

THE LAW SOCIETY OF ALBERTA

IN THE MATTER OF THE *LEGAL PROFESSION ACT*

AND

**IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF CHRISTOPHER M.A. SOUSTER
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

HEARING COMMITTEE REPORT

Hearing Committee:

Anthony G. Young, Q.C., Chair (Bencher)

W.E. Brett Code, Q.C., Committee Member (Bencher)

Amal Umar, Committee Member (Lay Bencher)

Appearances:

Counsel for Christopher M.A. Souster - James Rooney, Q.C.

Counsel for the Law Society – Nicholas Maggisano

Hearing Date:

March 11, 2015

Hearing Location:

Law Society of Alberta at 500, 919 – 11th Avenue S.W., Calgary, Alberta

Jurisdiction, Preliminary Matters and Exhibits

[1] On March 11, 2015, a Hearing Committee (Committee) convened at the office of the Law Society of Alberta (LSA) to conduct a hearing regarding a number of citations against Christopher M.A. Souster (Member). The Member and counsel for the LSA were asked whether there were any objections to the constitution of the Committee. There being no objections, the hearing proceeded. The Member attended throughout the hearing.

[2] Exhibits 1 through 4, consisting of the letter of appointment of the Committee, the Notice to Solicitor pursuant to section 56 of the *Legal Profession Act*, the Notice to Attend to the Member and the Certificate of Status of the Member with the LSA established the jurisdiction of the Committee.

[3] The Certificate of Exercise of Discretion pursuant to Rule 96(2)(b) of the *Rules of the Law Society of Alberta* ("Rules") pursuant to which the Deputy Executive Director and Director, Regulation of the LSA, determined that there were no persons to be served with a private hearing application, was entered as Exhibit 5. Counsel for the LSA advised that the LSA did not receive a request for a private hearing. Accordingly, the Chair directed that the hearing be held in public.

[4] At the outset of the hearing, Exhibits 1 through 17, contained in the Exhibit Book which had been provided to the Committee in advance, were entered into evidence in the hearing with the consent of the parties. Further, Exhibit 18 being the Member's Record and Exhibit 19, an estimated Statement of Costs, was added to the Exhibit Book as the hearing proceeded.

Citations

[5] The Member faced the following amended Citations:

1. It is alleged that Christopher Souster *unknowingly* assisted a client in an improper purpose and that such conduct is deserving of sanction;
2. It is alleged that Christopher Souster failed to conscientiously serve his clients, the mortgage lender, and that such conduct is deserving of sanction;
3. It is alleged that Christopher Souster failed to conscientiously serve his clients, the purchasers, and that such conduct is deserving of sanction;
4. It is alleged that Christopher Souster acted while in a conflict or potential conflict of interest without obtaining his clients' consent or in circumstances where it was not in the best interests of his clients that he do so, and that such conduct is deserving of sanction;
5. It is alleged that Christopher Souster signed documents as a witness to a client's signature and swore to having witnessed the signature without having been present

to see the client sign or to take the client's declaration and that such conduct is deserving of sanction.

6. It is alleged that Christopher Souster *unknowingly* assisted a client in an improper purpose and that such conduct is deserving of sanction;
7. It is alleged that Christopher Souster failed to conscientiously serve his clients, the mortgage lenders, and that such conduct is deserving of sanction;
8. It is alleged that Christopher Souster failed to conscientiously serve his clients, the purchasers, and that such conduct is deserving of sanction;
9. It is alleged that Christopher Souster acted while in a conflict or potential conflict of interest without obtaining his clients' consent or in circumstances where it was not in the best interests of his clients that he do so, and that such conduct is deserving of sanction;
10. It is alleged that Christopher Souster signed documents as a witness to a client's signature and swore to having witnessed the signature without having been present to see the client sign or to take the client's declaration and that such conduct is deserving of sanction;
11. It is alleged that Christopher Souster failed to properly supervise his support staff and that such conduct is deserving of sanction.
12. It is alleged that Christopher Souster *unknowingly* assisted a client in an improper purpose and that such conduct is deserving of sanction;
13. It is alleged that Christopher Souster failed to conscientiously serve his clients, the mortgage lenders, and that such conduct is deserving of sanction;
14. It is alleged that Christopher Souster failed to conscientiously serve his clients, the purchasers, and that such conduct is deserving of sanction;
15. It is alleged that Christopher Souster acted while in a conflict or potential conflict of interest without obtaining his clients' consent or in circumstances where it was not in the best interests of his clients that he do so, and that such conduct is deserving of sanction;
16. It is alleged that Christopher Souster signed documents as a witness to a client's signature and swore to having witnessed the signature without having been present to see the client sign or to take the client's declaration and that such conduct is deserving of sanction.
17. It is alleged that Christopher Souster *unknowingly* assisted a client in an improper purpose and that such conduct is deserving of sanction;
18. It is alleged that Christopher Souster failed to conscientiously serve his clients, the mortgage lenders, and that such conduct is deserving of sanction;

19. It is alleged that Christopher Souster failed to conscientiously serve his clients, the purchasers, and that such conduct is deserving of sanction;
20. It is alleged that Christopher Souster acted while in a conflict or potential conflict of interest without obtaining his clients' consent or in circumstances where it was not in the best interests of his clients that he do so, and that such conduct is deserving of sanction;
21. It is alleged that Christopher Souster signed documents as a witness to a client's signature and swore to having witnessed the signature without having been present to see the client sign or to take the client's declaration and that such conduct is deserving of sanction.

Agreed Statement of Facts and Admission of Guilt

[6] The LSA tendered a Statement of Admitted Facts and Admission of Guilt (Statement) regarding the twenty one citations. It is attached as Schedule "A".

[7] No additional evidence was led by either Party.

Discussion Regarding the Joint Submission on Guilt

[8] The facts as set out in the Statement describe the Member unknowingly assisting with a skip transfer mortgage fraud scheme.

[9] A skip transfer mortgage fraud scheme is usually completed by an intermediary purchasing a property with an extended possession date. The intermediary then recruits a straw purchaser to purchase the property at an inflated rate and a concurrent possession date. The straw purchaser makes a mortgage loan application from the mortgagee at an inflated property value in exchange for a fee. The purchase of the property is completed using a skip transfer. (A skip transfer occurs where title goes directly from the owner of the property to the straw purchaser, skipping over the intermediary who had originally agreed to purchase the property.)

