THE LAW SOCIETY OF ALBERTA
HEARING COMMITTEE REPORT

IN THE MATTER OF THE LEGAL PROFESSION ACT, R.S.A. 2000, C. L-8 AND IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF PETER D. RICCIONI A MEMBER OF THE LAW SOCIETY OF ALBERTA

HEARING REPORT

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PETER D. RICCIONI
A MEMBER OF THE LAW SOCIETY OF ALBERTA

Panel:

Sarah King-D'Souza, Q.C. – Chair
Neena Ahluwalia, Q.C.
Anthony Young, Q. C.

Counsel Appearances:

L. James Thornborough – For the Member on February 14 and 15, 2011
Patrick B. Higgerty – For the Member on November 15, 2011 and for subsequent appearances
Lindsay MacDonald, Q.C. – for the Law Society of Alberta (LSA)

Hearing Dates: February 14 – 18, 2011
November 15, 2011
January 9 – 13, 2012
February 27, 2012
March 14, 2012
May 10, 2012

Hearing Location: 500, 919 11th Avenue SW, Calgary, AB

HEARING REPORT

I. INTRODUCTION

Peter Riccioni (the Member) is a Member of the Law Society of Alberta and was admitted to the Alberta Bar in 1997.

On January 26, 2005, lawyer, John Wellborn, informed the Unauthorized Practice Committee at the Law Society of Alberta that a letter from the Member in relation to a real estate transaction directed him to: "*Please make trust cheques payable to D. R. Paralegal Services Ltd."* John Wellborn's belief was that the Member's signature on the letter was a stamp and that the address provided in the letter was not the Member's business address but a personal residence address.

Questions arose as to the nature of the relationship between the Member and D.R. Paralegal Services Ltd. and the Member provided responses to the Law Society in relation to his personal involvement with files where D.R. Paralegal Services Ltd. was working on his real estate files, and the extent of his supervision over Debra Ridley the owner of D.R. Paralegal Services Ltd.

On March 1, 2005 the Member indicated to the Law Society that he had only used Debra Ridley's address for logistical purposes and client convenience but had discontinued doing so as of February 3, 2005. He indicated that it was an oversight that funds were directed payable to D.R. Paralegal Ltd. by John Wellborn. The Member confirmed that his trust accounting records were located at his own offices. Specifically he stated: "*I review all files, correspondence, reports and see my own clients. In particular I review the real estate purchase and sale agreement and contact the client, request appropriate searches, draft required conveyancing documents and meet with the client report back to the client, close and store the files at my 513-18th Avenue office."* The Member confirmed that Ms Ridley provided him with real estate conveyancing assistance and worked under his supervision.

Ms Ridley was contacted by the Law Society. Concerns were expressed to her that she was involved in the unauthorized practice of law. Ms Ridley explained that she referred clients to the Member and he was comfortable with working with her on files where she acted for an unrepresented Vendor or Purchaser. The direction in the letter to John Wellborn was an error and was corrected. Ms Ridley stated that, in relation to contractual work done for lawyers, she did not see those clients but her role was limited to document preparation.

On May 2, 2006 the Member wrote to the Law Society to advise that effective immediately his real estate offices were located at Debra Ridley's home address.

In May 2006 the Member was audited by the Law Society and an audit report was issued in June 2006. Resulting from the audit the Member's trust account was frozen for four or five days until his books and records were updated. The audit report noted that trust payments had been made to D.R. Paralegal Services Ltd. allegedly without the consent of the clients and there were a number of payments made by the Member from his trust account to D. R. Paralegal Services Ltd. The Member advised the Law Society that he would stop paying trust funds to Ms Ridley.

In October 2006 the Member was referred to Practice Review and he provided a Practice Snapshot in November 2006. A Practice Review Panel met with the Member in January 2006 and he had a follow up Office Consultation. The Member met again with a Panel of Practice Review on June 4, 2007. The Practice Review file was closed.

In October 2006 an investigation was directed by the Law Society into the Member's conduct and more specifically into his handling of trust funds in transactions with Debra Ridley as identified during the Audit.

Further investigations were undertaken by the Law Society that identified that over $6,618,470.88 had been paid from the Member's trust account to D. R. Paralegal Services Ltd. between April 6, 2004 and October 30, 2007 and that from May 31, 2006 to June 6, 2008 the Member paid Debra Ridley $138,891.56 from his General Account.

The auditors discovered a number of real estate files that in their opinion showed signs of mortgage fraud including properties being flipped for significantly more money, purchasers not paying any money towards the purchase, purchasers receiving $5,000.00 – $10,000.00 to lend their name to a transaction, purchasers not seeing the properties and purchasers not moving into the properties.

The concern then arose that the Member had not informed his lender clients, the Banks who were funding the mortgages, of the material details of these matters.

Questions also arose with respect to whether or not the Member had personally signed all of 185 trust cheques tested in the audit.

In June 2008 the M. Trust Company contacted the Law Society to advise that the Member had not met with two individuals, A.D. and A.L. who had obtained a Mortgage through M. Trust Company and whom the Member had represented for a purchase transaction in September 2007. M. Trust Co. identified a purchase price discrepancy and alleged that the Member had failed to protect them.

II. CITATIONS

The Member faced the following 20 citations:

1. IT IS ALLEGED THAT you failed to follow the accounting rules of the Law Society of Alberta, and that such conduct is deserving of sanction.
2. IT IS ALLEGED THAT you acted in a manner that might weaken public respect for law and the justice system and that such conduct is deserving of sanction.
3. IT IS ALLEGED THAT you failed to serve your clients, the purchasers and that such conduct is deserving of Sanction.
4. IT IS ALLEGED THAT you failed to serve your clients, the mortgage lenders and that such conduct is conduct deserving of sanction.
5. IT IS ALLEGED THAT you improperly delegated your duties and responsibilities on real estate files to D. R. Paralegal Services Ltd. and DR and that such conduct is conduct deserving of sanction.
6. IT IS ALLEGED THAT you failed to be candid in your written and verbal communications with the Law Society and that such conduct is conduct deserving of sanction.

7. IT IS ALLEGED THAT you misled another lawyer or failed to correct the misapprehension of another lawyer and that such conduct is conduct deserving of sanction.
8. IT IS ALLEGED THAT you assisted one or more clients in an improper purpose and that such conduct is conduct deserving of sanction.
9. IT IS ALLEGED THAT you permitted funds to be withdrawn from your trust account by one or more cheques which were not signed by you or by any active member of the Law Society and that such conduct is conduct deserving of sanction.
10. IT IS ALLEGED THAT you engaged in conduct that brings discredit to the profession and that such conduct is conduct deserving of sanction.
11. IT IS ALLEGED THAT you failed to deal with trust money in a manner required by the *rules of the Law Society* and that such conduct is conduct deserving of sanction.
12. IT IS ALLEGED THAT you improperly delegated your duties and responsibilities on real estate matters to DR Paralegal and Ridley and that such conduct is conduct deserving of sanction.
13. IT IS ALLEGED THAT you failed to serve your client, M. Trust Company and that such conduct is conduct deserving of sanction.
14. IT IS ALLEGED THAT you failed to serve your clients, A.D. and A. L. and that such conduct is conduct deserving of sanction.
15. IT IS ALLEGED THAT you improperly delegated your duties and responsibilities on real estate matters to DR Paralegal and Ridley and that such conduct is conduct deserving of sanction.
16. IT IS ALLEGED THAT you acted in a manner that might weaken public respect for the law or justice system or in a manner that brought discredit to the profession and that such conduct is conduct deserving of sanction.
17. IT IS ALLEGED THAT misled another lawyer or failed to correct the misapprehension of another lawyer and that such conduct is conduct deserving of sanction.
18. IT IS ALLEGED THAT you failed to respond to another lawyer on a timely basis and that such conduct is conduct deserving of sanction.
19. IT IS ALLEGED THAT you assisted one or more clients in an improper purpose and that such conduct is conduct deserving of sanction.
20. IT IS ALLEGED THAT you failed to respond to the Law Society on a timely basis and in a complete and appropriate manner and that such conduct is conduct deserving of sanction.

On February 14, 2011 the Hearing Committee was advised that the Member had admitted guilt to Citation 1: That he failed to follow the accounting Rules of the LSA and that such conduct is conduct deserving of sanction.

III. STANDARD OF PROOF

The Standard of Proof required in Law Society proceedings is the civil standard which is proof on a balance of probabilities. F.H. v. McDougall (2008) S.C.C. 53 paragraph 49.

The Alberta Court of Appeal in its 2011 ruling Moll v College of Alberta Psychologists 2011 ABCA 110, [2011] AJ No 368, at paragraph 22 cited F.H. v. McDougall to establish that the burden of proof in professional disciplinary proceedings is on a balance of probabilities, stating as follows:

"First, what is not in issue is the burden of proof. Moll's factum suggests that findings of professional misconduct can only be made on the basis of evidence that is "clear, convincing and cogent", the implication being that this is the standard to be met. But the law is now clear that there is only one civil standard of proof at common law. That is proof on a balance of probabilities. There is no "clear, convincing and cogent" standard, whatever that floating standard might have meant: F.H. v McDougall 2008 S.C.C. 53 (CanLII)"

IV. HEARING

1. Jurisdiction

The Member was represented by L. James Thornborough, Esq. on February 14 and 15, 2011. Mr. Thornborough withdrew from his representation of the Member on February 16, 2011.

On February 14, 2011, Counsel for the Law Society of Alberta (**LSA**) established jurisdiction and the following jurisdictional Exhibits were entered:

Binder 1- Jurisdictional Documents:

J1. Notice of Appointment of this Hearing Committee;
J2. Notice to Solicitor with 20 Citations, with receipt acknowledged by Counsel for the Member;
J3. Notice to Attend, acknowledged by Counsel for the Member;
J4. Certificate indicating that the Member is an active Member of the LSA and does not have a Student at Law;
J5. Certificate of Exercise of Discretion indicating that 12 persons were to be served the Hearing Application Notice and were in fact served.

Counsel for the Member had no objections to jurisdiction having been established by way of entry of those Exhibits. Neither the LSA nor the Member objected to the composition of the Hearing Committee on the basis of an apprehension of bias or for any other reason. The Hearing Committee received no materials in advance of the first Hearing date.

2. Representation

The Member represented himself on February 17 and 18, 2011 and indicated that he was prepared to proceed without counsel on those days.

Although the Hearing Committee endeavored to accommodate new counsel for the Member earlier in 2011, due to the busy trial schedule of counsel for the Member the next dates for the hearing could not be scheduled until November and December, 2011.

For the appearance November 15, 2011 and for subsequent appearances the Member was represented by Mr. Patrick B. Higgerty, Esq.

3. Interim Suspension Application

Counsel for the Law Society made an application for the Member's suspension on February 16, 2012. The Member represented himself for that application. The Member was not suspended but was permitted to continue to practice upon conditions and Undertakings.

The Undertakings made by the Member on February 18, 2011, are attached as **Appendix "1"** to these reasons.

4. Positions of Counsel

At the conclusion of the Hearing it was the position of the counsel for the Law Society that the Member should be found deserving of sanction on all Citations except for Citations 7, 11, 17, 18 and 20.

With respect to Citation 1 it was the position of Counsel for the Member that the citation related to outstanding trust conciliations and bank errors, all of which were corrected, and that the Member had also paid the costs of the audit.

It was the position of Counsel for the Member at the end of the Hearing that outstanding citations against the Member should be dismissed and that the Law Society had not met the standard of proof for conviction on the outstanding Citations.

Written Briefs were provided by both Counsel. Submissions as to guilt from Counsel were made on March 14, 2012.

The decision was rendered on May 10, 2012 finding the Member guilty of Citations 1,3,14,4,13,5,12,15,6,8,19,9,2,10, and 16 with written reasons to follow by way of this Hearing Report.

November 26, 2012 was scheduled in order for both counsel to make any further representations respecting sanction, after having had an opportunity to review the written reasons of the Committee respecting guilt.

V. EXHIBITS

There were eight binders of Exhibits entered throughout the course of Proceedings.

VI. WITNESSES

The time line for the hearing and dates where witnesses were called was as follows:

February 14, 2011	***Brian Olesky***	***Transcript pages 18-144***
February 14, 2011	***Robert Steven Vanderberg***	***Transcript pages 145-156***
February 14, 2011	***Lesley Leedham Peace***	***Transcript pages 156-255***
February 14, 2011	***Brian Olesky***	***Transcript pages 256-264***
February 16, 2011	***Brian Olesky***	***Transcript pages 296-326***
November 15, 2011	***Matthew James***	***Transcript pages 445-469***
November 15, 2011	***C. G.***	***Transcript pages 470-493***
November 15, 2011	***A. G.***	***Transcript pages 493-524***
November 15, 2011	***B. P.***	***Transcript pages 524-538***
November 15, 2011	***D. W. J. C.***	***Transcript pages 539-569***
November 15, 2011	***R. P. W.***	***Transcript pages 569-586***

November 15, 2011	***J. T.***	***Transcript pages 587-605***
January 9, 2012	***Kenneth John Davies***	***Transcript pages 661-770***
January 9, 2012	***Kenneth John Davies***	***Transcript pages 778-821***
January 10, 2012	***Kenneth John Davies***	***Transcript pages 825-861***
January 11, 2012	***Peter D. Riccioni questioned by Hearing Committee***	***Transcript pages 962-964***
January 11, 2012	***Peter D. Riccioni questioned by LSA counsel***	***Transcript pages 964-1011***
January 12, 2012	***Peter D. Riccioni questioned by LSA counsel***	***Transcript pages 1014 -1130***
January 13, 2012	***Peter D. Riccioni questioned by LSA counsel***	***Transcript pages 1153-1214***
February 27, 2012	***Peter D. Riccioni – questioned by his counsel***	***Transcript pages 1216- 1266***

VII. RE-ORGANISED CITATIONS

The Hearing Committee for reasons of logic in writing these reasons and to give some structure to overwhelming amount of evidence and Exhibits, re-organized the Citations to address them by related issues, as follows:

1. Citation 1: "Accounting rules not followed"

1. IT IS ALLEGED THAT you failed to follow the accounting rules of the Law Society of Alberta, and that such conduct is deserving of sanction.

2. Citations 3 and 14: "Failure to serve purchaser clients"

3. IT IS ALLEGED THAT you failed to serve your clients, the purchasers and that such conduct is deserving of Sanction.

14. IT IS ALLEGED THAT you failed to serve your clients, A.D. and A. L. and that such conduct is conduct deserving of sanction.

3. Citations 4 and 13: "Failure to serve lender clients"

4. IT IS ALLEGED THAT you failed to serve your clients, the mortgage lenders and that such conduct is conduct deserving of sanction.

13. IT IS ALLEGED THAT you failed to serve your client, M. Trust Company and that such conduct is conduct deserving of sanction.

4. Citations 5, 12 and 15: "Improper delegation of duties on real estate files to D. R. Paralegal Services Ltd. and D.R."

5. IT IS ALLEGED THAT you improperly delegated your duties and responsibilities on real estate files to D. R. Paralegal Services Ltd. and D.R. and that such conduct is conduct deserving of sanction.

12. IT IS ALLEGED THAT you improperly delegated your duties and responsibilities on real estate matters to DR Paralegal and Ridley and that such conduct is conduct deserving of sanction.

15. IT IS ALLEGED THAT you improperly delegated your duties and responsibilities on real estate matters to DR Paralegal and Ridley and that such conduct is conduct deserving of sanction.

5. Citation 6: "Failing to be candid"

6. IT IS ALLEGED THAT you failed to be candid in your written and verbal communications with the Law Society and that such conduct is conduct deserving of sanction.

6. Citations 8 and 19: "Assisted clients in an improper purpose"

8. IT IS ALLEGED THAT you assisted one or more clients in an improper purpose and that such conduct is conduct deserving of sanction.

19. IT IS ALLEGED THAT you assisted one or more clients in an improper purpose and that such conduct is conduct deserving of sanction.

7. Citation 9: "Permitted funds to be withdrawn from your trust account by one or more cheques not signed by you or by any active member of the Law Society"

9. IT IS ALLEGED THAT you permitted funds to be withdrawn from your trust account by one or more cheques which were not signed by you or by any active member of the Law Society and that such conduct is conduct deserving of sanction.

8. Citations 2, 10 and 16: "Weaken public respect for law and justice system, bring discredit to profession"

2. IT IS ALLEGED THAT you acted in a manner that might weaken public respect for law and the justice system and that such conduct is deserving of sanction.

10. IT IS ALLEGED THAT you engaged in conduct that brings discredit to the profession and that such conduct is conduct deserving of sanction.

16. IT IS ALLEGED THAT you acted in a manner that might weaken public respect for the law or justice system or in a manner that brought discredit to the profession and that such conduct is conduct deserving of sanction.

9. Citations 7, 11, 17, 18 and 20

Counsel for the Law Society indicated in his Written Brief that the Law Society was not proceeding on these Citations.

VIII. DECISION AND REASONS:

This is a matter that for the most parts turns on the credibility of the evidence of the Member. The Hearing Committee did not find the Member credible. His evidence was not in harmony with the evidence of other persons whose evidence was credible, clear, and consistent with the evidence that the Hearing Committee accepted as true. The Member's evidence was changeable, illogical, and on numerous occasions as reviewed and discussed in these Reasons, contradictory to facts proven in evidence to be true.

1. Citation 1

1. IT IS ALLEGED THAT you failed to follow the accounting Rules of the Law Society of Alberta and that such conduct is deserving of sanction.

Positions:

The Member acknowledged that he had failed to follow the accounting rules of the LSA. The evidence in this regard is found at Exhibit B-2, Tab 9, the Rule 130 audit report dated June 28, 2006.

Member's Counsel indicated in his argument that the Member paid the costs of the Law Society audit and that the exceptions were all corrected.

Issues:

a. How did the Member fail to follow the accounting rules of the LSA?

b. Is that conduct, conduct deserving of Sanction?

Applicable Law:

Part Five of the Rules of the Law Society of Alberta as they then existed, sets out the accounting Rules for lawyers.

Findings:

The Member admits this Citation. The evidence admitted by the Member establishes his The Hearing Committee accepts his admission and makes a finding of guilt and finds that it is conduct deserving of sanction.

Evidence:

During the 2006 Audit, a number of exceptions to Rule 130 audit procedures were noted as follows (Exhibit B-2, Tab 9):

1. Books/Records not current - last trust reconciliation 3 months behind.

2. Client trust ledger shortages – 10 files showed deficiencies;

3. Trust Reconciliations not properly completed – four trust bank reconciliations were not dated within 30 days of month end;

4. Trust funds not expeditiously deposited into trust – one cheque received from client August 5, 2004 not deposited into trust until February 28, 2005. There was a dispute whether the funds had been received from the client;

5. Improper withdrawal from trust - 11 files where trust payments were made to D. R. Paralegal Services Ltd. without consent of the client.

6. Late Form S – Forms S for year-end December 31, 2004 received 43 days late; December 31, 2005 yearend Form S received 88 days late;

7. Late Form T – form T for year-end December 31, 2004 received 56 days late; December 31, 2005 yearend Form T received 41 days late.

8. Non cheque withdrawal from trust – a non-cheque withdrawal from trust made May 24, 2005 in the amount of $4,616.10 by the Member on his own client trust ledger card.

9. More than $100.00 of personal funds in trust – as of May 11, 2006 the Member had $4,607.06 of his own money in trust.

10. Trust Account used for General Account transactions – the Member used the trust account for non-legal business matters (purchase and sale of equipment for trucking business)

11. General Account not properly maintained – the bank account contained both personal and law firm general account transactions.

12. Trust and general receipt journals not properly maintained – method by which money is received in trust and general accounts not provide in the journals.

The exceptions were characterized by the Manager, Audit and Investigations, on page 5 of the Audit Report as "serious exceptions to the Rules" that needed to be rectified immediately.

As a result of the Audit a complaint issued from the Law Society on September 25, 2006.

The Member responded to the complaint by letter on November 9, 2006. He indicated that the problems identified in the audit had been resolved. He explained that for three months in 2006 he had been ill and at the same time his bookkeeper had resigned. He felt that under the circumstances it was unfair that he be cited with failure to comply with audit rules and required to pay the audit costs.

On March 23, 2007, the Member wrote again to the Law Society in response to a call from Katherine Whitburn on March 16, 2007. The Member explained some trust shortages, explained the issue respecting some alleged trust funds not having been expeditiously deposited into trust as never actually received, although entered as received by the bookkeeper, discussed reasons for late filing of Forms S and T, advised that he had opened a separate general account, and provided copies of client directions to pay to D.R. Paralegal, also advising the practice stopped immediately after the audit.

2. Citations 3 and 14: "Failure to serve purchaser clients"

3. IT IS ALLEGED THAT you failed to serve your clients, the purchasers and that such conduct is deserving of Sanction.

14. IT IS ALLEGED THAT you failed to serve your clients, A.D. and A. L. and that such conduct is conduct deserving of sanction.

Position of the Member:

It was the position of counsel for the Member that the Member had properly served his purchaser clients. He met with them, for the most part, performed the usual services, there were few complaints except as raised in the hearing which was a small number of transactions. ALIA, or as counsel for the Member characterized it: "the Law Society's own insurer", is defending the Member on the basis he has met his obligations to his purchaser clients.

Issues:

a. Who were the Member's purchaser clients for the purposes of this citation?

b. How did the Member fail to serve them?

c. If so, is the failure to serve clients conduct deserving of sanction?

Applicable Law:

Section 49 (1) of The Legal Profession Act sets out the general test for the Hearing Committee to consider in relation to all citations in this hearing as follows:

49(1) *For the purposes of this Act, any conduct of a member, arising from incompetence or otherwise, that*
(a) is incompatible with the best interests of the public or of the members of the Society, or
(b) tends to harm the standing of the legal profession generally,
is conduct deserving of sanction, whether or not that conduct relates to the member's practice as a barrister and solicitor and whether or not that conduct occurs in Alberta.

At all material times, the Code of Professional Conduct, Chapter 9, The Lawyer as Advisor, Statement of Principle, stated as follows:

"A lawyer has a duty to provide informed, independent and competent advice and to obtain and implement the client's proper instructions."

At all material times the relevant *Rules in* Chapter 9, of the Code of Professional Conduct stated as follows:

"2. Except when the client directs otherwise, a lawyer must ascertain all of the facts and law relevant to the lawyer's advice.

…

4. A lawyer must not render advice unless competent to do so.

5. A lawyer must obtain instructions from the client on all matters not falling within the express or implied authority of the lawyer

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

10. A lawyer must not implement instructions of a client that are contrary to professional ethics and must withdraw if the client persists in such instructions

11. A lawyer must not advise or assist a client to commit a crime or fraud.

12. A lawyer must use reasonable efforts to ensure that the client comprehends the lawyer's advice and recommendations. "

For the purpose of all of these reasons the Hearing Committee provides the following definitions to assist the readers:

Findings:

The Hearing Committee finds that the Member failed to serve his clients, including A.D. and A. L., and that such conduct is conduct deserving of sanction.

