

2005 LSBC 01

Report issued: January 14, 2005

Citations issued: May 26, 2003, June 22, 2004
July 6, 2004 and November 16, 2004

The Law Society of British Columbia
In the matter of the *Legal Profession Act*, SBC 1998, c.9
and a hearing concerning

RAGHBIR SINGH BASI

Respondent

Decision of the Hearing Panel On Verdict and Penalty

Hearing date: December 20, 2004

Panel: Glen Ridgway, Q.C., Chair, Gordon Turriff, Q.C., Ross Tunnicliffe

Counsel for the Law Society: Jean Whittow, Q.C.

Appearing on his own behalf: Raghbir S. Basi

[1] On September 27, 2004, we published our decision determining that the Respondent had committed professional misconduct as alleged in paragraphs 1 and 2 of the schedule to a citation issued on May 26, 2003. On November 4, 2004, by Rule 5.2(8) of the *Law Society Rules*, the President of the Law Society referred us two other citations involving the Respondent. The referral was made on the application of the Respondent and with the consent of the Law Society. A fourth citation came to us by consent. The two referred citations had been issued on June 22, 2004 and July 6, 2004. The fourth citation was issued on November 16, 2004.

[2] At a hearing on December 20, 2004, we determined that the Respondent had committed professional misconduct as alleged in the three further citations. We then heard submissions about penalty. Counsel for the Law Society and the Respondent asked us to impose what they described as a "global penalty" for all four instances of misconduct. We are satisfied that we have jurisdiction, by section 38(1), (5) and (7) of the *Legal Profession Act*, to impose a global penalty.

[3] In our September 27, 2004 decision, we recorded our finding about the Respondent's conduct after hearing evidence from two witnesses called by the Law Society. The Respondent did not testify. Our findings about the conduct alleged in the other three citations were based on agreed statements of fact and on admissions by the Respondent that the conduct alleged against him amounted to professional misconduct. In a nutshell, we found:

(a) with reference to the conduct alleged in the citation issued on May 26, 2003, that the Respondent had breached an implied undertaking by failing to deliver a discharge of mortgage within a reasonable time;

(b) with reference to the conduct alleged in the citation issued on June 22, 2004, that the Respondent had failed to respond to correspondence from the Law Society "from September 2003 to March 2004" referable to requests made of him in connection with an audit report dated June 23, 2003;

(c) with reference to the conduct alleged in paragraphs 1 and 3 in the citation issued on July 6, 2004, that the Respondent had breached an implied term of an undertaking imposed on him in a real estate transaction (the alternative allegation made in paragraph 2 of that citation is dismissed) by not obtaining a registrable release within a reasonable time and that he had failed to reply reasonably promptly to communications from UA, the lawyer who had imposed the undertaking and who sought an explanation for the delay in the delivery of the release; and

(d) with reference to the conduct alleged in the citation issued on November 16, 2004, that the Respondent had failed to comply promptly to communications from the Law Society concerning a complaint made by one S.K.

(The Agreed Statements of Fact on which our findings with reference to the second, third and fourth citations were based are attached to this decision as Appendices "A", "B" and "C" respectively. The documents to which reference is made in the Agreed Statements were received as Exhibits 3, 5 and 7 in the consolidated proceedings).

[4] Counsel for the Law Society submitted that an appropriate global penalty would be:

1. that the Respondent should be suspended for four months from the date of publication of this decision;
2. that following that period of suspension the Respondent should be permitted to practise law only in a setting approved by the Practice Standards Committee and on such conditions as the Committee may fix; and
3. that the Respondent should pay the costs of the four citations in a claimed amount of \$26,202.56.

