The Law Society of Saskatchewan

KEVAN MIGNEAULT
HEARING DATE: November 8, 2016
HEARING DECISION DATE: April 2, 2017
PENALTY HEARING DATE: May 31, 2017
PENALTY DECISION DATE: June 29, 2017
***Law Society of Saskatchewan v. Migneault*, 2017 SKLSS 7**

IN THE MATTER OF *THE LEGAL PROFESSION ACT, 1990*
AND IN THE MATTER OF KEVAN MIGNEAULT,
A LAWYER OF NORTH BATTLEFORD, SASKATCHEWAN

DECISION OF THE HEARING COMMITTEE FOR THE LAW SOCIETY OF SASKATCHEWAN

INTRODUCTION

1. A Hearing was conducted in-person at Regina on November 8, 2016, before a Hearing Committee comprised of Gerald Tegart (Chair), Janna Gates and Heather Hodgson. Kevan Migneault ("the Member") was in attendance and conducted his own representation. Timothy F. Huber represented the Conduct Investigation Committee ("the Investigation Committee"). There were no objections to the constitution or jurisdiction of the Hearing Committee.

2. After the completion of the cases of both parties and the hearing of oral submissions we adjourned to allow for the filing of written submissions. The Hearing reconvened by conference call on February 1, 2017, and was concluded that day.

3. A Partial Agreed Statement of Facts and Admissions ("the Agreed Statement of Facts") was filed at the commencement of the November 8 Hearing as Exhibit P2. It included agreed upon amendments to the allegations contained in the Formal Complaint. With the amendments agreed to by the parties and ordered by the Hearing Committee, the complaint now reads as follows:

> THAT KEVAN MIGNEAULT, of the City of North Battleford, in the Province of Saskatchewan is guilty of conduct unbecoming a lawyer in that he:
>
> Participation in the Fraud
> 1. did, through negligence and a failure to exercise due diligence, facilitate the commission of a fraud, or frauds, by his client A.M.;

2. did, through willful blindness or recklessness, facilitate the commission of a fraud, or frauds, by his client A.M.;

3. did knowingly facilitate the commission of a fraud, or frauds, by his client A.M.;

4. did allow himself to become the dupe of, A.M, an unscrupulous client;

5. did enable A.M. to achieve an improper purpose by using his law firm and status as a lawyer to legitimize the fraudulent activities of A.M.;

Trust Accounting Rule Breaches

9. did fail to maintain proper books and records for his legal practice;

12. did, in relation to the L.S. matter, withdraw funds from trust in payment of fees and disbursements in a manner that was not authorized by the Law Society rules;

13. did, in relation to the L.S. matter, use trust funds held on behalf of L.S. for a purpose other than which L.S. intended; namely, a personal loan in the amount of $61,217.50 made by the Member to a third party;

14. did enter into or continue a debtor/creditor relationship with the following clients (loaning money) when his interests and the interests of those clients were in conflict and failed to ensure that:

i. the transaction was a fair and reasonable one;
ii. that its terms were fully disclosed to the client in writing in a manner that is reasonably understood by the client;
iii. the client was given a reasonable opportunity to seek independent legal advice about the transaction;
iv. the client consented in writing to the conflict of interest; and
v. there was no appearance of undue influence;

in relation to the following client matters:

1. R.G.;
2. R.B.;
3. L.G.;
4. L.S.; and
5. B.C.;

15. did, for the years 2006 through 2013, mislead the Law Society of Saskatchewan by filing annual practice declarations stating that he had not loaned money to clients in those years when he knew that to be false;

Investments/Cease Trade Order

18. did, through willful blindness or recklessness, involve himself in the investment offerings of his client, A.M. and his affiliated corporations, to the general public when A.M. and his affiliated corporations were the subject of a Cease Trade Order.

4. The gaps in the numbering of the counts reflect the numbering in the original Formal Complaint and its subsequent amendments, including the withdrawal of several counts and the consolidation of two others.

5. The Member entered guilty pleas to counts 9, 12, 13, 14 and 15. It was agreed that consideration of those counts would be deferred until the allegations in the other remaining counts were determined.

6. Counts 1 through 4 are alternative to one another. The Member indicated an intention to plead guilty to count 4. Counsel for the Investigation Committee submitted the evidence would substantiate a finding of conduct unbecoming related to count 2. It was agreed the acceptance of the count 4 guilty plea would be deferred.

7. Consequently, the Hearing proceeded as a consideration of the merits of counts 1, 2, 3, 4, 5 and 18.

DECISION

8. For the reasons set out below, the Hearing Committee finds the Formal Complaint to be well founded in relation to counts 1, 5 and 18. The determination in relation to count 1 renders moot the allegations related to counts 2, 3 and 4, since counts 1 to 4 were advanced in the alternative each to the others.

FACTS

9. The evidence was principally comprised of the Agreed Statement of Facts as well as oral evidence from the Member. The Agreed Statement of Facts runs to over one hundred pages, including attachments. What follows here is the summary related specifically to contested counts 1, 2, 3, 4, 5 and 18 set out in paras. 9 through 48 of the Agreed Statement of Facts. Also included here are paras. 5 through 8 of the Agreed Statement of Facts, which provide context for the investigation leading to the complaint. As indicated in the Agreed Statement of Facts, the A.M. referred to in the Formal Complaint is an individual by the name of Allan Moen. Much of this is already a matter of public record.

Excerpts from the Agreed Statement of Facts

Origin of Complaint

5. The Law Society began an investigation into the Member after the RCMP alerted the Law Society to the Member's firm's involvement with Allan Moen ("Moen"). Moen was being investigated in relation to a series of fraudulent investment schemes. The RCMP contacted the Law Society in advance of their search of the Member's law office for the purposes of seizing the files relating to Moen. That search occurred on or about October 15, 2012.

6. In the context of the search by the RCMP, it soon became apparent to the Law Society that the Member's law firm had deep ties with Moen and that large amounts of the funds from investors in Moen's schemes flowed through the Member's firm.

7. On October 27, 2015, Moen pled guilty to defrauding several investors out of funds in excess of $700,000.00. Moen was sentenced to 3 years in prison. A copy of the Moen Conviction is attached at Tab 3.

8. During the same period the Law Society audit process revealed a variety of issues connected to Moen, and additional issues with the Member's conduct that resulted in the allegations of conduct unbecoming described above.

Early Dealings with Moen

9. The Member's relationship with Moen dates back approximately 40 years. The Member was acquainted with Moen while the Member was in university and later in the community of North Battleford. In the 1990s Moen frequented the Member's firm and received legal services from the Member's former partner. The Member's first business dealings with Moen were in relation to a loan of $2,000.00 for a piece of machinery. Moen paid the Member back in relation to that loan.

10. During this same period, Moen approached the Member with an investment opportunity. The opportunity involved a medical device that was allegedly being developed by an American doctor. Through Moen, the Member invested $150,000.00 in this venture which was identified as Medcam, and later, Life Systems Corporation.

11. Moen was not typical of an individual raising capital for significant ventures. The Member recalls Moen appearing disheveled and unkempt. He wore ill-fitting clothes and needed dental work. He drove broken down vehicles and often travelled between cities by bus.

12. Shortly after the Member's $150,000.00 investment through Moen, it became apparent that the initial investment may be on shaky ground. Ultimately the Member experienced no return on his investment and lost the principle [sic].

13. In December of 2001, the Member became involved with another transaction relating to Moen. The transaction pertained to a numbered corporation owned and controlled by Moen called 101012190 Saskatchewan Ltd. ("190" Corp.). 190 Corp. was a holding company with various mineral claims in northern Saskatchewan. Between December 2001 and October 2003, the Member and his firm accepted funds from investors and paid those funds into trust on behalf of 190 Corp. Payments from investors deposited into the firm trust account were made payable in some cases to Moen directly, and in many cases to the Member's firm.

14. The Member was uncomfortable with the transaction from the beginning. Moen's appearance and manner of doing business was concerning to the Member. The Member also felt, at the time that Moen was involving the firm in receiving the investments being made in order to legitimize the investment. Moen had provided the Member with an excuse for having the investments flow through the law firm. Moen indicated that he did not have time to set up a bank account for the corporation on short notice and said that he would deal with that issue in a week or so. This never occurred and the practice of paying investment funds through the firm continued, for one corporation of [sic] another, for a decade.

15. On December 14, 2001, the Member drafted a waiver to be signed by investors in 190 Corp [Tab 4]. The waiver, intended by the Member to protect himself and his firm, stated, in part, the following: Any funds being paid into the firm's trust account or to 101 via this office will be paid out to Allan Moen and/or his designate, to cover costs of acquisition of the mining claim to a maximum of $150,000.00. It is hoped a public corporation will ultimately be set up or obtained with the remaining investment funds over and above the initial $150,000.00 acquisition costs. The intention is for investors in 101 to receive a corresponding percentage of their 101 holding in the new company. It cannot be stated that this will actually happen depending upon the nature of the public vehicle set up or obtained. If the public company does not come about for any reason, the investment proceeds over and above the $150,000.00 acquisition costs will be refunded on a pro-rata basis to the investors, who will then be issued shares in 101 on the basis of 0ne (1) share for each dollar invested. … This investment is risky and should not be made if you cannot afford to lose your investment.

16. Over the two-year period spanning 2001-2003, approximately $550,000.00 came into the firm trust account from approximately thirty third party investors in relation to 190 Corp. Both the Member and Murray Greenwood, the Member's partner, handled these transactions. Over that same period approximately $260,000.00 was paid out of trust directly to Moen via trust cheque. Ultimately, inside the two-year period, the entire balance of investor funds in trust was disbursed, including $21,500.00 to the Member, $9,520.00 to his partner for payment of loans or fees and one large transfer to the firm's US fund trust account in the amount of $154,140.00. The Member does not recall where the

$154,140.00 payment was directed and has no records to identify the recipient beyond a trust ledger entry labeled "Fort A La Crone". Attached at Tab 5 is the trust ledger for 190 Corp.

17. In 2002 the assets in 190 Corp, being the mineral claims in northern Saskatchewan, were, in a deal arranged by Moen, transferred to a different entity controlled by Moen's business associate, Urban Casavant ("Casavant") called Casavant Mining Kimberlite International (CMKI). The name of that company was later changed to CMKM Diamonds Inc. In the late 1990s and early 2000s, Moen had been business partners with Casavant in relation to another unrelated deal. That deal spawned messy litigation in Alberta with third parties who claimed they had lost large amounts of money in their dealings with the pair [Tab 6]. The Member was aware of this litigation at the time.

18. As indicated above, the investors in 190 Corp were promised shares in a future entity. CMKM appears to have been that entity. The Member was to receive shares (in addition to the $21,500.00 mentioned above) as part of the original deal.

19. Between 2002 and 2005, 40,000 investors in CMKM were defrauded of at least $64,000,000.00 after Urban Casavant and his cohorts sold in excess of 600 billion shares in CMKM, a company that, in reality, had engaged in no mining activity. All of the 190 Corp investors lost their investments. While the Member's involvement appears to have ended with the initial share swap and transfer of assets from 190 Corp to CMKI, and there is no evidence to suggest that he was involved in the CMKM fraud, he did receive a share certificate for four million shares in CMKI/CMKM. The Member is unable to explain why he received the share certificate.

20. Attached at Tab 7 is an initial decision from the U.S. Securities and Exchange Commission dated July 12, 2005 detailing Casavant's dealings on CMKM. Attached at Tab 8 is an April 10, 2008 Saskatoon Star Phoenix article illustrating the infamy that ultimately surrounded Casavant and his dealings in Saskatchewan and the United States. The Member was aware of the CMKM matter, Casavant's involvement therein and Moen's connection with Casavant.

21. In other dealings with Moen in the early 2000s, the Member "guaranteed" the investment of a third party in a corporation that Moen was promoting. In short order, that investment also soured and the Member became liable for the guarantee and was forced to pay out $245,000.00 to the third-party investor.

<u>West African Industries Inc.</u>

22. West African Industries Inc. (WAI) was a venture that Moen started promoting in approximately 2004. The venture centered around the development of a gold mine in Sierra Leone. There is no evidence to suggest that WAI was, at any time, incorporated in Canada or the United States. The Member believes that WAI was incorporated in Sierra Leone although no confirmation of that has ever been found.

23. Between 2005 and 2013, the Member invested heavily in WAI, in excess of $240,000.00. Ultimately, the Member believed that he owned a 44% stake in WAI.

24. At the same time as the Member was providing money to Moen for his own investment in WAI, he was processing money from a variety of other investors. These transactions were, in large part, processed through two numbered Saskatchewan corporations known as 101056000 Saskatchewan Ltd. ("000" Corp.) and 101076568 Saskatchewan Ltd. ("568" Corp.). The trust ledgers for 000 Corp. and 568 Corp. are attached hereto at Tab 9 and Tab 10 respectively.

25. The Member had done no due diligence in relation to WAI. Nor did the Member do any due diligence in relation to 000 Corp. and 568 Corp. The Member had no knowledge about what 000 Corp. and 568 Corp. were for despite the fact that his firm was the registered office for both corporations. 000 Corp. and 568 Corp. were not officially affiliated with any particular venture and, for the Member, represented little more than trust ledgers on which to post transactions where people, including himself, were investing money with Moen. Investor documents illustrate that these numbered corporations were in fact affiliated with WAI.

