File no: 007015-CM; 011077.001

THE REAL ESTATE COUNCIL OF ALBERTA

A Hearing Under Part 3 of the *Real Estate Act*,
R.S.A. 2000, c.R-5

AND IN THE MATTER OF a Hearing regarding the conduct of Licensee, Casurt Roy Morgan, a licensed Mortgage Associate currently registered with Axiom Mortgage Solutions Inc. operating as Axiom Mortgage Solutions

Hearing Panel Members:	[K.S], Chair [J.D] [C.S]
Appearances:	Christopher Davison, Counsel for the Registrar of the Real Estate Council of Alberta ("RECA") Casurt Roy Morgan Dale Knisely, Counsel for Casurt Roy Morgan
Hearing Date:	March 21 – 24, 2023, via video conference

DECISION ON CONDUCT DESERVING OF SANCTION

Introduction

1. On March 21-24, 2023, this Panel conducted a Hearing, under Part 3 of the *Real Estate Act*, RSA 2000, c. R-5 (the *Act*), into allegations of Conduct Deserving of Sanction against Casurt Roy Morgan (Morgan).

2. The Registrar alleges that Morgan engaged in the following conduct deserving of sanction:

    a. On or about February 2016, Morgan committed forgery in connection with the provision of services, contrary to section 42(b) of the Real Estate Act Rules (the Rules), while representing [M.B] and [T.O];

    b. On or about April 2016 to May 2016, Morgan committed forgery in connection with the provision of services, contrary to section 42(b) of the Rules, while representing [S.C]; and

c. On or about April 2016 to May 2016, Morgan failed to provide adequate supervision for an assistant who was performing duties on his behalf while representing [S.C], contrary to section 69(e) of the Rules.

3. For the reasons set out below, this Panel finds that Morgan engaged in conduct deserving of sanction. In particular, the Panel finds that Morgan engaged in forgery while representing [M.B] and [T.O], and while representing [S.C], both in breach of section 42(b) of the Rules.

4. The Panel further finds that the allegation of a failure to provide adequate supervision, contrary to section 69(e) of the Rules has not been proven.

Background Facts

5. Morgan, who was represented by legal counsel in the hearing, did not testify, nor did he formally admit any facts. That said, his legal counsel did not seriously challenge the background facts which are set out below for context.

6. In 2016, Morgan was a mortgage associate licensed under the Rules. At the time, his mortgage brokerage was Invis Inc., operating as Invis.

The [M.B DEAL]

7. In February 2016, Morgan, in his capacity as a mortgage associate, assisted spouses [M.B] ([M.B]) and [T.O] ([T.O]) in obtaining mortgage for the purposes of purchasing a property located in [ADDRESS 1] (the [M.B DEAL]).

8. A number of documents (the [M.B] Documents) were created in connection with the [M.B DEAL]:

    a. A Purchase Contract;

    b. A Mortgage Commitment form;

    c. A Mortgage Disclosure form;

    d. An Initial Disclosure form;

    e. An Insurance form; and

    f. A Client Consent form.

9. As required by Invis' compliance procedures, the [M.B] Documents were then submitted to Invis' document management system, where they would be available for review by the compliance department.

10. Sometime after the completion of the [M.B DEAL], [M.B] died. [T.O] then contacted Invis to inquire about the life insurance on the mortgage. Through this inquiry, [T.O] learned that she and [M.B] had declined insurance. She requested copies of the documents prepared in relation to the [M.B DEAL].

11. Following her review of the documents, [T.O] advised Invis that she and [M.B] had not signed or initialed the Mortgage Disclosure, the Initial Disclosure, the Insurance form, or the Client Consent.

12. The Registrar alleges that the signatures for [M.B] and [T.O] on the Mortgage Disclosure, the Initial Disclosure, the Insurance form, and the Client Consent were forged by Morgan.

13. Additionally, the Registrar alleges that the Mortgage broker / associate License Number on the Mortgage Disclosure and the Initial Disclosure was also forged by Morgan.

The [S.C DEAL]

14. In April and May 2016, Morgan, in his capacity as a mortgage associate, assisted [S.C] ([S.C]) in obtaining a mortgage for a property in [ADDRESS 2] (the [S.C DEAL]).

15. Two "gift letters" were prepared in connection with the mortgage transactions. The "gift letters" indicate that each of the two donors provided [S.C] with $25,240 and certify that the donors are immediate family members, have no interest in the sale of the subject property, and that the funds are gift and need not be repaid.

16. Gift letters are commonly submitted to prospective lenders where a portion of the down payment for a property is coming from funds held by someone other than the purchaser or recently received by the purchaser. Often, they are required to demonstrate to the prospective lender that the "gift" portion of the down payment does not constitute a debt owing by the purchaser that could affect the purchaser's ability to repay the mortgage.

17. The Registrar alleges that the signature for the donor on each of the gift letters was forged by Morgan.

18. Alternatively, the Registrar alleges that the signatures were forged by Morgan's assistant, and that Morgan failed to properly supervise the assistant so as to prevent the forgery.

Morgan's defense

19. Morgan did not provide a substantive defense to the Registrar's allegations. Through counsel, he simply points out that the Registrar bears the burden of proving the allegations on a balance of probabilities. He asserts that the Registrar has not done so.

Issues

20. This matter is being decided under Part 3 of the *Act* which contemplates a two-stage process. The Panel must first determine whether the Licensee engaged in conduct deserving of sanction. If conduct deserving of sanction is found, the Panel may then make orders in respect of the appropriate sanction.

21. This decision addresses the first question only. Namely, whether Morgan engaged in conduct deserving of sanction as alleged.

22. Section 42(b) of the Rules states:

> Industry members must not:
>
> (b) participate in fraudulent or unlawful activities in connection with the provision of services or in any dealings.

23. The parties agree that engaging in "forgery," as defined in the *Criminal Code*, would constitute participation in "fraudulent or unlawful activities."

24. Section 366 of the *Criminal Code* defines "forgery" as the making of

> "a false document, knowing it to be false, with intent
>
> (a) that it should be in any way used or acted on as genuine, to the prejudice of anyone whether within Canada or not; or
>
> (b) that a person should be induced, by the belief that it is genuine, to do or to refrain from doing anything, whether within Canada or not."

25. A "false document" is defined under section 321 of the *Criminal Code* as a document

> "(a) the whole or a material part of which purports to be made by or on behalf of a person
>
> (i) who did not make it or authorize it to be made, or
> (ii) who did not in fact exist,

(b) that is made by or on behalf of the person who purports to make it but is false in some material particular,

(c) that is made in the name of an existing person, by him or under his authority, with a fraudulent intention that it should pass as being made by a person, real or fictitious, other than the person who makes it or under whose authority it is made."

26. Section 69(e) of the Rules states:

A mortgage associate must:

(e) ensure there is an adequate level of supervision for his employees and others who perform duties on his behalf.

27. The onus is on the Registrar to prove the misconduct on a balance of probabilities.

28. Morgan challenges much of the evidence put forward by the Registrar on the basis that it is hearsay or otherwise not credible because it is conjecture, speculation, or opinion evidence offered by a person who is not an "expert" in the area of their opinion.

29. The Registrar counters, stating that the Panel is entitled to accept hearsay evidence where it considers the evidence to be credible and reliable. The Registrar asserts that its witnesses' testimony is credible and reliable and should be preferred to the evidence of the sole witness for Morgan, [J.B]. Finally, the Registrar asserts that the Panel can accept lay opinion evidence in some circumstances and, in any event, the Hearing Panel can draw its own conclusions from the evidence.

30. Morgan also challenges the Panel's jurisdiction over the [M.B DEAL]. He observes that the property and the mortgage clients ([M.B] and [T.O]) were, at all relevant times, in Saskatchewan. He argues that this places the [M.B DEAL], and his alleged misconduct in relation to it, outside the Panel's jurisdiction.

31. Accordingly, the issues to be addressed by this Panel are:

a. Should the Panel accept the hearsay evidence in this case?

b. Was the evidence provided by the various witnesses credible?

c. Has Registrar has proved, on a balance of probabilities, the following:

i. The [M.B DEAL]:

1. The Panel has jurisdiction over the [M.B DEAL];

2. Morgan was an industry member providing services;

3. Morgan prepared false documents by signing [M.B] and/or [T.O]'s signatures on the Mortgage Disclosure, the Initial Disclosure; the Insurance form; and the Client Consent without their permission;

4. Morgan prepared false documents by writing a fake Mortgage broker / associate License Number on the Mortgage Disclosure and the Initial Disclosure; and

5. Morgan intended that the false documents would be acted upon as if genuine to the prejudice of a third party or would induce a third party to do or refrain from doing something.

ii. The [S.C DEAL]:

1. Morgan was an industry member providing services;

2. Morgan prepared false documents by signing the donors' signatures on the gift letters without their permission;

3. Morgan intended that the false documents would be acted upon as if genuine to the prejudice of a third party or would induce a third party to do or refrain from doing something; and

4. Morgan failed to ensure an adequate level of supervision for his employees and others who performed duties on his behalf in relation to this deal.

Decision

a. Should the Panel accept the hearsay evidence in this case?

32. Morgan argues that the Hearing Panel should not accept any hearsay evidence in support of the Registrar's case. He asserts that it would be unfair for the Hearing Panel to do so. The very nature of hearsay is such that the actual "witness" to the event is not the person before the Hearing Panel and, therefore, the real witness' evidence cannot be tested by cross-examination. Morgan relies on the Court's decision in *Re Roenisch and Alberta Veterinary Association* where the Court observed, in *obiter*:

> "...affidavits and statements were admitted in evidence under circumstances precluding any cross-examination. I am satisfied the decision could quite properly be set aside on that ground.

