

IN THE MATTER OF THE *LEGAL PROFESSION ACT*

AND

**IN THE MATTER OF A RESIGNATION APPLICATION
FOR DOUGLAS M. SEFCIK**

September 23 and 24, 2013, Calgary, Alberta

Panel: N. Ahluwalia, QC Chair
K. Ryan, QC
B. Code, QC

Law Society of Alberta: L. MacLean

For the Member: T. Meagher

Douglas Sefcik has made an application to resign from the Law Society of Alberta.

This resignation is not opposed by counsel for the Law Society. There are six citations pending a hearing. Mr. Sefcik has, by an agreed statement of facts, admitted to four of the citations. The citations, the admitted statement of facts, required statutory declaration, and undertaking are appended to this decision.

Mr. Sefcik acted as solicitor on the sale of ten residential properties in Calgary. In all of those cases, he admits to failing to perform his work in the manner of a careful and prudent solicitor and failed to conscientiously serve his clients. He also admits to providing legal services in a conflict or potential conflict without full disclosure or proper consent. Additionally, he admits to failing to adequately manage the amount of work in real estate conveyance and mortgage matters and failed to properly train and supervise support personnel. Finally, Mr. Sefcik admits to failing to comply with Accounting Rules of the Law Society of Alberta.

The remaining two citations allege that he assisted clients in committing a fraud or improper purpose and that Mr. Sefcik improperly signed an affidavit and failed to administer an oath for an affidavit.

Counsel for the LSA has candidly submitted to the committee that on the two citations remaining, the evidence is not altogether clear that he knew about fraud being

committed and indeed, some evidence that would be led would show that Mr. Sefcik was being duped by others who were coached to provide him with false answers to his questions.

Mr. Sefcik has provided the resignation committee with an undertaking that contains the following terms:

1. To never re-apply for re-admission to the Law Society of Alberta (LSA);
2. To cooperate with the LSA and ALIA with respect to any claim made against him or the Assurance fund;
3. To pay any deductible with respect to any claim paid by ALIA and to pay any amount of any claim paid by the LSA assurance fund;
4. To surrender his certificate of enrollment.

Mr. Sefcik testified before us. He has been a lawyer in Calgary since 1981. He practiced in all areas except for matters requiring him to attend in court. For the most part, he practiced alone. There was a period of about 10 years where he was in an office sharing arrangement. When the matters that brought him to the attention of the LSA occurred in 2007 and 2008, he was practicing alone. In 2006, his wife was working with him as an assistant. Later that year, his daughter was also employed at the office. It was later that year that things started to get very busy for him.

Adding to his increased work load were unexpected health issues. Mr Sefcik suffered a ruptured disk that caused him a great deal of pain. He was unable to sit at his desk and would stand at a raised desktop during the day. Sometimes, he related, that he would see clients while kneeling. Mr. Sefcik's wife suffered a heart attack in mid-December that year. She returned to work in mid-January of 2007 because they needed the help at the office.

Mr. Sefcik described a typical day at the office during that time as one where he would work 12-16 hours a day, everyday save Sunday. On Sundays, he would work 6-8 hours. He described this time as a flood of work. He says that he felt like he was drowning in work and could barely manage to keep his head above water. Mr. Sefcik asserted that as a sole practitioner he felt that he could not say no to work coming in. In a practice such as his, it was uncertain when there might be a lull in business. During this time, he was closing 60-100 files a month. Mistakes were made on files, he told the panel. But he asserted, the mistakes were minor and could be fixed.

His evidence was that the major mistake he made was not knowing about the changes major banks made when giving instructions to lawyers. This came to his attention when the LSA started its investigation. He assumed that lenders were getting appraisals on property before lending money. He did not think that anyone would forward money on property that was not worth what they were lending.

There were, over the course of this time, two paralegals. Mr. Sefcik was unable to secure the services of an experienced paralegal. The market was volatile. Paralegals were in short supply.

In 2010, Mr. Sefcik sold his law practice. He retains about a dozen files that can be easily distributed to two named lawyers.

Mr. Sefcik has no discipline record. In his testimony, he was clearly remorseful. The reality of the situation is that Mr. Sefcik's career ended years earlier than it otherwise would have as a direct result of these allegations and Mr. Sefcik's role in them.

The committee must determine whether it is in the best interest of the public and the members of the LSA to permit Mr. Sefcik to resign prior to the resolution of his pending conduct matters. In making this determination, it is incumbent on the committee to consider that this is a joint submission by the member and counsel for the LSA. Much deference must be paid. The jurisprudence requires this committee to accept the joint submission unless it is unfit or unreasonable. The Committee cannot say the outcome here is unfit or unreasonable.

