

**THE LAW SOCIETY OF ALBERTA**

**IN THE MATTER OF THE *LEGAL PROFESSION ACT***

**AND**

**IN THE MATTER OF A HEARING REGARDING**

**THE CONDUCT OF SARJAN S. LUTHRA,**

**A MEMBER OF THE LAW SOCIETY**

**Hearing Committee:**

Chair: Walter Pavlic, QC  
Panel Member: Douglas Mah, QC  
Panel Member: Wayne Jacques

**Appearances:**

Counsel for Sarjan S. Luthra – Stewart Baker  
Law Society of Alberta (LSA) Counsel – Rocky Kravetsky

**HEARING REPORT**

**Introduction**

1. This matter proceeded to hearing on April 15, 2015 before a Hearing Committee consisting of Walter Pavlic, QC Chair, Douglas Mah, QC and Wayne Jacques. The Law Society was represented by Rocky Kravetsky and the member was represented by Stewart Baker.

**Jurisdiction**

2. The Law Society established jurisdiction in this matter through the entry of the following exhibits:
  1. Exhibit 1-1 - Notice of Appointment of a Hearing Committee;
  2. Exhibit 1-2 - Amended Notice to Solicitor;
  3. Exhibit 1-3 - Amended Notice to Attend,
  4. Exhibit 1-4 - Certificate of Membership and Exhibit;

5. Exhibit 1-5 - Private Application Hearing Notice.
3. As no application for a private hearing was made, the hearing was held in public.

### **Citations**

4. The Conduct Committee panel directed the following citations:
  1. It is alleged that you assisted your client in an improper purpose and that such conduct is deserving of sanction.
  2. It is alleged that you failed to protect the interests of your clients and that such conduct is deserving of sanction.
  3. It is alleged that you acted for more than one party in a conflict, or potential conflict situation, without the consent of all parties and/or where it was in the best interests of the parties to do so, and that such conduct is deserving of sanction.
  4. It is alleged that you swore a false Affidavit and that such conduct is deserving of sanction.
5. At the hearing, the parties jointly agreed that citations (1) and (4) would not be proceeding.
6. The Hearing Committee was presented with a Statement of Agreed Facts which is attached as Appendix "A" to this decision.

### **Factual Background**

7. Mr. Luthra has been a member of the Law Society of Alberta since June 27, 2001, and carries on practice as a sole practitioner at the Luthra Law Office in Edmonton, Alberta. In October of 2007, Mr. Luthra was approached by Mr. M., for the purposes of incorporating a corporation and acquiring a parcel of land known as the Leduc property. Shortly thereafter, Mr. Luthra was retained by Ms. C. to incorporate a corporation that was to ultimately acquire the Leduc property from Mr. M.. The transaction was structured in such a way that the vendor of the Leduc Property sold his interest to Mr. M. who then immediately assigned it to Ms. C., via their respective corporations. Mr. M.'s corporation paid \$1,908,000.00 for the Leduc property which was then immediately transferred to Ms. C. for \$2,385,000.00. The transaction resulted in Mr. M. making an immediately profit of \$477,000.00, without having to invest any money of his own. In acting for Mr. M. and Ms. C. and their related corporations, Mr. Luthra failed to identify the potential conflict and did not obtain consent from the parties to act, nor did he recommend that the parties obtain independent legal counsel. In doing so, Mr. Luthra violated the *Code of Professional Conduct* by failing to fully inform Ms. C. of material and relevant information, failing to recognize that he was acting in circumstances where

there was a conflict or potential conflict, and failing to obtain consent to act from his client. The concern in this matter is not that the fact that Mr. M. made a profit, but that Mr. Luthra did not advise Ms. C. that such a profit was being made. It is this failure that results in the citations being directed and the resultant sanctions being imposed.

