THE LAW SOCIETY OF ALBERTA

IN THE MATTER OF The *LEGAL PROFESSION ACT*

- and -

IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF PUBALAGAN VENKATRAMAN, A MEMBER OF THE LAW SOCIETY OF ALBERTA

The Panel:

Kathleen A. Ryan, QC, Chairperson
Dennis Edney, QC, Bencher
Derek Van Tassell, QC, Bencher

Counsel Appearances:

D. A. Cranna, for the Law Society of Alberta
P. J. McAllister, for the Member

Date and Place of Hearing:

December 11, 2013
Edmonton, AB

REPORT OF THE HEARING COMMITTEE

I. INTRODUCTION

1. Pubalagan Venkatraman ("Mr. Venkatraman") is an active lawyer and member of the Law Society of Alberta. He is subject to conduct proceedings under the *Legal Profession Act* R.S.A. 2000 c.L-8 on the following citations:

   (a) it is alleged that you failed to serve your client B.R.Ltd., and that such conduct is conduct deserving of sanction. [Citation 1]

(b) it is alleged that you generally failed to properly supervise your employee T.E., and that such conduct is conduct deserving of sanction. [Citation 2]

(c) it is alleged that you failed to follow the accounting rules of the Law Society of Alberta, and that such conduct is conduct deserving of sanction. [Citation 3]

(d) it is alleged that you failed to properly supervise your employee T.E. in the matter of a transaction involving M.T. and B.A…Ltd., and that such conduct is conduct deserving of sanction. [Citation 4/ 2(a)]

(e) it is alleged that you failed to serve your clients M.T. and B.A…Ltd. in a conscientious, diligent and efficient manner, and that such conduct is conduct deserving of sanction. [Citation 5]

(f) it is alleged that you failed to properly supervise your employee T.E. in the matter of a transaction involving A.K. and R. Ltd., and that such conduct is conduct deserving of sanction. [Citation 6/ 2(b)]

(g) it is alleged that you failed to supervise your employee T.E. in the matter of transactions involving M.M., and that such conduct is conduct deserving of sanction. [Citation 7/ 2(c)]

2. The Agreed Statement of Facts, redacted for privilege and confidentiality, is appended hereto as Appendix 1.

3. The Hearing Committee received and accepted an admission of guilt in respect of Citations 1, 2, 3, 4 and 6, as described in the Agreed Statement of Facts. The citations were consolidated such that Citation 4 became Citation 2(a); Citation 6 became Citation 2(b); and Citation 7 became Citation 2(c). Citation 5 was abandoned.

4. The Member was present throughout the hearing and was represented by counsel. At the conclusion of the hearing, the Committee provided oral reasons.

5. At the hearing, the sanction was delivered immediately to ensure swift consequence and to allow the member to prepare for the sanction imposed. This is the written report of the decision.

II. **JURISDICTION**

4. The jurisdictional requirements for the hearing were established through Exhibits 1 through 4. There was no objection to any of the members of the Hearing Committee. The Hearing Committee determined that it had jurisdiction to hear the matter.

III. PRIVATE HEARING MATTERS

5. A private hearing notice was issued in accordance with s. 78 of the *Legal Profession Act* Ch. L-8 RSA 2000 (the "Act") and Rule 98 of the Rules of the Law Society (the "Rules"). Those entitled to receive notice of a private hearing were provided such notice. No interested person applied to have the hearing held in private and, accordingly, the hearing proceeded in public. The Hearing Committee directs that any third party names and client names should be redacted from this Committee report. The transcripts of the proceedings and the exhibits filed herein prior to any publication of same shall also have that redaction and this includes an extension to any identifying personal information.

IV. EXHIBITS

6. The Hearing Committee received and entered into the record Exhibits 1 through 23.

V. FINDINGS OF FACT - CONDUCT DESERVING OF SANCTION

7. The parties tendered an Agreed Statement of Facts. The Member admitted guilt on citations 1, 2, 3, 4 and 6 as described in the Agreed Statement of Facts. The Committee accepted the form of Agreed Statement of Facts and the admission of guilt. Mr. Venkatraman:

   (a) failed to serve his client B.R.Ltd.

   (b) failed to properly supervise his employee T.E.

   (c) failed to follow the accounting rules of the Law Society of Alberta

   (d) failed to properly supervise his employee T.E. in the matter of a transaction involving M.T. and B.A.

   (e) failed to properly supervise his employee T.E. in the matter of a transaction involving A.K. and R Ltd.

   (f) failed to supervise his employee T.E. in the matter of transactions involving M.M.

8. The admitted Citations are established. The Conduct is deserving of sanction.

VI. EVIDENCE

1. The appended Agreed Statement of Facts describes the evidence behind the citations in detail. A brief summary is set out here.

2. Mr. Venkatraman is a senior lawyer in the City of Edmonton and has practiced for over 30 years, primarily in the area of real estate and conveyancing. Mr. Venkatraman practices law at Venkatraman & Purewal, an association of independent practitioners (the "Firm").

A. Citation 1: Failure to Serve B.R.Ltd.

3. Mr. Venkatraman acted on behalf of 2 successive purchasers of the same residence between March and May 2003. In March 2003, Mr. Venkatraman swore an affidavit that the value of the property was $68,500. Within two months, Mr. Venkatraman also acted for the subsequent purchaser and B.R. Ltd. (the "Lender") at which time the purchase price was stated to be $133,600.

4. The Statement of Adjustments for the second transaction showed that $19,454.16 was paid "between purchaser and vendor directly." The Lender's instructions required Mr. Venkatraman to report to the Lender, his client, if payments were made directly between vendor and purchaser, or other than through the lawyer's trust account, or if payments were of an "unusual nature."

5. While quick succession transfers were not unusual in Alberta in 2003 because of a rapidly rising real estate market, some transfers had known indicators of possible mortgage fraud. These signs often included a significant rise in price from one transaction to another in a very short time frame. This is particularly so where there is no evidence of any capital improvement and large payments are made directly from purchaser to vendor without independent proof of same.

6. This development led many lenders, including Mr. Venkatraman's client in this case, to provide express instructions to guard against possible mortgage fraud.

7. Mr. Venkatraman neither confirmed the direct payment was made nor did he report this direct payment to his client, the Lender, despite express instructions to do so.

8. This failure was conduct clearly in breach of Mr. Venkatraman's instructions from his client and clearly constitutes a failure to serve the Lender, B.R. Ltd.

9. Mr. Venkatraman's failure in this case did not just amount to a breach of duty, but also rendered his client vulnerable to potential fraud at the hands of his other clients at a time when the Lender client had provided instructions expressly to protect its interest in this regard. This conduct is completely unacceptable. Even the most sophisticated lender cannot conduct business without the ability to reasonably rely on its counsel to implement the most basic and clear instructions.

10. A highly experienced real estate lawyer like Mr. Venkatraman should have known better and should have done better. Although there was no evidence tendered at hearing that the Lender suffered a loss, the conduct itself is deserving of sanction.

B. Citation 2, 2(a), 2(b), 2(c) – Transactional Failures / Undiscovered Fraud

11. The remaining citations all derive from the unusual circumstances surrounding T.E., an employee of the Firm at the material times the Citations arose.

12. T.E. was a senior real estate paralegal. She began working for the Firm in 2001. When the Firm's former bookkeeper left the Firm in March 2003, T.E. also assumed bookkeeping duties for the firm in May 2003. T.E. left the Firm in April 2005, just before the Firm discovered that she had engaged in massive fraud. In hindsight, T.E.'s dual role of paralegal and bookkeeper was a recipe for disaster for Mr. Venkatraman and the Firm.

