LAW SOCIETY OF ALBERTA

IN THE MATTER OF THE *LEGAL PROFESSION ACT;*

AND

IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF CLIVE O. LLEWELLYN A MEMBER OF THE LAW SOCIETY OF ALBERTA

Hearing Committee

Nancy Dilts, QC – Chair
Leighton Grey, QC – Lawyer Adjudicator
Ike Zacharopoulos – Public Adjudicator Committee Member

Appearances

Derek Cranna – Counsel for the Law Society of Alberta (LSA)
Pat Peacock, QC – Counsel for Clive Llewellyn

Hearing Dates

October 24, 25, 26, 2017

Hearing Location

LSA office, at 500, 919 - 11 Avenue SW, Calgary, Alberta

HEARING COMMITTEE REPORT

Jurisdiction, Preliminary Matters and Exhibits

1. On October 24, 25 and 26, 2017 a Hearing Committee (Committee) convened at the office of the LSA to conduct a hearing with respect to a number of citations against Clive Llewellyn. There were no objections to the composition of the Committee and as a result, the hearing proceeded.

2. Mr. Cranna appeared as counsel for the LSA. Mr. Llewellyn was present throughout the hearing and was represented by Mr. Peacock, QC.

3. The jurisdiction of the Committee was established by Exhibits 1 through 4, consisting of the letter of appointment of the Committee, the Notice to Solicitor pursuant to section 59 of the *Legal Profession Act*, the Notice to Attend to the Member and the Certificate of Status of the Member with the LSA.

4. Exhibit 5 identified those persons who the Deputy Executive Director and Director, Regulation of the LSA determined should be served with a private hearing application.

The LSA did not receive any request for a private hearing. Accordingly, the Committee directed that the hearing be held in public.

5. The Committee was provided with agreed exhibits and an unsigned Statement of Agreed Facts in advance of the Hearing. At the outset of the hearing, Exhibits 1 through 89, were entered into evidence in the hearing with the consent of the parties. In addition, an executed Statement of Agreed Facts was entered as Exhibit 90. A redacted version of that Statement of Agreed Facts is attached to this Hearing Committee Report as Schedule A.

Citations

6. Mr. Llewellyn faced the following Citations:

[1] It is alleged that you failed to serve your client, AL (and/or his corporation), in respect of transactions regarding the property known as the EA, and that such conduct is deserving of sanction.
[2] It is alleged that you brought discredit to the profession in your representation of your clients AL and JS (and/or their corporations) with respect to transactions involving the property known as the EA and by becoming financially involved in the transaction and in the subsequent redevelopment of the property and that such conduct is deserving of sanction.
[3] It is alleged that you acted while in a conflict of interest by acting for both AL and JS (and/or their corporations) and becoming financially involved in JS's (and/or his corporation's) financing and in the subsequent redevelopment of the property and that such conduct is deserving of sanction.
[4] It is alleged that you misled ND, counsel to a mortgage lender, with respect to whether your client JS (and/or his corporation) had $300,000 in equity in the Property known as the EA and that such conduct is deserving of sanction.
[5] It is alleged that you failed to be candid with the Law Society and that such conduct is deserving of sanction.

7. Counsel for the LSA advised the Committee that the LSA did not intended to present any evidence with respect to citations 2 and 5 and consented to the dismissal of those citations. The Committee therefore dismissed citations 2 and 5 and the hearing proceeded on citations 1, 3 and 4.

The Evidence

8. In addition to the Exhibit Book and Statement of Agreed Facts, the Committee heard the testimony of two witnesses: Mr. Llewellyn and ND, a member of the LSA who acted as counsel in one of the transactions that gives rise to the citations.

9. The conduct of Mr. Llewellyn that gives rise to the citations is largely set forth in the Statement of Agreed Facts; however, the following facts warrant additional comment and bear directly on the citations.

10. The Committee heard a great deal of evidence from Mr. Llewellyn regarding his relationship with his client, AL. Mr. Llewellyn first observed AL in chambers when AL, self-represented, was asserting an $800,000 builders' lien on a property in Edmonton (the "Edmonton Property") that had a $1.2MM mortgage on it. In chambers, the bank was seeking the authority to acquire the property for $500,000. According to Mr. Llewellyn, AL was struggling to be understood and to understand the predicament he was in holding a builders' lien on a property that was worth materially less than the mortgage on title. Mr. Llewellyn spoke with AL outside of chambers at which time he explained to AL that he would recover nothing on his builders' lien given the circumstances and asked AL whether he could get the money together to buy the lands for $500,000, supported by a $20,000 deposit.

11. Mr. Llewellyn testified that he was interested in helping AL as it was his nature to try to be of assistance. He was also particularly interested in the legal question being posed by the proceedings: whether, if the bank was seeking the authority to acquire a property at a low appraised value, it had to sell the property at a low appraised value. Mr. Llewellyn, in the opinion of the Committee, became invested in the outcome of the proceedings and began a lengthy and material investment of his professional time to pursue the issues in the foreclosure litigation.

12. This complex foreclosure litigation regarding the Edmonton Property progressed over the next 15 months with Mr. Llewellyn acting for AL throughout, and culminated with the Court setting the value for the purchase of the Edmonton Property at $800,000. An appraisal received around the time of the Court's decision valued the Edmonton Property at $1.3MM.

13. In the interim, seeing the arbitrage opportunity presented by the difference in the purchase price and the appraised value, Mr. Llewellyn introduced AL to JS, also a client of Mr. Llewellyn's, as a potential source of funding for the purchase of the Edmonton Property when AL's source of funds disappeared. Mr. Llewellyn, in part, drew AL into complicated legal proceedings and orchestrated convoluted business arrangements by which AL was to acquire the Edmonton Property for $800,000 and then sell it onward to another purchaser for $1,050,000. In describing his efforts, Mr. Llewellyn was satisfied that, thanks to him, AL had an opportunity he would not otherwise have had: the right to purchase the land at $800,000, the right to sell the land at $1,050,000, and a non-refundable deposit paid by the future purchaser.

14. Throughout his involvement with AL, Mr. Llewellyn was very aware that AL had limited financial means. In addition to being aware that AL was asserting unpaid builders' liens on two properties, each lien in excess of $800,000, he quickly became aware that AL was not working and had been unable to work because of injury; he also knew that AL had a disputed claim against WCB and faced a deficiency judgment of in excess of $150,000 against him by the Canada Mortgage and Housing Corporation (CMHC). Mr. Llewellyn's own statements of account for legal services rendered to AL were deliberately modest given Mr. Llewellyn's understanding that AL had little money. What he did charge AL for legal services remained largely unpaid. Moreover, during the course of these matters, Mr. Llewellyn personally loaned AL money, which was never repaid, and paid conduct money for a witness to attend questioning because AL could not afford to.

