

**IN THE MATTER OF THE *LEGAL PROFESSION ACT***

**AND**

**IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF  
STEPHEN G. HEINZ, A MEMBER OF THE LAW SOCIETY OF ALBERTA**

**The Panel:**

Fred R. Fenwick, Q.C., Chairperson  
Larry Ackerl, Q.C.  
Miriam Carey, PhD

**Counsel Appearances:**

Lois McLean, Law Society of Alberta  
Dale Ellert, for Stephen G. Heinz

**Date and Place of the Hearing:**

September 6, 2012  
Calgary, Alberta

**REPORT OF THE HEARING COMMITTEE**

**Summary**

1. In 2006, the Member's accounts were audited by the Law Society of Alberta; this led to a review of real estate transactions, some of which showed indications of what now would be known as "red flags" indicative of mortgage fraud (skip transfers, purchase deposits not paid through the solicitor's office, quick increases in value of the property, high ratio mortgages and payments related to the usual parties in the transaction).
2. Eventually one client, a purchaser, made a specific complaint to the Law Society and after an investigation the Member was charged with a count of failing to serve the interests of that client; a further charge brought by the Law Society regarding failure to serve the interests of the member's mortgage lender clients related to specified transactions, and a charge relating to assisting an (unspecified) client with an improper purpose.
3. By consent, materials were circulated to the Hearing Committee in advance of the hearing. The evening before the hearing, the member submitted a Statement of Agreed Facts admitting culpability regarding failure to serve his purchaser client and his mortgage lender clients which admission was accepted by the Hearing Committee. The

Member contested the citation regarding assisting in an improper purpose and a hearing was held in which the Member was the only witness.

4. After deliberation, the Panel accepted the Member's guilty plea with regards the two counts of "failing to serve" and acquitted the Member regarding assisting in an improper purpose.
5. The Member was reprimanded, assessed costs of the hearing and referred to Practice Review for a course of remedial education.

## **Citations**

Stephen G. Heinz faces three citations as follows:

### **"T" Complaint (C020100496)**

1. It is alleged that you failed to serve the Complainant and such conduct is conduct deserving of sanction.

### **Law Society Complaint (C020080483)**

2. It is alleged that you assisted your client in an improper purpose and that such conduct is deserving of sanction.
3. It is alleged that you failed to serve your lender clients, and that such conduct is conduct deserving of sanction.

## **Jurisdiction**

4. At the opening of the hearing, a Binder of Exhibits, admitted with agreement by both counsel for the Law Society and Counsel for the Member, was entered (additional exhibits were also entered) and jurisdiction was established by the entry of the Exhibits 1 to 4 as follows:

**Exhibit 1      Letter of Appointment**

**Exhibit 2      Notice to Solicitor with acknowledgement of service**

**Exhibit 3      Notice to Attend with acknowledgment of service**

**Exhibit 4      Certificate of Status**

5. Counsel for the Law Society and the Member agreed that the hearing committee had jurisdiction.
6. Counsel for both the Law Society of Alberta and the Member accepted the composition of the Panel and raised no objection with respect to bias, reasonable apprehension of bias or any other reason.

## **Private Hearing Matters**

7. Exhibit 5, Letter of Exercise of Discretion re: Private Hearing Notices was entered; the Hearing Committee was advised that no request for a private hearing was being made and the Hearing Committee directed that the hearing proceed in public.
8. A member of the public was present during the hearing. The Panel cautioned counsel to consider whether that member of the public was a potential witness and whether exclusion ought to be considered; no such application was made. The Panel was informed during the sanctioning phase that the member of the public was the complainant T who tendered an Exhibit during the sanctions but gave no evidence.

## **Exhibits**

9. The Hearing Committee received and entered into evidence with consent of both parties a Binder of Exhibits numbered 1 through 14. Exhibit 11 was contained in two large binders (Volumes 2 and 3) containing the details of the Law Society Final Investigation Report including the Law Society's executive summary, investigation order, background, finding of facts, documents concerning the real estate transactions involved including the Member's accounting records, and transcripts of interviews with the Member and witnesses.

## **Evidence**

10. The parties tendered into evidence an Agreed Statement of Facts and Admission of Conduct Deserving of Sanction on citations 1 and 3 which was entered as Exhibit 15.
11. The Agreed Statement of Facts and Admission contains 96 numbered paragraphs and is attached as Exhibit "A" to this report.
12. Pursuant to section 60 of the *Legal Profession Act*, the Hearing Committee ruled that Exhibit 15 was in a form acceptable to the Committee.

## **Evidence (Testimony) of the Member**

13. The Member is a compellable witness for the Law Society. By agreement between counsel, the Member testified by direct evidence and was cross-examined by Law Society counsel. The evidence at the hearing consisted of the Agreed Statement of Facts, including the exhibits noted above (containing the Law society's investigation report), the Member's testimony and cross examination.
14. The Hearing Committee sets out highlights of its finding of facts as below. Details concerning the facts are found in the 96 paragraphs of the Agreed Statement of Facts and the Exhibits put before the Hearing Committee. The Hearing Committee referred to and considered all of the evidence and documentation in reaching its decision.