> When it is realized how serious a matter it is to deprive a professional of his profession, it is all the more imperative that natural justice be recognized. There is nothing more important than the right and opportunity to cross-examine."[1]

33. The Registrar argues that the Court's *obiter* remarks in *Re Roenisch* do not apply in the context of the *Act*. Further, to the extent that *Re Roenisch* ever set out the law with respect to the use of hearsay in decisions under the *Act*, it has been overtaken by the Court of Appeal's more modern approach to administrative tribunals, as set out in *Lavallee v Alberta Securities Commission*.[2]

34. In *Lavallee*, the Court of Appeal considered sections 29(e) and (f) of the *Securities Act*, which are the same as sections 42(a) and (h) of the *Act*:

> 42(a) the Hearing Panel shall receive evidence that is relevant to the matter being heard…
>
> (h) the laws of evidence applicable to judicial proceedings do not apply…

35. The Court of Appeal approved the chambers judge's observation that "in a regulatory context the admission of hearsay or compelled testimony or the lack of opportunity to cross-examine will not necessarily breach procedural fairness."[3] The Court of Appeal went on to hold that, given the language of the *Securities Act* (which is the same as sections 42(a) and (h) of the *Act*):

> It is therefore open to a panel to admit, for example, hearsay evidence without holding a *voire dire*. By the same token, a panel has the discretion to refuse evidence; for example, evidence that it considers to be inherently flawed. The provisions of the statute must be read so as to give effect to the legislative intent that relevant evidence will be generally admissible, while at the same time honouring the requirements of procedural fairness and giving the Commission control over its own process.[4]

36. Based on the above, the Panel is satisfied that there is no blanket prohibition against admitting and/or relying upon hearsay evidence. Rather, the Panel must first ask whether the evidence is relevant. If it is, the Panel must consider whether the evidence is "inherently flawed" or so problematic in some manner

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[1] *Re Roenisch and Alberta Veterinary Association*, 1968 CanLII 641 at p. 364 (*Re Roenisch*)
[2] *Lavallee v Alberta Securities Commission*, 2010 ABCA 41 (*Lavallee*)
[3] *Lavallee* at para 17
[4] *Lavallee* at para 17

that it would be procedurally unfair to consider it. The mere fact that evidence is hearsay is not enough to meet this test.

37. The Panel has applied these considerations in weighing the various pieces of evidence as they relate to the elements of the conduct deserving of sanction.

The [M.B] Interview

38. Morgan was interviewed on September 23, 2021, by a RECA investigator regarding the [M.B DEAL]. An audio recording of the interview and a transcript of the audio recording, prepared by a certified Court reporter, were entered as exhibits at the hearing (the [M.B] Interview).

39. The Panel has determined that, while the [M.B] Interview could be considered hearsay as Morgan did not testify under oath, it is nevertheless relevant evidence. Morgan answers questions and makes statements that have a direct bearing on his alleged misconduct.

40. Counsel for Morgan argued that the [M.B] Interview was not reliable and was unfairly prejudicial. Counsel asserted that there was no evidence that Morgan was the person who attended the interview.

41. Counsel also opined that Morgan ought to have been cautioned that he should get legal advice / representation prior to participating in the interview. He also argued that the questions asked by the investigators were improper because they were lengthy, compound, hypothetical, and invited Morgan to speculate. Counsel suggested that Morgan was at a considerable disadvantage in attending the interview without legal representation and that this resulted in Morgan inadvertently giving answers that were confusing or inaccurate.

42. The Panel does not agree that there is doubt as to whether it is Morgan's voice on the recording. RECA investigator, [A.B] ([A.B]) testified. He identified his and Morgan's voices on the audio recording and confirmed that the audio recording aligned with his memory of the interview. The transcript of the recording was prepared and certified by a Court Reporter and, on the Panel's review, aligned with the audio recording. The idea that an imposter attended an interview, to which only Morgan was invited, does not accord with the preponderance of probabilities. Likewise, there was simply no evidence to suggest some kind of conspiracy by [A.B], RECA, or others to "fake" an interview with Morgan.

43. Turning to the question of whether RECA had an obligation to encourage or warn Morgan to obtain counsel prior to attending the interview, we agree with

the Registrar that no statutory obligation exists. Indeed, under section 38(2) of the *Act*, Morgan was required to attend and cooperate with the investigation.[5]

44. Additionally, we note that there is no evidence that Morgan was denied the opportunity to seek legal advice prior to the interview. Nor is there evidence that Morgan did not understand, or was denied clarification in respect of, a question he was asked.

45. In sum, we found the [M.B] Interview to be reliable and admissible.

The [S.C] Investigation

46. Morgan was also interviewed in relation to the [S.C DEAL] on October 24, 2018, by RECA investigator, [T.H] ([T.H]). An audio recording and a transcript of the audio recording, prepared by a certified Court reporter, were entered as exhibits at the hearing (the [S.C] Interview). Other documents prepared in the course of [T.H]'s investigation (the [S.C] Investigation) were also entered as exhibits.

47. [T.H] did not testify at the hearing. Her supervisor at the time of the investigation, [J.P] ([J.P]), did. [T.H] went on maternity leave following the [S.C] Interview and then left her employment with RECA in November 2019. [J.P] testified that he reviewed [T.H]'s [S.C] Investigation file and was satisfied that nothing appeared to be missing from the file and that the investigation was complete. He then went on to explain his understanding of the correspondence contained in the investigation file.

48. Counsel for Morgan objected to the admission of the [S.C] Interview and the various documents collected and prepared by [T.H] in the course of the [S.C] Investigation into evidence, as well as [J.P]'s testimony about them. Counsel argued that, as neither Morgan nor [T.H] testified, this evidence was inadmissible hearsay. He argued that it would be unfairly prejudicial to Morgan for the Tribunal to consider such evidence in circumstances where [T.H] did not testify about any of them.

49. The Registrar replied that the documents contained within the [S.C] Investigation file would, under the traditional rules of evidence, be considered "business records" of RECA that could be admitted without the need for [T.H]'s testimony. He argued that, while the section 42(h) of the *Act* is clear that the traditional rules of evidence do not apply to hearings under Part 3, it would be

[5] Provided that, per section 38(4) of the *Act*, his answers could not be used against him in a civil proceeding, the prosecution of an "offence" under the *Act*, or in proceedings under any other Act, except in respect of a contravention of section 38 of the *Act*. As Morgan is not charged with an "offence" as defined in section 81 of the *Act*, he did not have a statutory "right to remain silent" in respect of his conduct.

an impractical result to have the Panel apply a stricter rule of evidence with respect to business records than a Court would.

50. We agree. The principle that administrative tribunals are not bound by the strict rules of evidence is intended to support the efficient and effective conduct of hearings, not to hamper them. In *Lavallee*, the Court of Appeal commented on the Securities Commission's observation that sections 29(e) and (f) (which contain the same language as sections 42(a) and (h) of the *Act*) gave the Commission "considerable latitude in determining what evidence to admit and, if admitted, the weight to assign to that evidence":

> The discretion inherent in this approach to the provisions is, in my view, essential to the efficient and effective conduct of Commission hearings. Sub-section 29(f) says that the Commission is not bound by the rules of evidence; it does not say that it is obliged to ignore them entirely and I would not read s.29(e) so as to compel that result. [6]

51. The "business record" exception to the general principle that hearsay is not admissible developed out of the recognition that, in the modern business world, it will not always be possible or practical to call each individual involved in creating a business record. Expanding on this principle, courts have admitted business records without requiring the creator of the record to testify, even where that creator could be identified, noting that nothing about this procedure precludes the opposing party from calling the witness to challenge the accuracy of the records.[7]

52. Turning to the present context, the Panel is satisfied that it was not necessary for the Registrar to call [T.H] to testify about the records created in the [S.C] Investigation. There was nothing about the records themselves that suggested they were inaccurate or unreliable. Moreover, there was nothing that prevent Morgan from testifying himself or calling [T.H] as a witness in order to challenge the accuracy of the records.

53. Morgan also objected to the audio recording / transcript of the October 24, 2018, interview for the same reasons he objected to the recording / transcript of the interview in relation to the [M.B DEAL]. Namely, that there was no evidence that Morgan was the person speaking and Morgan was not cautioned to get legal advice.

54. The Panel listened to the audio recording and reviewed the transcript from [T.H]'s interview on October 24, 2018. We note that the interviewee introduces

[6] *Lavallee* at paras 15-16

[7] *Ares v Venner* (1969), 70 WWR 96 (ABCA)

himself as "Casurt Morgan" indicates that he intends to respond completely and truthfully to the interviewer's questions. His voice and verbal tics (for example, the use of "uh" and "dut-da-dut" to fill the air while trying to recall something) were remarkably similar to the recording of the interview relating to the [M.B DEAL]. [T.H]'s email inviting Morgan to the interview was entered as an exhibit. Someone identifying themselves as "Cas Morgan" responded from the email address "casmorgan@yahoo.com" and confirmed they would attend.

55. There was simply no evidence that the person interviewed was other than Morgan and, again, it struck the Panel as improbable that an imposter had attended the interview with [T.H] or that [T.H] had somehow faked the interview.

56. In sum, Morgan's objection to the Panel's consideration of the [S.C] Investigation records is overruled. We found the [S.C] Interview and [S.C] Investigation records reliable and admissible.

b. Was the evidence provided by the various witnesses credible?

