

**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 Hermo Toribio Pagtakhan,  
a member of the Law Society of Alberta**

**Jurisdiction and Preliminary Matters**

- I. The Hearing Committee of the Law Society of Alberta (LSA) held a hearing into the conduct of Hermo Toribio Pagtakhan on September 8, 2006, October 10, 2006, and December 11, 2006. The Committee was comprised of Vaughn Myers, Q.C., Chair, Brian Beresh, Q.C., and Morris Taylor, committee member. The LSA was represented by Janet Dixon. The member was represented by Ken Alyluia.
- II. Exhibits One through Four consisted of the Letter of Appointment of the Hearing Committee, the Notice to Solicitor, a Notice to Attend, and the Notice of Status of the Member, established jurisdiction of the committee.
- III. There was no objection by the member's counsel or counsel for the LSA regarding the membership of the committee.
- IV. The Certificate of Exercise of Discretion was entered as exhibit five. Counsel for the LSA advised that the LSA did not receive a request for a private hearing, therefore the hearing was held in public.

**Citations**

- V. The member faced the following citations:

**Citation 1: IT IS ALLEGED THAT you failed to render appropriate service to Complainant A on a timely basis, and that such conduct is conduct deserving of sanction.**

**Citation 2: IT IS ALLEGED THAT you failed to respond to the Law Society on a timely basis and in an appropriate manner regarding the matters related to Complainant A and that such conduct is conduct deserving of sanction.**

**Citation 3: IT IS ALLEGED THAT you failed to render appropriate service to Complainant B on a timely basis, and that such conduct is conduct deserving of sanction.**

**Citation 4: IT IS ALLEGED THAT you failed to render appropriate service to Complainant C on a timely basis, and that such conduct is conduct**

deserving of sanction.

- Citation 5:** IT IS ALLEGED THAT you failed to respond to the Law Society on a timely basis and in an appropriate manner regarding the matters related to Complainant C and that such conduct is conduct deserving of sanction.
- Citation 6:** IT IS ALLEGED THAT you failed to render appropriate service to Complainant D on a timely basis and that such conduct is conduct deserving of sanction.
- Citation 7:** IT IS ALLEGED THAT you failed to respond to the Law Society on a timely basis and in an appropriate manner regarding the matters related to Complainant D and that such conduct is conduct deserving of sanction.
- Citation 10:** IT IS ALLEGED THAT you failed to respond to the Law Society on a timely basis and in an appropriate manner regarding the complaint of Prestige Reporting Group and that such conduct is conduct deserving of sanction.
- Citation 11:** IT IS ALLEGED THAT you failed to render appropriate service to Complainant F and G on a timely basis and that such conduct is conduct deserving of sanction.
- Citation 12:** IT IS ALLEGED THAT you failed to respond to the Law Society on a timely basis and in an appropriate manner regarding the matters related to Complainants F and G and that such conduct is conduct deserving of sanction.
- Citation 13:** IT IS ALLEGED THAT you failed to provide Complainant H with the appropriate and necessary information relating to your fees, and that such conduct is conduct deserving of sanction.
- Citation 14:** IT IS ALLEGED THAT you failed to respond to Complainant H in a timely fashion, and that such conduct is conduct deserving of sanction.
- Citation 15:** IT IS ALLEGED THAT you failed to clearly identify on the Initial Statement of Account of Complainant H the amount attributable to fees and the nature and amount of any disbursements, and that such conduct is conduct deserving of sanction.
- Citation 16:** IT IS ALLEGED THAT you failed to respond to the Law Society on a

**timely basis and in a complete and appropriate manner regarding the matters related to Complainant H and that such conduct is conduct deserving of sanction.**

**Citation 17: IT IS ALLEGED THAT you failed to respond to Complainant J on a timely basis, and that such conduct is conduct deserving of sanction.**

**Citation 18: IT IS ALLEGED THAT you failed to provide Complainant J reasonable information concerning your fees, and that such conduct is conduct deserving of sanction.**

**Citation 19: IT IS ALLEGED THAT you failed to respond to the Law Society on a timely basis and in an appropriate manner regarding the matters related to Complainant J and that such conduct is conduct deserving of sanction.**

**Citation 20: IT IS ALLEGED THAT in failing to pay a Default Judgment, you failed to respect and uphold the law in your personal conduct and failed to refrain from personal conduct that brings discredit to the profession, and that such conduct is conduct deserving of sanction.**

### **Evidence**

VI. The evidence in this hearing included 105 exhibits as set out in Appendix A. A statement of facts, marked as Exhibit 99, consisting of 15 pages and 62 paragraphs, outlined the core allegations against the member. The only evidence given was that of the member who in essence took the committee through the time period and offered explanations for the complained of conduct. We will review both the Agreed Upon Statement of Facts and the Findings of Fact in the next heading.