13. As the responsible lawyer, it was Mr. Venkatraman's obligation to supervise staff that worked on his files. Mr. Venkatraman, like many of his generation, was not a sophisticated computer user and relied on his bookkeeper, T.E., in respect the Firm's accounting program, bank records, and trust accounting. T.E. was the only staff member with access to the trust ledger.

14. Unlike the Firm's former bookkeeper, T.E. did not provide monthly reports on funds in trust or files open. And Mr. Venkatraman did not ask her for them nor did he ensure they were properly completed.

15. Over time, T.E. became a willing secret participant in a scheme and conspiracy to defraud lenders and others by setting up straw buyer transactions to take profits from fraudulent real estate transactions. In these transactions, G.P. (and others), through numbered companies, purchased marginal quality homes and flipped them to straw buyers who had no connection to the home other than for the purpose of placing a name on title to procure mortgage funds. The mortgage applications to the lenders contained multiple material misrepresentations including inflated property values, non-existent capital improvements, false financial information, and fictitious down payments. The purpose of these transactions was to maximize mortgage proceeds to fund the transactions, which proceeds were later reaped by G.P. and his cohorts. The end result was often a property with little or no equity, a bona fide lender holding worthless security.

16. T.E. used the vehicle of the Firm, and Mr. Venkatraman in particular, to advance her unlawful agenda and perpetrate fraud.

17. G.P. began referring work to the Firm in 2003. T.E., over time, actively worked with G.P. with a view to furthering the fraudulent scheme. Still later, T.E. opened files under a secret code so that she could work on the G.P. files without the Firm's knowledge. By late 2004, Mr. Venkatraman asked T.E. to stop taking work through G.P. But she continued to do so behind his back.

18. Three examples of T.E.'s participation in this scheme are the subject of Citation 2(a), 2(b), and 2(c).

Citation 2(a): The M.T. transaction

19. G.P.'s company sold a property to M.T., Mr. Venkatraman's client. A lender, also the Firm's client, approved M.T. for a mortgage of $158,901.75. However, there were two

prior encumbrances on title that had to be discharged so that Mr. Venkatraman's lender client could rank as the first charge on property, which priority ranking was required as a condition of the mortgage advance. Another lawyer, Scott Park, undertook to arrange for those discharges. However, Mr. Park did not provide those discharges until over a year later, in March 2005. In February 2004, T.E. had prepared a letter to the lender client stating that the lender mortgage was the first charge on title. In fact, this was false.

20. Mr. Venkatraman admits that he failed to properly review the transactional documents and allowed T.E. to meet with the client M.T. and execute all documents. He failed to take timely steps to ensure that the proper encumbrances had been removed.

Citation 2(b): The A.K./R.L. Ltd. transaction

21. A residential property in Edmonton was owned by one of G.P.'s associates' numbered companies. The principle of the numbered company contracted to sell the property to his older brother in early 2005. Both the principle and the brother were later discovered to be known parties to G.P.'s mortgage fraud schemes. T.E. handled all aspects of this file, from opening, to preparing documents, to swearing the Affidavit of Value as Commissioner of Oaths, to disbursement of proceeds.

22. The property was already encumbered by a first mortgage of $56,250. A purchaser's mortgage was procured for $86,250 from a second lender. The second lender required that its mortgage be the first charge on the property; this required a payout of the first mortgage. The transfer of property was filed February 4, 2005, but T.E. did not payout the prior mortgage. Instead, she disbursed the second mortgage proceeds to various parties.

23. The property went into foreclosure and the Firm ultimately paid the first mortgage from its own resources. Mr. Venkatraman admits that T.E. was able to participate in this fraudulent scheme without any meaningful supervision, without any meaningful review of the transaction, and without ensuring that the lender's instructions were followed.

Citation 2(c): The M.M./D.E. Inc. transaction

24. M.M. was told by a corporate entity, D.E. Inc., that he could purchase 2 homes for no money down and merely had to make mortgage payments. Once again, T.E. handled the entire transaction. If M.M. could not make the payments, he was told the properties would be transferred back to D.E. Inc. M.M. could not make the payments and intended to move to Toronto.

25. When M.M. returned to the Firm to advise he wanted to "reverse" the mortgage, he discovered that only one property had been registered in his name. In fact, that property later went into foreclosure. A foreclosure order was registered August 27, 2004. A subsequent review of the file showed that T.E. issued a cheque to cover mortgagee arrears and another cheque to a known G.P. associate, the same associate who later

participated in the fraudulent scheme, which is the subject of citation 2(b). The result was a negative trust balance of $12,760.95. T.E. then posted a fictitious backdated trust transfer, ostensibly to conceal the fraud, in April 2004.

26. Again, Mr. Venkatraman admits that he failed to supervise this file or provide meaningful oversight. This failure allowed T.E. to perpetuate and further another G.P.-related fraudulent scheme.

C. Citation 3 – Failure to follow accounting Rules of the Law Society

27. Mr. Venkatraman further admits that, as the Responsible Lawyer in his Firm, it was his obligation to ensure that the Firm's accounts, including trust accounts, met Law Society requirements.

28. This means that Mr. Venkatraman was obliged to ensure monthly trust reconciliations. These monthly reconciliations, which are undertaken on all law firms' trust accounts in Alberta, allow firms to have timely discovery of debit balances (trust shortages), outstanding deposits, bank errors, posting errors and the like. This is a key safeguard for firms and for the public to ensure that funds held by firms on trust are properly accounted for. If there are errors or shortages, they can be identified immediately to ensure that trust accounts balance, that outstanding deposits are cleared, and that adjustments made are properly identified and explained.

29. Mr. Venkatraman admitted that he did not properly conduct these reviews for a period of over 18 months during 2003 to 2005. He admits he did not have the necessary understanding of the accounting rules to apply them and did not question his bookkeeper, T.E.

30. As a result of this failed oversight, the Firm had multiple unexplained adjustments, unsupported deposits, unposted transactions, and trust shortages. These were not nickels that were missing or unexplained. There were literally hundreds of thousands missing or improperly adjusted. This is utterly unacceptable and this Hearing Committee unanimously agrees with Justice Verville's finding that the lack of supervision at the Firm created "the ideal environment within which a dishonest person could conduct fraudulent transactions." [Agreed Statement of Facts, page 9; R. v. Ellis, 2007 ABQB 722 at para 163-164]

D. Discovery of the Fraud

31. On February 28 2005, after growing concerns, Mr. Venkatraman met with T.E. Mr. Venkatraman issued a memorandum to her dated March 2, 2005. The memorandum required T.E. to provide current trust accounting, completed postings, all lawyer balance sheets, and a complete listing of real estate files, billed or unbilled. T.E. was ordered to work on no real estate files until this task was complete. By April 12, 2005, T.E. had left the Firm. The next day, the Firm's computer systems crashed. Backups of the Firm data were missing. Financial information and cheques had been removed.

32. The Firm quickly hired experts to recover the lost information. Included in this effort was a return of the former bookkeeper to the Firm. The former bookkeeper quickly became concerned and formed the opinion that a massive trust defalcation had occurred. The Firm reported the matter to the Law Society. The Law Society in turn commenced an audit which identified a trust account shortfall of approximately $1.9 million as at May 31, 2005, most of which was attributable to files involving G.P. and his companies, all handled by T.E.

