

THE LAW SOCIETY OF ALBERTA
HEARING COMMITTEE REPORT

IN THE MATTER OF the *Legal Profession Act*, and
IN THE MATTER OF a Hearing regarding the conduct of
Surinder Randhawa, a Member of the Law Society of Alberta

Counsel: H. Spicer, counsel for the Law Society of Alberta (LSA)

D.A. McDermott, QC, counsel for the Member

INTRODUCTION

1. On **September 29, 2014**, the Hearing Committee reconvened to continue the Hearing. At the commencement of the Hearing, Counsel for LSA advised the Hearing Committee that Counsel for the Member and she had arrived at an agreed Statement of Facts and the Member had made an admission of guilt. Counsel for the LSA on behalf of the LSA and Counsel for the Member presented an eight-page document entitled "Statement of Facts and Admission of Guilt" bearing the signature of the Member and dated September 29, 2014.

HEARING DAYS

2. This Hearing commenced on **April 30, 2014** and was adjourned on **May 7, 2014**. The Hearing resumed on **May 22, 2014** and was adjourned on **May 23, 2014**.
3. On **May 8, 2014**, during the course of the Hearing, Counsel for the LSA brought an application for an interim suspension which was granted. On **May 23, 2014**, Counsel for the Member brought an application to Stay the interim suspension. The application was denied.

DOCUMENTATION

4. This Decision must be read in conjunction with the following:
 - (i) The Hearing Committee's Report on the application for an interim suspension and a stay of the interim suspension consisting of 29 pages dated **July 4, 2014**;
 - (ii) Statement of Facts and Admission of Guilt consisting of eight pages, dated **September 29, 2014** entered as Exhibit 114 in these proceedings; and
 - (iii) The record of the Member dated **September 25, 2014** entered as Exhibit 116 in these proceedings. It is to be noted that during the time this Hearing was ongoing, the Member was found guilty on **September 24, 2014** of three counts of conduct deserving of sanction, bringing discredit to the profession in multiple interactions with a Complainant, another lawyer, and in threatening another person. The Member was reprimanded and ordered to pay costs. Prior to **September 24, 2014**, the Member had been found guilty on **July 8, 1996** on two counts of conduct deserving of sanction whereon he was reprimanded, ordered to pay costs and a two-year suspension was ordered. On **August 30, 2005**, the Member pled guilty to three counts of conduct deserving of sanction and was

ordered to pay costs and a fine and was suspended for 30 days and referred to the Practice Review Committee.

CITATIONS

5. The Member faced five Citations:
 - (1) It is alleged that you assisted one or more clients in an improper purpose, and that such conduct is conduct deserving of sanction.
 - (2) It is alleged that you failed to properly supervise your support staff, and that such conduct is conduct deserving of sanction.
 - (3) It is alleged that you failed to serve your clients, the mortgage lenders, and that such conduct is conduct deserving of sanction.
 - (4) 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.
 - (5) It is alleged that you failed to respond in a timely basis and in a complete and appropriate manner to communications from the Law Society of Alberta, and that such conduct is conduct deserving of sanction.
6. The Member pled guilty to Citations 2, 3 and 4. Counsel for the LSA advised the Hearing Committee that the LSA was not calling evidence relating to Citations 1 and 5, Hearing no evidence, the Hearing Committee dismissed Citations 1 and 5.

DECISION OF THE PANEL IN RELATION TO THE STATEMENT OF FACTS AND ADMISSION OF GUILT

7. Following submissions by Counsel for the LSA and Counsel for the Member, the Hearing Committee went into recess to deliberate on whether or not the Hearing Committee would accept the Statement of Facts and Admission of Guilt. Following deliberations, the Hearing resumed and the Chair advised Counsel for the LSA and Counsel for the Member that the Hearing Committee had accepted the Statement of Facts and Admission of Guilt.

SANCTION

8. Joint submissions were heard from Counsel that the appropriate sanction was a fourteen-month suspension. Submissions were heard on whether the suspension should be retroactive to May 8, 2014.

COSTS

9. The Chair on behalf of the Hearing Committee invited submissions on the issue of costs. Argument was heard from Counsel for the LSA and Counsel for the Member.
10. Counsel for the LSA, with the consent of Counsel for the Member, provided the Hearing Committee with an estimated Statement of Costs in the amount of \$79,928.09 which was entered as Exhibit 115 in these proceedings.

11. Counsel for the Member argued that as no evidence was proffered by the LSA in relation to Citations 1 and 5 the amount of costs ought to be reduced.

DECISION ON SANCTION AND COSTS

12. Following submissions on sanction and costs, the Hearing Committee went into recess to deliberate. At the resumption of the Hearing, the Chair delivered the Decision of the Hearing Committee that:
- (i) The joint submission of a fourteen-month suspension of the Member was accepted by the Hearing Committee but the retroactivity was denied. Rather the Hearing Committee ordered that the fourteen-month suspension is effective commencing **September 29, 2014**. The Hearing Committee did not accept the 'argument that the Hearing Committee ought to take into account that the Member has been under suspension since **May 8, 2014**. The Hearing Committee heard nothing new in submissions that would cause it to shorten the period of suspension given the serious allegations the Member faced during the Hearing and the evidence before the Hearing Committee prior to the second adjournment of the Hearing which commenced on **May 23, 2014**.
 - (ii) The Member is ordered to pay all costs which may be more than noted in the Estimated Statement of Costs being Exhibit 115 in these proceedings. It is further ordered that the Member shall pay the costs in their entirety within one year of re-instatement to practice.

REPRIMAND

13. The Chair delivered a reprimand stating that the Member's behavior was shameful; the Member had brought disgrace upon the LSA and the community he served. The Member was reminded of the oath he had taken when he became a member of the LSA which included his swearing that he would not destroy anyone's property and that he would not pervert the law to favor or prejudice anyone, but in all things would conduct himself truly and with integrity. The Member's behavior resulting in the Citations to which he pled guilty demonstrate that he failed to conduct himself in the fashion expected of a Member of the LSA.
14. All Exhibits shall be available to the public following redaction.
15. There shall be no referral to the Attorney General as the authorities are already aware of the Member's behavior. A senior Detective was present during each Hearing day with the exception of September 29, 2014.

DATED this 20th day of October 2014.

ROSE M. CARTER, QC
Chair

DEREK VAN TASSELL, QC
Member

ROBERT DUNSTER
Member

**IN THE MATTER OF THE *Legal Profession Act*,
and in the matter of a Hearing regarding the conduct of
Surinder Randhawa, a Member of the Law Society of Alberta**

**THE LAW SOCIETY OF ALBERTA
HEARING COMMITTEE REPORT ON
APPLICATIONS FOR AN INTERIM SUSPENSION
AND STAY OF THAT SUSPENSION**

*Report on the applications for an Interim Suspension and a Stay of the
Interim Suspension.*

Counsel: **Molly Naber-Sykes, QC and H. Spicer, counsel for the Law Society of Alberta (LSA)**

 D.A. McDermott, QC, counsel for the Member

INTRODUCTION

1. On **May 8, 2014**, during the course of the Hearing, Counsel for the LSA brought an application for an interim suspension which was granted. On **May 23, 2014**, Counsel for the Member brought an application to Stay the interim suspension. The application was denied.

CITATIONS

2. The Hearing Committee will continue to hear evidence on the following five Citations facing the Member:
 - It is alleged that you assisted one or more clients in an improper purpose, and that such conduct is conduct deserving of sanction.
 - It is alleged that you failed to properly supervise your support staff, and that such conduct is conduct deserving of sanction.
 - It is alleged that you failed to serve your clients, the mortgage lenders, and that such conduct is conduct deserving of sanction.
 - It is alleged that you failed to follow the accounting rules of the Law Society of Alberta, and that such conduct is conduct deserving of sanction.
 - It is alleged that you failed to respond in a timely basis and in a complete and appropriate manner to communications from the Law Society of Alberta, and that such conduct is conduct deserving of sanction.

APPLICATION FOR INTERIM SUSPENSION

3. The Hearing commenced on **April 30, 2014**. At the end of evidence on **May 8, 2014**, the LSA had not closed its case. On **May 8, 2014** Counsel for the LSA brought an application, which was opposed, to interim suspend the Member.

NO PRE-HEARING APPLICATION

4. LSA Counsel advised that there was too much information missing prior to the onset of the Hearing for the LSA to bring an application for an interim suspension. It is only recently that further information has come to the attention of the LSA including the brevity of the Member's client files for the P Property and M Property. The Member's client files had to be supplemented through documentation from various witnesses heard. (**Exhibits 42, 105**) The LSA assembled multiple more pages on the P Property transaction than what was found on the Member's client file. Also, evidence from witnesses called to date has helped to fill in missing pieces of the puzzle.
5. Counsel for the LSA argued that:
 - (i) In considering the application it is appropriate for the Hearing Committee to focus on the best interests of the public;
 - (ii) This Hearing is far from being concluded; and
 - (iii) There is a concern at the number of adjournments sought and received by the Member.

Adjournments

6. Some adjournments were related to a change in the Member's Counsel. There is medical information on the health issues, including stress, from which the Member suffers and health issues which caused an adjournment of the **November 4, 2013** Hearing. There is also the stress of this very serious hearing. (**Exhibit 104**) Counsel for the Member submitted to this Committee that it was not possible for the Member to sit late one evening because of medical issues. All of this supports the LSA's submission that there is no guarantee this Hearing will continue. LSA Counsel also reminded the Committee of the Member's Counsel's submissions about the busyness of the Member's practice. Member's Counsel made the submission on the Member's busyness in the context of his inability to meet with his client, before the Hearing, to finalize matters because of the Member's busyness.

EVIDENCE HEARD FROM APRIL 30, 2014 TO MAY 8, 2014

7. Because of the lengthy evidence heard and large number of Exhibits entered it is necessary in dealing with this Interim Suspension application, to set out a summary of evidence heard to date.
8. From **April 30** to **May 7, 2014** evidence was heard from the following LSA witnesses:
 - (i) April 30 – I.F., X Bank employee;
 - (ii) May 2 – L.P., handwriting expert;

- (iii) May 2 – Ms. B.K.S., purported mortgagee;
- (iv) May 5 – K.S., the Complainant;
- (v) May 6 – L.S., Y Bank employee;
- (vi) May 6 – I.S., N Ltd.; and
- (vii) May 7 – B.H., Realtor.

