

**THE LAW SOCIETY OF ALBERTA**  
**RESIGNATION COMMITTEE REPORT**  
**IN THE MATTER OF THE *LEGAL PROFESSION ACT*,**  
**AND IN THE MATTER OF AN APPLICATION TO RESIGN WHILE FACING CITATIONS,**  
**INVOLVING ALEXANDER POZNIAK**  
**A MEMBER OF THE LAW SOCIETY OF ALBERTA**

1. On January 31, 2014, a Resignation Committee (the “Committee”) of the Law Society of Alberta (the “LSA”) convened at the LSA offices in Edmonton, Alberta, to hear an application by the Member, Mr. Alexander Pozniak, to resign as a member of the LSA, pursuant to s. 32 of the *Legal Profession Act*. The Committee was comprised of Brett Code, QC, Chair, Derek Van Tassell, and Wayne Jacques, CA. The LSA was represented by Ms. Tami Friesen. The Member was present throughout the hearing and was represented by Mr. S. M. Moring.
2. Mr. Pozniak and the LSA submitted an Agreed Statement of Facts which was signed by Mr. Pozniak. It contained certain admissions, which were made part of Mr. Pozniak’s application to resign. It was effectively a Joint Submission as to the appropriateness of the resignation under s. 32 of the Act in the face of the extant citations and the admissions made. The Committee was aware that such a joint submission should receive the deference of a committee such as this unless that submission is unfit, unreasonable in the circumstances, or contrary to the public interest.
3. The formal citations faced by Mr. Pozniak were set out in Exhibit 2. That Exhibit is appended to this Memorandum.
4. Mr. Pozniak’s application constituted four documents that were entered as Exhibit 6:
  - a. EXHIBIT 6(A) - Application for Resignation
  - b. EXHIBIT 6(B) - Statutory Declaration
  - c. EXHIBIT 6(C) – Undertaking
  - d. EXHIBIT 6(D) - Statement of Facts

Exhibit 6(D) included extensive support documentation behind many Tabs. All of those tabbed documents constitute part of Exhibit 6, but Exhibit 6 is appended to this Memorandum without those tabbed documents being included.

5. The decision of the Resignation Committee was given orally by the Chair and was as follows:

THE CHAIR: All right. We're reconvened and back on the record. The Resignation Committee has considered the application of Mr. Pozniak and grants the application to resign.

I have a question before I carry on. Ms. Friesen, the issue about ordering costs of the custodianship is new to all three of us, and we're wondering -- we've, including just this week, heard other matters where we didn't hear anything about custodian costs; and we're wondering whether this is a one-off case or whether it's a new policy of the Law Society or if there's a reason why we're seeking costs of the custodianship here?

MS. FRIESEN: It actually just came about when I was drafting the notice. I thought it would be -- to cover all the bases in terms of the reinstatement because we're not really asking for any other conditions. We're not seeking an undertaking that he not reapply or anything of that nature. It's really just something that I thought of when I was drafting the notice, so it's not -- I've spoken to the Custodianship Department about it, and they appreciate it. But I can't speak for the Law Society as to whether that's a new policy or not.

THE CHAIR: Okay. We'd rather not use an individual case to decide something that's a matter of policy. And so even though I think Mr. Pozniak hasn't disagreed with this, I think that what we're going to do is not order the custodianship costs --

THE CHAIR: We will not order the payment of the custodianship costs. But we do order the payment of actual costs in accordance with this Estimated Statement of Costs as adjusted to become actual costs and that those costs be paid in advance or as part of any application for readmission. We do want the notice that has been agreed by Mr. Pozniak and his counsel to go to the profession. Of course, it must be amended to deal with the issue of the custodian costs in advance of being published. So the last sentence of the last paragraph needs to be amended. The exhibits will be treated as available and redacted. Mr. Pozniak will be struck from the Roll. The Roll will contain an announcement of his resignation as well as Exhibit 6, A, B, C, and D without the attachments to Exhibit D of which there are 50 some. Those attachments will not go with the Roll.

THE CHAIR: Thank you for your attendance here today. Good luck to you, sir. You are no longer a member of the Law Society of Alberta, and we wish you well.