[5] The Respondent conceded that a suspension was called for but submitted that the period of suspension should not exceed three months, including the period from October 1, 2004 until the determination of the allegations made in the fourth citation, during which period he is suspended as the result of a decision by a different hearing panel under section 39 of the *Legal Profession Act*. The Respondent accepted that he should return to practice in a setting approved by and on such terms as the Practice Standards Committee may fix. He argued that he should only have to contribute towards costs, rather than to have to pay the full amount claimed, saying that in his particular circumstances it would be unfair for him to have to bear the full burden of an indemnity order.

[6] The only explanation the Respondent gave for any of his misconduct was that he was overwhelmed by work and that he did not attend to matters as he knows he should have done.

[7] The Respondent is 43 years old. He was called and admitted in 1989. He is married. He and his wife have two teenaged sons. He has a large East Indian clientele. He believes he is the only Punjabi speaking solicitor in Greater Victoria. He and his wife have no savings. They have equity in real property they own but Mr. Basi believes that the property is not "mortgagable" because of ratio limits set by prospective lenders. He says that his current suspension has adversely affected his family. He asks us not to punish his family further by imposing a harsh penalty on him.

[8] We are mindful of the effect that a new suspension will have on the Respondent's family. Nonetheless, we are satisfied that a further period of suspension is necessary as a general and specific deterrent. We fix

that further period as four months from the date of the publication of this decision. Had counsel for the Law Society not sought a suspension limited to a further four months, we would have ordered a longer one, having regard to the gravity of the misconduct committed by the Respondent and to the Respondent's unfortunately cavalier approach to the performance of his obligations. We hardly need repeat what has been said by many other panels: undertakings must be fulfilled; lawyers must communicate reasonably with their colleagues; and the Law Society must be able to insist that lawyers respond promptly to Law Society communications so the Society can discharge its responsibility of protecting the public interest by having the information it needs to conduct and complete its appropriate investigations.

[9] We also impose the practice condition suggested by counsel for the Law Society and accepted by the Respondent, namely, that after he has served the four month suspension he must not practise law except in a setting approved by the Practice Standards Committee and on such conditions as that Committee might fix.

[10] There is no reason in principle why lawyers who have misconducted themselves should expect their colleagues to contribute towards the expenses reasonably incurred by the Law Society to prove misconduct. Having said that, there are circumstances in which a full costs indemnity is inappropriate and in the circumstances here, having regard to the price the Respondent will pay in lost income during the period of his suspensions, we are satisfied that a full indemnity costs order would not be appropriate. Accordingly, we order the Respondent to pay, within one year of the date of publication of this decision, two thirds of the claimed costs amount of \$26,202.56, if the Respondent agrees that that amount is reasonable. If he does not, we will assess the costs and in that case he must pay two thirds of the assessed amount. We reserve the power to fix the costs of the assessment if there is one.

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APPENDIX A **Agreed Statement of Facts**

1. Mr. Raghbir (Ray) Basi was called to the Bar of British Columbia on May 19, 1989.
2. At all material times, Mr. Basi practiced law with the firm of Basi & Basi in Victoria, British Columbia.
3. The citation issued to Mr. Basi is contained at Tab 1 of the Book of Documents. The affidavit of service of citation as sworn by Michelle Robertson is at Tab 2.
4. In July 2002, the Law Society conducted an investigation of Mr. Basi's books, records and accounts pursuant to Rule 4-43, which revealed the following exceptions:
 - a) a large overdraft occurred in the trust account in July 22002 which was not reported to the Law Society under Rule 3-66(2);
 - b) the lawyer's float was in excess of the maximum allowed under Rule 3-52(4);
 - c) several trust ledger cards had balances that were not included in trust books;
 - d) general funds were deposited into trust;
 - e) several trust shortages were not corrected immediately; and
 - f) there were returned cheques on the general account.

A copy of the Revised Final Audit Report dated June 20, 2003 is attached at Tab 3.

5. The above exceptions were not included in the Accountant's Report prepared for Mr. Basi's practice for the period June 1, 2002 to May 31, 2003, a copy of which was received by the Law Society on August 28, 2003 and is attached at Tab 4.