(a) MR. S, THE COMPLAINANT, LSA WITNESS

9. When the Member acted for K.S. on a passport matter he provided the Member with personal information including his SIN, photocopies of his license and other related documentation (the Documentation). K.S. testified that the Documentation, if used for purposes other than in relation to his Passport application, was done without his knowledge and consent. (**Exhibits 13, 14**)
10. K.S. presented as a bright, hard working person who was steadfast in his evidence and withstood vigorous cross-examination. He was not moved from the evidence he had given in direct. Through serendipity, he became aware in or about **March 2007** and in or about **September 2008** that his name was on titles of two properties, P and M (the Properties). He believed he only owned one property on Falconridge Drive, the home in which he and his family have resided for 15 years and on which he has a mortgage with his brother. He learned that he "owned" one of the Properties after he attended the bank with his sister and brother-in-law to offer his good name, his financial backing and to do what he could to assist them to secure a home as they could not qualify on their own for a mortgage. He learned he "owned" another home when he was contacted about renewing his mortgage.
11. K.S., once he learned that he might have had fraud perpetrated against him, was to take immediate action. He wanted the bank manager at Z Bank to determine what had occurred. When he had not heard from the bank manager two days or so after his discussion with them, he wrote a letter which he personally delivered to Z Bank. The letter dated **March 18, 2007**, sets out in no uncertain terms that he did not have a mortgage with the Z Bank. (**Exhibit 70**) Following that, he sought the assistance of the police. He told both the banking personnel and the police that he believed he was a victim of fraud. He also made a complaint to the LSA. (**Exhibit 63**) K.S. testified that when the Member and the Member's wife learned that K.S. had made a complaint to the LSA, they attended at his residence and asked him to withdraw his complaint. He refused to do so.

P PROPERTY

12. On **September 23, 2008**, K.S. was contacted by an employee of X Bank asking if he wished to renew "his" mortgage on P Property with X Bank. (**Exhibit 56**) He said that he did not have a mortgage with them but the X Bank personnel insisted that he did. They verified with him the information they had regarding him.

(b) MS. B.K.S., LSA Witness

13. Ms. B.K.S. did not know English well at the time she was asked to sign documents to help the Member. At the Hearing her evidence was translated. She was emotional throughout much of her evidence saying that she was a truthful person and that she was telling the Committee the truth.

She presented as an unsophisticated person who, when asked by an authority figure to do something to help him, did so.

14. Ms. B.K.S. testified that she did not sign certain documentation for the P Property mortgage which purportedly bared her signature. (**Exhibits 7, 8, 12, 13, 13A, 49, E, F, and G**)
15. Ms. B.K.S. presented as a person who looks up to her elders in her cultural community. She trusted the Member. She was asked by her husband, Mr. X.S., to "lend" her name so the Member could secure a mortgage (P Property). She did what she was asked to do. The Member called Ms. B.K.S. and told her to come to his office as the documents were ready to be signed. When she was at the office the Member told her the mortgage for a house was not "getting approved" so if she could "lend" her name it would help. In **2003**, at the Member's request, she gave him her ID, SIN and license. (**Exhibit 52 and 53**) She did not pay the P Property mortgage, she did not know where the house was although the Member did tell her; she did not receive a letter from Mr. Randhawa in **2003** (**Exhibit 16**); she did not pay property taxes on P Property; she denied that it is her signature which appears on **Exhibits 7, 12, 8, E, 13, 13 A, 49, B and F**; she does not know K.S. or Ms. X who are shown as co-owners of P Property (**Exhibit 48**); and she did not give a copy of her pay stub from L Inc. to X Bank in **2003** but may have given it to the Member. (**Exhibit 54**). She recalls only "signing once" on the mortgage documents. She knew she was signing to help the Member get a mortgage. She denied signing **Exhibit 12**. She testified that when she met with the Member and signed the documents, all he told her was to "sign here, sign here".

(c) B.H., LSA WITNESS

16. B.H. has been a licensed realtor in Alberta since **October 2003** and is affiliated with ABC Real Estate.
17. B.H. refused to speak to LSA personnel until **April 17, 2014**, less than a month prior to commencement of this Hearing. B.H. was served with a Notice to Attend and attended before the Committee under duress relying on Section 13 of the *Charter* in giving his evidence. B.H., until approximately ten days prior to the commencement of the Hearing, refused to produce his file to the LSA. Contained in B.H.'s file was documentation that LSA Counsel was unaware of prior to B.H.'s appearance. This documentation shows a very different purchase contract for the M Property than the purchase contract entered as **Exhibit 98** before the Committee heard B.H.'s evidence. B.H.'s name has been replaced by the name of the company of the Member's wife. (**Exhibits 13, 21, 86, 91, 94 and 99**).
18. B.H. met Mr. Randhawa in **2006** on the recommendation of Mr. L., a member of the Member's community. Mr. Randhawa provided B.H. with legal services when he purchased a property at N Drive NW. B.H. described himself as the Member's business partner in the purchase of various real estate properties.
19. Initially, B.H. believed that he had an interest in not only the M Property but its duplex as well. The Member told him he did not. He learned, "already, very early in the situation" dealing with the Member was not simple.

PURCHASE OF THE M PROPERTY

20. B.H. testified that he and the Member were friends and they were establishing a business relationship whereby they would each own 50% of the M Property and by **July 2006** that was the

ownership. **(Exhibit 20)** B.H. trusted the Member and he operated on good faith that the Member was doing what was best for himself and governing himself under his occupation as B.H. was doing.

21. The Member told B.H. that the M Property owned by Mr. and Ms. J was for sale and he and the Member should meet to discuss purchasing it together. He and the Member met with the seller's son in the **Spring, 2006**. B.H. signed a real estate purchase contract on **April 28, 2006**. **(Exhibit 86)** B.H. noted on the real estate purchase contract that the Member would be acting for the seller and purchaser. B.H. paid a \$3,000 deposit pursuant to the real estate purchase contract. The Member's office created a statement of sale setting out some of the finances for his purchase from Mr. and Ms. J. When B.H. and the Member purchased the M Property the original principal amount on the mortgage was \$105,421. **(Exhibit 19)** The M Property was not transferred to B.H. in **2006** but rather was transferred to XXXXXXXX Alberta Ltd., being the company of the Member's spouse and the transfer was registered by the Member's office. The statement of sale and adjustments dated **May 12, 2006** shows a credit to B.H. of \$3,000 which B.H. confirmed as accurate. **(Exhibit 88)** The balance of funds required to close the purchase is shown as \$30,147.68. **(Exhibit 87)** The amount of \$12,872.98 was transferred to file XXXX-XXX being the M Property from another file in the Member's office on **July 3, 2006**. B.H. does not recall having any money on deposit with the Member relating to another file on **July 3, 2006**. In **August 2005** B.H. offered to purchase the property from them in **April 2006**.
22. On **July 6, 2006**, the Member, at B.H.'s request, filed a caveat certifying B.H.'s interest in the M Property and the registration of the caveat was on title for the M Property by **July 25, 2006**.
23. The first time B.H. saw the Transfer of Land from the original owners of M Property to XXXXXXXX Alberta Ltd. was at the Hearing. Title of the M Property was registered to the numbered company of the Member's wife on **July 4, 2006**. **(Exhibit 19)** He does not remember that in **May 2006** the M Property was going to be transferred to a numbered company.
24. It did not matter to B.H. whether the M Property was registered under his name or the name of the Member. It was the Member's idea to register the M Property in the name of XXXXXXXX Alberta Ltd. There was no formal documentation put in place showing that XXXXXXXX Alberta Ltd. was being substituted for B.H. on the M Property.

REFINANCING AND INVOLVEMENT OF S.W.

25. When counsel for LSA asked B.H. what happened with respect to the M Property he responded, "A lot."
26. After the purchase of M Property, the Member and B.H. spoke about refinancing that property. The market was very brisk at the time and they believed they could refinance the property. One way of doing this was to see if B.H.'s wife, S.W., could qualify for a mortgage. If she qualified, the plan was that she would sign the mortgage documents and the Member and B.H. would take equity out of the property. B.H. prepared and signed the residential real estate purchase contract between XXXXXXXX Alberta Ltd. and S.W. **(Exhibit 89, p. 4)** B.H. signed his wife's name without her knowledge and consent. **(Exhibit 89)** The M Property was listed for sale in the **Summer/Autumn 2006**. B.H. was the listing agent. They did not receive any offers to purchase the M Property except for the offer purportedly from S.W.

27. B.H. did not discuss with the Member or the Member's wife why XXXXXXXX Alberta Ltd. did not apply for a mortgage to take equity out of the M Property. B.H. did not apply for a mortgage to take the equity out because he was certain he would not qualify as he already owned real estate. S.W. had perhaps one other mortgage in **August 2006** on property in PEI. The Member led the thinking on the pricing of the M Property. To B.H.'s knowledge, the Member's wife did not participate in any discussions related to the M Property. He does not remember whose decision it was to change the purchase price from \$210,000 to the handwritten price of \$218,000. **(Exhibit 89)** The Member selected the price of \$225,000 as the list price for the M Property. B.H. felt the \$225,000 price was too high and he so advised the Member. The Member did not want to reduce the price. B.H. assumed he would receive 50% of any gain from the sale. He did not negotiate for a commission because \$3,000 is "peanuts".
28. B.H. wrote a cheque to the Member in trust for \$1,500 as a deposit for S.W.'s purchase of the M Property. **(Exhibit 89)** He does not recall if the \$1,500 cheque was cashed by the Member and deposited into the Member's trust account. B.H. never gave the Member one of his cheques with K.S.'s name on it instead of his Company's name. His Company name was always on the cheque **(Exhibit 99)**. B.H. assumes he would have given the Member **Exhibit 99** in relation to another matter. He did blank out his name on the cheque above the name of S.W. **(Exhibit 92)**
29. On **August 23, 2006**, B.H. prepared a real estate purchase contract which he signed using his wife's name without her permission or knowledge showing a sale from XXXXXXXX Alberta Ltd. to his wife for the purpose of seeing if his wife could qualify for a mortgage. B.H. signed the property inspection schedule dated **August 23, 2006**. **(Exhibit 90)** He wrote S.W.'s name on the property inspection schedule but does not recall who signed for the seller. **(Exhibit 90)** B.H. wrote the name of S.W. on an amendment to the real estate purchase contract for M Property. **(Exhibit 91)** He did not prepare any other information in support of the S.W. application. B.H. does not recall if the signature of the seller on behalf of XXXXXXXX Alberta Ltd. and the signature of the witness were affixed to the real estate purchase contract for M Property when he prepared the contract. **(Exhibit 89)**
30. B.H. believes the Member applied for a mortgage in the name, S.W., for the M Property because he recalls the Member advising him that his wife had qualified for a mortgage.