## The Member's Practice

15. The Member's educational background included an undergraduate degree from St. Francis Xavier in Nova Scotia (1981 – 1985), a Master's Degree from Queen's University (1986) and a law degree from the University of Calgary (1986-1989). He articulated to an experienced sole practitioner in Calgary focussing on criminal law and personal injury and since 1992 has been, for the most part, a sole practitioner.
16. The Member testified that business was not particularly good and he had an "open door" policy regarding work. In other words, he would take whatever work came through his door. He developed a general practice encompassing family, criminal, civil litigation and real estate. By the time these matters occurred in 2006, his practice had included residential real estate conveyancing for 12 to 14 years. When first interviewed by the Law Society investigators in relation to this matter, he described his level of sophistication with regards to real estate transactions as 8/10. He was clearly not.
17. These events occurred at a time when the member was under considerable personal stress. His civil litigation practice was contingency-based and regular fees were not coming in. He was caring for his sister and his mother who were both grievously ill.
18. During this difficult time, the key character in this tale showed up at the Member's office evidently in response to the Member's Yellow Pages' ad. Mr. "M" was the sole shareholder and director of 122... Alberta Ltd. (referred to hereafter as "122") which also operated under the trade name of M Investments and was held out as a purchaser and vendor of real estate in Calgary.
19. Mr. M was not a lawyer, realtor or mortgage broker by trade but assured Mr. Heinz of a regular flow of mortgage conveyancing files coming out of his real estate "investments". Mr. Heinz' practice did not have a regular cash flow and he was very interested from a business point of view in securing Mr. M and his associates as a regular client.
20. Despite the fact that Mr. Heinz was moving into a more high volume real estate practice, he did not take any steps to upgrade his conveyancing practice knowledge. He did not take any LESA courses, he did not sign up for or attend CBA sections and when asked by members of the Hearing Committee why he did not upgrade his knowledge, he gave the curious response that he "could not afford to".
21. No accurate records were tendered at the hearing as to the number of transactions that were related to Mr. M; the Member testified that perhaps there were 30. After a (presumably) complete review by the Law Society investigators, five of these transactions were dealt with in detail by the Hearing Committee.
22. The five M transactions are dealt with in specific detail in the agreed facts and the Exhibits and there are slight differences. However, typically, the transactions involved:

- a. The properties were purchased by Mr. M or his numbered company and then sold a very short time later to other parties at a very steep (tens of thousands of dollars) increase in value.
- b. The timing between the initial purchase by Mr. M and the subsequent sale to a secondary purchaser happened so quickly that Mr. M's company was not registered on title. Mr. M had the transfer documents signed in blank and had the Member transfer the property directly to the subsequent purchaser. This is known in the industry as a "skip transfer".
- c. There was no apparent reason for the increased value of the properties.
- d. Mr. Heinz handled all sides of the transaction for the vendor, the purchaser and the mortgage lender financing the transaction including the secondary, skip purchase.
- e. The mortgage financing for the secondary purchasers was always a "high ratio" mortgage which typically required that the purchaser reside in the property and because it was a high ratio mortgage, involved the personal liability of the borrower in the event of a mortgage default (deficiency judgment).
- f. Typical instructions from the mortgage lenders required the solicitor retained by them for the placing of the mortgage to inform them of matters such as:
  - whether or not the property had been transferred recently;
  - whether or not the matter had been transferred recently using the solicitor's offices;
  - whether or not there had been a recent unexplained increase in value;
  - whether or not there were any unusual payments made from the mortgage proceeds.
- g. Even though the transactions involved multiple parties (122, purchaser, mortgage lender) Mr. Heinz's trust account records only included a trust record for 122.
- h. Despite the multiple representation, no conflict letters were sent out.
- i. Although the secondary purchase agreements noted deposits paid, typically the deposits were alleged to have been paid directly to Mr. M or his company; deposits did not pass through the solicitor's office.
- j. Unusual payments were made. Typically the purchaser would receive a round number payment (e.g. \$4,000) upon instructions from Mr. M or his company. It would be unusual that a purchaser would receive "cash back" in a conveyancing situation.

- k. Individual purchasers would attend at Mr. Heinz's office to execute documents, but generally speaking, arrangements were made by M. Heinz was accepting instructions on the conduct of the transaction directly from Mr. M.
  - l. Upon report out of the transaction to the mortgage lenders, after the conveyancing, Mr. Heinz reported none of the unusual circumstances to his client, notwithstanding the specific instructions.
  - m. Heinz's reporting letter and account letter was to M (or 122) and 122 paid the account.
23. Specifically regarding the complaint of Mr. T, Mr. T was involved in the purchase of two separate properties involving introductions through Mr. M. The second of these transactions, xx B. W., NW, Calgary, Alberta, is described specifically in paragraphs 75 to 94 of Exhibit "15".
24. Mr. T was a subsequent (skip) purchaser of a condominium property by way of the first purchase of Mr. M's corporation 122. As usual, the property had gone up substantially in value from \$365,000 to \$424,000 (a \$59,000 increase) in the one day that it was owned by 122, deposits were alleged to have been paid (but did not go through Heinz's office) and a high ratio mortgage was placed on the property to fund Mr. T's purchase.
25. When Mr. T came to sign the document for the purchase and the placing of the mortgage at Mr. Heinz's office, he was informed that the R B (which presumably had discovered something about Mr. T's indebtedness during an interim period) had put an additional condition on the mortgage funding, that is the payment down of a line of credit that Mr. T had at the T Bank.
26. Mr. T balked at this (presumably this would interfere with the cash to close although this was not testified to) but Mr. Heinz prevailed upon Mr. T to sign the mortgage and transfer documents in order that Mr. Heinz could keep the documents on his file and utilize them in a subsequent transfer should the line of credit be otherwise paid out or instructions otherwise change. Mr. T evidently did agree with this as he signed the documents and left them in Mr. Heinz's office.
27. Subsequent to this, an R mortgage broker provided to Mr. Heinz, on R letterhead, an instruction that the T/R mortgage could be advanced, the condition concerning payout of the T line of credit from the R mortgage proceeds was modified and that the R was satisfied that the line of credit would be paid down from sale of another T property.
28. Without receiving specific follow up or confirmatory instructions directly from Mr. T, Mr. Heinz completed the transaction including the transfer into the name of Mr. T (and another joint purchaser), advancing the mortgage proceeds and registering the R mortgage.
29. Those final conveyancing steps without, follow up instructions from Mr. T constitutes the basis of Mr. T's complaint, the admission of facts and guilt by the member with respect to Mr. T.