6. On September 24, 2003, Roma Carroll CGA, a Trust Accountant with the Law Society of British Columbia, wrote Mr. Basi. This letter is at Tab 5. Ms. Carroll requested that Mr. Basi's accountant, Mr. Ron L. Schell CGA, provide a written explanation for the exclusion of these exceptions from the Accountant's Report. Ms. Carroll also requested confirmation from Mr. Schell as to whether minimum standards per the Law Society's "Instructions to Accountants for Completing the Accountant's Reports" were followed in preparing the Accountant's Report. Ms. Carroll also noted that the schedule to "Part A: Description of Practice" was not signed by the partners of Basi & Basi, and enclosed the original schedule for completion.

7. On September 26, 2003, Mr. Schell wrote to the Law Society. This letter is at Tab 6.

8. On October 8, 2003, Ms. Carroll wrote Mr. Basi confirming receipt of this letter. This letter is at Tab 7. Ms. Carroll requested that, pursuant to Rule 3-77(2)(b), Mr. Basi forward copies of his monthly trust account reconciliations, bank statements and client listings for the period covering June 1, 2002 through May 31, 2003. Ms. Carroll requested this information by October 29, 2003.

9. On October 30, 2003, Ms. Carroll wrote Mr. Basi indicating no response had been received from Mr. Basi to either the letter dated September 24, 2003 or the letter dated October 8, 2003. This letter is at Tab 8. Ms. Carroll enclosed copies of these letters and stated that the Law Society had not received a signed schedule to Part A of the Accountant's Report, and the monthly trust account reconciliations, bank statements and client listings for the period covering June 1, 2002 through May 31, 2003. Ms. Carroll renewed her requests for this information, to be received by November 19, 2003.

10. On November 21, 2003, Ms. Carroll wrote Mr. Basi, indicated that the requested information had not been received and renewed her requests for the information, to be received by December 5, 2003. This letter is at Tab 9. Ms. Carroll advised Mr. Basi that the Professional Conduct Handbook, Chapter 13, Rule 3 requires a lawyer to reply promptly to any communication from the Law Society, and that failure to respond constitutes a breach of this Rule. Ms. Carroll indicated that the matter would be referred to the Professional Conduct Department should Mr. Basi continue not to respond.

11. On December 5, 2003, (the date referenced in Ms. Carroll's letter of November 21, 2003), Mr. Basi telephoned the Law Society's Finance and Member Services Department and spoke with Ms. Wiley Ho, assistant to Ms. Carroll, and stated he needed a few more days in which to respond to Ms. Carroll's letters. Ms. Basi advised that he would courier something in on December 10, 2003. Ms. Ho's notes regarding this conversation are at Tab 10.

12. Ms. Carroll received a letter by facsimile dated December 12, 2003 from Mr. Basi indicating that the requested material would be sent with the mailed copy of the same letter. This facsimile is at Tab 11.

13. On December 29, 2003, Lisa Nevalainen, an employee of the Law Society, telephoned Mr. Basi's office, leaving a message for Ray Basi. The message advised that neither the original copy of the December 12, facsimile nor the requested material had been received by the Law Society, and request that Mr. Basi contact Ms. Nevalainen. Ms. Nevalainen's notes of this telephone conversation are at Tab 12.

14. On January 8, 2004, Ms. Nevalainen telephoned Mr. Basi's office, leaving a message for Ray Basi with his receptionist, who indicated he was with a client. Ms. Nevalainen requested that the receptionist ask Mr. Basi if the original of his letter of December 12, and the requested material had been sent. Ms. Nevalainen requested that her call be returned. Ms. Nevalainen's notes of this telephone conversation are also at Tab 12.

15. On January 13, 2004, at or about 3:17 p.m., Ms. Nevalainen telephoned Mr. Basi's office, leaving a message for Ray Basi with his receptionist, requesting that Mr. Basi return her call that same day, and advising that this was her third attempt to reach him by telephone. Ms. Nevalainen's notes of this telephone conversation are also at Tab 12.