The evidence shows that the Member:

1. Allowed D. Ridley to perform contract work knowing she did so for other lawyers AND had her own "real estate practice;"
2. Used her address as his address for certain transactions at certain times;
3. Had clients meet with her alone and only her on certain transactions;
4. Accepted referrals for one side of a transaction, knowing she acted on the other side;
5. Did not pay attention to documents presented for signature;
6. Allowed access to the Member's files and had access to her files.

By doing so, the Member mixed clients and practices of both himself and Ridley. This lead to confusion over who acted on certain files. Inevitably, the result cannot be resolved in the Member's favour.

The Hearing Committee finds that the Member negligently and irresponsibly created a situation where his clients and his alleged transactions cannot be clearly separated out from those clients he and Ms Ridley shared and those who were solely Ms Ridley's.

The Member's effort to "parse out" whom he represented, after the fact, is artificial and not supported by the evidence.

The Hearing Committee finds that there were sufficient red flags with respect to this transaction and how monies were moving through the trust account, for a competent lawyer, to at the very least, identify that the parties might be in a conflict of interest position, and that they both needed separate counsel.

The Hearing Committee finds that the Member negligently and irresponsibly created a situation where his clients and his alleged transactions cannot be clearly separated out from those clients he and Ms Ridley shared and those who may have been solely Ms Ridley's. A reasonable person would be confused by the situation and could reasonably assume that the Member was acting as the lawyer on all transactions where either he or Ms Ridley was involved with the client in future. This relates to the C.s and Mr. W. in particular where the first transaction went through the Member's trust accounts and Ms Ridley did the work.

Evidence:

a) <u>D. C. and L. C.</u>

The Hearing Committee heard from D.C. who was introduced to one R. B. by a friend. D.C. gave evidence that he had attended at a house in southwest Calgary with his wife. Debra Ridley was present and the couple signed numerous documents. Mr. C. understood that his name was being used to save Mr. B. from having to put 25 – 30% down on a revenue property. The C.s received $5,000.00 for the transaction. Mr. C. knew that this was not going to be his primary residence. Mr. C. opened up a bank account and Mr. B. was to put mortgage payments into that account. This actually occurred for a year, and then stopped.

The C.s were the "ultimate purchasers" and straw buyers from S. Properties Inc. (a corporation owned by R. B.) which received as middle-man, $41,820.62 from this sale to the C.s. The mortgage obtained by the C.s was with X Bank.

The first C. transaction: Unit xxx, xxx xst Avenue NE, Calgary went through the Member's trust account. Mr. C. was unable to identify a transfer from his trust ledger card to someone called "P. P." in the amount of $14,608.11.

With respect to C. purchase of: Unit xxx, xxx xst Ave, [Exhibit B-11 Tab 10], this was a second property purchased through the C.s involvement with R. B. for which the C.s were paid $7,500.00. The mortgage was with Y Bank. The paperwork prepared by Ms Ridley was ostensibly done under the name of the Member as lawyer for the C.s. S. Properties Inc. received as middle-man, $68,213.02 from this sale to the C.s.

Both properties were eventually foreclosed on, although Mr. C. made efforts to make mortgage payments for as long as he could. The properties were over-valued, according to Mr. C.. Ultimately he and his wife declared bankruptcy.

Mr. C. never met Mr. Riccioni. Mr. C. was not aware of the Member's involvement in either transaction until foreclosure proceedings began when Mr. C. requested his files from the Member. He spoke to the Member and then picked up two big manila envelopes containing his files at Debra Ridley's house.

The Member in his evidence agreed that he had acted for the C.s on the first transaction and confirmed that he had never met the C.s. He believed that there was a record on the file directing him to pay to Mr. P. the sum of $14,608.11. The Member acknowledged that Mr. B. gave him those instructions. The Member explained that Mr. B. was one of the parties in the transaction and that these were his funds and upon his instructions they were transferred to Mr. P.'s file. When asked whether the Member had been acting for S. Properties Inc. or Mr. B. the Member responded that he believed that Mr. C. was his only client. He did not consider Mr. B. was the client just because he instructed him to forward part of his sale proceeds to another party. However, by the time of giving his evidence at this hearing the Member was not so certain whether Mr. B. was or was not his client.

The Member acknowledged that he was under trust conditions from Hansen and Associates when B. Developments was selling to S. Properties Inc. and that he sent the amount to close from S. Properties Inc. to Hansen and Associates. In response to the inquiry whether he sent the money to close on behalf of S. Properties Inc. the Member responded that "it depends". The Member could not recall whether he acted for S. Properties Inc. as seller to the C.s. He had prepared a Statement of Adjustments and denied that he did it as Counsel for S. Properties Inc. but rather for his personal use in making calculations.

On the first C. transaction the Member also acted for X Bank. He confirmed that he considered that he had an obligation to the Bank, to the C.s, and to S. Properties Inc. as fiduciary and was obliged to let them know material facts in his knowledge that would include a jump in purchase price. In the Member's view the true purchase price was that price paid by the C.s ($297,000.00) so there was no jump. The Member acknowledged that S. Properties Inc. did not actually own the property at the time it sold the property to the C.s. The Member was focused on completing the deal. He knew of the large increase in price but believed that the bank had full disclosure.

With respect to Unit xxx, xxx xst Ave., the second C. purchase, the Member was unable to recall receiving the letter from Hansen and Associates which sent over to him at his 18th Avenue S.W. office, Titles and Transfers relating to sales from B. to S. Properties

Inc. of eleven different units including Unit xxx [Exhibit B-11 Tab 6.] The Member wrote to Hansen and Associates on his letterhead using Debra Ridley's address in respect to Unit xxx, xxx xst Ave., a S. Properties Inc. purchase from B. Development [Exhibit B-11-7] and believes on this transaction he was acting for S. Properties Inc. and not the C.s.

The Member identified the Mortgage Commitment letter from Y Bank for the C.s, and the Member acknowledged what his duties would have been under the Standard Instructions to Lawyer, but stated that he did not believe that this was his file. The Member indicated that this file had not gone through his trust account and that the funds had been deposited by Ms. Ridley into her own account. Although it appeared from the paperwork that he was involved in the transaction, the funds did not go through his trust account.

The Member indicated that he was aware of the transaction to a certain point. He indicated that a lot of transactions were on the back burner awaiting mortgage instructions re financing. He had two baskets: one for transactions that were ready to go, and the other for where there were no instructions to proceed. The Member asserted that somehow throughout this time, Ms. Ridley intercepted a lot of communications, proceeded with this transaction and deposited the funds into her own account. The Member indicated that he was losing control over certain files because he was told at the time that files were waiting for mortgage instructions or whatever the case might be.

The Member agreed that the transfers and documents had come to his office not to Debra Ridley's office and that he had not returned them to Hansen and Company indicating that he was not acting for S. Properties Inc. He also did not advise Y Bank on this transaction as to any increase in the purchase price of the property. The Member indicated that he believed that Y Bank knew what the purchase price was, who the client was, had appraised the properties and knew that prices were escalating. He understood that there more than likely is a duty to disclose the price escalation but at the time he did not believe it was material. He did not recall whether he advised of any unusual credits in favour of the mortgagor. He was not clear that the Bank would want to know this type of information.

With respect to the purchase of Unit xxx, the Member indicated that he was not paid for the transaction. He asserted that Ms. Ridley had stolen the transaction from him and he did not realize it until the investigations took place.

The Member was involved with the first transaction, as it went through his account. The Member had Debra Ridley meet with the C.s on the transaction.

With respect to the second transaction, on the one hand, the Member suggested that he was acting for S. Properties Inc. (the middleman, buyer from B. for $192,320.00 on January 4, 2007, and seller to the C.s for $275,000.00 on December 14, 2006, in relation to the C. transaction via Debra Ridley and her home address.

On the other hand, the Member also alleged that Debra Ridley performed a rogue second transaction for the C.s.

Of note, the two units purchased by the C.s were at the same building address, with the same lawyer for the seller B. Developments, the same date for the trust letters which appear to be the same trust letter for each of the eleven transactions and apparently sent to the Member's office address. Furthermore, one of the units was also bought by a Mr. W. (Unit xxx) at around the same time frame. Mr. W. was a client of the Member for that transaction.

There are two possibilities here respecting the second transaction:

Either the Member and Ridley were involved in a mortgage fraud scheme together and the Member abdicated his practice to Ridley to facilitate the scheme; or

The Member abdicated his practice to Ridley because he assumed she was honest and competent, and by so doing permitted her to create a scheme involving his clients on second and third transactions that he was unaware of.

The important fact is that the Member based on his own decisions, lost all control of his practice and the outcome was that the Member failed to serve his clients, the C.s. He failed to protect them from fraud, foreclosure and bankruptcy. He did so either knowingly or recklessly.

b) B. P.

Ms P. met R. B. in December 2006. He knew her sister through a pub she was working at. Ms P. was a store manager at P. x I. and earned a good income. Her sister also became involved with R. B. in March or April 2007. R. B. told Ms P. that there were people who could not qualify for a mortgage and she could offer up her credit and her name, get the mortgage and someone would assume it. She would be paid some money for doing so.

The first property B. P. purchased was: Unit x, xxx-xrd Ave NW, Calgary. The second property was: Unit xxx, xxxx-xxth Ave SW, Calgary.

Ms P. signed documents at Debra Ridley's house. She paid no money down on the property and R. B. paid her $5,000.00 for the first transaction which she used for the

mortgage payments. She was told that if she chose to buy a second or third property she would receive $7,500.00 or $10,000.00. Ms P. bought two properties under the scheme but in the end did not receive any money for the second property.

Ms P. understood that she was being put up as a straw buyer to get the bank to lend the mortgage money. At Z Bank when she went to sign for the mortgage for the first purchase she was shown a Statement of Income, purportedly her own, for a company she did not work for, that she knew was untrue. She did not correct the information with the Bank.

With respect the second purchase, Ms P. signed documents in R. B.'s car. She never met with Debra Ridley, and she never met with the Member. She learned that the Member existed subsequently.

Both properties were foreclosed on. Both B. P. and her sister hired a lawyer, Matthew James. Ms P. had to file for bankruptcy as a result of her involvement in these transactions and now drives a school bus.

The client trust ledger card for the sale and purchase of Unit x, xxx xrd Ave N.W., Calgary was a D. R. Paralegal Services Ltd. bank account ledger card [Exhibit B16 Tab 2.] S. Properties Inc. received $55,117.23 on April 26, 2007 from the transaction.

This transaction was one unit in a sale of a ten unit condo building for $2.8 Million Dollars. The lawyer for the Seller was Robert S. Vanderberg. S. Properties Inc. purchased the entire building but then sold off each unit to individual ultimate purchasers.

Calgary lawyer, Matthew James, gave evidence at the hearing that he sent a fax letter to the Member on February 28, 2008, asking for B. P.'s file. He then had a conversation with the Member on the telephone and the Member advised either that he would be in the area and would drop off the file himself, or that he had just dropped it off himself.

In his direct examination Mr. James responded [Hearing Transcript at page 448, lines 5-12]:

Q."And did he suggest in any way that it was not his file at or about that time?

A. At that time, no. I did have a subsequent telephone conversation with Mr. Riccioni. I believe it was April 7, 2008. And in the course of that conversation, Mr. Riccioni has indicated that he has no record of ever representing B. P.. That was after I had received his…receive the file under this covering letter."

When cross examined by Mr. Higgerty at Hearing Transcript, page 453 line 20 to page 454, line 2, Mr. James said:

Q. "Mr. James, the file material that you received in response to your letter of February 28th, Tab 26, February 28, 2008, the file received was not, in fact, the one you had asked for: is that correct?

A. I think it was the file I asked for. I'm looking at Tab 26. I asked for the file regarding Unit x, xxx -x Avenue NW. The covering letter at Tab 27 refers to the same property description.

Q All right. And that's the file you received?

A To the best of my recollection, yes."

….

And at Hearing Transcript, page 454 Lines 16-21:

Q. "There's no indication at any time that you received any incorrect file from Mr. Riccioni?

A. I don't believe so, no

Q There was never any mix up in providing you with anything you requested?

A. No I don't think so"

In the file Matthew James received from the Member was both a Statement of Account of the Member and a Statement of Receipts and Trust Funds showing paid to the Member $1,582.02. The Ridley trust ledger shows a payment to the Member for a Statement of Account but the Law Society Investigator could not find a debit/cheque from Debra Ridley's trust account to the Member proving payment to the Member. The file Mr. James received had a cover letter signed by the Member dated March 3, 2008 [Exhibit B-16 Tab 27.]

The Member's evidence was that he had not acted for B. P. or S. Properties Inc. with respect to this transaction. The Member stated this was another "rogue transaction" [Hearing Transcript January 12, 2012, page 1021, line 3 to 7.] The seller's lawyer, Robert Vanderberg, had written to the Member at Ms. Ridley's home address. The Member indicated that although he used Debra Ridley's address on his letterhead for specific real estate purposes he did not consider her offices as his real estate satellite office. The Member could not recall whether Mr. Vanderberg's letter came to his attention. The Member was unaware that this was a $2.8 million dollar transaction for a

number of units until he found out during the investigation. He did not recall the particulars of the file and did not recall a conversation with Mr. Vanderberg in relation to trust conditions. The Member did not recall reviewing mortgage instructions from Z Bank with respect to this matter and he did not believe he did any work on the file.

Yet the Member also acknowledged that he signed the "Additional Information" sheet for B. P.'s mortgage and the Solicitor/Notary's final reports on Title [Hearing Transcript, January 12, 2012, page 1021, line 8 to 22, referring to Binder 4, Exhibit B-16, Tab 22 "Additional Information", B-16, Tab 23 Solicitors Final Report on Title dated May 28, 2007, B- 16, Tab 24 Solicitors/ Notary's Final Report on Title dated July 25, 2007.]

The Member suggested that these documents were slipped under his nose by Ms. Ridley and he signed unwittingly.

With respect to the letter sent to the Member on February 28, 2008 from Mr. James, wherein Mr. James requested Ms. B. P.'s file, the Member acknowledged that he had not called Mr. James back to say he had not represented Ms. P., but that he had called and said he would provide Mr. James with the file and he did so.

Mr. Riccioni's evidence is that he provided B. P.'s sister's file to Matthew James. The sister's name is: "A. B. P.".

The Member's evidence on this issue was that upon receiving the fax from Mr. James he searched for a "B. P." file in his accounting records. He stated he had a different letter on his file than the one entered as Exhibit B-16, Tab 27 and identified by Mr. James as having been received from the Member. The Member says that he dropped off the "B. P." file to Mr. James.

The Member states that later Mr. James called him and advised that it was not the file he was looking for. The Member said he was not aware of another file so he spoke to Debbie Ridley who was vague with him but said it was one of her files. Debra Ridley provided him with the file and he took it to Mr. James.

The Member indicated to the Hearing Committee he could provide the B. P. file and that there would be a cover letter in that file from the Member to Mr. James.

After the lunch break on January 12, 2012, the Member brought with him a copy of the "B. P." file, not the original file. The Member said it was one he found in his office and was the file he delivered to Mr. James. The file was for a client named "A. P.", Purchase from S. Properties xxxx P. R. N.E. [Exhibit F-20.] The Member advised that this was a D.R. Paralegal Services file.

The Member indicated that he believed the original file was with Ms. Ridley. He had received the copy through David Kitchen, her lawyer. The Member also indicated that the A. B. P. file had disappeared for a time from his offices; it was not in his system in his offices, nor on his list of files. The Member assumes that Debra Ridley took the A. B. P. original file. The Member last saw the original file at the time he photocopied it and personally delivered it Mr. James.

When asked how he came to have the file the Member responded: *"The particulars are vague how I came across this file."* [Transcript at page1096, line 25] and "*Somehow it was found in my—in my office"* [Transcript at page 1097 line 1.]

There was no cover letter to Mr. James with the material contained in Exhibit F-20. At Pages 1099 line 25 - 1100 of the Hearing Transcript the Member says in response to a question from Law Society Counsel as to where the cover letter was for that file:

A. "Okay. Let me explain further. This is a little… this is a little bit complicated. The---actual file—file, I completely did not pay any attention to this---this file that I delivered. And nothing---Mr. James said it wasn't the file he was looking for. So I didn't even, like, do anything with the file or even think about it. All I can say ways that the file was no longer in my office. It disappeared, this ---this A. P. file. Yes, this one here, including the letter, my correspondence that I brought with me when I went to his office.

Q So where did this come from?

A This one here, this one came from Debbie Ridley's solicitor, David Kitchen…

Q. When did you get it?

A. About a year ago."

The Member agreed that Exhibit B-16, Tab 26 was a cover letter from him to Mr. James and that the subject line referred to Unit x and B. P. and that the Member had signed the letter. He could not explain how that could have happened. [Hearing Transcript, January 12, 2012, page 1100, line 23 to page 1104, line 25]. All he could say for certain was that the file he had with him at the time was the A. B. P. file. The Member was unable to explain how, when he did not have a file for B. P. and he had materials for A. P. that a letter was drawn up by his staff referring to the B. P. file. Nor did he attempt to explain how, if his story were true about not having anything to do with the B. P. purchase of Unit x, for which he was under trust conditions to Mr. Vanderberg, he did not realize that this was a "rogue" transaction.

The Member's evidence is troubling. His complicated explanations as to how he initially assumed Mr. James wanted the "A. B. P." file and he found it in his office having

reviewed his accounting files, but it was really not his file, it was not on his system, yet he located it and it disappeared for a while, made no sense. It was as if the Member had one version of events in mind when he started to give his evidence (that he had never acted for B. P. but had acted for A. P. and had believed that file to be the one requested by and given to it to Mr. James and furthermore it had disappeared for a while from his office) to a second version of events when he presented a copy of the file to the Hearing Committee (that the A. B. P. file was never his file.) The Hearing Committee believes that both B. and A. P. were likely both the Member's clients. If a client is in the lawyer's system and accounting records as a client, as was A. B. P. , they must be a client. With respect to B. P., the Member had control of the file and was able to provide it to Mr. James upon demand, whether B. P.'s file was physically with him or Ms Ridley. Exhibit 16, Tab 2, page 2 is a copy of a cheque payable to Riccioni Law Office in trust for $400,000.00 in relation to the Unit x B. P. transaction and apparently endorsed over to D.R. Paralegal Services Ltd. by the Member. The Member denies that he countersigned the back of that cheque. The original cheque was not provided to the forensic examiners for their opinion.

With respect to that bank draft, the Member indicates that he first saw it during the course of the Law Society investigations in around May 2008. The Member indicated that he would not have endorsed a cheque over to Ms. Ridley [Transcript page 1289, lines 7 and 8.]

In the hearing, the Member in his evidence was very clear that he had signed all of the cheques reviewed by the forensic examiners. However he denied signing the back of this particular bank draft – one not reviewed by the examiners.

The Hearing Committee accepts Mr. James' evidence when he advises in his evidence that he received B. P.'s file from the Member with a cover letter. The Hearing Committee finds that Mr. Riccioni provided the B. P. file to Mr. James and that the Member was Counsel on the real estate matters for B. P..

Other documents in the file received by Mr. James clearly indicate that the Member was the lawyer for the transaction and corroborates that the Member was the lawyer.

The Member also failed to meet with B. P. and did not ensure that he had direct instructions from her.

c) R. W.

Mr. W. met R. B. through a friend who introduced him to get involved in a scheme to buy and sell houses for profit.

Mr. W. purchased Unit xxx, xxx xst Ave NE, Calgary from S. Properties Inc. and B. Developments for $275,000.00. The mortgage was with X Bank. Mr. W. did not make a down payment for the purchase. He received $5,000.00 from Mr. B. for making the purchase. He signed documents with Debra Ridley, and he swore falsely in a Statutory Declaration that a certain amount of the purchase price had come from his own resources. S. Properties Inc. received $68,074.30 from the transaction.

Mr. W. was involved in three such transactions (Unit xxx xxx-xst Avenue N.E., Unit xxx xxxxx -xx Street S.W. and Unit xxxx, xxxx xxth Ave S.E.) and was paid in total $11,500.00 for his cooperation. Initially, Mr. B. made the mortgage payments on the properties although cheques were late from time to time. Mr. W. is planning to declare bankruptcy.

On the transaction respecting Unit xxx, xxxx-xxth Ave SE, Calgary, there is a signed Solicitor's Opinion signed by Mr. Riccioni [Exhibit B14, Tab 24], and similarly on transaction respecting Unit xxx, xxxx xxth St SW, Calgary at Exhibit B-13, Tab 22 there is a Solicitor's Opinion signed by the Member.

With respect to purchase by R. W. of Unit xxx, in evidence at the hearing the Member indicated that he understood that skip transfers were not illegal. He was unsure whether Mr. W. had come to his offices. He did know that Mr. W. had met with Ms. Ridley.

In the Member's opinion, his primary client was Mr. W. and he did not believe he had any relationship with S. Properties Inc. other than to forward to difference in the final purchase price to it. In the Member's view he acted for the ultimate purchaser. S. Properties Inc. was not his client or his focus. The Member indicated that he represented the ultimate purchaser, and took his instructions from that person, S. Properties Inc. had a contract and an equitable interest in the property but Member did not consider S. Properties Inc. his client at the time. When asked whether he would accept trust conditions on behalf of a non-client, the Member's evidence was that it was a common thing to accept and fulfill the trust conditions and he did not consider it material to ask Hansen and Associates to amend the letter because they would have known what the real situation was based on either a letter or other communications.

The Member indicated that he saw S. Properties Inc. as an unrepresented individual despite the Statement of Adjustments prepared on behalf of S. Properties Inc. by the Member [Exhibit B-12, Tab 13]. The Member saw no need to advise the Bank that S. Properties Inc. was paying his fees, and was paying fees on behalf of the purchaser W., and he did not advise the Bank about the increase in the purchase price from $192,000.00 to $275,000.00.

With respect to purchase by R. W. of Unit xxx Mr. Riccioni confirmed that usually his offices received the documents under trust conditions from Hansen and Associates, the documents then being sent to Ms. Ridley's Christie Park address which was being used as his real estate office address for time sensitive matters. This trust letter went to Ms Ridley's address. The Member indicated that he only learned about this transaction during the Law Society investigation. The Member did acknowledge that in relation to this transaction there was a Transfer of Land with his signature on it [Exhibit B-13, Tab 19.] The Member indicated that he had signed the Transfer of Land believing that it was his transaction. The name "R. W." was familiar to the Member and he did not scrutinize the transaction or have a file and he signed the Transfer of Land believing it was one of his files. The Member did not receive fees for the transaction but did not wonder why this was.

With respect to purchase by R. W. of Unit xxx the Member indicated that this was another rogue transaction of Ms. Ridley's. With respect to Exhibit B-14, Tab 7 a letter from Mr. Riccioni to lawyer John Wellborn in relation to the transaction, the Member indicated that it was his signature to the letter but he had no recollection signing the letter which must have been slipped into a pile by Ms. Ridley for him to sign.