Dated at Edmonton, Alberta, the 23<sup>rd</sup> day of February, 2014

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W.E. Brett Code, QC, Chair

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Derek Van Tassell

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Wayne Jacques, CA

## **APPENDIX #1**

### **CITATIONS**

#### **Alexander Pozniak**

1. It is alleged that you failed to accept reasonable trust conditions that were in accordance with standard conveyance practice and consistent with the purchase contract, and that such conduct is conduct deserving of sanction; and
2. It is alleged that you advised the complainant, M.S., to mislead or attempt to mislead another party, and that such conduct is conduct deserving of sanction.
3. It is alleged that you failed to accept reasonable trust conditions in a real estate matter involving your client, Z.H., and that such conduct is conduct deserving of sanction; and
4. It is alleged that you failed to serve your client, Z.H., and that such conduct is conduct deserving of sanction.
5. It is alleged that you failed to respond to Practice Review, and that such conduct is conduct deserving of sanction.

## APPENDIX #2

### IN THE MATTER OF THE *LEGAL PROFESSION ACT* IN THE MATTER OF AN APPLICATION BY ALEXANDER POZNIAK TO RESIGN AS A MEMBER OF THE LAW SOCIETY OF ALBERTA

#### STATEMENT OF FACTS

#### INTRODUCTION

1. Alexander Pozniak has been a member of the Law Society of Alberta since his admission on November 9, 1987.
2. On March 31, 2013, Mr. Pozniak sent a letter of resignation of his membership to the LSA, not realizing that the only method of resigning while facing discipline proceedings was pursuant to s.32 of the *Legal Profession Act*. He effectively retired from the practice of law at that time. Mr. Pozniak was then suspended for nonpayment of fees in April of 2013.
3. Mr. Pozniak now tenders this admission of facts with his application to resign pursuant to s.32 of the *Legal Profession Act*.

#### MATTERS DIRECTED TO HEARING:

4. The following matters were directed to hearing by the Conduct Committee on May 16, 2012:
  6. IT IS ALLEGED THAT you failed to accept reasonable trust conditions that were in accordance with standard conveyance practice and consistent with the purchase contract, and that such conduct is conduct deserving of sanction; and
  7. IT IS ALLEGED THAT you advised the complainant, M.S., to mislead or attempt to mislead another party, and that such conduct is conduct deserving of sanction.
5. Additional citations were directed to hearing on January 15, 2013:

8. IT IS ALLEGED THAT you failed to accept reasonable trust conditions in a real estate matter involving your client, Z.H., and that such conduct is conduct deserving of sanction; and
  9. IT IS ALLEGED THAT you failed to serve your client, Z.H., and that such conduct is conduct deserving of sanction.
6. And a further citation was directed to hearing on February 19, 2013:
5. IT IS ALLEGED THAT you failed to respond to the Practice Review Committee, and that such conduct is conduct deserving of sanction.

#### **OUTSTANDING CONDUCT MATTERS:**

7. A complaint by one of Mr. Pozniak's clients, Ms. K, is still outstanding, but has moved on to the s.53 referral process. Possible future Citations might include failing to serve his client, L.K. with respect to a real estate conveyance matter.

#### **FACTS:**

##### **Citation 1 and 2: Complaint by Mark Stillman**

8. Mr. Pozniak represented the purchasers and the complainant, Mr. Stillman, represented the vendor on a residential condominium transaction with a closing date of February 16, 2010. The purchasers paid a deposit of \$5,000 with a balance of \$150,000 due on closing. This was a cash deal. **(TAB 1)**

9. On January 29, 2010, Mr. Stillman forwarded the transfer of land on trust conditions which incorrectly stated that he had been advised it was a mortgage transaction. **(TAB 2)** Mr. Pozniak replied on February 11, 2010 to confirm the conveyance was a cash transaction and to request different trust conditions to accommodate the cash closing. In the interim, Mr. Pozniak asserts that he was awaiting mortgage instructions until he spoke with his client about not having received mortgage instructions. **(TAB 3)**

10. On Friday, February 12, 2010, late in the afternoon, Mr. Stillman, forwarded an Estoppel Certificate and Certificate of Insurance to Mr. Pozniak and provided revised trust conditions that included terms which required Mr. Pozniak to submit and confirm registration of the Transfer and upon confirmation pay the cash to close; and, in any event required the case to close be unconditionally paid on or before 12:00 noon on February 16, 2010, and required notice to the municipality of the change in ownership. **(TAB 4)**

11. Mr. Pozniak received this letter, but refused to accept the trust condition requiring registration of the Transfer on the basis that it was an attempt to alter or amend the purchase contract. Mr. Pozniak also disputed the condition requiring him to give notice to the municipality about the change of ownership. On February 15, 2010, Mr. Pozniak sent a fax detailing additional concerns. **(TAB 5)**