26. In relation to 568 Corp., between November 24, 2005 and August 25, 2006, the Member processed payments through his firm totaling $51,675.00 from ten investors, including a $10,000.00 investment from his affiliated corporation Erjo. In relation to the Member's $10,000.00 investment, it was combined with another $10,000.00 investment from another investor and paid out to Moen as a $20,000.00 trust cheque. But for $2,500.00 paid to Moen's travel agent, each of the investments were paid out to Moen immediately, via firm trust cheque signed by the Member. Moen's practice was to take the cheque to the bank to cash it immediately. No legal services were provided to Moen in connection with these transactions. Likewise, no legal services were provided to the investors. The Member knew of no shares being issued in relation to the corporation. The Member knew nothing of the basis for the transaction, other than that his job was to provide a trust cheque to Moen. Ultimately, all of the investors, including the Member, lost their investments without receiving any return.

27. In relation to 000 Corp., between July 18, 2005 and March 22, 2012, $87,527.00 in payments received from approximately a dozen investors, some of whom also invested in 568 Corp., were processed through the Member's firm (by both the Member and his partner). But for $4,200.00 paid to the Member and $2,400.00 paid to his firm mate, each of the investments were paid out to Moen immediately, via firm trust cheque. The Member signed four of the cheques issued to Meon [sic] on the following dates in the following amounts: - July 9, 2009 -$4,000.00 - July 29, 2009 - $6,427.00 - October 6, 2009 -$6,000.00 - March 22, 2012 -$5,000.00

28. Moen's practice was to take the cheque to the bank to cash it immediately. No legal services were provided to Moen in connection with these transactions. Likewise, no legal services were provided to the investors. The Member knew of no shares being issued in relation to the corporation. The Member knew nothing of the basis for the transaction, other than that his job was to provide a trust cheque to Moen. Ultimately, all of the investors lost their investments without receiving any return.

The Nature of the Member's Involvement in Moen's Activities

29. In all cases, Moen had engaged with the investors independently of the Member and his firm. Over the years, before and after the Member's involvement, Moen completed hundreds of transactions with investors directly in furtherance of the fraud. From time to time, Moen chose to run certain transactions through the Member's firm (the transactions relating 190 Corp, 586 Corp and 000 Corp for example). The transactions that were handled through the firm were part of Moen's scheme and formed part of the funds lost by investors.

30. Moen's desire to run certain transactions through the Member's firm appears to have been motivated by an ability of Moen to receive a faster turnaround on third party payments by taking advantage of the immediate turnaround associated with law firm trust cheques. Banks typically hold back funds relating to third party cheques for several days, while law firm trust account cheques can allow for the immediate release of funds by the bank. Alternatively, it appears that Moen involved the Member and his firm in an effort to legitimize his operations, as occurred in the case of the 190 Corp. matters.

Saskatchewan Financial Services Commission Hearing and Cease Trade Orders

31. Moen's activities, specifically those in connection with his promotion of WAI drew the attention of the Saskatchewan Financial Services Commission ("SFSC"). On November 17, 2009 Moen, WAI and a third individual called Louis Supera became the subject of a Temporary Cease Trade Order (the "Temporary Order"). Neither Moen, WAI or Supera responded to the Temporary Order and it was extended a number of times on December 1, 2009, March 25, 2010, October 21, 2010, March 10, 2011 [SFSC Temporary Order and Extensions attached at Tab 11]. The extensions of the cease trade order were required in order to for the SFSC to complete its investigation into Moen and WAI.

32. On April 29, 2011, a Notice of Hearing was issued in relation to Moen, WAI, 568 Corp., Life Systems Corporation and others affiliated with Moen [Tab 12]. Further extensions of the Temporary Order in relation to this group were issued by the SFSC on June 9, 2011 and October 21, 2011 in order to schedule a Hearing into the matter [Tab 13].

33. In advance of the SFSC orders of the SFSC, the Migneault Greenwood law office received several notices from the SFSC. Starting in 2010, the Member's law partner, Murray Greenwood, started receiving other documents from the SFSC. On or about March 1, 2010 and October 22, 2010 he received several Summons for Documents relating to Moen himself and several entities connected to Moen including 190 Corp. and 000 Corp. Murray Greenwood was Power of Attorney and registered office for these entities. On November 12, 2010 Murray Greenwood wrote back to the SFSC stating that he would not respond to the Summons documents and that the documents in question would need to be obtained directly from Moen. The letter confirmed that he had passed the summons documents on to Moen and that he understood a meeting would occur between Moen and the SFSC on November 16, 2010 [Tab 14]. The Member claims to have had no knowledge of the correspondence from the SFSC to his partner in relation to Moen or the various corporations that were operated out of the Migneault Greenwood office. He states that he and Murray Greenwood rarely spoke to one another.

34. On or about November 25, 2010, apparently after Moen's meeting with the SFSC, an SFSC investigator telephoned the Member. The purpose of the call was to ascertain whether or not the Member would be representing Moen and or WAI in the upcoming SFSC hearings. The Member's response was that he was not representing Moen or WAI in the pending SFSC matters. The SFSC investigator emailed the Member after the call to confirm the discussion [Tab 15].

35. At the time of the Member's conversation with the SFSC on November 25, 2010, the Member was heavily invested in WAI, Life Systems and other Meon [sic] related entities. An agreement between the Member and Moen signed on March 24 and 25, 2010 illustrated the particulars of what was an investment by the Member in Meon [sic] related entities (including WAI) in excess of $550,000.00 [Tab 16].

36. In correspondence provided by Moen to investors dated October 27, 2010 [Tab 17], Moen stated the following: Our lawyer Kevan Migneault of the law firm Migneault Greenwood in North Battleford, Saskatchewan will handle the funds and do the contractual paper work for the joint venture. I am the vice president and CFO of the W.A.I. and will be directing the funds to equipment suppliers in California and Africa to facilitate the production process.

37. Moen's solicitation dated October 27, 2010 was in violation of the cease trade order in effect at the time. The Member states that he was not aware that he was referenced in Moen's correspondence in this manner.

38. The SFSC hearing into Moen and his related entities occurred on October 11 and 12, 2011. Moen appeared on behalf of himself, 568 Corp. and another numbered corporation. No one appeared on behalf of WAI or Life Systems. A decision was rendered by the SFSC on December 8, 2011 [Tab 18] wherein the SFSC ordered that:

i. The exemptions in Saskatchewan securities laws do not apply to the Respondents;
ii. The Respondents cease trading in all securities and exchange contracts;
iii. The Respondents cease acquiring securities and entering into exchange contracts, except for their own account or that of their spouse or spousal equivalent;
iv. The Respondents cease advising with respect to any securities, trades or exchange contracts; and,
v. Moen and Supera are prohibited from becoming or acting as directors or officers of an issuer, registrant or investment fund manager; or from being employed in the selling of or advertising on securities or exchange contracts by an issuer, registrant or investment fund manager.

39. A subsequent order dated May 31, 2012 required the Respondents to pay restitution to three specific investors totaling $226,212.90 [Tab 19].

40. The Member did not participate in the hearing and stated that he was not aware of it, in spite of the November 25, 2010 conversation with the SFSC.

41. The decision of the SFSC attracted the attention of the media. On December 22, 2011, the Saskatoon Star Phoenix published an article referring to all of the parties that were subject to the decision of the SFSC and described the decision [Tab 20]. The Member and his wife subscribed to that newspaper. Upon returning from vacation shortly after the article was published, the Member's wife reviewed this article and advised the Member that the newspaper said that Allan Moen had been suspended from trading in securities. The Member states that he thought nothing of this information and did not review the article and did not follow up on the matter in any way. The Member states that he was not surprised that Moen was suspended.

42. After November 17, 2009 when the first temporary cease trader [sic] order was implemented, and after his November 25, 2010 conversation with the SFSC, the Member participated in transactions between Moen and investors. Between August 9, 2011 and November 22, 2011, he personally signed eight trust cheques totaling $46,747.54, transferring funds to Moen and/or his son from at least two WAI investors. During this period, the Member was posting the transactions to the trust ledger for another Moen corporation known as Full Time Management Inc. [Tab 21 – Member signed cheques indicated by "KM" notation]. That trust ledger was only active for three months between August 2011 and November 2011.

Inquiry to WAI

43. On March 13, 2015, Law Society staff, via the WAI website, inquired about investing in WAI. A surreptitious name was used. Mr. Supera responded on March 14, 2015. When a follow-up question was asked by Law Society staff (posing as a potential investor) about possible return on investment and how to purchase shares in WAI, Mr. Supera sent the following email on March 23, 2015 in response: "Once again, thank you interest in our company. Because I am in the field a lot it would be easier for you to deal with our company attorney who is also an investor in our company. His name is Kevan Migneault and his contact info is, kevan@mglawoffice.com and his tel. No. Is 001 306 4454436. After you contact him, let me know how things go. Cheers"

44. A few hours later, the Member responded to the Law Society Staff Member as follows:

> Lou supera asked me to respond. Wai has some mining areas agreed upon with local tribes but that is never a certainty as its all verbal deals with lou & chiefs. Wai also has some mining sites with govt of s/l but hasn't got operable due to finances. With a fairly minimal investment some activity could commence on a limited scale at the tribal sites with hope to recover gold enuf to purchase heavy equip needed to get production started on the primary leases. This is a speculative investment. There was some promising preliminary testing but that's no guarantee. The whole operation depends on lou who has been over there for a lot of years but underfunded. Lou is 70. if lou dies there would be little chance of sorting things out. I have a vested interest in wai & have put in a lot of $ to keep it afloat/roads built/buy equipment etc. lou

> has 56% of wai & I have 44%. If $ starts to flow back to me as dividend I want to see various people get back investment/share of profits as I believe parties have put in $ on basis of a profit share. No profit to date & may never be. Please feel free to call if any questions
>
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45. The conversation with the Member continued after the Law Society staff Member indicated an interest in investing $20,000.00 - $30,000.00. On April 7, 2015 the Member wrote as follows:

> I expect wai could issue you preferred shares with a specified interest rate/option to convert to common shares or maybe issue some common shares. Given the time & expense to date I'm not sure what lou would consider for $25000.00 investment maybe 5%? Theres no certainty the shares will have any value if theres no gold/minerals/diamonds/rare earths but my understanding is the geologist examined site & was positive it was valuable. But in end still need a lot $ to mine at a large scale & hope is if revenue can generate on small scale the profits could pave way for bigger equip & production. I don't know the full details/layout but any investment will be totally at lous discretion. To this point my return is nil but I feel lou is a square shooter.
> Kevan M. Migneault

46. The Law Society staff Member advised that a $10,000.00 investment would be preferable and asking about when to expect receipt of the preferred shares after the investment. The Member responded as follows on April 30, 2015:

> Lou called back.says that wai has no preferred shares. I don't see any deal being reached here as wai needs more $ & it's a hi risk venture for you or any other investor
>
> Kevan M. Migneault

47. The full email exchange is attached hereto at Tab 22.

48. At the point in time where this exchange took place between the Member and Law Society staff person:

> a. The Member had been the subject of a law office search and seizure by the RCMP (October 15, 2012) targeting all Moen files including WAI;
>
> b. The Member had been personally interviewed by the RCMP as to his involvement with Moen and WAI;
>
> c. Moen, WAI and Supera were all the subject of the SFSC cease trade order arising out of the December 8, 2012 SFSC hearing decision;
>
> d. Moen was being actively prosecuted for investor fraud;
>
> e. The Member was aware of this prosecution because he was scheduled to testify in relation to the preliminary hearing in that matter in June of 2014. Ultimately, the Member was not required to testify after the preliminary hearing was resolved after Moen waived his preliminary hearing and consented to a committal for trial.

10. The Member's oral testimony did not contradict the Agreed Statement of Facts in any material way. The overall tenor of his testimony, consistent with his subsequent oral and written submissions, was to add context to the facts outlined in the Agreed Statement of Facts. For example, he explained his relationship with his partner, Murray Greenwood, noting that the two rarely spoke and that Moen may have used that to his advantage. In the Member's words, that was part of how Moen was able to "bamboozle" him.

11. He pointed to his own investments with Moen and offered his opinion that no one was "fleeced" more than he was.

12. According to the Member, although he had known Moen for many years, Moen was mainly Greenwood's client and the Member largely provided services when Greenwood was away from the office or unavailable for other reasons. However, it is clear from both the Member's testimony and the Agreed Statement of Facts that he provided services on many occasions and that he was reasonably knowledgeable about Moen's business with the firm.

