

2009 LSBC 08

Report issued: March 04, 2009

Oral Reasons: December 9, 2008

Citation issued: April 26, 2007

The Law Society of British Columbia
In the matter of the *Legal Profession Act*, SBC 1998, c.9
and a hearing concerning

Richard Craig Nielsen

Respondent

Decision of the Hearing Panel

Hearing date: December 9, 2008

Panel: Robert D. Punnett, QC, Chair, David Mossop, QC, Thelma O'Grady

Counsel for the Law Society: Maureen Boyd

Counsel for the Respondent: Gerald Cuttler

Background

[1] On April 26, 2007 a citation was issued against the Respondent pursuant to the *Legal Profession Act* and Rule 4-13 of the Law Society Rules. The Schedule to the citation is attached as Schedule A.

[2] The citation directed an inquiry into the Respondent's conduct in assisting his clients and others in a fraudulent scheme in which mortgage funds were obtained and dispersed under false pretenses from his Bank client, in relation to a number of transactions. It also directed an inquiry into the Respondent's conduct in acting in conflicts of interest for multiple parties in a number of transactions.

[3] The citation further directed an inquiry into the Respondent's conduct in failing to advise his clients of material facts, contrary to the *Professional Conduct Handbook*, in failing to acquire and maintain sufficient knowledge and skill to represent his client's interests effectively, contrary to the *Professional Conduct Handbook* and failing to serve his client in a conscientious, diligent and efficient manner so as to provide a quality of service at least equal to that which would be expected of a competent lawyer in a similar situation and in failing to disclose all relevant information to the client, contrary to the *Professional Conduct Handbook*.

[4] In addition, the citation alleged that the Respondent contravened the Law Society Rules in a number of respects regarding trust funds and maintenance of his books, records and accounts.

[5] This citation came before this Panel as a conditional admission of a disciplinary violation and consent to a specific disciplinary action pursuant to Rule 4-22 of the Law Society Rules. The Respondent admits all the underlying facts in this case, and admits each of the allegations as set out in the schedule, and to an adverse determination in respect of each of them (variously, incompetent performance of duties, professional misconduct or breach of the Rules) and consented to the following disciplinary action:

(a) a suspension of six months commencing February 1, 2009; and

(b) costs in the amount of \$4,500, payable by February 1, 2010.

[6] In addition, the Respondent continues to be bound by an undertaking not to practise real estate law until such time as he may be released from the undertaking by the Discipline Committee.

[7] On November 13, 2008, the Discipline Committee considered and accepted this proposal. Pursuant to Rule 4-22(4), discipline counsel was instructed to recommend the acceptance of this proposal to this Hearing Panel.

[8] The requirements for service of the citation upon the Respondent pursuant to Rule 4-15 were admitted by the Respondent.

Statement of Agreed Facts

[9] Counsel submitted a Statement of Agreed Facts, some 51 pages in length. The Statement of Agreed Facts is appended to these reasons as Appendix B.

[10] The transactions in question are commonly referred to as "Oklahoma Flips". In a *Notice to the Profession* dated August 10, 2005, the Law Society of British Columbia alerted the profession to such fraudulent schemes and stated the following:

The schemes typically involve a fraudster who purchases real property and resells it to a complicit purchaser at an artificially inflated price. This positions the new purchaser to deceive a mortgage lender as to the true value of the property when obtaining a mortgage loan.

Discipline Violations

[11] The Schedule to the citation sets out eight allegations, summaries of which are set out below, each with the adverse determination pursuant to section 38(4)(b) of the *Legal Profession Act* that is admitted by the Respondent:

Allegation 1

He assisted his client and others in a fraudulent scheme to obtain and disburse mortgage funds from his client, Bank A, under false pretences in 12 property transactions, which occurred between November 2004 and March 2005 - Incompetent performance of duties

Allegation 2

He assisted his client and others in a fraudulent scheme to obtain and disburse mortgage funds from his client, Bank B, under false pretences in a property transaction, which completed on March 7, 2005 - Incompetent performance of duties

Allegation 3

He acted in a conflict of interest in respect of 14 property transactions in which he acted for multiple parties, where the transactions were not simple conveyances, he failed to disclose material facts to his lender client, and he failed to provide written disclosure of potential conflict issues and failed to give undivided loyalty to each of his clients when he preferred the interests of some clients or himself over

the interests of another client, contrary to Chapter 6, Rule 1 of the *Professional Conduct Handbook* - Professional misconduct

Allegation 4

In acting for his lender client, Bank A and in one transaction Bank B, he failed to advise his lender client of material facts, contrary to Chapter 1, Rule 3 of the *Professional Conduct Handbook*; acquire and maintain sufficient knowledge and skill to represent his clients' interest effectively, contrary to Chapter 3, Rule 1 of the *Professional Conduct Handbook*; and provide a quality of service at least equal to that which would be expected of a competent lawyer in a similar situation, contrary to Chapter 3, Rule 3 of the *Professional Conduct Handbook*, by failing to disclose all relevant information - Professional misconduct

Allegation 5

He allowed a trust shortage of over \$2,500 to continue for six months between June and December 2004 without correcting it or making the report required pursuant to Rule 3-55 - Breach of the Rules

Allegation 6

He paid himself \$3,000 from trust funds held to the credit of a purchaser client without written direction from the client and without first preparing a bill, contrary to Rules 3-56 and 3-57(2) - Breach of the Rules

Allegation 7

He issued a trust cheque of \$2,000 payable to himself and authorized the withdrawal of these funds held to the credit of his purchaser client without written directions from his client and without first preparing a bill to the client, contrary to Rules 3-56(1) and 3-57(2) - Breach of the Rules

Allegation 8

He failed to maintain his books, records and accounts in accordance with Part 3, Division 7 of the Law Society Rules - Breach of the Rules

[12] These allegations, which the Respondent has admitted, are significant and serious. However, the first seven allegations all relate to his involvement in a real estate flip scheme (" Oklahoma flips"), by which his primary clients I Ltd. and Q Ltd. bought properties (13 in total), within a few days assigned the contract of purchase and sale to a nominee purchaser with a significantly higher purchase price, then arranged for and received mortgage funds in respect of this second contract in an amount which exceeded the initial purchase price. All of the conduct occurred in a period between November 2004 and early March 2005. These transactions are summarized in table form as follows:

Property	Closing Date	1st Purchase Price	2nd Purchase Price	Amount of Mortgage
[address] Pacific	Jan. 24, 2005	\$229,000	\$265,000	\$253,068.75
[address] Parker	Jan. 28, 2005	\$310,000	\$398,900	\$367,087.73

[address] Cardero	Feb. 3, 2005	\$670,000	\$749,000	\$689,267.25
[address] W. Pender	Feb. 7, 2005	\$450,000	\$549,800	\$505,953.45
[address] Keefer	Feb. 10, 2005	\$440,000	<i>No second contract</i>	\$542,763.45
[address] W. Georgia	Feb. 10, 2005	\$425,000	\$498,000	\$458,284.50
[address] W. Georgia	Feb. 15, 2005	\$405,000	<i>No contract</i>	\$422,394.75
6 Strata Lots at [address] Dunbar		\$2,598,000 total		
Strata Lot 1	Mar. 7, 2005	(\$519,600)*	\$650,000	\$589,162.50
Strata Lot 2	Mar. 7, 2005	(\$337,740)	\$438,000	\$403,069.50
Strata Lot 3	Mar. 7, 2005	(\$389,700)	\$489,000	\$450,002.25
Strata Lot 4	Mar. 7, 2005	(\$363,720)	\$438,000	\$403,069.50
Strata Lot 5	Mar. 7, 2005	(\$389,700)	\$489,000	\$450,002.25
Strata Lot 6	Mar. 7, 2005	(\$597,540)	\$750,000	\$561,352.50

**Brackets denote the amount listed as Fair Market Value and amount of consideration on the Form A Transfer to the nominee purchaser*

[13] Even in a sharply rising real estate market as existed at the time, these increases in price between the first and second sales - in most cases in a matter of days - are excessive and must call into question their *bona fides*. Added to these circumstances are the fact that the Respondent:

- (a) improperly acted for multiple parties in a real estate transaction that was not a simple transaction as defined in Appendix 3 of the *Professional Conduct Handbook*;
- (b) failed to provide written disclosure of potential conflict issues to all clients and obtain written instructions from all clients allowing him to act despite the conflict, contrary to Chapter 6, Rules 4 to 6 of the *Professional Conduct Handbook*;
- (c) having failed to recognize that he was acting in a situation of divided loyalties, continued to act and by his conduct preferred the interests of some of his clients (the corporate assignors) over those of other clients (the lender banks and the nominee purchasers) and took his instructions from a principal of the corporate assignors who also completed a number of the transactions on behalf of the nominee purchaser through the use of a power of attorney;
- (d) acted in a conflict of interest between his own interests and those of his clients (in particular, the

Cardero Street transaction in which he was paid a \$3,000 bonus from the excess mortgage proceeds);

(e) failed to disclose material facts to his lender clients, including that the mortgage funds exceeded the amount of the first purchase price and that these excess funds were disbursed to persons unrelated to the transaction at the direction of the principal of the corporate assignor (rather than the nominee purchaser who was the mortgagor), and

(f) completed Property Transfer Tax Returns and Form A Transfers that showed the consideration for the purchase as the first purchase price, rather than the second purchase price.

[14] If the Respondent had paid attention to - and complied with - the " formalities" of real estate practice and the principles of conflict of interest, it is doubtful that he would have participated in this scheme, or at least that his participation would have been cut short. However, the record of his conduct clearly reveals that he acted oblivious to these requirements, which are fundamental to the practice of law.

[15] There is no doubt that his conduct in the whole of this matter constitutes " a marked departure from that conduct the Law Society expects of its members" (*Law Society of BC v. Martin*, 2005 LSBC 16 at para. [171]).

[16] The Respondent's explanation is set out in his letter dated September 19, 2005, and is, in essence, that he was a dupe. In *Law Society of Upper Canada v. Peddle Jr.*, [2001] LSDD No. 64, the Panel commented at paragraph 1 about the nature of " dupe" cases as follows:

... The facts of dupe cases are generally unbelievable and strain credulity. Yet that is the very essence of dupe cases. Dupes are suckers, pawns or patsies. Dupes are victims of unscrupulous individuals. When the dupe is a lawyer, the level of incredulity often rises to the point that an objective observer could conclude that the lawyer was willfully blind or advertent to the reality of the scheme brought to bear on him or her. However, a Hearing Panel must be vigilant to determine both the blameworthiness and penalty of a duped lawyer charged with professional misconduct within the parameters of the ethical turpitude involved: ...

[17] The Respondent's explanation is that the fraudsters were referred to him as clients by a bank employee who knew that he was trying to build a conveyancing practice. He was retained in the summer of 2004 by their company to represent it on a commercial real estate transaction which never proceeded (which was used to justify the payment of the \$3,000 bonus to him later). He retained another more experienced lawyer to advise him on that transaction, who was paid \$10,000, but the Respondent was not paid. He was told by the fraudsters that the company's business was to help clients moving to Canada to obtain visas, and the properties were bought at favourable prices from clients, and sold by the company to other clients to assist in the immigration process. He understood that the properties were used in the immigration process, rather than as investments.

[18] The Respondent took a number of steps which he characterized as " due diligence" , in which he did raise some concerns and sought advice about the transactions and the proper way to document them. Although these inquiries themselves arguably display a marked departure from the conduct the Law Society expects of its members, they are inconsistent with knowing participation in a fraud and consistent with a general lack of judgment, skill and diligence. These inquiries include:

(a) On November 30, 2004, he called a Law Society Practice Advisor and advised her that the registered owner was going to sell the property to a purchaser, who would then sell it to a second purchaser, and that he was going to represent both the second purchaser and the bank. He also advised that the first purchase price was \$40,000 less than the second, so the bank may not have the

security it thought. She told him that it was "all okay if the bank knows, but if not, then it is not okay," and advised him to tell the bank and get instructions in writing that it was okay to proceed. However, he did not ever get such written instructions from the banks (See Statement of Agreed Facts, paragraphs 13 and 14).

(b) In January 2005, the Respondent did contact the Bank Mortgage Centre and told a person identified as "Linda" that he had some concerns about the nature of some upcoming transactions involving purchases of properties with two contracts, and that the second contract had a significantly higher purchase price. He told her he was concerned that the Bank was basing its mortgage on the second purchase price. He was told that the Bank relied on its own property appraisals in satisfying itself that the purchase price was reflective of the market price in order to grant the mortgage, and that he did not have any role in funding the mortgage (See Statement of Agreed Facts, paragraphs 15 and 16).

(c) He contacted a conveyancer at his former firm for advice on what amount to state as the fair market value in the Form A Transfer, and was told to use the amount from the first contract.

[19] The Respondent has admitted to various adverse determinations pursuant to s. 38(4)(b) of the *Legal Profession Act*, which sets out four alternative determinations:

- (a) professional misconduct;
- (b) conduct unbecoming a lawyer;
- (c) a breach of the Act or the Rules; or
- (d) incompetent performance of duties undertaken in the capacity of a lawyer.

[20] "Professional misconduct" is not defined in the *Act*, but was extensively discussed in *Law Society of BC v. Martin*, (*supra*), (reviewed on penalty only at 2007 LSBC 20), in which it was determined at paragraphs [138] to [171] that a finding of professional misconduct no longer may be made only when the conduct is "disgraceful or "dishonourable". The Panel concluded at para. [154] that:

... This Panel agrees that the gravamen of the citation alleged is not properly cast in terms of "honour". The real question to be determined is essentially whether the Respondent's behaviour displays culpability which is grounded in a fundamental degree of fault, that is whether it displays gross culpable neglect of his duties as a lawyer.

It then articulated the test for professional misconduct (at para. [171]) as follows:

The test that this Panel finds is appropriate is whether the facts as made out disclose a marked departure from that conduct the Law Society expects of its members; if so, it is professional misconduct.

[21] The nature of "incompetence" was considered in *Law Society of BC v. Goldberg*, 2007 LSBC 03, affirmed 2008 LSBC 13. In the hearing decision, the Panel commented upon competency at para. [50]:

A useful discussion of competence can be found in *The Regulation of Professions in Canada* by James T. Casey, commencing at page 13 through to page 14. In summary, the question is whether or not a mistake or mistakes made by a professional will be of such significance so as to demonstrate incompetence. Assessing incompetence is a function of looking at the nature and

extent of the mistake or mistakes and the circumstances giving rise to it or them. It may be self-inflicted or the result of negligence or ignorance. ...

Further, at para. [63], the Hearing Panel concluded that:

... the affidavits drawn by the Respondent demonstrate a complete lack of knowledge of the law of evidence. The Respondent's written material demonstrated a serious lack of knowledge and skill for the reasons set out above. ...

