IN THE MATTER OF THE *LEGAL PROFESSION ACT*

AND IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF

MATTHEW R. LAURICH

A MEMBER OF THE LAW SOCIETY OF ALBERTA

HEARING COMMITTEE REPORT

SUMMARY

1. Matthew Laurich ("Laurich") was admitted to practice in Alberta in 1995. He has always practiced in Calgary, and while he has had a number of practice arrangements, he has largely practiced as a sole practitioner or in smaller firm settings.

2. Between late 1999 and early 2001, Laurich provided legal work in relation to three condominium "syndications". In general terms, these syndications each involved the sale of an entire condominium development to a single purchaser, with "investors" then recruited to purchase the individual condominiums at a higher unit price. The sales were completed as skip transfers, meaning title went directly from the developer to the investor, skipping over the intermediary party who had agreed to buy the entire development. The investor would obtain financing for the purchase at the higher price, and would then sell the condominium unit back to the intermediary in exchange for an option payment, pursuant to a "buy back option agreement".

3. In short, these were skip transfer mortgage fraud schemes, with straw purchasers (the "investors") engaged to make mortgage loan applications at inflated property values in exchange for a fee. In such schemes, the straw purchasers generally have no intention of living in, paying the mortgages for, or keeping title to the properties. Their credit ratings are used in exchange for a fee, and the intermediary profits from the inflated property values. The mortgage lender is at risk as the loans are made at inflated values.

4. Laurich provided the Hearing Committee with a very detailed Agreed Statement of Facts and Admission of Conduct Deserving of Sanction, with the consent and approval of the Law Society. Laurich specifically admitted that his conduct was deserving of sanction in that he:

   (a) Unwittingly engaged in conduct that enabled others to achieve an improper purpose thereby committing conduct deserving of sanction.

   (b) Failed to serve his clients thereby committing conduct deserving of sanction.

5. The Hearing Committee accepted Laurich's Agreed Statement of Facts and Admission of Conduct Deserving of Sanction pursuant to Section 60 of the *Legal Profession Act*. The Agreed Statement of Facts makes it clear that Laurich permitted himself to be used as a dupe, repeatedly and over several condominium projects, with many individual transactions, and in the face of many and quite obvious warning signs that something

was amiss. His actions put many millions of dollars in bank funds at risk. Laurich proceeded in circumstances where he did not understand the underlying transactions, and he failed, in spectacular fashion, to protect the interests of his clients.

6. The Hearing Committee heard detailed submissions on sanction from counsel for the Law Society and from Laurich. In the end result, the Hearing Committee directed that Laurich be suspended for 5 months commencing August 1, 2014, and that he pay costs of the investigation and hearing in the amount of $46,851.58 within 6 months of his reinstatement.

PROCEDURAL HISTORY

7. The Hearing Committee in this matter first convened on September 24, 2012 to deal with two preliminary Applications brought by Laurich. At that time, the Hearing Committee included the two present members; the third member was Brett Code, QC, Bencher. Laurich was represented by counsel on these Applications.

8. Mr. Code was initially a member of the Hearing Committee in this matter, and as noted above, he served in that capacity for the preliminary Applications. However, in the interim between those Applications and this Hearing, Mr. Code sat on another matter that turned out to be related, and he concluded that he should recuse himself from further involvement with this matter. As a result, Mr. Code's appointment was revoked, and the Hearing Committee continued with two members pursuant to Section 66 (3) of the *Legal Profession Act*. In addition, the Chair continued as a Hearing Committee member pursuant to Section 66 (1) of the *Legal Profession Act*, notwithstanding that his term as a Bencher, and as President of the Law Society, had ended.

9. The Hearing Committee was scheduled to reconvene June 10-14 and June 17-21, 2013 for a Hearing into the merits. As those dates approached, Counsel advised that there was a reasonable prospect that the length of the Hearing might be reduced, and so the Hearing was adjourned to pursue that opportunity.

10. Ultimately, the Hearing was rescheduled to proceed for one day on June 16, 2014, at which point Counsel provided the Hearing Committee with the Agreed Statement of Facts and Admission of Conduct Deserving of Sanction. Laurich represented himself at the Hearing.

