LAW SOCIETY OF ALBERTA

IN THE MATTER OF THE *LEGAL PROFESSION ACT;*

AND

**IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF TERRY THOMAS
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

Hearing Committee:

Robert Armstrong, Q.C., Chair
Robert Dunster, Committee Member

Appearances:

T. S. Meagher and S.L. Hunka for the Law Society of Alberta ("LSA")
Terry Thomas on his own behalf

Hearing Dates:

June 22, 23, 24, 2015
July 27, 28, 29, 2015
November 9, 10, 12, 13, 2015
February 22, 23, 2016
May 2, 2016
September 12, 13, 14, 16, 2016

Hearing Location:

Law Society of Alberta at 800 Bell Tower, 10104 – 103 Avenue, Edmonton, Alberta

HEARING COMMITTEE REPORT

Introduction

1. Following a lengthy investigation into several conduct matters, thirteen citations were issued against Terry Thomas, a member of the Law Society of Alberta ("LSA"). The citations are as follows:

    1. That the Member failed to uphold the law, and such conduct is deserving of sanction;

    2. That the Member brought the profession into disrepute, and such conduct is conduct deserving of sanction;

3. That the Member misappropriated trust funds, and such conduct is conduct deserving of sanction;

4. That the Member failed to follow trust accounting rules, and such conduct is deserving of sanction;

5. That the Member failed to be candid with the LSA, and such conduct is deserving of sanction;

6. That the Member failed to cooperate with the LSA, and such conduct is deserving of sanction;

7. That the Member exchanged legal services for the services of clients without providing the clients with statements of account and without recommending that the client receive independent legal advice, and such conduct is deserving of sanction;

8. That the Member failed to properly serve the Complainant, and such conduct is deserving of sanction;

9. That the Member improperly billed the Complainant, and such conduct is deserving of sanction;

10. That the Member failed to cooperate with the LSA, and such conduct is deserving of sanction;

11. That the Member failed to follow the client's instructions, and such conduct is deserving of sanction;

12. That the Member failed to serve his client in a conscientious, diligent and efficient manner, and such conduct is deserving of sanction; and

13. That the Member is ungovernable, and such conduct is deserving of sanction.

2. Citations 4, 7 and 11 were admitted by Mr. Thomas.

3. As he was being investigated in relation to the allegations against him, Mr. Thomas was suspended for non-payment of his insurance premiums. Mr. Thomas was suspended effective July 15, 2009. He remains administratively suspended. At no time has Mr. Thomas ever taken any steps to terminate his administrative suspension.

4. An agreed book of exhibits was provided to the Hearing Committee ("Committee") at the commencement of the hearing. Over the course of the 17 day hearing, the Committee heard from 19 witnesses and a total of 167 exhibits were entered, including the agreed exhibits.

5. At the conclusion of the hearing with respect to the citations, the Committee found conduct deserving of sanction in relation to citations 1, 2, 3, 6, 8, 10, and 13. Citations 5, 9 and 12 are dismissed and the remaining citations, 4, 7 and 11, were admitted.

JURISDICTION

6. On June 22, 2015 the Committee convened at the office of the LSA in Edmonton to conduct a hearing into the 13 citations against Terry Thomas. At the commencement of the hearing, both Mr. Thomas and counsel for the LSA were asked if there were any objections to the constitution of the Committee. No objections were raised and the hearing proceeded.

7. The jurisdiction of the Committee was established by Exhibits 3 through 6 consisting of the letter of appointment of the Committee, the Notice to Solicitor pursuant to section 59 of the *Legal Profession Act*, the Notice to Attend to the Member and the Certificate of Status of the Member with the LSA. Mr. Thomas also acknowledged the jurisdiction of the Committee to proceed.

8. Exhibit 7 in the proceedings was the Certificate of Exercise of Discretion pursuant to Rule 96(2)(b) of the Rules of the Law Society of Alberta ("LSA Rules"). The Deputy Executive Director and Director, Regulation of the LSA served 11 people with the Private Hearing Application Notice. Mr. Thomas and counsel for the LSA both advised the Committee that there were no applications for a private hearing. Accordingly, the hearing proceeded in public.

9. When the hearing began, Douglas Mah, QC, was the Committee Chair. He was appointed as a Justice of the Court of Queen's Bench in June of 2016. Robert Armstrong, QC, then assumed the responsibilities of the Chair and the hearing proceeded with a Committee of two Benchers, pursuant to section 66 of the *Legal Profession Act.*

PRELIMINARY STAY APPLICATION

10. On the eve of the commencement of the hearing, Mr. Thomas brought an application for a stay of proceedings, or, in the alternative, for an order quashing the citations issues against him. In summary, the grounds for the application were an alleged inordinate delay in disclosure from the Law Society of Alberta that frustrated Mr. Thomas's ability to make full answer and defense to the allegations against him, and prejudice as a result of inappropriate payments being made from his trust account by the custodian. Mr. Thomas also claims that the LSA has engaged in an abuse of process by virtue of the delay, a lack of disclosure, and the manner in which his trust accounts were handled by the custodian. Finally, Mr. Thomas further claimed that his rights pursuant to section 7 of the Canadian *Charter of Rights and Freedoms* (the "*Charter*") had been violated and as such, the citations against him ought to be stayed.

11. Mr. Thomas called evidence from 5 witnesses in support of his stay application. In addition to giving evidence on his own behalf, he called his former assistant and ex-wife, EF, former lawyer SB, 2 former clients, BB and TT and a former colleague, PS. The LSA called evidence from one LSA employee, SB.

12. At the conclusion of the stay application, the Committee adjourned to consider the application. It was determined that there were evidentiary issues that the Committee wanted resolved prior to making its decision on the stay application. In order to ensure that the Committee had all of the relevant evidence before it prior to determining the stay application it decided:

> . . . we are going to not decide the stay application until we've heard all of the evidence on the hearing proper.
>
> A stay remedy can be granted at any stage of the proceedings, and the Committee has decided to wait until the end of the hearing. Therefore, at the conclusion of the hearing, the Committee will determine whether grounds for a stay have been made out with respect to some or all of the citations.
>
> In that regard, we will take into consideration the evidence of delay on the part of the Law Society and on Mr. Thomas' part and the conduct of the Law Society including disclosure issues as that evidence may be further presented in the hearing.
>
> If, at, the conclusion of the decision on the stay, there remain any citations on the table, the Committee will decide at that point whether conduct deserving of sanction has been proven or not in respect of the remaining citations, if any.

13. Having now heard all of the evidence from the hearing and having had the opportunity to consider the argument advanced by Mr. Thomas and on behalf of the LSA, the Committee is now prepared to render its decision with respect to the stay application. For the reasons that follow, the application for a stay is denied.

14. In order to put the application for a stay of proceedings in the appropriate context, a summary of the proceedings leading up to the commencement of the hearing is useful. The citations against Mr. Thomas arose from a series of events and various client matters that resulted in complaints to the LSA in and around 2009. Multiple investigations into the various allegations against Mr. Thomas ensued and the result was the issuance of citations against him. While the matters were initially separate complaints, ultimately all of the citations were consolidated so that they could be dealt with in a single hearing.

15. The matter was set down for a hearing that was to commence in May 2013. Mr. Thomas made an application to adjourn that hearing as he was living in China at the time and he maintained that he would not be able to return to Canada for the hearing in May 2013.

Mr. Thomas' application was granted and the hearing was rescheduled to November of 2013.

16. Throughout the summer of 2013, Mr. Thomas made a number of demands for additional disclosure from the LSA. It is noteworthy that the disclosure issues had been raised by Mr. Thomas commencing as early as August 2012. At that time Mr. Thomas was advised by the Vice-Chair of Conduct at the time that, if he had issues with respect to disclosure, he should make an application.

17. In April 2013 Mr. Thomas was advised by a Vice-Chair of Conduct to bring an application in relation to his disclosure concerns. Mr. Thomas was directed to bring any application for further and better disclosure that he was contemplating by June 14, 2013. He did not do so.

18. At the August 15, 2013, pre-hearing conference, Mr. Thomas, who was continuing to raise disclosure issues, was again directed to bring an application if he wanted his disclosure issues addressed. He was directed to file and serve any motion relating to disclosure issues by September 30, 2013, failing which he would be prohibited from advancing any further applications for matters relating to disclosure.

19. Mr. Thomas' application for further and better disclosure was made in September 2013, and as a result of the application the November 2013 hearing date was adjourned. Had Mr. Thomas brought his application in a more timely fashion when he was first directed to do so, it is likely that the November 2013 hearing date could have been preserved.

20. The disclosure application was initially set for February 18, 2014. Prior to that hearing taking place, counsel for the LSA requested an adjournment of that hearing. The adjournment was requested in order to allow the LSA time to clarify with Mr. Thomas exactly what had and had not been disclosed over the history of the matter. A brief adjournment was granted and the application was put over to March 11, 2014.

21. On March 11, 2014 the application for further disclosure proceeded and resulted in a series of directions being issued, requiring the LSA to clarify certain issues and provide additional information.

22. The hearing into the citations was set to commence December 8, 2014. The week before the hearing was to commence, the LSA located a box of additional records. The late disclosure of records necessitated a further adjournment of the hearing. It was rescheduled to commence on June 22, 2015.

23. The commencement of the hearing was delayed yet again when Mr. Thomas indicated that he had a preliminary application to make. The application was not raised as an issue until the hearing was set to commence, despite the fact that it could have been dealt with in the months between December 2014 and June 2015, thereby allowing the hearing to proceed in June.

24. Responsibility for the delay in getting the matter to hearing is shared between the LSA and Mr. Thomas. Mr. Thomas' own unwillingness to pursue his applications in a timely manner does not support his contention that he was anxious to have the matter proceed. He was directed on two occasions to bring a disclosure application. He ignored the first direction. With respect to the second direction, he did not bring his application until the very last day that was possible.

25. The within stay application was also brought at the last possible moment, thereby resulting in further delay. It is difficult to accept Mr. Thomas' protestations over delay when he did not pursue matters himself with any expediency.

26. The Committee's comments regarding Mr. Thomas' own contributions to the delay should not be taken as excusing the conduct of the LSA that contributed to the delay. The manner in which the LSA provided disclosure was far from optimal and full disclosure required repeated requests from Mr. Thomas and his counsel and eventually an application to compel additional production. The LSA's failure to deal with disclosure in a timely and efficient manner contributed to the delay in these proceedings.