57. The Registrar called six witnesses:

    a. [S.B] ([S.B]), [THE COMPLAINANT];

    b. [A.B] ([A.B]), an investigator for RECA who interviewed Morgan in relation to the [M.B DEAL];

    c. [J.G] ([J.G]), an investigator for RECA who interviewed Morgan in relation to the [M.B DEAL];

    d. [T.O] ([T.O]), [M.B]'s wife and one of the purchasers whom Morgan assisted in obtaining a mortgage in relation to the [M.B DEAL];

    e. [G.S] ([G.S]), a former Regional VP at Invis, who spoke to Morgan about the gift letters prepared in the [S.C DEAL] and reported his conversation to RECA investigator, [T.H]; and

    f. [J.P] ([J.P]), an investigation manager for RECA who supervised RECA investigator [T.H] during her investigation of the [S.C DEAL].

58. Morgan called one witness, [J.B] ([J.B]), who is [M.B]'s mother. [J.B] testified that she has also been a mortgage client of Morgan's and that she had introduced [M.B] to Morgan so that Morgan could assist [M.B] in obtaining a mortgage for the [M.B DEAL]. She gave evidence about her understanding of [M.B]'s instructions to Morgan during the [M.B DEAL].

59. To make its decision, the Panel must first determine the relevant facts. In making its factual findings, the Panel weighs the evidence, including the exhibits entered and the testimony of the witnesses. In weighing the evidence, the Panel must determine whether a witness' testimony on any given point is credible. To do this, the Panel applies the principles set out in the seminal case of *Faryna v Chorny*:

> …the validity of evidence does not depend in the final analysis on the circumstance that it remains uncontradicted, or the circumstance that the Judge may have remarked favourably or unfavourably on the evidence or the demeanour of a witness …
>
> The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. **In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.**[8]

60. More recently, other decision-makers have observed:

Some of the traditional factors considered in assessing credibility include:

- The witnesses' demeanour, although this is considered to be one of the least reliable credibility factors.
- The witnesses' memory.
- The ability of the witness to observe and accurately recount what happened.
- Inconsistencies in the evidence of the witness.
- Consistency of the witnesses' testimony with other established facts in the case.
- The motivation of the witness.
- The overall plausibility of the witnesses' testimony
- Other factors which are relevant given the particular circumstances of the case.[9]

[8] *Faryna v Chorny*, 1951 CanLII 252 at pp 356-57 [Emphasis added]

[9] *Edmonton (City) v Amalgamated Transit Union Local No 569*, 2020 CanLII 103768 (ABGAA) at para 59

61. In making its factual findings, the Panel has considered the above factors and determined whether the testimony of each witness accords with the "preponderance of probabilities" that a practical and informed person would consider to be reasonable in the circumstances.

c. Has the Registrar proved its case on a balance of probabilities?

i. The [M.B DEAL]

1. Does the Panel have jurisdiction over the [M.B DEAL]?

62. Under section 5 of the *Real Estate Act*, the purposes of RECA are:

> (a) to set and enforce standards of conduct for the industry and the business of industry members as the Council determines necessary in order to promote the integrity of the industry, to protect against, investigate, detect and suppress mortgage fraud as it relates to the industry and to protect consumers affected by the industry;
>
> (b) to provide services and other things that, in the opinion of the Council, enhance and improve the industry and the business of industry members;
>
> (c) to administer this Act as provided in this Act, the regulations, the bylaws and the rules.

63. The Registrar cites the RECA Information Bulletin, "Dealing in Mortgages – Jurisdiction" (the Bulletin)[10] for the test to be applied in determining the Panel's jurisdiction over the conduct of licensees. The Bulletin states:

> RECA decides its jurisdiction based on a legal test known as the "sufficient connection" test. This test was developed by Canadian courts and applies when a decision maker decides which provincial jurisdiction is the most appropriate to deal with a particular issue.
>
> ...
>
> To determine if there is a sufficient connection, RECA considers all the facts and impact on Alberta consumers. RECA uses these factors to determine whether a deal in mortgages has a sufficient connection to Alberta:

[10] Exhibit 16

- where the brokerage activities occurred
- where the borrower is located
- where the property is located
- where the mortgage broker holds a licence
- were the activities considered dealing in mortgages
- the place where advertisements originate and appear
- the place dealing records are held
- how documents are prepared, signed, sent, or given to the parties
- where documents are prepared, signed, sent, or given to the parties
- where a corporation was incorporated and carries out its usual business
- the place receipt of deposits into a trust account occurs
- where money originates and is delivered to conclude a deal in mortgages
- any choice of law clauses adopted by parties in any agreement

The Act applies to deals in mortgages when there is a sufficient connection to Alberta.

64. The Panel is mindful of the fact that the property is located in Saskatchewan, as were [M.B] and [T.O]. To the extent that [M.B] and [T.O] signed documents in relation to the [M.B DEAL], they did so in Saskatchewan.

65. Nevertheless, the Panel is satisfied that it should take jurisdiction over the [M.B DEAL], particularly given RECA's stated purpose (including: "to set and enforce standards of conduct", "promote the integrity of the industry", "to protect consumers affected by the industry" and "to administer…the rules").

66. We begin by noting that there is no "choice of law" provision in any of the [M.B] Documents mandating or suggesting that the appropriate jurisdiction is other than Alberta.

67. Further, Morgan's RECA license history was entered as an exhibit. It contains his personal and business contact information as well as the details of his license status over time. Additionally, [S.B] and [G.S], who each worked with Morgan at Invis, testified that he and the brokerage conducted their usual business, including uploading relevant mortgage documents to the file management system used by lenders, in Alberta. [T.O] testified that Morgan was in Alberta when she and [M.B] spoke to him about the [M.B DEAL].

68. From this evidence, the Panel deduces that Morgan prepared the documents to be signed by [T.O] and [M.B] in Alberta. More significantly, to the extent that he allegedly forged any of the documents, he would also have done this in Alberta.

69. Morgan's substantial connection to Alberta and, importantly, the fact that, assuming he engaged in the misconduct alleged in respect of the [M.B DEAL], he did so in Alberta, creates a substantial enough connection to Alberta to found the Panel's jurisdiction over the [M.B DEAL].

2. Was Morgan an industry member providing services?

70. Section 1(1)(r) of the Rules defines an "industry member" as "any person who holds a license issued under these Rules". Morgan's RECA licence history was entered as an Exhibit and demonstrates that, at all relevant times, Morgan held a license issued under the Rules.

71. Morgan is listed as the contact person for the mortgage broker on the Mortgage Commitment, Mortgage Disclosure, and Initial Disclosure documents. [T.O] also testified that Morgan acted as the mortgage broker for her and her husband, [M.B], in the [M.B DEAL].

72. Based on the above, the Panel is satisfied that Morgan was an industry member providing services in respect of the [M.G DEAL].

3. Did Morgan prepare false documents by signing [M.B] and/or [T.O]'s signatures on the Mortgage Disclosure, the Initial Disclosure form, the Insurance form, and the Client Consent form without their permission?

Evidence

73. [T.O] testified that, in 2016, she and her husband, [M.B], arranged to purchase a home [ADDRESS 1] from [M.B]'s mother, [J.B]. To complete the purchase, they needed to obtain a mortgage. [J.B] had used Morgan as her mortgage broker in the past and recommended him. [M.B] and [T.O] then secured a mortgage through Morgan and completed the purchase of the property.

74. In the fall of 2020, [M.B] was diagnosed with terminal cancer. [M.B] contacted Morgan to ask how the life insurance on the mortgage worked. Morgan replied that [M.B] and [T.O] had declined mortgage insurance. [T.O] says she was shocked. She did not recall doing this and it would be out of character for her. She is the type of person who tends to get insurance; for example, she states that she has two life insurance policies for herself and even life insurance for her

daughter. She followed up with Morgan, but he ceased communication with her in October 2020.

75. [M.B] passed away on January 12, 2021. [T.O] was still surprised at Morgan's insistence that she and [M.B] had declined insurance and decided to investigate. She contacted [S.B] ([S.B]), a Mortgage Broker who worked at Invis with Morgan, to obtain a copy of the Insurance form. [S.B] provided [T.O] with copies of the [M.B] Documents.

76. [T.O] testified that Morgan did not provide her and [M.B] with copies of the Client Consent, Mortgage Disclosure, Initial Disclosure, or Insurance form at any point. She first saw these documents when she received them from [S.B].

77. [T.O] testified that she did not sign / initial the Client Consent, Mortgage Disclosure, Initial Disclosure, or Insurance Form. She was certain that she would have recalled signing them because applying for a mortgage is not an "everyday event" to her. [T.O] and [M.B] kept a mortgage file and none of these documents were in it. [T.O] was certain that she would have had copies had she signed them.

78. [T.O] reviewed the Mortgage Disclosure and confirmed that the signatures for herself and [M.B] on that document were authentic. [T.O] recalled seeing and signing this document. Additionally, and significantly, when [T.O] first started reviewing her mortgage records, [T.O] found that she did have a copy of this document, with the original signatures, at home.

79. [T.O] testified that the signature purporting to be hers on the Client Consent, Mortgage Disclosure, Initial Disclosure, and Insurance forms was not, in fact, her signature.

80. [T.O] stated that she could identify [M.B]'s signature, having seen it written by him many times before. [T.O] testified that the signature for [M.B] on the Client Consent, Mortgage Disclosure, Initial Disclosure, and Insurance form was not [M.B]'s signature.

81. [T.O] denied giving Morgan her consent to sign any documents on her behalf. [T.O] likewise denied telling [M.B] to tell Morgan that he could sign documents on her behalf.

82. In advance of her testimony, she had reviewed her and [M.B]'s home email accounts. [T.O] testified that she did not find any emails containing the Client Consent, Mortgage Disclosure, Initial Disclosure, or Insurance form, nor did she find any communications between [M.B] and Morgan where [M.B] gave Morgan permission to sign documents on his or [T.O]'s behalf.

83. [T.O] testified that she was ultimately unable to receive a life insurance pay out on the mortgage because of the signed Insurance form declining insurance. She ultimately had to sell another property and rely on a "go fund me" campaign set up by her friends to help her make the mortgage payments.