15. Notwithstanding AL's limited financial means and limited comprehension, Mr. Llewellyn remained focused on brokering a deal that he both originated and orchestrated. What may have started as a desire to be of assistance and an intellectual curiosity in the outcome of legal questions posed in foreclosure litigation became very muddied as Mr. Llewellyn's interest and involvement in the deal deepened and as the risks to his client increased.

16. As the transaction was to close, JS disclosed that he no longer had the necessary funding to purchase the Edmonton Property and from this point, Mr. Llewellyn's involvement in the transaction deepened and took on a different complexion than counsel. Mr. Llewellyn became a director in the numbered company that was ultimately designated as nominee for the purchase of the lands. He became the guarantor of the loan to that numbered company by a mezzanine lender. And he personally borrowed $300,000 from a third-party lender to advance for the purchase of the lands.

The Submissions of the Parties
Citation 1

17. Counsel for the LSA argued that Mr. Llewellyn's admitted failure to enter into a retainer agreement with AL allowed there to be a lack of clarity in Mr. Llewellyn's mandate, particularly given how both the litigation (with multiple appeals) and the commercial transaction developed and changed over time. Moreover, the LSA argued that Mr. Llewellyn accepted and disbursed monies into and out of his trust ledger without the engagement or instruction of his client AL; instead he dealt directly with JS regarding the deposit monies that were in his trust account for EE, AL's company.

18. The LSA also focused on Mr. Llewellyn's role with respect to the court sale of the Edmonton Property as evidence of his failure to serve AL. The LSA argues that Mr. Llewellyn was the only player not aware of the Real Estate Purchase Contract governing

the transaction with the result that Mr. Llewellyn provided advice to his client based on a misapprehension of the terms of the deal. The LSA maintains that Mr. Llewellyn could not have been providing conscientious and diligent service to AL in those circumstances. Moreover, Mr. Llewellyn became a purchaser of property without knowing the terms of the deal himself.

19. Finally, with respect to citation 1, the LSA argued that Mr. Llewellyn failed to adequately protect his client's interests by permitting AL to rely on two uncertified cheques from JS as a deposit on the transaction, plus an unspecified, undocumented and unclear arrangement with JS regarding the delivery by AL to JS of inventory relating to the Edmonton Property.

20. Counsel for the LSA argued that by the end of Mr. Llewellyn's orchestration of the purchase of the Edmonton Property, his client had no interest in the Edmonton Property, no interest in the entity that ultimately acquired the Edmonton Property, no documented arrangement regarding his right to the $300,000 deposit monies and no document governing the inventory transaction, all of which, the LSA argued, evidenced a remarkable failure to serve.

21. Counsel for Mr. Llewellyn acknowledged that Mr. Llewellyn was retained by AL from February 2008 until the purchase of the Edmonton Property by the numbered company in June 2010, and urged the Committee to look at the magnitude of the efforts Mr. Llewellyn expended on AL's behalf to get him something out of the Edmonton Property when he would otherwise have had nothing. Counsel for Mr. Llewellyn argued that AL was left with the ability to obtain $300,000 from JS if he delivered the inventory to JS.

Citation 3

22. Counsel for the LSA argued that there was clear evidence that Mr. Llewellyn acted while in a conflict of interest when he acted on instructions from JS rather than AL regarding the transfer of funds into and out of EE's trust account. It is important to note that the LSA does not allege improper trust accounting on the part of Mr. Llewellyn, but that taking instructions from another client regarding EE's trust account put Mr. Llewellyn in a conflict of interest.

23. The LSA also pointed to Mr. Llewellyn's personal financial involvement in the ultimate transaction as not only the guarantor of the loan (Statement of Agreed Facts, paragraph 63), but as a personal borrower of funds to close the court sale and as a director of the numbered company (Statement of Agreed Facts, paragraphs 63 and 68) as evidence of a conflict of interest. LSA counsel pointed to a lack of any evidence that Mr. Llewellyn was alive to the potential conflict that arose from the many roles he was playing – as counsel for AL, as counsel for JS, as counsel for the numbered company, as guarantor

of the PC loan, and as director of the numbered company and as personal lender to JS. The LSA argued that this multi-layered conflict of interest was not addressed by Mr. Llewellyn in any letters or memoranda fully explaining his role, advising AL that he may wish to seek independent legal advice or documenting the fully informed consent of his client to Mr. Llewellyn's various involvement in the transactions. Furthermore, the LSA argued that there was no evidence that Mr. Llewelyn ever undertook the analysis and evaluation of whether his actions gave rise to a conflict of interest.

24. Counsel for Mr. Llewellyn acknowledged that Mr. Llewellyn acted for multiple parties in the various sale and purchase transactions on the Edmonton Property, but argued that no conflict of interest arose until after June 6, 2010. Up to that point, counsel argued, the parties were totally aligned with respect to the intention to purchase and sell the Edmonton Property. He argued that all of Mr. Llewellyn's clients were aware of what was happening with respect to the Edmonton Property and that while the potential for conflict existed, it did not arise. Finally, counsel for Mr. Llewellyn argued that while Mr. Llewellyn personally invested in the transaction by guaranteeing the loan and borrowing money to cover the court purchase shortfall, he did so only to aid AL.

Citation 4

25. The LSA argued that based on the correspondence from the lender and its counsel, Mr. D, and based on the testimony of Mr. D, the lender on the purchase of the Edmonton Property did not intend to finance 100% of the purchase of the Edmonton Property and relied on the buyer, the numbered company for whom Mr. Llewellyn was counsel and of which Mr. Llewellyn was a director, to have equity in the purchase. (Exhibits 73, 74, 75). When he became aware that the uncertified cheques held by AL from JS were not cashable, the LSA says Mr. Llewellyn had an obligation to inform Mr. D of this material information. Instead, Mr. Llewellyn borrowed money from a third-party lender and undertook a series of actions with that money to give the appearance of there being borrower's equity in the property. In doing so, the LSA argues that Mr. Llewellyn misled Mr. D as to whether the purchaser of the Edmonton Property had equity in the Edmonton Property.

26. Counsel for Mr. Llewellyn argued that Mr. Llewellyn technically complied with his obligations in the transaction and that doing so was sufficient. Moreover, he pointed to the fact that Mr. D's client was ultimately paid in full on its loan as evidence of the fact that there was adequate equity in the property.

Decision Regarding Citations

27. The Committee is unanimously of the view that, for the reasons set out below, Mr. Llewellyn is guilty of conduct deserving of sanction with respect to each of citation 1, 3 and 4.