11. At the opening of the Hearing, two citations were withdrawn by Counsel for the Law Society, with the approval of Laurich and the approval of the Hearing Committee. Those citations alleged deliberate and reckless conduct on the part of Laurich, and alleged that he acted in a conflict of interest. Counsel for the Law Society indicated that he would not be calling evidence on those two citations, and indeed no such evidence was received.

12. In addition, the first citation was amended to allege that Laurich's conduct in enabling others to achieve an improper purpose was conduct that he engaged in "unwittingly". Again, this amendment was proposed by Counsel for the Law Society, agreed to by Laurich, and approved by the Hearing Committee.

13. As noted earlier, the Hearing Committee accepted the Agreed Statement of Facts and Admission of Conduct Deserving of Sanction in this matter, pursuant to Section 60 of the *Legal Profession Act*. As such, Laurich's admission of guilt on each of the citations is

deemed for all purposes to be a finding by the Hearing Committee that the conduct of the Member is conduct deserving of sanction.

THE AGREED FACTS

14. The Agreed Statement of Facts and Admission of Conduct Deserving of Sanction in this matter runs to 145 paragraphs over 20 pages. In general terms, the facts provide information on Laurich's background, the complaint giving rise to the investigation, related litigation, the history of the investigations, and the three condominium syndications at issue. The Hearing Committee had careful regard to those facts, some of the most pertinent of which are summarized here.

A Development

15. A Development was the first of the three condominium "syndications" in which Laurich was involved. Laurich acted for two individual clients on this development, L.T., and D.M. who had been introduced to him by another lawyer P.W., who was a former colleague and a mentor to Laurich.

16. In November 1999, Laurich was contacted by D.M., and then by P.W., who explained that the A Development transactions would be a condominium syndication. P.W. explained to Laurich how the syndication would work, and specifically that the clients would sell an entire condominium project, unit by unit, to individual purchasers.

17. Laurich admits that he thinks he had a vague understanding that condominium syndications may involve a buy-back option, but Laurich does not recall making any inquiries to understand whose option it would be or how it would be exercised.

18. A Development's transactions were structured and proceeded on the basis that Laurich's clients located a condominium development whose owner was willing to sell the entire development to Laurich's clients "and/or nominee" for a fixed price. The clients then paid a fee to a mortgage broker to recruit investors to purchase multiple condominium units and to apply for residential mortgage financing to fund the purchases.

19. The investors purchased the units at inflated prices, in exchange for cash deposits and new mortgage financing. The cash deposits were covered by "Participatory Promissory Notes" from the investors in favour of the clients. None of the investors actually paid any of their own money to purchase these units.

20. Laurich acted for the clients in the purchase of the A Development, and in the sale of the individual A Development condominium units to the investors. The investors' mortgage proceeds became the cash to close. Title was transferred pursuant to "skip transfers", meaning that the title went directly from the original owner of the A Development to the individual investors.

21. Each investor executed "Buy-Back Option Agreements", pursuant to which they could sell their units back in exchange for an option payment, being $3,000.00. The investors signed Declarations of Trust indicating that they held the legal title to their condominium units as Trustee, and an Acknowledgement of Trust by which the investor acknowledged having executed the buy-back option, and indicating that they held Title as Trustee for the benefit of the vendor or for any third party to whom Title was ultimately transferred.

22. L.T. agreed to be responsible for all mortgage payments costs associated with the ownership of the condominium units and to cancel the Participatory Promissory Notes.

23. The Agreed Statement of Facts makes it clear that Laurich was not involved in identifying or recruiting the investors for the A Development. He did not know that the appraisals for the purchases of the A Development condominium units were inflated.

24. Laurich was never provided with copies of the Real Estate Purchase Contracts for the sale of the 126 A Development condo units to the investors. He was unaware of who was supposed to be holding the cash deposits for the sale of each unit. Laurich did not himself receive any cash deposits, and he never obtained written confirmation that the deposits had been paid. He did not know that the investors had paid no cash deposits.

