

IN THE MATTER OF THE LEGAL PROFESSION ACT

AND

**IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF PAUL S. MULLEN,
A MEMBER OF THE LAW SOCIETY**

Hearing Committee

Chair:	Walter J. Pavlic, Q.C.
Member:	Darlene Scott
Member:	Dr. M. Carey

Appearances:

N. Maggisano – Law Society

J. Lutz – Member

HEARING REPORT:

1. This matter proceeded on October 9, 2014 before the Hearing Committee consisting of Walter J. Pavlic, Q.C., Darlene Scott, and Dr. Miriam Carey. The Law Society was represented by N. Maggisano and the member was represented by J. Lutz.

Jurisdiction

2. The Law Society established jurisdiction in this matter through the entry of exhibits J-1 through J-5 being the Notice of Appointment of a Hearing Committee, Notice to the Solicitor, Notice to Attend and Private Application Hearing Notice, Certificate of Membership and the Certificate of Exercise of Discretion pursuant to 96 (2) (b) of the Legal Profession Act.

Citations:

3. On September 17, 2013, the Conduct Committee Panel directed the following citations:
 1. It is alleged that you failed to be candid with the Complainants and such conduct is deserving of sanction.

2. It is alleged that you failed to conscientiously serve the Complainant and such conduct is deserving of sanction.
 3. It is alleged that you acted in a conflict or potential conflict situation without the consent of the parties or where it was not in the best interests of the parties that you so act and such conduct is deserving of sanction.
 4. It is alleged that you failed to be candid with the Complainant and such conduct is deserving of sanction.
4. At the hearing, the parties made a joint application to amend the citations against Mr. Mullen to read as follows:
1. It is alleged that you failed to be candid with R.K. or E. Inc. by not clarifying your role in a transaction and failing to advise that you were not representing their interests, and such conduct is deserving of sanction.
 2. It is alleged that you caused Land Titles documents to be registered on behalf of E. Inc. when you knew or ought to have known that you did not have either the express or implied authority of E. Inc. to do so, and such conduct is deserving of sanction.
 3. It is alleged that you failed to be candid with T.R. and S.R. by not clarifying your role in a transaction and failing to advise that you were not representing their interests, and such conduct is deserving of sanction.

The Amendments were accepted by the Hearing Committee.

5. Following the amendments to the citations, the Hearing Committee was presented with a Statement of Facts in which the member admitted his guilt to the amended citations and acknowledged that his conduct was deserving of sanction (see Appendix A.)

Factual Background

6. Mr. Mullen has been a member of the Law Society of Alberta for approximately 29 years and practices as a Solicitor at the firm of Peterson, Mullen and Co.
7. During the period from approximately March 2010 to February 22, 2011, Mr. Mullen performed legal services in relation to a loan from Mr. K. to L Ltd. Mr. Mullen was involved in receiving the funds by way of bank draft which did not indicate the source of funds, forwarding those funds to L Ltd., placing a caveat on the property of Mr. and Mrs. R, and having Mr. and Mrs. R attend his offices to sign a promissory note indicating their agreement to repay the loan amount.
8. Upon Mr. Mullen receiving the funds from Mr. K, he immediately forwarded them to L Ltd. (after deducting his fee of \$1,000.00). He did so prior to registering any caveat to protect Mr. K's interest and prior to obtaining any signed promissory note from Mr. and Mrs. R.

