

LAW SOCIETY OF ALBERTA
HEARING COMMITTEE REPORT

IN THE MATTER OF the *Legal Profession Act*; and

IN THE MATTER OF a hearing (the "Hearing") regarding the conduct of
Stephen Brian Nelson, a Member of the Law Society of Alberta

INTRODUCTION

[1] On March 24, 2014 a Hearing Committee (the "Committee") of the Law Society of Alberta ("LSA") convened at the LSA office in Calgary to inquire into the conduct of Stephen Brian Nelson, a Member of the LSA. The Committee was comprised of Anthony G. Young, QC Chair, James Glass, QC, Bencher and Sarah King D'Souza, QC, Bencher. The LSA was represented by Gillian Clarke. The Member was in attendance throughout the hearing and was represented by James Rooney, QC. Also present at the Hearing was a Court Reporter to transcribe the Hearing.

[2] Prior to the delivery of written reasons James Glass, QC, was appointed as a judge to Central Region/Red Deer Provincial Court. As such, although he agreed with the result herein, he did not participate in the finalization of the decision.

JURISDICTION, PRELIMINARY MATTERS AND EXHIBITS

[3] The Chair asked Counsel for the Member and Counsel for the LSA whether there was any objection to the constitution of the Committee. There being no objection, the Hearing proceeded.

[4] Exhibits J1 through J4, consisting of the Letter of Appointment of the Committee, the Notice to Solicitor pursuant to section 56 of the *Legal Profession Act*, the Notice to Attend to the Member and the Certificate of Status of the Member with the LSA established the jurisdiction of the Committee.

[5] The Certificate of Exercise of Discretion pursuant to Rule 96(2)(b) of the Rules of the LSA ("Rules") pursuant to which the Director, Lawyer Conduct of the LSA, determined that there were no persons to be served with a Private Hearing Application was entered as Exhibit J5. Counsel for the LSA advised that the LSA did not receive a request for a private hearing. Accordingly, the Chair directed that the Hearing be held in public.

[6] At the outset of the hearing Exhibits 1 through 11 contained in the Exhibit Book which had been provided to the Committee in advance were entered into evidence in the Hearing with the consent of the parties. Further Exhibit 12, (the Agreed Statement of Facts and Admission of Guilt), Exhibit 13 (Mr. Nelson's discipline record) and Exhibit 14 (the Estimated Statement of Costs) were added to the Exhibit Book as the hearing proceeded.

CITATIONS

[7] The Member faced the following Citations:

1. It is alleged that you signed powers of attorney as a witness to the donor's signature and deposed to having witnessed the signatures without having been present to see the donor sign the power of attorney, and that such conduct is conduct deserving of sanction.
2. It is alleged that you assisted a client in an improper purpose, and that such conduct is conduct deserving of sanction.
3. It is alleged that you failed to conscientiously serve your clients, the mortgage lenders, and that such conduct is conduct deserving of sanction.
4. It is alleged that you failed to conscientiously serve your clients, the purchasers, and that such conduct is conduct deserving of sanction.
5. It is alleged that you acted while in a conflict or potential conflict of interest without obtaining your clients' consent or in circumstances where it was not in the best interest of your clients that you do so, and that such conduct is conduct deserving of sanction.
6. It is alleged that you breached a trust condition, and that such conduct is conduct deserving of sanction.
7. It is alleged that you failed to properly supervise your support staff, and that such conduct is deserving of sanction.
8. It is alleged that you failed to follow the accounting rules of the Law Society of Alberta, and that such conduct is deserving of sanction.

SUMMARY OF RESULTS

[8] The Member tendered an Agreed Statement of Facts and Admission of Guilt regarding all 8 Citations. The Hearing Committee found that Agreed Statement of Facts and Admission of Guilt was in a form acceptable to it and that the conduct noted was conduct deserving of sanction.

[9] There was a joint submission by counsel for the Member and counsel for the LSA regarding sanction. It was jointly submitted that the Member be suspended for a period of 6 months. The Hearing Committee agreed with the joint submission.

Agreed Statement of Facts and Admission of Guilt

[10] The Agreed Statement of Facts and Admission of Guilt is attached hereto as Schedule “A”.

Decision

[11] No additional evidence was led by either party.

[12] Mr. Nelson acknowledged to the Hearing Committee that he:

- (a) made the admissions voluntarily;
- (b) unequivocally admitted his guilt to the essential elements of the citations;
- (c) understood the nature and consequences of the admissions; and
- (d) understood that the Hearing Committee was not bound by any submission made jointly by his counsel and counsel for the LSA regarding sanction.

[13] The Hearing Committee was asked to consider the joint submission of guilt and make a determination that it was acceptable and that the conduct outlined therein was conduct deserving of sanction.

[14] After deliberating on the Agreed Statement of Facts and Admission of Conduct Deserving of Sanction the Hearing Committee found that it was in a form acceptable to it pursuant to Section 60 of the *Legal Profession Act*. As such, it was deemed for all purposes to be a finding of the Hearing Committee that the conduct of Mr. Nelson was deserving of sanction.

Joint submission on sanction

[15] There was a joint submission regarding sanction. Specifically the joint submission was for:

- a) A suspension of six months;
- b) Actual costs of investigation and hearing; and
- c) A written undertaking from that Mr. Nelson will not practice in the area of real estate law.

[16] Law Society counsel referred to the purposeful approach to sanctioning. That is, the goal of sanctioning is to ensure that high professional standards are maintained in the public’s confidence in the legal profession is preserved. The overarching goal is protection of the public.

[17] It was submitted that the joint submission on sanction, involving quite a lengthy suspension of 6 months, maintains the public confidence in the legal system and ensures that a message is sent to all other lawyers that high professional standards and the taking of responsibility for clients is fundamental to the practice of law in Alberta.

[18] Counsel for the Law Society made reference to paragraph 56 of the Hearing Guide which states:

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

[19] It was submitted that the aggravating factors in this matter are that Mr. Nelson:

- a) had been suspended for a period of 12 months after being found guilty of six counts deserving of sanction 14 years previous;
- b) was not supervising his paralegal, who was in charge of his practice;
- c) never reviewed any of the physical files;
- d) was not aware of the solicitor instructions provided by lenders;
- e) paid no attention to the practice at all;
- f) completely abdicated his responsibilities in respect of his real estate practice;
- g) never met with any of the purchasers instead relying upon a paralegal to do the work for him in circumstances where he probably ought not to have trusted the paralegal to know or understand the full extent of the nature of the transaction;
- h) ignored a trust condition that was imposed; and
- i) had been in practice for 20 years and ought to have known better.

[20] The mitigating factors were described as follows:

- a) Mr. Nelson was completely and fully cooperative with the Law Society throughout the time he received the section 53 letter;
- b) Mr. Nelson assisted Law Society in putting together the attached Agreed Statement of Facts to avoid a five day hearing that would have inconvenienced 10 or 12 witnesses;
- c) the matters complained of occurred over a brief period of time (3 months);
- d) Mr. Nelson has agreed to provide an undertaking not to practice real estate law; and,
- e) there is evidence that Mr. Nelson has attention deficit disorder.

[21] In support of the joint submission, counsel for Law Society provided cases on the range of sanction (one too lenient, one too severe, and one just right). They were referred to by counsel as “the Goldilocks cases .” Two of the Goldilocks cases dealt with an abdication of professional responsibility to a paralegal. The other dealt with a lawyer failing to be on guard against becoming a tool or dupe of others. The three cases are:

- a) *The Law Society of Alberta v. Stephen G. Heinz*, 2012 ABLs 11 (CanLii) (“Too Cold”);

- b) *The Law Society of Upper Canada v. Winston Gauntlett Mattis*, 2009 ONLSHP 5 (CanLii) (“Too Hot”);
- c) *The Law Society of Upper Canada v. Donna Gayle Mason*, 2012 ONLSHP 92 (CanLii) (“Just Right”);

“Too Cold” *The Law Society of Alberta v. Stephen G. Heinz*, 2012 ABLs 11 (CanLii)

[22] In this case, the lawyer that was the subject of conduct proceedings, Mr. Heinz, was convicted of two citations: failing to serve the purchaser clients and failing to serve the lender client. There was no indication that Mr. Heinz had abdicated his professional responsibility on his file. Law Society Counsel argued that Mr. Heinz was duped without any additional aggravating conduct.

[23] In deciding sanction the Hearing Committee in the Heinz case found mitigating circumstances, among other things, in that Mr. Heinz:

- a) Took steps to improve himself by self-education (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) and thereafter revising his practice;
- b) admitted responsibility and cooperated with Law Society Investigators;
- c) provided an Agreed Statement of Facts to the Hearing Committee;
- d) had no record of discipline;
- e) was genuinely remorseful;
- f) had already engaged Practice Review;
- g) had taken on a “career coach”.

[24] Mr. Heinz received a reprimand, a referral to practice review and an order to pay the full costs of the hearing.

[25] This case is distinguishable (and “too cold”) because there are additional aggravating circumstances in the Nelson case and Mr. Nelson has a discipline record.

“Too Hot” *The Law Society of Upper Canada v. Winston Gauntlett Mattis*, 2009 ONLSHP 5 (CanLii);

[26] In this matter, the conduct complained of related to purchase, sale and mortgage transactions on 15 properties in the period between August 2001 and June 2003. Mr. Mattis became a tool or dupe of unscrupulous clients by completely abdicated professional responsibility to supervise his real estate practice. In addition, he failed to be honest and candid when advising clients, acted despite conflicts of interest without disclosure, consent or independent legal advice and failed to serve his lender clients to the standard of competent lawyer.

[27] Mr. Mattis had a “significant” discipline history and was suspended on other matters at the time of his hearing before the Law Society of Upper Canada. The Ontario Hearing Committee found that there were no mitigating circumstances.

[28] He was disbarred.

[29] This case is also distinguishable (and “too hot”) because there are several factors which mitigate in favor of a less severe sanction for Mr. Nelson. These factors are noted in paragraph [20] above.

“Just Right” *The Law Society of Upper Canada v. Donna Gayle Mason*, 2012 ONLSHP 92 (CanLii)

[30] The *Mason* case describes a lawyer in Ontario who abdicated her responsibilities in the same manner as Mr. Nelson. She was not looking after her lender clients. She did not have proper conflict letters in place. She was not properly advising her clients of all material facts that were necessary to make proper decisions.

“The misconduct related to 13 real estate transactions that occurred between 2001 and 2005. In these transactions, the licensee frequently acted for all three parties: purchaser, vendor, and lender without disclosing this conflict of interest to the lender. She repeatedly failed to receive the deposit payments, which she advised her lender client had been paid. In some transactions, she closed the deal under circumstances in which the vendor did not receive the amount due under the agreement of purchase and sale, without disclosing this to her lender client. She failed to advise the lender client that in some of the transactions, the property had been “flipped” in a manner that artificially escalated the purchase price. There were numerous unexplained credits that lowered the purchase price, another fact that she did not disclose to her lender client. She redirected proceeds from the transactions to pay other party’s legal fees, broker fees, or tax liability, to pay unconnected third parties, or even back to a purchaser under suspicious circumstances without disclosing this to her lender client.”

[31] In this case the hearing committee referred to the *Law Society of Upper Canada v. Frank Fazio* ONSLAP 1(CanLii) para.83 which provides that:

“... The level of moral blameworthiness of an unwitting dupe will be informed by various considerations, such as: the extent to which the licensee neglected or abdicated his or her professional responsibilities, the duration of such neglect or abdication, whether it was accompanied by other ethical breaches, its importance in facilitating the client’s criminality and the extent to which the licensee personally benefited from the subject transaction(s). Of course, these are not the only determinants of penalty; others include, but are not limited to, the impact of the misconduct or facilitated criminality on clients are victims, the size or quantum of the facilitated criminality, the extent of remorse, whether the misconduct is admitted and the need for proof obviated, and whether the misconduct was out of character or isolated or explained, in whole or in part

by medical factors. Of course, the existence or lack of a prior disciplinary record is also of importance.”