13. The following excerpt from the Member's testimony concerning the entity referred to in the Agreed Statement of Facts as 568 Corp. provides some insight into both the Member's participation in Moen's business and the approach he took to providing his services to Moen:

> Anyway, with respect to 568, that company was set up by me. He had come in to see Murray. Murray wasn't there. We had a shelf company. He wanted this company set up, and it wasn't clear to me why he was setting it up, but I think he had a - he had a third party cheque from someone, and he wanted to have this company set up. And his instruction, as I recall it, was that the investor was going to get -- or the person that had written a cheque to him was going to get some shares and/or a promissory note or profits in a venture that may well have been West Africa. It wasn't clear to me because at the time I really didn't know about West Africa Industries.
>
> Anyway, we took the shelf company up. My initial went on that company because Murray wasn't there and that's how Rachel, who looks after most of our corporate work, set the files up with the -- with the initial of me on there. So on that particular file, there were some cheques. None of them were payable to our trust. They were all third-party cheques payable to Moen, and I think what ended up happening on those was that the -- he may have given promissory notes to these people saying, I will pay you this much with interest of so much or you have the option of getting shares or you have the option of taking profits in a venture. I think that's what he, sort of, promoted to the investors.
>
> So those cheques were third parties, they paid them to him. If we -- and I put them through our trust account, gave them cheques back, and to the extent -- it made things easier for him because he could go get his money instead of waiting for five days while the bank cleared a cheque from somebody else. They would process ours, I guess, that's probably what took place, and it just made it so that he was able to go and get -- and do things quicker then he would've otherwise. I guess if he had just taken them and set his own account up and put the money in, he would've operated and just -- he would've had a little bit of a lag time in terms of getting things done.
>
> He did have an account at the Bank of Montreal because I know that there was a couple cheques made payable to the Bank of Montreal. And, you know, he took them -- and took them to the Bank of Montreal. So he at least had a personal account, I believe, at the Bank of Montreal at some point in time.
>
> Now, in connection with 568, kind of, after the fact of the - these investments -- the initial investments in 2005 and early 2006, I put in $10,000 into that account -- that trust account, and J.T. and A.T. -- one of j.t. or A.T. had given Moen a third-party cheque payable to him. That went into trust. I gave Moen a cheque for the $20,000. I'm not sure exactly what he was going to do with that $20,000. I'm not sure if it even relates to that file, you know, 568. I think it would've related to either getting something done with one of the mineral leases or alternatively, that he was heading to China or, you know, one of those trips there. Like, he had projects. Like I said, there was a -- there was one in China as well. It was Pan Pacific, I think it was called, and I don't know what ended up happening there.

14. The Member's testimony of his involvement related to the other Moen corporations and the services the firm provided to Moen depicts a similar approach and level of participation.

15. In the discussion at the November 8 Hearing prior to the Member taking the stand, both counsel told us they did not expect the Member's testimony to contradict the Agreed Statement of Facts. Having heard his testimony, this appears to be so. Consequently, we conclude we can rely primarily on the Agreed Statement of Facts as an accurate and complete recital of the facts material to the consideration of the allegations.

COUNTS 1 to 4

16. Counts 1 to 4 in the Formal Complaint, which are advanced in the alternative, each to the others, allege that the Member:

> 1. did, through negligence and a failure to exercise due diligence, facilitate the commission of a fraud, or frauds, by his client A.M.;
>
> 2. did, through willful blindness or recklessness, facilitate the commission of a fraud, or frauds, by his client A.M.;
>
> 3. did knowingly facilitate the commission of a fraud, or frauds, by his client A.M.;
>
> 4. did allow himself to become the dupe of, A.M, an unscrupulous client….

Submissions

17. Counsel for the Investigation Committee asked us to characterize the Member's conduct as wilful blindness, leading to a finding of conduct unbecoming based on count 2. He referred us to two decisions in the Law Society of Upper Canada discipline process considering the meaning of wilful blindness and summarized his position as follows (at para. 14 of his written submission):

18. All of the red flags above lead to one inescapable conclusion. The Member had actual knowledge that there were problems with Moen, knew the risks associated with dealing with him, knew the consequences of engaging in the risk, and he chose to close his eyes, preferring to remain blind to what was literally staring him in the face for years. He did this to his own detriment. More importantly, he did this to the detriment of the investors who he helped fund Moen and he did this to the detriment of the profession that expects more from its Members than this.

19. The Member asked us to characterize his conduct as that of a mere dupe – another of Moen's victims. He pointed us to the several instances in which he cautioned potential investors and to the fact he himself was an investor with Moen who lost his investments.

Analysis and reasons for decision

20. Counts 1 to 3 allege the Member's conduct facilitated the commission of a fraud, or frauds, by the Member's client, Allan Moen. The difference among the three is the characterization of the Member's conduct, ranging from "negligence and a failure to exercise due diligence" in count 1 to actual knowledge in count 3.

21. Count 4 involves what is generally accepted as a lower level of culpability, alleging that the Member was simply a dupe of his client.

22. All four characterizations of the Member's conduct potentially attract discipline and would warrant serious consideration by the Law Society. However, there is arguably a range of

appropriate regulatory responses depending on which count we conclude most correctly describes the Member's conduct.

23. The Member offered a guilty plea to count 4 at the outset of the Hearing. Counsel for the Investigation Committee asked us to postpone accepting that plea pending the hearing of evidence and argument (which we did), indicating he would ask us to find count 2 is established by the evidence. As we indicated earlier, we have concluded that count 1 best describes the appropriate level of culpability based on the Member's conduct.

24. The Member's conduct is not defined by one or two incidents. It involves a pattern of activity that extends over a period of more than a decade. The basic facts are not in dispute. What is less certain is what inferences are to be drawn from those facts as we work to characterize the Member's conduct.

25. It is common ground that Allan Moen perpetrated multiple frauds that involved conduct connected to several business corporations in relation to which the Member's firm provided services. Again, what is less clear is precisely what role the Member played in the law firm's work related to these corporations and their connection to Moen's fraudulent activities. However, considering all of the admitted facts, it is clear that the Member's multiple individual actions when considered in their totality did facilitate Moen's fraudulent activities.

26. Nonetheless, elements of the Member's conduct are uncomfortably ambiguous. This ambiguity is reflected in the alternative counts. The Member would have us believe he was essentially innocent – a mere dupe. In fact, the evidence bears out that he was in specific instances one of Moen's many victims. The Member lost considerable sums of money involving personal investments in Moen's enterprises. We also have evidence that, on occasion, he urged potential investors to be cautious in their investments with Moen.

27. Counsel for the Investigation Committee asks us to find the Member's conduct demonstrates wilful blindness, which would support a finding of conduct unbecoming as alleged in count 2.

28. Rule 2.02(7) of the *Code of Professional Conduct* addresses a lawyer's obligations in relation to a client who may be engaged in dishonest or fraudulent conduct:

> 2.02 (7) When acting for a client, a lawyer must never knowingly assist in or encourage any dishonesty, fraud, crime or illegal conduct, or instruct the client on how to violate the law and avoid punishment.

29. While the Rule contemplates actual knowledge on the part of the Member, the commentary to the Rule makes clear that a lawyer's obligations extend beyond those instances where actual knowledge exists:

> [1] A lawyer should be on guard against becoming the tool or dupe of an unscrupulous client, or of others, whether or not associated with the unscrupulous client.

> [2] A lawyer should be alert to and avoid unwittingly becoming involved with a client engaged in criminal activities such as mortgage fraud or money laundering. Vigilance is required because the means for these, and other criminal activities, may be transactions for which lawyers commonly provide services such as: establishing, purchasing or selling business entities; arranging financing for the purchase or sale or operation of business entities; arranging financing for the purchase or sale of business assets; and purchasing and selling real estate.
>
> [3] Before accepting a retainer, or during a retainer, if a lawyer has suspicions or doubts about whether he or she might be assisting a client in dishonesty, fraud, crime or illegal conduct, the lawyer should make reasonable inquiries to obtain information about the client and about the subject matter and objectives of the retainer. These should include verifying who are the legal or beneficial owners of property and business entities, verifying who has the control of business entities, and clarifying the nature and purpose of a complex or unusual transaction where the purpose is not clear. The lawyer should make a record of the results of these inquiries.

30. Counsel for the Investigation Committee referred us to the decisions in *Law Society of Upper Canada v Kazman*, 2008 ONLSAP 7 (CanLII) and *Law Society of Upper Canada v. Purewal*, 2009 ONLSAP 10 (CanLII) to support his submission related to the wilful blindness element in count 2. *Kazman* focuses largely on the distinction between wilful blindness and recklessness. In doing so it provides the following helpful description of wilful blindness (at paras. 44 and 45):

> Knowledge of wrongdoing relates to two elements:
>
> a) Knowledge of the risk.
> b) Knowledge of the possible consequences of engaging in the risk.
>
> In the case of willful blindness, the licensee is aware that he should open his eyes and become knowledgeable as to both elements, but chooses not to, preferring to remain blind to both of them.

31. *Purewal* provides this succinct definition (at para. 32):

> "Willful blindness" means that a licensee actually suspects the dishonest activity, but deliberately refrains from making further inquiries for fear of confirming those suspicions.

32. We accept the statements in *Kazman* and *Purewal* as accurate descriptions of behaviour that reflects wilful blindness.

33. The Member here was definitely aware of circumstances that called out for further inquiry and a possible consequent change in his conduct supporting Moen's activities. However,

in order for this to constitute wilful blindness, we need two specific findings. First, in the words of Purewal, did the Member actually suspect dishonest activity? We have no direct evidence he did and we are not prepared to infer this from the evidence. Again, the Member should have made further inquiries, given these circumstances, but that doesn't necessarily establish wilful blindness in the manner articulated in Purewal.

34. Secondly, if the Member had suspected dishonest activity, wilful blindness requires a further finding that the Member chose to remain blind (in the language of *Kazman*) or deliberately refrained from making further inquiries (in the language of *Purewal*). We have no direct evidence to establish either. While it might be argued we should infer a state of mind that meets either or both of those tests, we are once again not inclined to do so in these circumstances. However, it should go without saying that, if there were clear evidence the Member had suspected dishonest activity, it would be easier to infer he made a choice to remain blind.

35. For both of these reasons, we do not find the allegation in count 2 to be made out.

36. The panel in *Purewal* also addressed the characterization of a lawyer as dupe (at para. 35):

> Being a dupe of the client (a phrase also frequently seen in the jurisprudence) is professional misconduct if accompanied by an appropriate level of fault. If the licensee is without knowledge and without that fault, then this is not professional misconduct. The licensee simply represents another innocent victim of a fraudster's activities.

37. The Member has acknowledged his culpability to the extent he was allegedly duped by Moen. There seems to be little doubt that certain individual interactions with Moen are most accurately characterized in that way. On the other hand, the overall relationship and the pattern of activity, when considered as a whole, suggest a greater level of responsibility.

38. It is difficult to accept that the Member was merely duped by Moen. Too many aspects of Moen's conduct, and the Member's knowledge of it and participation around it, involve instances where any reasonably astute lawyer would, at the very least, have made additional inquiries and taken steps to ensure that nothing in his work for the client could be assisting the client in ways that breached the lawyer's duties. While these professional obligations are not limited to situations involving a client seeking business investments, a lawyer's antennae should be particularly attuned when this is the main client activity the lawyer is asked to support.

39. The meanings to be attached to "negligence" and "due diligence" in count 1 were not argued in the Hearing or in the written submissions. Nonetheless, we are required to consider count 1 since it was left to us as an alternative to counts 2, 3 and 4. For the reasons that follow, we find it best describes the Member's conduct.

40. We conclude that negligence in this context simply means a failure to meet a reasonable standard of care expected of a lawyer in these circumstances. Due diligence can be described as

the diligence reasonably expected of a lawyer in circumstances such as these. We need not interpret these terms in the way we would if they were set out in legislation and subject to the principles of statutory interpretation or, for example, if we were considering whether the tort of negligence is made out.

41. Since we have already determined that the Member's conduct facilitated Moen's fraudulent activities, what remains to be decided in relation to count 1 is whether the Member's conduct amounts to negligence and a lack of due diligence, in the sense set out in the allegation and described above, and whether that negligence and lack of due diligence, in these circumstances, amounts to conduct unbecoming.

42. The written submissions of counsel for the Investigation Committee summarized certain facts that he advanced as indicators of wilful blindness. While we have concluded that wilful blindness is not established, those same facts support a determination that the Member's conduct was negligent and lacked due diligence and amount to conduct unbecoming. Included in the list of facts were the following:

> -Moen did not present as an individual who would be raising capital for significant ventures;
> -the Member lost his first investment with Moen;
> -the Member ran funds going to Moen through his trust account simply because Moen didn't open his own account and wanted quicker access to the funds;
> -at one point the Member was sufficiently uncomfortable with how money was flowing through the firm that he obtained waivers from investors;
> -the Member received 4 million shares for no apparent reason in relation to the Casavant venture;
> -the Member had to pay $245,000 to settle a claim based on a guarantee the Member gave in relation to another investor whose investment was lost;
> -the Member never saw any investor get their investment back or a return on that investment;
> -after the Member became aware the Saskatchewan Financial Services Commission ("SFSC") was investigating he continued to provide services to Moen.

