



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 Darren Matwe, a Member of the Law Society of Alberta.

A. Jurisdiction and Preliminary Matters

1. A Hearing Committee of the Law Society of Alberta (LSA) held a hearing into the conduct of Darren Matwe on November 24, 2006. The Committee consisted of Douglas R. Mah, QC, Chair, Carsten Jensen, QC and Morris Taylor. The LSA was represented by Garner Groome. The Member was represented by Harris Hanson.
2. Exhibits 1 through 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 Committee and were admitted into evidence by consent.
3. There was no objection by the Member's counsel or counsel for the LSA regarding the membership of the Committee.
4. The Certificate of Discretion was entered as Exhibit 5. No request for a private hearing had been received and therefore the hearing proceeded in public. However, in order to protect personal privacy and solicitor-and-client privilege, LSA counsel requested, and the Committee granted, the following orders with respect to Exhibits 45 through 64:
 - Exhibit 45 – redaction of third party names and addresses,
 - Exhibit 48 – redaction of third party names and addresses,
 - Exhibit 49 – that the exhibit be kept private in its entirety,
 - Exhibit 50 – redaction of third party names and addresses,
 - Exhibit 51 – redaction of third party names and addresses,
 - Exhibit 52 – redaction of third party names and addresses,
 - Exhibit 53 – that the exhibit be kept private in its entirety,
 - Exhibit 54 – that the exhibit be kept private in its entirety,
 - Exhibit 55 – redaction of third party names and addresses,
 - Exhibit 56 – redaction of third party names and addresses,
 - Exhibit 57 – redaction of third party names and addresses,
 - Exhibit 58 – that the exhibit be kept private in its entirety,
 - Exhibit 59 – redaction of third party names and addresses,
 - Exhibit 60 – redaction of third party names and addresses,
 - Exhibit 61 – redaction of third party names and addresses and any personal identifiers,
 - Exhibit 62 – that the exhibit be kept private in its entirety, and
 - Exhibit 64 – redaction of third party names and addresses.

5. Exhibits 6 through 92, contained in three exhibit binders provided to Committee members and the parties, were admitted into evidence by consent. The following additional exhibits were also entered into evidence by consent:
 - Exhibit 93 – Agreed Statement of Facts and Admission of Guilt dated November 24, 2006 and signed by the Member;
 - Exhibit 94 – letter dated November 20, 2006 from H. D., registered psychologist;
 - Exhibit 95 – Estimated Statement of Costs;
 - Exhibit 96 – Certificate of No Record dated November 20, 2006 signed by R. Gregory Busch, Director, Lawyer Conduct;
 - Exhibit 97 – Section 53 Report dated October 4, 2006 prepared by Katherine A. Whitburn, Manager, Complaints, concerning the Member;
 - Exhibit 98 – copy of letter dated November 24, 2006 from Marco DiStefano to Mr. Groome.
6. Counsel for T., Mr. Colin Yeo, attended the initial part of the hearing. His interest was in protecting the personal information of customers of his client that was contained in some of the exhibits. Mr. Yeo left the hearing once the orders referred to in paragraph 4 above were made.
7. Exhibit 97 refers to a separate complaint made against the Member that had been directed to a hearing by a Conduct Committee Panel. It was agreed between counsel, and accepted by the Hearing Committee, that the Section 53 Report could be referred to by counsel during the sanctioning phase of the hearing, but was not to be considered by the Hearing Committee as constituting a separate citation. It was noted that the Hearing Committee Chair had been part of the Conduct Committee Panel that had considered the Section 53 Report. Neither counsel had any objection to the Hearing Committee Chair continuing to chair the hearing.
8. The Hearing Committee agreed to amend citation 16 as proposed in paragraph 11 of the Agreed Statement of Facts and Admission of Guilt (Exhibit 93).
9. LSA counsel advised that the Member had been put on notice that the LSA would be asking the Hearing Committee to consider suspension and possibly even disbarment in the event of a finding of guilt.

B. Agreed Statement of Facts and Admission of Guilt

10. The Agreed Statement of Facts and Admission of Guilt (Exhibit 93) states as follows:

GENERAL BACKGROUND

1. The Member was a sole practitioner in Calgary, Alberta. He is currently employed with a land company in non-legal capacity. He remains on the active/practicing list. He was admitted to the Bar on July 12, 1990.

