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## Bank takes a hard hit with condo parking space fraud

Transactions lend new meaning to concept of 90 per-cent financing

Imagine being able to buy an \$11,000-parking space in a classy Markham condominium project and then getting a mortgage on it for \$185,000.

Or buying a storage unit assessed at \$31,000 in a Toronto condominium on Spadina Ave. near Queen St. W., and getting a bank mortgage of \$201,650.

It seems hard to believe, but that's exactly what happened in these and 14 similar transactions, which took place between December 1998 and March 2002.

In total, TD Canada Trust shelled out \$1.9 million in mortgages on condominium units that were actually worth as much as 90 per cent less than the financed amounts. These transactions give new meaning to the concept of "90-per-cent financing."

The strange story of the overpriced parking and locker units came to light recently in a discipline decision released by the Law Society of Upper Canada and published on the website of the Canadian Legal Information Institute (<http://www.canlii.org/en/on/onlsdp/doc/2007/2007onlsdp5/2007onlsdp5.html> and see below)

In January, a society hearing panel found Toronto lawyer Steven Michael Mucha guilty of professional misconduct by assisting other persons in dishonest or fraudulent conduct, by acting for multiple parties despite conflicting interests and without obtaining the consent of the lender, and by failing to serve his lender client diligently and to the standard of a competent lawyer.

Other than legal fees, the panel found that Mucha did not benefit from the proceeds of any of the fraudulent transactions.

Of the 16 transactions, 10 were on levels A and D of the condominium at 188 Spadina Ave., in Toronto. (Typically, condominium units on these levels are always below ground, and consist of either parking spaces or lockers.) Five more mortgaged units were on the first level of 398 Ferrier St., in Markham, and one was at 95 Prince Arthur Ave., in Toronto.

Here is how the scheme worked on the Spadina Ave. parking and locker units. Between late 1998 and July 2001, various purchasers applied to the TD Bank for conventional mortgages on what were falsely represented as dwelling units selling from \$240,000 to \$280,000.

According to the Law Society's ruling written by panel chair Alan D. Gold, in all 10 Spadina transactions, the vendor was a corporation controlled by two brothers named Chan. Two employees of a TD branch at Weston Rd. and Finch were involved in all the mortgage applications or approvals.

In some of the cases, and unknown to Mucha, the lawyer and the bank received different versions of the agreement of purchase and sale. As well, the original status certificates from the condominium corporation described the units as parking or storage, but those words were deleted from the photocopied versions delivered to the lawyer.

Both the condominium declaration and the municipal tax arrears certificates described the units involved as storage or parking, but Mucha told the Law Society panel that he did not recall reviewing them, or if he did, he didn't notice the descriptions. Nor, he said, did he notice that four of the Spadina units were shown on the tax certificates as having assessed values of \$31,000.

Typically, when the deals closed, the only money changing hands was the bank mortgage advance, which was paid to the vendors, and not the balance of the purchase monies required from the buyers.

During the six-day hearing last summer, Toronto lawyer Reuben Rosenblatt testified as an expert witness for the Law Society. Rosenblatt teaches real estate law at Osgoode Hall Law School and is regarded by many of his colleagues as the dean of the real estate bar in Ontario.

In testifying before the Law Society panel, Rosenblatt described Mucha's handling of the 16 real estate files as "deplorable."

The issue for the Law Society panel, according to chair Alan D. Gold, was whether Mucha was, in his own words, a "stupid dupe," or whether he knew he was assisting in the dishonest and fraudulent conduct taking place.

Mucha admitted to the Law Society panel that all of the transactions involved fraudulent or dishonest conduct by his clients, whom he assisted by acting for the vendor, purchaser and lender without the lender's consent. Mucha denied, however, that at the time he was aware of or wilfully blind to the fraudulent or dishonest conduct.

After careful consideration, the discipline panel ruled that Mucha "knowingly assisted in dishonest or fraudulent conduct to obtain mortgage funds under false pretenses in connection with the (mortgage) transactions."

The penalty hearing will take place shortly.

On June 8, 2005, the registrar of the Real Estate and Business Brokers Act revoked the registration of Roland Williams as a real estate salesperson. He is named by the Law Society panel as an agent in the transactions handled by Mucha.

When the TD Bank attempted to realize on its mortgages, it was forced to sell the parking and locker units at a significant loss.

Typical of the losses were three units at 398 Ferrier St., in Markham, which were originally reported to have sold in 2001 at \$265,000 each. In 2003 and 2004, the units were resold by the bank to real purchasers on the open market.

Unit 16, which was mortgaged for \$185,000 was sold for \$11,600. Unit 40, originally mortgaged to secure \$172,250, was sold for \$35,000, and unit 39, mortgaged for \$198,750, sold for \$44,000. The Law Society panel decision does not mention whether the American-owned title insurer on all the transactions reimbursed the bank for its losses.

The Mucha case is only one of more than 100 investigations currently underway against lawyers suspected of involvement in questionable real estate transactions. Sadly, more cases like this one may be heard in the coming months.

(A word of disclosure here: Although I am an elected director of the Law Society, I took no part in the Mucha case. I first read the decision when it was publicly released.)

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## Law Society of Upper Canada v. Steven Michael Mucha, 2007 ONLSHP 5 (CanLII)

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Date: 2007-01-25  
Docket: 2005-00112 CN73/05

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**Noteup**

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LAW SOCIETY HEARING PANEL

Citation: *Law Society of Upper Canada v. Steven Michael Mucha*, 2007 ONLSHP 0005

Date: January 25, 2007

Docket: 2005-00112

File No.: CN73/05

BETWEEN:

**The Law Society of Upper Canada**, Applicant

v.

**Steven Michael Mucha**, Respondent

of the City of Toronto

Before: Alan D. Gold (chair)  
Dr. Richard Filion  
Patrick G. Furlong, Q.C.

Heard: June 12, 13, 14, 15, 16, and August 22, 2006, in Toronto, Ontario

Counsel: Tanus Rutherford, for the applicant  
William Trudell and Mark Lapowich, for the respondent

**REASONS for decision**

[1] The member Steven Michael Mucha was the subject of a Notice of Application as follows:

TAKE NOTICE THAT the Law Society of Upper Canada intends to apply to the Hearing Panel of the Law Society pursuant to section 34 of the *Law Society Act* for a determination of whether you have contravened section 33(1) of the *Law Society Act* by engaging in professional misconduct.