8. Although Mr. Luthra breached the provisions of the *Code of Professional Conduct*, there are a number of mitigating factors in his favour. These are:
  1. In acting as he did, Mr. Luthra did not prefer the relationship with one client over the other;
  2. There is no evidence to suggest that Mr. Luthra obtained any personal gain or engaged in any improper purpose;
  3. There have been no repeat acts of misconduct in the eight years subsequent to the offence, and Mr. Luthra has an otherwise unblemished record;
  4. There have been changes made to Mr. Luthra's practice and Mr. Luthra is now careful to recognize potential conflicts and utilizes the appropriate conflict letters where required;
  5. The admission of guilt has resulted in a savings to the Law Society of an estimated four days of hearings.
9. Counsel for the Law Society and Mr. Luthra provided joint submissions in which they suggested that an appropriate penalty would be a fine of \$7,500.00 and payment of a portion of the actual investigation in the amount of \$10,000.00. In circumstances where a joint submission is made on sanction, the Hearing Committee is obliged to provide serious consideration to that joint submission and reject it only if it is found to be unfit, unreasonable or contrary to the public's interest. In all these circumstances, the Hearing Committee is satisfied that the joint submission on penalty is appropriate and, accordingly, Mr. Luthra is ordered to pay a fine of \$7,500.00 plus \$10,000.00 costs for a total payment of \$17,500.00. Mr. Luthra has asked that payments be made by installments and the Law Society has agreed to receive payments of \$1,000.00 per month, commencing May 1<sup>st</sup>, 2015 and continuing until such time as the full amount of the penalty is paid. Should payment not be made when due, Mr. Luthra is to be immediately suspended and remain suspended until payment of all arrears is made.
10. No Notice to the Profession shall be made.
11. No referral to the Attorney General is required

Dated this 14<sup>th</sup> day of September, 2015.

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Walter Pavlic, QC – Chair  
Hearing Committee  
The Law Society of Alberta

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Douglas Mah, QC – Member  
Hearing Committee  
The Law Society of Alberta

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Wayne Jacques - Member  
Hearing Committee  
The Law Society of Alberta

**Appendix "A"**

**THE LAW SOCIETY OF ALBERTA**

IN THE MATTER OF:

THE LEGAL PROFESSION ACT

- and -

IN THE MATTER OF:

A HEARING INTO THE CONDUCT OF  
SARJAN S. LUTHRA, a member of THE LAW SOCIETY OF ALBERTA

**STATEMENT OF AGREED FACTS (EXHIBIT 6)**

For the purpose of the above proceeding, the parties agree on the following facts:

**I. Jurisdiction, Service, and Panel Composition**

1.1 Sarjan Luthra is an active member of The Law Society of Alberta ("the Society"), having been admitted on June 27, 2001 (Exhibit 4).

1.2 Mr. Luthra has been validly served with notice of hearing for the following 4 citations (Exhibits 2, 3):

1. It is alleged that you assisted your client in an improper purpose and that such conduct is deserving of sanction.
2. It is alleged that you failed to protect the interests of your clients and that such conduct is deserving of sanction.
3. It is alleged that you acted for more than one party in a conflict, or potential conflict situation, without the consent of all parties and/or where it was in the best interests of the parties to do so, and that such conduct is deserving of sanction.
4. It is alleged that you swore a false Affidavit and that such conduct

- 1.3 Mr. Luthra acknowledges jurisdiction and has no objection to the composition of the panel on the basis of bias or otherwise.

## **II. Practice History**

- 2.1 Mr. Luthra was called to the Bar and admitted as a solicitor on June 27, 2001.
- 2.2 Mr. Luthra has been a member of the Society since June 27, 2001. He is an active member.
- 2.3 Mr. Luthra is, and all relevant times was, a sole practitioner carrying on his practice in Edmonton under the name the name Luthra Law Office.
- 2.4 Mr. Luthra has no discipline record with the Society (Exhibit 30).

## **III. Facts - Overview**

- 3.1 These citations arise from a complaint made on behalf of S. "J." C. ("C").
- 3.2 Mr. Luthra acted for C. and a business associate, M. L. ("L.") and for corporations he incorporated for them. He also for J. "J." M. ("M.") and corporations Mr. Luthra created for him.
- 3.3 The citations concern transactions involving a 159 acre parcel of land located in Leduc, Alberta ("the Leduc property").
- 3.4 In October 2007 the Leduc property was the subject of two Agricultural Real Estate Purchase Contracts, the first AREPC was between the original owner, G. B. and XXX430 ("430"), a corporation controlled by M.. The second AREPC was between 430 and XXXX998 Alberta Ltd. ("998") a corporation controlled by C. and L..
- 3.5 Both transactions were to close on November 15, 2007.

- 3.6 Mr. Luthra acted for M. in creating 430 and for C. and L. in creating 998. He then acted for 430 in connection with the B./430 AREPC and acted for both 430 and 998 in connection with the 430/998 AREPC.
- 3.7 The transactions were accomplished by way of a "flip transfer", which is to say a transfer directly from G. B. to 998.