CITATIONS

2. On January 18, 2005, and June 27, 2006, the Conduct Committee referred twenty-three citations arising from seven separate complaints:

1. IT IS ALLEGED THAT you breached your undertaking to J.D., and that such conduct is conduct deserving of sanction;
2. IT IS ALLEGED THAT you failed to respond to J.D. in a timely manner, and that such conduct is conduct deserving of sanction;
3. IT IS ALLEGED THAT you failed to respond to the Law Society in the matter of J.D. on a timely basis and in a complete and appropriate manner, and that such conduct is conduct deserving of sanction;
4. IT IS ALLEGED THAT you failed to serve your client D.M. in a conscientious, diligent, and efficient manner, and that such conduct is conduct deserving of sanction;
5. IT IS ALLEGED THAT you failed to be punctual in fulfilling commitments made to your client D.M. and failed to respond on a timely basis to client communications that contemplated a reply, and that such conduct is conduct deserving of sanction;
6. IT IS ALLEGED THAT you failed to keep your client D.M. informed as to the progress of the client's matter, and that such conduct is conduct deserving of sanction;
7. IT IS ALLEGED THAT you failed to respond to the Law Society in the matter of D.M. on a timely basis and in a complete and appropriate manner, and that such conduct is conduct deserving of sanction;
8. IT IS ALLEGED THAT you failed to serve your client T... in a conscientious, diligent, and efficient manner, and that such conduct is conduct deserving of sanction;
9. IT IS ALLEGED THAT you failed to be punctual in fulfilling commitments made to your client T... and failed to respond on a timely basis to client communications that contemplated a reply, and that such conduct is conduct deserving of sanction;
10. IT IS ALLEGED THAT you failed to keep your client T... informed as to the progress of the client's matter, and that such conduct is conduct deserving of sanction;
11. IT IS ALLEGED THAT you failed to respond to the Law Society in the matter of T... on a timely basis and in a complete and appropriate manner, and that such conduct is conduct deserving of sanction;
12. IT IS ALLEGED THAT you failed to serve your client M.M. in a conscientious, diligent, and efficient manner, and that such conduct is conduct deserving of sanction;
13. IT IS ALLEGED THAT you failed to be punctual in fulfilling commitments made to your client M.M. and failed to respond on a timely basis to client communications that contemplated a reply, and that such conduct is conduct deserving of sanction;

14. IT IS ALLEGED THAT you failed to keep your client M.M. informed as to the progress of the client's matter, and that such conduct is conduct deserving of sanction; and
 15. IT IS ALLEGED THAT you failed to respond to the Law Society in the matter of M.M. on a timely basis and in a complete and appropriate manner, and that such conduct is conduct deserving of sanction.
 16. IT IS ALLEGED THAT you breached your undertaking to D.P., and that such conduct is conduct deserving of sanction;
 17. IT IS ALLEGED THAT you failed to respond to D.P. in a timely manner, and that such conduct is conduct deserving of sanction;
 18. IT IS ALLEGED THAT you failed to respond to the Law Society in the matter of D.P. on a timely basis and in a complete and appropriate manner, and that such conduct is conduct deserving of sanction;
 19. IT IS ALLEGED THAT you breached an undertaking to L.P., and that such conduct is conduct deserving of sanction;
 20. IT IS ALLEGED THAT you failed to respond to L.P. in a timely manner, and that such conduct is conduct deserving of sanction;
 21. IT IS ALLEGED THAT you failed to respond to the Law Society in the matter of L.P. on a timely basis and in a complete and appropriate manner, and that such conduct is conduct deserving of sanction;
 22. IT IS ALLEGED THAT you failed to comply with your undertaking given to the Law Society with respect to bringing your accounting records up to date, and that such conduct is conduct deserving of sanction;
 23. IT IS ALLEGED THAT you failed to respond to the Law Society in the matter of its complaint, and that such conduct is conduct deserving of sanction.
3. The particulars of Citations 1 through 3 include the following:
- 3.1 In 1999 the Member represented the vendors of a residential property in Calgary. The Complainant J.D. acted for the purchasers.
 - 3.2 On 21 Oct 99 the Member gave undertakings to provide a new RPR and "reasonable best efforts" to obtain City of Calgary compliance (Exhibit 6 Tab 3; Exhibit 20 Tab 4).
 - 3.3 The RPR was completed on 17 Jul 00 (Exhibit 9 Tab 2) but the Member did nothing with it.
 - 3.4 On 11 Jun 03 the Complainant complained to the Law Society that the undertakings were not fulfilled despite "repeated requests" (Exhibit 6).

3.5 By letter dated 17 Jun 03 the Law Society requested a reply to the complaint from the Member by 2 Jul 03 (Exhibit 7). The Member received this correspondence but did not respond.

3.6 The Law Society wrote the Member on 10 Dec 03 again requesting a reply to the complaint by 31 Dec 03 (Exhibit 8). The Member received this second letter but did not respond.