This matter has been fully investigated by the LSA. The initial complaint was a letter dated August, 2007. The hearing on that and other complaints was scheduled for this week, just over five years later. All complaints relate to the matters that took place in 2006-7. There is no suggestion that after these particular matters are dealt with, there is concern about any other of Mr. Sefcik files.

Mr. Sefcik has admitted guilt. The LSA has admitted that the evidence that would be called in support of the remaining citations is equivocal. Counsel for the LSA has suggested that on the citations for which admissions have been made, they would, at a hearing, have asked the committee to consider a sanction involving a period of suspension. By tendering his resignation, an undertaking not to apply for re-admission, and a detailed agreed statement of facts acknowledging guilt. Mr. Sefcik has forestalled a lengthy hearing, the outcome of which is not certain. This surely is in the interest of the members of the LSA.

There is no regulatory interest to be served by taking this matter to hearing. Indeed, Mr. Sefcik's undertaking to never apply for re-admission means that the joint submission results in a practical outcome more harsh than may have been the case after full hearing. Likewise, if the public interest would otherwise require some formal sanction beyond resignation, this interest is achieved by an outcome that assures that no member of the public will ever be put at risk again. Mr. Sefcik has lost his career and his livelihood as a result of these events and conduct process. This is a significant consequence that is a fit and reasonable outcome based on the evidence and the admissions. This outcome serves as not only a specific deterrent for Mr. Sefcik, but a general one for all members of the profession. And, on this evidence, this outcome is in the public interest.

The resignation application is granted effective immediately.

Mr. Sefcik is to comply with all of the requirements of and cooperate with the Trust Safety Department of the LSA in closing his trust accounts.

The Roll of the Law Society of Alberta will reflect the member's application under s.32 of the *Legal Profession Act* was allowed on September 24, 2013.

The LSA is awarded costs of this proceeding against Mr. Sefcik.

Dated, this 26th day of February, 2014

N. Ahluwalia, QC (Chair)

B. Code, QC

K. Ryan, QC

CITATIONS

Douglas Sefcik

1. It is alleged that you assisted clients to commit a fraud or improper purpose, and that such conduct is conduct deserving of sanction.
2. It is alleged that you failed to perform your work in the manner of a careful and prudent solicitor and failed to conscientiously serve your clients, and that such conduct is conduct deserving of sanction.
3. It is alleged that you improperly provided legal services to clients in a conflict or potential conflict situation without full disclosure or proper consent and when not in all clients' best interests, and that such conduct is conduct deserving of sanction.
4. It is alleged that you failed to adequately manage the amount of work in real estate conveyance and mortgage matters and failed to properly train and supervise support personnel, and that such conduct is conduct deserving of sanction.
5. It is alleged that you improperly signed an affidavit and failed to administer an oath for an affidavit, and that such conduct is conduct deserving of sanction.
6. It is alleged that you failed to comply with the Accounting Rules of the Law Society of Alberta, and that such conduct is conduct deserving of sanction.

IN THE MATTER OF THE *LEGAL PROFESSION ACT*

AND

IN THE MATTER OF A HEARING REGARDING THE

CONDUCT OF DOUGLAS SEFCIK

A MEMBER OF THE LAW SOCIETY OF ALBERTA

**FILES: Law Society of Alberta re: S-AP (Complainant) and Douglas Sefcik
(Member)
File # CO20072192**

**GL re: YAG (Complainant) and Douglas Sefcik (Member)
File # CO20081645**

**GL re: P and GD (Complainants) and Douglas Sefcik (Member)
File # CO20090358**

**AC, RC, and VP (Complainants) and Douglas Sefcik (Member)
File # CO20091964**

**Law Society of Alberta re: JA (Complainant) and Douglas Sefcik (Member)
File # CO20092005**

**Law Society of Alberta re: SP (Complainant) and Douglas Sefcik (Member)
File # CO20092006**

**Real Estate Council of Alberta re: SP (Complainant) and Douglas Sefcik
(Member)
File # CO20101216**

**Law Society of Alberta (Complainant) and Douglas M. Sefcik (Member)
File #CO20102230**

ADMITTED STATEMENT OF FACTS

CITATIONS

On May 19, 2011, and July 21, 2011, the Conduct Committee referred the following conduct of Douglas Sefcik to hearing:

