

**THE LAW SOCIETY OF ALBERTA  
RESIGNATION COMMITTEE REPORT**

**IN THE MATTER OF THE *Legal Profession Act*,  
and in the matter of an Application by Richard Gariepy, a Member of the  
Law Society of Alberta to Resign while Facing Citations**

*On March 19, 2014, the Member made an application to the Benchers of the LSA to resign as a Member of the LSA pursuant to s. 32 of the LPA. Mr. Gariepy, on the date of this Application, was a suspended Member of the LSA.*

**Counsel: Stuart J. Weatherill, counsel for the Law Society of Alberta (LSA)**

**Richard Gariepy represented himself.**

Corrected decision: A corrigendum was filed on July 20, 2015; the corrections have been made to the text and the corrigendum is appended to this Report.

## **INTRODUCTION**

1. On **September 26, 2014**, the Resignation Application of Richard Gariepy (the Member) was heard at the Law Society of Alberta (LSA) offices in Edmonton, Alberta.

## **EXHIBITS**

2. Eight documents were entered as Exhibits including:
  1. Letter of appointment dated August 12, 2014;
  2. Outstanding Formal Citations;
  3. Application for Resignation dated March 19, 2014;
  - 7b. Statutory Declaration sworn August 31, 2014;
  - 7c. Undertaking dated March 19, 2014;
  - 7d. Statement of Facts dated March 20, 2014; and
  - 7e. Supplemental Statement of Facts dated September 11, 2014.

## **CITATIONS**

3. The Member faced the following 18 Citations (Exhibit 2):

**CITATION 1:**

IT IS ALLEGED THAT you failed to follow the accounting rules in the audit period from October 2007 to March 2008 and that such conduct is conduct deserving of sanction.

**CITATION 2:**

IT IS ALLEGED THAT you misappropriated trust funds belonging to A Ltd in regards to Development I, and that such conduct is conduct deserving of sanction.

**CITATION 3:**

IT IS ALLEGED THAT you participated in a fraud on specified investors in regards to Development I, and that such conduct is conduct deserving of sanction.

**CITATION 4:**

IT IS ALLEGED THAT you engaged in a conflict of interest regarding your involvement in T Ltd with respect to Development I, and that such conduct is conduct deserving of sanction.

**CITATION 5:**

IT IS ALLEGED THAT you misappropriated trust funds belonging to B Ltd in regards to Development II, and that such conduct is conduct deserving of sanction.

**CITATION 6:**

IT IS ALLEGED THAT you participated in a fraud on specified investors in regards to Development II, and that such conduct is conduct deserving of sanction.

**CITATION 7:**

IT IS ALLEGED THAT you breached undertakings you provided to Blake Cassels in regards to Development II, and that such conduct is conduct deserving of sanction.

**CITATION 8:**

IT IS ALLEGED THAT you engaged in a conflict of interest regarding your involvement in T Ltd with respect to Development II, and that such conduct is conduct deserving of sanction.

**CITATION 9:**

IT IS ALLEGED THAT you misappropriated trust funds belonging to C Ltd in regards to Development III, and that such conduct is conduct deserving of sanction.

**CITATION 10:**

IT IS ALLEGED THAT you participated in a fraud on specified investors in regards to Development III, and that such conduct is conduct deserving of sanction.

**CITATION 11:**

IT IS ALLEGED THAT you breached undertakings you provided to Masuch Albert in regards to Development III, and that such conduct is conduct deserving of sanction.

**CITATION 12:**

IT IS ALLEGED THAT you engaged in a conflict of interest regarding your involvement in T Ltd with respect to Development III, and that such conduct is conduct deserving of sanction.

**CITATION 13:**

IT IS ALLEGED THAT you misappropriated trust funds belonging to D Ltd in regards to Development IV, and that such conduct is conduct deserving of sanction.

**CITATION 14:**

IT IS ALLEGED THAT you participated in a fraud on specified investors in regards to Development IV, and that such conduct is conduct deserving of sanction.

**CITATION 15:**

IT IS ALLEGED THAT you breached undertakings you provided to Masuch Albert in regards to Development IV, and that such conduct is conduct deserving of sanction.

**CITATION 16:**

IT IS ALLEGED THAT you participated in a fraud on specified investors in regards to Development V, and that such conduct is conduct deserving of sanction.