3.7 On or about 5 Mar 04 the Member verbally advised the Law Society that he was looking for the file and on 22 Mar 04 he was asked to provide a more detailed report on the status of the file.

3.8 On 29 Mar 04 the Member advised the Law Society that his file was closed without dealing with the RPR and compliance issues (Exhibit 9).

3.9 As of 13 Apr 04 the Member was still waiting for pictures of the property so he can proceed with encroachment application (Exhibit 10).

3.10 On 19 Apr 04 the Law Society asked the Member verbally for a detailed report in writing.

3.11 On 7 May 04 the Law Society requested in writing a meaningful report from the Member (Exhibit 11). By way of letter dated 17 May 04 the Member advised the Law Society he has made an encroachment application to City of Calgary (Exhibit 12).

3.12 Nothing further was heard from the Member despite repeated requests from the Law Society in writing on 1 Jun and 24 Jun 04 (Exhibits 13 & 14) and by a voice mail message left on 14 Jun 04 until the Member advised that he was still awaiting receipt of documents from the City of Calgary (Exhibit 15). The Law Society followed up by leaving voice mail messages on 29 Jul and 2 Aug 04. On 3 Aug 04 the Member responded by leaving a voice mail with the Law Society on 3 Aug 04 to the effect that he is checking with the City (Exhibit 16).

3.13 On or about 16 Aug 04 a Section 53 demand letter was sent to the Member via registered mail for a formal written response to complaint. The letter was returned by the Member marked "refused" (Exhibit 17).

3.14 In the meantime, on or about 23 Aug 04 the Member sent an encroachment agreement to the Complainant for signature and informed the Law Society accordingly a few days later (Exhibit 18).

3.15 The Law Society personally served the Aug 16th Section 53 Demand Letter upon the Member on 27 Aug 04 (Exhibit 19).

3.16 On 9 Sep 04 the Member provided a written response to the complaint (Exhibit 20) wherein he admitted his failure to respond to the Complainant. The Member blamed his staff for closing the file before completing it and for the delay in getting the RPR and compliance.

3.17 On 30 Sep 04 the Complainant confirmed that the Encroachment Agreement was sent to City of Calgary on 9 Sep 04 (Exhibit 21). The Complainant also advised he is satisfied with the Member's response as long as he complies with his undertakings. On or about 3 Nov 04 the undertakings were finally fulfilled and the Member apologized for his "extensive delay" (Exhibit 22).

4. The particulars of Citations 4 through 7 include the following:
 - 4.1 The Member represented the Complainant D.M. in a litigation matter. After trial party-party costs were awarded to the Complainant in a judgment issued on 7 Aug 01 (Exhibit 23 Tab 2). However, nothing was done by the Member to pursue costs. The costs, inclusive of disbursements, are approximately \$7,000 (Exhibit 29 Tab 3).
 - 4.2 The Complainant made numerous attempts between Aug 01 and June 03 to get the Member to recover the costs (Exhibit 23). The Member received these requests but did not respond.
 - 4.3 On 17 Jun 03 (Exhibit 23 Tab 3) and 16 Sep 03 (Exhibit 23 Tab 4) the Complainant wrote the Member about the costs. The Member received these letters but did not respond. The Complainant filed a complaint with the Law Society on 27 Oct 03.
 - 4.4 The Law Society contacted the Member via telephone on 27 Oct 03 who promised to finalize the file and report to the Complainant (Exhibit 24).
 - 4.5 By 8 Dec 03 nothing had been done by the Member so the matter was referred to the formal complaint process after an undetermined amount of attempts to contact him by the Law Society (Exhibit 25).
 - 4.6 After numerous attempts the Law Society contacted the Member on 12 Feb 04 who promised to have the work done the following week (Exhibit 26).
 - 4.7 On 4 Mar 04 the Member advised the Law Society that he is attempting to negotiate costs (Exhibit 27).
 - 4.8 On 24 Mar 04 the Law Society faxed the Member requesting that he address issue of interest on the costs (Exhibit 28). The Member received this request but did not respond until 3 May 04 (Exhibit 29).
 - 4.9 On or about 17 May 04 opposing counsel in the litigation matter sent to the Member funds to cover agreed upon costs and related material under standard trust conditions (Exhibit 30).
 - 4.10 Between 26 May 04 and 5 Jul 04 the Law Society wrote the Member 5 times requiring a response (Exhibits 31, 32, 33, 34, and 35). The Member received each of these requests but did not respond until 5 Jul 04 (Exhibit 36).
 - 4.11 In his response of 5 Jul 04 the Member advised that there were difficulties with the court documentation sent by opposing counsel. Ultimately this was corrected and sent to the court on 12 Jul 04 (Exhibit 38).
 - 4.12 On 18 Aug 04 a Section 53 demand letter dated 17 Aug 04 was refused delivery by Member (Exhibit 41).

