

IN THE MATTER OF THE *LEGAL PROFESSIONS ACT*  
AND IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF  
**DARRELL ELGERT, A MEMBER OF THE LAW SOCIETY OF ALBERTA**

**REPORT OF THE HEARING COMMITTEE**

**I. INTRODUCTION**

1. On November 29, 2010, a Hearing Committee comprised of Rose M. Carter, Q.C. (Chair), Ron Everard, Q.C., and Wayne Jacques (the Hearing Committee) convened at the Law Society of Alberta (LSA) office in Edmonton, Alberta to inquire into the conduct of Darrell Elgert (Mr. Elgert). Mr. Elgert was represented by Mr. C.B. Davidson and the LSA was represented by Mr. G.A. Groome (Mr. Groome).

**II. CITATIONS**

2. The Member faced 21 citations:

1. IT IS ALLEGED THAT you failed to recommend to your client, A.H., to obtain independent legal representation in respect of personal loan transactions made by your professional corporation to your client, and that such conduct is conduct deserving of sanction.

2. IT IS ALLEGED THAT you breached an undertaking to another lawyer, Kenneth Haak, to discharge a mortgage, and that such conduct is conduct deserving of sanction.

3. IT IS ALLEGED THAT you failed to inform other counsel, Kenneth Haak, on a timely basis of your breach of undertaking, and that such conduct is conduct deserving of sanction.

4. IT IS ALLEGED THAT you failed to recommend to your client, A.H., that she obtain independent legal advice once it became clear that you had breached your undertaking, and that such conduct is conduct deserving of sanction.

5. IT IS ALLEGED THAT you failed to respond in a timely manner to communications from the Law Society that contemplated a reply in the matter of a complaint by Kenneth Haak, and that such conduct is conduct deserving of sanction.

6. IT IS ALLEGED THAT you failed to cooperate with the Law Society by not providing your file(s) in the matter of A.H. in a timely manner as requested, and that such conduct is conduct deserving of sanction.

7. IT IS ALLEGED THAT you failed to respond in a timely manner to communications from another lawyer, James Cregan, that contemplated a reply, and that such conduct is conduct deserving of sanction.

8. IT IS ALLEGED THAT you failed to report a breach of undertaking to another lawyer, James Cregan, and failed to cease to act when you were in a conflict of interest arising from such breach, and that such conduct is conduct deserving of sanction.
9. IT IS ALLEGED THAT you breached undertakings given to another lawyer, James Cregan, to discharge non-permitted encumbrances, and that such conduct is conduct deserving of sanction.
10. IT IS ALLEGED THAT you failed to be competent and to render competent service to your client, Y.G., in the matter of the refinancing of her residential property, and that such conduct is conduct deserving of sanction.
11. IT IS ALLEGED THAT you failed to respond in a timely manner to communications from another lawyer, L. Diane Young, that contemplated a reply, and that such conduct is conduct deserving of sanction.
12. IT IS ALLEGED THAT you breached undertakings to and/or trust conditions imposed by another lawyer L. Diane Young, and that such conduct is conduct deserving of sanction.
13. IT IS ALLEGED THAT you failed to provide truthful and forthright information to the Law Society in the matter of a complaint by L. Diane Young, and that such conduct is conduct deserving of sanction. **[Withdrawn]**
14. IT IS ALLEGED THAT you failed to respond in a timely manner to communications from the Law Society that contemplated a reply in the matter of a complaint by L. Diane Young, and that such conduct is conduct deserving of sanction.
15. IT IS ALLEGED THAT you failed to respond on a timely basis to communications from G.Z., and that such conduct is conduct deserving of sanction. **[Withdrawn]**
16. IT IS ALLEGED THAT you failed to respond in a timely manner to communications from another lawyer Brent Mielke, and that such conduct is conduct deserving of sanction. **[Withdrawn]**
17. IT IS ALLEGED THAT you failed to transfer your client file for S... to successor counsel Brent Mielke on a timely basis, and that such conduct is conduct deserving of sanction.
18. IT IS ALLEGED THAT you failed to respond in a timely manner to communications from the Law Society that contemplated a reply in the matter of a complaint by G.Z., and that such conduct is conduct deserving of sanction.
19. IT IS ALLEGED THAT you failed to serve your clients, E.G. and B.L., and that such conduct is conduct deserving of sanction.

20. IT IS ALLEGED THAT you acted while in a conflict of interest by representing both E.G. and B.L., as vendors, and G.T., as purchaser, in circumstances where it was not in their best interests, and that such conduct is conduct deserving of sanction.

21. IT IS ALLEGED THAT you failed to respond on a timely basis to communications from the Law Society that contemplated a reply in the matter of a complaint by E.G., and that such conduct is conduct deserving of sanction.

### **III. JURISDICTION AND OTHER PRELIMINARY MATTERS**

3. Jurisdiction was established by entering as Exhibits the Letter of Appointment (*Exhibit 1*), Notice to Solicitor (*Exhibit 2*), Notice to Attend (*Exhibit 3*), Certificate of Status (*Exhibit 4*) and Certificate of Exercise of Discretion (*Exhibit 5*). Counsel for Mr. Elgert, and Counsel for the Law Society accepted the jurisdiction and the composition of the Panel.

### **IV. PRIVATE HEARING**

4. No application was made to hold any portion of the Hearing in private, thus, the hearing was held in public.

5. At the onset of the Hearing, counsel for the LSA advised that the LSA would not be calling evidence in relation to citations 13, 15 and 16. As such, those citations were withdrawn by the LSA.

6. Counsel for the LSA and counsel for the Member did not call any evidence.

### **VI. EVIDENCE**

7. At the onset of the Hearing, counsel for LSA and Mr. Elgert proffered a proposed Statement of Facts (Statement of Facts) to the Hearing Committee copies of which had been provided to the Hearing Committee members prior to commencement of the Hearing.

8. After deliberations, the Hearing Committee accepted the Statement of Facts and it was entered as *Exhibit 6*.

### **VII. AGREED STATEMENT OF FACTS**

9. The Agreed Statement of Facts (*Exhibit 6*) is reproduced below. The Member admitted the following facts:

#### Haak/A.H. Complaints – Citations 1-6

4. In summary, the Member was retained to represent A.H. regarding the sale of her city home and her subsequent purchase of an acreage and modular home. The Complainant Kenneth Haak was retained to represent the purchasers of A.H.'s

city home. A.H. had a ResMor Trust Mortgage on her city home which contained a “due on sale” clause. A.H. sought to have the ResMor Trust Mortgage ported to the acreage she was purchasing. The Member provided Haak with the transfer documents and undertook to payout and discharge the ResMor Trust Mortgage from the sale proceeds. The city property transferred into the purchasers’ names and the ResMor Mortgage remained on title. ResMor Trust decided not to allow A.H. to port the mortgage. The mortgage went into arrears and ResMor commenced a foreclosure action on the city property. The Member failed to payout the ResMor Mortgage from the cash to close.

5. On November 27, 2006, A.H. executed a ResMor Trust Mortgage on her city home located in Edmonton for \$237,000 which contained a “due on sale” clause which stated, in part:

“In the event of a Transfer of the Mortgaged Premises, in whole or in part, or of any interests therein to a Transferee . . . the outstanding principal balance of the Mortgage shall, at the option of the Mortgagee, immediately become due and payable together with all accrued interest and other monies owing thereunder.”