### **Findings of Fact**

VII. Citation One and Two.

The first set of allegations involved Complainant A. The Citations facing the member include Citation One: Failing to render appropriate service to Complainant A on a timely basis; and Citation Two: Failing to respond to the Law Society on a timely basis and in an appropriate manner regarding the matters relating to Complainant A and that such conduct is conduct deserving of sanction.

With respect to these two Citations, it was August 9, 2005 in which the Law Society received

a complaint from Complainant A, a financial corporation that had retained the member to secure the advance of a mortgage on a residential property in Edmonton.

The original mortgage transaction closed September 10, 2004. Pursuant to the retainer with the client, the member was required to provide the following documents after releasing mortgage funds:

- a) Solicitor's Final Report on Title;
- b) Registered Mortgage/Charge and Schedule;
- c) Title Insurance Survey or Estoppel/Strata Certificate;
- d) Fire Insurance Policy;
- e) Certified Copy of Title. (Exhibit 6)

Complainant A sent follow-up letters to the member on December 13, 2004, March 11, 2005, June 15<sup>th</sup>, July 5<sup>th</sup>, July 11<sup>th</sup>, and July 25<sup>th</sup>, all of 2005 requesting the required documents. The member did not reply to any of the correspondence of Complainant A and did not provide the required documents (Exhibit 7 through 12).

By letter dated August 16, 2005, Maurice Dumont, Q.C. sent the complaint of A to the member and demanded a response to the complaint within 14 days pursuant to the provisions of Section 53 of the Legal Profession Act (LPA). This letter was delivered by courier to the business offices of the member on August 17, 2005 (Exhibits 13 and 14).

By letter dated August 29, 2005, the member asked for an extension of the deadline to respond to the Section 53 of the demand to September 12, 2005 (Exhibit 15).

By letter dated August 30, 2005, Mr. Dumont denied the request for an extension. This was delivered by courier to the business offices of Mr. Pagtakhan on August 30, 2005. To date, Mr. Pagtakhan has not provided responses to this complaint.

The member gave evidence with respect to this and the other Citations, which in the most part, were not dissimilar to these allegations. Mr. Pagtakhan explained that with respect to failing to answer the client's request, that in general, he did not answer them as he did not have the documents which they were requesting. He described his practice as exceptionally busy, and on a number of occasions, described that he had a great deal of work to do on upcoming files and advised the hearing committee that he did not "wish to get sued" by spending time responding to these requests when he had already completed the work. With respect to this citation, the mortgage transaction and real estate transaction closed September 10, 2004. Six requests over 7 ½ months were made by the client with no response. In fact, as of August 30, 2005, Mr. Pagtakhan had still not responded, which at the start of this hearing was some 13 months later. The hearing committee in fact finds that Mr. Pagtakhan had an extremely busy practice and further accepts his evidence that he was doing the best that he could in keeping up with the new work that he had to do. The hearing committee however finds that Mr. Pagtakhan did not treat reporting to his client as an integral part in the provision of legal services to the client. What was clear was that Mr. Pagtakhan simply did not understand that his client wanted to be informed as to what had happened via reporting letter. Mr. Pagtakhan treated Complainant A's legitimate request as a request that he believed he could not

answer because he did not have the documents that were requested. It completely escaped Mr. Pagtakhan that his clients deserved a response even if that response was “ I cannot provide that to you as I do not have those documents”. Treating his clients in the cavalier manner that he did was completely unprofessional, yet appeared to escape him. He knew he had a request from a client which he simply failed to respond to because:

1. He perceived himself to be too busy; and
2. He did not believe he had the documents that they were requesting so refused to give any response to their legitimate queries.

The Hearing Committee found Mr. Pagtakhan would often do the following: ask for more time at the end of the LSA’s deadline and ask for further extensions on the last day of the extended period of time. If this would have been the first request for an extension, the hearing committee would have viewed it differently. There was a history of this behavior and we do not find that his responses were reasonable in light of the fact he failed to respond to both his client and the LSA, and find him guilty of Citation 1 and 2.

#### Citation Three

With respect to Complainant B, this citation alleged that he had failed to respond to the complainant on a timely basis and such conduct was conduct deserving of sanction.

On July 6, 2005, a letter was sent to ALIA from Complainant B concerning a mortgage file handled for Complainant B by Mr. Pagtakhan. The matter was investigated by ALIA, who determined there appeared to be no issues of negligence and passed it on to the Law Society of Alberta for review. Complainant B was a financial corporation that had retained Mr. Pagtakhan to secure a collateral mortgage on his behalf.