**CITATION 17:**

IT IS ALLEGED THAT you breached undertakings you provided to Masuch Albert in regards to Development V, and that such conduct is conduct deserving of sanction.

**CITATION 18:**

IT IS ALLEGED THAT you misappropriated trust funds belonging to Unit Investors, and that such conduct is conduct deserving of sanction.

**FACTS**

The Member signed the following Statement of Facts on March 19, 2014 and the Supplemental Statement of Facts on September 11, 2014 (hereinafter referred to collectively as the Facts):

## STATEMENT OF FACTS (Exhibit 7d)

### INTRODUCTION

I was admitted to the Law Society of Alberta on June 26, 1981.

I actively practiced law in the Province of Alberta until December 15, 2009. I was suspended by the Law Society of Alberta for non-payment of fees on January 15, 2010. I have not practiced law since that date.

I have applied to resign as a member of the Law Society of Alberta pursuant to s. 32 of the *Legal Profession Act*.

I admit the contents of this Statement of Facts, which is tendered in support of my resignation application.

The Law Society of Alberta received complaints (collectively the “Complaints”) regarding my conduct in connection with my legal work with respect to a number of real estate projects located in Calgary, Alberta

Certain Complaints were investigated by the Law Society of Alberta and an investigation report was issued by the Law Society of Alberta’s forensic investigator on March 30, 2010 (“Investigation Report”).

As a result of the Complaints, the Law Society of Alberta’s investigation and the Investigation Report, a Conduct Committee Panel of the Law Society of Alberta directed a hearing (the “Hearing”) to determine whether I am guilty of conduct deserving sanction in relation to a number of citations. The Hearing (given Law Society of Alberta file number HE20110011) was commenced before a Hearing Committee of the Law Society of Alberta comprised of D. Edney QC (Chair), J.R. Nickerson, QC and W. Jacques, CA.

The Hearing, which started on April 29, 2013, proceeded over a number of days until May 10, 2013. A number of witnesses testified at the Hearing and a number of exhibits were entered, including the Investigation Report. The Hearing was adjourned on May 10, 2013 and has not yet been concluded.

## BACKGROUND

Over a period of years I provided legal services to AK and corporations involving or affiliated with AK. Some of the legal services related to real estate developments involving AK (as a developer and/or promoter) either personally or through various corporate entities and joint ventures affiliated with AK.

AK was involved in a number of real estate developments or projects (the "Projects") located in Calgary, Alberta. These Projects included:

- Calgary I, Calgary AB
- Calgary II, Calgary AB
- Calgary III, Calgary AB
- Calgary IV, Calgary AB

AK's general plans in relation to the Projects were to acquire and assemble land, obtain financing and then develop and build condominiums for sale to end users. AK was able to acquire and assemble the land where the Projects were to be located. Title to the lands was put into the names of the following numbered companies:

- Calgary I was in the name of XXXXXXXX Alberta Ltd. ("XX3")
- Calgary II was in the name of XXXXXXXX Alberta Ltd. ("XX5")
- Calgary III was in the name of XXXXXXXX Alberta Ltd. ("XX7")
- Calgary IV was in the name of XXXXXXXX Alberta Ltd. ("XX4")

AK intended on involving partners or other investors in relation to the Projects. I understood from AK that the partners and other investors would be bringing capital and other value to the Projects.

As the Projects moved forward certain new investors (hereafter defined as "Purchasers") agreed to purchase the lands over which the Projects were located from the numbered company owners (hereinafter defined as "Vendors") with the understanding that joint venture agreements involving the Purchasers and entities affiliated with AK would be finalized and executed to govern the development of the Projects and the sharing of anticipated future profits.

I did not personally invest in any of the Projects.

I had, over a period of a number of years, invested some of my own money in other real estate ventures and projects involving AK and corporate entities and joint ventures affiliated with AK. Some of these projects were located in Mexico.

At all material times I have been the sole director, sole shareholder and sole officer of T. Corporation, an Alberta corporation.

I did not incorporate the Vendors.

I understood that each of the Vendors had various shareholders, some of whom had paid \$50,000.00 or more for their shares. I understood that AK did not personally hold shares in the Vendors.

I understood that the Vendors had various directors. I understood that AK was not a director of any of the Vendors but that the directors were all employees or associates of AK.