12. On February 16, 2010, the day after a statutory holiday, Mr. Stillman sent Mr. Pozniak, two faxes. The first indicated that a new trust letter had been sent, and that interest was payable from February 16 whether Mr. Pozniak's client took possession or not. **(TAB 6)**

13. The second fax, sent at 4:09 PM afternoon - subsequent to the closing of the Land Titles office for the day, and authored by Gregory Bentz - indicated that Mr. Stillman would delete the last sentence of para. 2 of the trust conditions, but would make no other adjustments. Mr. Stillman further indicated that if the trust cheque was not forwarded unconditionally by February 17, 2010 at noon, he would return the funds. **(TAB 7)**

14. On February 16, 2010, Mr. Pozniak tendered the cash to close on condition that the funds not be released until the disputed trust conditions were amended to conform with the contract, which provided that late receipt of documents allowed his clients possession with no interest payable **(TAB 8)**. Mr. Pozniak also demanded the immediate release of the keys to his purchaser clients. He sent several other faxes over the course of the day **(TAB 9)**. In addition, Mr. Pozniak complained to the Law Society about Mr. Stillman. **(TAB 10)**

15. On February 17, 2010, Mr. Pozniak returned the conveyance documents to Mr. Stillman on the basis that he was unwilling to accept Mr. Stillman's trust conditions and Mr. Stillman returned the cash to close to Mr. Pozniak.

16. Mr. Pozniak wrote to Mr. Stillman and the realtor on February 17, 2010, proposing that the matter be settled by an exchange of the cash to close without interest for the Transfer and keys. **(TAB 11)**

17. The transaction was completed on February 18, 2010, when the trust conditions were amended to remove the registration requirement and only require unconditional payment prior to use of the Transfer. This was apparently done on Mr. Stillman's client's instruction, despite Mr.

Stillman's concerns about his client's potential liability associated with no registration requirement. Mr. Pozniak asserts this occurred subsequent to Mr. Stillman's advice to the realtors on February 17, 2010 that the transaction was terminated and the deposit forfeited. **(TAB 12)**

18. Prior to completion of the real estate transaction, the condominium management company refused to issue the Estoppel Certificate and Certificate of Insurance without knowing the full names of the purchasers. Mr. Stillman asked Mr. Pozniak to provide the name of the purchasers for the condominium management company, as their names were not clearly legible on the purchase contract **(TAB 12)**.

19. Mr. Pozniak did not think the provision of the purchasers' full names was required by law in order to comply with the Act **(TAB 13)**. He left a phone message with Mr. Stillman's assistant and stated that he would not provide the full names of his purchaser clients and that Mr. Stillman should simply "make up names" if he was unable to persuade the condominium management company to comply with the Act. **(TAB 14)** The message was recorded.

20. In complaining to the LSA, Mr. Pozniak's position was that Mr. Stillman had acted without instruction and put his client in breach of contract by not releasing the keys on the closing date. He alleged that Mr. Stillman misled his client and the Law Society about the client's liability in not releasing the keys on the closing date. Pozniak further suggested that Mr. Stillman, in attempting to force a protocol closing, placed purchasers at risk and failed to serve his client in initially refusing to release the keys on the closing date **(TAB 14)**.

21. In responding to Mr. Pozniak's complaint against him, Mr. Stillman filed a cross-complaint alleging that Mr. Pozniak refused to accept reasonable trust conditions which, in Mr. Stillman's view, were in accordance with standard conveyancing practice and consistent with the terms of a standard real estate purchase contract, and that Mr. Pozniak's conduct was detrimental to his own clients and to the opposing parties **(TAB 12)**.

#### **Citation 5: Complaint by the Law Society's Practice Review Committee**

22. The Conduct Committee Panel directed a hearing with respect to Mr. Stillman's complaint, and in so doing, referred Mr. Pozniak to Practice Review. This was the fourth time



Mr. Pozniak had been referred to Practice Review, although only two prior reviews had actually taken place.

23. Practice Review staff members sent out letters to Mr. Pozniak on June 14, 2012 and September 6, 2012 asking for a response from Mr. Pozniak so they could begin the Practice Review process. **(TABS 15 and 16)** Proof of delivery of both letters was confirmed. To date, Mr. Pozniak has never responded to the letters, or contacted anyone within the Practice Review department. **(TAB 17)**

#### **Citations 3 and 4: Complaint by Kenneth R. Haak**

24. Mr. Pozniak represented the purchasers and the purchasers' mortgagee and the complainant, Mr. Haak represented the vendor on a residential transaction.

