them, and that such conduct is conduct deserving of sanction.

4. IT IS ALLEGED THAT you failed to be candid in your dealings with the Complainant, D.A., and that such conduct is conduct deserving of sanction.

5. IT IS ALLEGED THAT you used your position to take unfair advantage of the Complainant, D.A., and engaged in a business transaction or transactions with the Complainant without recommending that she seek independent legal advice, and that such conduct is conduct deserving of sanction.

6. IT IS ALLEGED THAT you failed to adequately clarify to the Complainant, D.A., that you were acting only as an officer of R..., and not as her lawyer, in the business transaction or transactions regarding a condominium project, and that such conduct is conduct deserving of sanction.

EVIDENCE

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

12. Exhibits 6-7, all relevant to the citations were entered into evidence by consent.

13. The Member provided a Partial Admission of Guilt in relation to citations #1, 2, 5 and 6 dated and signed by the Member September 8th, 2010. The Hearing Committee reviewed the Partial Admission of Guilt in relation to citations #1, 2, 5 and 6 and accepted the Admission of Guilt and accordingly, the Hearing Committee finds it to be in a form acceptable to the Hearing Committee and pursuant to s.60(4) of the *Legal Profession Act* the admission is deemed for all purposes to be a finding of the Hearing Committee that the conduct of the Member described therein is conduct deserving of sanction in relation to citations #1, 2, 5 and 6. The Partial Admission of Guilt was entered into evidence as Exhibit 6 by consent.

FACTS

14. Counsel for the Law Society of Alberta and the Member did not call any evidence except for the facts admitted to in the Agreed Statement of Facts (Exhibit 6).

15. Pursuant to the Agreed Statement of Facts, the Member admitted the following facts:

General Background

1. In approximately 2001 the Member's wife acquired an interest in a development corporation owned by a former lawyer. The lawyer asked the Member to act as president of the development corporation which the Member agreed to do. The development corporation, through name changes and an amalgamation, become R. R. L. Corporation ("RRLC"). The Member at all material times was the President and a director of RRLC. The lawyer's interest in RRLC was sold to the remaining shareholders by court order in 2004.

2. The sole asset of RRLC was a parcel of land adjacent to the City of Fernie, in the Province of British Columbia, which was in the process of being amalgamated into the City of Fernie and rezoned from an agricultural to a commercial zoning. In late 2001 the directors of RRLC, the Member among them, determined to construct and sell a condominium/hotel project on the parcel of land.

3. RRLC hired a marketing company to provide a plan for the marketing and sale of the units to be constructed. Through 2002 and 2003 the directors of RRLC, the Member among them, became concerned that the services being delivered by that marketing company were inadequate. Accordingly they looked for a replacement marketing company.

B.T. and T.T. Complaint - Citations 1-3

4. The Complainants owned a marketing company. The Member had become close friends with B.T. and T.T., travelling and holidaying together between the late 1980's and 2006. The Member had also acted for the Complainants on various matters over a period of approximately 15 years, and during the time in question, was acting for the Complainants in a debt action against another property developer. At all material times the Member acted as the Complainant's personal lawyer on all matters not related to RRLC, including acting as the registered office for their corporation.

5. Having been introduced by the Member to B.T. and T.T., the directors of RRLC entered into a verbal, and then a written, contract with the Complainants' corporation, S...Group, to provide marketing and sales management services to RRLC for the condominium/hotel project. The written contract (the "Marketing Agreement") was dated June 17, 2004, and it:

(i) prohibited S... Group from selling for other developers or realtors in the Fernie area until all of the project's condominium units had been sold;

(ii) provided for a payment to S...Group of a monthly retainer of $2,500, bonuses if sales targets were met, and commissions if the sales closed; and

(iii) gave S...Group the option of applying earned bonus entitlements to the purchase of a condominium unit in the project

6. The Member advised the Complainants to obtain independent legal advice with respect to the Marketing Agreement and the Complainants did receive independent legal advice in that regard. The Complainants had the contract reviewed by an independent lawyer. At that time, it was learned during the course of the subsequent lawsuit by the Complainants that the independent lawyer recommended the Complainants obtain personal guarantees from the RRLC partners but they were not obtained.