[2] The particulars of the professional misconduct alleged against you relate to purchase, sale and mortgage transactions (the Transactions ) on the properties listed by their municipal address in Schedule A to the Notice of Application (the Properties ), in or about the period from December 2, 1999 to July 21, 2001<sup>[1]</sup>, and are as follows:

**ASSISTING DISHONEST OR FRAUDULENT CONDUCT**

1. You breached Rule 2.02(5) and former Rule 3 of the *Rules of Professional Misconduct* (the *Rules*) by knowingly assisting in dishonest or fraudulent conduct to obtain mortgage funds under false pretenses in connection with the Transactions.

#### **FAILING TO BE HONEST AND CANDID WHEN ADVISING CLIENTS**

2. You breached Rule 2.02(1) and former Rule 3 of the *Rules* by failing to be honest and candid when advising your lender client in connection with the Transactions. In particular, you failed to advise the lender of all material facts, including the following:
  - a. that you were acting for the vendor as well as the purchaser in each Transaction;
  - b. that you had an on-going business relationship with the vendor, its principals and/or related corporations;
  - c. there was an on-going employment, business or other relationship between the vendor (or related companies or individuals) and the purchasers or their spouses
  - d. there were significant discrepancies between the consideration stated in the purchase agreements and the actual consideration paid;
  - e. the purchasers were not contributing any funds for down payments or closing costs;
  - f. Properties A to L were parking units or storage units rather than residential condominium units;
  - g. Property O was the subject of a recent transaction in which the Property had sold at a much lower price; and
  - h. at the time of the transactions involving Properties A, B and C, the vendor corporation was dissolved.

#### **ACTING DESPITE CONFLICTING INTEREST WITHOUT DISCLOSURE AND CONSENT**

3. You breached Rules 2.04(3), (6), (7) and (8) and former Rule 5 of the *Rules* by:
  - a. acting or continuing to act for multiple persons in the Transactions, where there was or was likely to be a conflicting interest;
  - b. by failing to disclose all material facts to the lender, including those listed in paragraph 2 of this Application; and
  - c. by failing to obtain the lender's informed, or any, consent.

#### **FAILING TO SERVE CLIENT TO THE STANDARD OF A COMPETENT LAWYER**

4. You breached Rule 2.02 and former Rule 2(b) of the *Rules*, by failing to serve your lender client in connection with the Transactions, in a conscientious and diligent manner, or to the standard of a competent lawyer. In particular:
  - a. you failed to make reasonable inquiries into the purpose of each Transaction and the reason for the discrepancy in the consideration for each Transaction; alternatively, if you did make such inquiries, you failed to disclose the information to the lender and advise it of the resulting risks;
  - b. you failed to make reasonable inquiries to verify that the deposits specified in Agreements relating to Properties N and O were in fact paid by the purchaser, and to whom the deposits were paid;
  - c. you failed to disclose material facts to the lender, as set out in paragraph 2 above; and
  - d. you failed to ensure that the vendor corporation was revived before the completion of Transactions A, B and C, or, alternatively, to advise the lender of the risk of completing the Transactions with the dissolved vendor corporation.

[3] The Hearing took place on June 12, 13, 14, 15, and 16, 2006. Submissions were made on August 22, 2006 and Decision was reserved.

[4] Ms. T. Rutherford and Mr. William Trudell appeared as counsel for the Society and the member, respectively.

[5] The following was the Agreed Statement of Facts [ASF]:

#### **I. JURISDICTION AND SERVICE**

1. The Member, Steven Michael Mucha, (the Member), admits service of Notice of Application CN73/05 and is prepared to proceed with a hearing of this matter on a date to be set by the Hearing Management Tribunal.

#### **II. IN PUBLIC/IN CAMERA**

2. The parties agree that this matter should be heard in public pursuant to section 9 of the *Statutory Powers Procedure Act* and Rule 3.01 of the *Rules of Practice and Procedure* made pursuant to section 62.1 of the *Law Society Act*.

#### **III. ADMISSIONS**

3. The Member has reviewed Notice of Application CN73/05 with his counsel. The Member denies particulars 1 and 2. The Member admits particular 3 in part, as set out in the Conclusion in this Agreed Statement. The Member also admits particular 4. The Member further admits that particulars 3 (as modified in the Conclusion) and 4, together with the facts set out in the Agreed Statement of Fact in relation to those particulars constitute professional misconduct.

#### **IV. BACKGROUND**

4. The Member is 51 years old and was called to the Bar in 1979. During the relevant time period, he was sole practitioner in Toronto with a general practice. About 25% to 50% of his practice was in real estate transactions.

5. On June 6, 2002, the Law Society received a written complaint from TD Canada Trust regarding the Member's conduct in several mortgage transactions. On July 17, 2002, the Law Society notified the Member that it was commencing an investigation of the complaint and requested production of the Member's file and records. The Member produced the requested files and records in July 2002.

6. By letter dated October 1, 2004, the Law Society's Investigator asked the Member's counsel to produce the Member for an interview as part of the investigation. By letter dated May 03, 2005, the Investigator again repeated his request for an interview, and advised that the matter would be submitted to the Proceedings Authorization Committee shortly.

7. On May 17, 2005, the Member, along with his Counsel, attended the Law Society and met with an investigator and investigation Counsel for some three hours during which time he was interviewed in relation to the allegations set out in Conduct Application CN73/05. On June 10, 2005, the Member attended at the Law Society with Counsel for a further almost five hours to complete the interview with the investigator and investigation Counsel. It is the Member's position that he responded in a complete and candid manner to the allegations as set out in the above noted Conduct Application. The Law Society admits that the Member attended for the interviews, but disputes that he responded in complete and candid manner.

## V. THE FACTS

8. The Application encompasses 16 transactions (the Transactions ) involving 16 properties (the Properties ) located in Toronto and Markham. The transactions occurred between December 1998 and March 2002, and involved units in three condominium buildings.

- (a) 188 Spadina Avenue, Toronto (the Spadina Condominium): The units and the corresponding transactions will be referred to as the Spadina Properties and the Spadina Transactions , respectively;
- (b) 398 Ferrier Street, Markham (the Ferrier Condominium): The units and the corresponding transactions will be referred to as the Ferrier Properties and the Ferrier Transactions , respectively;
- (c) 95 Prince Arthur Avenue, Toronto (the Prince Arthur Condominium): The unit and corresponding transaction will be referred to as the Prince Arthur Property and the Prince Arthur Transaction , respectively.

9. The Transactions are set out in chart format in Schedule A to this Agreed Statement. Detailed summaries of each Transaction are contained in Appendix 1 to this Agreed Statement. The paragraphs below provide an overview of the Transactions. [Schedule A and Appendix 1 are not set out in these Reasons]

10. The Member acted on all of the Transactions and charged fees totaling approximately \$17,820.00 ranging from \$750.00 to \$1,800.00 per Transaction.