[10] The straw purchaser generally has no intention of living in the property. Often it is a condition of mortgage financing that a purchaser does reside in the property being mortgaged. In addition, the straw purchaser usually has no intention of repaying the mortgage or keeping title to the property. Often, the expectation is that property will be transferred and the mortgage assumed by another party after the purchase.

[11] The straw purchaser has the expectation that he or she will receive a fee for acting as the nominal purchaser and applying for a mortgage. Often the straw purchaser does not have an understanding that he or she will have liability flowing from the transaction. The intermediary, on the other hand, generally profits from an inflated property value.

[12] The mortgage lenders are entirely reliant upon the lawyers completing the transaction on their behalf. As such, they have developed instructions that specifically address the issues of detection of the badges of fraud. If instructions are not followed, the risk to the lender increases.

[13] Generally, vulnerable lawyers are targeted by the intermediary to complete the transactions on behalf of all parties. These lawyers often do not have the expected safeguards in place to detect and prevent the fraud from occurring.

The E Complaint

[14] There are numerous failures on the part of the Member that helped facilitate the skip transfer mortgage fraud scheme. With respect to the E Complaint these include:

- a) Failing to confirm the straw purchaser's intention to reside in the property;
- b) Representing all parties to the transaction but failing to provide a conflict letter to the straw purchaser regarding the vendor/purchaser conflict;
- c) Not advising the straw purchaser of the following material facts:
 - i. The intermediary had originally purchased the subject lot from the builder at a significantly lower purchase price;
 - ii. The mortgage proceeds were used to fund the intermediary's intervening purchase; and
 - iii. The mortgage proceeds were significantly greater than the purchase price from the builder.
- d) Failing to comply with the mortgagee's instructions;
- e) Unknowingly signing as a witness and swearing as having witnessed a signature without having been present when documentation was signed; and
- f) Disbursing funds to the intermediary without any direction or authority from the straw purchaser and without her knowledge.

[15] In this matter, the mortgagee foreclosed on the lot and received judgment against the intermediary and the straw purchaser in the amount of \$215,188.93.

The P Complaint

[16] This complaint is about a variation on the skip transfer mortgage fraud scheme. In this variation an entire condominium building or complex is purchased by a single purchaser. The individual buyers (straw purchasers) are then recruited to purchase individual condominium units at an inflated price. The sales to the individual straw purchasers are completed by way of

a skip transfer. The straw purchaser obtains financing for the purchase at the higher price, and then sells the condominium unit back to the intermediary in exchange for a fee.

The General Characteristics in the P Complaint

[17] For the majority of the transactions in the P Complaint the Member was not provided with a copy of the purchase contract. When his file did have a copy of the purchase contract, the purchaser stated that the signature appeared to be a forgery. It was not the Member's standard practice to do a detailed review of purchase contracts with clients.

[18] No realtor was involved in the transactions and no appraisals were provided to the Member's office.

[19] Unbeknownst to the Member at the time, the purchasers were paid a fee to qualify for the mortgages on the promise that title to the properties would be transferred and their mortgages assumed by another party shortly after the purchase. They did not, and had no intention to, reside in the properties and the Member did not specifically confirm their intentions to reside in the properties.

[20] The Member represented multiple parties to the transaction. He acted while in a potential or actual conflict of interest and did not advise the purchaser or the mortgagee of the potential or actual conflict or recommend independent legal advice. The purchaser signed a conflict letter as between the purchasers/mortgagors and the mortgage lender but no letter regarding the vendor/purchaser conflict.

[21] The Member did not advise the purchasers or the mortgagees of numerous material facts, including that:

- a) Although the purchasers generally attended at his office with the vendors, he did not specifically advise that he also represented the vendor (unregistered intervening purchaser);
- b) The properties had recently been purchased at a lower price;
- c) The mortgage proceeds were used to fund the intervening purchase;
- d) The mortgage proceeds were significantly greater than the original purchase price; and
- e) The unregistered vendors were making money on the transactions and that he was forwarding excess mortgage proceeds to them.

[22] The Member failed to comply with the mortgagee's instructions which required that he disclose if he was acting for the vendor, and if there were indicia of mortgage fraud such as material increases in price and unregistered intervening purchasers.

[23] In most of the transactions the purchasers state that:

- a) The Member did not meet with them and that they only met with one of his assistants to sign the transaction documents, including the mortgage;

- b) They received no advice about, or explanation of, the documents they signed and were rushed through the process; and
- c) CMHC mortgage liability was not explained to them.

[24] The Member signed as a witness to the purchasers' signatures on the transaction documents and swore Affidavits of Execution to that effect, despite the purchasers' statements that he was not present when the documents were signed. The Member did not dispute that he signed documents as a witness and swore to having witnessed signatures without having been present, but did not do so knowingly.

[25] The Member was aware of the CMHC requirement that the borrower resides in the property and that a borrower could not hold more than one high ratio mortgage at one time. Nevertheless a minimum of 11 purchasers held at least two concurrent high ratio mortgages. In each case the Member signed as a witness to the execution of the mortgage and swore an Affidavit of Execution.

[26] The mortgage lenders ultimately foreclosed on the properties. The deficiency on foreclosures totaled \$3,551,117.

[27] The Member disbursed trust funds to the straw purchasers. In particular two straw purchasers received \$8,000.00 and \$12,000.00 respectively. The entries in the trust ledger identify the payments as assignment of the client. At the time of the LSA interviews the Member could not explain these disbursements, but on subsequent investigation believes that his assistant was a knowing participant in the mortgage fraud and made these payments without his knowledge. The Member acknowledges that he did not properly supervise his assistant who handled the transactions and, if he had, this and the other issues with the transactions set out above would have been addressed.

LSA Complaint

[28] The LSA Complaint arose through a report from the Alberta Lawyers' Insurance Association (ALIA) which consisted of copies of pleadings alleging a further mortgage fraud in which the Member was named as a Defendant.