25. The Real Estate Purchase Agreement (REPC) was signed on April 21, 2011 and conditional on satisfactory financing and inspections; the closing date was stated to be May 2, 2011 later amended to May 4, 2011; and the purchase price was approximately \$500,000. **(TABS 18 - 19)**

26. One of the standard terms in the REPC was paragraph 4.12:

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

27. Conditions were waived on May 2, 2011. **(TABS 20 - 21)** Upon being advised that conditions had been waived, Mr. Haak sent the conveyancing documents to Mr. Pozniak under his standard trust letter which allowed for the purchaser to close either on the basis of a conventional closing (Schedule A) or under a Protocol closing (Schedule B). **(TAB 22)** He included a Real Property Report (RPR) dated March 24, 2011 with a compliance stamp dated April 6, 2011. This letter contained an error and referenced May 2 as the closing date instead of May 4.

28. Mr. Pozniak received mortgage instructions on May 3rd or 4th and met with his client on May 4th at which time he received the cash to close and confirmed his instructions to proceed to close with title insurance after he advised the client that the only feasible protection was with

title insurance. Mr. Pozniak asserts that had the trust conditions been amended, he would have proceeded with a title insured gap closing.

29. Mr. Pozniak brought this error to Mr. Haak's attention two days later, on May 4, after the transaction was scheduled to close. **(TAB 23)** Mr. Pozniak asked Mr. Haak to amend his trust letter to delete the Schedule B trust conditions and to "permit closing under title insured/gap rather than protocol . . . [or] conventionally" and that he be permitted to submit for registration on May 5, 2011. **(TAB 23)**

30. Mr. Haak responded the next morning, May 5, 2011, stating "you have the option of closing with title insurance/gap closing under the trust letter that we have provided. We do not believe that there is any need for an amended trust letter." **(TAB 24)**

31. Mr. Pozniak replied, and took the position that Mr. Haak was attempting to impose an impossible trust condition and repeated his earlier request for amendments to the conditions. **(TAB 25)** Mr. Haak sent over a revised trust letter the same day, setting out his position with respect to the issues raised. **(TAB 26)**

32. Mr. Pozniak then sent 5 faxes in a row. **(TAB 27)** In the last fax, he set out his calculation of the cash to close plus interest to May 6, enclosing a trust cheque in that amount. Mr. Haak replied at 3:58 PM that same day. **(TAB 28)** More faxes from Mr. Pozniak followed. **(TAB 29)**

33. Mr. Haak eventually agreed to permit Mr. Pozniak to close with gap insurance, in an effort to close the deal. **(TAB 30)** Mr. Pozniak responded and asked that the keys be released by 10 am the next morning, May 6. He asserts that he made this request because his client was leaving the country for an extended period of time and he would not be able to receive instructions from him. **(TAB 31)**

34. The morning of May 6, 2011, Mr. Pozniak faxed another letter to Mr. Haak demanding clear trust conditions. **(TAB 32)**

35. Mr. Haak responded, again indicating that the Protocol trust conditions allowed Mr. Pozniak to close with title insurance, and extending the date "to register" to May 6. **(TAB 33)**

Mr. Haak further stated that if Mr. Pozniak demanded the return of the cash to close, the vendor would be taking the position that the purchaser was in breach and that the deposit was forfeit.

36. Mr. Pozniak then demanded the return of the cash to close because Mr. Haak had not authorized release of the keys by 10:30 a.m. **(TAB 34)** Mr. Pozniak then followed up with another fax: “As stated return the cash to close, upon receipt I am returning the mortgage advance to the mortgagee and will return your documents and am ceasing to act.” **(TAB 34)**

37. Mr. Haak replied to Mr. Pozniak to say that he would be communicating directly with the purchaser in light of Mr. Pozniak’s withdrawal. **(TAB 35)**

38. Later that day, Mr. Haak faxed Mr. Pozniak to advise that keys had been released to the purchaser and that he took the position that by having sent the cash to close and by having used the documents, Mr. Pozniak was deemed to have accepted the trust conditions, and that he was therefore proceeding to finalize the transaction and close his file. **(TAB 36)**

39. Mr. Pozniak sent a fax indicating that he would be stopping payment on his trust cheque and then did so. **(TAB 37)** At 2:30 p.m., on May 6, 2011, Mr. Haak’s office tried unsuccessfully to certify the trust cheque.