### The Parties and Other Participants

11. Patrick Chan and Cameron Chan (the Chans ) are brothers and were involved in all of the Transactions. They were the controlling minds of the three corporate vendors named in Spadina and Ferrier Transactions and they were the employer of individual vendor named in the Prince Arthur Transaction. Cameron Chan is also the husband of the purchaser in one of the Spadina Transactions (Transaction G). The Chans were long-standing clients of the Member and he believed that they were successful businessmen.

12. Holl-Gel Realty Ltd. ( Holl-Gel ), Kingsberg Far East Corporation ( Kingsberg ) and 1255039 Ontario Ltd. ( 1255039 ) are corporations controlled by one or both of the Chans. Holl-Gel was the Vendor in all 10 of the Spadina Transactions. Kingsberg was the Vendor of the Ferrier Transactions. 1255039 was the Vendor in two of the Ferrier Transactions.

13. HomeLife/Realty Centre Corp ( HomeLife ) was named as the real estate broker and Roland Williams was its agent in the 10 Spadina Transactions and the Prince Arthur Transaction. In the five Ferrier Transactions, Homelife and Williams were named as broker and agent in the purchase agreements received by the Bank but not in the purchase agreements received by the Member. It is the Member's position that he was never aware that the Bank had different agreements of purchase and sale.

14. Canada Trustco Mortgage Company and Toronto Dominion Bank were the lenders in all of the Transactions. The two institutions merged during the time period of the Transactions and will be referred to as simply the Bank . Lascelles Williams and Amid Baig were employees of the Bank who worked at same branch, Branch No. 325, located at Weston Road and Finch Avenue, and they were involved in the mortgage applications or approvals for all of the Transactions. Unknown to the Member, Lascelles Williams was the brother of Roland Williams. It is the Member's position that, while he knew that Amid Baig was involved in the approval of a at least one Transaction, he did not know of Lascelles Williams or that the same branch was involved in all of the Transactions.

### The Spadina Properties and Transactions

15. Ten of the Transactions involved condominium units in the Spadina Condominium. The Spadina Condominium is a high-rise building, and includes dwelling units, commercial units, storage units and parking units. None of the Spadina Properties were dwelling units; instead, seven of the Properties were storage units; and three were parking units. It is the Member's position that he did not know, nor was he wilfully blind and reckless, that the Spadina Properties were storage units and parking units; it is the Law Society's position that the member did know, or was wilfully blind or reckless.

16. The Spadina Transactions occurred between December 1998 and July 2001.

17. To finance the Transactions, the Purchasers applied to the Bank for conventional mortgages. The Purchasers, or persons associated with them, falsely represented that they were buying a dwelling unit and falsely represented the purchase price. It is not known whether the Purchasers did so knowingly or whether they were duped by the Chans or their agents. The Bank was induced to approve the loan amount based on the false representations. The mortgages in the Spadina Transactions ranged from \$160,000.00 to \$210,000.00 and totalled more than \$1.9 million.

18. More specifically, the Spadina Transactions shared several characteristics:

- (a) Purchase prices ranged from \$240,000 to \$280,000 and were grossly excessive for storage units and parking units.
- (b) Six of the purchasers were employees, business associates or family members of the Chans.
- (c) The Agreements in all of the Spadina Transactions named a listing broker even though some of the Transactions involved individuals associated with the Chans as set out in (b) above. Commission was paid in most of the Transactions.
- (d) In the Spadina Transactions, the Member did not receive any closing funds from the purchasers. The sole source of closing funds he received was the mortgage advance.
- (e) In the Spadina Transactions, the Member did not receive sufficient funds to cover the balance due on closing, since he only received the mortgage advance. The shortfalls in the closing funds received by the Member ranged from about \$50,000.00 to \$38,000.00, as set out in Schedule B to this Agreed Statement. [Schedule B is not set out in these Reasons]
- (f) In all the Spadina Transactions, the vendor was a Chan company. The real estate agent was Roland Williams of HomeLife, the lender was the Bank.

19. The following sets out the Member's conduct in the Spadina Transactions:

- (a) In all of the Spadina Transaction, the Member acted for all three parties without any consent from the Bank.
- (b) After closing, the Member prepared separate reports to the Vendor and the Purchaser, but in most cases addressed both reports to the Chan's [sic] business address, at the instructions of the Chans.
- (c) The Member closed the Transactions despite the fact that he did not receive sufficient funds for closing to cover the balance due on closing, as set out in paragraph 18(e) above.
- (d) The Member paid the net sale proceeds to the Chans personally, without any written Direction from the Vendor corporation. It is the Member's position that he did so at the verbal instructions of the Chans.
- (e) The Member did not include any such adjustments for property taxes and common expenses in his Statements of Adjustments, except in Transaction G (where the purchaser was the spouse or common law partner of Cameron Chan). It is the Member's position that he did so at the verbal instructions of the Chans.
- (f) In Transaction A, the Member requested a tax certificate for Property A and received a certificate that listed all of the Spadina Properties under one roll number. In Transaction B, the member requested a tax certificate for Property B but the tax department requested a suite number and the Member never responded. In Transaction C, D, and F the Member did not request or obtain a tax certificate. In Transaction E, the Member did request a tax certificate, but the one he received showed the wrong level, yet the Member made no further inquiries. In Transaction G, H, I and J, the Member obtained tax bills for the previous year from the Chans instead of requesting tax certificates from the tax department. In Transaction H, the Member also sent a standard notice of change of ownership to the tax department, but identified the wrong level, and the tax department subsequently advised him that the property (as incorrectly described by the Member) was not assessed, yet the Member made no further inquiries and took no further actions. It is the Member's position that he simply overlooked the municipal tax matters; the Law Society disputes this position.
- (g) The Member issued separate accounts to each party in only three Transactions (H, I, J). In two of the other Transaction (A and G), the Member issued an account to the Purchaser (addressed to the Vendors office) but no account to the Vendor. In the remaining five Transactions, the Member issued an account to the Vendor for both the purchase and sale but did not issue any account to the Purchaser. In all Transaction, the Member used the mortgage funds to satisfy his accounts, regardless of which party he addressed the account to.
- (h) In the Spadina Transactions, the Member and Cameron Chan agreed that the latter would pick up the Estoppel Certificate from property manager and deliver it to the Member. The Estoppel Certificate delivered by Cameron Chan was not sealed and, unknown to the Member, differed from the original issued by the property manager, in that the latter described the units as either a storage unit or parking unit, whereas the former omitted the description.