## **The Member's Testimony, Cross-Examination, and "Improper Purpose" (citation 2)**

30. The Member testified that notwithstanding what was alleged to be the non-standard nature of the M transactions in question, he had no reason at the time to question the bona fides of the transactions.
31. Regarding the lack of deposits passing through his office and the unusual cash payments (and the other factors alleged to be unusual about the purchases), Heinz took the attitude that his clients were consenting adults and could make such agreements as they wish, without need for him to investigate the underlying circumstances or to advise them on these transactions.
32. The Member had no explanation for failing to follow the mortgage lender's advice concerning unusual transactions. He stated that, in a similar (unrelated) transaction, he called a bank officer with notice of such things and was told to go ahead and fund in any event. However this was one transaction, unrelated to the M transactions, and was after the M transactions which are being considered by this Hearing Committee.
33. When questioned by the Hearing Committee concerning his taking instructions primarily from M and only keeping financial records under the M's numbered company 122, the member admitted that it was really M's interests which he was looking after as opposed to his other clients.
34. Heinz remained resolute in the face of cross-examination by Law Society counsel that he did not see the possibility of an "improper purpose" arising out of these circumstances.
35. Heinz testified that the time frame of these transactions and his growing understanding of the events were relevant. These transactions occurred in 2006 and 2007. The member was subject to a Law Society audit in 2007 and in 2008; the Law Society requested a number of the M files in 2009.
36. When the M files were requested by the Law Society, this caused the Member to question why those files in particular were of interest, as at that time he had received no client complaint. Heinz called the Law Society practice advisor and was directed to a website maintained by the Law Society of Upper Canada concerning mortgage fraud and the "red flags" of mortgage fraud which practitioners ought to be aware of. Heinz testified that it was not until then that he recognized some of these factors in the M transactions.
37. At that time, Mr. M was still in Calgary, Mr. Heinz downloaded the material from the website, showed it to Mr. M and received explanations of innocence from M.
38. Around this time, the Member also became aware of the complaint of Mr. T and understood that it involved lack of specific consent for the completion of the transaction but still did not believe that he had been involved in mortgage fraud transactions.

39. In any event, the Member consequently ceased doing “skip transfer” transactions and transactions generally with Mr. M.
40. The Member generally cooperated with the Law Society’s investigation, including the production of documents and attending at two long interviews with Law Society investigators. It was during one of the Law Society investigation interviews in 2010 that the first official or semi-official notice was given to Mr. Heinz that there was a mortgage fraud concern.

### **The Issue (Improper Purpose)**

41. Mr. Heinz admitted to the complaints concerning not serving Mr. T and his mortgage lender clients and the Hearing Committee accepted the facts and the admission of guilt. The bulk of the testimony and the argument dealt with citation #2 which is repeated for clarity below:

“It is alleged that you assisted your client in an improper purpose, and that such conduct is deserving of sanction.”

42. In closing argument, counsel for the Law Society suggested that the panel had three options regarding Mr. Heinz’s involvement with Mr. M and the five transactions under consideration:
  - a. That Mr. Heinz was blind to the improper purpose of Mr. M (i.e. was an innocent);
  - b. That he knew completely of Mr. M’s improper purpose and was willingly assisting;
  - c. He was willfully blind to the improper purpose.
43. In submissions the Law Society pointed to “red flags” which not only were present in individual transactions but were a “pattern” within five of the M transactions including:
  - Purchased by Mr. M or his company
  - Flipped the same day or shortly thereafter for considerably more money
  - Second mortgage was more than the first purchase price
  - Skip transfer
  - Unusual payments
44. Counsel for the Law Society says that Mr. Heinz was practicing at a relatively high level of competence and must have known he was assisting his client in an improper purpose.
45. Counsel for Mr. Heinz, on the other hand, pointed out that the Member had no experience with transactions such as this and no reason to suspect an improper purpose. Counsel submitted this assertion was bolstered by the fact that he had been completely cooperative and candid with the Law Society in the production of material and



explanations tendered at interviews. As well, he had done his own investigation (Law Society of Alberta practice advisor, Law Society of Upper Canada website). He also voluntarily withdrew from dealing with Mr. M long before a specific allegation of assisting with an improper purpose.

46. The Hearing Committee asked for assistance from both counsel concerning the level of intentionality that was necessary to prove “assist” within the charge. In other words, is it necessary that assistance of an improper purpose be knowingly given, or willfully blindly given, or would it be enough that the behavior simply has had the effect of assisting the improper purpose?
47. In answering this question, counsel for the Law Society directed the panel’s attention to:
- a. Section 49 of the *Legal Profession Act* which requires simply that conduct be incompatible with the best interests of the public or the members of the society or tends to harm the standing of the legal profession generally;
  - b. Chapter 2 of the (previous) Code of Conduct concerning competence and suggested to the panel that an isolated incident or inadvertent error would not be indicative of neglect of professional duty but the gross neglect or pattern of neglect may prompt the Law Society’s intervention.

Counsel for the Law Society suggested that the panel could find that the Member reasonably ought to have known about Mr. M’s improper purpose, especially from the pattern of dealings.

48. The Hearing committee notes here that it seems to have been assumed for the purposes of this hearing that the “improper purpose” concerned is a mortgage fraud or similar transaction orchestrated by Mr. M. While this may be, the Committee points out that:
- a. “Fraud” has not been proven and this Committee makes no finding in that regard, especially as it may relate to matters outside this disciplinary process,
  - b. M was not a party to this process nor a witness and while the Committee may have its suspicions and findings for the purposes of its statutory responsibilities, with respect to the Member, none of these findings are binding with regards M, T or in respect to other processes which may engage other jurisdictions, parties or a different evidentiary matrix.