6. On February 1, 2007, A.H.’s husband contacted the Member regarding the purchase of an acreage and modular home. The Member agreed to act for A.H.
7. A.H. borrowed \$21,500.00 (net \$20,000.00 after deduction of the lender’s fee of \$1,500.00) from a numbered company to facilitate the purchase. She executed a promissory note and an irrevocable assignment of the sale proceeds of her city home in favour of the numbered company on February 2, 2007.
8. On February 3, 2007, A.H. entered into a purchase agreement with Jandel Homes to purchase a modular home for \$152,078.88, and on a subsequent unspecified date entered into a purchase agreement for an acreage property and modular home from the same numbered company which lent her the \$21,500.00 for a purchase price of \$265,000.00. The closing date on this latter purchase agreement was May 1, 2007. The Member in that transaction acted for both the numbered company and A.H. This second purchase agreement appears to have superceded the Jandel Homes purchase agreement.
9. On February 5, 2007, A.H. executed a Home Trust Company Mortgage for \$9,000.00, which was registered on title of the city property on March 6, 2007. This loan was presumably to facilitate the purchase of the acreage property.
10. A.H. entered into a real estate contract to sell her city property to Haak’s clients on March 22, 2007, for a purchase price of \$387,900.00 and a closing date of June 1, 2007. A copy of that contract and the one for the acreage property was provided by the Member to ResMor on March 28, 2007, with a request to permit A.H. to port her mortgage to the acreage property.

11. By way of email dated April 29, 2007, the Member wrote A.H. advising her he had spoken with the numbered company who was prepared to loan an additional \$65,000.00 to provide the bridge financing needed to close the acreage and modular home transaction, assuming ResMor was prepared to port the mortgage. The Member advised A.H. that in order to provide this additional financing the numbered company would require an additional \$2,500.00 lending fee and additional security necessitating additional legal fees of \$1,000.00. The Member on his own volition prepared all of the additional security documentation and invited A.H. to attend his office to sign them without delay as the closing date was approaching. A.H. did so on April 30, 2007.
12. On May 3, 2007, the Member requested a real property report on the city property, a payout statement from Home Trust for the \$9,000.00 mortgage, and provided Haak with the transfer documents under trust conditions and undertakings to payout and discharge the prior ResMor and Home Trust mortgages registered on title and provide Haak's office with proof of discharge in due course.
13. On May 10, 2007, the Member advised A.H. that he had spoken with ResMor and that they required a specific application in order to port the mortgage over to the acreage property. A.H. contacted ResMor and was advised that in order to do so she would have to pay down more on the mortgage than she was willing or able to afford. A.H. advised the Member of this on May 11, 2007.
14. On May 18, 2007, A.H. sent the Member an email seeking advice as to how to respond to repeated inquiries from Jandel Homes as to the status of her purchase of the modular home. A.H. sent another email the next day, citing technical issues with retrieving her emails if the Member had responded (he had not), and urging him to contact her as A.H. believed she only had until the end of that day (May 19th) to pay for the modular home or delivery would be delayed leaving her with no residence once the sale of her city home closed on June 1st. The modular home was loaded on the trucks awaiting payment. A.H. was nervous and agitated about the uncertainty over the closing of her purchase of the modular home and said so in her email. The Member did not respond.
15. Home Trust provided the Member with its payout statement on May 22, 2007, in the amount of \$9,328.04.
16. On May 29, 2007, Haak provided the Member with the 2006 tax summary and his statement of adjustments and requested that the Member hold back \$3,000.00 pending receipt of the new RPR and a compliance certificate on the city property. The Member agreed to the holdback without seeking A.H.'s instructions.
17. The acreage property transferred into A.H.'s name on May 30, 2007. The next day the Member provided the City of Edmonton with the new RPR and requested

a compliance certificate. That same day (May 31<sup>st</sup>) Haak requested the bridge financing funds for his purchaser.

18. On June 1, 2007, Haak received the bridge financing funds and sent to the City of Edmonton payment of the 2007 taxes. Haak also received that day the net mortgage proceeds his clients required for the closing of the purchase of the city property and forwarded the cash to close to the Member with a reminder of his undertakings. Haak sent the transfer documents and the new mortgage into Land Titles for registration. There was nothing on file indicating that this transaction was closed pursuant to the Western Conveyancing Protocol.
19. The Member paid the real estate commissions on the sale of the city property on June 5, 2007. By letter of the same date the Member provided D.C. with a trust cheque in the amount of \$139,132.87, representing repayment of a loan he had made to A.H. (\$173,500.00 loan advance; \$632.88 interest of 12%; and \$1,000.00 lender's fee).
20. By letter dated June 5, 2007, to himself, the Member paid himself out of trust the amount of \$10,017.53, representing repayment of a loan he had made to A.H. (\$9,865.00 loan advance and \$152.53 interest of 12%). This loan was not directly connected to the real estate transaction. It was lent to the A.H. to tide her over. The Member did not insist A.H. obtain independent legal advice with respect to this loan.
21. On June 5, 2007, the Member also sent to the numbered company the sum of \$88,032.06, representing repayment of its loan to A.H., plus interest, and he paid out the Home Trust loan in the amount of \$9,328.04 representing the payout on the city property.
22. The transfer of title on the city property was registered in the names of the purchasers on June 13, 2007.
23. On June 18, 2007, the Member provided Haak with the R.P.R. with compliance.
24. By way of letter dated June 26, 2007, the Member requested an appraisal of the modular home and acreage property. The appraisal was completed on July 6, 2007, indicating the market value was \$265,000.00.
25. Haak reported to his clients on July 8, 2007, subject to receipt of the Member's undertakings.
26. Home Trust provided the Member with a registerable discharge of its mortgage on July 18, 2007.
27. ResMor provided to A.H. an application to port the mortgage on July 23, 2007. This same date the Member provided ResMor with A.H.'s completed application and requested confirmation of the amount that could be ported to the new

property. The Member also this same date provided A.H. with a trust cheque in the amount of \$10,000.00.

28. On July 30, 2007, the Member provided ResMor with a copy of the real estate contract for the sale of A.H.'s city property.
29. On August 1, 2007, A.H. wrote the Member an email outlining cash flow difficulties she was having pending the confirmation of the porting of the mortgage over to the acreage property. She requested \$5,000.00 from the Member. The Member did not respond.
30. By way of email dated August 7, 2007, ResMor informed the Member they did not receive the real estate contract for A.H.'s sale of her city property and requested it again. The Member resent it on August 13, 2007. On that same date, A.H. was sued by a contractor for an outstanding invoice for work done on her acreage property.
31. On August 22, 2007, the first amended closing date listed on the Purchase Agreement of the acreage property, was amended again to September 1, 2007.
32. On August 30, 2007, A.H. was informed by ResMor that it would not approve the porting of the mortgage over to the acreage property for the following reasons:
  - A.H. lived outside ResMor's lending area
  - A.H. had another loan from Wells Fargo which was too new
  - A.H.'s discharge from her bankruptcy which pre-dated the ResMor mortgage
  - The lending ratio was too high
  - A.H.'s new occupation was not in the same line of work as her previous job
  - A.H. exceeded her credit limit on one of her credit cards
  - A.H. husband had since declared bankruptcy
33. A contemporaneous email from A.H. to the Member indicated that a message to that effect was left by ResMor with the Member the previous day. The Member agrees he was told of the situation by ResMor but has no recollection as to the date and there is nothing in his file to indicate when this advice was received.
34. By this time, A.H. was living in the modular home on the acreage property and A.H. was seeking the Member's advice on what to do. He did not respond to the August 30<sup>th</sup> email.
35. On September 1, 2007, A.H. sent another email to the Member. She indicated that she was very concerned she had not yet heard anything back from the Member, seeking his assistance with her predicament. The Member did not respond.