The Member also acknowledged that he had signed the Solicitor's Opinion with respect to this transaction [Exhibit B-14, Tab 24]. The Member acknowledged that this had been a flip from R. B. to Mr. W. and Y Bank had paid out more for the mortgage than had the initial price for the sale of the property been.

The first W. transaction, purchase of Unit xxx, xxx-xst Ave NE, Calgary went through the Member's trust account. The purchase of Unit xxx, xxxx-xxth St S.W., Calgary went through Debra Ridley's bank account. Of note, a cheque was written from Ms. Ridley's account to Peter Riccioni in the sum of $911.96 on January 27, 2007, which cleared from the Ridley account but was not shown as deposited into the Member's general account.

The purchase for Unit xxx, xxxx xxth Ave SW, Calgary, transaction went through D. R. Paralegal's bank account and a cheque was issued July 5, 2007 number xxxx to payee Peter Riccioni for $885.78, but was not deposited into the Member's general account.

Whether these cheques were deposited or not to the Member's general account, that they were made payable to the Member is some evidence of connections to the "rogue" W. transactions.

Mr. W. was indubitably the Member's client for the Unit xxx purchase. The Member also signed a transfer of land on Unit xxx and he signed the solicitor's opinions for the

transactions relating to Units xxx and xxx. On the balance of probabilities, Mr. W. was the Member's client on all transactions.

The Member failed to meet with Mr. W. to ascertain instructions, advise him and learn the extent of his involvement in these transactions. This can only lead to the conclusion that the Member was willfully blind to the fraud being perpetrated.

d) A. and C. G.

C. G. gave evidence that her family had moved to Canada from the Philippines in 2004 and had owned a home in Calgary. Her husband met R. G. (brother in law of R. B.) through his employment at X. M.. Raymond asked them to come to this house. They went there and were then taken to R. B.'s house to meet Mr. B. and his wife. There were papers on the dining room table for a house that was going to be bought in the G.s name. Mr. G. was to receive some money for buying the house. Mrs. G. thought it was $10,000.00. Some months later her husband did get the $10,000.00.

The G.s bought xxxx E. D. SW, from K. B.. This was a direct sale from K. B. to the G.s with a conventional mortgage. The signatures purporting to be theirs on the residential purchase contract were not theirs [Exhibit B-18, Tab 5.] The transaction went through the Riccioni trust account [Exhibit B-18, Tab 2.] The G.s did not meet Debra Ridley. The signature on the direction for payment of mortgage proceeds [Exhibit B-18, Tab 9] was not Mrs. G.'s actual signature. Exhibit B-18, Tab 10 was not her signature. Exhibit B-13, Tab 13, a Promissory Note No Interest for $50,000.00 payable to K. B. was not signed by her or husband. Exhibit B-18, Tabs 6 and 11 did have the signatures of Mr. and Mrs. G..

The G.s used up their line of credit and the savings for their children's education to pay the mortgage and then declared bankruptcy. They never met Mr. Riccioni. They signed more papers at a later date. Mrs. G. did not understand the transaction and only found out about the Member's involvement at examinations for discovery. Mrs. G. thought there was a deficiency judgment against her for the E. D. property. In total they were involved in three transactions.

Mr. G. also gave evidence. He indicated he met R. B. through B.'s brother-in-law R. G.. The G.s purchased three properties in all and in the end declared bankruptcy. Mr. G. thought that he would be getting about $10,000.00 for each transaction. In the end the money he did receive he used to pay the three mortgages which totaled $11,000.00 in a month. Mr. G. was not aware of whether Mr. Riccioni was involved or not. He did not know what the Promissory Note was about. He never intended to nor lived in any of the three houses purchased.

Exhibit B-18 Tab 12, the client trust ledger, shows an initial deposit of $5,000.00 from the G.s, a further cash to close portion, and receipt of monies by way of Promissory Note.

The Member indicated that he had represented the G.s. He was not sure whether he had represented K. B.. He was not sure who had provided him with instructions. Upon reviewing materials further over a break the Member indicated in his evidence that he had in fact acted for the G.s and K. B. and had received his instructions from Debra Ridley. He had also acted for Y Bank. He had never met the G.s but would have been aware that Ms. Ridley was meeting with them because he and she were in daily communications. The Member believed that the initial deposit and further cash to close for the transaction of $141,000.00 was received from Mr. and Mrs. G..

With respect to the Promissory Note between the G.s and Ms. B., the Member did not remember the details. The Member did not consider the $56,000.00 Promissory Note to be an unusual credit that should have been reported to Y Bank, although Zinner Law Office had been paid a $3,000.00 retainer from trust funds respecting foreclosure. The Member did not recall that the property was in foreclosure at the time, although this was "possible".

With respect to the payout of the Promissory Note approximately 5 weeks later, the Member believed the funds came from the G.s. He did not find it unusual that in the Statement of Adjustments the vendor had paid the G.s' legal fees for the purchase, nor did he report this to the Bank. The Member indicated that having heard the G.s evidence that obviously they had been dishonest. Although the cash to close went into his trust account he did not know where it came from and specifically was not aware that it came from the B. s.

With respect to the Promissory Note signed between the G.s and K. B., the Member acknowledged that his evidence previously had been that it would have come from the G.s. However, when examined by his Counsel at Transcript page 1295, lines 2 – 4, the Member in response to a question states as follows:

> *Q: "Do you have any other ideas where this bank draft may have come from now? "*
>
> *A: "It's possible it may have come from K. B."*

And at Hearing Transcript page 1297, lines 11 – 15:

> *Q: "So do you…do you know why that…that loan or that purported loan reflected in the Promissory Note would be for that amount, Sir; do you know why?"*

A: "It was the only way for this transaction to close. I mean somebody had to come up with the $56,000.00."

The Member's position was that the Bank would have received the purchase contact and it would have been clear to the Bank that there was a shortfall but the lender did not express any concerns about this.

At page 1299 of the Hearing Transcript, the Member stated at lines 9 -*15: ""no, not...not what so ever, and I think I said that at the last hearing, that it wasn't unusual because it's not my…it's not my obligation as a lawyer to question the bank's discretion on lending and how the come up with the lending terms and what's required. And If there's a shortfall of $56,000.00, they... they would have known where that source comes from."*

This was a complicated transaction. The Member did not even meet with the G.s. Had he done so, reviewed all of the documents with them and discussed the transaction, as would a prudent and competent lawyer, he would have become aware of some if not all of the questionable aspects of the transaction, such as that they had no money and had paid none for the transactions, had not signed all of the documents and had little understanding that what they were doing was not in their interests. He would have been able to easily recognize and advise them accordingly.

e) J. T. - Unit xxxx, xxxx xxth Ave SW.

Mr. T. never met R. B. but was put in contact with him through friends and they spoke on the telephone only. B. invited Mr. T. to take part in a real estate transaction. Mr. B. would purchase property, do some renovations, there would be someone living on the premises at the time and then the property would be sold for profit. Mr. T. met only Debra Ridley throughout the course of the transaction at her residence in Calgary. When Mr. T. attended at Debra Ridley's residence he overheard a heated telephone call she had with R. B.. He was approximately 10 minutes signing documents with Ms. Ridley.

The transaction went through the Riccioni trust account. Mr. T. swore a false Statutory Declaration indicating that a certain amount of the purchase price was from his own resources. He did not receive any documents after the transaction took place, other than mortgage documents from Y Bank. He did not pay the $10,255.48 deposit cheque for the purchase on October 15, 2007, as indicated in the client trust ledger. The Riccioni client from whom that deposit came via a trust account: J. H. via R. B., was unknown to Mr. T.

R. B. made one payment for the property mortgage and a couple of postdated cheques bounced. T. found a renter but is short $600.00 per month which he pays out of his own pocket to maintain the property and the property is worth $50,000.00 less than he bought it for.

In his evidence, the Member acknowledged initially that he acted for Mr. T., Y Bank and Mr. B.. He then indicated that he was not sure whether he acted for Mr. B.. The Member acknowledged that when interviewed by the Law Society investigators he had stated that did not act for Mr. B. or possibly had not thought of it that way.

The Member indicated that this was a transaction where the property may have actually transferred to Mr. B. before he sold it to Mr. T.. The Member agreed that although the trust records showed that the cash to close of $10,255.48 came from Mr. T. that in fact this sum was noted as paid to Mr. B. on the J. H. trust ledger [Exhibit B-19, Tab 3] but instead was made payable to the Member in trust and used for Mr. T. 's purchase. The Member acknowledged that he must have had instructions from Mr. B. to take money from the H. trust account and pay it on the T. transaction.

The Member acknowledged that although the transaction was his, the proceeds of the mortgage were initially paid to D.R. Paralegal in trust. The Member indicated that Ms. Ridley had advised him that the cheque had been sent to her in error and she endorsed it over to the Member with the Bank's authorization. The Member did not consider it to be an unusual credit that Mr. B.'s money was being used to pay the cash to close for Mr. T. nor did he feel it necessary to inform the Bank.

Mr. T. to a large extent was an author of his own misfortune. He now owns a property that costs him more each month than it can be rented for and is worth less than he purchased it for. The Member nonetheless failed in his obligation to meet with and advise Mr. T. of the potential consequences of his actions.

The Member in this instance took instructions on the purchase from R. B.. The Member implemented instructions contrary to professional ethics. He failed to meet with Mr. T. to determine the facts surrounding the purchase. By failing to do so, the Member did not protect either himself or his client against allegations of fraud.

f) D. and L. Purchase

The Member responded to the Law Society complaint in relation to this matter on September 18, 2008. He indicated that he could not remember if he had met with Mr. D. and Ms L. but that all required signatures and identifying information was obtained by Debra Ridley and that he had received the Real Estate Purchase Agreement (REPC)

from D. and L.. He was unable to explain why there were two different REPCs but pointed out that there was no discrepancy in the purchase price.

On October 15, 2009 the Member wrote again to the Law Society in response to the Law Society investigation IN200600xx to indicate that he was not aware that the purchasers had received money to lend their name to the transaction, had not seen the property, nor intended to move into it.

At the hearing, the Member indicated that he acted for Mr. D. and Ms. L.. He did not meet them at the time of the transaction but met with Mr. D. several times after the transaction was completed and problems had arisen. It appeared that this was because Mr. D. was contacting him with concerns. The Member also acted for M. Trust Co.

This was a skip transfer and the Member indicated that he was unsure whether Mr. B. became his client. The Member did not inform M. Trust Co. of the increase in purchase price between the time it was purchased by Mr. B. for $245,000.00 and sold to Mr. D. and Ms. L. for $295,000.00. The Member was not aware that he had a responsibility to do so and felt that M. Trust Co. knew the purchase price was $295,000.00 and that they had all the pertinent information respecting the transactions.

The Member confirmed that he had read the mortgage instructions from M. Trust Co. that stated as follows:

"This loan has been approved based on a purchase price of $295,000.00 including any applicable GST. If the true purchase price is not $295,000.00, you are to contact the undersigned immediately."

The Member's position is that the actual purchase price for the transaction was $295,000.00 because that is what D. and L. paid in the REPC. There was a $50,000.00 bump in the skip transfer process, which the Member ascribed to the market and a normal increase at the time. The Member indicated that the Affidavit of Transferee, sworn by R. B. , with the original purchase price, which he would have seen at the time made him feel more comfortable as it demonstrated an intention by the middle person to purchase. The Member found nothing out of the ordinary with respect to the Affidavit of Transferee, sworn by Mr. B. in this transaction, stating that true consideration for the lands was $245,000.00.

With respect to Mr. D. and Ms L., the Member did not meet with them. He did not discuss with them the fact that they were buying a property that had recently gone up in value by $50,000.00. The Member knew this was a skip transfer, and he could see from the Affidavit of Transferee what the (not insubstantial) increase in price was. It was incumbent upon him to review the transaction from the perspective of all of his

clients. In his evidence the Member spoke about this this matter primarily from Mr. B. 's perspective and expressed no understanding or concern about his obligations to the buyers who were also his clients.

g) 62 persons listed in Appendix 3 to the Brief of the Law Society

As per Appendix 3 of the Law Society Brief, an analysis of the Member's answers given to Mr. Olesky the Law Society Investigator in an interview, 62 persons were identified as having been clients of the Member's. Of those 62 client names provided, Mr. Riccioni claimed to have met or believed he had met with only six of the 62 named clients. There were 19 clients he said he may have met or could not recall if he had met and 37 he said he did not meet or believed he had not met, although Ms Ridley handled the transactions for him.

Is there evidence that he failed to serve those persons by not meeting them or were they adequately served, presumably by Ms. Ridley?

None of those persons has given evidence in the hearing or come forward to report problems with their real estate transactions. On the other hand, it is clear that although a lawyer can use the services of a paralegal for real estate transactions, the paralegal must be supervised. Evidence other than that of the Member is lacking in this regard.

The Hearing Committee on the balance of probabilities can make no finding that the Member failed to serve any of these persons unless the Committee is prepared to find that failing to meet with any client is "failure to serve" and that Ms Ridley was not supervised for any of the 62 transactions by the Member. Although we suspect it, we cannot make the finding on the balance of probabilities. However, this appears to be further evidence that the Member was not candid with the Law Society when he had previously stated that it was his practice to meet with all of his clients.

h) Rogue Transactions

Although Mr. Riccioni has told the Hearing Committee that he did not have anything to do with the files on which D. R. Paralegal's trust account was used, the evidence shows otherwise.

For example: Hanson and Associates was acting for B. Developments on the sale of properties at xxx – xst Avenue NE, Calgary to S. Properties Inc. Hanson and Associates sent to Mr. Riccioni at his 18th Ave location a total of 22 transfers of land for condo units as well as one transfer for xxxx-xxth Ave SW, Calgary. Mr. Riccioni admitted he acted on two of the transactions, the C.s on Unit xxx and W. on Unit xxx. He also indicated that he acted for S. Properties Inc. with respect to Unit xxx. He denied he acted on others.

As counsel for the Law Society stated in his Brief (Paragraph 48), page 22: "*It makes no sense that he would voluntarily become bound by trust conditions on 23 property transfers for S. and then not be aware that Debra Ridley had taken deals from him while he claimed to be "….actively involved in every file…"*

Robert Vanderberg who testified at the hearing on February 15, 2011, acted for the vendor, C. H.Properties, on a multiple unit sale of condos at xxx-xrd Ave NW, Calgary, to S. Properties Inc. He sent ten executed transfers to Mr. Riccioni at the Christie Park address on March 19, 2007 under strict trust conditions [Exhibit B-16, Tab 4.]

On April 4, 2007, Mr. Vanderberg wrote to Mr. Riccioni and Ms. Ridley [Exhibit B-16, Tab 6] to re-iterate that the cash to close was $2,852,312.06 and that none of the transfers could be used until all of that money was paid. He also said in the same letter: *"Mr. Riccioni has confirmed in our telephone conversation that none of the transfers have been used as of this date so that he is not offside our trust conditions."* Mr. Vanderberg confirmed that discussion took place in his testimony before this Hearing Committee. [Hearing Transcript, February 15, 2011, page 145, line 26 to page 148, line 9.]

The Member claimed in cross-examination that he could not recall the $2.8 million dollar transaction or the conversation with Mr. Vanderberg about not being "offside" the trust conditions [Hearing Transcript, January 12, 2012, page 1017, line 13 to page 1019, line 3.]

If Mr. Riccioni were not acting for S. Properties Inc. on these purchase transactions and allowing Debra Ridley to run the transactions through her trust account, there would be no reason for him to accept the trust conditions and to speak to Mr. Vanderberg and assure him that he was not offside the trust conditions.

The Hearing Committee accepts Mr. Vanderberg's evidence that he spoke to the Member about the trust conditions in or around April 4, 2008 as his letter at the time states.

With respect to alleged rogue transactions of Ms Ridley, and the connection of the Member to these transactions as it relates to whether a client was Ms. Ridley's, the Member's client, or both of their client at the same or different times, the Interpretation section of the Code of Professional Conduct in effect at the time defines client as follows at paragraph 4(d): *" 'Client' generally means a person on whose behalf the lawyer renders professional services and with whom the lawyer has a current or ongoing lawyer/client relationship, but may also include a person who reasonably believes that a lawyer/client relationship exists although one or more of the customary indicia are absent."*

3. Citations 4 and 13: "Failure to serve lender clients"

IT IS ALLEGED THAT you failed to serve your clients, the mortgage lenders and that such conduct is conduct deserving of sanction.

IT IS ALLEGED THAT you failed to serve your client, M. Trust Company and that such conduct is conduct deserving of sanction.

Positions:

The position of the Law Society is that the Member acted for purchasers and Mortgage Lenders, but did not tell his Mortgage Lender clients about instances of flips and recent sales of the same properties for substantially lower values. He also did not inform his Mortgage Lender clients as to indicae of mortgage fraud such as the unusual credit by promissory note on the G. purchase and the source of the cash to close on the real estate purchase on the T. file.

It was the position of counsel for the Member that the Member had properly served his mortgage lending clients. The lenders had appraisals done on the properties to justify loan amounts and had done tax and title searches that could identify whether the registered owners were the same persons or entities as the sellers. There were no indicae of mortgage fraud especially given the heated real estate market at the time. There was no indicae of unusual credits or closing fund sources.

Counsel for the Member indicated that Y Bank instructions relied upon by counsel for the Law Society in his brief were located on a purchase file where Debra Ridley's trust account had been used and on which Mr. Riccioni had testified that he would not have represented Mr. C..

With respect to X Bank instructions, Counsel for the Member indicated that the Member was entitled to rely on the Statutory Declaration of the client to the effect that the purchaser's funds were not borrowed as a satisfactory check that such was the case.

With respect to the Z Bank instructions, Counsel for the Member's position that these Mortgage instructions had no relevance as Mr. Riccioni did not act on the B. P. file.

With respect to the M. Trust Mortgage instructions it was the position of Member's Counsel that the mortgage terms had been complied with as the true purchase price was $295,000.00.

Issues:

a. Did the Member fail to serve mortgage lenders?

b. Which mortgage lenders were they?

c. Did he breach any specific instructions?

d. What were the Member's failures in duties towards the Mortgage Lenders?

e. Is it conduct deserving of sanction?

Applicable Law:

The Code of Professional Conduct as it was at the time, Chapter 9, The Lawyer as Advisor, Statement of Principle, states as follows:

"A lawyer has a duty to provide informed, independent and competent advice and to obtain and implement the client's proper instructions."

The relevant *Rules in* Chapter 9, of the Code of Professional Conduct as it was at the time state:

"2. Except when the client directs otherwise, a lawyer must ascertain all of the fact and law relevant to the lawyer's advice.

…

4. A lawyer must not render advice unless competent to do so.

5. A lawyer must obtain instructions from the client on all matters not falling within the express or implied authority of the lawyer

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

10. A lawyer must not implement instructions of a client that are contrary to professional ethics and must withdraw if the client persists in such instructions

11. A lawyer must not advise or assist a client to commit a crime or fraud.

12. A lawyer must use reasonable efforts to ensure that the client comprehends the lawyer's advice and recommendations. "

Findings:

The Hearing Committee finds that the Member failed to serve his clients, the Mortgage Lenders including M. Trust Company, and that such conduct is conduct deserving of sanction.

The Hearing Committee finds that the Member acted for purchasers and Mortgage Lenders, but did not tell his Mortgage Lender clients about instances of flips and recent sales of the same properties for substantially lower values. He also did not inform his Mortgage Lender clients as to indicae of mortgage fraud such as the unusual credit by promissory note on the G. purchase and the source of the cash to close on the real estate purchase on the T. file. The Member on many occasions "assumed" instructions from the Mortgage Lenders, and (incorrectly) "assumed" he knew what they knew and did not know about the transactions. As a result he did not implement the Mortgage Lenders' instructions: he implemented instructions that suited his need to close transactions and the furthered the purposes of Mr. and Mrs. B..

Lenders rely upon lawyers and their instructions are clear. The onus is on the lawyer to report to the lender as the instructions they have accepted as the retainer requires. What the lender does with that information is then up to them, but it is not for the lawyer to assume they will do nothing and thus not report any concerns. Nor can a lawyer assume what a lender client does and does not independently know about a transaction.

Evidence:

a) <u>Y Bank</u>

With respect to Y Bank mortgage terms the Hearing Committee has found that the C.s were clients of the Member and does not accept that that Mr. Riccioni had nothing to do with the C. purchase files which used Ms. Ridley's trust account. The Hearing Committee believes that in the overall scheme of events he either knew or ought to have known and recklessly chose to disregard the fact that Ms. Ridley was having his clients or people who had previously used his offices for a real estate transactions complete further transactions at Ms. Ridley's office that involved Mr. B. .

The specific instructions on the C. mortgage for Unit xxx are as set out in the Standard Instructions to lawyer at Exhibit 11, Tab 13 page 1 and (in summary) authorize the Member to act on behalf of the Bank to ensure that the mortgage is prepared and registered in accordance with its instructions. The Member assumes sole responsibility for the accuracy and validity of all documents and the preparation and registration of them as required at law.

The Member is to take all steps that would be taken by a careful and prudent solicitor on behalf of a client. This includes advising the Bank of any material fact known to him which might affect the Bank's decision to make the mortgage loan, advising of any significant escalation in value of the property over a short period of time or if 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, and advising if there are any unusual credits on the statement of adjustments in favour of the Mortgagor.

The R. W. purchases of Units xxx and xxx each involved a Y Bank mortgage. The specific instructions on the W. mortgage for Unit xxx as set out in the Y Bank Standard Instructions to lawyer at Exhibit 13, Tab 15 page 1 and Exhibit B-14-17 respectively are the same as above.

The G. transaction also included a Y Bank Conventional Mortgage. The specific instructions on that mortgage as set out in Exhibit 18, Tab 7 at page 1 were the same as summarized out above.

The T. transaction also included a Y Bank Mortgage. The specific instructions on that mortgage as set out in Exhibit 19, Tab 9 at page 1 are the same as summarized above.

b) <u>X Bank</u>

An X Bank Mortgage was obtained on the transaction respecting C. Unit #xxx.

The C.s swore a Statutory Declaration [Exhibit B-11, Tab 23] declaring that the balance of the purchase price plus CMHC fee was obtained from their own resources and that they would be living on the lands as their residence. They swore the Statutory Declaration with Ms Ridley.

The R. W. purchase of Unit xxx xxx-xst Avenue N.E. also involved an X Bank Mortgage. Copies of Instructions to the lawyer, signed request for mortgage funds and the residential mortgage are found at Exhibit 12 Tabs 18 and 19.

The Request for Mortgage Funds signed by the Member states:

"In accordance with your instructions, I have conducted the necessary searches with respect to the property and will issue the opinion you have requested from us in the form specified in your instructions and I confirm that all conditions of your instructions have been complied with. I have provided, or will provide, Our Commitment to Lend and Disclosure Statement and the schedule to it (the "commitment"), to the customer at least two clear business days prior to entering into the mortgage unless the customer waives this timing. I am now in a position to advance the mortgage. Please forward the full proceeds of the mortgage as shown in the commitment to my trust account."