[29] The general characteristics of the LSA Complaint are almost identical to those of the P Complaint.

Conclusion

[30] The Member has directly admitted the substance of each and every one of the 21 citations against him.

[31] The *Code of Conduct* states:

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

The Member's abdication of his practice and failures in so many respects permitted the mortgage fraud schemes to proceed. In the result, not only did the Member breach the Code of Conduct but he also assisted, albeit unknowingly, in fraud that resulted in client losses of millions of dollars.

[32] As such, subsequent to the Committee's review of the Statement the Committee determined that it was in a form acceptable to it. Pursuant to Section 60 of the *Legal Profession Act*, R.S.A. 2000, c.L-8, the conduct noted therein was therefore deemed for all purposes to be a finding of this Committee and the Committee finds that the conduct of the Member is conduct deserving of sanction.

Joint Submission on Sanction

[33] A joint submission was made by LSA counsel and counsel for the Member that a fair and reasonable sanction in this matter was a four month suspension.

Discussion regarding the Joint Submission on Sanction

[34] It was emphasized by LSA counsel that there was no indication of direct involvement by the Member in the fraud schemes. Rather, the opportunity for the fraud arose by the Member's abdication of his practice to his assistants and complete lack of oversight and supervision.

[35] In support of the joint submission the Committee was directed to 3 cases: *Law Society of Alberta v. Venkatraman*, 2013 ABLs 29; *Law Society of Alberta v. Laurich*, 2014 ABLs 45; and *Law Society of Alberta v. Carlson*, 2012 ABLs 3.

[36] In the *Venkatraman* case the lawyer was unknowingly involved in mortgage fraud where the assistant was a fraudster and dishonest. In that case the assistant opened secret files without the knowledge of the lawyer and his firm, manipulated financial records to conceal the fraud from the lawyer, met with clients surreptitiously to commission false documents and destroyed and concealed evidence of her misconduct when others in the firm became suspicious. The Hearing Committee stated at paragraph 71 that:

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

[37] And further, at paragraph 76, the Hearing Committee stated that:

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

[38] Mr. Venkatraman received a one month suspension.

[39] The *Venkatraman* case may be distinguished somewhat on the basis that the actions of Mr. Venkatraman were exemplary. He paid back approximately \$2,000,000 in missing funds from his own resources in addition to responding appropriately upon the discovery of the fraud.

[40] The *Laurich* case is similar to the present matter in that the lawyer was found guilty of “unwittingly engaging in conduct that enabled others to achieve an improper purpose”. At paragraph 6 the Hearing Committee in the *Laurich* case stated:

The Agreed Statement of Facts makes it clear that Laurich permitted himself to be used as a dupe, repeatedly and over several condominium projects, with many individual transactions, and in the face of many and quite obvious warning signs that something was amiss. His actions put many millions of dollars in bank funds at risk. Laurich proceeded in circumstances where he did not understand the underlying transactions, and he failed, in spectacular fashion, to protect the interests of his clients.

[41] Mr. Laurich received a five month suspension.

[42] The *Carlson* case did not deal with mortgage fraud. Rather it dealt with the lawyer’s involvement in a Ponzi scheme.

[43] In that case a joint submission was made for a sanction of a 3 month suspension. In accepting the joint submission the Hearing Committee stated at paragraph 57 that:

A joint submission on sanction deserves deference. As an Appeal Panel of the Law Society of Upper Canada stated, a joint submission “promotes resolution, the saving of time and expense, and reasonable certainty for the parties”. *Law Society of Upper Canada v. Cooper*, supra. A hearing committee should give serious consideration to a joint sentencing submission, should not lightly disregard it, and should accept it unless it is unfit or unreasonable, contrary to the public interest, or there are good and cogent reasons for rejecting it. (See *Rault v. Law Society of Saskatchewan*, 2009 SKCA 81 (CanLII), [2010] 1 W.W.R. 678; *R. v. L.R.T.*, 2010 ABCA 224 (CanLII).)

[44] They commented further at paragraph 60 that:

The Hearing Committee did have concerns about the proposed length of the suspension. In our view, a 3 month suspension term barely falls within an acceptable sanction range. However, it was not demonstrably unfit and, in the totality of circumstances, adequately addressed sentencing objectives.

[45] Paragraph 56 of the Hearing Guide states:

If a submission on sanction is made jointly by the member and Law Society counsel, the Hearing Committee should give serious consideration to the joint submission, and accept it unless they consider it unfit or unreasonable or contrary to the public interest. The Hearing Committee, however, is not bound by the submission, and may determine the more appropriate sanction, but only do so after the member and Law Society counsel are given an opportunity to speak to the matter.

[47] The Hearing Committee found that there were a number of mitigating factors in the instant matter. These include that the Member:

- a) admitted the facts and his guilt;
- b) was very cooperative with the investigation;
- c) made timely admissions about his involvement;
- d) has no discipline history;
- e) has a low risk of reoccurrence; and
- f) has practiced since the occurrence of the matters (from 2007 to 2008) in question until the date of hearing without further issues.

In addition, and in further mitigation, there was some evidence that the Member's assistant was concealing the fraud from him.

[48] It is generally accepted that a joint submission should be accepted by the Hearing Committee unless the submission is unfit or unreasonable. If the submission falls within the range of possible sanctions it should be given serious consideration. The Hearing Committee was of the view that the suggested sanction of a four month suspension fell within the range of sanction for conduct. As such, the Hearing Committee ordered, pursuant to Section 72(1)(b) of the *Legal Profession Act*, R.S.A. 2000, c.L-8, that the Member be suspended for 4 months, effective April 1, 2015.

Concluding Matters

[49] The Member was ordered to pay the actual costs of the hearing. One half of the costs shall be paid prior to or at the reinstatement of the Member. The other half shall be paid within 6 months after reinstatement. If the costs are not paid as aforesaid, the Member shall stand automatically suspended.

[50] There shall be no Notice to the Attorney General.

[51] There shall be a Notice to the Profession in the usual form.

[52] Counsel for the LSA is directed to provide a PDF and Word copy of the Statement of Admitted Facts and Admission of Guilt for incorporation into this Decision.