84. On cross-examination, [T.O] reiterated that she had never intended to decline mortgage insurance. [T.O] had understood, from a previous mortgage transaction, that insurance came with the mortgage unless you declined.

85. It was put to her that [M.B] could have communicated with Morgan about declining insurance or signing documents on their behalf without [T.O] knowing. [T.O] denied this. [T.O] testified that, since she and [M.B] were in Saskatchewan and Morgan was in Alberta, they communicated by telephone and email. [T.O] says she was on most of the calls about the mortgage with Morgan and [M.B]. When Morgan and [M.B] spoke without her, [T.O] says [M.B] told her about the calls. [T.O] was adamant that he shared information with her because both [T.O] and [M.B] were obtaining the mortgage and purchasing the property together.

86. It was put to [T.O] that [M.B] sold insurance at the time of the [M.B DEAL] and could have obtained his own insurance. [T.O] testified that, while [M.B] ultimately got his insurance license, it was not until two years later. Further, he sold agricultural insurance, not life or mortgage insurance. [T.O] says that, at the time of the [M.B DEAL], they did not know anyone who sold life insurance.

87. [J.B] also testified about the [M.B DEAL]. [J.B] stated that she and [M.B] had discussed mortgage insurance on multiple occasions and that [M.B] felt that it did not make sense to purchase because the premium remained the same even as the amount owing on the mortgage declined. According to [J.B], [M.B]'s preference was to purchase independent life insurance instead. At the time, she had a relative who sold insurance who could have assisted him, although it was not clear whether [M.B] would have qualified for insurance due to a pre-existing medical condition.

88. Finally, the panel heard evidence from [A.B]. [A.B] testified that he interviewed Morgan regarding the [M.B DEAL]. The Panel heard an audio recording of the interview, and a transcript was also entered as an exhibit. [A.B] identified his own and Morgan's voices in the recording.

89. During the interview, Morgan told [A.B] that [M.B] had communicated to him (Morgan) that he ([M.B]) did not want mortgage insurance. Morgan also stated that he did not discuss mortgage insurance with [T.O].

90. Morgan could not recall whether he sent all of the [M.B] Documents out for signature at the same time or not. He explained that the only document required for the lender was the Mortgage Commitment. The Client Consent, Mortgage Disclosure, Initial Disclosure, and Insurance form were internal, Invis compliance documents.

91. Morgan told [A.B] that he (Morgan) wrote the date on the Client Consent, Mortgage Disclosure, Initial Disclosure, and Insurance form. He was not sure whether the date written was the date when the documents were signed. He also agreed that, where [T.O] and [M.B]'s names were printed on the forms, that writing was his. He said he filled these parts in for [T.O] and [M.B] for "ease" and to make sure the blanks were filled in.

92. Looking at the signatures for [T.O] and [M.B], he stated: "And to be totally, completely truthful in regards to the signature, might be mine. I don't know." Later, he suggested there was a "50-50" chance it was his writing. However, he also stated multiple times that he did not recall signing the documents and could not think of a reason why he would have done so. He could not recall whether [M.B] had told him to sign the documents on his behalf.

93. [A.B] went to ask Morgan whether someone other than [T.O], [M.B] or himself could have signed the documents. Morgan answered: "It would only be me. It would only be me on my particular desk."

Finding

94. The Panel finds, on a balance of probabilities, that [M.B] and [T.O] did not sign the Client Consent, Mortgage Disclosure, Initial Disclosure, or the Insurance form.

95. We begin by noting that "non-expert" witnesses have long been allowed to testify as to the "identification of handwriting."[11] Moreover, it is open to the Panel itself to undertake a "comparative evaluation" of handwriting in evidence.[12]

96. The Panel compared [T.O] and [M.B]'s signatures and initials on the Mortgage Commitment with the signatures on the Client Consent, Mortgage Disclosure, Initial Disclosure, and Insurance form. The signatures and initials on the second set of documents clearly do not match the signatures and initials on the Mortgage Commitment. The style of lettering is so substantially different that the Panel is satisfied, on a balance of probabilities, that the signatures could not have been written by [T.O] or [M.B].

[11] *Graat v The Queen*, 1982 CanLII 33 (SCC) at p 835
[12] *R v Meer*, 2015 ABCA 141 at paras 84-88

97. Additionally, we are persuaded by [T.O]'s evidence that the signatures are not hers or [M.B]'s. The Panel found [T.O]'s evidence to be generally credible. Her explanation that she would have recalled signing the Client Consent, Mortgage Disclosure, Initial Disclosure, and Insurance form because insurance was important to her and because a mortgage is not an everyday transaction had an air of truth to it. It was also significant that the Mortgage Commitment, which she recalled signing, was the only document that she had a copy of in her mortgage file. This fact is consistent with [T.O]'s evidence that she never received a copy of the documents and did not sign them.

98. Having found that [T.O] and [M.B] did not sign the Client Consent, Mortgage Disclosure, Initial Disclosure, and Insurance form, the Panel must now consider whether we are satisfied, on a balance of probabilities, that Morgan signed their signatures. We are.

99. Morgan was the mortgage broker for the [M.B DEAL]. In the interview with [A.B], he acknowledged that all of the other writing on the documents (the dates, his signature, and [T.O] and [M.B]'s printed names) was his. He specifically stated that no one else was working with him at the time. Thus, there was no one else who could have signed the documents in place of [T.O] and [M.B]. Given our finding that [T.O] and [M.B] did not sign the documents and Morgan's own admission that no one else would have had access to the documents to sign them, we come to the conclusion that it is more likely than not that he signed the Client Consent, Mortgage Disclosure, Initial Disclosure, and Insurance form.

100. This conclusion is further bolstered by the fact that the style of writing – particularly the signatures for [T.O] – closely resembles the writing Morgan admits is his. For example, the "T" in [T.O]'s first name – as printed by Morgan on the Client Consent – is virtually identical to the "T" in her "signature" on that same document.

101. Finally, the Panel is also satisfied, on a balance of probabilities, that neither [M.B] nor [T.O] consented to Morgan signing the documents on their behalf.

102. We acknowledge [J.B]'s evidence that [M.B] told her he considered mortgage insurance to be a waste of money and intended to purchase insurance elsewhere. In weighing this evidence, the Panel notes that, in her testimony, [J.B] acknowledged that she had made incorrect / inaccurate statements earlier in the process when interviewed by RECA. The content of the inconsistencies is not particularly germane to this matter. What is relevant, however, is the fact that [J.B] acknowledged she had given the RECA investigator inaccurate information. [J.B] explained that she made the mistake because she was "emotional" and not thinking clearly. On cross-examination, she indicated she was also "emotional" in the course of this hearing. In other words, there was a

potential for further inaccuracy in her testimony. The Panel also noted that [J.B] appeared to struggle to recall certain details such as how many times she had used Morgan as her mortgage broker.

103. More significantly, however, the Panel finds that it is not necessary to make a ruling on whether [J.B]'s recollection of [M.B]'s pre-disposition against mortgage insurance was accurate. What was abundantly clear from [T.O]'s evidence is that she did not give her permission (either directly or through [M.B]) to have Morgan sign on her behalf. In his interview with [A.B], Morgan confirmed that he had not spoken directly with [T.O].

104. While it is possible that [M.B] could have given Morgan permission to decline mortgage insurance on his behalf without [T.O]'s knowledge, in the Panel's view, it is unlikely. The only reason for Morgan to sign on [M.B]'s behalf would have been to avoid the process of sending the document out to [M.B] for signature and then back to Morgan. This step is only saved, however, if Morgan signs for both [M.B] and [T.O] or if, [T.O] has already signed and returned the document, and the parties are simply waiting on [M.B]'s signature.

105. We accept [T.O]'s evidence that she never saw or signed the Client Consent, Mortgage Disclosure, Initial Disclosure, or Insurance form and that she did not give Morgan permission to sign on her behalf. In these circumstances, it would not have made sense for [M.B] to, nevertheless, advise Morgan to sign the documents on his ([M.B]'s) behalf as this would not have saved any time or hassle. Morgan would still have had to send a copy of the document out to [T.O] to have her sign and send it back.

106. Additionally, [M.B]'s alleged pre-disposition against mortgage insurance does not explain why he would have asked Morgan to sign the other documents on his behalf.

107. Finally, we note that none of the documents indicate that they are being signed by Morgan "for" or "on behalf of" [M.B] or [T.O]. Words to this effect, quotation marks, or printing in the place of a signature would all have been signals consistent with Morgan signing on [M.B] and [T.O]'s behalf and with their permission. That is not what happened.

108. In sum, looking at the evidence as a whole, the Panel is satisfied, on a balance of probabilities, that Morgan signed [T.O] and [M.B]'s signatures on the Client Consent, Mortgage Disclosure, Initial Disclosure, and Insurance form without their permission.

4. Did Morgan prepare false documents by writing a fake Mortgage broker / associate License Number on the Mortgage Disclosure and the Initial Disclosure and Lenders form?

Evidence

109. In his interview with [A.B], Morgan explained that, at the time he worked on the [M.B DEAL], he did not think that he needed a Saskatchewan license. He stated that he wrote an "arbitrary" number as his "pseudo" license number on the compliance documents for the [M.B DEAL]. He stated: "honestly, it was just a random 12345 number."

110. Elaborating further on his thinking, he said:

> "...my understanding was it was just you had to put in a number. Just throw in a number. But because my understanding was that you didn't need a license number, but in order to actually have it to be done, throw in this number.
>
> ...I tried looking up the licensing number for Alberta. Alberta, you don't have a licensing number. So they said for Saskatchewan. So that's where I said, if we don't have one here and you don't need a license in Saskatchewan, so therefore this number is just arbitrary.
>
> Almost like a form that you needed to fill out but didn't' have – fill in all the blank spots but didn't need it. Didn't need it. So in retrospect, a hundred percent, I should have just left it blank."