The original mortgage transaction closed September 14, 2004. Complainant B had provided the loan proceeds to Mr. Pagtakhan on the following trust conditions: “That you will forward the original duplicate registered mortgage, Certificate of Title, and Solicitor’s Letter of Opinion stating that the Toronto Dominion Bank has a good and valid first charge and any other documentation as listed in our letter of April 22, 2004 to our office.” (Exhibit 18)

Complainant B had advised Mr. Pagtakhan that they expected the final documentation to be

forwarded to it within 30 days of the closing. Pursuant to the retainer with the client and the trust conditions, Mr. Pagtakhan was required to provide the following documents, all of which remained outstanding:

- a) Registered Collateral Mortgage;
- b) Resolution;
- c) Tax Certificate;
- d) Fire Insurance Confirmation;
- e) Reporting letter/Final Reporting of Title;
- f) Estoppel Certificate. (All of Exhibit 19)

Complainant B sent follow-up letters to Mr. Pagtakhan on November 8, 2004 and February 14, April 21, June 2, and July 6<sup>th</sup>, all of 2005, requesting the required documents. Mr. Pagtakhan did not reply to any of the correspondence from Complainant B and did not provide the required documents (Exhibits 19 through 22).

By letter dated October 18, 2005, Maurice Dumont, Q.C. sent the complaint of B to Mr. Pagtakhan and demanded a response to the complaint within fourteen days pursuant to the provisions of Section 53 of the Legal Profession Act. This letter was delivered by courier to the business office of Mr. Pagtakhan on October 19, 2005. To date, Mr. Pagtakhan has not provided responses to this complaint.

With respect to Citation 3, the hearing committee finds Mr. Pagtakhan exhibited the same behavior that he did with the previous complainant, Complainant A. That is, he had done the work and because he didn't believe he had all of the documents being requested, chose not to respond at all to his clients. He did admit however on cross-examination, with respect to these documents that Complainant B was asking for, that he in fact did have a) the Registered Collateral Mortgage; b) the resolution; c) the Tax Certificate; d) the Fire Insurance confirmation; and e) the Estoppel Certificate. The sole document that he did not have was the Solicitors Reporting Letter/Final Reporting Title, which was the document he would have to prepare. However, as a result of not having all the documents prepared, he chose not to answer his client. The hearing committee finds that he treated his clients in an unprofessional manner, and finds the member guilty of Citation Three.

Citation Four and Five relate to Complainant C, and again, involve failing to render appropriate service to Complainant C on a timely basis as well as failing to respond to the Law Society on a timely basis. With respect to these allegations, the Law Society received a complaint from Complainant C, a financial corporation that had retained Mr. Pagtakhan to secure the advance of a mortgage on a residential property in Edmonton (Exhibit 25).

The original mortgage transaction closed August 22, 2000. Pursuant to the retainer with the client and the trust conditions under which the mortgage funds were advanced, Mr. Pagtakhan was required to provide the following documents after release of mortgage funds:

- a) Registered Mortgage;
- b) Solicitor's Report on Title; and
- c) Certificate of Title.

Complainant C contacted the offices of Mr. Pagtakhan on several occasions and finally, on January 20, 2005, the member advised Complainant C by letter that the file had been closed (Exhibit 25).

Mr. Pagtakhan was contacted by the Law Society by letter dated February 3, 2005

seeking a response. In response, Mr. Pagtakhan sought an extension to respond. On March 30, 2005, Mr. Pagtakhan faxed to the Law Society a copy of a letter directed to Complainant C which apparently complied with his outstanding obligations (Exhibits 26 through 29).

After receiving the letter of March 30, 2005, Lewis Wassel, complaints resolution officer of the Law Society of Alberta, made a telephone inquiry of Complainant C to confirm that the material the member claimed had been sent by him to the Complainant, had been received. It had not. Further investigation noted the address used by Mr. Pagtakhan in his letter was the incorrect address for Complainant C. In a telephone conversation on April 15, 2005, Mr. Wassel advised Mr. Pagtakhan that the letter and materials had not been received by Complainant C and the package was improperly addressed. Mr. Pagtakhan indicated he had just sent it the prior Tuesday (April 12, 2005), and would try to trace it (Exhibit 30).

Between April 29, 2005 and May 4, 2005, Mr. Pagtakhan left messages with the Law Society that he had been told by someone at Complainant C that his material was received. Mr. Wassel confirmed with Complainant C that the letter had not been received. Ultimately, the individual with whom Mr. Wassel was dealing placed a note on the system that she should be notified when anything came in on the file. The last information received by the Law Society from Complainant C was on July 21, 2005 which confirmed that no material had been received by Mr. Pagtakhan.

By letter dated June 7, 2005, Mr. Pagtakhan sought an extension to respond to the inquiries of Mr. Wassel.

On July 21, 2005, the complaint was advanced to the formal process by letter dated July 27, 2005 by Maurice Dumont, Q.C. sent the complaint of C to Mr. Pagtakhan and demanded a response to the complaint within fourteen days in accordance with the provisions of Section 53 of the LPA. This letter was delivered by courier to the business office of Mr. Pagtakhan on July 28, 2005 (Exhibit 32 and 33).

By letter dated August 10, 2005, Mr. Pagtakhan sought an extension to reply to the Section 53 letter to August 29, 2005. By letter dated August 29, 2005, Mr. Pagtakhan responded to the Section 53 letter by enclosing his letter of March 30, 2005 to Complainant C, providing no further information regarding the complaint or addressing the prior information provided to him that that letter had not been received by Complainant C. By letter dated August 30, 2005, Mr. Dumont responded to Mr. Pagtakhan and advised that the prior correspondence was insufficient and sought an additional response. Mr. Pagtakhan did not offer any further response to the Law Society regarding this matter (Exhibit 36).