1. IT IS ALLEGED THAT you assisted clients to commit a fraud or improper purpose, and that such conduct is conduct deserving of sanction.
2. IT IS ALLEGED THAT you failed to perform your work in the manner of a careful and prudent solicitor and failed to conscientiously serve your clients, and that such conduct is conduct deserving of sanction.
3. IT IS ALLEGED THAT you improperly provided legal services to clients in a conflict or potential conflict situation without full disclosure or proper consent and when not in all clients' best interests, and that such conduct is conduct deserving of sanction.
4. IT IS ALLEGED THAT you failed to adequately manage the amount of work in real estate conveyance and mortgage matters and failed to properly train and supervise support personnel, and that such conduct is conduct deserving of sanction.
5. IT IS ALLEGED THAT you improperly signed an affidavit and failed to administer an oath for an affidavit, and that such conduct is conduct deserving of sanction.
6. IT IS ALLEGED THAT you failed to comply with the Accounting Rules of the Law Society of Alberta, and that such conduct is conduct deserving of sanction

INTRODUCTION

The Member was admitted to the Bar on July 07, 1981, Roll No. XXXX, and practices in Calgary, Alberta, as an active member until present.

FACTS REGARDING THE FOLLOWING PROPERTIES WHICH ARE THE SUBJECT MATTER OF CITATIONS 1 TO 5 INCLUSIVE

1. XXX E. WAY SW

D. from J.

1. Mr. Sefcik represented D. who purchased this property, which was a new home, from homebuilder J. for a purchase price of \$462,642.84 including GST. In accordance with the terms of the amended purchase agreement (tab 1.1A) the tentative construction start date was 31 July 2006 with a tentative completion date of 2 May 2007.
2. The closing of this transaction was on 10 May 2007.

Sale by D. to M.P.

3. On April 7, 2007, D. entered into a purchase contract (tab 1.1B) with M.P. (or Nominee) for the property for the price of \$449,194. Mr. Sefcik acted for the seller and the buyer.

4. Although the contract said that the purchaser would make a \$5,000 deposit to be delivered to the lawyer's trust account, this deposit was not made.
5. D. directed Mr. Sefcik to pay the proceeds of sale, less \$10,000 to M.P. Mr. Sefcik subsequently paid \$10,000 to D.

Sale by M.P. to O., M. & Y.

6. On April 7, 2007, M.P. entered into a purchase contract with O., M. and Y. to sell the property to them for the price of \$545,000 (tab 1.1C).
7. In this transaction, Mr. Sefcik acted for the vendor, the purchaser and the lender.
8. The purchase contract named M.A. and J.F.S.R. as the brokerage house as the realtors. No commission was sought by or paid to the realtors.
9. By contract amendment in writing, M.P. acknowledged receipt of all deposits and the balance owing, and the vendor agreed to pay the buyers' legal fees, and the parties advised Mr. Sefcik that there would be no adjustments between the buyers and the sellers.
10. On May 1, 2007, Mr. Sefcik was instructed to act for the lender in securing a new mortgage in this transaction in the amount of \$535,094.63. (tab 1.6).
11. Contrary to the lender's instructions (tab 1.5), Mr. Sefcik:
 - a. Acted for the vendor without the lender's written consent; and
 - b. Did not notify the bank that the property had been sold within the previous three to six months for substantially lower value.
12. Mr. Sefcik was also to ensure that the mortgagors had acquired fire insurance. He did this but not until eight days after disbursement of the mortgage proceeds.
13. Mr. Sefcik received mortgage proceeds on May 10, 2007 which were used in part to pay for the D. purchase from J.
14. The August 18, 2007 final report to the lender by Mr. Sefcik stated: "We confirm that all instructions by the Bank have been complied with." (tab 1.15)
15. The seller paid the buyer's legal fees.

Sale By M.P. to E. and S.

16. On June 29, 2007, M.P. entered into a purchase contract with E. and S. for \$570,000 (tab 1.2).

17. O., M. and Y. advised Mr. Sefcik in writing (tab 1.12) that they received sale proceeds from M.P. and were aware that the property was being skip transferred to E./S.
18. Mr. Sefcik acted for the seller and the buyers in this transaction.

2. XX H.C., DEWINTON

Sale by W. to M.P.

19. The property was purchased for \$620,000 by M.P. from L. and L.W. by an offer to purchase dated April 4, 2007 (tab 2.1A). The deal was scheduled to close on May 17, 2007. The W.s were represented by Anderson Sinclair. Mr. Sefcik represented M.P.

Sale by M.P. to O., M. & Y.