43. The Member points to the fact Moen was principally his partner's client and that he and Greenwood rarely spoke. This is no answer. The Member himself regularly provided services for Moen and was generally aware of all of the work the firm was doing for Moen. Considering the various particular facts set out above and the knowledge of Moen's activities and the firm's support of those activities, the Member's failure to make further inquiries and adjust the firm's support for Moen amounted to negligence and a lack of due diligence that in turn constitutes conduct unbecoming. Consequently, the allegation in count 1 is well founded.

COUNT 5

44. Count 5 alleges the Member:

> 5. did enable A.M. to achieve an improper purpose by using his law firm and status as a lawyer to legitimize the fraudulent activities of A.M…..

Submissions

45. While the facts relevant to the first four counts are largely relevant to this count as well, counsel for the Investigation Committee emphasized the ongoing processing of money through the firm's trust account and the acknowledgment by the Member that his status as a lawyer and investor with Moen was likely used by Moen to lend additional credibility to his transactions with investors and, ultimately, to support his fraudulent activities. He pointed us back to rule 2.02(7) of the Code, referenced earlier, and to the decision in *Law Society of British Columbia v. McCandless*, [2010] L.S.D.D. No. 22.

46. The Member's response to this allegation was effectively the same as his response to the first four counts. He acknowledged he made mistakes. However, he asked us to conclude his conduct was innocent and that the Investigation Committee's assertions are speculative.

Analysis and reasons for decision

47. As a preliminary matter, we find that, if the Member's actions did enable Moen to achieve an improper purpose by using the Member's law firm and status as a lawyer to legitimize Moen's fraudulent activities, this is capable of being conduct unbecoming.

48. There is no question the activities of the Member and his firm facilitated and thereby enabled Moen's fraudulent activities. The issue, based on the specific wording of the fifth count, is whether the firm and the Member's status as a lawyer were used to legitimize those fraudulent activities. We have little direct evidence on point. We have the Member's acknowledgement in oral testimony, with respect to his unexplained receipt of 4 million shares in relation to the Casavant transactions, that giving him these shares may have allowed the promoters of the projects to use it as a "selling feature saying, hey, here's this lawyer in Saskatchewan. He's invested in our company. He's got 4 million shares, and maybe that made it so that he could sell more shares to more people." We also have the Member's acknowledgement that investor cheques were processed through the firm's account for years, even though this practice began as a short-term solution that would cease in "a week or so" after Moen set up a corporate bank account. The Agreed Statement of Facts (at para. 14) contains the following statement:

49. The Member also felt, at the time that Moen was involving the firm in receiving the investments being made in order to legitimize the investment.

50. It is no stretch to conclude that the Member's and his firm's participation added legitimacy to all of Moen's investment solicitations where the firm was involved.

51. Involving a law firm will normally lend credibility to an activity, perhaps not with every potential Member of the public, but certainly with some if not most. This fact imposes a particular obligation on lawyers to ensure their status and their law firms are not being used to legitimize fraudulent or other improper conduct on the part of their clients or persons closely connected to their clients.

52. It's noteworthy that the Member's direct dealings with prospective investors were often measured and sometimes may have actually discouraged investment. Although this may serve as a mitigating factor when an appropriate penalty is considered, it does not lead to a different conclusion with respect to whether the Member's conduct constituted conduct unbecoming a lawyer. We find the allegation in count 5 to be well founded.

COUNT 18

53. Count 18 alleges the Member:

> 18. did, through willful blindness or recklessness, involve himself in the investment offerings of his client, A.M. and his affiliated corporations, to the general public when A.M. and his affiliated corporations were the subject of a Cease Trade Order.

Submissions

54. Counsel for the Investigation Committee indicated that the analysis related to wilful blindness and recklessness supported by the cases and analysis referenced in relation to counts 1 to 4 is relevant to this count as well. He asked us to conclude that the Member, knowing what he knew about Moen's activities and the SFSC proceedings, "closed his eyes to the risk of continued involvement, preferring to remain blind to what was occurring".

55. The Member pointed to his limited knowledge of the SFSC proceedings, the fact his partner Greenwood was the SFSC's main contact and that he had no direct knowledge of what was transpiring between Greenwood and the SFSC or of details of the SFSC proceedings.

Analysis and reasons for decision

56. Consideration of this allegation requires us to look at the time-line related to the various orders and actions of the SFSC and the Member's knowledge of the SFSC processes and his activities during the relevant period.

57. Moen, along with Lou Supera and WAI, were first made subject to an interim cease trade order in November of 2009. This order was extended on several subsequent occasions, but only in relation to those persons. When a notice of Hearing into the matter was issued on April 29, 2011, it was directed to those three persons as well as 101065273 Saskatchewan Ltd ("273 Corp"), what is referred to in this decision as 568 Corp and Life Systems Corporation. Although there were subsequent extending orders, they merely extended the original orders and did not include the three additional parties.

58. While it hasn't been established that the Member was aware of the interim orders, and it is clear that the SFSC's dealings with the Member's firm were primarily with his partner Greenwood, it is acknowledged that the Member became aware that Moen was the subject of upcoming SFSC hearings when he was contacted by an SFSC representative on November 25, 2010, to determine if the Member would be representing Moen or WAI at the hearings. He indicated he wouldn't and apparently made no further inquiries as to the substance of the SFSC proceedings.

59. According to the Agreed Statement of Facts (at para. 42), the Member continued to provide services to Moen and WAI subsequent to becoming aware of the SFSC proceedings, but not until the period between August and November of 2011. During that period, the Member "signed eight trust cheques totaling $46,747.54, transferring funds to Moen and/or his son from at least two WAI investors".

60. The final cease trade order of the SFSC was issued on December 19, 2011. It imposed cease trade restrictions on all six parties to whom the notice of hearing had been directed.

61. On December 22, 2011, the Member became aware from the newspaper article read by his wife that Moen had been suspended from trading in securities. Again, the Member acknowledges he did nothing to follow up in order to learn more of the details.

62. There follows a period of relatively little activity involving the Member and Moen's ventures. On March 22, 2012, the Member signed a cheque issued to Moen in the amount of $5,000.00 related to 000 Corp. The next evidence we have of the Member providing any services of relevance to the charge takes us to March of 2015, when he was contacted by the law society employee conducting the simple undercover exercise. When the law society employee was referred to the Member by Lou Supera to respond to the request for investment information related to WAI, the Member responded and sent three emails over the ensuing weeks. While it must be said that the Member did not actively encourage this "potential investor" to invest, the Member did make contact after having been held out by Supera as WAI's "company attorney".

63. As a preliminary matter, we find the count as framed is capable of constituting conduct unbecoming, depending on the circumstances that support it. Cease trade orders must be respected, and a lawyer should avoid any activity that supports non-compliance with an order.

64. The facts supporting this allegation must be limited to those that occurred after the Member became aware that Moen and his affiliates were subject to a cease trade order, or at least after circumstances arose that required the Member to make himself aware of that. As indicated earlier, the evidence does not support a finding that the Member knew, or ought to have made the inquiries to inform himself, that a cease trade order was in effect until he was contacted by the SFSC on November 25, 2010. Consequently, while the Member's earlier conduct might provide context for our consideration of his actions subsequent to this date, it is only his actions subsequent to this date that can constitute conduct unbecoming in relation to this count. This includes his services from August to November of 2011, the single transaction in March of 2012 and his interaction with the law society employee in March and April of 2015.

65. To determine whether the allegation is well founded, we must first consider whether the Member's conduct was based on wilful blindness or recklessness, since that is an element stated in the allegation. In characterizing his conduct, we can look to the overall pattern of conduct over the multiple years the Member provided legal services to Moen and his affiliates. As concluded in relation to counts 1 to 4, we might be reluctant to find the Member had the requisite intent to establish wilful blindness. However, it is unnecessary to determine that, since we have concluded his conduct can be correctly characterized as recklessness.

66. The Member's overall approach to his relationship with Moen and Moen's questionable activities is troubling. Notwithstanding the ambiguities that arise by virtue of the Member's own inclination to risk and lose his own investments, as well as his occasional words of caution to potential investors, his ongoing willingness to facilitate Moen's dubious business methods and demands on the Member's firm cannot be excused. It is not an overstatement in these circumstances to characterize as recklessness the Member's failure to make the necessary inquiries to ensure he was not supporting activities that would compromise his professional obligations.

67. Through this recklessness the Member continued to be involved in Moen's investment seeking activities through parts of 2011 and 2012 and then again in 2015 when he had contact with the Law Society employee. Throughout this period Moen and one or more of his affiliated corporations were subject to a cease trade order. The Member's conduct in these circumstances constitutes professional misconduct, and we find the allegation in count 18 to be well founded.

PENALTY HEARING

68. A Penalty Hearing related to the counts considered in this decision and the remaining counts to which the Member has entered guilty pleas will be scheduled in due course.

"Gerald Tegart" (Chair)	"April 2/17"
"Janna Gates"	"April 2, 2017"
"Heather Hodgson"	"April 2, 2017"

PENALTY HEARING DECISION

Hearing Committee: Gerald Tegart (Chair), Janna Gates, Heather Hodgson
Representing the Conduct Investigation Committee: Timothy Huber
Kevan Migneault ("the Member") conducted his own representation.

INTRODUCTION

69. A Penalty Hearing was held in-person at Regina on May 31, 2017. On November 8, 2016, a Hearing to determine whether any or all of the charges contained in the Formal Complaint against the Member were well founded was conducted in-person at Regina. It was continued by conference call on February 1, 2017, to hear oral argument related to written submissions filed by the parties subsequent to the in-person Hearing.

70. The Formal Complaint, as amended at the November Hearing, contained the following allegations:

> THAT KEVAN MIGNEAULT, of the City of North Battleford, in the Province of Saskatchewan is guilty of conduct unbecoming a lawyer in that he:

Participation in the Fraud

1. did, through negligence and a failure to exercise due diligence, facilitate the commission of a fraud, or frauds, by his client A.M.;

2. did, through willful blindness or recklessness, facilitate the commission of a fraud, or frauds, by his client A.M.;

3. did knowingly facilitate the commission of a fraud, or frauds, by his client A.M.;

4. did allow himself to become the dupe of, A.M, an unscrupulous client;

5. did enable A.M. to achieve an improper purpose by using his law firm and status as a lawyer to legitimize the fraudulent activities of A.M.;

Trust Accounting Rule Breaches

9. did fail to maintain proper books and records for his legal practice;

12. did, in relation to the L.S. matter, withdraw funds from trust in payment of fees and disbursements in a manner that was not authorized by the Law Society rules;

13. did, in relation to the L.S. matter, use trust funds held on behalf of L.S. for a purpose other than which L.S. intended; namely, a personal loan in the amount of $61,217.50 made by the Member to a third party;

14. did enter into or continue a debtor/creditor relationship with the following clients (loaning money) when his interests and the interests of those clients were in conflict and failed to ensure that:

i. the transaction was a fair and reasonable one;
ii. that its terms were fully disclosed to the client in writing in a manner that is reasonably understood by the client;
iii. the client was given a reasonable opportunity to seek independent legal advice about the transaction;
iv. the client consented in writing to the conflict of interest; and
v. there was no appearance of undue influence;

in relation to the following client matters:

1. R.G.;
2. R.B.;
3. L.G.;
4. L.S.; and
5. B.C.;

15. did, for the years 2006 through 2013, mislead the Law Society of Saskatchewan by filing annual practice declarations stating that he had not loaned money to clients in those years when he knew that to be false;

Investments/Cease Trade Order

18. did, through willful blindness or recklessness, involve himself in the investment offerings of his client, A.M. and his affiliated corporations, to the general public when A.M. and his affiliated corporations were the subject of a Cease Trade Order.

71. The gaps in the numbering of the counts reflect the numbering in the original formal complaint and its subsequent amendments, including the withdrawal of several counts and the consolidation of two others.

72. The Member entered guilty pleas to counts 9, 12, 13, 14 and 15. It was agreed that consideration of those counts would be deferred until the allegations in the other remaining counts were determined. Consequently, the Hearing proceeded as a consideration of the merits of counts 1, 2, 3, 4, 5 and 18. Counts 1 through 4 were alternative to one another.

73. In a decision dated April 2, 2017, the Hearing Committee found the formal complaint to be well founded in relation to counts 1, 5 and 18. The determination on count 1 rendered moot the allegations related to counts 2, 3 and 4. Therefore, the penalty to be determined is based on counts 1, 5, 9, 12, 13, 14, 15 and 18.

FACTS

Counts 1, 5 and 18

74. The facts pertaining to counts 1, 5 and 18 are set out in the Hearing Committee's earlier decision. While separate counts, the three are factually related, since they deal with the Member's activities in relation to Alan Moen, a client of the firm who was ultimately found to have perpetrated multiple frauds involving the solicitation of investments. Some, although not all, of those frauds were facilitated to some degree by services provided to Moen by the Member's law firm.

75. The Member's firm provided services to Moen in relation to his various commercial and investment raising activities beginning in the 1990s and continuing for more than a decade. While it was the Member's partner, Murray Greenwood, who had primary responsibility for these services, the Member periodically assisted Moen, in particular when Greenwood was absent from the office. These services often involved the processing of payments from investors, including allowing the firm's trust account to be used to expedite the transfer of payments to Moen.