With respect to Citation 4, as was noted, this mortgage transaction closed August 22 of 2000. There was a trust condition that he provide a registered mortgage, solicitors report

and a copy of Title and this was requested on several occasions. It took until January 30, 2005 to advise the complainant the file had been closed. In essence, Mr. Pagtakhan responded to the mortgage company four years and five months later.

With respect to the Citation that he did not respond to the Law Society, the hearing committee found that his conduct followed the earlier conduct involving Complainants A and B and consisted of :

1. Seeking an extension to respond to the LSA on the due date demanded;
2. Waiting until the extension was almost over and seeking a further extension.

With respect to this complainant, the issue was not only failing to address the concerns of the Law Society, but rather sending an old letter back to the Law Society which he knew did not respond to their concerns. It was on February 3, 2005 that he was requested to give a response to the complaint. He seeks an extension. On March 30, 2005, he responds with a letter which appears to comply with the request. On April 13, 2005, the complaints officer advises him the correspondence has not been received by the complainant. On April 29, 2005, the member advises the complaints officer that someone at the Complainant's office stated they had received this documentation. However, the complaints officer could not find anyone who said that they had received same. Again it is on June 7, 2005 that Mr. Pagtakhan seeks an extension and on July 7, 2005 the complaints officer demands a response within fourteen days. It is on August 10, 2005 that Mr. Pagtakhan seeks a further 19 day extension and on August 29, 2005, simply re-sends the March 30, 2005 letter which he was informed was incorrect. This was simply a pro forma response by the member, again treating the whole process in a cavalier manner. Subsequent information that he was aware of revealed that the complainant had not received a response. On August 30, 2005, he was again advised of this and was asked for an additional response which he did not give. In total, seven months had elapsed from the beginning to the end and the hearing committee accepts his evidence that he was simply too busy to respond appropriately. His responses were inappropriate and he had no reasonable excuse for failing to comply with his duties to his clients.

Further, he had an absolutely inadequate explanation for failing to respond to the Law Society with respect to Complainant C's complaints. He again simply asked for more time and responded with correspondence that had he addressed his mind to, would have realized did not answer the complaint. The Hearing Committee finds the member guilty of Citation 5.

Citation 6 and 7 involve Complainant D and again the allegations are that he failed to render an appropriate service to Complainant D on a timely basis as well as failed to respond to the Law Society on a timely basis with respect to the allegations made by Complainant D.

In April 2005, the Law Society received a complaint from Complainant D, who had



retained Mr. Pagtakhan as his lawyer in a residential real estate purchase, a business purchase, and to set up a corporation. The house transaction occurred in February 2004 and the business matters were to occur in May of 2004. Complainant D had indicated that he had spoken to Mr. Pagtakhan in February 2005 seeking documentation and accounting on the two transactions but still had not received the promised information (Exhibit 37).

After receiving the complaint, Mr. Wasel of the Law Society contacted Mr. Pagtakhan by telephone to determine the status of these matters. Mr. Pagtakhan responded by voice mail with confirming letters dated May 6, 2005. (Exhibit 38)

Mr. Pagtakhan did not provide the status report as of May 23, 2005 as indicated in his May 2005 letter. On June 5, 2005, Mr. Pagtakhan sent a further letter indicating he would provide a status report by June 15, 2005. Mr. Pagtakhan did not provide that status report. (Exhibit 39)

The complaint was advanced to the formal process. By letter dated July 22, 2005, Maurice Dumont, Q.C. sent the complaint of D to Mr. Pagtakhan and demanded a response to the complaint within fourteen days pursuant to the provisions of Section 53 of the LPA. This letter was delivered by courier to the offices of Mr. Pagtakhan on July 25, 2005. (Exhibits 40 and 41)

Mr. Pagtakhan responded by letter dated August 5, 2005 seeking an extension of the deadline to respond to the Section 53 letter to August 22, 2005, which was granted by Mr. Dumont. (Exhibits 42 and 43)

By letter dated August 22, 2005, Mr. Pagtakhan advised he had arranged a meeting with D on August 24, 2005 to finalize and conclude the outstanding matters. At the meeting held August 24, 2005, Mr. Pagtakhan provided D with his corporate minute book and the accounting related to his business, but did not provide documentation regarding the February 2004 real estate transaction. Mr. Pagtakhan promised to deliver the real estate documentation by August 26, 2005. Mr. Dumont made inquiries of D after that date and determined that Mr. Pagtakhan had failed to provide any real estate documentation to D. (Exhibits 44 and 45)

At no time did Mr. Pagtakhan provide the response to the Section 53 letter dated July 22, 2005.