[22] On Review, the Benchers upheld the finding of incompetence in respect of the Respondent's preparation and submission to Court of materials in four criminal appeals. In doing so, it observed at para. [15] that, "[i]ncompetence is the want of ability suitable to the task (see *Mason v. Registered Nurses' Association of British Columbia* (1979), 13 BCLR 218 (SC) ...)" In that case, at p. 236 the Court stated that:

The want of capacity, ability or fitness may arise from a lack of physical or mental attributes. However, a person not lacking in physical or mental attributes may nonetheless be incompetent by reason of a deficiency of disposition to use his or her abilities and experience properly.

[23] This case law illustrates that there is a degree of overlap between these various adverse determinations. It is a fine point whether conduct that betrays an effective lack of any "lawyering" or judgment constitutes professional misconduct or incompetence. In this case, the Respondent has admitted to incompetence in respect of Allegations 1 and 2, as it is his view that the root cause is lack of ability and skill.

Penalty

[24] The authorities set out a range of disciplinary responses in respect of a lawyer's involvement in mortgage fraud or other fraudulent schemes. There have been a number of such cases in Ontario in recent years, in which the principle has emerged that the appropriate penalty is disbarment when a lawyer is found to have "knowingly" been involved in mortgage fraud ("knowing" includes recklessness and wilful blindness): *Law Society of Upper Canada v. Kazman*, 2008 ONLSAP 7, aff'g 2005 ONLSHP, *Law Society of Upper Canada v. Markowitz*, 2008 ONLHP 10 and 2008 ONLSHP 49, *Law Society of Upper Canada v. Mucha*, 2008 ONLSAP 05, *Law Society of Upper Canada v. Yat*, 2007 ONLSHP 43, *Law Society of Upper Canada v. Poonai*, 2007 ONLSHP 82, and *Law Society of Upper Canada v. Purewal*, 2007 ONLSHP 24.

[25] However, disbarment is not invariable, particularly where the lawyer's knowledge of the fraud falls short of actual knowledge or the lawyer is unknowing. In these cases, the range of the penalties is from a three-month suspension (*Law Society of Upper Canada v. Verbeek*, 2007 ONLSAP 123) to a twelve-month suspension (*Yungwirth v. Law Society of Upper Canada*, 2004 ONLSAP 1).

[26] In determining the appropriate penalty, it is important to remember the primary purpose of disciplinary proceedings, which is the fulfillment of the Law Society's mandate set out in section 3 of the *Legal Profession Act* to uphold and protect the public interest in the administration of justice. This purpose is recognized in the following often-cited passage from MacKenzie, *Lawyers and Ethics: Professional Regulation and Discipline*, at p. 26-1:

The purposes of law society discipline proceedings are not to punish offenders and exact retribution, but rather to protect the public, maintain high professional standards, and preserve public confidence in the legal profession.

In cases in which professional misconduct is either admitted or proven, the penalty should be determined by reference to these purposes.

[27] The 1999 decision in *Law Society of BC v. Ogilvie*, [1999] LSBC 17 sets out a non-exhaustive list of factors that may be considered by a hearing panel in determining the appropriate penalty:

- (a) the nature and gravity of the conduct proven;
- (b) the age and experience of the respondent;
- (c) the previous character of the respondent, including details of prior discipline;
- (d) the impact upon the victim;
- (e) the advantage gained, or to be gained, by the respondent;
- (f) the number of times the offending conduct occurred;
- (g) whether the respondent has acknowledged the misconduct and taken steps to disclose and redress the wrong and the presence or absence of other mitigating circumstances;
- (h) the possibility of remediating or rehabilitating the respondent;
- (i) the impact upon the respondent of criminal or other sanctions or penalties;
- (j) the impact of the proposed penalty on the respondent;
- (k) the need for specific and general deterrence;
- (l) the need to ensure the public's confidence in the integrity of the profession; and
- (m) the range of penalties imposed in similar cases.

[28] The Law Society submitted that the most important factors in this case are both specific and general deterrence, which will also serve to ensure the public's confidence in the integrity of the profession. As the Court of Appeal commented in *McGuire v. Law Society of British Columbia*, 2007 BCCA 442, at paragraph 14:

... general deterrence can be an important means of protecting the public.

[29] Of significant importance is that the Respondent will continue to be bound by his undertaking not to practise in the area of real estate law until relieved by the Discipline Committee. It is, in effect, a disbarment from real estate law. The continuing undertaking serves to protect the public from this Respondent ever again participating in mortgage fraud.

Prior Case Law

[30] In *Law Society of BC v. Bohun*, [2003] LSBC 08, the lawyer acted for a "client" who asserted that he was to inherit a significant sum of money under a will, provided he was "debt free". In order to pay off his "debts" and inherit, he borrowed money on a short-term, high-interest rate basis from various people. The lawyer was involved in receiving and paying out to the fraudster approximately \$148,000 of such loans and also made representations to the lenders that the loans would be repaid. The Respondent in that case admitted that the representations were made recklessly. Pursuant to a Rule 4-22 conditional admission, he was suspended for 12 months.

[31] In *Law Society of Manitoba v. Ward*, [1997] LSDD No. 60, the lawyer acted in a transaction by which a property was flipped. The first sale was between A as purchaser and the original vendor, for a purchase price of \$480,000. Two days before A finalized this first purchase, he entered into an agreement with the original vendor's real estate agent and his wife to sell the property to them for \$776,000, financed in part by mortgage funds of \$582,000. The lawyer acted for A, the ultimate purchasers and the mortgagee trust company. He conveyed the property directly from the original vendor to the nominee company owned by the realtor and wife and certified its value in the Declaration as to Value as the original price of \$480,000. The Panel stated that:

All counsel must be deemed to know and accept that in agreeing to act for a number of clients whose interests may conflict there is an absolute obligation to be open and candid with each of them. In these circumstances it is uncontradicted that Mr. Ward's lack of disclosure of relevant information exposed his client to a risk of loss that had it known the truth it would not have occurred.

The Panel suspended the lawyer for 60 days.

[32] In *Law Society of Upper Canada v. Di Francesco*, [2003] LSDD No. 44, the lawyer was found to be an unknowing dupe of an unscrupulous client, and was suspended for one month, which was characterized as being at the lowest end of the range. The Panel accepted the lawyer's testimony as credible, but found that (at paragraphs 24 to 26):

24. ... in light of the knowledge that has been admitted that the member had of Mr. Corbett, this knowledge should have made him wary of this client. He had a professional duty to give honest and candid advice to his client. While accepting the honesty of the member, it is clear to this Committee that he failed in his obligation to give proper, full legal advice to his client.

25. We find that the member failed to question the underlying motivation of Mr. Corbett in wanting to use the member's good offices to facilitate the paying of his so-called debts. In our view, a reasonable and competent solicitor would have been wary of Mr. Corbett in all of the circumstances that Mr. Di Francesco was aware of in March of 1997.

26. *The member had an obligation not to allow himself to be a mere unquestioning instrument of his client's wishes*, especially in light of the background that we have reviewed here. (emphasis added)

[33] In *Law Society of Upper Canada v. Peddle Jr.*, (*supra*), the lawyer acted as escrow agent for a group of investors who were supposed to be investing in "high-yield private debt instrument buy/sell/repurchase arrangements." He allowed money that was obtained through a fraudulent scheme to pass through his trust account and bank account and the account of a company controlled by him. The Panel found that he benefited from his involvement (paragraph 5). The Panel cited four previous cases (paragraph 4) and noted that "[t]he range of sentences in these cases is two (2) to six (6) months." The Panel ordered him suspended for three months, fined him \$5,000 and restricted him from acting as an escrow agent regarding investment funds without the Law Society's authorization.

[34] In *Law Society of Upper Canada v. Tucciarone*, 2005 ONLSHP 20, the lawyer was involved in a mortgage fraud in which he acted in 16 transactions in an 18-month period. In these transactions, he acted for multiple parties, and on five transactions he acted for the vendor, the purchaser and the mortgagee bank.

He knowingly commissioned an affidavit setting out consideration that was false. He was found to be a pawn in the hands of the broker (the fraudster), whom he had viewed as a trusted friend and therefore had not knowingly participated in a scheme to defraud the mortgagee bank. The Panel commented that the lawyer failed to meet his positive obligation to disclose material facts to the mortgagee bank (paragraphs 38 to 40). He was suspended for six months.

[35] Of interest at paragraph 80, the Panel in *Tucciarone* referenced a non-exhaustive list of "red flags" that arose in that case:

- (a) the client sends numerous deal to the lawyer;
- (b) the client appears to be in control of the transactions;
- (c) there is one real estate agency involved;
- (d) the bank loans money on the strength of a higher agreement in its possession;
- (e) the same lending institution is common to the loans;
- (f) the same purchasers or vendors are involved;
- (g) the lawyer is directed to pay excess funds to the mastermind or his or her designate;
- (h) there is an absence of written authorizations from the lender;
- (i) the mortgages are usually CMHC insured; and
- (j) if the purchaser does provide any funds on closing, the amounts are minimal.

[36] Several of those red flags were also present in the transactions in this case. However, the Panel accepted that the lawyer had a "clear belief" that the mortgagee bank could not lose under his friend's development program (paragraph 85) and noted his cooperation with the Law Society in its investigation.

[37] In determining penalty in *Tucciarone*, 2005 ONLSHP 36, the Panel noted at paragraph 11 that, at the hearing, the lawyer was:

... not the same person who fell under the spell of his friend, the broker, in 1998. At that time he had only been in practice for about 2 years. He was on his own. He had only a part-time assistant. He had no mentor and no clear idea of his obligations and duties to his clients. He failed to see the "red flags" that he ought to have seen and failed to appreciate that he was being taken advantage of.

[38] In *Law Society of Upper Canada v. Verbeek*, 2007 ONLSHP 100, the lawyer was found to have unknowingly participated in a mortgage fraud scheme, but adverse determinations were made with respect to his breach of the rules by acting for multiple persons where there was likely to be a conflict of interest, failing to disclose all material facts to his lender clients and failing to obtain his lender clients' informed consent and failing to serve his lender clients in a conscientious and diligent manner. On appeal, the dismissal of the allegations related to knowing involvement in the mortgage fraud was upheld. The penalty of a three-month suspension and a condition that he submit to a practice review was not appealed (2008 ONLSHP 10).

[39] In *Yungwirth v. Law Society of Upper Canada*, (*supra*), the lawyer was found to have been a dupe in a mortgage fraud scheme and also to have failed to serve his lender clients by failing to disclose material

facts and to carry out their instructions. He acted in conflicts of interest and preferred the interests of his purchaser clients over the interests of his lender clients, purposely sought to mislead some of his clients and participated in the swearing of false affidavits. The Hearing Panel concluded (cited at paragraph 6 of the Appeal decision) that:

This Panel takes a very serious view of the misconduct here. It is clear that in all of the real estate flips in this case, that [sic] the second transaction was bogus and was only for the purpose of receiving mortgage monies. The 7 bona fide sales totalled \$281,000.00 while the 7 "flips" totalled \$605,900.00. The member was more than careless and unthinking. As in the Linton case, the member made knowing misrepresentations to his clients. He failed to follow specific instructions from his lender client; purposely sought to mislead some of those clients; and participated in the swearing of false affidavits.

These actions are not consistent with that [sic] of an ethical solicitor. He has breached his fiduciary duty to his lender clients and has demonstrated a very serious lack of professional integrity.

[40] On appeal, in relation to the penalty, the Appeal Panel stated at paragraph 46 that:

The Hearing Panel reviewed all of the cases put to it. The Hearing Panel considered that these cases showed a range of suspension from 2 months to 9 months for "dupe" cases. The Hearing Panel was of the view that because of the aggravating particulars in the member's conduct that [sic] the pure dupe cases were not applicable and that the Richie James Linton case in which there was a 12 month suspension, a payment of \$10,000.00 in costs, and a condition that he be employed for a period of 2 years with another solicitor approved by the Law Society was more appropriate.

[41] The proposed penalty of a six-month suspension is squarely in the range of comparable cases.

Factors Related to the Respondent

[42] The Respondent was called in September 2001, and therefore had been practising less than four years at the time this conduct occurred. At the time, the Respondent was working for F Ltd. as a Land Titles signing officer and also trying to build a practice as a sole practitioner. He had limited legal experience, had been practising for about one and one-half years on his own and was not practising with any senior solicitors when the misconduct occurred.

[43] It is of note that the misconduct occurred over a relatively short period of time, as all of the transactions took place between approximately mid-December 2004 and March, 2005.

[44] The Respondent received some benefit from his misconduct in the form of higher than normal fees, which he justified on the short turnaround time provided on the conveyances. He also received a "bonus" of \$3,000, which was attributed as compensation for his work on the transaction that did not proceed in the summer of 2004. The Respondent prepared a second "bonus" cheque in the amount of \$2,000 on March 7, 2005, but did not remove this cheque from his chequebook (Statement of Agreed Facts, paragraphs 236 to 238).

[45] The Respondent does have a Professional Conduct Record ("PCR"), which consists of:

- (a) a Conduct Review in 2004,
- (b) a referral to Practice Standards in 2005, and
- (c) a citation issued June 30, 2006, which was resolved by a Rule 4-22 proposal in May 2007.

[46] This Professional Conduct Record shows that prior to the issuance of this citation, the Respondent tended to practise by expending the minimal effort to complete the work and without the exercise of legal or ethical judgment. It is consistent with his conduct in this matter, in which he arguably allowed himself to be a mere unquestioning instrument of his client's wishes, in the words of the Hearing Panel in *Law Society of Upper Canada v. Di Francesco (supra)*.

[47] However, the Respondent's involvement with Practice Standards (including his release from Practice Supervision) and his cooperation in this matter (including the undertaking) are factors that suggest that the Respondent may be remediable.

Deterrence/Integrity of the Profession

[48] Deterrence - both specific and general - are critical factors in this case. On the specific level, the six-month suspension should send a strong message to the Respondent that his fitness to continue as a member of the Law Society is questioned. It should also send the message that, if he is before a Hearing Panel again, his very entitlement to continue as a member will likely be at issue.

[49] The six-month suspension should also send a message to the profession in general, that a lawyer who fails to be on guard against being used in a fraudulent scheme should expect a serious disciplinary response. The "cost" of discipline will significantly outweigh the benefits that may flow from shutting one's eyes to the red flags that arise in a file in favour of the income that flows from a steady client providing legal work.

[50] Further, the Respondent's undertaking to not practise real estate law is a key factor. If the undertaking were not in place, the Law Society would have sought a condition that restricted the Respondent from practising real estate law. General deterrence is also served because, whether by an undertaking or condition, this restriction results in the Respondent losing the entitlement to practise in that area.

Costs

[51] The Respondent has agreed to pay costs of \$4,500, payable by February 1, 2010.

Summary

[52] The Panel finds that the penalty proposed by the Respondent, and recommended by the Discipline Committee, is appropriate in all of the circumstances. The Panel therefore accepts the proposed disciplinary action.

[53] It is accordingly ordered that the Respondent:

- (a) be suspended for a period of six-months, commencing February 1, 2009;
- (b) pay costs in the amount of \$4,500, by February 1, 2010; and
- (c) remain bound by the undertaking not to practise real estate law, until such time as he may be released from it by the Discipline Committee.