7. While the written terms of the Marketing Agreement were being finalized throughout 2003 and early 2004 the Complainants provided services to RRLC.

8. They entered into a contract for the purchase of a unit in the project (the "Purchase Agreement"). The Member did not advise to obtain independent legal advice with respect to this transaction. The original Purchase Agreement had in fact been prepared by the Complainants, as it was one of the duties of the Complainants to prepare Purchase Agreements for the project. Subsequent to the Complainants entering into the Purchase Agreement the member recollects referring them to a second independent lawyer to act for the Complainants in relation to their rights and obligations arising under the Purchase Agreement, previously signed.

9. The first sales target was met and the bonus of $30,000 was paid by cash in full.

10. The second sales target was met in November, 2005, D.P. (the Development Manager) informed the Complainants that because cash flow was very tight RRLC could not fully pay the Complainants the bonus of $90,000.00, but paid the Complainants an amount of $20,000.00, with the balance to be paid when possible at some future time, or applied as a deposit under the Purchase Agreement.

11. The Complainants were reassured by the principals of RRLC that they would receive payment in due course. The Complainants relied upon the Member and trusted him and therefore continued to market the project.

12. In June, 2006, the Complainants were told that money was tight and RRLC stopped paying the monthly retainer of $2,500. The Directors of RRLC advised the Complainants that their unpaid bonuses, retainers and commissions could be applied against the purchase price of their unit. At or about this time the

Complainants agreed to purchase a second unit and executed an agreement in this regard. The Member advised the Complaints that their unpaid bonuses would be set off against the purchase price of their units. It is the belief of the member the Complainants at this time had independent counsel.

13. During discussions with the Member in November 2006, regarding the rumours they heard that the project may be sold, the Member advised the Complainants that he knew very little to nothing about the potential sale, but that he would keep them updated. The Member also indicated to them that he was not aware if there was a serious buyer or whether there would be an application made to the City of Fernie to allow the project to close.

14. The Member was aware by this time that RRLC had run into significant financial difficulty. Through October and November of 2006, the Member as director of RRLC tried to negotiate with the City of Fernie and RRLC's bankers, to allow the granting of interim occupancy permits for the condominium project so that the property could be rented over the 2006/2007 ski season. However, in late November 2006 it became apparent to the Member that those negotiations would not come to fruition.

15. The Member met with B.T. over lunch and explained that he was extending the contract to give the Complainants an advantage in the event that RRLC was foreclosed by the banks. On December 7, 2006, the Member unilaterally amended the Purchase Agreement to include all of the unpaid bonuses, retainers and commissions as deposits toward the Complainants' unit, and changed the date such that the contract would remain in effect until April 30, 2007, rather than December 31, 2006. The Member advised the Complainants that the amended agreement would protect their interests, and did not suggest that they obtain independent legal advice with respect to the amendment to the Purchase Agreement. The amendment to the Purchase Agreement in December, 2006 was made by the Member with the intention of benefiting the Complainants.

16. Following the amendment to their purchase agreements the member advised B.T. that he should take the amended agreement to a British Columbia lawyer and the member understands that B.T. dealt thereafter with a third independent lawyer.

17. In mid-December 2006 RRLC's bankers called the directors of RRLC to a meeting at which time they advised the Member that the bank was in the process of commencing foreclosure proceedings. RRLC was given the option of transferring title to the development to a subsidiary of P...Corp, itself a shareholder in RRLC and constructor of the project, or face foreclosure proceedings. The Board of Directors, including the Member, on behalf of RRLC decided to transfer the title to a subsidiary of P... Corp. P... Corp. agreed to assume the liabilities of RRLC but it refused to accept the obligation of RRLC to comply with the terms of all outstanding purchase and sale agreements.