[55] There will be the usual redaction with respect to preserving client confidentiality and solicitor/client privilege; however, there shall be no restriction on the publishing of the names of the Member or his staff.

Dated at the City of Calgary, in the Province of Alberta on this 12th day of January, 2016.

Anthony G. Young, Q.C.

Amal Umar

Concurring Report

1. I have had the benefit of reading the report of the Chairperson. I concur in the result.
2. On March 11, 2015, the Hearing Committee convened. On that day, we received admissions of guilt, which we accepted, having found them to be in a form satisfactory to us (Section 60, LPA). On the basis of those admissions, which are attached as Schedule "A" to the Chair's Report, we found the Member guilty.
3. Also on March 11, we subsequently heard the joint submission of counsel regarding sanction. They submitted that a fair and reasonable sanction, in the fit and appropriate range, was a suspension of four months. Hearing Committees like ours should defer to joint submissions, so long as the sanction recommended is not unfit or unreasonable. The joint submission made by the two highly competent counsel before us was fit and reasonable, and we accepted it.
4. On that same day, we advised counsel of our acceptance of their joint submission, and the Chairperson declared, pursuant to section 72(1)(b) of the LPA, that the Member would be subject to a four-month suspension, commencing April 1, 2015.

Dated at the City of Calgary, in the Province of Alberta on January 6, 2016.

W.E. Brett Code, Q.C.

Schedule "A"

IN THE MATTER OF THE LEGAL PROFESSION ACT

AND

IN THE MATTER OF A HEARING INTO THE CONDUCT

OF CHRISTOPHER M. A. SOUSTER,

A MEMBER OF THE LAW SOCIETY OF ALBERTA

STATEMENT OF ADMITTED FACTS AND ADMISSION OF GUILT

INTRODUCTION

1. Mr. Souster was admitted to the Law Society of Alberta ("LSA") on June 4, 1999.
2. He practices law in Calgary, Alberta as a sole practitioner, primarily in the area of civil litigation.

E COMPLAINT

3. E submitted a complaint to the LSA on January 21, 2009 [**TAB 1**]. As a result of her complaint the following citations were issued by a Conduct Panel on March 25, 2014:
 1. It is alleged that Christopher Souster assisted a client in an improper purpose and that such conduct is deserving of sanction;
 2. It is alleged that Christopher Souster failed to conscientiously serve his clients, the mortgage lender, and that such conduct is deserving of sanction;
 3. It is alleged that Christopher Souster failed to conscientiously serve his clients, the purchasers, and that such conduct is deserving of sanction;
 4. It is alleged that Christopher Souster acted while in a conflict or potential conflict of interest without obtaining his clients' consent or in circumstances where it was not in the best interests of his clients that he do so, and that such conduct is deserving of sanction;
 5. It is alleged that Christopher Souster signed documents as a witness to a client's signature and swore to having witnessed the signature without having been present to see the client sign or to take the client's declaration and that such conduct is deserving of sanction.

4. On November 20, 2007 F purchased a home ("Lot X") from a builder for \$449,900.00, with the sale closing November 30, 2007 **[TAB 2]**.
5. F then immediately sold Lot X to himself and E at a price of \$589,000. Title was to be transferred directly from the builder to F and E. Mr. Souster was not provided with a copy of this purchase contract. Mr. Souster was not aware if a realtor was involved and no appraisal was provided.
6. F recruited E and paid her a fee of \$10,000 to co-qualify for the mortgage on his promise that title to Lot X would be transferred and their mortgage assumed by another party after the purchase. Mr. Souster was not aware of these arrangements and was not involved. E did not, and had no intention to, reside in Lot X. Mr. Souster has no specific recollection of confirming her intention to reside in the Property.
7. Mr. Souster represented all parties to the transaction, including F , E and the Mortgagee. He acted while in a potential or actual conflict of interest and did not advise E and the Mortgagee of the potential or actual conflict or recommend independent legal advice. E signed a conflict letter as between the purchasers/mortgagors and the mortgage lender but no letter regarding the vendor/purchaser conflict.
8. Mr. Souster did not advise E or the Mortgagee of numerous material facts, including that:
 - a) F had originally purchased Lot X from the builder at a significantly lower purchase price;
 - b) The mortgage proceeds were used to fund F's intervening purchase; and
 - c) The mortgage proceeds were significantly greater than the purchase price from the builder.
9. On December 5, 2007 Mr. Souster received Solicitor's instructions from the Mortgagee confirming his engagement on their behalf for the preparation and registration of a CMHC mortgage on Lot X in the amount of \$578,294.03, in the names of F and E **[TAB 3]**. The Mortgagee confirmed that the purchase price for the property was \$589,000.00.
10. Mr. Souster failed to comply with the Mortgagee's instructions. The instructions included the following:

"You are to take all steps that would be taken by a careful and prudent solicitor on behalf of my client. This includes, without limitation, advising the Mortgagee of any material fact known to you which might affect its decision to advance the loan. If the funds will be used to purchase the property, you must verify that the purchase price in the Agreement of Purchase and Sale is the same as the price indicated in our Specific Instructions. You must also advise us if: (i) the property value significantly escalated over a short period of time; (ii) the vendor under the Agreement of Purchase and Sale was not the registered owner at the time the Contract of Purchase and Sale was signed;...(iv) and advising if there are any unusual credits on the statement of adjustments in favour of the Mortgagor"

11. On December 6, 2007 F and E signed the mortgage **[TAB 4]**. On or about this date F executed the Affidavit of Transferee before Souster as a Commissioner for Oaths attesting to the present value of Lot X of \$589,000.00 **[TAB 5]**.
12. E states that:
 - a) Mr. Souster did not meet with her and that she only met with his assistant L to sign the transaction documents, including the mortgage;
 - b) E received no advice about or explanation of the documents she signed and was rushed through the process; and
 - c) CMHC mortgage liability was not explained to her.