25. Laurich indicates that he does not think he turned his mind to the apparent increase in the average value of the condominium units in the relevant time period.

26. On closing, Laurich accepted instructions to make numerous distributions of funds for the "settlement" of buy-back options. The Agreed Statement of Facts includes the following statement: "Looking back, Laurich acknowledges it is incumbent upon a lawyer to understand why he is sending large amounts of money to other parties, but Laurich does not remember making any inquiries to understand his instructions."

27. Laurich did not know that the individual investors did not intend to make mortgage payments, or whether the investors would retain ownership of their condominium units. He did not know that the individual investors had not made a down payment, or that the cash to close from the investors was by way of Promissory Notes. He did not consider or recognise that the investors were being paid a fee for their involvement.

28. Laurich's own legal fees for his services with respect to the A Development were modest.

B Development

29. B Development was the second of the three condominium syndications in which Laurich was involved. P.W. contacted Laurich about this development in approximately February of 2000. He asked Laurich to represent the investors and the lenders. He suggested that Laurich use the services of a specific paralegal, who could "take care of basically all the paperwork." In fact, the paralegal did prepare the purchase and mortgage financing paperwork for the B Development with very little involvement, supervision or assistance from Laurich.

30. B Development syndication proceeded in a similar way to the A Development, but Laurich had a different role, representing the investors and their lenders rather than the intermediary. The investors were recruited by P.W., and they each agreed to buy condominium units at a price significantly higher than the average value that P.W. had agreed to pay. Each investor agreed to buy the condominiums for cash deposits, "further deposits and other consideration" and through mortgage financing. The investors apparently paid cash deposits of $1,000.00 each, but the "further deposits and other consideration" were covered by "Participatory Promissory Notes".

31. Laurich received the mortgage advances from the lenders, and forwarded those funds together with the cash deposits to P.W., who was acting for the intermediary corporation that he had himself incorporated. P.W. used those proceeds to close the purchase of the B Development from the original developer, and titles to the individual condominium's "skipped" over the intermediary directly to the individual investors.

32. The investors executed buy-back option agreements similar to those on the A Development, with each receiving an option payment of $4,000.00. P.W.'s company agreed to be responsible for the mortgage payments, costs and expenses associated with the condominium units.

33. Laurich was not involved with identifying or recruiting investors for the B Development. He did obtain copies of the Real Estate Purchase Contracts for the units. Laurich received mortgage instructions from multiple lenders with respect to the B Development, and he represented those lenders together with the investors.

34. The investors each financed more than one unit through more than one lender. However, Laurich did not consider that his lender clients were unaware of this, and he did not consider how it might affect the lenders' decisions as to whether or not to advance funds.

35. Laurich did not see the appraisals for the B Development condo units, and he did not know that the appraisals were inflated.

36. Laurich swore the Affidavits of Transferee as agent for some of his investor clients. Those Affidavits were not true. The stated consideration matched the purchases prices in the individual contracts as between the intermediary corporation and the individual investors. However, as the transactions proceeded as skip transfers, the actual transfers of land were from the original developer. Laurich did not consider that this meant that his Affidavits were untrue.

37. Laurich understood that the investors were paying further deposits and other consideration directly to the intermediary company. However, Laurich has no recollection of confirming this with any of the investors, or warning any of the investors of the risks of proceeding on this basis. He states that he has no recollection of any of the investors telling him about the Participatory Promissory Notes or the buy-back option agreements. He did not know that the consideration paid was less than represented in the Statement of Adjustments, and he took no steps that he could recall to obtain documentation with respect to the further deposits and other consideration. He was unaware that the investors had no intention of making payments on their mortgages.

38. On March 30, 2000 Laurich signed a letter to P.W. indicating that it enclosed, among other things, "83 buy-back option agreements in triplicate". Laurich has no recollection of signing that letter, and he was not involved in preparing, drafting, reviewing, signing or using any of the buy-back option agreements.