76. During this period, the Member was sufficiently familiar with the details of Moen's investment opportunities that he invested substantial amounts of his own money, all of which he ultimately lost. The Member also guaranteed the $245,000 investment of another party in one of Moen's schemes and ultimately paid that amount to the investor when the investment was lost.

77. The Member was not an active promoter of investments with Moen. In fact, he sometimes cautioned potential investors. However, as the facts underlying counts 1 and 5 indicate, he allowed his law firm and his status as a lawyer to legitimize Moen's fraudulent activities, and his negligence and failure to exercise due diligence facilitated those frauds.

78. The facts underlying count 18 occurred well after most of those related to counts 1 and 5.

Counts 9, 12, 13, 14 and 15

79. These counts are grouped together in the complaint under the heading "trust accounting rule breaches". The facts are outlined in paragraphs 49 through 65 of the Partial Agreed Statement of Facts entered into evidence at the original Hearing and set out below.

L.S. Matter - Allegations #12 and #13

49. The Member represented L.S. in relation to a residential school claim Independent Assessment Process (IAP) matter. On October 16, 2014 the Member received, from the Government of Canada, settlement funds in trust for L.S. in the amount of $155,821.10. Attached at Tab 23 is the Member's trust ledger for the L.S. matter. From the settlement funds, the Member determined that L.S. was entitled to $94,032.50 after payment of a series of legal accounts and loans (dealt with below). The Member paid L.S. this amount on October 20, 2014 at which time the Member viewed his obligations to L.S. satisfied.

50. The Member calculated his entitlement to the L.S. settlement funds as being $61,217.50 (representing the settlement funds minus the legal accounts and loans). The Member was in a position to receive the amount of $61,217.50 into his general account from trust on October 20, 2014. He did not process the payment. The Member indicated in a letter to the Law Society delivered on April 9, 2015 that "I did not have the accounts day sheeted at the time as our income for the firm in 2014 appeared to me to be quite good while the prospects for 2015 were not so good". The Member further states that "I made a note that the L.S. bills would be paid no later than December 31, 2015 or earlier if there was a change in our partnership as Murray had indicated he planned to retire in 2015."

51. The Member did not transfer trust funds owing to his firm into his general account as soon as it was practicable to do so in accordance with rule 940(2). The Member retained funds owing to his firm in his trust account intentionally in order to defer receipt of those funds into the following tax year as a tax planning strategy.

52. The Member's trust ledger reveals further issues associated with the L.S. matter. Specifically, the ledger shows the entirety of the $61,217.50 owing to the Member's firm being paid out to a third party, A.D. Inc., on January 5, 2015. When questioned the Member revealed that he found himself in a situation
where he wanted to loan A.D. Inc. $250,000.00 on short notice. Attached at Tab 24 is a copy of the Mortgage the Member entered into with A.D. Inc. The Member, viewing the money in the L.S. trust account as firm money, decided to issue a trust cheque directly to A.D. Inc. to fund the loan and recorded the cheque in the trust ledger for L.S. The Member issued a cheque from his affiliate corporation, Erjo, for the balance of the loan, $188,782.50.

53. This payment to A.D. Inc. from trust and recorded in the trust ledger of L.S. was not contemplated by L.S. L.S. was not aware of this payment and has no connection to A.D. Inc. The payment to a third party from another client's trust ledger on an unrelated matter is not an approved basis or method for withdrawal of trust funds from the Member's trust account.

54. The Member's conduct in relation to the L.S. matter represented a breach of the following Law Society trust accounting rules:

- Rule 940(2) – trust funds owing to Member/firm were not transferred from trust to general account as soon as practicable;
- Rule 941(3) – the Member did not account to the client for all trust funds received and disbursed (i.e. the client was not aware of payment to A.D. Inc recorded in his trust ledger);
- Rule 942(3) – funds withdrawn from trust for fees and disbursements owed to the Member was not done by way of trust cheque payable to the Member's general account;
- Rule 942(4) – trust monies were not paid to the Member's general account expeditiously once legal matter was concluded; and
- Rule 964(1) – trust transactions were not recorded promptly by the Member (the invoices were not recorded six months after they were issued to the client).

Loaning Money to Clients – Allegations #14 and #15

55. The Law Society first began investigating the possibility that the Member was loaning money to clients in 2009. A complaint was received from a Member of the public at that time. The Member adamantly maintained that any money being loaned to Members of the public was loaned via his wife's corporation, Erjo, and that none of his legal clients were involved. At the time the Member was advised that it would be inappropriate for him or his spouse

to loan money to clients. The annual practice declarations form required Members to disclose if they, or their spouse or corporate affiliate have loaned money to clients. The Member consistently answered "no" in response to that question between 2006 and 2013.

56. During the audit of the Member's practice, many instances of the Member loaning money through Erjo were uncovered. The Member had signing authority over Erjo account and effectively controlled Erjo, despite the fact that the corporation technically belonged to his wife.

57. Three examples of the Member loaning money to residential school survivors demonstrate the Member's practice. In the cases of R.G., R.B. and L.G., the Member completed Common Experience Process (CEP) claims for his clients. He then proceeded to loan each of those clients money. The loans were supported by Promissory Notes attached at Tab 25.

58. The following is a table detailing the loan amounts from the Member, the portions of the loan amounts supported by the Member's records, and the effective interest rate factoring in pre-calculated interest and administrative fees:

Client	**# of months**	**Promissory note**	**Total loaned supported**	**Total loaned unsupported**	**Total loaned**	**Interest Rate**
R.G.	14.8	$ 8,000	$ 5,500	$ 500	$ 6,000	27.03%
R.B.	15.2	$ 22,300	$ 16,300	$ 700	$ 17,500	21.65%
L.G.	5	$ 6,200	$ 5,050	$ 1,119	$ 6,169	1.21%
Total		**$ 36,500**	**$ 26,850**	**$ 2,319**	**$ 29,669**	

59. A total of $7,331.00 of "pre-calculated interest and administrative fees" was collected by the Member for Erjo in connection with the three loans noted above. The Member made these loans to clients without any suggestion that they seek independent legal advice and none was obtained by the clients. The terms associated with the loans were not fully disclosed to the clients, specifically the cost of borrowing and the charging of pre-calculated interest and fees.

60. The loans made by the Member to L.S., mentioned above, totaled $28,500.00 over the course of approximately 16 months. All but one of the loans were completed by way of cash withdrawals from either his personal bank account or Erjo's bank account and then given directly to the client or deposited by the Member into the client's account.

61. Most of the loans were between $1,000 and $2,000 but one loan was for $10,000. This amount was withdrawn as cash from the Member's personal account and then "$10,000.00 cash in an envelope" was given to the client.

62. Although supporting documentation for all loans was requested from the Member, the only support he was able to provide was ATM slips for 6 of the 10 cash withdrawals that coincided with the amounts and dates of the loans. He also provided a copy of a completed "Customer Account Information" form. The form is presumed to have been used by the Member to deposit funds directly into the client's bank account. These slips do not conclusively prove that the amounts were received by the client as we are unable to verify where this cash went after being withdrawn. The loans are, effectively, completely undocumented, with no clear terms and no independent legal advice being provided.

63. IAP settlement funds were received into trust on Oct 16, 2014 and two separate invoices, totaling $61,217.50 were issued [Tab 26]. The first invoice included fees in connection with the IAP claim, based on a signed contingency agreement. The second invoice included fees related to other services provided to the client, including time for hours spent associated with the loaning of money to the client. This second invoice also included a separate line item with the description "Repayment of advances to Erjo/Migneault" that added $28,500.00 to the invoice total for the undocumented loans claimed to have been advanced to the client.

64. CEP and IAP payments are governed by the Indian Residential School Settlement Agreement that requires that all settlement payments from the government, less approved fees, be delivered to the claimant. Assignments of any form, or diversion of settlement funds for other purposes, including payment of unrelated legal fees or loans are prohibited.

65. Other cases, such as the B.C. matter, involved the Member becoming involved with clients in debtor creditor relationships without those clients receiving independent legal advice. In the B.C. matter, the unorthodox transaction included the Member taking title to the client's home (through his affiliate Erjo), and having the client enter into a *(sic)* with a buyback/rental agreement. While the Member's financing was provided as an alternative to other short term high interest financing options, it is clear that B.C. did not appreciate the implications of transferring her title to the Member, for example, in the context of refinancing the loan from the Member. Independent legal advice would have addressed these issues for B.C. had such advice been received.

SUBMISSIONS

80. Counsel for the Investigation Committee recommended disbarment. He referred to a series of discipline decisions from law societies in other provinces that evidence a range of

penalties in cases involving lawyers embroiled in the illegal activities of clients. In the cases he cited, that range extends from a low end of a brief suspension and the payment of costs to a high end of disbarment. Counsel suggested the penalties at the lower end tend to be based on brief and unwitting involvement by the Member, while those at the higher end reflect a high level of culpability, a long period of involvement, the presence of red flags or significant harm to others.

81. He summarized what he categorized as the aggravating factors here that should lead us to the imposition of a harsh penalty:

> a. The Member's facilitation of the Moen frauds occurred in the presence of accumulating red flags over the course of more than a decade. At the end, the accumulation of red flags included knowledge on the part of the Member that the SFSC was investigating and prosecuting the Moen and that ultimately, he was suspended from trading in securities. The Member continued to do business with Moen. The Member participated in the schemes of Moen on dozens of occasions over the years without ever asking questions;
>
> b. Members of the public lost significant amounts of money in connection with the fraudulent schemes, well in excess of $1,000,000.00. Had the Member acted differently, the activities of Moen may have been halted or *(sic)*;
>
> c. Rehabilitation of the Member is problematic. The Member's blind faith in Moen and his enterprises and his blatant disregard for the rules surrounding trust accounts calls into question his ability to practice. How can the Law Society be assured that he is competent to practice? Time on interim suspension will have done nothing to rehabilitate the Member's deficiencies;
>
> d. The conduct is extremely harmful to the public perception of the profession. In this scenario, the public will almost certainly view the Member as having been an active participant or so incompetent that he should not be allowed to practice. Maintaining public confidence may require the harshest of penalties;
>
> e. The level of intent found in most of the above noted cases was that of a mere dupe. In this case, a higher level of culpability has been found, being negligence and a failure to exercise due diligence;
>
> f. The facilitation of the Moen fraud is but one element of misconduct proven in this matter. The Member has been found guilty of conduct unbecoming in connection with other very serious conduct including misleading the Law Society for years, loaning money to clients and serious violations of the trust accounting rules. The Member's filing of false declarations calls into question the ability of the Law Society to regulate its Members.

82. He also identified as mitigating factors that the Member has no prior discipline record, that he was cooperative throughout and that he is generally viewed as having good character by his peers despite the significant slate of allegations that have been proved.

83. The Member suggested an appropriate penalty would be "time served", i.e. that his interim suspension for roughly the past 18 months meets or exceeds the penalty that should have been imposed had the matter been resolved when the law society first investigated his conduct. His position is that past similar cases that led to disbarment involve conduct by a lawyer that directly caused harm to victims of the illegal activities.

ANALYSIS AND REASONS

84. As noted above, the Member has no prior discipline history. Counsel for the investigation Committee acknowledges he is generally viewed as a person of good character despite the conduct established through these proceedings. The Member filed more than 25 letters of support from individuals ranging from those who are personally close to him (including his wife and his son) to clients and to lawyers who have had professional connections with the Member. They are uniformly positive in relation to the Member's character and his suitability to practice law, again notwithstanding the general acknowledgment that he has made significant mistakes.

85. Indications of support are important, but can never be determinative. Notwithstanding the sincere opinions of individuals who know the Member, the appropriate penalty must be supported by relevant legal principles applied to the circumstances as a whole.

86. Of the several decisions from other jurisdictions referred to us by counsel for the Investigation Committee, *Law Society of British Columbia v. McCandless*, [2010] L.S.D.D. No. 53, is of particular relevance because its facts are somewhat similar to those in the present case and it provides the most compelling precedent supporting counsel's recommendation of disbarment.

87. *McCandless* incorporated and acted as lawyer for a company identified as TIC that was created for the purpose of raising investments for an American venture run by a company identified as IFC. Allegedly, the IFC investment initiative was a Ponzi scheme. Notwithstanding his awareness there were allegations against IFC and that two government regulators were investigating IFC as a fraudulent scheme, McCandless engaged in conduct that gave TIC shareholders (and therefore investors in IFC) the impression their investments were secure and continuing to generate earnings. In fact, they lost thousands of dollars.

88. In concluding the appropriate penalty was disbarment, the Hearing panel considered a number of factors, several of which involve facts similar to those established in the present case. The lawyers in both instances were mature. The impact on the victims in both situations was significant. Both lawyers lost money themselves. Both cases involved conduct extending over a period of time.

89. One significant difference between the two situations is that *McCandless* had a previous record of discipline involving five separate interventions of the law society between 1979 and 2005, one of which resulted in a reprimand and a $250 fine and another a one-month suspension. As already noted, the Member here has no prior discipline record.