9. Mr. Mullen's initial position in this matter was that he was acting only for L Ltd. and as such had no responsibility to Mr. K or Mr. and Mrs. R. We have great difficulty with this position. Given the circumstances; both Mr. K and Mr. and Mrs. R were reasonable in their belief that Mr. Mullen was representing their interests. Mr. Mullen at no time advised either Mr. K or Mr. or Mrs. R that he was not acting for them. Mr. Mullen also failed to obtain a signed conflict letter identifying the potential conflict of interest that would arise from him acting for both the lender and the borrower in this transaction.
10. L Ltd. never advanced the full funds to Mr. and Mrs. R. Ultimately Mr. K received full repayment of the principal money he advanced.
11. Mr. Mullen has admitted to his guilt to the amended citations and Mr. Mullen's counsel and the Law Society have agreed that the appropriate penalty in this matter is a reprimand, payment of a fine of \$5,000.00 and payment of the actual costs of this hearing.
12. In these circumstances, the Hearing Committee agreed that the proposed penalty is appropriate. The Chair then delivered a reprimand in which Mr. Mullen's cooperation in the process and Mr. Mullen's taking responsibility for his action was recognized. Mr. Mullen was then reminded of his responsibility as a member of the Law Society of Alberta to ensure that he does not place himself in a position of conflict or potential conflict. In particular, he was advised of the importance of understanding and identifying precisely who the client is in any particular transaction and to ensure that, where there is any doubt, a conflict letter be obtained. Mr. Mullen was reminded of the trust the members of the public place in lawyers and their expectation that a lawyer will conduct a transaction appropriately and professionally. Mr. Mullen's conduct in this particular matter was detrimental to the parties involved, the public interest, and the profession and his conduct was worthy of sanction.
13. Mr. Mullen is ordered to pay a fine of \$5,000.00 plus set costs of \$3,056.85. These amounts will be paid by no later than December 9, 2014. Should Mr. Mullen default in payment, he is ordered suspended.

Dated this 14th day of May 2015.

Walter J. Pavlic, Q.C.
Chair

Darlene Scott

Dr. Miriam Carey

Appendix A

IN THE MATTER OF THE LEGAL PROFESSION ACT
AND
IN THE MATTER OF A HEARING INTO THE CONDUCT
OF PAUL S. MULLEN,
A MEMBER OF THE LAW SOCIETY OF ALBERTA

STATEMENT OF FACTS

INTRODUCTION

1. Mr. Mullen was admitted to the Law Society of Alberta (“LSA”) on June 30, 1986.
2. He practices law in Calgary, Alberta, in association with another lawyer, primarily in the areas of real estate and corporate/commercial transactions, wills and estates and civil litigation.

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3. On September 17, 2013 the following citations were directed by a Conduct Committee Panel:
 1. The Member failed to conscientiously serve the Complainant;
 2. The Member acted in a conflict or potential conflict situation without the consent of the parties or where it was not in the best interests of the parties that he so act; and
 3. The Member failed to be candid with the Complainant.
4. On February 28, 2012, the LSA received a complaint from Mr. K regarding Mr. Mullen [EXHIBIT 2].
5. Mr. K was approached by a mortgage associate with an opportunity to make money by loaning funds to a third party (“borrowers”) which would be repaid with interest.
6. On March 23, 2010 Mr. K emailed Mr. Mullen in relation to an unrelated potential investment matter and his possible representation of Mr. K in that regard, and seeking to confirm Mr. Mullen’s contact information. Included in the e-mail were Mr. K’s cellular and home telephone numbers. Mr. Mullen responded by e-mail the following day to confirm his contact information [EXHIBIT 3].