[54] The Law Society will publish the circumstances summarizing this admission as required by Rule 4-38.

[55] The Executive Director is instructed to record the Respondent's admission on the Respondent's Professional Conduct Record.

SCHEDULE A

SCHEDULE TO CITATION

Nature of Your Conduct or Competence to be Inquired into:

1. You assisted your client and others in a fraudulent scheme in which mortgage funds were obtained and dispersed under false pretenses from your client, Bank A, in relation to the following transactions:

- a. Mortgage [number], obtained to fund the purchase of property at [address] Cardero Street, Vancouver, B.C. by your client BB
- b. Mortgage [number], obtained to fund the purchase of property at [address] Keefer Place, Vancouver, B.C. by your client VS;
- c. Mortgage for \$367,087.73, obtained to fund the purchase of property at [address] Parker Street, Vancouver, B.C. by your client PA;
- d. Mortgage [number], obtained to fund the purchase of property at [address] West Georgia Street, Vancouver, B.C. by your client VT;
- e. Mortgage [number], obtained to fund the purchase of property at [address] West Pender Street, Vancouver, B.C. by your client AS;
- f. Mortgage [number], obtained to fund the purchase of property at [address] West Georgia Street, Vancouver, B.C. by your client IP;
- g. Mortgage [number], obtained to fund the purchase of property at [address] Pacific Street, Vancouver, B.C. by your client JK;
- h. Mortgage [number], obtained to fund the purchase of property at [address] Dunbar Street, Vancouver, B.C. by your client FP;
- i. Mortgage [number], obtained to fund the purchase of property at [address] Dunbar Street, Vancouver, B.C. by your client LP;
- j. Mortgage [number], obtained to fund the purchase of property at [address] Dunbar Street, Vancouver, B.C. by your client MF;

k. Mortgage [number], obtained to fund the purchase of property at [address] Dunbar Street, Vancouver, B.C. by your client AP; and

l. Mortgage [number], obtained to fund the purchase of property at [address] Dunbar Street, Vancouver, B.C. by your client JH;

In assisting your clients and others with each of these transactions, you knew or were wilfully blind that the mortgage transactions were fraudulent. Alternatively, in assisting your clients and others with these transactions, you were reckless as to whether the transactions were fraudulent, or you were grossly negligent or negligent in aggravated circumstances in continuing to assist your clients and others when you ought to have made further inquiries.

2. You assisted your clients and others in a fraudulent scheme in which mortgage funds were obtained and dispersed under false pretenses from your client, Bank B, in relation to the following transaction:

(a) Mortgage [number], obtained to fund the purchase of property at [address] Dunbar Street, Vancouver, B.C. by your client MI;

In assisting your clients and others with each of these transactions, you knew or were willfully blind that the mortgage transactions were fraudulent. Alternatively, in assisting your clients and others with these transactions, you were reckless as to whether the transactions were fraudulent, or you were grossly negligent or negligent in aggravated circumstances in continuing to assist your clients and others when you ought to have made further inquiries.

3. You acted in conflicts of interest for multiple parties in the following transactions and in the following circumstances:

(a) In the conveyance of the property at [address] Cambie Street, Vancouver, B.C. from the vendor AM to the purchaser FS, with mortgage financing from the lender Bank A, you acted for the vendor, the purchaser and the lender in the following circumstances:

i. The transaction was not a simple conveyance as defined in Appendix 3 of the *Professional Conduct Handbook*;

ii. You processed a credit of \$37,455.17 from the vendor to the purchaser that was not contemplated in the contract of purchase and sale, and not disclosed to your lender client;

iii. You paid out funds from the proceeds of the sale to parties not involved in the transaction without written directions and without disclosing those payments to all of your clients;

iv. You failed to provide written disclosure of potential conflict issues to all clients and obtain written instructions from all clients allowing you to act despite the conflict, contrary to Chapter 6, Rules 4 to 6 of the *Professional Conduct Handbook*.

(b) In the conveyance of the property at [address] Cardero Street, Vancouver, B.C. from DS and

AS to BB, with mortgage financing from the lender Bank A, you acted for the corporate assignor of the original purchase contract, I Ltd., a principal of the corporate assignor, GF, the purchaser and the lender in the following circumstances:

- i. The transaction was not a simple conveyance as defined in Appendix 3 of the *Professional Conduct Handbook*;
- ii. You prepared and witnessed an agreement between GF and the purchaser BB, which confirmed that BB would act as purchaser, become the registered owner on title, provide GF with a general power of attorney (" POA") restricted to dealing with the property, receive mortgage proceeds from the lender and pay the purchase price from the mortgage proceeds, and that GF would indemnify BB for his financial obligations if the market value of the property falls below the purchase price, and GF would be responsible for the mortgage payments, property taxes, strata fees and other expenses. You did not disclose the existence of this agreement to your lender client;
- iii. The purchaser's statement of adjustments shows excess mortgage funds. You did not disclose that information to your lender client and you disbursed those funds to other parties, to GF and to yourself without written directions;
- iv. You paid yourself a \$3,000 bonus from the excess mortgage proceeds without rendering an account for the bonus, and without disclosing that information to your lender client;
- v. You prepared and witnessed a power of attorney (" POA") allowing GF to act as the attorney and execute the mortgage documentation for BB with respect to the property. You did not disclose the existence of the POA to your lender client, contrary to that client's written instructions;
- vi. You did not provide written disclosure of the conflict issues or receive written instructions from all of your clients allowing you to act in conflict, contrary to Chapter 6, Rules 4 to 6 of the *Professional Conduct Handbook*;
- vii. You did not disclose to your lender client the following relevant information about the transactions that they were funding:
 1. There was an original contract of purchase between the corporate assignor and the vendor;
 2. A second contract of purchase between the corporate assignor and the purchaser was executed shortly after the original contract;
 3. The second contract of purchase was for a significantly higher purchase price;
 4. The mortgage proceeds advanced were for a greater amount than was needed to complete the first contract;
 5. The registered Form A Transfer between the vendor and purchaser listed the purchase price from the original contract as the market value of the property and the consideration

paid;

6. The Property Transfer Tax Returns executed by the purchaser for the transaction indicated that the purchase price from the original contract of purchase was the gross purchase price and reflected the fair market value of the property.

(c) In the following transactions:

- i. Conveyance of property at [address] Keefer Place, Vancouver, B.C. from FF to VS, with mortgage financing from the lender Bank A,
- ii. Conveyance of property at [address] Parker Street, Vancouver, B.C. from RA to PA, with mortgage financing from the lender Bank A,
- iii. Conveyance of property at [address] West Georgia Street, Vancouver, B.C. from RA to VT, with mortgage financing from the lender Bank A,
- iv. Conveyance of property at [address] West Pender Street, Vancouver, B.C. from LF to AS, with mortgage financing from the lender Bank A,
- v. Conveyance of property at [address] West Georgia Street, Vancouver, B.C. from VN and PL to IP, with mortgage financing from the lender Bank A,
- vi. Conveyance of property at [address] Pacific Street, Vancouver, B.C. from ZB to JK, with mortgage financing from the lender Bank A,

you acted for the corporate assignor of the original purchase contract, I Ltd., a principal of the corporate assignor, GF, the purchaser and the lender in the following circumstances:

1. The transaction was not a simple conveyance as defined in Appendix 3 of the *Professional Conduct Handbook*;
2. You did not provide written disclosure of the conflict issues or receive written instructions from all of your clients allowing you to act in conflict, contrary to Chapter 6, Rules 4 to 6 of the *Professional Conduct Handbook*;
3. You did not advise your lender client that you were receiving instructions from GF rather than from the purchaser;
4. You disbursed excess proceeds from the transaction to unrelated parties without written directions;
5. You did not disclose to your lender client the following relevant information about the transactions that they were funding:
 - A. There was an original contract of purchase between the corporate assignor and the vendor;

B. A second contract of purchase between the corporate assignor and the purchaser was executed shortly after the original contract;

C. The second contract of purchase was for a significantly higher purchase price;

D. The mortgage proceeds advanced were for a greater amount than was needed to complete the first contract;

E. The registered Form A Transfer between the vendor and purchaser listed the purchase price from the original contract as the market value of the property and the consideration paid;

F. The Property Transfer Tax Returns executed by the purchaser for the transaction indicated that the purchase price from the original contract of purchase was the gross purchase price and reflected the fair market value of the property.

(d) In the following transactions:

i. Conveyance of property at [address] Dunbar Street, Vancouver, B.C. from M Inc. to MI, with mortgage financing from the lender Bank B,

ii. Conveyance of property at [address] Dunbar Street, Vancouver, B.C. from M Inc. to FP, with mortgage financing from the lender Bank A,

iii. Conveyance of property at [address] Dunbar Street, Vancouver, B.C. from M Inc. to LP, with mortgage financing from the lender Bank A,

iv. Conveyance of property at [address] Dunbar Street, Vancouver, B.C. from M Inc. to MF, with mortgage financing from the lender Bank A,

v. Conveyance of property at [address] Dunbar Street, Vancouver, B.C. from M Inc. to AP, with mortgage financing from the lender Bank A,

vi. Conveyance of property at [address] Dunbar Street, Vancouver, B.C. from M Inc. to JH, with mortgage financing from the lender Bank A,

you acted for the corporate assignor of the original purchase contract, Q Ltd., a principal of the corporate assignor, GF, the purchaser and the lender in the following circumstances:

1. The transaction was not a simple conveyance as defined in Appendix 3 of the *Professional Conduct Handbook*;

2. You did not provide written disclosure of the conflict issues or receive written instructions from all of your clients allowing you to act in conflict, contrary to Chapter 6, Rules 4 to 6 of the *Professional Conduct Handbook*;

3. You did not advise your lender client that you were receiving instructions from GF rather than from the purchaser;

4. You advanced excess mortgage proceeds to unrelated parties with no written directions, and without disclosing the fact of the excess mortgage proceeds to your lender client;

5. You did not disclose to your lender client the following relevant information about the transactions that they were funding:

A. There was an original contract of purchase between the corporate assignor and the vendor;

B. A second contract of purchase between the corporate assignor and the purchaser was executed shortly after the original contract;

C. The second contract of purchase was for a significantly higher purchase price;

D. The mortgage proceeds advanced were for a greater amount than was needed to complete the first contract;

E. The registered Form A Transfer between the vendor and purchaser listed the purchase price from the original contract as the market value of the property and the consideration paid;

F. The Property Transfer Tax Returns executed by the purchaser for the transaction indicated that the purchase price from the original contract of purchase was the gross purchase price and reflected the fair market value of the property.

You thereby failed to give undivided loyalty to each of your clients when you preferred the interests of some clients or yourself over the interests of another client, contrary to Chapter 6, Rule 1 of the *Professional Conduct Handbook*.

4. In acting for your lender client, Bank A or Bank B in the transactions listed above, you:

(a) Failed to advise your client of material facts, contrary to Chapter 1, Rule 3 (2) of the *Professional Conduct Handbook*;

(b) Failed to acquire and maintain sufficient knowledge and skill to represent your client's interests effectively, contrary to Chapter 3, Rule 1 of the *Professional Conduct Handbook*;

(c) Failed to serve your client in a conscientious, diligent and efficient manner so as to provide a quality of service at least equal to that which would be expected of a competent lawyer in a similar situation, and in particular you failed to disclose all relevant information to the client, contrary to Chapter 3, Rule 3 of the *Professional Conduct Handbook*.

5. You allowed a trust shortage of over \$2,500 to continue for six months between June and December

2004 without correcting it. You failed to make an immediate report of the trust shortage to the Executive Director of the Law Society when you became aware of it, contrary to Rule 3-55 of the Law Society Rules.

6. You paid yourself \$3,000 from trust funds held to the credit of your client BB without written direction from the client and without first preparing a bill to the client, contrary to Rule 3-56(1) and Rule 3-57(2) of the Law Society Rules.

7. You issued a trust cheque for \$2,000 payable to yourself and thereby authorized the withdrawal of trust funds held to the credit of your client JH without written direction from the client and without first preparing a bill to the client, contrary to Rule 3-56(1) and Rule 3-57(2) of the Law Society Rules.

8. You failed to maintain your books, records and accounts in accordance with Part 3, Division 7 of the Law Society Rules, as follows:

(a) You made payments from trust funds when trust accounting records were not current, contrary to Rule 3-56(1.2) of the Law Society Rules;

(b) You failed to record all funds received and disbursed in connection with your law practice by maintaining the records required under Part 3, Division 7 of the Law Society Rules, contrary to Rule 3-59(1) of the Law Society Rules;

(c) You failed to maintain a central source for trust ledger sheets or equivalent documents, contrary to Rule 3-59(3) of the Law Society Rules;

(d) You failed to maintain a trust account data source or book of entry to record the source of funds received, the identity of the client on whose behalf the funds were received or disbursed and the name of each recipient of funds paid out of trust, contrary to Rule 3-60(a) of the Law Society Rules;

(e) You failed to maintain a trust transfer journal to record, explain the purpose of and confirm lawyer authorization of transfers of funds between client trust ledgers, contrary to Rule 3-60(c) of the Law Society Rules;

(f) You failed to reconcile trust records from August 2004 to March 2005, contrary to Rule 3-60(d), and Rule 3-65(1), (2), and (4) of the Law Society Rules;

(g) You failed to maintain adequate general account books, contrary to Rule 3-61(1) of the Law Society Rules;

(h) You failed to keep file copies of all bills delivered to clients or persons charged in chronological, alphabetical or numerical order, contrary to Rule 3-62(1) of the Law Society Rules;

(i) You failed to total your cashbooks and record trust transactions within the applicable time limits, contrary to Rule 3-63(1) of the Law Society Rules.

SCHEDULE B

STATEMENT OF AGREED FACTS

Member's Background

1. On September 5, 2001, the Respondent was called to the Bar in British Columbia.
2. The Respondent has practised as a sole practitioner since his call to the Bar, except for the period between February 15, 2002 and August 15, 2003, when he practised with the firm Stewart Aulinger & Company.
3. On March 18, 2005, the Chair of the Discipline Committee ordered that an investigation of the books, records and accounts of the Respondent be conducted pursuant to Rule 4-43(1) of the Law Society Rules (the " Investigation Order"). Mr. William Kinsey, CA, Ms. Penny Lehan and Ms. Paula Kalsi were subsequently designated by the Executive Director pursuant to Rule 4-43(2)(a) to conduct the investigation.
4. On April 26, 2005, the Respondent provided an undertaking to the Law Society in which he undertook, *inter alia*, not to practise law in the area of real estate.
5. On January 25, 2007, the Discipline Committee of the Law Society authorized the issuance of a citation against the Respondent (the " Citation").
6. On April 27, 2007, the Citation was issued. The Respondent admits that he was served with a copy of it and waives the strict requirements of Rule 4-15 of the Law Society Rules.

Mortgage Transactions

Background Facts

7. Q Ltd. is a British Columbia company incorporated on September 9, 2004. At all material times, PS was a director.
8. I Ltd. was a British Columbia company incorporated on November 24, 2004. It was dissolved on October 24, 2006. From its inception until I Ltd. was dissolved, GF was its president and director. PS was also a director.