111. [S.B] testified that, after [T.O] told her that she ([T.O]) had not signed the Insurance from, she ([S.B]) decided to review the [M.B] Documents further. [S.B] then noticed that the Mortgage Disclosure and Initial Disclosure forms each had a place to fill in information about licensing in Saskatchewan.

112. Following her review, [S.B] concluded that Morgan had filled in a license number even though he was not registered in Saskatchewan.

113. [S.B] then made the complaint to RECA that ultimately resulted in this hearing. In her complaint, [S.B] states:

> "Further investigation has revealed that Mr. Morgan was not licensed in Saskatchewan (has never been) yet signed all of the required Saskatchewan disclosures (with a FAKE license #). I have reported this to the SK regulator, but I don't know what action, if any, they will be taking after a 5 year period."

114. [S.B] has been a mortgage broker for 25 years, working with Invis and its affiliates for twenty-three of those years. [S.B] testified that she is licensed in both Alberta and Saskatchewan. [S.B] concluded that the license number used by Morgan was "fake" because, due to her own licensing in Saskatchewan, she is aware that

Saskatchewan license numbers have six digits. The license number written by Morgan only had five.

115. Additionally, [S.B] says that she spoke with [M.R] ([M.R]), an employee of the Financial and Consumer Affairs Authority of Saskatchewan (the Saskatchewan regulator equivalent to RECA) who advised her that Morgan was not, and had never been, licensed in Saskatchewan.

116. Finally, looking at the Mortgage Disclosure form, [S.B] noted that Morgan had selected "Broker" (as opposed to "Associate") to describe himself. She opined that, given Morgan's qualifications in Alberta, were he licensed in Saskatchewan, he would more likely have been an "Associate," not a "Broker." From this, she concluded that Morgan was likely making up his Saskatchewan status.

Finding

117. Counsel for Morgan objected to [S.B]'s testimony, asserting that it was speculative, hearsay, and offered an opinion that was not based on any expertise.

118. The Panel agrees that [S.B]'s recounting of her conversation with [M.R] is hearsay. Notably, [S.B] provided correspondence between herself and [M.R] which, while discussing Morgan's actions, makes no mention of his Saskatchewan license status. We also agree that much of her evidence was more in the nature of a conclusion rather than an observation. However, as noted previously, the Panel may consider hearsay and lay opinion evidence where appropriate. We are mindful of the weaknesses of [S.B]'s evidence on this issue, but view the weaknesses as affecting the weight, as opposed to the admissibility, of the evidence.

119. Importantly, [S.B]'s evidence that Morgan did not have a Saskatchewan license and wrote down a "fake" license number is significantly bolstered by Morgan's own information. He advises that he wrote the number on the forms and that it was "arbitrary," "random," and a "pseudo" license number he simply made up. He stated that he did this because he did not believe he needed a Saskatchewan license number.

120. In light of the above, we are satisfied, on a balance of probabilities, that the Mortgage Disclosure and Initial Disclosure documents created by Morgan were "false documents" in that they were "false in some material particular." Specifically, Morgan filled in a Saskatchewan license number that was "random" and which he knew was not accurate.

5. Did Morgan intend that the false documents would be acted upon as if genuine to the prejudice of a third party, or would induce a third party to do or refrain from doing something?

Evidence

121. As set out above, Morgan created false documents by signing [M.B] and [T.O]'s signatures / initials on the Mortgage Disclosure, the Initial Disclosure, the Insurance form, and the Client Consent, and by writing a false Saskatchewan license number on the Mortgage Disclosure and the Initial Disclosure.

122. [S.B] testified that the Mortgage Disclosure, the Initial Disclosure, the Insurance form, and the Client Consent were "compliance documents". That is, they were not required by the lender in order to fund the mortgage, but rather, were required by Invis' internal compliance group.

123. [S.B] testified that, in the normal course, licensees would fill in these compliance documents, have them signed by the client, and then upload them to a website where they would be reviewed by the Invis compliance department. [S.B] stated that all of the compliance documents needed to be completed and uploaded in order for the licensee to get paid a commission on the mortgage that had been brokered.

124. [S.B] provided a screenshot of the Invis payroll showing that, on March 3, 2016, Morgan received a gross payment of $3,360 in relation to a mortgage for a "[M.B]". The lender is "Wealthline" and the "Loancode" in payroll is "IINB-51527-1". She advised that this payment was made in relation to the [M.B DEAL].

125. In his interview with [A.B], Morgan advised that it was not necessary to fill in a Saskatchewan license number in order to get the mortgage approved or funded. Likewise, the Mortgage Disclosure, the Initial Disclosure, the Insurance form, and the Client Consent had nothing to do with the lender. Rather, they were required for compliance.

126. Morgan also confirmed that he would not have received his commission on the mortgage without having the compliance documents completed, signed, and sent in. At the same time, however, when asked if he had filled in [M.B] and [T.O]'s signatures without consulting them so that he could get paid his commission, he answered "no."

127. Of significance to the Panel, Morgan advised that he filled in the dates on the various compliance documents but could not recall whether the date written actually correlated with the date that the document was executed by [M.B] and [T.O]. His explanation of the paperwork process was vague, confusing, and improbable for a number of reasons.

128. First, we note that Morgan stated the forms were filled in by hand, as opposed to online. He acknowledged it was not a situation where he had to fill information into a field on an electronic form in order to be able to advance to the next slot. He was aware that it remained an option to leave fields blank.

129. Second, the dates of the documents were not consistent with them having been completed in the ordinary course. Morgan stated that the Client Consent was the first document to be signed and that, generally, no steps could be taken on the client's behalf without this document being signed first. However, the Mortgage Disclosure was dated the same day as the Client Consent (January 3, 2016) and only two days prior to the date on which the Mortgage Commitment was generated (January 5, 2016).

130. Even more curious is the date of the Initial Disclosure. This document sets out the lenders to whom the mortgage broker is able to submit an application. Logically, it should pre-date the Mortgage Disclosure (which sets out the details of the recommended or proposed mortgage) and the Mortgage Commitment (which shows the client's acceptance of the mortgage). In the [M.B DEAL], however, the Initial Disclosure is dated February 3, 2016, more than a month after the Mortgage Disclosure (signed January 3, 2016) and more than week after the Mortgage Commitment was executed ([T.O and [M.B] signed on January 25, 2016).

131. Likewise, the Insurance Form is dated February 9, 2016, more than two weeks after the Mortgage Commitment was signed.

132. When asked about why he filled dates in on the compliance documents, the following exchange occurred:

> "Q: Yeah. And to confirm, you wouldn't have received your commission without having these documents sent in and signed.
>
> A: Yeah, correct.
>
> Q: Is it reasonable to think that it's so that you can get the commission?
>
> A: No, no. Like, for me – like, yeah, to have your deals be done and satisfied, you have to have all these particular docs signed and sent off, right.
>
> Q: M-hm.

A: So for me, I would need to obviously have this stuff all done and then submitted in order to be compliant.

Q: Yes.

A: So yeah. So yeah, that's the only way – like you said, in order to get paid, you have to have all your compliance done and settled.

Q: Okay. So that's why you filled in each of these dates on each of these documents?

A: Right. True."

133. Morgan also explained in the interview with [A.B] that, while working at Invis, he received a list of compliance documents that told him what needed to be completed to be compliant. He stated that, had a document not been completed correctly / completely, the compliance department would have come back to him to tell him to correct / complete the document.

Finding

134. The Panel is satisfied, on a balance of probabilities, that Morgan intended that the false documents (the Mortgage Disclosure, Initial Disclosure, Insurance form, and Client Consent) would be acted upon as if genuine to induce a third party do or not something.

135. While Morgan answered "no" to the direct question of whether he completed the false compliance documents so that he could get paid his commission, the bulk of the evidence – including Morgan's own explanation of what he did and why – does not align with this statement and, in fact, points to the opposite.

136. Morgan and [S.B] were both clear that the compliance documents were not necessary to obtain the mortgage from the lender. In other words, it is improbable that obtaining the mortgage for his clients was the reason why Morgan filled them in.

137. On the other hand, [S.B] and Morgan both agreed that he would not have been paid his commission had he not completed the documents.

138. Additionally, Morgan stated that it was necessary to complete the documents "to be compliant". Had he not completed the false compliance documents, the Invis compliance department would have followed up. That is the point of the compliance department. Morgan would then have had to go back to [M.B] and [T.O] to get the documents completed. Filling them in himself avoided this.

139. We acknowledge that the burden of proof lies with the Registrar and that Morgan was not obliged to testify to provide an alternate explanation. However, we do note that counsel for Morgan cross-examined [S.B] and [A.B], who had each concluded that Morgan had created the false documents so that he could get paid his commission. Nothing in that cross-examination undermined their conclusions or suggested any other reason for creating the false documents.

140. The Panel does not accept that Morgan created the false compliance documents without intending them to be relied upon by Invis. The idea that Morgan created the false documents for no reason is simply improbable and we heard nothing that suggested any other reason for completing them.

141. We find that he intended for the Invis compliance department to accept the false documents so that the file could be closed, and Morgan could be paid his commission.

6. Conclusion on the [M.B DEAL]

142. The Panel is satisfied that it has jurisdiction over the [M.B DEAL]. The finds, on a balance of probabilities, that Morgan was acting as an industry member providing services in the [M.B DEAL] and, in so doing, created false documents.

143. Specifically, he signed [M.B] and [T.O]'s signatures or initials on the Mortgage Disclosure, Initial Disclosure, Insurance form, and Client Consent. He also entered a false or inaccurate Saskatchewan license number on the Mortgage Disclosure and Initial Disclosure.