20. The Member's files contain documents disclosing that the Spadina Properties were storage and parking units:

- (a) The Property description in the Agreement of Purchase and Sale received by the Member and the closing documents prepared by the Member identified units either Level A or Level D. In the condominium industry, levels at or above grade are assigned numbers (e.g. Level 1) whereas levels below grade are assigned letters (e.g. Level A). Dwelling units are usually located on levels above grade whereas parking and storage units are usually located below grade.
- (b) The condominium declaration obtained by the Member described the Properties as storage units and parking units. It is the Member's position that he does not recall whether he read the declaration, but if he did so, he did not read it carefully and did not notice that the unit descriptions in the declaration [sic]; the Law Society disputes the Member's position.
- (c) A note to file by the Member in Transaction A records a conversation with Patrick Chan about a warehouse unit in basement.
- (d) A tax certificate obtained by the Member listed all the Spadina Properties under one roll number and described them as either locker or parking. It is Member's position that he did not review the tax certificate closely and did not notice the unit descriptions; the Law Society disputes the Member's position.
- (e) Tax bills obtained by the Member for four Properties (G, H, I, J) showed that each was assessed at a value of \$31,000.00, less than 15% of the ostensible purchase price. The tax bills also classified the Properties as commercial. It is the Member's position that he did not notice the assessed value or classification; the Law Society disputes this position.

21. Five Transactions involved condominium units in the Ferrier Condominium. The Ferrier Condominium is a commercial condominium operating as a retail mall. The Ferrier Transactions commenced after the last of the Spadina Transactions and closed between August 2001 and March 2002.

22. To finance the Transactions, the Purchasers applied to the Bank for conventional mortgages. The Purchasers (or persons associated with them) falsely represented that they were buying a dwelling unit and falsely represented the purchase price. It is not known whether the Purchasers did so knowingly or whether they were duped by the Chans or their agents. The Bank was induced to approve the loan amount based on the false representations. The mortgages in the Ferrier Transactions ranged from \$172, 250.00 to \$198, 750.00 and totaled about \$935,000.00.

23. The Ferrier Transactions shared several characteristics:

- (a) The purchase prices in the Transactions ranged between \$265,000.00 and 300,000.00, and were significantly higher than the purchase prices before and/or after the subject Transactions, as set out below:

Property	Prior Trans n: Transfer Price & Date (A)	Subject Trans n: Transfer Price & Date (B)	Increase from A to B	Re-sale Price & Date	Decrease From B to C
K	N/A	\$265,000 August 16, 2001	N/A	\$11,600 May 25, 2003	\$253,400 95% less
L	N/A	\$265,000 August 16, 2001	N/A	\$35,000 December 7, 2004	\$230,000 87% less
M	N/A	\$265,000 August 16, 2001	N/A	\$44,000 May 1, 2003	\$221,000 83% less
N	\$140,000 November 25/97	\$300,000 February 2, 2002	\$160,000 114% more	\$36,000 May 1, 2003	\$264,000 88% less
O	\$40,000 (2 units) February 26/02	\$287,000 March 4, 2002	\$247,000 617% more[2]	\$30,000 May 12, 2003	\$257,000 90% less

- (b) As indicated above, Property O and a non-subject property were transferred together for \$40,000.00 while a purchase agreement on Property O alone for \$247,000.00 was simultaneously pending.
- (c) Unknown to the Member, he and the Bank each received different Agreements. The Member's Agreement and the Bank's agreement referred to the same Property, named the same purchaser and specified the same purchase price, but they differed in several respects, including:
- (i) Format: The Member's Agreement was in a non-standard format prepared by or for Kingsberg for commercial use, whereas the Bank's Agreement was in a standard format prepared by the Toronto Real Estate Board for residential use.
  - (ii) Vendor name: The Member's Agreement named either Kingsberg or 1255039 Ontario Ltd. as the vendor, whereas the Bank's Agreement named various individuals as the vendors.
  - (iii) Deposit amount: In the first three Ferrier Transactions, the Member's Agreement and the Bank's Agreement specified the same deposit amount. However, in the last two Ferrier Transactions (N and O), the Member's Agreement specified a deposit of \$105,000.00 and \$104,000.00 respectively whereas the Bank's Agreement specified a deposit of only \$5,000.00 in each.
  - (iv) Deposit payee: In all the Ferrier Transactions, the Member's Agreement required the deposit to be paid to the Vendor/Vendor's solicitor/Vendor's real estate agent whereas the Bank's [sic] Agreement required the deposit to be paid to the Vendor's real estate agent.
  - (v) Real estate agent: The Member's Agreement did not name the any real estate agent, whereas the Bank's Agreement did name a real estate agent.
- (d) None of the Purchasers contributed any funds on closing towards either a down payment or closing costs. The mortgage advance was the sole source of closing funds received by the Member.
- (e) The closing funds received by the Member, consisting solely of the mortgage advance, fell short of the balance due on closing, as set out in Schedule C to this Agreement Statement. [Schedule C is not set out in these Reasons]
- (f) As Stated above, the Member's Agreement required that the deposit be paid to the Vendor/Vendor's solicitor/Vendor's real estate agent, but did not specify which one.

- (g) The deposits on the last two Ferrier Transactions (N and O) were \$105,000.00 and \$104,000.00 respectively and represented about 1/3<sup>rd</sup> [sic] of the ostensible purchase price. The deposit amounts were also the exact difference between the mortgage loan and the purchase price shown in the Agreement.
- (h) In all of the Ferrier Transactions, the Vendor was the Chan company, the real estate agent (named in the Bank's Agreement) was Roland Williams of HomeLife, and the lender was the Bank. These same participants had also appeared in all of the Spadina Transactions.

24. The following sets out the Member's conduct in the Transactions:

- (a) As in the Spadina Transactions, the Member acted for the vendor, the purchaser and the Bank in each of the Ferrier Transactions, and did not obtain the Bank's consent.
- (b) As in the Spadina Transactions, the Member closed the Ferrier Transactions despite the fact that he received insufficient funds. There is no record in any of the Member's files of any explanation or instructions regarding the shortfall, apart from a brief note of a verbal representation by Cameron Chan in Transaction N that he had the deposit.
- (c) In the first three Ferrier Transactions, the Member paid the net sale proceeds to the Chans personally, without any written direction of the Vendor corporation. It is the Member's position that he received verbal instruction for the Chans to make the payments.
- (d) The Member received only a partial copy of the Agreement from the Chans. He never requested or obtained a complete copy. It is the Member's position that he had enough information to complete the transaction. The Law Society disputes this position.
- (e) As in the Spadina Transactions, the Member did not include any adjustments for property taxes or common expenses, except in Transaction N, where he included an adjustment for taxes but not common expenses. It is the Member's position that he did so at the verbal instructions of the Chans.
- (f) In the first three Ferrier Transactions (K, L, M), the Member charged separate fees to the Vendor and Purchaser, and issued separate accounts, which is normal. However, in the last two Ferrier Transactions (N and O), the Member charged the Vendor a single fee for both the sale and purchase, and did not issue any account to the Purchaser. In all the Transactions, regardless of who the Member charged his fee to, the fees were paid from the mortgage funds.