- 4.13 The same day (18 Aug 04) the Member finalized the costs, rendered an account (Exhibit 42 Tab 2) and reported to the Complainant, providing the net amount of costs plus interest at 5% on the net amount of costs for the delay (Exhibit 42 Tab 1). The Member reported finalization to the Law Society on 23 Aug 04 (Exhibit 42).
- 4.14 On 30 Aug 04 personal service of the Section 53 demand letter was effected on the Member (Exhibit 43).
- 4.15 By way of letter dated 9 Sep 04 the Member admitted he failed to vigorously pursue the costs but denies any responsibility for any delay past "spring 2004". The Member stated that he "regrets not always responding to the Law Society and [the Complainant] on a scheduled basis" (Exhibit 44 Tab 1).
5. The particulars of Citations 8 through 11 include the following:
- 5.1 On 19 Dec 03 a mortgagee, T..., advised the Law Society that it could not get a response from the Member on several outstanding residential mortgage matters the Member acted on in connection with the purchase of the related properties (Exhibit 45).
- 5.2 On 26 Mar 04 a detailed complaint was received from T...concerning the Member's failure to provide final documentation regarding the placement of 3 mortgages on residential purchases he acted on (Exhibit 52).
- 5.3 With respect to the first purchase, the transaction closed 15 May 02 (Exhibit 52 Tab 1) but the Member did not provide report until 8 Jan 03 (Exhibit 48 Tab 1). A report was made to T... but it was incomplete with respect to the survey and compliance. The survey and compliance requirements were completed after Law Society intervention on 19 Apr 04 (Exhibit 53). In the meantime, the purchaser had sold the property to a third party who assumed the mortgage (Exhibit 53 Tab 2).
- 5.4 With respect to the second purchase, the transaction closed 26 Apr 2002 (Exhibit 52 Tab 2) but no report was made to T... at all until after Law Society intervention on 21 Mar 04 (Exhibit 49 Tab 1). No RPR and compliance was provided as required (Exhibit 59). An old RPR and compliance was provided via the Law Society on 9 Sep 04 (Exhibit 63 Tab 2) and forwarded to the Complainant with no further reply from the Complainant.
- 5.5 With respect to the third purchase, the transaction closed 29 Jun 00 (Exhibit 52 Tab 3) but no report to T... was made at all until after Law Society intervention on 22 Jun 04 (Exhibit 58).
- 5.6 On 16 Aug 04 the Law Society sent a Section 53 demand letter to the Member (Exhibit 61) but it was returned and marked "refused" on 17 Aug 04. The Member was personally served with this demand letter on 27 Aug 04 (Exhibit 62).
- 5.7 The Member provided a written response to the Law Society on 9 Sep 04 (Exhibit 63). The third purchase file was just simply closed and archived without reporting to the complainant (Exhibit 63 Tab 1 p.1). The second purchase file was mistakenly recorded as completed and archived (Exhibit 63 Tab 1 p.1). In that regard the Member undertook to the Law Society to obtain a Statutory Declaration on the old RPR (Exhibit 63 Tab 2). On the first purchase file the report was "completed by a member of his staff and archived" without actually forwarding the report on to T...(Exhibit 63 Tab 1 p.2).

5.8 Citation 11 (failure to reply to LSA on a timely basis and in a complete and appropriate manner) stems primarily from pre-Section 53 demand inquiries from the Law Society. The Member admits he was less than “vigilant” in responding to Law Society inquiries (Exhibit 63 Tab 1 p.2). This citation also relates to the Member’s failure to provide the Statutory Declaration on the second purchase file by 12 Nov 04 (Exhibit 64). The further particulars of Citation 11 include:

5.8.1 On 14 Jan 04 the Law Society requested a response to the initial complaint (Exhibit 45) from the Member by 28 Jan 04 (Exhibit 46). The Member received this request but did not respond.

5.8.2 On 4 Mar 04 the Member was contacted by the Law Society and promised a response by 8 Mar 04 (Exhibit 47). The Member did not respond until 21 Mar 04 (Exhibits 48 & 49). It should be noted that as of this date only the first and second purchase matters have been raised by the Complainant. The third purchase file is not raised by the Complainant until it makes its formal written complaint on 26 Mar 04 (Exhibit 52 Tab 3). In any event, there is no reply from the Member until 3 May 04 (Exhibit 54) where he says the vendor’s solicitor’s undertaking is being sought for a clear Certified Copy of Title.