144. Morgan created these false documents with the intention that Invis' compliance department would rely upon them, allowing him to close the file and get paid his commission on the mortgage.

145. Based on the above, the Panel finds that Morgan breached section 42(b) of the Rules in respect of the [M.B DEAL].

ii. The [S.C DEAL]

1. Was Morgan an industry member providing services?

146. As noted previously, section 1(1)(r) of the Rules defines an "industry member" as "any person who holds a license issued under these Rules". Morgan's licensing history was entered as an exhibit at the hearing and demonstrates that he held a license as an Associate with Invis in May / June 2016.

147. The [S.C DEAL] took place in May / June 2016. Morgan is listed as the mortgage broker on the Mortgage Commitment for the [S.C DEAL].

148. Based on the above, the Panel finds that Morgan was, in May / June 2016, an industry member providing services in respect of the [S.C DEAL].

2. Did Morgan prepare false documents by signing the donors' signatures on the gift letters without their permission?

Evidence

149. [G.S] ([G.S]) was the Regional VP for the Prairies at Invis for a period of time, including 2016, when the [S.C DEAL] occurred. [G.S] testified that he was contacted by a lender, National Bank, and advised that National Bank's risk department had conducted a review of gift letters submitted in relation to loans it had funded. [G.S] says that the National Bank identified the gift letters in the [S.C DEAL] as falsified and left it with [G.S] to decide what to do.

150. [G.S] then asked [S.B] to look at the file for the [S.C DEAL] and let him know if she had any concerns or thoughts. [S.B]'s opinion was that the gift letters were not authentic.

151. Counsel for Morgan objected to this evidence (National Bank's and [S.B]'s concerns) as hearsay and unfairly prejudicial to Morgan. While the Panel has the discretion to consider hearsay, in this circumstance, we do wish to note that we have given this evidence no weight. It is the role of the Panel to determine whether the gift letters contained forgeries and we agree that we should not be guided by what the National Bank may or may not have reported to [G.S], nor should we simply accede to [S.B]'s opinion. We include this information simply for context in terms of how the present complaint came about.

152. [G.S] testified that he called Morgan to ask about the gift letters. [G.S] says that Morgan agreed something about the gift letters was not right, advised that his assistant had prepared the gift letters, and stated that he had been unaware of the forgeries until [G.S] brought them to his attention.

153. [G.S] made notes of the conversation while he and Morgan were speaking and shortly after the end of the call. [G.S] referred to them in his testimony, noting that Morgan told him the assistant was named "Robert" but did not provide a last name. [G.S] was unaware that Morgan had an assistant.

154. [G.S] asked for the assistant's contact information. [G.S] also stated that he was no longer comfortable with being associated with Morgan and the conversation turned to the terms of Morgan's departure from the brokerage. Morgan left Invis and never provided his assistant's contact information.

155. [S.B] testified that she was unable to find any evidence that Morgan ever had an assistant. This is significant because, according to [G.S] and [S.B], Invis had certain protocols that applied to assistants in terms of what they could or could not do and kept files on the assistants for privacy and other policy reasons. Both [G.S] and [S.B] felt that, had Morgan's assistant existed, there would have been paperwork for him. There was none.

156. The Panel reviewed the [S.C] Investigation records, beginning with an April 18, 2017, letter from Morgan to RECA explaining his version of events relating to the [S.C DEAL]. In the letter, Morgan states that he spoke with his assistant, "Richard Vasquez", who admitted that he ("Richard Vasquez") prepared the gift letters. "Richard Vasquez" had apparently been unable to get ahold of [S.C] regarding potential concerns about the down payment, so created the gift letters to alleviate any concerns the lender might have had. He did not tell Morgan he was doing this. Morgan provides an email address and phone number for "Richard Vasquez".

157. The Panel reviewed a memo from [T.H] regarding her efforts to contact " Richard Vasquez". She called the number on February 10, 2018, and received the message that the number was not in service. She obtained a production order, which she served on Telus, in relation to the phone number. Telus confirmed that, while it owned the phone number during the period in which Morgan says "Richard Vasquez" was his assistant, it was not assigned to anyone at that time. There was no record of it ever being assigned to a "Richard Vasquez".

158. During the interview with [T.H], Morgan again asserted that Richard Vasquez" had created the gift letters. Morgan told [T.H] that he believed Richard Vasquez" had created the gift letters by using the names and information of Morgan's other recent clients. Reviewing the gift letters, Morgan agreed that the writing on them looked similar to his but denied preparing them. He suggested that "Richard Vasquez" may have mimicked his handwriting using writing samples that "Richard Vasquez" would have been able to access from Morgan's files.

159. Morgan also attempted to call "Richard Vasquez" at the phone number he had provided to [T.H] but acknowledged that it was out of service. He told [T.H] that he knew where "Richard Vasquez" lived although he didn't have the street address. He stated that he would go to the house and speak with "Richard Vasquez"after the interview.

160. [T.H] followed up by email the following day. Morgan responded: "I didn't speak with him. I've emailed him to have him contact myself or you directly." [T.H] responded requesting a copy of the email Morgan had sent to "Richard Vasquez", along with any other emails Morgan might have demonstrating that "Richard

Vasquez" existed. Morgan did not forward the email, so [T.H] followed up. Rather than forward any emails, Morgan simply provided the email address that he had sent the emails to. [T.H] followed up by email once again. [J.P] testified that Morgan did not respond to this final email and no additional information regarding "Richard Vasquez" was provided.

161. Finally, the Panel reviewed the gift letters themselves as well as Client Consent forms that had been completed in other transactions involving the alleged donors. The handwriting on the gift letters, other than the signatures of the donors, is substantially similar to Morgan's acknowledged handwriting on the [M.B DEAL] documents. The style used to write the date on gift letters, which appears: "month – date – year" using dashes instead of commas or slashes, is the same style that appears where Morgan wrote the date on the [M.B DEAL] documents.

162. The signatures for the donors on the gift letters do not – by any stretch of the imagination – match the signatures used by those same individuals on the Client Consent forms completed in relation to these individuals' own mortgage transactions.

163. The difference in handwriting between the Client Consent form and the gift letter is quite striking in the case of one of the alleged donors. The style used to write the date on the Client Consent form does not match the style used by Morgan (on the [M.B] Documents) nor does it match the gift letter allegedly signed by that donor. Notably, the date on the Client Consent form appears to match that individual's handwriting elsewhere on the Client Consent form and appears in the same colour of pen, suggesting that the individual wrote the date and chose that particular style of writing, which does not match her supposed gift letter.

164. Notably, neither signature is described as "for" or "on behalf of" the donor.

Finding

165. The evidence supports, on a balance of probabilities, the finding that the donors did not sign the gift letters. We make this finding notwithstanding the fact that the alleged donors did not testify to this fact. The Panel is satisfied that it was not necessary for the alleged donors – who otherwise appear to have had nothing to do with the [S.C DEAL] – to attend and testify in order for the Panel to make this finding.

166. The signatures simply do not match the signatures on the Client Consent forms. From a commonsense perspective, it is unlikely that someone forged the Client Consent form on the donor's own mortgage file and that the gift letters, that appear to have nothing to do with the donors' own mortgages, contain the

genuine signatures. Likewise, given the short time between when the Client Consent forms were signed and when the gift letters were allegedly signed, it is similarly unlikely that the donors adopted new signatures in the interim and that both sets of signatures are genuine. Moreover, assuming it were the somewhat improbable case that the donors had changed their signatures in between signing the Client Consent forms and the gift letters, or the Client Consent forms (and not the gift letters) were forged, it was open to Morgan to call the donors to testify to this effect. While the Registrar bears the burden of proving its case on a balance of probabilities, this does not mean that the Registrar must call evidence to rebut every and any alternate theory, no matter how improbable, in order to do so.

167. The Registrar's failure to call the alleged donors to rebut this already unlikely theory, does not, in and of itself, make that theory more probable. Rather, the more probable explanation – which even Morgan acknowledged in his discussion with [G.S] and his explanation to [T.H] – is that "someone" forged the donors' signatures on the gift letters.

168. Turning then to "who" forged the signatures, the Panel is satisfied that the evidence supports a finding that Morgan, not "Richard Vasquez" signed the donors' signatures on the gift letters and did so without their permission.

169. There is simply no evidence that "Richard Vasquez" ever existed or that he was Morgan's assistant at the time of the [S.C DEAL]. Given the requirement that brokers complete paperwork in relation to their assistants, it is improbable that Morgan had an assistant that [G.S] had never heard of, and for whom there was no paperwork. Moreover, it is compelling that the phone number for "Richard Vasquez" was not in use at the relevant time. Assuming this was a mistake, Morgan was given multiple opportunities to correct this information by locating the correct / updated phone number. He never produced one.

170. Further the fact that Morgan never provided "Richard Vasquez"'s street address and never provided a copy of any of his email communications with "Richard Vasquez" is suspicious. In cross-examination, Morgan's counsel pointed out that Morgan lost access to his "Invis" emails when he left the company. The Panel accepts that this may have meant that he lost previous emails with "Richard Vasquez", but it does not explain why Morgan would not copy [T.H] on his subsequent emails to "Richard Vasquez" or forward them to her. Likewise, the Panel accepts that Morgan may not have recalled "Richard Vasquez"'s exact street address, but it is surprising that, after having gone to "Richard Vasquez"'s house, he still did not provide the address. The tone of his responses to [T.H]'s requests for "Richard Vasquez"'s information was evasive. The content appeared to be intentionally vague and unhelpful. When pressed repeatedly for any proof

of communication with "Richard Vasquez" ever, Morgan simply stopped responding to [T.H].

171. All of the above suggested to the Panel that "Richard Vasquez" never existed or, if he did, Morgan had a marked interest in RECA never speaking to him ("Richard Vasquez").