16. On January 13, 2004, Mr. Basi and Ms. Nevalainen spoke by telephone. Mr. Basi indicated he thought he was "signed off on this matter" . Ms. Nevalainen advised Mr. Basi that the requested material had not yet been received. Mr. Basi inquired whether the Law Society required faxed or original copies of the material; Ms. Nevalainen and Mr. Basi agreed that both faxed and original copies would be sent. Mr. Basi stated that he was calling between clients and was due to appear in court the following day. Mr. Basi requested that he be allowed more time to transmit the documents by facsimile, and suggested Friday, January 16, 2004. Ms. Nevalainen advised Mr. Basi that the materials were required by that date. Ms. Nevalainen's notes of this conversation are also at Tab 12.

17. On January 20, 2004, Ms. Carroll referred this matter to the Professional Conduct Department.

18. On February 3, 2004, Mr. James Dent, a staff lawyer in the Professional Conduct Department wrote Mr. Basi a letter recounting the chronology of this matter. This letter is at Tab 13. Mr. Dent further wrote that the requests for the signed schedule to Part A of the Accountant's Report and the copies of the monthly trust reconciliations, bank statements and client listings for the period covering June 1, 2003 to May 31, 2004 remained outstanding. Mr. Dent reminded Mr. Basi of his obligations, pursuant to Chapter 13, Rule 3 of the Professional Conduct Handbook, to reply promptly to any communication from the Law Society, and that Mr. Basi's failure to respond in this matter had been referred to the Professional Conduct Department. Mr. Dent requested an explanation of Mr. Basi's failure to reply and indicated that he would expect a response within two weeks.

19. On February 25, 2004, Mr. Dent wrote Mr. Basi requesting a reply to his letter of February 3, 2004 within ten days. This letter is at Tab 14.

20. On March 9, 2004, Mr. Dent wrote to Mr. Basi requesting a reply to his letters of February 3 and February 25, 2004 within five days. This letter is at Tab 15.

21. On March 15, 2004, Mr. Dent telephoned Mr. Basi's office twice, receiving a busy signal both times. Notes regarding these telephone calls are at Tab 16.

22. On March 16, 2004, Mr. Dent telephoned Mr. Basi's office, asked to speak to Mr. Basi, and was told he was unavailable. Mr. Dent left a message with the receptionist that he had written a series of letters to Mr. Basi to which Mr. Basi had not responded. Mr. Dent requested that the receptionist inform Mr. Basi that his failure to reply would be referred to the Discipline Committee. Notes regarding these telephone calls are also at Tab 16.

23. On March 17, 2004, at or about 9:18 a.m. Mr. Dent's assistant Michelle Boren received a telephone call from Mr. Basi, who indicated that he had left a voice-mail message for Mr. Dent and that he would be sending Mr. Dent a fax that same day. Ms. Boren telephoned Mr. Basi's office at or about 9:23 a.m. and was advised that he had already left the office. Ms. Boren advised Mr. Basi's office that his voice-mail had been received and the Law Society anticipated receiving the facsimile transmittal that

same day. Ms. Boren's email regarding these telephone calls is at Tab 17.

24. On March 29, 2004, Mr. Dent telephoned Mr. Basi's office and left a message with his receptionist that as of that time, no response had been received. Mr. Dent's handwritten notes of this conversation are at Tab 18.

25. On April 1, 2004, having received no response from Mr. Basi, Mr. Dent wrote Mr. Basi to advise that this matter had been referred to the Discipline Committee. This letter is at Tab 19.

26. On April 1, 2004, the Discipline Committee resolved to recommend to the Chair of the Discipline Committee that there be a direction to issue a citation against Mr. Basi for his conduct in failing to respond to Law Society correspondence, contrary to Chapter 13, Rule 3 of the Professional Conduct Handbook, and the Chair so directed.