The Commitment to Lend and Disclosure Statement to the borrowers states at Exhibit B-10, Tab 15, page 2:

"You promise that you're not borrowing any other money to pay for the property. The lawyer or notary must check that you're not doing so."

Mr. W. also swore a Statutory Declaration [Exhibit B-12, Tab 17] declaring that the balance of the purchase price plus CMHC fee was obtained from his own resources and that he would be living on the lands as their residence. He swore the Statutory Declaration with Ms Ridley.

The C.s and Mr. W. swore their statutory declarations with Ms Ridley not with the Member. The Member nonetheless failed in his obligation to his lender clients to meet with the purchaser clients, at which time they might well have told him what was occurring and the Member could then have provided advice regarding the course of action they were embarking upon. At that point, Mr. Riccioni would have been acting as a lawyer rather than a mere money making machine.

c) Z Bank

The Z Bank granted a mortgage on the B. P. purchase of Unit x xxx xrd Ave. This was one of the ten condos S. Properties had purchased from Mr. Vanderberg's client Mr. Riccioni had adamantly denied acting for B. P. [Hearing Transcript, January 12, 2012, page 1015, lines 1 to 15.]

The specific instructions on the B. P. mortgage for Unit x as set out in the Solicitor/Notary Instructions to lawyer at Exhibit B-16, Tab 13, page 1 and (in summary) state that the Bank relies solely on the Member to ensure that the Mortgage is prepared in accordance with their Instructions. The Member assumes sole responsibility for the accuracy and validity of all documents, including the Mortgage and will ensure that all of the Bank's interests as Mortgagee are valid and appropriately secured. In addition the instructions require the Member to advise the Bank of any unusual circumstances that may indicate a potential fraud, such as recent sales (e.g. within 3 to 6 months) of the same property at substantially lower values, recently discharges mortgages(s) or title transfer(s) (e.g. within 3 to 6 months), disbursements to parties other than the usual payees, or a disbursement to a mortgage broker or someone arranging financing.

The Hearing Committee has found that B. P. was a client of the Member's. He failed in his duty to the Z Bank who relied solely on him to protect their interests in this transaction and advise of potential fraud.

d) M. Trust Co. Mortgage

M. Trust complained to the Law Society on June 18, 2008. According to the Complainant, D. R., Manager Corporate Security, he had performed a Land Titles Records search and discovered that the property mortgaged by M. Trust Company for A. D. and A. L. had apparently been sold twice on September 19, 2007 with a price differential of $50,000.00. Mr. R. indicated that he had attempted to meet with the

Member to review documents and discuss the matter but meeting requests were denied.

The Member had faxed him a copy of the Residential Real Estate Purchase Contract (REPC) and Statement of Receipts and Disbursement of Trust funds in relation to the file. Mr. R. indicated that the REPC that the Member sent was not the same one as on the M. Trust Mortgage file. The Complainant also indicated that the Statement of Receipts and Disbursements of Trust Funds was dated August 31, 2007 but disbursement cheque was not issued by M. Trust until September 14, 2007.

It was Mr. R.'s belief that the Member was aware of the first transfer of property on September 17, 2007 and the purchase price discrepancy and as such failed to protect the interests of M. Trust Company by not notifying M. Trust Company of these issues.

The Member replied to the Law Society that he did not recall meeting with the clients but Ms Ridley had done so. He could not explain why there were two REPCs. He believed that M. Trust's interests had been protected pursuant to its instructions and the Member's final report, mortgage funds had been deposited September 14, 2007. Furthermore that the Statement of Receipt and Disbursements of Trust Funds implied an adjustment of the closing date to August 31, 2007 and that this was not the actual date of the Statement.

Of note: the Statement of Adjustments discloses that R. B. was paid $49,677.21 from net sale proceeds.

In evidence, the Member expressed that he did not understand where M. Trust Co, was coming from when they claimed there was something unusual about the transaction because it actually reflected the true parties. The Member indicated he did not know if he had seen the consolidated contract when he closed the transaction or if he only saw the consolidated contact for the transaction during the M. Trust Co. investigation, although he did know the flow of the transaction. M. Trust had not stipulated that he was required to advise of any escalation in value or whether there were other parties involved but rather, whether there was any difference in the true price.

The Member believes now that there was a fiduciary duty on his part to advise the Bank because they made an issue of it and because he is a defendant in a law suit commenced by the X Bank, where they are alleging a fiduciary duty on his part. The Member indicated that he is being defended by ALIA with respect to this action, on both his files and the rogue files where he allegedly had no involvement.

The specific instructions on the M. Trust Co. mortgage found at Exhibit D-5, pages 3 and 4 require the Member *"to ascertain the identity of each Mortgagor and Guarantor*

and to ensure that all mortgage documentation has been executed by the proper parties. All mortgage documents must be signed in the member's presence or in the presence of your designate, for whose actions the Member is fully liable.

…

Purchase Price

If the proceeds of the mortgage loan are to be used to purchase the secured property, you have no reason to believe that the true purchase price to be paid for the secured property and the amount actually paid on closing (subject to usual adjustments) is not as stated in the Agreement of Purchase and Sale relating to the purchase. This loan has been approved based on a purchase price of $295,000.00 including any applicable GST. If the true purchase price is not $295,000.00, you are to contact the undersigned immediately.

…"

The instructions also state that it is the Member's responsibility to ensure that he has taken all steps which should be taken by a careful and prudent Solicitor.

The Hearing Committee finds that, in light of the evidence, the Member ought to have known that the true purchase price was not $295,000.00 and ought to have contacted M. Trust Co. immediately. The Member also failed to meet his duties to the lender by not meeting with the buyers. Had he done so, he might have realized that they were "straw purchasers" and dissuaded them from their purchase, or at the least, withdrawn as counsel and notified M. Trust Co. of his concerns,

The fact that the Statement of Trust Receipts and Disbursements shows $49,677.82 [Exhibit D-2, Tab 2] paid to R. B. suggests to the Hearing Committee that a prudent Solicitor would have known that the true purchase price was not $295,000.00. The Hearing Committee finds that under the circumstances the Member did not take the steps which should be taken by a careful and prudent Solicitor on their own file. Instead he unreasonably and negligently relied on Ms Ridley.

4. Citations 5, 12 and 15: "Improper delegation of duties"

5. IT IS ALLEGED THAT you improperly delegated your duties and responsibilities on real estate files to D. R. Paralegal Services Ltd. and DR and that such conduct is conduct deserving of sanction.

12. IT IS ALLEGED THAT you improperly delegated your duties and responsibilities on real estate matters to DR Paralegal and Ridley and that such conduct is conduct deserving of sanction.

15. IT IS ALLEGED THAT you improperly delegated your duties and responsibilities on real estate matters to DR Paralegal and Ridley and that such conduct is conduct deserving of sanction.

Positions:

The position of counsel for the Law Society is that the Member failed to comply with Chapter 2 Rule 4 of the Code of Professional Conduct in that the Member permitted Debra Ridley to meet with clients without meaningful supervision and without ensuring that clients were advised of the legal significance of the documents they were signing. The Member's improper delegation of duties and failure to supervise Ms Ridley permitted Ms Ridley to do as she liked on the Member's files, use his letterhead and his identity as a "front" for mortgage fraud activities. The Member was aware of the Law Society's concerns by 2005. The Member failed to appreciate the risk and disregarded warnings from Practice Review that he was lacking attention to his law practice

The position of counsel for the Member is expressed in his Brief, at paragraph 16 as follows:

"Mr. Riccioni provided meaningful supervision of Ms Ridley and ensured that clients were advised of the legal significance of the documents they were signing. Mr. Riccioni met with Mrs. Ridley very regularly, reviewed all documentation, applied checklists, and signed all trust cheques and correspondences. Where applicable, on CMHC insured mortgages, he also ensured that the borrower clients received and executed a Memorandum explaining their liabilities and made Statutory Declarations as required by their lender as to the source of the purchase funds and their requisite residency. Mr. Riccioni was entitled to rely on the honesty of Mrs. Ridley and his clients. However, unfortunately Mrs. Ridley ultimately proved herself to be untrustworthy and the purchaser clients who gave evidence were apparently so blinded by the prospect of cash payments, unknown to Mr. Riccioni, that they were all prepared to sign legal documents without even looking at them, so they claim,. They were the true ones looking for "money for nothing", not Mr. Riccioni."

Issues:

1. Did the member improperly delegate his duties and responsibilities on real estate files to D. R. Paralegal Services Ltd. and Debra Ridley?

2. What duties and responsibilities did the Member delegate to D.R. Paralegal Services Ltd. and Debra Ridley?

3. What was the extent of the delegation?

4. For what period of time did he do so?

5. Is it conduct deserving of sanction?

Applicable Law:

At all material times, the Code of Professional Conduct stated as follows:

"Chapter 2, Rule 4

A lawyer may assign to support personnel only those tasks that they are competent to perform and must ensure that they are properly trained and supervised.

C.4.1 General: The obligation to train employees extends to ethical guidance (see, for example, rule #4 of Chapter 7, Confidentiality).

Supervision of every employee must be meaningful and effective. In particular, if a staff member is assisting a lawyer in providing services that are legal in nature rather than clerical, the standard of supervision required is extremely high. A system for periodic evaluation of employees facilitates the monitoring of competence on an ongoing basis. Code of Professional Conduct Chapter 2

Competence

Certain tasks in the provision of legal services may not be delegated to a non-lawyer. These include the following:

Accepting new cases;

Exercising professional judgment;

Negotiating or compromising a matter with another lawyer or third party;

Approving legal documents;

Advising on the merits of a case;

Setting fees;

Exercising judgment with respect to accepting, imposing or amending trust conditions;

Exercising judgment with respect to giving or accepting undertakings."

Findings:

The Hearing Committee finds that the Member improperly delegated his duties and responsibilities on real estate files and matters to D. R. Paralegal Services Ltd. and Debra Ridley and that such conduct is conduct deserving of sanction.

The Hearing Committee finds that during some or all of the time that the Member had a business relationship with Ms Ridley he allowed her to meet with his clients without providing any meaningful supervision and without ensuring that the clients were advised of the legal significance of documents being signed.

Although Mr. Riccioni states that he knew nothing of the mortgage fraud activities of the B. s or Debra Ridley, by his actions and inactions, the Hearing Committee finds he improperly delegated his lawyer's duties to Ms Ridley and by doing so, exposed himself to allegations of fraud.

The evidence at this hearing is rife with examples of situations where the Member delegated duties and responsibilities on real estate files to D. R. Paralegal Services Ltd. and Ms Ridley. The Member's contentions that Ms Ridley was a dishonest person, and the clients were greedy are separate issues and do not explain or excuse the Member's actions.

The Member is not *"entitled to rely on the honesty of Mrs. Ridley and his clients..."* Lawyers are supposed to be educated professionals not dupes. They do not blindly do whatever they are told to do by a client or hired contractor. The ultimate responsibility for what happens in a lawyer's practice falls on the lawyer.

A lawyer must apply his or her legal training and analytical thinking to any situation. With respect to use of a paralegal the parameters are clear [see above Code of Conduct Chapter 2, Rule 4.] In relation to clients the lawyer must get the right facts, determine what is going on, decide what advice to give to the client and if this advice is disregarded, decide whether there are ethical considerations such that the lawyer ought not to act. In Mr. Riccioni's case, a few minutes spent with the clients would quickly and clearly have shown that something was amiss.

Evidence:

Mr. Riccioni became involved with Ms. Ridley around 2004. From 2005 the Law Society, as Mr. Riccioni's regulator, became increasingly involved with the Member in relation to concerns about Ms. Ridley's involvement in his practice, even at a monetary cost to the Member (costs of audit).

In relation to the complaint by Mr. Welbourne on January 25, 2005 to the Law Society which raised a serious concern, the following exchange between the Member and Law Society counsel took place in cross-examination at the hearing on January 12, 2012 at Transcript page 1109 line1 to page 1111 line 2:

"A: Yes

Q: And it's from your 18th Avenue SW address?

A: Yes

Q: And you say, "It was an oversight" - and I'm reading from paragraph 2 (As reads):

"It was an oversight on my part regarding the trust funds to be made payable to D. R. Paralegal Services Ltd"

So was it an oversight on your part?

A: well, I blame myself because it came from my office, so the only explanation I had was that it was an oversight. It's the only – the way it could – but now I found out that she – or I – it's possible that she may have slipped in a different page when she faxed it.

Q: Well, you said just a few minutes ago, I thought, that the letter that you sent to Mr. Welbourne wasn't the one you had drafted?

A: When I reviewed it, it didn't have those remarks in it.

Q: And so when Mr. Bach sent you Mr. M.'s letter with the letter stating that trust funds should be paid to D. R. Paralegal, you must have been up in arms?

A: When he brought it to my attention, I corrected it immediately, and I apologized profusely. That was never the intention.

Q: But you didn't fire Debra Ridley?

A: No, I didn't

Q: You didn't realize you had a rogue paralegal on your hands at that point?

A: No

Q: So she is telling a lawyer to make trust funds payable on a real estate closing to her in trust, not to you, not to her employer, and that's it; you don't do anything about it?

A: I – I interpreted that as being an error. And I didn't blame her for that. It came from my office. I took the responsibility. I acted immediately, and I corrected this error. And I didn't jump to that conclusion that she was a rogue at that time.

Q: Well, in No. 2, though, in your letter of March 1st, 2005, to the Law Society - -

MR. HIGGERTY: What tab, please, Mr. Macdonald?

Mr. MACDONALD: The one I was just reading, at tab 3.

MR. HIGGERTY: Thank you.

Q: Mr. MACDONALD: You're – you're saying it was an oversight on my part regarding the trust funds to be made payable to D. R. Paralegal Limited. Aren't you – aren't you telling Mr. Bach that it was your fault that –

A: Ultimate - -

Q: - - that happened?

A; everything that comes out my office is my fault. That's the way I interpret it. That's the way I see my practice if there's -

Q: "And once Mr. " –

A: - - a problem "

Investigations were undertaken by the Law Society which identified that over $6,618,470.88 had been paid from the Member's trust account to D. R. Paralegal Services Ltd. between April 6, 2004 and October 30, 2007, and that from May 31, 2006 to June 6, 2008 the Member had paid Ms Ridley $138,891.56 from his General Account. This establishes a working relationship between Ms Ridley and the Member of about four years.

At an early stage in his relationship with Ms. Ridley, Mr. Riccioni, as solicitor for a purchaser, was paying the full cash to close to Ms Ridley as "agent" for the vendors on a number of transactions. He did so, he said, in a response to directions to pay, but admitted in cross-examination that he did not advise his clients about the import of those directions to pay because it was Ms. Ridley who got the directions signed by his clients.

At Hearing Transcript, January 12, 2012, page 1116, line 9 to page 1118, line 1:

"Q: Okay. Well, let's break this down: They are No. 1, they are your clients, right?

A: the – the purchaser?

Q: Yes

A: Yes

Q: and No. 2, they are signing a direction to their own lawyer you - -

A: Yes

Q: to pay the trust funds on closing transactions to Debra Ridley?

A: yes, Debbie Ridley was acting as agent for the seller.

Q: And Debra Ridley, then, was the one who would actually get your client to sign these directions; isn't that what you just said?

A: Well, she – she – she was there, yes. She signed – she was acting on her own file, the sale file, as agent, and the client, my client was aware of it. My client was comfortable. My client has this relationship with Debbie Ridley. She – they knew – they were completely aware of what was going on. The instructions are very straightforward. They acknowledged this. And they understand that Debbie Ridley is not a lawyer.

Q: And, therefore, you aren't there to explain to them the import of the document at the time they sign it?

A: No., I wasn't present.

Q: Any they, your client, are sending house – proceeds of mortgages and so forth, maybe hundreds of thousands of dollars to Debra Ridley, D. R. Paralegal Limited; she's not a licensed lawyer. She doesn't have assurance-fund backup like a lawyer would have, does she?

A: I'm aware now that she had – or that – that she had insurance. And at the time when this was happening, she was married to a lawyer, Peter Ridley. And Peter Ridley and her worked out of their own house. That was my understanding. I knew Peter Ridley, so I felt comfortable with that arrangement, especially when she was – she was an agent. She was acting for a seller, and I don't see anything wrong with that provided if the lawyer doesn't accept those trust conditions, then – then, they're not accepted. But I accepted it. I felt comfortable at the time to deal with the funds that way. However, as soon as the Law Society pointed out to me, the ramifications, I – I - I quickly stopped that.

Q: Because you knew that heat was on from the Law Society about that practice?

A: No."

The Member's evidence was that Ms Ridley had a network of clients, the referrals came to him from her, she completed the paper work, she met with the clients, the clients signed the directions to him that the trust funds be paid to Debra Ridley's bank account, the clients were aware of what was happening and understood that Ms. Ridley was not a lawyer. Ms. Ridley was acting for the seller; he was acting for the purchaser. When the Law Society pointed out to him the ramifications and risk to clients he stopped the practice.

Of note, with respect the Member's relationship with Ms Ridley and the incident with the lawyer Mr. Wellborn in 2005 the Member indicated at Hearing Transcript page 1109 line 13 and 14 that letter sent to Mr. Wellborn was not a letter he had drafted, i.e. that he had not directed a letter whereby trust funds were to be paid to D.R. Paralegal. When Mr. Wellborn brought the matter to his attention the Member indicated that he corrected the matter and apologized profusely. Somewhat inexplicably, he did not fire Debra Ridley for making the direction to pay trust funds to her. Nor did the incident result in the Member more closely supervising Debra Ridley which might have avoided much of what transpired.

5. Citation 6: "Failing to be candid"

IT IS ALLEGED THAT you failed to be candid in your written and verbal communications with the Law Society and that such conduct is conduct deserving of sanction.

Positions:

The position of the Law Society in relation to this citation is set out in written submission pages 2 – 13. The Member's position in relation to this citation is set out in brief of Counsel Pages 2 – 4.

Issues:

1. How did Member fail to be candid in his written and verbal communications with the Law Society?

2. Is that conduct, conduct deserving of Sanction?

Applicable Law:

At all material times the Code of Professional Conduct, Chapter 3, Relationship of the Lawyer to the Profession, Statement of Principle, stated as follows:

"A Lawyer has a duty to uphold the standards and reputation of the profession and to assist in the advancement of its goals, organizations and institutions. "

The relevant *Rules in* Chapter 3, of the Code of Professional Conduct as it was at the time state:

1. *A lawyer must refrain from personal or professional conduct that brings discredit to the profession.*

2. *All correspondence and remarks by a lawyer addressed to or concerning another lawyer, the Law Society or any other professional organization or institution must be fair, accurate and courteous.*

A Lawyer must respond on a timely basis and in a complete and appropriate manner to any communications from the Law Society that contemplates a reply."

Findings:

The Hearing Committee finds that the Member failed to be candid in his written and verbal communications with the Law Society and that such conduct is conduct deserving of sanction.

a) <u>Failing to be candid about who signed his trust cheques</u>

For the reasons that are set out below at Pages 67-91 the Hearing Committee does not accept the Member's evidence that he signed all of his trust cheques. The Member has not been candid with the Law Society in relation to this issue and it is conduct deserving of sanction.

b) <u>Failing to be Candid about meeting with the clients</u>

By 2005 the Member understood the concerns of the Law Society in relation to this issue and that the Law Society was seeking assurances from the Member that he had direct personal contact with his clients and that this was the case at the time and would continue to be the case in the future.

As of March 1, 2005, the Member confirmed to the Law Society that he saw his own clients: "*"I…see my own clients….and meet with the client…"*. The absence of the word "all" in that sentence does not diminish the sense of those words or the message they were intended to deliver to the Member's Regulator.

On March 10, 2005 in a letter to the Law Society Ms Ridley confirmed this.

When interviewed in December 2008 by Mr. Olesky, [Exhibit E-4, Riccioni Interview, December 9, 2008 page 206 line 21-22 the Member confirmed that despite what Ms

Ridley said in the letter, she saw his clients. He suggested that the words *"their clients*" in Ms Ridley's letter meant the clients of other lawyers she worked for, not his. At page 207, line 27 the Member agrees that he was copied with the letter. He read it, but did not catch the incorrect statement [Exhibit E-4, page 208 lines 9-10.]

At the hearing, the Member in his evidence stated that he was not aware of Ms. Ridley's letter to the Law Society until 2007 or 2008, thus contradicting his statement to Mr. Olesky that he had read the letter [Hearing transcript, February 27, 2012, page 1365, lines 3 to 23.]

On October 15, 2009 the Member wrote to the Law Society and stated that he met with clients, Ms Ridley met with clients, and sometimes they did so together, that Ms Ridley only met with clients to execute documents, that he was always accessible to clients and Ms Ridley worked under his supervision.

It is very clear that the Member was not candid with the Law Society in relation to this issue. It was clear that he did not meet with most real estate clients.

The Member also endeavored to differentiate between types of documents that did not require him to meet with clients. But he changed his explanations numerous times and they made no sense.

With respect to the Office Consultation, the Hearing Committee does not accept the contention of the Member that Ms. Frazer misrepresented his remarks and that word "all" was her word not his, and does not accept as a reasonable explanation that in saying it was his "practice" to meet with clients he was not saying he met with all clients but that what the Member meant was it was his practice to meet with all clients.

The legal profession is a self-governing profession in Alberta. It is incumbent upon Members to be completely honest and forthright with the Law Society when inquiries are made with respect to their legal practice. If a question is asked, it needs to be responded to directly, clearly and honestly and language used will be interpreted by the Law Society subject to its usual and standard meaning.

c. Failing to be candid about his knowledge of a trust account for D.R. Paralegal

The Hearing Committee does not accept the Member's evidence that 1) he completely forgot about signing on the D. R. Paralegal Services Ltd. bank accounts, 2) that he did not realize one was a trust account and 3) that he had signed as temporary measure in case of emergency. The Member is a lawyer, it is incumbent upon him to read documents and be aware of what he is signing and remember what he signs. The Member cannot say to his Regulator that he unwittingly and unquestioningly signed

these documents. There is nothing in any of the documentation included in Exhibit B-6 to suggest that the signing authority was a temporary measure, which could have been indicated clearly in the documentation provided to the Bank. The Hearing Committee does not find any evidence to support the Member's contention that the words "trust account" on one of the accounts was written in after the Member signed with the Bank.

The Member was not candid with the Law Society about his knowledge of a trust account for D.R. Paralegal and it is conduct deserving of sanction.

d. Failing to be candid about his use of D.R. Paralegal's address

In order to find the Member guilty of this aspect of this citation the Hearing Committee would have to have evidence of the Member using Debra Ridley's offices from February 2005 to May 2006 and we have not located such evidence.

e. Failing to be candid about acting for S. Properties Inc.

Interpretation section 3 (c) of the Code of Professional Conduct states as follows that:

"Relevance of intentions and willfulness: Although the word "knowingly" does not generally appear in the rules, a lawyer's intentions and willfulness or deliberateness of conduct are relevant to whether a breach of this Code will be sanctioned. If a lawyer did not know, and could not reasonably be expected to have known, one or more factual elements of an ethical violation, any disciplinary assessment of the conduct will take this circumstance into account".