39. The Agreed Statement of Facts indicates that Laurich did not know whether the investors would retain ownership of the condominium units in question, and that he had no knowledge that the investors may have made fraudulent mortgage applications to their lenders. Laurich executed transfers back for each unit and provided those to P.W., in compliance with a trust condition imposed upon him. The Agreed Statement of Facts

indicates that he found that unusual, but he has no recollection of making inquiries about it. He acknowledges that this could have placed his clients at risk.

40. Laurich's own legal fees for his services to the investors with respect to the B Development were modest.

C Development

41. C Development was the third and final of the condominium syndications in which Laurich was involved. On this development Laurich acted for the intermediary company, which had been established by D.M., and which was to purchase the entire development. L.T. and D.M. paid a fee to a mortgage broker to recruit investors to purchase multiple condominium units and to apply for mortgage financing. Each investor agreed to buy units at a higher price than the amount paid by the intermediary corporation. The purchasers agreed to buy the units for cash deposits and new mortgage financing.

42. All of the cash deposits and the balance of the purchase prices were covered by Participatory Promissory Notes from the investors. None of the investors paid any of their own money for their interests in the condominium units.

43. Laurich acted for the intermediary corporation on D.M.'s instructions both for the purchase of the development, and for the sale of the individual condominium units to investors. P.W. acted for the individual investors.

44. Laurich received the new mortgage financing from P.W. and used those funds to pay the vendor of the C Development. Skip transfers were used to transfer the unit titles directly from the original project owner to the individual investors.

45. Once again, buy-back option agreements were executed by the investors. In this case, the investors would sell the condominium units back in exchange for an option payment of $3,000.00. The intermediary corporation agreed to take responsibility for all mortgage payment, costs and expenses associated with the individual units.

46. The Agreed Statement of Facts makes it clear that Laurich had no involvement in identifying or recruiting the investors for the C Development. Laurich had no knowledge that the appraisals for the individual condominium units had been greatly inflated.

47. The Statements of Adjustment reflected a $2,000.00 deposit as a credit to the investors purchasing each condominium unit, as well as "other consideration" ranging from $30,000.00 to $35,000.00 depending on the unit. Laurich never received the deposits, or the other consideration, for any of the units. He relied on D.M.'s advice that this consideration had been paid to the intermediary corporation. Laurich never obtained any written confirmation or documentation with respect to these payments. Laurich did not know that the investors had not paid the deposits for these units or that the consideration paid was less than that represented to him. He did not know that participatory promissory notes had been used.

48. Laurich did receive the Real Estate Purchase Contracts in this case, but is not clear when that occurred. He does not think that he turned his mind to the increase in the apparent average value of the condominium units over the relevant time.

49. On D.M.'s instructions, Laurich disbursed significant sums of money to a number of individuals for settlement of their "buy-backs". As far as he can recall, he made no inquiries to understand exactly why he was instructed to do this.

50. The Agreed Statement of Facts includes an acknowledgment by Laurich that "it is incumbent upon a lawyer to understand why he is sending such large amounts of money to other parties but Laurich omitted to make inquiries about this."

51. Laurich was not involved in the preparation of the participatory promissory notes or buy-back option agreements for C Development. He did not know whether the investors would retain ownership of their units, and had no knowledge that the investors had not made down payments or that the cash to close was by promissory note. He did not know that the individual investors did not intend to make mortgage payments on their units.

52. There was a note on Laurich's file confirming D.M.'s advice that cash payments/receipts were going directly to the company.

53. Laurich's legal fees for services on the C Development were similar to those on the other two projects.

The Consequences of Laurich's Conduct

54. Laurich's conduct came to the attention of the Law Society in late 2005 as a result of a complaint made by Bank A, one of the lenders on the B Development. Bank A and several other lenders had previously commenced civil actions with respect to the A Development and the C Development. Laurich was among the Defendants in those actions, which were settled pursuant to a Pierringer Settlement Agreement in June 2005 without any finding of liability or culpability on Laurich's part. Laurich's insurer contributed towards the settlement of that matter on a no fault basis.

55. A Development involved a 126 unit complex, which was purchased for $4.7 million dollars. Laurich received in excess of $8 million dollars into his trust account on the A Development sale file.