20. The property was purchased for \$749,500 by O., M. & Y. from M.P. by an offer to purchase dated April 24, 2007 (tab 2.1B) scheduled to close on May 15, 2007. In accordance with the terms of this contract, the seller acknowledged receipt of all deposits and balance owing, the seller paid the buyers' legal fees and there was to be no adjustments between the buyers and the seller.
21. The lender sent correspondence to Mr. Sefcik dated May 16, 2007 confirming its engagement of his services for the preparation and registration of a mortgage against title to this property. The engagement letter referred Mr. Sefcik to the lender's website for general instructions. Mr. Sefcik did not read the general instructions.
22. Mr. Sefcik acknowledges that he did not tell the lender about the sale price on the W. transfer to M.P., the payments from the purchaser directly to the vendor, or that this was a skip transfer.
24. Mr. Sefcik on instructions from M.P. paid \$30,000 to R.S. Mr. Sefcik did not tell the lender about this.
25. The mortgage loan was advanced by the lender May 17, 2007, in the amount of \$712,025 (tab 2.3). Under the terms of the offer, the balance payable to the vendor via the financing was only \$702,025; however all of the funds were disbursed directly to, or transferred to other files of the vendor, or in payment of Mr. Sefcik.

M.P. to P.

26. The property was purchased from M.P. for \$785,877.84 by P. by an offer to purchase dated August 10, 2007 (tab 2.13).
27. Mr. Sefcik obtained an acknowledgement from M., O., and Y. that they had received all money owing to them directly from M.P. and were aware of the future skip transfer to P., Mr. Sefcik was not acting for them, and they were aware of their continuing liability under the mortgage (tab 2.15).
28. The purchaser's file number xxxx did not contain: a statement of adjustments, reporting letters to either the purchasers or the vendor, or statement of account from Mr. Sefcik.

29. The lender obtained title to this property on December 22, 2007 in a foreclosure action. The value of the property was declared to be \$610,000.

3. XX H.H., DEWINTON

Sale by A. to B.

30. The property was purchased by R.A. from XXXXXXXX Alberta Ltd. for \$630,000 on February 23, 2007. Mr. Sefcik did not act for any party in that transaction.
31. By virtue of a purchase contract dated April 3, 2007, A. sold the property to B. for \$759,000 (tab 3.1). Mr. Sefcik acted for the seller, the buyer, and the lender.
32. The lender sent instructions to Mr. Sefcik dated May 16, 2007 confirming its engagement of his services for the preparation and registration of a mortgage against title to this property (tab 3.6).
33. Mr. Sefcik acted for the vendor without the consent of the lender. The lender's instructions included requiring Mr. Sefcik to take all steps that would be taken by a careful and prudent solicitor including advising the mortgagee of any material fact known to Mr. Sefcik which might affect the decision to make the mortgage loan including advising of any significant escalation in the value of the property over a short period of time and advising if there are any unusual credits on the statement of adjustments in favour of the Mortgagor. Mr. Sefcik did not advise the lender of any escalation in value.
34. Mr. Sefcik's report to the purchasers (tab 3.12) was sent to the vendor's address as was a later report, after the title was cleared (tab 3.16). That's because Mr. Sefcik's practice was to send reporting letters to the address on title. In this case R. and B. were shown on title as being of XX H.L. Boulevard.
35. Mr. Sefcik's file did not disclose a written conflict letter regarding any transaction.
36. The seller paid the buyer's legal fees.

Transfer from B. & R. to A.

37. A transfer dated October , 2007 was prepared showing consideration of \$740,000 to R.A. (tab 3.13, page 2). R.S. signed for B. under a Power of Attorney (tab 3.5).
38. Mr. Sefcik reported to R.A. (tab 3.17) on the sale and purchase from B. and Reynolds but there was no report to B./R. on Mr. Sefcik's file. This property went into foreclosure and on January 20, 2009 the Court of Queen's Bench of Alberta granted an order for sale to the plaintiff and judgment to the lender (tab 3.18). The purchase price was \$622,000.

4. XXX C. BOULEVARD

39. This property was acquired by M.P. through a purchase contract dated July 21, 2007 (tab 4.1a). Mr. Sefcik represented M.P. The purchase price was \$465,000 and the possession date was August 24, 2007.

Transfer from M.P. to T. & C.

40. By purchase contract dated August 15, 2007 (tab 4.1b), M.P. sold the land to purchasers C.T.T. and L.W.C. for a purchase price of \$565,000. The possession date was September 14, 2007.

41. No conflict letter was prepared for any party.

42. On September 12, 2007, the lender instructed Mr. Sefcik to act for them to secure a mortgage loan to the purchasers – T. and C.

43. Mr. Sefcik acknowledges that he now knows that he was required to obtain a title insurance policy for the lender but did not do so as he was not aware of that requirement at the time the mortgage funds were advanced.