#### **IV. Facts - Detail**

##### *Background*

- 4.1 C. is an immigrant from China. She has been in Canada since March 1984 and resides in Vancouver, British Columbia. Her first language is Cantonese.
- 4.2 L. is also an immigrant from China whose first language is Cantonese. He lives in Vancouver and is in the restaurant business.
- 4.3 M. is a principle of E. Developments Inc. of Richmond, B.C. and holds himself out as a builder and land developer.
- 4.4 Ms. C. was introduced to M. in December 2005 by G. T. ("T."), whom she understood to be a partner of M.. T. also lives in the Vancouver and is associated with E. Developments Inc. T. speaks Cantonese; M. does not.
- 4.5 In 2006 and 2007 C. and L., on behalf of a number of investors as well as themselves, became involved in six separate transactions with M. and T..
- 4.6 The last of these was the transaction involving the Leduc property that is the subject of this proceeding.
- 4.7 Mr. Luthra was not involved in any of the prior five transaction. In prior transactions the M./T. interests made separate profits. There is now ongoing litigation between the M./T. interests and the C./L. interests arising out of their several transactions.

*The Leduc Property*

- 4.8 G. B. was the owner of the Leduc property, subject to a life estate in favour of his mother.
- 4.9 Mr. B. listed the property for sale with a real estate agent, K.C.. The listing price was \$2,146,500 (Exhibit 7).
- 4.10 In the Fall of 2007 C., L., M. and T. came to Alberta and were shown the Leduc property by V.L., a real estate agent. V.L. has advised that he did not represent, C., L. or 998 in any matters.
- 4.11 Sarjan Luthra was first instructed on behalf of C. and L. by M. and T. and later met with all of them.
- 4.12 Mr. Luthra incorporated 998 and 430. (Exhibits 8 - 11)
- 4.13 On October 9, 2007, M., T., C. and L. met with Mr. Luthra. This was the first time T., C. and L. had met Mr. Luthra. Mr. Luthra had previously met M. on a single occasion.
- 4.14 On October 20, 2007, after having been shown the Leduc property by Vishal Luthra in the company of L. and C., M. caused 430 to enter into an AREPC with G. B.. Under the terms of this AREPC 430 "or nominee" agreed to buy and G. B. to sell the Leduc property for \$1,908,000, to be paid by:
- a. a deposit of \$100,000;
  - b. a vendor take back mortgage of \$1,100,000;
  - c. the balance of \$708,000, subject to normal adjustments, on closing (Exhibit 12).
- 4.15 On October 23, 2007, 998, through C. and L., signed an AREPC in Vancouver offering to buy the same property from 430 for \$2,385,000. M. signed the acceptance on the offer on behalf of 430. The same vendor take back financing schedule that was part of the B./430 AREPC was attached to the AREPC between 998 and 430. The payments terms of this AREPC were:
- a. a deposit of \$350,000;



- b. a vendor take back mortgage of \$1,100,000 on the same terms as the B./430 AREPC;
  - c. the balance of \$935,000, subject to normal adjustments, on closing.
- 4.16 The 430/998 AREPC was faxed to Mr. Luthra by M. on October 25, 2007 (Exhibit 13).
- 4.17 The C./L. group paid \$350,000 directly to M. (Exhibit 14). Mr. Luthra was not involved in that payment but he was provided with a copy of the negotiated cheque.
- 4.18 M. then paid \$100,000 to B.. Mr. Luthra was not involved in that payment, but it was accounted for in the Statement of Adjustments for the B. sale (Exhibit 21).
- 4.19 M. had signed the acceptance of the 430/998 AREPC on behalf of 430 (Exhibit 13).
- 4.20 430 and 998 were also parties to a Joint Venture Agreement concerning the Leduc property dated as of November 1, 2007 (Exhibit 15). Mr. Luthra had no part in the preparation of the Joint Venture Agreement and was not aware of its terms.
- 4.21 On October 30, 2007 after a conversation between Mr. Luthra and Mr. B.'s lawyer, Mr. B.'s lawyer provided to Mr. Luthra, by fax, certain documents to close the transaction contemplated by the B./430 AREPC including the vendor take back mortgage. A transfer document was prepared to effect transfer of the title directly from Mr. B. to 998.
- 4.22 On October 30, 2007 Mr. Luthra met with C., L., M. and T. in the company of Mr. T.'s daughter, R. T.. On this occasions R. T. acted as translator for C. and L.. On the prior meeting T. himself acted as translator.
- 4.23 At the October 30, 2007 meeting C. and L. executed the vendor take back mortgage in favour of B. (Exhibit 16).