56. The B Development involved in 83 unit condominium complex purchased for $6 million dollars. Laurich received mortgage advances from his lender clients on that development in excess of $7 million dollars. The B Development was later refinanced and the mortgages were paid out, with none of the lenders suffering any known losses.

57. The C Development involved a 178 unit condominium complex purchase for $6,322,000.00. In total, Laurich received sale proceeds of $11,754,651.34 on that development.

58. In addition to the civil litigation arising from A and C Developments, it is clear that Laurich's conduct put numerous investor and lender clients at significant risk on that matter. Laurich's conduct facilitated the mortgage fraud schemes advanced by his clients on the A Development and the C Development. His actions on those matters placed third party lender funds at risk, and harmed individual investors as well.

59. The Agreed Statement of Facts does note that: "Unlike now, at the time of the incidents in question, in Alberta, there was very little, if any, general understanding or knowledge of mortgage fraud and things to watch out for, through bulletins, publications, seminars or articles."

The Investigations

60. It is clear to the Hearing Committee that the Law Society's investigation into Laurich's conduct was hampered by the late complaint made by Bank A. The Agreed Statement of Facts notes that the Law Society investigators experienced challenges locating information, in part because of the late complaint, and in part because many of the individual investors involved could not be located or would not cooperate. In addition, some files were lost or destroyed (through no fault of Laurich's), and L.T. and D.M. could not be contacted.

61. The Agreed Statement of Facts makes it clear that Laurich has fully cooperated with the Law Society of Alberta in a professional and timely manner throughout the investigative process. At no time did Laurich contribute to or waive any delay.

SUBMISSIONS OF COUNSEL

Submissions of Law Society Counsel

62. Law Society Counsel drew a clear distinction between cases where a lawyer knowingly participates or assists others in mortgage fraud transactions, and those where a lawyer is unwittingly involved. Law Society Counsel acknowledged that Laurich's conduct fits into the latter category.

63. In such a case, with a lawyer whose conduct unwittingly enabled a fraudulent scheme, Law Society Counsel acknowledged that the most serious professional misconduct has not been proven.

64. Nevertheless, Law Society Counsel submitted that a lawyer's unwitting participation in a dishonest scheme can be characterized as professional misconduct where it is significantly blameworthy, even though not intentional: *Purewal v. LSUC*, 2009 ONLSAP 10 (CanLII) at para. 34.

65. Law Society Counsel characterized Laurich as a "dupe", because he was not a knowing participant in the fraudulent schemes. He argued that a lawyer who was careless or inattentive may commit conduct deserving of sanction through his or her participation in a fraudulent transaction. He suggested that fashioning an appropriate sanction for such carelessness requires an analysis of the degree of carelessness of the lawyer, and in support of that proposition cited the following:

> Dupes are victims of unscrupulous individuals. When the dupe is a lawyer, the level of incredulity often rises to the point that an objective observer could conclude that the lawyer was willfully blind or advertent to the reality of the scheme brought to bear on him or her. However, a Hearing Panel must be vigilant to determine both the blameworthiness and penalty of a duped lawyer charged with professional misconduct within the

> parameters of the ethical turpitude involved: carelessness, not willfulness, honest but mistaken beliefs. On the other hand, the degree of carelessness and breadth of mistaken beliefs are the critical paths of inquiry into and hallmarks of dupe cases.
>
> *Re Peddle*, 2001 CanLII 21502 (ONLST) at para.1

66. Further, Law Society Counsel referenced the factors set out in *Law Society of Upper Canada v. Fazio* as relevant to determine the level of blameworthiness attributable to a dupe, as follows:

    i. The extent to which the licensee neglected or abdicated his or her professional responsibilities;
    ii. The duration of such neglect or abdication;
    iii. Whether the licensee committed other ethical breaches;
    iv. The importance of the licensee's conduct in facilitating the criminality;
    v. The extent to which the licensee personally benefitted from the transaction(s);
    vi. The impact of the misconduct on clients or victims;
    vii. The size of the facilitated criminality;
    viii. The extent of remorse;
    ix. Whether the misconduct is admitted and the need for proof obviated;
    x. Whether the misconduct was out of character or isolated;
    xi. Whether the licensee has a prior disciplinary record.