I did not act for the Vendors in connection with the transfer or sale of any of the shares of the Vendors.

I did not act for any of the shareholders of the Vendors.

I did act for the Vendors in connection with the sale of the lands, over which the Projects were located, to the Purchasers. In each case a written agreement, drafted by counsel for the Purchaser, was signed by the parties. In particular:

- I acted for XX3 in the sale of the Calgary I lands to the Purchaser, Calgary I
- I acted for XX5 in the sale of the Calgary II lands to the Purchaser, Calgary II
- I acted for XX7 in the sale of the Calgary III lands to the Purchaser, Calgary III
- I acted for XX4 in the sale of the Calgary IV lands to the Purchaser, Calgary IV

I did not act for the Purchasers in connection with the purchase of the above mentioned lands.

While I understood that AK was neither a director nor a direct shareholder of any of the Vendors, I took my instructions from him in connection with the sale of the above mentioned lands. AK advised me that he was the majority beneficial owner of the Vendors and at all times I was told and believed that he was the operating mind of the Vendors.

### Sale of Calgary I Lands

With respect to Calgary I and the sale of the Calgary I lands, I acted for XX3 on instructions from AK. The Purchaser, Calgary I, was represented by the firm Blake Cassels Graydon LLP (“Blakes”).

Between September 6, 2006 and October 3, 2006 I received a total of \$1.3 million on behalf of XX3 in connection with the sale of the Calgary I lands and in accordance with the purchase and sale agreement related to these lands. These funds were deposited into my trust account.

Between October 4, 2006 and June 27, 2007 all of the funds from the sale of the Calgary I lands were paid out, or transferred out, of my trust account on the instructions of AK. The particulars of the trust transactions are found at pages 13 and 14 of the Investigation Report and are reproduced here at TAB 1.

### Sale of Calgary II Lands

With respect to Calgary II and the sale of the Calgary II lands, I acted for XX5 on instructions from AK. The Purchaser, Calgary II, was represented by Blakes.

Between October 25, 2006 and December 14, 2006, I received over of \$2.2 million behalf of 115 in connection with the sale of the Calgary II lands and in accordance with the purchase and sale agreement related to these lands. These funds were deposited into my trust account.

Between December 6, 2006 and June 27, 2007, all of the funds from the sale of the Calgary II lands were paid out, or transferred out, of my trust account on the instructions of AK. The particulars of the trust transactions are found at pages 33 and 34 of the Investigation Report and are reproduced here at TAB 2.

### Sale of Calgary III Lands

With respect to Calgary III and the sale of the Calgary III lands, I acted for XX7 on instructions from AK. The Purchaser, Calgary III, was represented by Masuch Albert LLP (“Masuch”).

Between December 11, 2006 and April 10, 2007 I received \$5.5 million in connection with the sale of the Calgary III lands and in accordance with the purchase and sale agreement related to these lands. These funds were deposited into my trust account.

Between February 27, 2007 and November 28, 2007, all of the funds from the sale of the Calgary III lands were paid out, or transferred out, of my trust account on the instructions of AK. The particulars of the trust transactions are found at pages 52 and 53 of the Investigation Report and are reproduced here at TAB 3.

Of the money I received on behalf of XX7 on the sale of the Calgary III lands, \$750,000.00 was sent to me by Masuch on February 26, 2007. The trust condition pertaining to this \$750,000.00 was that it was only releasable by me “for the purpose of dealing with matters directly related to this project”, which meant the Calgary III project. My trust ledger for the sale of the Calgary III lands demonstrates that I had \$850,000.00 in trust on February 26, 2007 and, by March 14, 2007, I had paid out over \$812,000.00 to parties unrelated to Calgary III. I did not knowingly breach this trust condition. At all material times I believed and still believe that I had sufficient funds in my trust account. I only had one trust account. Due to poor accounting practices I made entries on the Calgary III ledger card which should have been made to the Calgary II ledger card. This was discovered in 2010 by the Law Society investigator and, although it seems to be a breach on the face of it, I believe that I had sufficient funds in my trust account at all times to comply with the substance of the trust condition.

#### Sale of Calgary IV Lands

With respect to Calgary IV and the sale of the Calgary IV lands, I acted for XX4 on instructions from AK. The Purchaser, Calgary IV, was represented by Masuch.