Citation 1

28. At the time of these events and continuing through to the hearing, Mr. Llewellyn was senior counsel well-experienced in foreclosure matters. Mr. Llewellyn's expertise in foreclosure law is not in question.

29. Chapter 2 of the Code of Professional Conduct (Code) that governed lawyer conduct from June 2009 to October 31, 2011 provides as a broad statement of principle that:

> A lawyer has a duty to be competent and to render competent services.

The commentary supporting this statement of principle elaborates on the idea of competence, noting that it encompasses a broad range of characteristics including professionalism and the exercise of sound professional judgment. Attributes contributing to the exercise of sound professional judgment include the ability to assess the strengths and weaknesses of a client's case and to recommend an appropriate course of action.

30. This statement of principle of competence and competent legal services encompasses broadly the idea of client service, including the lawyer's duty to be conscientious and diligent in serving his client, the lawyer's duty to develop a strategy in consultation with his client and the lawyer's duty to fully inform a client of the risks, rights and obligations involved in any proposed action.

31. In his dealings with AL, the Committee finds that Mr. Llewellyn's conduct fell materially short of the expectations of a lawyer. After hearing Mr. Llewellyn's lengthy evidence, the Committee was not satisfied that Mr. Llewellyn adequately advised AL of the risks inherent in the strategy to acquire the Edmonton Property and AL's obligations of performance at the various stages of the transactions. When overlaid with the evidence that AL was an unsophisticated party without strong command of the English language and that Mr. Llewellyn himself became a knowledgeable party and stakeholder in the real estate transaction, his responsibilities to fully advise his client heightened. There was no evidence that satisfied the Committee that Mr. Llewellyn, verbally or in writing, explained to AL fully, clearly and impartially the risks and opportunity with respect to the strategy Mr. Llewellyn proposed regarding the purchase of the Edmonton Property at any stage of the transaction.

32. Mr. Llewellyn penned a lengthy letter to AL in September 2013 (Exhibit 88) that purported to set out AL's knowledge and understanding with respect to the Edmonton Property transactions. The Committee finds this letter, particularly given the evidence regarding AL's lack of sophistication and lack of command of the English language, to be self-serving. The Committee is not satisfied that Mr. Llewellyn discharged his obligations to fully inform and advise AL of his risks, rights, and obligations at the outset of his retainer when he addressed AL outside of the courtroom, nor that he discharged this obligation as the transactions advanced and changed and Mr. Llewellyn became a participant therein.

33. The Committee finds that Mr. Llewellyn often acted unilaterally, substituting his own judgment for that of his client. When it became clear to Mr. Llewellyn that JS was unable to obtain financing to purchase the Edmonton Property in the Court sale, Mr. Llewellyn did not stop to advise his client of the possible options, one of which could be Mr. Llewellyn's participation in the transaction. Instead, convinced of the arbitrage opportunity, he acted, without informed instructions, to extend the closing date, to become a director of the numbered company that would purchase the Edmonton Property, to personally guarantee the loan to the numbered company and to personally advance additional funds needed to close the court sale (Statement of Agreed Facts, paragraphs 62, 63, 64, 68). In the Committee's view, these decisions were not his to make. They were decisions that should have been made by the client, fully and impartially after being informed of the risks, rights and obligations by his counsel.

34. Finally, the Committee has serious concerns regarding Mr. Llewellyn's evidence surrounding the two cheques JS provided AL as a deposit on the purchase of the Edmonton Property. Mr. Llewellyn's evidence was that he considered the two uncertified cheques to be "good enough" evidence of JS's indebtedness to AL and as good as a promissory note. In Mr. Llewellyn's mind, AL was in control of his own destiny to receive payment on those cheques by delivering the inventory he claimed he had. While Mr. Llewellyn's evidence was that he didn't see the cheques when they were given by JS to AL, he knew they were not certified and was told that they would not clear the account they were written on.

35. It is not reasonable that a seasoned lawyer experienced in commercial matters would view uncertified cheques to be equivalent to or better than a promissory note. Mr. Llewellyn had an obligation to ensure that his client understood the implications of holding two uncertified cheques as deposit on a purchase of lands and to document any conditions to payment under those cheques. Mr. Llewellyn did neither. Instead he allowed his client to rely on two cheques that were not reliable and that he knew were not reliable.

36. In his evidence, Mr. Llewellyn said at many times and in many ways that his actions were all intended to try to place AL in a better commercial position than he was otherwise in. “I have got him something he wouldn’t otherwise have got”. The Committee does not doubt Mr. Llewellyn’s motives; however, Mr. Llewellyn lost sight of his role as counsel. Even if we agree that AL was better positioned at the end of this complicated legal and business transaction, which we do not, a lawyer’s discharge of his obligations is not measured by the commercial outcome to a client. To do so would ignore the obligations of competent service throughout a lawyer’s retainer.

Citation 3

37. Rule 2 of Chapter 6 of the Code provides that:

> A lawyer must not act for more than one party in a conflict or potential conflict situation unless all such parties consent and it is in the best interests of the parties that the lawyer so act.

The commentary relating to Rule 2 makes it clear that the lawyer has the obligation to independently evaluate whether his representation of multiple parties is in the best interests of his client. Only after the lawyer has undertaken the diligence of independently evaluating whether the best interests of the parties are served by having one counsel can he then obtain the consent of the parties to the conflict. In that regard, the Code is clear that consent can only be given following full and fair disclosure of the opportunity and advantages to retaining one lawyer or to obtaining independent counsel.

38. As noted in the commentary:

> While it is not mandatory that either disclosure or consent in connection with multiple representation be in writing, the lawyer will have the onus of establishing that disclosure was sufficient and that informed consent was granted. Therefore, it is advisable to document the process in some manner (such as memorandum to file or follow-up letter) and to obtain written confirmation from the client wherever possible.

39. It is common sense that a lawyer’s obligation to evaluate the best interest of the parties is not a static assessment but is a fluid and ongoing obligation that arises and re-surfaces as a transaction changes and the potential for conflict arises.

40. In his cross examination by LSA counsel, Mr. Llewellyn admitted that he did not advise AL of any conflict of interest as he himself did not perceive there to be any conflict. In his opinion, he was acting in AL’s interests. The Committee heard no other evidence to suggest that Mr. Llewellyn turned his mind to the presence of an actual or potential

conflict in acting for AL and JS, or in acting for AL and the numbered company (of which he was a director), or in taking instructions from JS regarding the movement of the $20,000 deposit moneys in the EE trust account, or of personally guaranteeing the loan to facilitate the purchase of the Edmonton Property by the numbered company, or of personally borrowing funds to tender in the transaction. While Mr. Llewellyn testified that "everyone knew what he was doing", meaning AL and JS, his evidence was not precise in either direct-examination or cross-examination to satisfy this Committee that in fact they were so informed. The Committee is of the view that, based on a review of all the evidence, on a balance of probabilities, there was insufficient disclosure of the conflict and that informed consent was not given, contrary to the Code.