Background

9. In July 2004, the Respondent was initially retained by PS to act on behalf of Q Ltd. to negotiate an extension of time of a completion date with the vendor's lawyer on the conveyance of an office tower in downtown Vancouver to Q Ltd.
10. Over the summer and fall of 2004 and into 2005, the Respondent was retained to act on behalf of the purchasers of various residential properties in conveyances in which PS, RA or GF were involved.
11. For the most part, the purchasers were introduced to the Respondent by one of PS, RA or GF. Most of the transactions involved a contract of purchase whereby Q Ltd. or I Ltd. would contract to purchase the property from the registered owners and then the purchaser introduced to the Respondent would contract to purchase the property from Q Ltd. or I Ltd. at an increased purchase price. The Respondent received some instructions for purchasers from the principals of the corporate assignors pursuant to

powers of attorney given to them by the purchaser. The Respondent says that at the time he honestly believed that, pursuant to the powers of attorney, it was proper for him to receive and follow such instructions, and the Law Society does not dispute this.

12. The Respondent was encouraged by PS, RA and GF to charge more than his usual rate for each transaction because the work required very short time frames and irregular hours. Eventually, he did charge more for these conveyance transactions than he was charging for similar transactions in which PS, RA and GF were not involved.

Respondent's Telephone Call to Law Society

13. In November 2004, the Respondent was concerned about the intention of Q Ltd. to enter into the original contracts of purchase and sale and then assign them for a higher purchase price to a new purchaser. On November 30, 2004, the Respondent telephoned Felicia Folk, at the time a practice adviser with the Law Society of B.C., to discuss his concerns about the upcoming transactions. He advised her that the scenario was that the registered owner is going to sell property to a purchaser who will then sell to a second purchaser. He advised that he was going to represent the second purchaser and the bank. He advised that the problem was that the bank may not know that the first purchase was for \$40,000 less and that its security may not be what it thought.

14. Ms. Folk advised the Respondent that this is all okay if the bank knows, but if not, then it is not okay. She advised that if the bank is aware, get instructions in writing that it is okay, but if the second purchaser doesn't want him to tell the bank, he must withdraw from acting.

Respondent's Telephone Call to Bank A Mortgage Centre

15. In January 2005, the Respondent contacted the Bank A mortgage centre by telephone and spoke with a person who identified herself as " Linda" . He advised her that he had some concerns about the nature of some upcoming transactions involving purchases of properties with two contracts, and that the second contract had a significantly higher purchase price. He told her he was concerned that the bank was basing its mortgage on the second purchase price.

16. " Linda" responded that the bank relied on its own property appraisals in satisfying itself whether the purchase price was reflective of the market price in order to grant the mortgage. She told the Respondent that he did not have any role in funding the mortgage and that his role only began at the time he received instructions from the bank. Based on this discussion, the Respondent believed that the bank had its own process for approving mortgages, that he was not required to have a role in that process

17. The Respondent did not seek written instructions from the bank with respect to any specific transactions.

Allegations 1(a), 3(b), 4 and 6

18. On January 21, 2005, a Contract of Purchase and Sale was executed in which I Ltd. agreed to purchase property at [address] Cardero Street, Vancouver (the " Cardero Property") from the registered owners DS and AS for \$670,000, with a deposit of \$1,000.

19. On January 25, 2005, a second Contract of Purchase and Sale involving the Cardero Property was

executed in which BB agreed to purchase the property from I Ltd. for \$749,000.

20. In this transaction, the Respondent acted for each of:

- a) the second purchaser BB,
- b) GF (a principal of the corporate assignor, I Ltd.), and
- c) the lender Bank A.

21. Bank A agreed to fund the transaction with a mortgage to BB in the amount of \$689,267.25. Bank A retained the Respondent to act on its behalf on February 1, 2005.

22. The Respondent prepared and witnessed a Power of Attorney executed by BB on February 1, 2005, in which BB appointed GF to be his attorney with respect to the transaction.

23. The Respondent prepared a "Purchase Agreement" to be executed by BB and GF on February 1, 2005. The Respondent witnessed both signatures. The Agreement provided that BB would purchase the Cardero Property with mortgage funds received from Bank A. GF agreed that if the market value of the Cardero Property fell below the purchase price, GF would indemnify BB for any financial obligations BB had with respect to the Cardero Property and would assume all financial responsibility for it. GF also agreed to assume responsibility for payments of any financial encumbrances against the Cardero Property, if BB was unwilling or unable to make the payments.

24. The Cardero Property was transferred from the original vendors to BB on February 3, 2005. The Form A Transfer was registered electronically by the Respondent in the Land Title Office, showing the transfer was from DS and AS to BB for consideration of \$670,000.

25. The Respondent completed, had BB execute, and caused to be filed a General Property Transfer Tax Return, in which BB certified that the gross purchase price of the Cardero Property was \$670,000 and its fair market value was \$670,000.

26. The Respondent prepared and arranged to be registered electronically a Form B Mortgage in the amount of \$689,267.25 in favour of Bank A against the Cardero Property.

27. On February 3, 2005, the Respondent deposited into his trust account the amount of \$673,935 from Bank A to fund the transaction.

28. The Respondent prepared the Purchaser's Statement of Adjustments, showing that there were excess mortgage proceeds after the Cardero Property transaction completed. He did not disclose the existence of the excess proceeds to his lender client Bank A.

29. The Respondent charged BB \$1,500 in fees plus disbursements, for a total of \$2,064.50 to complete the conveyance. The Respondent transferred that amount from his trust account from the proceeds of the Cardero Property transaction.

30. After the vendors were paid, the Respondent made several disbursements of the excess funds remaining in his trust account. The Respondent did not receive written instructions from his purchaser client authorizing those disbursements; he received verbal instructions from GF. Among those disbursements was a cheque written February 14, 2005 made payable to himself for \$3,000 as a "bonus". The Respondent recorded that payment as a payment to Richard C. Nielsen (bonus) on his Statement of Receipts and Disbursements (In & Out) for the file.

31. The Respondent did not advise his lender client Bank A of the following in respect of the Cardero Property transaction:

- a) There was an initial contract of purchase and sale between I Ltd. and the initial vendors.
- b) The contract of purchase and sale between BB and I Ltd. was the second contract and was for a significantly higher purchase price than the initial contract between I Ltd. and the initial vendors.
- c) The mortgage fees advanced were for a greater amount than was needed to complete the first contract of purchase and sale.
- d) He received instructions from GF to disburse the excess proceeds.
- e) He paid himself a " bonus" of \$3,000 from the excess proceeds.
- f) The purchaser had executed a Power of Attorney appointing GF, a principal of the corporate assignor as his power of attorney.
- g) The purchaser and GF had entered into the " Purchase Agreement" .
- h) The registered Form A Transfer between the initial vendors and the purchaser listed the purchase price from the initial contract as the market value for the property and as the consideration paid for the property.
- i) The Property Transfer Tax Return executed by the purchaser showed that the purchase price from the initial contract was the gross purchase price and was also its fair market value.

32. The Respondent did not provide written disclosure of the conflict issues arising in the Cardero Property transaction to all of his clients and did not receive written instructions from each of his clients allowing him to act in conflict, contrary to Chapter 6, Rules 4 to 6 of the *Professional Conduct Handbook*.

33. The Cardero Property transaction was not a simple conveyance as defined in Appendix 3 of the *Professional Conduct Handbook*.

34. The Respondent now believes that BB and I Ltd. obtained mortgage financing from Bank A for the purchase of the Cardero Property for more than its fair market value, thereby obtaining mortgage funds under false pretences. Although the Respondent had no involvement in the application for mortgage financing, by failing to advise his lender client Bank A of all of the relevant information involving this transaction, the Respondent unwittingly assisted his other clients in obtaining mortgage funds under false pretences.

35. Although the Respondent had no involvement in the application for mortgage financing, by failing to advise Bank A of all the relevant information involving this transaction, he assisted his other clients in obtaining mortgage funds under false pretences.

36. By failing to advise his lender client of material information relevant to the transaction, the Respondent unwittingly preferred the interests of his other clients over those of his lender client. However, the Respondent says that he did not intend to do so and did not realize it at the time, and the Law Society does not dispute this.

37. Although the Respondent did not think he was acting for the corporate assignor, I Ltd., in this

transaction at the time, he took instructions on what to do with the excess proceeds from GF, who had a power of attorney from the second purchaser.

Allegation 6: Unauthorized Payment of \$3,000 from Trust to the Respondent

38. The Respondent did not issue a statement of account to his client BB to authorize the payment to himself of a \$3,000 bonus. He recorded the payment on the ledger sheet he maintained for the file.

39. The Respondent did not receive written direction from his client BB, or from anyone authorized by BB, to pay himself \$3,000 from the trust funds held to the credit of his client BB. He received verbal instructions from his client's attorney, GF.

40. On February 8, 2005, the Respondent met with PS, RA and GF. In the course of that meeting, he was told to write himself a cheque for \$3,000 from the excess proceeds of the Cardero Property transaction, as a bonus for all the work he had done for them with respect to other matters.

41. The Respondent admits that he paid himself \$3,000 from trust funds held to the credit of his client BB without written direction from the client, contrary to Rule 3-56(1) of the Law Society Rules, and without first preparing a bill to the client, contrary to Rule 3-57(2) of the Law Society Rules.

Allegations 1(b), 3(c) and 4

42. On February 1, 2005, a Contract of Purchase and Sale was executed in which I Ltd. agreed to purchase property at [address] Keefer Street, Vancouver (the " Keefer Property") from the registered owner FP for \$440,000, with a deposit of \$10,000.

43. Shortly after the initial contract was executed, a second Contract of Purchase and Sale was executed in which VS agreed to purchase the Keefer Property from I Ltd. for a significantly higher purchase price.

44. There was no second Contract of Purchase and Sale involving the Keefer Property on the Respondent's file. However, the Keefer Property transaction completed as a sale from FP to VS.

45. In this transaction, the Respondent acted for each of:

- a) the second purchaser VS, and
- b) the lender Bank A.

46. Bank A agreed to fund this transaction with a mortgage to VS in the amount of \$542,763.45. Bank A retained the Respondent to act on its behalf on February 9, 2005.

47. The Keefer Property was transferred from the original vendor to VS on February 10, 2005. The Form A Transfer was registered in the Land Title Office and stated the property had a market value of \$440,000 and was transferred from FP by his lawful attorney PL to VS for consideration of \$440,000.

48. The Respondent prepared and arranged to be registered a Form B Mortgage in the amount of \$542,763.45 in favour of Bank A against the Keefer Property.

49. The Respondent deposited into his trust account the amount of \$530,655 from Bank A to fund the Keefer Property transaction.

50. The Respondent prepared the Purchaser's Statement of Adjustments, showing that there were \$90,761.98 in excess mortgage proceeds after the transaction completed. He did not disclose the existence of the excess proceeds to his lender client Bank A.

51. The Respondent did not obtain written instructions from his client VS to disburse the excess proceeds; he received verbal instructions from GF as to how to disburse them. The Respondent recorded these payments on his Statement of Receipts and Disbursements (In & Out) for the file. The excess proceeds were disbursed as follows:

- a) \$37,704.87 was transferred to another client matter (W);
- b) \$8,000 was paid to AS;
- c) \$20,000 was paid to RA;
- d) \$20,000 was paid to E;
- e) \$5,000 was paid to I Ltd. (the corporate assignor).

52. The Respondent did not advise his lender client Bank A that he was disbursing excess proceeds to parties unrelated to the Keefer Property transaction or that he was receiving instructions from someone other than VS to disburse excess proceeds from this transaction.

53. The Respondent did not advise his lender client Bank A of the following relevant information regarding the Keefer Property transaction:

- a) There was an initial contract of purchase and sale between the original vendor and the corporate assignor I Ltd. for \$440,000.
- b) There was a second contract of purchase and sale between the corporate assignor I Ltd. and VS, executed shortly after the initial contract for a significantly higher purchase price.
- c) The mortgage proceeds advanced to fund the transaction were for a greater amount than was needed to complete the initial contract.
- d) The Form A Transfer showed a transfer from the original vendor to VS and listed the market value and the consideration paid as \$440,000.
- e) The Property Transfer Tax Return prepared by the Respondent, executed by VS and filed by the Respondent, stated that the gross purchase price was \$440,000 and the fair market value was \$440,000. It also stated that the mortgage obtained to finance the purchase was for \$430,000.
- f) VS executed a Power of Attorney in favour of GF, a principal of the corporate assignor.

54. The Respondent did not provide written disclosure of the conflict issues arising in this transaction to all of his clients and did not receive written instructions from each of his clients allowing him to act in conflict, contrary to Chapter 6, Rules 4 to 6 of the *Professional Conduct Handbook*. The Respondent did provide his purchaser client with a standard form letter regarding his representation of both purchaser and lender. VS signed the letter on February 10, 2005 consenting to and acknowledging the dual representation.

55. The Keefer Property transaction was not a simple conveyance as defined in Appendix 3 of the *Professional Conduct Handbook*.

56. The Respondent now believes that VS and I Ltd. obtained mortgage financing from Bank A for the purchase of the Keefer Property for more than its fair market value, thereby obtaining mortgage funds under false pretences. Although the Respondent had no involvement in the application for mortgage financing, by failing to advise Bank A of all the relevant information involving this transaction, he unwittingly assisted his other clients in obtaining mortgage funds under false pretences. However, the Respondent did not intend to do so and did not realize it at the time.

57. By failing to advise his lender client of material information relevant to the Keefer Property transaction, the Respondent unwittingly preferred the interests of his other clients over those of his lender client. The Respondent says that he did not intend to do so and did not realize it at the time, and the Law Society does not dispute this.

58. By failing to advise his lender client of material information relevant to this transaction, the Respondent unwittingly preferred the interests of his other clients over those of his lender client. The Respondent says that he did not intend to do so and did not realize it at the time, and the Law Society does not dispute this.

Allegations 1(c), 3(c) and 4

59. On January 14, 2005, a Contract of Purchase and Sale was executed in which I Ltd. agreed to purchase property at [address] Parker Street (the " Parker Property") from the registered owner RA for \$310,000 with a deposit of \$1,000.

60. On January 18, 2005, a second Contract of Purchase and Sale involving the Parker Property was executed, in which PA agreed to purchase the Parker Property from I Ltd. for \$398,900, with a deposit of \$1,000.

61. No realtors were involved in either contract.

62. In the Parker Property transaction, the Respondent acted for each of:

- a) the second purchaser PA, and
- b) the lender Bank A.

63. Bank A agreed to fund the Parker Property transaction with a mortgage to PA in the amount of \$367,087.73. Bank A retained the Respondent to act on its behalf on January 27, 2005.

64. The Parker Property was transferred from the original vendor to PA on January 28, 2005. The Form A Transfer, which was executed on January 31, 2005 and registered electronically by the Respondent, stated the Parker Property had a market value of \$310,000 and was transferred from RA to PA for consideration of \$310,000.