Between June 6, 2007 and July 4, 2007, I received over \$4 million from the sale of the Calgary IV lands and in accordance with the purchase and sale agreement related to these lands. These funds were deposited into my trust account.

Between June 8, 2007 and December 3, 2007, all of the funds from the sale of the Calgary IV lands were paid out, or transferred out, of my trust account on the instructions of AK. The particulars of the trust transactions are found at pages 91 and 92 of the Investigation Report and are reproduced here at TAB 4. (Note: the July 4, 2007 receipt of \$1,004,466.46 as shown on TAB 4 was incorrectly credited to my Calgary IV trust ledger. This amount was for a different project involving AK, called Calgary V. A July 18, 2007 receipt of \$1,160,800.46 was incorrectly credited to my Calgary V trust ledger and these funds were actually meant for Calgary IV. See pages 111 and 126 of the Investigation Report, reproduced here as TAB 5 and TAB 6 respectively.)



### General Comments on Sale of Lands

With respect to my involvement in the sale of the Calgary I, Calgary II, Calgary III and Calgary IV lands, listed above, including the receipt and disbursement of funds:

- (a) I did not obtain any instructions from any director or shareholder of any of the Vendors;
- (b) I did not have anything in writing from any shareholder or director of any of the Vendors confirming that AK was an authorized representative of the Vendors and authorized to provide instructions to me;
- (c) I did not have any executed corporate, directors' or shareholders' resolution confirming that AK was an authorized representative of the Vendors and authorized to provide instructions to me;
- (d) I did not have or obtain any executed corporate, directors' or shareholders' resolutions in relation to the Vendors' sale of the lands mentioned above or the payment or disbursements of funds;
- (e) I was aware of a number of shareholders of the Vendors who were concerned about their investment in the Projects and the pace of development of the Projects. Although some had expressed this concern, others had confirmed in writing their intention to remain invested in the projects until completion. In addition some of the investors had been repaid their investment in 2006 and 2007 on my advice to AK;
- (f) At the time I did not fully consider whether or to what extent all of the shareholders of the Vendors would be negatively impacted or affected by the sale of the lands and the disbursement of funds from my trust account;
- (g) Over \$2.5 million of the funds paid or disbursed by me was with respect to real estate projects located in Mexico, some of which I had a personal interest;
- (h) I did not take steps to ensure that all of the shareholders in the Vendor corporations had an interest in the Mexico real estate projects or were agreeable to having money paid or disbursed by me with respect to Mexico real estate projects;
- (i) I did not advise the shareholders or directors of the Vendors that some of the money I was receiving in connection with the sale of the lands would be transferred by me in relation to real estate projects in Mexico, some of which I had a personal interest;

- (j) With the agreement of AK, I utilized money from my trust account towards purchasing a condominium property located in Vancouver, BC, in which I had an interest. This money was refunded to my trust account 42 days later;
- (k) Funds sent to me by counsel acting for the Vendors often had trust conditions applicable thereto or were sent to me on the reliance of undertakings given by me. During the Law Society investigation, it was discovered that some undertakings and trust conditions were not fully complied with. This discovery occurred in 2010 and had not previously been raised by any party to the transaction. For example, with respect to the sale of the Calgary II lands, I provided an undertaking to Blakes to discharge caveats (which were registered against title to the lands) on or before March 1, 2007. Although one caveat was discharged the second caveat was not. Once it was brought to my attention I fulfilled this undertaking; and
- (l) For each transaction I did not address my mind to whether the sale of the lands represented a sale of all or substantially all of the property of each of the Vendors or whether the sale of the lands was considered to be in the ordinary course of business of each of the Vendors. I did not address my mind to whether the sale of the lands required the approval of the shareholders of the Vendor corporations in accordance with the provisions of Alberta's *Business Corporations Act*.

#### Receipt of Deposits

One of the corporations affiliated with AK was S. Inc.

I understood that AK was utilizing S. Inc. as the agent of the developers of the Projects to market and sell individual condominium units in the Projects to end purchasers. I also understood that AK was the controlling mind of S. Inc.

Between 2005 and 2007, inclusive, I acted for S. Inc. and received deposits from end purchasers in relation to purchases of individual condominium units in the Projects. These deposits were paid to me in trust. The deposits I received were deposited into my trust account and totalled over \$1.8 million. I understood at that time that I was holding the deposits on behalf of S. Inc. and in capacity as legal counsel for S. Inc. I did not act for any of the end purchasers.