18. The Member did not have either a direct or indirect interest in the corporations to which RRLC was sold.

19. The Member did not consider advising the Complainants to obtain independent advice because when he amended the purchase contract he felt he was not giving legal advice. When the Member later learned of P… Corp.'s intentions to cancel all purchase and sale agreements, because of the close relationship with the Complainants the Member advised them to get a B.C. lawyer involved to protect their interests.

20. The Complainants provided no funds to RRLC towards a deposit on the condominium units. The deposit amount was to be deducted from commissions earned by the Complainants on the closing of unit sales.

21. Because of the Member's assurances that the Statement of Claim against another property developer was proceeding and the fact that their Purchase Agreement was being amended, the Complainants believed the Member was their lawyer.

22. At the end of January, 2007, RRLC through P... Corp took the position that all the purchase agreements had terminated by "effluxion of time" and returned the purchasers' deposits to those who had made them. In a letter to the Complainants, RRLC advised, that it was not going to honour any "services in lieu of cash" deposits towards the purchase of the Complainants' units, and accordingly the Complainants were to receive neither the unit nor the unpaid bonuses and monthly retainers.

23. The Complainants believe that the Member did not deal with them in good faith, and allege that knowing that the project was insolvent, the principals of RRLC, including the Member, spent six months putting together a deceitful plan to sell the project for less than market value In order to defeat the creditors of RRLC. The Member does not agree with this allegation and states that when the Directors of RRLC became aware of financial problems in the summer of 2006 the Member was directed to, and did, continue to negotiate with the City of Fernie believing that the only real problem faced by RRLC was the lack of occupancy permits.

24. The Complainants commenced an action against RRLC, along with 11 other individuals, for what was alleged to be the improper cancellation of purchase contracts for units and the improper sale of the project. As far as is known this lawsuit is still before the British Columbia courts. The Complainants believe that their unit was sold by the new owners.

25. In defending the Complainants' lawsuit, RRLC ignored the amended Purchase Agreement prepared by the Member and maintained that the Complainants' Purchase Agreement had terminated by "effluxion of time".

26. The Complainants were at all times aware that the Member was the President of RRLC and that his law firm did not formally act for them with respect to their

involvement with RRLC. The Member at no time billed the Complainants or communicated with them on firm letterhead regarding the project.

27. The Member did not receive anything from the insolvency or sale of RRLC although he would have gained had the project completed as originally contemplated.

28. The Member advised the Complainants that the amended contract would give them an advantage when dealing with the bank during any foreclosure proceedings. As President of RRLC, he revised the Complainants' contract, but at no time did he specifically give them advice, legal or otherwise, that the revisions would protect them nor did he provide the Complainants direct counsel with respect to RRLC. The Member's intention in amending the Purchase Agreement and directing the Complainants to independent counsel in December, 2006, was to protect them from the failure of RRLC and give them an opportunity to take steps to ensure their Purchase Agreement remained valid.

29. The Complainants' contractual claim against RRLC related to the Complainants' agreement to purchase units in the RRLC development and, through S...Group, the Complainants provided marketing services that entitled them to be paid upon the closing of sales. In lieu of payment, the Complainants chose to apply their commissions to the purchase of units.

30. Although the Member had on a number of occasions advised the Complainants that payment for their services would be by way of set off or reduction in the cash to close otherwise payable by them on the purchase of their units, he did not recall anyone using the word "security" at any time.

31. However, on account of the past solicitor-client relationship between the Complainants and the Member the Complainants had a reasonably held belief that what the Member had said and done during the course of this matter gave them the impression that the bonuses and commissions owed to them would be set off against the purchase price of their units thereby protecting their interests in what was owed to them under the Marketing Agreement.

32. The purchase transactions, although flowing from the marketing arrangement, were sufficiently different in substance as to impose a fresh obligation on the Member to either ensure that the Complainants had independent legal representation or that they had consented to proceeding without independent representation and that the transactions were fair and reasonable to them.