[32] In this case the Hearing Panel concluded that the misconduct fell within the medium to severe range in the spectrum of cases and determined that a sanction 6 months suspension was appropriate.

[33] Counsel for the Law Society suggested that the *Mason* case demonstrated a sanction that was “just right”.

Decision Regarding Sanction

[34] The Hearing Committee is of the view that the joint submission concerning sanction falls within the range for conduct of this kind.

[35] There is no question that Mr. Nelson neglected or abdicated his professional responsibilities to his real estate paralegal assistant. There is evidence that Mr. Nelson did not review or examine the physical real estate files (unless questions were asked about them). This level of supervision was not sufficient to ensure whether:

- a) necessary documentation was being completed and kept;
- b) solicitor’s instructions had been followed;
- c) there had been proper discussions and documentation regarding conflicts of interest and the need for independent legal advice; and
- d) red flags regarding various types of mortgage fraud were recognized.

[36] The extent to which Mr. Nelson abdicated his professional responsibilities is a factor that militates in favour of a lengthy suspension.

[37] On the other hand, the duration of Mr. Nelson’s neglect or abdication is approximately 3 months. This period of time is shorter than in all of the cases presented by Law Society Counsel. In addition, there is no evidence that Mr. Nelson personally benefited from the subject transactions. Also, Mr. Nelson’s cooperation with the Law Society of Alberta and his admission of misconduct are additional factors in mitigation of sanction.

[38] As such, the Hearing Committee is satisfied that the joint submission on sanction adequately addresses the primary purpose of sanctioning as set out in section 49(1) of *The Legal Profession Act*.

[39] The Member will be suspended for a period of six months.

[40] As the Law Society regulates in the public interest and the case has been made that a period of time is required for replacement counsel to come up to speed; the suspension shall commence on April 25, 2014.

[41] There shall be a Notice to the Profession regarding the suspension.

[42] There shall be no notice to the Attorney General.

[43] There shall be such redaction of the record as may be necessary to protect confidentiality and privilege.

[44] Mr. Nelson shall provide a written undertaking that he will not practice in the area of real estate law.

[45] The Member shall pay the actual costs of the Hearing. Such costs are payable by the Member upon reinstatement.

Dated at the City of Calgary, in the Province of Alberta this 19th day of May, 2014.

Anthony G. Young, QC (Chair)

Sarah King D'Souza, QC

Schedule “A”

IN THE MATTER OF THE *LEGAL PROFESSION ACT*;

**AND IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF STEPHEN BRIAN NELSON
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

LAW SOCIETY HEARING FILE HE20120001

**AGREED STATEMENT OF FACTS
AND ADMISSION OF CONDUCT
DESERVING OF SANCTION**

1. Stephen Brian Nelson (“Mr. Nelson”) is a member of the Law Society of Alberta (“Law Society”), having been admitted on July 3, 1986. He was a member at all times relevant to this proceeding.

CITATIONS

2. Mr. Nelson faces 8 citations as follows:

Law Society Complaint

- 1) It is alleged that you signed powers of attorney as a witness to the donor’s signature and deposed to having witnessed the signatures without having been present to see the donor sign the power of attorney, and that such conduct is conduct deserving of sanction.
- 2) It is alleged that you assisted a client in an improper purpose, and that such conduct is conduct deserving of sanction.
- 3) It is alleged that you failed to conscientiously serve your clients, the mortgage lenders, and that such conduct is conduct deserving of sanction.
- 4) It is alleged that you failed to conscientiously serve your clients, the purchasers, and that such conduct is conduct deserving of sanction.
- 5) It is alleged that you acted while in a conflict or potential conflict of interest without obtaining your clients’ consent or in circumstances where it was not in the best interests of your clients that you do so, and that such conduct is conduct deserving of sanction.

- 6) It is alleged that you breached a trust condition, and that such conduct is conduct deserving of sanction.
- 7) It is alleged that you failed to properly supervise your support staff, and that such conduct is conduct deserving of sanction.
- 8) It is alleged that you failed to follow the accounting rules of the Law Society of Alberta, and that such conduct is conduct deserving of sanction.

COMPLAINT PROCESS BACKGROUND

3. On March 7, 2009, Bank A filed a Statement of Claim naming C.H. and R.H. as Defendants **[Exhibit 1]**. The H.'s filed a Third Party Notice **[Exhibit 2]** alleging that they were the victims of a mortgage fraud scheme and claimed indemnity against:
 - a. Mr. Nelson (alleging, *inter alia*, that he used his name, offices, and professional position to facilitate a fraudulent transaction and that he had failed to explain the risk of personal liability on high-ratio mortgages);
 - b. J.A., the alleged principle in the mortgage fraud scheme;
 - c. Corporation A, J.A.'s company;
 - d. A.F., J.A.'s employee/associate.
4. On or about June 9, 2009, A.F. filed a Fourth Party Notice **[Exhibit 3]** claiming indemnity against Mr. Nelson, J.A., and Corporation A. This Fourth Party Notice has since been Discontinued and all allegations of fraud were withdrawn **[Exhibit 4]**.
5. Mr. Nelson notified the Alberta Lawyers' Insurance Association ("ALIA") of the claims. In turn, ALIA provided copies of the pleadings to the Law Society of Alberta and a complaint was opened accordingly.
6. The Law Society sent a letter to Mr. Nelson on September 9, 2009 requesting a written response pursuant to Section 53 of the *Legal Profession Act* and Mr. Nelson responded to the same by letter dated September 21, 2009 **[Exhibit 5]**.
7. On October 2, 2009, the Law Society wrote to Mr. Nelson requesting further information from him and also requesting a copy of his file for the H.'s. Mr. Nelson responded by letter dated October 19, 2009 **[Exhibit 6]** forwarding a copy of the file and answering the questions posed by the Law Society.
8. By way of letter dated October 21, 2009 **[Exhibit 7]**, Mr. Nelson provided the Law Society with a copy of the amended pleadings in the H. action pursuant to which the claim against him was in negligence only.

9. On December 2, 2009 an Investigation Order was issued by the Law Society. An investigation was conducted by Law Society Investigators and an Investigation Report was issued August 31, 2010. **[Exhibit 8]**. This Exhibit is comprised of 4 binders of material including a written report and Tabs 1 to 12.1.
10. As part of the investigation, Mr. Nelson was asked to produce any files he had involving J.A., Corporation A, A.F. or the H.'s. Mr. Nelson provided the investigators with 11 files and from those the investigators identified 5 files with indicia of mortgage fraud and another file which contained irregularities but no indicia of mortgage fraud.

GENERAL BACKGROUND

11. The primary focus of Mr. Nelson's law practice since he was admitted to the bar in 1986 has been motor vehicle accident and personal injury claims.
12. Prior to January, 2005 Mr. Nelson had done some real estate work on occasion but it was a very small part of his practice.
13. After the *Minor Injury Regulation (Alberta Reg. 123/2004)* came into effect in October, 2004, Mr. Nelson felt it was necessary to do more than just personal injury law in order to maintain a practice. He started taking on real estate transactions in January, 2005 with the help of paralegals in his office. In May 2006 he attended a legal course at Lake Louise, which focused on real estate. He only attended the first two days of the 4-day course due to other office commitments.
14. In 2007, Mr. Nelson's practice was comprised of approximately 30% real estate files and 70% litigation files.
15. To assist him in his real estate practice, Mr. Nelson had an experienced real estate paralegal assistant and also made use of a leased computer program called JAS. In February 2007 this paralegal assistant moved to another firm.
16. Mr. Nelson eventually hired a new real estate paralegal assistant, E.Y. E.Y. was 21 years old when she was hired. Mr. Nelson was aware that she was not as experienced as his previous real estate paralegal. Mr. Nelson understood that E.Y. came from another law firm and had practiced real estate for a year or two before joining his office. Mr. Nelson does not recall if E.Y. provided a resume, and does not have a copy of one. Mr. Nelson did not check any references for E.Y. Prior to her actual start date of May 1, 2007, E.Y. and Mr. Nelson trained together on the software. The training session took place on April 14, 2007 and lasted for ½ day or 3.75 hours. Mr. Nelson left the training session early as he felt he was getting in the way of E.Y.'s training on the system. He felt that she seemed to understand the concepts, asked good questions, and he felt satisfied that she was competent in real estate. From this training, he satisfied himself

that the software produced all of the necessary documents for real estate transactions, including conflict letters and introductory letters to the clients.

17. In 2007, the litigation side of Mr. Nelson's practice was very busy and he consequently gave more attention and a greater priority to that side of the practice. This included the preparation for and attendance at a 3 week trial in late August and early September.
18. Mr. Nelson's routine with E.Y. was to visit with her in the mornings on approximately a daily basis regarding the various real estate files coming into the office. E.Y. would describe what she was doing and Mr. Nelson offered assistance, if needed. Mr. Nelson trusted E.Y. to ask questions as required and to work independently. E.Y. ended her employment with Mr. Nelson at the beginning of December, 2007, in order to move to Toronto with her boyfriend. Notably, throughout their employment relationship:
 - a. Aside from the initial training session on the software, Mr. Nelson did not otherwise train or educate E.Y. regarding real estate transactions.
 - b. Mr. Nelson occasionally followed up with clients for feedback about E.Y. and that feedback was positive.
 - c. Mr. Nelson did not review or examine the physical real estate files E.Y. was working on unless questions were asked about them and was therefore generally unaware of:
 - i. Whether E.Y. was completing and keeping copies of the necessary documents;
 - ii. The solicitor's instructions that had been provided by the lenders and whether those instructions were being followed. Mr. Nelson left it up to E.Y. to review and comply with the solicitor's instructions because he felt she understood she was to do so. He cannot recall if he had a specific discussion with E.Y. regarding this issue and he does not know if E.Y. actually reviewed the solicitor's instructions and fulfilled the obligations in respect of the same;
 - iii. Whether E.Y. was speaking with clients regarding conflicts of interest and the need for independent legal advice and does not know what, if anything, the clients were told in that regard;
 - iv. Whether or not Directions to Pay were provided on every real estate matter
 - d. Mr. Nelson had the intention to meet with all real estate clients and conveyed this intention to E.Y. Mr. Nelson acknowledges that this occurred only during May, 2007 and during the remaining months of E.Y.'s employment with him, she

stopped booking appointments in his diary and he only met clients when he was available. He is unable to estimate what percentage of clients he met with versus the percentage E.Y. met with.