I now acknowledge that:

- (a) the provisions of Alberta's *Condominium Property Act* (the "Act") apply both to S. Inc. and myself;
- (b) that the Act was applicable with respect to the sale of units in the Projects;

- (c) that s. 14 of the Act defined a “developer” as including a “person who, on behalf of a developer, acts in respect of the sale of a unit or a proposed unit or receives money paid by or on behalf of a purchaser of a unit or a proposed unit pursuant to a purchase agreement”; and
- (d) that s. 14(3) of the Act provided that “A developer shall hold in trust all money, other than rents or security deposits, paid by the purchaser of a unit up to the time that the certificate of title to the unit is issued in the name of the purchaser in accordance with the purchase agreement.”

By early December 2007 all of the deposit money that had been provided to me in trust from purchasers of individual units in the Projects had been paid out, or transferred out, of my trust account. Approximately \$1.2 million was sent by me to S. Inc. at the request of S. Inc. in December 2007. Over \$200,000.00 was sent by me to T. Corporation and then disbursed by me at the direction of AK for use in AK controlled ventures. The particulars of the trust transactions in relation to unit deposits are found at pages 134 to 137 of the Investigation Report and are reproduced here at TAB 7.

All of the payments and transfers out of my trust account, including the payments to my company T. Corporation, were done on instructions from AK.

Generally speaking, I did not obtain any authorization or instructions from the individual unit purchasers before I paid or transferred the monies out of my trust account representing the deposits paid in relation to the purchases of individual units in the Projects.

At no time did I ever warn any purchasers of the individual units of the Projects of the risks inherent with me paying out or transferring out deposit monies from my trust account or that such activity may be a breach of the Act.

I did not warn all of the individual unit purchasers that some of the deposit funds would be (or were in fact) paid by me to T. Corporation a corporation in which I was the sole shareholder and director.

At no time before I paid or transferred the monies out of my trust account had title to any individual condominium unit been registered into the name of any of the purchasers for whom I had been provided deposit funds in trust.

At the time when I released the funds, I believed that this was permitted by the Act and pursuant to the contracts signed by the purchasers of the individual units in the Projects. AK also provided me with certain assurances that the interests of the individual purchasers would be protected. However, I now know that my earlier belief was mistaken and that AK's assurances were not fulfilled. My earlier mistaken belief may have been avoided by a more careful review of the Act.

## CONCLUSIONS

While I do not agree with the entirety of the contents and conclusions contained within the Investigation Report I nonetheless acknowledge that the Investigation Report raises a number of concerns about my involvement and conduct in connection with the various transactions detailed therein, including those described in this Statement of Facts.

I acknowledge that the Law Society of Alberta, as my regulator, has concerns about my involvement and conduct in connection with the various transactions detailed in the Investigation Report and as described in this Statement of Facts.

I acknowledge that certain aspects of my conduct, in connection with the transactions described in the Investigation Report and in this Statement of Facts, were not in accordance with the expectations of my regulator, the Law Society of Alberta.

I acknowledge that I did not strictly adhere to the accounting guidelines or rules established by my regulator, the Law Society of Alberta, in relation to the transactions detailed in the Investigation Report and as described in this Statement of Facts.

I acknowledge that at the end of the Hearing if certain of the citations were proven, on a balance of probabilities, I could be facing serious sanctions, including disbarment.

In order to:

- (a) avoid a further lengthy continuation of the Hearing;
- (b) avoid the inconveniencing of further witnesses; and
- (c) bring a resolution to the citations dealt with in the Hearing

I am hereby agreeing to resign from the Law Society of Alberta. I also hereby agree and undertake to never apply for reinstatement with the Law Society of Alberta or to apply for application to any other law society in Canada.

I acknowledge that a number of applications for compensation from the Law Society of Alberta Assurance Fund ("Assurance Fund Claims") have been made in relation to my involvement and conduct in connection with the transactions mentioned in the Investigation Report. I acknowledge that my resignation from the Law Society of Alberta and this Statement of Facts is in no way meant to act as a release or determination of these Assurance Fund Claims. I acknowledge that these Assurance Fund Claims will be dealt with, in due course, in accordance with the statutory regime established to deal with Assurance Fund Claims.