36. The Member was advised by ResMor on September 4, 2007, that it would not permit the porting of the mortgage and that it would not make any exceptions.
37. A.H.'s husband left a telephone message for the Member on September 20, 2007, regarding the situation. The Member did not return the call but the next day provided A.H. with a trust cheque for \$6,000.00 from monies held in trust from the sale of the city property.
38. On September 26, 2007, ResMor left a message for the Member requesting a status update.
39. On September 27, 2007, A.H.'s husband left a message for the Member to return his call about the situation or he would go see the Member in person. The Member did not return the call. The same date, ResMor provided the Member with its Mortgage Discharge/Transfer Statement of the A.H. mortgage on the city property, showing a balance outstanding of \$250,455.01.
40. On October 2, 2007, Haak's office received a telephone call from Scotiabank indicating that they had been contacted by ResMor inquiring why Scotiabank had registered a third charge on the city property. Scotiabank was to be first on title after the purchase closed June 1, 2007, but ResMor indicated to them that they had not received payout funds nor had a payout statement been requested. Haak learned from one of the Member's assistants that the ResMor mortgage was supposed to be ported to A.H.'s new property but the Member was dealing with the transaction himself.
41. Shortly thereafter the Member advised Haak that he was assisting A.H. and her husband in obtaining a new mortgage on the acreage property since the ResMor mortgage could not be ported and had to be paid out. Haak passed this information on to Scotiabank.
42. On October 11, 2007, the Member provided to a mortgage broker the acreage property appraisal and the financing application previously provided to ResMor.
43. On October 17, 2007, a female from ResMor left an urgent telephone message for the Member to return her call stating she was waiting for a fax from the Member. The Member did not respond.
44. On October 18, 2007, the Member sent \$14,804.29 to the solicitors for the contractor who had sued A.H. for improvements on the acreage property and the claim was settled.
45. On October 23, 2007, the solicitors for ResMor sent a demand letter to the purchasers of the city property and A.H. seeking to enforce their rights under the due on sale clause, demanding that arrears and costs be paid in the amount \$6,134.24 no later than November 2, 2007, and title transferred back to A.H.,



failing which the full mortgage amount would be due and owing in the amount of \$244,806.14 plus interest at \$47.17 daily from that date.

46. On October 25, 2007, the Member advised Haak he would be arranging a “personal mortgage” to clear the city property title.
47. Haak complained to the Law Society on October 30, 2007, about the Member’s conduct in the matter.
48. On November 21, 2007, ResMor commenced foreclosure proceedings against the city property claiming the balance owing against the purchasers.
49. By letter dated November 23, 2007, the Law Society sent Haak’s complaint to the Member for a response. He did not respond. The Law Society sent a follow up letter to the Member on December 14, 2007, seeking a response to the complaint. The Member did not respond.
50. A Section 53 demand was sent by the Law Society to the Member on December 28, 2007. The Member did not respond. The Law Society sent a follow up letter to the Member on January 22, 2008, but the Member still did not respond.
51. On February 14, 2008, ResMor obtained an Order Nisi/Order for Sale in its foreclosure action on the city property.
52. ALIA appointed counsel to defend a potential negligence claim against the Member and on February 22, 2008, he wrote Haak indicating he was in the course of assisting the Member in repairing the file prior to the redemption period expiring under the Order Nisi/Order for Sale and that steps were being taking by the Member and A.H. to obtain alternate financing to see the ResMor mortgage paid in full.
53. On March 3, 2008, the Law Society demanded that the Member provide his file for review. The Member did not respond.
54. In the meantime, the Home Trust mortgage discharge was submitted for registration and a partial payment of \$47,000.00 was made by A.H. through the Member to the solicitors for ResMor on March 10, 2008. That mortgage was discharged shortly thereafter.
55. On the same date the Member replied to the Law Society providing a response to the Haak complaint setting out his communications regarding the attempt to port the ResMor mortgage. The Member also advised that he was assisting A.H. in obtaining private financing to pay out the ResMor mortgage, acknowledging his inability to comply with his undertakings to date on account of relying upon verbal advice from ResMor that the mortgage could be ported. He did not provide his file to the Law Society as demanded.

56. On March 25, 2008, the Law Society again demanded the Member provide his entire file for review. He did not respond. The Law Society sent a follow up letter on April 16, 2008; the Member did not respond.
57. On May 7, 2008, the Law Society issued an Investigation Order for the purpose of obtaining the Member's file and relevant documentation.
58. By way of letter dated May 14, 2008, the Law Society investigator demanded that the Member surrender his file by May 16, 2008. A request that Haak provide his file was made the same date. The Member and Haak provided their files to the Law Society on May 15, 2008, for copying; the files were returned the same date.
59. As of May 21, 2008, the title to the acreage property in A.H.'s name still showed the contractor's builders' lien and *lis pendens* registered against title, along with several caveats.
60. On August 20, 2008, a consent order was entered in Court of Queen's Bench dismissing the ResMor foreclosure action as its mortgage was paid out in full. By September 25, 2008, title to the city property was clear of any ResMor interest and proof of the same was provided to Haak shortly thereafter.
61. On October 20, 2008, the Law Society requested further information from the Member concerning his \$9,865.00 loan to A.H. and a letter setting out precisely how the ResMor matter was resolved, including his steps to assist A.H. in securing new financing. The Member did not respond. A follow up letter was sent to the Member on November 14, 2008. The Member did not respond.
62. A further follow up letter was sent to the Member on December 1, 2008. The Member responded on December 3, 2008, providing copies of his cheques regarding his loan to A.H. and an explanation as to how the ResMor matter was resolved. ALIA advanced the funds to pay out the ResMor mortgage and placed a charge on A.H.'s acreage property as security with the consent of A.H. and her new solicitor while A.H. continued to obtain alternate financing.
63. On December 9, 2008, the Law Society requested further documentation regarding the Member's loan to A.H. and any repayment, plus documentation regarding the \$14,804.29 payment through his office to settle the builders' lien claim. The Member did not respond.
64. By December 9, 2008, all non-permitted encumbrances had been discharged on the city property.
65. The Law Society sent a follow up to its December 9<sup>th</sup> demand on December 23, 2008. The Member did not respond and a further follow up demand was sent on January 16, 2009. The Member did not respond.

66. On February 3, 2009, the Law Society warned the Member that the matter would be put before the Conduct Committee if it did not receive an immediate response to the recent demand for further information.
67. By way of letter of February 9, 2009, the Member responded to the Law Society indicating he had no other documents regarding his personal loan to A.H. and provided documentation on the builders' lien settlement from the A.H. acreage purchase file in possession of ALIA counsel.
68. On March 9, 2009, the Law Society sent to the Member a chronology setting out the foregoing asking him to correct any significant errors or omissions before a report was made to the Conduct Committee recommending certain listed citations. The Member did not respond.

Y.G. Complaint – Citations 7-10

69. In summary, the Member was retained to represent the Complainant Y.G. in the re-mortgaging of her house which was subject to numerous mortgages and charges. The Complainant asserts the Member failed to serve her and failed to respond to her communications. In the course of representing Y.G. on the refinancing the Member breached his undertakings to discharge non-permitted encumbrances in a timely manner. During the course of his representation, the Member failed to respond to other lawyers' communications and requests with respect to the fulfillment of his undertakings in a timely manner. The Member paid out one of Y.G.'s mortgages from his own funds and took a personal assignment of that mortgage thereby breaching his undertaking and creating a conflict of interest for which he did not report to either the mortgagee or Y.G. nor did he cease to act for her being in conflict.
70. Y.G. owned a property located in Edmonton. She obtained the following Mortgages for this property:

|                      |     |                                  |
|----------------------|-----|----------------------------------|
| Home Trust Company   | ... | \$208,000.00 (February 21, 2007) |
| Home Trust Company   | ... | \$10,000.00 (February 21, 2007)  |
| DGMJ Investments     | ... | \$11,850.00 (July 4, 2007)       |
| DGMJ Investments     | ... | \$8,450.00 (July 17, 2007)       |
| DGMJ Investments     | ... | \$6,575.00 (August 15, 2007)     |
| Canada Trust Company | ... | \$65,250.00 (September 5, 2007). |
71. The Canada Trust Mortgage was obtained to pay out the three DGMJ Mortgages. These Mortgages were paid out but not discharged from title.
72. Y.G. retained the Member to obtain a new mortgage with Alta West. These funds were to be used to pay out the Home Trust second mortgage, the Canada Trust third mortgage, as well as a Caveat on the property charging the property for

about \$3,000. Alta West was to be the second mortgage after the Home Trust first mortgage.