90. The conduct giving rise to discipline in *McCandless* was limited to the lawyer's involvement in the investment scheme. Here we must also consider a second set of charges characterized as trust accounting rule breaches.

91. It may also be that the conduct of *McCandless* that caused harm to investors was more directly responsible for that harm than the Member's conduct here.

92. The analysis of the *McCandless* hearing panel that led to its determination to order disbarment ultimately focussed on the possibility of remediating or rehabilitating the lawyer, the need for specific and general deterrence and the need to ensure the public's confidence in the integrity of the profession.

93. In relation to rehabilitation, the panel concluded (in para. 23):

> [T]he evidence coupled with this Respondent's Professional Conduct Record puts in serious doubt the possibility of rehabilitation. The Professional Conduct Record is a pattern of failing to delineate between personal, professional and business relationships that has placed the Respondent, his friends, and his clients in financial risk.

94. Public confidence was addressed in the following terms (at para. 32):

> The proven misconduct in the present case is extremely serious and is conduct that exposed the public to considerable harm and taints the reputation of the legal profession. As a result, in order to maintain the public's confidence in the legal profession, a significant disciplinary response is warranted.

95. With respect to specific and general deterrence, the panel said (at paras. 25, 26 and 35):

> Previous interventions by the Law Society have had little or no impact on deterring repetitive misconduct by this Respondent. Accordingly, specific deterrence is required.
>
> As stated in paragraphs [10] and [11] above, the primary goal of the Legal Profession Act and the Law Society of British Columbia is the protection of the public. Such protection of the public requires an emphasis on general deterrence, which in turn will increase and maintain the public's confidence in the integrity of the profession.
>
> …
>
> The Respondent's Professional Conduct Record reveals an inability of the Respondent to learn from Law Society intervention and prior discipline.

96. Counsel for the Investigation Committee urged us to consider the same principles. With respect to public confidence, he pointed us to the duties of the law society set out in s. 3.1 of *The Legal Profession Act, 1990,* which include the obligation "to protect the public by assuring the integrity, knowledge, skill, proficiency and competence of Members", and which he in turn

linked to the public's confidence in the integrity of the profession and its ability to govern its Members.

97. With respect to deterrence, he suggested (correctly in our view) the most significant issues in the current case relate to general rather than specific deterrence, adding that "[t]he penalty must serve to awaken the Members of the profession as to their obligation to be diligent and avoid being used to facilitate their client's harmful or illicit activities". He submitted that the goal of maintaining high professional standards and preserving public confidence could not be achieved here without the imposition of a "significant sanction". We agree.

98. What then is a "significant disciplinary response", in the words of the panel in *McCandless*, or a "significant sanction", in the words of counsel for the Investigation Committee? Clearly, disbarment would be significant. However, so would a lengthy suspension. A long suspension has serious consequences in almost any situation. It would typically involve significant economic hardship. It's highly disruptive to every part of the Member's life. And, it carries with it all of the ignominy associated with the suspension and the discipline process as a whole. It's clear in this case that the Member has already experienced all of this.

99. We have concluded a lengthy suspension would meet the requirements of general deterrence. In the words of counsel for the Investigation Committee, this penalty should "serve to awaken the Members of the profession as to their obligation to be diligent and avoid being used to facilitate their client's harmful or illicit activities".

100. There may be Members of the general public who would see a suspension, even of significant length, to be inadequate in these circumstances. Whether or not that might be due in part to a misunderstanding of the specifics of the Member's conduct, it shouldn't be ignored. However, if other factors such as deterrence and suitability to practice do not justify disbarment, there must be a meaningful basis to conclude disbarment is required in order to maintain public confidence. We are satisfied that public confidence will be maintained without a penalty of disbarment.

101. This takes us to the consideration of rehabilitation. Having determined the principles of deterrence and public confidence do not require an order for disbarment, has the Member nonetheless demonstrated, through the conduct giving rise to discipline and his submissions to the hearing panel explaining that conduct, that he is no longer capable of carrying out the onerous obligations essential to the practice of law. We must not, in answering this question, hold the Member to a standard of perfection. We do not do that when lawyers are admitted to the profession and we must not do that in discipline proceedings. The question is whether the Member can, if permitted to continue practising law, be expected to meet an acceptable standard, with whatever conditions we might place on his continued practice, based on the requirements of the profession's governing legislation.

102. The Member's conduct raises concerns in this regard. However, he was straightforward with the Hearing Committee when we pressed him on his apparent history of mixing his natural tendencies to lend a helping hand with his professional obligations. He has acknowledged that

he must never again allow those tendencies to compromise his responsibilities as a lawyer and that he must maintain appropriate boundaries between his personal commitments in his community and his professional obligations. With respect to the Moen transactions, we are satisfied the Member not only accepts his responsibility for the harm done but understands what he must do going forward to ensure he never repeats similar conduct. Consequently, we believe that, subject to appropriate conditions, he can ultimately resume his practice.

103. In conclusion, having considered the specifics of the counts in the Formal Complaint that have been determined to be well founded, the Member's conduct in more general terms, the principles applicable to the determination of an appropriate penalty and the submissions of the Member and counsel for the Investigation Committee, we are not convinced that disbarment is required. However, we do regard this as a very serious matter that warrants a significant sanction. The Member has been under suspension for approximately 18 months. A further period of suspension to the end of this calendar year would provide a total period of suspension of approximately two years, which we consider to be a significant sanction that strongly denounces the Member's conduct.

ORDER

104. This Order is made pursuant to s. 53 of *The Legal Profession Act, 1990*.

105. The Member has been under suspension for approximately 18 months. He is further suspended from practice for a period commencing the effective date of this decision and ending December 31, 2017.

106. The Member is ordered to pay to the Law Society of Saskatchewan the costs of this inquiry and of the Society relating to the inquiry totaling $15,360.00. This amount must be paid by December 31, 2017. If the Member fails to pay any portion of that amount by that date, he is further suspended from practice from that date until any outstanding amounts are paid.

107. Prior to resuming the practice of law the Member will, at his own cost, complete a program of continuing professional development, with a focus on ethical issues and law office management, prescribed for the Member by the Executive Director of the Law Society. If the Member fails to complete this program to the satisfaction of the Executive Director, he is further suspended until he has done so.

108. If the Member resumes the practice of law after any suspension described above his continuing practice is subject to the conditions that:

> (a) he not has control of any trust fund or trust monies associated with his practice without the express written approval of the Executive Director of the Law Society of Saskatchewan and subject to any conditions the Executive Director may impose; and
>
> (b) he not lend money to any client.

"Gerald Tegart" (Chair)	"June 29/17"
"Janna Gates"	"June 29/17"
"Heather Hodgson"	"June 29/17"

PARTIAL AGREED STATEMENT OF FACTS AND ADMISSIONS

In relation to the Amended Formal Complaint dated August 30, 2016, as further amended herein alleging the following:

THAT KEVAN MIGNEAULT, of the City of North Battleford, in the Province of Saskatchewan is guilty of conduct unbecoming a lawyer in that he:

Participation in the Fraud

1. **did, through negligence and a failure to exercise due diligence, facilitate the commission of a fraud, or frauds, by his client A.M.;**

2. **did, through willful blindness or recklessness, facilitate the commission of a fraud, or frauds, by his client A.M.;**

3. **did knowingly facilitate the commission of a fraud, or frauds, by his client A.M.;**

4. **did allow himself to become the dupe of, A.M, an unscrupulous client;**

5. **did enable A.M. to achieve an improper purpose by using his law firm and status as a lawyer to legitimize the fraudulent activities of A.M.;**

6. ~~**did realize a personal financial benefit in connection with the fraudulent activities of A.M. that you helped to facilitate;**~~ **WITHDRAWN**

Conflict of Interest and Breach of Fiduciary Duty

7. ~~**did act or continue to act in a matter when there was, or was likely to be, a conflicting interest between his client A.M. and various other clients who became investors in A.M.'s business enterprises, specifically J.T. and A.T.;**~~ **WITHDRAWN**

8. ~~**did breach the fiduciary duty he owed to his clients A.T. and J.T. by failing to safeguard their interests in various transactions with his other client A.M.:**~~ **WITHDRAWN**

Trust Accounting Rule Breaches

9. did fail to maintain proper books and records for his legal practice; GUILTY

10. ~~did, in relation to the L.S. matter, contrary to Law Society Rule 940(2), fail to transfer trust funds to his general account, that were owing to himself or his firm in payment of fees, as soon as it was practicable to do so~~; WITHDRAWN

11. ~~did, in relation to the L.S. matter, use his trust account to shield income from the Canada Revenue Agency and to defer payment of tax~~; WITHDRAWN

12. did, in relation to the L.S. matter, withdraw funds from trust in payment of fees and disbursements in a manner that was not authorized by the Law Society rules; GUILTY

13. did, in relation to the L.S. matter, use trust funds held on behalf of L.S. for a purpose other than which L.S. intended; namely, a personal loan in the amount of $61,217.50 made by the Member to a third party; GUILTY

14. did enter into or continue a debtor/creditor relationship with the following clients (loaning money) when his interests and the interests of those clients were in conflict and failed to ensure that:

- **i. the transaction was a fair and reasonable one;**
- **ii. that its terms were fully disclosed to the client in writing in a manner that is reasonably understood by the client;**
- **iii. the client was given a reasonable opportunity to seek independent legal advice about the transaction;**
- **iv. the client consented in writing to the conflict of interest; and**
- **v. there was no appearance of undue influence;**

in relation to the following client matters:

1. **R.G.;**
2. **R.B.;**
3. **L.G.;**
4. **L.S.; and**
5. **<u>B.C.</u> GUILTY**

15. <u>did, for the years 2006 through 2013, mislead the Law Society of Saskatchewan by filing annual practice declarations stating that he had not loaned money to clients in those years when he knew that to be false;</u> GUILTY

<u>Investments/Cease Trade Order</u>

16. ~~**did, between November 17, 2009 and May 4, 2015, act in contravention of a Cease Trade Order pertaining to WAI, a corporation associated with A.M., the Member and a third party;**~~ **CONSOLIDATED IN ALLEGATION 18**

17. ~~**did involve himself in the investment offerings of his client, A.M., to the general public when he knew or ought to have known that A.M. was engaging in fraudulent activity;**~~ **CONSOLIDATED IN ALLEGATION 18**

18. **did, through willful blindness or recklessness, involve himself in the investment offerings of his client, A.M. and his affiliated corporations, to the general public when A.M. and his affiliated corporations were the subject of a Cease Trade Order.**

JURISDICTION

109. Kevan Migneault (hereinafter "the Member") is, and was at all times material to this proceeding, a practicing Member of the Law Society of Saskatchewan (hereinafter the "Law Society"), and accordingly is subject to the provisions of *The Legal Profession Act, 1990* (hereinafter the "Act") as well as the Rules of the Law Society of Saskatchewan (the "Rules"). Attached at Tab 1 is a Certificate of the Executive Director of the Law Society of Saskatchewan pursuant to section 83 of the Act confirming the Member's practicing status.

110. The Member is currently the subject of an Amended Formal Complaint initiated by the Law Society dated August 30, 2016. Attached at Tab 2 is a copy of the Amended Formal Complaint along with proof of service. The original Formal Complaint was dated January 19, 2016 and was served upon the Member's former counsel on January 27, 2016. The Member intends to plead guilty to allegations 9, 12, 13, 14 and 15. The Law Society intends to withdraw allegations 6, 7, 8, 10, and 11. Allegations 16 and 17 are consolidated into allegation 18. The Member consents to all of the amendments to the Formal Complaint.

111. The following partial agreement as to the facts is intended to support the guilty pleas on allegations 9, 12, 13, 14, and 15 and to provide a partial factual basis for contested allegations 1, 2, 3, 4, 5 and 18.

112. Allegations 1, 2, 3, and 4 are pled in the alternative to one another.

ORIGIN OF COMPLAINT

113. The Law Society began an investigation into the Member after the RCMP alerted the Law Society to the Member's firm's involvement with Allan Moen ("Moen"). Moen was being investigated in relation to a series of fraudulent investment schemes. The RCMP contacted the Law Society in advance of their search of the Member's law office for the purposes of seizing the files relating to Moen. That search occurred on or about October 15, 2012.

114. In the context of the search by the RCMP, it soon became apparent to the Law Society that the Member's law firm had deep ties with Moen and that large amounts of the funds from investors in Moen's schemes flowed through the Member's firm.

115. On October 27, 2015, Moen pled guilty to defrauding several investors out of funds in excess of $700,000.00. Moen was sentenced to 3 years in prison. A copy of the Moen Conviction is attached at Tab 3.

116. During the same period, the Law Society audit process revealed a variety of issues connected to Moen, and additional issues with the Member's conduct that resulted in the allegations of conduct unbecoming described above.

PARTICULARS

Contested Matters

Participation in Client Fraud and Violation of Cease Trade Order

Allegations 1, 2, 3, 4, 5 and 18

Early Dealings with Moen

117. The Member's relationship with Moen dates back approximately 40 years. The Member was acquainted with Moen while the Member was in university and later in the community of North Battleford. In the 1990s Moen frequented the Member's firm and received legal services from the Member's former partner. The Member's first business dealings with Moen were in relation to a loan of $2,000.00 for a piece of machinery. Moen paid the Member back in relation to that loan.