33. Ultimately, T.E. was charged with 28 counts under the Criminal Code involving fraud arising from this scheme. Justice G.A. Verville found her guilty on 16 counts. She was sentenced to a total of 6 years less time served. The decisions (including sentencing) are R. v. Ellis, 2007 ABQB 722 and R. v. Ellis 2008 ABQB 40.

34. While not all of Justice Verville's obiter was admitted in these proceedings, both Mr. Venkatraman and the Law Society readily agreed with this finding respecting T.E.:

> "I find that T.E. is a blatant liar and that little of her testimony can be believed. I found much of T.E.'s evidence to be unbelievable or far-fetched and at times nonsensical. I was left with the impression that she is truly a stranger to the truth…" [R. v. Ellis, 2007 ABQB 722 at para 157]

35. T.E.'s fraud and misconduct within the Firm was extensive. It included:

    (a) Opening secret files without the knowledge of Mr. Venkatraman and the Firm;

    (b) Creating multiple sets of ledgers and manipulation of financial records to conceal her conduct from Mr. Venkatraman and the Firm so as to prevent the discovery of non-existent deposits or transactions where trust funds from one transaction were used to fund others;

    (c) Meeting with clients surreptitiously to commission false documents in support of mortgages known by her to be fraudulent;

    (d) Destroying and concealing evidence of her misconduct when others in the Firm became suspicious.

36. At no time before discovery of defalcation was Mr. Venkatraman aware of T.E.'s scheme and fraud. In that sense, Mr. Venkatraman and the Firm were themselves victims of T.E.'s fraud. However, Mr. Venkatraman is responsible for the practice of law under his name. With the privilege of the public trust and the practice of the law comes the very serious corresponding obligation to take responsibility for the actions of those under a lawyer's watch.

37. T.E. was able to perpetrate this fraud not only because of her own web of deceit, which by all accounts was extensive and sophisticated; she was able to do this because her employer, a law firm, a lawyer, had trusted in her honesty to a fault.

38. Employee theft, embezzlement, even large scale fraud is a reality for many businesses, even professions. But perhaps no profession relies more on the public trust and commits more to the public interest than lawyers do. Bona fide purchasers and vendors rely on lawyers to be perfect custodians of their most precious physical assets: their home and their money. Lenders rely on lawyers to protect their interests, particularly where multiple clients are represented. The real estate industry as a whole requires lawyers to be meticulous in their handling of these transactions. As the Law Society noted in argument, the handling of trust money is "sacred" in the eyes of both the public and this profession. When lawyers become unwitting pawns in a mortgage fraud scheme, the public suffers. The profession suffers.

E. Mr. Venkatraman's conduct post Discovery

39. Notwithstanding the gravity of the misconduct committed by Mr. Venkatraman, it is proper to consider the nature of Mr. Venkatraman's response to his discovery of the fraud perpetuated at his Firm and on his files.

40. Mr. Venkatraman and the Firm immediately hired experts to reconstruct lost data and analyze T.E.'s misconduct. Their self-report to their regulator was swift. The Law Society's response was also swift and a full audit was undertaken on an expedited time line. There was complete cooperation with the police, which enabled the Attorney General to move in a timely fashion against those criminally responsible for the fraud.

41. The total trust shortage was almost $2 million. Mr. Venkatraman and the other lawyers in the Firm promptly replaced all of the shortfall from their personal resources. As a result, the trust shortage was completely remedied out of the personal pockets of the lawyers under whose watch it occurred. The cost to Mr. Venkatraman and the Firm occasioned by T.E.'s fraud was and continues to be enormous. While the cost was aggravated by Mr. Venkatraman's own failure to detect the fraud through standard processes required by the Law Society, his approach to making good that loss is entirely in the public interest. And it was done voluntary, without question, and with great speed.

42. Peter Royal, QC gave evidence during the sanctioning phase of the hearing. Mr. Royal was admitted to the Bar in 1975 and has been a practitioner for 39 years. He was a Bencher of the Law Society between 1986 and 1995 and was the President of the Law Society in 1994-1995. Mr. Royal and Mr. Karim Mawani, also a member of the Law Society, were requested by the Practice Review Committee of the Law Society of Alberta to attend at the offices of Mr. Venkatraman in early 2006 for a Practice Assessment.

43. At the time of Mr. Royal's attendance, Mr. Royal was aware that T.E. had engaged in fraudulent conduct, which resulted in a defalcation of almost $2 million dollars from the Firm's trust account.

44. Mr. Royal met with the Member on January 30, 2006 and then subsequently met with the staff. Mr. Royal also met with each associate for an hour to an hour and a half. He

conducted a series of closed and open file reviews. He prepared, in his words, the “most extensive report” that he had ever done. This report was in evidence before the Hearing Committee.

45. He found the cooperation of each of the staff and lawyers in the office to be "exceptional" and "free". He was given free reign in terms of file selection and review. He stated Mr. Venkatraman was cooperative. Mr. Royal had no difficulty in assessing the practice.

46. It was Mr. Royal's evidence that, based on his review, Mr. Venkatraman was taken advantage of by T.E. Mr. Royal stated Mr. Venkatraman was literally "blindsided".

47. Mr. Royal was careful to point out that Mr. Venkatraman was not innocent in these proceedings. He stated there was far too casual an attitude in his office. He said Mr. Venkatraman was too accepting and too trusting. There was a lack of discipline.

48. Having said that, Mr. Royal concluded his evidence by noting that Mr. Venkatraman was "the most honourable man that I have met in my practice".

VII. SUBMISSIONS RESPECTING SANCTION

A. Submissions of the Law Society

49. The Law Society sought a suspension of Mr. Venkatraman for 6 months. Law Society counsel noted that the defalcation was extremely serious and involved criminal activities from a staff member from within Mr. Venkatraman's Firm.

50. The Law Society highlighted that this was not an issue of integrity the evidence was that Mr. Venkatraman’s integrity was sound. Rather, it was a question of competence. The Law Society noted serious and significant long-term lapses on supervision of T.E. over an 18-month period.

51. The environment at the Firm enabled her to do what she pleased without consequence. As both a real estate paralegal and the Firm bookkeeper, she was in a position to do considerable damage as a direct result of the lack of meaningful control on her.

52. The Law Society also readily admitted, however, that T.E. was adept at deflecting, was a convicted fraudster, and was a liar.

53. The Law Society stressed that a responsible supervising lawyer is "not a bit player in the activities of his firm". As such, steps must be taken within any firm based on evidence and the Rules, not based on faith. The practice of law, the Law Society rightly noted, is not a faith-based exercise. The same is true of trust accounting.

54. Mr. Venkatraman’s misconduct was such that T.E. was effectively practicing law on her own: she opened files, she examined documents, she met with clients by herself, and

she managed the money. The conduct in this regard raises serious questions of public confidence and there were no adequate controls to ensure oversight and supervision.

55. The case is not without multiple mitigating factors. The Law Society readily conceded the following:

(a) The admission of guilt conserves resources and produces an outcome in the public interest without requiring many witnesses to attend to provide evidence;

(b) Mr. Venkatraman was extremely cooperative throughout the investigation;

(c) Mr. Venkatraman's personal funding of the trust shortage resulted in minimal client impact from defalcation;

(d) Mr. Venkatraman has practiced for a significant period of time since these issues arose without any other issue arising; and

(e) Mr. Venkatraman has had a long successful career in practice serving the public. It is apparent that Mr. Venkatraman can and does now practice in a way that does not endanger the public and therefore there is a very reduced chance of recurrence.