172. Additionally, the Panel notes that Morgan's explanation that the rest of the writing on the gift letter looked like his writing because "Richard Vasquez" had forged it, was bizarrely improbable. Morgan asserted that "Richard Vasquez" used a sample of Morgan's writing to forge his writing on the gift letter. At the same time, however, "Richard Vasquez", who also had access to the Client Consent forms – which he would have used to get the donors' personal information for the gift letters, was unable to forge the donors' signatures with the same level of accuracy he applied to Morgan's writing. The idea that "Richard Vasquez" was, at the very same time, an excellent and terrible forger, simply strains credibility.

173. The handwriting and the style in which the date is written in the gift letter strongly suggests that the rest of the document was filled in by Morgan. There is no evidence that the signatures were filled in by Morgan with the permission of the donors. For example, the signatures are not stated to be "for" or "on behalf of" the donors; the donors' names are not in quotations or simply printed.

174. Morgan's conduct and explanation around "Richard Vasquez"'s actions and location supports an inference that "Richard Vasquez"'s involvement in the creation of the gift letters was a fiction invented by Morgan. The extent of Morgan's (unsuccessful) efforts to place the blame on "Richard Vasquez" without allowing RECA access to him to verify this story, supports the inference that Morgan's real goal was to cover his own actions in respect of the gift letters.

175. Morgan's own efforts to deflect scrutiny of the gift letters, combined with their obvious similarity to Morgan's writing and dissimilarity to the donors' signatures, support a finding, on a balance of probabilities, that Morgan signed the donors' signatures without their permission.

3. Did Morgan intend that the false documents would be acted upon as if genuine to the prejudice of a third party or would induce a third party to do or refrain from doing something?

176. [S.B] testified that, at the time of the [S.C DEAL], Invis used an electronic filing system to upload relevant documents that would then go directly to the lender (in this case, National Bank). She reviewed a screenshot of the file for the [S.C DEAL] and stated that the gift letters had been uploaded to this electronic file

on May 30, 2016. [S.B] reviewed a screen shot of the detailed electronic file which shows not only the date on which actions are taken on a file, but who took those actions. The "actor" is identifiable in the system because they must use certain login credentials to access the system.

177. The electronic file shows the [S.C DEAL] being accessed by "Cas Morgan" on May 30, 2016, at the same time the gift letters were being uploaded. The electronic file shows the loan being approved by the lender the following day. [S.B] testified that the electronic file could not have been accessed without a login credential. Only Morgan (or perhaps Morgan's assistant using Morgan's credentials) would have been able to upload the gift letters to this system on May 30, 2016.

178. In his interview with [T.H], Morgan explained that "Richard Vasquez" had generated gift letters in order to assist in getting the loan approved. He explained that there had been a recent deposit into the client's bank account and that the lender wanted to know where the funds had come from. Morgan told [T.H] that "Richard Vasquez" told him (Morgan) that he did not want to bother the client and so decided producing the gift letter would be the easiest course of action. It would result in the loan being approved because the lender would then be satisfied.

179. Morgan's explanation has an air of truth to it. It struck the Panel as a logical (although obviously inappropriate) explanation for how the gift letters came to be and how they ended up on the electronic filing system.

180. Of course, as noted above, the Panel finds on a balance of probabilities that it was Morgan, not "Richard Vasquez" who signed the gift letters. For the same reasons, we also find that Morgan, not "Richard Vasquez" using Morgan's credentials, uploaded them. In particular, we have considerable doubt that "Richard Vasquez" existed at all. If he did, we note that Morgan made almost no effort to assist RECA in contacting him, which frankly makes little sense as "Richard Vasquez" is the one person who could verify Morgan's story that it was "Richard Vasquez" who uploaded the documents. Rather, the more probable inference is that Morgan uploaded the documents and then invented "Richard Vasquez"'s involvement to deflect responsibility from his own actions.

181. Finally, as with the [M.B DEAL], Morgan received a commission upon approval of the loan. Morgan would not have received, or perhaps been delayed in receiving his commission had the loan not been approved (or had it been delayed).

182. In his interview with [T.H], Morgan explained that it was unnecessary for "Richard Vasquez" to create the gift letters because the client had ample funds and the loan would ultimately be approved as a result. While Morgan's hindsight

explanation makes sense, it is also reasonable to infer that, at least at the time that he prepared the gift letters, Morgan intended them to be relied upon by the lender to speed along / ensure approval of the loan so that Morgan could close the deal and get his commission.

183. It is improbable that a stranger accessed the electronic file and uploaded the gift letters. It is equally improbable that Morgan uploaded the documents but did not intend for the lender to rely upon them. There is no reason to take this step (uploading the documents) if they are not intended to be relied upon by the lender.

184. In sum, the Panel is satisfied, on a balance of probabilities, that Morgan created the gift letters and then uploaded them with the intent that the lender would rely upon them to approve the loan.

4. Did Morgan fail to ensure an adequate level of supervision for his employees and others who performed duties on his behalf in relation to this deal?

185. For the reasons set out above, the Panel is not persuaded, on a balance of probabilities that "Richard Vasquez" existed. There is no documentary evidence supporting such an inference (for example, an email from "Richard Vasquez" to Morgan, RECA, or any of the parties involved in the [S.C DEAL]). The telephone number for "Richard Vasquez" was not in service at the time and has never been assigned to a person by that name.

186. Moreover, Morgan's marked lack of cooperation in locating "Richard Vasquez" suggests that Morgan is not interested in having RECA speak to "Richard Vasquez" to corroborate Morgan's story. From this, the Panel infers that, even if "Richard Vasquez" did exist, he is not likely to corroborate Morgan's version of events.

187. In sum, the evidence does not support a finding that "Richard Vasquez" created and submitted the gift letters and that Morgan simply failed to provide him with adequate supervision. Rather, the evidence supports that Morgan himself engaged in the misconduct. Accordingly, the Panel finds that the breach of section 69(e) of the Rules is not proven on a balance of probabilities.

5. Conclusion on the [S.C DEAL]

188. The Panel finds, on a balance of probabilities, that Morgan was acting as an industry member providing services in the [S.C DEAL] and, in so doing, created false documents.

189. Specifically, he signed the donors' signatures on the gift letters. Morgan created these false documents with the intention that the lender would rely upon them to approve the mortgage, allowing him to close the file and get paid his commission on the mortgage.

190. Based on the above, the Panel finds that Morgan breached section 42(b) of the Rules in respect of the [S.C DEAL].

191. Given its finding that Morgan, not "Richard Vasquez", engaged in the conduct breaching section 42(b) of the Rules, and given the Panel's doubt that "Richard Vasquez" existed at all, the Panel finds that the breach of 69(e) of the Rules is not proven.

Conclusion

192. For the reasons set out above, the Panel finds:

a. On or about February 2016, Morgan committed forgery in connection with the provision of services, contrary to section 42(b) of the Rule, while representing [M.B] and [T.O] in the [M.B DEAL];

b. On or about April 2016 to May 2016, Morgan committed forgery in connection with the provision of services, contrary to section 42(b) of the Rules, while representing [S.C] in the [S.C DEAL]; and

c. The allegation that Morgan failed to provide adequate supervision for an assistant who was performing duties on his behalf in respect of the [S.C DEAL], contrary to section 69(e) of the Rules, is not proven.

193. The Panel thanks the parties for their submissions.

Request for Submissions on Sanction and Costs

194. The Hearing Panel requests written submissions from the parties on the appropriate sanction and costs, and directs as follows:

1. Counsel for the Registrar must supply their written submissions to the Hearings Administrator within 14 days of receipt of this decision. The Hearings Administrator will supply those written submissions to the Licensee immediately on receipt;

2. The Licensee must supply his written submissions to the Hearings Administrator within 14 days of receipt of the Counsel of the Registrar's written submissions. The Hearings Administrator will supply those written submissions to the Counsel of the Registrar immediately on receipt.

3. Counsel for the Registrar may supply a rebuttal within 7 days of receiving the Licensee's submissions. Once the timelines above have passed, the Hearings Administrator will provide all written submissions to the Hearing Panel for consideration and decision on sanction and costs.

This Decision is dated this 11th day of August 2023

"Signature"

[K.S], Hearing Panel Chair

THE REAL ESTATE COUNCIL OF ALBERTA

A Hearing Under Part 3 of the *Real Estate Act*,
R.S.A. 2000, c.R-5

AND IN THE MATTER OF a Hearing regarding the conduct of Licensee, Casurt Roy Morgan, a licensed Mortgage Associate currently registered with Axiom Mortgage Solutions Inc. operating as Axiom Mortgage Solutions

Hearing Panel Members: [K.S], Chair
[J.D]
[C.S]

Appearances: Andrew Bone, Counsel for the Registrar of the Real Estate Council of Alberta ("RECA")
Casurt Roy Morgan
Dale Knisely, Counsel for Casurt Roy Morgan

Hearing Date: March 21 – 24, 2023, via video conference

DECISION ON SANCTION AND COSTS

Introduction

195. On March 21-24, 2023, this Panel conducted a Hearing, under Part 3 of the *Real Estate Act*[13] (the *Act*), into allegations of Conduct Deserving of Sanction against Casurt Roy Morgan (Morgan).

196. On August 11, 2023, this Panel found that Morgan had engaged in conduct deserving of sanction (the Misconduct). Specifically, the Panel found:

    a. On or about February 2016, Morgan committed forgery in connection with the provision of services, contrary to section 42(b) of the Rule, while representing [M.B] and [T.O] in the [M.B DEAL];
    b. On or about April 2016 to May 2016, Morgan committed forgery in connection with the provision of services, contrary to section 42(b) of the Rules, while representing [S.C] in the [S.C DEAL]; and

[13] ***Real Estate Act***, RSA 2000, c. R-5

c. The allegation that Morgan failed to provide adequate supervision for an assistant who was performing duties on his behalf in respect of the [S.C DEAL], contrary to section 69(e) of the Rules, is not proven.[14]

197. The Panel then requested written submissions from the parties on the appropriate sanction and costs in light of its findings.