118. During this same period, Moen approached the Member with an investment opportunity. The opportunity involved a medical device that was allegedly being developed by an American doctor. Through Moen, the Member invested $150,000.00 in this venture which was identified as Medcam, and later, Life Systems Corporation.

119. Moen was not typical of an individual raising capital for significant ventures. The Member recalls Moen appearing disheveled and unkempt. He wore ill-fitting clothes and needed dental work. He drove broken down vehicles and often travelled between cities by bus.

120. Shortly after the Member's $150,000.00 investment through Moen, it became apparent that the initial investment may be on shaky ground. Ultimately the Member experienced no return on his investment and lost the principle.

121. In December of 2001, the Member became involved with another transaction relating to Moen. The transaction pertained to a numbered corporation owned and controlled by Moen called 101012190 Saskatchewan Ltd. ("190" Corp.). 190 Corp. was a holding company with various mineral claims in northern Saskatchewan. Between December 2001 and October 2003, the Member and his firm accepted funds from investors and paid those funds into trust on behalf of 190 Corp. Payments from investors deposited into the firm trust account were made payable in some cases to Moen directly, and in many cases to the Member's firm.

122. The Member was uncomfortable with the transaction from the beginning. Moen's appearance and manner of doing business was concerning to the Member. The Member also felt, at the time that Moen was involving the firm in receiving the investments being made in order to legitimize the investment. Moen had provided the Member with an excuse for having the investments flow through the law firm. Moen indicated that he did not have time to set up a

bank account for the corporation on short notice and said that he would deal with that issue in a week or so. This never occurred and the practice of paying investment funds through the firm continued, for one corporation of another, for a decade.

123. On December 14, 2001, the Member drafted a waiver to be signed by investors in 190 Corp [Tab 4]. The waiver, intended by the Member to protect himself and his firm, stated, in part, the following:

> **Any funds being paid into the firm's trust account or to 101 via this office will be paid out to Allan Moen and/or his designate, to cover costs of acquisition of the mining claim to a maximum of $150,000.00. It is hoped a public corporation will ultimately be set up or obtained with the remaining investment funds over and above the initial $150,000.00 acquisition costs. The intention is for investors in 101 to receive a corresponding percentage of their 101 holding in the new company. It cannot be stated that this will actually happen depending upon the nature of the public vehicle set up or obtained. If the public company does not come about for any reason, the investment proceeds over and above the $150,000.00 acquisition costs will be refunded on a pro-rata basis to the investors, who will then be issued shares in 101 on the basis of 0ne (1) share for each dollar invested.**
>
> **…**
>
> **This investment is risky and should not be made if you cannot afford to lose your investment.**

124. Over the two-year period spanning 2001-2003, approximately $550,000.00 came into the firm trust account from approximately thirty third party investors in relation to 190 Corp. Both the Member and Murray Greenwood, the Member's partner, handled these transaction. Over that same period approximately $260,000.00 was paid out of trust directly to Moen via trust cheque. Ultimately, inside the two-year period, the entire balance of investor funds in trust was disbursed, including $21,500.00 to the Member, $9,520.00 to his partner for payment of loans or fees and one large transfer to the firm's US fund trust account in the amount of $154,140.00. The Member does not recall where the $154,140.00 payment was directed and has no records to identify the recipient beyond a trust ledger entry labeled "Fort A La Corne". Attached at Tab 5 is the trust ledger for 190 Corp.

125. In 2002 the assets in 190 Corp, being the mineral claims in northern Saskatchewan, were, in a deal arranged by Moen, transferred to a different entity controlled by Moen's business associate, Urban Casavant ("Casavant") called Casavant Mining Kimberlite International (CMKI). The name of that company was later changed to CMKM Diamonds Inc. In the late 1990s and early 2000s, Moen had been business partners with Casavant in relation to another unrelated deal. That deal spawned messy litigation in Alberta with third parties who claimed they had lost large amounts of money in their dealings with the pair [Tab 6]. The Member was aware of this litigation at the time.

126. As indicated above, the investors in 190 Corp were promised shares in a future entity. CMKM appears to have been that entity. The Member was to receive shares (in addition to the $21,500.00 mentioned above) as part of the original deal.

128. Between 2002 and 2005, 40,000 investors in CMKM were defrauded of at least $64,000,000.00 after Urban Casavant and his cohorts sold in excess of 600 billion shares in CMKM, a company that, in reality, had engaged in no mining activity. All of the 190 Corp investors lost their investments. While the Member's involvement appears to have ended with the initial share swap and transfer of assets from 190 Corp to CMKI, and there is no evidence to suggest that he was involved in the CMKM fraud, he did receive a share certificate for four million shares in CMKI/CMKM. The Member is unable to explain why he received the share certificate.

129. Attached at Tab 7 is an initial decision from the U.S. Securities and Exchange Commission dated July 12, 2005 detailing Casavant's dealings on CMKM. Attached at Tab 8 is an April 10, 2008 Saskatoon Star Phoenix article illustrating the infamy that ultimately surrounded Casavant and his dealings in Saskatchewan and the United States. The Member was aware of the CMKM matter, Casavant's involvement therein and Moen's connection with Casavant.

130. In other dealings with Moen in the early 2000s, the Member "guaranteed" the investment of a third party in a corporation that Moen was promoting. In short order, that investment also soured and the Member became liable for the guarantee and was forced to pay out $245,000.00 to the third-party investor.

West African Industries Inc.

131. West African Industries Inc. (WAI) was a venture that Moen started promoting in approximately 2004. The venture centered around the development of a gold mine in Sierra Leone. There is no evidence to suggest that WAI was, at any time, incorporated in Canada or the United States. The Member believes that WAI was incorporated in Sierra Leone although no confirmation of that has ever been found.

132. Between 2005 and 2013, the Member invested heavily in WAI, in excess of $240,000.00. Ultimately, the Member believed that he owned a 44% stake in WAI.

133. At the same time as the Member was providing money to Moen for his own investment in WAI, he was processing money from a variety of other investors. These transactions were, in large part, processed through two numbered Saskatchewan corporations known as 101056000 Saskatchewan Ltd. ("000" Corp.) and 101076568 Saskatchewan Ltd. ("568" Corp.). The trust ledgers for 000 Corp. and 568 Corp. are attached hereto at Tab 9 and Tab 10 respectively.

134. The Member had done no due diligence in relation to WAI. Nor did the Member do any due diligence in relation to 000 Corp. and 568 Corp. The Member had no knowledge about what 000 Corp. and 568 Corp. were for despite the fact that his firm was the registered office for both corporations. 000 Corp. and 568 Corp. were not officially affiliated with any particular venture and, for the Member, represented little more than trust ledgers on which to post transactions

where people, including himself, were investing money with Moen. Investor documents illustrate that these numbered corporations were in fact affiliated with WAI.

135. In relation to 568 Corp., between November 24, 2005 and August 25, 2006, the Member processed payments through his firm totaling $51,675.00 from ten investors, including a $10,000.00 investment from his affiliated corporation Erjo. In relation to the Member's $10,000.00 investment, it was combined with another $10,000.00 investment from another investor and paid out to Moen as a $20,000.00 trust cheque. But for $2,500.00 paid to Moen's travel agent, each of the investments were paid out to Moen immediately, via firm trust cheque signed by the Member. Moen's practice was to take the cheque to the bank to cash it immediately. No legal services were provided to Moen in connection with these transactions. Likewise, no legal services were provided to the investors. The Member knew of no shares being issued in relation to the corporation. The Member knew nothing of the basis for the transaction, other than that his job was to provide a trust cheque to Moen. Ultimately, all of the investors, including the Member, lost their investments without receiving any return.

136. In relation to 000 Corp., between July 18, 2005 and March 22, 2012, $87,527.00 in payments received from approximately a dozen investors, some of whom also invested in 568 Corp., were processed through the Member's firm (by both the Member and his partner). But for $4,200.00 paid to the Member and $2,400.00 paid to his firm mate, each of the investments were paid out to Moen immediately, via firm trust cheque. The Member signed four of the cheques issued to Meon on the following dates in the following amounts:

- July 9, 2009 -$4,000.00
- July 29, 2009 -$6,427.00
- October 6, 2009 -$6,000.00
- March 22, 2012 -$5,000.00

137. Moen's practice was to take the cheque to the bank to cash it immediately. No legal services were provided to Moen in connection with these transactions. Likewise, no legal services were provided to the investors. The Member knew of no shares being issued in relation to the corporation. The Member knew nothing of the basis for the transaction, other than that his job was to provide a trust cheque to Moen. Ultimately, all of the investors lost their investments without receiving any return.

<u>The Nature of the Member's Involvement in Moen's Activities</u>

138. In all cases, Moen had engaged with the investors independently of the Member and his firm. Over the years, before and after the Member's involvement, Moen completed hundreds of transactions with investors directly in furtherance of the fraud. From time to time, Moen chose to run certain transactions through the Member's firm (the transactions relating 190 Corp, 586 Corp and 000 Corp for example). The transactions that were handled through the firm were part of Moen's scheme and formed part of the funds lost by investors.

139. Moen's desire to run certain transactions through the Member's firm appears to have been motivated by an ability of Moen to receive a faster turnaround on third party payments by taking advantage of the immediate turnaround associated with law firm trust cheques. Banks

typically hold back funds relating to third party cheques for several days, while law firm trust account cheques can allow for the immediate release of funds by the bank. Alternatively, it appears that Moen involved the Member and his firm in an effort to legitimize his operations, as occurred in the case of the 190 Corp. matters.

Saskatchewan Financial Services Commission Hearing and Cease Trade Orders

140. Moen's activities, specifically those in connection with his promotion of WAI drew the attention of the Saskatchewan Financial Services Commission ("SFSC"). On November 17, 2009 Moen, WAI and a third individual called Louis Supera became the subject of a Temporary Cease Trade Order (the "Temporary Order"). Neither Moen, WAI or Supera responded to the Temporary Order and it was extended a number of times on December 1, 2009, March 25, 2010, October 21, 2010, March 10, 2011 [SFSC Temporary Order and Extensions attached at Tab 11]. The extensions of the cease trade order were required in order to for the SFSC to complete its investigation into Moen and WAI.

141. On April 29, 2011, a Notice of Hearing was issued in relation to Moen, WAI, 568 Corp., Life Systems Corporation and others affiliated with Moen [Tab 12]. Further extensions of the Temporary Order in relation to this group were issued by the SFSC on June 9, 2011 and October 21, 2011 in order to schedule a hearing into the matter [Tab 13].

142. In advance of the SFSC orders of the SFSC, the Migneault Greenwood law office received several notices from the SFSC. Starting in 2010, the Member's law partner, Murray Greenwood, started receiving other documents from the SFSC. On or about March 1, 2010 and October 22, 2010 he received several Summons for Documents relating to Moen himself and several entities connected to Moen including 190 Corp. and 000 Corp. Murray Greenwood was Power of Attorney and registered office for these entities. On November 12, 2010 Murray Greenwood wrote back to the SFSC stating that he would not respond to the Summons documents and that the documents in question would need to be obtained directly from Moen. The letter confirmed that he had passed the summons documents on to Moen and that he understood a meeting would occur between Moen and the SFSC on November 16, 2010 [Tab 14]. The Member claims to have had no knowledge of the correspondence from the SFSC to his partner in relation to Moen or the various corporations that were operated out of the Migneault Greenwood office. He states that he and Murray Greenwood rarely spoke to one another.

143. On or about November 25, 2010, apparently after Moen's meeting with the SFSC, an SFSC investigator telephoned the Member. The purpose of the call was to ascertain whether or not the Member would be representing Moen and or WAI in the upcoming SFSC hearings. The Member's response was that he was not representing Moen or WAI in the pending SFSC matters. The SFSC investigator emailed the Member after the call to confirm the discussion [Tab 15].

144. At the time of the Member's conversation with the SFSC on November 25, 2010, the Member was heavily invested in WAI, Life Systems and other Meon related entities. An agreement between the Member and Moen signed on March 24 and 25, 2010 illustrated the particulars of what was an investment by the Member in Meon related entities (including WAI) in excess of $550,000.00 [Tab 16].

145. In correspondence provided by Moen to investors dated October 27, 2010 [Tab 17], Moen stated the following:

> **Our lawyer Kevan Migneault of the law firm Migneault Greenwood in North Battleford, Saskatchewan will handle the funds and do the contractual paper work for the joint venture. I am the vice president and CFO of the W.A.I. and will be directing the funds to equipment suppliers in California and Africa to facilitate the production process.**

146. Moen's solicitation dated October 27, 2010 was in violation of the cease trade order in effect at the time. The Member states that he was not aware that he was referenced in Moen's correspondence in this manner.