In summary, with respect to Citation 6, the house transaction occurred in February 2004 and the business matters in May of 2004. It was in February 2005, that the complainant said the member promised the documentation and an accounting April 1<sup>st</sup> of 2005 yet still had not done so. It was on August 24, 2005 that Mr. Pagtakhan met the client and gave him his minute books as well as an accounting, but no documents for the February 2004 transaction. Mr. Pagtakhan simply did not respond or keep his promises that he had

made to his client with respect to the house transaction documents. With respect to his dealing with the Law Society respecting Complainant D's concerns, it was April 2005 that the complaint was directed to the member. It was in May that the member stated that he would give a status report by May 23, 2005 and didn't. It was June 2005 that the member was to give a status report and didn't. It was on July 22, 2005 that a formal request was made by the complaints officer to the member and on August 5, 2005, the member requests an extension to August 22, 2005. On August 22, 2005, Mr. Pagtakhan advises he was having a meeting on August 24, 2005, yet never provides reporting documents on the real estate transaction to the complainant and never responds to the complaints officer's correspondence. In sum, the finding of fact is that the member made a number of promises to the complainant respecting a reporting letter on the real estate transaction and simply failed to do so. Secondly, he failed to respond to the Law Society in a timely fashion and the Hearing Committee finds the member guilty of both citations.

With respect to Citations 8 and 9, the Law Society did not proceed on those and accordingly, they are dismissed.

With respect to Citation #10, it was alleged that the member failed to respond to the Law Society on a timely basis, and in an appropriate manner with respect to the complaint of Prestige Reporting Group and such conduct is conduct deserving of sanction. With respect to the facts surrounding this allegation, by letter dated June 22, 2005, Prestige Reporting Group complained that an invoice issued by it to Hermo Pagtakhan in the amount of \$149.53 had been unpaid since November 2004 and that Mr. Pagtakhan had provided no response whatsoever to numerous faxes and phone calls which followed the invoice. (Exhibit 46)

By letter dated June 24, 2005, Mr. Pagtakhan was provided with a copy of a complaint and asked to either pay the invoice or provide a written explanation for disputing the invoice within 10 days. (Exhibit 47)

Mr. Pagtakhan provided no response to the letter of June 24, 2005. Accordingly, the complaint was advanced to the formal system. By letter dated July 22, 2005, Maurice Dumont, Q.C. sent the complaint of D to Mr. Pagtakhan and demanded the response to the complaint within fourteen days pursuant to the provisions of Section 53 of the Legal Professions Act. This letter was delivered by courier to the business offices of Mr. Pagtakhan on July 25, 2005. (Exhibits 48 and 49).

Mr. Pagtakhan responded by letter dated August 5, 2005 seeking an extension of the deadline to respond to the Section 53 letter to August 22, 2005, which was granted by Mr. Dumont. (Exhibits 50 and 51)

By letter dated August 22, 2005, Mr. Pagtakhan advised that he had sent a post-dated cheque to Prestige Reporting Group on that same date. (Exhibit 52)

By letter dated August 23, 2005, and received August 24, 2005, Mr. Dumont responded to Mr. Pagtakhan advising that the prior response was insufficient and sought an additional response. Having received no response from Mr. Pagtakhan, Mr. Dumont sent a follow-up request on October 18, 2005. Mr. Pagtakhan did not offer any further response to the Law Society regarding this matter. (Exhibits 53 through to 55)

While the hearing committee found that the member technically breached the rules of failing to respond to the Law Society on a timely basis, the Hearing Committee also finds that the correspondence of June 24, 2005 provided Mr. Pagtakhan with two options:

1. Pay the invoice; or
2. Provide a written explanation for disputing the account within ten days.

While the member failed to respond with an explanation disputing the account within ten days, the member took the option, albeit belatedly, to eventually pay the account. Therefore, while the Hearing Committee finds that the member did fail to respond to the Law Society on a timely basis and in an appropriate manner, that this was not sufficient conduct to merit sanction and therefore dismisses Citation #10.

With respect to Citation #11, it is alleged that the member failed to render appropriate service to complainants F and G on a timely basis, and that such conduct is conduct deserving of sanction. Citation #12 alleges that he failed to respond to the Law Society in a timely basis and in an appropriate manner regarding the matters relating to Complainants F and G and that such conduct is conduct deserving of sanction.

In September of 2005, the LSA received complaints from Complainants F and G. Complainant F had retained Mr. Pagtakhan as her lawyer when she sold her house to her friend, Complainant G. Mr. Pagtakhan was also retained by Complainant F in the purchase of her new home which closed at approximately the same time, in August of 2004. Mr. Pagtakhan also acted for Complainant G in the purchase from Complainant F. At the time of the complaint, neither Complainant F nor G had received reporting documents on either real estate transaction despite several requests from both parties. (Exhibits 56 and 57) In summary, this would have been approximately thirteen months after the real estate transaction occurred.