27. The test for a stay on the basis of abuse of process as a result of inordinate delay was set out in the decision of *Law Society of Alberta v. Odishaw*, 2011 ABLS 28 at para. 9. In that decision the Hearing Committee stated:

> Under the doctrine of abuse of process, inordinate delay may defeat an administrative body's jurisdiction where the delay causes "significant prejudice" by either a) impairing a party's right to a fair hearing, resulting in "legal prejudice"; or b) substantially harming the party's non-legal interests (such as psychological or reputational interests), resulting in "personal prejudice".

28. Delay amounting to an abuse of process in an administrative proceeding was also dealt with in the decision of *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44. The Court indicated that delay which prejudices the ability of a party to defend itself may result in a stay, and it then went on to state at para. 115 of the decision:

> I [Bastarache J. writing on behalf of the majority of the Court] would be prepared to recognize that unacceptable delay may amount to an abuse of process in certain circumstances even where the fairness of the hearing had not been compromised. Where inordinate delay has directly caused significant psychological harm to a person, or attached a stigma to a person's reputation, such that the human rights system would be brought into disrepute, such prejudice may be sufficient to constitute an abuse of process. The doctrine of abuse of process is not limited to acts giving rise to an unfair hearing; there may be cases of abuse of process for other than evidentiary reasons brought about by delay. It must however be emphasized that few lengthy delays will meet this threshold. I caution that in cases where there is no prejudice to hearing fairness, the delay must be clearly unacceptable and have directly caused a significant prejudice to amount to an

abuse of process. It must be a delay that would, in the circumstances of the case, bring the human rights system into disrepute.

29. Given the shared responsibility for the delays and given that the delays occurred in order to ensure full disclosure was made, that the parties were prepared to proceed and all preliminary applications were dealt with, the delay was not inordinate. More importantly, the Committee finds that there was no prejudice to Mr. Thomas as a result of the delay.

30. Mr. Thomas' right to a fair hearing was not impaired. No witnesses were identified who were required for Mr. Thomas' defense but who were not available due to the passage of time. The quality of the evidence was generally very good and, where memories needed to be refreshed, there were comprehensive documentary records that were of great assistance.

31. With respect to the claim of deficient disclosure, those issues were dealt with in the decision of the Conduct Chair in relation to Mr. Thomas' application for further and better disclosure. Mr. Thomas had the opportunity to fully argue his position with respect to disclosure and any deficiencies with respect to disclosure were rectified in the Order of the Chair of Conduct. It is not now open for Mr. Thomas to launch a collateral attack on that order by asserting there are additional disclosure issues not addressed in that application.

32. With respect to the issue of personal prejudice, no psychological evidence was called by Mr. Thomas. There was evidence that the investigations were hard on Mr. Thomas and on his marriage, but that was the investigation – it was not the delay in bringing the matter to a hearing that caused that hardship. Finally, Mr. Thomas was only ever administratively suspended for a failure to pay his LSA insurance levy. At no time did he attempt to seek reinstatement, nor did he suffer the reputational harm or stigma that might be associated with an interim suspension pending a conduct hearing.

33. Mr. Thomas called three witnesses in addition to himself and his former assistant, EF, in support of his stay application. BB and TT were former clients of Mr. Thomas. They testified to receiving satisfactory services from Mr. Thomas and they were questioned with respect to trust funds that were identified in the custodian's application for a discharge. PS gave favorable evidence as to Mr. Thomas' character.

34. With respect to the evidence adduced in relation to the return of trust funds to some of Mr. Thomas' former clients, Mr. Thomas argued that the LSA engaged in an abuse of process by failing to properly account for his trust funds. He alleges that improper payments out resulted in shortages which were then attributed to his failure to properly maintain his trust accounts.

35. The custodian's handling of the trust funds seized from Mr. Thomas' practice has already been reviewed by a Justice of the Court of Queen's Bench and the accounting was approved. If Mr. Thomas wanted to dispute the manner in which his trust accounts

were handled by the custodian, he ought to have attended the application for the custodian's discharge and opposed it.

36. Mr. Thomas was served with the custodian's application for discharge. The application included an affidavit sworn by the custodian on April 9, 2013, and attaching an accounting of all funds which he received and disbursed in connection with the custodianship. To the extent that Mr. Thomas had issues with respect to any of the accounting done by JS, the time to address those was at the application for discharge.

37. On June 27, 2013, a Justice of the Court of Queen's Bench of Alberta issued an Order approving the accounts of the custodianship of the property and practice of Terry J. Thomas, as set out in the Affidavit of JS sworn April 9, 2013. Mr. Thomas did not attend the application despite having notice of it. He also did not appeal the Order. The accounts were passed. The Committee finds that the trust accounts were handled appropriately and therefore there was no abuse of process in relation to the manner in which the custodian handled the trust funds seized from Mr. Thomas' practice.

38. Mr. Thomas also alleges that his *Charter* rights have been violated and that the appropriate remedy is a stay of these proceedings. Mr. Thomas relies on section 7 of the *Charter* which guarantees everyone a right to ". . . life, liberty, and security of the person and the right not to be deprived thereof, except in accordance with the principles of fundamental justice."

39. Mr. Thomas' life and liberty are not at issue. He claims the security of his person has been deprived by virtue of the stress and stigma associated with these proceedings, all of which has been exacerbated by the protracted nature of the proceedings. A similar argument was advanced in the *Blencoe* case and the Supreme Court of Canada addressed the argument, at para. 97 of the decision, as follows:

> The framers of the Charter chose to employ the words, "life, liberty and security of the person", thus limiting s. 7 rights to these three interests. While notions of dignity and reputation underlie many Charter rights, they are not stand-alone rights that trigger s. 7 in and of themselves. Freedom from the type of anxiety, stress and stigma suffered by the respondent in this case should not be elevated to the stature of a constitutionally protected s. 7 right.

40. In the present case, unlike in *Blencoe*, one of the potential results is that Mr. Thomas could be disbarred, thereby preventing him from pursuing his chosen profession. Mr. Thomas argues that this factor does engage section 7 because the impact goes beyond anxiety, stress and stigma and affects his right to pursue his chosen profession. This argument cannot be accepted as the ability to practice of law is a privilege, not a right.

41. In *Mussani v. College of Physicians and Surgeons of Ontario*, 74 O.R. (3d) 1 at paras. 41-43 the court identified the numerous authorities that confirm there is no constitutional right to practice a particular profession and said:

> The weight of authority is that there is no constitutional right to practice a profession unfettered by the applicable rules and standards which regulate that profession . . .
>
> . . .
>
> . . . there is no constitutionally protected right to practice a profession, and that the mandatory revocation of a health professional's certificate of registration in substance infringes an economic interest of the sort that is not protected by the Charter.

42. In this case, the evidence does not establish that the fairness of the hearing has been compromised or that the personal prejudice to Mr. Thomas reached the level of significance so as to bring the conduct process into disrepute. Furthermore, section 7 does not guarantee Mr. Thomas the right to practice law.

43. As Mr. Thomas' application for a stay has been denied, this Committee must now turn to the citations issued against Mr. Thomas and determine whether those citations have been proved by the LSA.

THE BURDEN OF PROOF

44. The burden of proof throughout these proceedings is on the LSA, with the exception of the citations dealing with misappropriation of trust funds. On those charges, the burden is on Mr. Thomas to establish funds entrusted to him were handled properly. This reversal of the burden of proof is mandated by section 67 of the *Legal Profession Act* which states:

> When it is established or admitted in any proceedings under this Division that a member has received any money or other property in trust, the burden of proof that the money or other property has been properly dealt with lies on the member.

45. The standard of proof in this matter is the balance of probabilities. The Supreme Court of Canada in *F.H. v. McDougall*, [2008] 3 SCR 41 at para. 40, eliminated any doubt with respect to the standard of proof in civil matters: "there in only one civil standard of proof at common law and that is proof on a balance of probabilities."

46. The Supreme Court of Canada also stated, at paragraph 46 of the *McDougall* decision that ". . . evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test."

CITATIONS 1 and 2

47. Citations 1 and 2 arise out of criminal charges against the member in January 2006. In December 2007, the charges were reported to the LSA by Mr. Thomas' counsel at the time.

48. The charges against Mr. Thomas were as follows:

> Count 1: On or about the 17th day of January, 2006, at or near Edmonton, Alberta, did with intent to mislead unlawfully cause a Peace Officer to enter on or continue an investigation by reporting that an offence had been committed when it had not been committed, thereby committing public mischief, contrary to section 140(1)(c) of the Criminal Code of Canada.
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> Count 2: On or about the 17th day of January, 2006, at or near Edmonton, Alberta, did unlawfully and willfully obstruct Constable Brown #2352, a Peace Officer, in the execution of his duty, contrary to section 129(a) of the Criminal Code of Canada.
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> Count 3: On or about the 17th day of January, 2006, at or near Edmonton, Alberta, did by deceit, falsehood or other fraudulent means, unlawfully defraud ING insurance of property, money, valuable security or a service, to wit: Canadian currency, of a value exceeding $5,000.00, contrary to section 380(1)(a) of the Criminal Code of Canada.
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> Count 4: Between the 16th day of January, 2006, and the 17th day of January 2006, both dates inclusive, at or near Edmonton, Alberta, being bound by a probation order dated the 6th day of June 2003, did willfully fail to comply with the Order, to wit: failed to abstain absolutely from alcohol and any other non-prescription drug, contrary to section 733.1(1) of the Criminal Code of Canada.
>
> Count 5: Between the 16th day of January, 2006, and the 17th day of January, 2006, both dates inclusive, at or near Edmonton, Alberta, being bound by a probation order dated 6th day of June, 2003, did willfully fail to comply with the Order, to wit: failed to keep the peace and be of good behavior, contrary to section 733.1(1) of the Criminal Code of Canada.

49. Mr. Thomas plead guilty to Count 1 and Count 4 and the remaining charges against him were withdrawn. The guilty plea was entered into pursuant to an Agreed Statement of Facts dated September 14, 2009. In the Agreed Statement of Facts, Mr. Thomas admitted to being in a single vehicle car accident while he was driving home after consuming alcohol at a pub in downtown Edmonton. He hit a light standard after failing to negotiate a right hand turn on a slippery road. Mr. Thomas admitted to causing $6,830.04 in damage to the light standard and approximately $19,000 damage to his own car.

50. Mr. Thomas abandoned his vehicle and walked home and then made a false report to the Edmonton Police that his car had been stolen. He provided a false alibi as to where he was at the time his car was stolen.