B. Submissions of Mr. Venkatraman

56. Mr. Venkatraman submitted that, on the evidence, no suspension was proper. His counsel provided some additional background facts.

57. Mr. Venkatraman graduated from the University of Alberta in 1978. After articles, he started his own firm. He has two grown children, one a lawyer and one an occupational therapist.

58. Mr. Venkatraman has been instrumental in local charitable endeavors in his community including the M.C. Fund in which he has assisted in raising over $500,000.00 in the past 5 years.

59. Mr. Venkatraman is a senior successful lawyer who has served the public for decades.

60. Mr. Venkatraman has sustained serious reputational damage as a result of these issues. When T.E.'s fraud was first discovered, there was an uncorroborated suggestion in the public domain that he was complicit, although he was clearly not.

61. T.E. used extremely complex methods to cover her fraud. Only a forensic audit on the Law Society's was able to sort out the web of her fraud.

62. As noted, Mr. Venkatraman replaced the $1.9 million almost immediately. While Mr. Venkatraman has been able to recover a significant portion of those funds through his own effort, over $400,000.00 remains outstanding today without accounting for the

Firms' cost to engage the forensic audit and cost to pursue recovery. Taking into account those costs, there is likely over $1 million dollars in net loss to the Firm and Mr. Venkatraman with no source of recovery. This does not include practice costs or reputational costs.

63. There has been considerable delay in the proceedings, in part to allow the criminal proceedings against T.E. to conclude. The Criminal Proceedings were in the public interest, but the additional delay beyond that time has meant that the matter has been extant for Mr. Venkatraman, with an element of public speculation as to his role is T.E.'s conduct, for years now. The Law Society has previously recognized that long delay can be a mitigating factor in sanction.

64. Mr. Venkatraman continues to owe money and wishes to have a further period of time to engage in practice to be able to pay that money off. Any period of suspension will compound the negative financial impact to Mr. Venkatraman, which impact has already been very, very high.

65. The events have had a tremendous emotional impact on Mr. Venkatraman having regard to the circumstances. It was personally devastating for him to recognize that these events had happened not only in his Firm, but under his watch.

C. Analysis

66. A number of prior decisions were put before the Committee for consideration on sanction. Included in these were the following:

(a) Law Society of Alberta v. Pearson 2011 ABLS 17

(b) Law Society of Alberta v. Carlson 2012 ABLS Hearing Report April 12, 2012

(c) Law Society of Upper Canada v. Cunningham 2012 ONLSAP 0031

(d) Law Society of Upper Canada v. Ogunniyi 2013 ONLSHP 0090

(e) Law Society of Upper Canada v. Lang 2008 ONLSHP 0002

(f) Law Society of Alberta vs. Murray Engelking 2009 LSA 18

67. The sanctions in these cases range from a reprimand to a suspension lengthier than the Law Society seeks here. The sanctions vary greatly just as the facts surrounding the circumstances in each are unique.

68. The Hearing Committee extensively considered the submissions of the Law Society and the Member.

69. Sanctioning requires this Committee to take a purposeful approach. The primary purpose of sanctioning derives from s. 49 of the Act: protection of best interests of the public and protection of the legal professional generally.

70. In Bolton v. Law Society [1994] 2 All ER 486, the Court held:

> …In most cases the order of the tribunal will be primarily directed to one or other of both of the two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence. This purpose is achieved for a limited period by an order of suspension; plainly it is hoped that experience of suspension will make the offender meticulous in his future compliance with the required standards….The second purpose is the most fundamental of all: to maintain the reputation of the solicitor's profession as one in which every member, of whatever standing, may be trusted to the ends of the earth…. If a member of the public sells his house, very often his largest asset and entrusts the proceeds to his solicitor, pending re-investment in another house, he is ordinarily entitled to expect that the solicitor will be a person whose trustworthiness is not, and never has been, seriously in question. Otherwise the whole profession and the public as a whole is injured. A profession's most valuable asset is its collective reputation and the confidence which that inspires. [at 492 (CA) per Sir Thomas Bingham MR]

71. In this case, Mr. Venkatraman's integrity was intact. But his casual approach to oversight of a key staff member in his Firm caused serious and substantial loss.

72. Pursuant to the Code of Conduct (the "Code"), Rule 1.02 requires a lawyer to uphold the standards and reputation of the legal profession and to assist in the advancement of its goals, organizations, and institutions.

73. The Code, 5.01 (1) provides:

> A lawyer has complete professional responsibility for all business entrusted to him and must directly supervise staff and assistants to whom the lawyer delegates particular tasks and functions.

74. Likewise, Rule 2.02 requires a lawyer to maintain office staff adequate to the lawyer's practice. This is part of the lawyer's duty to provide quality service to clients. Rule 2.01 requires a lawyer to perform all legal services undertaken on a client's behalf to the standard of a competent lawyer.

75. Notwithstanding the size of the defalcation and the extended time frame over which it was allowed to occur, the Hearing Committee considered as a significantly mitigating fact the swift steps Mr. Venkatraman took to replace funds and to investigate circumstances surrounding the conduct of T.E. It was conceded that Mr. Venkatraman at all material times acted with integrity and that the issues related hereto were strictly a failure in oversight and not intentional conduct.

76. Mr. Venkatraman's conduct in the immediate aftermath of his discovery of his employee's fraud reveals the nature of his character. His response was rapid, remedial, and forthright. There is virtually no risk, and the Law Society concedes this, that the public will be at risk again because of Mr. Venkatraman's practice.

77. Likewise, there was evidence that the nature of T.E.'s deceit in this case was so complex, so well spun, that, even with diligent review, many lawyers may have missed it.

78. There had been a very long passage of time that had occurred since these transactions without any incident on Mr. Venkatraman's part. Although there was a dated history of conduct matters for Mr. Venkatraman, the matters ranged from 9 to 20 years prior to this hearing.

79. As a result of this evidence, the Committee is of the view that a suspension is likely not necessary in order to protect the public in the sense that it will prevent further misconduct in Mr. Venkatraman's firm. That question has already been answered by several subsequent years of unblemished practice. Indeed, the Committee noted the impactful evidence of Mr. Royal, QC: "This is the most honourable man that I have met in my practice".

80. However, while suspension may not be necessary to protect the public from misconduct, the same cannot be said with respect to protection of the public from the perspective of the public confidence and protection of the profession itself.

81. Although T.E. was subsequently criminally convicted and brought to justice through a 6 year prison sentence, and although T.E. was found to be convincing in her role as a fraudster, her crimes do not excuse Mr. Venkatraman's incompetent oversight. Because T.E. was both paralegal and bookkeeper, and because she was allowed to open files on her own and meet with clients on her own and essentially run files, she put Mr. Venkatraman and his clients in a position of vulnerability. This means Mr. Venkatraman put the public at risk.

82. This arrangement demanded more oversight than Mr. Venkatraman provided. His conduct damaged his own reputation and the reputation of the profession. The public confidence in the profession has suffered. For that, Mr. Venkatraman must be sanctioned and a reprimand will not suffice. A fine will not suffice. A suspension is the appropriate sanction.

83. It is recognized that a suspension imposed by the Law Society of Alberta carries a significant degree of stigma within the profession and the public domain. As a matter of public confidence in the profession, that is the only proper outcome in this case notwithstanding the integrity of the lawyer suspended.

84. No referral to the Attorney General is necessary. The Attorney General is well aware of these circumstances and the guilty party within Mr. Venkatraman's Firm has been imprisoned for her crimes.