By letter dated September 14, 2005, Maurice Dumont, Q.C. sent the complaint of F to Mr. Pagtakhan and demanded a response to the complaint within 14 days pursuant to the provisions of Section 53 of the Legal Professions Act. This letter was delivered by courier to the business offices of Mr. Pagtakhan on September 16, 2005. (Exhibits 58 and 59)

By letter dated October 18, 2005, Mr. Dumont sent the complaint of G to Mr. Pagtakhan advising him the complainant was being treated as a secondary complainant to the original complaint of Complainant F. Mr. Pagtakhan was advised he was also required to respond to the complaint of G pursuant to the provisions of Section 53 of the Legal

Professions Act. This letter was delivered to the business offices of Mr. Pagtakhan on October 19, 2005. (Exhibit 60)

At no time did Mr. Pagtakhan provide a response to any of the Section 53 letters sent to him regarding the complaints of F and G. With respect to Citation #11, the failure to respond in 13 months was simply unacceptable. The Hearing Committee finds as they have in the previous citations, that the member was simply too busy with upcoming real estate work to effectively respond to the questions of his clients and finds his conduct unacceptable, unprofessional and conduct deserving of sanction.

With respect to Citation #12, which is his failure to respond to the Law Society, the member raises a doubt in the minds of the Hearing Committee in that he received an interim suspension in September of 2005 and was of the belief that as he was suspended, he did not have to respond to the queries of the Law Society. While the member was clearly in error, and was informed of same via the Oct 18, 2005 LSA correspondence, it raises a doubt and the Hearing Committee dismisses that citation.

Citations #13 through #16 involve Complainant H. Citation #13 alleged that the member failed to provide Complainant H with the appropriate and necessary information relating to his fees and such conduct was conduct deserving of sanction.

Citation #14 alleged that the member failed to respond to Complainant H in a timely fashion and that such conduct was conduct deserving of sanction. Citation #15 was that he failed to clearly identify on the initial statement of account of Complainant H, the amount attributable to fees and the nature and any amount of disbursements and that such conduct was conduct deserving of sanction. Citation #16 alleged that he failed to respond to the Law Society in a timely, complete and appropriate manner regarding the matters relating to Complainant H and that such conduct was conduct deserving of sanction.

The facts surrounding the complaint are as follows: In January of 2005, the LSA received a complaint from Complainant H, who had retained Mr. Pagtakhan as her lawyer in two real estate transactions, one being the sale of her current home and the second, the purchase of a new home. The new home purchase closed on June 25<sup>th</sup>, 2004. (Exhibit 62)

Complainant H complained that he had been overcharged on the two transactions as Mr. Pagtakhan agreed to complete both transactions as a fixed fee package deal. Mr. Pagtakhan issued a statement of account to Complainant H dated June 24, 2004 in the sum of \$805.00, which was paid by a cheque issued by Complainant H to Mr. Pagtakhan in that amount upon the closing of the new home purchase. On September 24, 2004, Mr. Pagtakhan issued a supplementary statement of account in the sum of \$428.00 which he paid from trust funds he continued to hold since the June 24, 2004 closing. Mr. Pagtakhan did not advise the complainant that any of the work he was performing related

to the outstanding deficiencies was in addition to the fixed fee package. (Exhibit 63 and 64)

With respect to Citation #14, the Hearing Committee finds the member clearly failed to respond in a timely fashion and finds him guilty with respect to this citation. The real estate transaction was to close June 24<sup>th</sup> of 2004 with an account issued that date and a supplemental account on September 24, 2004. It was from September 24<sup>th</sup> onward that the complainant attempted numerous times to contact the member with respect to questions surrounding the account, seeking a reporting package and trust accounting to no avail. It was in January 2005 that a complaints officer became involved (some four months after the complainant.) The Complainant sent further information, yet nothing was forthcoming from the member. The complaints officer attempted a response from the member from January 28 through to June 8, 2005. The member advised the complaints officer that the member would report to the complainant by June 15, 2005 and failed to do so. The complaint then proceeds to the formal process and a July 28, 2005 request seeking a response within fourteen days was issued. It was on the last day of that fourteen day period, August 11, 2005, that the member seeks an extension to September 5, 2005. Again, no response is received and a reminder letter sent October 18, 2005 advising the LSA still awaits the members response. A response was never received.

With respect to these four citations, the Hearing Committee finds as follows:

With respect to Citation #13, the allegation is that he failed to provide the Complainant with appropriate and necessary information relating to fees and that such conduct was conduct deserving of sanction. The member testified that he had in fact spoken to this Complainant about additional fees, although in cross-examination, it was clear that he was referring to his normal practice to speak about fees as opposed to an individual recollection of same. In light of his evidence, the Hearing Committee was not convinced to the necessary standard that a breach of the rules was made out as opposed to poor communications with his client. With respect to the allegation that he failed to respond to Complainant H in a timely fashion, the member testified that he had had telephone communications with Complainant H and had indicated that Complainant H would call often and felt that it bordered harassment. The Hearing Committee finds that there was a clear failure to respond in a timely fashion and finds the member guilty of Citation 14.