33. Even if the Complainants' independent legal advice regarding the Marketing Agreement was sufficient for the purchase transactions, the transactions in the circumstances were not fair and reasonable to the Complainants. The original Purchase Agreement reflected a reasonable and commercially fair transaction. However, by the time the Member prepared the amendment to the Purchase Agreement in December, 2006, the project was on the verge of insolvency, there

were significant sums owing to the Complainants, and it is possible that had the Complainants been referred for independent representation, an independent lawyer could have acted to better protect the Complainants' position. A short time later, RRLC repudiated the amended Purchase Agreement and took the position that the "services in lieu of cash" deposits would not be honoured.

34. The Member did take a number of steps to make it clear that he was acting in his capacity as an officer of RRLC. All written communications were sent under the letterhead of RRLC and the Complainants were sent out for independent advice in the matter of the Marketing Agreement in June, 2004. However, a great deal of the communication between the Member and the Complainants was informal and verbal rather than formal written correspondence. Given that the Member had been representing the Complainants for years on various matters, and that he was representing them in pursuing a debt action at the very time in question, it is not unreasonable that the Complainants failed to differentiate between the Member acting in his capacity as their lawyer and the Member acting as a representative of RRLC, and they fell into their old habit of expecting the Member to look out for their interests.

35. The situation of the condominium project was a complex one and one of commercial exigencies. The Complainants were sophisticated business people who were expecting to earn significant bonuses and commissions from their relationship with the Member and RRLC. There is no indication that the Member was acting in anything other than in good faith in amending the Purchase Agreement in order to attempt to benefit the Complainants. However, in the circumstances a higher standard of conduct on the Member than would be the case in an ordinary commercial transaction was expected of the Member. While the Member, knowing that the Complainants trusted him to be straightforward with them, failed to alert them to the fact that their remuneration was in increasing jeopardy, or in fact, actually encouraged them to believe that payment of their remuneration was credited against their condominium units, the Member was not acting in bad faith.

36. The Complainants estimate they are owed approximately $70,000 under the Marketing Agreement.

D.A. Complaint - Citations 3-6

37. The Member had previously acted for the Complainant on various matters including her divorce, corporate matters, several real estate transactions, and on her late father's estate. The Member's office was the registered office for the Complainant's corporation.

38. In February of 2005, the Complainant loaned RRLC funds through a complicated loan structure. Initially funds were advanced to RRMC, a demand promissory note was issued by the principals of RRLC, including the Member and his law partner, in favour of the Complainant's daughter S.E., and RRLC guaranteed the

debt. Funds were repaid and re-lent, with the last loan documents, drawn in October 2006, being a promissory note for $400,000 issued by RRLC In favour of the Complainant's company D... Inc., and secured by the personal guarantee of the Member and the other principals of RRLC. Specifically, the documentation provided regarding the initial loan transactions was:

(i) a bank draft for $200,000 made payable to R. R. Management Company dated February 3, 2005;

(ii) a demand promissory note for $200,00 dated February 2, 2005, issued by the Member and other RRLC principals in favour of S.E.;

(iii) a continuing guarantee of the debt by RRLC, dated February 4, 2005, and signed by the Member on behalf of RRLC); and

(iv) a letter dated February 4, 2005, from RRLC to S.E., confirming that RRLC would pay interest on the debt monthly and that the entire balance of the loan would be repaid by December 31, 2005. This letter was signed by the Member as president of RRLC.

39. The promissory note and guarantee were drafted by the Member and at no time did the Member suggest to the Complainant the benefits of obtaining independent legal advice before accepting these documents as security for the loan.

40. The Complainant maintains that during her discussions with the Member about the initial loan, the Complainant asked the Member what would happen if she requested a refund. According to the Complaint the Member advised her that all she had to do was ask and he would make sure that she was paid back immediately.

41. During the first 30 days of the initial loan, RRLC failed to make the interest payments to the Complainant that were due. After numerous phone calls and conversations with the Member, he apologized for the oversight. She eventually received interest cheques from one of the principals on behalf of RRLC.

42. In March of 2006, the Complainant demanded full payment of the $200,000 by March 31, 2006 (the year end of D... Inc.). She received payment in full with the understanding that the $200,000 would be re-lent to RRLC the following month. The Member was not a part of these negotiations.