73. On January 16, 2008, Home Trust Company provided Y.G. with a Mortgage Statement showing the principal balance remaining on the first mortgage was \$205,754.92.
74. By letter dated January 30, 2008, Mike Johnson of Mortgage Source provided Y.G. with the Canada Trust Mortgage payout in the amount of \$73,000.00.
75. Y.G., through her mortgage broker, Hal Tagg at Centum Mortgageflex, arranged for a new mortgage of \$92,000.00 through Alta West Mortgage Capital Corporation. This mortgage was obtained to pay out the second Home Trust Company mortgage and the Canada Trust Company mortgage, and the Centum Caveat.
76. By letter of February 13, 2008, James Cregan – the solicitor retained to act for Alta West Mortgage – provided the Member with Alta West mortgage documents to be signed by Y.G. on the undertaking that the Member would provide Cregan with the following discharges:
- |                      |     |             |
|----------------------|-----|-------------|
| Home Trust Company   | ... | \$10,000.00 |
| DGMJ Investments     | ... | \$11,850.00 |
| DGMJ Investments     | ... | \$8,450.00  |
| DGMJ Investments     | ... | \$6,575.00  |
| Canada Trust Company | ... | \$65,250.00 |
| Centum Caveat        | ... | \$3,000.00  |
77. In February, 2008, the amount of the Alta West Mortgage was increased from \$92,000.00 to \$98,000.00.
78. By way of letter dated February 29, 2008, Cregan provided the Member with revised documents, which reflected the increased mortgage amount, subject to the previously stated undertakings.
79. On March 5, 2008, the Member provided Cregan with the revised mortgage documents which Y.G. had executed and confirmed his undertakings to discharge the previously stated encumbrances.
80. The next day the Member made notes to his file indicating he was expecting funds later that week, that he needed to confirm fire insurance policy had been paid up, and that the matter was urgent so as to pay off the first mortgagee to prevent foreclosure.

81. On March 7, 2008, Mike Johnson wrote to the Member confirming the balances on the DMJ Investments Inc. mortgages were paid in full and sent discharges to him that day.
82. That same day Cregan provided the Member with his trust cheque in the amount of \$85,471.80, representing the Alta West mortgage proceeds, subject to the Member's previous undertakings. These funds were to be used to pay out the Canada Trust Mortgage and the Centum Caveat.
83. In addition to paying out the Canada Trust Mortgage and Centum Caveat, Y.G. informed the Member she required cash in the amount of \$5,400.00. In light of this, the Member calculated that in addition to the \$98,000.00 Alta West Mortgage (net \$85,000), additional financing of \$7,437.69 would be required in order to make the refinancing work, including \$500.00 to pay up the fire insurance policy. The Member approached Johnson with respect to obtaining a further mortgage for Y.G. in the amount of \$8,350.00, the difference being mortgage and other fees. Johnson agreed, subject to the execution of another mortgage and promissory note to be registered against the property, along with an undertaking from Y.G. to sign such further documents as may be necessary. In addition, Y.G. would have to show that the Home Trust first mortgage had a principal balance of no more than \$206,000.00 and their third mortgage on title must be fully title insured. The interest rate on this additional financing was to be at 17.5% on a one year closed term with monthly interest only payments to be coordinated directly between Johnson and Y.G. Y.G. signed the promissory note but while a draft mortgage agreement was prepared it was never executed.
84. On March 10, 2008, the Member provided Mortgage Source (apparent agent for Canada Trust) with a trust cheque in the amount of \$73,000.00 and requested a registerable discharge of the Canada Trust Company Mortgage 0.
85. After paying these monies, the amount of trust funds remaining was only \$7,071.80, which was insufficient to payout the second Home Trust Company mortgage, which was approximately \$10,734.47 and the Caveat which was approximately \$3,000.00. This indicated that the Member was approximately \$6,662.67 short to comply with his undertakings. This deficiency was to be rectified by the new DGMJ Mortgage.
86. On March 17, 2008, Johnson provided the Member with a cheque in the amount of \$8,350.00. These monies were not deposited into the Member's trust account and the third mortgage was never registered as the Member claims he could not successfully reach Y.G. The Home Trust second mortgage was not paid because the Member said he was unable to finalize the refinancing because the new third mortgage for DMJ had never been executed. The Member says he did not have sufficient funds to pay out Home Trust's second mortgage without the additional funds from DMJ being releasable.

87. On May 27, 2008, the Member provided Y.G. with the Alta West mortgage documents confirming he had requested discharges of the DMJ mortgages and the Canada Trust Company mortgage, indicating that he had reported to Alta West and that he would make further report to Y.G in due course. At this point, the Member had completed everything except the payout of the Home Trust second mortgage and the caveat.
88. On June 2, 2008, Y.G.'s house was damaged by a fire.
89. By way of an email dated June 3, 2008, Cregan's office requested the Member provide an updated title confirming the discharge of the non-permitted encumbrances.
90. This was followed up by way of a letter dated June 5, 2008, from Cregan to the Member noting that arrangements had not been made to discharge any of the previous registrations which the Member had undertaken to do nor had he provided Cregan with proof of payment of the insurance premium to the end of the term.
91. It was noted by Cregan that by this time the Home Trust second mortgage had gone into foreclosure. Cregan demanded that the Member fulfill his undertakings by June 12, 2008 failing which Alta West would take action to enforce the undertakings.
92. The Member did not respond to Cregan's June 5, 2008, letter.
93. Y.G. alleges she attempted to reach the Member on numerous occasions about her refinancing. On June 24, 2008, Y.G. complained to the Law Society asserting that the Member failed to serve her and failed to respond to her.
94. On June 25, 2008, Charlotte Christopherson, retained by Alta West in its foreclosure proceedings against Y.G., wrote the Member demanding compliance with his outstanding undertakings to Cregan.
95. By way of letter dated July 3, 2008, the Law Society sent Y.G.'s complaint to the Member and requested a response. He did not respond.
96. On July 7, 2008, Christophersen wrote the Member again seeking confirmation of the fulfillment of his undertakings, as well as requesting confirmation that he had dealt with resolving the payout of the Home Trust second mortgage in foreclosure proceedings.
97. Not having received a response to its first letter regarding the Y.G. complaint, the Law Society sent to the Member a formal demand to respond on July 22, 2008.
98. On July 24, 2008, the Member requested a payout statement from Home Trust on the second mortgage. The payout statement was provided to the Member on July

28, 2008, indicating the payout would be \$14,004.63, including approximately \$2,700.00 in costs.

99. By way of letter dated July 29, 2008, the Member responded to the Law Society admitting that while it was difficult to reach him by phone it was also difficult for him to reach Y.G. to arrange to have her execute the mortgage documents. The Member also advised that on March 20, 2008 he received a letter from Mortgage Source enclosing a cheque in the sum of \$8,350.00 for the new third mortgage but he could not arrange for Y.G. to execute the mortgage documents so he would have enough to pay the Home Trust second mortgage. The Member intended to report to Y.G. with respect to the Alta-West mortgage when she attended at his office to execute the new third mortgage but such a meeting never took place. At one point the Member had set an appointment for her to come in and sign the documents but she did not come in. The Member does not have a record of the date and time the appointment was set for because he spoke to her over the phone making the arrangements and did not write to her to confirm. The Member enclosed a reporting letter to Y.G. reporting on the Alta-West second mortgage dated May 27, 2008. The Member also offered to pay out the Home Trust second mortgage using the funds in trust and his firm's general funds. The Law Society did not comment upon his proposed course of action.
100. By way of letter dated July 28, 2008, the Member informed Christophersen that the three DGMJ Mortgage Discharges had been submitted to Land Titles for registration and then went on to state that on March 10, 2008, he had sent funds to payout the "Canadian Trust Company in trust" mortgage (instrument number ...) to Mike Johnson of the Mortgage Source requesting the discharge of mortgage. He followed up on July 28, 2008, with Johnson who promised to get him a discharge on a priority basis. That discharge was delivered to the Member the next day. The Member also advised Christophersen that he was following up on the Home Trust Company payout statement (instrument number ...) and that he had funds in trust to pay out the caveat (instrument number ...).
101. On July 30, 2008, the Member submitted the three DGMJ Discharges of Mortgage and the Canada Trust Mortgage Discharge for registration which were registered on August 9, 2008.
102. On August 11, 2008, the Member paid from his own funds, \$10,000.00 to his firm, Barry Elgert Peddie, as partial payment towards the second Home Trust Company mortgage payout. The next day the Member paid an additional \$4,066.28 from his own funds towards the second Home Trust Company mortgage payout and deposited the total of \$14,066.28 into its solicitor's trust account requesting a discharge and a discontinuance of the foreclosure action, together with an assignment of the mortgage in his favour. This was not done on the instructions or foreknowledge of Y.G. and was done in an attempt to comply with the Alta West undertakings.

