

## 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 **PETER A. CRISFIELD**  
a Member of The Law Society of Alberta

### INTRODUCTION AND SUMMARY OF RESULT

1. On November 7, 2012 a Hearing Committee of the Law Society of Alberta (LSA) convened at the Law Society offices in Calgary to inquire into the conduct of the Member, Peter A. Crisfield. The Committee was comprised of James Glass Q.C., Chair, Robert Harvie Q.C. and Wayne Jacques, Lay Benchers. The LSA was represented by Ms. Molly Naber-Sykes. The Member was present throughout the hearing and was represented by Mr. James Thornborough.
2. The Member faced four citations:
  1. IT IS ALLEGED THAT you failed to serve your client, and that such conduct is conduct deserving of sanction.
  2. IT IS ALLEGED THAT you failed to obtain instructions from your client or, in the alternative, you failed to ensure that the instructions received from a third party on behalf of your client accurately reflected the wishes of your client, and that such conduct is conduct deserving of sanction.
  3. IT IS ALLEGED THAT you failed to serve your client, and that such conduct is conduct deserving of sanction.
  4. IT IS ALLEGED THAT you failed to obtain instructions from your client or, in the alternative, you failed to ensure that the instructions received from a third party on behalf of your client accurately reflected your wishes of your client, and that such conduct is conduct deserving of sanction.
3. At the commencement of the hearing, counsel for the LSA and Mr. Crisfield presented the Hearing Committee with an Agreed Statement of Facts in relation to all four citations. Further, counsel for the LSA and Mr. Crisfield confirmed that this was **not** an Admission of Guilt and therefore the Hearing Committee did not have to make a ruling pursuant to s. 60 of the Legal Profession Act.
4. On the basis of the Agreed Statement of Facts, the other evidence received at the hearing, an entry of guilty pleas to Citations 2 and 4 and for the reasons that follow, the Hearing Committee found the conduct of Mr. Crisfield to be deserving of sanction on the two citations of admitted guilt. The Hearing Committee sanctioned Mr. Crisfield by issuing a reprimand, a fine of \$5,000.00 and directed the payment of costs in the amount of \$4,121.25.

## **JURISDICTION AND PRELIMINARY MATTERS**

5. Exhibits 1-4, consisting of the Letter of Appointment of the Hearing Committee, the Notice to Solicitor, the Notice to Attend and the Certificate of Status of the Member, established the jurisdiction of the Hearing Committee. The Certificate of Exercise of Discretion was entered as Exhibit 5. These Exhibits were entered into evidence by consent.
6. There was no objection by the Member's counsel or counsel for the LSA regarding the constitution of the Hearing Committee.
7. The entire hearing was conducted in public.

## **CITATIONS**

8. The Member faced four citations:
  1. IT IS ALLEGED THAT you failed to serve your client, and that such conduct is conduct deserving of sanction.
  2. IT IS ALLEGED THAT you failed to obtain instructions from your client or, in the alternative, you failed to ensure that the instructions received from a third party on behalf of your client accurately reflected the wishes of your client, and that such conduct is conduct deserving of sanction.
  3. IT IS ALLEGED THAT you failed to serve your client, and that such conduct is conduct deserving of sanction.
  4. IT IS ALLEGED THAT you failed to obtain instructions from your client or, in the alternative, you failed to ensure that the instructions received from a third party on behalf of your client accurately reflected your wishes of your client, and that such conduct is conduct deserving of sanction.

## **EVIDENCE**

9. As noted above, Exhibits 1-5 (the jurisdictional exhibits) were entered into evidence by consent. Exhibits 6–38 were entered into evidence by consent.
10. The Agreed Statement of Facts was marked as Exhibit 39 and entered into evidence by consent. The Agreed Statement of Facts was signed by the Member on November 7, 2012 and the Member acknowledged same.