41. It became evident to the Committee in listening to Mr. Llewellyn's testimony that Mr. Llewellyn became more focused on making the deal happen rather than on his discharging his professional duties and obligations as counsel for AL. That perhaps became most clear when the Committee heard from Mr. D, a member of the LSA. Mr. D was examined on the loan transaction and the issue of the importance of borrower's equity to his client, the lender in the purchase of the Edmonton Property. When asked by LSA counsel what he would have done had he been informed that there was no borrower's equity in the property at the time of close, Mr. D's swift and uncalculated response was that he would have reported that fact to his client and sought further instructions. In contrast, in each and every instance where there was a change to the underlying premise of the transactions involving AL, Mr. Llewellyn brokered a solution without fully informing his client of the risks, rights and obligations and without his client's informed instructions to do so.

42. As mentioned above, some of the solutions Mr. Llewellyn devised involved Mr. Llewellyn assuming the role of participant and stakeholder in the transaction by becoming a director of the numbered company that was acquiring the Edmonton Property from AL, by signing a guarantee of the loan to that numbered company to support the advance of funds, and by personally loaning money on the court purchase of the lands. There was no satisfactory evidence that Mr. Llewellyn fully informed AL of the implications of Mr. Llewellyn's involvement in the transaction in these capacities.

43. Rule 8 of Chapter 6 of the Code provides that:

> A lawyer must not engage in a business transaction with a client of the lawyer who does not have independent legal representation unless the client consents and the transaction is fair and reasonable to the client in all respects.

44. Rule 8 of Chapter 6 does not preclude a lawyer from engaging in business with his client but it requires a lawyer who wishes to so engage to proceed with thoughtful caution and clarity. In this Committee's opinion, Mr. Llewellyn failed to maintain that clarity as to his

role. Mr. Llewellyn put on and took off his lawyer hat indiscriminately and in so doing, demonstrated a lack of diligence regarding the discharge of his duties to his client.

Citation 4

45. A lawyer's duty to act with integrity is the cornerstone of the profession. The Preface to the Code reinforces this principle and provides:

> Two fundamental principles underlie this Code and are implicit throughout its provisions. First a lawyer is expected to establish and maintain a reputation for integrity, the most important attribute of a member of the legal profession. Second, a lawyer's conduct should be above reproach.

46. Chapter 4, Rule 1 reflects this expectation of integrity in a lawyer's dealing with other lawyers in stating that "[a] lawyer must not lie or mislead another lawyer."

47. Mr. D became involved in these transactions as counsel for PC, the mezzanine lender to the numbered company. Mr. D corresponded with Mr. Llewellyn understanding Mr. Llewellyn to be counsel to the numbered company. Mr. D's first letter dated May 30, 2010 (Exhibit 70) incorporated by reference the conditions of the loan as set out by PC to JS; that letter also set out funding conditions and included reference to the loan funds and the additional funds from Mr. Llewellyn's client as follows:

> 6. You must also advise us that you have negotiated the form of trust conditions with Mr. [RA] of the [BM] firm (the "Trust Letter") and you will forward the terms to us. The Trust Letter must contain an undertaking wherein the [BM] firm undertakes to hold the Funds (both our loan funds and your client's additional funds) in trust until the new title to the Property is issued.
>
> 7. Upon receipt of the Trust Letter you will forward your client's funds (to make up the full cash to close) to the [BM] firm to comply with terms of the Trust Letter...

48. Mr. D's May 30, 2010 letter also set out trust conditions upon which the lender agreed to advance funds, including:

> 2. You will hold the Funds [defined as the net funds from the loan arrangement between [PC] and the numbered company] until you receive the additional funds (the "Client Funds") from LLEWELLYN LAW which in sum would equal the full Cash to Close with respect to the transfer of the Property to Mr. Llewellyn's client via Court Order.
> 3. Should you not receive the Client Funds, or not receive the Client Funds before the deadline for the closing of the Property (which we understand to be 4pm

May 31, 2010) then you will return the Funds to us, in full, by close of business June 1, 2010."

The letter goes on to confirm the gross amount of funds to be advanced by the lender of $730,000.

49. Mr. D further writes to Mr. Llewellyn on May 31, 2010 (Exhibit 73) to confirm that funds have been advanced to the BM firm and includes the following trust condition:

2. Within a reasonable amount of time, you will forward to us evidence (ie. copies of your letters) to each of [BM], forwarding the remaining cash to close, and [EE], forwarding the approximately $300,000, being their cash difference in the sale to 153[…] Alberta Inc.

50. In a series of email communications with Mr. D on May 31, 2010, Mr. Llewellyn corresponded with Mr. D in real time (11:24 Mr. D to Mr. Llewellyn, 11:44 Mr. Llewellyn to Mr. D, 11:48 Mr. D to Mr. Llewellyn, 11:53 Mr. Llewellyn to Mr. D) until at 11:57 when Mr. D writes to Mr. Llewellyn and asks "Isn't the purchase price over a million? I understood you had $200k in trust." Mr. Llewellyn did not respond.

51. Mr. Llewellyn's explanation regarding his incomplete communications with Mr. D was unconvincing and convenient. When questioned about the May 31 letter, Mr. Llewellyn maintained that he did not see that letter, nor the trust conditions in that letter, until June 2, 2010. When questioned about the real-time email communications with Mr. D on May 31, Mr. Llewellyn said he did not pay attention to Mr. D's last inquiry regarding the purchase price and that the only dollar amount he was paying attention to was the purchase price to be paid in the Court sale. Mr. Llewellyn also testified in his direct examination that the terms and conditions upon which PC was prepared to fund $730,000 (Exhibit 69) did not include a condition that Mr. Llewellyn show that the $300,000 was paid by the purchaser. Moreover, consistent with his overall manner with respect to these transactions, Mr. Llewellyn substituted his opinion for that of others. Regardless that PC had conditions to lending, Mr. Llewellyn shrugged off technical compliance with those conditions - in his opinion, PC was adequately protected. Again, it was not Mr. Llewellyn's place to substitute his judgment for that other others.

52. The Committee accepts Mr. D's evidence regarding the PC loan. Mr. D testified that PC was an asset lender that would want to ensure there was sufficient value in the property to secure the loan and to ensure the lender's expected return. As such, PC would not lend 100% of the money to purchase an asset but would expect the buyer to have "skin in the game". Mr. D confirmed that his reason for inquiring of Mr. Llewellyn in the various communications sent was to make sure the other purchase money, the borrower's equity, was present for the purchase of the property. Mr. D's evidence was that Mr.