25. The Member's files include the following documents:

- (a) In Transactions N and O, the Member obtained a title search and a copy of the previous Transfer, which indicated a price escalation of 116% in 2 years for Property N and a price escalation of 618% for Property O while the Transaction O was still pending.
- (b) In Transactions K, L, and M, the Member obtained tax bills that showed an assessed value of less than half the ostensible purchase price.
- (c) The Member's Statement of Adjustments and client registers show the deficiency between the balance due on closing funds received and paid by the member through his trust account.

#### **The Prince Arthur Property & Transaction**

26. One of the Transactions involved a condominium unit in the Prince Arthur Condominium, which is a residential high-rise building. This Transaction closed in July 2001, shortly after the last of the Spadina Transactions and shortly before the first of the Ferrier Transactions.

27. To finance the Transaction, the Purchaser applied to the Bank for a conventional mortgage. The Purchaser, or persons associated with him, falsely represented the purchase price. It is not known whether the Purchaser did so knowingly or whether he was duped by the Chans or their agents. The Bank was induced to approve the loan amount based on the false representation. The mortgage was in the amount of \$211,000.00.

28. The Prince Arthur Transaction involved several features:

- (a) The purchase price in the subject transaction was double the price in a transaction 2 years earlier, on which the Member had also acted.
- (b) The Member did not receive any closing funds from the purchaser towards either a down payment or closing costs. The mortgage advance was the sole source of closing funds received by the Member.
- (c) The closing funds received by the Member, consisting solely of the mortgage advance, fell short of the balance due on closing by \$75,000.00.
- (d) The Vendor (a Chan employee) did not receive any of the sale proceeds. The sale proceeds were paid to Cameron Chan, at Chan's verbal instructions, even though he was not named a party to the transaction.
- (e) As in the Spadina Transactions and the Ferrier Transactions, the real estate agent (named in the Bank's Agreement) was Roland Williams of HomeLife, and the lender was the Bank. The vendor was a Chan employee who had acquired the Property from Patrick Chan's wife. Cameron Chan gave instructions to the Member even though he was not a party.

29. The following sets out the Member's conduct in the Prince Arthur Transaction:

- (a) As in the Spadina and Ferrier Transactions, the Member acted for the vendor, the purchaser and the Bank without the Bank's consent.
- (b) After closing, the Member addressed his reports to the vendor and the purchaser to the Chans business address.
- (c) As in the Spadina and Ferrier transactions, the Member closed the Prince Arthur Transaction even though he had received insufficient funds. There is no record in any of the Member's files of any explanation or instructions regarding the shortfall.
- (d) The payment of the sale proceeds to Cameron Chan was made without a written direction from the Vendor. It is the Member's position that he received verbal instructions from Cameron Chan to make the payment.

- (e) As in most of the Spadina Transactions and Ferrier Transactions, the Member did not include any adjustments for property taxes or common expenses in the Prince Arthur Transaction. It is the Member's position that he did so at the verbal instruction of Cameron Chan.
- (f) A few months after closing, the Member received a call from the property manager about common expenses arrears and then contacted Cameron Chan, rather than the purchaser. Cameron Chan told the Member that he would in turn tell the real estate agent, Roland Williams, to look after it.

## VI CONCLUSION

### Particular #1 Knowingly Assisting Fraud or Dishonest Conduct

30. The Member admits, in retrospect, that all of the Transactions involved fraudulent or dishonest conduct by his client, the Chans, and persons associated with them, and that he unknowingly assisted the conduct by:

- (a) acting for vendor, purchaser and lender without disclosure to and consent from the lender;
- (b) receiving and disbursing the mortgages funds from his lender client;
- (c) providing the legal services to close the Transactions; and
- (d) in Transaction P, taking instructions from and paying the closing proceeds to Cameron Chan even though he was not a party.

However, the Member denies that he was aware of, or was wilfully blind or reckless [*sic*], the fraudulent or dishonest conduct at the time of Transactions. It is the Law Society's position that the Member knew of the fraudulent or dishonest conduct, or was wilfully blind or reckless.

31. The Member admits that he knew the following facts:

- (a) he was acting for the vendor as well as the purchaser and lender;
- (b) he had an on-going solicitor-client relationship with the Chans, who were the principals of the vendor corporations in the Spadina and Ferrier transactions, and the employer of the individual vendor in the Prince Arthur Transaction;
- (c) he received no closing funds from the purchasers and the mortgage funds he received from the Bank were insufficient to close the Transactions;
- (d) at the time of the first three Spadina Transactions, the corporate vendor was dissolved.

The Member further admits in retrospect that these facts were material, but denies that he knew, or was wilfully blind and reckless to that fact, at the time of the Transactions, they were material. It is the Law Society's position that the Member knew these facts and they were material, or was wilfully blind or reckless.

32. The Member denies that he had any knowledge at all, or was wilfully blind or reckless, of the following facts:

- (a) the Spadina Properties were parking units and storage units and that the purchase prices were grossly inflated for such units;
- (b) the actual consideration paid by the purchasers was significantly less than the purchase price represented in the purchase agreements;
- (c) the purchase price for Properties N and P had doubled within 2 years;
- (d) Property O was transferred with another unit for \$40,000.00 while the purchase agreement for \$247,000 was still pending.

The Member admits, in retrospect, that these facts were material to the Bank. It is the Law Society's position that the Member knew these facts and that they were material, or was wilfully blind or reckless.

### Particular #2: Failing to Be Honest and Candid When Advising Client

33. The Member denies that he breached Rule 2.02(1)(former Rule 3).

34. The Member admits that he failed to disclose the facts set out in subparagraphs 31(a) to 31(d), but, as previously stated, he denies that he knew at the time that they were material to the Bank, or was wilfully blind or reckless. It is the Law Society's position that the Member knew that the facts were material, or wilfully blind or reckless, and that he should therefore have disclosed them to the Bank.

35. The Member admits that he also failed to disclose the facts set out in subparagraphs 32(a) to (d), but, as previously stated, he denies that he had any knowledge of all the facts, or was wilfully blind and reckless. It is the Law Society's position that the Member knew that the facts were material, or was wilfully blind or reckless, and that he should therefore have disclosed them to the Bank.