103. On August 12, 2008, the Member wrote Y.G. and informed her of what he had done in paying out the second Home Trust Company mortgage, including the taking of a personal assignment of the mortgage.
104. The Certificate of Lis Pendens and Discontinuance of Action on the Home Trust foreclosure action were on August 18, 2008.
105. The Member on August 20, 2008, submitted the discharge of the Centum Mortgageflex Ltd. caveat to Land Titles and wrote to Christophersen advising her of the discharge of the registrations save the Home Trust mortgage (instrument number ...) postponement which he indicated he would register upon receipt of his mortgage assignment.
106. On August 25, 2008, Home Trust executed a transfer of its mortgage (instrument number ...) to the Member in consideration of \$11,363.78 and provided it to the Member on September 6, 2008, together with a release, withdrawal of its Certificate of Lis Pendens, and a filed Discontinuance of Action.
107. On September 19, 2008, the Member executed a postponement of his mortgage (instrument number ...) in favour of Alta West and submitted it for registration at Land Titles. The postponement was ultimately rejected and resubmitted for registration. The same day as executing the postponement the Member wrote Christophersen and provided her with copies of the mortgage transfer, caveat, postponement, withdrawal of the lis Pendens, and discontinuance. The Member advised he would report upon confirmation of registration from Land Titles.
108. Christophersen followed up with the Member on September 29, 2008, seeking confirmation of registration of the postponement, requesting his immediate action as there could be further litigation over potential damage and loss claims against the insurance company following the recent fire in the property.
109. On October 2, 2008, the Member responded to Christophersen providing proof of registration of the postponement, requesting more details about the status of the foreclosure proceedings and the potential damage and loss claims referenced in her September 29<sup>th</sup> letter.
110. By letter of the same date the Member wrote the Law Society providing an update as to the matter and seeking its directions as to whether he should render an account to Y.G., which he had not yet done, in the hopes of preventing further complaint by Y.G. if he were to send an account in the circumstances.
111. The Law Society on October 15, 2008, asked the Member to provide his file which he did shortly thereafter. The trust ledger at Tab A to this Statement of Facts shows the flow of funds through the Member's trust account in relation to Y.G.'s refinancing.



112. Upon review of the Member's file the Law Society wrote on November 25, 2008, inquiring after the \$4,071.80 remaining in his trust account and indicating that it appeared to belong to Y.G. such that taking an account from them might be ill advised unless he could show an entitlement to it. The Law Society encouraged the Member to seek legal counsel as to any entitlement he might have to the funds. The Law Society further advised that it would encourage Y.G. to tax any account the Member might render in these circumstances. The Law Society specifically declined to offer any direction and further referred the Member to seek his own advice, including consulting the Practice Advisor's Office.
113. On December 23, 2008, the Law Society wrote the Member offering him an opportunity to provide a further response to the complaint before a report was made to the Conduct Committee. The Member declined to make any further comment.
114. The \$4,071.80 remains in the Member's trust account.

Young Complaint – Citations 11-14

115. In summary, the Member was retained to represent the purchaser regarding the purchase of two condominium units through foreclosure. The Complainant L. Diane Young was retained to represent the mortgagee. The Member failed to comply with undertakings given to Young. The Member failed to respond to Young's numerous correspondence and phone calls. After Young complained to the Law Society, the Member failed to respond to the Law Society on a timely basis.
116. K.B. agreed to purchase two residential condominium properties and arranged financing through Pioneer West Acceptance Corporation. The mortgage broker emailed the Member on October 10, 2007, indicating that the purchaser and lender were looking to close the transaction as soon as possible, and that his information was that the mortgagee's solicitor's office, L. Diane Young, had made several calls in the previous few weeks inquiring after the status of the transaction without success.
117. The solicitors for the vendor sent to the Member a real estate purchase contract on October 12, 2007, and he arranged for its execution by K.B. on October 15, 2007, for a purchase price of \$91,775.00. A condition of the offer was that the Purchaser would pay all outstanding condominium fees, including penalties and City of Edmonton taxes, including penalties prior to possession. The offer was formally accepted on December 5, 2007.
118. By letter of October 15, 2007, the Member requested a statement of all outstanding condominium fees and the Member wrote Young indicating that he will be receiving a registerable Transfer of Land from the vendor's solicitor shortly and that the transaction is to proceed with a closing date as soon as they

reasonably were able to close. On October 17, 2007, Young wrote to the solicitors for the condominium asking them to release information to the Member.

119. On October 23, 2007, Young sent to the Member the tax balances for the two units.
120. On November 23, 2007, the Member was provided with a statement of the outstanding condominium fees in the amount of \$65,035.20.
121. In response to an inquiry from Young, the Member confirmed on November 28, 2007, that K.B. still intended to proceed with the purchase of the two units.
122. By letter of December 20, 2007, Young provided the Member with mortgage documentation pertaining to the first mortgage of \$192,400.00 and second mortgage of \$29,600.00. The same date the transfer documentation was provided by the solicitors for the vendor to the Member under trust conditions including, *inter alia*, that interest was to run from the closing date of December 15, 2007, and in any event the documents were to be returned unused if funds were not provided by January 7, 2008.
123. K.B. executed the mortgage commitment letters on December 22, 2007.
124. On December 23, 2007, the solicitors for the condominium wrote to the Member and the solicitor for the vendor indicating that since the outstanding condominium fees has not been paid they were seeking instructions to proceed with litigation to collect the outstanding amounts.
125. On January 3, 2008, the Member provided mortgage related documents to Young and gave the following undertaking:

“With respect to the City of Edmonton Taxes and the Condo Fees they are both going to be paid in full as part of this transaction. I expect that I will be able to provide the confirmation that the taxes are paid on the day the purchase closes. I will be able to provide you with a copy (sic) of my letter to the Condo Associations lawyer confirming my payment of all condo fees owing up to the present on the day of closing and forward the Estoppel Certificate and Information Statement pursuant to my undertakings relatively quickly after the closing date.”
126. An extension of the deadline to provide the cash to close on the purchase was granted by the vendor to January 9, 2008.
127. By letter dated January 9, 2008, the title insurer confirmed with the Member that title insurance was in place on both properties.
128. K.B. was unable to provide the Member with the post-dated cheques required by Young’s client until January 11, 2008, which were provided to Young the same date along with a copy of the title insurance and a request to urgently fund the

mortgages. Young advanced the mortgage funds on the basis of the Member's January 4<sup>th</sup> undertakings and the Member successfully went to registration while concurrently forwarding the cash to close with interest to the vendor's solicitor on an agreed upon further extension of the deadline.

129. After an exchange of correspondence regarding the registration of required caveats, Young wrote the Member on January 30, 2008 that she awaited fulfillment of the following outstanding undertakings:
  - a clear Estoppel Certificate and Information Statement from the condominium association
  - updated certified copies of the Certificates of Title evidencing discharge of the non-permitted encumbrances being the caveats and *lis pendens* regarding unpaid condominium fees on each of the units
130. On March 10, 2008, Young contacted the Member's office looking for an update as to the status of the outstanding undertakings and she was advised that it would be looked into. No further report was made to Young.
131. By letter of June 4, 2008, Young wrote the Member advising him that she learned that Tax Notifications were filed by the City of Edmonton against both units. Young reminded the Member that his undertakings included the payment of taxes and arrears with provision of confirmation to her. Young demanded that the Member comply without further delay. The Member did not respond.
132. Young complained to the Law Society on July 18, 2008, regarding the outstanding undertakings. The next day she left a message with the Member but he did not respond.
133. By letter dated July 22, 2008, the Law Society made a Section 53 demand on the Member. The same day the Member made a report to K.B. on the purchase indicating he would make a further separate report with respect to the arrears of condominium fees and an accounting.
134. On July 24, 2008, the Member contacted the Law Society via telephone and promised to have a response to Young's complaint by the following Monday (July 28<sup>th</sup>).
135. By letter dated July 28, 2008, the Member made a report to Young providing current tax searches showing that taxes had been paid but the Member was unaware the city had filed Tax Notifications so he had not forwarded sufficient funds to cover the cost of the discharges. He promised to pay those amounts and forward confirmation of clear title in due course and apologized for the delay in responding.