Mr. Souster states that his regular practice was to meet with clients and explain the documents they were signing but that there were times where he did not meet with clients. Without a specific recollection or note in his file indicating otherwise he is not in a position to dispute the facts as outlined by E.
13. Mr. Souster signed as a witness to E's signature on the mortgage and swore an Affidavit of Execution to that effect, despite E's statements that he was not present when the mortgage was signed. Mr. Souster stated that his regular practice was to meet with clients but that there were times he did not meet with them. Without a specific recollection of the signing of the transaction documents nor any note to his file indicating that he did he is not in a position to dispute that he signed documents as a witness and swore to having witnessed the signature without having been present, but did not do so knowingly.
14. On December 7, 2007 mortgage proceeds in the amount \$559,550.00 were advanced by the Mortgagee to Mr. Souster by way of direct deposit into his trust account. There were no other funds deposited to the F/E trust ledger in respect of the Lot X purchase, which was 100% funded by the CMHC mortgage **[TAB 6]**. Mr. Souster was aware of the CMHC requirements regarding deposits and personal resources.
15. On December 7, 2007 Mr. Souster delivered the cash to close of \$443,378.95 to the lawyer for the vendor builder. He further withdrew \$1,907.91 from the F/E trust ledger in payment of his account **[TAB 6]**.
16. On December 11, 2007 Mr. Souster disbursed mortgage proceeds in the amount of \$114,000 to F from the trust ledger of F/E **[TAB 6]**. These funds were paid to F without any direction or authority from E and without her knowledge.
17. On December 12, 2007 F and E become the registered owners of Lot X and the mortgage was registered. The copy of the mortgage registered with Land Titles reflected the signatures of both F and E, but only F's signature was witnessed by Mr. Souster **[TAB 7]**. The affidavit of execution also grossly misspelled E's name.
18. On November 5, 2008, in response to E's attendance at his office seeking transaction documentation, Mr. Souster sent a reporting letter to E regarding her purchase of Lot X **[TAB 8]**. This was the only reporting on Mr. Souster's file. The copy of the mortgage provided in this reporting letter reflected the signatures of both F and E, with both

signatures witnessed by Mr. Souster. A Statement of Adjustments had been prepared for F's purchase from the builder but not in relation to the purchase by F and E. Mr. Souster has no recollection of the Statement of Adjustments, and is unable to locate such documentation on his file.

19. The mortgagee foreclosed on Lot X. On June 15, 2009 an Order for Sale to Plaintiff and Judgment was granted **[TAB 9]**. The value of Lot X was set at \$390,000 and the judgment against F and E was in the amount of \$215,188.83.

P COMPLAINT

20. P, as spokesman for 32 condominium owners, submitted a complaint to the LSA on March 6, 2009 **[TAB 10]**. As a result of his complaint the following citations were issued by a Conduct Panel on March 25, 2014:
 1. It is alleged that Christopher Souster assisted a client in an improper purpose and that such conduct is deserving of sanction;
 2. It is alleged that Christopher Souster failed to conscientiously serve his clients, the mortgage lenders, and that such conduct is deserving of sanction;
 3. It is alleged that Christopher Souster failed to conscientiously serve his clients, the purchasers, and that such conduct is deserving of sanction;
 4. It is alleged that Christopher Souster acted while in a conflict or potential conflict of interest without obtaining his clients' consent or in circumstances where it was not in the best interests of his clients that he do so, and that such conduct is deserving of sanction;
 5. It is alleged that Christopher Souster signed documents as a witness to a client's signature and swore to having witnessed the signature without having been present to see the client sign or to take the client's declaration and that such conduct is deserving of sanction;
 6. It is alleged that Christopher Souster failed to properly supervise his support staff and that such conduct is deserving of sanction.

Condo Building #1

21. H Corp. purchased a condominium building in October 2007 for \$4,150,000.00, closing January 10, 2008, from V Corp.
22. The individual units of the condominium building were then sold to purchasers at a significantly increased price. A sample transaction was the sale by H Corp, to TF and CF. The purchase contract was dated November 20, 2007 **[TAB 11]**. It provided that one of the units of the condominium building ("Unit Y") would be sold to TF and CF on the following terms:

Initial Deposit: \$10,000.00
Balance Owing: \$6,950.00
New Financing: \$322,050.00

Purchase Price: \$339,000.00

Closing: December 28, 2007

23. Title was to be transferred directly from V Corp. to TF and CF in a skip transfer, with H Corp. as the unregistered intervening purchaser.
24. On December 17, 2007 V Corp executed a transfer of land acknowledging the consideration paid by H Corp. for Unit Y in the amount of \$225,000.00 and showed TF and CF as the ultimate Transferees **[TAB 12]**.
25. On December 21, 2007 Mr. Souster rendered an account to H Corp. (or a related operating company) of \$9,011.00 for its purchase of the condominium building.
26. On December 22, 2007 a CMHC mortgage with Bank A for \$332,838.67 was signed by TF and CF **[TAB 13]**. On or about this date TF executed the Affidavit of Transferee attesting to the present value of Unit Y as \$339,000.00. Mr. Souster signed as Commissioner for Oaths **[TAB 14]**.
27. On December 28, 2007 a Statement of Adjustments was prepared which showed a deposit of \$10,000.00 and cash to close of \$329,000.00 **[TAB 15]**.
28. On December 28, 2007 Bank A advanced \$332,050.00 to Mr. Souster, which was deposited into his trust account. There were no other funds deposited to the TF and CF trust ledger in respect of the Unit Y purchase, which was 100% funded by the CMHC mortgage, despite CMHC requirements **[TAB 16]**.
29. On December 28, 2007 Mr. Souster withdrew \$1,002.37 from trust in payment of his December 21, 2007 account to H Corp. (or a related operating company) and \$1,762.26 from trust in payment of his account to TF and CF in regarding their purchase of Unit Y **[TAB 16]**.
30. On December 31, 2007 the remaining Unit Y mortgage proceeds of \$319,285.37 were forwarded to another firm in relation to an unrelated purchase for H Corp. (or a related operating company) **[TAB 16]**.
31. On or before January 31, 2008 Mr. Souster disbursed the cash to close in relation to the purchase of the condominium building by H Corp. to counsel for V Corp. This amount was comprised of mortgage proceeds realized on H Corp.'s subsequent sales of the units in the condominium building to individual purchasers at a higher price.
32. On January 15, 2008 TF and CF become the registered owners of Unit Y and the mortgage was registered on title.