31. The Member and B.H. planned to speak to B.H.'s wife about using her name to refinance. The Member was present at B.H.'s home when his wife came back from holidays. A discussion with the Member occurred at B.H.'s kitchen table and he saw a document saying that S.W. worked at a liquor store earning \$50,000 to \$55,000 a year. His wife never worked at a liquor store. The first time he saw the certificate about S.W.'s employment at the liquor store was when the Member gave it to him. A copy of the certificate was not produced at the Hearing. The letter showing her employment was used to support his wife's application for a mortgage on the M Property in the **Summer 2006**. He described the mood of his home as "sort of a festive feeling" because she qualified for the mortgage. S.W. did not have a good feeling about the Member and was upset and shocked when she looked at the job certificate showing she worked at a liquor store earning \$50,000-\$55,000 a year and that B.H. and the Member were asking her to sign documents that were not true. At all times, S.W. was a schoolteacher earning approximately \$60,000 or \$80,000 per year. The Member's reaction to S.W.'s refusal was "angst maybe". When it became clear that B.H.'s wife would not agree to let her name stand, the Member offered to arrange for the mortgage and use his mortgage broker.
32. A tenant occupied the M Property prior to and after title was transferred to XXXXXXXX Alberta Ltd. remaining at M Property until **October/November 2006**. B.H. paid the mortgage on the M Property with the rental monies. B.H. managed the M Property and performed renovations. He would be paid for these tasks and any profit thereafter would be split on a 50/50 basis with the Member.
33. B.H. was not present when the Member and the Member's wife signed the amendment to the real estate purchase contract for M Property. (**Exhibit 91**) B.H. was shown a fax dated **September 27, 2006** from the Member to him. His writing appears on the fax and it appears that he faxed the document to the Member although the fax number was busy. (**Exhibit 92**)

K.S., COMPLAINANT

34. B.H. testified that K.S. became a partner and qualified for a mortgage as his wife, S.W., was meant to do. The Member told B.H. that K.S. had agreed to apply for a mortgage and would be paid for doing so by the Member and B.H. with the proceeds of the sale. B.H. does not remember the Member telling him the amount that they were paying K.S. to do this. The Member, not B.H., paid K.S. for his role in the refinancing of the M Property.
35. B.H. denies preparing the real estate purchase contract between H.B. and K.S. for the M Property. (**Exhibit 94**) He does not know who prepared the document and if he is the H.B. referred to as the seller. (**Exhibit 94**)
36. B.H. was asked to compare the two purchase agreements noting there was a different seller. (**Exhibits 21 and 94**) **Exhibit 21** shows a closing date of **December 21** while **Exhibit 94** shows a closing date of **December 28**. B.H.'s handwriting does not appear on **Exhibit 94**. (**Exhibit 21**) There are two different sellers, XXXXXXXX Alberta Ltd. and H.B., noted on **Exhibits 21 and 94** but the signatures have not changed.
37. B.H. does not know why there was a residential real estate purchase contract between XXXXXXXX and K.S. in **December 2006**. He knew nothing about K.S. in **December 2006** and has never met K.S.
38. After S.W. refused to be involved in the plan, B.H. believes that the M Property was transferred from XXXXXXXX Alberta Ltd. to someone else (K.S.) for the purpose of refinancing. It was the

Member's decision to transfer the M Property from XXXXXXXX Alberta Ltd. to someone else (K.S.). He does not remember the discussions he had with the Member about transferring the M Property to K.S.

39. B.H. assumes that he provided a copy of his cheque of his company, A Ltd. to the Member at some point. The cheque was altered, substituting K.S.'s name at the top for his name. B.H. did not put K.S.'s name on the cheque. **(Exhibit 99)** B.H. testified he did not authorize anyone at Randhawa Law Office to put K.S.'s name on his cheque nor did he write "void" on the cheque and he did not draw certain lines on the cheque. **(Exhibit 99)**
40. B.H. testified that when he gave his cheque to the Member, B.H.'s company name, A. Ltd., was on the upper left hand corner, not K.S.'s name. No one else could have given his cheque to the Member. B.H. has reason to believe that while he did give his cheque to Randhawa Law Office, it was not for the purpose of putting K.S.'s name on the cheque. **(Exhibit 99)**
41. B.H. has no recollection of signing the discharge of caveat on **January 4, 2007**. **(Exhibit 95)**

SHARE OF PROCEEDS

42. B.H.'s Q Bank statement shows a deposit of \$38,074.45 made on **January 4, 2007** for a cheque he received from the Randhawa Law Office. **(Exhibit 96)** The Member gave B.H. that cheque for his purported share in the refinancing of the M Property. The Member's trust ledger for the K.S. purchase and sale of M Property shows an entry for **January 4, 2007** being a payment to B.H. in the amount of \$38,074.45.

REFINANCING MONIES

43. On **January 4, 2007**, \$207,100 was deposited into the Member's trust account from Z Bank which was their money (the Member and B.H.) from the refinancing of the M Property mortgage. The Member and B.H. were to share the "new" money (approximately \$103,000). B.H. received \$38,000 and assumes the Member "got somewhere around \$38,000". It appears K.S. would have been paid somewhere between \$20,000 and \$25,000 for his involvement. **(Exhibit 33)** B.H. believed the basis of the calculation for the split between he and the Member is that he would have been paid for his losses on the property such as the mortgage payments throughout and the renovations. After he was paid then they would share on a 50/50 basis any further gain in the increase of the value of the property. B.H., at his attendance at the Hearing, was clearly upset when he learned that he did not receive his fair share of the refinancing monies as more money than that paid to him was transferred into the account of the Member's wife's corporation. Also, if K.S. was not paid, the Member benefited from that money (\$20,000 - \$25,000) as well. He and the Member did not discuss the amount he would be paid from the new mortgage before the \$38,074.45 cheque was paid to him.
44. At the Hearing, B.H. denied seeing the following documents regarding the M Property: the Commitment for a Z Bank Fixed Rate Mortgage Agreement; the Confirmation that the Member was to act as counsel for the vendor and the purchaser; the Application for Mortgage Critical Illness and Life Insurance; the Provincial Mortgage; the Historical Land Title Certificate regarding the M Property; and the Transfer of Land Agreement. **(Exhibits 23, 24, 25, 26, 27, 28 and 29)** He did not file the Transfer of Land Agreement to K.S. on the M Property. **(Exhibit 27)**
45. B.H. arranged for insurance on the M Property in **January 2007** instructing his insurance provider to cooperate with his partner, the Member. He advised his insurance provider that

effective **January 4, 2007**, A Ltd. and K.S. had fire and extended coverage in the amount of \$155,000 on the M Property with any losses payable to Z Bank effective **January 4, 2007**.

46. B.H. did not see the Member's Request of Funds Letter or the Member's Invoice, regarding the M Property. (**Exhibits 31 and 32**) The Member's trust ledger for the purchase and sale by K.S. of the M Property shows an entry on **January 5, 2007** for a payment of \$64,074.44 to XXXXXXXX Alberta Ltd. by cheque 2734. (**Exhibit 33**) B.H. asked the Member if he paid K.S. and he was assured by him that what B.H. was paid was from the proceeds after the Member had paid K.S.
47. B.H.'s signature appears on the Transfer of Land from K.S. to him (**Exhibit 78**) The Member's signature and his Commissioner for Oaths stamp appears on the document attesting that B.H. swore and signed the Affidavit before him on **January 23, 2007**.

ASSUMPTION OF THE M PROPERTY AFTER REAL ESTATE MARKET FELL

48. On **March 15, 2007**, B.H. attended at the Z Bank and signed the paperwork to have his name substituted for that of K.S. on the mortgage. (**Exhibit 98**) He understood that even with the transfer, if the mortgage payments were not made that the bank could "go after" K.S. The mortgage was a high ratio mortgage with a 95% loan to value guaranteed by C Corp. He understood that, if the mortgage went into default, C Corp. would pay out the mortgage but would seek reimbursement from the mortgagee. The banks stopped allowing assumptions of property in approximately **February 2008**.
49. The M Property was transferred from K.S. to B.H., because B.H. wanted to control the property, but no terms were agreed between him and the Member. B.H.'s perspective was that he and the Member would take equity out of the property and he would continue to manage it with his 50% ownership, pay down the mortgage and in 10 or 15 years it would increase in value. At that point the Member and he would sell the property and split the increase, again at 50% each.
50. In **January 2008**, there were email exchanges between the Member and B.H. (**Exhibit 97**) By **January 2008**, B.H. had taken control of the M Property. The real estate market was falling. The Member no longer had a real interest in the M Property because there was no equity in it. The Member was never a "long-term hold guy anyway, more a flipper." When he wrote the email to the Member, B.H. was trying to be amicable. He was paying the Member \$7,000 to "get him out" of his life. (**Exhibit 97**) In **March 2007**, the Member had a 50% interest in the M Property. The cheques totaling \$7,000 which B.H. issued to the Member were in satisfaction of B.H.'s purchase of the Member's interest in the M Property. (**Exhibit 97**) He assumes the Member cashed his cheques.
51. B.H. testified that "K.S. is safe, K.S. is not on title. I've assumed his mortgage." B.H. felt comfortable that K.S.'s mortgage would be paid and he would not be harmed. B.H. was questioned regarding what he meant by saying that K.S. was "safe". He responded that K.S., as a "partner" in the M Property, was exposed to a risk that with the market dropping the mortgage would not be paid. There was a risk to K.S.'s credit, his history, his life and his future plans. As long as B.H. was in control of the mortgage, the property and the tenants, he would never let that happen to K.S. Z Bank was authorized to take mortgage payments from B.H.'s company account. (**Exhibit 100**) He sold the property for \$200,000 approximately two weeks prior to testifying at the Hearing. He testified that "K.S. will never have to worry again."
52. B.H. testified that he does not know H.M., Broker, but wishes he did.

53. In **December 2006**, there was a real estate purchase contract from B.H. to K.S. (**Exhibit 94**) B.H. did not prepare or sign **Exhibit 94**. The name on the contract was H.B., not B.H. B.H. denied having anything to do with the preparation of **Exhibit 94**. In **January 2007**, B.H. received a cheque from the Randhawa Law Office for \$38,074.45 whereon he signed a discharge of caveat registered against the M Property. The M Property was transferred from XXXXXXXX Alberta Ltd. to K.S. who B.H. had never met.
54. In early **2007**, title to the M Property was in K.S.'s name. He understood K.S. had taken out a new mortgage through Z Bank. The \$38,074.45 paid to B.H. by the Randhawa Law Office was part of the mortgage proceeds from the mortgage taken out by K.S. on the M Property. The Member advised B.H. that K.S. was paid to get a mortgage in his name and go on the M Property title. In **February 2007**, B.H. signed a Transfer of Land accepting the transfer by K.S. to him of the M Property. The transfer was registered by the Member's office and title to the M Property was in B.H.'s name thereafter. B.H. paid the Member \$7,000 to satisfy the Member's interest in the M Property as evidenced by B.H.'s email to the Member in **January 2008**. B.H. does not know whether his two cheques to the Member were cashed but has no reason to believe they were not. (**Exhibit 97**) Upon payment to the Member by him of the \$7,000, the Member no longer had any interest in the M Property.

TERMINATION OF EMPLOYMENT

55. As a licensed realtor, B.H. prepared notes regarding his real estate dealings. B.H. prepared notes stating that on **March 16, 2007** he was shown a contract by Mr. R at ABC Real Estate. The contract appeared to show that B.H. had sold the M Property for \$219,000 to K.S. (**Exhibit 98**) Following his meeting with Mr. R on **March 16, 2007**, he was fired by ABC Real Estate because Mr. R believed B.H. was implicated in mortgage fraud.
56. B.H. recalled being interviewed by Mr. Q of the Real Estate Council of Alberta. In response to Mr. Q's question as to why he was going to have his wife refinance, B.H. advised that he could not personally do it because his assessments were too low. He said he was "dense", especially with a partner such as the Member. He did it because he saw it "like some cash" in his pocket. B.H. stated in cross-examination that he did not discuss with any lender that he wished to get a mortgage from them. He left all of that to the Member. In cross-examination, B.H. stated that he was quite upset at discovering during his evidence that he was not paid his full share of the remortgaging monies on the M Property. He testified that he "never took the time to know what that number was until this morning." He is quite upset with himself for paying the Member another \$7,000 to "get him out" of his life. He wonders how the Member could ethically take the \$7,000.