5.8.3 On 18 May 04 the Law Society requested a report from the Member (Exhibit 55). The Member received this request but did not respond.

5.8.4 The Law Society again requested a report on 28 May 04 noting how “painfully slow” the Member’s responses have been (Exhibit 56). Responses from the Member trickle in on 8 Jun 04 (Exhibit 57) and 22 Jun 04 (Exhibit 58). The responses are not complete and do not fully address T.’s issues.

5.8.5 On 25 Jul 04 the Law Society requested from the Member an update regarding the compliance on the second purchase file (Exhibit 60). This inquiry was received by the Member but he provided no response (Exhibit 63) until after the Section 53 demand was personally served on 27 Aug 04 (Exhibit 62).

6. The particulars of Citations 12 through 15 include the following:

6.1 The Member represented the Complainant M.M. as plaintiff in a property claim arising out of a 19 Nov 96 motor vehicle accident (Exhibit 70 Tab 2). The Court of Queen’s Bench action was filed on 18 Nov 98 (Exhibit 70 Tab 3) and served on 5 January 00 (Exhibit 70 Tab 4). Apparently nothing further was done until responding to the complaint dated 14 Jul 04 (Exhibit 69).

6.2 A verbal complaint was made to the Law Society on 21 Jan 04 concerning a delay in the Member dealing with file (documented at Exhibit 72 Tab 1). The Complainant had heard nothing from the Member since the fall of 2003 and had been unable to contact the Member because the Member’s telephone was out of service. The Member was advised of the complaint on 22 Mar 04.

6.3 On 27 Jan 04 a written complaint was provided by the complainant to the Law Society but it was misplaced and never found (Exhibit 72 Tab 1).

6.4 On 22 Mar 04 the Member promised the Law Society that he will attend to the file.

- 6.5 On 19 Apr 04 the Member advised the Law Society that he is in process of consolidating the action with another action related to the same accident.
- 6.6 Requests were made to the Member for a response on 7 May 04 (Exhibit 65), 18 May 04 (Exhibit 66), 1 Jun 04 (Exhibit 67), 14 June 04 (Exhibit 68), and 24 Jun 04 (Exhibit 68), all of which were received by the Member. There was no response from the Member until he said he is looking into it on 14 Jul 04 and that he will report further in early August 04 (Exhibit 69). No report was made by the Member.
- 6.7 On 12 Aug 04 the Law Society sent a demand for a meaningful response to the complaint "forthwith" (Exhibit 71). This demand was received but the Member did not respond.
- 6.8 On 27 Aug 04 a Section 53 demand letter dated 23 Aug 04 (Exhibit 72) was delivered by personal service to the Member (Exhibit 73).
- 6.9 On 9 Sep 04 the Member responded to the complaint (Exhibit 74). He explained that after some initial inquiries into whether the defendants had counsel, the file was misplaced. He further stated that he received instructions from the Complainant to proceed to note the defendants in default.
- 6.10 The Member's response was sent to the Complainant on 16 Sep 04 (Exhibit 75). Nothing further was heard from the Complainant.
7. The particulars of Citations 16 through 18 include the following:
- 7.1 On 26 Jul 04 a complaint was received from the Complainant D.P. (Exhibit 76). The Member represented a vendor in a residential real estate transaction that closed in August, 2003. On 29 Jul 03 the Member undertook to the Complainant to provide a Real Property Report and municipal compliance (Exhibit 76 Tabs 5 & 7), and on 1 Aug 03 he further undertook to discharge an existing mortgage and caveat from title within a reasonable time (Exhibit 76 Tab 7).
- 7.2 On 14 Oct 03 the Complainant asked the Member for the RPR (Exhibit 76 Tab 10). The Member received this request but did not respond.
- 7.3 On 7 Apr 04 the Complainant again asked the Member for the RPR, compliance, and the discharge of the prior encumbrances indicating the matter has become urgent as the purchaser is re-selling the property with a closing of 30 Jul 04 (Exhibit 76 Tab 11). The Member responded by voicemail saying he is waiting for one further discharge (Exhibit 76 Tab 12).
- 7.4 On 15 Apr 04 the Complainant asked the Member to provide confirmation of the discharge by 16 Apr 04 (Exhibit 76 Tab 12). The Member received this request but did not respond.
- 7.5 On 21 Apr 04 the Complainant formally demanded a response from the Member by 22 Apr 04 or he would report the matter to the Law Society (Exhibit 76 Tab 13).
- 7.6 The Member responded to the Complainant on 28 Apr 04 referencing only the prior mortgage yet to be discharged and enclosing by fax a RPR and compliance (Exhibit 76 Tab 14). The Member did not send the original RPR and compliance (Exhibit 76 Tab 15).