Condo Building #2

33. H Corp. purchased 8 units of a condominium building in October 2007 for \$1,736,000.00, closing November 28, 2007, from E Corp. The average cost per unit was \$217,000.00.
34. The individual units were then sold to purchasers at an increased price. A sample transaction was the sale by H Corp, to R. The purchase contract was dated November 22, 2007 **[TAB 17]**. It provided that one of the units ("Unit Z") would be sold to R on the following terms:
- | | |
|------------------|-------------------|
| Initial Deposit: | \$10,000.00 |
| Balance Owing: | \$3,950.00 |
| New Financing: | \$265,050.00 |
|
 | |
| Purchase Price: | \$279,000.00 |
|
 | |
| Closing: | November 28, 2007 |
35. Title was to be transferred directly from E Corp. to R in a skip transfer, with H Corp. as the unregistered intervening purchaser.
36. On November 28, 2007 a Statement of Adjustments was prepared which showed a deposit of \$13,950.00 and cash to close of \$265,050.00 **[TAB 18]**.
37. On November 30, 2007 Bank B advanced \$265,050.00 to Mr. Souster, which was deposited into his trust account. There were no other funds deposited to the R trust ledger in respect of the Unit Z purchase, which was 100% funded by the CMHC mortgage, despite CMHC requirements **[TAB 19]**.
38. On November 29, 2007 Mr. Souster withdrew \$1,112.62 from trust in payment of an account to H Corp. (or a related operating company) regarding its purchase of Unit Z. On November 30, 2007 Mr. Souster withdrew \$1,002.37 from trust in payment of his account to H Corp. (or a related operating company) regarding its sale of Unit Z and \$1,739.26 from trust in payment of his account to R regarding his purchase of Unit Z **[TAB 19]**.
39. On November 30, 2007 E Corp. executed a transfer of land transferring Unit Z to R in consideration of \$217,000.00 **[TAB 20]**.
40. On December 6, 2007 Mr. Souster disbursed the remaining \$261,195.75 to counsel for E Corp. in partial payment of the cash to close in the H Corp. purchase from E Corp. **[TAB 19]**.
41. On December 10, 2007 R signed a mortgage to Bank B for \$273,929.17 before another lawyer, who acted as agent for Souster **[TAB 21]**.
42. On January 15, 2008 Mr. Souster executed the Affidavit of Transferee as agent for R attesting to the value of the land at \$279,000.00 **[TAB 22]**. Mr. Souster acknowledges that his signature appears on the Affidavit of Transferee as agent for R attesting to the

value of the land at \$279,000. Mr. Souster states it is not his practice to swear Affidavits of Transferee and does not recall knowingly executing this document.

General Characteristics

43. For the majority of the transactions Mr. Souster was not provided with a copy of the purchase contract. When his file did have a copy of the purchase contract, the purchaser stated that their signature appeared to be a forgery. It was not his standard practice to do a detailed review of purchase contracts with clients.
44. No realtor was involved in the transactions and no appraisals were provided to his office.
45. Unbeknownst to Mr. Souster at the time, the purchasers were paid a fee to qualify for the mortgage on the promise that title to the properties would be transferred and their mortgage assumed by another party shortly after the purchase. They did not, and had no intention to, reside in the properties and Mr. Souster did not specifically confirm their intention to reside in the properties.
46. Mr. Souster represented multiple parties to the transaction. He acted while in a potential or actual conflict of interest and did not advise the purchaser or the Mortgagee of the potential or actual conflict or recommend independent legal advice. The purchaser signed a conflict letter as between the purchasers/mortgagors and the mortgage lender but no letter regarding the vendor/purchaser conflict.
47. Mr. Souster did not advise the purchasers or the mortgagees of numerous material facts, including that:
 - a) Although the purchasers generally attended at his office with the vendors, he did not specifically advise that he also represented the vendor (unregistered intervening purchaser);
 - b) The properties had recently been purchased at a lower price;
 - c) The mortgage proceeds were used to fund the intervening purchase;
 - d) The mortgage proceeds were significantly greater than the original purchase price; and
 - e) The unregistered vendors were making money on the transactions and that he was forwarding excess mortgage proceeds to them.
48. Mr. Souster failed to comply with the Mortgagee's instructions which required that he disclose if he was acting for the vendor, and if there were indicia of mortgage fraud such as material increases in price and unregistered intervening purchasers.
49. In most of the transactions the purchasers state that:
 - a) Mr. Souster did not meet with them and that they only met with BL, one of his assistants, to sign the transaction documents, including the mortgage;
 - b) They received no advice about or explanation of the documents they signed and were rushed through the process; and
 - c) CMHC mortgage liability was not explained to them.

Mr. Souster states that his regular practice was to meet with clients and explain the documents they were signing but that there were times where he did not meet with clients. Without a specific recollection or note in his file indicating otherwise he is not in a position to dispute the facts as outlined by the purchasers.

50. Mr. Souster signed as a witness to the purchaser's signatures on the transaction documents and swore Affidavit of Executions to that effect, despite the purchasers' statements that he was not present when the documents were signed. Mr. Souster stated that his regular practice was to meet with clients but there were times he did not meet with them. Without a specific recollection of the signing of the transaction documents nor any note to his file indicating that he did he is not in a position to dispute that he signed documents as a witness and swore to having witnessed signatures without having been present, but did not do so knowingly.
51. Mr. Souster was aware of the CMHC requirement that the borrower reside in the property and that a borrower could not hold more than one high ratio mortgage at one time. Nevertheless a minimum of 11 purchasers held at least two concurrent high ratio mortgages. In each case Mr. Souster signed as a witness to the execution of the mortgage and swore an affidavit of execution.
52. The mortgage lenders ultimately foreclosed on the properties. The deficiency on foreclosures totaled \$3,551,117.
53. Mr. Souster disbursed trust funds to purchasers. In particular two purchasers received \$8,000.00 and \$12,000.00 respectively. The entries in the trust ledger identify the payments as assignment of client. At the time of the Law Society interviews Mr. Souster could not explain these disbursements, but on subsequent investigation believes that his assistant, BL, was a knowing participant in the mortgage fraud and made these payments without his knowledge. Mr. Souster acknowledges that he did not properly supervise BL, who handled the transactions, and if he had this and the other issues with the transactions set out above would have been addressed.