136. The Member did not copy the Law Society with his July 28<sup>th</sup> letter to Young so it wrote him on July 30, 2008, asking him to attend to responding to Young as requested. The Member did not respond.
137. On August 14, 2008, the Law Society sent a follow up letter to the Member seeking a response to its previous correspondence. It warned the Member that a report would issue to the Conduct Committee without the benefit of this response if he did not reply.
138. The Member wrote the Law Society and Young on August 17, 2008, enclosing a copy of this July 28<sup>th</sup> correspondence together with a brief explanation as to the tax notifications and an apology to both Young and the Law Society for not responding promptly.
139. On August 19, 2008, the Law Society wrote the Member asking for his file. He did not respond. The Law Society sent follow up letters dated September 11, 2008, and September 22, 2008. On September 29, 2008, the Member provided his file to the Law Society which was copied and returned to him the next day.
140. On October 1, 2008, estoppel certificates were issued to the Member with respect to both units. He did not provide them to Young until November 28, 2008.
141. Young wrote the Member on October 29, 2008, reminding him of his outstanding undertaking to provide clear estoppel certificates and clear tax certificates, asking for them without delay. Later the same day Young emailed the Law Society advising it that her client's mortgages had been paid and that she would not be requiring anything further from the Member.
142. By letter dated November 29, 2008, the Law Society requested from the Member a copy of the November 23, 2007, statement of outstanding condominium fees. The Member provided it to the Law Society the next day.
143. On January 30, 2009, the Law Society wrote the Member seeking a response to the June 22, 2008, Section 53 demand and provided a chronology including the foregoing events for the Member's comment. The Member did not respond within the time requested.
144. On February 25, 2009, the Member wrote the Law Society advising the chronology was accurate and that he responded to Young's October 29<sup>th</sup> letter on November 28, 2008, by providing clear titles and clear estoppel certificates. He stated he was unaware that he needed to send the November 28<sup>th</sup> letter to the Law Society as he thought the issue Young had raised with the Law Society was the property taxes, and that he thought his letter of August 17, 2008, and the provision of his file on September 28<sup>th</sup> was the response required.

G.Z. Complaint – Citations 15-18

145. In summary, the Member was retained to represent the G.Z. to pursue a civil claim. G.Z. felt the Member delayed and failed to move the matter forward so he retained new counsel. G.Z.'s new counsel repeatedly requested the Member provide his file. The Member failed to provide his complete file and failed to respond to communications from G.Z. and new counsel. The Member further failed to respond to communications from the Law Society.
146. In September 1997, G.Z. retained the Member to pursue a civil claim. By April 2003 it appeared to G.Z. that the action stalled in discoveries. After the Member gave assurances that further discoveries would take place and numerous calls and discussions with the Member yet the action failed to progress, G.Z. decided to retain new counsel.
147. In December 2007 G.Z. gave notice to the Member that he had retained Brent Mielke to take over the file.
148. During 2008 several attempts were made by G.Z. and Mielke to obtain the file from the Member without complete success. On July 24, 2008, Mielke wrote the Member and requested the balance of his file as soon as possible. The Member did not respond.
149. On December 8, 2008, Mielke wrote the Member indicating he was worried that G.Z.'s case would be prejudiced and demanded the balance of the file be provided to him no later than December 12, 2008. The Member did not respond. At the same time, Mielke advised G.Z. to file a complaint with the Law Society as he had no confidence that the Member would respond to his efforts to obtain the file.
150. On January 19, 2009, G.Z. complained to the Law Society.
151. By letter dated January 28, 2009, the Member wrote Mielke indicating that he felt he had provided Mielke with "all of those substantial portions of the file to allow you to deal with any ongoing steps necessary in the litigation. All that remained in my office was the correspondence file which I now enclose as you have requested." The Member requested Mielke contact him if he needed anything further. A copy of this letter was sent by the Member to the Law Society.
152. On February 10, 2009, the Law Society issued a Section 53 demand upon the Member. He did not respond. A follow up letter was sent to the Member dated March 3, 2009, requesting a response. The Member did not respond. A further follow up was sent on March 24, 2009.
153. On March 27, 2009, the Member responded to the Law Society indicating he had provided his file prior to receipt of the February 10<sup>th</sup> demand and that after receipt he spoke with Mielke who advised him he was content with what he obtained of

the file. As he felt the complaint was satisfied he did not feel it was necessary to respond.

154. By way of letter dated April 3, 2009, the Law Society wrote the Member seeking an explanation as to why he did not respond to Mielke and G.Z.'s requests for the balance of the file at some point prior to July 24, 2008, until January 28, 2010.
155. The Member responded on April 9, 2008, to the effect that he wanted to review the file for disbursements and as it was a large file he would have needed an undisturbed block of time to review the file to verify the disbursements as the file had been conducted on a deferred fee basis and the posting of disbursements was not as complete as it should have been. He acknowledged he did not set aside the time as promptly as he should have and in retrospect should have forwarded the entire file on condition that it be made available to him in the event the file reached a conclusion and he was in a position to bill for legal fees and disbursements.

E.G. Complaint – Citations 19-21

156. In summary, the Member was retained to represent the Vendors, E.G. and B.L., and Purchaser, G.T., in a real estate transaction. The Vendors provided the Purchaser with a Mortgage. The Member prepared all documentation including the mortgage and transfer documents. The Vendors and Purchaser executed an agreement whereby the Purchaser would transfer back the property to the Vendors if the Purchaser failed to make mortgage payments for three consecutive months. The Member retained an executed transfer back on his file in the event that this was required. The transaction closed and the Purchaser failed to obtain fire insurance at the time of the closing. The Purchaser did eventually obtain fire insurance but failed to list the Vendors as first loss payees. The insurance policy was cancelled due to non payment of premiums. Since the Vendors were not shown as first loss payees, they did not receive notice of cancellation. The property burned down subsequent to the insurance policy being cancelled. The complaint is that the Member failed to ensure that there was a fire insurance policy in place at the time the transaction closed and failed to ensure that the Vendors were listed as first loss payee.
157. S... Co. was the owner of certain residential property in Spruce Grove, Alberta (the "property"). On November 26, 2007, E.G. and B.L. (the "Vendors") entered into an agreement to sell that property to G.T. (the "Purchaser") for a purchase price of \$600,000.00 with a closing date of December 14, 2007. The Member was listed as the solicitor for both the Vendors and the Purchasers.
158. On December 5, 2007, the closing date of the agreement was amended to March 15, 2008, as the Purchaser would be renting the property until that date. On this same date the Member opened a sale file for this transaction.