HEARING

57. On **September 19, 2011**, B.H.'s Hearing before the Real Estate Council of Alberta commenced. (**Exhibit 101**) At the Hearing, six properties, including the M Property, were discussed and there was an allegation of mortgage fraud made against B.H. (**Exhibit 101**) B.H. testified that one did not have to be careful in 2006 and 2007 in buying property and assuming mortgages because "it was so easy." He owned a number of properties through joint ventures like the one he had with the Member.

CROSS EXAMINATION

58. B.H. denied, in cross-examination, that he was dealing with a numbered company owned by the Member or his wife. He was adamant that he was dealing with the Member, not a company. B.H. reaffirmed that the Member told him he would have to pay K.S. "around \$20,000" plus some other expenses. The Member also spoke about paying the mortgage broker. B.H. did not strongly disagree with Member's counsel that the Member's wife or her company may have paid his expenses for items needed to fix up M Property to make it rentable.
59. B.H. reiterated the steps taken to deal with the selling of the M Property. He and the Member talked about doing so. The second step was listing it on MLS. The other steps involved writing a purchase contract in his wife's name to refinance the M Property. It was first listed on MLS to see if it could be sold "legitimately".

(d) I.S., LSA WITNESS

60. I.S. is the co-owner of N Ltd. I.S. testified that K.S. never worked for N Ltd. I.S. did not write or sign the "job letter" and the letter is not on the letterhead of N Ltd. **(Exhibit P)** Also, the pay stub purported to be from his company is not theirs. **(Exhibit 81)** Furthermore, the company's pay stubs look different (different style and design). **(Exhibit 82)**

(e) L.S., LSA WITNESS

61. L.S. has worked for Y Bank for 35 years. On **September 14, 2009**, the LSA investigator emailed asking for confirmation of Y Bank statements dated **October 15, November 15** and **December 15, 2006** in the name of K.S. **(Exhibit 83)** L.S. investigated and learned the following:

- (i) **October 15, 2006 Y Bank Statement** – The transit number of ■ is for a Y Bank Branch at ■, Edmonton not ■, Calgary as shown on the Statement.
- (ii) **November 15, 2006 Y Bank Statement** – The transit number of ■ is for a Branch on ■ in Edmonton not ■, Calgary as shown on the Statement.
- (iii) **December 15, 2006 Y Bank Statement** – The transit number of ■ is for the Branch in Calgary not ■ Branch, Calgary as shown on the Statement **(Exhibit 83)**.

The account number ■ appearing on the three Statements was never registered at any Y Bank Branches. **(Exhibit 82)** Based on the documentation she reviewed, she concluded that these three Y Bank Financial statements were false, not legitimate Y Bank documents issued by Y Bank.

(f) L.P., LSA WITNESS

62. L.P., an expert in hand writing and document analysis, testified that the four signatures on **Exhibit 8, p. 2** were taken from another document. L.P. testified that the signatures on **Exhibits 12, 21 & 105** are not original.
63. L.P. demonstrated, graphically, with the assistance of Powerpoint, how the signatures of various individuals were "cut and pasted" on other documentation so that it would look as though Ms. B.K.S., Ms. X and K.S. had signed the documents. This did not occur once or twice, but on numerous occasions.

(g) I.F., LSA WITNESS

64. I.F. testified on matters relating to the P Property. I.F. explained the falsification of a Y Bank document which listed bank deposits, bank withdrawals, direct payments and debit card payments. Even she, a sophisticated banking individual, did not note until it was pointed out to her, the error made in the purportedly falsified Y Bank document where the year 2005 appears in the midst of a list of 2006 dates. **(Exhibit 83, p. 15)** She testified that it would be impossible for the incorrect year to appear in the midst of another year in a bank statement.

THE LAW

65. ***In the Matter of M.H.***, 1999, The Law Society of Alberta (per a panel of 12 Benchers on review from a decision to suspend pursuant to (then) section 60):

"The Panel agreed...that an interim suspension is a draconian measure to be used sparingly and only in circumstances where it is shown that suspension is necessary to protect the public."

"Having reviewed *Gould v. The Law Society of Alberta* (1990), 206 A.R. 396 we concluded that the standard of proof in determining whether to suspend is whether there are reasonable grounds to believe that [the member] is wrongfully doing or failing to do something that might cause harm to a client or the public."

66. ***Gould v. The Law Society of Alberta*** (1990), 206 AR. 396, affirmed by C.A, leave to appeal to S.C.C. refused 114 AR. 320n, (per decision of Queen's Bench Justice Feehan at p.4):

"It seems that the very nature of a lawyer's work, the relationship to his client and the need to protect the public, requires that the Society have the right to move in and shut a lawyer down, that is, suspend him, if they have reasonable grounds to believe that he is wrongfully doing or failing to do something that might cause harm to the client or to the public at large."

* * *

"When the lawyer joined the Society, he accepted those rules and he cannot now complain that they should not apply to him."

67. ***Lawyers and Ethics: Professional Responsibility and Discipline***, by Gavin MacKenzie, Carswell, 1993 at p. 26-36.1:

"The courts have held that where statutes expressly empower governing bodies to issue interim suspension orders, such orders should be used sparingly. An interim suspension order may be made when it is necessary to protect the public or when a practitioner has flouted the authority of the governing body."

Suspension during the proceedings

63(1) If the conduct of a member is the subject of proceedings under this Division, the Benchers, without prior notice or hearing, may order the suspension of the membership of the member at any stage of those proceedings if the Benchers consider the suspension warranted in the circumstances having regard to the nature of the conduct.

(2) An order of suspension under subsection (1)

- (a) may be terminated by the Benchers at any time on application or on their own motion;
- (b) may be terminated by a Hearing Committee on application or on its own motion if it considers the continuation of the suspension unwarranted in

the circumstances or when it makes a finding under section 71(1) that the conduct of the member is not conduct deserving of sanction;

- (c) terminates on the discontinuance of the proceedings against the member under section 62(1) or (2) unless it has been sooner terminated under clause (a) or (b) of this subsection.
- (3) If a Hearing Committee is directed to deal with a member's conduct and considers it warranted in the circumstances to do so having regard to the nature of the conduct, the Hearing Committee, at any time after the direction is made and without prior notice or hearing, may order the suspension of the membership of the member pending the making of the Committee's decision under section 71 (1) and, if the Committee finds the member guilty of conduct deserving of sanction, pending the making of the Committee's order under section 72.
- (4) An order of suspension under subsection (3)
- (a) may be terminated by the Hearing Committee that made it or by the Benchers, on application or on the Committee's or the Benchers' own motion;
 - (b) terminates on the discontinuance of the proceedings against the member under section 62(1) or (2) unless it has been sooner terminated under clause (a) of this subsection.
- (5) A termination of a suspension by or under subsection (2) or (4) does not preclude the making of another order under this section for the suspension of the membership of the same member in respect of the same conduct.

DECISION OF THE COMMITTEE

68. For the reasons set out below, it is the decision of the majority of the Committee that the Member be suspended on an interim basis. While the Committee waits to hear the evidence from the Member, the documentary evidence before the Committee and the evidence given by witnesses is sufficient to grant the LSA's Application for an interim suspension and it is hereby granted.
69. In granting the application, the Hearing Committee considered the evidence heard in the first days of the Hearing; the Exhibits entered; and the documentation revealed for the first time through various witnesses. It appears that the LSA did not receive the Member's complete files as requested. The Committee has before it enough evidence to be concerned about the protection of the public. In addition, the Committee has concerns regarding when the Hearing will conclude. The LSA has not concluded its case. The Member, through his counsel, advised that he cannot sit late because of his health. In support of previous adjournments, his physician by letter dated **November 4, 2013** addressed to Whom It May Concern wrote that the Member has known insulin - dependent diabetes. **(Exhibit 104)** At the time of the writing of the letter, the Member's diabetes had been poorly controlled secondary to stress. The Member also has a generalized anxiety disorder with major depression. He has seen a psychiatrist and psychologist. It was found that the Member was overwhelmed with his work. The Member was advised to cut-down his work hours and rest for one week. The Member is reported to have been under an extremely depressed state. He was advised to bed rest for one week and to do minimum necessary work only for the rest of the "months". He was started on Ativan. The Committee has no way of

knowing, at this time, how much longer the Hearing will last, the date for the continuation of the Hearing and how many witnesses remain to be called for both the LSA and the Member. In addition, the Member and his wife had been criminally charged with fraud. While the LSA's allegations and the criminal charges have not been proven, there is ample evidence before this Committee to heighten our concern of the need to protect the public. On a number of the Exhibits, the Member's wife who works in his office, has acted as the Commissioner for Oaths presumably, under the direction of the Member. If she was not operating under the direction of the Member, it was nonetheless the Member's responsibility to give proper directions to his staff.

70. Until approximately 10 days prior to the Hearing commencing, B.H. refused to produce his file to the LSA and refused to speak to LSA personnel until **April 17, 2014**.
71. B.H.'s file contains a very different offer to purchase contract for the M Property than what was provided to the LSA by the Member. When a member is requested by the Law Society to produce a complete client file, it is expected that the member will do so. Given that the contents of B.H.'s file differ, to some extent, from the content of the Member's file, it appears that the Member did not produce his complete file to the LSA. Unless proven otherwise during the course of the Member's case, that shows a lack of integrity and raises the issue of governability of the Member.
72. K.S. testified that when the Member learned that K.S. had complained about him to the LSA, the Member and his spouse attended at K.S.'s home and asked him to withdraw his complaint. He refused to do so. If true, such behavior is very concerning.
73. It is clear from the documentation before us that K.S.'s sensitive personal information including his SIN and driver's license were used in support of a mortgage application of which K.S. denies any knowledge. M.E., Z Bank investigator, demonstrated the number of false documents used in support of the M Property mortgage application. We have seen a cheque of B.H.'s which bears the name of K.S. leading the reviewer of the cheque to conclude that the cheque is K.S.'s when, in fact, the account number on the cheque is that of B.H.'s company. There is documentation before us showing that the Member reported to the bank that the mortgage documentation reviewed by him was accurate. The evidence has proven otherwise. All this evidence leaves the majority of the Committee with no option but to order the suspension to protect the public interest.