- e. E.Y. would only occasionally ask Mr. Nelson questions about the files she was working on. Their relationship was characterized by Mr. Nelson asking if she needed help or if everything was okay and E.Y.'s reassurances that everything was fine.
 - f. At no time did Mr. Nelson speak with E.Y. concerning red flags to watch out for on real estate matters and acknowledges that she would not have been capable of recognizing them herself;
19. Mr. Nelson acknowledges he knew in 2007 that it was his responsibility to ensure that the real estate matters completed in his office were done correctly.
 20. As the summer of 2007 progressed into the fall, E.Y. started to take a lot of time away from the office. It was noted by at least one of Mr. Nelson's staff from 2007, although not by Mr. Nelson himself that E.Y. appeared to be losing interest in her work.
 21. As E.Y. started taking more time away from work, Mr. Nelson hired additional staff to assist in the real estate side of his practice and to assist E.Y.
 22. In September, 2007, Mr. Nelson became concerned about the organization of his office and contacted a professional office organizer, who made recommendations which were implemented throughout October and November, 2007.
 23. In November, 2007, Mr. Nelson learned that a bank had not received both offers to purchase in the same real estate transaction. He consequently decided he could no longer act for J.A.
 24. Based on his consultations with the office organizer, Mr. Nelson determined that his real estate practice was mainly responsible for the disorganization in his office and he decided to discontinue this practice.
 25. In 2007, Mr. Nelson's receptionist advised the organizer that she felt Mr. Nelson had all the symptoms of Attention Deficit Disorder ("ADD"). She had observed him jumping from one matter to another, misplacing files and paperwork minutes after he picked it up and also trying to do too many things at the same time.
 26. The office organizer asked Mr. Nelson if he had ADD. He did not believe he did at the time.
 27. In early 2011, Mr. Nelson obtained a referral to psychiatrist Dr. C. for examination for ADHD. Dr. C found evidence for inattentive ADHD, but insufficient evidence of

hyperactivity. He was started on medication for this diagnosis. In February, 2012, Mr. Nelson self-referred to psychologist R.H. for a psychoeducational evaluation in order to determine how his cognitive profile may have impacted upon his work performance.

28. Mr. Nelson attended for this evaluation over the course of 6 days between February 1 and April 20, 2012. R.H.'s report arising from this assessment is dated April 25, 2012 **[Exhibit 9]**. From this report, the following is noted:
- a. Mr. Nelson required approximately 2 hours more testing time than the average test taker;
 - b. Testing was conducted in a quiet office with minimal distraction;
 - c. Testing was scheduled so that Mr. Nelson performed the achievement testing without the benefit of his ADHD medication, although his ability testing was undertaken while on the medication;
 - d. R.H. determined that the results of the assessment were considered valid and reliable indicators of his functioning;
 - e. R.H. concluded that Mr. Nelson had a "robust presentation of inattention, distractibility and impulsiveness" and diagnosed him with "Attention Deficit Hyperactivity Disorder, Combined Type ". Of lesser impact was a diagnosis of "Reading Disorder" including word pronunciation difficulties. (Exhibit 9, page 8).
 - f. Recommendations included trying to focus on only one thing at a time, arranging work tasks to be done in short time spans, introducing as much structure into the day as possible, considering the practice of meditation and of taking part in adult reading classes focusing on phonics or word decoding. (Exhibit 9, page 9).
 - g. R.H. referred to the fact that Mr. Nelson's partner noticed a "remarkable difference" after he started taking his ADHD medication including thinking things through rather than impulsively taking action. (Exhibit 9, page 2)
29. After a discussion with Mr. Nelson regarding his Law Society concerns, R.H. suggested, in a letter dated May 22, 2012, that "the problems identified with his failure to review files, his not being able to account for why some letters are not on file when they should be, and his overlooking specific word usage in a letter, could all be attributed to ADHD type mistakes. Although I cannot say for certain that this ADHD was the cause behind these errors, it is reasonable to suspect that his ADHD would be consistent with such errors." **[Exhibit 10]**

DETAILS OF THE REAL ESTATE TRANSACTIONS

30. The records relating to the 5 transactions which contained indicia of mortgage fraud are found in the Investigation Report, Exhibit 8, Tabs 5, 6 and 8 to 10. In addition, there are records in which there are no indicia of mortgage fraud but there are irregularities found at Tab 7 of the Investigation Report. They can be summarized as follows:
31. **Property 1: [REDACTED] Drive N.E., Calgary, Alberta – Tab 5 of the Investigation Report**
- a. Mr. Nelson acted for J.A./Corporation A (purchaser and vendor by way of skip transfer), C.H. and R.H. (purchasers) and the lender, Bank A, on the purchase and sale, the skip transfer and the mortgage. The vendors, G.C. and T.C. (the "C.'s") were represented by Larry Revitt ("Revitt") of the law firm of McConnell MacInnes.
 - b. J.A./Corporation A and/or Nominee offered to purchase this property from the C.'s for \$285,000.00 with a closing date of August 30, 2007. The Real Estate Purchase Contract ("REPC – J.A.") can be found at Tab 5.05 of the Investigation Report.
 - i. The REPC-J.A. indicated a deposit of \$2000.00 was to be paid to McConnell MacInnes in trust, \$270,500.00 by way of new financing and a balance owing of \$12,500.00.
 - ii. J.A. paid the \$2000.00 deposit to Revitt.
 - iii. The Statement of Adjustments prepared by Mr. Revitt (Tab 5.13 of the Investigation Report), revealed that J.A. needed \$283,008.06 to close on August 30, 2007.
 - iv. Mr. Nelson paid \$283,364.72 (cash to close plus late interest of \$356.66) to McConnell MacInnes on September 6, 2007 (Tab 5.43 of the Investigation Report).
 - v. The \$283,364.72 came from the H.'s' mortgage proceeds (see Paragraph 32(c)(iii) below).
 - c. C.H. and R.H. offered to purchase this property from J.A./Corporation A with a possession date of August 30, 2007 for \$350,000.00, the same date J.A./Corporation A was to complete the purchase from the C.'s and for an increase of \$65,000.00. This Real Estate Purchase Contract ("REPC-H.'s") is found at Tab 5.06 of the Investigation Report.

- i. The REPC-H.'s indicated a deposit of \$2,000 was to be paid to Mr. Nelson's firm in trust, \$332,500 by way of new financing and balance owing of \$15,500.00.
 - ii. The H.'s mortgage application with Bank A was approved and mortgage proceeds of \$332,500.00 were paid to Mr. Nelson's firm in trust. These mortgage proceeds were placed in a trust ledger for J.A., rather than one in the name of the H.'s. Mr. Nelson did not open a trust ledger on this transaction in the name of the H.'s.
 - iii. While the bulk of these proceeds were used to close J.A. / Corporation A purchase from the Coles, the remaining balance of \$49,135.28 was profit recognized and provided to J.A. (Tab 5.43 of the Investigation Report).
 - iv. There is no evidence in Mr. Nelson's file that the \$2000 deposit or the \$15,500 balance owing was paid to either J.A. or Mr. Nelson in trust. J.A. was not a realtor and there were no realtors involved in either sale so no deposits would be held by a realtor.
- d. The Land Titles registration was completed by way of a skip transfer so the Land Titles records do not show the property being registered in the name of J.A. or Corporation A at all. (Tab 5.07 of the Investigation Report).
 - e. There were no conflict letters in Mr. Nelson's file for the parties involved in these transactions. Mr. Nelson has no explanation for this. He expected the software to provide such letters and that they would be used by E.Y. in the normal course of her work on the files. He did not review the file to ensure that such letters existed. He did not expressly review this issue with E.Y. He notes that the software may not have been set up to deal with skip transfers.
 - f. J.A. accepted the mortgage proceeds from the H.'s and used these funds to fulfill his obligation to the C.'s.
 - g. These real estate transactions were completed by E.Y. at Mr. Nelson's office.
 - h. Mr. Nelson's office created Powers of Attorney for each of R.H. and C.H. to sign appointing A.F. (J.A./Corporation A's employee or associate) as their attorney.
 - i. A.F. obtained the Powers of Attorney from Mr. Nelson's office and attended directly with the H.'s at their house to get them to sign the Powers of Attorney. The H.'s state that they signed them only in the presence of A.F. and A.F. did not advise them as to the nature of the document they were signing other than to say it was necessary for the transaction to go through (Tab 5.39 of the Investigation Report, pages 13 to 20).

- j. Although he never met them, Mr. Nelson signed the Powers of Attorney (Tabs 5.15 and 5.16 of the Investigation Report) as witness and swore Affidavits of Execution that he had witnessed the H.'s' signatures.
- k. Mr. Nelson does not have an independent recollection of executing and swearing these documents. He stated that he spoke with former staff who reminded him that E.Y. had come into the office on a Saturday (August 25, 2007) because she was going to be out of the office for 10 days or more. He believes E.Y. provided the Powers of Attorney to A.F. at this time. When she returned from holidays, E.Y. asked Mr. Nelson if he had witnessed the Powers of Attorney and he states that because his name was printed beneath the witness line and that no one else signed as witness, he believed he had witnessed the H.'s' signatures and that is why he signed as witness and swore the Affidavits of Execution. Mr. Nelson did not and could not otherwise try to independently verify that he had indeed met with the H.'s to sign the Powers of Attorney. Mr. Nelson states that his staff was instructed that Powers of Attorney executed at his office were only to be executed by him and the events that occurred were contrary to his general instructions and established practice.
- l. The transcript of the interview of the H.'s by the Law Society Investigators is found at Tab 5.39 of the Investigation Report. Mr. Nelson agrees that the H.'s gave the following information:
 - i. The H.'s state that they never saw the property they were purchasing, were not aware of the increase in value of the residence, were familiar with the Powers of Attorney and signed them but were not knowledgeable about Powers of Attorney and no one discussed their purpose with them.
 - ii. The H.'s also stated that they were paid \$10,000.00 for the use of their identification to apply for the new mortgage with Bank A.
 - iii. Finally they noted that they never met nor communicated with Mr. Nelson or anyone else at Mr. Nelson's office until months after these transactions and then it was only one of Mr. Nelson's staff that they spoke with to get the mortgage documentation they had not previously received. (Tab 5.39, pages 7 to 20, 35 to 38, 48 to 52).
- m. Mr. Nelson received the Transfer of Land from the solicitors for the C.'s with the name of the purchaser in blank; the purchase price was stated to be \$285,000.00. Mr. Nelson, or his staff, filled in the H.'s' names as purchasers. Mr. Nelson commissioned the Affidavit of Transferee of the H.'s which is required by Land Titles. The Affidavit stated that the value of the land was \$285,000.00. The Transfer of Land stated that the Transferor was the C.'s. (Tab 5.24 of the Investigation Report).

- n. The H.'s were actually purchasing from J.A. / Corporation A for a purchase price of \$350,000.00.
- o. The purchaser under the REPC-J.A. was shown as J.A./Corporation A Investments and/or Nominee.
- p. Mr. Revitt who acted for the C.'s sent Mr. Nelson a letter dated July 31, 2007 (Tab 5.13 of the Investigation Report) imposing, *inter alia*, the following trust conditions:

“Transfer of Land. You may insert your client’s name in the transfer of land provided such insertion includes the names of all parties who are purchasers in the contract. If all parties are not being inserted you must obtain our prior written consent to the exclusion of any purchaser named in the purchase contract which consent will require written confirmation from any excluded purchaser that they consent to such exclusion. Additionally, if an additional purchaser is being added to the transfer of land, you must obtain our prior written consent to the addition of any purchaser not named in the purchase contract which consent will require written confirmation from any named purchaser that they consent to such addition.

...

In the event that you are unable or unwilling to comply with the foregoing trust conditions, please contact this firm immediately to discuss any possible variation of the above trust conditions. The enclosed Transfer of Land is to be returned to this office unused if the trust conditions cannot be mutually agreed upon.”

- q. Mr. Nelson’s office accepted this trust letter but failed to obtain Mr. Revitt’s consent to inserting only the names of the H.’s on the Transfer of Land or to address the issue of this trust condition at all.
- r. Mr. Nelson’s file contained information relating to a title insurance application by the H.’s with Insurance Company A. (Tab 5.26 of the Investigation Report). The application contained false information; namely:
 - i. Question 6 on page 2 of the application asks if any parties to the transaction are signing by way of power of attorney and the response is “no”.
 - ii. Question 3 on page 2 of the application asks if all matters that would normally qualify his opinion had been disclosed and the answer is “yes” despite the fact that there was no indication on Mr. Nelson’s file that Insurance Company A. had been advised of the powers of attorney,

significant increase in value of the property, the skip transfer or other material facts.