I have executed this Statement of Facts for the sole purpose of applying to resign from the Law Society of Alberta, and for no other purpose. I have executed this Statement of Facts on my own free will and with the full understanding of its meaning and consequences. I have either obtained independent legal advice in relation to my execution of the Statement of Facts or I have elected to forego obtaining independent legal advice.

#### **SUPPLEMENTAL STATEMENT OF FACTS** (Exhibit 7e)

This statement of facts supplements my earlier statement of facts signed on March 19, 2014.

I am aware of a complaint against me made by PS (given file no. COXXXXXXXX) which was investigated by the Law Society of Alberta (given file no. INXXXXXXXX) and which resulted in an investigation report submitted to the Law Society of Alberta dated July 17, 2014 (the "Investigation Report"). This supplementary statement of facts addresses the subject matter of the complaint by PS and certain litigation commenced against me by XXXXXXXX Alberta Ltd. ("XX2 Corp.") which is, in part, related to the issues raised in the PS Complaint. This supplementary statement of facts also addresses my involvement in the sale of certain lands as more particularly described below.

In 2007 and 2008, I provided legal services to AK in relation to a land development project located in Calgary, Alberta, which has been described as Calgary V. For ease of reference, I will describe the lands where this project was located simply as "the D Lands".

AK was a land developer and I understood that his general plans in relation to the D Lands were to ultimately develop the lands into a condominium and then to sell the individual units, hopefully at a profit.

At the time of my involvement in these matters, title to the D Lands was in the name of A. Developments Ltd. A. Developments Ltd. had acquired the D Lands in 2005. I did not act for A. Developments Ltd. in connection with A. Developments Ltd.'s acquisition of the D Lands.

I understood that AK was authorized by A. Developments Ltd. to deal with the D Lands and to provide instructions to me on behalf of A. Developments Ltd. Furthermore, at the time, KB was a director of A. Developments Ltd. and was also AK's employee and colleague. KB was associated with AK in the development of the D Lands and in relation to other projects.

My understanding of AK's authority in relation to A. Developments Ltd. was based on representations to me from AK and KB.

As the development of the D Lands moved forward I understood that AK had arranged for certain new investors to be involved with the project. These new investors were to purchase the D Lands and a joint venture agreement involving the new investors and AK (or one or more of his related corporate entities) would be finalized and executed to govern the development of the D Lands, the sale of the individual condominium units and the sharing of the profits.

In the late spring of 2007, AK retained me on behalf of A. Developments Ltd. in relation to the sale of the D Lands for \$1.8 million to an entity called Calgary V Corp. I understood that Calgary V Corp. was the corporate vehicle being utilized by the new investors to purchase the D Lands.

KB signed the transfer of lands on behalf of A. Developments Ltd. in relation to the sale of the D Lands to Calgary V Corp.

I did not act for Calgary V Corp. in relation to A. Developments Ltd.'s the sale of the D Lands. Calgary V Corp. was represented by the Masuch Albert LLP firm in Calgary, Alberta (collectively referred to as "Masuch").

In July 2007, I received approximately \$1.8 million from Masuch in connection with the sale of the D Lands. These funds were deposited into my trust account. Thereafter I paid out these funds to various parties and entities on the instructions of AK. None of the funds from the sale

of the D Lands were paid from my office to PS or, to my knowledge, any entity related to or affiliated with PS.

With respect to my involvement in the sale of the D Lands, including the receipt and disbursement of funds:

- I did not obtain any instructions from any director or shareholder of A. Developments Ltd. (other than receiving a transfer of land signed by KB);
- I did not have anything in writing from any shareholder or director of A. Developments Ltd. confirming that AK was an authorized representative of A. Developments Ltd. and authorized to provide instructions to me;
- I did not have any executed corporate, directors' or shareholders' resolution confirming that AK was an authorized representative of A. Developments Ltd. and authorized to provide instructions to me;
- I did not have or obtain any executed corporate, directors' or shareholders' resolutions in relation to the A. Developments Ltd.'s sale of the D Lands or the payment or disbursement of funds;
- At the time I did not fully consider whether or to what extent any shareholders or investors in A. Developments Ltd. would be negatively impacted or affected by the sale of the D Lands and the disbursement of funds from my trust account;
- Some of the funds paid or disbursed by me were with respect to real estate projects located in Mexico, some of which I had a personal interest;
- I did not take steps to ensure that the shareholders or investors in A. Developments Ltd. also had an interest in the Mexico real estate projects or were agreeable to having money paid or disbursed by me with respect to Mexico real estate projects;
- I did not advise the shareholders or directors of A. Developments Ltd. that some of the money I was receiving in connection with the sale of the D Lands would be transferred by me in relation to real estate projects in Mexico, some of which I had a personal interest; and
- I did not address my mind to whether the sale of the D Lands represented a sale of all or substantially all of the property of A. Developments Ltd. or whether the sale of the D Lands was considered to be in the ordinary course of business of A. Developments Ltd. I did not address my mind to whether the sale of the D Lands