## FACTS

11. The Agreed Statement of Facts (Exhibit 39) is reproduced herein:

***IN THE MATTER OF THE LEGAL PROFESSION ACT***

***AND***

***IN THE MATTER OF A HEARING REGARDING THE  
CONDUCT OF PETER A. CRISFIELD,  
A MEMBER OF THE LAW SOCIETY OF ALBERTA***

**AGREED STATEMENT OF FACTS**

**INTRODUCTION**

1. *Mr. Crisfield was admitted to the Law Society of Alberta on May 3, 1983.*
2. *Mr. Crisfield has been a sole practitioner since October 3, 2005.*
3. *Mr. Crisfield has a general practice which includes real estate transactions.*

**CITATIONS**

4. *On November 1, 2011, the Conduct Committee Panel referred the following conduct to hearing:*
  1. *IT IS ALLEGED THAT you failed to serve your client, and that such conduct is conduct deserving of sanction.*
  2. *IT IS ALLEGED THAT you failed to obtain instructions from your client or, in the alternative, you failed to ensure that the instructions received from a third party on behalf of your client accurately reflected the wishes of your client, and that such conduct is conduct deserving of sanction.*

*These citations arose as a result of a complaint by L.V.*

5. *On May 17, 2012, the Conduct Committee Panel referred the following conduct to hearing:*
  3. *IT IS ALLEGED THAT you failed to serve your client, and that such conduct is conduct deserving of sanction.*
  4. *IT IS ALLEGED THAT you failed to obtain instructions from your client or, in the alternative, you failed to ensure that the instructions received from a third party on behalf of your client accurately*

reflected your wishes of your client, and that such conduct is conduct deserving of sanction.

These citations arose as a result of a complaint by K.H., who is L.V.'s son.

**K.H.**

**PURCHASE OF X CONDOMINIUM**

6. On November 4, 2007, David Goldenberg signed a Residential Real Estate Purchase Contract offering to buy a condominium, for \$277,110.00 from ##### Alberta Ltd. (the seller). The seller accepted Mr. Goldenberg's offer on November 4, 2007. The closing date set by the contract was December 3, 2007. Mr. Goldenberg agreed to assume a mortgage in the approximate principal amount of \$270,110 and to pay \$7,000 cash. **(Exhibit 6)**
7. The contract showed the buyer as "David Goldenberg or nominee". The contract identified the seller's lawyer as Allen Howard and the buyer's lawyer as Peter Crisfield.
8. On November 5, 2007, the contract was amended to include a parking stall and storage unit. **(Exhibit 7)**
9. On November 5, 2007, \$3,500 was paid to P.R.D. by way of bank draft. **(Exhibit 8)**
10. On November 13, 2007, the contract was amended to move the mortgage assumption condition day from November 13, 2007 to November 20, 2007. David Goldenberg signed this amendment. **(Exhibit 9)**
11. On November 20, 2007, David Goldenberg signed a notice confirming the mortgage assumption condition had been waived or satisfied. **(Exhibit 10)**
12. By November 26, 2007 letter to Mr. Crisfield, Mr. Howard asked how the purchaser wished to be described in the transfer documents. **(Exhibit 11)**
13. On December 5, 2007, Mr. Crisfield received \$3,750 from David Goldenberg, which he placed in his trust account for file #61702 **(Exhibit 12)**
14. By December 10, 2007 fax, Mr. Crisfield told Mr. Howard the description of the purchaser is K.H. **(Exhibit 13)**
15. By December 10, 2007 letter, Mr. Howard sent Mr. Crisfield the documents to close the contract on the trust conditions set out in his letter. **(Exhibit 14)** Mr. Crisfield did not include in the materials he sent to the Law Society in March, 2011 a copy of the Transfer of Land.
16. By December 17, 2007 letter, Mr. Crisfield sent Mr. Howard his trust cheque for \$4,982.92 as the cash to close plus interest. **(Exhibit 15)**