40. Mr. Pozniak then faxed Mr. Haak to deny that he had used his documents, to advise that the delivery of the cash to close had been “conditional and hence not delivered to you at all”, and to note a number of what he believed to be contradictions in Mr. Haak’s position. **(TAB 38)**

41. Mr. Haak returned Mr. Pozniak’s trust cheque and demanded return of the documents on May 10, 2011. **(TAB 39)** Mr. Pozniak returned the documents on May 11, 2011 and confirmed he was no longer acting for the client. **(TAB 40)**

42. The sale eventually closed on July 5, 2011, with a new lawyer acting for the purchasers. **(TAB 41)** The Trust Letter Mr. Haak sent to that new lawyer was identical to the Trust Letter sent to Mr. Pozniak, with the exception of the dates. **(TAB 42)**

43. On May 8, 2011, Mr. Pozniak had complained to the Law Society about Mr. Haak's conduct and in particular, his attempted imposition of "impossible trust conditions" by cc'ing the Law Society on his latest correspondence with Mr. Haak. **(TABS 34 and 38)**

44. In August of 2011, Mr. Haak filed a cross-complaint alleging breach of trust conditions, and in general, that Mr. Pozniak's conduct caused prejudice to his own clients. **(TAB 43)** Mr. Pozniak filed additional responses elaborating on his position. **(TABS 44 and 45)**

#### **Outstanding complaint matter**

45. Mr. Pozniak represented the complainant and her husband (the Ks) on a real estate foreclosure purchase. Mr. Cotter represented the Bank of Montreal. The closing date was set for June 20, 2010. **(TAB 46)**

46. A Master's Order regarding the sale, dated June 10, 2010 stated that the requirements of section 191 of the *Land Titles Act* could be dispensed with. **(TAB 47)** In a letter dated June 16, 2010, Mr. Pozniak took the position that an undertaking to discharge the caveat for outstanding condo fees was required and the Order that had been made was beyond the Master's jurisdiction, and he objected to registration of the Order for Sale. **(TAB 48)** He reiterated his position in a letter dated June 21 2010. **(TAB 48)** Section 191(4) of the *Land Titles Act* provides that the order could be registered notwithstanding section 191(1).

47. Mr. Cotter replied indicating he had made various amendments as suggested by Mr. Pozniak and noting that the Master's Order was binding. **(TAB 49)** Mr. Pozniak replied in a letter dated June 22, 2010 in which he indicated he thought Mr. Cotter was in "contempt of court." **(TAB 50)** Mr. Cotter replied the same day, suggesting mediation of their dispute by Ross Macleod, Practice Advisor. **(TAB 51)** Numerous letters and faxes between Mr. Pozniak and Mr. Cotter followed.

48. On July 5, 2010 and November 23, 2010, Mr. Cotter sent letters to Mr. Pozniak asking for confirmation of registration. **(TAB 52)** Mr. Pozniak replied that he had not registered, and set out his reasons why. More faxes followed. **(TAB 53)** On December 8, 2010, Mr. Cotter sent a letter to Mr. Pozniak amending trust conditions; however, Mr. Cotter did not undertake to pay the condo arrears and to discharge the *caveat* claiming arrears. **(TAB 54)** Mr. Pozniak replied on December 13, 2010 and December 2010 and the stalemate continued. **(TAB 55)**

49. In 2011, and again in 2012, the Ks received a tax assessment mailed to the purchased condo's address which was still in the name of the foreclosed mortgagors. When they asked Mr. Pozniak about this he advised them to just pay the assessment, and that he was working on it. In June of 2012, the purchasers, the Ks, complained to the Law Society about Mr. Pozniak's handling of the purchase. **(TAB 56)**

50. After speaking with members of the Complaints Department at the LSA, Mr. Pozniak continued to take the position that a "Certificate of No Appeal" was required. Mr. Cotter continued to refuse to provide that Certificate on the basis that the Master's Order dispensed with it. **(TAB 57)**

51. After meeting with the Ks, and subsequent to Mr. Cotter removing all the trust conditions, Mr. Pozniak agreed to register the Order so that title could be transferred into their names. He did so in July of 2012.

## **CONCLUSION**

52. Mr. Pozniak admits to the facts set out above. Where there are allegations, he admits only that the allegations were made, and not that the allegations are true.

53. Mr. Pozniak does not admit that he did not maintain the standard of professionalism required of him with respect to the conduct set out above; however, considering all the circumstances, Mr. Pozniak recognizes that it is in his own best interests and the interests of the Law Society for him to resign his membership.

54. Mr. Pozniak is making these admissions, and this application, voluntarily.

**ALL OF THESE FACTS ARE ADMITTED THIS 28<sup>th</sup> DAY OF JANUARY, 2014.**

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**Alexander Pozniak**

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**Witness**