## **Decision**

49. The Hearing Committee is sympathetic to the Law Society’s argument asserting that the Member “reasonably ought to have known”. Can a member credibly state that he has no knowledge of an improper purpose when he has taken every possible step to shield himself from such knowledge?
- a. He has specifically refrained from educating himself on the subject matter;

- b. He turns away from distinctly odd features of a transaction;
  - c. He fails to send out required explanatory documents including conflict letters;
  - d. He ignores the instructions of his mortgage lender clients to notify them of exactly these same odd features and denies those lenders what they had asked for in their instructions, ie, knowledge of relevant facts to give them a decision making point to proceed or withdraw from a transaction .
50. It is apparent to anyone outside of the situation that Heinz was solely looking after the interests of one client (M) to the exclusion of the interests of the others.
51. However, the Hearing Committee heard very little if any evidence at all about “improper purpose”, as was specifically charged in Count 2. It is assumed for the sake of argument that the improper purpose was Mr. M’s mortgage fraud (Mr. Heinz having already admitted guilt to the other general improper purpose of failing to follow the lender’s reporting instructions and failure to get back-up instructions from Mr. T).
52. However, even making that assumption, the Hearing Committee did not hear evidence concerning:
- a. The general state of mortgage fraud knowledge at the time in question such as bulletins on the Law Society website, continuing education seminars, journal articles or other evidence which would give the panel an indication of a standard of care against which to assess potential knowledge or wilful blindness in 2006 and 2007.
  - b. Whether the mortgage lenders would or would not have advanced in the situations under investigation. Counsel for Mr. Heinz argued (or noted) that none of the mortgage lenders have complained. The Hearing Panel notes that actual loss of money would not be necessary to support a finding of responsibility; it may have been enough that a mortgage lender would have testified that they would not have advanced had they known, but no such evidence was produced.
  - c. The knowledge base of the clients (other than M or the banks) who were under Heinz’s care in these transactions. None of those whom we would now call “straw purchasers” such as Mr. T, were called as witnesses to speak to their understanding of the transactions or their acknowledgement of the financial jeopardy that they had accepted and been put under.
53. Given all of the circumstances including uncertainty as to the “improper purpose”, the absence of evidence of the appropriate state of practice in 2006 and 2007 against which to assess “wilful blindness” or “ought to have known” and the member’s testimony, the Hearing Committee has given the benefit of the doubt to the Member concerning his explanation that he had no knowledge of or suspicion of an improper purpose and he is acquitted on count #2.

## Decision on Sanction

54. Counsel for the Law Society submitted, with consent of the counsel for Mr. Heinz, a letter from the Director of Lawyer Conduct that the Member has no discipline record with the Law Society of Alberta (Exhibit 16) and Exhibit 17, estimated Statement of Costs in the amount of \$3,197.25.
55. Counsel for the Law Society then informed the Hearing Committee that Mr. T who had been present throughout had just given her an Exhibit which Mr. T wanted marked as an Exhibit. The document was a Statement of Claim between the R B of C as Plaintiff and A S and P T as Defendants, a mortgage foreclosure action filed April 4<sup>th</sup>, 2011. The document appears to concern the property referred to as Property 5 in the Agreed Statement of Facts.
56. The Hearing Committee heard argument from counsel for the Law Society and counsel for Heinz (who objected) concerning the admission of the document and the Hearing Committee decided to enter the Exhibit as an Exhibit (Exhibit 18) in the sanctioning phase only and has found it illustrative of the risk that it has already decided that the member exposed his client to as a result of Count 1.
57. The Hearing Committee found there to be matters to the credit of Mr. Heinz:
  - a. His uncontradicted testimony was that his early level of knowledge did not lead him to suspect an improper purpose (and none has actually been proven) but when his self-education on the issues improved (which included voluntary contact with the Law Society of Alberta's practice advisor and review of the Law Society of Upper Canada website concerning the subject of mortgage fraud), he revised his practice including cessation of dealing with M.
  - b. He stopped the skip transfer transactions generally.
  - c. He has no record of discipline.
  - d. He has admitted responsibility for the circumstances both in cooperation with the Law Society investigators before the laying of charges and in his admission to responsibility in this investigation and hearing. As such there do not appear to be governance issues.
  - e. The Hearing Committee had the opportunity of observing his demeanor and his answers in testimony and found him to be candid, credible and genuinely remorseful concerning what had happened.
  - f. The Member testified that he has already been to Practice Review; as such the Committee is satisfied that competence issues will be dealt with.
  - g. The Member has testified that he has taken on a "career coach" in determining how to proceed in the practice of law.

- h. Counsel for the Law Society requested a “modest suspension” (90 days or less) which the Hearing Committee takes as tacit agreement that the Member can return to public practice without a danger to the public.
58. Under all of the circumstances, the panel finds that, as the Member will be returning to practice, a suspension or a fine would perform no useful purpose in the protection of the public. The Hearing Committee would rather that the Member invest his time and money in continuing education (especially ethical education) and therefore orders as follows:
- a. There will be no suspension;
  - b. The Member will be reprimanded;
  - c. The Member will be referred to practice review (it is understood that he already is engaged with Practice Review) and he is ordered to take an additional four days of legal education within the next year as approved by his Practice Review advisor. It is highly recommended that at least one of these days be with respect to his ethical obligations.
  - d. There will be no fine.
  - e. The Member will pay the full costs of the hearing as per Exhibit 17 in the amount of \$3,197.25 on or before March 31<sup>st</sup>, 2013.
59. A reprimand was delivered by the Chair at the conclusion of the hearing.

### **Concluding Matters**

- 60. In the event of any request for public access to the evidence heard in these proceedings, the Exhibits and the transcript of proceedings shall be redacted to protect the identity of the Member’s former clients, and any information subject to proper claims of privilege.
- 61. No referral to the Attorney general is directed.
- 62. No Notice to the Profession is directed.

### **Reprimand**

- 63. This Hearing Committee has accepted your guilty plea with regards to failing to serve your mortgage lender clients and Mr. T. Notwithstanding the fact that the Committee has given you the benefit of the doubt regarding the “improper purpose” portion of citation #2, the Committee is appalled by the level of practice management testified to today with regard to your practice in 2006 and 2007.
- 64. A member of the Law Society of Alberta is a legal professional, not a legal form filler, and you owe your clients a fiduciary duty of care which requires the exercise of both independent and continually educated judgment.