DISSENT

74. Hearing Committee Member Mr. Van Tassell, did not support an interim suspension application. He stated that while he also has serious concerns with regard to what transpired in the transactions and the legitimacy of the documents before the Hearing Committee, the issue of fairness troubles him. The Member is at an enormous disadvantage when an application for an interim suspension is brought with essentially no notice and inadequate time for the Member's Counsel to properly prepare. The Member is also at a further disadvantage when he does not have a chance to present his side of the story prior to the interim suspension hearing and the only evidence before the Hearing Committee is from the LSA. Mr. Van Tassell quoted from the Hearing Handbook at paragraph 11 which states:

". . . an interim suspension is a draconian measure to be used sparingly and only in circumstances where it is shown that suspension is necessary to protect the public."
75. Mr. Van Tassell's position is that the public could be adequately protected by placing restrictions on the Member's practice pursuant to the *Legal Profession Act* s.63(6). A suspension in the middle of the Hearing should be the last resort.

MAY 23, 2014 APPLICATION FOR STAY OF INTERIM SUSPENSION

76. The *Legal Profession Act* s.63(1b) (LPA) provides that an Order of Suspension under ss. 3 may be terminated by the Hearing Committee that makes it or by the Benchers on application. Counsel for the Member elected to make an application before the Benchers by written notice to the President of the LSA which was accepted. At the time of this application, the date for the application before the Benchers was pending.
77. The Member seeks:
- (i) A stay of the Interim Suspension Order; OR
 - (ii) If the Committee is not prepared to stay the Interim Suspension Order, then there be a stay of the publication of the Notice of Suspension.
78. Counsel for the Member thought we should hear evidence from the additional witnesses before the Stay Application. Counsel for the Member had hoped the evidence called on behalf of the Member would assist the Committee to decide in favour of granting the Stay. It has not.
- Evidence has been heard from:
- (a) **May 22, 2014** – M.E., Z Bank, LSA witness;
 - (b) **May 22, 2014** – K.G., LSA employee, LSA witness;
 - (c) **May 22, 2014** – H.S.M., Member's witness
 - (d) **May 23, 2014** – N.S., a computer store owner, Member's witness; and
 - (e) **May 23, 2014** – H.M., Broker, LSA witness.
79. Counsel for the Member argued that there would not be irreparable harm if a Stay were granted. Counsel argued that the Member has been precluded from going to his office and he has been "cut off" from his files. One of the "real injustices" for the Member is that the Member's daughter has not been allowed into her practice. Many of the Member's clients do not have English as their first language which has created difficulties and there have been "one or two closings" of real estate transactions that have been affected. Finally, the Member's law practice premises are "cheek to jowl" with two law firms and they are delighted with the Member's plight because they are now "scooping up" clients: "They are taking people from the front door". It is to be highlighted that as noted by the counsel for the LSA, the above submissions by Counsel on behalf of the Member were not before the Committee in an Affidavit form or through *viva voce* evidence.
80. Counsel for the LSA argued that the same principles apply to an application for a Stay as are applicable to interlocutory injunctions. First, a preliminary assessment must be made on the merits of the case to determine whether there is a serious issue to be tried. In this case, the Citations are serious. Second, the test requires that the Committee determine whether the litigants who seek the Stay will suffer irreparable damage if an injunction is not granted. Also, the law requires that in relation to irreparable harm, the question is whether a refusal to grant a Stay of the Interim Suspension Order would so adversely affect the Member's own interests that the harm

would not be remedied if the eventual decision on the merits does not accord with the result of the interlocutory application.

81. LSA Counsel argued that:

- (i) There continues to be several issues to be tried;
- (ii) No evidence has been provided of irreparable harm to the Member. If there has been irreparable harm it has been to the public interest whose interest the LSA is tasked with protecting. Rule 107 contemplates such in that if the Interim Suspension is offered in the future, a second Notice to the Profession will be issued; and
- (iii) An assessment must be done as to which of the two parties will suffer the greater harm. Here the greater harm is to the public.

82. Again, as occurred in the Application for the Interim Suspension it is necessary to review the evidence heard since the Order for the Interim Suspension of the Member.

WITNESSES

(a) N.S., LSA WITNESS

83. N.S. testified that the Member's wife introduced K.S. to him asking if he knew a mortgage broker. She advised N.S. that K.S. was her nephew and he was looking for a mortgage. N.S. knows H.M. to be a mortgage broker, so he gave the Member's wife his business card. In essence, N.S. referred K.S. to H.M.
84. Later, H.M. came to see him and was unhappy that N.S. had referred K.S. to him, as this resulted in H.M. getting into trouble with the Real Estate Council. In cross examination, H.M. denied advising N.S. that he had made a mistake by making up some of the documents.

(b) M.E., LSA WITNESS

85. M.E. has been an employee of the Z Bank for approximately eighteen years. In 2006 she was working as an investigative specialist with Z Bank's corporate security and in that role, she reviewed the file relating to K.S. and the M Property. The Z Bank's investigation file for the M Property mortgage consists of 99 pages. **(Exhibit 106)** The mortgage was approved in **2006** and funds advanced.
86. The Z Bank investigated because K.S. telephoned the Z Bank in approximately **February 2007** and wanted to know why he had a mortgage for which he never applied.
87. The mortgage broker was H.M. of C Inc. (the Broker). The Broker provided the materials to the I Centre in **December 2006** seeking approval of a mortgage for K.S. Neither the Z Bank or the I Centre verified the documents received as they relied on the Broker.
88. In support of the mortgage application, the following were provided to the Z Bank by the Broker:
- (a) Letter saying K.S. is renting Falconridge from Mr. B.S. **(Exhibit 106, p. 1)** (K.S. is an owner of Falconridge);

- (b) A Bank statement from Y Bank showing K.S. has funds in the account **(Exhibit 106, p. 2-4)**;
- (c) An insurance application waiver **(Exhibit 106, p. 5)**;
- (d) An employment letter from K.S.'s purported employer, N Ltd. **(Exhibit 106, p. 6)**;
- (e) The mortgage application purportedly signed by K.S. **(Exhibit 106, 7-10)**; and
- (f) A void cheque for an account with the Q Bank purported to be the account of K.S. but is, in fact, the account of B.H. **(Exhibit 106, p. 18)**

89. M.E. testified as to what she did and what she learned:

- (i) She contacted N Ltd. and learned that they did not have an employee named K.S. and did not provide an employment letter **(Exhibit 106, p. 26)**.
- (ii) She contacted Q Bank and learned that while the account on the void cheque did exist, it was not in K.S.'s name. **(Exhibit 106, p 18)**.
- (iii) She compared the signature on the employment letter provided by N Ltd. for K.S. and as N Ltd. was also a client of the Bank, she compared the signature of I.S., the purported author of the N Ltd. employment letter for K.S., and the signatures did not match. **(Exhibit 106, p 24-26)** M.E. spoke with I.S. and he confirmed that not only did he never write a letter of employment for K.S., but K.S. was never their employee. N Ltd. never issued the pay stub for K.S. **(Exhibit 106, p. 31)**.
- (iv) She learned when she called Y Bank on **December 15, 2006** that the Y Bank account number on the statement did not exist and Branch ■ is not located at ■, but is located at ■. **(Exhibit 106, p. 28-30)**.
- (v) Y Bank account ■ did not belong to K.S. and no such account number existed for Y Bank. **(Exhibit 106, p. 29 - 30)**.
- (vi) On **February 20, 2007**, there was a Transfer of Land to B.H. The lawyer shown on the transfer is the Member. The Member was the signing lawyer for the mortgage documents and he purported to represent K.S. **(Exhibit 106, p. 33, 34, and 37)**.
- (vii) She learned that K.S. is an owner of K Ltd. and also works for X Inc. **(Exhibit 106, p. 39)**.
- (viii) B.H. owns a company called A Ltd. **(Exhibit 106, p. 41)**.
- (ix) She reviewed K.S.'s signature on a signature card held by the Z Bank and compared his signature from that document to the application materials and determined they were different. **(Exhibit 106, p. 42-45)**

- (x) The documentation from the Land Titles office showed the M Property was registered to K.S.; the M Property mortgage was discharged on **June 25, 2007**; the property was registered to A Ltd. registered under XXXXXXXX Alberta Ltd., the company of the Member's wife, and was discharged on **January 4, 2007**; B.H. owned the M Property and had a mortgage with Z Bank as of **January 4, 2007**; and K.S.'s Z Bank mortgage was discharged at some point, but she was uncertain as to when. (**Exhibit 99, p. 51-85**)

90. During her investigation M.E. also learned that:

- (a) The mortgage was advanced by Z Bank on **December 28, 2006** and filed at Land Titles. (**Exhibit 106, p. 52**) The transfer of the M Property from K.S. to B.H. occurred on **January 22, 2007**. (**Exhibit 106, p. 96**) Regardless of the transfer, K.S. remained liable to Z Bank under the M Property mortgage.
- (b) The Affidavit of Execution purported to have been sworn by K.S. (**Exhibit 106, p. 97**);
- (c) The Dower Affidavit of K.S. dated **January 23, 2007** purportedly sworn before the Member states that neither K.S. nor his spouse have resided on the M Property. (**Exhibit 106, p. 99**)
- (d) At all times the Member was the legal representative for the Z Bank on the M Property mortgage. The Residential Real Estate Purchase Contract indicates that deposits should be delivered in trust to the seller's lawyer, being the Member. (**Exhibit 106, p. 12**) Z Bank was unaware that the Member also acted for other parties to the mortgage. Z Bank was not advised that the deposits were not in fact paid through the Member's trust account.

91. At the end of her investigation, M.E. concluded that:

- (a) K.S. had not applied for the M Property mortgage;
- (b) When K.S. went to the Member's office to have a passport application signed he gave all his personal information; and
- (c) This was a fraudulent mortgage in that someone else used K.S.'s information to obtain the M Property mortgage and it is her belief that B.H. and the Member were behind securing the M Property mortgage.

92. In cross-examination, M.E. testified that:

- (a) The Z Bank relied on the Broker to verify the information contained on the mortgage application. (**Exhibit 106, p. 77**)
- (b) It is a requirement of Z Bank that the broker meet face to face with the borrower.
- (c) She did not find a commitment on the file between the Broker and K.S.
- (d) She did not follow-up on the different closing dates of **December 20 and 21** on the mortgage documents. (**Exhibit 106, p. 2-18**)

- (e) On **January 4, 2007**, K.S. came off the M Property mortgage because it was advanced to B.H. (**Exhibit 106, p. 91**)
- (f) She agreed that she "jumped" to the conclusion that the Member must be the person that was fraudulent or part of the fraud. The Bank did not make any enquiries about who the lawyer was who dealt with the Z Bank.
- (g) The Z Bank had certain expectations to be met by the Member in order to protect the interests of the Z Bank. The Member had to make sure that the Z Bank was properly on title, which was done in this case.
- (h) Throughout her investigations, M.E. did not speak with the mortgage broker, the Member or B.H. M.E. did not, nor did the Z Bank, report the Member to the LSA.
- (i) At the material time, it was permissible for parties to assume mortgages without the Z Bank's approval. That practice has now changed and the Bank has to be involved in approving assumptions.