44. Mr. Sefcik also acknowledges that he was required to notify the lender if there had been a title transfer within the last 90 days before the transfer of title to the borrowers. Mr. Sefcik acknowledges that he did not advise of the skip transfer and he was not aware of the requirement regarding the notification.

45. Mr. Sefcik acknowledges that he was required to certify that the borrowers had arranged for fire insurance before any funds were advanced and he acknowledges that he failed to obtain confirmation of fire insurance coverage with a mortgage endorsement to the lender.

46. Mr. Sefcik acknowledges that he was required to but did not advise the mortgagor to obtain independent legal representation and he did not obtain the mortgagor's written consent to act for the lender. Nor did he contact the lender to advise that he was acting for the vendor as required. He acknowledges not reading the mortgage instructions.

5. XXX T. CRESCENT

47. By a purchase contract dated December 18, 2006, M.A. and S.M. agreed to purchase a new home to be constructed on land from the builder for \$385,757.50 (tab 5.1a). The closing date was set for April 30, 2007 (tab 5.5).
48. The transaction did not close on time and the parties entered into a new contract with an increased purchase price of \$419,127.51 and a change in possession date to May 31, 2007 (tab 5.1b).
49. Mr. Sefcik acted for the purchasers and requested a change in the transfer to the name of M.A. only (tab 5.7). This was authorized by the solicitor for the vendor.
50. On May 9, 2007 Mr. Sefcik received the instructions of the lender to act on their behalf in the preparation and securing of a first mortgage for M.A. On June 1, 2007 (tab 5.14), Mr. Sefcik faxed the title insurer confirming:
 - a. The mortgage had been submitted for registration; and
 - b. The funds had been disbursed.
51. In fact, the transfer to M.A. and the mortgage were not registered until August 21, 2007. The reason for the delayed registration is not known.
52. The lender's instructions required Mr. Sefcik to verify that fire insurance was in place with a mortgage endorsement in favour of the lender. There is no record of insurance coverage on Mr. Sefcik's file.
53. The conflict letter prepared by Mr. Sefcik was not signed by the client M.A. (tab 5.13).

M. Sale to S.

54. By a purchase contract dated November 5, 2007, M. sold this property to K.S. for \$461,000.
55. S. signed Mr. Sefcik's conflict letter (tab 5.22) which advised that Mr. Sefcik was acting for both the mortgagee and purchaser. There was no conflict letter in regards to Mr. Sefcik acting for the vendor.
56. Mr. Sefcik did not advise and obtain the consent of the lender to act for the vendor.
57. Mortgage instructions (tabs 5.17 and 5.18) were forwarded to Mr. Sefcik by the lender on November 28, 2007.
58. Mr. Sefcik did not advise the lender that the land price increased \$41,800.

59. The instructions to Mr. Sefcik included that Mr. Sefcik will advise immediately, in the event that it comes to his attention that any credits toward the purchase price in favour of the purchaser on a conveyancing transaction arise other than by way of payment of funds through Mr. Sefcik's trust account. This duty to report includes deposits allegedly paid directly from the purchaser to vendor.
60. The purchaser did receive credit for deposits allegedly paid directly to the vendor. This was not reported, as required, to the lender.
61. On April 12, 2007, \$19,200 was deposited to Mr. Sefcik's trust account on this file – xxx on behalf of the vendor. The deposit was returned as NSF. It was replaced by a deposit of \$19,200 from the vendor who told Mr. Sefcik that he would collect it from the buyer (tab 5.4).

6. XXX T. GROVE NE

62. A.M. and A.R. were the registered owners of this property.

63. Y.G.Q. entered into a purchase contract with M.P. to purchase the property from M.P. for \$491,500 to close on September 21, 2007 (tab 6.1A).

64. A.M. signed the transfer of land for himself and for A.R. (under a Power of Attorney). Mr. Sefcik witnessed those signatures and signed and swore an affidavit of execution stating:

That I was personally present and did see A.M. and A.R., personally known to me to be the persons named therein, duly sign and execute the same for the purpose named therein. (tab 6.11, page 3)

65. Mr. Sefcik has stated this was a mistake. He did not see R.R. sign the affidavit because A.M. signed for him pursuant to a Power of Attorney.

66. Mr. Sefcik acknowledges that he made a mistake. He intended to make changes to the affidavit before it was submitted for registration to indicate that it had been signed by Power of Attorney but he forgot to do this and it was submitted as is.