85. Mr. Venkatraman is found guilty of citation 1, 2, 3, 4, 6 and 7. Citation 5 is dismissed. The Hearing Committee imposes the following sanction on Mr. Venkatraman

(a) Mr. Venkatraman is suspended for a period of 1 month;

(b) The suspension shall commence December 23, 2013;

(c) Mr. Venkatraman shall pay the costs of these proceedings in the amount of $10,481.63;

(d) Time to pay those costs was granted for a period of 3 months following December 23, 2013;

(e) The Notice to Profession will issue together with the directions above respecting the availability of the decision and the Exhibits herein.

Dated at Edmonton, Alberta, this 28th day of July, 2014.

_____ _____

Kathleen A. Ryan, QC, Bencher & Chair Dennis Edney, QC, Bencher

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Derek Van Tassell, QC, Bencher

APPENDIX 1

IN THE MATTER OF THE *LEGAL PROFESSION ACT*

AND

IN THE MATTER OF A HEARING REGARDING THE

CONDUCT OF PUBALAGAN ("POPS") VENKATRAMAN,

A MEMBER OF THE LAW SOCIETY OF ALBERTA

AGREED STATEMENT OF FACTS

Introduction

1. Pubalagan ("Pops") Venkatraman (the "Member") was admitted to the Alberta Bar on May 30, 1978.

2. The Member is an active member of the Law Society of Alberta, practicing primarily in the area of real estate and conveyancing. At all relevant times, the Member was the principal of and senior practitioner with Venkatraman & Purewal, an association of independent practitioners (the "Firm").

Citations

3. The Conduct Committee referred the following cited conduct by the Member to a hearing:

    1. IT IS ALLEGED that you failed to serve your client B.R. Ltd., and that such conduct is conduct deserving of sanction.

    2. IT IS ALLEGED that you generally failed to properly supervise your employee T.E., and that such conduct is conduct deserving of sanction.

    3. IT IS ALLEGED that you failed to follow the accounting rules of the Law Society of Alberta, and that such conduct is conduct deserving of sanction.

4. IT IS ALLEGED that you failed to properly supervise your employee T.E. in the matter of a transaction involving M.T. and B.A. Ltd., and that such conduct is conduct deserving of sanction.

5. IT IS ALLEGED that you failed to serve your clients M.T. and B.A. Ltd. In a conscientious, diligent and efficient manner, and that such conduct is conduct deserving of sanction.

6. IT IS ALLEGED that you failed to properly supervise your employee T.E. in the matter of a transaction involving A.K. and R. Ltd., and that such conduct is conduct deserving of sanction.

7. IT IS ALLEGED that you failed to supervise your employee T.E. in the matter of transactions involving M.M., and that such conduct is conduct deserving of sanction.

CITATION #1: It is alleged that you failed to serve your client, B.R. Ltd., and that such conduct is conduct deserving of sanction.

4. Beginning in March 2003, the Member acted for a company called M.P. in purchasing a residence located at xxxx - xxx Avenue, Edmonton, for the amount of $68,500.00.

5. On April 25, 2003, as agent for the transferee, the Member swore an Affidavit of Transferee stating that the value of that property was $68,500.00. On May 2, 2003, the transfer of that land to M.P. was registered on the Title.

6. In the interim, on April 5, 2003, R.D. entered into a real estate purchase contract with M.P. for the same residence. The Member acknowledges that he also acted as legal counsel for R.D. and the lender in this transaction.

7. On May 5, 2003, B.R. Ltd. faxed its mortgage instructions to the Firm. Pursuant to those instructions, the Member was to notify B.R. Ltd. immediately if he learned that any credits in

favour of the purchaser arose during the transaction other than by way of payment of funds through the lawyer's trust account, or a licensed realtor's trust account.

8. The Member's duty to report under those instructions also specified that it included deposits allegedly paid directly from the purchaser to the vendor, as well as allowances or credits in favour of the purchaser that were of an "unusual nature."

9. Subsequently, on May 16, 2003, M.P. executed a transfer of land for the property to R.D. for $133,600.00. On that same date:

a) R.D. swore an Affidavit of Transferee before the Member, stating that in his opinion the property had a value of $133,600.00;

b) R.D. signed the mortgage, with a principal amount of $115,831.20 issued by B.R. Ltd., which was witnessed by the Member; and

c) The Member completed the transaction documentation, including certification that the transaction had closed according to the purchase contract, and enclosing a Statement of Adjustments. The Statement of Adjustments indicated an adjustment of $19,454.16 "between purchaser and vendor directly."

10. The Member states that he was informed by M.P.'s principal and R.D. that the $19,454.16 would be paid directly between them. The Member took their word on it, and did not take any further steps to confirm that the adjustment had in fact occurred between the parties.

11. The transfer of land to R.D. was then registered on the title. On June 3, 2003, the Firm wrote to B.R. Ltd. and requested the mortgage proceeds, which were provided.

12. The Member admits that he failed to serve his client, B.R. Ltd., in that:

a) He did not seek confirmation that that the claimed adjustment between the parties had actually been made;

b) Contrary to the mortgage instructions, he did not notify B.R. Ltd. that credits to the purchaser had arisen outside of an authorized trust account; and

c) He executed transactional documentation showing an elevated value for the property from $68,500.00 to $133,600.00 within a period of 3 weeks (April 25 to May 16, 2003) and did not notify B.R. Ltd. of that significant increase in the property's stated value.

CITATION #2: It is alleged that you generally failed to properly supervise your employee, T.E., and that such conduct is deserving of sanction.

13. This citation relates to the Member's failure to supervise the activities of his employee, T.E., who acted as a real estate paralegal and as the bookkeeper for the Firm at all relevant times. Throughout her employment the Member was responsible for the supervision and management of T.E.

14. T.E. started her employment with the Firm in April 2001, initially as a real estate conveyancing paralegal. At the end of March 2003, the Firm's bookkeeper, D.M., left its employ. T.E. assumed the bookkeeping duties in May 2003, in addition to her paralegal work.

15. As the Firm's bookkeeper, T.E. was in charge of keeping track of deposits, reconciling bank statements, entering information into the Firm's accounting program, issuing and issuing cheques. T.E. had signing authority on two trust accounts, which required a second signature from one of the Firm's lawyers. She also had actual possession of the Firm's banking records, and was the only staff member who had access to the trust ledger.

16. The Member acknowledges that he is not a sophisticated computer user, nor does he have an accounting background.

17. Prior to T.E.'s assumption of the bookkeeping duties, the Member would receive monthly lawyer reports that would disclose file openings and funds in trust for each client. After T.E. became the Firm bookkeeper, she did not provide such monthly reports, and the Member did not request them from her.

18. Under the previous direction of D.M., the Firm attached trust account logs to the inside of cover of each real estate transaction file. Those logs were intended to show the relevant trust account information, such as deposits, dates and amounts, so that the lawyer could quickly refer to them to determine whether sufficient funds were available to cover funds being disbursed by cheque.

19. After assuming the bookkeeping role, T.E. was the staff member responsible for completing the log entries, posting information and requisitioning cheques.

20. T.E. held her dual positions until April 12, 2005, at which time she left the Firm, ostensibly on a stress leave. She did not return to work at the Firm.

21. The next day, April 13, 2005, the Firm discovered that its computer systems had crashed. All data on its hard drives were inaccessible, including its banking and bookkeeping data. Back-ups of the Firm's financial data were missing; there was also evidence that other financial information and cheques had been removed from the Firm.