27. On June 22, 2004, the Executive Director of the Law Society issued a notice to Mr. Basi of the Citation and the fixing of a Discipline Hearing date of September 27, 2004 to inquire into the Citation.

28. Mr. Basi admits that his conduct in failing to respond to Law Society correspondence constitutes professional misconduct.

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APPENDIX B

Agreed Statement of Facts

1. Mr. Raghbir (Ray) Basi was called to the Bar of British Columbia on May 19, 1989.

2. At all material times, Mr. Basi practiced law with the firm of Basi & Basi in Victoria, British Columbia.

3. The citation issued to Mr. Basi as amended is contained at Tab 1 of the Book of Documents. The affidavit of service of citation as sworn by Michelle Robertson is at Tab 2.

4. Mr. Basi acted for the Vendor in a real estate transaction. Mr. Urmas Anniko, barrister and solicitor, represented the purchaser. The transaction closed on July 19, 2002.

5. Mr. Basi's undertakings were imposed by Mr. Anniko in letters dated July 16, 2002 (in anticipation of the closing date)(Tab 3) and July 19, 2002 (Tab 4).

6. The undertaking imposed in the letter dated July 16, 2002 read in part:

"Our trust cheque, representing the sale proceeds, will be provided to you on your undertakings below with respect to the following charges:

Mortgage in favour of The Toronto-Dominion Bank registered on July 5, 2001 under No. ES54684;

1. You will forthwith pay to the Charge Holder, sufficient funds to place it under a legal obligation to provide you with a registrable release of its Charge, and to pay those funds on the condition that the Charge Holder provides you with the registrable release within a reasonable period of time;

2. On receiving a registrable release of the Charge, you will file that release in the Land Title Office and will provide us with registration particulars of that filing" .

7. Mr. Basi replied by letter dated July 18, 2002 (Tab 5) which read in part:

"Upon receipt of sale proceeds, we undertake to provide to [the Bank] sufficient funds to obligate them to provide a discharge of Mortgage ES54684 registered against title. Upon receipt and registration of the discharge, we will provide particulars to you.

...

As a courtesy, I do advise in advance that I will not accept or consider myself bound by any undertakings sought to be imposed upon me other than those stated above unless I expressly agree to do so."

8. On July 19, 2002, the closing date for the transaction, Mr. Anniko forwarded his trust cheque for the sale proceeds and imposed the following undertakings by letter (Tab 4):

"The enclosed sale proceeds are made available to you on your undertaking to payout the sum required to legally obligate the charge holder to provide your office with a registrable Form-C Release, to apply for registration of the said Form C-Release forthwith upon your receipt and to advise our office of registration particulars in due course for the following encumbrance:

1. Mortgage, registered in favor of [the Bank] under Registration No. ES54684" .

9. The letters dated July 16 and 19, 2002 also imposed an undertaking on Mr. Basi to ensure the outstanding property taxes on the property were paid in full to December 31, 2002, up to and including the completion date. By letters dated September 5, 2002, November 5, 2002, and November 20 and 27, 2002 (Tabs 6(a-d)), Mr. Anniko reminded Mr. Basi that confirmation of payment of outstanding property taxes was still outstanding. By letter dated December 5, 2002 to Mr. Anniko (Tab 7), Mr. Basi provided proof of payment for the 2002 property taxes and the following explanation:

"It was my understanding from my review of the trust accounting and correspondence on file that we had forwarded the Homeowner's Grant applications and the balance owing to the Municipality of Saanich on July 22, 2002. I again reviewed the file and note that although the material was prepared and signed, it never left my office. I have now sent the material to the Municipality by hot courier and have asked that they forward a receipt."