Llewellyn did not advise him that there was no borrower's equity in the property at the time of close.

53. Mr. Llewellyn knew that none of AL, JS or the numbered company had the $300,000 to contribute to the purchase of the Edmonton Property. Mr. Llewellyn admitted in the Statement of Agreed Facts at paragraphs 73 and 74 that on June 4, 2010 he borrowed $300,000 from a third-party lender for JS, deposited that money into his trust account; caused the issuance of a bank draft for $300,000 payable to AL, met with AL at AL's bank and delivered the bank draft to AL with a transmittal letter dated June 4, 2010 to AL. AL deposited the draft into his account and immediately thereafter issued a bank draft payable to the third-party lender and provided the bank draft to Mr. Llewellyn.

54. Mr. Llewellyn did not inform PC or Mr. D as PC's counsel that he was aware no later than June 2, 2010 that the numbered company did not have the funds to close the purchase the Edmonton Property. In these circumstances, Mr. Llewellyn misled Mr. D with respect to the $300,000 borrower's equity in the Edmonton Property.

55. The Committee finds that the citations 1, 3 and 4 have been proven and Mr. Llewellyn's conduct is deserving of sanction.

Concluding Matters

56. This Committee has determined that Mr. Llewellyn is guilty of citations 1, 3 and 4. This matter will now proceed to the sanction phase. The Committee will hear submissions from counsel regarding the appropriate sanction to be applied in accordance with the *Act*.

57. The exhibits tendered at the hearing will be available for inspection and copying by members of the public for a fee and will be subject to redaction of personal identifying information. Further redactions will be made to preserve the privacy of the parties and to preserve client confidentiality and solicitor-client privilege.

Calgary, Alberta, February 2, 2018.

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Nancy Dilts, QC

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Leighton Grey, QC

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Ike Zacharopoulos

SCHEDULE A

IN THE MATTER OF THE LEGAL PROFESSION ACT

AND

IN THE MATTER OF A HEARING

REGARDING THE CONDUCT OF CLIVE O. LLEWELLYN

A MEMBER OF THE LAW SOCIETY OF ALBERTA

STATEMENT OF AGREED FACTS

The following facts are agreed. There are other facts which will be adduced at the Hearing.

INTRODUCTION

1. Clive Llewellyn ("Llewellyn") was admitted as a member of the Law Society of Alberta in June 1983. Llewellyn's present status with the Law Society of Alberta is Active/Practicing.

2. Llewellyn has practiced in Calgary, Alberta from 1983 to present, as follows:

    a. 1982 articled at Howard Mackie
    b. 1983 to 1987 associate at Code Hunter
    c. 1987 to April 1991 partner at Code Hunter
    d. 1991 to December 31 2007 partner at Fleming LLP
    e. 2008 to December 2009 associate at Fleming LLP
    f. 2010 to July 2013 sole practitioner of Llewellyn Law
    g. July 2013 to present senior lawyer of firm Llewellyn Law with associate lawyers

3. The file in issue in the Citations commenced February 2009, when Llewellyn was at Fleming LLP and continued after January 2010 when Llewellyn was a sole practitioner at Llewellyn Law.

4. Llewellyn's practice in 2009, while at Fleming LLP was approximately:
    - Civil Litigation (40%)
    - Bankruptcy/Insolvency/Foreclosure (45%)
    - Commercial Law (10%)
    - Employment/Labour (5%)

5. Llewellyn's practice in 2010, as a sole practitioner was approximately:
    - Civil Litigation (40%)
    - Bankruptcy/Insolvency/ Foreclosure (45%)
    - Commercial Law (10%)

- Employment/Labour (5%)

6. Llewellyn's practice at present in 2017, in the context of the Llewellyn Law firm is approximately:
   - Civil Litigation (65%)
   - Bankruptcy, Insolvency/ Foreclosure (15%)
   - Commercial Law (10%)
   - Real Estate (supervising associate role) (5%)
   - Matrimonial/Family litigation (5%)

FACTS

1. The Complainant, A.L., is and was an electrician who owned and operated a company called [•] (hereinafter "EEL").

2. In 2007 and 2008, EEL was involved as a contractor in least two redevelopment projects for [AV Inc.], in Calgary at [•] and one in Edmonton and had filed builders' liens on both.

3. On January 5, 2009, EEL filed a builders' lien on an apartment building located at [•] (the "Property"), claiming $802,000 of unpaid work. The Property had been gutted as part of a redevelopment by the [AV Inc.].

4. In the course of the renovations, [AV Inc.] defaulted on its $1.8 million first mortgage. The first mortgagee, [GM Ltd.] brought foreclosure proceedings.

5. On February 6, 2009, [GM Ltd.] applied in Chambers to purchase the Property at an appraisal value of $500,000 via a direct sale without a public advertising or sale process, and to obtain a deficiency judgment against [AV Inc.].

6. On behalf of EEL, A.L. attended the Chambers application and was unrepresented. Llewellyn was also present in Chambers that date.

7. Upon hearing counsel for [GM Ltd.] and then hearing from A.L, the Master explained to A.L. that given the appraised value of $500,000 and the mortgage debt of $1.8 million, as a subsequent lien claimant A.L. would receive nothing in the foreclosure. The Master then adjourned the application in order for A.L to consult a lawyer.

8. Llewellyn became interested in the application. Llewellyn approached A.L. after Chambers and explained to A.L that, given the appraised values, unless A.L. could establish that the property was worth more than the mortgage debt, A.L. would receive nothing from the foreclosure or any sale of the Property. They discussed the value of the property, and Llewellyn asked if A.L. could obtain a $20,000 deposit and $500,000 to purchase the property himself. A.L. indicated that he could.

9. Llewellyn said he could act for A.L in making the application for A. L. to buy the Property and to prepare an offer for A.L. A.L. agreed that Llewellyn would act as his counsel, and while at the Fleming firm Llewellyn opened file 35235. Llewellyn proceeded to contact counsel for [GM Ltd.] to seek an adjournment. He also:

    a. Prepared an Affidavit for A.L and filed a Demand of Notice for A.L. on February 23, 2009; **[TAB 9]**

    b. Prepared a Tender to Purchase, for $503,000 for A.L; **[TAB 10]** and

    c. Researched the law in respect of mortgagees purchasing mortgaged property.

10. On February 25, 2009, Llewellyn opened file 35242 for A.L., regarding another foreclosure on the property located at [•] in Calgary. In that matter A.L. claimed to be unpaid of $814,000 for similar work done for the [AV Inc.]. Llewellyn filed a Demand of Notice in that second matter for A.L., and over the next months, Llewellyn had various meetings with A.L., and correspondences occurred with the foreclosing lawyer on that file. **[TABS 7, 8, 12 – 16, 18 – 24, 26, 27, 31, 40]**

11. There was no written retainer agreement between Llewellyn and A.L. and no money retainer for either of these matters.