65. The Respondent prepared and arranged a Form B Mortgage to be registered electronically on January 31, 2005 in the amount of \$367,087.73 in favour of Bank A against the Parker Property.

66. The Respondent prepared the Purchaser's Statement of Adjustments, showing that excess mortgage proceeds of \$40,371.94 after the Parker Property transaction completed were transferred to

another client file. He did not disclose the existence of these excess proceeds to his lender client Bank A.

67. The Respondent prepared and certified a Power of Attorney, which PA executed in favour of GF on January 28, 2005.

68. The Respondent did not obtain written instructions from his client PA to disburse the excess proceeds; he received verbal instructions from GF as to how to disburse them. He did not advise his lender client Bank A that he was disbursing excess proceeds to parties unrelated to the Parker Property transaction or that he was receiving instructions from someone other than PA to disburse the excess proceeds from this transaction.

69. The Respondent paid himself fees of \$3,500 on the transaction. His account dated January 29, 2005 stated that \$1,500 was his fee for the conveyance and mortgage and \$2,000 was his fee as " Real estate commission" . The Respondent did not act as a realtor on this transaction.

70. The Respondent prepared a final report to his purchaser client PA, but did not send it out. The original letter remained on the file.

71. The Respondent did not advise his lender client Bank A of the following relevant information regarding the Parker Property transaction:

- a) There was an initial contract of purchase and sale between the original vendor and the corporate assignor I Ltd. for \$310,000.
- b) There was a second contract of purchase and sale between the corporate assignor I Ltd. and PA, executed shortly after the initial contract for the significantly higher purchase price of \$398,900.
- c) The mortgage proceeds advanced to fund the transaction were for a greater amount than was needed to complete the initial contract.
- d) The Form A Transfer showed the Parker Property was transferred from the original vendor to PA and listed its market value and the consideration paid as \$310,000.
- e) The Property Transfer Tax Return prepared by the Respondent, executed by PA and filed by the Respondent, stated that the gross purchase price of the Parker Property was \$310,000 and its fair market value was \$310,000. It also stated that the amount of financing was \$309,000.

72. The Respondent did not provide written disclosure of the conflict issues arising in the Parker Property transaction to all of his clients and did not receive written instructions from each of his clients allowing him to act in conflict, contrary to Chapter 6, Rules 4 to 6 of the *Professional Conduct Handbook*.

73. This transaction was not a simple conveyance as defined in Appendix 3 of the *Professional Conduct Handbook*.

74. The Respondent now believes that PA and I Ltd. obtained mortgage financing from Bank A for the purchase of the Parker Property for more than its fair market value, thereby obtaining mortgage funds under false pretences. Although the Respondent had no involvement in the application for mortgage financing, by failing to advise Bank A of all the relevant information involving this transaction, he unwittingly assisted his other clients in obtaining mortgage funds under false pretences.

75. By failing to advise his lender client of material information relevant to the Parker Property transaction, the Respondent unwittingly preferred the interests of his other clients over those of his lender client. However, the Respondent says that he did not intend to do so and did not realize it at the time, and the Law Society does not dispute this.

Allegations 1(d), 3(c) and 4

76. On February 1, 2005, a Contract of Purchase and Sale was executed in which I Ltd. agreed to purchase property at [address] West Georgia Street, Vancouver (the " 1st Georgia Property") from the registered owner RA for \$425,000 with an unspecified deposit amount.

77. On February 1, 2005, a second Contract of Purchase and Sale for the 1st Georgia Property was executed, in which VT agreed to purchase it from I Ltd. for \$498,000, with a deposit of \$50,000.

78. In the 1st Georgia Property transaction, the Respondent acted for each of:

- a) the second purchaser VT, and
- b) the lender Bank A.

79. Bank A agreed to fund the 1st Georgia Property transaction with a mortgage to VT in the amount of \$458,284.50. Bank A retained the Respondent to act on its behalf.

80. The 1st Georgia Property was transferred from the original vendor to VT on February 10, 2005. The Respondent registered the Form A Transfer electronically on February 10, 2005. The transfer form stated the 1st Georgia Property had a market value of \$425,000 and was transferred from RA to VT for consideration of \$425,000.

81. The Respondent prepared and arranged a Form B Mortgage to be registered electronically on February 10, 2005 in the amount of \$458,284.50 in favour of Bank A against the 1st Georgia Property.

82. The Respondent prepared the Purchaser's Statement of Adjustments, showing that excess mortgage proceeds of \$13,442.20 remained in trust after the 1st Georgia Property transaction completed. He did not disclose the existence of these excess proceeds to his lender client Bank A. The Respondent charged \$1,500 in fees for the transaction.

83. The Respondent prepared and certified a Power of Attorney which VT executed in favour of GF on February 9, 2005.

84. The Respondent did not obtain written instructions from his client VT to disburse the excess proceeds; he received verbal instructions from GF as to how to disburse them. The Respondent transferred some of the excess proceeds to other client trust ledgers (W; WS). He did not advise his lender client Bank A that he was disbursing excess proceeds to parties unrelated to the 1st Georgia Property transaction or that he was receiving instructions from someone other than VT to disburse these excess proceeds. The Respondent recorded these payments on his Statement of Receipts and Disbursements (In & Out) for the file.

85. The Respondent prepared a final report to his purchaser client VT but did not send it out. The original letter remained on the file.

86. The Respondent did not advise his lender client Bank A of the following relevant information

regarding the 1st Georgia Property transaction:

- a) There was an initial contract of purchase and sale between the original vendor and the corporate assignor I Ltd. for \$425,000.
- b) There was a second contract of purchase and sale between the corporate assignor I Ltd. and VT, executed shortly after the initial contract for the significantly higher purchase price of \$498,000.
- c) The mortgage proceeds advanced to fund the transaction were for a greater amount than was needed to complete the initial contract.
- d) The Form A Transfer showed a transfer of the 1st Georgia Property from the original vendor to VT and stated the market value and the consideration paid as \$425,000.
- e) The Property Transfer Tax Return prepared by the Respondent, executed by VT and filed by the Respondent, stated that the gross purchase price of the 1st Georgia Property was \$425,000 and its fair market value was \$425,000. It also stated that the amount of financing was \$425,000.

87. The Respondent did not provide written disclosure of the conflict issues arising in this transaction to all of his clients and did not receive written instructions from each of his clients allowing him to act in conflict, contrary to Chapter 6, Rules 4 to 6 of the *Professional Conduct Handbook*.

88. The 1st Georgia Property transaction was not a simple conveyance as defined in Appendix 3 of the *Professional Conduct Handbook*.

89. The Respondent now believes that VT and I Ltd. obtained mortgage financing from Bank A for the purchase of the 1st Georgia Property for more than its fair market value, thereby obtaining mortgage funds under false pretences. Although the Respondent had no involvement in the application for mortgage financing, by failing to advise Bank A of all the relevant information involving this transaction, he unwittingly assisted his other clients in obtaining mortgage funds under false pretences.

90. By failing to advise his lender client of material information relevant to this transaction, the Respondent unwittingly preferred the interests of his other clients over those of his lender client. The Respondent says that he did not intend to do so and did not realize it at the time, and the Law Society does not dispute this.

Allegations 1(e), 3(c) and 4

91. On January 21, 2005, a Contract of Purchase and Sale was executed in which I Ltd. agreed to purchase property at [address] West Pender Street, Vancouver (the "Pender Property") from the registered owner LF for \$450,000 with no deposit amount.

92. On January 21, 2005, a second Contract of Purchase and Sale involving the Pender Property was executed in which AS agreed to purchase the Pender Property from I Ltd. for \$549,800, with a deposit of \$55,000 paid directly to I Ltd.

93. No realtors were involved in either of these two Contracts of Purchase and Sale of the Pender Property.

94. In this transaction, the Respondent acted for each of:

- a) the second purchaser AS, and
- b) the lender Bank A.

95. Bank A agreed to fund the Pender Property transaction with a mortgage to AS in the amount of \$505,953.45. Bank A retained the Respondent to act on its behalf on February 4, 2005.

96. A Power of Attorney was executed on September 20, 2004 by the initial vendor LF granting PS power of attorney with respect to the Pender Property transaction. At the relevant time PS was a principal of the corporate assignor I Ltd.

97. The Pender Property was transferred from the original vendor to AS on February 7, 2005. The Respondent registered the Form A Transfer electronically on February 7, 2005. The transfer form stated the Pender Property had a market value of \$450,000 and was transferred from LF by her lawful attorney PS to AS for consideration of \$450,000.

98. The Respondent prepared and arranged a Form B Mortgage to be executed by AS and registered electronically on February 7, 2005 in the amount of \$505,953.45 in favour of Bank A against the property.

99. The Respondent prepared the Purchaser's Statement of Adjustments, showing that excess mortgage proceeds of \$34,192.13 remained in trust after the Pender Property transaction completed. He did not disclose the existence of these excess proceeds to his lender client Bank A. The Respondent charged \$1,500 in legal fees for this transaction.

100. The Respondent did not obtain written instructions from his client AS to disburse the excess proceeds; he received verbal instructions from GF as to how to disburse them. The Respondent recorded these payments on his Statement of Receipts and Disbursements (In & Out) for the file. The Respondent disbursed the excess proceeds as follows:

- a) \$5,600 to T Co.;
- b) \$6,000 to M;
- c) \$35.32 transfer to another client file (W);
- d) \$5,500 to RC;
- e) \$7,000 to BB;
- f) \$5,000 to GB; and
- g) \$5,000 to GF.

101. The Respondent prepared a final report to his purchaser client AS but did not send it out. The original letter remained on the file.

102. The Respondent did not advise his lender client Bank A that he was disbursing excess proceeds to parties unrelated to the Pender Property transaction or that he was receiving instructions from someone other than AS to disburse these excess proceeds.

103. The Respondent did not advise his lender client Bank A of the following relevant information regarding the Pender Property transaction:

- a) There was an initial contract of purchase and sale between the original vendor and the corporate assignor I Ltd. for \$450,000.
- b) There was a second contract of purchase and sale between the corporate assignor I Ltd. and AS, executed the same day as the initial contract for the significantly higher purchase price of \$549,800.
- c) The mortgage proceeds advanced to fund this transaction were for a greater amount than was needed to complete the initial contract.
- d) The Form A Transfer showed a transfer from the original vendor to AS and listed the market value of the Pender Property and the consideration paid as \$450,000.
- e) The Property Transfer Tax Return prepared by the Respondent, executed by AS and filed electronically by the Respondent, stated that the gross purchase price was \$450,000 and the fair market value was \$450,000. It also stated that the amount of financing was \$400,000.

104. The Respondent did not provide written disclosure of the conflict issues arising in the Pender Property transaction to all of his clients and did not receive written instructions from each of his clients allowing him to act in conflict, contrary to Chapter 6, Rules 4 to 6 of the *Professional Conduct Handbook*. The Respondent did provide his purchaser client AS with a standard form letter. AS signed the letter on February 6, 2005, thereby consenting to and acknowledging the dual representation.

105. The Pender Property transaction was not a simple conveyance as defined in Appendix 3 of the *Professional Conduct Handbook*.

106. The Respondent now believes that AS and I Ltd. obtained mortgage financing from Bank A for the purchase of the Pender Property for more than its fair market value, thereby obtaining mortgage funds under false pretences. Although the Respondent had no involvement in the application for mortgage financing, by failing to advise Bank A of all the relevant information involving this transaction, he unwittingly assisted his other clients in obtaining mortgage funds under false pretences.

107. By failing to advise his lender client of material information relevant to the transaction, the Respondent unwittingly preferred the interests of his other clients over those of his lender client. However the Respondent says that he did not intend to do so and did not realize it at the time, and the Law Society does not dispute this.

Allegations 1(f), 3(c) and 4

108. On February 1, 2005, a Contract of Purchase and Sale was executed in which I Ltd. agreed to purchase property at [address] West Georgia Street, Vancouver (the " 2nd Georgia Property") from the registered owners VN and PL for \$405,000 with a deposit of \$5,000.

109. No realtors were involved in the Contract of Purchase and Sale with respect to the 2nd Georgia Property.

110. Shortly after the initial contract, a second Contract of Purchase and Sale was executed in which IP agreed to purchase the 2nd Georgia Property from I Ltd. for a significantly higher purchase price.

111. There was no second Contract of Purchase and Sale on the Respondent's file. However, the transaction completed as a sale from VN/PL to IP.

112. In the 2nd Georgia Property transaction, the Respondent acted for each of:

- a) the purchaser IP, and
- b) the lender Bank A.

113. LP acted for the vendors, VN/PL.

114. Bank A agreed to fund the 2nd Georgia Property transaction with a mortgage to IP in the amount of \$422,394.75. Bank A retained the Respondent to act on its behalf on February 14, 2005.

115. The Respondent prepared and certified a Power of Attorney that was executed on February 14, 2005 by IP granting GF power of attorney with respect to this transaction. At the relevant time GF was a principal of the corporate assignor I Ltd.

116. The 2nd Georgia Property was transferred from the original vendor to IP on February 15, 2005. The Respondent registered the Form A Transfer electronically on February 15, 2005. The transfer form stated the 2nd Georgia Property had a market value of \$405,000 and was transferred from VN and PL to IP for consideration of \$405,000.

117. The Respondent prepared and arranged a Form B Mortgage to be executed by IP and registered electronically on February 15, 2005 in the amount of \$422,394.75 in favour of Bank A against the 2nd Georgia Property.

118. The Respondent prepared the Purchaser's Statement of Adjustments, showing that excess mortgage proceeds of \$3,849.48 remained in trust after the 2nd Georgia Property transaction completed. He did not disclose the existence of these excess proceeds to his lender client Bank A. The Respondent charged \$1,500 in legal fees for this transaction.

119. The Respondent did not obtain written instructions from his client IP to disburse the excess proceeds; he received verbal instructions from GF as to how to disburse them. The Respondent disbursed these excess proceeds by transferring them to another client file (W). The Respondent recorded this payment on his Statement of Receipts and Disbursements (In & Out) for the file.

120. The Respondent did not advise his lender client Bank A that he was disbursing excess proceeds to parties unrelated to the 2nd Georgia Property transaction or that he was receiving instructions from someone other than IP to disburse excess proceeds from the transaction.

121. The Respondent prepared a final report to his purchaser client IP but did not send it out. The original letter remained on the file.

122. The Respondent did not advise his lender client Bank A of the following relevant information regarding the 2nd Georgia Property transaction:

- a) There was an initial contract of purchase and sale between the original vendor and the corporate assignor I Ltd. for \$405,000.
- b) There was a second contract of purchase and sale between I Ltd. and IP for a significantly higher purchase price.
- c) The mortgage proceeds advanced to fund the transaction were for a greater amount than was needed to complete the initial contract.

d) The Form A Transfer showed a transfer from the original vendor to IP and listed the market value and the consideration paid as \$405,000.

e) The Property Transfer Tax Return prepared by the Respondent, executed by IP and filed by the Respondent stated that the gross purchase price was \$405,000 and the fair market value was \$405,000. It also stated that the amount of financing was \$400,000.

f) IP executed a Power of Attorney in favour of GF, a principal of the corporate assignor.