- s. The Instructions to Solicitor from Bank A dated August 30, 2007, were on Mr. Nelson's file (Tab 5.19 of the Investigation Report). These further directed Mr. Nelson to a website from which to print the Solicitor Documents. From this website, the Investigators printed a document entitled "Instructions to Solicitor Re: First Mortgage" (Tab 5.20 of the Investigation Report). These Instructions (Number 14 under the heading "Reporting on Title") required Mr. Nelson to take all steps required of a careful and prudent solicitor and on behalf of a client including:
 - i. Reporting to Bank A if there were material facts which might affect the decision to make the loan
 - ii. Reporting to Bank A if there was a significant escalation in the value of the property over a short period of time
 - iii. Reporting to Bank A if the vendor was not the registered owner at the time the Agreement of Purchase and Sale was executed
 - iv. Reviewing all of the mortgage documentation with the mortgagors
 - v. Ensuring there were no discrepancies between the information contained in the mortgage documentation and the information contained in the Agreement for Purchase and Sale
 - vi. Reporting to the Bank A if there are any credits towards the purchase price in favour of the purchaser on a conveyancing transaction that arose other than by payment into Mr. Nelson's trust account or a licensed realtor's trust account.
 - vii. Reporting to the Bank A that the mortgage was to be executed under a power of attorney.
 - viii. Under the heading "Responsibility of Solicitor", Number 1 also obliges Mr. Nelson to examine acceptable identification from each mortgagor and have each mortgagor complete an Identification Verification Form ("IVF") and that the mortgagor be physically present when Mr. Nelson examined the identification.
- t. Mr. Nelson never personally reviewed these Solicitor Instructions. Neither Mr. Nelson nor anyone in his office:
 - i. Personally met with the H.'s as required by Bank A;

- ii. Examined or photocopied the identification of the H.'s or completed IVF's in respect of them;
 - iii. Did not meet with the H.'s to explain and execute the powers of attorney;
 - iv. Did not advise Bank A that the H.'s appointed A.F. as their attorney;
 - v. Did not advise Bank A that the powers of attorney were not executed correctly;
 - vi. Did not disclose to Bank A there were multiple sales contracts in respect of the same property;
 - vii. Did not disclose to Bank A that there was a significant increase in value of the property over a short time period;
 - viii. Did not disclose that the vendor was not the registered owner at the time the REPC – H.'s was executed and that the property was the subject of a skip transfer and was being flipped for profit;
 - ix. Did not disclose the credits toward the purchase price in favour of the H.'s that were not received in his trust account or that of a licensed realtor or that the full purchase price was not paid; namely that the deposit of \$2,000 and \$15,500 balance owing were not paid to Mr. Nelson in trust nor to a licensed realtor, in trust;
 - x. Did not advise that directions were being taken from J.A. and A.F. rather than the H.'s who were purportedly applying for the mortgage;
 - xi. Did not advise that A.F. was the sales agent for J.A. and at the same time Attorney for the H.'s;
 - xii. Did not disclose that false information was provided to the title insurance company in the application for title insurance.
- u. The mortgage was a high ratio mortgage which required CMHC insurance. As a result, the H.'s were personally liable in the event of a deficiency. As described in paragraph 3 above, Bank A has commenced proceedings against the H.'s as a result of their default in payments on the mortgage.
- v. The property in question has been condemned and declared unfit for human habitation on or about July 10, 2008 and an Executive Officer's Order and Notice of Health Hazard Registration was registered against title to the Lands (Tab 5.07 of the Investigation Report).

32. Property 2: [REDACTED] N.W., Calgary, Alberta – Tab 6 of the Investigation Report

- a. Having regard to this property, Mr. Nelson represented J.N. - vendor, A.F. (co-purchaser), J.Q. (co-purchaser), J.A. (purchaser and vendor by way of skip transfer) and the lender, Bank B on the sale and purchase, the skip transfer and the mortgage.
- b. J.A. and/or Nominee offered to purchase this property from J.N. for \$355,000.00 with a closing date of July 3, 2007. The Real Estate Purchase Contract (“REPC – J.A. 2”) can be found at Tab 6.08 of the Investigation Report.
 - i. The REPC-J.A.2 indicated an initial deposit of \$1000.00 was to be paid to the Mr. Nelson (as the buyer’s lawyer) in trust, \$337,000.00 by way of new financing and a balance owing of \$17,000.00.
 - ii. There is no evidence in Mr. Nelson’s records that either the \$1,000 deposit or the \$17,000 balance owing was provided to him (Tab 6.43 of the Investigation Report).
 - iii. Mr. Nelson acknowledges that there are 2 Statements of Adjustments prepared, the first for \$355,136.68 and the second for \$400,136.68 with the only difference being the net sale price. He does not know why the 2 were prepared. He acknowledges that J.A. does not appear on either Statement and cannot explain why.
 - iv. The trust ledger reveals that the mortgage proceeds of \$354,136.68 described in paragraph 33(c)(iv) and (v) below were transferred to Mr. Nelson’s trust ledger for J.N. on July 16, 2007. From these funds, J.N.’s mortgage on Property 2 of \$126,591.14 was paid out as was Mr. Nelson’s account of \$560.30 leaving a balance of \$226,985.24.
 - v. Mr. Nelson’s trust ledger reveals that of this remaining balance, J.A. was paid \$220,000.00 on July 16, 2007 and J.N. was paid \$6,985.24 on July 17, 2007.
 - vi. Mr. Nelson recalls signing a trust cheque for J.A. in the sum of \$220,000.00 but would not have been provided with any back up or supporting documents to review prior to signing the cheque as he trusted his paralegals to know what was going on.
- c. A.F. and J.Q. offered to purchase this property from J.A. with a closing date of June 30, 2007 or 3 days before J.A. was to take possession of it under the

REPC-J.A.2. The purchase price was 400,000.00 for an increase of \$45,000.00. This Real Estate Purchase Contract ("REPC-J.Q./A.F.") is found at Tab 6.10 of the Investigation Report:

- i. The REPC- J.Q./A.F. provided for payment of a \$1,000 initial deposit, \$380,000 in new financing and a balance owing of \$19,000.00.
 - ii. Although the initial deposit and the balance owing were to be held by Mr. Nelson as J.A.'s lawyer, there is no evidence in his records that the \$20,000 were provided to him (6.43 of the Investigation Report).
 - iii. There was an Addendum to REPC-J.Q./A.F. which indicated that J.Q. was to be credited with a credit of \$10,998.00 for improvements made on other property., Mr. Nelson is unable to explain or account for the remaining 9,002.00 owing.
 - iv. A.F. and J.Q. applied for new with Bank B was approved in the sum of \$392,730.00 of which \$12,730.00 was allocated to CMHC insurance application fee and premium and \$380,000.00 in mortgage proceeds were paid to Mr. Nelson's firm, in trust (Tabs 6.24 and 6.43 of the Investigation Report).
 - v. These mortgage proceeds were placed in a trust ledger for J.Q./A.F.
 - vi. Mr. Nelson agrees that the Statement of Adjustments of \$355,136.68 revealed that \$354,136.68 was the required cash to close the J.N. sale. This comprised the bulk of the mortgage proceeds received by J.Q./A.F. and this amount was transferred from the /A.F. trust ledger in the names of J.Q./A.F. to the trust ledger of J.N.
 - vii. Mr. Nelson's legal account for \$1,043.94 was also paid with the mortgage proceeds, and the remaining balance of the mortgage proceeds of \$24,819.38 was profit recognized and paid to J.A.
 - viii. Mr. Nelson agrees that the trust ledger of J.N. also reveals that a profit of \$24,819.38 was paid to J.A.
 - ix. J.A. was not a realtor and there were no realtors involved in either sale so no deposits would be held by a realtor.
- d. The Land Titles registration was completed by way of a skip transfer so the Land Titles records do not show the property being registered in the name of J.A. at all. (Tab 6.05 of the Investigation Report).

- e. In addition, A.F. named Mr. Nelson as her attorney pursuant to a power of attorney. Mr. Nelson did not advise the other parties he acted as A.F.'s attorney pursuant to a power of attorney. However, Mr. Nelson could not locate the power of attorney on the file.
- f. Mr. Nelson's file contained a conflict letter signed by J.Q. and J.N. There was a line for Mr. Nelson to sign as the attorney for A.F. by way of the Power of Attorney but it was left blank (Tab 6.20 of the Investigation Binder). There was no space created for J.A. to sign the conflict letter and he did not sign the conflict letter. There was no mention of J.A.'s involvement in the transactions on this property in the conflict letter.
- g. Mr. Nelson did not recommend that any of the parties obtain independent legal advice in any of the transactions.
- h. These real estate transactions were completed by E.Y. at Mr. Nelson's office.
- i. Mr. Nelson did not meet J.Q. and at all times took direction from J.A.
- j. In addition to the Conflict Letter, Mr. Nelson acknowledges that he signed a Direction to Pay, (Tab 6.22 of the Investigation Binder), a Tenancy at Will Agreement (Tab 6.25), an Irrevocable Assignment of Proceeds of Sale (Tab 6.26) and Irrevocable Assignment of Proceeds of Mortgage (Tab 6.27) on behalf of A.F. as her attorney under the Power of Attorney.
- k. Mr. Nelson agrees that J.N. provided the following information to the investigators for the Law Society (Tab 6.42 of the Investigation Report):
 - i. J.P. was her married name, J.N. was her maiden name and she changed back to J.N. around the time of the these events;
 - ii. She had approached J.A. herself as she wanted to purchase a home located at [REDACTED] Road, N.W., Calgary, Alberta. She asked J.A. to purchase her home at [REDACTED] Drive and assist with the purchase of [REDACTED] Road;
 - iii. J.A. agreed to purchase the Berkley Road property for \$355,000 but she never received a \$1,000.00 deposit;
 - iv. J.A. arranged for Mr. Nelson's services. She recollected signing documents in front of E.Y. at Mr. Nelson's office, but she did not personally give any directions or instructions to Mr. Nelson. She believes she only met him once in the presence of E.Y. but did not have any specific conversation or communication with Mr. Nelson.