43. On March 31, 2006, she received a Promissory Note for the funds, which were payable on August 31, 2006. The documents provided by the Complainant in regard to this transaction are:

(i) a bank draft for $200,000 made payable to RRDC dated April 3, 2006; and

(ii) a promissory note for $200,000 dated March 31, 2006 and payable by July 31,2006, issued by the Member and the other RRLC principals in favour of S.E..

44. The Complainant did not receive any suggestion from the Member that she should obtain independent legal advice. The Complainant states that at this time she spoke to the Member and asked "if I needed the money back, what would happen." By the Member's response, the Complainant understood that if she required the funds to be repaid RRLC would repay her.

45. On April 11, 2006, she was approached by D.P., one of the RRLC principals, with respect to Investing additional funds with RRLC. She agreed to provide a further $200,000 upon the condition that additional security be issued to her on both her investments. That principal agreed and as additional security executed two Purchase Agreements for two units in the project, showing in each case a purchase price of $200,000 having been paid in full. The documents provided by the Complainant in regard to this transaction are:

(i) a bank draft for $200,000 made payable to RRDC dated April 12, 2006; and

(ii) the purchase agreement for unit 217, dated April 12, 2006 and made between R. R. Project Management Corp. as Vendor and D... Inc. as Purchaser. D.P. signed the agreement on behalf of the Vendor.

46. During the next few weeks these units were listed for sale, and one was purportedly sold. Since she believed that she legally owned the units, she felt that she was being forced to purchase the units or to place caveats against both units to protect her interests.

47. On August 13, 2006, the Complainant sent a fax to RRLC demanding that her $400,000 be repaid in full together with unpaid interest by August 31, 2006.

48. On August 18, 2006 she received two interest cheques. She sent an email to the Member advising that she would not accept the interest cheques and that she expected payment in full of the $400,000 by August 31, 2006. When no payment was forthcoming on August 31st, the Complainant did ultimately negotiate the interest cheques.

49. The Member left a voice mail message for the Complainant on August 25, 2006, advising that D.P. was attempting to obtain additional funding to pay out the independent investors (one of whom was filing a lawsuit against RRLC that day) within two weeks.

50. August 31, 2006 came and went and she received no contact from any of RRLC's officers with respect to either her loan repayment or the interest that was due. She felt that her loans were at risk and therefore sought independent legal counsel.

51. The interest payments initially came directly from the Member's office. By mid 2005 all payments to D.A. came from RRLC, through D.P. On September 29, 2006, the Complainant discussed the repayment of her loan with the Member. He advised her that he no longer had signing authority for RRLC. It was at this point where the Complainant threatened legal action and/or a complaint to the Law Society.

52. The Member left a voice mail message with the Complainant on October 10, 2006, which the Complainant had transcribed in her letter of November 17, 2006. That message appears to be the same message, or to have the same content as the message that the Complainant received on August 25, 2006.

53. On October 27, 2006, the Member left a voice mail message for the Complainant advising that he was waiting for two more signatures on the Promissory Note and Guarantee. He was also waiting to hear from counsel in B.C. with respect to which units sold so that title to the unsold units could be registered in the Complainant's name. The following documents relate to this voicemail message:

    (i) a promissory note for $400,00 dated October 1, 2006 and payable by December 31, 2006, issued by RRLC in favour of D... Inc., and signed by the Member on behalf of RRLC, and stating that it was in substitution for previous notes given in favour of S.E.; and

    (ii) a continuing guarantee of the debt by the Member and other RRLC principals, dated October 27, 2006.

54. The Complainant contacted D.P. on November 17, 2006 to request an interest payment that was due on November 15, 2006. D.P. advised her that RRLC no longer had any funds available to pay the debts.

55. The Member's assistant called the Complainant on the afternoon of November 17, 2006, to advise that the title transfers were completed, but when the Complainant said that she would come to pick them up, the assistant said that she was not sure whether she could release them to her. The Complainant attended the Member's office and from what the Member advised her she understood that the title transfers were "not legal" according to B.C. counsel, and that the Member did not know how to deal with the problem. The Member suggested that shares in the company or other alternative options could be considered for providing security. The Complainant advised the Member that she had not received the interest payment which was due on November 15, 2006, and that D.P. had told her that it would not be paid until the Member, his law partner, and the other principals provided the additional funds to complete the project.