7. On March 28, 2010 the mortgage associate e-mailed Mr. K setting out an “investment opportunity” regarding a loan secured on a property in NE Calgary on San Diego, in Monterey Park (“Monterey Park property”). She advised that the borrowers were willing to pay \$315/month for one year, that a caveat would be placed on the Monterey Park property, Mr. Mullen would do all of the paperwork and the borrowers would be responsible for his fees [EXHIBIT 4].
8. On March 29, 2010 Mr. K responded to the mortgage associate’s email, copying Mr. Mullen, saying that his company E Inc. (“lender”) agreed to lend money to the borrowers on the terms proposed. The March 28, 2010 email from the mortgage associate was part of the email string which Mr. Mullen was copied with. The mortgage associate then replied to Mr. K, without copying Mr. Mullen, saying that the “\$25000 will go thru the lawyer. I will have all the agreements and arrangement finalized with [Mr. Mullen] today. [Mr. Mullen] hold the funds in trust, till the caveat is in place. That usually takes 1 day” [EXHIBIT 5]. Mr. Mullen understood that he represented L Ltd., the mortgage associate’s company, and was following its instructions and protecting its interests.
9. The mortgage associate delivered a bank draft dated March 30, 2010 to Mr. Mullen for \$25,000. The draft contained no indication of the source of the funds, but did contain a notation “For 1 Yr Loan/Payments of \$315.00/month” [EXHIBIT 6].
10. Mr. Mullen opened a file referencing “Monterey Park Property.” The \$25,000 draft was deposited into Mr. Mullen’s trust account on April 1, 2010 and Mr. Mullen immediately disbursed \$24,000 to L Ltd. The remaining \$1,000 was taken by Mr. Mullen as fees on September 15, 2010. The trust ledger shows the client as the mortgage associate and the matter refers to the borrowers and the Monterey Park property. It also shows the source of the \$25,000 as bank draft from the lender [EXHIBIT 7].
11. Once the \$24,000 was deposited into the account of L Ltd. it was immediately seized by the CRA. The mortgage associate advanced \$8,000 of her own money to the borrowers but, despite promises to advance the balance, she never did so.
12. Mr. Mullen then prepared a promissory note for the \$25,000 loan, which provided for monthly payments of \$315.00 and included a charge against the Monterey Park property (the “first note”). It was signed on April 27, 2010 by L Ltd. and one of the borrowers, who was the registered owner of the Monterey Park property, with each agreeing to be jointly and severally liable for the debt. Mr. Mullen also prepared a caveat but stated that it was not registerable because L Ltd. was not a registered owner of the property. Also the *Dower Act* requirements had not been met and would have prevented registration. The caveat showed Mr. Mullen’s firm as the address for service of notices, was executed by the lender, by its solicitors and agents “PETERSON MULLEN & CO.” and signed by Mr. Mullen. Mr. Mullen also swore the Affidavit in Support of Caveat as agent of the lender [EXHIBIT 8].
13. Mr. Mullen later prepared another promissory note on similar terms which added a second property belonging to one of the borrowers to the charging clause and which was signed only by the borrowers and witnessed by Mr. Mullen on June 8, 2010 (the “second note”). The associated caveat again showed Mr. Mullen’s firm as the address for service

of notices, was executed by the lender, by its solicitors and agents "PETERSON MULLEN & CO." and signed by Mr. Mullen. Mr. Mullen also swore the Affidavit in Support of Caveat as agent of the lender. The caveat was registered on June 15, 2010 [EXHIBIT 9].

14. Mr. K stated that he believed that Mr. Mullen was acting for the lender and that he was to provide a draft loan agreement for his review and that he would confirm that the borrowers' property had sufficient equity to secure the loan. Mr. Mullen understood that he actually represented L. Ltd., the mortgage associate's company, and so was following its instructions and protecting its interests. Mr. K did not receive any communication from Mr. Mullen, and he had not communicated with Mr. Mullen, until he received a letter from him dated September 15, 2010, with enclosures that suggested that the full amount of the funds had been released to the borrowers without any authorization from Mr. K. Enclosed was the second note, the registered caveat and copies of title. His letter ended with "We are pleased to have been of service to you." The first note was not included [EXHIBIT 10].
15. When Mr. K received this letter he hired a lawyer. At about this same time, the borrowers, who had become frustrated that the balance of the loan had never been advanced, sought to reverse the loan transaction, repay the advance and clear the caveat from their titles. Eventually, Mr. Mullen received \$8,000 from the borrowers and \$17,000 from the mortgage associate and on February 22, 2011, sent a cheque for \$25,000 to Mr. K's counsel on trust that the caveat be discharged [EXHIBIT 11]. A dispute about the interest payable ensued.
16. As stated above, Mr. Mullen actually represented L Ltd., the mortgage associate's company. He did not represent the lender or the borrowers. Notwithstanding the complex nature of the transaction, Mr. Mullen did not notify the lender, an unrepresented person, that he was not acting for him or looking after his interests, or recommend independent legal advice.
17. Notwithstanding the fact that Mr. Mullen did not represent the lender, and did not receive any instructions from the lender to do so, he registered documents at Land Titles on the lender's behalf without his express or implied authority.
18. Mr. Mullen responded to the complaint on April 16, 2012 [EXHIBIT 12].
19. Mr. K. sent a further letter to the LSA on May 14, 2012 [EXHIBIT 13].
20. On July 3, 2012, Mr. K provided his comments on Mr. Mullen's response [EXHIBIT 14].
21. On August 27, 2012 Mr. Mullen responded to Mr. K's July 3, 2012 letter [EXHIBIT 15].