required the approval of the shareholders of A. Developments Ltd. in accordance with the provisions of Alberta's *Business Corporations Act*.

In May 2008 I was at AK's home near Calgary, Alberta. I recall that Mr. and Ms. PS then attended at the residence, although I had no advance notice that Mr. and Ms. PS would be attending (the "May 2008 Meeting").

I recall the following about the May 2008 Meeting:

- Mr. and Ms. PS claimed to be investors in connection with a project or projects involving AK.
- Mr. and Ms. PS were concerned about their investment given litigation between AK and other investors involving a number of Calgary-based projects, including the D project.
- AK stated to me and Mr. and Ms. PS that Mr. and Ms. PS had "nothing to worry about" because there were mortgages, caveats and liens filed against "the properties" which, according to AK, would "securitize" the investors, including Mr. and Ms. PS.
- AK asked me to confirm that Mr. and Ms. PS's investment was secured. I did so given my knowledge that a number of the properties in relation to the AK projects had mortgages and other registrations against them.

At the time of the May 2008 Meeting, T. Corporation, a corporation in which I was the sole director and shareholder, had registered mortgage security over other lands in Calgary where AK was involved as a developer. T. Corporation never held registered mortgage security in the D Lands. AK was utilizing T. Corporation as a corporate vehicle to finance some of the other Calgary projects he was involved in.

I had understood from AK that certain monies received would be pooled and eventually paid to investors in relation to all of the Calgary projects. I also understood, from AK and my review of the titles, that there were various other registrations (i.e. builder's liens and caveats) against the lands for the Calgary projects that provided security to the investors.

I agreed AK's representation to Mr. and Ms. PS at the May 2008 Meeting that Mr. and Ms. PS's investment was secured by mortgages held by T. Corporation and the other various registrations (i.e. builder's liens and caveats) on the lands related to the other Calgary projects. I told Mr. and Ms. PS that I agreed with AK. However, at the time of the 2008 Meeting, I did not



fully appreciate that Mr. and Ms. PS believed that they had an interest only in relation to the D project.

At the May 2008 Meeting, I do not recall advising Mr. and Ms. PS:

- That I did not act for them and that I only acted for AK and his related entities;
- That I would not be providing any legal services or advice directly for their benefit;
- That they should obtain their own legal advice related to their investment;
- That T. Corporation did not have registered mortgage security over the D Lands; and
- That the sale of the D Lands to another entity, Calgary V Corp., had been completed approximately 10 months earlier.

At the May 2008 Meeting, especially knowing that Mr. and Ms. PS were there without their own legal counsel, and without any material knowledge of the particulars of their purported investment, I now understand that it would have been more prudent to not have offered my opinion to Mr. and Ms. PS that their investment was secured by mortgages held by T. Corporation and the other various registrations against the lands related to the other Calgary projects.

In addition to the PS Complaint, I (along with AK and others) have been sued in Court of Queen's Bench of Alberta Action No. XXXX XXXXX (the "2009 Action") by the XX2 Corp. A copy of the Statement of Claim in the 2009 Action is attached as Schedule "A". The allegations in the 2009 Action deal with some of the same subject matter as the PS Complaint. I understand that Mr. and Ms. PS claim to be investors in XX2 Corp. and that XX2 Corp. alleges to have held a beneficial interest in the D Lands.

I have defended the 2009 Action through my insurer, Alberta Lawyers Insurance Association ("ALIA"). The 2009 Action has not been resolved and is ongoing.