123. The Respondent did not provide written disclosure of the conflict issues arising in this transaction to all of his clients and did not receive written instructions from each of his clients allowing him to act in conflict, contrary to Chapter 6, Rules 4 to 6 of the *Professional Conduct Handbook*. The Respondent provided his client IP with a standard form letter regarding his representation of both purchaser and lender. IP signed the letter on February 14, 2005, thereby confirming her consent and acknowledgement of the dual representation.

124. The 2nd Georgia Property transaction was not a simple conveyance as defined in Appendix 3 of the *Professional Conduct Handbook*.

125. The Respondent now believes that IP and I Ltd. obtained mortgage financing from Bank A for the purchase of the 2nd Georgia Property for more than its fair market value, thereby obtaining mortgage funds under false pretences.

126. Although the Respondent had no involvement in the application for mortgage financing, by failing to advise Bank A of all the relevant information involving the 2nd Georgia Property transaction, he unwittingly assisted his other clients in obtaining mortgage funds under false pretences.

127. By failing to advise his lender client of material information relevant to the transaction, the Respondent unwittingly preferred the interests of his other clients over those of his lender client. The Respondent says that he did not intend to do so and did not realize it at the time, and the Law Society does not dispute this.

Allegations 1(g), 3(c) and 4

128. On December 8, 2004, a Contract of Purchase and Sale was executed in which KL agreed to purchase property at [address] Pacific Street, Vancouver (the " Pacific Property") from the registered owner BZ for \$229,000 with a deposit of \$1,000.

129. On December 11, 2004, a second Contract of Purchase and Sale involving the Pacific Property was prepared by the Respondent with I Ltd. as vendor and a purchase price of \$275,000. There is no purchaser named and the contract is unsigned.

130. By addendum to the initial contract, on December 11, 2004, KL assigned the right to purchase the Pacific Property to I Ltd. The original Contract of Purchase and Sale was amended with KL's name crossed out and I Ltd.'s name inserted.

131. By further addendum, on December 11, 2004, I Ltd. then assigned the right to purchase the Pacific Property to JK. By further addendum, the deposit amount was increased to \$10,000 on December 20, 2004.

132. The realtor involved in the Contract of Purchase and Sale with respect to the Pacific Property was

NH, of S Realty, who acted as an agent for both the vendor and purchaser.

133. In the Pacific Property transaction, the Respondent acted for each of:

- a) the purchaser JK, and
- b) the lender Bank A.

134. Notary PL acted for the vendor, BZ.

135. Bank A agreed to fund this transaction with a mortgage to JK in the amount of \$253,068.75.

136. The Pacific Property was transferred from the original vendor BZ to JK. The Respondent registered the Form A Transfer electronically on January 24, 2005. The transfer form stated the Pacific Property had a market value of \$229,000 and was transferred from BZ to JK for consideration of \$229,000.

137. The Respondent prepared and arranged a Form B Mortgage to be executed by JK and registered electronically on January 24, 2005 in the amount of \$253,068.75 in favour of Bank A against the Pacific Property.

138. The Respondent prepared the Purchaser's Statement of Adjustments, showing that excess mortgage proceeds of \$3,231.06 remained in trust after the Pacific Property transaction completed. He did not disclose the existence of the excess proceeds to his lender client Bank A. The Respondent charged \$1,900.92 for legal fees, disbursements and taxes for the transaction.

139. The Respondent did not obtain written instructions from his client JK to disburse the excess proceeds; he received verbal instructions from GF as to how to disburse them. The Respondent disbursed the excess proceeds of \$3,231.06 by transferring some to another client file. Payments without written instructions were also made as follows:

- a) \$7,000 to JK;
- b) \$5,000 to GB; and
- c) \$10,000 to RS.

140. The Respondent prepared a final report to his purchaser client JK but did not send it out. The original letter remained on the file.

141. The Respondent did not advise his lender client Bank A that he was disbursing excess proceeds to parties unrelated to the Pacific Property transaction or that he was receiving instructions from someone other than JK to disburse these excess.

142. The Respondent did not advise his lender client Bank A of the following relevant information regarding the Pacific Property transaction:

- a) There was an initial contract of purchase and sale between KL and the original vendors.
- b) KL assigned the right to purchase to I Ltd., who assigned the right to purchase to JK.
- c) The second contract that was prepared (unsigned, no purchaser names) was for a significantly higher purchase price than the initial contract between KL and the original vendors.

d) A second contract of purchase and sale between JK and I Ltd. or KL was executed shortly after the initial contract for a significantly higher purchase price. The second contract was used to obtain mortgage financing.

e) The mortgage proceeds advanced to fund the transaction were for a greater amount than was needed to complete the initial contract.

f) The Form A Transfer showed a transfer from the original vendor to JK and listed the market value and the consideration paid as \$229,000.

g) The Property Transfer Tax Return prepared by the Respondent, executed by JK and filed by the Respondent stated that the gross purchase price was \$229,000 and the fair market value was \$229,000. It also stated that the amount of financing was \$224,000.

143. The Respondent did not provide written disclosure of the conflict issues arising in the Pacific Property transaction to all of his clients and did not receive written instructions from each of his clients allowing him to act in conflict, contrary to Chapter 6, Rules 4 to 6 of the *Professional Conduct Handbook*. The Respondent prepared a standard form letter for his client JK, but did not retain a signed copy in his file.

144. The Pacific Property transaction was not a simple conveyance as defined in Appendix 3 of the *Professional Conduct Handbook*.

145. The Respondent now believes that JK and I Ltd. obtained mortgage financing from Bank A for the purchase of the Pacific Property for more than its fair market value, thereby obtaining mortgage funds under false pretences.

146. Although the Respondent had no involvement in the application for mortgage financing, by failing to advise Bank A of all the relevant information involving this transaction, he unwittingly assisted his other clients in obtaining mortgage funds under false pretences.

147. By failing to advise his lender client of material information relevant to the Pacific Property transaction, the Respondent unwittingly preferred the interests of his other clients over those of his lender client, however the Respondent says that he did not intend to do so and did not realize it at the time, and the Law Society does not dispute this.

The Dunbar Properties

148. On February 14, 2005, a Contract of Purchase and Sale was executed in which Q Ltd. agreed to purchase strata lots #1 to 6 of [address] Dunbar Street, Vancouver (together, the "Dunbar Properties") from the registered owner RM (as principal of M Inc.) for \$2,598,000, with a deposit of \$10,000.

149. On February 28, 2005 by Addendum, the deposit was increased to \$40,000.

150. The realtor involved in the first Contract of Purchase and Sale with respect to the Dunbar Properties was NH, of S Realty. He acted as an agent for both the vendor and purchaser. RM, the vendor, was also a realtor involved in this transaction.

Allegations 1(h), 3(d) and 4

151. On February 14, 2005, a Contract of Purchase and Sale involving Unit [number] of the Dunbar Properties was executed in which FP agreed to purchase [address] Dunbar Street, Vancouver (the " 1st Dunbar Property") from Q Ltd. for \$438,000 with a \$44,000 deposit.

152. In this transaction, the Respondent acted for each of:

- a) the second purchaser FP, and
- b) the lender Bank A.

153. Bank A agreed to fund the 1st Dunbar Property transaction with a mortgage to FP in the amount of \$403,069.50. Bank A retained the Respondent to act on its behalf on March 3, 2005.

154. On March 3, 2005, the Respondent filed a Power of Attorney that had been executed in Saskatchewan on February 25, 2005 by the purchaser FP, which granted GF power of attorney with respect to this transaction.

155. The 1st Dunbar Property was transferred to FP. The Respondent registered the Form A Transfer in the Land Title Office on March 7, 2005. The transfer form stated the 1st Dunbar Property had a market value of \$337,740 and was transferred from M Inc. to FP for consideration of \$337,740.

156. The Respondent prepared and arranged a Form B Mortgage to be registered electronically on March 7, 2005 in the amount of \$403,069.50 in favour of Bank A against the 1st Dunbar Property.

157. The Respondent prepared the Purchaser's Statement of Adjustments, showing that excess mortgage proceeds of \$51,469.21 remained in trust after the 1st Dunbar Property transaction completed. He did not disclose the existence of these excess proceeds to his lender client Bank A. The Respondent charged legal fees of \$1,600 for this transaction.

158. The Respondent did not obtain written instructions from his client FP to disburse the excess proceeds; he received verbal instructions from GF or others as to how to disburse them. The Respondent disbursed the excess proceeds of \$51,469.21 by transferring them to another client file (#050306: Purchaser JH). The Respondent recorded this payment on his Statement of Receipts and Disbursements (In & Out) for the file. The Respondent charged a total of \$2,189.20 for fees and disbursements on this transaction.

159. The Respondent prepared a final report to his purchaser client FP, but did not send it out. The original letter remained on the file.

160. The Respondent did not advise his lender client Bank A that he was disbursing excess proceeds to parties unrelated to the 1st Dunbar Property transaction or that he was receiving instructions from someone other than FP to disburse excess proceeds from the transaction.

161. The Respondent did not advise his lender client Bank A of the following relevant information regarding the 1st Dunbar Property transaction:

- a) There was an initial contract of purchase and sale between the original vendor and the corporate assignor Q Ltd. for \$2,598,000 for the Dunbar Properties.
- b) There was a second contract of purchase and sale between the corporate assignor Q Ltd. and FP, executed the same day as the initial contract for the purchase price of \$438,000; for the 1st Dunbar Property.

- c) The mortgage proceeds advanced to fund the transactions for the Dunbar Properties were for a greater amount than was needed to complete the initial contract.
- d) The Form A Transfer showed a transfer from M Inc. to FP and listed the market value and the consideration paid as \$337,740.
- e) The Property Transfer Tax Return prepared by the Respondent and signed by GF was blank.
- f) FP executed a Power of Attorney in favour of GF.

162. The Respondent did not provide written disclosure of the conflict issues arising in the 1st Dunbar Property transaction to all of his clients and did not receive written instructions from each of his clients allowing him to act in conflict, contrary to Chapter 6, Rules 4 to 6 of the *Professional Conduct Handbook*.

163. The 1st Dunbar Property transaction was not a simple conveyance as defined in Appendix 3 of the *Professional Conduct Handbook*.

164. The Respondent now believes that FP and Q Ltd. obtained mortgage financing from Bank A for the purchase of 1st Dunbar Property for more than its fair market value, thereby obtaining mortgage funds under false pretences.

165. Although the Respondent had no involvement in the application for mortgage financing, by failing to advise Bank A of all the relevant information involving the 1st Dunbar Property transaction, he unwittingly assisted his other clients in obtaining mortgage funds under false pretences.

166. By failing to advise his lender client of material information relevant to the 1st Dunbar Property transaction, the Respondent unwittingly preferred the interests of his other clients over those of his lender client. The Respondent says that he did not intend to do so and did not realize it at the time, and the Law Society does not dispute this.

Allegation 1(i), 3(d) and 4

167. On February 14, 2005, a Contract of Purchase and Sale involving Unit [number] of the Dunbar Properties was executed, in which LP agreed to purchase [address] Dunbar Street, Vancouver (the "2nd Dunbar Property") from Q Ltd. for \$489,000 with a \$49,000 deposit.

168. In this transaction, the Respondent acted for each of:

- a) the second purchaser LP, and
- b) the lender Bank A.

169. Bank A agreed to fund this transaction with a mortgage to LP in the amount of \$450,002.25. Bank A retained the Respondent to act on its behalf on March 1, 2005.

170. The Respondent prepared a Power of Attorney that was executed on March 2, 2005 by the purchaser LP granting GF power of attorney with respect to the 2nd Dunbar Property transaction.

171. The 2nd Dunbar Property was transferred to LP on March 7, 2005. The Respondent registered the Form A Transfer electronically on March 7, 2005. The Form A Transfer stated the 2nd Dunbar Property

had a market value of \$389,700 and was transferred from M Inc. to LP for consideration of \$389,700.

172. The Respondent prepared and arranged a Form B Mortgage to be registered electronically on March 7, 2005 in the amount of \$450,002.25 in favour of Bank A against the 2nd Dunbar Property.

173. The Respondent prepared the Purchaser's Statement of Adjustments, showing that excess mortgage proceeds of \$44,640.33 remained in trust after the 2nd Dunbar Property transaction completed. He did not disclose the existence of these excess proceeds to his lender client Bank A. The Respondent charged legal fees of \$1,600 for this transaction.

174. The Respondent did not obtain written instructions from his client LP to disburse the excess proceeds; he received verbal instructions from GF as to how to disburse them. The Respondent disbursed the excess proceeds of \$44,640.33 by transferring them to another client file (#050306: Purchaser JH) which the Respondent recorded on his Statement of Receipts and Disbursements (In & Out) for the file.

175. The Respondent billed his purchaser client \$2,189.20 for fees and disbursements for this transaction.

176. The Respondent prepared a final report to his purchaser client LP, but did not send it out. The original letter remained on the file.

177. The Respondent did not advise his lender client Bank A that he was disbursing excess proceeds to parties unrelated to the 2nd Dunbar Property transaction or that he was receiving instructions from someone other than LP to disburse excess proceeds from this transaction.

178. The Respondent did not advise his lender client Bank A of the following relevant information regarding the 2nd Dunbar Property transaction:

a) There was an initial contract of purchase and sale between the original vendor and the corporate assignor Q Ltd. for \$2,598,000 for the Dunbar Properties.

b) There was a second contract of purchase and sale between the corporate assignor Q Ltd. and LP executed the same day as the initial contract for 2nd Dunbar Property for a purchase price of \$489,000.

c) The mortgage proceeds advanced to fund the Dunbar Property transactions were for a greater amount than was needed to complete the initial contract;

d) The Form A Transfer showed a transfer from M Inc. to LP and listed the market value and the consideration paid as \$389,700.

e) The Property Transfer Tax Return prepared by the Respondent, executed by LP and filed by the Respondent, stated that the gross purchase price was \$389,700 and the fair market value was \$389,700. It also stated that the amount of financing was \$345,700.

f) LP executed a Power of Attorney in favour of GF.

179. The Respondent did not provide written disclosure of the conflict issues arising in the 2nd Dunbar Property transaction to all of his clients and did not receive written instructions from each of his clients allowing him to act in conflict, contrary to Chapter 6, Rules 4 to 6 of the *Professional Conduct Handbook*. The Respondent prepared a standard form letter for his purchaser client LP regarding the

joint representation. The letter is undated and the consent and acknowledgement was signed by GF.

180. The 2nd Dunbar Property transaction was not a simple conveyance as defined in Appendix 3 of the *Professional Conduct Handbook*.

181. The Respondent now believes that LP and Q Ltd. obtained mortgage financing from Bank A for the purchase of the 2nd Dunbar Property for more than its fair market value, thereby obtaining mortgage funds under false pretences.

182. Although the Respondent had no involvement in the application for mortgage financing, by failing to advise Bank A of all the relevant information involving this transaction, he unwittingly assisted his other clients in obtaining mortgage funds under false pretences.