65. Your professional obligations for continuing competence, legal independence and avoidance of conflict are well set out in the Code of Professional Conduct and you have shirked these duties for the privilege of being a “mouthpiece” for a fast-talking real estate speculator with (potential) improper purpose.
66. You have exposed your individual personal clients to mortgage deficiency judgments and you have exposed your lender clients to security deficiencies. The fact that there was no testimony about the specifics of any deficiencies does not blind the Hearing Committee to the fact that such jeopardy exists and that you have endangered the public by failure in your duty to analyze and advise, or even follow specific instructions.
67. Your explanation given at the hearing that you thought that your clients were free to contract as they wished is an abandonment of your professional responsibilities. No other professional, a medical professional, or an engineer would be excused by their professional organization by saying that they took their instructions from their patient to perform an unwarranted and dangerous surgical procedure or knowingly build a building structure demonstrably unsafe to the client or other members of the public.
68. If you are unable to say “no” to clients when they give you dangerous (or even illegal instructions) or you willfully refuse to look behind the highly superficial facts given to you by your clients you will have not given them the independent professional advice that they deserve, expect, and that they are paying for.
69. The Hearing Committee commends you for your candor and cooperation in this investigation and the steps that you have taken to renew your practice and your acquaintance with your professional obligations and wishes you success in these endeavours.

Dated this 25<sup>th</sup> day of September, 2012.

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Fred R. Fenwick, Q.C., Chair

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Larry Ackerl, Q.C.

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Miriam Carey, PhD

EXHIBIT "A"

In the Matter of the *Legal Profession Act*  
And In the Matter of A Hearing Regarding  
The Conduct of **Stephen G. Heinz**

A Member of the Law Society of Alberta  
Law Society Hearing file: HE20110056

**AGREED STATEMENT OF FACTS**

And

**ADMISSION OF CONDUCT DESERVING OF SANCTION  
ON CITATIONS #1 and #3**

1. Stephen G. Heinz is a member of the Law Society of Alberta, having been admitted on May 11, 1990. He was a member at all times relevant to this proceeding.
2. Stephen Heinz faces 3 citations, as follows:

***P T Complaint*** (C020100496)

1. It is alleged that you failed to serve the Complainant, and that such conduct is conduct deserving of sanction.

***Law Society Complaint*** (C020080483)

2. It is alleged that you assisted your client in an improper purpose, and that such conduct is conduct deserving of sanction.
3. It is alleged that you failed to serve your lender clients, and that such conduct is conduct deserving of sanction.
3. As the facts relating to Citations 2 and 3 were earlier in time this Statement of Facts will deal with those two citations first. Properties # 4 and 5 relate to the T complaint which is Citation #1.
4. In 2008 a Law Society audit identified evidence of unusual real estate transactions in the files reviewed by the auditors. In particular, files in which Mr. Heinz represented 122 Alberta Ltd. (referred to as 122) were identified as note-worthy, and as having indicia of potential mortgage fraud. Thirty seven client files were identified. Five files were picked for further detailed investigation.

5. The sole shareholder and director of 122 was C M. That company also operated under the trade name K Investments.
6. A chart of the 5 transactions is attached as *Schedule A* to this Agreed Statement of Facts.

***Property 1: #xxx, xxxx-xx Ave. SW Calgary***

7. This was 1 of 8 condos purchased by 122 from M Development Inc. on July 17, 2007. The purchase price was \$310,000. The purchase contract is Tab 2.1 of the Investigation Report, and lists the vendor as M Developments and the purchaser as 122 or nominee.
8. 122 sold the property to K J on August 27, 2007 for \$379,000 (an increase of \$69,000). This was her second purchase from 122, the first being property #3.
9. The Land Titles registration was completed by way a skip transfer so the Land Titles records do not show the property as having been registered in the name of 122 at all. (Tab 2 of the Investigation Report)
10. The Purchase Agreement between 122 and J indicated that the price was to be paid by way of deposits of \$18,995, and \$360,905 by new financing. The deposits were not provided to Mr. Heinz. Mr. Heinz told the investigators that he understood from Mr. M that he (M) had received the deposits directly.
11. There were no realtors involved in either sale, so no deposits would have been held by any realtor.
12. To pay the balance of the purchase price, Ms. J applied for and obtained a mortgage in the amount of \$372,995 from The T Bank.
13. Mr. Heinz acted for 122, K J and the T Bank on the purchase and sale, the skip transfer and the mortgage. As counsel for T he prepared the mortgage documents for registration at Land Titles, in accordance with T standard mortgage instructions.
14. There was no conflict letter on file, and no suggestion one was prepared or sent.
15. Copies of the land titles searches, contracts and mortgage documents are at Tab 2 of the Investigation Report.
16. Mr. Heinz received the Transfer of Land from the solicitors for M Developments with the name of the purchaser in blank; the purchase price was stated as \$310,000. Mr. Heinz, or his staff, filled in K J's name as the purchaser. Mr. Heinz commissioned the Affidavit of Transferee of K J which is required by Land Titles. That Affidavit said that the Transferor named in the document (M Developments) was the person from whom K J was acquiring the lands, and stated that the value of the land was \$379,900. (IR Tab 2.2)
17. Ms. J was actually purchasing from 122. The purchase agreement between J and 122 is at IR Tab 2.5.
18. Mr. Heinz provided the normal solicitor's reports to the T Bank, and received mortgage proceeds from them of \$360,905, representing the mortgage amount less mortgage life insurance of \$12,090 which was deducted by T.