10. By letters dated January 9, 2003, March 6, 2003 and April 7, 2003 (Tab 8 (a) and (c)), Mr. Anniko informed Mr. Basi that he had not received discharge particulars for the vendor's mortgage. The April 7, 2003 letter reads in part:

"You indicated on March 12, 2003 that you had not had an opportunity to look into the matter and would be doing so promptly and would be advising us. I have recently left two telephone messages, which have not been returned, in regard to obtaining discharge particulars."

11. A copy of this letter was delivered to the Law Society and a complaint file was opened.

12. By letter dated May 1, 2003, James A. Dent, a staff lawyer with the Professional Conduct Department of the Law Society wrote Mr. Basi enclosing a copy of Mr. Anniko's complaint and requesting an explanation. This letter is at Tab 9.

13. By letter to Mr. Basi dated June 5, 2003, Mr. Dent requested a response to his letter of May 1, 2003 and drew Mr. Basi's attention to Chapter 13, Rule 3 of the *Professional Conduct Handbook*, and quoted this rule. This letter is at Tab 10.

14. By letter to Mr. Basi dated June 18, 2003 (Tab 11), Mr. Dent requested a response to his letters of

May 1, and June 5, 2003 and informed Mr. Basi that if a response was not received within five calendar days from the date of the letter that the matter would be referred to the Discipline Committee.

15. On June 23, 2003, Ramona Pfeiffer, an employee of the Law Society, telephoned Mr. Basi and left a message with his receptionist. Mr. Basi later left a voice mail message indicating that he had just received the letter dated June 18, 2003 and that he would respond by the following morning. Ms. Pfeiffer again telephoned Mr. Basi and left another message inquiring as to whether Mr. Basi had received the letters dated May 1 and June 5, 2003. Ms. Pfeiffer's handwritten notes of these conversations are at Tab 12.

16. On June 25, 2003, Mr. Basi telephoned the Law Society to advise that he was unable to respond the previous day as he had previously indicated, and that a facsimile had been sent. Handwritten notes and an email from Ms. Pfeiffer to Mr. Dent regarding this conversation are at Tab 13. The faxed letter (at Tab 14), dated June 25, 2003 and addressed to Mr. Dent, read:

"A few matters arose yesterday and I am delayed in getting my response to you. I have asked my staff to not interrupt me until I am able to respond to you today, I expect by this morning. Please call and interrupt me if this poses any difficulty."

17. Mr. Basi sent a second letter to Mr. Dent via facsimile on June 25, 2003. This letter at Tab 15 read in part:

"My review of the file indicates the mortgage was paid out in a timely fashion. The mortgage company indicates it sent a Form C Discharge. I do not have it on file. Either the mortgage company is in error in indicating that a Form C Discharge was sent or my office has misfiled the same. I will take tomorrow to locate the copy the bank indicates they sent and if it is not found, I will immediately order a replacement.

...

Thank you and I will advise upon either locating the misplaced discharge or a replacement being received."

18. By letter dated July 7, 2003 (at Tab 16), Mr. Dent informed Mr. Basi that he was in receipt of the facsimile transmission of June 25, 2003 and anticipated hearing from Mr. Basi within three weeks.

19. On July 29, 2003, at or about 4:55 p.m., Mr. Dent telephoned Mr. Basi's office. The line rang approximately twenty times without an answer. Mr. Dent's handwritten notes of this telephone call are at Tab 17.

20. On July 30, 2003, Mr. Dent telephoned Mr. Basi's office and left a message. Mr. Basi returned this call later the same day. Mr. Dent advised Mr. Basi that the matter of the breach of the undertaking would be referred to the Discipline Committee, and that he should respond with information as to what steps he had taken to obtain the mortgage discharge. Handwritten notes of this conversation are at Tab 17 as well.

21. On August 6, 2003, Mr. Basi telephoned the Law Society and left a voice mail message advising that a death in his family had delayed his response and that he would respond by the end of the day. Handwritten notes of this telephone call are at Tab 18.