22. The Firm hired experts to try and recover the lost information. They did not receive the hard drives back until the end of April 2005. The Firm then approached D.M. to return to work and assist the Firm in reconstructing its financial records.

23. D.M. found numerous mistakes, missing documentation, and false postings and adjustments during her review of the records. She formed the opinion that a massive trust defalcation had occurred, which the Firm reported to the Law Society.

24. A Rule 130 audit was commenced on May 26, 2005; the preliminary audit investigation report is attached at **[TAB 6]**. The audit found a trust account shortfall of approximately $1.9 million as at May 31, 2005, which had accumulated during the period that T.E. had been the bookkeeper.

25. Approximately $1.6 million of that shortfall was attributable to files involving an individual named G.P. and his associated companies. At that time, G.P. had been named as a defendant in civil litigation brought by Bank A, which alleged that he was involved in mortgage fraud. G.P. also had a personal relationship with T.E.

26. The Firm retained its own forensic accountant, who provided her report to the Law Society in December 2006. The report is attached at **[TAB 7]**. In summary, her review confirmed the shortfalls identified in the Rule 130 audit, and indicated that the Firm's bank balances and trust reconciliations had been manipulated to artificially balance them. After addressing the numerous irregularities, she concluded that the total trust shortage was $1,982,439.16. Of that shortfall, $1,683,046.68 was attributable to G.P. and his associated companies.

27. The Firm's file no. xxxxx related to XXXXXXX Alberta Ltd., a company controlled by G.P. That file contained $1,609,420.46 of the trust shortfall. Firm file no. xxxxx related to XXXXXXX Alberta Ltd., another G.P.-controlled company, which contained a trust shortfall of $71,171.22. Each of those files was opened by T.E. without the Member's knowledge.

28. Between 2001 and 2005, G.P. operated a fraud scheme involving the purchase, mortgage and sale of marginal quality residences in Edmonton and Camrose. The scheme involved superficial, if any, renovations, the recruitment of straw-buyers to obtain mortgages, artificially inflated property values and material misrepresentations in the mortgage applications to the lenders.

29. In the spring of 2003, G.P. began referring clients to the Firm, mostly the buyers of his properties and the involved mortgage lenders. T.E. exclusively attended to G.P.'s transactional work. Ultimately, T.E. began opening files on her own with a number of G.P.'s companies as clients. T.E. had her own file code – 'xx' - which she used to open files under the name of the Member, and then process and consolidate suspicious transactions without the Member's knowledge.

30. The Member did not wish to have G.P. as a client, as he was suspicious of his activities. However, G.P. was responsible for referring a significant volume of business to the Firm on the other side of his transactions. The Member was aware that G.P. attended at the Firm frequently and met with T.E. on almost every occasion, initially behind closed doors. T.E. was eventually instructed by the Member to not meet with G.P. in private at the Firm, but she continued to do so.

31. In late 2004 or early 2005, the Member became aware that T.E. was doing real estate work directly for G.P. as there were files relating to him or his associated companies, and outstanding fees and disbursements owed in an amount between $20,000 and $30,000. The Member spoke to T.E. and she promised to collect the outstanding amounts, but that did not occur.

32. Most of T.E.'s fraudulent activities revolved around file no. xxxxx, which she kept physical custody of. Following the Member's discovery of her work for G.P. directly, and the fees and disbursements owed by G.P., T.E. became even more possessive of file no. xxxxx. Following her departure from the Firm, file no. xxxxx was missing; even after the execution of search warrants, including one at T.E.'s home, the entire physical file was not found.

33. Also in or about late 2004 or early 2005, and after a falling-out with T.E., the Member had another lawyer at the firm, Mahendra ("Mergs") Pillay, primarily supervise T.E.'s work to ensure that her files were concluded and all outstanding amounts paid.

34. The Member was aware that Pillay was primarily a litigator and had less experience with real estate transactions than the Member. Pillay was not able to exercise any meaningful supervision or control over T.E.'s activities; ultimately T.E. forged Pillay's signature on numerous trust cheques to disburse mortgage proceeds and other sums related to the mortgage fraud scheme.

35. The Member became more concerned about the financial affairs of the Firm and T.E.'s handling of them. The Member met with T.E. on February 28, 2005 to go over the financial matters that required her immediate attention. Those matters and the Member's instructions were then outlined in a memorandum from the Member to T.E. dated March 3, 2005, as follows:

- Complete all postings as at February 28, 2005;
- Complete all trust account reconciliations as at January 31, 2005;
- Provide balance sheets for individual lawyer's account as at February 28, 2005;

- Provide all real estate files that have been billed or unbilled in your possession to Pops on or before the close of business on March 4, 2005.

36. The memorandum also directed that the postings and balance sheets be completed by March 21, 2005, and that T.E. was not to work on any real estate files until that work was completed. The memorandum also indicated that pursuant to instructions from the Firm`s accountant, an internal audit was being conducted of all files. The Member provided two copies of the memorandum to T.E., one of which was to be signed and returned as acknowledgement of receipt.

37. The memorandum was not signed or returned, and the requested work was not completed. The Member made requests for the memorandum's return; T.E. provided excuses for delaying to do so. The Member did not ensure that the memorandum was executed and returned, nor ensure that the requested tasks had been completed. The unsigned copies of the memorandum were later found at T.E.'s residence following the execution of a search warrant.

38. Following the discovery of the trust shortages, the police investigated and arrested a number of individuals identified with the G.P. mortgage fraud scheme, including T.E. T.E. was charged with 28 separate offences under the *Criminal Code*, including 24 counts of fraud (s. 380(1)(a)), one count of committing fraud for the benefit of or at the direction of or in association with a criminal organization (s. 467.12), and one count of conspiring to commit fraud with named an unnamed co-conspirators (s. 465(1)(c)).

39. After a one-month Queen's Bench trial, Justice Verville rendered his reasons in *R. v. Ellis*, 2007 ABQB 722 **[TAB 8]**. The Member, T.E., Pillay and others testified at trial. It was Justice Verville's opinion that:

a) the Member did not properly supervise T.E., particularly with respect to T.E.'s work on G.P. files;

b) the Member was irresponsible in directing T.E. to report to Pillay (the Member does not agree with this opinion); and

c) the lack of supervision or controls at the Firm created "the ideal environment within which a dishonest person could conduct fraudulent transactions" **[TAB 8, paras. 163-164]**.

40. T.E. was ultimately convicted on 16 of the 28 charges against her. In January 2008 she was sentenced to 6 years in prison less time served **[TAB 9]**.

41. During T.E.'s tenure as both a real estate paralegal and the Firm's bookkeeper, the Member's lack of supervision enabled T.E. to:

a) Accept and open files for real estate transactions unilaterally, and to conceal those file openings for long periods of time;

b) Exercise almost complete, independent control over certain client files, such as file xxxxx for XXXXXXX Alberta Ltd., a company controlled by G.P. That file was then used to pool various funds related to the mortgage fraud scheme;

c) Meet with clients and execute documentation relating to property transactions on numerous occasions without a lawyer being present;

d) Take instructions from clients and act upon them without relaying either to a lawyer;

e) Shield her activities as the Firm's bookkeeper, by not providing monthly lawyer reports indicating new file openings and trust balances for those clients; and

f) Manipulate the Firm's financial records to conceal her illegal activities between November 2003 and the end of her employment in April 2005.

42. The Member admits that he generally failed to properly supervise T.E.

Citation #4 ("2(A)"): IT IS ALLEGED that you failed to properly supervise your employee T.E. in the matter of a transaction involving M.T. and B.A. Ltd., and that such conduct is conduct deserving of sanction.