51. At the time of the accident, Mr. Thomas was bound by a Probation Order and Mr. Thomas admitted to willfully breaching a condition of that Order by consuming alcohol on the night of the accident

52. At the time Mr. Thomas entered into the Agreed Statement of Facts he was represented by very experienced criminal law counsel. The Agreed Statement of Facts was presented to the Court and relied upon by the Court. Based on the facts presented to the Court, the Court accepted the guilty plea to counts 1 and 4 and the remaining charges were withdrawn. The Court imposed a 2-year suspended sentence with probation and it also ordered Mr. Thomas to pay restitution in the amount of $6,830.04 for the damages done to the light standard that Mr. Thomas struck with his car.

53. Mr. Thomas disputes citations 1 and 2 which relate to these matters on the basis of an alleged agreement between him and MD, an investigator with the LSA. Mr. Thomas alleges that MD promised him that if he plead guilty to the criminal charges, no citations would be issued against Mr. Thomas. Mr. Thomas alleges that in the face of this agreement, citations 1 and 2 are an abuse of process and should therefore be dismissed.

54. Mr. Thomas' lawyer in the criminal matter, AP, was called as a witness to give evidence on the existence of the alleged agreement with MD. He gave evidence that he had a discussion with MD in the time immediately preceding the guilty plea and that the discussion was that if Mr. Thomas plead guilty to the charge of mischief, no citation would be issued by the LSA with respect to that matter.

55. In cross-examination, AP testified that he made no notes regarding the alleged conversation with MD. The Committee Chair also questioned AP as to why he did not reduce the alleged agreement with the LSA, which was admittedly very important to Mr. Thomas, to paper or otherwise memorialize it. AP was unable to answer the question.

56. MD also gave evidence on the issue of the alleged agreement not to pursue a citation if Mr. Thomas plead guilty to the mischief charge. MD emphatically denied any such agreement was made. MD recalled two conversations he had with AP. MD gave evidence that he recalled the first conversation he had with AP was to ask AP to encourage Mr. Thomas to respond to the LSA's demands and to cooperate with its investigations. The second call involved AP advising MD that he had lost contact with his client, Mr. Thomas.

57. In cross-examination, MD was taken to a series of emails between him and AP. None of the emails referenced an agreement on behalf of the LSA not to pursue citations against Mr. Thomas if he plead guilty to the mischief charge. MD remained unwavering in his testimony that no such agreement was offered by him.

58. MD was also questioned in cross-examination on an email that Mr. Thomas had written to him. The email, dated October 4, 2010, said in part: "[AP] expressly stated that he discussed the particulars of this matter with MD on the basis that it would not result in disciplinary proceeding and that MD further encouraged me to deal with [AP]."

59. Mr. Thomas attempted to characterize this email, which he himself had written, as documentary proof that MD had indeed offered to forgo any citations against Mr. Thomas if Mr. Thomas plead guilty to the criminal charges against him. This characterization does not hold up to scrutiny when there is no documentation by either MD or AP, the two individuals who supposedly struck the deal, confirming the existence of such agreement. Furthermore, the lack of a denial from MD in response to receipt of the email composed by Mr. Thomas does not make the statement in the email true.

60. The Committee is satisfied there was no agreement with the LSA regarding citations in relation to Mr. Thomas's guilty plea to the criminal charges. The LSA had nothing to gain or lose with respect to Mr. Thomas pleading guilty to the charges he was facing so it makes no sense that the LSA would have any interest in trying to persuade Mr. Thomas to plead guilty in exchange for a promise not to pursue citations against him. Furthermore, MD did not have the authority to enter into any such agreement on behalf of the LSA.

61. Most compelling is the lack of any documentation of such an agreement. AP and Mr. Thomas both testified that the agreement was a very important element in the decision by Mr. Thomas to plead guilty to the criminal charges. Despite the importance placed on the agreement, at no time did very experienced counsel, AP, ever confirm the agreement in writing or make a note of the terms of the agreement for his file. The Committee concludes that no such agreement was ever offered or entered into.

62. Given the finding of this Committee that the LSA did not agree that it would not issue citations against Mr. Thomas if he plead guilty to the criminal charges he was facing, the abuse of process claim advanced by Mr. Thomas must fail.

63. In addition to the claim that Citations 1 and 2 amounted to an abuse of process on the part of the LSA, Mr. Thomas also disputed Citations 1 and 2 by giving evidence that he was, in fact, innocent of the criminal charges against him. This was a very troubling piece of evidence given by Mr. Thomas. If accepted, it would mean that Mr. Thomas had actively deceived the court when he signed the agreed statement of facts.

64. Knowingly misleading a court is a serious violation of the Code of Conduct and goes to the heart of the duties a lawyer owes with respect to the administration of justice. While this Committee does not accept the evidence of Mr. Thomas as to his innocence, the very attempt by Mr. Thomas to persuade this Committee to dismiss Citations 1 and 2 on the basis that he lied to a court of law is repugnant.

65. Mr. Thomas plead guilty to the charge of committing mischief and to breaching his probation order. This Committee accepts that guilty plea as definitive evidence of Mr.

Thomas's guilt in relation to the associated charges. As such, Mr. Thomas is guilty of Citation 1 in that he failed to uphold the law.

66. It is worth noting that in addition to the charge of mischief, Mr. Thomas also plead guilty to breaching a probation order. As a member of the legal profession, Mr. Thomas is an officer of the court. It is his duty to uphold the law and to abide by the terms of any order issued by a court of competent jurisdiction. His failure to adhere to the terms of the probation order when he was in the position of being an officer of the court, by virtue of his membership in the legal profession, brings the profession even further into disrepute than the mischief charge alone. Accordingly, as a result of his criminal actions, including his failure to abide by a court order, Mr. Thomas is guilty of Citation 2 for bringing the profession into disrepute.

CITATIONS 3, 4 and 6

67. Citation 3 against Mr. Thomas alleges that he misappropriated trust funds. Citation 4, which is admitted, alleges that Mr. Thomas failed to follow LSA trust accounting rules, and Citation 6 alleges the Mr. Thomas failed to cooperate with the LSA investigation into his trust accounts.

68. Misappropriation of trust funds is a very serious allegation and it goes to the heart of the relationship of trust that is characteristic of the solicitor-client relationship.

69. Evidence was adduced on behalf of the LSA, primarily from three investigators: LT, the Forensic Investigator in the Audit and Investigations Department; GA, the Manager of Audit and Investigations; and MD, the Manager of Complaints. The custodian of Mr. Thomas' practice, JS, also gave evidence relating to his dealings with Mr. Thomas' trust accounts.

70. The evidence adduced by the LSA from these witnesses was consistent in describing Mr. Thomas as uncooperative, unresponsive and difficult to deal with. The oral testimony of the witnesses is supported by the documentary evidence which demonstrates a persistent course of action on the part of Mr. Thomas to delay or avoid responding to the LSA's investigators. The evidence was also consistent on the issue of the state of Mr. Thomas' financial records, which were in a significant state of disarray.

71. While Mr. Thomas has admitted guilt to the allegation in Citation 4 that he had not followed the LSA's trust accounting rules, the task for this Committee is to determine whether there is clear and cogent evidence that establishes, on balance, that Mr. Thomas engaged in misappropriation of funds entrusted to him and whether he failed to cooperate with the LSA's investigation.

72. The decision of the Hearing Panel in *The Law Society of British Columbia* v. *Sabrina Ali*, 2007 LSBC 18, contains a useful discussion of the meaning of misappropriation in the context of a discipline hearing. At paragraphs 79 – 80 the Panel states:

> Misappropriation is defined in ***Black's Law Dictionary***, 6th Edition as follows:

> The unauthorized, improper, or unlawful use of funds or other property for purposes other than that for which intended. Misappropriation of a client's funds is any unauthorized use of clients funds entrusted to an attorney, including not only stealing but also unauthorized temporary use for lawyer's own purpose, whether or not he derives any personal gain or benefit therefrom . . .

In *Law Society of BC v. Andres-Auger*, Hearing report: Findings of Fact dated January 14, 1994, misappropriation was explained as follows:

> Webster's definition of "appropriate" includes "often without permission or legal right" indicating that "misappropriation" must involve something more than mere "lack of right". A finding of "misappropriation" is a factual finding only and it is only after submissions are received on verdict that it can be determined that any found "misappropriation" leads or does not lead to a finding of "professional misconduct", "conduct unbecoming a Member" or a finding of "incompetence". A factual finding of misappropriation will not always lead to all or any such verdicts in every case.
>
> "Misappropriation" or "wrongfully converting money" at least requires proof of the appropriation being wrongful, and means more than merely receiving money to which you are not entitled. There must be some mental element amounting to wrong doing. This need not be the equivalent of criminal conduct such as dishonesty or fraud. Incompetence or some degree of carelessness may be all that is necessary. It will in every case depend upon the circumstances.

73. The following description of misappropriation from the decision in *Nebraska State Bar Association v. Veith*, 470 NW (2d) 549 (Neb 1991) at para. 6 was endorsed in Canada in the decisions of *Law Society of Upper Canada v. Richard Kazimierz Chojnacki*, 2010 ONLSHP 74 (CanLII) and *Doolan v. Law Society of Manitoba*, 2016 MBCA 57 at para 54. The relevant portion of the definition discussed is as follows:

> Misappropriation caused by serious, inexcusable violation of a duty to oversee entrusted funds is deemed willful even in the absence of deliberate wrongdoing.

74. In the present case, the evidence is uncontroverted that trust funds were transferred out of trust to Mr. Thomas' general account in the absence of accounts being rendered and in the absence of any other authorization for the transfer. Mr. Thomas takes the position, supported by evidence from himself and from his former assistant, EF, that there was no

misappropriation because no money was taken from trust unless the work on the file had been completed, even if no account had been rendered.

75. Mr. Thomas further argues that he was unable to defend himself against the misappropriation citation because, once his files were seized, he was unable to reconcile the files and prepare accounts to justify the trust transfers. He further alleges that the LSA lost key accounting records, thereby preventing him from demonstrating how the trust funds were all properly accounted for, and that the custodian, JS, would not allow him to review his files while he was under investigation.

76. The Committee does not accept Mr. Thomas' assertions in this regard. The evidence does not establish that the trust accounting records that Mr. Thomas alleges had been lost by the LSA were ever provided to the LSA. Furthermore, Mr. Thomas was provided with numerous opportunities to meet with the custodian for the purpose of reviewing files after the custodianship. He did not avail himself of these opportunities.