183. By failing to advise his lender client of material information relevant to the 2nd Dunbar Property transaction, the Respondent unwittingly preferred the interests of his other clients over those of his lender client. The Respondent says that he did not intend to do so and did not realize it at the time, and the Law Society does not dispute this.

Allegations 1(j), 3(d) and 4

184. On February 14, 2005, a Contract of Purchase and Sale involving Unit [number] of the Dunbar Properties was executed in which MF agreed to purchase [address] Dunbar Street, Vancouver (the "3rd Dunbar Property") from Q Ltd. for \$438,000 with a \$44,000 deposit.

185. In this transaction, the Respondent acted for each of:

- a) the second purchaser MF, and
- b) the lender Bank A.

186. Bank A agreed to fund the 3rd Dunbar Property transaction with a mortgage to MF in the amount of \$403,069.50. Bank A retained the Respondent to act on its behalf on March 3, 2005.

187. A Power of Attorney was executed on March 1, 2005 by which the purchaser MF granted GF power of attorney with respect to the 3rd Dunbar Property transaction. The Respondent caused that Power of Attorney to be filed on March 3, 2005.

188. The 3rd Dunbar Property was transferred to MF on March 7, 2005. The Respondent registered the Form A Transfer electronically on March 7, 2005. The Form A Transfer stated the 3rd Dunbar Property had a market value of \$363,720 and was transferred from M Properties Inc. to MF for consideration of \$363,720.

189. The Respondent prepared and arranged a Form B Mortgage to be registered electronically on March 7, 2005 in the amount of \$403,069.50 in favour of Bank A against the 3rd Dunbar Property.

190. The Respondent prepared the Purchaser's Statement of Adjustments, showing that excess mortgage proceeds of \$24,962.76 remained in trust after the 3rd Dunbar Property transaction completed. He did not disclose the existence of these excess proceeds to his lender client Bank A.

191. The Respondent did not obtain written instructions from his client MF to disburse the excess proceeds; he received verbal instructions from GF or others as to how to disburse them. The Respondent disbursed the excess proceeds of \$24,962.76 by transferring them to another client file

(#050306: Purchaser JH), which the Respondent recorded on his Statement of Receipts and Disbursements (In & Out) for the file. The Respondent charged \$1,600 in legal fees for this transaction.

192. The Respondent prepared a final report to his purchaser client MF, but did not send it out. The original letter remained on the file.

193. The Respondent did not advise his lender client Bank A that he was disbursing excess proceeds to parties unrelated to the 3rd Dunbar Property transaction or that he was receiving instructions from someone other than MF to disburse these excess proceeds.

194. The Respondent did not advise his lender client Bank A of the following relevant information regarding the 3rd Dunbar Property transaction:

- a) There was an initial contract of purchase and sale between the original vendor and the corporate assignor Q Ltd. for \$2,598,000 for the Dunbar Properties.
- b) There was a second contract of purchase and sale between the corporate assignor Q Ltd. and MF, executed the same day as the initial contract for the 3rd Dunbar Property with a purchase price of \$438,000.
- c) The mortgage proceeds advanced to fund the transactions for the Dunbar Properties were for a greater amount than was needed to complete the initial contract.
- d) The Form A Transfer showed a transfer from M Properties Inc. to MF and listed the market value of the 3rd Dunbar Property and the consideration paid as \$363,720.
- e) The Property Transfer Tax Return prepared by the Respondent and signed by GF was blank.
- f) MF executed a Power of Attorney in favour of GF.

195. The Respondent did not provide written disclosure of the conflict issues arising in the 3rd Dunbar Property transaction to all of his clients and did not receive written instructions from each of his clients allowing him to act in conflict, contrary to Chapter 6, Rules 4 to 6 of the *Professional Conduct Handbook*. The Respondent prepared a standard form letter for his purchaser client MF regarding the joint representation of purchaser and lender. It is not dated and the consent and acknowledgement was signed by GF.

196. The 3rd Dunbar Property transaction was not a simple conveyance as defined in Appendix 3 of the *Professional Conduct Handbook*.

197. The Respondent now believes that MF and Q Ltd. obtained mortgage financing from Bank A for the purchase of the 3rd Dunbar Property for more than its fair market value, thereby obtaining mortgage funds under false pretences.

198. Although the Respondent had no involvement in the application for mortgage financing, by failing to advise Bank A of all the relevant information involving the 3rd Dunbar Property transaction, he unwittingly assisted his other clients in obtaining mortgage funds under false pretences.

199. By failing to advise his lender client of material information relevant to this transaction, the Respondent unwittingly preferred the interests of his other clients over those of his lender client. The

Respondent says that he did not intend to do so and did not realize it at the time, and the Law Society does not dispute this.

Allegations 1(k), 3(d) and 4

200. On February 14, 2005, a Contract of Purchase and Sale involving Unit [number] of the Dunbar Properties was executed in which AP agreed to purchase [address] Dunbar Street, Vancouver (the "4th Dunbar Property") from Q Ltd. for \$489,000 with a \$49,000 deposit.

201. In this transaction, the Respondent acted for each of:

- a) the second purchaser AP, and
- b) the lender Bank A.

202. Bank A agreed to fund the transaction with a mortgage to AP in the amount of \$450,002.25. Bank A retained the Respondent on March 1, 2005.

203. The Respondent prepared a Power of Attorney that was executed on March 1, 2005 by the purchaser AP, granting GF power of attorney with respect to the transaction.

204. The 4th Dunbar Property was transferred to AP on March 7, 2005. The Respondent registered the Form A Transfer electronically on March 7, 2005. The Form A Transfer stated the 4th Dunbar Property had a market value of \$389,700 and was transferred from M Properties Inc. to AP for consideration of \$389,700.

205. The Respondent prepared and arranged a Form B Mortgage to be registered electronically on March 7, 2005 in the amount of \$450,002.25 in favour of Bank A against the 4th Dunbar Property.

206. The Respondent prepared the Purchaser's Statement of Adjustments, showing that excess mortgage proceeds of \$44,809.14 remained in trust after the 4th Dunbar Property transaction completed. He did not disclose the existence of these excess proceeds to his lender client Bank A. The Respondent charged \$1,600 in legal fees for this transaction.

207. The Respondent did not obtain written instructions from his client AP to disburse the excess proceeds; he received verbal instructions from GF as to how to disburse them. The Respondent disbursed the excess proceeds of \$44,809.14 by transferring them to another client file (#050306: Purchaser JH), which the Respondent recorded on his Statement of Receipts and Disbursements (In & Out) for the file.

208. The Respondent billed his purchaser client AP \$1,600 for fees plus disbursements totalling \$2,189.20.

209. The Respondent prepared a final report to his purchaser client AP, but did not send it out. The original letter remained on the file.

210. The Respondent did not advise his lender client Bank A that he was disbursing excess proceeds to parties unrelated to the 4th Dunbar Property transaction or that he was receiving instructions from someone other than AP to disburse these excess proceeds.

211. The Respondent did not advise his lender client Bank A of the following relevant information

regarding the 4th Dunbar Property transaction:

- a) There was an initial contract of purchase and sale between the original vendor and the corporate assignor Q Ltd. for \$2,598,000 for the Dunbar Properties.
- b) There was a second contract of purchase and sale between the corporate assignor Q Ltd. and AP executed the same day as the initial contract for the 4th Dunbar Property for the purchase price of \$489,000.
- c) The mortgage proceeds advanced to fund the transactions for the Dunbar Properties were for a greater amount than was needed to complete the initial contract.
- d) The Form A Transfer showed a transfer from M Properties Inc. to AP and listed the market value and the consideration paid as \$389,700.
- e) The Property Transfer Tax Return prepared by the Respondent and signed by AP was blank.
- f) AP executed a Power of Attorney in favour of GF.

212. The Respondent did not provide written disclosure of the conflict issues arising in the 4th Dunbar Property transaction to all of his clients and did not receive written instructions from each of his clients allowing him to act in conflict, contrary to Chapter 6, Rules 4 to 6 of the *Professional Conduct Handbook*. The Respondent prepared a standard form letter for his purchaser client AP regarding the joint representation of purchaser and lender. It is not dated and the consent and acknowledgement was signed by GF.

213. The 4th Dunbar Property transaction was not a simple conveyance as defined in Appendix 3 of the *Professional Conduct Handbook*.

214. The Respondent now believes that AP and Q Ltd. obtained mortgage financing from Bank A for the purchase of the 4th Dunbar Property for more than its fair market value, thereby obtaining mortgage funds under false pretences.

215. Although the Respondent had no involvement in the application for mortgage financing, by failing to advise Bank A of all the relevant information involving the 4th Dunbar Property transaction, he unwittingly assisted his other clients in obtaining mortgage funds under false pretences.

216. By failing to advise his lender client of material information relevant to the transaction, the Respondent unwittingly preferred the interests of his other clients over those of his lender client. The Respondent says that he did not intend to do so and did not realize it at the time, and the Law Society does not dispute this.

Allegations 1(l), 3(d), 4 and 7

217. On February 14, 2005, a Contract of Purchase and Sale involving Unit [number] of the Dunbar Properties was executed in which JH agreed to purchase [address] Dunbar Street, Vancouver (the " 5th Dunbar Property") from Q Ltd. for \$750,000 with a \$75,000 deposit.

218. In this transaction, the Respondent acted for each of:

- a) the second purchaser JH, and

b) the lender Bank A.

219. Bank A agreed to fund the transaction with a mortgage to JH in the amount of \$561,352.50. Bank A retained the Respondent to act on its behalf on March 7, 2005.

220. The Respondent prepared a Power of Attorney that was executed on March 1, 2005 by the purchaser JH granting GF power of attorney with respect to this transaction. The Respondent caused that Power of Attorney to be filed on March 3, 2005.

221. On March 7, 2005, the Respondent caused \$548,835 to be deposited into his trust account to the credit of his client JH. Those funds were advanced from the lender Bank A to fund the 5th Dunbar Property transaction. In addition to those funds, on March 7, 2005, the Respondent transferred \$223,308.49 from other client trust ledgers to the credit of JH.

222. The 5th Dunbar Property was transferred from the original vendor to JH on March 7, 2005. The Respondent registered the Form A Transfer electronically on March 7, 2005. The Form A Transfer stated the 5th Dunbar Property had a market value of \$597,540 and was transferred from RM to JH for consideration of \$597,540.

223. The Respondent prepared and arranged a Form B Mortgage to be registered electronically on March 9, 2005 in the amount of \$561,352.50 in favour of Bank A against the 5th Dunbar Property. The Form B was executed by JH's power of attorney, GF.

224. The Respondent prepared the Purchaser's Statement of Adjustments, showing that an additional \$17,204.04 was required to complete the 5th Dunbar Property transaction.

225. The Respondent did not obtain written instructions from his client JH to disburse the excess proceeds; he received verbal instructions from GF as to how to disburse them. The Respondent disbursed the excess proceeds from the 5th Dunbar Property transaction by transferring them to another client file, or by disbursing the funds to other unrelated parties.

226. The excess proceeds from this transaction and the other Dunbar properties were disbursed as follows:

- a) \$10,000 to IK;
- b) \$90,000 to [trust company];
- c) \$5,200 to LP;
- d) \$5,200 to MI;
- e) \$7,000 to AP;
- f) \$3,600 to GW;
- g) \$15,000 to RR;
- h) \$7,000 to FP;
- i) \$15,000 to MC;

- j) \$9,000 to [realty company];

- k) \$30,000 to GF; and
- l) \$2,000 to Richard Nielsen (cheque not processed)
- m) \$7,104.25 to file 050206 (W).

227. The Respondent prepared a final report to his purchaser client JH, but did not send it out. The original letter remained on the file.

228. The Respondent prepared a Statement of Account dated March 7, 2005, in which he charged \$1,600 in fees, plus disbursements, for a total of \$2,189.20.

229. The Respondent did not advise his lender client Bank A that he was disbursing excess proceeds to parties unrelated to the 5th Dunbar Property transaction or that he was receiving instructions from someone other than JH to disburse these excess proceeds.

230. The Respondent did not advise his lender client Bank A of the following relevant information regarding the 5th Dunbar Property transaction:

- a) There was an initial contract of purchase and sale between the original vendor and the corporate assignor Q Ltd. for \$2,598,000 for the Dunbar Properties.
- b) On the same day, there was a second contract of purchase and sale executed between the corporate assignor Q Ltd. and JH for the 5th Dunbar Property for the purchase price of \$750,000.
- c) The mortgage proceeds advanced to fund the transactions for the Dunbar Properties were for a greater amount than was needed to complete the initial contract.
- d) The Form A Transfer showed a transfer from the original vendor to JH and listed the market value and the consideration paid as \$597,540.
- e) The Property Transfer Tax Return prepared by the Respondent and signed by GF was blank.
- f) JH executed a Power of Attorney in favour of GF.

231. The Respondent did not provide written disclosure of the conflict issues arising in the 5th Dunbar Property transaction to all of his clients and did not receive written instructions from each of his clients allowing him to act in conflict, contrary to Chapter 6, Rules 4 to 6 of the *Professional Conduct Handbook*. The Respondent prepared a standard form letter for his purchaser client JH regarding the joint representation of purchaser and lender. It is not dated and the consent and acknowledgement was signed by GF.

232. The 5th Dunbar Property transaction was not a simple conveyance as defined in Appendix 3 of the *Professional Conduct Handbook*.

233. The Respondent now believes that JH and Q Ltd. obtained mortgage financing from Bank A for the purchase of the 5th Dunbar Property for more than its fair market value, thereby obtaining mortgage funds under false pretences.

234. Although the Respondent had no involvement in the application for mortgage financing, by failing to advise Bank A of all the relevant information involving this transaction, he unwittingly assisted his other clients in obtaining mortgage funds under false pretences.

235. By failing to advise his lender client of material information relevant to the 5th Dunbar Property transaction, the Respondent unwittingly preferred the interests of his other clients over those of his lender client, however the Respondent says that he did not intend to do so and did not realize it at the time, and the Law Society does not dispute this.

Allegation 7: Unauthorized Trust Cheque

236. After the Respondent paid the vendor and paid other necessary disbursements on the 5th Dunbar Property transaction, including his account for \$2,189.50 for fees and disbursements, there were excess funds in trust to the credit of JH.

237. The Respondent wrote a cheque payable to himself on March 7, 2005 for \$2,000 (the " JH Bonus cheque"). At March 31, 2005, the Respondent had not removed the cheque from his chequebook, but he had recorded the amount in the trust ledger for this client as a bonus of \$1,754.38, plus GST and PST.

238. The Respondent had not prepared a bill to support the authorization of the withdrawal of trust funds for fees prior to writing the JH Bonus cheque. He did not have the written authorization of the client or his lawful representative to withdraw those funds from trust prior to writing the JH Bonus cheque. The Respondent received verbal instructions from GF to write the JH Bonus cheque. The Respondent admits that he breached Rule 3-56(1) and 3-57(2) when he wrote the JH Bonus cheque. The Respondent says he subsequently decided not to cash the JH Bonus Cheque as he concluded that it was inappropriate to do so. He recorded the amount of the cheque in his trust ledger because he believed that this was required to comply with the Law Society Rules. He did not prepare an invoice as he did not consider it necessary to do so given the fact that he decided not to cash the cheque. The Law Society does not dispute this evidence.