43. This citation involves the purchase of property by an apparent straw buyer in the G.P. mortgage fraud scheme, and a mortgage placed on the Title for Bank A.

44. The transaction involved XXXXXXX Alberta Ltd. as the vendor of a property located at xxxxxx – xx Street, Edmonton. That company was controlled by G.P., and was represented by Scott Park. The purchaser was M.T. and the lender was Bank A, both represented by the Member. The Member acknowledges that he was legal counsel to both M.T. and Bank A in this transaction, and that he was responsible for its proper handling.

45. Bank A approved M.T. for a mortgage in the amount of $158,901.75. The property was encumbered by two mortgages and one caveat, all of which were to be discharged upon payment of the cash to close and leaving Bank A with the first mortgage on Title once the transaction was completed.

46. On November 26, 2003, Park sent the purchase documents to the Member under trust conditions. Upon payment of the cash to close, Park also gave his undertaking that he would pay out the two existing mortgages and provide the Member with an updated Title.

47. Bank A advanced the mortgage on November 19, 2003, and the Member remitted the cash to close to Park. Park did not take any steps to remove the encumbrances from the title in accordance with his undertaking.

48. In February 2004 the Firm provided Bank A with a Solicitor's Report and a covering letter respecting the transaction. Another member of the Firm signed the Solicitor's Report in the Member's absence, which had been prepared by T.E. The Solicitor's Report erroneously

stated that Bank A's mortgage was the first charge against the property. The Member authored the covering letter, which indicated that the two prior mortgages still had to be discharged.

49. In January 2005, Greg Reid of Witten LLP, on behalf of Bank A, wrote the Member requesting a Solicitor's Final Report with a copy of a certified Title showing Bank A as first charge.

50. By this time, Bank A's mortgage had been advanced and funded for more than one year. Upon receipt of Reid's letter, the Member immediately wrote Park and requested confirmation of the discharges. The discharges were finally provided by Park on March 2, 2005.

51. T.E. handled the completion and execution of the key transaction documents, including the mortgage itself and the related affidavits, at a meeting she conducted with M.T. on November 7, 2003. The Member acknowledges that he was not involved in that meeting.

52. [redacted]

53. The Member admits that he failed to supervise T.E. in the following respects:

a) T.E. met with his client and executed documents outside his presence, [redacted]

b) He did not adequately review the transactional documents prepared by T.E., which were related to the ongoing G.P. mortgage fraud scheme; and

c) Due to his absence from the office on holiday for part of the relevant time period, he did not ensure that T.E. or others took timely steps to ensure that the prior encumbrances had been removed from the property in accordance with Park's undertaking and the lender's instructions.

Citation #6 ("2(B)"): IT IS ALLEGED that you failed to properly supervise your employee T.E. in the matter of a transaction involving A.K. and R. Ltd., and that such conduct is conduct deserving of sanction.

54. This citation is with respect to the Member's failure to supervise T.E., and involved the purchase of property by an apparent straw buyer in the G.P. mortgage fraud scheme, and a mortgage placed on the Title for Bank B. The Member had no involvement in, nor knowledge of, this transaction.

55. The transaction involved a property located at xxxxx – xx Street, Edmonton, which had previously been the subject of a number of sales and re-sales with progressively inflated estimates of value, consistent with the G.P. mortgage fraud scheme.

56. The vendor in the relevant transaction was XXXXXXX Alberta Ltd., a company controlled by T.K., who was a close associate of G.P. and subsequently known to be involved in the G.P. mortgage fraud scheme for many years.

57. The purchaser was A.K., T.K.'s older brother; the mortgage lender was Bank B. The Member acknowledges that he was legal counsel to both A.K. and the Bank B in this transaction, and that he was responsible for its proper handling.

58. In January 2005, Bank B issued a mortgage to A.K. in the amount of $86,250 for the purchase of the property; the Firm opened a file respecting the transaction at that time. This was a matter "xx" file, indicating that it was opened and administered by T.E.

59. The property was subject to a prior mortgage in the amount of $56,250 granted by Bank C. Bank B had issued its standard mortgage instructions to the Member, which included provision that Bank B would be the first charge on the property following the transaction.

60. The transfer of land from XXXXXXX Alberta Ltd. to A.K. was registered on title February 4, 2005. Despite that registration, the subsisting Bank C mortgage was not paid out until May 25, 2005, and was not discharged until June 8, 2005.

61. In the period between February 4 and the end of her employment with the Firm on April 12, 2005, and unbeknownst to the Member, T.E. disbursed Bank B's mortgage proceeds to various parties, but did not discharge Bank C's mortgage.

62. The property went into foreclosure on the Bank C mortgage in May 2005, and the Firm was notified of that fact. The Firm subsequently provided the sum of $57,918.94 to Bank C's solicitors and requested that the Bank C mortgage be discharged. The sum provided by the Firm did not come from the Bank B mortgage proceeds.

63. The Member had only cursory involvement in the file. He was not involved in opening, conducting or closing the file; T.E. took all of the material steps throughout, including the preparation of Transfers and swearing the Affidavit of Value as the Commissioner for Oaths.

64. This file was opened by T.E. during the time that the Member had passed supervision of her over to Pillay. Despite that, the Member admits that he was ultimately responsible for the supervision of T.E.

65. The Member admits that he failed to supervise T.E. in the following respects:

a) T.E. was able to open, conduct and conclude this transaction file, which was related to the G.P. mortgage fraud scheme, without any meaningful supervision or oversight;

b) He conducted no meaningful review of the transaction documents or the financial reporting associated with the file, leaving all of those tasks to T.E.; and

c) He did not ensure that T.E. or others took timely steps to ensure that the prior encumbrances had been removed from the property in accordance with the lender's instructions.

Citation #7 ("2(C)"): IT IS ALLEGED that you failed to supervise your employee T.E. in the matter of transactions involving M.M., and that such conduct is conduct deserving of sanction.

66. This citation is with respect to the Member's failure to supervise T.E., and involved the purchase of property by an apparent straw buyer in the G.P. mortgage fraud scheme named M.M.

67. The transaction involved the purchase of two properties by M.M. in Edmonton. The vendor was a company called D. Inc. The Firm, being T.E. in this case, acted on behalf of M.M. and attended to the transfers. The Firm opened a file, notionally under the Member's name, but this was a matter "xx" file which was opened and administered by T.E.

68. The principal of D. Inc. spoke with M.M. and indicated that his company had two houses that M.M. could purchase for no money down; all he had to do was make the mortgage payments. If at any time he felt he was unable to afford those mortgage payments, then the Transfers and mortgages could be reversed back to D. Inc.

69. The properties were transferred to M.M. in early February 2004. M.M. met with T.E. and executed all of the transfer and mortgage assumption documentation; M.M. may have believed that T.E. was in fact his lawyer. Neither the Member nor any other lawyer had any substantive involvement in the administration of the transactions.

70. On February 2, 2004, T.E. also wrote to the mortgage lender requesting a mortgage assumption statement. She advised that the Member was acting for D. Inc., which was incorrect, and she signed the letter ostensibly on the Member's behalf. The Member was unaware of this correspondence.

71. After a few months, M.M. discovered that he could not afford the mortgages and he intended to move to Toronto. He then returned to the Firm and sought to speak with T.E., who was not there at that time. He indicated that he wanted to "reverse" the mortgages. He was told that due to a documentation error, only one of the titles had been transferred to him in any

event. M.M. left the Firm with the understanding that the one outstanding title would be reversed and taken out of his name.