(c) K.G., LSA WITNESS

- 93. K.G. is employed by the LSA and has worked as a Rule 130 Compliance Officer since 2008.
- 94. K.G. testified on the requirement of the LSA for its members to keep certain records and in what form. Rule 122 governs the prescribed financial records required to be kept by a Member of the LSA. The Rule requires that each client have an individual ledger card for accountability to the client. The ledger card allows for the tracking of monies held in trust by the client, the identification of the balance held in the account, the shortages if there are any, and reporting to the client.
- 95. In cross-examination, K.G. testified that if a lawyer were acting for both the vendor and the purchaser, a ledger card would be opened for each party. Each transaction would be handled separately. When the funding came in for the purchase, the funding would be transferred to the seller's ledger card and a cheque would be written for the proceeds of the sale to the seller. It is necessary to have an account for each transaction so that the lawyer can account to the client separately and appropriately.
- 96. In relation to the P Property, there is a ledger card showing that XXXXXX was the Vendor and that K.S. and L.S. were joint Purchasers of the P Property. Contrary to the requirements of the Rule, there are transactions for both the seller and the purchaser on the P Property ledger card. (**Exhibit 14**) That is contrary to the intent of Rule 122, as one cannot determine what balance is held in trust for which client in a single ledger (**Exhibit 14, 33**), and it does not allow the LSA to determine what balance is held in trust for which client.
- 97. Another client ledger from the Member's office refers to K.S. as a client of the Member's law office. This ledger card refers to the M Property but also mentions the Z Bank and B.H. (**Exhibit 33**) There was a payout to XXXXXXXX Alberta Ltd., the Vendor of the property and a client of the Member's law office. These entries are not consistent with the intent of Rule 122. There should have been a separate client ledger card for both the purchase and the sale side of the transaction.

(d) H.M., BROKER, LSA WITNESS

98. H.M. left Pakistan in **2001** and studied in the UK, moving to Calgary in **2004**. He is a mortgage broker having received his license in **2006** and at the material time worked with C Inc. Mortgage where he remained until **January of 2007**. Previously, H.M. worked, for a few weeks, at the computer store where N.S. worked.
99. The role of the mortgage broker is to try to get the client the best mortgage rate and the "best deal". The lenders ask for job letters, bank statements and pay stubs. Sometimes they will ask for a notice for assessment. It is the role of the mortgage broker to ensure the documents given to the bank are correct and accurate to the best of their knowledge. For example, the mortgage broker would call the employer for confirmation of the applicant's job. Mortgage brokers try to have the original copies of bank statements.
100. Following completion online, of an application for a mortgage, it is sent to the bank via Fax. Once the bank approves the mortgage application, the bank asks for the job letter, bank statement, pay stubs and, sometimes, a notice of assessment.
101. H.M. confirmed that he knows N.S. who previously worked at the computer store which was in the same plaza as the Member's office. He left his business cards at N.S.'s place of business. On **December 1, 2006**, N.S. contacted him and asked him to contact the Member because someone was looking for a mortgage.
102. The Member is a well-known lawyer in the East Asian community. It is obvious from N.S.'s evidence that he took, at face value, the information given to him by the Member concerning K.S.'s finances and employment.
103. Prior to the Hearing, H.M. was interviewed by the LSA investigator. At the interview, the investigator took notes, however H.M. was unable to read the investigator's writing. H.M. testified that the LSA representative read to him what he had written following which H.M. initialed the statement. The witness did not have his glasses at the Hearing so he could not read from his statement.

APPLICATION FOR MORTGAGE ON M PROPERTY

104. He denied knowing the Member before speaking with him about K.S.'s mortgage. In cross examination, H.M. testified that he has never met B.H.
105. He first learned of K.S. when he received a telephone call from the Member advising him that he wanted a mortgage for a neighbour or he may have said his relative. The Member told him that K.S. was driving for a trucking company. He asked the Member to give him all the information in writing and fax it to him.
106. H.M. only applied to one bank, the Z Bank, for the mortgage for K.S. H.M. applied for a mortgage on the M Property for K.S. at the behest of the Member.

DOCUMENTS RECEIVED FROM THE MEMBER

107. Following their initial conversation, the Member asked H.M. to come to his office. When he attended at the Member's office to see the Member there were a few people present who he did not know and to whom he was not introduced. K.S. was not there. That was the first time he had

met the Member. The Member gave him an envelope containing a SIN, a driving license and handwritten information regarding K.S. (**Exhibit 108**) On the handwritten note was information concerning K.S.'s job, salary, address and the value of K.S.'s vehicle and household goods totaling \$70,000.00. (**Exhibit 109**) The property information contained in **Exhibit 109, p. 2** was on the handwritten page he received from the Member. **Exhibit 106, p 17** was received by H.M., via Fax, from the Member. The C Inc. file contains the MLS listing for the M Property. (**Exhibit 110**)

108. The information regarding K.S.'s liabilities was secured by H.M. when he looked at K.S.'s credit rating. He believes he had a consent signed by K.S. allowing him to check his credit information, but there is no copy of any consent on C Inc.'s file.
109. K.S. did not sign the C Inc. Confirmation Sheet in front of H.M. (**Exhibit 110**)

ADDITIONAL INFORMATION REQUESTED

110. Once the application was approved on **December 18, 2006**, the Z Bank advised on approval that additional information was required (job letter, pay stubs, and bank statements) which H.M. had to secure from the Member who he called his "client".
111. H.M. received the necessary supporting documents for the mortgage approval from the Member when the Member was in his truck leaving the parking lot of his office in **December 2006**. (**Exhibit 106, pp. 1-18**) The Member had a lot of files in his truck. That was the second time H.M. had seen him. Included in the information he received from the Member was a pay stub for K.S. from N Ltd. (**Exhibit 106, p. 11**) Following receipt of the information he provided it to the Z Bank on **December 21, 2006** at 12:34 pm. H.M. did not ask to meet with K.S.

VERIFICATION OF DOCUMENTS

112. H.M. does not recall if he contacted N Ltd. to determine K.S.'s employment. He sometimes called employers and sometimes did not. Neither the Member nor the Member's wife told H.M. in **December 2006** anything about K.S.'s signature appearing on the Mortgage Application Documents. (**Exhibit 106, pp. 1-18**) His supervisor at C Inc. did not check the documents sent in by H.M. Once the application was approved and the necessary information provided to the Z Bank, H.M. had no further involvement other than to receive his commission for his work. Subsequently C Inc. cancelled one of his commission cheques on another mortgage and it was somehow related to the K.S. mortgage.
113. H.M.'s explanation for not having all the documentation he referred to on the C Inc. file is because the company policy was that after the information was used for its intended purposes, it was shredded.

FURTHER DOCUMENTS

114. H.M. received a document entitled "C Inc." from the Member. (**Exhibit 112**) It is not a document that was sent to the Z Bank. The document at page 12 of **Exhibit 106** states that all deposits shall be delivered in trust to the seller's lawyer. H.M. had no idea if the deposits were paid to the seller's lawyer.

CONTACT IN 2007

115. In **2007**, H.M. received a call from C Inc. advising that there was a problem with an application he had submitted. C Inc. wanted to know why the mortgage was in K.S.'s name. In response to the call he attended at C Inc.'s office and met with an employee of C Inc. and a Z Bank representative. H.M. gave a statement at his attendance with the Z Bank representative and the C Inc. employee. (**Exhibit 113**)
116. Following the call from C Inc., H.M. called the Member to advise him there was a problem with the application. He advised the Member that K.S. said that he was not the actual owner of the house. The Member told H.M. that there was no problem and the matter was solved. In his statement, H.M. stated that the Member and the Member's wife told him that K.S. had attended at their office and personally signed everything. H.M. confirmed that the Member told him that the Member's wife had commissioned the document. H.M. attempted to, but did not, connect with K.S.
117. H.M. noted that two days after he was called by C Inc., he went to the Member's office to secure information concerning the problem. (**Exhibit 113**) While he was there, K.S. called his office. During his evidence, he denied recalling that. He never spoke with K.S.

REFUSAL BY THE Z BANK TO ACCEPT FURTHER MORTGAGE APPLICATIONS

118. The Z Bank, after this incident, refused to allow H.M. to apply for mortgages with them. He continued to work with C Inc. after **March , 2007** but did not work as an active mortgage associate.

EXPECTATION OF C INC.

119. C Inc. mostly asked that those applying for mortgages meet with the mortgage broker. In this case, H.M. did not meet with K.S.

IDENTIFICATION OF MEMBER

120. Suddenly, in the middle of cross-examination, H.M. asked where the Member was, stating that he had not seen the Member in the Hearing Room although he was told he would be present during his evidence. (The Member was present in the Hearing Room during H.M.'s evidence.)

H.S.M., MEMBER'S WITNESS

121. The Member owns a liquor store in Calgary and is H.S.M.'s brother and brother-in-law.
122. H.S.M. has known K.S. for approximately 18-20 years. K.S. is his wife's cousin. When K.S. first came from India, K.S. attended at H.S.M.'s liquor store almost every day often helping with the unloading of product. When K.S.'s father became ill, H.S.M. drove him to the hospital every day for a few weeks. In 2013, when H.S.M.'s son was being married in India, he delivered an invitation to K.S.'s family at K.S.'s residence on Falconridge. In **2006**, H.S.M. knew that K.S. was married.
123. In cross-examination, H.S.M. testified that the Member's wife worked at his place of business in approximately **2006** and she jointly owned a liquor store with H.S.M. The liquor store was sold prior to the matters before this Hearing.

124. On **December 28, 2006**, H.S.M. witnessed the signature of K.S. at the request of K.S. (**Exhibit 26, p. 56-57**) H.S.M. agrees he signed three documents when he attended with K.S. at the Member's office: a banker document; a "Commissioner for Oaths" for witnesses; and a mortgage document which he referred to as banker document. He insists that it is his signature that appears on all the documents shown to him. When he witnessed K.S.'s signature, the Member's wife was present.
125. The signing occurred "a couple years" previously in **December**, around Christmas time when K.S. attended at H.S.M.'s place of business advising he was to purchase a house and he needed a witness. In response to K.S.'s request, H.S.M. closed his business and he and K.S. went to the Member's office. They did not see the Member at this attendance at the Member's office. H.S.M. agreed that he did, on other occasions, attend at the Member's office to sign mortgages for other people.
126. H.S.M. was interviewed by an investigator of the LSA on **May 7, 2010**, during which he advised that the house K.S. was buying was in Marlborough. (K.S.'s Mortgage Application correctly shows K.S. is married. (**Exhibit P**))
127. H.S.M. was asked to look at the lines under K.S.'s signature appearing on the M Property Mortgage Document between K.S. and Z Bank. He initially gave evidence that there might have been different underlining under the signatures, but moved away from that. (**Exhibit 26, Exhibit K**)

STAY APPLICATION

128. Counsel for the LSA argued that the Member has not provided evidence of irreparable practical harm to him. Given the evidence to date, there is irreparable harm against the public interest which the LSA is primarily tasked with protecting. Also, that is why s. 85(1) is a mandatory requirement that a Notice of Suspension be published. Counsel for the LSA argued that there is no evidence before this Committee of irreparable harm to the Member. There is a custodian in place and the Members files are being transferred to another lawyer within the Member's practice.
129. The balance of convenience requires an assessment between the two parties regarding who will suffer the greater harm from the granting or the refusal of a Stay of the Interim Suspension Order pending a decision on the merits. The factors to be considered are numerous but LSA Counsel emphasized that in this matter the party that will suffer the greater harm is the public and the public interest: the very parties and interest that the LSA is charged with protecting.
130. In response, Counsel for the Member argued that it is difficult to compare an interlocutory injunction before the Courts to an administrative body such as a Hearing Committee.