159. S... Co. agreed to sell the property to the Vendors by way of an agreement dated December 7, 2007, for the purchase price of \$359,389.00. The next day the Member received a deposit of \$35,000.00 from the Purchaser.
160. Title to the property was registered in the name of the Vendors on December 12, 2007.
161. On December 28, 2007, the Vendors executed a Transfer of Land to the Purchaser in consideration of the sum of \$585,000.00. The Member did not execute the Affidavit of Execution until April 17, 2008, and the transfer was not registered until April 23, 2008.
162. Sometime in January 2008 the real estate contract was amended to provide for the deletion of the initial deposit of \$35,000.00 and the insertion of an initial deposit of \$20,000.00 with an additional \$20,000.00 deposit to be provided by the Purchaser upon mortgage approval.
163. By way of an email dated January 28, 2008, R.L. (the spouse of B.L. and a mortgage broker) wrote the Member advising him that the Purchaser wanted to take \$15,000.00 of the \$35,000.00 deposit held by the Member in trust, with the Purchaser to provide an additional \$20,000.00 on the closing date to replace the funds he withdrew. The closing date of the transaction was to be changed to April 15, 2008.
164. On January 29, 2009, the Member paid the Purchaser \$15,000.00 from trust.
165. By way of email dated April 10, 2008, R.L. wrote the Member advising him that a deal had been put together and they require the Member's help to set up the paperwork with the following details:
  - the purchase price is \$585,000.00
  - the possession date is April 15, 2008
  - the Purchaser has \$20,000.00 in trust with the Member
  - the Purchaser will give the Vendors \$10,000.00 for down payment and \$3,000.00 interest payment for the month of April
  - the Vendors will carry an open mortgage of \$575,000.00 plus a 3.7% mortgage fee for a total of \$596,275.00 for a one year term at 5.5% interest
  - based on a 40 year amortization, monthly payments on the mortgage will be \$3050.30 with the first payment due June 1, 2008 and a maturity date of May 1, 2009
  - they would need an agreement drawn up in the event the Purchaser fails to make three consecutive monthly payments whereby the Purchaser will transfer the title back to the Vendors
  - the transfer back is to be held on the Member's file until required

166. On April 16, 2008, the Member opened a purchase file with respect to this transaction. By letter of the same date the Member provided the Vendors and the Purchaser with a conflict letter confirming he would be acting for all parties in the transaction. By another letter of the same date the Member advised the parties as follows:
- “I am writing to confirm the Agreement between the Vendors and the Purchaser that the Purchaser shall execute a Transfer of Land; to be held in trust by our law firm; which transfer of land will be held in trust on the condition that in the event that the Purchaser should fail to make the mortgage payments required for three consecutive months, the transfer of land shall be registered at Land Titles and the Purchaser shall have no rights in the lands. The Purchaser shall upon the registration of the Transfer of Land immediately vacate the property, providing [the Vendors] with vacant possession of the lands.”
167. The same day the Purchaser attended the Member’s office and executed the transfer back in favour of the Vendors which was held on the Member’s file. The Purchaser also executed the mortgage in favour of the Vendors in the amount of \$596,275.00. The Member verbally advised the Purchaser to obtain fire insurance and fax him a copy of the insurance.
168. On April 16, 2008, the Member also paid the Purchaser \$5,000.00 as a partial refund of the deposit monies and paid the Vendors E.G. and B.L. each the amount of \$6,500.00 from the trust monies (\$10,000.00 deposit and \$3,000.00 rent). By way of an email of the same date the Purchaser requested that the Member add his spouse W.T. to the transfer documents.
169. On April 17, 2008, the Member made a handwritten note to his assistant instructing her to submit the mortgage and transfer documents to the Land Titles Office for registration, that the Purchaser will be providing proof of insurance, and to transfer \$1,000.00 from the sale file to the purchase file to cover fees and disbursements. This was done the same day.
170. By way of email of the same date, the Member informed the Purchaser that once he was the registered owner, he could execute a further Transfer of Land to have W.T.’s name added to the title and that W.T. would have to agree to execute the Transfer back to the Vendors which would be filed in the event that three consecutive mortgage payments were missed. The Purchaser indicated by reply email the same date that he and his wife would sign any necessary documents.
171. On April 22, 2008, R.L. sent an email to the Member inquiring as to whether the title had been transferred and if Purchaser had arranged for fire insurance. The Member did not provide a response assuming the parties would be speaking directly to each other about fire insurance. The Member did not receive any further inquiries from the Vendors or R.L. about fire insurance.



172. Title to the property in the name of the Purchaser and the mortgage in favour of the Vendors were registered on April 23, 2008.
173. By letter of April 28, 2008, the Member wrote the Vendors and the Purchaser informing them that the Purchaser wished to have W.T. added to title and confirming that the Vendors were in agreement provided W.T. signed the same acknowledgement as provided to the parties on April 16, 2008 (see paragraph 166 above). A draft transfer adding W.T. to title was prepared by the Member but it was never executed.
174. By letter dated April 30, 2008, the Member enclosed for the Vendors a copy of the mortgage and title, along with his statement of account in the amount of \$560.70 and reported, in part, that the deposit and April rent in the total sum of \$13,000.00 had been provided to them on April 16, 2008. The Member in this correspondence also confirmed that the Purchaser wants the property also registered in W.T.'s name and that she will be signing the conflict letter. E.G. asserts that she and B.L. did not receive this reporting letter until mid-April 2009 which the Member denies. There was no proof of delivery on file.
175. By letter dated April 30, 2008, the Member wrote the Purchaser a similar reporting letter and enclosures, with a statement of account for \$954.70; it does not appear it was ever sent.
176. Between May and December 2008 E.G. states she made numerous requests to the Member for a reporting on the transaction; the Member denies receiving these requests insisting that he provided his final report on or about April 30, 2008.
177. By way of an email dated September 28, 2008, the Purchaser inquired of the Member as to when he would see or receive any paperwork on the mortgage, stating he did not have a copy of anything he signed. The Member did not respond to this request.
178. On October 18, 2008, the Member spoke with the Purchaser about adding W.T. to the title and instructed his assistant by way of handwritten notes of the same date asking her to prepare a transfer back "in good" as the previous assistant had only prepared a letter to sign.
179. On December 15, 2008, the Purchaser applied for house/fire insurance for the property but the insurance application did not list any first loss payees. Insurance coverage was granted the next day effective to December 16, 2009.
180. Between January and March 2009, E.G. asserts that she made numerous requests to the Member for the final report on the transaction; the Member denies receiving these requests insisting that he provided his final report on or about April 30, 2008.

181. On April 5, 2009, the insurance on the property was cancelled for non-payment of premiums. Since no first loss payees were listed in the insurance application the Vendors were not notified of the policy cancellation.
182. Sometime in April 2009 the Vendors attended the Member's office and informed that the Purchaser had failed to make several mortgage payments. The Member advised them to exercise the transfer back in the event that three consecutive payments were missed. The Member's recollection is that the Vendors did not want to take the property back because of a decline in property values.
183. By way of letter dated May 4, 2009, the Member provided the Purchaser with a copy of the title, mortgage and statement of account, stating that the reporting letter was sitting in his office as the Member was anticipating a transfer adding W.T. to title, but since the Purchaser was now three consecutive months in arrears the Member was now putting the Purchaser on notice that the Vendors were intending to exercise the transfer back. The Member asked the Purchaser to call him to discuss resolution.
184. On May 8, 2009, R.L. informed the Member that the Purchaser had made a \$2,000.00 payment and that the mortgage would be renewed.
185. However, on May 8, 2009, the property was destroyed by fire.
186. On May 10, 2009, E.G. attended the Member's office to discuss the matter at which time the Member advised her he did not have a copy of the insurance binder letter in his file.
187. E.G. filed a complaint against the Member with the Law Society on June 9, 2009, setting out the events noted above and stating that she and B.L. were relatively inexperienced and relied upon the Member's professional expertise to protect their interest in the property. E.G. questioned as to why the Member would transfer title without confirming fire insurance was in place and that the Vendors were named as first loss payees.
188. On July 9, 2009, the Law Society sent the Member a Section 53 demand. The Member did not respond. A follow up letter was sent to the Member on August 13, 2009. He did not respond. A further reminder was sent to the Member on August 31, 2009, but the Member did not respond.
189. By way of letter dated September 9, 2009, the Law Society demanded a response from the Member. He did not respond. That demand was repeated on September 28, 2009.
190. The Member responded to the Law Society on October 20, 2009, by way of letter dated May 9, 2009, setting out the events noted above and stating that he believed he did everything required of him on this transaction.

191. On February 8, 2010, the Law Society requested the Member provide his files for review. The Member complied with the request on February 11, 2010. The files were returned to the Member on February 18, 2010.

**ADMISSION OF FACTS**

192. The Member admits as fact the statements contained within this Agreed Statement of Facts for the purposes of these proceedings. The Member admits that all correspondence sent to him was received by him on or about the dates indicated, unless stated otherwise.