- v. She did not recall signing the conflict letter and was not given direction to obtain independent legal advice.
 - vi. She was not aware of J.A. being involved with A.F. and does not know A.F.
 - vii. She did not recall J.A. being paid \$220,000.00 from the mortgage proceeds. Mr. Nelson cannot confirm if he was authorized by J.N. to pay these proceeds to J.A.
 - viii. She did not recall receiving any detailed accounting from Mr. Nelson regarding the distribution of mortgage proceeds and none were found in his file.
- l. J.N. signed a Direction to Pay dated July 5, 2007, found at Tab 6.15 of the Investigation Binder. This document did not give Mr. Nelson authority to pay J.A. \$220,000.00 as described above.
- m. The solicitors' instructions from Bank B were not found on this file. Mr. Nelson agrees that they would have been the same instructions received from Bank B on the matter relating to Property Number 3 described in Paragraph 34 below (Tab 7.10 of the Investigation Report). These instructions required Mr. Nelson to, *inter alia*:
- i. Take all steps that would be taken by a careful and prudent solicitor on behalf of a client;
 - ii. Advise Bank B of any material fact known by Mr. Nelson which might affect its decision to make the mortgage loan;
 - iii. Obtain personal identification of the client (including photo identification) if the mortgagor was not personally known to Mr. Nelson;
 - iv. Advise of any significant escalation in the value of the property over a short period of time;
 - v. Advise if the vendor under the Agreement of Purchase and Sale was not the registered owner at the time of the Contract of Purchase and Sale was signed;
 - vi. Advise if there are any unusual credits on the statement of adjustments in favour of the mortgagor.
- n. Mr. Nelson never personally reviewed these Solicitor Instructions. Neither Mr. Nelson nor anyone in his office:

- i. Obtained personal identification from A.F. or J.Q.;
- ii. Met with J.Q.;
- iii. Advised Bank B that the H.'s appointed A.F. as their attorney;
- iv. Disclosed to Bank B there were multiple sales contracts dated the same day in respect of the same property pursuant to which one provided a purchase price of \$355,000 and the other for \$400,000 – a price increase of \$45,000 and that this ought to be considered a significant escalation in price over a short period;
- v. Disclosed that the vendor J.A. was not the registered owner at the time the REPC – J.Q./A.F. was executed and that the property was the subject of a skip transfer and was being flipped for profit;
- vi. Disclosed the credits toward the purchase price in favour of the H.'s that were not received in his trust account or that of a licensed realtor or that the full purchase price was not paid; namely that the deposit of \$1,000 and \$19,000 balance owing were not paid to Mr. Nelson in trust nor to a licensed realtor, in trust nor that there was apparently a renovation credit arising in respect of another property purchased by J.Q. at the same time as this subject property raising the issue of whether such renovations could have taken place to support the credit;
- vii. Advised that directions were being taken from J.A. rather than the J.Q. and A.F. who were purportedly applying for the mortgage;
- viii. Advised that A.F. was the sales agent for J.A. who was vendor and at the same time she was a purchaser and at the same time Mr. Nelson acted as an attorney pursuant to a power of attorney from A.F.
- ix. Advised that the closing date of the second REPC-J.Q. A.F. was 3 days before the closing of the REPC-J.A..
- x. Recommended all of the parties obtain independent legal advice;
- xi. Disclosed to Bank B that J.Q. was involved in the purchase of another real estate purchase involving a high ratio mortgage at the same time as her purchase in respect of this property
- xii. Disclosed that J.Q. did not intend to take up occupancy of this property as required due to the fact that it is a high ratio mortgage as evidenced by the fact that Mr. Nelson was acting on her behalf regarding the purchase

of another property at the same time which also involved a high ratio mortgage which required occupancy of the property.

- o. The mortgage was a high ratio mortgage which required CMHC insurance. As a result, J.Q. and A.F. were personally liable in the event of a deficiency.
- p. A Statement of Claim was issued against J.Q. and A.F. by Bank B on approximately October 19, 2007 but Discontinued thereafter as of December 27, 2007.

33. Property 3: [REDACTED] Road N.W., Calgary, Alberta – Tab 7 of the Investigation Report

- a. Mr. Nelson acted for J.N. (same person as the vendor with respect to Property 2 described above) and the lender, Bank B on the purchase and the mortgage. The vendors, R.M. and G.M. (the “M.’s”) were represented by David Gottlieb (“Gottlieb”) of the David Gottlieb Law Office.
- b. There are no indicia of mortgage fraud in respect of this property.
- c. J.N. offered to purchase this property from the M.’s for \$485,000.00 with a closing date of July 3, 2007, later amended to July 10, 2007. It was a further condition of the offer that if J.N. could not sell her own home by June 4, 2007, the M.’s could list their home with their agent. The Real Estate Purchase Contract (“REPC – J.N.”) can be found at Tab 7.06 of the Investigation Report.
 - i. The REPC-J.N. indicated an initial deposit of \$10,000.00 was to be paid to Gottlieb in trust, and \$475,000.00 by way of cash and new financing.
 - ii. Mr. Nelson’s client trust ledger for J.N. reveals that J.A. provided \$220,000.00 to J.N.’s purchase of this property on July 9, 2007. Notably, this purchase closed before the mortgage proceeds in respect of Property 2 were going to be advanced.
 - iii. The Statement of Adjustments prepared by Gottlieb and dated July 10, 2007 (Tab 7.09 of the Investigation Report), revealed that the M.’s had received the \$10,000.00 deposit and that cash to close was \$475,107.06.
 - iv. Mr. Nelson paid \$475,107.06 to David Gottlieb Law Office on July 9, 2007 (Tab 7.04 of the Investigation Report).
 - v. J.N.’s mortgage application with lender Bank B was approved and mortgage proceeds of \$258,000.00 were paid to Mr. Nelson’s firm in trust.

These mortgage proceeds were placed in a trust ledger for J.N. (Tab 7.04 of the Investigation Report).

- vi. J.A. was paid \$1,900.00 from balance of the funds Mr. Nelson held in J.N.'s trust ledger (Tab 7.04 of the Investigation Report) after payment of the cash to close and Mr. Nelson's account were paid.
 - vii. J.N. signed a Direction to Pay dated July 4, 2007, found at Tab 7.13 of the Investigation Binder. This document did not give Mr. Nelson authority to pay J.A. \$1,900.00 as described above.
- d. In addition to the information described in paragraph 32(k) above, Mr. Nelson agrees that J.N. also provided the following information to the investigators for the Law Society (Tab 6.42 of the Investigation Report):
- i. She made the \$10,000 deposit on the purchase of this property;
 - ii. She did not recall that J.A. was to contribute \$220,000 to the down payment of this residence nor that he was paid \$220,000.00 from the sale of Property 2.
 - iii. She did not recall ever giving Mr. Nelson a Direction to Pay J.A. \$1,900.00 at the end of the transactions with respect to Properties 2 and 3 and none was found on either file.
 - iv. She did not recall providing any directions at all to Mr. Nelson. E.Y. was her contact Mr. Nelson's office.
- e. The solicitors' instructions from Bank B are found at Tab 7.10 of the Investigation Report and are as outlined in Paragraph 33(m) above. Mr. Nelson never personally reviewed these Solicitor Instructions. Neither Mr. Nelson nor anyone in his office of the following material facts:
- i. Advised Bank B that J.A. was involved in the purchase of Property 3;
 - ii. Advised Bank B that J.A. provided \$220,000 in short term (1 week) financing.

34. Property 4: [REDACTED] Crescent N.E., Calgary, Alberta – Tab 8 of the Investigation Binder

- a. Having regard to this property, Mr. Nelson represented D.M. - vendor, A.F. (co-purchaser), J.J. (co-purchaser), J.A. (purchaser and vendor by way of skip

transfer) and the lender, Bank C on the sale and purchase, the skip transfer and the mortgage.

- b. J.A. and/or Nominee offered to purchase this property from D.M. for \$313,190.00 with a closing date of May 21, 2007. The Real Estate Purchase Contract (“REPC – J.A.3”) can be found at Tab 8.08 of the Investigation Report.
 - i. The REPC-J.A.3 indicated an initial deposit of \$1,000 was to be paid to the seller and a balance owing of \$313,189.00.
 - ii. There is no evidence in Mr. Nelson’s records that either the \$1,000 deposit or the \$17,000 balance owing was provided to him (Tab 6.43 of the Investigation Report).
 - iii. Mr. Nelson acknowledges that there are 2 Statements of Adjustments prepared, the first for \$355,136.68 and the second for \$400,136.68 with the only difference being the net sale price. He does not know why the 2 were prepared. He acknowledges that J.A. does not appear on either Statement and cannot explain why.
 - iv. The trust ledger reveals that the mortgage proceeds of \$354,136.68 described in paragraph 33(c)(iv) and (v) below were transferred to Mr. Nelson’s trust ledger for J.N. on July 16, 2007. From these funds, J.N.’s mortgage on Property 2 of \$126,591.14 was paid out as was Mr. Nelson’s account of \$560.30 leaving a balance of \$226,985.24.
 - v. Mr. Nelson’s trust ledger reveals that of this remaining balance, J.A. was paid \$220,000.00 on July 16, 2007 and J.N. was paid \$6,985.24 on July 17, 2007.
 - vi. Mr. Nelson recalls signing a trust cheque for J.A. in the sum of \$220,000.00 but would not have been provided with any back up or supporting documents to review prior to signing the cheque as he trusted his paralegals to know what was going on.
- c. A.F. and J.J. offered to purchase this property from J.A. with a closing date also of May 21, 2007. The purchase price was 380,000.00 for an increase of \$66,810.00. This Real Estate Purchase Contract (“REPC-J.J./A.F.”) is found at Tab 8.07 of the Investigation Report:
 - i. The REPC- J.J./A.F. provided for payment of a \$1,000 initial deposit, \$361,000 in new financing and a balance owing of \$18,000.00.

- ii. Although the initial deposit and the balance owing were to be held by Mr. Nelson as J.A.'s lawyer, there is no evidence in his records that the 19,000 was provided to him (8.04 of the Investigation Report).
 - iii. There was an Addendum to REPC-J.Q./A.F. which indicated that A.F./ and J.J. were to be credited \$19,660.93 for renovations to be done on the property.
 - iv. A.F. and J.J. applied for new financing with Bank C and were approved in the sum of \$373,093.50 of which \$12,093.50 was allocated to the mortgage insurance premium and \$361,000.00 in mortgage proceeds were paid to Mr. Nelson's firm, in trust (Tabs 8.04 and 8.16 of the Investigation Report).
 - v. These mortgage proceeds were placed in a trust ledger for J.A. and not A.F. and J.J. There is no indication that Mr. Nelson had a trust ledger for A.F. and J.J.
 - vi. Mr. Nelson agrees that the Statement of Adjustments (Tab 8.09 of the Investigation Report) revealed that \$312,710.03 was the required cash to close the D.M. sale. This comprised the bulk of the mortgage proceeds received by J.J./A.F. This amount was transferred from the A.F. trust ledger in the names of J.Q./A.F. to the trust ledger of J.N.
 - vii. Mr. Nelson agrees that the profit to J.A. on this transaction was \$46,636.06.00
 - viii. J.A. was not a realtor and there were no realtors involved in either sale so no deposits would be held by a realtor.
- d. The Land Titles registration was completed by way of a skip transfer so the Land Titles records do not show the property being registered in the name of J.A. at all. (Tab 8.05 of the Investigation Report).
- e. There were numerous accounting errors on this matter by Mr. Nelson, including:
- i. The failure to open and maintain a separate trust ledger for A.F. and J.J., the recipients of the mortgage proceeds;
 - ii. Depositing the mortgage proceeds into the trust ledger maintained for J.A.;
 - iii. Approving a \$60,592.98 payment to a lawyer in Ontario for D.M. regarding his purchase of a home in Ontario which payment was taken

from the trust ledger of J.A., when they should have been taken from the D.M. trust ledger;

- iv. Mr. Nelson agrees that the proper trust entries are as described in the table prepared by the Law Society Investigators in their A.T.saction Synopsis found at page 2 of Tab 8.00 of the Investigation Binder. Mr. Nelson acknowledges that his trust accounting as provided at Tab 8.04 of the Investigation Binder was incorrect.
- f. Mr. Nelson's file contained a conflict letter signed by J.J., A.F. and D.M. (Tab 8.11 of the Investigation Binder) and dated May 22, 2007. There was no space created for J.A. to sign the conflict letter and he did not sign the conflict letter. There was no mention of J.A.'s involvement in the transactions on this property in the conflict letter.
- g. Mr. Nelson did not recommend that any of the parties obtain independent legal advice in any of the transactions.
- h. These real estate transactions were completed by E.Y. at Mr. Nelson's office.
- i. Mr. Nelson did not meet with A.F. or J.J. on this matter, does not recall meeting with J.A. and does not recall meeting D.M. but did sign the Direction to Pay with him. J.A. sent the REPC's and at all times he took direction from J.A.
- j. Only a portion of the solicitors' instructions from Bank C can be found at Tab 8.16 of the Investigation Binder. At their request, Bank C provided the Law Society Investigators with a copy of the Solicitors' Instructions that would have been in place at the time (Tab 10.58 of the Investigation Report). These instructions required Mr. Nelson to, *inter alia*:
 - i. Not also act for a vendor in a purchase transaction unless he had written consent from the bank
 - ii. Prepare the mortgage in accordance with the bank's instructions;
 - iii. Obtain and copy specified personal identification of the mortgagor's in accordance with the Identification Guidelines in the physical presence of the mortgagor;
 - iv. Advise the bank of any unusual circumstances that may indicate a potential fraud such as recent sales (e.g. within 3 to 6 months) of the same property at substantially lower values, recently discharged mortgages or title transfers (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.