12. On February 26, 2009, Llewellyn attended at the next chambers appearance with a drafted Tender to Purchase by A.L. for the Property for $503,000. The Master adjourned the matter to a Special Chambers sitting.

13. Llewellyn sent the Tender and the Certified Cheque for $20,000 (payable to the Clerk of the Court) **[TAB 11]** obtained from A.L. to the Court on March 3, 2009. However, the Clerk would not accept the tender without a Court Order. Counsel agreed that Llewellyn would hold the Certified Cheque pending the outcome of the application.

14. At or around that time, A.L. advised Llewellyn that A.L. had another group that would fund the $503,000 purchase, although the particulars of that funding were not provided to Llewellyn at the time.

15. A.L. paid a $2,000 retainer by cheque to Fleming LLP on March 1, 2009.

16. Llewellyn issued an account to A.L. on March 11, 2009 for $1,750 in fees, plus disbursements and GST, totaling $2,095. **[TAB 17]**

17. Counsel for [GM Ltd.] filed an Amended Motion seeking a judicial sale listing **[TAB 25]**. Llewellyn researched the law, prepared and filed a Written Brief for the Master's Special Chambers sitting, which was heard on May 28, 2009.

18. The Master subsequently issued a Written Decision **[TAB 29]**, and an Order was entered June 17th, 2009, to the effect that the First Mortgagee was bound by its process and bound by its offer of $500,000, and the Master directed the sale to A.L. at $503,000. **[TAB 28]**

19. On June 24, 2009, having been successful at the Special Hearing, Llewellyn issued an account to EEL of $3,696 in fees, plus disbursements and GST, for a total of $4,063.00. **[TAB 30]**

20. On June 30, 2009, [GM Ltd.] appealed. The Appeal was set for a Justice Special to be heard September 1, 2009.

21. On August 14, 2009, the Foreclosing Mortgagee's brief was served with a further affidavit of [GM Ltd.], and with a settlement inquiry by letter, to the effect that [GM Ltd.] may be interested in working with A.L to complete the project. **[TAB 34]**

22. Llewellyn prepared and on August 21, 2009, filed a redrafted Reply Brief for A.L. for the Justice Special on Appeal.

23. Due to ongoing discussions between the parties the Appeal was adjourned *sine die* and did not proceed on September 1, 2009.

24. On September 28, 2009, A. L. paid $2,000 by cheque to Fleming LLP, which was applied on account leaving the rendered accounts then owing of $2,657.32. **[TAB 41]**

25. Effectively after June 24, 2009, further time was not recorded at Fleming LLP on this matter, although Llewellyn continued to work on it. The balance of the outstanding Fleming accounts of $2,657.32 was carried by Llewellyn when he left Fleming in January 2010.

26. The discussions between the parties continued, and covered alternative proposals to proceed, but ultimately were unsuccessful.

27. In November 2009, counsel for [GM Ltd.] provided an updated appraisal showing an $800,000 "as is" value for the Property **[TAB 42]**. [GM Ltd.] then applied in the Appeal, on December 1, 2009, to have the property sold at $800,000. The Court directed that matter be adjourned for questioning on that updated appraisal. **[TAB 43]**

28. In late 2009 A.L. asked for advice from Llewellyn on another legal matter, being a long-standing WCB-related civil action claiming lost income in 2007 and 2008 arising from a motor vehicle accident while working.

29. In January 2010, A.L. asked Llewellyn review the file. Discussions were ongoing with A.L. after that, because A.L. was unhappy with the progress by his other counsel on that file. These conversations were ongoing at that time informally and no file was opened, but A.L. kept raising these issues in his conversations with Llewellyn.

30. Eventually in October 2010 Llewellyn assumed carriage of that matter and opened a file dealing with this WCB claim as his file 40305. After taking the matter through further questioning and a JDR, the matter was settled for a monetary payment to A.L. in 2013. Llewellyn subsequently rendered an account to A.L. for a reduced fee. **[TAB 86]**

31. In January 2010, Llewellyn left Fleming LLP to practice as a sole practitioner, and opened his office at [•], an old bungalow where he was also residing. He filed a Notice of Change of Solicitor at or about that time.

32. In February 2010, Llewellyn conducted a questioning on the Foreclosing Mortgagee's new appraisal affidavit of value ($800,000). Llewellyn paid the $410 conduct money out of his General Account (not funds from A.L.). The funds were never recovered from A.L.

33. In or about February and March 2010, the parties (by counsel) were still discussing settlement proposals regarding the Property that would see A.L. purchase it.

34. In March 2010, A.L. asked Llewellyn to look at another matter. Llewellyn opened file 40224 for A.L. taking an existing file over from other counsel dealing with attempts to resolve a 2008 CMHC deficiency judgment for $155,000 that was outstanding against A.L. personally and against his wife. This CMHC matter was ongoing through 2010 to 2013, and no settlement was ever achieved by Llewellyn.

35. Sometime prior to the Justice Appeal (April 2010):

    a. A.L. had advised Llewellyn that A.L. could not complete the purchase of Eastwood himself, because the persons who had provided to him the $20,000 deposit in 2009 did not want to go ahead any further.

    b. The aged Fleming account was still not paid and Llewellyn had not rendered any further account since June 2009.

36. The Justice Appeal was rescheduled for April 22, 2010. On April 22, 2010, the Justice Appeal Special was heard and:

    a. The Justice held that the most recent appraisal of $800,000 governed, and that the Master's Order from the prior year to sell to A.L at $503,000 was set aside;

    b. The property was directed to be tendered for sale; and

    c. Costs were awarded against A.L of the Appeal. **[TAB 45]**

37. Llewellyn advised A. L. to appeal the Justice's decision, and to continue pursuing resolution discussions through Llewellyn with counsel for [GM Ltd.].