77. Mr. Thomas alleges he did not meet with JS because every time he went to the office it was closed. It is noteworthy that all of the Mr. Thomas' former clients who gave evidence about having dealings with JS were able to meet with JS at his office without difficulty. The Committee does not accept Mr. Thomas' evidence in relation to his inability to meet with JS.

78. The trust accounting records that Mr. Thomas claims were lost by the LSA or the custodian following the seizure of his files by the custodian consist, in part, of a series of index cards containing accounting information for each of his clients. Both Mr. Thomas and his former assistant, EF, gave evidence as to the existence of these cards, although the evidence was vague with respect to exactly what information was on the cards. Some index cards were produced by the LSA in these proceedings, but Mr. Thomas and EF gave evidence that most of the cards were missing.

79. Mr. Thomas was aware that his trust accounts were under scrutiny long before any of his records or files were seized pursuant to the custodianship. The Rule 130 audit commenced in May 2009. The custodianship did not occur until the end of July 2009.

80. Following the commencement of the Rule 130 trust audit, the investigators attended at Mr. Thomas' office to inspect the accounting books and records. The investigators were advised the records were not at the office but were at home. In the absence of records establishing that funds in the trust account were sufficient to satisfy the trust obligations, the LSA sought an undertaking from Mr. Thomas. The undertaking was provided to Mr. Thomas under cover letter dated June 4, 2009, from LA, the Rule 130 Audit Coordinator for the LSA. That letter stated, in part:

> During the course of a Rule 130 audit it has come to our attention that you are not able to produce your books and records as they are kept at your home. This means that you cannot prove that the records are current and that you have sufficient trust assets to meet all of your trust obligations. The

> receipt and subsequent handling of client trust funds in an important obligation entrusted to lawyers and it is the responsibility of both the law firm and the Law Society to ensure that these obligations are fulfilled.
>
> . . .
>
> Regarding the timeframe for updating your accounting records, the trust bank account(s) to **April 30, 2009** must be reconciled by **June 9, 2009**.

81. On June 4, 2009, Mr. Thomas did sign an undertaking in respect of his trust accounts. The undertaking explicitly referred to shortages in Mr. Thomas' trust account and it referred to the fact that Mr. Thomas' trust accounting books and records had not been reconciled as required by the Rules of the LSA. Mr. Thomas had custody of and access to all of his trust accounting records at this time and he knew there were problems.

82. At the hearing of this matter, Mr. Thomas claimed repeatedly that, if he had access to his trust accounting records, he would be able to explain every shortage and provide a reconciliation of his trust accounts. He blamed his inability to defend the allegations against him in relation to Citation 3 on the fact that he did not have access to his records and his files after the custodianship and that the disclosure in this process was deficient. The difficulty with Mr. Thomas' contention in this regard is that he did have access to his files and his trust accounting records in May and June and July of 2009.

83. The Committee is satisfied that, if any exculpatory records were available to Mr. Thomas, he would have identified them to the LSA investigators and auditors. The only reasonable conclusion this Committee can draw from his failure to identify any exculpatory records in May, June or July of 2009, before the custodianship, is that those records never existed or, if they did exist at some point, they were lost by Mr. Thomas or his assistant prior to June 2009.

84. LT, a forensic investigator for the LSA in the Audit and Investigation Department, visited Mr. Thomas' offices on June 15, 2009. While Mr. Thomas was not in the office due to illness, LT did meet with Mr. Thomas' assistant (who was also his wife at that time) who was responsible for maintaining the financial records for Mr. Thomas' legal practice. LT explained that the LSA had determined there was a deficiency in the trust account of $40,891.22 and that most of the deficiency consisted of unattributed transfers out of the trust account. Mr. Thomas' assistant was given a copy of the reconciliation prepared by the LSA. No seizure of any files or financial records had occurred by this time.

85. On June 17, 2009, GA, the Manager, Audit and Investigations, met with Mr. Thomas. That meeting was followed up by a letter of the same date confirming that Mr. Thomas would be providing a client trust listing as at May 31, 2009, along with copies of the client trust ledger cards. No seizure of any files or financial records had occurred by this time so, if the index cards existed, they would have been available to Mr. Thomas to provide to the LSA. No index cards were provided.

86. On June 30, 2009, GA wrote to Mr. Thomas. By this time, Mr. Thomas' assistant had advised GA that the trust ledger cards could not be located. The previous advice provided was that they were at the home of Mr. Thomas. This was before the custodianship and before the seizure of any files or accounting records from Mr. Thomas. Mr. Thomas' contention that the index cards containing exculpatory trust accounting information about his clients were seized by the custodian and then lost is not supported by the evidence. The evidence establishes that the index cards either never existed or were lost by Mr. Thomas or his assistant prior to June 30, 2009.

87. By July 2009, the LSA was warning Mr. Thomas that an application for a custodian to take over Mr. Thomas' practice was imminent. GA wrote to Mr. Thomas on July 21, 2009, and that letter stated, in part:

> Unless we receive the following documents, client files, etc by **Thursday July 23, 2009** which were previously requested of you, we will apply for a custodian to manage your practice:
>
> 1. A signed authorization letter for the Law Society to obtain documents directly from your trust and general bank accounts
>
> 2. Client trust ledger cards for all files
>
> 3. Statements of account to support all payments made to the law firm general bank account (including the non cheque transfers)
>
> 4. A listing of how the shortage occurred including the cheques and files involved.
>
> 5. Client files . . .

88. By late June 2009, some limited reconciliations from the trust accounts had been provided by Mr. Thomas' assistant to the LSA. When the remainder of the requested records were provided to the LSA, MD, the Manager of Complaints for the LSA, emailed Mr. Thomas advising him that the LSA was in a position to apply for a custodianship order on Friday, July 31, 2009. The email was dated July 28, 2009, and sent in the morning. It explicitly stated that the custodian, JS, would take possession of Mr. Thomas' files and all accounting records on July 31, 2009. Upon receipt of this email, Mr. Thomas would have had three days to copy and preserve any exculpatory records that existed but he did not do so. Again, the only reasonable conclusion that can be drawn is that these records never existed or had been lost by Mr. Thomas before the custodianship.

89. This conclusion is supported by the evidence of Mr. Thomas' assistant, EF. She was the primary bookkeeper and Mr. Thomas had delegated all of his trust accounting responsibilities to her. In cross-examination, EF confirmed that the trust records necessary to perform reconciliations were not available even before the custodianship. She said:

> . . . when I was trying to get this stuff together for the audit, you know, that was when my index cards became a really big issue because they had been changed from the detailed ones I was keeping to now just like a name and client number. There was not really – there was no details on it that there should have been there. There was not a so-and-so deposited on this day; this cheque was written; this money was paid out. Those details were now gone off of my cards.

90. Mr. Thomas also claims that a second computer was seized from his office and that he was prejudiced in his ability to defend the citations against him because he did not have access to that second computer.

91. The evidence of Mr. Thomas' assistant, who functioned as the office administrator, is that Mr. Thomas' office had two computers. One computer was located in Mr. Thomas' office which he just used to work on documents and draft pleadings and the like. The other was referred to as the paralegal computer and it was the computer that Mr. Thomas' assistant used to maintain file records and which contained accounting records. According to EF, the paralegal computer contained a separate electronic folder for monthly accounts, broken down by month and for two accounts: the general account and the trust account. EF also referred to a trial accounting program that was in use, although her recollection as to the details of that program was poor.

92. The hard drive of the paralegal computer was seized at the time the custodian took over the practice. Throughout the investigation, Mr. Thomas claimed that he required access to the computer to respond to the LSA's questions. In January 2010, arrangements were made to have Mr. Thomas review the contents of the computer. At this time, there was no reference to a second computer.

93. By mid-February, Mr. Thomas had not attended at the LSA to review the computer files. In an email dated February 18, 2010, LT wrote to Mr. Thomas and asked: "Please can you communicate your intentions to review the Thomas Law computer files at the Law Society of Alberta, as soon as possible."

94. On February 23, 2010, Mr. Thomas' assistant, EF, attended at the offices of the LSA and took hard copies of files from the computer that had been seized from the offices of Thomas Law. At this time, no issue was raised that the computer provided was the wrong one or that the accounting records were not available on the computer. No one asked to see a second computer.

95. The evidence as to the difference between the two computers was clear. One computer had draft or working documents on it. It was used by Mr. Thomas only and only for the purpose of doing file work such as drafting pleadings, preparing contracts and the like. The other computer contained all of the client file records, including accounting records.

96. It would have been immediately apparent to EF when she attended on February 23, 2010, if the computer provided was not the one containing the client files. EF raised no

concern that the files she was expecting to see were not present when she reviewed the computer and raised no allegation that the computer provided was Mr. Thomas' computer and not the computer with the client files and accounting information on it.

97. This Committee finds that the computer containing the client files and accounting information was made available to Mr. Thomas for his review. The second computer, which the LSA denies having, would have been the computer from Mr. Thomas' office and the evidence establishes that that computer would not have contained any information relevant to the investigation or to Mr. Thomas' ability to defend himself in these proceedings.

98. Accounting records were available to Mr. Thomas, as was the computer seized from his office throughout this period in February and March 2010. Mr. Thomas did not attend to review them. No one was withholding any information that Mr. Thomas suggested he required in order to respond to the LSA's investigators.

99. Having had every opportunity to provide investigators with information about his trust accounts, Mr. Thomas did not do so. The trust accounting records that were recreated by LSA investigators demonstrated shortages in the trust account in excess of $40,000.00. While some of those funds were replaced by Mr. Thomas during the investigation, the end result of the investigation was a significant shortage in the trust accounts.

100. In his defense, Mr. Thomas called evidence from four former clients: PK, JP, FS and EE. PK was a business owner who had utilized the legal services of Mr. Thomas for several years. His evidence was that he was always happy with Mr. Thomas' work and that once Mr. Thomas had done work for him, Mr. Thomas would bill him and he would pay the bill.

101. JP was a business owner, an entrepreneur and real estate investor. He first retained Mr. Thomas somewhere between 2003 and 2005 and over the years used Mr. Thomas' services in relation to a variety of legal matters including corporate matters and litigation files. JP testified that he would receive a bill from Mr. Thomas for work completed and he would pay that bill. JP found the process for having his files transferred from the custodian to his new counsel slow.