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22. On September 17, 2013 the following citations were directed by a Conduct Committee Panel:
 1. The Member failed to be candid with the Complainants.

23. On March 1, 2012, the LSA received a complaint from the borrowers, T.R. and S.R., regarding Mr. Mullen and the same transaction referred to above [EXHIBIT 16].
24. The mortgage associate had arranged for the borrowers to borrow \$25,000 from the lender on the basis of a promissory note to be secured against one of their properties. The borrowers stated that the mortgage associate suggested that they go to Mr. Mullen to have the transaction executed and on April 27, 2010, one of the borrowers met with Mr. Mullen at his office to sign the first note.
25. The next day the borrowers received an advance of \$8,000 by a transfer from the mortgage associate's bank account [EXHIBIT 17]. A couple of weeks later, the borrowers stated that the mortgage associate advised them that the lender also required a charge against another of their properties before releasing the rest of the funds and the borrowers accordingly met with Mr. Mullen to sign the second note. However they did not receive any further funds.
26. Eventually in October, 2010 the borrowers decided to reverse the loan transaction, repay the advance and clear the caveat from their titles. To that end they met with Mr. Mullen and the mortgage associate at Mr. Mullen's office on October 27, 2011, and provided a bank draft for \$8,000 to Mr. Mullen [EXHIBIT 18].
27. The mortgage associate did not provide the remaining \$17,000 to Mr. Mullen until February 2011.
28. On February 22, 2011, Mr. Mullen sent a cheque for \$25,000 to the lender's lawyer on trust that the caveat be discharged. A dispute regarding the amount of interest payable ensued, meanwhile the caveat remained on the borrowers' properties and their credit-worthiness continued to be adversely affected.
29. The borrowers stated that they believed that Mr. Mullen was looking after the loan transaction for them and was responsible to protect their interests. Mr. Mullen actually represented L Ltd., the mortgage associate's company. Notwithstanding the complex nature of the transaction, Mr. Mullen did not notify the borrowers, who were unrepresented, that he was not acting for them or looking after their interests, or recommend independent legal advice.
30. Mr. Mullen responded to the complaint on April 16, 2012 [EXHIBIT 19].

CONCLUSION

31. Mr. Mullen admits as fact the statements contained within this Statement of Facts for the purposes of these proceedings. Mr. Mullen does not deny that all correspondence sent to or by him was received or sent by him on or about the dates indicated, unless stated otherwise.
32. Mr. Mullen admits his guilt to the following amended citations and that his conduct set out herein was conduct deserving of sanction, being incompatible with the best interests of the public and tending to harm the standing of the legal profession generally:

1. It is alleged that you failed to be candid with R.K. or E. Inc. by not clarifying your role in a transaction and failing to advise that you were not representing their interests, and such conduct is deserving of sanction.
2. It is alleged that you caused Land Titles documents to be registered on behalf of E. Inc. when you knew or ought to have known that you did not have either the express or implied authority of E. Inc. to do so, and such conduct is deserving of sanction.
3. It is alleged that you failed to be candid with T.R. and S.R. by not clarifying your role in a transaction and failing to advise that you were not representing their interests, and such conduct is deserving of sanction.

ALL OF THESE FACTS ARE ADMITTED THIS 9TH DAY OF OCTOBER, 2014.

“Paul S. Mullen”

PAUL S. MULLEN