THE LAW SOCIETY OF ALBERTA
HEARING COMMITTEE REPORT

IN THE MATTER OF THE *Legal Profession Act*,
and in the matter of a Hearing regarding the conduct of
JASON INGIMUNDSON, a Member of the Law Society of Alberta

INTRODUCTION

1. A hearing into the conduct of Jason Ingimundson commenced September 17, 2013 before a Hearing Committee comprising Anne Kirker, QC, Bencher (Chair), Nancy Dilts, QC, Bencher and Miriam Carey, PhD, Lay Bencher (the "September proceedings"). After commencement of the September proceedings, Ms. Kirker recused herself. Under the authority of the *Legal Profession Act* section 66(3), the hearing continued with the two remaining members of the Hearing Committee continuing as the Hearing Committee. Nancy Dilts, QC, Bencher, acted as Chair.

2. At the September proceedings, LSA counsel sought an adjournment of the hearing dates because the LSA's key witness was very unexpectedly called away to attend to an urgent and serious family emergency. That application for adjournment was granted. As a result, the Hearing Committee reconvened December 1 and 2, 2014 to consider the conduct of Mr. Ingimundson (the "December proceedings").

3. At the December proceedings, the LSA was represented by Ms. Shanna Hunka. Although Mr. Ingimundson originally had counsel at the September proceedings, at the December proceedings, Mr. Ingimundson represented himself.

4. A hearing was initially directed on two citations:

1. *It is alleged that you provided misleading information to the Complainant concerning the subject real estate transaction, and that such conduct is conduct deserving of sanction.*

2. *It is alleged that you failed to comply with an undertaking, and that such conduct is conduct deserving of sanction.*

5. At the September proceedings, both parties advised the Hearing Committee that the second citation should be dismissed. As a result, the second citation was dismissed.

6. The December proceedings therefore addressed the following citation:

1. *It is alleged that you provided misleading information to the Complainant concerning the subject real estate transaction, and that such conduct is conduct deserving of sanction.*

A new Notice to Solicitor was prepared and served containing the one citation.

SUMMARY OF RESULT

7. At the conclusion of the hearing, the Hearing Panel found Mr. Ingimundson guilty of conduct deserving of sanction with respect to the sole citation reproduced above. The Hearing Panel was satisfied that the evidence demonstrated that Mr. Ingimundson misled the Complainant during the course of a real estate transaction.

8. With respect to sanctioning, LSA counsel sought a reprimand and a fine of $2,500. Mr. Ingimundson urged the Hearing Panel to impose a lower sanction. Considering all factors relevant to sanctioning, the Hearing Panel concluded that Mr. Ingimundson should receive a reprimand and a fine of $2,500. A reprimand was delivered by the Chair at the conclusion of the December proceedings and is set out below.

9. LSA counsel presented an estimated Statement of Costs of $10,467.64. The Hearing Panel noted that the matter had been long outstanding and the hearing had been adjourned through no fault of Mr. Ingimundson's. The Hearing Panel considered it inappropriate to require Mr. Ingimundson to bear the financial burden of an unexpected adjournment and costs associated with new LSA counsel assuming conduct of the matter. As a consequence, Mr. Ingimundson was directed to pay fixed costs of $5,000. Mr. Ingimundson was given 6 months from service of the Statement of Costs to pay the fine and costs.

SUBMISSIONS OF THE PARTIES AND EVIDENCE

10. This inquiry arises out of a real estate transaction in which Mr. Ingimundson acted for the vendor of certain lands called Unit 4. The Complainant, a lawyer, acted for a subsequent encumbrancer on title ("F&O"). F&O had security on title as a consequence of a settlement arising from an unrelated transaction. Under that settlement agreement, F&O and Mr. Ingimundson's client agreed that F&O would release its security against title to Unit 4 on the understanding that proceeds from the sale of the property would be used to pay down prior encumbrances thereby improving F&O's equity position on title. Any remaining proceeds would go to F&O. F&O had a direct interest in seeing that the property sold for its highest value.

11. In February, 2009, Mr. Ingimundson's client entered into a Residential Real Estate Purchase Contract respecting Unit 4 ("Purchase Contract") with a buyer "MM" for a purchase price of $210,500. That Purchase Contract was subsequently amended in March 2009 to reduce the purchase price to $195,000 and to reduce the deposit supporting the transaction accordingly.

12. In April, 2009, the Complainant learned that the purchase price was reduced to $195,000 and, by letter to Mr. Ingimundson, asked whether there were other price reductions negotiated that he was not aware of. The Complainant explained clearly what he would require before discharges would be forthcoming.