- v. Complete a solicitor's report within 30 days after mortgage proceeds are disbursed.
- k. Mr. Nelson never personally reviewed these Solicitor Instructions. Neither Mr. Nelson nor anyone in his office:
- i. Obtained personal identification from A.F. or J.J.;
 - ii. Mr. Nelson did not meet with J.Q.;
 - iii. Disclosed to Bank C there were multiple sales contracts closing the same day in respect of the same property pursuant to which one provided a purchase price of \$313,190.00 and the other for \$380,000 – a price increase of almost \$57,000 and that this ought to be considered a recent sale at substantially lower values;
 - iv. Disclosed to Bank C that the vendor J.A. was not the registered owner at the time the REPC – J.J./A.F. was executed and that the property was the subject of a skip transfer and was being flipped for profit;
 - v. Disclose that the full purchase price was not paid; namely that the deposit of \$1,000 and \$19,000 balance owing were not paid to Mr. Nelson in trust nor to a licensed realtor, in trust nor that there was apparently a renovation credit allocated to J.J./A.F.;
 - vi. Advised that directions were being taken from J.A. rather than the J.J. and A.F. who were purportedly applying for the mortgage;
 - vii. Advised that A.F. was the sales agent for J.A. who was vendor and at the same time she was a purchaser
 - viii. Recommended all of the parties obtain independent legal advice;
- l. The mortgage was a high ratio mortgage which required CMHC insurance. As a result, J.J. and A.F. would be personally liable in the event of a deficiency.
- m. Mr. Nelson understands that the Law Society Investigators consulted Bank C and were advised by Bank C that it was policy not to fund mortgages that were suspected of fraudulent activity.

35. Property 5: [REDACTED] Circle N.E. Calgary, Alberta – Tab 9 of the Investigation Report

- a. Mr. Nelson acted for Corporation A (purchaser and vendor by way of skip transfer), purportedly for C.E. (purchaser) and the lender, Bank D on the

purchase and sale, the skip transfer and the mortgage. The vendor, A.T. was represented by Glenda Nguyen (“Nguyen”) of the law firm AG Law Office.

- b. Corporation A and/or Nominee offered to purchase this property from A.T. for \$380,000.00 with a closing date of July 31, 2007. The Real Estate Purchase Contract (“REPC – Corporation A”) can be found at Tab 9.06 of the Investigation Report.
 - i. The REPC-Corporation A indicated a deposit of \$2000.00 was to be paid to Mr. Nelson in trust, \$361,000.00 by way of new financing and a balance owing of \$17,000.00.
 - ii. The signatures of J.A. for Corporation A and A.T. were not witnessed.
 - iii. There were 2 addendums to REPC-Corporation A dated August 1, 2007 (Tab 9.08 of the Investigation Binder), but neither signature was witnessed and August 28, 2007 (Tab 9.09 of the Investigation Binder) where both signatures are witnessed but the witnesses signature is not legible.
 - iv. The effect of the August 1, 2007 amendment was to delete the requirement of \$361,000 in new financing and the balance owing of \$17,000 and replacing it with an additional deposit of \$20,000 payable by the seller not refundable after August 17, 2007, \$358,000 in new financing and \$0.00 balance owing.
 - v. The effect of the August 28, 2007 amendment was to delete the requirement for \$358,000 in new financing and the closing date of July 31, 2007 and replace it with \$278,000.00 in new financing, another additional deposit of \$80,000.00 by August 28, 2007 and a closing date of September 15, 2007.
 - vi. The Revised Revised Statement of Adjustments prepared by Nguyen (Tab 9.34 of the Investigation Report), revealed that Corporation A needed \$278,475.50 to close on September 15, 2007.
 - vii. Mr. Nelson paid \$279,093.49 (cash to close plus late interest of \$617.99) to AG Law Office apparently over a period of several days between September 21, 2007 and October 2, 2007 (Tab 9.04 of the Investigation Report).
 - viii. The \$279,093.49 came from the C.E. mortgage proceeds (see Paragraph 36(c) below).

- ix. Mr. Nelson did not create a client trust ledger for Corporation A for this transaction.
 - x. Mr. Nelson incorrectly utilized the client trust ledger for C.E. to complete all financial transactions for both Corporation A and C.E. (see Paragraph 36(c) below).
- c. An offer to purchase appears to have been made and signed by C.E. to purchase this property from Corporation A with a closing date of July 31, 2007 for \$430,000.00, the same date Corporation A initially was to complete the purchase from A.T. and for an increase of \$50,000.00. This Real Estate Purchase Contract (“REPC-C.E.”) is found at Tab 9.07 of the Investigation Report.
- i. The REPC-C.E. indicated a deposit of \$2,000 was to be paid to the seller, \$408,500.00 by way of new financing and balance owing of \$19,500.00.
 - ii. It appears that C.E. made a mortgage application with Bank D which was approved. Mortgage proceeds of \$408,490.00 were paid to Mr. Nelson’s firm in trust on September 17, 2007 at which time Mr. Nelson’s trust ledger for C.E. was created.
 - iii. Although all the deposits were to be held in trust by the seller is no evidence they were ever provided to Mr. Nelson. J.A. was not a realtor and there were no realtors involved in either sale so no deposits would be held by a realtor.
- d. The Land Titles registration was completed by way of a skip transfer so the Land Titles records do not show the property being registered in the name of Corporation A. (Tab 9.05, page 4 of the Investigation Report).
- e. There were no conflict letters in Mr. Nelson’s file for the parties involved in these transactions. Mr. Nelson has no explanation for this. He did not review the file to ensure that such letters existed. He did not expressly review this issue with E.Y. He notes that the software may not have been set up to deal with skip transfers.
- f. These real estate transactions were completed by E.Y. at Mr. Nelson’s office.
- g. Mr. Nelson’s office created a Power of Attorney for C.E. to sign appointing A.F. (J.A./Corporation A’s employee or associate) as his attorney.
- h. A.F. took the Power of Attorney from Mr. Nelson’s office and purportedly had C.E. sign the same. (Tab 9.15 of the Investigation Report).
- i. Mr. Nelson cannot recall if he met with C.E. or not to sign and explain the power of attorney. Mr. Nelson signed the Power of Attorney as witness and swore the

attached Affidavit of Execution indicating that he had witnessed C.E.'s signature. He stated at the time he signed it that he thought he had witnessed C.E.'s signature and did not know that E.Y. was allowing clients to take documents from the office.

- j. Mr. Nelson did not have copies of any personal identification for C.E. on his file.
- k. The transcript of the interview of C.E. by the Law Society Investigators is found at Tab 9.40 of the Investigation Report. Mr. Nelson agrees that C.E. provided the following information:
 - i. C.E. indicated that he had met with A.F. and J.A. to view a number of properties but did not find any homes he was interested in.
 - ii. He did not like the properties he was shown, conveyed this to A.F. and terminated the relationship with A.F. and J.A. at that point.
 - iii. C.E. recalls signing one document for A.F. and J.A. but does not know what it was.
 - iv. He denies:
 - 1. Submitting an offer to purchase this property;
 - 2. Agreeing to pay \$430,000 for this property;
 - 3. Signing a power of attorney in favour of A.F. or at all although he stated part of the signature on it looked like his and part did not;
 - 4. Ever having met Mr. Nelson or attending at his office;
 - 5. Ever providing any direction to Mr. Nelson regarding the purchase of the property;
 - 6. Applying for mortgage financing in relation to the property;
 - 7. Retaining Mr. Nelson to act on his behalf.
 - v. He learned that money had been deposited in and mortgage payments had been withdrawn from his bank account with Bank C only after he closed out his Bank C account and opened a new account with Bank E. Apparently whoever had been depositing money in his Bank C account stopped doing so and C.E. estimated approximately \$10,000 had been removed from the account of his own funds.

- vi. Once he moved accounts, there were no funds from which to draw the mortgage payments and about 2 months later, he was served with foreclosure papers.
 - vii. He estimates the payments had been deposited and withdrawn from his Bank C account for almost 2 years.
 - viii. He advises he did not look at his bank statements to realize this was occurring.
 - ix. Once he was served with the foreclosure papers he retained his own lawyer.
- I. In order for this matter to close, Mr. Nelson required title insurance. A Stewart Guarantee Company Residential Order Form dated September 11, 2007 for C.E. (Tab 9.23 of the Investigation Report) contains the following incorrect information:
- i. Page 1: The purchase price of the residence is shown as \$380,000.00 when it was actually \$430,000.00
 - ii. Page 2: Answering yes to the question of whether government issued photo id would be obtained from the client and a legible copy maintained on the file - this did not happen
 - iii. Page 2: Answering no to the question of whether the mortgage proceeds are being paid to anyone other than an existing lender or to the borrower when they were paid to the existing lender and vendor
- m. The Instructions to Solicitor from Bank D were not on Mr. Nelson's file. However, Mr. Nelson acknowledges and agrees that:
- i. He had not been reviewing solicitors instructions on any of his files at this time;
 - ii. It would have been appropriate to report to Bank D that:
 - 1. there was a significant escalation in the value of the property over a short period of time;
 - 2. there were multiple sales contracts in respect of the same property;
 - 3. the vendor was not the registered owner at the time the Offer to Purchase was executed;

4. C.E. had purportedly signed a Power of Attorney;
 5. No conflict letter had been prepared and signed on the file;
 6. The property was the subject of a skip transfer and being flipped for profit;
 7. No direction to pay was prepared and executed authorizing payment to Corporation A or J.A.;
 8. Incorrect information had been provided to qualify for title insurance;
 9. Mr. Nelson had not met C.E. nor verified his identity;
 10. That A.F. was apparently appointed as C.E.' attorney and at the same time was employed by Corporation A and J.A.;
- iii. deposit of \$2,000 and \$15,500 balance owing were not paid to Mr. Nelson in trust nor to a licensed realtor, in trust;
 - iv. Did not advise that directions were being taken from J.A. and A.F. rather than the H.'s who were purportedly applying for the mortgage.
- n. The mortgage was a high ratio mortgage which required CMHC insurance. As a result, C.E. was personally liable in the event of a deficiency.
 - o. Bank D commenced proceedings against C.E. by way of Statement of Claim filed July 7, 2009 as a result of his alleged default in payment under the mortgage (Tab 9.38 of the Investigation Report). Thereafter, C.E. commenced a Counterclaim against Bank D, A.F., J.A., Corporation A and Mr. Nelson.
 - p. Ultimately, Mr. Nelson resolved these matters by way of his personal payment of \$32,500.00 to C.E. and \$40,000 to Bank D. Attached as **Exhibit 11** are letters dated December 14 and 23, 2010 from C.E.'s lawyer, Lyle Wilson to Mr. Nelson, confirming settlement of the action against Mr. Nelson and C.E.