### Particular #3: Acting Despite Conflicting Interest Without Disclosure and Consent



36. The Member admits that he breached Rules 2.04(3), (6), (7) and (8) and former Rule 5 of the *Rules* in that he:

- (a) acted or continued to act for the vendors as well as the purchaser and the Bank in Transactions where he knew or ought to have known that there was a potential conflict of interest;
- (b) failed to disclose to the Bank that he was acting for the vendors and failed to obtain the Bank's consent to act in those circumstances; and
- (c) failed to disclose his long-term solicitor-client relationship with the Chans to the Bank.

37. It is the Law Society's position that the Member knew there was an actual (not just potential) conflict of interest at the time of Transactions.

#### **Particular #4: Failure to Serve Lender Client**

38. The Member admits that he breached Rule 2.01(2) and the former Rule 2(b) of the *Rules*, by failing to serve the Bank in a conscientious and diligent manner, or to the standard of competent lawyer, by:

- (a) failing to read the condominium declaration and tax certificates carefully or at all in the Spadina Transactions; and
- (b) failing to verify that the purchasers actually paid the purchase price represented in purchase agreements.

39. It is the Law Society's position that the Member's conduct was deliberate or reckless, rather than merely inadvertent, careless or negligent.

#### **VII. PRIOR DISCIPLINE HISTORY**

40. The Member does not have a prior discipline history.

[6] As stated in the ASF, the issues are whether it has been proved to the requisite burden of proof that the member:

- knew or was willfully blind or reckless to the fraudulent or dishonest conduct of the parties involved;
- knew or was willfully blind or reckless to the materiality of the facts that he admittedly failed to disclose to his lender client;
- knew or was willfully blind or reckless to the facts in para. 32 of the ASF;
- knew there was an actual conflict of interest in acting for all parties in the transactions
- acted with a deliberate or reckless state of mind rather than being merely negligent or incompetent.

[7] The time frame is relevant because it is submitted the profession at the time in question was not as alert or as well informed as now respecting fraudulent activities in mortgage and other real estate transactions, and the Panel is to consider the standard of practice acceptable at the time of the transactions.

[8] In summary, ten transactions related to units in a building described as the Spadina Condominium (Spadina Transactions). Five transactions related to units in a building described as the Ferrier Condominium (Ferrier Transactions). One Transaction related to a building known as the Prince Arthur Condominium (Prince Arthur Transaction). The vendors in all of the Spadina and Ferrier transactions were corporations controlled by Patrick Chan and Cameron Chan (the Chans). The vendor in the Prince Arthur transaction was an employee of the Chans. Mrs. Cameron Chan was the purchaser in one of the Spadina transactions. Canada Trustco Mortgage Company and Toronto Dominion Bank (the Bank) were the lenders/mortgagees in each transaction. All the mortgage applications were processed through the same branch of the Bank from which the member received instructions regarding acting as solicitor for the Bank.

[9] Expert evidence from Mr. Reuben M. Rosenblatt, a recognized and admitted expert on real estate law and practice called as a witness by the Society, confirmed the deficiencies in the member's handling of the subject real estate files and in general described the member's conduct on these files as deplorable. His expert opinion evidence supports a reasonable inference that the member did in fact appreciate the true state of affairs, as opposed to being merely greatly negligent or incompetent. In addition, the member was candid enough to agree with his counsel to the obvious:

18 A. I can understand Mr. Rosenblatt using  
19 the word deplorable. The level of service that I  
20 provided to the clients in this matter was clearly below  
21 the competence of a reasonable solicitor acting in such  
22 matters.

23 Q. How do you feel about that?

24 A. Many The key emotion I feel about it  
25 is shame. I For four years I've lived with this

1 investigation. And two questions I often ask myself are,  
2 How could I have been so stupid, and How could I have  
3 been such a dupe in these transactions?

4 Q. And who is responsible for what we see  
5 in front of us?

6 A. I am the one that's responsible for  
7 this, but I've had four years to think about this. It  
8 would be easy for me to blame the Chans, to blame those  
9 people who worked for the Toronto Dominion Bank that were  
10 involved in these transactions, to blame Roland Williams  
11 who was the agent for HomeLife in these transactions; but  
12 on sober reflection, the reason I'm here today is not  
13 their fault. The reason I'm here today is because of my  
14 actions or my inactions. I am responsible for being here  
15 today, and I take the blame accordingly.

(Transcript of Evidence, June 14, 2006, at p. 310, line 18 to p. 311 line 15)

[10] Regarding how he viewed himself in these transactions, the member testified:

11 Q. Now, let me ask you this. Help us with  
12 where you are today in terms of acting for all three  
13 parties in a transaction. I mean, help us with where you  
14 sit on this issue right now.

15 A. I'm not there today. I don't do it.  
16 They After the interviews, and as Mr. Trudell  
17 indicated, there was eight hours of it. And I had an  
18 opportunity to review the transcripts. It's clear I was  
19 in a conflict of interest. It was clear I failed in each  
20 of these transactions to step back from them, to look at  
21 each of the participants and by participants I mean  
22 vendor, purchaser and lender and say and to treat  
23 the vendor as if it was my only client. To say to myself,  
24 All right. This is the vendor. What do you have to do  
25 to represent it properly? This is the purchaser. What do

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1 you have to do to represent this purchaser properly? This  
2 is the lender or the bank. What do you have to do to  
3 represent this this institution properly?

4 I did not distinguish or step back, as I  
5 said, and look at the interests of each party with a  
6 critical eye. Regrettably, I looked at each of these  
7 files as a transaction to be completed, and I now realize  
8 that I was a conveyancer here. I wasn't a lawyer. I just  
9 made sure that the deed was in the proper form, the  
10 mortgage was properly registered, and the money that I  
11 received was disbursed as directed on behalf of the  
12 vendors. That's very simplistic, but in terms of the  
13 actual conveyancing work I did. But in terms of what did  
14 I do here, I was a conveyancer. I didn't do I I  
15 didn't act properly as a lawyer should in these  
16 transactions.

17 Q. We have a number of transactions which  
18 clearly are storage lockers or parking units that were

19 being transferred for considerable sums of money. How  
20 could you miss that?  
21 A. I missed it because I didn't carefully  
22 read the agreements of purchase and sale. There was a  
23 declaration which contained information as Mr. Rosenblatt  
24 indicated yesterday which, if I'd read it with any degree  
25 of carefulness, would have alerted me to the fact that

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1 these were parking and storage units. The tax certificate  
2 that Mr. Rosenblatt referred to and which was discussed  
3 yesterday, I looked at it. All I was looking to see when  
4 I looked at it was are there tax arrears and how am I  
5 going to deal with this. I did not match up the legal  
6 description contained in one of the corners of the tax  
7 certificate with the subject transaction.