    LSUC v. Fazio, 2009 ONLSAP 1 (CanLII) at para. 83

67. In summary, Law Society Counsel submitted that Laurich's conduct was extremely careless and inattentive for all three condominium developments, which involved many transactions, and a large amount of money, for a period of time in excess of a year. While Laurich was relatively junior in his practice, his omissions were many, and included other ethical breaches, namely the swearing of transactional Affidavits that he should have known were false. In order to preserve public confidence in the profession, and to deter others from similar conduct in question, Law Society Counsel submitted that an appropriate sanction in this case would be a suspension for the period of 3-6 months.

Submissions of Laurich

68. Laurich noted that disciplinary sanctions imposed by the Law Society are not meant to punish or exact retribution for past transgressions. He specifically referenced the Law Society Hearing Guide, and noted that the primary purpose of disciplinary proceedings is to ensure that the public is protected, and that the public maintains a high degree of confidence in the legal profession. He further noted a number of general factors to be taken into account, all as outlined in the Hearing Guide at paragraph 69:

    > (a) The need to maintain the public's confidence in the integrity of the profession, and the ability of the profession to effectively govern its own members.
    >
    > (b) Specific deterrence of the member in further misconduct.

(c) Incapacitation of the member (through disbarment or suspension).

(d) General deterrence of other members.

(e) Denunciation of the conduct.

(f) Rehabilitation of the member.

(g) Avoiding undue disparity with the sanctions imposed in other cases.

69. Taking those factors into account, and noting that his own conduct was unintentional, negligent or careless, Laurich questioned whether he should be sanctioned at all. In support of this, Laurich cited several decisions focused on unwitting conduct or negligence, including *LSA v. Nielsen*, and specifically the following:

> 35 … It is far from clear that the Member ever considered that the client was doing anything illegal or fraudulent at the time of the transactions – in fact the outcome of these allegations against the client are still pending. There were a series of transactions over a number of months, that with the benefit of hindsight, the Member now acknowledges should have raised some concern, however, at the time, there were no apparent or obvious issues. The client was well known to the Member and he had no concerns with the client previously. The Hearing Committee is not able to conclude that the Member's conduct deserves sanction.
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> *Law Society of Alberta v. Nielsen*, 2012 ABLS 6 (CanLII)
>
> See also *Law Society of Alberta v. Westra*, 2011 ABLS 6 (CanLII) and *Law Society of Alberta v. Heintz*, 2012 ABLS 11 (CanLII)

70. Laurich acknowledged that his Agreed Statement of Facts and Admission of Conduct Deserving of Sanction included a specific admission that his conduct was actually deserving of sanction, notwithstanding the authorities that he cited.

71. In his submissions Laurich did specifically acknowledge a number of failures on his part, including not appreciating or understanding the nature of the work that he had undertaken, failing to review documents and report properly to his clients, not obtaining all of the documents that he should have, inappropriately relying on others, not turning his mind to large increases in value, disbursing large amounts of money without understanding why, failing to supervise his paralegal, failing to take into consideration the interests of multiple lenders, and improperly completing Affidavits of Transferees.

72. Laurich argued that his conduct should not be considered based on the standards of practice now in place, and he noted that the Hearing Committee should be careful to consider the circumstances of the time, where real estate fraud was less well understood by the bar.

73. Laurich urged the Hearing Committee to consider the degree of carelessness involved, and the fact that there is no evidence that he considered that he might be facilitating a fraud. In the absence of a direct integrity issue, Laurich urged the Hearing Committee to consider a reprimand, and perhaps a fine.

74. Laurich also noted his cooperative approach with the Law Society investigation, and the fact that he has now admitted that his conduct is deserving of sanction.

75. In addition, Laurich noted the lengthy period of time during which these matters have been outstanding before the Law Society. He noted that the protracted discipline proceedings in this case have caused stress and damage to his professional reputation, and that is particularly so because the original citations (prior to amendment) put his character and reputation into question. Those original citations remained on the Law Society website for a long period of time.