38. A new appraisal for the Property, also dated April 22, 2010, valued the Property at $1,300,000. **[TAB 46]**

39. Llewellyn had introduced A.L. to J.S., a property developer he knew.

40. On April 22, 2010, Llewellyn received an email from J.S. with the subject line [*"GM. Ltd."]*, which stated *"I can get him $750K cash on that deal Monday, can you make it happen?"* **[TAB 47]**

41. On April 25, 2010, Llewellyn received an email from J.S. with the subject line *"Eastwood Apartments – Edmonton"*, which stated "*Clive – Will $850K work for [GM Ltd.]? We can close next week."* **[TAB 48]**

42. On April 29, 2010, [GM Ltd.] counsel wrote Llewellyn to confirm EEL's intention to offer $750,000 to purchase the Property, with a $20,000 deposit to be applied towards the purchase price. **[TAB 49]**

43. In the interim, J.S. had negotiated a sale of the Property to purchasers in Edmonton ("[S]"). Although the name [S] was not known, monies through a name "[I]" transferred $20,000 to Llewellyn's account on April 29, 2010. **[TABS 52, 54]**

44. Understanding that the $20,000 were from J.S, on J.S.'s instructions, Llewellyn transferred that $20,000 to A.L.'s builder's lien file that same day. **[TABS 50, 51]**

45. On April 29, 2010, Llewellyn sent a trust cheque for $20,000 as A.L.'s deposit to [GM Ltd.'s] counsel. **[TABS 50, 51]**

46. Llewellyn prepared an Assignment Agreement dated April 30, 2010 (the "Assignment Agreement"), between EEL and J.S. and also to be signed by the Assignee's Nominee. The Assignment Agreement provided that EEL would assign its right to purchase the Property to J.S. or J.S. Nominee for the amount of $1,050,000, which included an unconditional and non-refundable deposit of $20,000. Notices to J.S. under the Assignment Agreement were to be sent to [DG] Professional Corporation in Edmonton. The closing date for the Assignment Agreement was on or before May 20, 2010. The date that each of EEL and J.S. signed the Assignment Agreement is not now known by Llewellyn. **[TAB 53]**

47. The agreement with [GM Ltd.] was confirmed by the Order of Mr. Justice Hawco on May 3, 2010, on the condition that the sale to A. L. was required to close on or before May 28, 2010 or the judicial tender process would be reopened in the Foreclosure Action. **[TAB 55]**

48. On May 4 and May 5, 2010, Llewellyn was contacted by [A.M.], an Edmonton Lawyer, who had left phone messages. Also [A.M.] left a message.

49. Llewellyn then had a telephone conversation with [A.M.], and understood [A.M.] was acting for J.S and the intended assignee of J.S.

50. On May 5, 2010, J.S. emailed Llewellyn to inquire whether A.L. had signed "the agreement." **[TAB 58]**

51. J.S. executed a Real Estate Purchase Contract (the "REPC") stated to be signed by him May 4th 2010, which was prepared on Llewellyn's office computer (though Llewellyn states he had no involvement in its preparation). The witness to the signature is not that of Llewellyn or either of his two staff. The REPC was signed by A.L. and witnessed by J.S. and stated to be dated May 5, 2010. The purchase price was $1,050,000, but there were to be two deposits payable to EEL and held in trust by EEL totaling $300,000. The sale was to close on May 28, 2010. **[TAB 57]**

52. At some time, the date not indicated, J.S. provided an uncertified cheque for $50,000 payable to A.L. dated May 5, 2010. **[TAB 59]**

53. On May 6, 2010, Llewellyn sent the executed Assignment Agreement to counsel, A.M., and sought confirmation of his understanding that A.M. was acting for J.S. and the assignees of J.S. (stated as [A] and [A.S.]) on the Assignment Agreement. **[TAB 60]**

54. On May 7, 2010, Llewellyn sent a further letter to A.M. enclosing the filed Court Order of May 3, 2010 and, among other things, stating:

> *I also understand, speaking with [J.S.] who appears to be intermediary now, that your client are interested in hiring my client [EE Inc.] (who was the prime contractor for the original mortgagor/ owner) with respect to completing the project. My client has a number of permits, and so forth, ready to proceed. My Client has also paid deposits to the City which would be returned to my client.*
>
> *If there is going to be an agreement with my client with respect to doing further work, and supplying further materials, we will need to document that as soon as possible as well.* **[TAB 61]**

55. By email of May 9th, 2010, A.L. sent photos of materials to J.S.

56. On May 18, 2010, Llewellyn wrote to counsel for the foreclosing mortgagee and to [A.M.] as counsel for the Assignee regarding the transaction.

57. Llewellyn then wrote to [A.M.] further on May 18th stating that Llewellyn had received instructions from J.S. to return to [A.M.]'s the $20,000, and Llewellyn confirmed that any arrangements with [A.M.]'s clients were at an end. On May 21, 2010, Llewellyn transferred $20,000 from another ledger in J.S.'s name, with the notation "under client instructions," into A.L.'s ledger. **[TAB 64]**

58. Also on May 21, 2010, J.S. provided a second uncertified cheque for $250,000 to A.L. **[TAB 59]**

59. On May 25, 2010, Llewellyn returned $20,000 to A.M. on J.S.'s instructions further to the voided transaction. **[TAB 50]**

60. On May 26, 2010, Llewellyn advanced $5,000 by cheque from his general account as a personal loan to A.L. This Loan was never repaid.

61. Llewellyn states that J.S. contacted him on May 27th, 2010, and advised that he was having trouble with closing. J.S. told Llewellyn that, although he had financing arranged, his personal covenant was not sufficient, and his lender ([PC]) was seeking a better guarantee. A.L. could not personally come up with the $730,000 required to close the court sale.

62. Llewellyn contacted the counsel for [PC] and requested an extension to the Friday, May 28th 2010, closing deadline. Counsel for [PC] granted a one business day extension to Monday, May 31st, 2010.

63. On May 28, 2010, J.S. incorporated 153[…] Alberta Inc. Llewellyn was appointed by J.S. as a co-director of the new company and was stated to hold 49% of its shares **[TAB 68]**. J.S.'s lender provided J.S. and Llewellyn with an updated Term Sheet that added Llewellyn as a guarantor for the loan **[TAB 69]**. Llewellyn states that he had not previously been involved in any business with J.S.

64. Also on May 28, 2010, J.S. and A.L. executed an amendment to the REPC at 9:10 pm. Llewellyn states this was done without his involvement. The amendment provided an extension of the closing date of the REPC to May 31, 2010, and exercised J.S.'s right to assign his interest to another party, which was 153[…] Alberta Inc. **[TAB 57]**

65. On Sunday, May 30, 2010, under cover of a letter setting out the requirements, counsel for [PC] (N.D.) sent the package of mortgage documents to Llewellyn's office. **[TAB 70]**

66. On that date, Sunday, May 30th, 2010:

    a. an email was sent from Llewellyn's office to J.S. and attached a copy of the REPC and the amendment **[TAB 71]**;

    b. Llewellyn and J.S. executed all the loan documents, including a guarantee and postponement of claim directed to [PC]; and

    c. A. L. was present and witnessed all the signing by J.S. and Llewellyn. **[TAB 72]**

67. On May 31, 2010, [PC] counsel forwarded the net loan monies of approximately $710,000 directly to counsel for [GM Ltd.], closing the judicial sale. **[TAB 73]**

68. On May 31, 2010, Llewellyn sent the balance of the cash to close of the judicial sale purchase to counsel for [GM Ltd.] of $20,140. Due to J.S.'s lack of funds, Llewellyn states that he personally advanced approximately $13,000 so the judicial sale transaction could close. Llewellyn states that those advanced funds were repaid by J.S. later in 2010.