8 Q. And, of course, it didn't happen once.

9 A. It happened several times.

10 Q. And you never caught it on any of those  
11 occasions?

12 A. No.

(Transcript of Evidence, June 14, 2006, at p. 323 line 11 to 325 line 12)

[11] The member later testified:

3 Q. Mr. Rosenblatt testified that these  
4 were flags that any competent solicitor would have paid  
5 attention to, would have seen. And we find out that these  
6 may be, in today's world, flags of fraud. Did you see  
7 these as flags?

8 A. No.

9 Q. Okay. Should you have seen them as  
10 flags looking back now?

11 A. Perhaps. I am aware of the flags now,  
12 and not just because Mr. Rosenblatt brought them to the  
13 panel's attention. There in the last three or four  
14 years there have been numerous publications and notices  
15 alerting lawyers who do real estate to the real poss-  
16 to the possibilities of fraud and what should be red  
17 flags. At the time, I didn't see red flags. At the time,  
18 I was acting as a conveyancer. And part of this  
19 testimony is with the benefit of my hindsight. We've got  
20 a willing vendor, a willing purchaser, a willing lender.  
21 All right? And that was my perception of it, and my job  
22 was to get the transaction done. Are some of these items  
23 red flags today? Most certainly. Were some of these  
24 these items red flags back at the time? I didn't even  
25 think of red flags.

(Transcript of Evidence, June 14, 2006, at p. 360 line 3 to line 25)

[12] In conclusion the member stated:

2 THE WITNESS: I realize that as a lawyer I  
3 have failed in these transactions to uphold the  
4 independence, the integrity, and the honour of the  
5 profession. I have In these transactions I acted as a  
6 conveyancer. And in some aspects, I didn't act as a very  
7 good conveyancer, even at that. As I indicated this  
8 morning, I was in a conflict of interest, and I failed to  
9 stand back and consider separately and independently my  
10 obligations as a lawyer not as a conveyancer as a  
11 lawyer to the vendor, to the purchaser, and to the lender.

12 This has caused tremendous shame and  
13 tremendous embarrassment to the profession, to my clients,  
14 and to my family. I am an honest man, and I did I try  
15 to do the best that I can. In these transactions my best  
16 could have been and most certainly should have been  
17 better, and it wasn't. And notwithstanding that there  
18 have been no criminal charges against me as a result of  
19 this investigation, notwithstanding there have been no  
20 civil actions against me arising from these fact  
21 situations, it is clear that my clients here were put at  
22 risk by my acting in a conflict of interest and that  
23 particularly with respect to the lender, Canada Trust and  
24 Toronto Dominion Bank, they were put at in they were  
25 at serious financial risk here because, as I've learned

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1 from this, these were parking units and these were storage  
2 units.

3 The values And I heard everything  
4 Mr. Rosenblatt had to say about not being a valuator. And  
5 he's right, and I don't consider myself to be a valuator  
6 either. But notwithstanding that, these were inordinate  
7 values for these particular Spadina units. And if I had  
8 seen that, then perhaps the bank wouldn't have been put at  
9 risk. I'd like to think they wouldn't have been. I would  
10 have either withdrawn from the transaction or asked more  
11 questions. But I didn't see it, so ...

12 Sorry, Mr. Trudell. This has been a long  
13 answer, but am I competent to continue practicing? [*sic*] I  
14 believe I am. I believe I'm smarter and I'm wiser as a  
15 result of this horrible experience that I'm going through  
16 with respect to this investigation, and we learn from our  
17 mistakes. And I made a lot of mistakes here, and these  
18 mistakes that I made in the context of these transactions  
19 here, in terms of tax certificates and declarations, I  
20 don't make anymore. And I'm further educated as a result  
21 of the Law Society's programs, LawPro, the Law Society  
22 itself. I don't think it's been mentioned, but the title  
23 insurers and I use First Canadian Title take an

24 active role in alerting its clients to how frauds are  
25 performed. I'm just a lot smarter.

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1 And I'm not going to tell this panel that I  
2 can't be duped again, because I can be. I don't pretend  
3 to be perfect. Even some of the literature here, sad to  
4 say, says, Look, even the best lawyer can still be  
5 duped. All I can say is it's going to be a heck of a lot  
6 harder. And notwithstanding the proposed introduction of  
7 the new rule banning conflicts I'm sorry banning or  
8 prohibiting lawyers from acting for vendors and purchasers  
9 in the same transaction, I already do that in my practice  
10 so that this can't happen again.

(Transcript of Evidence, June 14, 2006, at p. 365 line 2 to p. 367 line 10)

[13] The member elaborated on his perception of himself as a conveyancer in these transactions as follows:

4 Q. We've used the word conveyancer,  
5 conveyancing. And Dr. Filion has asked for to help  
6 us with it. What is meant by when you use the word  
7 conveyancer? What's a conveyancer?

8 A. First of all, a conveyancer is not a  
9 lawyer. A conveyancer is a person who is often  
10 characterized as a law clerk, a legal secretary, or I  
11 described Helen Scherer, my assistant, earlier in my  
12 testimony today. It is a person who is capable of  
13 performing many, if not all, of the mechanical functions  
14 in a real estate deal.

15 From the vendor's perspective a conveyancer  
16 is capable of preparing and I don't mean this list to  
17 be exhaustive the documents that a purchaser's lawyer  
18 would reasonably expect to receive on closing. Those  
19 documents would consist of the deed, the statement of  
20 adjustments, an undertaking to readjust the statement of  
21 adjustments, a bill of sale, a warranty that the premises  
22 are not insulated with urea foam formaldehyde insulation,  
23 a statutory declaration that the vendors are residents of  
24 Canada or nonresidents, sometimes that happens of  
25 Canada for tax purposes, a statement with respect to the

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1 spousal status of the vendor in the event that the vendor  
2 is an individual or individuals in order that Family Law  
3 Act compliance can be that the purchaser's lawyer can  
4 be assured that the Family Law Act issues have been  
5 addressed, a direction re: funds. So the conveyancer  
6 would prepare these documents.

7 From the purchaser's perspective, the  
8 documents that the conveyancer would prepare would be a

9 direction as to title, in other words, the purchaser  
10 telling the seller, Look, put the title in either our  
11 names or as we tell you to ; the land transfer tax  
12 affidavit which, during the relevant time, had to be  
13 presented at the time of registration.

(Transcript of Evidence, June 14, 2006, at p. 379 line 4 to p. 380 line 13)

7 CHAIR: A conveyancer is just a law clerk  
8 that deals with land transactions? Would that be fair?

9 THE WITNESS: Yes.

10 CHAIR: Conveyancer is not a lawyer. It s  
11 a clerk that deals in land transactions?

12 THE WITNESS: That s right. And they can  
13 attend to close a transaction, do the mechanical

(Transcript of Evidence, June 14, 2006, at p. 381 line 7 to line 13)

16 Q. What you re saying to the committee is  
17 that in these transactions you were acting in the role  
18 more of a conveyancer than the proper role as a lawyer?