LSA COMPLAINT

54. In May 2009 the Alberta Lawyers' Insurance Association (ALIA) provided the LSA's Conduct Department with copies of pleadings alleging mortgage fraud in which Mr. Souster was named as a Defendant. As a result of this complaint the following citations were issued by a Conduct Panel on March 25, 2014 for both the CO20091294 and CO20101584 complaint files:
 1. It is alleged that Christopher Souster assisted a client in an improper purpose and that such conduct is deserving of sanction;
 2. It is alleged that Christopher Souster failed to conscientiously serve his clients, the mortgage lenders, and that such conduct is deserving of sanction;
 3. It is alleged that Christopher Souster failed to conscientiously serve his clients, the purchasers, and that such conduct is deserving of sanction;

4. It is alleged that Christopher Souster acted while in a conflict or potential conflict of interest without obtaining his clients' consent or in circumstances where it was not in the best interests of his clients that he do so, and that such conduct is deserving of sanction;
 5. It is alleged that Christopher Souster signed documents as a witness to a client's signature and swore to having witnessed the signature without having been present to see the client sign or to take the client's declaration and that such conduct is deserving of sanction.
55. H Corp. purchased a condominium building in October 2007 for \$3,590,000.00, closing October 31, 2007, from V Corp.
 56. The 16 individual units of the condominium building were then sold to purchasers at a significantly increased price. Two sample transactions were the sale of unit 201 and 204 to Mr. H. On or about October 31, 2007 Mr. H allegedly entered into an agreement to purchase unit 201 from H Corp. (or a related company) on the following terms:

Deposit:	\$18,000.00
Cash to Close:	\$342,000.00
Purchase Price:	\$360,000.00
Closing:	November 9, 2007
 57. On or about the same date Mr. H also allegedly entered into an agreement to purchase unit 204 from H Corp. (or a related company) on the following terms:

Deposit:	\$6,543.00
Cash to Close:	\$342,000.00
Purchase Price:	\$360,000.00
Closing:	November 9, 2007
 58. Title was to be transferred directly from V Corp. to Mr. H as a skip transfer, with H Corp. as the unregistered and undisclosed intervening purchaser.
 59. In neither case did Mr. Souster have a copy of the purchase contract on his file at the time of the Law Society review. For 3 of the 4 transactions analyzed by the LSA investigation, he did not have a copy of the purchase contract. In the one case that his file did have a copy of the purchase contract, the purchaser stated that their signature appeared to be a forgery.
 60. On November 1, 2007 V Corp. executed a Transfer of Land acknowledging the consideration paid by H Corp. in the amount of \$238,750.00 for unit 201 and showed Mr. H as the ultimate transferee **[TAB 23]**. On the same date V Corp. executed the same document, on the same terms, for unit 204 **[TAB 24]**.

61. On November 5, 2007 Bank C sent a mortgage requisition to Mr. Souster requesting that he act on their behalf regarding the unit 201 mortgage **[TAB 25]**.
62. On November 7, 2007 Mr. H executed a Bank C mortgage for unit 201 in the amount of \$353,457.00 **[TAB 26]**. Mr. Souster commissioned Mr. H's Affidavit of Mortgagor and swore an Affidavit of Execution.
63. On November 8, 2007 Mr. H executed a mortgage a Bank D mortgage for unit 204 in the amount of \$353,457.00 **[TAB 27]**. On the same date Mr. H executed an Affidavit of Transferee for unit 201 showing the value as \$372,060.00 **[TAB 28]** and an Affidavit of Transferee for unit 204 showing the value as \$359,963.00 **[TAB 29]**.
64. On November 8, 2007 Bank C advanced \$342,000 to Mr. Souster in relation to unit 201, which was deposited into his trust account and \$236,809.00 was paid to counsel for V Corp. for the H Corp. purchase of unit 201 **[TAB 30]**. On the same date Bank D advanced \$342,000.00 to Mr. Souster in relation to unit 204, which was depositing into his trust account and \$236,809.00 was paid to counsel for V Corp. for the H Corp. purchase of unit 204 **[TAB 31]**. There were no other funds deposited to the trust ledgers in respect of the Unit 201 and 204 purchases, which were 100% funded by the CMHC mortgage, despite CMHC requirements.
65. On November 9, 2007 Mr. Souster withdrew \$1,002.37 from each trust ledger in payment of his accounts to H Corp. (or a related company) for the sale of unit 201 and 204 to Mr. H. He also withdrew \$1,773.26 from trust in payment of his account to Mr. H for his purchase unit 201 and \$1,771.26 from trust in payment of his account to Mr. H for his purchase of unit 204. The remaining funds in both trust ledgers were transferred to accounts for the benefit of H Corp. (or a related company) **[TAB 30/31]**.
66. On November 15, 2007 Mr. H became the registered owners of unit 201 and 204 and the Bank C and Bank D mortgages were registered on title.

General Characteristics

67. No realtor was involved in the transactions and no appraisals were provided.
68. Unbeknowst to Mr. Souster at the time, the purchasers were paid a fee to qualify for the mortgage on the promise that title to the properties would be transferred and their mortgage assumed by another party shortly after the purchase. They did not, and had no intention to, reside in the properties and Mr. Souster did not specifically confirm their intention to reside in the properties.
69. Mr. Souster represented multiple parties to the transaction. He acted while in a potential or actual conflict of interest and did not advise the purchaser or the Mortgagee of the potential or actual conflict or recommend independent legal advice. The purchaser signed a conflict letter as between the purchasers/mortgagors and the mortgage lender but no letter regarding the vendor/purchaser conflict.