DECISION ON APPLICATION TO STAY THE INTERIM SUSPENSION

131. The application by the Member on **May 23, 2014** did not come as a surprise to the Committee, as we were alerted to the possibility of such an application for a Stay being brought when the Hearing reconvened on **May 22, 2014**.
132. The central question for the Committee on this application is: Should the evidence the Committee heard on **May 22 and 23** cause the Committee to reconsider its Interim Suspension Order of **May 8, 2014**? The answer is 'No'. The evidence of **May 22 and 23** and earlier

evidence raises grave concerns about the Member's actions and credibility. The Member continues to face serious allegations. The Member's application for a Stay is denied.

NOTICE TO THE PROFESSION

133. It is within the spirit of professional courtesy between Counsel to grant the Member's request, as was done here by LSA counsel, that the usual notice not go to the profession pending arrangements being made for an application by the Member to the Benchers to set aside the Interim Suspension Order made on **May 8, 2014**. As that application has not been heard, the time has come, for the Notice of Interim Suspension to go to the profession. The Notice is to be published at the earliest opportunity. If the Member is successful before the Benchers, pursuant to Rule 107, a second notice will be issued. Rule 107 would not exist if the publication of a second notice revoking the first Notice of Suspension were not considered to be an acceptable remedy.

ALLEGATIONS AGAINST SENIOR LSA COUNSEL

134. On **May 23, 2014** serious allegations of breaches of conduct were levied against senior LSA counsel by counsel for the Member. This was not the first time in this Hearing that counsel for the Member made such allegations. Faced with these serious allegations, counsel for the LSA, quite properly, requested an adjournment to enable her to seek instructions from her client. Her co-counsel opposed the application for a Stay brought by counsel for the Member. Thus, no Hearing time was lost.

DATED this 4th day of July, 2014.

ROSE M. CARTER, QC
Chair

DEREK VAN TASSELL, QC
Member

ROBERT DUNSTER
Member

IN THE MATTER OF THE LEGAL PROFESSION ACT
AND
IN THE MATTER OF A HEARING REGARDING THE CONDUCT
OF SURINDER RANDHAWA
A MEMBER OF THE LAW SOCIETY OF ALBERTA

STATEMENT OF FACTS AND ADMISSION OF GUILT

INTRODUCTION

1. Surinder Randhawa was admitted to the Law Society of Alberta (The “Law Society”) on March 20, 1989.
2. Mr. Randhawa actively practiced in the Province of Alberta from 1989 until he was suspended by disciplinary hearing penalty from July 26, 1996 for a period of two years. He was reinstated on January 9, 2002. Mr. Randhawa then actively practiced until he was suspended by disciplinary hearing penalty from October 1, 2005 for a period of 30 days. He was reinstated on November 4, 2005 and actively practiced until 2014.
3. On May 9, 2014, Mr. Randhawa was suspended by a Hearing Committee by way of an interim suspension. He has not practiced law since that date.
4. Mr. Randhawa’s practice of law is that of a general practitioner.
5. The Law Society of Alberta received complaints (collectively the “Complaints”) regarding Mr. Randhawa’s conduct in connection with his legal work.
6. On November 8, 2011, the Conduct Committee considered conduct which had been brought to the Law Society’s attention by K.S. It referred the following conduct arising from Mr. Randhawa’s representation of K.S. to hearing:
 1. It is alleged that he assisted one or more clients in an improper purpose, and that such conduct is conduct deserving of sanction.
 2. It is alleged that he failed to properly supervise his support staff, and that such conduct is conduct deserving of sanction.
 3. It is alleged that he failed to serve my clients, the mortgage lenders, and that such conduct is conduct deserving of sanction.
 4. It is alleged that he failed to follow the accounting rules of the Law Society of Alberta, and that such conduct is conduct deserving of sanction.
 5. It is alleged that he failed to respond on a timely basis and in a complete and appropriate manner to communications from the Law Society of Alberta, and that such conduct is conduct deserving of sanction.
7. Mr. Randhawa’s conduct with respect to citations 1 through 5 is the subject of a disciplinary proceeding (the “Hearing”). The Hearing proceeded over a number of days, commencing April

30 through May 9, and then May 22-23, 2014. The Hearing was adjourned on May 23, 2014, after the Law Society had concluded its evidence and Mr. Randhawa had started entering his. The Hearing has not yet concluded.

8. So far, evidence has been heard by way of direct and cross-examination of the following witnesses:
 - i. I.F., X Bank employee
 - ii. L.P., LSA hand-writing expert
 - iii. Ms. B.K.S., purported mortgagor
 - iv. K.S., Complainant
 - v. L.S., Y Bank employee
 - vi. M.E., Y Bank employee
 - vii. I.S., N. Ltd. owner
 - viii. B.H., Realtor
 - ix. H.M., mortgage broker
 - x. K.G., LSA employee
 - xi. H.M., Member's witness
 - xii. M.S., Member's witness (partial testimony)
9. One hundred and twelve Exhibits have also been entered as evidence.

BACKGROUND FACTS

10. Mr. Randhawa is a sole practitioner, employing one staff member, a paralegal who is also his wife, K.R. (together doing business as "Randhawa Law Office"). K.R. is also a licensed real estate agent and a Commissioner for Oaths in the Province of Alberta.
11. K.S. is a cousin of K.R.
12. Ms. X is a niece of Mr. Randhawa.
13. K.S. testified that in 2003, he approached Randhawa Law Office for legal services with respect to the transfer of title of XXX Falconridge Drive NE, Calgary, from his deceased mother to himself and his brother. K.S.'s mother passed away at the end of January, 2003 and the title transfer was registered with Land Titles in November of 2003.
14. Mr. Randhawa would testify that Randhawa Law Office prepared none of the documents relating to the Falconridge Drive property transfer. They were prepared by K.S. and his brother before they came to Randhawa Law Office. Randhawa Law Office was asked to, and then did, file the documents at the Land Title Office.
15. K.S. testified that Mr. Randhawa provided legal services to K.S. with respect to his 2006 passport application. K.S. testified that he provided to Randhawa Law Office his driver's license and card bearing his social insurance number and that Randhawa Law Office retained copies of these items. Mr. Randhawa would testify that he was asked to assist with a passport application by acting as guarantor, but did not provide legal services or receive and retain documents.
16. In or about June of 2003, K.S. and Mr. Randhawa discussed the possibility of a new mortgage for the Falconridge home. K.S. testified that he provided to Randhawa Law Office a letter dated August 11, 2003 from his employer confirming his employment. Some weeks later, K.S.

requested the letter back but was advised by Randhawa Law Office that it had been misplaced. K.S. did not ultimately use the services of Randhawa Law Office for the renewal of his mortgage.

17. Mr. Randhawa would testify that he was never provided with a letter from K.S.'s employer.
18. Prior to 2006, Mr. Randhawa met B.H., a Calgary realtor. B.H. testified that he and Mr. Randhawa worked together on some real estate transactions and developed a friendly relationship. They discussed buying properties together, and/or with K.R. or her company.

FACTS

P Property and Transaction

19. In 2003, Randhawa Law office provided legal services with respect to the sale and purchase of the P Property, and the execution of a mortgage (the P Transaction).
20. The parties to the P Transaction were:
 - a. purchasers Ms. B.K.S., Ms. X., and K.S. (the "Purchasers")
 - b. seller XXXXXX Alberta Ltd.
 - c. mortgagee X Bank
21. Randhawa Law Office purportedly represented all of the parties to the P Transaction.
22. There is one Randhawa Law Office file for the entire transaction, and one trust ledger.
23. The Purchasers bought the P Property for \$198,000.
24. Randhawa Law Office retained a copy of the conflict letter purportedly sent to the P Transaction Purchasers. The conflict letter indicated the parties' acknowledgement by their signatures in the appropriate locations. However, the copy on file does not contain original signatures. The Law Society's hand-writing expert testified that, in his opinion, the signatures of the Purchasers on the retained copy were copied and pasted from other source documents.
25. B.D. was a mortgage specialist with Financial Institution A. Financial Institution A. provided materials to X Bank in support of the Purchasers' mortgage application including:
 - a. Credit reports for the Purchasers
 - b. Consent form
 - c. Mortgage Life Insurance Application
 - d. Residential Real Estate Purchase Contract
 - e. Bank statements
 - f. T4 for K.S.
 - g. Paystub for Ms. B.K.S.
 - h. T4 for Ms. B.K.S.
 - i. A letter confirming Ms. X's employment and paystub
 - j. A letter confirming K.S.'s employment
26. K.S. testified that he does not know B.D. and did not provide any materials to him. Ms. B.K.S. also testified that she does not know B.D. and did not provide any materials to him.

27. The registered mortgage from the Purchasers to X Bank was witnessed by K.R. The Law Society's hand-writing expert testified that, in his opinion, the Purchasers' signatures on the mortgage commitment were copied and pasted from other source documents.
28. A modification of mortgage loan approval document was purportedly signed by the Purchasers on September 12, 2003. The Law Society's hand-writing expert testified that, in his opinion, the Purchasers' signatures on the mortgage modification were copied and pasted from other source documents.
29. K.S. testified that he did not have knowledge of or give consent to Randhawa Law Office to act on his behalf with respect to the P Transaction. He testified that he did not receive legal advice with respect to the P Transaction. He testified that he did not provide the materials referenced in paragraph 25 above to Randhawa Law Office for the purpose of the P Transaction, if at all. He testified that he never lived at the P Property.
30. Ms. B.K.S. testified that she did go to Randhawa Law Office and signed papers put in front of her, but she did not understand what she was signing and was not provided legal advice by Mr. Randhawa. She testified that she understood she was helping with a mortgage for someone else.
31. When interviewed by the Law Society, Ms. B.K.S.'s husband, Mr. X.S., made statements contrary to those in paragraphs 29 and 30. He would testify that he saw K.S. sign the mortgage documents, and that K.S. asked Ms. B.K.S. to lend her name to the mortgage.
32. The X Bank mortgage was a high ratio mortgage, meaning there could be a deficiency judgment against the mortgagors/Purchasers if there was a default on the mortgage and a deficiency. Ms. X alone paid the mortgage.
33. Randhawa Law Office purportedly sent the Purchasers a reporting letter dated September 29, 2003 to the P Property address. K.S. and Ms. X testified they did not receive the reporting letter.
34. Ms. X would testify that K.S. lived at the P Property for a few months.
35. Randhawa Law Office purported to act for the Purchasers when it registered a Transfer of Land for the P Property from the Purchasers to Ms. X in June of 2004.
36. K.S. testified that he did not sign documents in relation to the transfer of title to the P Property to B.S. Ms. B.K.S. testified that she does not know what she was asked to sign, but that she only went to Randhawa Law Office to sign P Property documents on one occasion.