17. *By January 3, 2008 letter to Mr. Crisfield, Mr. Howard sent the Estoppel Certificate and Certificate of Insurance. (Exhibit 16)*
18. *On February 8, 2008, Mr. Crisfield swore the Affidavit of Transferee as agent of K.H. (Exhibit 17).*
19. *On February 13, 2008, title to the condominium was registered in K.H.'s name. (Exhibit 18)*
20. *On February 27, 2008, Mr. Crisfield sent Bank A. a cheque for \$3,378.10 to cover the mortgage arrears for January and February 2008 on the condominium. (Exhibit 19)*
21. *Mr. Crisfield's August 7, 2008 account addressed to Dave Goldenberg or nominee for the purchase of the condominium is Exhibit 20.*
22. *Mr. Crisfield's client ledger for file #61702 is Exhibit 21.*
23. *Mr. Crisfield acted for the buyer of the condominium. Mr. Goldenberg directed Mr. Crisfield to register title to the condominium in the name of K.H. Mr. Crisfield did not question Mr. Goldenberg's instructions to register the property in the name of K.H. Mr. Crisfield does not recall discussing this transaction with K.H. (Exhibit 22)*
24. *Mr. Crisfield enclosed a copy of his file for the condominium purchase with his March 1, 2011 letter to the Law Society of Alberta. Mr. Crisfield's file does not include a copy of the Transfer of Land. Mr. Crisfield's file contains no reporting letter with respect to the purchase of the condominium.*
25. *Mr. Crisfield's file contains no notes of any conversation with K.H. with respect to this purchase.*

#### **FAILURE TO SERVE K.H.**

26. *Mr. Crisfield represented the buyer of the x condominium. He transferred title to the condominium to K.H. Mr. Crisfield acted as if he were the lawyer for K.H. and acknowledges that he had certain obligations to him as a result of conveying title to the condominium to him.*
27. *Mr. Crisfield did not serve K.H. because:*
  - a) *He did not discuss the transfer of the condominium to K.H. with K.H.;*
  - b) *He did not question Mr. Goldenberg's instructions to register the condominium in the name of K.H.;*
  - c) *He did not tell K.H. that title to the condominium issued in his name;*

- d) *He did not tell K.H. that he was personally obligated on a high ratio CMHC mortgage registered against the condominium;*
- e) *He did not tell K.H. he was responsible to pay condominium fees to the Condominium Association.*

#### **FAILURE TO OBTAIN INSTRUCTIONS FROM K.H.**

- 28. *Mr. Crisfield received no instructions from K.H. with respect to the transfer of the x condominium.*
- 29. *Mr. Crisfield did not ask K.H. whether the instructions he received from David Goldenberg accurately reflected K.H.'s wishes.*

#### **L.V.**

#### **PURCHASE OF ## STREET CONDOMINIUM FROM G.C.**

- 30. *On June 5, 2008, Mr. Crisfield received a fax from David Goldenberg enclosing a Real Estate Purchase Contract for ## Street SE (the ## Street condominium) from G.C. for \$196,000. The buyer is identified as L.V. or Nominee. **(Exhibit 23)***
- 31. *On June 5, 2008, G.C. signed a Transfer of Land for the ## Street condominium to L.V. in the presence of Peter Crisfield. **(Exhibit 24)***
- 32. *On July 11, 2008, Mr. Crisfield ordered an Assumption of Mortgage Statement from Bank B. **(Exhibit 25)***
- 33. *On July 14, 2008, Mr. Crisfield received an Assumption Statement from Bank B. as well as a blank assumption form. **(Exhibit 26)***
- 34. *Mr. Crisfield prepared a Statement of Adjustments for the ## Street condominium with an adjustment date of July 15, 2008. **(Exhibit 27)***
- 35. *On July 22, 2008, Mr. Goldenberg faxed a Mortgage Assumption form and void cheque to Mr. Crisfield **(Exhibit 28)**. Mr. Crisfield has not produced a copy of the signed Mortgage Assumption form or void cheque.*
- 36. *Sometime after July 22, 2008, Mr. Crisfield sent Bank B.:*
  - a) *a cheque for the July 21<sup>st</sup> mortgage payment of \$1,217.73;*
  - b) *the Mortgage Assumption Agreement; and*
  - c) *a void cheque. **(Exhibit 29)***
- 37. *On March 3, 2009, G.C. signed a Transfer of Land to L.V. in the presence of Mr. Crisfield. Mr. Goldenberg signed the Affidavit of Transferee as agent*

for L.V. on March 3, 2009 before Mr. Crisfield as a Commissioner for Oaths. **(Exhibit 30)**