67. Mr. Sefcik admits that he did not properly account for and settle property tax payments prior to closing.

68. Mr. Sefcik admits that there was a rent adjustment error. He offered to ask the seller to reimburse Y.G.Q., but Y.G.Q.'s lawyer was not interested in that.

69. Mr. Sefcik did not secure the informed consent of his purchaser client Y.G.Q. when he forgot to have him sign the standard letters of conflict of interest and acknowledgement of high ratio mortgage obligations.

7. XX T. WAY NW

D.'s Purchase from T.

70. On January 28, 2007, G. and P.D. signed a purchase contract to buy this property from S.E. for \$525,000 (tab 7.1). According to the contract, the deposit of \$26,250 was to be paid to the seller directly.
71. Mr. Sefcik acted for the vendor, purchaser and mortgage lender.
72. Mr. Sefcik did not include property taxes in the statement of adjustments.
73. The vendor paid the purchasers' legal fees and expenses.
74. Mr. Sefcik failed to comply with the following instructions from the mortgagee:
 - a. To obtain a lender's Title Insurance policy;
 - b. To obtain buyer's written consent to act for lender;
 - c. To advise the lender he was acting for the seller;
 - d. To confirm that the purchasers had fire insurance with loss payable to the lender.
75. On April 23, 2008 Mr. Sefcik signed and faxed his solicitor's report to the lender (tab 7.14), which stated:

The undersigned hereby certifies as follows: all terms and conditions as set out in your requisition to solicitor/notary for mortgage/hypothecary loan, have been fulfilled and where required supporting documentation has been obtained.

8. XXX E. RISE SW, CALGARY

76. By a purchase contract dated January 27, 2007, G.D. and P.D. agreed to purchase this property from A.A. and N.T. for \$525,000 (tab 8.1). The deposits totaling \$26,250 were shown on the contract to be paid to the sellers. The balance of \$498,750 was to be paid from new financing.
77. M.A. was named in the contract as the buyer's realtor.
78. Mr. Sefcik acted for vendors, purchasers and mortgage lenders in this transaction.
79. On March 8, 2007, the lender's residential mortgages manager R.S. faxed a letter to Mr. Sefcik (tab 8.9) confirming that the lender was aware of the land value increase over the last year.
80. The purchasers' legal fees were paid by a third party named K.
81. The purchasers signed an acknowledgement for Mr. Sefcik that they had paid all deposits directly to the sellers (tab 8.5). A similar document was not obtained from the seller to acknowledge the receipt.
82. Mr. Sefcik obtained a written acknowledgement of his conflict position from the vendors and purchasers (tab 8.6). In this document, he did not disclose that he also represented the lender.

9. XXX N.B. DRIVE SE

83. In May of 2008 a transfer of land from the developer was signed at the request of the builder transferring the land into the name of N.B. The value of the land stated by the agent for the purchaser was \$402,855.45 (tab 9.4).
84. An unconditional purchase contract was signed by A. and R.C. and the vendor N.B. on March 18, 2008 (tab 9.1). The purchase price was \$552,500 paid by a deposit of \$5,000 and the balance of \$552,500 (sic) by new financing. The contract did not specify who was to hold the deposit.
85. Mr. Sefcik acted for the vendor, purchasers and mortgage lender on the C. purchase.
86. The transfer of land to C./P. was signed for the seller B. by R.S. under a Power of Attorney (tab 9.5) and witnessed by Mr. Sefcik.
87. According to Mr. Sefcik, R.S. was a relative of B.
88. Mr. Sefcik was the affiant in the affidavit of transferee as agent for the purchasers. He swore the value of the land to be \$552,500 (tab 9.8, page 4).
89. Mr. Sefcik received written instructions from the lender to act for them in the placement of mortgage security against the land. Mr. Sefcik did not review the mortgage instructions and failed to heed the following instructions:
- a. He did not request the lender's consent to act for the vendor;
 - b. Mr. Sefcik was to advise the bank of any unusual circumstances that may indicate a potential fraud, such as recent sales (eg. within 3 to 6 months) of the same property at substantially lower values ... or title transfers (eg. within 3 to 6 months), disbursements to parties other than the usual payees, or a disbursement to a mortgage broker or someone arranging financing.
90. The vendor did not have title to the land at the time the purchase contract was signed. Mr. Sefcik did not advise the lender of the transfer to the vendor which occurred June 24, 2007 (17 days prior to the lender's mortgage being signed), or the recent escalation in value.
91. Mr. Sefcik reported to the lender that the taxes for the year were paid (tab 9.13), but they were not.
92. Mr. Sefcik paid R.S. the sale proceeds of \$546,496.16 (tab 9.3). Mr. Sefcik does not remember why he did not make the cheque payable to the property owner, N.B., other than the fact that R.S. had a Power of Attorney.