69. There was an email exchange between N.D. and Llewellyn on the morning of May 31st , 2010:

a. N.D. asked how the documents and *completion of conditions was going?*

b. *Llewellyn responded by saying that "the documents were signed yesterday"* and asked *"what exact money was going over to [BM]?"*

c. N.D responded he was *"sending over $709,860";*

d. Llewellyn responded *" that means I send over $20,140";*

e. A subsequent email from N.D., was sent at 11:57 a.m., which stated *"Isn't the purchase price over $1 million? I understood you had $200,000k in trust Yt Nick?"*

f. The record does not disclose any response to that email by Llewellyn. **[TAB 74]**

70. At 1:10 pm on May 31, 2010, N.D. emailed Llewellyn and stated in part:

> *Hi Clive further to the phone message we have just met with [PC]. They would need to ensure that the $300k difference between the $750k going to [GM Ltd.] and the $1,050,000 that [J.S.] offered [E] is going to [E].*

There is no record of a response to that email. **[TAB 75]**

71. Also on May 31, 2010, the documents were sent to the LTO. Llewellyn swore an Affidavit of Transferee attesting that the Property was worth $1.3 million. Llewellyn signed the Affidavit of Transferee. **[TAB 77]**

72. In its letter dated May 31, 2010 couriered to Llewellyn's office, confirming that the $709,860 monies had been forwarded to [BM] for the judicial sale (releasable once Llewellyn sent over the $20,140, among other things), N.D. then requested from Llewellyn:

> 2. Within a reasonable amount of time you will forward to us evidence (i.e. copies of your letters) to each of [BM], forwarding the remaining cash to close, and to [EEL] forwarding the approximately $300,000.00, being their cash difference in the sale to 153[…] Alberta Inc. **[TAB 73]**

Llewellyn states that he did not review N.D.'s May 31, 2010 letter until likely Wednesday June 2nd, 2010.

73. On June 4, 2010, Llewellyn borrowed $300,000 from a third-party lender for J.S.; deposited the $300,000 into his trust account; caused the issuance of a bank draft for $300,000 payable to A.L. **[TAB 80]**; and met with A.L. at A.L.'s bank and delivered the bank draft to

A.L. with a transmittal letter dated June 4, 2010 to A.L. **[TAB 81]** At or about this time Llewellyn dictated a memo to file. **[TAB 82]**

74. A.L deposited the draft into his account, and immediately thereafter A.L. issued a bank draft payable to the third party lender and provided that bank draft to Llewellyn. A.L. retained the two uncertified cheques from J.S. previously provided to him on May 5 and 21, respectively, totaling $300,000. Llewellyn states that those cheques were retained by A.L. in order to provide evidence of the debt owed by J.S.

75. On June 6, 2010, Llewellyn sent a reporting letter to N.D. confirming the registration of the [PC] Mortgage, confirming the delivery of the remaining cash to close to counsel for [GM Ltd.], and a copy of the June 4, 2010 transmittal letter to A.L. referencing the $300,000 payment by bank draft. **[TAB 83]**

76. On June 23, 2010, Llewellyn issued an account to J.S. in respect of the purchase of the Property, which covered the real estate conveyance, Affidavits of Execution, and appearing at Court to get the Order in respect of the sale from [GM Ltd.] to A.L. **[TABS 50, 51]**

77. In July 2010, Llewellyn advanced money for 153[…] Alberta Inc. to make a monthly payment on the [PC] mortgage because J.S. was without funds. This then resulted in communications with J.S. by Llewellyn to get the re-sale completed, and to get the [PC] mortgage paid off.

78. Matters carried on to early 2011 with Llewellyn (and his business partner G.A.) making the [PC] payments monthly for 153[…] Alberta Inc., because Llewellyn was the Guarantor. G.A. was involved because the [PC] payments were then coming from a common business of G.A. and Llewellyn through their company.

79. At that stage in early 2011 there were meetings as among G.A., J.S., A.L. and Llewellyn, and as evolved:

    a. The name of 153[…] Alberta Ltd. was changed to [E Apartments Ltd.];

    b. Llewellyn and G.A. became the directors, so that G.A. could start applying to lenders for construction financing for Eastwood;

    c. J.S. had ceased being a director of [E Apartments Ltd.]; and

    d. To obtain financing it was agreed that G.A. and Llewellyn's company (Freestyle Holdings Corp.) would become the shareholder of record. **[TAB 85]**

80. The [PC] Loan was paid in full, without default, by refinancing, in 2011.

81. The construction of the project was eventually completed by [E Apartments Ltd.] with J.S. overseeing the work and G.A. managing the finances, although not without controversy with A.L. Disputes arose between A.L. and [E Apartments Ltd.] as to the non- delivery of the

promised materials, and when and how work and what work was performed on the Property by A.L., and at what price.

82. G.A met with A.L. on March 11, 2013. G.A had a handwritten note to A.L. which G.A. asked Llewellyn to sign for [E Apartments Ltd.], and A.L. signed in a discussion regarding the overall costs of [E Apartments Ltd.], the lack of supplies, and the claim by A.L. for money owing. **[TAB 87]** However, some or all of these issues remain disputed.

83. After this March 11, 2013 date, G.A caused [E Apartments Ltd.] to pay A.L. sums totaling $80,000.

84. On September 24, 2013 Llewellyn write to A.L. under the letterhead of [E Apartments Ltd.] The letter sets out Llewellyn's version of the events to that date. **[TAB 88]**

85. The Property has since been sold by [E Apartments Ltd.].

86. A.L made the complaint to the Law Society against Llewellyn in March 2014. **[TAB 89]**

87. A.L. commenced a Civil Action on April 17, 2015, against the Defendants Llewellyn, G.A., J.S. and [E Apartments Ltd.], which Action has been defended by each defendant. [E Apartments Ltd.] has counterclaimed against A.L.

88. No formal steps of any kind have been taken by A.L. since the filing of each of the defenses by each of the Defendants.

89. Counsel for A.L. has filed a Notice Ceasing to Act in the Civil Action.

THIS AGREED STATEMENT OF FACTS IS MADE THIS 24th DAY OF OCTOBER, 2017.

"CLIVE LLEWELLYN"	**"DEREK CRANNA"**
_____	_____
CLIVE LLEWELLYN	**DEREK CRANNA,** **for the Law Society of Alberta**