193. The Member proposes the following citations be amended to read as follows (amendments in *italics*):

9. IT IS ALLEGED THAT you *failed to fulfill within a reasonable time* undertakings given to another lawyer, James Cregan, to discharge non-permitted encumbrances, and that such conduct is conduct deserving of sanction.

12. IT IS ALLEGED THAT you *failed to fulfill within a reasonable time* undertakings given to another lawyer, L. Diane Young, and that such conduct is conduct deserving of sanction.

194. The Member admits guilt to Citations 1-8, 9 (as amended), 10 (as amended), 11, 12 (as amended), 14, 17, and 18-21.

195. This Agreed Statement of Facts is not exhaustive and the Member may lead additional evidence not inconsistent with the stated facts herein. The Member acknowledges that the Law Society is not bound by this statement of facts and that it may cross-examine the Member, adduce additional evidence, or otherwise challenge any point of fact it may dispute in this statement.

12. Counsel for the LSA also offered a section 58(5) Report of the Practice Review Panel dated March 22, 2010. With the consent of the Member, the Report was entered into evidence as Exhibit 10.

**VIII. FINDING OF GUILT**

13. The Hearing Committee, having accepted the admission of guilt from the Member as set out in Exhibit 6, finds the Member guilty of those citations as set out in paragraph 194 above.

**IX. EVIDENCE OF THE MEMBER PRIOR TO SANCTION**

14. At the request of the panel, the Member gave evidence under oath. Mr. Elgert responded under oath to questions posed by counsel and by the Hearing Committee members.

**REPORT OF THE HEARING COMMITTEE**

**In the Matter of DARRELL ELGERT**

**Page 28**

15. The Member was admitted to the Bar on August 15, 1986 and practices in Edmonton, Alberta. At the time of the hearing, the Member was aged 50 years.
16. For over ten years the Member has practiced with two other lawyers. The Member describes himself as having a general practice with a focus on real estate, some civil litigation, and some small corporate work in the last ten years. By 2006/2007, the Member was doing a substantial amount of real estate work.
17. Part of the Member's problems developed from overwork because of too much real estate work. The Member testified that much of his difficulty which brought him before the Hearing Committee was that as problems arose, he tried to solve those without seeking outside assistance. By doing so, the Member stated that he had taken a very bad situation and made it "horrendous". For example, the Member testified how it came about that he loaned money to client AH. The client was in a very difficult situation financially, where she could not pay her bills. She asked the Member to release to her some of the monies held in trust pending closure of her real estate matter. Of course, he could not do that. As a result, he made her a personal loan of \$10,017.53 (\$9,865.00 plus interest of \$152.53) so she "had some money to live on". He stated that, in retrospect, he should not have charged her interest.
18. The Member has accessed the ASSIST program. He underwent two informal counseling sessions some time after March 22, 2010. The counsellor did not suggest any specific treatment program.
19. In cross examination by counsel for the LSA, the Panel heard that the Practice Review Department asked the Member to follow up on its November 4, 2010 report by November 15, 2010 (the Report). The Member did not do so. His reason for not responding is because his understanding of the letter to him was that if he disagreed with the contents of the Report, he should advise. He does not disagree with anything in the Report and so did not respond. Later, he did leave a voice mail message for the Practice Review Manager in relation to the Report. Counsel for the LSA confirmed that the message had reached the Practice Review Manager.

**MEMBER'S PRACTICE DURING SUSPENSION**

20. The Member knew prior to the Hearing that he was facing the possibility of a suspension of six months.
21. In response to questioning by Mr. Everard, the Member explained what would happen to his law practice during his period of suspension. There are 150 to 200 ongoing, active files. Prior to the hearing, the Member referred all the files to one of his law partners. The Member has spoken, where it was possible, to each client and advised that his partner would be assuming responsibility of his/her file. The clients have expressed no dissatisfaction with that arrangement. Over the month prior to the Hearing, the Member advised his clients that he will be in an LSA hearing and that he would be suspended for a period of time.

**X. DECISION REGARDING SANCTION**

22. Counsel for the LSA proffered the Member's record, which shows no discipline record with the LSA. With the consent of the Member, it was entered into evidence as Exhibit 8.
23. Counsel for the LSA proffered an Estimated Statement of Costs (the Cost Estimate). With the consent of the Member, the Cost Estimate was entered into evidence as Exhibit 9.

**XI. SUSPENSION**

24. The Hearing Committee heard submissions regarding sanction from both counsel. In arriving at the sanction, the Hearing Committee is mindful of the purpose of the sanction is not to punish Mr. Elgert but rather as a reminder that lawyers must be vigilant and maintain high professional standards. In addition to the quotes below, the Hearing Committee is also mindful that, as stated in *R. v. Shropshire* (1995), 102 C.C.C. (3d) 193 at paragraph 48 (S.C.C.), there is no single correct sanction.
25. Lawyers & Ethics: Professional Responsibility and Discipline, by Gavin McKenzie (at pages 26-1):

The purposes of law society discipline proceedings are not to punish offenders and exact retribution, but rather to protect the public, maintain high professional standards, and preserve public confidence in the legal profession.

In cases in which professional misconduct is either admitted or proven, the penalty should be determined by reference to these purposes...

The seriousness of the misconduct is the prime determinant of the penalty imposed. In the most serious cases, the lawyer's right to practice will be terminated regardless of extenuating circumstances and the probability of recurrence. If a lawyer misappropriates a substantial sum of clients' money, that lawyer's right to practice will almost certainly be determined, for the profession must protect the public against the possibility of a recurrence of the misconduct, even if that possibility is remote. Any other result would undermine public trust in the profession.

26. As stated in *Bolton v. Law Society*, [1994] 2 All ER 486 at 492 (C.A.), per Sir Thomas Bingham MR for the court:

If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends on trust.

27. Following the submissions and deliberation, the Hearing Committee ruled that the sanction was suspension of the Member for six months commencing on December 17, 2010. A joint submission by counsel had been for a suspension commencing on an earlier date, but because of the Hearing Committee's concern regarding the transition of the Member's files, it held that the start date of December 17, 2010 would serve the best interests of the public.
28. In delivering the sanction, the Chair, on behalf of the Hearing Committee, indicated to the Member that he must maintain professional boundaries and is neither a social worker nor a banker. The panel is satisfied that the Member understands that loaning money to clients is to be undertaken with great caution and forethought and then only under the manner prescribed by the Rules of the LSA.
29. It is hoped that during the six month suspension, the Member will undertake, as ordered to do, not only the recommendations of the Practice Review Committee but that he will seriously evaluate his professional life and how he conducts it so that when he returns to practice, he will not encounter similar difficulties which brought him before this Hearing Committee. It is hoped that the Member will heed the Hearing Committee's advice that he demonstrate his governability by responding promptly to any future communications from the LSA; and serving clients in a diligent fashion and not becoming overworked, which led, as stated by the Member in evidence, to this "horrendous mess".
30. The Member is to continue with the Practice Review process and implement the directions of the Practice Review Committee as set out in Exhibit 10.

## **XII. COSTS**

31. The LSA produced an estimated Statement of Costs which totaled \$9,124.50 (the Costs) (*Exhibit 9*).
32. It is ordered that the Costs are due and payable on or before December 17, 2011.

## **XIII. ANCILLARY ORDERS**

33. The Hearing Committee directs that, following redaction to protect client confidentiality and with the exception of the client ledger at tab A of Exhibit 6, all Exhibits entered at the Hearing are a matter of public record and are available to the public.
34. On the basis of submissions of counsel for the LSA, and with the consent of the Member, the report of the Practice Review Committee, (*Exhibit 10*), shall be redacted to the extent required to protect client privilege and confidences, following which it shall form part of the public record.
35. The Profession shall be notified of the suspension.
36. There shall not be a referral to the Attorney General.

**REPORT OF THE HEARING COMMITTEE  
In the Matter of DARRELL ELGERT  
Page 31**

DATED this 7 day of April, 2011.

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**ROSE M. CARTER, Q.C.**  
Chair

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**RON EVERARD, Q.C.**  
Member

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**WAYNE JACQUES**  
Member