19 A. That s correct.

(Transcript of Evidence, June 14, 2006, at p. 383 line 16 to line 19)

[14] There is no need to go into the other details of the member s admitted defaults in these transactions. In fact, there is virtually no disagreement, in hindsight, regarding his failures of conduct. The issue to be decided at the hearing and in these reasons is whether the member, in light of the circumstances and his knowledge as it existed at the time, was guilty of merely negligence by failing to measure up to the objective standards required or whether the evidence established subjective culpability, a knowing dishonesty; whether the member was, in his words, a stupid dupe or whether he knew he was assisting in the dishonest and fraudulent conduct taking place.

[15] In addition to the member s evidence under oath in support of his being merely negligent and not knowingly dishonest, that inference is supported by the lack of evidence of any special relationship between the member and the perpetrators involved in the frauds, although they were amongst his repeat clients. As well the evidence shows a lack of any unusual benefit to the member, monetary or otherwise, from his involvement in the subject transactions. Further, his presumptive good character is un rebutted with regard to both his credibility as a witness and the improbability of his having performed his acts with knowing dishonesty as opposed to, in his words, stupid negligence.

[16] This Panel has considered carefully the admittedly unusual aspects of all the transactions as set out in the ASF. In addition the following matters brought out in cross-examination required consideration:

the member was experienced in real estate transactions and prior to these transactions had closed hundreds of real estate transactions, including a fair number of condominium purchases. (Transcript of Evidence, dated June 15 and 16, 2006, p. 400)

his representing two parties to a transaction the purchaser and vendor was not unusual but representing all three parties was. (Transcript of Evidence, dated June 15 and 16, 2006, pp. 423 - 425)

his initial evidence regarding his appreciation of conflict of interest at the time described the only relevant interest of all the parties as being to close the transaction, (Transcript of Evidence, dated June 15 and 16, 2006, p. 437 line 1 to 438 line 4; and p. 449 line 1 to line 23)

Documents in the member s files clearly disclose that the units were not dwelling units; the documents included the member s copies of purchase agreements, the Condominium Declaration, tax certificates, tax bills, and a note by the member referring to a warehouse unit in a basement ; certain tax bills showed some of the units assessed at \$31,000.00, a small percentage of the purchase price, and classified the property as commercial; the member admitted I don t have a valid or reasonable explanation for that, where that is the fact that it did not cross his mind that a condominium property on level A or D was a parking spot or a storage locker and not a residential property. (Transcript of Evidence, dated June 15 and 16, 2006, p. 581 line 24 to 582 line 9; see also p. 594 line 4 to p. 597 line 20)

[17] The standard of proof required to establish a complaint of professional misconduct against a current member of the Society is well settled:

- (a) The standard is a civil standard rather than the criminal standard of proof beyond reasonable doubt, even if the misconduct alleged is also a criminal offence.
- (b) The standard nevertheless rises in direct proportion to the gravity of the allegation and the seriousness of the consequences, and accordingly, if the allegations are serious, the trier of fact must scrutinize the cogency of the evidence with greater care than would be required, for example, in an ordinary case of negligence.
- (c) In order to find an allegation of professional misconduct or conduct unbecoming a barrister and solicitor made out, clear and convincing proof based on cogent evidence is required. The Panel has applied this burden of proof in this case.

[18] We instructed ourselves that if the member s testimony as to his lack of knowledge or recklessness regarding the factual and other matters in dispute is accepted, the allegations remain unproven. Even if not accepted, his testimony, viewed in the context of all of the evidence, may leave us unable to be satisfied that the evidence of his misconduct has met the requisite standard. Finally, even rejection of his testimony does not compel findings of misconduct; the balance of the evidence must nonetheless satisfy us to the requisite degree of proof. We instructed ourselves that we may be unable to resolve conflicting evidence as the allegations of misconduct, and that inability would enure to

the benefit of the member. We instructed ourselves that some, all or none of the allegations may be proven. Simply put, this is not an all or nothing situation.

[19] Applying this burden of proof the Panel finds that the member's evidence does not withstand scrutiny. It is simply impossible to credit in any way his claim of lack of knowledge. Listening to him as an experienced real estate lawyer testify again and again to all the matters that he overlooked or failed to notice or did not appreciate became an experience in compounding improbabilities to the point where incredulity inevitably set in. The Panel concluded that it was simply impossible to attach any credit to his evidence based upon its inherent improbabilities, the lack of adequate explanation, for example, for the warehouse unit contemporaneous notation or the failure to correct property misdescriptions in multiple documents, as well as the admitted unusual behaviours he engaged in. It is no answer to say that currently there is a greater sensitivity to the possibility of mortgage fraud or fraudulent real estate transactions. The issues and activities involved in this case were equally significant and appreciated by the profession at the time of these events and for many years before.

[20] Specifically, this Panel finds by clear and convincing proof based on cogent evidence that:

the member breached Rule 2.02(5) and former Rule 3 of the *Rules of Professional Misconduct* (the *Rules*) by knowingly assisting in dishonest or fraudulent conduct to obtain mortgage funds under false pretenses in connection with the Transactions;

the member breached Rule 2.02(1) and former Rule 3 of the *Rules* by failing to be honest and candid when advising his lender client in connection with the Transactions, as set out in the Notice of Application;

the member acted for multiple persons despite conflicting interests, without disclosing all material facts to the lender, and without obtaining the lender's consent; and

the member failed to serve the lender client conscientiously and diligently and to the standard of a competent lawyer, as set out in the Notice of Application.

[21] The member is determined to have contravened s. 33(1) of the *Law Society Act* by engaging in professional misconduct as set out in the Notice of Application.

[22] The parties may arrange a date through the Tribunal office for the Panel to be reconvened to continue with the issue of penalty.

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[1] While these are the dates in the Notice of Application, the Agreed Statement of Facts discloses the wider timeframe of December 1998 to March 2002 for the entire sequence of events involved in all the transactions. No issue was taken by the Member's counsel and we accept that this difference is a matter of detail with no significance. The general significance of the time frame is discussed in these Reasons.

[2] The February 26, 2002 transfer included Property O and a non-subject property, for a single price of \$40,000. The exact apportionment of the price for Property O alone is unknown, but could have ranged from \$0 to \$40,000. For ease of calculation, the calculation of the subsequent increase in the March 4, 2002 transaction was based on the highest possible price for Property O in the March 4, 2002 transaction.