- 7.7 On 3 May 04 the Complainant requested information on the discharges and sought the original RPR and compliance (Exhibit 76 Tab 15). The Member received this request but did not respond.
- 7.8 On 13 Jul 04 the Complainant in desperation demanded compliance by 16 Jul 04 (Exhibit 76 Tab 16). The Member received this demand but did not respond.
- 7.9 The Complainant was therefore forced to make his own arrangements to obtain an original RPR and compliance on 26 Jul 04 and he advised the Member that he was doing so. The Complainant contacted the caveator on the discharge of the caveat and it turned out that it had been discharged. Regarding the prior mortgage the Complainant contacted the mortgagee directly but it would provide a discharge to the Complainant without consent of original vendor due to privacy legislation (Exhibit 76).
- 7.10 On 28 Jul 04 the Law Society sent the complaint to the Member requiring a response by 6 Aug 04 (Exhibit 77). The Member received this request but did not respond.
- 7.11 On 16 Aug 04 a Section 53 demand was sent by the Law Society but it was returned "refused" on 17 Aug 04 (Exhibit 78). The demand letter was ultimately served via personal service on 27 Aug 04 (Exhibit 80).
- 7.12 In the meantime, on 24 Aug 04 the Member contacted the Complainant (Exhibit 79). The Complainant got the impression from this conversation that since he had informed the Member that he would have to deal with the matter himself, the issue was no longer important to the Member. Considerable anguish and frustration was caused to the Complainant and his client as a consequence of the Member's inaction.
- 7.13 On 26 Aug 04 the Member confirmed with the Complainant that the mortgage discharge was en route as of 23 Aug 04 (Exhibit 81).
- 7.14 On 9 Sep 04 the Member responded to the Section 53 demand. He gave no explanation for failures except to say that he did not lie or mislead anyone (Exhibit 82).
- 7.15 The Member's problem in getting the mortgage discharged promptly was partly due to the mortgagee resisting because they continued to show that the mortgage existed, even after the Member had provided the funds, because the vendor's kept the mortgage file open when they took advantage of the portability option and borrowed from the mortgagee, under the same account, in buying another home.
- 7.16 On 6 Oct 04 the Complainant acknowledged full compliance with the undertakings and that part of problem was a delay on the part of the mortgagee but he felt that the Member did not do everything reasonably possible to comply with his undertakings, and the lack of communication from the Member was "absolutely irritating" (Exhibit 83).
8. The particulars of Citations 19 through 21 include the following:
- 8.1 On 6 Aug 04 a complaint was received from the Complainant L.P. (Exhibit 84). The Member represented a vendor in a residential real estate transaction that closed 30 May 03.

- 8.2 The Member undertook to the Complainant on 2 Jun 03 to discharge prior encumbrances (a bank mortgage and an individual mortgage) and to provide compliance and an encroachment agreement regarding the roofline (Exhibit 84 Tab 1). The Member also undertook to hold back \$3500 until the issues noted in the Real Property Report were sorted out (Exhibit 84 Tab 1).
- 8.3 Between 22 Aug 03 and 6 Apr 04, the Complainant sent 7 requests to comply with the undertakings (Exhibit 84 Tabs 2-8). The Member received these requests but did not respond.
- 8.4 On 16 Aug 04 the Law Society sent a Section 53 demand letter to the Member and it was returned "refused" on 18 Aug 04 (Exhibit 85).
- 8.5 On 27 Aug 04 the Section 53 demand letter was personally served on the Member (Exhibit 86).
- 8.6 On 9 Sep 04 the Member responded to the Law Society. He said that he "placed this file to the side and unfortunately, overlooked it" (Exhibit 87). The Member promised to complete his undertakings. Eventually the bank mortgage was discharged but there was no indication that the individual mortgage was discharged.
- 8.7 On 16 Sep 04 the Law Society forwarded the Member's response to the Complainant and asked for comments (Exhibit 88). None were received.
- 8.8 On 31 March 05 the Member obtained the RPR and municipal compliance.
- 8.9 As of October 27, 2005, the Member still had not complied with his undertakings (Exhibit 89).
9. The particulars of Citations 22 and 23 include the following:
- 9.1 On 16 Oct 01 a Rule 130 audit noted 17 trust accounting irregularities (Exhibit 90 Tab 1).
- 9.2 By way of undertaking on 11 Apr 02 the Member signed a compliance confirmation saying all correctible deficiencies noted in the audit report were corrected and he undertook to maintain compliance with trust accounting rules in the future (Exhibit 90 Tab 2).
- 9.3 On 1 Nov 05 a follow up audit conducted by the Law Society noted that the Member's trust reconciliations were in arrears since at least Aug 04 (Exhibit 90 Tab 3). The Member agreed to freeze his trust accounts (Exhibit 90 Tab 4) until the reconciliations were completed. By 28 Nov 05 all reconciliations were completed, all trust shortages known to that date were corrected, and the Member's trust accounts were unfrozen (Exhibit 90 Tab 5).
- 9.4 On 23 Feb 06 the follow up audit report was completed (Exhibit 90 Tab 6) indicating numerous failures to follow trust accounting rules and it was sent to the Member's business address according to the records of the Law Society. Another compliance confirmation from the Member was requested by no later than 23 Mar 06. No compliance confirmation was provided by the Member by that date.
- 9.5 Concurrently, the Law Society auditors referred the matter to the Conduct Department of the Law Society (Exhibit 90). The Law Society sent a Section 53 demand letter and a copy of the February 2006 audit report to the Member by registered mail at the Member's business address