With respect to Citation #16 therefore, the member simply fails to respond to the complaints officer over a period of months, undertakes to report and fails to do so and continues to fail to report to the Law Society. The Hearing Committee finds the member guilty of Citation #16. With respect however to Citation #15, being the citation that the member failed to clearly identify on the initial statement of account the amount attributable to fees and the nature and amount of disbursements, the member testified again that it is his practice to advise at the beginning of a retainer, what fees may be addition or that additional disbursements may be required in the event of unforeseen circumstances. Again, the member's testimony on this point centered more on his normal practices as opposed to a specific recollection of this file. In total however, the Hearing

Committee was not convinced on the requisite standard that the member had breached this rule and dismissed Citation 15. Again, the Hearing Committee felt it was as a result of poor communication as opposed to a total failure to identify amounts attributable to fees and disbursements.

Citations #17, 18 and 19 allege a complaint respecting Complainant J. Citation #17 alleged a failure to respond to Complainant J on a timely basis and that such conduct was conduct deserving of sanction.

Citation #18 alleged failure to provide Complainant J with reasonable information concerning the member's fees and that such conduct was conduct deserving of sanction.

Citation #19 alleged that the member failed to respond to the Law Society in a timely basis and in an appropriate manner regarding the matters related to Complainant J and that such conduct was conduct deserving of sanction.

On October 22, 2004, the Law Society received a complaint from Complainant J who had retained Mr. Pagtakhan as his lawyer in two residential real estate transactions involving the current sale of his home in Edmonton and the purchase of a home in Calgary. The purchase closed on July 4, 2005. (Exhibit 71)

Complainant J called Mr. Pagtakhan every day after the possession date for the reporting package on his purchase. Between July 5, 2004 and September 4, 2004, Mr. Pagtakhan returned one telephone message left by Complainant J on August 18, 2004. In that conversation, Complainant J was advised he would receive the reporting package by August 23, 2004. It was not provided until September 29, 2004. The closing documents included a payment of \$8,635.27 to Complainant J. (Exhibit 71 and 72)

Complainant J had negotiated a fixed legal fee in the sum of \$700.00 for the two transactions in advance of the closing dates. Upon agreeing to that fixed legal fee, Mr. Pagtakhan did not alert Complainant J that he intended to charge fees for any steps taken by him which he considered to be out of the ordinary. (Exhibits 71 and 72)

Upon receiving the complaint, Lewis Wassel of the LSA attempted to resolve the matter. His efforts continued until July 2005 when the matter was referred to the formal process.

By letter dated July 27, 2005, Maurice Dumont, Q.C. sent the complaint of H to Mr. Pagtakhan and demanded a response to the complaint within 14 days pursuant to the provisions of Section 53 of the Legal Professions Act. This letter was delivered by courier to the business offices of Mr. Pagtakhan on July 28, 2005. (Exhibits 77 and 78)

Mr. Pagtakhan responded by letter dated August 10<sup>th</sup>, 2005 seeking an extension of the deadline to respond to the Section 53 letter to August 29, 2005. (Exhibit 79)

By letter dated August 29, 2005, Mr. Pagtakhan responded to the complaint. By letter dated August 30, 2005, Mr. Dumont advised Mr. Pagtakhan that he did not believe the response was adequate and asked that Mr. Pagtakhan provide him with the complete files of the purchase and sale together with the trust ledger cards for each transaction. This letter was delivered by courier to the business offices of Mr. Pagtakhan on August 31, 2005. (Exhibits 80 through 82)

By letter dated October 18, 2005, Mr. Dumont sent a further reminder to Mr. Pagtakhan to provide a response to the Section 53 letter. Mr. Pagtakhan provided no response after his letter of August 29, 2005.

With respect to Citation #17, that being failing to respond to Complainant J on a timely basis, the Hearing Committee finds the member guilty. The closing date was July 5, 2004 with the Complainant calling every day to September 4<sup>th</sup> for a reporting package. The member admits returning one call only, being August 18, 2004, advising that the Complainant would have the reporting package by August 23, 2004. It was provided September 29, 2004, or three months after the original closing date. The Hearing Committee further finds that this conduct is conduct deserving of sanction and is in reality just another example of the member failing to respond to his clients and treating their legal questions and concerns in a cavalier manner.

With respect to Citation #18, respecting failing to provide a client with reasonable information concerning his fees, the Hearing Committee is not convinced upon the requisite standard that this citation was made out. The member testified under oath that he did in fact explain the basis for his fees, and again the Hearing Committee has some doubt as to whether or not this was simply sloppy client communications. With respect to Citation 19 his failing to respond to the Law Society in a timely manner regarding the matters respecting Complainant J, the Hearing Committee is again not convinced on the requisite standard that this Citation was made out. The member was suspended on an interim basis in September 2005, and his comments that he was no longer under an obligation to respond to the Law Society, while ill founded, raised a doubt as to his guilt.

Citation #20 alleged that the member had, in failing to pay a Default Judgment, failed to respect and uphold the law in his personal conduct and failed to refrain from personal conduct that brings discredit to the profession and that such conduct is conduct deserving of sanction.