102. FS was a client of Mr. Thomas' commencing in April of 2009. She hired Mr. Thomas to represent her in divorce proceedings. She paid a total of $6,000 in retainers to Mr. Thomas. Following Mr. Thomas' suspension, FS received approximately $1,800.00 back from the custodian. FS did not recall the details of why she received the funds or what accounts or bills had been provided to her by either Mr. Thomas or the custodian. She did not retain any records from that period, claiming she had moved on with her life.

103. Mr. Thomas represented EE with respect to some litigation matters. EE spoke highly of the service he received from Mr. Thomas and he advised that he had no concerns with respect to how he was billed for services rendered. EE advised that following Mr.

Thomas' suspension, he attended at the custodian's office and he was given a sum of money, the amount of which he could not recall.

104. The witnesses PK, JP, FS and EE were of limited value to the proceedings. None of them had files that were the subject of the citations. The Committee has no doubt that Mr. Thomas provided competent legal services to many of his clients and that his clients received proper accounts and paid their bills. That is not the issue for this Committee. The issue is whether trust funds were misappropriated and none of these witnesses were able to speak to that issue as their funds were not at issue. In any case where there is a pooled trust fund, as there was in this case, some clients will receive their money, while others will not. Evidence from four satisfied former clients does not in any way refute the overwhelming evidence of misappropriation.

105. Mr. Thomas did argue that some clients, including FS, received refunds from trust to which they were not entitled and that these refunds resulted in the shortage in his trust accounts. The Committee cannot accept that argument. Mr. Thomas had every opportunity to be involved in the reconciliation of his trust accounts and he refused participate.

106. One clear instance of Mr. Thomas' refusal to participate in the reconciliation of his accounts in any meaningful way relates to his client EE. The custodian made several attempts to contact Mr. Thomas in relation to funds held in trust for EE. The custodian was unable to discern from the records whether there were fees owing to Mr. Thomas that should be paid out of the trust funds. When Mr. Thomas refused to respond to the custodian's repeated requests for information, the custodian was forced to bring an application for a declaration that Mr. Thomas had no claims for fees against the funds held in trust to the credit of EE.

107. Mr. Thomas did not show up at the application relating to the funds held in trust for EE. The court reviewed several emails between the custodian and Mr. Thomas, wherein the custodian was trying to obtain information about potential fees owing. The court concluded its review in the decision of *Law Society of Alberta v. Thomas*, 2011 ABQB 441, at paras. 20-21, with the following comments:

> Additionally, Mr. Thomas has consistently refused to bill for any fees owing by [EE] and the court must draw the undeniable inference that [EE] does not owe Mr. Thomas for any further legal fees. If Mr. Thomas was owed legal fees for unbilled work by [EE] surely at some point throughout the course of many months and many emails, he would have issued his statement of account.
>
> Instead Mr. Thomas has engaged in a pattern of delay and obfuscation.

108. The pattern of delay and obfuscation identified by the Justice of the Court of Queen's Bench following the hearing into EE's trust fund issues is a pattern that was pervasive throughout all Mr. Thomas' dealing with the LSA, commencing in 2009.

109. Mr. Thomas argued vigorously that, had his trust accounting records not been seized, he could have provided reconciliations which would have accounted for all of the funds entrusted to him. He blames his inability to account for his trust funds on the LSA and on the custodian who assumed conduct of Mr. Thomas' files following his administrative suspension for failing to pay his fees.

110. Mr. Thomas further argued that any errors or omissions relating to his trust accounts were the result of simply failing to follow the LSA trust accounting rules and he plead guilty to that citation. He maintained that his actions in failing to follow the rules did not amount to misappropriation.

111. The shortages in the trust account were, for the most part, caused by unattributed transfers from the trust account to the general account. The transfers were undertaken by Mr. Thomas' legal assistant/bookkeeper; however, Mr. Thomas had completely abdicated his responsibilities in relation to trust accounting to her, with no oversight.

112. Mr. Thomas exercised no supervisory role over his trust accounts, nor did he insist upon or review monthly reconciliations of his trust accounts. When trust funds go unaccounted for in the face of such dereliction of the lawyer's duty to oversee the trust accounts, misappropriation is established. The Committee finds that Mr. Thomas misappropriated trust funds and that he failed to cooperate with the LSA in their investigation into his trust accounts, and that such conduct is deserving of sanction. He is therefore guilty of Citations 3 and 6. Mr. Thomas has admitted his guilt with respect to Citation 4.

CITATION 5

113. Citation 5 relates to an allegation that Mr. Thomas failed to be candid with the LSA in respect of a particular transaction. The allegation is that Mr. Thomas received a cash retainer in the amount of $4,500 from a client, DG.

114. The receipt was located by LSA investigators and they were unable to find a corresponding entry in the trust ledger causing them to investigate further.

115. The evidence of Mr. Thomas' assistant is that the receipt was not typical of the receipts issued for retainer funds. It was not signed by Mr. Thomas or by his assistant, EF, who would be the expected person to be signing the receipt. The best evidence that could be provided was that the receipt had been prepared and signed by another employee of the firm, whose regular duties and responsibilities did not include receiving trust funds or issuing receipts.

116. The LSA did not call DG to give evidence with respect to the $4,500 retainer. The evidence provided by Mr. Thomas and EF was that they were unsure of what happened to those funds or why a receipt was issued in the form that it was. Given the irregularities with the receipt, and the absence of direct evidence from DG as to the fact that the funds were delivered and the purpose of the funds, there is a lack of clear and cogent

evidence upon which to make a finding that Mr. Thomas was not candid with the LSA. Accordingly Citation 5 is dismissed.

CITATION 7

117. Citation 7 was admitted by Mr. Thomas. The citation relates to a deal Mr. Thomas struck with a client, whereby Mr. Thomas would perform some legal services for his client in exchange for his client performing some minor repair and renovation on his home. The allegation admitted to is that Mr. Thomas failed to advise his client to obtain independent legal advice in respect of the arrangement and that he failed to issue an account for the services performed.

118. Some limited evidence was adduced in relation to this matter. Ultimately the deal worked out very poorly for Mr. Thomas as the work done on his home was very substandard and necessitated him hiring contractors to complete remedial work.

119. The LSA characterized Mr. Thomas' transgression in relation this citation as on the low end of the spectrum of seriousness. The Hearing Committee agrees and finds that the breach was technical in nature and did not result in any harm to Mr. Thomas' client.

CITATIONS 8, 9, 10 and 11

120. Citations 8, 9, 10 and 11 all deal with a matter involving a client of Mr. Thomas known as Dr. J. Dr. J was making a high interest short term bridge financing loan and she retained Mr. Thomas to prepare the loan documentation and ensure that the loan was properly secured**.**

121. Dr. J had been engaged in negotiations with a developer to provide a bridge financing loan in the amount of $1.4 million. The term of the loan was to be 130 days with a potential extension for up to 6 months. If the extension was engaged, a daily fee applied.

122. Through her corporation, Dr. J. advanced the sum of $1.4 million pursuant to a Bridge Financing Loan Agreement. The borrower ultimately defaulted on the loan.

123. Dr. J's initial complaint with respect to Mr. Thomas related to his fee. Dr. J gave evidence that her understanding was that the borrower would be responsible for the legal fees. As such, when she was presented with a bill for the legal services provided by Mr. Thomas, she refused to pay it and she eventually contacted the LSA regarding the dispute over Mr. Thomas' fee.

124. Two retainer letters dealing with Mr. Thomas' fees were prepared in respect of Dr. J's engagement of Mr. Thomas. The first, dated March 27, 2009, indicates that the fee charged is payable to Thomas Law whether or not the bridge financing loan transaction closes and regardless of whether the fees are paid by the borrower pursuant to the Bridge Finance Loan Agreement. A second retainer letter, dated April 27, 2009, did not contain that language with respect to fees. Rather it stated that pursuant to the Loan Agreement the borrower was to indemnify Dr. J for the fees and that those fees would be

collected, upon the instructions of Dr. J, by Thomas Law. Neither retainer agreement was signed.

125. It is clear that Dr. J negotiated, as part of the bridge financing loan deal, that the borrower would indemnify her for her legal fees. What is less clear is what was to happen in the event the borrower did not pay for legal services rendered to Dr. J. On balance, the evidence establishes that Mr. Thomas communicated to Dr. J that ultimately, as his client, she would be responsible for the fees incurred.

126. It would be unreasonable of Dr. J to assume she would be receiving legal services for free and the Committee finds that, having performed legal services for Dr. J, Mr. Thomas was entitled to render an account for those fees and expect payment. Whether the account issued was reasonable or not is not a matter for this Committee to decide. For the purposes of this hearing, the Committee has determined that by rendering his account and expecting payment, Mr. Thomas did not engage in conduct deserving of sanction. Accordingly, Citation 9 is dismissed.

127. Citation 8 relates to an allegation that Mr. Thomas failed to properly serve his client. There are two aspects to this citation. First, it is alleged that Mr. Thomas failed to provide proper advice with respect to what constitutes a criminal rate of interest. Second, it is alleged that Mr. Thomas failed to provide proper advice with respect to the security on the loan advanced by his client.

128. The Bridge Financing Loan Agreement had been substantially negotiated by Dr. J and the borrower before Dr. J retained the services of Mr. Thomas. This included terms relating to interest and fees on the loan. While Dr. J had an understanding of what she was seeking in the agreement with respect to interest and fees when she came to see Mr. Thomas, she did seek specific advice from Mr. Thomas on what constitutes a criminal rate of interest. Dr. J and Mr. Thomas did have discussions about the various rates and fees included in the Agreement.

129. Ultimately, after Dr. J had consulted with Mr. Thomas, the Bridge Financing Loan Agreement provided for the following:

    a. A bridge financing loan in the amount of $1,400,000.00;

    b. A Lender's Fee of $168,000.00. The Agreement stated that the Lender's Fee was not interest or a penalty.

    c. A fee of $5,600 per day in the event the loan period was extended beyond the initial thirty day term. Again the Agreement characterized this charge as a fee and not as interest or a penalty.

130. Pursuant to section 347 of the *Criminal Code of* Canada, a criminal rate of interest means "an effective annual rate of interest calculated in accordance with generally accepted actuarial practices and principles that exceeds sixty per cent on the credit advanced under an agreement or arrangement." Interest is defined in section 347 as:

> The aggregate of all charges and expenses, whether in the form of a fee, fine, penalty, commission or other similar charge or expense or in any other form, paid or payable for the advancing of credit under an agreement or arrangement, by or on behalf of the person to whom the credit is or is to be advanced, irrespective of the person to whom any such charges and expenses are or are to be paid or payable, but does not include any repayment of credit advanced or any insurance charge, official fee, overdraft charge, required deposit balance or, in the case of a mortgage transaction, any amount required to be paid on account of property taxes. [emphasis added]

131. The evidence establishes that the Bridge Financing Loan Agreement in question contemplates a criminal rate of interest. On an annualized basis, the "Lender's Fee" amounts to a rate of 144% and this does not include the daily amounts payable in the event the loan period was extended. Characterizing the amount payable as a fee rather than interest does not permit the lender to evade the law with respect to criminal interest rates.