according to the records of the Law Society on 7 Mar 06 (Exhibit 91). It was returned unclaimed (Exhibit 91 Tab 1).

9.6 On 30 Mar 06 the materials referred to in Exhibit 7 were delivered by courier to the Member's home address according to the records of the Law Society (Exhibit 91 Tabs 2 & 3). Member did not respond.

9.7 On 28 Apr 06 the Law Society sent a reminder to the Member at his home address (Exhibit 92). The Member did not respond.

ADMISSION OF FACTS AND ADMISSION OF GUILT

10. The Member admits the particulars contained within this Agreed Statement of Facts. The Member further acknowledges his conduct as described in the within Agreed Statement of Facts is conduct deserving of sanction.

11. The Member agrees to an amendment to Citation 16 as follows:

16. IT IS ALLEGED THAT you failed to comply with your undertakings to D.P. within a reasonable time, and that such conduct is conduct deserving of sanction;

12. The Member makes these admissions as an admission of guilt to all 23 citations as amended and as contemplated by Section 60 of the *Legal Profession Act*.

THIS AGREED STATEMENT OF FACTS AND ADMISSION OF GUILT IS MADE THIS 24 DAY OF NOVEMBER, 2006.

 "original signed"
Darren Matwe

C. Decision as to Citations

11. The Hearing Committee determined that the Agreed Statement of Facts and Admission of Guilt (Exhibit 93) was in an acceptable form. Consequently, it is deemed for all purposes to be a finding of the Hearing Committee that the conduct of the Member is deserving of sanction in respect of all citations referred to therein, including the amended citation 16.

D. Evidence and Submissions Respecting Sanction

12. The following information was elicited from the Member through questioning by his counsel, LSA counsel and the Hearing Committee members:

- The Member has not opened a file in two years. At present, he is trying to close down his practice.
- The Member is currently unemployed. He has most recently been working in a non-legal capacity as a land man in the oil and gas sector.

- He has worked in both an in-house legal department and as a sole practitioner. Should he return to the practice of law, it would not be as a sole practitioner.
 - He was contacted on three occasions by the Practice Review Committee but declined involvement on all three occasions.
 - He has struggled to make a living most of the time that he spent as a sole practitioner.
 - The Member advised that one of his children has significant medical issues. He admitted to communication problems with his spouse.
 - He has suffered from depressive symptoms, which have waxed and waned since 1997, and has just recently started counselling with Ms. D. He continues to suffer from a depressive illness as at the date of the hearing.
 - The Member has difficulty working without supervision and would definitely do better in a more structured environment. He performed quite well as an in-house counsel in a corporate law department.
13. LSA counsel, in speaking to sanction, made note of the following:
- The conduct in question occurred over a long period of time.
 - Although the Member's circumstances are compelling and worthy of sympathy, the Hearing Committee must be concerned with protection of the public and upholding the integrity of the profession. The Hearing Committee should take a purposeful approach to sentencing.
 - It is obvious that the Member has difficulty in private practice. The complainants have been inconvenienced. The Member has put the profession into disrepute.
 - The Member's problems relate to practice management.
 - There is a serious issue with respect to governability of the Member.
 - Having regard to the factors outlined in paragraph 60 of the Hearing Guide, an appropriate sanction is a lengthy suspension of one to two years. Had the Member not attended, disbarment could have been considered.
 - If the Hearing Committee deems that a suspension is appropriate, there should be conditions attached to the suspension relating to practice review, practice restriction and cooperation with completion of work on outstanding files.
14. The Member's counsel made the following submissions with respect to sanction:
- The Hearing Committee should look at the reasons for the conduct. They are medical reasons.
 - It is conceded that the Member has difficulty with the management of a private practice.
 - It is agreed that the conduct could warrant a period of suspension, but the suspension should only relate to private practice. The Member must earn a living and support a family and therefore should be given the opportunity to work in an in-house legal department. Alternatively, the Hearing Committee could consider a reprimand.
 - There is no need to inflict unnecessary hardship on the Member and his family.
 - The Member is not ungovernable. He did attend the hearing.