- 4.24 On November 7, 2007 998 paid \$945,000 to Mr. Luthra and the money was received into Mr. Luthra's trust account to the credit of 998.(Exhibit 17).
- 4.25 On November 7, 2007, Mr. B.s' lawyer, Jordan B. then of Merchant Law Group's Edmonton office, delivered to Mr. Luthra his closing documents and trust letter. The closing documents included:
- a. Transfer of land from G. B. to 998 with a stated consideration of \$1,908,000;
  - b. Statement of Adjustments as between G. B. as Vendor and 998 as purchaser;
  - c. Mortgage from 998 to B. securing \$1,100,000, previously faxed.
- 4.26 The trust letter and statement of adjustments were subsequently amended to take account of GST being dealt with by self-assessment.
- 4.27 Attached are copies of:
- Trust letter, November 7, 2007 Exhibit 18
  - Transfer of Land Exhibit 19
  - Revised trust letter, November 15, 2007 Exhibit 20
  - Revised statement of adjustments Exhibit 21
  - Mortgage, as executed on October 30, 2007 Exhibit 16
- 4.28 On November 15, 2007 Mr. Luthra transferred \$935,035.35 from the trust funds held for 998 to the credit of 430 (Exhibits 17, 22).
- 4.29 Mr. Luthra then drew a trust cheque for \$708,535.55 payable to Merchant Law Group in trust and delivered that to Jordan B. together with a letter dated November 15, 2007 and required closing documents in respect of the B./430 AREPC (Exhibits 22, 23, 24). Jordan B.'s revised trust letter (Exhibit 20) followed the same day.
- 4.30 On December 14, 2007 Mr. Luthra:
- a. billed 998 a total \$4,089.82, inclusive of disbursements (Exhibit

- b. issued a trust cheque to himself against the 998 trust account to pay his bill (Exhibits 17, 26);
- c. issued a cheque to refund \$5,874.83 to 998 (Exhibits 17, 26).

4.31 Also on December 14, 2007 Mr. Luthra:

- a. billed 430 a total \$4,864.98, inclusive of disbursements, for "Purchase & Sale"
- b. issued a trust cheque to himself against the 430 trust account to pay his bill;
- c. issue a trust cheque to himself in the amount of \$778.46 to pay his account for incorporation of 430;
- d. issued a trust cheque to 430 for \$220,856.36, being the balance of the funds held to the credit of 430;
- e. sent a letter to 430 to the attention of Mr. M., enclosing copies of documents.

(Exhibits 27, 28).

4.32 In March 2008, 998 paid another \$200,000 on account of their arrangements with the M.. The money was received by Mr. Luthra and deposited to his trust account on March 18, 2008. The next day Mr. Luthra paid that amount to G. B. on account of the vendor take back mortgage (Exhibits 17, 29).

4.33 No further payments were made on the vendor take back mortgage and G. B. then took foreclosure proceedings and recovered the Leduc property.

4.34 Mr. Luthra did not at any time tell C. or L. that:

- a. B. had agreed to sell the Leduc property for \$1,908,000;
- b. M. had, through 430, entered into an AREPC with B. for \$1,908,000;
- c. M., through 430, was making an immediate profit of \$477,000 on the acquisition of the Leduc property without investing any money of his own..

V. Admission

- 5.1 Mr. Luthra agrees and admits to all of the facts stated herein and to the authenticity of the documents Exhibits 1-5 and 7-30.
- 5.2 Mr. Luthra agrees and admits that in acting for both the M./430 interests and C./L./998 interests he was acting for parties with conflicting interests and that it was not in the best interests of his clients for him to act but that he continued to act despite this conflict.
- 5.3 Mr. Luthra further agrees and admits that he did not have the written consent of his clients to act in these circumstances. Mr. Luthra failed to insure that C., L. and 998 were aware of all of the material facts of the transactions, before obtaining consent of those parties in acting for them.
- 5.4 Mr. Luthra agrees and admits that by reason of the facts as stated herein he failed to protect the interests of his clients, C., L. and 998.
- 5.5 Mr. Luthra agrees and admits that the facts as stated herein constitute conduct deserving of sanction as set out in Citations 2 and 3.

DATED this \_\_\_\_\_ day of April, 2015

Sarjan Luthra

Witness