132. The evidence given during the cross examination of Dr. J, and in chief by Mr. Thomas on the subject, further demonstrates that Mr. Thomas had an imperfect understanding of what constitutes a criminal interest rate and what factors go into the calculation of an effective interest rate on an annualized basis. When approached to provide advice in respect of the Bridge Financing Loan Agreement, Mr. Thomas had a duty to provide accurate and competent advice or, in the event he was unable to do so, to refer the client to another lawyer who could provide the required advice.

133. The evidence of Dr. J and that of Mr. Thomas establishes that Mr. Thomas failed to provide proper advice with respect to what constitutes a criminal rate of interest and in doing so he failed to properly serve his client. The Committee determined that Mr. Thomas was guilty of conduct deserving of sanction in respect of Citation 8.

134. While the finding that Mr. Thomas failed to properly serve his client with respect to providing advice on the interest rate charges in the Bridge Financing Loan Agreement is sufficient for there to be a finding of guilt with respect to Citation 8, there is also the issue of the security provided on the loan and whether Mr. Thomas failed to properly serve his client with respect to the security provided.

135. While Dr. J was a sophisticated lender who had admittedly been involved in prior deals wherein she provided bridge or interim loan financing, one of the issues she clearly had in her mind when she met with Mr. Thomas was the security in place for her loan.

136. The Bridge Financing Loan Agreement that Dr. J negotiated, contemplated a parcel of land in B.C. being put up as security for the loan. Prior to retaining Mr. Thomas, Dr. J received an appraisal package with respect to the land that would act as security for Dr. J's loan. The appraisal package was provided to Dr. J by the borrower and Dr. J, in turn, provided the appraisal to Mr. Thomas for his review. The appraisal was based on the

value of the property, with residential development of approximately 99 lots serviced with private water and sewage systems. According to the appraisal, the land was worth $4,981,000.

137. The date of the appraisal provided to Dr. J was January 7, 2008. The appraisal notes that the lands were purchased in August 2007 for $450,000.00. No development or improvements had been undertaken with respect to the land in the 5 months between the date of the purchase of the lands for $450,000.00 and the date of the appraisal of the lands at $4,981,000.00.

138. While there was a Promissory Note and a General Security Agreement, there was no information with respect to what assets there might be to secure the loan should the lender have to enforce the security. The evidence establishes that the primary source of security on the funds advanced was the land.

139. On April 22, 2009, Mr. Thomas wrote to Dr. J enclosing a series of documents relating to the transaction including, among other documents, a General Security Agreement and a Promissory Note. Mr. Thomas advised Dr. J in the letter that: “We have reviewed the security pledged and are satisfied from our review that the security exceeds the liability of a loss of the Bridge Loan in the event of a default.”

140. On April 27, 2009, Mr. Thomas wrote to counsel for the borrower and provided the Bridge Financing Loan Agreement, the General Security Agreement and the Promissory note to counsel for the borrower. He provided the documents pursuant to a series of trust conditions which included the registration of a mortgage in favor of the lender and the provision of proof of registration of the General Security Agreement at the Personal Property Registry for British Columbia.

141. The trust conditions were fulfilled by the borrower and Mr. Thomas proceeded to send the funds by wire transfer to a lawyer located in the state of Texas in the U.S.A. The recipient bank was J.P. Morgan Chase, also located in Texas. The funds were transferred out of Canada in violation of Dr. J’s express instructions to Mr. Thomas that the funds not leave Canada.

142. Dr. J was of the view that, if something went wrong on the deal, it would be much more difficult for her to recover her money if the funds left the jurisdiction. For this reason she had given Mr. Thomas express instructions not to send the funds outside of Canada.

143. After the funds were transferred to Texas, the borrower defaulted on the loan. The evidence before the Committee establishes that the security pledged was insufficient to cover the liability for the loan default. Dr. J has attempted to recover her losses by hiring counsel to assist her in realizing on the security. Foreclosure proceedings were commenced in respect of the land that was pledged as security and Dr. J. has also commenced a civil suit against Mr. Thomas.

144. Dr. J testified that after the default on her loan she spoke to the appraiser and she asked what the value of the land was at the current time. The appraiser told her that the value would be about the same as what had been paid for the land in August 2007, but that there was not much activity in the market and so it might not even be worth that much. The appraiser confirmed for Dr. J that the appraised value in the report was based on the developed value of the land, not the raw land value that was pledged as security for Dr. J's loan.

145. Mr. Thomas provided his assurance to his client that the he reviewed the security pledged and was satisfied that the security exceeded the liability of a loss of the loan in the event of a default. It is clear no such review took place. Had the security been scrutinized at all, it would have been apparent that the appraisal contemplated developed land, not land in the condition that it was in at the time it was pledged as security. A review also ought to have disclosed that there were no other assets of any significance to cover Dr. J's losses in the event of a default. By stating that he had conducted a review and by assuring Dr. J. that the security was sufficient to cover a default when it was not, Mr. Thomas is guilty of failing to serve his client.

146. With respect to sending the loan funds outside of Canada against Dr. J.'s express instructions, Mr. Thomas has admitted Citation 11. Mr. Thomas acknowledges that he sent Dr. J.'s funds to the U.S.A. and, in doing so, he failed to follow his client's instructions.

147. The final citation in the bundle dealing with the Dr. J. matter alleges that Mr. Thomas failed to cooperate in respect of the LSA investigation into the complaints lodged against Mr. Thomas by Dr. J.

148. By way of letter dated April 9, 2010, the Director, Lawyer Conduct for the LSA, directed that an investigation into the complaint of Dr. J. be conducted for the purpose of obtaining information to assist the Executive Director of the LSA or his delegate to conduct a review of Mr. Thomas' conduct.

149. A meeting was arranged for Mr. Thomas to attend at the LSA in relation to the Dr. J. complaint. The meeting was set to take place on the afternoon of May 7, 2010, but Mr. Thomas did not attend. He claimed that he was unable to attend as he had been involved in an accident and he suffered from two fractured ribs.

150. Another meeting was scheduled for May 14, 2010. Again Mr. Thomas did not attend and he advised he was unable to attend the May 14, 2010, meeting as he was working out of town. The meeting was rescheduled again to May 20, 2010. On May 20, 2010, Mr. Thomas did not attend the scheduled meeting, this time citing complications arising from three fractured ribs. As a result of Mr. Thomas' repeated failures to attend the meeting to discuss the investigation against him, the investigator, LT, advised Mr. Thomas that if he wanted to meet he should contact the LSA to arrange it, but that he intended to continue to work on and finalize his investigation report regardless of whether he heard from Mr. Thomas.

151. A further meeting was set to occur between the investigator, LT, and Mr. Thomas on October 19, 2010. The meeting was to discuss the Dr. J. matter as well as a series of other client complaints and matters relating to Mr. Thomas' trust accounts. At the last minute, Mr. Thomas called LT and cancelled the meeting, advising only that he was in a meeting with another lawyer. The meeting was rescheduled to November 5, 2010, at 9:00 a.m.

152. At 9:02 a.m. on November 5, 2010, Mr. Thomas emailed LT and advised him that due to a dental emergency he would not be at the meeting scheduled for 9:00 a.m., but that he would attend at 1:00 p.m. LT confirmed that he would meet with Mr. Thomas at 1:00 p.m. that same day, but then at 11:28 a.m. Mr. Thomas emailed LT and advised that he would not be attending at 1:00 as he had an abscessed molar that required extraction. Ultimately the meeting was rescheduled to 8:45 a.m. on November 9, 2010.

153. At 5:53 a.m. on November 9, 2010, Mr. Thomas sent an email to LT advising that he would not be attending the meeting scheduled for that morning because his father had suffered a medical emergency the night before and he was at the hospital with him.

154. It was not until August of 2011 that Mr. Thomas finally made himself available to be interviewed by LT. While LT's report had been substantially completed, he advised Mr. Thomas that he would still accept a written reply to the inquiries he had made. If anything in the report turned out to be factually incorrect based on Mr. Thomas' responses, an addendum to the report could be prepared. Mr. Thomas did not avail himself of the opportunity to respond.

155. All members of the LSA are required to cooperate with investigations commenced by the LSA. Chapter 7 of the *Code of Conduct* requires a lawyer to reply promptly and completely to any communication from the Society. At the relevant time, Chapter 3, Rule 3 of Alberta's former *Code of Professional Conduct* required that a lawyer must respond on a timely basis, and in a complete and appropriate manner, to any communication from the LSA that contemplates a reply. LT refused to respond in any meaningful way to the LSA for over a year, despite being afforded opportunity after opportunity to do so.

156. The sheer number of times that Mr. Thomas suffered some personal or medical crisis, on the very same date that he was scheduled to meet with an LSA investigator regarding the complaints against him, raises significant concerns over the credibility of Mr. Thomas' excuses. However, even taking into account the series of misfortunate events that Mr. Thomas claims kept him from attending the scheduled meetings, Mr. Thomas had ample opportunity to respond to the LSA's concerns in writing, which he did not do.

157. Mr. Thomas argues that he ultimately attended for an interview in August of 2011, and this means he did cooperate with the LSA; therefore, the citation for failing to cooperate should be dismissed. He also alleges that reporting to the Alberta Lawyers' Insurance Association ("ALIA") in relation to the claim against him by Dr. J. was sufficient to fulfill his duty to the LSA. It does not.

158. The duty of a lawyer to cooperate requires timely responses from its members to the LSA and not some other body, including ALIA. The evidence overwhelmingly establishes that Mr. Thomas failed to meet his obligation to the LSA to respond promptly in relation to its investigation of him. Accordingly, the Committee finds Mr. Thomas guilty of Citation 10. He failed to cooperate with the LSA and that conduct is deserving of sanction.

CITATION 12

159. Citation 12 relates to the dealings between Mr. Thomas and a client by the name of Ms. G. Ms. G had approached Mr. Thomas to assist her with a claim relating to patent and latent defects found in a property that she had purchased. Mr. Thomas met with Ms. G and her father to discuss the claim. Mr. Thomas' evidence is that he met with the client on two occasions, conducted a review of the file and documents provided by his client, and prepared a draft statement of claim on her behalf.