Interpretation section 4(q) of the Code of Professional Conduct states as follows that:

"reasonable", when used in relation to the conduct or state of mind of a lawyer, means the conduct or state of mind of a prudent and competent lawyer, acting in good faith, given all of the facts and circumstances;"

It is clear to the Hearing Committee that the Member did act for S. Properties Inc. on many occasions and that any prudent and competent lawyer would have recognized this. It is clear from the RE: lines on letters, from taking of instructions from Mr. B. the principal of S. Properties Inc. on files where ostensibly S. Properties Inc. was not a client, and from the nature of the transactions themselves. The Member was willfully blind to the issue of who his clients were or deliberately chose not to analyze and consider the issue.

The Member was not candid with the Law Society about his acting for S. Properties Inc. and it is conduct deserving of sanction.

Evidence:

a) Failing to be candid about who signed his trust cheques

The evidence in relation to this issue is fully discussed under Citation 9, “Permitting the signing of his trust cheques by someone else".

b) Failing to be Candid about meeting with the clients

On February 3, 2005, Steve Bach of the Law Society wrote to Mr. Riccioni about his concerns about his relationship with D. R. Paralegal Services Ltd. and asked him to describe in detail the structure of the relationship to be employed between the Member and D. R. Paralegal Services Limited in the future.

On March 1, 2005 the Member replied to Mr. Bach: *“I review all files, correspondence, reports, and see my own clients. In particular, I review the real estate purchase and sale agreements and contact the client, request appropriate searches, draft required conveyancing documents and meet with the client report back to the client, close and store the file at my 513 – 18th Avenue office. “*

The Member’s evidence when examined by his Counsel was that this statement was true up to that time. Moving forward from March 1, 2005 until the Member became aware of the investigation the frequency of his meetings with clients on their real estate transactions diminished greatly. The Member indicated that as his comfort level with Ms. Ridley increased he allowed her to meet more clients than he would normally have allowed. 2007 in particular was the year when the diminishment in his meetings with clients would have occurred due to the fast pace and higher volumes of real estate transactions.

The Member indicated that at around the time he had written the letter to Mr. Bach he had spoken to him several times about the limitations of a paralegal meeting with a lawyer’s clients and understood that it was left up to the lawyer to decide whether or not he was comfortable allowing the paralegal to meet with the client. With Ms. Ridley the Member had daily communications with her, would visit with her and would meet all the time. The Member indicated that he did supervise Ms. Ridley and reviewed all documents at the appropriate time. He had a checklist and he followed it. The Member indicated that when he received request from a client to meet with him personally he did accommodate those requests without fail.

The following exchange took place in cross-examination of the Member at Hearing Transcript, January 12, 2012, page 1107, line 19 to page 1108, line 21:

"Q: So did you understand Mr. Bach to be asking for current information and also asking you for what your relationship was going to be in the future?

A. 1—I honestly can't remember that particular, about writing about the future. I believe my letter explained the present situation, and I – I didn't catch that. I don't….

Q. Well, it's not a long letter, Mr. Riccioni. And this is a letter from your regulator, a representative of your regulator; did you take it quite seriously when you for the letter?

A: Of course.

Q: and did you read it carefully?

A: I read it, and I answered to the best of my understanding at the time of the relationship between a paralegal and a solicitor.

Q: and did you—did you not read point No. 5 in Mr. Bach's Letter?

A: No, I read it.

Q: did you – is there anything in there that you didn't understand?

A: No, I understand.

Q: So he's talking about the future?

A: Yes, he is"

Later in the cross-examination, Mr. Riccioni made the following statements at Hearing Transcript, January 12, 2012, page 111:

"*Q: And you were trying to give the Law Society the impression that they could relax; they didn't need to worry about you not or in the future?*

A: Yes.

In a letter dated March 10, 2005, Debra Ridley wrote to Mr. Bach at the Law Society and copied her letter to Mr. Riccioni. She spoke about her conveyancing work under contracts with various solicitors and said, in part [Exhibit B-2, Tab 5]:

"We do not see their clients, we prepare the document/correspondence and deliver the file directly to the solicitor working on the file for their perusal and to arrange to have their clients appear at their office to execute any documentation required to complete the transaction."

In December of 2008, Mr. Olesky questioned Mr. Riccioni about why he did not call the Law Society to correct the misleading information given in that letter by Mr. Ridley [Exhibit E-4, Riccioni interview, December 9, 2008, page 207, line 27 to page 208, line 10] :

"Mr. Olesky: And my question to you: You were copied on the letter. Did you bring that potentially inaccurate statement to the Law Society's attention? Did you phone the Law Society and say, hey, look, I've been copied on this letter from Debra Ridley to you, the Law Society of Alberta? I notice she says that she does not meet my clients. That is not true. I do allow her meet my clients. Did you do that?

Mr. Riccioni: I didn't catch that. I didn't read that - - or I read it, but I - - I didn't follow that up, I guess. "

In not following up the Member reinforced the Law Society's understanding, as expressed in his letter of March 1, 2005, that he met with all clients.

In Exhibit D-3, his letter of October 15, 2009 to the Law Society in response to the Olesky Investigation Report, Mr. Riccioni said, in part:

"Issue #3: Failing to Correct a Misrepresentation By Ridley to the Law Society with respect to the letter dated March 10, 2005 from Ms. Ridley to the Law Society wherein she states: "we do not see their client", although it is alleged by Ridley that a copy of this letter was sent to me. I cannot recall ever reading this letter, and therefore did not know that she had stated this to the Law Society."

In Exhibit D-3 the Member also stated at pages 1 and 2: *"I had no involvement with the seller/buyer dealings with each other (it was never my practice to involve myself with their negotiations or the creation of the Offer to Purchase), the mortgage application process, or the documents used to apply for mortgage approval, and the first time that Debra Ridley and/or was for the purpose of their executing mortgage and conveyancing documents. As that time, the purchaser(s) also executed a Statutory Declaration that the property was to their principal residence, and an Affidavit stating that they had paid the deposit privately to the vendor(s)/. The clients were also advised, by Debra Ridley and/or me, of their risks under a high ration mortgage, and provided with written Memorandum explaining potential personal liability under a CMHC, high ratio mortgage.*

…

Although I was aware of the increase in the final sale process, this increase was occurring during a period of hyper-inflation in the Calgary residential real estate market. At the time, I did not find the increase in the sale price to be unusual as the price of residential real estate doubled between 2005 and 2006 in Calgary.

…

Regarding my name and signatures on documents relating to Ridley's files, either I signed some of those documents, but cannot later remember doing so, or my signature was forged.

…

With respect to the issue of meeting clients, sometimes I met with them, sometimes Ridley met with them, and sometimes we met with them together. I really cannot recall how often each scenario occurred, nor who met with each client on a file by file basis. The fact that my paralegal Ridley met unsupervised with clients, to merely execute documents which I either had, or would, review did not seem unusual to me., In fact, it was not a requirement for a lawyer to meet with his client for the purpose of executing conveyance documents. In my own personal experience, with the re-financing of my home, I only met with the real estate conveyancing secretary who reviewed and explained the documents, and I thereafter executed them. At no time did I meet with the lawyer.

…

I was always accessible and available to my clients at all times, either by telephone, fax, or email. I was actively involved in every file, even those where Ridley met with the clients (e.g. communication with the mortgage brokers, bankers, real estate agents, solicitors on the other side, and clients).

In addition, I had periodic meetings and discussions with Debra Ridley on a weekly basis to review my expectations, client service, trust accounting (inclusive of fees and disbursements), postings, and general business practices as between her office and mine. It was clearly understood that she worked directly under my control and supervision, and was accountable to me, and all the clients were aware of this as well. No client ever complained that they were uncomfortable with meeting with a paralegal."

At the hearing with respect to the Letter from Debra Ridley, dated March 10, 2005 to the Law Society wherein she advised that she did not see lawyer's clients including the Member's clients, the Member agreed that this statement was false, but said he had not become aware of it until 2007 or 2008 after he had terminated his relationship with Ms. Ridley [Hearing transcript, February 27, 2012, page 1365, lines 3 to 23.]

"Q: okay. So us she saying that she wasn't meeting with your clients at the time she was writing this letter; is that what you understand she was saying or not; what's your understanding?

A: That's what she said in that letter.

Q: All right. And was that, in fact, true or false, sir?

A: That was false.

Q: All right. And when did you first become aware of this letter?

A: During the course of – like, I can't remember if I had to reply to this letter, but – I don't know the specific date, but I – it was in '07 or '08.

Q: That was the first time you were aware of this letter, sir?

A: Yes

Q: And did you –

A: It would have been after – after I terminated my relationship with Debbie Ridley.

Q: All right. But you've also said it was sometime in the latter part of 2007, correct?

A: Yes"

Office Consultation

On March 29, 2007, the Member spoke with Jocelyn Frazer, an employee of the Law Society who was carrying out an office consultation on behalf of the Practice Review Committee. In her Report Exhibit B-2, Tab 19, she stated that the Member told her that *"….it is his practice to meet with all clients… most real estate meetings taking place at the conveyancing secretaries' home office". "*[and] *that all trust money is handled through the main office".*

It is the contention of the Member that Ms. Frazer misrepresented his remarks and that word "all" was her word not his. The Member did not however, choose to correct the misstatement in the Report once he received it.

During cross-examination on January 12, 2012, Mr. Riccioni admitted he did tell Ms. Frazer the above [Hearing Transcript, January 12, 2012, page 1115.] However, during his testimony the next day, Mr. Riccioni claimed that when he told Ms. Frazer that it was his "practice" to meet with clients he was not saying he met with all clients. Instead, he said, what meant was it was his practice to meet with all clients but he never said that he met with all clients.

He denied that he told Ms. Frazer what he did because he wanted to give her the impression that there was no concern needed by the Law Society that he was meeting all clients. [Hearing Transcript, January 12, 2012 January 13, 2012, page 1170.]

The Member reiterated that it was not his intention to convey to the Law Society that he met with all his clients and he did not say this.

In re-examination on February 27, 2012, the Member said the following about his conversation with Ms. Frazer [Hearing Transcript, February 27, 2012, page 1356, lines 10 to 27]:

"Q: What's your understanding of the meaning of the word practice? What was you intent when you used the word practice; what does it mean?

A: My practice is my intention. I - usually meet – meet with the clients. It wasn't meant to be an absolute that I meet with every client. I did in '08 – I mean, in '04. More than likely I met with all of them. And prior to that, I met, more than likely, with all of them.

Q: So, Sir, you used the word usually. Are you suggesting that the word usually is synonym within your intent of the word practice, an akin word sir?

A: Yes, I would say that. But I would have meant it – or I meant it in the sense that it was my intention, the way I intended to operate my practice.

Q; And, sir, throughout all the time period that you're being scrutinized in this hearing, did you, in fact, usually meet with client?

A: for the most part, I did. "

On March 8, 2008, in an interview by Mr. Ellergodt and Mr. Stevens, Law Society investigators, the Member said he met with his clients. [Exhibit E-3, page 35, lines 20 to 23.]

"Mr. Ellergodt: Peter, when it comes to the mortgage files, how much of the file would you have actually done on your own? Did you meet with the clients?

Mr. Riccioni: Yes, Yes

- - -

Mr. Stevens: And if you weren't around, would Debbie secure the signatures for these documents on the client files?

Mr. Riccioni: What do you mean secure?

Mr. Stevens: *Well, obtain the signature if you weren't around.*

Mr. Riccioni: *For certain things yeah, where it didn't require me to be there, she would get them to sign. "*

During Cross-examination, when asked what kind of documents did not require him to be there at the time of signing, the following exchange took place [Hearing Transcript January 13, 2012 page 1178, line 26 to page 1180 line 26]:

"Q: And my question, Mr. Riccioni, what kind of documents didn't require you to be there at the time of signing?

A: Firstly, we need – we need to look back at – at what he was asking me. Mr. Ellergodt asked me when it comes to mortgage files, first of all. And I was – my answer involved mortgage files only, strictly. And on the mortgage ones that I remember doing, I believe I met all those clients, and that's why I said, Yes, I met. And I was referring to mortgage files. And there are some documents when you don't – it was my understanding at the time the general practice was that a paralegal that was competent and qualified could meet with a client to execute documents.

Q: Well, you talk about documents where it didn't require me to be there. What kind of documents didn't require you to be there?

A: For execution purposes, all of the conveyancing – all the conveyance documents.

Q: Didn't require you to be there?

A: Correct

Q: So no documents required you to be there, then?

A: No, I'm saying the conveyance documents didn't require me to be there for execution purposes.

Q: Okay. So what documents did require you to be there?

A: On conveyance documents, I don't believe it was required for a lawyer to be present for the execution of the required documents on conveyance deals or on real estate matters.

Q: Including the mortgage?

A: Yes.

Q: so you've told us you're just talking about mortgage deals, strictly mortgage – only deals when you're talking to Mr. Ellergodt here and Mr. Stevens, and you're differentiating, it appears, between some documents that – that didn't require you to be there, so correct me if I'm wrong, but I'm assuming that you were saying there were some that did require you to be there; am I wrong in that?

A: I – I really don't have an explanation at this point. I – I can't remember why I said that.

THE CHAIR: Can I just clarify, Mr. MacDonald?

MR. MACDONALD: Yes

THE CHAIR QUESTIONS MR. RICCIONI:

Q: So you're saying that for a refinancing purpose, when somebody is maybe refinancing on a house they own and they need to redo their mortgage, you felt that a lawyer should always be there, but if it was a conveyancing, where they were buying a house, doing various things to buy a house and getting a new mortgage, that you felt that that was within the bailiwick of a paralegal?

A: Yes

Q: Is that what you're saying?

A: Yes"

In his re-examination on February 27, 2012, Mr. Riccioni had a new explanation of his statement to the investigators on March 8, 2008. He claimed, not only that he was limiting his answer about meeting with clients to those signing mortgages but also to mortgages where the mortgagee is a private individual and where he is representing both sides of the transaction. [Hearing Transcript, page 1357, line 1 to page 1364, line 9.]

These limitations were not mentioned on January 13th, 2012 when the Chair very specifically asked him, and he agreed, that a lawyer should always be there: *"when somebody is maybe refinancing on a house they own and they need to redo their mortgage".*

On February 27th, 2012 in re-examination, the Member also contradicted himself. He claimed that in his exchange with the Chair on January 13th, 2012, he was not talking about the refinancing of a mortgage held by a Bank:

…..if it's a true refinance, then a paralegal would be more than qualified. Or a qualified paralegal would be more – more than competent to – to meet with the – with the party, and that should be enough because it's a refinancing, so they – they already have the terms. They understand the terms. They understand the property. They have consent. They've dealt with the bank already, so in that situation, then, more than likely as – it would be fine for a paralegal to meet with them. Hearing Transcript, February 27, 2012, page 1363, lines 6 to 14."

The above well-illustrates the nature of the Member's evidence throughout the hearing: confused, contradictory, and inherently illogical.

In an interview on December 19th, 2008, Mr. Olesky questioned Mr. Riccioni about meeting with his clients [Exhibit E – 6, pages 112 to 122.] An analysis of the answers given to Mr. Olesky by the Member shows that, of the sixty client names provided, Mr. Riccioni claimed to have met or believed he had met with only six of them. There were nineteen clients he said he may have met or could not recall if he had met and thirty seven he said he did not meet or believed he had not met.

Later in the interview of December 19, 2008, on page 123, 124, the following exchange took place between Mr. Olesky and Mr. Riccioni:

"Q: So given that you provided assurances to the Law Society that you were meeting with your clients and given that it appears there's a relatively large number you did not meet with, do you feel that you deceived the Law Society?

A: I had no intentions of deceiving the Law Society. There's no reason why I would want to deceive the Law Society for not having met with the client. I don't think there's an issue unless if the client has a particular issue or problem, then I'm always available to be consulted with or just discuss issues. Not being there when the documents are being executed, I don't believe is a – is wrong.

Q: But this is more than just not being there when the documents are executed. This is not even meeting with the client at all.

A: It's a timing issue. The client – the clients decide to use my services and they – call me and they decide to use my services, so if I can't meet them, they're comfortable with that. "

c. <u>Failing to be candid about his knowledge of a trust account for D.R. Paralegal</u>

Mr. Riccioni denied to Mr. Olesky on two occasions that he even knew that D. R. Paralegal had a trust account. [Binder 7, Exhibit E-6, Interview of December 19, 2008 at

page 77, lines 23 to 25 and Exhibit E-7, Interview of January 27, 2009, page 125, lines 2 to 9.]

From the evidence it appears that in 2005, the Member's office was making large payments to D. R. Paralegal Services Ltd. on behalf of clients. The Member for many years seems to have sent money to DR Paralegal on behalf of clients simply on good faith. The Member entered into his relationship with Ms Ridley and sent large sums of money to her for years without any concern for whether it was safe to do so, or what the longer term implications might be to clients.

However, after March 29, 2007 it is clear that the Member had signing authority on both her general and trust accounts. [Exhibit B-6, Tabs 1 and 2.]

In Cross-examination on January 12, 2012, the Member repeated that he did not realize, when he signed the signature card that it was for what purported to be a trust account for Ms Ridley [Hearing Transcript, January 12, 2012, page 1129, lines 11 to 20.]

Exhibit B- 6, Tab 1 shows that on September 8, 2003, Ms. Ridley opened an account with Scotiabank that was used as a Trust Account. Exhibit B-6 Tab 1 contains at page 5 and 6 a banking resolution whereby on March 29, 2007 D. R. Paralegal Services Ltd. "(Trust)" [handwritten] authorizes the president and the corporate solicitor to sign service requests and other banking agreements and give instructions, verifications and approvals from time to time. At page 2 of Exhibit B-6 Tab 1 is an undated signing card which the Member signed as the Corporate Solicitor, and Debra Ridley signed as the President.

Exhibit B-6, Tab 2 relates to a second bank account in the name of D. R. Paralegal Services Ltd. At page 2 is an undated signing card with the Member's name indicated as Solicitor, copies of his Alberta driver's license and CIBC Gold Visa and a signed application for business banking services signed by the Member and dated March 29, 2007.

At page 9 of Exhibit B- 6 Tab 2 is a Certificate of Officers, Directors and Signing Authorities that indicates that the Member is authorized to give instructions, verifications and approvals on behalf of the Company from time to time, as well as a banking resolution at page 10 permitting Mr. Riccioni to sign service requests and banking agreements as well as provide instructions, verifications and approvals on behalf of the account.

d. <u>Failing to be candid about his use of D.R. Paralegal's address</u>

On March 1st, 2005, Mr. Riccioni wrote to the Law Society [Exhibit B-2, Tab 3] and stated:

"I have only in some limited real estate files used the D. R. Paralegal Services Ltd. address for logistical purposes and client convenience. However, I have discontinued the use of her address as of February 3, 2005."

On May 2, 2006 the Member wrote to the Law Society to advise that effective immediately his real estate offices were located at Debra Ridley's home address. Within days he was audited by the Law Society.

In 2007 respecting the file for W. Unit xxx the Member was using Debra Ridley's address on his letterhead. [Exhibit B-12, Tab 8] which letter refers to an enclosed trust cheque which is reflected in the respective trust ledger of the Member [Exhibit B-12, Tab 2.]

In his Brief at Paragraph 15 counsel for the Member states: "Mr. Riccioni merely volunteered [to the Law Society in 2005] that he would not use Mrs. Ridley's address as the sole address and was never directed that he could not also use her address in the future."

Failing to be candid about acting for S. Properties Inc.

Much of the evidence on this issue has been reviewed above, in relation to other citations.

The Member told Mr. Olesky on January 27, 2009 that he had not represented S. Properties Inc. ever on any file. [Exhibit E-7, page 41, lines 24 to 27.}

In his letter of October 5th, 2009 to the Law Society Exhibit D-3 page 5 in response to the Olesky Investigation report, the Member said*, "It is my view that I did not represent S. ."*

The Member did acknowledge that in relation to Unit xxx, xxx xst Ave., the second C. purchase that he believed on this transaction he was acting for S. and not the C.s.

In cross-examination, he confirmed that remains his position [Hearing Transcript, January 13, 2012, page 1194, line 22 to page 1195, line 18.]

In redirect the Member indicated that his views on the subject had changed.

It is clear to the Hearing Committee that the Member did act for S. Properties Inc. on many occasions and that any prudent and competent lawyer would have recognized this

6. Citations 8 and 19: "Assisted clients in an improper purpose"

8. IT IS ALLEGED THAT you assisted one or more clients in an improper purpose and that such conduct is conduct deserving of sanction.

19. IT IS ALLEGED THAT you assisted one or more clients in an improper purpose and that such conduct is conduct deserving of sanction.

Positions:

The position of the Law Society is that the Member assisted clients in an improper purpose by not advising mortgage lenders about the facts as he knew them to be. The position of the Member's Counsel is that the lenders had their own appraisals of the properties to justify loan amounts, tax and title searches to compare registered owners with contracts to identify if sellers were different parties, there was no indicia of mortgage fraud by virtue of recent proceeding sales or flip or price escalations especially in the heated real estate market at the relevant time, nor were there any other indicae of fraud. There were no unusual credits or questionable closing fund sources. On the G. purchase the credit was explained by the Member as stemming from the lenders knowingly underfunding mortgage proceeds compared to what was contemplated by the contract and also that this it was not a CMHC insured mortgage that precluded such a purchase credit. On the T. transaction, the purchaser client made a Statutory Declaration that the purchase price less mortgage financing was obtained from his own sources. Notwithstanding that those funds were transferred from another client file as authorized, Mr. Riccioni was entitled to rely on the Statutory Declaration to believe that the funds belonged to Mr. T..

Issues:

1. What were the improper purposes?
2. Which clients engaged in them?
3. What assistance did the Member provide?
4. Is it conduct deserving of sanction?

Applicable Law:

At the applicable time, The Code of Professional Conduct, Chapter 1, Relationship of the Lawyer to Society and the Justice System, Statement of Principle, stated as follows:

"A lawyer shares the responsibility of all persons to society and the justice system and, in addition, has certain special duties as an officer of the court and by virtue of the

privileges accorded the legal profession, including a duty to ensure that the public has access to the justice system."

The relevant *Rule in* Chapter 1, of the Code of Professional Conduct as it was at the time states:

1. A lawyer must respect and uphold the law in personal conduct and in rendering advice and assistance to others."

The relevant *Rules in* Chapter 9, of the Code of Professional Conduct as it was at the time state:

"10. A lawyer must not implement instructions of a client that are contrary to professional ethics and must withdraw if the client persists in such instructions

11. A lawyer must not advise or assist a client to commit a crime or fraud."

Findings:

The Hearing Committee finds that the Member assisted one or more clients in an improper purpose and that such conduct is conduct deserving of sanction.