10. XX S. POINT NE

93. This property was acquired by A.A. by title registered November 28, 2007. Mr. Sefcik acted for G.K. when she purchased the property December 13, 2007 from A.A. for \$265,000 (purchase contract at tab 10.1). A copy of a deposit cheque from R.S. on the K. purchase was provided to Mr. Sefcik along with the offer to purchase (tab 10.1, page 4).
94. Kaur sold the land to A. and R.C. by offer to purchase dated February 15, 2008 (tab 10.2) for \$323,000. R.S. signed the transfer of land (tab 10.9, page 2) under a Power of Attorney she held for K.
95. Mr. Sefcik acted for all parties in the sale to, and mortgage by the C. The lender requested Mr. Sefcik to act as their solicitor in their mortgage instructions to Mr. Sefcik dated April 9, 2008 (tab 10.8). Their instructions included a requirement that prior to the release of funds we require the solicitor's undertaking that the sale of XX C. Way SE, Calgary, in which A. and R.C. are the vendors, is scheduled to close April 21. These instructions were revised and faxed to Mr. Sefcik an hour later the same day with an amendment to the closing date in the above clause to April 25 (tab 10.8, page 3). On April 14, 2008 Mr. Sefcik signed and faxed a solicitor's request for funds to the lender. Mr. Sefcik had deleted the line "solicitor undertaking sale of XX C. scheduled for April 25" and added in his handwriting "I confirm that we have a firm sale for the sale of XX C. scheduled for April 25, 2008." (tab 10.11)
96. XX C. Way was a mistake. XX C. Way was the C. residence, and as part of their mortgage application they said that they would sell that property and another one.
97. Mr. Sefcik had a copy of a contract for the sale of XX C. Way which is at tab 10.15, stating that this was a firm sale. He had no further file information.
98. As the result of a posting date error, on April 9, 2008, Mr. Sefcik transferred \$321,489.57 to the vendor's file. No funds were received in trust until the lender's cheque was deposited on April 16. This resulted in file xxxx being in a deficit position for 7 days.

11. XXX T. WAY

99. R.A. originally purchased the new home at XXX T. Way for \$385,758.23 from the builder (tab 11.1). Before closing, the land was sold to S.K. and S.A. for \$447,000 (tab 11.2).
100. Mr. Sefcik acted for the vendor, purchasers and the lender on this transaction.
101. Mr. Sefcik did not read the mortgage instructions or the amendments which set out the terms of his engagement by the lender.
102. Consequently, Mr. Sefcik did not follow the lender's instructions:
 - a. Mr. Sefcik failed to notify the lender of the recent transfer of the land from R. to A.;
 - b. Mr. Sefcik did not advise the lender he was also acting for the vendor, and did not obtain the lender's consent.
103. Mr. Sefcik obtained acknowledgements of the deposits and cash balance being paid/received by the purchasers and vendor (tab 11.5). Proper sale adjustments were not made. A property tax adjustment was "missed" and Mr. Sefcik acknowledged that the purchasers should not have had to assume the unpaid taxes.
104. On July 31, 2007, M.P. entered into a purchase contract (tab 11.15) to sell the land to A. (tab 11.15). Mr. Sefcik did not act for A.

12. XXXX - XTH AVENUE NE – SEPTEMBER 24, 2007

105. M.A. and N.A. (M.A.'s mother-in-law) transferred title to this property to N.A. Mr. Sefcik commissioned N.A.'s affidavit of transferee on June 12, 2007 wherein she swore that the value of the land in her opinion was \$614,000 (tab 12.5).
106. Mr. Sefcik later acted for the seller N.A. and the purchaser S.P.
107. The pertinent purchase contract, attached at tab 12.1, dated August 19, 2007 says that the purchase price was \$700,000 with a deposit of \$5,000 to be delivered to the seller's lawyer. The completion date of September 18, 2007 was later amended by agreement to September 24, 2007.
108. By letter dated September 18, 2007, Mr. Sefcik was asked to act on behalf of the lender to prepare and register a mortgage to be given by S.P. on the property (tab 12.6).
109. There is a conflict letter to S.P. and N.A. signed by both of them and dated October 4, 2007 (tab 12.9).
110. The statement of adjustments was prepared, dated September 24, 2007. The buyer was not given credit for the deposit. It's stated that the cash to close was \$700,312.98 (tab 12.14, page 5)
111. The lender granted a mortgage to S.P. in the amount of \$687,277.50 in October of 2007 (tab 12.10)
112. The lender's instructions in this case were the standard instructions. Mr. Sefcik failed to follow the lender's instructions in the following regard:
 - a. The title transfer to N.A. was just barely within or just barely without the 90 day window.
 - b. Mr. Sefcik did not notify the lender of this previous transaction.
 - c. Mr. Sefcik did not recommend that the mortgagor obtain independent legal representation nor did Mr. Sefcik obtain their written consent to act for both.
 - d. Mr. Sefcik did not tell the lender he was acting for the seller nor did he obtain additional instructions and documentation that were required in order to obtain the lender's consent to such representation.