13. An associate from the Complainant's office, Ms. WT, had a telephone conversation with Mr. Ingimundson on April 3, 2009. She admittedly had no background with respect to the file, but created notes of the conversation at the time. Those notes indicate that Mr. Ingimundson said the property would be "selling at $160,000" and that there was an "agreement with a realtor (of sorts) to sell properties at expedited rate". Her notes go on to indicate that Mr. Ingimundson agreed to send them the agreement with the "realtor (of sorts)". Finally, her notes indicate that "160K would be used to pay bank to stay foreclosure, also pay his legals, and our legals to do the discharges. Anything left over would be to pay down the second mortgagee."

14. The transaction closed April 14, 2009. Ultimately, some proceeds were used to pay a second mortgagor and $25,000 was paid by Mr. Ingimundson's office to the purchaser as per a direction to pay.

15. On May 7, 2009, Mr. Ingimundson provided the Complainant with a copy of his trust ledger for the sale of Unit 4 and represented that there were no remaining funds from the sale to pay to the Complainant's client. That trust ledger shows very clearly that funds of $185,034.32 were received by Mr. Ingimundson and that of those funds, $25,034.31 were paid out to MM, the buyer of Unit 4. The Complainant immediately raised concerns that the funds were not distributed in accordance with the settlement agreement. In follow up letters, he expressed concerns that there were indicia of mortgage fraud, particularly, the $25,000 "kickback" to the purchaser.

16. In response to the Complainant's May 7, 2009 letter, on May 13, 2009 Mr. Ingimundson wrote:

> It is certainly our understanding that your client had agreed to the purchase price of $160,000. The difference between the funds received and the purchase price was paid to the purchaser under a Letter of Direction, as a condition of closing. This is not news to you as we had advised [Ms. WT] of your office of this condition prior to closing the transaction. Further, we have been advised by our client that they have subsequently met with yours and have come to an arrangement whereby the issue you raise today is in fact not an issue.
>
> That being said, we provided you with all the documentation that you requested pursuant to the understanding that the purchase price was $160,000.00.
>
> Further, we provided you with a copy of our Trust Ledger Statement indicating how the funds were disbursed. You are now claiming that a portion of the funds ($25,000.00) should have been used to either pay down the second mortgage or be payable to your client. Again, this could not happen as the $25,000.00 payment was a condition of closing. The funds were disbursed accordingly, pursuant to all parties understanding.
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> *(emphasis added)*

17. Mr. Ingimundson continued to press the Complainant for the discharges. The Complainant brought the matter to the attention of the LSA. Through the course of communications with the LSA, Mr. Ingimundson produced to the LSA an undated Finders Fee Agreement under which the $25,000 fee was to be paid on the sale of Unit 4.

18. At the hearing, the LSA tendered an additional letter dated March 27, 2009 from Mr. Ingimundson to a lawyer acting for a prior mortgagee respecting Unit 4 and other properties in which Mr. Ingimundson writes "we confirm that the purchase price for each unit respectively is $160,000.00. . ." *(emphasis added).*

19. At the December proceedings, the LSA produced two witnesses: the Complainant and Ms. WT, the Complainant's associate. The Complainant is a senior member of the LSA with significant experience in real estate. He gave his evidence in a very measured and careful manner. He took deliberate care at the time of the events to prepare a detailed description of the transaction and his concerns, particularly before articulating those concerns to the LSA.

The Complainant's recollection of matters corresponded with the documents before the Hearing Panel and the details of his concerns as articulated in writing to Mr. Ingimundson and the LSA in June, 2009. The Hearing Panel found the Complainant to be very credible, clearly making effort to not exaggerate events or his concerns.

20. The Complainant was unequivocal that he understood from Mr. Ingimundson that the purchase price for Unit 4 was $160,000 and that he only became aware that Unit 4 sold for $195,000 when he received a copy of Mr. Ingimundson's trust ledger. Even after he received the trust ledger, Mr. Ingimundson persisted in characterizing $160,000 as the purchase price in his May 13, 2009 letter. At all times, Mr. Ingimundson knew i) that the purchase price was in fact $195,000 and ii) that F&O had a direct interest in the sale price for Unit 4 under the settlement agreement with Mr. Ingimundson's client. Neither the Complainant nor Ms. WT were told prior to May 13, 2009 that there was an agreement re-directing $25,000 of the purchase proceeds to the buyer.