22. On August 7, 2003, Mr. Basi telephoned the Law Society to advise that he had found a copy of his trust cheque, which was sent with a letter dated July 19, 2002 to the solicitor for the [the Bank] to

discharge the mortgage. Mr. Dent's handwritten notes of this conversation are at Tab 19. Mr. Basi provided copies of these documents to the Law Society via facsimile (Tab 20). The letter imposed the following undertaking upon Mr. Delsey:

"Further to your letter of July 18, 2002, please find enclosed our trust cheque in the amount of \$185,636.12. These funds are provided on your undertaking to return to us a Form C discharge of your client's mortgage in registrable form."

23. By letter dated August 7, 2003 to Mr. Dent (Tab 21), Mr. Basi confirmed that he provided funds to the mortgagee's solicitor, Patrick Delsey, due to the fact that a Certificate of Pending Litigation had been registered against the property. This letter read in part:

"I have personally reviewed our files to ensure we did not receive the discharge and somehow misfile it. I am confident we did not. I have spoken with the solicitor for the first mortgagee directly and he advises he will look into the matter and have it "fixed" . I trust we will be receiving the signed discharge and I will be able to comply with my undertaking."

24. By facsimile dated August 8, 2003 (at Tab 22), Mr. Basi wrote Mr. Dent:

"Please find enclosed a copy of the discharge of the subject mortgage, received in our office by fax today. The original is said to have been furnished to my office previously but I can advise that neither the conveyancer nor I have any recollection of having received it and it is not on file. The form would have been noteworthy as I would have questioned the sufficiency of the clarity of the information concerning the officer who took the signature. In any event, I have asked for a replacement to be provided so that we may file the same."

25. On September 24, 2003, Mr. Dent spoke to Mr. Basi by telephone (notes of this conversation are at Tab 23). Mr. Basi advised that he was in possession of the discharge and would register it no later than the following Monday, and would fax confirmation of same to Mr. Dent and Mr. Anniko.

26. On September 25, 2003, Mr. Dent spoke to Mr. Anniko by telephone. Handwritten notes of this conversation are at Tab 23 as well. Mr. Dent was advised by Mr. Anniko that he had "heard nothing" from Mr. Basi.

27. Mr. Basi filed the discharge on October 2, 2003 (approximately 15 months after the completion date, and five months after he was first contacted by the Law Society).

28. By letter dated October 2, 2003, Mr. Basi provided Mr. Dent a copy of the Form C mortgage discharge that had been filed on October 2, 2003. This letter is at Tab 24.

29. Mr. Basi's responses to the complaint were forwarded to Mr. Anniko and he was requested to comment. Mr. Anniko responded by letter dated October 27, 2003 (at Tab 25), indicating that his main concern is that when he made enquiries (with regard to the mortgage discharge), Mr. Basi:

"... did not discover that a mortgage discharge had not been received and take steps to obtain a new one. As well, it would have been an easy matter for him to reply to indicate what the situation was, rather than a vague 'he would be looking into it'."

30. On April 22, 2004, Mr. Dent spoke with Mr. Delsey by telephone. Handwritten notes of this conversation are at Tab 26. Mr. Delsey confirmed that he sent Mr. Basi two registrable discharges. Mr. Delsey indicated that the first registrable discharge was sent on October 2, 2002 and the second was sent on August 15, 2003.

31. On April 26, 2004, Mr. Dent spoke with Mr. Delsey's assistant by telephone, who confirmed the mailing dates indicated by Mr. Delsey for the discharges and that their office had no record of any returned mail from Mr. Basi. Mr. Dent's handwritten notes of this conversation are at Tab 27.

32. Mr. Basi admits that his conduct, in failing to take steps to ensure that he obtained a registrable discharge of the Mortgage within a reasonable time and in failing to promptly apply for registration of the discharge, amounts to a breach of undertaking and professional misconduct.