72. M.M. then moved to Toronto. Six months later, he received copies of legal documentation indicating that the property that had been transferred to him was the subject of foreclosure. A foreclosure order had been registered by the mortgage lender on August 27, 2004.

73. In the interim, T.E. issued 2 trust cheques from the M.M. transaction file which resulted in a negative trust balance of $12,760.95. One of the cheques was to the mortgage lender to cover an arrears payment; the other, larger amount was paid to T.K., the associate of G.P. T.E. then posted a fictitious, back-dated trust transfer to the M.M. file of $12,760.95 in April 2004.

74. The Member admits that he failed to supervise T.E., in that T.E. was able to open, conduct and conclude this transaction file, which was related to the G.P. mortgage fraud scheme, without any meaningful supervision or oversight.

CITATION #3: **It is alleged that you failed to follow the accounting rules of the Law Society of Alberta, and that such conduct is conduct deserving of sanction.**

75. The Member acknowledges that he was the Responsible Lawyer, as that term is defined and used in the Rules of the Law Society of Alberta, for the Firm's accounts including its trust accounts.

76. As stated in the admitted facts supporting Citation #2, T.E. caused a trust shortage at the Firm totaling $1,982,439.16. The Firm's two primary trust accounts between 2003 and 2005 were with the Bank A and Bank D.

Background on Trust Reconciliations

77. Monthly trust reconciliations are prepared by all law firms to ensure that the trust accounts maintained by the firm are balanced and to ensure that errors and shortages are identified and corrected. The trust reconciliation enables law firms to identify problems such as debit balances (trust shortages), outstanding deposits, bank service charges, bank errors and recording or posting errors on the trust account. The trust reconciliation is the key document for proper maintenance of the trust account.

78. When reviewing the trust reconciliation, the Member acknowledges that it is prudent that the responsible lawyer, at a minimum:

- Ensures the trust reconciliation balances;
- Reviews for debit balances (trust shortages) on the trust listing;
- Reviews for bank service charges on the bank reconciliation;
- Ensures outstanding deposits have cleared within a few days;
- Ensures that adjustments are properly identified and explained.

Debit Balances (Trust Shortages)

79. Debit balances are trust shortages on client trust ledger cards. They occur when a firm pays out more money than it holds in trust for a client. Debit balances show up on the monthly trust reconciliations as positive amounts on the trust listings; they must be identified and corrected immediately.

80. Between June 2003 and September 2004 (inclusive), the Firm experienced a multitude of debit balances in its Bank A trust reconciliation, including 6 debit balances in excess of $150,000 **[TAB 10].**

81. Between July 2004 and October 2004 (inclusive), the Firm experienced a number of debit balances in its Bank D trust reconciliation, including 5 debit balances in excess of $50,000 **[TAB 11].**

82. The Member admits that he failed to identify those debit balances, and did not properly review the reconciliations from those time periods.

83. The Member acknowledges that he did not have the necessary understanding to apply the accounting rules and ensure that the reconciliations were appropriate prior to approving and signing them. He did not question his bookkeeping staff about the reconciliations prior to approving them.

Unexplained Adjustments (Plugs)

84. Unexplained differences or adjustments represent reconciling items that are not explained. In effect, they are plugs to the reconciliation. The Member acknowledges that there should be no unexplained differences or adjustments on the trust reconciliation.

85. Between January 2003 and July 2005, the Firm's trust account reconciliations for both Bank A and Bank D contained a number of significant and unexplained adjustments.

86. The attached table outlines a sample of unexplained adjustments from each trust account between June 2003 and October 2004 (inclusive). All were characterized as "other deductions" on the bank statements, and none had any notes or accompanying documentation to support the amounts noted **[TAB 12].**

87. Most prominent were the significant, unexplained adjustments of $438,693.22 and $690,034.01 made in April and May of 2004, respectively. Each of those adjustments appear to have been made by T.E. in furtherance of the mortgage fraud scheme.

88. The Member admits that he failed to identify those adjustments, and did not make further inquiries to ensure that those adjustments were justified.

Unsupported Deposits in Transit (Outstanding Deposits)

89. Deposits in transit, also known as outstanding deposits, represent trust funds received by a law firm but not deposited into the trust bank account before the reconciliation date (month-end), and are therefore not reflected on the bank statement used to prepare the reconciliation. This normally occurs at month-end when trust funds are received on the last day of the month but are not deposited into the bank account until the next banking day.

90. The Member acknowledges that deposits in transit should be supported on the reconciliation with a list broken down by source, file number and the amount. Further, a law firm must ensure the outstanding deposit clears the bank account early the next month to ensure that the cheque or other negotiable instrument has not been lost or misplaced. Any unsupported or unexplained deposit in transit on the reconciliation is effectively a plug that covers up a shortage in the trust account by artificially inflating the bank balance.

91. Between June 2003 and September 2004, the Firm's trust account reconciliations for both Bank A and Bank D contained a large number of significant and unsupported deposits in transit.

92. The attached table outlines a sample of deposits in transit, or additions to the bank balances, that were unsupported by any notes or other documentation attached to the trust reconciliations **[TAB 13].** The table indicates 17 instances of unsupported deposits in transit exceeding $150,000.

93. The Member admits that he failed to make the necessary inquiries to ensure that those deposits in transit were justified and supported by adequate documentation.

Un-posted Transactions

94. Between June 2003 and September 2004, the Firm's trust account reconciliations for both Bank A and Bank D contained a number of un-posted transactions.

95. The attached table outlines a sampling of un-posted transactions noted in the Firm's trust reconciliations between June 2003 and October 2004 **[TAB 14].**

96. None of the amounts shown were supported by notes or other documentation. The only plausible explanation for the significant un-posted transactions is that they were used as "plugs" to force balances between the Firm's bank account and the general ledger, and to create the illusion that the trust reconciliations were in balance.

97. The Member admits that he failed to make inquiries with his bookkeeping staff to verify the legitimacy of the un-posted transactions.

Review of Trust Reconciliations

98. As the Responsible Lawyer for the Firm's financial records, the Member acknowledges his responsibility to review the Firm's trust reconciliations in a thorough, accurate and timely manner, within one month of the reconciliation date.

99. Between January 2003 and June 2005, 25 monthly trust reconciliations were prepared respecting the Firm's Bank A trust account. The last 23 of those reconciliations were prepared by T.E. **[TAB 15].**

100. Of those 25 reconciliations, 5 were not signed at all: December 2003, April 2004, November 2004, December 2004, and January 2005. A further 13 reconciliations were signed late, being more than 30 days following the reconciliation date.

101. Between December 2003 and January 2005, 14 monthly trust reconciliations were prepared respecting the Firm's Bank D trust account, all of which were prepared by T.E. **[TAB 16].**

102. Of those 14 reconciliations, 7 were not signed at all. Of the 7 that were signed, 6 were signed late, being more than 30 days following the reconciliation date.

103. The Member acknowledges that in the instances that he did review the Firm's trust reconciliations, his reviews were cursory and did not ensure sufficient control over, or the accuracy of, the Firm's financial reporting.

104. The Member admits that he failed to comply with the accounting rules of the Law Society of Alberta in all of the foregoing respects.

Admissions of Facts and Guilt

105. The Member admits to the above Agreed Facts, and admits guilt to Citations 1, 2, 3, 4, 6, and 7.

THIS AGREED STATEMENT OF FACTS IS MADE this 11th day of December, 2013.

Per: Pubalagan ("Pops") Venkatraman