Allegations 2, 3(d) and 4

239. On February 14, 2005, a Contract of Purchase and Sale involving Unit [number] of the Dunbar Properties was executed in which MI agreed to purchase [address] Dunbar Street, Vancouver (the " 6th Dunbar Property") from Q Ltd. for \$650,000 with a \$65,000 deposit.

240. In this transaction, the Respondent acted for each of:

- a) the second purchaser MI, and
- b) the lender Bank B.

241. Bank B agreed to fund the 6th Dunbar Property transaction with a mortgage to MI in the amount of \$598,162.50.

242. The Respondent prepared a Power of Attorney that was executed on March 2, 2005 by the purchaser MI granting GF power of attorney with respect to this transaction.

243. The 6th Dunbar Property was transferred to MI on March 7, 2005. The Respondent registered the Form A Transfer electronically on March 7, 2005. The Form A Transfer stated the 6th Dunbar Property had a market value of \$519,600 and was transferred from M Inc. to MI for consideration of \$519,600.

244. The Respondent prepared and arranged a Form B Mortgage to be registered electronically on March 7, 2005 in the amount of \$598,162.50 in favour of Bank B against the 6th Dunbar Property.

245. The Respondent prepared an incomplete Purchaser's Statement of Adjustments showing that excess mortgage proceeds would remain in trust after the 6th Dunbar Property transaction completed. He did not disclose the existence of these excess proceeds to his lender client Bank B.

246. The Respondent did not obtain written instructions from his client MI to disburse these excess proceeds; he received verbal instructions from GF as to how to disburse them. The Respondent disbursed the excess proceeds of \$57,427.05 by transferring them to another client file (#050306: Purchaser JH), which the Respondent recorded on his Statement of Receipts and Disbursements (In & Out) for the file.

247. The Respondent prepared a Statement of Account on March 3, 2005. He charged \$1,600 in fees for this transaction.

248. The Respondent prepared a final report to his purchaser client MI, but did not send it out. The original letter remained on the file.

249. The Respondent did not advise his lender client Bank B that he was disbursing excess proceeds to parties unrelated to the 6th Dunbar Property transaction or that he was receiving instructions from someone other than MI to disburse these excess proceeds.

250. The Respondent did not advise his lender client Bank B of the following relevant information regarding the 6th Dunbar Property transaction:

- a) There was an initial contract of purchase and sale between the original vendor and the corporate assignor Q Ltd. for \$2,598,000 for the Dunbar Properties.
- b) There was a second contract of purchase and sale between the corporate assignor Q Ltd. and MI, executed the same day as the initial contract for the purchase of the 6th Dunbar Property for the purchase price of \$650,000.
- c) The mortgage proceeds advanced to fund the transactions for the Dunbar Properties were for a greater amount than was needed to complete the initial contract.
- d) The Form A Transfer showed a transfer from M Inc. to MI and listed the market value of the 6th Dunbar Property and the consideration paid as \$519,600.
- e) The Property Transfer Tax Return prepared by the Respondent, executed by MI and filed by the Respondent stated that the gross purchase price was \$519,600 and the fair market value was \$519,600. It also stated that the amount of financing was \$454,600.
- f) MI executed a Power of Attorney in favour of GF.

251. The Respondent did not provide written disclosure of the conflict issues arising in the 6th Dunbar Property transaction to all of his clients and did not receive written instructions from each of his clients allowing him to act in conflict, contrary to Chapter 6, Rules 4 to 6 of the *Professional Conduct Handbook*.

252. The 6th Dunbar Property transaction was not a simple conveyance as defined in Appendix 3 of the *Professional Conduct Handbook*.

253. The Respondent now believes that MI and Q Ltd. obtained mortgage financing from Bank B for the purchase of the 6th Dunbar Property for more than its fair market value, thereby obtaining mortgage funds under false pretences.

254. Although the Respondent had no involvement in the application for mortgage financing, by failing to advise Bank B of all the relevant information involving this transaction, he unwittingly assisted his other clients in obtaining mortgage funds under false pretences.

255. By failing to advise his lender client of material information relevant to the 6th Dunbar Property transaction, the Respondent unwittingly preferred the interests of his other clients over those of his lender client, however the Respondent says that he did not intend to do so and did not realize it at the time, and the Law Society does not dispute this.

Allegations 3(a) and 4

256. On January 18, 2005, a Contract of Purchase and Sale was executed in which FS agreed to purchase property at [address] Cambie Street, Vancouver (the "Cambie Property") from the registered owner AM for \$348,000 with a deposit of \$5,000.

257. The realtor involved in the Contract of Purchase and Sale with respect to the Cambie Property was EC, of Apex International Services Ltd.

258. In this transaction, the Respondent acted for each of:

- a) the vendor AM,
- b) the purchaser FS, and
- c) the lender Bank A.

259. Bank A agreed to fund the Cambie Property transaction with a mortgage to FS in the amount of \$320,247. Bank A retained the Respondent to act on its behalf on January 26, 2005.

260. AM had purchased the Cambie Property from DP and CW on August 17, 2004 for \$268,000. Several days prior to that sale, on August 14, 2004, AM executed a Power of Attorney granting MF power of attorney. The Respondent caused that document to be filed on January 25, 2005.

261. MF, as attorney for AM, executed the Contract of Purchase and Sale dated January 18, 2005.

262. The Respondent prepared a Power of Attorney that was executed on January 26, 2005 by the purchaser FS, granting GF power of attorney with respect to the Cambie Property transaction.

263. The Cambie Property was transferred from the original vendor to FS on January 26, 2005. The Form A Transfer which was registered in the Land Title Office showed a transfer of the Cambie Property from AM to FS for consideration of \$348,000 and a market value of \$348,000.

264. The Respondent prepared and arranged to be registered a Form B Mortgage in the amount of \$320,247 in favour of Bank A against the Cambie Property.

265. The Respondent prepared the Purchaser's Statement of Adjustments and the Vendor's Statement of Adjustments, both showing that there was a credit from vendor to purchaser in the amount of \$37,455.17 to complete the Cambie Property transaction.

266. The credit of \$37,455.17 from the vendor to the purchaser was not contemplated in the contract and purchase and sale, and was not disclosed to the Respondent's lender client Bank A.

267. The Respondent prepared an account and charged his purchaser client \$1,300 for fees plus disbursements.

268. The Respondent prepared a Statement of Disbursement of Proceeds which showed net sale proceeds of \$301,700 plus \$3,231.06 transferred from another file. With the sale proceeds, the Respondent paid his fees of \$500 plus disbursements and two mortgages on title to the Cambie Property, and also made the following payments:

- a) \$330.60 to C Ltd.;
- b) \$7,000 to FS;
- c) \$30,000 to HS;
- d) \$5,000 to R Realty in Trust;
- e) \$5,200 to NS;
- f) \$4,800 to RC;
- g) \$10,000 to SK;
- h) \$3,035.56 to RP; and
- i) \$8,391.33 transfer to another file.

269. The Respondent prepared an account and charged his vendor client \$500 for fees plus disbursements totalling \$786.81.

270. The Respondent did not obtain written instructions from either his client FS or AM to disburse the excess proceeds; he received verbal instructions from GF or others as to how to disburse them.

271. The Respondent did not advise his lender client Bank A that he was disbursing these excess proceeds to parties unrelated to the Cambie Property transaction or that he was receiving instructions from someone other than FS or AM to disburse them.

272. The Respondent did not advise his lender client Bank A of the following relevant information regarding the Cambie Property transaction:

- a) There was an initial sale of the property to AM for \$268,000.
- b) There was a second sale between AM and FS for a significantly higher purchase price.
- c) AM executed a Power of Attorney in favour of MF, prior to the first sale. MF signed the documents for the second sale.
- d) FS executed a Power of Attorney in favour of GF.
- e) There was a credit back from the vendor to the purchaser to complete the transaction.

273. The Respondent did not provide written disclosure of the conflict issues arising in the Cambie

Property transaction to all of his clients and did not receive written instructions from each of his clients allowing him to act in conflict, contrary to Chapter 6, Rules 4 to 6 of the *Professional Conduct Handbook*.

274. The Cambie Property transaction was not a simple conveyance as defined in Appendix 3 of the *Professional Conduct Handbook*.

275. By failing to advise his lender client of material information relevant to the Cambie Property transaction, the Respondent unwittingly preferred the interests of his other clients over those of his lender client. However the Respondent says that he did not intend to do so and did not realize it at the time and the Law Society does not dispute this.

Allegation 4: Failure to Provide Quality of Service

276. For each of the 14 real estate transactions set out in this Statement of Agreed Facts, the Respondent admits that he:

a) failed to advise his lender client of material facts, contrary to Chapter 1, Rule 3 (2) of the *Professional Conduct Handbook*;

b) failed to acquire and maintain sufficient knowledge and skill to represent his client's interests effectively, contrary to Chapter 3, Rule 1 of the *Professional Conduct Handbook*; and

c) failed to serve his client in a conscientious, diligent and efficient manner so as to provide a quality of service at least equal to that which would be expected of a competent lawyer in a similar situation, and in particular he failed to disclose all relevant information to his client, contrary to Chapter 3, Rule 3 of the *Professional Conduct Handbook*.

Allegation 8: Failure to Maintain Books and Records

277. Pursuant to the Investigation Order, Mr. Kinsey, CA investigated the books, records and accounts of the Respondent. He produced an audit report dated April 26, 2005 (the "Audit Report").

278. The Respondent admits that Mr. Kinsey is qualified to give expert opinion evidence about law practice accounting and compliance with Division 3, Part 7 of the Law Society Rules.

279. The Audit Report contains Mr. Kinsey's opinion about the state of the Respondent's books, records and accounts and the Respondent admits the opinion as fact and admits those facts set out in the Audit Report that support that opinion.

280. Appendix F of the Audit Report sets out the apparent violations of Law Society Rules observed by Mr. Kinsey. The Respondent admits that he failed to maintain his books, records and accounts in accordance with Part 3, Division 7 of the Law Society Rules, and in particular, he admits that he breached the following rules as set out in paragraphs 281 to 289.

281. The Respondent made payments from trust funds when trust accounting records were not current, contrary to Rule 3-56(1.2) of the Law Society Rules, when he made such payments from his trust account between August 2004 and May 2005 despite the fact that trust accounts had not been reconciled since August 2004.

282. The Respondent failed to properly record all funds received and disbursed in connection with his law practice by maintaining the records required under Part 3, Division 7 of the Law Society Rules, contrary to Rule 3-59(1) of the Law Society Rules.

283. The Respondent failed to maintain a central source for trust ledger sheets or equivalent documents, thereby failing to record transactions in books, records and accounts in a chronological and in an easily traceable form, contrary to Rule 3-59(3) of the Law Society Rules.

284. The Respondent failed to maintain a trust account data source or book of entry to record the source of funds received, the identity of the client on whose behalf the funds were received or disbursed and the name of each recipient of funds paid out of trust, contrary to Rule 3-60(a) of the Law Society Rules when he kept trust cash books that did not identify the names of the accounts for which funds were received or paid out, that failed to identify the source of deposits or to which client file the deposit related, and when he did not identify property purchase tax bank withdrawals in his accounting records.

285. The Respondent failed to maintain a trust transfer journal to record, explain the purpose of and confirm lawyer authorization of transfers of funds between client trust ledgers, contrary to Rule 3-60(c) of the Law Society Rules when he transferred funds between clients on multiple occasions but did not prepare a trust transfer journal.

286. The Respondent failed to reconcile trust records from August 2004 to March 2005, contrary to Rule 3-60(d), and Rule 3-65(1), (2), and (4) of the Law Society Rules.

287. The Respondent failed to maintain adequate general account books, contrary to Rule 3-61(1) of the Law Society Rules when he kept general account books that were incomplete and not totalled, failed to record billing details on all ledger sheets, and failed to maintain an accounts receivable ledger or other suitable system.

288. The Respondent failed to keep file copies of all bills delivered to clients or persons charged in chronological, alphabetical or numerical order, contrary to Rule 3-62(1) of the Law Society Rules when he failed to maintain a billings file after January 21, 2005.

289. The Respondent failed to total his cashbooks and record trust transactions within the applicable time limits, contrary to Rule 3-63(1) of the Law Society Rules when he failed to total his cashbooks from October 2004 to March 2005, and when he recorded numerous trust transfers much more than seven days after the transaction.

Allegation 5: Trust Shortage of \$2,500 from June to December, 2004

290. In May 2004, \$2,900 was transferred from the Respondent's trust account to his general account. The Respondent admits that he was aware of the transfer in June 2004 and recorded it in his records. The Respondent has not provided an explanation as to how the transfer occurred in the first place.

291. The Respondent did not reconcile his trust accounting records between June 2004 and November 2004.

292. Bank C reversed the \$2,900 transfer by transferring that amount from the Respondent's general account to his trust account on December 3, 2004.

293. The Respondent admits that he allowed a trust shortage of over \$2,500 to continue from June

2004 to December 2004 without correcting it and without making an immediate report of the trust shortage to the Executive Director when he became aware of it, contrary to Rule 3-55 of the Law Society Rules.

294. The following additional facts relate to the contraventions regarding accounting rules and trust shortage.

295. From mid 2004 to mid- March 2005 the Respondent was very busy, and he was trying to balance his practice between working in Langley in the day as a signing officer for F Ltd. and working on top of these hours on his conveyance files. Typically these files were the ones involving Q Ltd. and the Respondent was receiving the bank instructions late in the process and had to have all the documents completed quickly to ensure the transactions would complete by the closing date.

296. As the Respondent tried to prepare all the necessary documents, and meet the requirements to complete the transactions in a timely manner he was overwhelmed with the amount of work he had undertaken. He had no support staff and was doing all the administrative work and conveyance work on top of his regular law practice. In addition, he also had family commitments that required his time and attention. Consequently, the Respondent fell behind in his file management and during this period he did not perform the administrative aspect of " closing" the files by organizing the file contents and preparing the client ledger sheets.

297. In some of the files the Respondent included computer printouts of the cheques and deposits for the accounts. The Respondent intended to use them to complete the client ledger sheets. The Respondent also placed blank client ledger sheets in files in anticipation of completing the sheets and closing the files. However, the Respondent fell behind and did not complete the client ledger sheets in a timely manner.

298. Regarding the recording of Property Transfer Tax (" PTT"), the Respondent recorded the information of the PTT debit on the client ledger card and indicated the PTT debit in his recording book together with any cheques or other withdrawals from the trust account. The Respondent also recorded every cheque written but the recordings were not in full compliance with the Law Society Rules. However he did not completely fail to record cheques or withdrawals from his accounts.

299. On his bank deposit slips the Respondent recorded all client account numbers that corresponded to the deposits. However, in his records book he made entries listed as " deposits" without identifying the source of the deposit.