33. Mr. Basi admits that his conduct, in failing to reply promptly to Mr. Anniko's correspondence concerning the fulfilment of Mr. Basi's undertakings, amounts to professional misconduct.

APPENDIX C

Agreed Statement of Facts

1. Mr. Raghbir (Ray) Basi was called to the Bar of British Columbia on May 19, 1989.
2. From June 1, 2004, Mr. Basi practiced as a sole practitioner. Immediately prior to that, Mr. Basi practiced law with the firm Basi & Basi in Victoria, British Columbia.
3. The citation issued to Mr. Basi is contained at Tab 1 of the Book of Documents. The affidavit of service of citation as sworn by Michelle Robertson is at Tab 2.
4. On December 16, 2003, the Law Society received a letter of complaint from Mr. SK dated December 15, 2003 concerning the conduct of Mr. Basi in relation to a series of property investments. The letter contained "statements" from RP, BP, MP and SK. A copy of the letter of complaint and enclosures is at Tab 3.
5. A complaint file was opened and the file was assigned to a staff lawyer, James Dent.
6. By letter dated January 16, 2004 Mr. Dent requested a response from Mr. Basi. A copy of this letter is at Tab 4.
7. On February 3, 2004, Mr. Dent sent a second letter requesting a response to the complaint. (Tab 5).
8. On February 13, 2004, Mr. Basi sent two letters to Mr. Dent by fax advising that he had been ill and needed until Monday to respond. (Tab 6).
9. On February 17, 2004, Mr. Basi sent a letter responding to the complaint. (Tab 7).
10. On February 18, 2004, Mr. Dent sent a letter to Mr. Basi acknowledging receipt of his letter. (Tab 8)
11. On May 19, 2004, Mr. Dent sent a letter to Mr. Basi requesting additional information. (Tab 9)
12. On June 3, 2004, Mr. Dent sent a letter to Mr. Basi requesting a response to his letter within ten days. (Tab 10)
13. On June 15, 2004, Mr. Dent sent a letter to Mr. Basi requesting a response to his correspondence of May 19 and June 3 within five days. (Tab 11)
14. On June 22, 23, 24, and 30, Mr. Dent telephoned Mr. Basi and left a message for him to return the call. Mr. Basi did not do so. On July 7, 2004, Mr. Dent wrote again to Mr. Basi and informed him that the

matter would be referred to the Discipline Committee.(Tab 12) This letter was hand delivered.

15. On May 31, 2004, Mr. Basi and his brother and partner terminated their partnership. On June 1, 2004, Mr. Basi moved offices from Quadra Street to McKenzie Avenue, both in Victoria.

16. On August 17, 2004, Mr. Dent wrote a letter to Mr. Basi concerning the complaint, and recommending Mr. Basi retain counsel. He advised that the matter would be considered by the Discipline Committee at its meeting of September 2, 2004. (Tab 13) A second letter dated August 25, 2004 advising that the matter was referred to the Committee for September 2 nd was also sent to Mr. Basi (Tab 14).

17. On September 2, 2004, the Discipline Committee resolved to recommend to the Chair of the Committee that there be a direction to issue a citation against Mr. Basi for his conduct in failing to respond to Law Society correspondence, contrary to Chapter 13, Rule 3 of the *Professional Conduct Handbook*, and the Chair so directed. The Discipline Committee further ordered that the matter be referred to three Benchers pursuant to s. 39 of the Legal Profession Act and Rule 4-17 of the Law Society Rules.

18. The Rule 4-17 proceedings took place on September 18 and October 1, 2004. On October 1, 2004, pursuant to Rule 4-17, Mr. Basi was ordered suspended pending disposition of the citation.

19. By letter dated September 20, 2004 Mr. Basi provided a further response to the complaint. He has subsequently provided requested documents. The investigation remains ongoing.

20. Mr. Basi admits that his conduct in failing to respond to Law Society correspondence concerning the K complaint constitutes professional misconduct.