M Property

37. In May of 2006, Randhawa Law office provided legal services with respect to the sale and purchase of the M Property (the "First M Transaction").
38. The parties to the First M Transaction were:
 - a. purchaser XXXXXXXX Alberta Ltd.
 - b. sellers S. and P.J.
39. Randhawa Law Office represented all of the parties to the First M Transaction.

40. At the time, K.R. was the sole director and 100% voting shareholder of XXXXXXXX Alberta Ltd.
41. XXXXXXXX Alberta Ltd. purchased the M Property for \$137,000 and assumed the existing mortgage. B.H. testified that he contributed funds towards the down payment. Randhawa Law Office registered a caveat on the M Property on July 6, 2006, protecting B.H.'s ½ ownership interest.
42. In December of 2006, Randhawa Law Office provided legal services with respect to the subsequent purchase and sale of the M Property and execution of a mortgage (the "Second M Transaction"). The Parties to the Second M Transaction were:
- a. Purchaser K.S.
 - b. Seller XXXXXXXX Alberta Ltd.
 - c. mortgagee Z Bank
43. Randhawa Law Office purportedly represented all of the parties to the Second M Transaction. Randhawa Law Office purportedly sent a conflict letter dated December 28, 2006 to K.S. and XXXXXXXX Alberta Ltd. The conflict letter indicated the parties' acknowledgement by their signatures in the appropriate locations. However, the copy on file does not contain original signatures. The Law Society's hand-writing expert testified that, in his opinion, K.S.'s signature on the conflict letter was copied and pasted from other source documents.
44. Mr. Randhawa did not inform Z Bank that he also acted for the seller, XXXXXXXX Alberta Ltd.
45. K.S. purportedly purchased the M Property from XXXXXXXX Alberta Ltd. for \$218,000.
46. The deposits for the purchase were not paid through Randhawa Law Office trust accounts. Z Bank was not advised of this.
47. A Transfer of Land registered at Land Titles bears K.S.'s signature. K.S. testified he did not sign the Transfer of Land. The Law Society's hand-writing expert testified that, in his opinion, K.S.'s signature on the Transfer was copied and pasted from other source documents. Land Titles will only accept a document bearing an original inked signature.
48. H.M. was a mortgage broker who facilitated the mortgage between Z Bank and K.S. H.M. testified that Mr. Randhawa gave him the following, which he then provided to Z Bank:
- a. Identification in the form of a driver's license and social insurance number card copy,
 - b. an affidavit in the name of K.S., commissioned by K.R., stating that K.S. was not married,
 - c. a cheque provided to Z Bank for pre-authorized payments,
 - d. bank statements from an Y Bank account purportedly belonging to K.S.,
 - e. a Declaration of Real Estate indicating the K.S. did not own/possess real estate,
 - f. a letter purporting to confirm K.S.'s tenancy,
 - g. a letter purporting to confirm K.S.'s employment with N. Ltd. and pay stubs purporting to confirm the same.
49. Mr. Randhawa would testify that he did not provide the materials referenced in paragraph 47 above to H.M. for the purpose of the securing a mortgage on the P Property, if at all.

50. H.M. was not able to identify Mr. Randhawa in the hearing room, and asked why Mr. Randhawa was not present. Mr. Randhawa was present in the hearing room and was next to his counsel who questioned H.M.
51. K.S. testified that he was married in December of 2006. He also testified that he did own property at the time, that being his Falconridge home, and that he did not rent from or know an individual named B.S.
52. K.S. testified that he had no Y Bank bank accounts. M.E., an employee of Y Bank, testified that the bank account statements had been falsified and matched no existing accounts in the Y Bank system.
53. K.S. testified that he did not at any time work for N. Ltd. I.S., owner of N. Ltd., testified that K.S. did not at any time work for N. Ltd., and that N. Ltd. did not provide the letter or pay stubs that H.M. gave to Z Bank.
54. The cheque form and the account number printed on the cheque provided to Z Bank for pre-authorized payments was for B.H.'s Q Bank business account A Ltd. The cheque given to Z Bank was altered to show K.S.'s name at the top, not B.H.'s company. B.H. testified that he did, at some previous time, provide to Randhawa Law Office a business cheque. Mr. Randhawa and K.R. would testify that neither made any alterations of any cheques, including those of B.H.
55. Based on the materials provided by H.M., Z Bank approved a high ratio mortgage to K.S., again meaning there could be deficiency judgment against K.S. if there was a default on the mortgage and a deficiency.
56. K.S. did not at any time reside in the M Property.
57. There were two Z Bank mortgage commitments located in the Randhawa Law Office file, one dated December 27, 2006, and one dated January 4, 2007. M.E., a Z Bank employee, testified that Z Bank did not have both versions on file, she could not explain why there were two, and stated that the foregoing is unusual. The Law Society's handwriting expert testified that, in his opinion, the second commitment is an altered copy of the first with changes to portions of the date. Mr. Randhawa would testify that he understood Z Bank changed the date upon which it would advance funds.
58. H.M. testified that he is Mr. Randhawa's brother, and his wife is K.R.'s sister, and thus she is also a cousin of K.S. Mann testified that he is therefore a close relation of K.S. H.M. testified that he witnessed K.S.'s signing of the Z Bank mortgage at Randhawa Law Office. K.S. testified that he did not sign the Z Bank mortgage and does not know a H.M.
59. A Z Bank Insurance Credit Protection Application for Mortgage Critical Illness and Life Insurance bears K.S.'s name. The Law Society's hand-writing expert testified that, in his opinion, K.S.'s signature on the Application was copied and pasted from other source documents. Mr. Randhawa would testify he did not have anything to do with this documentation.
60. The Z Bank mortgage was always, both when K.S. was on title and when B.H. was on title, paid from B.H.'s business account, which was provided to Z Bank by the mortgage broker in the form of an altered cheque. No payments were missed, and the mortgage was paid out in full.

61. Randhawa Law Office received a letter from J. Insurance Ltd. dated January 4, 2007, indicating that K.S. and A Ltd. had insurance coverage on the M Property. At this time, K.S.'s ownership had not been registered and B.H.'s personal caveat was still on title. A Ltd. had no interest in the property. Randhawa Law Office did not respond.
62. Randhawa Law Office discharged B.H.'s caveat on January 16, 2007.
63. Randhawa Law Office purportedly sent a reporting letter dated January 31, 2007 to K.S. at the M Property. K.S. testified that he did not receive this letter.
64. In February, 2007, Randhawa Law Office handled the purchase by B.H. of the M Property from K.S. for \$219,000 (the "Third M Transaction"). B.H. assumed the Z Bank mortgage and continued to pay the mortgage. Despite B.H.'s assumption of the mortgage on the M Property, K.S. remained liable on the high ratio mortgage until such a time as it was discharged.
65. K.S. testified that he did not have knowledge of or give consent to Randhawa Law Office to act on his behalf with respect to the Second M Transaction or the Third M Transaction. He testified that he did not receive legal advice with respect to the Second M Transaction or the Third M Transaction. He testified that he did not provide the materials referenced in paragraph 47 above to Randhawa Law Office for the purpose of the Second M Transaction or the Third M Transaction, if at all.
66. There is one Randhawa Law Office file for all transactions relating to the M Property, and one trust ledger.
67. The Law Society's hand-writing expert testified that, in his opinion, the various pieces of K.S.'s identification found on unrelated Randhawa Law Office files were secondary copies of original photocopies. K.S. testified that he provided identification to Randhawa Law Office and allowed it to be copied, but solely for other purposes.
68. The Law Society's handwriting expert testified that he could not conclusively say whether four different versions of a signature purportedly of K.S., including one K.S. said was his, were not made by the same person. Mr. Randhawa's handwriting consultant (not yet certified an expert by the Hearing Committee) would testify that, in his opinion, those same four signatures were made by the same person.

CONCLUSION

69. Mr. Randhawa acknowledges that, as lawyer, he is responsible for everything that goes on in his office and, whether he was aware of inaccurate, incomplete, or wrongful acts on the part of his office, he is ultimately responsible.
70. Mr. Randhawa states that he did not know of and did not participate in an improper purpose, if one was achieved, but acknowledges that his supervision of the above real estate transactions and staff was inadequate to the extent that he abdicated his practice. Mr. Randhawa acknowledges that, as a result, he failed to provide informed, independent and competent advice and obtain and implement Z Bank's proper instructions in the context of the P Property Transaction and the First, Second and Third M Transactions.

71. Mr. Randhawa acknowledges that his conduct with regard to all of the above transactions breached the Professional Code of Conduct as set out in citations 2 and 3, and that such conduct is deserving of sanction.
72. Mr. Randhawa also acknowledges that, by creating only one file and trust ledger per property and not per client, he failed to follow and adhere to the Accounting rules of the Law Society of Alberta as set out in citation 4, and that such conduct is deserving of sanction.

Although some of the facts set out above are contradictory, I admit that my conduct as acknowledged above constitutes conduct deserving of sanction.

This Statement of Facts and Admission of Guilt is dated the 29th day of September, 2014.

Witness

Surinder Randhawa

SEPTEMBER 25, 2014

HEATHER SPICER

Staff Lawyer
The Law Society of Alberta
500, 919 – 11th Avenue SW
Calgary, AB T2R 1P3

Dear Ms. Spicer:

RE: SURINDER RANDHAWA

I hereby certify that as of the date of this letter **Surinder Randhawa** has the following discipline record with the Law Society of Alberta:

July 8, 1996

Guilty, one count of conduct deserving of sanction – failing to stop his motor vehicle while involved in an accident with another motor vehicle and, with intent to escape civil or criminal liability, failed to stop his motor vehicle and give his name and address.

Guilty, one count of conduct deserving of sanction – attempting to obstruct the course of justice by causing a document purporting to be a Statutory Declaration signed by a third party, falsely stating that the third party had been the driver of his vehicle at the time of the accident in question, to be sent to the Crown Prosecutor's Office in order to influence a criminal prosecution against himself.

- Reprimand, costs and two-year suspension

August 30, 2005

Guilty, one count of conduct deserving of sanction - using his position to take unfair advantage of the principals of the Vendor.

Guilty, one count of conduct deserving of sanction - communicating with the principals of the Vendor in connection with the sale transaction, when he knew or ought to have known they were represented by counsel.

Guilty, one count of conduct deserving of sanction – breaching his practice restrictions imposed by the Monitoring Contract in acting on a commercial real estate transaction.

- Costs, fine, 30-day suspension and referral to Practice Review Committee

September 24, 2014

Guilty, three counts of conduct deserving of sanction – bringing discredit to the profession in multiple interactions with a Complainant, another lawyer, and in threatening another person.

- Reprimand and costs

Elizabeth J. Osler
Deputy Executive Director &
Director, Regulation
The Law Society of Alberta

EJO/sc