At the time I received the sale proceeds from the D Lands and disbursed same, on the instructions of AK, I did not know that that XX2 Corp. or any of its investors, including Mr. and Ms. PS, were claiming a beneficial interest in the D Lands or the proceeds of the sale of the D Lands. Nor did I know this at the time of the May 2008 Meeting.

While I do not concur with the entirety of the content and conclusions in the Investigation Report, I acknowledge that the Investigation Report raises a number of concerns about my conduct at the May 2008 Meeting.

I also acknowledge that the Law Society of Alberta, as my regulator, has concerns about my conduct at the May 2008 Meeting as detailed in the Investigation Report and this supplemental statement of facts.

I have executed this supplemental statement of facts for the sole purpose of applying to resign from the Law Society of Alberta, and for no other purpose. I have executed this supplemental statement of facts on my own free will and with the full understanding of its meaning and consequences. I have either obtained independent legal advice in relation to my execution of the supplemental statement of facts or I have elected to forego obtaining independent legal advice.

4. Exhibit 7(c) sets out the Undertaking of the Member dated March 19, 2014. The Member's Undertaking is that he will pay to the LSA, on its demand, any amount of any claim paid on the Member's behalf by the LSA's assurance fund, or any deductible with respect to any Claim paid on behalf of the Member by the LSA's insurer.

## **ISSUE**

Given the totality of the evidence as set out in the Facts, ought the Member's application pursuant to S. 32 of the *Legal Professions Act*, be granted?

## **DECISION ON THE MEMBER'S APPLICATION**

5. Counsel for the LSA did not oppose the Application of the Member. The Member agreed with the Facts. Following submissions by Counsel for the LSA and by the Member, the Resignation Committee went into recess to deliberate on whether or not the Resignation Committee would accept the Statement of Facts and Supplemental Statement of Facts.

6. Following deliberations, the Chair advised Counsel for the LSA and the Member that the Resignation Committee accepted the Statement of Facts and Supplemental Statement of Facts.
7. Given the Facts which the Member has admitted, it is the finding of the Resignation Committee that the best interests of the public and the LSA are served with the acceptance of the Resignation of the Member. Furthermore, it is also in the best interests of the public to accept the Member's Application for Resignation because the Member agrees to never apply for reinstatement and as he argued at this Application, such is more serious than a disbarment as he is precluded from ever applying to become a Member of the LSA or any other Law Society in Canada. Finally, he has given his Undertaking to cooperate and has been cooperating, with the LSA in dealing with the claims against him.

### **SUBMISSION ON COSTS**

8. Following submissions on the issue of costs of which there was no dispute, the Resignation Committee went into recess to deliberate. Following deliberations, the Hearing resumed. The Chair delivered the Resignation Committee's Decision that costs plus interest calculated pursuant to the *Judgment Interest Act*, from the date of the Member's resignation are payable in the event that the Member is relieved of his Undertaking not to apply to be reinstated as a Member of the LSA or any Law Society in Canada.
9. Exhibit 8 sets out the estimated statement of costs in the amount of \$169,244.59.
10. On October 10, 2014, prior to these Reasons being released, the Chair signed the Statement of Costs showing the costs be set in the amount of \$169,244.59 plus interest

to be calculated pursuant to the *Judgment Interest Act* from October 10, 2014, until full payment by the Member.

## **CONCLUDING MATTERS**

11. All Exhibits shall be available to the public following redaction.
12. There shall be no referral to the Attorney General.
13. The usual Notice shall be issued to the Profession.

DATED this 27<sup>th</sup> day of November, 2014.

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**ROSE M. CARTER, QC**  
Chair

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**ROBERT DUNSTER**  
BENCHER

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**WALTER J. PAVLIC, QC**  
BENCHER

### Corrigendum of the Hearing Committee Report

In paragraph 5, the second instance of the phrase "Counsel for" was deleted, and the word "by" was inserted before the phrase "the Member"; the phrase "Statement of" was inserted before the second instance of the word "Facts", and the phrase "Supplemental Statement of Facts" was inserted before the phrase "Member's Admission of Guilt would be accepted". The phrase "Member's Admission of Guilt would be accepted" was deleted.

In paragraph 6, the second instance of the phrase "Counsel for" was deleted; the phrase "Statement of" was inserted before the word "Facts", and the phrase "Supplemental Statement of Facts" was inserted before the phrase "Member's Admission of Guilt". The phrase "Member's Admission of Guilt" was deleted.