CONCLUSION

113. Mr. Sefcik admits that he failed to perform his work in the manner of a careful and prudent solicitor and failed to conscientiously serve his clients.

114. Mr. Sefcik admits that he provided legal services to clients in a conflict or potential conflict without full disclosure or proper consent.
115. Mr. Sefcik admits that he failed to adequately manage the amount of work in real estate conveyance and mortgage matters and failed to properly train and supervise support personnel.
116. Mr. Sefcik admits that he failed to comply with the Accounting Rules of the Law Society of Alberta as disclosed in the Rule 130 audit reports of May 25, 2010 and September 30, 2010 which are at exhibit 23, in the exhibit binder.

THIS ADMITTED STATEMENT OF FACTS IS MADE THIS 19TH DAY OF SEPTEMBER, 2013.

Douglas Sefcik

IN THE MATTER OF THE LEGAL PROFESSION ACT

IN THE MATTER OF A RESIGNATION APPLICATION BY DOUGLAS M. SEFCIK, A MEMBER OF THE LAW SOCIETY OF ALBERTA

STATUTORY DECLARATION

I, **Douglas M. Sefcik**, of Calgary, Alberta, do solemnly declare that:

1. My birth date is [REDACTED].
2. I was admitted to the Bar in the Province of Alberta on July 07, 1981, Roll No. XXXX.
3. I reside in Calgary, Alberta, and I actively practiced as a barrister and solicitor in Calgary, Alberta, from my admission to present - 32 years
4. My office address is 212 – 20 Sunpark Plaza S.E., Calgary, Alberta.
5. I am making an application to resign from the Law Society of Alberta because I want to retire from the practice of law.
6. At this time I am facing conduct proceedings under Part 3 of the Act, namely six (6) citations against me more particularized in the Statement of Facts provided with my resignation application, and I am aware of the particulars of the citations and the circumstances which led to them.
7. I am not aware of any Assurance Fund claims against me.
8. I am aware of 8 professional negligence claims made against me that are being handled by the Alberta Lawyers Insurance Association (“ALIA”). The ALIA file numbers and the names of the claimants are as follows:

File Number	Claimant Name
XXXX XXXX	E.P.
XXXX XXXX	J.E.
XXXX XXXX	Y.A.G.
XXXX XXXX	C.F.
XXXX XXXX	Financial Institution
XXXX XXXX	Financial Intuition
XXXX XXXX	K.H.I.
XXXX XXXX	A.C.P.

9. As a result of this application, Paul Mullen or Paul Wozniak will take possession of all trust funds and client matters and, to the best of my knowledge, will dispose of the same.

10. I make my resignation application pursuant to section 32(1) of the *Legal Profession Act*.

I make this solemn declaration conscientiously believing it to be true and knowing that it has the same force and effect as if made under oath and by virtue of the Canada Evidence Act.

Declared before me at Calgary, Alberta
this 24th day of September, 2013

Commissioner of Oaths,
Notary Public, or other official
empowered to attest to statements
under oath in this jurisdiction.

Douglas M. Sefcik

IN THE MATTER OF THE LEGAL PROFESSION ACT

IN THE MATTER OF A RESIGNATION APPLICATION BY DOUGLAS M. SEFCIK, A MEMBER OF THE LAW SOCIETY OF ALBERTA

Undertaking

I, **Douglas M. Sefcik**, undertake to never re-apply for admission to the Law Society of Alberta.

I undertake and agree to cooperate with the Law Society of Alberta and the Alberta Lawyers' Insurance Association in respect to any claim made against me or the Assurance Fund regarding me now or in the future.

I undertake and agree to pay any deductible with respect to any claim paid by the Alberta Lawyers' Insurance Association and to pay the Law Society of Alberta any amount of any claim paid by the Law Society's Assurance Fund.

I undertake to locate and surrender to the Law Society of Alberta the Certificate of Enrolment issued by the Law Society pertaining to my admission to the Bar.

Dated at Calgary, Alberta, this 23rd day of September, 2013.

Douglas M. Sefcik