160. The evidence of Ms. G corroborates Mr. Thomas' recollection of the events. She met with him on two occasions. The first meeting involved a lengthy discussion about her potential claim and what would be involved in bringing a law suit in relation to the deficiencies identified in the property she had purchased. The second meeting involved her dropping off documents for Mr. Thomas to review, as well as a $1,500 retainer. Ms. G was unable to recollect whether she saw a draft statement or not but she did testify that she and Mr. Thomas discussed what the claim would look like.

161. Ms. G testified that the meetings she had with Mr. Thomas were "helpful". Unfortunately for Ms. G, after the initial meetings with Mr. Thomas, Mr. Thomas was suspended and his practice was assumed by a custodian, JS. While no draft Statement of Claim was located by the custodian, there is no way for this Committee to determine whether the lack of a draft Statement of Claim was as a result of it never being prepared or a result of it being misplaced by the custodian. In any event, whether the draft Statement of Claim was prepared or not, the evidence does establish that Ms. G received valuable advice from Mr. Thomas during her meetings with him. The intervening suspension prevented Mr. Thomas from continuing to work on behalf of Ms. G, but the evidence does not support the allegation that Mr. Thomas failed to serve his client in a conscientious, diligent and efficient manner prior to his suspension. Accordingly, Citation 12 is dismissed.

CITATION 13

162. Citation 13 alleges that Mr. Thomas is ungovernable. Paragraph 86 of the Hearing Guide published by the Law Society of Alberta provides guidance with respect to the concept of governability. It states:

> The ability of the Law Society to govern the professional is essential. Without that ability, the self-governing aspect of the profession is put at

risk. Various types of conduct undermine the ability to govern the profession. These include (but are not limited to):

- Failing to respond to those involved in the Law Society process
- Failing to be candid with those involved in the Law Society process
- Failing to cooperate with those involved in the Law Society process
- Breaching an undertaking given to those involved in the Law Society process
- Practicing while suspended or inactive.

163. The following comments from the decision in *Law Society of Manitoba v. Ward*, [1996] L.S.D.D. No. 119 at p. 5 are also instructive:

> In our view, the right to practice law carries with it obligations to the Law Society and it its members. The minimum obligations in our view are, compliance with rules and communication with the Society as might reasonably be expected. Ward has persistently failed to comply with the rules and to communicate with the Society. This is all without any explanation or excuse of any kind whatsoever. The justification for self government is at least partly based on the assumption that the Society will in fact govern its members and that members will accept governance. Ward has demonstrated through his behavior that he does not accept governance.

164. In addition to the conduct described above, another hallmark of the ungovernable member is an inability to accept responsibility for one's own conduct and actions. The Law Society does not expect perfection from its members. Lawyers may violate provisions of the *Code of Conduct* and engage in conduct deserving of sanction for a myriad of reasons. The lawyers who acknowledge their role in the events leading up to the issuance of citations or demonstrate some insight into how things might have been handled better by them are governable. However, where there is a repeated and persistent course of conduct whereby a member fails to respond to the Law Society, fails to cooperate with the Law Society and fails to be candid with the Law Society, and those failures are compounded by a member who places the blame for his or predicament on others and refuses to accept any responsibility, there is a very real risk that he or she cannot be governed.

165. In the present case, the evidence adduced in the hearing of this matter establishes very clearly that Mr. Thomas engaged in a course of conduct, over a long period of time, designed to thwart the Law Society's attempts to investigate his conduct. Mr. Thomas was non-responsive when the Law Society required him to provide information. Mr. Thomas was not candid with the Law Society in his dealings with them. Mr. Thomas did not cooperate with the Law Society, nor did he cooperate with the custodian appointed to assume conduct of his practice.

166. The final investigation report into Mr. Thomas' conduct in relation to investigation 20090034 and complaint CO20091809 contains a useful and accurate chronology of the events that demonstrates the complete lack of responsiveness displayed by Mr. Thomas throughout the investigation into his conduct. The evidence given by LT, MD, GA and JS confirmed the difficulties faced by the LSA in obtaining compliance and cooperation from Mr. Thomas.

167. In a letter dated November 23, 2011, from MD to Mr. Thomas, MD summarizes the many attempts the LSA made to obtain responses from Mr. Thomas to complaints that had been lodged with the LSA against him. The evidence given by MD and the exhibits containing the correspondence in question corroborate the summary provided by MD in his letter of November 23, 2011.

168. The chronology of significant events based primarily on the chronology contained in the investigation report and MD's letter of November 23, 2011, is as follows:

February 27, 2009: A section 53 demand was issued by the LSA in relation to complaint 20090469.

April 4, 2009: The LSA sent Mr. Thomas a reminder that it was awaiting a response to the section 53 demand on complaint 20090469.

April 20, 2009: Complaint 20090718 against Mr. Thomas is referred to the formal complaints department.

April 22, 2009: The LSA issues a section 53 demand requiring a written response to complaint 20090718. An extension is granted permitting Mr. Thomas until May 15, 2009 to respond.

May 15, 2009: No response to the section 53 demand on complaint 20090718 is received by the LSA.

May 26, 2009: A Rule 130 Audit was commenced by RT on the law firm of Thomas Law. The reconciliations of the trust bank account were not available and the Rule 130 auditor was informed that the books and records of the firm were offsite with the bookkeeper.

May 29, 2009: The LSA issues a section 53 demand to Mr. Thomas in relation to complaint 20091243. No response was provided by Mr. Thomas.

June 4, 2009: A letter was sent to Mr. Thomas requesting that an undertaking be signed not to use the trust bank account until such time as trust bank reconciliations could be produced. The LSA investigators were told that the bank account reconciliations were at Mr. Thomas' residence. The law firm was advised to have the reconciliations completed by June 9, 2009. Mr. Thomas executed the undertaking the same day.

June 9, 2009: Mr. Thomas writes to the LSA advising that his response to the section 53 demand on complaint 20090718 would be provided shortly.

June 9, 2009: Mr. Thomas did not produce trust bank account reconciliations so the firm's books and records were requested by the LSA. Mr. Thomas opened a new trust account.

June 9, 2009: Mr. Thomas advises the LSA that he will respond to the section 53 demand on complaint 20090469 within one week.

June 17, 2009: The LSA sends Mr. Thomas an email to follow up on the response to the section 53 demand on complaint 20090469. Mr. Thomas emailed the LSA advising he would respond by June 23, 2009. Mr. Thomas did not provide a response.

June 15, 2009: Trust bank account reconciliations that had been prepared by the LSA based on bank records were provided to Mr. Thomas by leaving a copy with his assistant, EF. These bank reconciliations showed a trust account balance shortage of $40,891.22.

June 17, 2009: the LSA writes to Mr. Thomas requesting a response to the section 53 demand on complaint 20090718. Mr. Thomas responds, advising that he would be providing a response to all outstanding complaints by June 23, 2009.

June 17, 2009: GA and JD met with Mr. Thomas and EF at the LSA offices to discuss the status of the trust bank account reconciliations. A letter was sent to Mr. Thomas requesting a client trust listing as at May 31, 2009, together with copies of client trust ledger cards. The LSA also requested statements of account in relation to the trust transfers from the trust bank account to the general account which were allegedly for payment of fees for work completed.

June 23, 2009: Mr. Thomas emails the LSA and advises he cannot respond to the complaints that day due to a family emergency. No further response was provided by Mr. Thomas in relation to the section 53 demand on complaint 20090718.

June 23, 2009: The LSA sends Mr. Thomas a reminder to respond to the section 53 demand on complaint 20091243. Mr. Thomas did not respond to the LSA.

June 29, 2009: the LSA issues a section 53 demand to Mr. Thomas in respect of complaint 20091731. Mr. Thomas did not respond to the demand.

June 30, 2009: GA sent a letter to Mr. Thomas advising him that the LSA was proceeding with an interim suspension application due to the lack of cooperation from Mr. Thomas in providing the information requested on June 17, 2009. Mr. Thomas' assistant provided reconciliations for the period July 2008 through December 2008 and then for the period January to May 2009. The reconciliations prepared on behalf of Mr. Thomas showed trust shortages in the amounts of $906.29 and $10,225.63, respectively.

July 6, 2009: MD and GA met with Mr. Thomas and EF to discuss the shortages in the trust account. Mr. Thomas agreed to replace the shortages demonstrated in his reconciliations and he did so by depositing $10,225.63 into the trust bank account.

July 7, 2009: GA authorized Mr. Thomas to issue a trust cheque from the account to deal with a specific client matter. The amount of the withdrawal from trust was $27,550.

July 7, 2009: GA seeks authorization from Mr. Thomas to permit the LSA to request information directly from Mr. Thomas' bank. GA also requested statements of account for January, April and May 2009 and an explanation as to how the trust shortages arose. GA also requested 10 client files for review.

July 9, 2009: The LSA issued a section 53 demand to Mr. Thomas in relation to complaint 20091855. Mr. Thomas did not respond to the demand.

July 15, 2009: Mr. Thomas was suspended for non-payment of insurance levies.

July 16, 2009: An investigation order is issued, directing an investigation into the conduct of Mr. Thomas and, in particular, into the trust accounting irregularities.

July 21, 2009: GA advises Mr. Thomas that a custodian will have to be appointed to manage his practice if the documents and records requested were not provided by July 23, 2009. The requested records included the bank authorizations, client ledger cards, statement of account to support trust transfers, an explanation as to how the trust shortage arose and the trust bank account reconciliations for June, 2009. Mr. Thomas protests the appointment of a custodian in an email.

July 22, 2009: Mr. Thomas sent an email to complain to the Law Society about the handling of his suspension. At no time does Mr. Thomas ever take steps to pay his insurance levies and have his administrative suspension revoked thereby necessitating an application for a suspension and an associated hearing where Mr. Thomas could object to the suspension.

July 24, 2009: The LSA issued a section 53 demand to Mr. Thomas on complaint 20091706. Mr. Thomas did not respond to the LSA's section 53 demand.

July 27, 2009: Mr. Thomas advises the LSA he will consent to the appointment of a custodian.

July 31, 2009: JS is appointed the custodian of Mr. Thomas' practice pursuant to a Custodianship Order.

August 11, 2009: JS transfers a total of $191,895.75 from Thomas Law's bank accounts into his own accounts.