56. The Complainant later came to believe through other counsel that the only reason the titles to the units could not be transferred to her name was because there were $15,000,000 in prior charges registered against title. She further understood that title was issued to RRLC in 2006.

57. The Complainant was of the understanding that trust funds for RRLC were to be held by a British Columbia law firm, but the funds were held at the Member's firm until early September when they were transferred to their counsel in British Columbia.

58. While the Member throughout did not purport to give legal advice or act for the Complainant or her daughter with respect to the loans to RRLC and was acting as President of RRLC and as one of the counsel to RRLC, he did not make this distinction clear with the Complainant. At no time did the Member ever suggest to the Complainant that she should seek independent legal counsel with respect to her business transactions with the Member and RRLC.

59. The Member prepared and delivered security documentation to the Complainant pertaining to the loans on the instructions of D P. and the directors of RRLC.

60. When RRLC failed to make the interest payment during the first month of the term, the Member received instructions from D.P. to discuss the late payment with the Complainant. He discussed with her the fact that D.P. would be making the monthly payments and that she should contact him for payment. The Complainant did not contact him further in that regard.

61. When the Member provided the replacement security documents to the Complainant, she asked about repayment of the loan. At D.P.'s request, the Member, on behalf of RRLC, spoke to the Complainant and advised her that she would be repaid by RRLC upon demand even though the promissory note actually stipulated a term ending on July 31, 2006.

62. The Member did not prepare the two Purchase Agreements provided to the Complainant as additional security. D.P. wanted to provide the Complainant with additional security by indicating that she was entitled to take ownership of a unit. The Member had drafted transfers the units but RRLC was unable to transfer title of the two units because British Columbia Land Titles had not Issued the titles yet. The Member advised the Complainant that as soon as the transfers were completed, he would let her know. The transfers did not complete.

63. The Member acknowledges receiving telephone messages from the Complainant from time to time regarding the non-payment of interest. He referred the Complainant to D.P. for information respecting her monthly payments.

64. The Complainant commenced legal action against RRLC and the guarantors, including the Member, which is still ongoing.

65. Except as noted above, the Member did not have any direct dealings with the Complainant regarding her loans to RRLC.

66. The Complainant's decision to lend the $400,000 was based on her previous relationship with D.P., the fact that the Member was also her lawyer until 2006, and that she trusted the Member.

67. The Complainant's demand for repayment was sent to all guarantors and the only person who responded was D.P. The reason she renegotiated with D.P. to re-lend the funds was because he was the only one who responded.

68. The business transactions with the Member were not fair and reasonable to the Complainant. The Complainant required the personal covenants or guarantees of the principals as security for her loans and she later learned that the Member had transferred all of his assets to his wife and as such had no assets to back up this covenant to pay the debt. Had the Complainant been referred for independent representation, an independent lawyer could have acted to better protect the Complainant's interests.

69. In his written communication and documents on behalf of RRLC, it was clear that the Member was signing his name as a representative of RRLC. However, it also appears that a great deal of the communication between the Member and the Complainant was informal and verbal rather than formal written correspondence.

70. Although the Complainant tacitly acknowledged that she did not retain or seek legal advice from the Member in any formal sense in regard to the loan transactions, she was relying on what she reasonably perceived to be his assurances regarding the repayment of the loan and his stature as her lawyer. As the Member had been representing the Complainant for some years on various matters, the Complainant expected that she could rely on the Member to look out for her interests even though he was not on a formal retainer.

71. The Complainant is still owed $100,000 plus accumulating interest on the loan made to RRLC.

CONCLUSIONS ON CITATIONS

16. The Hearing Committee, having accepted the admission of guilt from the Member on citations 1, 2,5 and 6 does find the Member guilty of those citations.

17. The Hearing Committee is not satisfied that the evidence supports a finding of guilt in relation to citations #3 and 4 and, accordingly, the same are dismissed.