70. Mr. Souster did not advise the purchasers or the mortgagees of numerous material facts, including that:
- a) Although the purchasers generally attended at his office with the vendors, he did not specifically advise that he also represented the vendor (unregistered intervening purchaser);
 - b) The properties had originally been purchased at a significantly lower price;
 - c) The mortgage proceeds were used to fund the intervening purchase;
 - d) The mortgage proceeds were significantly greater than the original purchase price; and
 - e) The unregistered vendors were making money on the transactions and that he was forwarding excess mortgage proceeds to them.
71. Mr. Souster failed to comply with the Mortgagee's instructions which required that he disclose if he was acting for the vendor, and if there were indicia of mortgage fraud such as material increases in price and unregistered intervening purchasers.
72. In most of the transactions the purchasers state that:
- a) Mr. Souster did not meet with them and that they only met with BL, one of his assistants, to sign the transaction documents, including the mortgage;
 - b) They received no advice about or explanation of the documents they signed and were rushed through the process; and
 - c) CMHC mortgage liability was not explained to them.
- Mr. Souster states that his regular practice was to meet with clients and explain the documents they were signing but that there were times where he did not meet with clients. Without a specific recollection or note in his file indicating otherwise he is not in a position to dispute the facts as outlined by the purchasers.
73. Mr. Souster signed as a witness to the purchaser's signatures on the transaction documents and swore Affidavit of Executions to that effect, despite the purchasers' statements that he was not present when the documents were signed. Mr. Souster stated that his regular practice was to meet with clients but there were times he did not meet with them. Without a specific recollection of the signing of the transaction documents nor any note to his file indicating that he did he is not in a position to dispute that he signed documents as a witness and swore to having witnessed signatures without having been present, but did not do so knowingly.
74. Mr. Souster was aware of the CMHC requirement that the borrower reside in the property and that a borrower could not hold more than one high ratio mortgage at one time. Nevertheless Mr. H held two concurrent high ratio mortgages.
75. The mortgage lenders ultimately foreclosed on the properties. The deficiency on foreclosure averaged \$183,402.00 per unit.
76. In the course of a rule 130 audit it was noted that Mr. Souster had disbursed trust funds to purchasers. In particular CM, DP and AT received \$10,000.00, \$8,000.00 and

\$8,000.00 respectively. The entries in the trust ledger identify the payments as joint venture disbursements. At the time of the Law Society interviews Mr. Souster could not explain these disbursements, but on subsequent investigation believes that his assistant, BL, was a knowing participant in the mortgage fraud and made these payments without his knowledge. [TAB 32].

CONCLUSION

77. Mr. Souster admits as fact the statements contained within this Statement of Admitted Facts for the purposes of these proceedings. Mr. Souster admits that all correspondence sent to or by him was received or sent by him on or about the dates indicated, unless stated otherwise.
78. Mr. Souster admits that his conduct set out herein was conduct deserving of sanction, being incompatible with the best interests of the public and tending to harm the standing of the legal profession generally. He further admits guilt to the following amended citations:
1. It is alleged that Christopher Souster *unknowingly* assisted a client in an improper purpose and that such conduct is deserving of sanction;
 2. It is alleged that Christopher Souster failed to conscientiously serve his clients, the mortgage lender, and that such conduct is deserving of sanction;
 3. It is alleged that Christopher Souster failed to conscientiously serve his clients, the purchasers, and that such conduct is deserving of sanction;
 4. It is alleged that Christopher Souster acted while in a conflict or potential conflict of interest without obtaining his clients' consent or in circumstances where it was not in the best interests of his clients that he do so, and that such conduct is deserving of sanction;
 5. It is alleged that Christopher Souster signed documents as a witness to a client's signature and swore to having witnessed the signature without having been present to see the client sign or to take the client's declaration and that such conduct is deserving of sanction.
 6. It is alleged that Christopher Souster *unknowingly* assisted a client in an improper purpose and that such conduct is deserving of sanction;
 7. It is alleged that Christopher Souster failed to conscientiously serve his clients, the mortgage lenders, and that such conduct is deserving of sanction;
 8. It is alleged that Christopher Souster failed to conscientiously serve his clients, the purchasers, and that such conduct is deserving of sanction;
 9. It is alleged that Christopher Souster acted while in a conflict or potential conflict of interest without obtaining his clients' consent or in circumstances

- where it was not in the best interests of his clients that he do so, and that such conduct is deserving of sanction;
10. It is alleged that Christopher Souster signed documents as a witness to a client's signature and swore to having witnessed the signature without having been present to see the client sign or to take the client's declaration and that such conduct is deserving of sanction;
 11. It is alleged that Christopher Souster failed to properly supervise his support staff and that such conduct is deserving of sanction.
 12. It is alleged that Christopher Souster *unknowingly* assisted a client in an improper purpose and that such conduct is deserving of sanction;
 13. It is alleged that Christopher Souster failed to conscientiously serve his clients, the mortgage lenders, and that such conduct is deserving of sanction;
 14. It is alleged that Christopher Souster failed to conscientiously serve his clients, the purchasers, and that such conduct is deserving of sanction;
 15. It is alleged that Christopher Souster acted while in a conflict or potential conflict of interest without obtaining his clients' consent or in circumstances where it was not in the best interests of his clients that he do so, and that such conduct is deserving of sanction;
 16. It is alleged that Christopher Souster signed documents as a witness to a client's signature and swore to having witnessed the signature without having been present to see the client sign or to take the client's declaration and that such conduct is deserving of sanction.
 17. It is alleged that Christopher Souster *unknowingly* assisted a client in an improper purpose and that such conduct is deserving of sanction;
 18. It is alleged that Christopher Souster failed to conscientiously serve his clients, the mortgage lenders, and that such conduct is deserving of sanction;
 19. It is alleged that Christopher Souster failed to conscientiously serve his clients, the purchasers, and that such conduct is deserving of sanction;
 20. It is alleged that Christopher Souster acted while in a conflict or potential conflict of interest without obtaining his clients' consent or in circumstances where it was not in the best interests of his clients that he do so, and that such conduct is deserving of sanction;
 21. It is alleged that Christopher Souster signed documents as a witness to a client's signature and swore to having witnessed the signature without having

been present to see the client sign or to take the client's declaration and that such conduct is deserving of sanction.

ALL OF THESE FACTS ARE ADMITTED THIS 11 DAY OF MARCH, 2015.

"Christopher M.A. Souster"

CHRISTOPHER M. A. SOUSTER