21. Both at the time his concerns arose and in his evidence before the Hearing Panel, the Complainant stated clearly that based on his dealings with Mr. Ingimundson, he did not expect him to be involved in mortgage fraud.

22. Ms. WT gave evidence regarding the phone call she had with Mr. Ingimundson on the Complainant's behalf. The Hearing Panel found Ms. WT to be thorough, conscientious and very diligent. Ms. WT testified that it was her standard practice to make notes of phone calls concurrent with the call. In particular, because she had no history or involvement on the file other than the one conversation with Mr. Ingimundson that is in issue, she took verbatim point form notes as the conversation unfolded to ensure that she captured important information for the Complainant. Her evidence was that her notes accurately reflected her conversation with Mr. Ingimundson and the Hearing Panel accepts that to be true. Based upon the notes taken at the time of the conversation, her evidence was that Mr. Ingimundson represented to her that Unit 4 was selling for $160,000.

23. The LSA maintains that Mr. Ingimundson misled the Complainant in his April 3, 2009 conversation with Ms. WT and in his letter to the Complainant dated May 13, 2009. Based on the documents before the Hearing Panel and the evidence of the Complainant and Ms. WT, the LSA maintains that Mr. Ingimundson represented to the Complainant that the purchase price was $160,000 when in fact it was $195,000 with $25,000 kicked back to the purchaser under a Finders Fee Agreement and Letter of Direction.

24. Mr. Ingimundson gave evidence. His evidence was that what the LSA characterizes as misleading was simply imprecise language and that his conduct does not rise to the level of being sanctionable. His evidence was that he had no intention to deceive the Complainant, that the Complainant did not rely on the misinformation and that the misinformation was ultimately corrected.

25. Mr. Ingimundson's evidence was that he understood that $160,000 of the sale proceeds was to be used to pay encumbrancers and that anything above $160,000 would be paid to the Finder under the Finders Fee Agreement. His evidence was that he thought he had been clear with Ms. WT that $160,000 would be applied to creditors and that the "realtor of sorts" would receive the remainder, with no monies left to be paid to the Complainant's client. Mr. Ingimundson made no notes of that conversation and had an inconsistent recollection insofar as he maintained before the Hearing Panel that his recollection regarding the discussion on the

purchase price was clear and precise, yet his recollection of other aspects of the conversation was uncertain. The Hearing Panel favoured Ms. WT's recollection of the conversation.

26. With respect to his May 13, 2009 correspondence and repeated characterization that the purchase price was $160,000, Mr. Ingimundson maintains that there was enough disclosure that the Complainant should have realized that $160,000 was a net amount and testified that he thought he provided the Complainant with a copy of the Finders Fee Agreement (notwithstanding that he never provided it to the Complainant). He relies on the fact the Complainant was advised that realtor commissions were above the $160,000 as a sufficient flag to the Complainant that the gross purchase price could not have been $160,000. He suggests he used imprecise language in his May 13, 2009 letter in characterizing $160,000 as being the "purchase price" and that the Complainant should have known what he meant.

27. When the real estate transaction closed, Mr. Ingimundson was away on a family vacation and the matter was concluded by a colleague. Mr. Ingimundson's evidence was that his office prepared the Direction to Pay pursuant to which the Finder directed that his fee be paid to the purchaser. His office ultimately disbursed the proceeds of the sale in accordance with that Direction to Pay, including the $25,000 to the purchaser MM. Before the Hearing Panel, Mr. Ingimundson took full accountability for the actions of his office.

28. Mr. Ingimundson maintains that his actions on the file were sloppy or careless but do not rise to the level of professional misconduct.

FINDINGS OF THE HEARING COMMITTEE

29. Given the wording of the citation, the Hearing Panel was not required to find that Mr. Ingimundson intended to mislead the Complainant. Rather, it need only to contrast what Mr. Ingimundson said orally and in writing as against the facts to determine that Mr. Ingimundson in fact misled the Complainant in saying repeatedly that the purchase price for Unit 4 was $160,000. In the context of the transaction, the purchase price and whether there were proceeds to pay the prior encumbrances and F&O was material information to the Complainant.

30. Looking at the totality of the evidence and in particular the consistency in evidence between the documents and the testimony of the Complainant and Ms. WT, the Hearing Panel concludes that Mr. Ingimundson misled the Complainant in informing him that the purchase price for Unit 4 was $160,000. Ultimately, it was Mr. Ingimundson's responsibility to ensure that he communicated with the Complainant fully, accurately and clearly on all matters relating to the transaction and particularly so with respect to the critical documents and their effect on the transaction.