147. The SFSC hearing into Moen and his related entities occurred on October 11 and 12, 2011. Moen appeared on behalf of himself, 568 Corp. and another numbered corporation. No one appeared on behalf of WAI or Life Systems. A decision was rendered by the SFSC on December 8, 2011 [Tab 18] wherein the SFSC ordered that:

i. The exemptions in Saskatchewan securities laws do not apply to the Respondents;
ii. The Respondents cease trading in all securities and exchange contracts;
iii. The Respondents cease acquiring securities and entering into exchange contracts, except for their own account or that of their spouse or spousal equivalent;
iv. The Respondents cease advising with respect to any securities, trades or exchange contracts; and,
v. Moen and Supera are prohibited from becoming or acting as directors or officers of an issuer, registrant or investment fund manager; or from being employed in the selling of or advertising on securities or exchange contracts by an issuer, registrant or investment fund manager.

148. A subsequent order dated May 31, 2012 required the Respondents to pay restitution to three specific investors totaling $226,212.90 [Tab 19].

149. The Member did not participate in the hearing and stated that he was not aware of it, in spite of the November 25, 2010 conversation with the SFSC.

150. The decision of the SFSC attracted the attention of the media. On December 22, 2011, the Saskatoon Star Phoenix published an article referring to all of the parties that were subject to the decision of the SFSC and described the decision [Tab 20]. The Member and his wife subscribed to that newspaper. Upon returning from vacation shortly after the article was published, the Member's wife reviewed this article and advised the Member that the newspaper said that Allan Moen had been suspended from trading in securities. The Member states that he thought nothing of this information and did not review the article and did not follow up on the matter in any way. The Member states that he was not surprised that Moen was suspended.

151. After November 17, 2009 when the first temporary cease trader order was implemented, and after his November 25, 2010 conversation with the SFSC, the Member participated in transactions between Moen and investors. Between August 9, 2011 and November 22, 2011, he personally signed eight trust cheques totaling $46,747.54, transferring funds to Moen and/or his son from at least two WAI investors. During this period the Member was posting the transactions to the trust ledger for another Moen corporation known as Full Time Management Inc. [Tab 21 – Member signed cheques indicated by "KM" notation]. That trust ledger was only active for three months between August 2011 and November 2011.

Inquiry to WAI

152. On March 13, 2015, Law Society staff, via the WAI website, inquired about investing in WAI. A surreptitious name was used. Mr. Supera responded on March 14, 2015. When a follow-up question was asked by Law Society staff (posing as a potential investor) about possible return on investment and how to purchase shares in WAI, Mr. Supera sent the following email on March 23, 2015 in response:

> **"Once again, thank you interest in our company. Because I am in the field a lot it would be easier for you to deal with our company attorney who is also an investor in our company. His name is Kevan Migneault and his contact info is, kevan@mglawoffice.com and his tel. No. Is 001 306 4454436. After you contact him, let me know how things go. Cheers"**

153. A few hours later, the Member responded to the Law Society staff Member as follows:

> **"Lou supera asked me to respond. Wai has some mining areas agreed upon with local tribes but that is never a certainty as its all verbal deals with lou & chiefs. Wai also has some mining sites with govt of s/l but hasn't got operable due to finances. With a fairly minimal investment some activity could commence on a limited scale at the tribal sites with hope to recover gold enuf to purchase heavy equip needed to get production started on the primary leases. This is a speculative investment. There was some promising preliminary testing but that's no guarantee. The whole operation depends on lou who has been over there for a lot of years but underfunded. Lou is 70. if lou dies there would be little chance of sorting things out. I have a vested interest in wai & have put in a lot of $ to keep it afloat/roads built/buy equipment etc. lou has 56% of wai & I have 44%. If $ starts to flow back to me as dividend I want to see various people get back investment/share of profits as I believe parties have put in $ on basis of a profit share. No profit to date & may never be. Please feel free to call if any questions"**
>
> **Kevan M. Migneault**
> **Migneault Greenwood**
> **Barristers & Solicitors**
> **Box 520 - 1391 101st Street**
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154. The conversation with the Member continued after the Law Society staff member indicated an interest in investing $20,000.00 - $30,000.00. On April 7, 2015 the Member wrote as follows:

> **"I expect wai could issue you preferred shares with a specified interest rate/option to convert to common shares or maybe issue some common shares. Given the time & expense to date I'm not sure what lou would consider for $25000.00 investment maybe 5%? Theres no certainty the shares will have any value if theres no gold/minerals/diamonds/rare earths but my understanding is the geologist examined site & was positive it was valuable. But in end still need a lot $ to mine at a large scale & hope is if revenue can generate on small scale the profits could pave way for bigger equip & production. I don't know the full details/layout but any investment will be totally at lous discretion. To this point my return is nil but I feel lou is a square shooter."**
> **Kevan M. Migneault**

155. The Law Society staff member advised that a $10,000.00 investment would be preferable and asking about when to expect receipt of the preferred shares after the investment. The Member responded as follows on April 30, 2015:

> **Lou called back.says that wai has no preferred shares. I don't see any deal being reached here as wai needs more $ & it's a hi risk venture for you or any other investor**
>
> **Kevan M. Migneault**

156. The full email exchange is attached hereto at Tab 22.

157. At the point in time where this exchange took place between the Member and Law Society staff person:

a. The Member had been the subject of a law office search and seizure by the RCMP (October 15, 2012) targeting all Moen files including WAI;
b. The Member had been personally interviewed by the RCMP as to his involvement with Moen and WAI;
c. Moen, WAI and Supera were all the subject of the SFSC cease trade order arising out of the December 8, 2012 SFSC hearing decision;
d. Moen was being actively prosecuted for investor fraud;
e. The Member was aware of this prosecution because he was scheduled to testify in relation to the preliminary hearing in that matter in June of 2014. Ultimately, the Member was not required to testify after the preliminary hearing was resolved after Moen waived his preliminary hearing and consented to a committal for trial.

L.S. Matter - Allegations #12 and #13

158. The Member represented L.S. in relation to a residential school claim Independent Assessment Process (IAP) matter. On October 16, 2014 the Member received, from the Government of Canada, settlement funds in trust for L.S. in the amount of $155,821.10. Attached at Tab 23 is the Member's trust ledger for the L.S. matter. From the settlement funds, the Member determined that L.S. was entitled to $94,032.50 after payment of a series of legal accounts and loans (dealt with below). The Member paid L.S. this amount on October 20, 2014 at which time the Member viewed his obligations to L.S. satisfied.

159. The Member calculated his entitlement to the L.S. settlement funds as being $61,217.50 (representing the settlement funds minus the legal accounts and loans). The Member was in a position to receive the amount of $61,217.50 into his general account from trust on October 20, 2014. He did not process the payment. The Member indicated in a letter to the Law Society delivered on April 9, 2015 that "I did not have the accounts day sheeted at the time as our income for the firm in 2014 appeared to me to be quite good while the prospects for 2015 were not so good". The Member further states that "I made a note that the L.S. bills would be paid no later than December 31, 2015 or earlier if there was a change in our partnership as Murray had indicated he planned to retire in 2015."

160. The Member did not transfer trust funds owing to his firm into his general account as soon as it was practicable to do so in accordance with rule 940(2). The Member retained funds owing to his firm in his trust account intentionally in order to defer receipt of those funds into the following tax year as a tax planning strategy.

161. The Member's trust ledger reveals further issues associated with the L.S. matter. Specifically, the ledger shows the entirety of the $61,217.50 owing to the Member's firm being paid out to a third party, A.D. Inc., on January 5, 2015. When questioned the Member revealed that he found himself in a situation where he wanted to loan A.D. Inc. $250,000.00 on short notice. Attached at Tab 24 is a copy of the Mortgage the Member entered into with A.D. Inc. The Member, viewing the money in the L.S. trust account as firm money, decided to issue a trust cheque directly to A.D. Inc. to fund the loan and recorded the cheque in the trust ledger for L.S. The Member issued a cheque from his affiliate corporation, Erjo, for the balance of the loan, $188,782.50.

162. This payment to A.D. Inc. from trust and recorded in the trust ledger of L.S. was not contemplated by L.S. L.S. was not aware of this payment and has no connection to A.D. Inc. The payment to a third party from another client's trust ledger on an unrelated matter is not an approved basis or method for withdrawal of trust funds from the Member's trust account.

163. The Member's conduct in relation to the L.S. matter represented a breach of the following Law Society trust accounting rules:

- Rule 940(2) – trust funds owing to member/firm were not transferred from trust to general account as soon as practicable;

- Rule 941(3) – the Member did not account to the client for all trust funds received and disbursed (i.e. the client was not aware of payment to A.D. Inc recorded in his trust ledger);
- Rule 942(3) – funds withdrawn from trust for fees and disbursements owed to the member was not done by way of trust cheque payable to the Member's general account;
- Rule 942(4) – trust monies were not paid to the Member's general account expeditiously once legal matter was concluded; and
- Rule 964(1) – trust transactions were not recorded promptly by the member (the invoices were not recorded six months after they were issued to the client).

Loaning Money to Clients – Allegations #14 and #15

164. The Law Society first began investigating the possibility that the Member was loaning money to clients in 2009. A complaint was received from a Member of the public at that time. The Member adamantly maintained that any money being loaned to members of the public was loaned via his wife's corporation, Erjo, and that none of his legal clients were involved. At the time the Member was advised that it would be inappropriate for him or his spouse to loan money to clients. The annual practice declarations form required members to disclose if they, or their spouse or corporate affiliate have loaned money to clients. The Member consistently answered "no" in response to that question between 2006 and 2013.

165. During the audit of the Member's practice, many instances of the Member loaning money through Erjo were uncovered. The Member had signing authority over Erjo account and effectively controlled Erjo, despite the fact that the corporation technically belonged to his wife.

166. Three examples of the Member loaning money to residential school survivors demonstrate the Member's practice. In the cases of R.G., R.B. and L.G., the Member completed Common Experience Process (CEP) claims for his clients. He then proceeded to loan each of those clients money. The loans were supported by Promissory Notes attached at Tab 25.

168. The following is a table detailing the loan amounts from the Member, the portions of the loan amounts supported by the Member's records, and the effective interest rate factoring in pre-calculated interest and administrative fees:

Client	# of months	Promissory note	Total loaned supported	Total loaned unsupported	Total loaned	Interest Rate
R.G.	14.8	$ 8,000	$ 5,500	$ 500	$ 6,000	27.03%
R.B.	15.2	$ 22,300	$ 16,300	$ 700	$ 17,500	21.65%
L.G.	5	$ 6,200	$ 5,050	$ 1,119	$ 6,169	1.21%
Total		**$ 36,500**	**$ 26,850**	**$ 2,319**	**$ 29,669**	

169. A total of $7,331.00 of "pre-calculated interest and administrative fees" was collected by the Member for Erjo in connection with the three loans noted above. The Member made these loans to clients without any suggestion that they seek independent legal advice and none was

obtained by the clients. The terms associated with the loans were not fully disclosed to the clients, specifically the cost of borrowing and the charging of pre-calculated interest and fees.

170. The loans made by the Member to L.S., mentioned above, totaled $28,500.00 over the course of approximately 16 months. All but one of the loans were completed by way of cash withdrawals from either his personal bank account or Erjo's bank account and then given directly to the client or deposited by the Member into the client's account.

171. Most of the loans were between $1,000.00 and $2,000.00 but one loan was for $10,000.00. This amount was withdrawn as cash from the Member's personal account and then "$10,000.00 cash in an envelope" was given to the client.

172. Although supporting documentation for all loans was requested from the Member, the only support he was able to provide was ATM slips for 6 of the 10 cash withdrawals that coincided with the amounts and dates of the loans. He also provided a copy of a completed "Customer Account Information" form. The form is presumed to have been used by the Member to deposit funds directly into the client's bank account. These slips do not conclusively prove that the amounts were received by the client as we are unable to verify where this cash went after being withdrawn. The loans are, effectively, completely undocumented, with no clear terms and no independent legal advice being provided.

173. IAP settlement funds were received into trust on Oct 16, 2014 and two separate invoices, totaling $61,217.50 were issued [Tab 26]. The first invoice included fees in connection with the IAP claim, based on a signed contingency agreement. The second invoice included fees related to other services provided to the client, including time for hours spent associated with the loaning of money to the client. This second invoice also included a separate line item with the description "Repayment of advances to Erjo/Migneault" that added $28,500.00 to the invoice total for the undocumented loans claimed to have been advanced to the client.

174. CEP and IAP payments are governed by the Indian Residential School Settlement Agreement that requires that all settlement payments from the government, less approved fees, be delivered to the claimant. Assignments of any form, or diversion of settlement funds for other purposes, including payment of unrelated legal fees or loans are prohibited.

175. Other cases, such as the B.C. matter, involved the Member becoming involved with clients in debtor creditor relationships without those clients receiving independent legal advice. In the B.C. matter, the unorthodox transaction included the Member taking title to the client's home (through his affiliate Erjo), and having the client enter into a with a buyback/rental agreement. While the Member's financing was provided as an alternative to other short term high interest financing options, it is clear that B.C. did not appreciate the implications of transferring her title to the Member, for example, in the context of refinancing the loan from the Member. Independent legal advice would have addressed these issues for B.C. had such advice been received.

PRIOR HISTORY

176. The Member has no prior discipline history.