The improper purpose of most transactions was mortgage fraud that benefitted S. Properties Inc. and the B.s in large sums of money resulting from purchase and sale of real estate using straw buyers.

With respect to the G. sale from B. of the E. D. property, the purpose of that sale was to extricate Mrs. B. from foreclosure proceedings at someone else's jeopardy.

The clients engaged in improper purposes were S. Properties Inc. of whom the Principal was R. B., R. and K. B., J. T., D. C. and L. C., B. P., R. W., A. and C. G., A. D. and A. L..

All of these persons were involved in improper activities that impacted themselves on the longer term, as well as the Banks who were mortgage holders.

The way assistance was provided to the above persons was that the Member did not advise the mortgage lenders about the facts as he knew them to be or as a prudent lawyer would have discovered them to be. The Member also assisted the above persons in their improper purposes by being willfully blind to what was occurring with his practice and his clients, not recognizing who his clients were and what his duties to them were and turning over his practice to Ms Ridley.

Evidence:

The Evidence in relation to this citation is found in the Exhibits, in part in the evidence earlier reviewed in this Hearing Report, and also in the Transcript evidence.

7. Citation 9: "Permitted funds to be withdrawn from your trust account by one or more cheques not signed by you or by any active member of the Law Society"

9. IT IS ALLEGED THAT you permitted funds to be withdrawn from your trust account by one or more cheques which were not signed by you or by any active member of the Law Society and that such conduct is conduct deserving of sanction.

Positions:

The position of counsel for the Law Society was that the Member permitted another person or persons who were not an active member or members of the Law Society to sign trust cheques purporting to be the signature of the Member.

The position of the Member was that he had signed all trust cheques himself.

Issues:

1. Did the Member permit funds to be withdrawn from his trust account by one or more cheques not signed by him or by any active member of the Law Society?

2. Which cheques, if any were these?

3. If so, is it conduct deserving of sanction?

Applicable Law:

Rule 124 (4) and (7) of the Rules of the Law Society of Alberta state as follows that:

'124(4) Except as provided in subrules (50, (5.1) and (6), money may be withdrawn from a trust account only by a cheque which must:

(a) Clearly indicate that it is a cheque drawn on a trust account;

(b) Not be made payable to cash or bearer;

(c) Be dated, but not post-dated;

(d) Be signed in compliance with subrule (7); and

(e) Be completed as to the payee and amount.

124 (7) A cheque referred to in subrule (4), a transfer made pursuant to subrule (5), or a request to wire money referred to in subrule (6), must bear the signature or counter-signature of an active member authorized by that law firm to sign it, except that, in special circumstances, the Executive Director, on application and with or without conditions, may authorize:

(a) The withdrawal of money from a trust account by cheques signed by one or more persons who are not active members of the Society and which are not signed by an active member, or

(b) Transfers of money pursuant to subrule (5) or requests to wire money referred to in subrule (6) by documents signed by one or more persons who are not active members of the Society and which are not signed by an active member. '

Findings:

The Hearing Committee finds that the Member permitted funds to be withdrawn from his trust account by one or more cheques which were not signed by him or by any active Member of the Law Society and that such conduct is conduct deserving of sanction.

The evidence of the expert Mr. Leslie Peace was consistent with other evidence that the Committee has accepted as true. The Hearing Committee believes from the evidence that the Member delegated his real estate practice to Ms Ridley. It is consistent with that delegation that the Member gave a series of trust cheques to Ms Ridley to sign for him. Alternatively, or additionally, it is consistent with the evidence that Ms Ridley may have taken cheques from the Member's office while she was there and used them. The Member paid little attention to what was going on with his real estate practice, provided no supervision and let Ms Ridley run the practice however she chose.

The Member's inconsistent and implausible evidence during this hearing, of which examples have been provided, is so pervasive that the Hearing Committee does not believe him when he says he signed all of the cheques.

In the Hearing Committee's opinion, the provenance of the S. M. letterhead document is highly suspect. The Member's explanation as to how he came across it and how he came to decide upon it as a document he should send to Mr. Davies is implausible.

Provision of this questionable document to his expert by the Member diminishes the reliability of the expert's opinion and goes to weight of the opinion. Mr. Davies analyzed the signatures, but he did not analyze the oddity of what he was provided with

by the Member. He did not address the partial signatures also on the page and what those might signify which is “practice” signatures. Mr. Davies agreed when cross-examined that where exemplars come from is important. His use of the S. M. document signatures is an irremediable error on his part and where his evidence falls apart.

Those signatures comprised 6 of 23 reviewed by Mr. Davies in good faith and assumed to be genuine by him, or 26 % of the signatures. Yet a layperson looking at those signatures can clearly see that one is not like the others. Mr. Davies agreed that one was not like the others. As much as the expert opinion is valuable to the Hearing Committee, the Hearing Committee is also required to apply its common sense, look at the document and make its own assessment.

Mr. Davies is of the opinion that if he had not analyzed those signatures from the S. M. sample, his opinions would have been the same but the Hearing Committee is of the view that his opinion must have been affected by the questionable S. M. document and gives his opinion little weight.

Experts’ Evidence:

a) Mr. Leslie Leedham Peace

i) Qualifications of Mr. Peace

Mr. Peace was tendered by the Law Society as a forensic document examiner with special expertise in the examination, comparison, and identification of handwriting.

Counsel for the Member did not object and Mr. Peace was accepted for the purposes of this hearing as an expert forensic document examiner with special expertise in examination, comparison, and identification of handwriting, including signatures.

ii) Evidence of Mr. Peace

Mr. Peace was engaged as an examiner for the Law Society of Alberta, and completed two preliminary reports in 2008.

In 2008 Mr. Peace received certain documents from the Law Society in Envelopes marked A and B Mr. Peace received 185 of the Member’s original trust cheques, bank authorization letters, and documents in an Envelope C containing Debra Ridley's signature. Mr. Peace also received from the Law Society a letter enclosing Document 1, a sample of the Member's normal signature, and Document No. 2, a sample of the Member's alternate signature, being sample writings on two sheets of foolscap.

In late 2010 Mr. Peace was engaged to complete a final formal report. He received the exhibits entered at the Hearing as Exhibits F-2-1, 2 and 3, F-3, and F-4. In 2008 they

were returned to the Law Society investigator, Mr. Stevens. At the point that he was engaged to complete a formal report, all of the exhibits before the Hearing were returned to him at which time he completed a re-examination and a formal forensic report.

Mr. Peace reached the conclusion in relation to the payor signatures on Exhibits F-2- 1, 2, and 3, that some were produced by the same person that produced Exhibits F-3 and F-4, and a large number of them, in his estimation, were not written by that person.

Mr. Peace's Forensic Examination Report was entered as Exhibit F-5.

There were 11 cheques that in Mr. Peace's opinion disclosed a culmination of similarities of identifying significance when compared with each other and when compared with the known documents or the sample documents, F-3 and F-4. They were set aside as a separate group. There was also another group of cheques wherein the signatures disclosed what Mr. Peace considered to be a pattern, a significant combination of differences in the handwriting habits depicted on those. They were set aside as a separate group within F-2-1. The first group had very good line quality, and so they were distinguished on the table in Appendix A by a code letter GLQ for Good Line Quality adjacent to the cheques that Mr. Peace considered to have a have a better than average line quality and that also compared very favourably with the sample writings. There were 11 signatures in that first group that matched that description based on Mr. Peace's comparison within that group and with the sample writing in Exhibits F-3 and F-4.

In that group there was another set of signatures that did not have the same quality, the same style, the same degree of fluency and spontaneity. They are classified in Mr. Peace's Appendix "A'" as MLQ for Moderate Line Quality. The writing characteristics on them did not match, in Mr. Peace estimation, the sample writing. He describes them as a pattern of significant differences.

Appendix "B" in Mr. Peace report relates to the same type of comparison with the second group of cheques. The same basic process was followed, and that process is described on pages 8 and 9 of the Report.

With regards to the second group of cheques there were four cheques in that group that in Mr. Peace estimation had good line quality. They had a combination of similarities as compared to each other, and those similarities coincided with the writing characteristics in the known documents Exhibits F-3 and F-4. Likewise, in that group, there were 53 payor signatures on the cheques that did not have the same degree of line quality. They were coded on Mr. Peace Appendix "B" as MLQs, and in comparison with the sample

writing, they disclosed what Mr. Peace consider to be a pattern of significant differences.

In the final group of cheques, there were 60 cheques. That comparison is described on pages 9 and 10 of Mr. Peace's Report. In that group of cheques Mr. Peace comparison examination disclosed what he considered to be seven cheques in that group that had good line quality and a combination of characteristics that were basically consistent with the sample writing, and a group of 53 cheques that had a lesser line quality, poorer line quality, and were coded on the Appendix as MLQs. The comparison disclosed – in relation to the sample writing - a pattern of differences in handwriting habit. That particular comparison relates to Appendix C in Mr. Peace forensic report.

Appendix "D" in Mr. Peace's report was included to show the reader of the Report the sample material that was presented in this case. It is a collaborative image at roughly a ratio of 133 percent showing the four signatures on Exhibit F-3, at the top of the page. The signatures on the bottom of that image represent the two sets of signatures that were submitted as Exhibit F-4-1, and 2, that was the sample material that was provided.

With regards to Appendix "E", as a result of the analyses and comparisons Mr. Peace described in his Report there were a collective total of 22 signatures that Mr. Peace considered to have characteristics, features, qualities, line quality, and a sum total of characteristics that were consistent with the sample writing; consistent within themselves and consistent to the sample writing. On the separate Appendices, they each had the code GLQ, and they had separate opinions or descriptors beside it specifying genuine. Appendix "E" is a digital composition that Mr. Peace prepared from scanned images of the cheques demonstrating the 22 signatures that form Exhibits F-2-1, 2, and 3, that he considered to be "genuine Q".

Appendix "F" to the Report is a representative sample, again a digital composition reflecting 12 of the signatures from the second group cheques that were listed in the various Appendices "A", "B", and "C" with the code letter MLQ for Moderate Line Quality just to distinguish them from the other ones and the signature that in Mr. Peace estimation contained a pattern of consistent and significant differences in handwriting habit. And as a result of those consistent and significant differences, Mr. Peace considered them to be nongenuine signatures. They were not written by the person who did the sample writing in Exhibits F-3 and F-4 and not the same person who did the cheques described in Appendix "E", the first group of cheques. In other words there were 163 cheques the signatures upon which were not consistent with the sample writings and not consistent with the first group of cheques.

In Mr. Peace's opinion there were clearly two writers, Because of volume; the chart in Appendix "F" does not include all of those 163 cheques. Mr. Peace just took a representative sample (12) and tried to choose one or two from each time period.

Appendix "G" was an enlarged digital composition of two of the signatures from two of the cheques that Mr. Peace considered to be nongenuine and not produced by the author of the sample material with some arrows indicating certain points and features of comparison. Those points and features of comparison are described on the second part of the Chart No. 4 with a verbal description of each point.

The Points on the chart were numbered from right to left for comparison with the sample writings. There were a number of features that Mr. Peace considered to be consistent and significant differences in comparison with the sample writings and in comparison with the other 22 cheques in Appendix "E". Mr. Peace reviewed the points on the chart in great detail during his evidence.

Mr. Peace's opinion was that the person who produced the specimen signatures also wrote:

1. the 11 signatures described with the code letters GLQ and the conclusion genuine in Appendix "A",

2. the four signatures identified with the code letters GLQ and the conclusion genuine in the table attached to the report as Appendix "B"; and

3. the seven signatures identified with the code letters GLQ and the conclusion genuine in the table of exhibits attached to the report as Appendix "C".

In other words, the person who produced the specimen signatures also wrote the 22 signatures that Mr. Peace considered being genuine in comparison to the sample material.

Mr. Peace's opinion was that the person who produced the specimen signatures did not write:

1. the 57 signatures identified with the code letters MLQ and the conclusions non genuine in Appendix " A",

2. the 53 signatures identified with the code letters MLQ, conclusion non genuine described in Appendix "B"; and

3. the 53 signatures identified with the code letters MLQ, conclusion non genuine in the table of exhibits as Appendix "C".

Mr. Peace indicated that he had made definitive opinions of genuineness and definitive opinions of non-genuineness as per the related Appendices.

Mr. Peace performed a blind test due to the time lapse between the analyses (3 years). The results were exactly the same as they were in 2008. Mr. Peace had his assistant take the cheques and scramble them. He did that three more times and replicated the results three more times.

Envelope C, Documents containing Debra Ridley's signature

Mr. Peace returned these to the Law Society without comparison. Debra Ridley's name compared with the name Peter Riccioni would have likely resulted in an inconclusive comparison.

Re-sorting of the spreadsheets

Mr. Peace did a chronological assessment of the cheques and the signatures joining all three of the Appendices together into one table. He wanted to explore if there were any dates where cheques that had been sorted and identified and classified by him as genuine and cheques that had been sorted, identified and classified as non-genuine occurred on the same date.

By doing a date and cheque number analysis, he came up with six separate dates where there were one or more cheques described as genuine and one or more cheques described as non-genuine written on the same date. He prepared a booklet demonstrating the table that he used and secondly, he extracted the signatures and put them into tabs within a booklet. [Exhibit F-6 – Chronological Review of Cheques.] With each of these tabs or tables or digital images, the signatures that Mr. Peace classified as genuine occur on the right side of the page and the signatures he classified as non-genuine occur on the left side of the page.

The chronological sorting of the cheques disclosed that on May 30, 2007 there were three cheques written. Two of them had been classified by Mr. Peace as non-genuine. One of them he had classified as genuine. The signatures on those three cheques occur at Tab 1 near the back of the chronology booklet. For the genuine signature the cheque number is out of sequence with the ones Mr. Peace classified as non-genuine.

Likewise there were a fairly large number of cheques written on June 14, 2007. Five of them had been classified by Mr. Peace as genuine, and eight of them had been classified by him in the various tables and various analyses and comparisons as non-genuine. Tab 2 at the back of the booklet Exhibit F-6, demonstrates those eight non genuine cheques on the left side of the page and the five signatures that had been classified as genuine on the right side of the page.

There were eight signatures produced on September 18, 2007, and seven of them had been previously classified by Mr. Peace as non-genuine. Cheque numbers adjacent to them range from 177 to 184.The signature on the right side of the tab was one of the signatures that Mr. Peace had classified as a genuine signature and the cheque number is out of sequence. The ones Mr. Peace classified as non-genuine are all in sequence with one missing in the middle. [Exhibit F-6 Tab 4]

Exhibit F-6, Tab 5 relates to four signatures that were alleged to be written on October 4, 2007. Three cheques on the left were classified by Mr. Peace as non-genuine. One cheque on the right classified as genuine. The cheque numbers, again, are somewhat out of sequence.

Likewise with Exhibit F-6, Tab 6, of six signatures written on October11, 2007, four had been classified as non-genuine. They are shown on the left side of Tab 6. Two signatures on the right classified as genuine, and they are shown on the right side of Tab 6. Their cheque numbers, again, are out of sequence with the ones on the left.

After Mr. Peace had prepared these six Tabs, he laid them out one above each other, and his remark was that it was a particularly graphic display, in his estimation, of the consistent differences in handwriting movement between the one group on the left side of each of these tabs and the one group on the right side. Even if one had no sample writing at all, in this particular case, there is in Mr. Peace's opinion clear and consistent evidence of two different writers and when you lay out these tables, in his estimation, that becomes abundantly clear.

iii) Cross examination of Mr. Peace

When cross-examined by Member's counsel as to the difference between a definitive and a non-definitive opinion Mr. Peace explained that as in a lot of forensic disciplines, there are ranges of opinions that can apply to a certain case depending on the examiner's level of certainty with the features and characteristics. In a number of cases, an examiner will provide a qualified opinion. In Mr. Peace's judgment in this case he was able to make definitive opinions.

Mr. Peace agreed that he would not put handwriting analysis in the same category as DNA analysis because there is not the statistical foundation for it. But he disagreed with the proposition that handwriting analysis is really more an art than it is a science and referred to studies that he stated have repeatedly shown that forensic document examiners far exceed lay persons and even college students and college graduate students in the ability to discriminate writing by sometimes six to eight to tenfold. Mr. Peace was of the opinion that handwriting analysis was not an exact science but he believed it to be an applied science.

b) Mr. Kenneth John Davies

i) Qualifications of Kenneth John Davies

Counsel for the member called Mr. Davies as an expert forensic document examiner with special expertise in examination, comparison, and identification of handwriting, including signatures.

Mr. Davies was engaged by Mr. Riccioni to do an analysis and write an opinion. The report is dated December 5th, 2011. [Exhibit F-12 Report of Mr. Davies.]

Mr. Davies' analysis was complete and his report was completed before he had any knowledge of Mr. Peace's report or findings. Mr. Davies read the Report of Mr. Leslie Peace dated January 29th, 2011 and reviewed the transcript of Mr. Peace's evidence.

Mr. Davies has been qualified as an expert in the proposed area many times in Provincial Courts and Queen's Bench across western Canada, and also in the United States estimating in the neighborhood of 30 times over approximately a 15-year time frame.

Mr. Davies studied with the International Graphoanalysis Society, and was certified as a graphoanalyst in 1984. Mr. Davies is also a Certified Forensic Consultant having received that certification in 2005. He is an associate of the Canadian College of Kineseography. "Kineseography" is a term that refers to relating handwriting, stroke elements in handwriting to physical aspects such as disease pathology.

Mr. Davies has been called upon to authenticate handwriting samples in hundreds of instances.

Cross examined by counsel for the Law Society, Mr. Davies claimed no expertise in the area of disease pathology.

Mr. Davies' business offers "Trait Aptitude Profiling," and "Occupational Clinical Investigative." "Trait aptitude" involves identifying and understanding specific stroke characteristics within handwriting and signatures. Mr. Davies can look at handwriting and give a prospective employer information on certain aptitudes for an employee and whether there is support for certain talents within an individual Trait analysis has been recognized as a valid discipline in North America in the last 30 -38 years or so. Mr. Davies has never testified with respect to trait analysis in a Canadian court.

Mr. Davies was accepted for the purpose of this hearing as an expert forensic document examiner with special expertise in examination, comparison, and identification of handwriting including signatures.

ii) Evidence of Mr. Davies

Mr. Davies examined all of the cheques.

Exhibit Q 2 to his Report. Mr. Davies found three cheques in the F-2-2 bundle that he found most questionable out of the 185.He treated those as a separate exhibit because there are anomalies there that needed to be examined and required explanation. Aside from those these three cheques, in his examination where he compared each cheque individually to known samples, in the end he found that there was a high likelihood that they were authentic signatures. He was not able to provide as strong an opinion on these three because of a specific anomaly in each of those three cheques.

Mr. Davies used the following “known exemplars” of the Member’s signature:

1. Exhibit “A” to his Report - two signature styles on Mr. Riccioni's passport.

2. Exhibit “B” to his Report - six signatures on a S. M. letterhead [Exhibit F-14]. These six signatures were enlarged on a separate page by Mr. Davies and this was entered as Exhibit F-15.

   Mr. Davies understood that the S. M. document had six signatures on it written by Mr. Riccioni, having been informed of this by Mr. Riccioni.

3. Exhibits C1-C4 to his Report - signed authorization letters to the Law Society, which were previously entered as Exhibit F-3,

   Mr. Davies also enlarged the signature portion of each of those for documents.

4. Exhibits “D” and “E” to his Report - 10 sample signatures previously entered as Exhibits “F-4-1” and “F-4-2”

Mr. Davies also received a note from Dr. Wessel Kriel confirming that the Member suffers from a neuron-motor affliction known as carpal tunnel syndrome. [Exhibit F to his report]

Mr. Davies studied the signatures in various ways, macroscopically, meaning looking at them essentially unaided or with a magnifying glass, then microscopically, applying a wide field binocular microscope in the power range of 40 to 400 powers for examining signatures and handwriting.

The exemplar signatures of Mr. Riccioni, identified as Exhibits “A” through “E” of his report, were studied by Mr. Davies individually and collectively with respect to disclosed stroke characteristics to characterize them and establish the common variation across the known samples.

Likewise the questioned cheques were studied individually and collectively to characterize those signatures, and looked at also as a group to characterize them and establish the range of variation across the known samples.

Then the characterized questioned signatures were compared with the characterized exemplar known signatures in all respects of disclosed stroke characteristics to make determinations as to the authenticity of the questioned documents.

At page 2 of his Report Mr. Davies itemized the general categories of stroke characteristics that need to be assessed. One can look also at extraneous elements as well or what are sometimes termed diacritics,

Mr. Davies went through the process of analyzing stroke characteristics in relation to all the exemplars that he included on page 2 of his Report, to establish a range of stroke characteristics and style types that the samples fall into. This involved analyzing initially the components of the signature, then the totality of the signature.

Mr. Davies went through the same process with respect to all of the questioned cheques. He went through each cheque in each of the three bundles that were provided to him in order from top to bottom one at a time assessing each signature and comparing those signatures one by one with the comparative known samples.

Finally the characterized questioned signatures were compared with the characterized exemplar known signatures that Mr. Davies had studied in all aspects of disclosed characteristics as the basis for making a determination of authenticity.

Results and conclusions of the Examination

Based on his examination of the exemplar known signatures of Mr. Riccioni Mr. Davies' initial finding of note is that Mr. Riccioni's signatures comprise an extremely broad range of variation or style. In Mr. Davies' opinion, the Member represents less than 10 percent of the populace in terms of the broad variation that he exhibits in his known signatures.

Mr. Davies also noted that with respect to the passport, Mr. Riccioni has two very distinct types of signatures apart from the broad variation. He has two distinct signatures that are unrelated. One of them would not be recognized in terms of a name by somebody that did not know the signature, whereas in the other type of signature, one can make out somewhat the name. In his examination, because the rather more obscure signature is not relevant to this examination, Mr. Davies excluded it. The questioned cheques, all 184 of them exclude this type of signature.

In relation to his assessment of stroke characteristics on the questioned signatures, Mr. Davies also found that there is a very broad range of signature style across those 184

signatures. With respect to the number of cheques as opposed to the number of exemplar known signatures, there was established an even broader range of variation in the questioned cheques. Simply because of the number, there is more opportunity to have various combinations of stroke characteristics and in various permutations of those characteristics in that much broader sample.

Mr. Davies found that: "*Overall range of variation to the questioned signatures is, with few exceptions, within the characteristic range of formation, rhythm, pressure, compression, expansion, and stroke sequence that is represented in the exemplar note signature -- known signatures examined in this undertaking."*

This means essentially that in Mr. Davies opinion all of the questioned signatures can be correlated within the known or established broad range of signature style that the known signatures represent with the exception of the three cheques that Mr. Davies separated as Exhibit Q 2.

Other than those three exceptions, the range of stroke characteristics of questioned signatures fit within the established range of the Member's known signatures.

The three signatures that Mr. Davies separated as Exhibit Q 2 show an "R" formation in the first letter of the signature that cannot directly be correlated to the known signatures that Mr. Davies examined. If more samples were taken then in Mr. Davies' opinion this type of "R" could have fit within the samples as well. Mr. Davies states this because looking at the other aspects of those three signatures, he believes that those three signatures are genuine because the rest of the signatures do fall within the identified range of the known signatures that he examined.