19. The mortgage instructions which Mr. Heinz received from the T specified that as their solicitor, he was required to advise the Bank of any unusual circumstances that might indicate a potential fraud, and specifically of:
  - .... recent sales (e.g. within 3 to 6 months) of the property at substantially lower values, recently discharged mortgage(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.
20. Mr. Heinz did not advise the bank of any unusual circumstances, or of the sale by M Developments to 122 for \$310,000 in July. He did not advise the T Bank of the nature of the skip transfer. Specifically, he did not advise T of the increase in price from the sale by M Developments in July to the purchase by J in August.
21. Mr. Heinz had previously acted for K J in October, 2006 (see property #3). She was referred to him by Mr. M, who coordinated the transaction.
22. The mortgage was a high ratio mortgage, which required CMHC insurance. As a result, if there is a default on the mortgage at any future date, Ms. J may be personally liable in the event of a deficiency.
23. The transcript of the interview of Ms. J by the Law Society Investigators is at Tab 2.8. Mr. Heinz cannot confirm whether the information she provided as to her arrangements with Mr. M is true, but for the purposes of summarizing the available information for the Hearing Committee, Mr. Heinz agrees that Ms. J gave the following information:
  - a. She stated that she did not make any down payment on the purchase of the condo.
  - b. She stated that she understood that Mr. M was fixing up the property so that it could be sold at a higher value. It is somewhat unclear, but it appears that the mortgage payment of \$1,908 comes out of her bank account monthly, but she is reimbursed every month by Mr. M. She understood the property was rented.
  - c. Ms. J says she was paid \$5,000 by Mr. M for the use of her name – (Transcript page 18).
24. Mr. Heinz's trust records do not show any payment to Ms. J on this file, although they do show a payment relating to Property #3 below.

***Property 2: #xxx, xxxx-xx Ave. SW***

25. This was another of the 8 condos purchased by 122 from M Development Inc. on July 17, 2007. The purchase price was \$315,000. The purchase documents are at Tab 3 of the Investigation Report.



26. 122 sold the condo to C M and C B on Aug. 7, 2007 for \$359,900 (an increase of \$44,900 in about 3 weeks).
27. The Land Titles registration was completed by way of a skip transfer, so the Land Titles records do not show the property as having been registered in the name of 122 at all. (Tab 3 of the Investigation Report).
28. The purchase contract between 122 and M/B indicated that the price was to be paid by way of a deposit of \$7,995, \$10,000 cash payable on closing, and new financing of \$341,905. (I.R. Tab 3.2)
29. The sellers are listed as 122 Alberta Ltd, M Developments. It was signed on behalf of the sellers only by 122 Alberta Ltd.
30. Mr. M told the investigators that he did not pay any deposit. Ms. B said that she did not pay a deposit, but was not sure whether Mr. M had. Mr. Heinz cannot confirm whether this information given by Mr. M and Ms. B to the LSA investigators is correct. The deposit was not paid to Mr. Heinz's trust account. Neither Mr. M nor Ms. B told Mr. Heinz that they had not paid a deposit. Mr. M confirmed to Mr. Heinz receipt of a deposit.
31. M and B obtained mortgage financing in the amount of \$353,358 through F Financial.
32. Mr. Heinz acted for 122, C B and C M, and F Financial on the sale and purchase, the skip transfer and the new mortgage. As counsel for F he prepared the mortgage documents for registration at Land Titles, in accordance with F standard mortgage instructions.
33. There was no conflict letter was on file, and there is no suggestion that one was prepared or sent.
34. Mr. Heinz received the Transfer of Land from the solicitors for M Developments with the name of the purchaser in blank; the purchase price was stated \$315,000. Mr. Heinz or his staff filled in the names of C M and C B as the purchasers.
35. Mr. Heinz commissioned the Affidavit of Value of C M (IR Tab 3.3) which stated that the Transferor named in the Transfer was the person from whom Mr. M was acquiring the property. The value of the land in the Affidavit of Value was listed as \$359,900. (I.R. Tab 3.3)
36. The mortgage instructions from F specified that the appointment of Mr. Heinz as the solicitor for F was to be:

on the understanding that you are independent of all other interests save that of the borrower. If this understanding is incorrect, we ask you to refrain from proceeding until you have discussed your interest with F. (I.R. Tab 3.11)

37. Mr. Heinz did not advise F that he was acting for the vendor (i.e.122), or of the sale by M Developments to 122 in July, or the skip transfer or of the increase in price between July and August.

38. The Alberta Solicitor's Request for Funds form (I.R. Tab 3.8) was signed by Mr. Heinz. It included a paragraph which stated:

If the Mortgagor is purchasing the mortgaged property coincident with this mortgage loan, we have confirmed that the purchase price set out in the agreement of purchase and sale provided to us by the Borrower and in the Statement of Adjustments, is the purchase price set forth in the Instructions to Solicitor form provided to us by you.

39. The purchase price listed in the Instructions to Solicitor (I.R. Tab 3.11) list the purchase price as \$359,900.
40. The mortgage was a high ratio mortgage meaning that Mr. M and Ms. B may be personally liable for any shortfall in the event of a deficiency.
41. The Statement of Adjustments for the M Developments sale to 122, and for the 122 sale to B/M are at Tabs 3.3 and 3.4 of the Investigation Report. They both show a closing date of Sept. 15, 2007, and show purchase prices of \$315,000 and \$359,900 respectively.
42. M and B were introduced to Mr. Heinz by Mr. M.
43. There is no evidence that either M and B were paid any fee by either Mr. Heinz or Mr. M.