36. Property 6: [REDACTED] Street N.E., Calgary, Alberta – Tab 10 of the Investigation Report

- a. Having regard to this property, Mr. Nelson represented J.A. (purchaser and vendor by way of skip transfer), J.Q. and the lender, Bank C on the sale and purchase, the skip transfer and the mortgage. The vendor, N.C. was represented by Karim Jivraj of the law firm Jivraj, Knight & Pritchett.

- b. J.A. and/or Nominee offered to purchase this property from N.C. for \$210,000 with a closing date of June 30, 2007. The Real Estate Purchase Contract (“REPC – J.A.4”) can be found at Tab 10.06 of the Investigation Report.
 - i. The REPC-J.A.4 indicated an initial deposit of \$1,000.00 with no indication in the contract as to where it would be paid. The balance owing of \$57,000.00 and new financing of \$150,000.00 was due on June 12, 2007.
 - ii. The trust ledger reveals that the mortgage proceeds of \$223,250.00 described in paragraph 37(c)(iv) below were transferred to Mr. Nelson’s trust ledger for J.A. on July 5, 2007. From these funds, the cash to close this transaction plus 7 days late interest, all totaling \$210,763.73 were paid to Jivraj, Knight & Pritchett on July 6, 2007 (Tabs 10.04 and 10.24 of the Investigation Binder).
- c. J.Q. offered to purchase this property from J.A. with a closing date also of June 30, 2007. The purchase price was 235,000.00 for an increase of \$25,000.00. This Real Estate Purchase Contract (“REPC-J.Q.”) is found at Tab 10.07 of the Investigation Report:
 - i. The REPC-J.Q. provided for payment of a \$1,000 initial deposit, \$223,250 in new financing and a balance owing of \$10,750.00.
 - ii. Although the initial deposit was to be held by Mr. Nelson as J.Q.’s lawyer, there is no evidence in his records that the \$1,000.00 was provided to him (8.04 of the Investigation Report).
 - iii. J.Q. applied for new financing with Bank C and was approved in the sum of \$230,728.88 of which \$7,478.88 was allocated to the mortgage insurance premium and \$223,250.00 in mortgage proceeds were paid to Mr. Nelson’s firm, in trust (Tabs 10.04 and 10.15 of the Investigation Report).
 - iv. An undated direction to pay was found on the file in the name of and signed by J.Q. (Tab 10.21 of the Investigation Report). However, there was no corresponding trust ledger created for J.Q.
 - v. These mortgage proceeds were placed in a trust ledger for J.A. and not J.Q. (Tab 10.04 of the Investigation Report).
 - vi. J.A. was not a realtor and there were no realtors involved in either sale so no deposits would be held by a realtor.

- d. The Land Titles registration was completed by way of a skip transfer so the Land Titles records do not show the property being registered in the name of J.A. at all. (Tab 10.05 of the Investigation Report).
- e. There were numerous accounting errors on this matter by Mr. Nelson, including:
 - i. The failure to open and maintain a separate trust ledger for J.Q., the recipient of the mortgage proceeds;
 - ii. Depositing the mortgage proceeds into the trust ledger maintained for J.A.;
 - iii. Utilizing the same client trust ledger account in the name of J.A. to complete all financial transactions for both clients.
- f. Despite the contract reference to new financing, J.A. did not apply for new financing on this property. Rather, the financing came from the subsequent transaction between J.A. and J.Q.
- g. At the time of this purchase transaction, J.Q. was concurrently involved in the purchase of Property 2 described in paragraph 33. Both purchases involved the application for and receipt of high ratio mortgages requiring owner occupancy.
- h. Mr. Nelson's file contains no evidence of any conflict letters. Mr. Nelson did not recommend that any of the parties obtain independent legal advice in any of the transactions.
- i. These real estate transactions were completed by E.Y. at Mr. Nelson's office.
- j. Mr. Nelson did not meet with J.Q. on this matter and there are no copies of any identification on his file in respect of J.Q.
- k. Only a portion of the solicitors' instructions from Bank C can be found at Tab 10.13 of the Investigation Binder. At their request, Bank C provided the Law Society Investigators with a copy of the Solicitors' Instructions that would have been in place at the time (Tab 10.58 of the Investigation Report). These instructions required Mr. Nelson to, *inter alia*:
 - i. Not also act for a vendor in a purchase transaction unless he had written consent from the bank;
 - ii. Prepare the mortgage in accordance with the bank's instructions;

- iii. Obtain and copy specified personal identification of the mortgagor's in accordance with the Identification Guidelines in the physical presence of the mortgagor;
 - iv. Advise the bank of any unusual circumstances that may indicate a potential fraud such as recent sales (e.g. within 3 to 6 months) of the same property at substantially lower values, recently discharged mortgages or title transfers (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;
 - v. Complete a solicitor's report within 30 days after mortgage proceeds are disbursed;
 - vi. In the case of a condominium, review the estoppel certificate and certificate of insurance for the property prior to funding on behalf of the condominium corporation and the mortgagor and determine that all documents are satisfactory.
- I. Mr. Nelson never personally reviewed these Solicitor Instructions. Neither Mr. Nelson nor anyone in his office:
- i. Met or obtained personal identification from J.Q.;
 - ii. Disclosed to Bank C there were multiple sales contracts closing the same day in respect of the same property pursuant to which one provided a purchase price of \$210,000.00 and the other for \$235,000 – a price increase of \$25,000 and that this ought to be considered a recent sale at substantially lower values;
 - iii. Disclosed to Bank C that the vendor J.A. was not the registered owner at the time the REPC – J.Q. was executed and that the property was the subject of a skip transfer and was being flipped for profit;
 - iv. Disclose that the full purchase price was not paid; namely that the deposit of \$1,000 and \$10,750 balance owing were not paid to Mr. Nelson in trust nor to a licensed realtor, in trust;
 - v. Advised that directions were being taken from J.A. rather than the J.Q. who was applying for the mortgage;
 - vi. Recommended all of the parties obtain independent legal advice;

- vii. Advised that J.Q. was concurrently purchasing Property 2 in respect of which she was applying for another high ratio mortgage requiring owner occupancy;
 - viii. Advised that the direction to pay did not correspond with the trust ledger;
 - ix. Prepared conflict letters;
 - x. Sought, obtained or reviewed the Estoppel Certificate and Certificate of Insurance or reported to J.Q. in respect of it prior to funding;
 - xi. Reported to Bank C within 30 days; rather the reporting did not take place until August 19, 2008 (Tab 10.50 of the Investigation Report).
- m. Mr. Nelson understands that the Law Society Investigators consulted Bank C and were advised by Bank C that it was policy not to fund mortgages that were suspected of fraudulent activity.
- n. On August 17, 2007, over a month and a half after the mortgage had been funded, Jivraj sent the Estoppel Certificate and Certificate of Insurance to Mr. Nelson (Tab 10.25 and 10.26 of the Investigation Report). The Estoppel Certificate revealed, *inter alia*, that:
- i. The monthly levy for condominium unit plus parking stall was to increase by \$50.00 as of September 1, 2007;
 - ii. A written demand had been filed against the Corporation by a former contractor for an amount in excess of \$5,000.00; and
 - iii. A special assessment levy was called as of July 4, 2007 to recover \$858,000.00 for repairs, other building issues and legal fees and the special assessment for the subject condominium unit was \$4,719.00.
- o. Mr. Nelson acknowledges that although he received the mortgage advance on July 5, 2007 and released most of the funds to the originating vendor the next day, the transfer and mortgage were not registered until October 24, 2007 and only after Bank C retained independent counsel to follow up on numerous occasions with their concerns regarding their security (Tabs 10.27 to 10.49 of the Investigation report).
- p. The mortgage was a high ratio mortgage which required CMHC insurance. As a result, J.Q. would be personally liable in the event of a deficiency.
- q. Default in payment under the mortgage was made and Bank C commenced a foreclosure action in October, 2007 (Tab 10.56 of the Investigation Report) and

on December 2, 2008, obtained a Consent Order for Sale to Plaintiff and Judgment (for the deficiency after sale) against J.Q. (Tab 10.54 of the Investigation Report).

- r. An action was also commenced against J.Q. by Corporation B. on July 10, 2008 for contributions interest and costs due and owing under the Condominium bylaws which action was subsequently discontinued as of August 20, 2008 pursuant to an agreement between the parties (Tab 10.55 of the Investigation Report).

CONCLUSION AND ADMISSIONS

37. Mr. Nelson agrees and admits to all of the facts described above in paragraphs 1 to 38.

38. For ease of reference, the properties and transactions listed above are summarized in the following table in date order relating to Closing Dates:

Property	Closing Date Scheduled (Actual) All in 2007	Parties	Mortgage Lender	Mr. Nelson Acting for:	Property Price Increase
4 (Tab 8-IR) [REDACTED] Crescent N.E.	May 21 (May 31)	Vendor: D.M. Skip A.T.sfer: J.A. Purchaser: J.J./A.F.	Bank C	All Parties	\$66,810
6(Tab 10-IR) [REDACTED] St. N.E	June 30 (July 6)	Vendor: N.C. Skip Transfer: J.A. Purchaser: J.Q.	Bank C	J.A. J.Q. Bank C	\$25,000
2 (Tab 6-IR) [REDACTED] Drive N.W.	June 30 (July 16)	Vendor: J.N. Skip Transfer: J.A. Purchaser: J.Q./A.F.	Bank B	All Parties	\$45,000
5 (Tab 9-IR) [REDACTED] Circle N.E.	July 31- amended to Sept 15 (September 21)	Vendor: A.T. Skip Transfer: Corporation A Purchaser: C.E.	Bank D	J.A. C.E. Bank D	\$50,000

<p>1 (Tab 5-IR) ██████████ Drive N.E.</p>	<p>August 30 (September 1)</p>	<p>Vendor: C.'s Skip Transfer: J.A. Purchaser: H.'s</p>	<p>Bank A</p>	<p>J.A. H.'s Bank A</p>	<p>\$65,000</p>
<p>3 (Tab 7-IR) ██████████ Road N.W.</p>	<p>July 10</p>	<p>Vendor: M.'s Purchaser: J.N.</p>	<p>Bank B</p>	<p>J.N. Bank B</p>	<p>N/A</p>

39. Regarding the citations, Mr. Nelson admits the following:

Citation 1:

It is alleged that you signed powers of attorney as a witness to the donor's signature and deposed to having witnessed the signatures without having been present to see the donor sign the power of attorney, and that such conduct is conduct deserving of sanction.

Admission

I admit that powers of attorney were used in respect of transactions relating to the following Properties:

██████████ Circle - C.E. granted power of attorney in favour of A.F.

██████████ Drive – H.'s both granted power of attorney in favour of A.F.

I admit that in respect of the H.'s and C.E., I signed a power of attorney and swore the attached Affidavit of Execution when in fact I was not present at the time of nor had he witnessed the execution of the documents.

I assumed I had done so based on noting my name was printed as witness, my belief that my staff would not give me documents I could not ethically sign and that I was unaware my staff let A.F. remove the documents from my office. I have no independent recollection of the circumstances relating to the signing the documents and am unable to independently verify that I ever met with the H.'s or C.E.

I admit that this conduct is conduct deserving of sanction.

Citation 2

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

Admission

I admit that I provided legal services concerning a number of real estate matters in 2007 involving a client, J.A. et al. who appears to have been involved in a mortgage fraud scheme pursuant to which many purchasers have been subjected to foreclosure proceedings and for which they are liable for the deficiency as they obtained high ratio mortgages.