38. On March 6, 2009, Mr. Crisfield sent the Transfer of Land to be registered **(Exhibit 31)**.
39. On March 18, 2009, Mr. Crisfield forwarded \$5,000 of his own funds to Heather Bonnycastle for arrears in payments for the ## Street condominium **(Exhibit 32)**.
40. On March 19, 2009, title to the ## Street condominium is registered in L.V.'s name **(Exhibit 33)**.
41. On March 20, 2009, Ms. Bonnycastle acknowledged receipt of \$5,000 from Mr. Crisfield **(Exhibit 34)**.
42. On March 24, 2009, Terrence McCaffery wrote to L.V. demanding payment of mortgage arrears for the ## Street condominium **(Exhibit 35)**.
43. On April 6, 2009, Bank B. filed a Statement of Claim against G.C. and L.V. **(Exhibit 36)**.
44. On May 13, 2009, L.V. filed a Statement of Defence to Bank B.'s action **(Exhibit 37)**.
45. Mr. Crisfield acted for the vendor and purchaser of the ## Street condominium. Mr. Goldenberg told Mr. Crisfield to register title to the ## Street condominium in L.V.'s name. Mr. Crisfield did not question Mr. Goldenberg's instructions to register the property in L.V.'s name. Mr. Crisfield does not recall discussing this transaction with L.V. **(Exhibit 38)**
46. Mr. Crisfield enclosed a copy of his file for the ## Street condominium purchase and sale with his April 5, 2011 letter to the Law Society of Alberta. Mr. Crisfield's file did not contain a copy of the Transfer of Land, his trust ledger, Statement of Account or any reporting letter.
47. Mr. Crisfield's file contains no notes of any conversation with L.V. with respect to this purchase.

#### **FAILURE TO SERVE L.V.**

48. Mr. Crisfield represented the seller and buyer of the ## Street condominium. He transferred title to the ## Street condominium property to L.V. Mr. Crisfield acted as if he were the lawyer for L.V. and acknowledges that he had certain obligations to her as result of conveying title to the ## Street condominium property to her.
49. Mr. Crisfield did not serve L.V. because:
  - a) he did not discuss the transfer of the ## Street condominium to L.V. with her;

- b) *he did not question Mr. Goldenberg's instructions to register the ## Street condominium in the name of L.V.;*
- c) *he did not tell L.V. that title to the ## Street condominium had issued in her name;*
- d) *he did not tell L.V. she was personally obligated on the mortgage registered against the ## Street condominium;*
- e) *he did not tell L.V. she was responsible to pay condominium fees to the Condominium Association.*

***FAILURE TO OBTAIN INSTRUCTIONS FROM L.V.***

- 50. *Mr. Crisfield received no instructions from L.V. with respect to the transfer of the ## Street condominium.*
- 51. *Mr. Crisfield did not ask L.V. whether the instructions he received from David Goldenberg accurately reflected L.V.'s wishes.*

***ADMISSION OF FACTS***

- 52. *Mr. Crisfield admits as fact the statements in this Agreed Statement of Facts for the purposes of these proceedings.*
- 53. *This Agreed Statement of Facts is not exhaustive and Mr. Crisfield may lead additional evidence not inconsistent with the facts stated in this document. Mr. Crisfield acknowledges the Law Society is not bound by this Agreed Statement of Facts and that it may cross-examine him, adduce additional evidence, or otherwise challenge any point of fact it may dispute in this document.*

***THIS AGREED STATEMENT OF FACTS IS MADE THIS 7<sup>th</sup> DAY OF NOVEMBER, 2012.***

***"Peter Crisfield"***  
**PETER CRISFIELD**

- 12. Counsel for the LSA submitted that the facts in relation to the citations were similar. She submitted that the issue to be determined by the Hearing Committee was whether Mr. Crisfield was entitled to rely upon instructions received from Mr. Goldenberg in relation to the transactions involving the complainants or was he required to obtain those instructions directly from the complainants. She referred the Hearing Committee to Chapter 9, Rule 9 of the Professional Code of Conduct that provides:



**When receiving instructions from a third party on behalf of a client, a lawyer must ensure that the instructions accurately reflect the wishes of the client.**

13. Counsel for the LSA called the complainant, K.H. He was sworn, examined by Counsel for the LSA and provided the following evidence relevant to the citations:

- He is the son of the other complainant, L.V.;
- xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx;
- He worked for Mr. Goldenberg doing maintenance and renovation work on rental properties owned by Mr. Goldenberg;
- He first met Mr. Crisfield in December 2007 when he attended at his office to meet Mr. Goldenberg to receive payment for some of his work;
- There was a meeting being conducted between a variety of individuals in Mr. Crisfield's office involving Mr. Goldenberg. L.V. was also in attendance;
- He received payment from Mr. Goldenberg and left. He did not sign anything nor did he speak to Mr. Crisfield;
- He has never retained the services of Mr. Crisfield at any time;
- He subsequently learned in 2008 that apparently he was the owner of a property referred to in these proceedings as the x condominium. He found this out when he was contacted by the mortgagee who demanded payment on the mortgage registered against the title;
- He contacted Mr. Goldenberg for advice and it was then that he learned that Mr. Goldenberg directed Mr. Crisfield to put the title to the x condominium into his name;
- He did not authorize Mr. Goldenberg or Mr. Crisfield to do this;
- He did not receive any type of reporting about the transaction from Mr. Crisfield;
- He never paid any of the mortgage payments and knew nothing of the transaction until he investigated the matter after being contacted by the mortgagee.

14. Counsel for Mr. Crisfield cross-examined K.H. and he provided the following additional evidence relevant to the citations:

- When he commenced working for Mr. Goldenberg, xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx;
- He had no knowledge of the terms of xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx;
- In December 2007, Mr. Goldenberg owed him in excess of \$10,000.00 for work done;
- He was in fact paid two payments of \$5,000.00 each for his work in December 2007. He recalls that both cheques were written on the account of Mr. Crisfield;
- He knew that Mr. Goldenberg (a disbarred lawyer) acted for himself whenever he could. The use of his name and credit to purchase the x condominium was never discussed with him by Mr. Goldenberg or Mr. Crisfield;
- He did not file a complaint about Mr. Crisfield for three years after he learned of the x condominium matter because he was concerned about the deficiency judgment and its affect on him personally;
- He blames Mr. Crisfield because he believes that he should have been a gatekeeper and ensured a transaction like this would not occur without speaking with him directly.

15. Counsel for the LSA called no further evidence.
16. Counsel for Mr. Crisfield called no evidence.

### JOINT SUBMISSIONS OF COUNSEL ON CITATIONS

17. The LSA has the onus to prove that the conduct of the Member is such that it is worthy of sanction and must prove this on the balance of probabilities.
18. Counsel for the LSA and for Mr. Crisfield jointly submitted that Citations 1 and 3 were not made out.
19. In regards to Citations 2 and 4, Counsel for Mr. Crisfield entered a guilty plea. Mr. Crisfield confirmed these guilty pleas to the Hearing Committee.

### DECISION OF HEARING COMMITTEE ON CITATIONS

20. Section 49 of the *Legal Profession Act* defines conduct deserving of sanction:

49 (1) For the purposes of this Act, any conduct of a member, arising from incompetence or otherwise, that

- (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.

21. Conduct deserving of sanction need not be disgraceful, dishonourable or reprehensible. ***Brendzan v LSA*** (1997), 52 Alta. L.R. (3d) 64 (Q.B.), at paras 30 - 32. Error of judgment may or may not amount to conduct deserving of sanction. ***Law Society of Alberta v. Oshry***, [2008] L.S.D.D. No. 164; ***Law Society of Alberta v. Ter Hart***, [2004] L.S.D.D. No. 25; ***Law Society of Alberta v. Smeltz***, [1997] L.S.D.D. No. 144.
22. The issue is whether the conduct rises to the level of conduct deserving of sanction. In assessing sanctionable conduct, hearing panels often refer to ***Re Stevens and Law Society of Upper Canada*** (1979), 55 O.R. (2d) 405 (Div. Ct.), at p. 410:

What constitutes professional misconduct by a lawyer can and should be determined by the discipline committee. Its function in determining what may in each particular circumstance constitute professional conduct ought not to be unduly restricted. No one but a fellow member of the profession can be more keenly aware of the problems and frustrations that confront a practitioner. The discipline committee is certainly in the best position to determine when a solicitor's conduct has crossed the permissible bounds and deteriorated to professional misconduct. Probably no one could approach a complaint against a lawyer with more

understanding than a group composed primarily of members of his profession.