August 20, 2009: The LSA issued a section 53 demand to Mr. Thomas regarding complaint 20092262. Mr. Thomas never responded to the demand.

August 31, 2009: A section 53 demand is sent to Mr. Thomas in relation to complaint 20092368. No response was provided by Mr. Thomas.

September 16, 2009: LT sends a letter to Mr. Thomas reminding him that GA's prior requests from July 21, 2009 are still outstanding.

September 21, 2009: JS files a claim with the Assurance Fund for $46,775.48 to cover shortages in Mr. Thomas' trust accounts. Mr. Thomas is invited to respond but he does not do so.

October 6, 2009: The LSA issued a section 53 demand to Mr. Thomas in relation to complaint 20092734. Mr. Thomas never responded.

October 6, 2009: The LSA sent a reminder to Mr. Thomas to respond to the section 53 demand on complaint 20092368. Mr. Thomas provided no response.

October 14, 2009: The LSA issues a section 53 demand requesting a response to complaint 20092550. Mr. Thomas did not provide a response.

November 9, 2009: LT emails Mr. Thomas to follow up on the request for documents. The request was reiterated for Mr. Thomas.

November 10, 2009: LT sends a letter to Mr. Thomas requesting documentation to support 27 withdrawals from the trust accounts.

November 13, 2009: DG files a claim with the Assurance Fund for $47,394.75 in trust funds missing from Mr. Thomas' account. Mr. Thomas is invited to respond but he does not do so.

November 17, 2009: A section 53 demand was made by the LSA to Mr. Thomas in relation to complaint 20093160. Mr. Thomas responds with a complaint that the custodian is releasing trust money to clients instead of protecting Mr. Thomas' fees and accounts. No further response to the complaint is received.

December 7, 2009: Mr. Thomas is sent a reminder to respond to the November 9 and 10th requests for information.

December 18, 2009: A section 53 demand is sent by the LSA to Mr. Thomas seeking a response to complaint 20093107. Mr. Thomas replies with an email advising that a response would be forthcoming.

December 23, 2009: Mr. Thomas is sent another reminder that the November 9 and 10th requests are still outstanding.

December 24, 2009: Mr. Thomas responds to the LSA advising that he will provide the requested information by January 8, 2010.

December 31, 2009: PC from ALIA emails Mr. Thomas and advises that any replies to the Assurance Fund claims by JS and DG must be received by January 14, 2010. Again Mr. Thomas does not respond.

January 4, 2010: the LSA sends a reminder that it is awaiting a response from Mr. Thomas regarding the section 53 demand on complaint 20093107.

January 5, 2010: LT emails Mr. Thomas reminding him that the requests from November 9 and 10th remain unanswered. An explanation as to why $5,000 received from two clients was paid directly into his general account was also requested.

January 18, 2010: GA and LT meet with EF at the LSA office regarding the information requested in November. EF was advised that access would be provided to the computer taken from Thomas Law.

January 29, 2010: The LSA receives a complaint from Thomas Law client SG who claims to have performed over $30,000 in work on Mr. Thomas' home in exchange for legal services.

February 23, 2010: EF attends at the LSA and is given access to the computer taken from Thomas Law. She does not ask about a second computer, nor does she raise any issue that the computer she was provided access to was not the computer where she kept client records.

March 2, 2010: PC again follows up with Mr. Thomas seeking a response to the Assurance Fund claims advanced by JS and DG. Again, Mr. Thomas declines to respond.

March 26, 2010: Due to the absence of any response to his written requests for information, LT requests a formal interview of Mr. Thomas.

March 26, 2010: Mr. Thomas advises the LSA that he is entering a residential treatment program from March 29, 2010 through April 17, 2010.

April 22, 2010: Mr. Thomas contacts MD to advise that he is prepared to respond to requests for information and to set up a meeting.

April 29, 2010: LT contacts Mr. Thomas to set up a meeting to discuss the matters raised in the November letters and the January 5, 2010 letter. A meeting is set for May 7, 2010.

May 7, 2010: Mr. Thomas does not attend the scheduled meeting with the LSA. He advises the LSA he was in an accident and suffered two cracked ribs. The meeting was rescheduled to May 14, 2010.

May 14, 2010: Mr. Thomas does not attend the meeting and advises the LSA that he is away on a work assignment. The meeting is rescheduled to May 20, 2010.

May 20, 2010: Mr. Thomas does not attend the scheduled meeting claiming complications arising from his fractured ribs. Mr. Thomas was informed that the LSA was going to proceed to finalize its findings but if he wanted to meet to provide information to the LSA then he should contact them.

August 24, 2010: The LSA issued a section 53 demand to Mr. Thomas in relation to complaint 20102109.

September 3, 2010: Mr. Thomas sends an email to the LSA regarding complaint 20102109 but it does not contain a substantive response.

October 6, 2010: The LSA sends a follow up reminder requesting a response to the section 53 demand on complaint 20102109. Mr. Thomas emails the LSA back advising that he is returning to Edmonton shortly and will review the file at that time.

October 19, 2010: A meeting was scheduled between Mr. Thomas and LT. On the day of the meeting Mr. Thomas cancelled the meeting claiming that he had to attend another meeting. The meeting was rescheduled to November 5, 2010.

October 21, 2010: A section 53 demand was made by the LSA to Mr. Thomas requesting a response to complaint 20101402. A brief response was provided by Mr. Thomas.

October 28, 2010: The LSA sends another reminder requesting a response to the section 53 demand on complaint 20102109. No substantive response was ever provided by Mr. Thomas.

October 28, 2010: The LSA issues a section 53 demand in relation to complaint 20081635. Mr. Thomas emailed the LSA that he was seeking additional information so that he could respond properly.

November 5, 2010: Mr. Thomas fails to attend the scheduled meeting with the LSA citing a dental emergency. The meeting was rescheduled to November 9, 2010.

November 9, 2010: Mr. Thomas fails to attend the scheduled meeting with LT citing a family medical emergency.

November 16, 2010: The LSA sends a reminder to Mr. Thomas that it is awaiting a response to the section 53 demand on complaint 20081635. Mr. Thomas sends an email inquiring as to the whereabouts of the file. The LSA also requested a more fulsome reply from Mr. Thomas regarding complaint 20101402.

November 22, 2010: The LSA writes to Mr. Thomas in respect of complaint 20081635 advising that Hladun and Company should have a copy of the file in question.

November 23, 2010: Mr. Thomas writes to the LSA advising that Hladun and Company has not responded to his inquiries about the file related to complaint 20081635. No further response was provided by Mr. Thomas to the LSA.

December 8, 2010: The LSA writes to Mr. Thomas seeking additional information on complaint 20101402.

December 29, 2010: The LSA sends Mr. Thomas another reminder about complaint 20101402.

January 25, 2011: The LSA sends Mr. Thomas another reminder about complaint 20101402.

February 14, 2011: The LSA sends Mr. Thomas another reminder about complaint 20101402.

February 28, 2011: The LSA sends Mr. Thomas another reminder about complaint 20101402.

March 14, 2011: The LSA sends Mr. Thomas another reminder about complaint 20101402.

April 1, 2011: The LSA sends Mr. Thomas another reminder about complaint 20101402.

May 2, 2011: The LSA sends Mr. Thomas another reminder about complaint 20101402.

May 31, 2011: The LSA sends Mr. Thomas another reminder about complaint 20101402. The only responses received to the reminder letters were emails from Mr. Thomas advising that he would be providing a complaint response in due course.

June 22, 2011: Mr. Thomas provides his response to the section 53 demand on file 20101402. The response is provided to JS for his response.

June 30, 2011: JS responds to the LSA's request for his response to Mr. Thomas' response to complaint 20101402.

July 4, 2011: The LSA provides JS's comments on complaint 2010142 to Mr. Thomas for comment.

August 24, 2011: The LSA writes to Mr. Thomas seeking a response to JS's comments on complaint 20101402.

September 14, 2011: The LSA writes to Mr. Thomas seeking a response to JS's comments on complaint 20101402.

October 4, 2011: The LSA writes to Mr. Thomas seeking a response to JS's comments on complaint 20101402.

October 13, 2011: Mr. Thomas writes to the LSA advising that he already responded to the complaint and that his father has passed away.

November 7, 2011: The LSA writes to Mr. Thomas advising it has still not received his response in relation to JS's comments on complaint 2010142.

November 23, 2011: The LSA writes to Mr. Thomas advising that if he does not respond to the 15 outstanding complaints by December 12, 2011, the LSA would seek disbarment of Mr. Thomas on the basis that he is ungovernable. Mr. Thomas did not respond to the outstanding complaints.

169. In addition to his multiple failures to provide information necessary for the LSA to carry out its regulatory function, Mr. Thomas admittedly failed to comply with the rules regarding the operation of his trust accounts. He abdicated responsibility for his trust

accounts to a staff member and provided no oversight or direction in relation to the maintenance of the trust accounts or the trust accounting records.

170. In addition to his failure to follow the rules of the LSA, his lack of responsiveness and his lack of cooperation, Mr. Thomas exhibits a troubling pattern of blaming everyone but himself for his difficulties. He blames his former law firm for the problems with his trust accounting records; he blames the custodian of his practice for his inability to respond to the Law Society's inquiries; he blames the Law Society for his inability to defend himself against the citations when he could have provided that defense long before the custodianship was ordered. Mr. Thomas blames an LSA investigator for the fact that he has been administratively suspended since July 2009. Mr. Thomas blames an "overzealous prosecutor," his defense counsel and the Law Society for his guilty plea to criminal charges. There is very little in the way in which Mr. Thomas has conducted himself throughout the investigation and throughout this hearing that gives this Committee any comfort that he is governable.

171. The behaviour exhibited by Mr. Thomas as described above exemplifies the definition of ungovernable. The Committee therefore finds Mr. Thomas guilty of Citation 13. He has demonstrated that he is ungovernable and that is conduct deserving of sanction.

SANCTION

172. The Hearing Committee and Mr. Thomas were advised prior to the commencement of the hearing that the LSA was seeking disbarment in relation to the citations issued against Mr. Thomas. A hearing with respect to the appropriate sanction for the 10 citations that were either admitted to or for which there were findings of guilt will be set in consultation with the parties.

Dated at the City of Calgary in the Province of Alberta this 1st day of May, 2017.

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Rob W. Armstrong, Q.C. (Chair)

_____

Robert Dunster

[Note: An erratum was issued May 8, 2017, changing the reference to "11 citations" in paragraph 172 to "10 citations".]