Although the "R" in those three exceptions does not fit within the stroke range identified by the samples he examined, in view of the signature as a whole showing strong correlation, he could not rule out the signature as being authentic.

In the case of a major aberration such as the "R", if there are other anomalies or other things that were problematic within the signatures, and then it may be sufficient to disqualify the signature as authentic. But in this particular case, the rest of the signature did fall within the established range of the known signatures.

With respect to ranges of opinions, Mr. Davies advised that there are different opinions of different degrees of strength. The highest level of confidence is stated as within a "high degree of certainty". Some would state that as a definitive result. Mr. Davies was unable to make a definitive finding here.

Below "high degree of certainty" would be "reasonable degree of certainty".

This was the strongest result Mr. Davies was able to apply to all of the questioned signatures with the exception of the three that he separated as Q 2.

Below “reasonable degree of certainty” is “high degree of probability”.

Mr. Davies had had two specific conclusions:

1. Reasonable degree of certainty was applied to authentication of all of the signatures other than the three that he separated out as Q 2.

2. With the three cheques that Mr. Davies identified as Q2 in his Report, the strength of his opinion was somewhat less. He expressed it as high degree of probability because he was unable to correlate the one specific element in those signatures.

Mr. Davies has a reasonable degree of certainty in relation to 182 of the subject cheques and a high degree of probability in relation to the other three, auguring towards the conclusion that there were no cheques among the185 questioned cheques that Mr. Davies could identify as nongenuine based on those levels of confidence.

Mr. Davies was referred to Mr. Peace's Chart No. 4 in his report, and Appendix G of F-5, which is also page 2 of Exhibit F-15, illustrating two signatures among the questioned cheques that Mr. Peace has identified as nongenuine and commented at length on same in is evidence. Mr. Davies was asked by a Hearing Committee member about the S. M. document. The original document was provided to Mr. Davies by the Member as examples of the Member’s signature sometime in November 2011. Mr. Davies did not know when those signatures were created.

Counsel for the Member acknowledged that this was the least reliable of the samples. Mr. Davies stated that from his perspective the document was a reliable sample. He did compare those signatures to the other samples, and satisfied himself that they did show a correlation.

Mr. Davies stated that if he had not analyzed those signatures from the S. M. sample, his opinions would have been the same based on the other known signatures because he can find, within the other signatures, correlations to the questioned cheques aside from the S. M. samples.

Mr. Davies stated that it was apparent that Mr. Peace in his analysis considered, to some extent, the seven or eight different facets of stroke characteristics that Mr. Davies identified. Mr. Peace did not put a particular emphasis on anyone or more features. Mr. Davies stated that the experts’ differences in opinion are not based so much on the features as they are applied in terms of a result in the final opinion.

A lot of the qualifiers that Mr. Peace used such as “usually”, “rarely”, “seldom”, “frequently” and so on, are not appropriate to the circumstances. Mr. Davies was of the opinion that for Mr. Peace to provide his final result as definitive, he has drawn a definitive result from a number of non-definitive results along the way, so that his final conclusion is more substantive than the evidence that he has built that on.

In Mr. Peace’s report he referred to 12 different sample types which Mr. Davies agreed could be grouped in that manner (and was in Appendix “F” of Mr. Peace’s report.) In Mr. Davies’ opinion the samples are style types and Mr. Peace is focused on style type, but Mr. Davies did not know what the basis of that was from Mr. Peace’s point of view.

Mr. Peace referred to moderate line quality and good line quality. Mr. Davies refers to that generally in terms of pressure and rhythm in the signature, which form the line or stroke of the writing.

Line quality is a recognized term of art. As Mr. Peace uses the word “Moderate” he is categorizing the degree or the quality of line using the term, suggesting that that for those signatures what Mr. Davies would use the term rhythm of the signature, is not as consistent or fluid as in other signatures. Mr. Davies would not use that adjective to describe line quality and does not understand why Mr. Peace equated signatures on cheques with moderate line quality as being nongenuine.

In Mr. Davies’ examination of these cheques, what Mr. Peace terms line quality and what he would term pressure and rhythm, Mr. Davies did not find any indication in those signatures that there was any hesitancy or any unfamiliarity with the writing of those signatures.

Mr. Davies does not know what specific components of stroke characteristics were taken into account by Mr. Peace or any understanding as to why, for Mr. Peace, moderate line quality may equate to non-genuine signatures.

It was Mr. Davies’ observation that there were no signatures that were identified as having distinctive pressure or rhythm characteristics that did not fall within the range of Mr. Riccioni's known signatures.

In terms of pressure, on all the 184 cheque signatures that Mr. Davies examined, the one area where Mr. Riccioni's signature is relatively consistent, and perhaps the only truly consistent area, is a fairly even pressure throughout the signature and consistent between signatures. When one compares Mr. Riccioni’s known signatures with that consistency to the 185 cheques, there is not a distinct difference in pressure throughout the signatures. Mr. Riccioni's signatures do not exhibit variances in pressure. And

looking at the questioned cheques, one does not see a lot of variance in that either. As an element for determining authenticity, it cannot be used to discount the signatures.

Mr. Davies' biggest overall critique of Mr. Pierce's approach to his analysis centers on the qualifying words to support his statements regarding nongenuine cheques and the ones he has identified as being genuine. In Mr. Davies' view that approach cannot be well applied in this circumstance.

With respect to whether Mr. Peace took into account the extreme range of variation Mr. Davies found in Mr. Riccioni's signatures, in Mr. Davies' opinion Mr. Peace seems to have equated an extreme range of the questioned signatures with an equivalent range within the comparatives signatures. In Mr. Davies opinion, that is a little like comparing a large apple to a small orange in the sense that characteristics that may be common or outstanding in the large body of the questioned signatures would not necessarily be expected to be found in those numbers in a smaller comparative sample.

It appeared to Mr. Davies that Mr. Peace had determined that that form or that style represents the legitimate signature of Mr. Riccioni, and more distinct letter formation styles are nongenuine. Mr. Davies' view is that this simply is not supported by the comparative samples because one sees many different forms represented in the legitimate samples.

In Mr. Davies' opinion Mr. Peace seemed to have put emphasis on style types. In contrast Mr. Davies did not consider style a significant element because individual stroke elements in the signatures are so extremely varied, the styles are going to be extremely varied as well.

iii) Cross-examination of Mr. Davies

With respect to the signatures on the S. M. letterhead, Mr. Davies confirmed that he had not seen them signed but had no reason to believe that they were not authentic; however, he did not know if they were authentic. Mr. Davies confirmed that in his estimation the S. M. signatures were a reliable sample and that he often relied on preexisting samples as opposed to taking samples specifically for examinations because they are produced largely non-self-consciously. From that point of view they are often of more value and unless he has reason to believe that they may not be authentic he will proceed with those and this was his approach in this instance.

Mr. Davies was asked to look at Exhibit F-15 document 3, being the blown up version of the signatures on the S. M. letterhead and then to Mr. Peace's Report and the two documents with Mr. Peace's 9 points on it. Mr. Davies agreed that on at least of 5 of the 6 signatures on the blown up version of the S. M. letterhead, that formation of the "O",

forming part of the next letter is seen but not in the signature at the bottom right-hand side of the S. M. letterhead page.

When asked whether known authenticity is the key to the examination to determine authorship Mr. Davies responded that in an ideal circumstance yes it was, but all circumstances are not ideal. An examiner examines what they are presented with and if an examiner can arrange ideal submissions they do so but one does not reject documents because they are not idea, they are treated in accordance with circumstance.

An excerpt from Wilson R. Harrison's text Suspect Documents, which Mr. Davies agreed was authoritative, was put to him at page 436 as follows:

"Where standard or comparison hand writing is concerned, whether in the form of signatures or letters, the first essentially is that. Is that the comparison material be reliable. The risk of including among comparison writings only a single specimen of hand writing not written by the person to whom it is attributed should never be taken, for the inclusion of a false standard of comparison may very well invalidate any conclusion based on this faulty material. For example, if a single forged signature is included among those described as genuine, then it may very well be that those features which would otherwise suggest that the questioned signature on a Will or other document is fraudulent would be present in the false comparison signature."

Mr. Davies referred in response to the next paragraph of that text which stated*: "The first care of the document examiner is the inter-comparison of any material described as the genuine writing of an individual to detect any specimens which appear to be of doubtful authenticity." and then in the paragraph below that, "Unfortunately when only a single comparison document is available, which often happens in criminal cases, involving persons who write very little, this test by inter-comparison cannot be applied."* Mr. Davies' point being that when a document cannot be inter-compared the writer of the text was implying that it might not necessarily be ruled out and that in respect of the S. M. document Mr. Davies had inter-compared to satisfy himself that there was no reason or basis to assume that it might not be genuine and that this in compliance with the context of the writer's statements.

In Mr. Davies' opinion when you have documents of known authenticity and can inter-compare something which might not be as certain then the examiner can satisfy himself as to the value of that document. He had no reason to automatically reject that document and that is not an incorrect standard. Mr. Davies confirmed that he had not considered the possibility that the lower right hand signature on the S. M. sample, which appears to be different from the other five, was an actual signature of the Member and

the others were practice false signatures. He did agree that the five signatures were different from the one on the lower right.

In Mr. Davies' opinion, four of the six blown up signatures on the S. M. document could be said to correspond very closely to the top signature on Chart 4, and the bottom left signature could be said to correspond very closely to the bottom signature on Chart 4. In Mr. Davies' opinion, the S. M. letterhead is a fairly good representation of the Member's signature correlating very strongly with these two signatures on Chart 4.

Mr. Davies agreed that the 14 exemplars used by Mr. Peace were an adequate, although not ideal sample size, and that they were of known authenticity.

With respect to the passport used by Mr. Davies as a known exemplar, Mr. Davies indicated that he was aware that the passport was issued in 2009 after the Member was aware that his signature on the cheques had been questioned by the Law Society but he accepted the signatures on the passport as exemplars.

Mr. Davies objection to Mr. Peace's use of phrases or word like "usually" or "seldom" are that in the context of this examination where you have a large body of samples that are questioned compared to a relatively small body of samples that are known to be authentic, to say "usually" and use qualifying terms of that nature applies more to the large body of sample to the relatively body. The frequency and occurrence of various stroke elements would be expected to been seen more in the larger body than the smaller body so "usually" is somewhat misleading in this context. In this context Mr. Davies did not agree with Mr. Peace in going through the 9 points of Chart 4 that the cumulative effect is what was important. Mr. Davies opinion was that in this context the cumulative effect is of less value due to relative volumes of material being compared.

With respect to Mr. Peace's' chronology chart, Exhibit F-6, Mr. Davies did not review it as it was not pertinent to him at the time. In looking at Exhibit F-6 Mr. Davies indicated that there were no conditions where he would expect not to see two different signatures on the same day. Mr. Davies did agree that the two different signatures are consistent within the two different groups in Exhibit F-6. They are consistent in style and that this, to some extent, was Mr. Peace's separation of genuine and non-genuine on the basis of style.

c) Member's Evidence respecting signatures on trust cheques

The Member agreed that he had provided exemplars of his signature to the investigators during an interview on February 28, 2008. The Member also agreed that other exemplars had been provided by him to the Law Society by way of his signature on documents authorizing Banks to provide information to the Law Society and that

these 14 documents constituted his real signatures. The Member indicated that he had not understood what the purpose was of his providing the signatures to the investigators.

The Member indicated that when he spoke to the investigators he showed them the signature he put on his passport which he had used all along in conjunction with his formal signature and these were the two different signatures he meant, whereas the 10 signatures he provided to the investigators on February 28, 2008 were just his regular signatures. The Member indicated that he showed the investigators the signature demonstrated in Exhibit F-15, page 2 (Top left), but the investigators were not interested in that one, they were interested in other forms of his signature. The Member indicated that he had the "squiggly signature" for several years and had given it to the bank but had not used that particular signature in respect to any of the cheques entered into evidence in the hearing. The Member indicated that he had adopted the squiggly signature as his signature now. The Member has always had that secondary signature but now has switched to it in case there are other cheques in circulation using his quote "decipherable" signature.

The Member believed that when he signed the passport he knew the Law Society was interested in his signatures.

With respect to Exhibit F-12, six signatures which the Member had provided to Mr. Davies on a S. M. letterhead, the Member indicated that he had attended at S. M. and received the letterhead from someone who worked there and had used it as a scratch pad in his office. He remembered writing his signature out and he found this page among a bunch of other files when Mr. Davies was asking for samples of his signature to use as comparisons.

When asked by Counsel for the Law Society at page 1083 of the Hearing Transcript lines 4 – 15:

"Q: Ok and did you have…are you suggesting that you had signed 6 times on this pad some years before?

A: I remember I used it as a scratch pad, I doodle, whatever, I write down some notes and it…the binder or the pad was in my office. And I remember doing that during that period of time because there are numbers there reflecting real estate maters.

Q: and I am going to suggest to you, sir, that the lower right hand signature is your correct signature and the other 5 that precede it are not; what's your response to that? A: No they're my signatures. "

The following was asked of the Member by Counsel for the Law Society at Transcript page 1085 lines 17 -25 as follows:

"Q: Mr. MacDonald: And I put it to you that the way this document was formed was that you actually signed the S. M. Document, and then somebody else way copying…was attempting to copy your signature?

A.:That never happened in my office.

Q:Did it happen…

A.Or anywhere.

Q...anywhere?

A.Or anywhere. Sorry."

The Member had attended at his doctor to obtain a report for Mr. Davies about Carpal Tunnel Syndrome. The Member indicated that although the medical letter had indicated that the Member need to wear a Carpal Tunnel brace for 4-6 weeks that in fact he had not a chance to get the prescription.

With respect to the Chronological Review of Cheques prepared by Mr. Peace, the Member confirmed that all cheque books were kept at his main office. He could not explain Mr. Peace's conclusions. All he could say was that they were all his signatures.

When questioned by his counsel, the Member related the circumstances of the Investigators attending at his offices for signatures. When the Member spoke of having two different signatures he meant the two completely different ones. The two different sets of five signatures he gave to the Investigators were not intended by him to demonstrate that. He just did what he thought he was being asked to do – provide a second set of his normal signature.

The Member's evidence when examined by his counsel was that he is 100% sure that he signed all of his trust cheques. With respect to having different series numbers of trust cheques in the office, this was as a result of ordering a new set from the Bank just before running out of the old set, picking up the new set from the Bank, and starting to use it when the old series of cheques was still not finished resulting in using overlapping cheque series sometimes, which had happened at this period of time. Persons who prepared his trust cheques for signing were the Member, his wife and D.R. or someone else from his office The Member indicated that he had never left trust cheques in the possession of Ms. Ridley at her offices; he always had them with him or at his office.

The Member explained that his real estate practice doubled from what it had been in 2006 to 1162 real estate files in 2007.

d) Reliability of the Handwriting Experts

The Hearing Committee accepts that the techniques applied by the experts can be used, the methodology has been tested, there are publications and texts on the topic, and training facilities exist in Canada and the U.S.A. for the skills area. It has professional associations and accepted standards and requires accreditation by practitioners, and is generally accepted as an area where one can have expertise. The Hearing Committee also accepts that the information provided by the experts is relevant to an issue before the Hearing Committee: did the Member sign the 185 trust cheques, and is necessary to assist the Hearing Committee in its fact finding mission.

The evidence of the two experts is completely opposed. Both experts expressed the substance of their opinion clearly and provided their respective levels of confidence with their opinions. Both experts have worked in the field for approximately thirty years.

e) What evidence have we heard and what does it say

In relation to the payor signatures on Exhibits F-2-1, 2, and 3, Mr. Peace reached the conclusion that some were produced by the same person that did Exhibits F-3 and F-4, and a large number of them, in his estimation, were not written by that person.

Mr. Peace's opinion was that the person who produced the specimen signatures also wrote:

1. the 11 signatures described with the code letters GLQ and the conclusion genuine in Appendix "A",

2. the four signatures identified with the code letters GLQ and the conclusion genuine in the table attached to the report as Appendix "B"; and

3. the seven signatures identified with the code letters GLQ and the conclusion genuine in the table of exhibits attached to the report as Appendix "C".

In other words, the person who produced the specimen signatures also wrote the 22 signatures that Mr. Peace considered being genuine in comparison to the sample material.

Mr. Peace's opinion was that the person who produced the specimen signatures did not write:

1. the 57 signatures identified with the code letters MLQ and the conclusions non genuine in Appendix “A”,

2. the 53 signatures identified with the code letters MLQ, conclusion non genuine described in Appendix “B”; and

3. the 53 signatures identified with the code letters MLQ, conclusion non genuine in the table of exhibits as Appendix “C”.

Mr. Peace indicated that he had made definitive opinions of genuineness and definitive opinions of non-genuineness.

Mr. Davies found three cheques that he found most questionable out of the 185. He treated those as a separate exhibit because there were anomalies there that needed to be examined and required explanation. Aside from those these three cheques, in his examination where he compared each cheque individually to known samples, in the end he found that there was a high likelihood that they were authentic signatures. He was not able to provide as strong an opinion on those three because of a specific anomaly in each of those three cheques.

Mr. Davies was unable to make a definitive finding.

Mr. Davies had had two specific conclusions:

1. Reasonable degree of certainty was applied to authentication of all of the signatures other than the three that he separated out as Q 2.

2. With the three cheques that Mr. Davies identified as Q 2 in his report, the strength of his opinion was somewhat less. He expressed it as high degree of probability because he was unable to correlate the one specific element in those signatures.

Mr. Davies has a reasonable degree of certainty in relation to 181 of the subject cheques and a high degree of probability in relation to the other three, auguring towards the conclusion that there were no cheques among the184 questioned cheques that Mr. Davies could identify as nongenuine based on those levels of confidence.

Both experts considered alternative explanations or interpretations of the data.

Both experts were aware that the Member had carpal tunnel syndrome.

Mr. Peace stated that a multitude of things can and do affect a person's handwriting and he had tried to consider numerous possible scenarios in this particular case. Carpel

tunnel explanation is not a satisfactory explanation for 163 cheques that have a pattern of consistent differences.

Mr. Davies indicated that physical conditions of an individual can affect stroke characteristics. Carpal tunnel is a neuromotor damage or degradation, and since there are some hundred muscles and nerves in the hand that is used in writing, it is reasonable to expect that there is with carpal tunnel or similar neuromotor damage, that there is some effect on the handwriting or signature of that individual. Generally one would expect that that would increase the variation within the handwriting or signature.

Mr. Davies has no information as to the extent to which the alleged condition of carpal tunnel may have affected that range in this case and is not really qualified to answer that. He could only say that the effect would vary as carpal tunnel is worse at some periods of time than others. It would have a varying affect according to how it is affecting the individual at any given time.

When cross examined with respect to the doctor's note, the meaning of the information for Mr. Davies was that he was obliged to consider what influence that impairment might have on the Member's handwriting or signature. Mr. Davies knew that it would definitely have an impact but does not have expertise to state what extent or what nature that impact would be. Mr. Davies acknowledged that he did not have the expertise to say Carpel Tunnel Syndrome would create an impact.

f) <u>What information does each opinion rely on and are there any issues with that information</u>

Mr. Peace was provided with 14 exemplars of the Member's signatures.

Mr. Davies was provided with 23 exemplars of the Member's signatures.

This difference in what each expert received as exemplars of the Member's signature creates a difficulty for the Hearing Committee.

Mr. Davies received a copy of the Member's passport issued on April 14, 2009. This was after the Member would have been aware that the Law Society was interested in his signatures. It contains three signatures of the Member, one of them being his "squiggly signature". The other two are the "legible" type. Of those other two legible signatures on the passport one is not an original. Mr. Davies' opinion is that even though one is not an original signature it is still a valid sample for the purpose of the analysis because the passport is a valid document. It is an accepted and not questioned document.

The Hearing Committee believes that the signatures on the passport are valid exemplars of the Member's signature as of sometime in 2009. A passport is an important document used for travel purposes. It must be assumed that it was signed by the Member to reflect his signature as they existed at the time he signed and as he intended to write them thereafter. It is not, however, evidence of how he signed his signature in the past.

Mr. Davies received a document on S. M. letterhead from the Member. It has six signatures purportedly the Member's at the bottom of the left hand side as well as what appear to be two illegible and incomplete signatures on the bottom right hand side that were not referred to by Mr. Davies.

Mr. Davies stated that if he had not analyzed those signatures from the S. M. sample, his opinions would have been the same as they have been based on the other known signatures because he can find, within the other signatures, correlations to the questioned cheques aside from the S. M. samples.

In respect to the S. M. document Mr. Davies had inter-compared to satisfy himself that there was no reason or basis to assume that it might not be genuine and that this in compliance with the context of the writer's statements.

Mr. Davies confirmed that he had not considered the possibility that the lower right hand signature on the S. M. sample, which appears to be different from the other 5, was an actual signature of the Member and the others were practice false signatures. He did agree that the 5 signatures were different from the one on the lower right.

g) Are the facts and reasoning process clear in the opinion, is articulation of the basis for the opinion completely transparent

Mr. Peace's opinion is to be preferred in relation to this aspect of the expert opinions. Mr. Peace took the Hearing Committee through a logical and clear methodology. He explained exactly what he did, from beginning to end. He prepared charts in relation to each and every cheque coding them and with a conclusion in relation to each. He prepared comparison charts of Signatures characterized as genuine and those he characterized as non-genuine to assist in explaining his reasoning and how he came to his conclusions. He prepared the nine point comparison Chart.

As a final analysis, Mr. Peace prepared a Chronological Review of Cheques assessing same-date signatures and looking at cheque sequences. [Exhibit F-6]

What this Chronological Review demonstrated was that there were five instances where the dates and cheque sequencing as well as a visual review of the signatures supported the proposition that they were genuine and non-genuine and on a balance of

probabilities could have been with two different persons that day. This evidence was very powerful. It visually and logically made sense. It permitted the Hearing Committee, along with other evidence, to be able to reach an independent opinion and fell confidence in the strength and reliability of Mr. Peace's opinion.

Mr. Davies provided his conclusions, and he explained how he conducted his examination but he did not take the Hearing Committee through his methodology in the same step by step manner, with visual aids, as did Mr. Peace. Mr. Davies evidence was more broad-brush in terms of his own conclusions, also he was focused a critique of Mr. Peace's report. He spent less time establishing his own methodology and more on critique. He used a highly questionable exemplar for the purposes of his opinion. For the Hearing Committee, trying to reconcile two entirely different viewpoints, the evidence of Mr. Peace made much more logical sense and was consistent with other evidence heard.

8. Citations 2, 10 and 16: "Weakening public respect for law, and the justice system, and engaging in conduct that brings discredit to profession"

2. IT IS ALLEGED THAT you acted in a manner that might weaken public respect for law and the justice system and that such conduct is deserving of sanction.