By letter dated October 8, 2004, Fraser Collection Services Ltd. complained that Mr. Pagtakhan had failed to pay an outstanding Default Judgment obtained against him in the sum of \$3,648.56 on July 30, 2004.

Upon receiving the informal complaint, Lewis Wassel of the LSA contacted Mr. Pagtakhan to determine whether the matter could be resolved. Mr. Wassel first left a voice mail message November 10, 2004. Upon Mr. Wassel speaking to Mr. Pagtakhan

in person, he was advised that Mr. Pagtakhan felt he had a valid defence. In January of 2005, Mr. Pagtakhan advised that he intended to take steps to set aside the judgment.

From January 2005 through to June 2005, correspondence was exchanged regarding the matter. On Jun 3, 2005, the Master in Chambers dismissed the application of Mr. Pagtakhan and set aside the Default Judgment. (Exhibits 85 through 91)

By letter dated July 22, 2005, Maurice Dumont, Q.C. sent the Complaint of Fraser Collection Services to Mr. Pagtakhan and demanded a response to the complaint within 14 days pursuant to the provisions of Section 53 of the Legal Professions Act. This letter was delivered by courier to the business offices of Mr. Pagtakhan on July 25, 2005. (Exhibits 92 and 93)

Mr. Pagtakhan responded by letter dated August 5, 2005 seeking an extension of the deadline to respond to the Section 53 letter to August 22, 2005. (Exhibits 94 and 95)

By letter dated August 22, 2005, Mr. Pagtakhan responded to the complaint. (Exhibits 96 through 98)

Mr. Pagtakhan has still not satisfied the outstanding Judgment of Fraser Collection Services.

With respect to this complaint, the member's position was as follows. The cause of action arose with respect to an account sent to Mr. Pagtakhan involving an advertisement. Mr. Pagtakhan took the position that the account was improper and that the contract was *void ab initio* and as such, was an unlawful debt. He had also indicated that the plaintiffs had sued him in Calgary and he believed it should have been Edmonton as that was where he resided. He did not pay much attention to this lawsuit and waited approximately six months to commence an appeal. He indicated that part of the reason for not responding to the lawsuit in a timely fashion was that he had many other matters pending including all of the complaints aforementioned. The Hearing Committee found that the member was the subject of a legally enforceable debt and refused to pay it. While he believed that the contract was void and therefore believed he didn't have a moral obligation to pay it, it was through his own inaction prior to appealing it and waiting some six months that appeared to be the major reason for the Master in Chambers dismissal of his appeal. The Hearing Committee found that it was his own actions that skuttled his chances for a successful appeal and therefore he placed himself in a position where he had no further recourse. He had a legally enforceable debt against him. This is in fact the very process that lawyers are sworn to uphold and through his own conduct, failed and refused and continued to fail and refuse to pay. The Hearing Committee finds that he did in fact fail to respect and uphold the law in his personal conduct and failed to refrain from personal conduct that brings discredit to the profession and that such conduct is conduct deserving of sanction and finds him guilty of Citation #20.



### **Sanction and Orders**

- VII. By way of sanction, Exhibit 102 confirmed that Mr. Pagtakhan had no prior record. The decision of the Hearing Committee is therefore to suspend the member effective December 17, 2007, for a period of 30 days, and we further order payment of costs in the amount of \$4,000 due and payable on or before December 11, 2007.

The Hearing Committee's greatest concern was the member's apparent lack of understanding that his obligation to his clients did not end once he thought that the work had ended, but rather when he had fully reported to his clients. The member clearly did not understand the comfort a client receives by a proper reporting letter and documentation that their home has been successfully transferred.

The second concern that the Hearing Committee had was that the member was a hostage to his own self-defeating conduct. He would not respond to his clients or complete the job (which includes reporting to clients and forwarding copies of all documentation) as a result of being too busy. His response on a number of occasions was that he was too busy and he didn't want to get sued for not having completed the new work that was coming up. The member ought to have realized that to stop this self-fulfilling turmoil, he needs to simply reject new work until such time as he had completed his already assumed tasks. By failing to do this, he compounded his own difficulties and created new difficulties for his existing clients.

The third concern that the Hearing Committee found was his procrastination in responding to the Law Society. He failed to appreciate the priority that members must demonstrate in responding to their governing body. Failure to appreciate this principle always raises issues about a member's governability.

Despite these concerns, the Hearing Committee was prepared to accept what in essence was a joint submission for the penalty imposed. We found no error in principle which would cause us to question or deviate from that submission.

### **Concluding Matters**

- IX. No Notice to the Profession or Notice to the Attorney General was ordered. Copies of all evidence may be released on request, after payment of reasonable photocopying, only after the names of clients or identifying features are redacted.

Dated this 30<sup>th</sup> day of May, 2007.

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Vaughn Myers, Q.C., Chair and Bencher

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Brian Beresh, Q.C., Bencher

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Morris Taylor, Member