**Property 3 #xxx, xxxx – xx Ave. SW**

44. The condo located at #xxx, xxxx – xx Ave was purchased by 122 from C Developments on June 24, 2006. The purchase price was \$188,888. The purchase agreement is IR Tab 4.1
45. The purchase contract, all land titles documents, and the mortgage documents are located at Tab 4 of the Investigation Report.
46. 122 sold the condo for \$234,900 on Oct. 26, 2006 to K J. This was an increase of \$46,000 in 4 months. From the purchase agreement, it appears that the unit was still under construction – see IR Tab 4.2
47. The purchase price was to be paid by way of deposits of \$11,745, and a new mortgage of \$223,155. The estimated possession date was Dec. 7, 2006. The title was not transferred into Ms. J's name until Feb. 1, 2007.
48. The Purchase Agreement between 122 and K J (I.R. Tab 4.2) included a Clause 22 as follows:

All Mortgage payments, Utility bill, Condominium fees, property taxes, lawyer fees and any other miscellaneous expenses that maybe incurred while this property is registered under the said **BUYER** shall be paid in full by **C M**. It is further agreed that in the case that this property is sold to a third party by way of assumption, and there is a default on the

payments within **12 months** from the purchase date. Then this payment shall be made by **C M.** (sic)

49. The Land Titles registration was completed was a skip transfer, meaning that the title was never registered in the name of 122 at all.
50. To pay the purchase price, J obtained mortgage financing for a mortgage from R in the amount of \$230,184.
51. Mr. Heinz acted for 122, K J and R on the sale and purchase, the skip transfer and the new mortgage. As counsel for R he prepared the mortgage documents for registration at Land Titles, in accordance with R standard mortgage instructions.
52. There is no conflict letter on file, and no suggestion one was prepared or sent.
53. Mr. Heinz received the Transfer of Land from the solicitors for C Developments with the name of the purchaser blank. The Statement of Adjustments from C 's lawyers (Allen & MacKay) is at I.R. Tab 4.4. The information from the realtors on that sale is at IR Tab 4.6.
54. Mr. Heinz or his staff filled in the name of K J as the purchaser on the Transfer of Land, and Mr. Heinz commissioned the Affidavit of Value of Ms. J, which listed the value of the land at \$234,900. The Affidavit also stated that the Transferor named in the transfer (C ) was the person from whom she had acquired the land. As noted, the Purchase Agreement between Ms. J and 122 on this land is at IR Tab 4.2.
55. The Statement of Adjustments on the C sale to 122 which was prepared by C's lawyer is at IR Tab 4.4. It shows cash to close of \$184,019. The Statement of Adjustments on the 122 sale to J prepared by Mr. Heinz or his office is at IR Tab 4.5. It lists the vendor as 122 and the purchaser as K J and shows cash to close of \$223,115.
56. The mortgage instructions from R to Mr. Heinz included a requirement that the lawyer acting for them was responsible for:

You are to take all steps that would be taken by a careful and prudent solicitor on behalf of a client. This includes, without limitation, advising the Mortgagee of any material fact known to you which might affect its decision to make the mortgage loan, ..... advising of any significant escalation in value of the property over a short period of time (in those jurisdictions where the title search discloses a declared property value) 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 ..... (I.R. Tab 4.12, page 2)

57. Mr. Heinz did not advise the Bank of any unusual circumstances, or of the sale by C to 122 in June for \$188,888. He did not advise R of the nature of the skip transfer, or of the increase in price between June and October.

58. The mortgage was a high ratio mortgage meaning that a CMHC insurance fee was deducted before distribution of the mortgage proceeds, and that the borrower, Ms. J, may be personally liable in the event of a deficiency. (Tab 4.7 page 2)
59. From the mortgage proceeds received on this file, Mr. Heinz's trust records confirm that he paid out the following amounts (IR Tab 4.10):
- |    |     |        |
|----|-----|--------|
| a. | W J | 2,500  |
| b. | R D | 5,000  |
| c. | W H | 17,225 |
| d. | K J | 5,000  |
| e. | F N | 2,000  |
| f. | P T | 4,000. |
60. All of these individuals were purchasers of properties from M on other files. Mr. Heinz stated that he paid all of the funds out at the direction of M, as he was entitled to them as the seller to J.
61. J sold this condo to M on July 26, 2007 for \$243,000. M transferred the property to a numbered company in 2009. Mr. Heinz did not act for either party in this transaction.

***Property 4 # xxx, xxxx – xx Ave. SW***

62. This condo was purchased by 122 and or nominee from C Developments on June 24, 2006. The purchase price was \$198,888. The Purchase Agreement is at IR Tab 5.1.
63. The Purchase Contract, all Land Titles documents and the mortgage documents are located at Tab 5 of the Investigation Report.
64. 122 sold the property to P T on September 24, 2006 for \$219,900 (an increase of \$21,012). That Purchase Agreement is at IR Tab 5.2.
65. The Land Titles registration was completed by way of a skip transfer, so that Land Titles records do not show the property as having been registered in the name of 122 at all. (IR, Tab 5 page 3)
66. The Purchase Agreement between 122 and Mr. T provided that the purchase price was to be paid by way of \$22,000 in deposits, \$32,975 in additional cash due on closing and new mortgage financing in the amount of \$164,925. Mr. Heinz's trust records indicate that he received cash in the amount of \$22,590.41, but he did not receive the balance of the cash to close.
67. Mr. Heinz received the Transfer of Land from the solicitors for C with space for the name of the purchaser blank. Mr. Heinz or his staff filled in the name of P T, and Mr. Heinz commissioned the Affidavit of Value sworn by Mr. T. That stated that Mr. T was acquiring the property from the transferor named in the Transfer (C).
68. P T obtained mortgage financing through the R (R).

69. Mr. Heinz acted for 122, P T and R on the sale and purchase, the skip transfer and the new mortgage.
70. As counsel for R he prepared the mortgage documents for registration at Land Titles, in accordance with R standard mortgage instructions.
71. The mortgage instructions issued by R included the reporting requirement set out in paragraph **56** above.
72. Mr. Heinz did not advise R of any unusual circumstances, or of the sale by C to 122 in June, or the escalation in value, or that there was a skip transfer.
73. Mr. Heinz cannot confirm the accuracy of the information given by Mr. T to the Law Society. Mr. T denied having provided any cash at all to Mr. Heinz at any time.
74. As noted in paragraph **59** above, P T was paid \$4,000 from the mortgage proceeds on Property #3 – a transaction in which he had no involvement. Mr. Heinz advised the investigators that all payments out of mortgage proceeds were made at the direction of Mr. M.