I admit that the transactions in question had a number of indicia of mortgage fraud associated with them including skip transfers, deposits purportedly paid to the seller to me (but not received by me), the rapid escalation in value of all of the properties save Property 3. I admit that the H.'s have admitted to being paid \$10,000 to use their identification and credit information to apply for the mortgage on Property 1 but had no intention of living on the property and did not live on the property. I admit that J.Q. was purchasing Properties 2 and 6 at the same time, that both involved high ratio mortgages (which in turn require owner occupancy) and that I should have recognized she could not live in both properties.

I admit that J.A. or A.F. were largely directing the transactions and communicating with my office but not with me although on at least 2 occasions I inquired about the increase in value of these properties and he provided me with explanations that appeared to be reasonable.

I admit that I my failure in reviewing these files, supervising my staff, and engaging in the real estate side of my practice facilitated and assisted J.A. et al in carrying out the improper purpose of mortgage fraud and that this conduct is conduct deserving of sanction.

Citation 3

It is alleged that you failed to conscientiously serve your clients, the mortgage lenders, and that such conduct is conduct deserving of sanction.

Admission

I admit that all of the transactions described above involved high ratio mortgages and that I never reviewed the Solicitor Instructions provided by any of the lenders. I admit that I had several files on which such instructions could not be located.

I never met personally with the purchasers/mortgagors and there are no copies of identification on my files of any of the purchasers/mortgagors save that of J.N. in respect of Property 3 which did not involve a high ratio mortgage.

I admit that I had a duty to act in the best interests of the lenders and notwithstanding their specific instructions, I did not advise the lenders:

- Of any material facts that would have affected their decisions to advance the mortgage loan;
- That I had not at the time verified and cannot today verify the payment of deposits noted in the Real Estate Purchase Contracts ("REPC"), even when those REPC's required that the funds be paid to me and therefore the only funds being received on the purchases were the mortgage funds;
- That in respect of Properties 1, 2, 4, 5, and 6, there was significant escalation in value of the property over a short period of time, sometimes on the same day
- That in respect of Properties 1, 2, 4, 5, and 6, there was a skip transfer and flip transaction involved and that the vendor (J.A. or Corporation A) was not the registered owner of the said property;
- That the mortgages in respect of Properties 1, 2, and 5 were executed under a power of attorney;
- That in respect of Properties 4 and 6, I did not seek the consent of Bank C to act for the vendor despite a specific provision in their mortgage instructions requiring me to do so
- That in respect of Property 6, I failed to provide a timely response to Bank C and to independent solicitors Bank C retained regarding questions about their security involved in that transaction that rather than reporting to Bank C Bank within 30 days of funding as required, I did not provide a report until over a year later;
- That several of these mortgages subsequently went into default and foreclosure proceedings were necessary.

I admit that I failed to conscientiously serve my clients, the lenders and that such conduct is conduct deserving of sanction.

Citation 4

It is alleged that you failed to conscientiously serve your clients, the purchasers, and that such conduct is conduct deserving of sanction.

Admission

I admit that I did not personally meet with any of the purchasers involved in the 6 real estate transactions described above and that neither I nor anyone in my office informed the purchasers of all the material facts related to their transactions.

I admit that I either had no conflict letters or did not have proper conflict letters (namely, revealing to all parties that I was acting for J.A. by way of skip transfers so as to flip the properties for profit) on all files other than Property 3.

I admit that at no time did I nor anyone in my office recommend the purchasers obtain independent legal advice in the face of the conflicts that existed.

I admit that at no time did either I nor anyone in my office explain to the purchasers the potential liabilities they were incurring by participating in the purchase transactions, the nature of the high ratio mortgages, nor did I provide them with any legal advice

I admit that in respect of the H.'s (Property 1) and C.E. (Property 5), I signed powers of attorney without meeting them and discussing the same and allowed A.F. to act as their attorney when she was an interested party and employed by the vendor in the transactions. This facilitated the completion of the transactions when the H.'s and C.E. were unaware of what was going on. I admit that the H.'s have admitted to being involved in a mortgage fraud scheme in this transaction pursuant to which they were paid \$10,000 for their personal information to be used in the mortgage application process. I acknowledge that C.E. was at no time aware that his information was being used in another mortgage fraud and that he denies ever having been involved in any way. I conducted my own investigation into the C.E. matter after the Law Society had concluded their investigation. C.E. reversed himself and admitted to me that he too had been paid \$10,000.00. I subsequently paid him \$32,500.00 as evidenced in the letters attached at **Exhibit 11**.

I admit that in respect of Property 2, I failed to provide J.N. with an accounting, that I failed to take proper direction from her and that I paid J.A. the sum of \$1,900.00 from the trust funds relating to her purchase of Property 3 and paying her sale proceeds of \$220,000 in respect of the sale of Property 2 without her authority or consent

I also admit that in several cases I failed to obtain appropriate directions to pay or acted in a manner contrary to the directions to pay that were given.

I admit that foreclosure proceedings were commenced in respect of Properties 1, 2, 5, and 6 leaving the purchasers liable for deficiency judgments.

I admit that I failed to conscientiously serve my clients, the purchasers and that such conduct is conduct deserving of sanction.

Citation 5

It is alleged that you acted while in a conflict or potential conflict of interest without obtaining your clients' consent or in circumstances where it was not in the best interests of your clients that you do so, and that such conduct is conduct deserving of sanction.

Admission

I admit that conflicts of interest arose in respect of all of the properties save Property 3 because I was acting for the purchasers/borrowers, mortgage lenders, and the intervening vendor (J.A.) on all of the transactions and the seller on some of them.

I admit that either did not have any conflict letter on the file or I had a deficient conflict letter in that no mention was made of J.A.'s participation nor was there a space for him to sign on the conflict letter nor did he sign the conflict letters where they existed.

I admit that neither I nor anyone in my office, otherwise recommended to the parties that they obtain independent legal advice.

I admit that in respect of Properties 2 and 4, I acted for all parties and that in both cases, A.F. was a joint purchaser. I admit that neither I nor anyone in my advised either J.Q. (Property 2) or J.J. (Property) that A.F. was also an employee and associate of J.A. who himself was realizing a profit from the flip transactions and that he was their vendor.

I admit that in respect of property 2, A.F. (as co-purchaser) granted a power of attorney to me to act as her attorney and that I failed to notify J.Q. (the other co-purchaser), that I was acting as her lawyer but also as her co-purchaser's attorney nor did I notify any of the same.

I admit that given the unorthodox nature of the transactions relating to Properties 1, 2, 4, 5, and 6 and the many indicia of mortgage fraud arising from them, my multiple representation of my clients was not in their best interests.

I admit that I acted in a conflict or potential conflict of interest in these matters without obtaining my clients' consent and in circumstances where it was not in their best interests that I do so and that such conduct is conduct deserving of sanction.

Citation 6

It is alleged that you breached a trust condition, and that such conduct is conduct deserving of sanction.

Admission

I admit that with respect to Property 5, I received conveyancing documents from the originating vendor's lawyer under cover of a letter dated July 31, 2007 containing the following trust conditions:

“Transfer of Land. You may insert your client's name in the transfer of land provided such insertion includes the names of all parties who are purchasers in the contract. If all parties are not being inserted you must obtain our prior written consent to the exclusion of any purchaser named in the purchase contract which consent will require written confirmation from any excluded purchaser that they consent to such exclusion. Additionally, if an additional purchaser is being added to the transfer of land, you must obtain our prior written consent to the addition of any purchaser not named in the purchase contract which consent will require written confirmation from any named purchaser that they consent to such addition.

...

In the event that you are unable or unwilling to comply with the foregoing trust conditions, please contact this firm immediately to discuss any possible variation of the above trust conditions. The enclosed Transfer of Land is to be returned to this office unused if the trust conditions cannot be mutually agreed upon.”

I admit that the purchaser was shown on the REPC as “J.A./Corporation A Investments and/or Nominee” and that I only inserted the names of the H.'s as the transferees on the transfer of land. I admit that I did not obtain Revitt's consent to this action.

In my view this was an improper trust condition as it sought to amend the agreement between the parties; however, I admit that I was obliged and failed to deal with the trust condition in some way whether by seeking an amendment to it or returning the conveyancing documents which I failed to do.

I admit that I breached a trust condition contrary to the *Code of Professional Conduct* and that such conduct is conduct deserving of sanction.

Citation 7

It is alleged that you failed to properly supervise your support staff, and that such conduct is conduct deserving of sanction.

Admission

I admit that I failed to properly supervise and train my employees in the real estate side of my practice, particularly E.Y.

I admit that E.Y. was 21 when I hired her, that I did not review her resume and did not contact any references. At the time I hired her, experienced real estate paralegals were in short supply.

I admit that during the summer and fall of 2007, I was very busy with my personal injury practice and was preparing for and then attending a three week trial.

I admit that I allowed E.Y. and other real estate assistants I hired after her to meet with clients, work directly with the lenders and fundamentally run the real estate side of my practice.

I admit that I never reviewed the physical real estate files themselves to check for the quality of the work or to verify that the transactions were being completed correctly.

I admit that I would ask E.Y. daily or almost daily how things were going on the files and would sign documents when asked but that I did not otherwise supervise her work. E.Y. would usually respond to my verbal queries on how things were going by saying that things were "fine".

I admit that I was responsible for the work done in my office whether by me or my staff.

I admit that I failed to properly supervise my support staff on the real estate side of my practice and that such conduct is conduct deserving of sanction.

Citation 8

It is alleged that you failed to follow the accounting rules of the Law Society of Alberta, and that such conduct is conduct deserving of sanction.

Admission

I admit Rule 122(2)(c) of the Rules of the Law Society that existed in 2007 required that I maintain individual and separate trust ledgers for each client represented in a matter.

I admit that in respect of Property 1, I maintained one trust ledger for J.A. and did not create a separate ledger for the H.'s who were the recipients of the mortgage proceeds.

In respect of Property 2, I had trust ledgers for A.F./J.Q. and for J.N. and that the mortgage proceeds went from A.F./J.Q.'s trust ledger directly to J.N.'s ledger. I admit that I failed to open a trust ledger for J.A. to allow for the transfer of funds from A.F./J.Q. to J.A. and then from J.A. to J.N..

I admit that in respect of Property 3, and in violation of Rule 124 of the Rules of the Law Society then existing, that I provided trust funds of \$1,900.00 from her client trust ledger to J.A. without being provided with such direction by J.N. as the Direction to Pay signed by J.N. did not authorize such a transaction and she did not otherwise authorize it.

In respect of Property 4, I admit that I had trust ledgers for D.M. and J.A., but did not have one for the purchasers, J.J./A.F. who were the recipients of the mortgage proceeds. As a result, I admit that the mortgage proceeds were deposited into J.A.'s trust ledger when they should have been placed in one for J.J./A.F. I also admit that the transaction was handled in an unorthodox manner in that money was sent from J.A.'s trust ledger to a lawyer in Ontario for D.M. when the money should have been transferred to the D.M. ledger and disbursed from there.

In respect of Property 5, I admit that I only had one client trust ledger for C.E. and did not create a separate trust ledger for J.A. as required by the Rules.

In respect of Property 6, I admit that I maintained a trust ledger for J.A. and did not create a separate ledger for J.Q. which was necessary to record the deposit of the mortgage proceeds and to allow for the transfer of money between J.Q. and J.A. Consequently, the mortgage proceeds were deposited into the J.A. trust ledger when they should have been placed in a trust ledger for J.Q.

I admit that with respect to these transactions, the flip transactions were being treated as a single transaction with no distinction being made between J.A. and the purchaser and with any excess cash being paid to J.A.

I admit that I failed to follow the Rules of the Law Society and that such conduct is conduct deserving of sanction.

This Agreed Statement of Facts and Admission is dated the 24th day of March, 2014.

WITNESS

STEPHEN B. NELSON