76. Laurich cited *Stinchcombe v. Law Society of Alberta*, 2002 ABCA 106, for the proposition that the length of the period of time between the initial incidents in question and the actual hearing is a factor to be considered in determining whether a delay is inordinate or unreasonable. Laurich also referred the Hearing Committee to *Law Society of Alberta v. Odishaw*, 2011 ABLS 28 (CanLII) for the proposition that prejudice can be inferred from long delay.

77. Laurich noted that the Law Society has conceded that it is largely responsible for the delay in this case, and that he himself has not waived or contributed to the delay. Laurich noted that it has been 13 years from the original incidents giving rise to the complaint, and 7 years from the original complaint.

78. In addition, Laurich argued that the long delay has caused strain in his marriage and familial relationships, and has caused him great emotional upset. Laurich provided the Hearing Committee with evidence regarding a number of medical conditions. That evidence will not be summarized here, but the Hearing Committee has carefully reviewed those materials.

79. In short, Laurich argues that the long delay has been prejudicial to him in a number of ways, including professional and reputational prejudice, prejudice in the hearing itself, and health issues arising.

80. In addition, Laurich noted that he is a sole practitioner, and a suspension would cause him inordinate harm, while also causing significant harm to his staff, and his clients. He noted that it would be particularly difficult to return to practice after a suspension, given his status as a sole practitioner.

81. After considering all of these matters, Laurich submitted that the appropriate sanction in this case would be a reprimand with perhaps a fine, and no costs, or a significant discount in the amount of costs ordered to be paid.

DECISION AS TO SANCTION

82. The Hearing Committee carefully considered the submissions made by both the Law Society and Laurich. In reaching its decision with respect to sanction the Hearing Committee was mindful of the purposive approach outlined in the Hearing Guide, and

specifically noted paragraph 57 of that Guide, which cites with approval the English Court of Appeal decision in *Bolton v. Law Society*:

> It is important that there should be full understanding of the reasons why the tribunal makes orders which might otherwise seem harsh….In most cases the order of the tribunal will be primarily directed to one or other or both of two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence. This purpose is achieved for a limited period by an order of suspension; plainly it is hoped that experience of suspension will make the offender meticulous in his future compliance with the required standards. The purpose is achieved for a longer period, and quite possibly indefinitely, by an order of striking off. The second purpose is the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled, but denied re-admission. If a member of the public sells his house, very often his largest asset, and entrusts the proceedings to his solicitor, pending re-investment in another house, he is ordinarily entitled to expect that the solicitor will be a person whose trustworthiness is not, and never has been, seriously in question. Otherwise, the whole profession, and the public as a whole, is injured. A profession's most valuable asset is its collective reputation and the confidence which that inspires.
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> *Bolton v. Law Society*, [1994] 2 All ER 486 at 492 (C.A.)

83. It is not the role of the Hearing Committee to punish the Member for his conduct, and in this we agree with Laurich's submissions. Instead, the role of the Hearing Committee is to ensure that the public is protected, and that it has a high degree of confidence in the legal system generally. In this case, which involves a lawyer engaged in conveyancing on a large scale, which is a core legal service where lawyers are entrusted with significant amounts of money, the issue of confidence in the legal system is of particular importance.

84. The Hearing Committee noted that specific deterrence is not a significant issue in this case, and that Laurich is unlikely to be involved in a similar problem in the future. General deterrence is, however, highly relevant. The Law Society must denounce the misconduct that occurred here, in part to preserve the integrity of the conveyancing system in this province, which is fundamentally premised on the confidence that the public has in lawyers.

85. The Member's admissions in this matter amount to an acknowledgment that he engaged as counsel on 3 significant projects, with many individual transactions, over a relatively long period of time that he did not understand. There were numerous warning signs that he missed or ignored. On some matters he abdicated responsibility to staff. He failed to review documents, and failed to ask pertinent questions. He disbursed large dollar

amounts without understanding the purpose. He improperly swore affidavits, which were untrue.

86. The dollar value of the transactions here is highly relevant. Many millions of dollars of lender funds were put at serious risk in property transactions valued at over $26 million. Lenders place heavy reliance on lawyers in Alberta in property conveyance matters, and rightly so.