***Property 5 xx B W NW***

75. This house was purchased by K Investments from C and B W on January 24, 2008 for \$365,000. On the same day, K sold the property to P T and A S for \$424,000. K was a trade name used by 122.
76. The difference between the two prices was \$59,000 (16% of the value).
77. The Land Titles registration was completed by way of a skip transfer, so that Land Titles records do not show the property as having been registered in the name of 122 at all (IR Tab 6, page 3).
78. Copies of all relevant documents are at IR Tab 6.
79. The Purchase Agreement between the W and K is at IR Tab 6.1
80. The Purchase Agreement between K and T and S is at IR Tab 6.2. The purchase price was to be paid by way of deposits of \$12,000, cash on closing of \$9,200 and a new mortgage of \$402,800. The deposits and cash to close were not provided to Mr. Heinz.
81. Mr. Heinz acted on behalf of K Investments, 122, A S, P T and R on the sale and purchase, and the skip transfer and the new mortgage.
82. As solicitor for R Mr. Heinz prepared the mortgage documents for registration at Land Titles, in accordance with standard R mortgage instructions.
83. No conflict letter was on file, and no suggestion one was prepared or sent.
84. The circumstances of this purchase are somewhat unclear, but it appears that A S was not able to qualify for a mortgage on his own, so P T was brought into the transaction by Mr. M.
85. Mr. T has stated that he had no knowledge that the transaction had been concluded.
86. He has stated that during his meeting with Mr. Heinz to sign the documents, Mr. Heinz advised him (Mr. T ) that approval of the R mortgage was dependent on Mr. T paying

out a T line of credit. Mr. T states that he advised Mr. Heinz that he was not prepared to do that and that he was therefore not prepared to proceed with the transaction. Mr. T stated further that Mr. Heinz suggested that he sign the balance of the documents in case he changed his mind, and for some reason which is not entirely clear, Mr. T accepted that suggestion.

87. Mr. Heinz generally agrees with that. His statement to the investigator was that after that meeting, he was advised by someone that the transaction was back on, and he therefore proceeded to use the documents. He cannot recall who gave him the information that the transaction was to proceed. He did not confirm the instructions with Mr. T directly. (see IR Tab 7.2 - transcript of interview of July 22, 2010, page 285 and following)
88. The Transfer of Land was prepared by the solicitor for the W, with the purchasers name left blank. The stated consideration was \$365,000. The Affidavit of Value which was commissioned by Mr. Heinz stated that the value of the land was \$365,000.
89. A mortgage in the amount of \$416,293 was registered in favor of R . The mortgage was a high ratio mortgage requiring CMHC insurance, meaning that P T and A S are personally liable in the event of a deficiency on that mortgage.
90. The mortgage instructions received from R contained the usual instructions to solicitors.
91. Mr. Heinz did not advise the Bank of any unusual circumstances, or of the sale by the W to K. He did not advise R of the skip transfer or the fact that the home had been sold by the W on the same date that it was apparently purchased by S and T for less than the amount of the R mortgage.
92. The client trust ledger which is located at Tab 6.5 confirms that mortgage proceeds in the amount of \$402,800 were received in April, 2008.
93. From the mortgage proceeds, \$355,068 was paid to the W's solicitors. \$45,340 was paid to 122, and the balance of the funds of \$1,441.24 was paid to Stephen Heinz for legal fees.
94. The documents indicate that the land was transferred to a J P K on June 21, 2007.

### *Information from Stephen Heinz*

95. Mr. Heinz will testify at the Hearing on these citations.
96. His written responses to the Law Society are included in the Exhibit Binders as Exhibits 10 and 14, and the transcript of his interview with the Law Society investigators (Dan Dorsey and George Rocks) is located at Tab 7 of the Investigation Report.

All of these facts are agreed to and admitted.

I agree that the facts as set out above constitute conduct deserving of sanction with respect to **Citations #1 and #3.**

I confirm that the issue of whether or not I am guilty with respect to **Citation #2** will be argued by my counsel and counsel for the Law Society before the Hearing Committee after I have testified.

This Agreement and Admission is dated the 05 day of September, 2012.

“Stephen Heinz”

\_\_\_\_\_  
Witness

\_\_\_\_\_  
**Stephen G. Heinz**

SCHEDULE "A"

Property Overview				
Property #1 xxx, xxxx – xx Ave.	Property #2 xxx, xxxx – xx Ave.	Property #3 xxx, xxxx – xx Ave.	Property #4 xxx, xxxx – xx Ave.	Property #5 xx, B W
<div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">July 17, 2007</div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">M Developments</div> <p style="text-align: center;">↓</p> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">122 AB Ltd. \$310,000</div> <p style="text-align: center;">↓</p> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">August 27, 2007</div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">K. J. \$379,900</div>	<div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">July 17, 2007</div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">M Developments</div> <p style="text-align: center;">↓</p> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">122 AB Ltd. \$315,000</div> <p style="text-align: center;">↓</p> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">August 27, 2007</div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">C. M. C. B. \$359,900</div>	<div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">June 24, 2006</div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">C Developments</div> <p style="text-align: center;">↓</p> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">122 AB Ltd. \$188,888</div> <p style="text-align: center;">↓</p> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">October 24, 2006</div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">K. J. \$234,900</div>	<div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">June 24, 2006</div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">C Developments</div> <p style="text-align: center;">↓</p> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">122 AB Ltd. \$198,888</div> <p style="text-align: center;">↓</p> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">September 24, 2006</div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">P. T. \$219,900</div>	<div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">January 24, 2008</div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">C/B W</div> <p style="text-align: center;">↓</p> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">K Investments \$365,000</div> <p style="text-align: center;">↓</p> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">January 24, 2008</div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">P. T. A. S. \$424,000</div>