E. Decision Regarding Sanction

15. The Chair expressed gratitude on behalf of the Hearing Committee to both counsel for their frank and forthright submissions, which were of considerable assistance in reaching the decision.
16. The Hearing Committee considers the Member's conduct to be serious. It raises issues of governability, not only of the Member but of the profession itself. If the LSA cannot rely on its members to respond to the regulator when called upon, the right to self-governance is itself jeopardized. The conduct also raises a serious issue of professionalism. Members rely on one another for prompt action and response, or at least action and response within a reasonable period of time. Otherwise, as shown in this case, clients on both sides cannot be properly served.
17. The Hearing Committee was asked to consider the entire spectrum of sanction, from reprimand to disbarment. But for the fact the Member appeared at the hearing, disbarment would have been under consideration. The Hearing Committee also concluded that it cannot partially suspend a member, that is, it cannot suspend a member from private practice but allow that member to engage in in-house practice. Suspension is all or nothing.
18. The sheer number of citations and the number of files to which the citations relate indicate serious problems with the Member's ability to practice, and did raise the question of whether he should be allowed to practice at all.
19. The Hearing Committee was cognizant of the Member's technical ability. The Reasons for Judgment that are part of Exhibit 23 are evidence of that ability. The Hearing Committee also notes that within a supervised environment, the Member performs relatively well.
20. The Hearing Committee is of the opinion that the Member does not represent a hopeless case and that somewhere within this mix of circumstances, there is a good lawyer to be salvaged.
21. Accordingly, the Hearing Committee has determined that in order to protect the interests of the public and to maintain the reputation of the profession (as stated in paragraph 51 of the Hearing Guide), there shall be a suspension of one year duration, commencing on November 28, 2006.
22. The following conditions are attached to the suspension:
 - That the Member will cooperate fully with the Executive Director and the eventual custodian with regard to any informal or formal custodianship established with respect to the Member's remaining files.

- That prior to any reinstatement, the Member must satisfy the Practice Review Committee that he has sufficiently resolved his mental health issues such that he can resume practice, including cooperation with the Practice Review Committee with respect to any psychological assessment to be undertaken, if deemed necessary by that Committee.
 - That the Member be prohibited from re-entering private practice upon expiry of the suspension, without prior approval of the Practice Review Committee.
 - That the Member cooperate fully with the Practice Review Committee with respect to any conditions or requirements placed by that Committee upon the Member, either before or after reinstatement.
23. The Hearing Committee recognizes the Member's need to earn a living and support his family. The sanction is not intended to be punitive but rather to express the LSA's strong disapproval of the conduct.
24. The Hearing Committee hopes that the Member will see the suspension as an opportunity to reflect, get healthy, establish communications with his family and develop a support network.
25. The Hearing Committee notes that the Member is not without skill and knowledge and is able to use his legal training, without practicing law, by performing land consulting services in the oil and gas sector. The Hearing Committee hopes that through the Member pursuing such work, he will eventually be able to demonstrate to the Practice Review Committee that he is capable of resuming legal practice.
26. With respect to the matter of custodianship, the Hearing Committee leaves it to the Executive Director to determine the nature of the custodianship, including whether it should be informal or formal, and to give consideration to any informal or formal custodian proposed by the Member.
27. The Member is also ordered to pay the actual costs of the hearing when determined. The Member requested time to pay and the Hearing Committee directed that the costs be paid in full prior to reinstatement.

F. Concluding Matters

28. LSA counsel requested and was granted the following additional orders for the purposes of protecting client confidentiality:
- Exhibit 5 – redaction of third party personal information
 - Exhibit 23, tabs 1, 3 and 4 and Exhibit 42, tabs 1 and 2 – to be held private in their entirety
29. All other documents not ordered to be held in private are available for public inspection upon payment of the appropriate fee and the redaction as ordered above.

30. The Executive Director is directed to publish a notice pursuant to Rule 107.

31. There shall be no referral to the Attorney General.

Dated this _____ day of _____, 2006.

Douglas R. Mah, QC – Chair and Bencher

Carsten Jensen, QC – Bencher

Morris Taylor – Bencher