10. IT IS ALLEGED THAT you engaged in conduct that brings discredit to the profession and that such conduct is conduct deserving of sanction.

16. IT IS ALLEGED THAT you acted in a manner that might weaken public respect for the law or justice system or in a manner that brought discredit to the profession and that such conduct is conduct deserving of sanction

Positions: Not fully articulated in written briefs but self- explanatory.

Issues:

1. How did the Member act in a manner that weakens public respect for law, and the justice system, and engaging in conduct that brings discredit to profession"

2. Is that conduct, conduct deserving of Sanction.

Applicable Law:

The above citations engage the following sections from the Code of Professional Conduct as it was at the time:

Chapter 1 of the Code of Professional Conduct, Relationship of the Lawyer to Society and the Justice System, Statement of Principle states as follows: *"A Lawyer shares the responsibilities of all persons to society and the justice system and, in addition, had certain special duties as an officer of the Court and by virtue of the privileges accorded to the legal profession, including a duty to ensure that the public has access to the legal system."*

Rule 1, Chapter 1 states that: "*A lawyer must respect and uphold the law in personal conduct and in rendering advice and assistance to others".*

Rule 3, Chapter 1 states that: *"A lawyer must not act in a manner that might weaken public respect for the law or justice system or interfere with its fair administration";*

Rule 7, Chapter 1 states that: *"A lawyer's position must not be used to take unfair advantage of any person or situation."*

Chapter 3 of the Code of Professional Conduct, Relationship of the Lawyer to the Profession, Statement of Principle states as follows: "*A lawyer has a duty to uphold the standards and reputation of the profession and to assist in the advancement of its goals, organizations and institutions."*

Rule 1, Chapter 3 states that: "*A lawyer must refrain from personal or professional conduct that brings discredit to the profession.*

Chapter 9, of the Code of Conduct, The Lawyer as Advisor, Statement of Principle states that: *"A lawyer has a duty to provide informed independent and competent advice and to obtain and implement the clients' proper instructions."*

Rule 3, Chapter 9 states that: *"A lawyer must not render advice in situations in which the independence of the lawyer professional judgment is impaired."*

Rule 9, Chapter 9 states that: *"When receiving instructions from a third party on behalf of a client, a lawyer must ensure that the instructions accurately reflect the wishes of the client."*

Rule 10, Chapter 9 states "a lawyer must no implement instructions of a client that are contract to professional ethics and must withdraw if the client persists in such instructions."

Rule 11, Chapter 9 states that: *"A lawyer must not advise or assist a client to commit a crime or fraud."*

Rule 12, Chapter 9 states that*: "A lawyer must use reasonable efforts to ensure that the client comprehends the lawyer's advice and recommendations."*

The Commentary to all of the above Rules is also relevant and has been reviewed by the Hearing Committee when making its decisions, but is not re-iterated in these Reasons.

Findings:

The Hearing Committee finds that the Member acted in a manner that might weaken public respect for the law or justice system or in a manner that brings discredit to the profession and that such conduct is conduct deserving of sanction.

It brings the profession into disrepute when a lawyer treats his clients as products on an assembly line, fails to meet with them to ensure that proper instructions are received ensure that they understand the legal transaction they are participating in and fails to ensure that the clients are well informed as to their legal rights and risks. That lawyers may use a paralegal on a supervised basis it is not an excuse for creating a process for clients that puts them at risk and permits fraudulent activities to occur.

It brings the legal profession into disrepute when a lawyer represents several parties on a transaction but choses to prefer one client over others and take instructions from that client to the detriment of the other clients.

It bring discredit to the profession when a lawyer delegates their practice to a paralegal and fails to supervise that person to such an extent that they are able to conduct various fraudulent activities under the member's name. When a lawyer participates in fraudulent activities, the lawyer sends a message to the public that fraud or criminal activity are accepted pursuits in a community.

It brings the profession in disrepute when a member fails to be candid with his regulator. Lawyers are a self-governing profession. In order to maintain this privilege, it is imperative that lawyers be completely candid with the Law Society when inquiries are made as to the nature of their practice and questions surrounding compliance with the governing legislation, Rules and Code of Professional Conduct.

That the Member permitted someone else to sign trust cheques on his behalf in order to facilitate an assembly line approach to the practice of law and engage in fraudulent endeavors is activity that weakens public respect for the law and brings discredit to the profession.

With respect to how the Member's activities weakened public respect for the justice system the Alberta Court of Appeal in Adams v. Law Society of Alberta **2000 ABCA 240**at paragraph 8 -10 states succinctly as follows: :

*"[8] Although arising in a different context, the Supreme Court of Canada made some relevant statements regarding the importance of the integrity of lawyers and the legal profession in **Hill v. Church of Scientology of Toronto**, 1995 CanLII 59 (SCC), [1995] 2 S.C.R. 1130. At 1178, Cory J. said:*

> *The reputation of a lawyer is of paramount importance to clients, to other members of the profession and to the judiciary. A lawyer's practice is founded and maintained upon the basis of a good reputation for professional integrity and trustworthiness. It is the cornerstone of a lawyer's professional life. Even if endowed with outstanding talent and indefatigable diligence, a lawyer cannot survive without a good reputation.*

[9] Every member is or ought to be aware that not only one's professional conduct, but also one's personal conduct may be subject to scrutiny when that conduct may likely affect one's professional reputation, integrity and trustworthiness. The misconduct may or may not be criminal. Unlike criminal behaviour per se, the individual's misconduct may have a significant effect on the reputation of the legal profession generally.

[10] Historians may question the origin and the history of the oft-repeated statements about the honour and integrity of the legal profession, but it cannot be denied that the relationship of solicitor and client is founded on trust. That fundamental trust is precisely why persons can and do confidently bring their most intimate problems and all manner of matters great or small to their lawyers. That is an overarching trust that the profession and each member of the profession accepts. Indeed, it is the very foundation of the profession and governs the relationships and services that are rendered. While it may be difficult to measure with precision the harm that a lawyer's misconduct may have on the reputation of the profession, there can be little doubt that public confidence in the administration of justice and trust in the legal profession will be eroded by disreputable conduct of an individual lawyer."

Evidence:

The Evidence in relation to this citation is found in the Exhibits, in part in the evidence reviewed already in this Report, and also in the Transcript evidence and will not be reviewed here.

9. Citations 7, 11, 17, 18 and 20

Counsel for the Law Society indicated in his Written Brief that the Law Society was not proceeding on these Citations.

The Threshold Guide states as follows at paragraph 32:

"There are two cases in which a discontinuance application may be entertained:

a) Where counsel for the Law Society takes the positions that the threshold test is not met. In such cases, the position of counsel for the Law Society is entitled to great deference."

The Hearing Committee accords that deference.

IX. Evidentiary Issues

1. Failure of Law Society of Alberta or Member's Counsel to call Certain Persons.

Neither the Law Society nor Member's Counsel called R. B. or his wife, nor was Debra Ridley called by either Counsel. Counsel for the Law Society provided the Hearing Committee with the case of Rault v. Law Society of Saskatchewan 2009 SKCA 81. Law Society Counsel submitted that although that case spoke of joint recommendations for disposition, that by analogy the same principles should be applied where both Counsel advise the Hearing Committee that they have discussed not calling the witnesses and concluded that would be a fair result if no adverse inference were draw against either side. Counsel did not want the Hearing Committee forming an adverse inference against either side as result of the failure by either Counsel to call any of those persons.

The Hearing Committee accepts the submissions of both Counsel in relation to the absence of this evidence and has not drawn any adverse inference against either the Law Society or the Member from the failure of either Counsel to call any of the above persons.

2. Calling the Member to give evidence

Positions of counsel:

Counsel for the Member chose not call the Member but indicated that if the Panel had any questions of the Member that the Member would answer them. Counsel for the Member advised that in taking that position he did not envision that Counsel for the Law Society would have the right of a full and complete cross-examination.

Counsel for the Law Society indicated that if the Panel called the Member he would conduct a cross-examination.

Counsel for the Member advised that counsel were in disagreement as to the scope of entitlement of counsel for the Law Society to cross-examine Mr. Riccioni. The position of Counsel for the Member was that the Panel should ask questions of the Member and

those questions would determine the scope of the cross-examination of Counsel for the Law Society.

The issue raised was: If a Member chooses not to give evidence in their own case, what is the process to follow when the Panel wishes to hear from the Member?

The Panel wanted to hear from Mr. Riccioni; however the Panel was not prepared to conduct either a direct or cross-examination of the Member. The Panel was concerned that any prolonged questioning by the Panel might be interpreted as descending into the arena which the Panel was not prepared to do. The Panel asked Counsel to consider whether it could call the Member and not ask him questions but have him cross-examined by Law Society Counsel.

Counsel for the Member asserted the following positions:

1. The Law Society had closed its case and therefore was precluded from calling the Member and fully cross examining him.

2. Law Society counsel had been notified that the Member was not being called in his own case, but would be available for cross examination by the panel.

3. Law Society counsel could then only cross examine the Member on the issues arising from the Panel's questions.

4. The Member would not be examined directly by his own counsel.

5. The Hearing Panel, by not calling the Member before the parties had concluded their cases, was now precluded from having a full and complete cross examination by counsel. Further that if the Hearing Panel directed the Member to answer questions of the Law Society counsel in an unrestricted manner, it may lead to an apprehension of bias as it may be seen that the Law Society counsel was acting as an agent for the Hearing Panel.

What does it mean for a Member to offer to be a witness?

In the opinion of this Panel offering to be a witness means a Member unconditionally taking the witness stand, which the Member in this instance did not do, thus putting the Hearing Panel in the position of having to order him to do so, which it is permitted to do. Although the Member through his Counsel expressed that he was willing to take the stand, i.e. would do so voluntarily, there was a conditional element to that willingness.

That conditionality related to the extent to which this would open him up to cross-examination by Counsel for the Law Society. Conditional willingness to take the stand in the opinion of this Hearing Panel detracted significantly from the stated willingness of the Member to give evidence.

Section 49(1) of the Legal Profession Act states that:

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

(a) is incompatible with the best interests of the public or of members of the Society, or

(b) tends to harm the standing of the legal profession generally,

is conduct deserving of sanction, whether or not that conduct relates to the member's practice as a barrister and solicitor and whether or not that conduct occurs in Alberta."

The Alberta Court of Appeal in Adams v. Law Society of Alberta **2000 ABCA 240**

at paragraph 6 discusses the self-regulatory role of professional disciplinary bodies:

"[6] Before addressing the specific grounds of appeal, it may be helpful to consider the context of a professional disciplinary hearing.*Professional bodies are those to whom the government has seen fit to grant monopoly status. With this monopolistic right comes certain responsibilities and obligations. Chief amongst them is self-regulation. Self-regulation is based on the legitimate expectation of both the government and public that those members of a profession who are found guilty of conduct deserving of sanction will be regulated – and disciplined – on an administrative law basis by the profession's statutorily prescribed regulatory bodies. Thus, a professional disciplinary hearing is not a criminal hearing; it is an administrative hearing. Admission or proof of the alleged professional misconduct (or incompetence) is not the same as a plea or finding of guilt in a criminal matter. Rather, it is a finding of conduct deserving of sanction or incompetent practice based on administrative principles, including applicable evidentiary rules. A professional misconduct hearing involves not only the individual and all the factors that relate to that individual, both favourably and unfavourably, but also the effect of the individual's misconduct on both the individual client and generally on the profession in question. This public dimension is of critical significance to the mandate of professional disciplinary bodies. "*

The legislative purpose of the disciplinary process under the Act is the regulation of the profession in the public interest. The goal is to ensure that the public is protected and that the public maintains a high degree of confidence in the profession

In this situation, the Panel had heard evidence from two experts whose opinions were completely divergent in relation to the crucial issue of the authenticity of the Member's

signature. Although counsel for the Law Society may have felt that he had proven his case sufficiently and counsel for the Member may have felt that the Law Society had not proven its case and that there was no need for the Member to be called from each of their perspectives, this is not the end of the matter.

The Law Society governs in the public interest. It is the duty of the Panel to ensure that all evidence is before it in order that the Panel can make the correct decisions. In the unique circumstances of this case with the nature of the citations, it was important for this panel to hear directly from the Member.

Legal Profession Act

68(1) In proceedings under this Division, a Hearing Committee, the Practice Review Committee or the Appeal Committee

(a) may hear, receive and examine evidence in any manner it considers proper, and

(b) is not bound by any rules of law concerning evidence in judicial proceedings.

And

69(1) a Member whose conduct is the subject of a hearing before a hearing committee is a compellable witness in proceeding before that committee..:"

The Legal Profession Act grants the Hearing Committee broad discretionary powers over evidence, allowing it to hear, receive, and examine evidence in any manner it considers proper without being bound by any other evidentiary rules.

It is evident that a Hearing Committee has significant leeway to question witnesses, including the member.

Although the Hearing Committee is not bound by any evidentiary rules it is still bound by the administrative law requirements of natural justice, and procedural fairness.

In Dunsmuir v R., [2008] 1 SCR 190 at paragraph 79 Justices Bastarache and LeBel state:

"[79] Procedural fairness is a cornerstone of modern Canadian administrative law. Public decision makers are required to act fairly in coming to decisions that affect the rights, privileges or interests of an individual. Thus stated the principle is easy to grasp. It is not, however, always easy to apply. As has been noted many times, "the concept of procedural fairness is eminently variable and its content is to be decided in the specific context of each case" (Knight, at p. 682; Baker, at para. 21; Moreau-Bérubé v. New Brunswick (Judicial Council), 2002 SCC 11 (CanLII), [2002] 1 S.C.R. 249, 2002 SCC 11, at paras. 74-75). "

Procedural fairness means that the Member is entitled to a fair hearing before an impartial adjudicator. If a Hearing Committee begins to question a member, in circumstances where it is suggested that the Hearing Committee is to assume the burden of the questioning, there is no doubt that the Hearing Committee can easily be perceived at putting itself into the role of prosecutor, thus creating a reasonable apprehension of bias and violating the principles of natural justice.

The approach suggested by Member's counsel is an unreasonable expectation of a Panel. A Panel sits as adjudicators, not as counsel to conduct examination or cross examination of parties. Certainly the fact that the Law Society governs in the public interest adds an overlay that arguably might expand the appropriateness the Panel questioning the member, but it is not unlimited.

The impracticality of the proposal is highlighted by the actual inability of a Panel to prepare for the type of questioning that may be required where counsel cannot or will not do it. A Panel has no staff to assist it in preparing questions. If the Panel were inclined to question, which this Panel is not, it would need to adjourn and review all materials, agree upon questions as a Panel, etcetera. In not being able to do so, a Panel is in the position of questioning ad hoc: three persons with three possible different thoughts, all asking questions on a partially informed basis and not being comfortable that they have adequately covered all areas fully. This might be a benefit to a Member from a strategic perspective but it is not in the public interest.

3. Scope of questioning

Counsel for the Law Society strongly disagreed that if he were permitted to fully cross-examine the Member that would exhibit bias on the part of the Panel. When the Hearing Committee decides to call the Member as it has every right to do, the permissible scope of the cross-examination is a question of law.

Counsel for the Law Society argued that member's Counsel announced from the beginning that he would make his client available for examination by the Hearing Committee. This was not a favour to the Hearing Committee but an acknowledgement of the law. He did not ask for a clarification or pre-ruling by the Hearing Committee as to what the scope of the Hearing Committee's examination would be or whether the prosecutor would be permitted to cross-examine and if so what the scope would be. Counsel for the Law Society gave no undertaking as to what the scope of his cross-examination would be.

Counsel for the Member submitted that since the Law Society had closed its case, to permit full and complete cross examination at this point would be akin to allowing the Law Society to re-open its case.

Relying on the Alberta Court of Appeal decision in Real Estate Counsel of Alberta v Henderson, 2007 ABCA 303, counsel for the Law Society argued that the right of the Hearing Panel to call the Member cannot be illusory.

Counsel for the Law Society suggested that there was a misapprehension as to the ability of a Hearing Panel to question a witness. Paragraph 243 of The Chippewas of Mnjikaning First Nation v. Her Majesty in Right of Ontario et al. 2010 ONCA 47 states:

"All of that said, appellate courts are reluctant to intervene on the basis that a trial judge entered the arena and improperly intervened in a trial. There is a strong presumption that Judges have conducted themselves fairly and impartially. Isolated expressions of impatience or annoyance by a Trial Judge a result of frustrations, particularly with Counsel, do not of themselves create unfairness"

In Law Society of Upper Canada v. Cengarle [2010] ONLSAP 11, the Court rejected the appellant's submission that the sheer volume of questions asked supported the conclusion that the appearance of fairness was lost.

The Law of Evidence in Canada (3d Edition, Lexis Nexis) at page 1097 paragraph 16.15 states:

"The trial judge should give Counsel for the parties an opportunity to examine a witness further on any matter arising of the questions put by the Judge. An excessive participation by the Judge may be tempered by this practice, but give the parties an opportunity to examine a witness further on any matter arising out of question is put by the Judge".

The Law of Evidence in Canada (3d Edition, Lexis Nexis) states at page 1097 paragraph 16.16:

"Although the trial judge's role is no longer considered to be that of a mere adjudicator, there are limitations with respect to his or her involvement in the Trial. Accordingly, if the Trial Judge takes over the examination of witnesses to the extent of descending into the arena, a new Trial may be ordered. Furthermore, subject to the power to recall a witness, the trial judge should leave the leading of evidence to the parties, and a new Trial may be ordered if a trial judge conducts an inquisitorial type of proceeding".

Real Estate Council of Alberta v. Henderson 2007 ABCA 303, at paragraph 27 states:

"The industry member, whose conduct is in issue, is compellable. As noted, the right to obtain this evidence cannot be illusory. It must be meaningful. We agree with the finding of the Chambers Judge that the industry Member is subject to cross-examination, and that the ruling of the hearing Panel was in error. This is essential to a

proper hearing process and this Judgment will serve as a precedent to be followed by future hearing Panels".

The Law of Evidence in Canada (3d Edition, Lexis Nexis) at page 1135, paragraph 16.113-16.115 and16.121, clarifies the limits of cross-examination. It must be relevant, not harassing or repetitious or constitute a misrepresentation, and also indicates that the extent of cross examination, which is that the slightest direct examination opens up the cross-examiners case and the cross-examining Counsel is permitted to pose leading questions to the witness even on material points.

The Law of Evidence in Canada (3d Edition, Lexis Nexis) at page 1141 Paragraph 16. 131 states that: "*Moreover, a witness who has been called to the stand by the Trial Judge is not subject to cross-examination by a party unless leave is granted by the Judge, which is generally given if the witness's evidence is adverse to that party."*

Of note, The Law of Evidence in Canada, 3d Edition, Lexis Nexis) at page 1141 Paragraph 16.178 states:

"A party may call a witness to the stand, and, without asking any questions in chief, make the witness available for cross-examination. This may be done to avoid the Court drawing an adverse inference from the failure of the party to call a witness who is presumed to process relevant evidence. Although such witness can then be subject to...subjected to cross-examination on the substantive issues, the witness cannot be attacked on his or her credibility on the grounds that because he or she has given no testimony his or her credibility is not an issue."

The Member was called by the Panel in a manner that is permitted under the Legal Professions Act and the Hearing Guidelines.

The Panel directed that the Member be called as a witness and asked the Member to identify transcripts of interviews of him by the Law Society of Alberta personnel, Exhibits E-1 to E-4 and Exhibits E-5, E-6, E-7 and E-8. The Member was asked whether he adopted his answers to the questions answered by him during those interviews as his sworn evidence in these proceedings and the Member indicated that he did. Upon being questioned by his Counsel, the Member acknowledged that he had an opportunity to refresh his memory on those materials and that it was possible since giving those interviews that there was other information which could vary his evidence in those transcripts.

Counsel for the Law Society inquired what the scope of his cross-examination was and was informed that it would be a full scope, but that there had to be a good faith basis for the questions, they must be relevant, not harassing, repetitious and for clarification that

the scope of the cross-examination needed to relate to the evidence that the Member had adopted as his evidence in these hearings. It was further clarified with Counsel for the Law Society that where the interviews referred to documents that had been entered as Exhibits that he could cross-examine on those items as well.

The Panel was of the opinion that in proceeding in the above fashion, it was doing so in a manner that was fair to parties before them, met the mandate of the Panel to hear this matter in the public interest and adhered to the principles of natural justice.

X . Conclusions:

The Hearing Committee found sufficient evidence on the balance of probabilities that that the Member had engaged in conduct deserving of sanction in relation to Citations 1, 3, 14, 4, 13, 5, 12, 15, 6, 8, 19, 9, 2, 10 and 16.

DATED this 14th day of November, 2012 at the City of Calgary in the Province of Alberta.

Per: _____

SARAH KING D'SOUZA, Q.C.

Per: _____

NEENA AHLUWALIA , Q.C.

Per: _____

ANTHONY YOUNG, Q.C.

APPENDIX 1

AS AN OUTCOME OF AN APPLICATION FOR SUSPENSION UNDER SECTION 63(3) OF THE LEGAL PROFESSION ACT, IN RELATION TO PETER RICCIONI, MEMBER.

AND AS A RESULT OF THE HEARING COMMITTEE HAVING IMPOSED CONDITIONS RESPECTING THE MEMBER'S CONDUCT PURSUANT TO SECTION 63(3) OF THE LEGAL PROFESSION ACT.

AND UPON THE MEMBER BEING INFORMED THAT THE HEARING COMMITTEE MAY SUSPEND THE MEMBERSHIP OF THE MEMBER IF THE MEMBER FAILS TO FULFILL THE CONDITIONS:

I, Peter Riccioni, Member, make the following certifications and undertakings to the Law Society of Alberta:

1. I certify that I have provided to the Law Society on this date all unused cheques for all trust accounts in my name or used by me.

2. Effective February 17, 2011 at 3:30 PM I certify that I ceased using any and all trust accounts and I undertake not to use same hereafter in any manner, unless directed by the Law Society, any and all trust accounts in my name or used by me including:
    a. CIBC Chinook Station Acct xxxxxxxxxxxxx

3. I undertake that I will not open any new trust accounts other than as may be approved by the Executive Director under the Safety of Trust Property Rules of the Law Society of Alberta.

4. I undertake to sign any authorizations directed to any bank or financial institution which may be required by the Law Society during the time these Undertakings are in effect.

5. I undertake to cooperate with the Law Society Audit department including providing access to my offices and records upon request.

6. I undertake to provide a list of my currently open files to the Law Society by February 22, 2011, close of business.

7. I undertake to provide the Director of Lawyer Conduct with immediate notification by fax or email of any file openings, file closings or work on new matters.

8. I undertake to cooperate with a Custodian appointed by the Law Society for the limited purpose of operating my trust account(s) and shall pay accounts rendered by the Law Society for such purpose within 15 (fifteen) days of receipt by me.

9. I acknowledge that I am bound by these undertakings until I am released from them by the Law Society of Alberta.

Dated: February 18, 2011

"Peter Riccioni"

_____

Peter Riccioni