31. It was evident that the Complainant took Mr. Ingimundson's word at face value and relied on Mr. Ingimundson's integrity in advising his office that the purchase price was $160,000.

32. The Preface to the Code of Professional Conduct ("Code") in place at the time this matter arose provides:

> Two fundamental principles underlie this Code and are implicit throughout its provisions. First, a lawyer is expected to establish and maintain a reputation for integrity, the most important attribute of a member of the legal profession. Second, a lawyer's conduct should be above reproach. *(emphasis added)*

33. Chapter 4, Rule 1 of the Code says: A lawyer must not lie to or mislead another lawyer. Furthermore, under Chapter 4, Rule 2, if a lawyer becomes aware during the course of a representation that the lawyer has inadvertently misled another lawyer then the lawyer must immediately correct the resulting misapprehension on the part of the other lawyer.

34. These Rules codify the principle of integrity. Much has been written on the importance of integrity as the foundation of the profession. The integrity of counsel allows for efficient and honest transactions to occur; it is essential for our legal system to operate and it goes squarely to the question of public confidence in the profession.

35. Integrity is not simply the absence of deceit. It is the positive and uncompromising commitment to uphold certain values and principles. It is the existence of a positive force; not the absence of negative force.

36. The *Legal Profession Act* (R.S.A. 2000, c. L-8) sets out the general definition of conduct deserving of sanction:

> 49(1) For the purposes of this Act, any conduct of a member, arising from incompetence or otherwise, that
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> (a) is incompatible with the best interests of the public or of the members of the Society; or
> (b) tends to harm the standing of the legal profession generally,
>
> is conduct deserving of sanction, whether or not that conduct relates to the member's practice as a barrister and solicitor and whether or not that conduct occurs in Alberta.

37. It is accepted that not every violation of the Code amounts to conduct deserving of sanction under the *Legal Profession Act*. Whether conduct amounts to conduct deserving of sanction requires the Hearing Panel to look at the primary purposes of disciplinary proceedings being to protect the best interests of the public and to protect the standing of the legal profession generally. The practice of law is founded on integrity; disciplinary proceedings emphasize the importance of maintaining that integrity in a lawyer's dealings with his client, with other counsel and with the public.

38. Given the importance of the matters in question to F&O, and given the numerous opportunities Mr. Ingimundson had to be clear in his communications with the Complainant and his repeated statements that the purchase price was $160,000 notwithstanding that he knew the purchase price to be $195,000, the Hearing Panel concludes that Mr. Ingimundson's actions in misleading the Complainant amounts to conduct deserving of sanction.

39. Given the concerns of mortgage fraud that arise from the real estate transaction in question, a number of factors are important to note that convinced the Hearing Panel that Mr. Ingimundson was not knowingly participating in a fraudulent transaction:

> First, Mr. Ingimundson provided the Complainant with a copy of his trust ledger showing clearly how the monies were distributed. The Hearing Panel accepts that doing so shows a level of transparency inconsistent with an intention to deceive.
>
> Second, Mr. Ingimundson's evidence was that by June, 2009, he ceased acting for his client on all files in his office (30 or more files).

Third, Mr. Ingimundson's evidence was that neither he nor his office prepared the undated Finders Fee Agreement.

Fourth, Mr. Ingimundson gained nothing personally as a result of misleading the Complainant.

Fifth, from his prior involvement with Mr. Ingimundson, the Complainant expected that Mr. Ingimundson would not be involved in mortgage fraud.

However, given the irregularities in the transaction, it demanded a high level of diligence, clear thinking with respect to the entire transaction and the conviction to question anomalies.

SANCTION

40. In determining an appropriate sanction, the Hearing Committee is to take a purposeful approach. The overarching purpose of the sanctioning process is to protect the public, preserve high professional standards, and preserve public confidence in the legal profession: *Law Society of Alberta v. Mackie*, 2010 ABLS 10. The purpose of sanctioning is not to "punish offenders and exact retribution": *Lawyers & Ethics: Professional Responsibility and Discipline,* by Gavin McKenzie (at page 26-1).

41. Mr. Ingimundson's disciplinary record was entered as an Exhibit in the proceedings showing that he had no prior disciplinary record.

42. The *Legal Profession Act*, Section 72(1) requires that a Hearing Committee, on finding a member guilty of conduct deserving of sanction, disbar, suspend or reprimand the member.