87. It is entirely correct to note that Laurich's conduct was unwitting, and therefore not at the most serious extreme of lawyer misconduct. However, within the range of dupe cases, where lawyers have unwittingly assisted frauds, this case is quite serious indeed. As in *Re Peddle*, the degree of carelessness and breadth of the mistaken beliefs are central to our analysis of the appropriate sanction. It is simply not acceptable for a lawyer to do legal work on transactions that he does not understand, while failing to ask questions and/or abdicating responsibility to others, and that is particularly so where there are large dollar amounts at risk. In all of the circumstances, the Hearing Committee concluded that a suspension is the only sanction appropriate here.

88. The Hearing Committee did consider the long delay issues raised by Laurich. We noted that the Law Society faced difficulties in the investigation in part because of the very late complaint, and in part because witnesses were unavailable or uncooperative. The Hearing Committee was not persuaded that the delays caused Laurich any meaningful prejudice in his ability to defend the allegations against him, and in fact there was no evidence of such prejudice.

89. The Hearing Committee received medical evidence from Laurich, which it reviewed carefully. That evidence did not demonstrate any connection between the delay in this matter and any medical condition suffered by Laurich beyond the normal (and understandably difficult) stress and anxiety resulting from professional disciplinary processes.

90. The Hearing Committee agrees that significant personal prejudice to a member, associated with long delay, can be a factor in sanctioning. That principal was outlined by the Court of Appeal in *Wachtler v. College of Physicians and Surgeons*, 2009 ABCA 130, which noted that long delay short of that which requires a stay of proceedings can be accounted for at the penalty stage, and that regulatory tribunals must consider these issues and not simply ignore them. In this case, however, the Hearing Committee was influenced by the following:

    (a) the Law Society has provided explanations for much of the delay,

    (b) the evidence of personal prejudice to Laurich is slight,

    (c) the matter has come before us on the basis of an Agreed Statement of Facts and Admission of Conduct Deserving of Sanction,

    (d) and the admitted misconduct is serious.

    In all of those circumstances, the Hearing Committee has concluded that a substantial adjustment to the sanction is not appropriate.

91. Finally, the Hearing Committee also considered the potential impact of a suspension on Laurich, his clients and his staff, given his status as a sole practitioner. This may be a factor to consider in fashioning an appropriate sanction where there are a range of possible outcomes that fit the offence and the circumstances of the case, including outcomes that do not involve suspension. That is not the case here. The effect of a penalty on a particular lawyer's practice can be a consideration, but cannot "…disproportionately mitigate the need for general deterrence."

Law Society of Upper Canada v. Senjule, 2008 ONLSHP 0022, para. 29

92. The appropriate sanction in each case must be determined based on the individual facts of that case. After reviewing the authorities provided by the Law Society and Laurich, the Hearing Committee concluded that a suspension of 5 months is the appropriate sanction in this case, and directed accordingly. This sanction is in general accord with the result in other cases involving lawyers who unwittingly facilitated fraud, particularly where the misconduct of the lawyers was at the more serious end of that scale.

93. In addition, the Member will be responsible to pay 50% of the Law Society's hearing costs. The reduced costs are in the amount of $46,851. This downward adjustment in the costs award reflects the fact that two citations were withdrawn, and that those citations had raised integrity issues which were not in the end pursued by the Law Society.

94. After hearing submissions from counsel for the Law Society and Laurich, the Hearing Committee directed that Laurich's suspension commence August 1, 2014, and that Mr. Laurich have 6 months after reinstatement to pay the costs.

CONCLUDING MATTERS

95. Laurich is suspended from practice for a period of 5 months commencing August 1, 2014.

96. Laurich is directed to pay costs in the amount of $46,851 within 6 months of his reinstatement to practice.

97. Laurich's medical records entered as exhibits in this proceeding will not be available to the public.

Dated this 9th day of September 2014.

CARSTEN JENSEN, QC
Hearing Committee Member
Chair

NANCY DILTS, QC
Bencher