23. A variety of factors may be considered. These include: whether a specific rule or duty was breached; whether the Member was acting dishonestly or in bad faith; whether the act was isolated or planned; whether personal gain was involved; the opportunity to reflect before the conduct was undertaken; the results or impact of the conduct on the parties, litigants, profession, administration of justice, or public; any steps to cover up the conduct; and, what steps could have been and were taken to correct any errors.
24. Counsel for the LSA did not call any further evidence in relation to Citations 1 and 3. She invited the Hearing Committee to dismiss same. We agree – on the basis of the evidence provided, Citations 1 and 3 are dismissed.
25. In relation to Citations 2 and 4, Counsel for the LSA and Mr. Crisfield submitted that upon the evidence that was before the Hearing Committee, that the citations were made out. In fact, this resulted in the guilty pleas being entered by Mr. Crisfield part way into the hearing. Given the facts and submissions by counsel for the LSA and Mr. Crisfield, the Hearing Committee agrees and finds that Mr. Crisfield's conduct was worthy of sanction in relation to Citations 2 and 4 for failing to ensure that the instructions he received from Mr. Goldenberg accurately reflected the wishes of K.H. and L.V.

#### **JOINT SUBMISSION ON SANCTION**

26. Counsel for the LSA tendered the record of Mr. Crisfield, which was entered as Exhibit 40 by consent. The Record indicates that the Member had one prior disciplinary matter for conduct that resulted in a reprimand in 2010.
27. Counsel for the LSA and Mr. Crisfield jointly submitted that an appropriate sanction for Mr. Crisfield would be:
  - A reprimand;
  - A fine of \$5,000.00;
  - Payment of the actual costs of the hearing; and
  - Confirmation of Mr. Crisfield's personal undertaking to contribute and pay the sum of \$40,000.00 in relation to a civil lawsuit involving these parties on or before the 15<sup>th</sup> of January, 2013.

#### **DECISION AS TO SANCTION**

28. In determining an appropriate sanction, the Hearing Committee is guided by the public interest, which seeks to protect the public from acts of professional misconduct. The primary purpose of disciplinary proceedings is the protection of the best interests of the public and protecting the standing of the legal profession generally. The fundamental purpose of the sanctioning process is to ensure that the public is protected and that the public maintains a high degree of confidence in the legal profession.
29. In *McKee v. College of Psychologists (British Columbia)*, [1994] 9 W.W.R. 374 at page 376, the British Columbia Court of Appeal articulated the following principles, which are equally applicable to the disciplinary process for the legal profession:

“In cases of professional discipline there is an aspect of punishment to any penalty which may be imposed and in some ways the proceedings resemble sentencing in a criminal case. However, where the legislature has entrusted the disciplinary process to a self-governing professional body, the legislative purpose is regulation of the profession in the public interest. The emphasis must clearly be upon the protection of the public interest, and to that end, an assessment of the degree or risk, if any, in permitting a practitioner to hold himself out as legally authorized to practice his profession. The steps necessary to protect the public, and the risk that an individual may represent if permitted to practice, are matters that the professional’s peers are better able to assess than a person untrained in the particular professional art or science.”

30. The Hearing Guide for the LSA, at paragraphs 60 and 61, articulate the relevant factors to be considered in determining the appropriate sanction:

60. A number of general factors are to be taken into account. The weight given to each factor will depend on the nature of the case, always keeping in mind the purpose of the process as outlined above.

- a) The need to maintain the public’s confidence in the integrity of the profession, and the ability of the profession to effectively govern its own members.
- b) Specific deterrence of the member in further misconduct.
- c) Incapacitation of the member (through disbarment or suspension).
- d) General deterrence of other members.
- e) Denunciation of the conduct.
- f) Rehabilitation of the member.
- g) Avoiding undue disparity with the sanctions imposed in other cases.

In one way or another each of these factors is connected to the two primary purposes of the sanctioning process: (1) protection of the public and (2) maintaining confidence in the legal profession.