43. When deciding how the public interest should be protected through the sanction process, the Hearing Committee is invited to take into account various factors, including the nature and gravity of the misconduct, whether the misconduct was deliberate, the impact of the misconduct on the client or other affected person, and imposing a penalty that is consistent with the penalties imposed in similar cases, to name just a few. In addition, the Hearing Committee is to consider mitigating circumstances that may temper the sanctions that may be imposed including the lawyer's prior disciplinary record. *Law Society of Alberta v. Elgert*, 2012 ABLS 9.

44. LSA counsel argued that Mr. Ingimundson should receive a fine of $2,500 and offered previous cases to suggest that fine amount was in an acceptable range given the circumstances*: LSA v. Magnan (2014); LSA v. Maxwell (2014), LSA v. Boulton (2013); LSA v. Geisterfer (2009).*

45. Mr. Ingimundson urged the Hearing Panel to impose a lower sanction.

46. Weighing the various factors relevant to sanctioning and having regard to cases discussed by both LSA counsel and Mr. Ingimundson, the Hearing Committee concludes that Mr. Ingimundson receive a reprimand and be ordered to pay a fine of $2,500. In imposing this sanction, the Hearing Committee considered Mr. Ingimundson's lack of prior disciplinary record and his own regret for how the transaction was handled. In addressing sanctioning, Mr. Ingimundson explained that he had learned from his errors. In his submissions, it was evident that Mr. Ingimundson understood the importance of integrity within the profession and to the public as a whole.

47. LSA counsel presented an estimated Statement of Costs of $10,467.64. The Hearing Panel noted that the matter had been long outstanding and the hearing had been adjourned in September 2013 through no fault of Mr. Ingimundson's. Between the September proceedings and the December proceedings, new counsel was appointed to the file by the LSA. The Hearing Panel considered it inappropriate to require Mr. Ingimundson to bear the financial burden of an unexpected adjournment and costs associated with new LSA counsel assuming conduct of the matter. As a consequence, Mr. Ingimundson was directed to pay fixed costs of $5,000 and was given 6 months from service of the Statement of Costs to pay the fine and costs.

48. As a result, having regard to all of the factors discussed above, the Hearing Committee makes the following order:

a) Mr. Ingimundson shall receive a reprimand to be delivered by the Chair of the Hearing Committee;

b) Mr. Ingimundson is ordered to pay a fine of $2,500;

c) Mr. Ingimundson is ordered to pay costs of the proceedings in the amount of $5,000.00; and

d) Mr. Ingimundson shall have 6 months from service of the Costs Order to pay the fine and costs.

REPRIMAND

Mr. Ingimundson, the preface to the Code of Conduct in place at the time these matters arose expresses the importance of integrity. A lawyer is expected to establish and maintain a reputation for integrity. In fact, our integrity is the hallmark of our profession and not something we should risk with loose conduct or incomplete disclosure.

Integrity is not just the absence of deceitful conduct. Nor is it cutting a fine line with providing minimal or inexact information. Integrity means open transparent dealings, complete and full communication and standing by your word and being seen to do so.

Our obligations as members of the LSA require us to conduct ourselves with diligence, precision and clear thought. Our clients and colleagues expect that of us. And our legal system only functions effectively if we are committed to that standard of professionalism and performance. In considering your conduct in this matter, you fell far short of that standard.

While this Panel accepts that you did not act with dishonest intentions, you were not forthright, clear or transparent in your dealings. Until this transaction, you had earned Mr. R's trust. Your carelessness and lack of diligence broke that trust. Mr. R took appropriate actions in reporting his concerns to the LSA.

Mr. R, one level removed from the offending transactions, was wise to see the indicia of mortgage fraud. You did not. Perhaps of greater concern is that you did not feel an obligation to watch for it. As a member of this profession, it is your responsibility to examine the transactions you are involved in and to evaluate the integrity of those transactions. Our jobs are not just to move paper, but are to apply our judgment, clear thinking and knowledge of the law

to matters entrusted to us. Our jobs are to question anomalies, to look for red flags and to intervene to prevent fraudulent actions from happening.

Integrity is the foundational building block of the legal profession and the public's confidence in it. Our job is to uphold the rule of law and without integrity, we fail. We encourage you to learn from this and to practice with diligence, precision and care and to never compromise your integrity and the integrity of the profession.

CONCLUDING MATTERS

49. In the event of any request for public access to the evidence heard in these proceedings, the Exhibits and the transcript of proceedings shall be redacted.

50. No referral to the Attorney General is directed.

51. There shall be no Notice to the Profession.

Dated at Calgary, Alberta, this 16th day of December, 2014.

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Nancy Dilts, QC - Chair

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Miriam Carey, PhD - Member