SUBMISSIONS ON SANCTION

18. Counsel for the LSA entered an Undertaking signed by the Member and dated September 8th, 2010. With the consent of the Member, this was entered into evidence as Exhibit 7.

19. Counsel for the LSA entered the Member's Record. With the consent of the Member, this was entered into evidence as Exhibit 8.

20. Counsel for the LSA also entered an estimated statement of costs. This was also entered into evidence by consent of the Member as Exhibit 9.

21. Counsel for the LSA also entered a s. 58(5) Report of the Practice Review Panel regarding the Members practice dated September 2, 2010. This was also entered into evidence by consent of the Member as Exhibit 10.

DECISION AS TO SANCTION

22. In determining an appropriate sanction, the Hearing Committee is guided by the public interest, which seeks to protect the public from acts of professional misconduct.

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

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

24. Various factors may be taken into account when deciding how the public interest should be protected, including: a) the nature and gravity of the proven misconduct, including the number of times it occurred; b) whether the misconduct was deliberate; c) whether the misconduct engages the Member's honesty or integrity; d) the impact of the misconduct on the client or other person affected; e) general deterrence of other members of the legal profession; f) specific deterrence of the Member from engaging in further misconduct; g) punishment of the Member; h) whether the Member has incurred other serious penalties or financial loss as a result of the circumstances; i) preserving the public's confidence in the integrity of the profession's ability to properly supervise the conduct of its members; j) the public's denunciation of the misconduct; k) the extent to which the offensive conduct is clearly regarded within the profession as falling outside the range of

acceptable conduct; and l) imposing a penalty that is consistent with the penalties imposed in similar cases.

25. In addition, the Hearing Committee considers mitigating circumstances that may temper the sanctions to be imposed, including: a) the Member's attitude since the misconduct occurred; b) the prior disciplinary record of the Member including whether this is a first offence; c) the age and inexperience of the Member; d) whether the Member has entered an admission of guilt, thereby showing an acceptance of responsibility; e) whether restitution has been made to the person harmed; and f) the good character of the Member, including a record of professional service.

26. In the present case, the Hearing Committee had regard to the following matters that influenced their decisions as to sanction:

    Mitigating factors:

    i) the Member was co-operative during investigation;
    ii) the Member admitted guilt on three of the citations;
    iii) the Undertaking provided by the Member;
    iv) the Member was co-operative at the hearing; and
    v) the Member has had to live with this complaint since 2006.

27. Taking into account all of the foregoing factors, evidence and the joint submission from counsel for the LSA and the Member, the Hearing Committee concluded that the sanction should be a reprimand, fines and the majority of the Hearing Committee concluded that the Member should pay 2/3 of the costs. One of the members of the Hearing Committee concluded that no reduction in the costs was warranted.

28. The Chair delivered the reprimand.

29. The Hearing Committee also agrees that fines are appropriate for the Member's conduct. The Hearing Committee is mindful that the maximum fine could be $10,000.00 per citation. Upon the joint submission of counsel for the LSA and the Member, the Hearing Committee has determined that the appropriate fines in relation to these matters are as follows:

Citation 1:	$ 2,500.00
Citation 2:	$ 2,500.00
Citation 5:	$ 2,500.00
Citation 6:	$ 2,500.00
Total:	$10,000.00

30. The Hearing Committee also directs the Member to pay 2/3 of the actual costs of this hearing.

31. The Hearing Committee notes that it has no issue with respect to the Member's integrity.

32. The Member is given time to pay the costs and the fines of six months from September 10th, 2010.

CONCLUDING MATTERS

33. No referral to the Attorney General is required in this matter.

34. A separate notice to the profession is not required in respect of this matter.

35. The decision, Exhibits and the transcript in this hearing are to be made available to the public with the names of the complainant, clients, third parties or other employees to be redacted.

Dated this 10th day of November , 2010

James A. Glass, Q.C, Bencher
Chair

Rose Carter, Q.C., Bencher

Wayne Jacques, Lay Bencher