61. More specific factors may include the following:

- a) The nature of the conduct:
  - (i) Does the conduct raise concerns about the protection of the public?
  - (ii) Does the conduct raise concerns about maintaining public confidence in the legal profession?

- (iii) Does the conduct raise concerns about the ability of the legal system to function properly? (e.g., breach of duties to the court, other lawyers or the Law Society)
  - (iv) Does the conduct raise concerns about the ability of the Law Society to effectively govern its members?
- 31. The Hearing Committee was influenced in its decision as to sanction by the following factors:
  - (a) the Member's co-operation with the LSA;
  - (b) that specific deterrence of the Member will be achieved with a reprimand in these circumstances; and
  - (c) that from a general deterrence perspective, that it is important for all Members of the LSA to understand that compliance with the Code of Conduct is important not only to the Bar, but also to maintain the public's confidence in the legal profession.
- 32. The use of joint submissions is a concept well known in criminal law and not unknown in administrative law cases. While a hearing panel is entitled to decline to accept a joint submission presented by the parties, there is a high threshold to be met for rejecting a joint submission. Taking into account the existing jurisprudence and the public interest, only a joint submission which is truly unreasonable or unconscionable should be rejected.
- 33. In *Nguyen*, reference was made to the Manitoba Court of Appeal's judgment in *R. v. Chartrand*, reflex, (1998), 131 C.C.C. (3d) 122 where Kroft J.A. stated the following:

[8] A sentencing judge is not bound to accept the recommendation, but it should not be rejected unless there is good cause for so doing. ....

See also, *Law Society of Upper Canada v. Stephen Alexander Coopre* 2009 ONSLAP (CANLII), 2009 ONSLAP.
- 34. Based upon the evidence that the Hearing Committee has read and heard in this proceeding, we agree with the joint submission of counsel as to the appropriate sanction for the conduct of Mr. Crisfield.
- 35. Taking into account all of the foregoing factors, the Hearing Committee concluded that the public interest would be protected and confidence in the profession maintained through a reprimand.
- 36. In addition, Mr. Crisfield is directed to pay the actual costs of the hearing. He is given time to pay the costs within 9 months from the receipt by Mr. Crisfield of the Hearing Committee's written decision.
- 37. Mr. Crisfield is directed to pay a fine in the amount of \$5,000.00. He is given time to pay the fine within 9 months from the receipt by Mr. Crisfield of the Hearing Committee's written decision.

38. The Chair delivered the reprimand to Mr. Crisfield, which expressed denunciation for the conduct of a Member that brought discredit to the profession. A copy of the reprimand is appended to this Hearing Report.
39. The Hearing Committee also confirms Mr. Crisfield's personal undertaking to contribute and pay the sum of \$40,000.00 on or before January 15<sup>th</sup>, 2013 in relation to a civil matter involving these parties before the courts.

#### **CONCLUDING MATTERS**

40. The Hearing Committee Report, the evidence and the Exhibits in this hearing are to be made available to the public, subject to redaction to protect privileged communications, the names of any of Mr. Crisfield's clients and such other confidential personal information.

Dated this 25<sup>th</sup> day of March, 2013.

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James A. Glass, Q.C., Bencher  
Chair

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Robert Harvie, Q.C., Bencher

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Wayne Jacques, Lay Bencher

## **REPRIMAND**

Mr. Crisfield, the Law Society of Alberta governs the profession in the public interest. Self-regulation through an independent Law Society is a privilege which our profession enjoys. That privilege is only preserved if lawyers firmly commit to and honour the ethical tents of our profession. We are obligated to serve our clients diligently, conscientiously and with a selfless regard for the clients' interests. Here you have failed in your ethical obligations. You have failed to ensure that the instructions received from a third party on behalf of your client accurately reflected the wishes of your client, and that such conduct is conduct deserving of sanction.

Due to those failings, you exposed K.H. and L.V. to risk that they did not know about or agree to. In these respects, you failed your clients and your profession. The public interest we serve demands more of you. Your standard of conduct fell short. As a consequence, you invited public derision of you and your profession. That loss of confidence is not easily regained. Your professional colleagues, quite frankly, expected more of you. We trust that this type of behavior, based upon what we've heard and the material provided to us, won't occur again.