198. This Decision addresses appropriate sanctions and costs in respect of Morgan's Misconduct. For the reasons set out below, the following sanctions and costs are imposed:

a. Morgan's license is cancelled pursuant to section 43(1)(a) of the *Real Estate Act* (the *Act*);
b. Morgan shall be ineligible to apply to the Real Estate Council of Alberta (RECA) for a license for a period of 3 years;
c. Morgan must pay the fines and costs awards set out below and must successfully complete all educational requirements in place at the time before being able to apply for a new license from RECA;
d. Morgan shall pay a fine in the amount of $20,000 in relation to the [M.B DEAL] and $10,000 in relation to the [S.C DEAL]; and
e. Morgan shall pay the costs of the Hearing in the amount of $15,620.

Factors to Consider on Sanction

199. The parties agree that the relevant factors to consider in assessing the appropriate sanction in this case are set out in *Jaswal v Newfoundland (Medical Board)* (the *Jaswal* Factors):

a. The nature and gravity of the proven allegations;
b. The age and experience of the Licensee;
c. The previous character of the offender and, in particular, the presence or absence of prior complaints or convictions;
d. The number of times the offence was proven to have occurred;
e. The role of the Licensee in acknowledging what occurred;
f. Whether the Licensee had already suffered serious financial or other penalties as a result of the allegations having been made;
g. Impact of the incident on the victim, if any;
h. Mitigating circumstances;
i. Aggravating circumstances;
j. The need to promote specific and general deterrence and thereby protect the public and ensure the safe and proper conduct of the profession;
k. The need to maintain the public's confidence in the integrity of the

[14] Morgan (Re) RECA 2023 (Part 1 Decision)

l. The degree to which the offensive conduct was found to have occurred was clearly regarded, by consensus, as being the type of conduct that would fall outside the range of permitted conduct; and
m. The range of sentence in other similar cases. [15]

The Parties' Positions

200. The Registrar seeks the following sanctions:

a. Cancellation of Morgan's license and a prohibition on reapplying for 5 years;
b. Morgan must successfully complete all educational requirements in place at the time before being able to apply for a new license from RECA;
c. Morgan must pay fines totalling $30,000 ($20,000 in respect of the [M.B DEAL] and $10,000 in respect of the [S.C DEAL]); and
d. Morgan must pay costs in the amount of $15,620.

201. The Registrar notes that the costs requested reflect only the costs associated with the attendance of Registrar's legal counsel, the Hearing Secretary, and the Hearing Panel for the 3.5 days of hearing. The costs do not include the cost of the investigation (including the preparation of interview transcripts), conduct money for the witnesses who were required to attend the Hearing, or costs associated with the legal counsel for the Registrar's preparation for the Hearing.

202. Turning to the sanctions, the Registrar argues that there are several aggravating factors that make a significant sanction appropriate. In particular:

a. Morgan is 47 years old and had been an associate for 6 years at the time of the Misconduct. The Registrar asserts that Morgan had sufficient experience and maturity to know that his Misconduct was unacceptable.
b. The Misconduct involves 6 separate breaches of Rule 42(b) of the Real Estate Rules (the Rules) occurring in 2 separate matters.
c. Morgan has not taken responsibility for the Misconduct. He went so far as inventing an assistant or preventing RECA from contacting the assistant in order to obfuscate his (Morgan's) involvement and avoid the consequences of his (Morgan's) actions.
d. The nature and gravity of the Misconduct is significant. Morgan intentionally engaged in forgery and deliberate dishonesty. RECA's mandate includes to "protect against, investigate, detect, or suppress fraud."[16] Morgan's Misconduct strikes at the heart of this mandate and is well outside the range of permitted conduct.

[15] *Jaswal v Newfoundland (Medical Board)*, 1996 CanLII 11630 (NLSC) at para 35
[16] *Act*, s 5

e. Morgan's Misconduct deprived [T.O] of the opportunity to obtain mortgage insurance which resulted in her experiencing a loss upon the passing of [M.B].

203. The Registrar also argues that a significant sanction is required to maintain public confidence in the industry. The Registrar cites *Law Society of Upper Canada v Lambert*[17] wherein it was noted that a profession's "most valuable asset is its collective reputation." The Registrar argues that, to maintain public confidence in the industry, RECA must be able to demonstrate to the public that it can and will investigate, detect, and supress fraud and other crimes of dishonesty. The Registrar asserts that a more minor sanction will not send this message to the public and will undermine confidence in the industry.

204. Finally, the Registrar asserts that a significant sanction is required for both specific and general deterrence in this case. Morgan has not taken responsibility for any of his Misconduct and took steps to hide it from the RECA investigators. The Registrar argues that this increases the risk of recidivism and, accordingly, from a specific deterrence perspective, a substantial sanction is required.

205. The Registrar presented several cases in support of the sanction proposed:

a. *Re Dhaliwal*[18] - A mortgage associate forged a single false mortgage commitment letter. The forgery resulted in no personal benefit to him. He had no prior discipline and expressed remorse for his conduct. He signed an agreed statement of facts and joint submission on sanction. His license was cancelled with no ability to reapply for 1 year. No costs or fines were levied.

b. *Re Merchant*[19] - A licensee committed fraud and stole $20,000 from his brokerage that he likely would have eventually received as commission. He had no prior discipline and signed an agreed statement of facts avoiding the need for a hearing. His license was cancelled with no ability to reapply for 1 year. He was fined $21,000. The parties agreed to $1,500 as costs.

c. *Re Aulakh*[20] - A mortgage broker created fraudulent documents in relation to a mortgage application, engaged in multiple conflicts of interest, provided incompetent service, and benefited financially from her misconduct. She had no prior discipline, took responsibility for her actions, and signed an agreed statement of facts and joint submission on

[17] *Law Society of Upper Canada v Lambert*, 2014 ONLSTH 158 at para 17
[18] Dhaliwal (Re) RECA 2023
[19] Merchant (Re) RECA 2019
[20] Aulakh (Re), 2019 ABRECA 121 (CanLII)

sanction. Her license was cancelled with no ability to reapply for 2 years. No costs or fines were imposed.

d. *Re Voth*[21] - An associate forged an Exclusive Buyer's Representation Agreement (EBRA) which he needed to collect a commission. He failed to cooperate with RECA investigators and forged a second record in an effort to avoid punishment for the original forgery. His forgeries did not result in loss to anyone. He had previously received an administrative penalty for failing to get a signature on an EBRA. He signed an agreed statement of facts which avoided a lengthy hearing. His license was cancelled with no ability to reapply for 3 years. He was fined $15,000. The Hearing Panel accepted the parties' agreement to limit costs to $1,500 but noted that, but for the agreement on sanction and costs, it would have ordered the licensee to pay a substantial portion or all of the costs of the hearing (which were estimated between $4,520 and $8,120).

e. *Re Wolf*[22] - An associate breached his fiduciary duties, created false and misleading documents, forged signatures, and inserted false purchase prices on documents. He failed to cooperate with the investigation, resulting in a hearing, at which he called no evidence. Although he had no prior discipline, his license was cancelled with no ability to reapply for 7 years. He was fined $25,000 and ordered to pay $49,816 in costs.

f. *Re Singh*[23] - An associate created multiple false documents in furtherance of a mortgage fraud that resulted in financial loss for his clients. He failed to cooperate with the investigation, resulting in a hearing. Although he had no prior discipline, his license was cancelled with no ability to reapply for 10 years. He was fined $80,000 and ordered to pay $23,465 in costs.

g. *Re Adel*[24] - An associate engaged in conflicts of interest and involved his client in a mortgage fraud. He had two prior sanctions and engaged in his misconduct for his own personal gain. He did not sign an agreed statement of facts and a lengthy hearing was required. His license was cancelled with no ability to reapply for 10 years. He was fined $63,500 and ordered to pay $152,584 in costs.

206. Morgan does not oppose the assessment of costs suggested by the Registrar. However, he submits that the nature and extent of his Misconduct has been "greatly exaggerated" by the Registrar and that the sanctions requested are excessive.

[21] Voth (Re) RECA 2023
[22] Wolf (Re) RECA 2002
[23] Singh (Re), 2023 ABRECA 10 (CanLII)
[24] Adel (RE), 2010 CanLII 150874 (AB RECA)

207. Morgan asserts that his Misconduct was "technical or administrative in nature." With respect to the [M.B DEAL], he argues that "the clients would have signed [the forged documents] upon request" and that there is "no evidence…they were prejudiced by [his] use of [the forged documents]." He states:

    a. There was no evidence before the Panel that [M.B] would have applied for insurance, nor was there any evidence that, had he applied, he would have been covered. Accordingly, Morgan's Misconduct did not cause anyone any loss.
    b. There was no evidence that Invis did anything with the Client Consent, Mortgage Disclosure, Initial Disclosure, or the Insurance Form other than archive them. Accordingly, there is no evidence that Morgan directly benefited from his Misconduct.

208. Based on the above, Morgan describes his Misconduct as "*de minimis* in its severity."

209. Turning to the [S.C DEAL], Morgan notes that there is no evidence that the fraudulent gift letters he created were essential to the lender's decision to advance funds. Likewise, there is no evidence that the clients whose information he used for the fraudulent letters suffered any adverse consequence as a result. Given that no one appears to have been harmed and there is no direct evidence of a benefit to Morgan, he asserts that "the [S.C DEAL] is of minimal severity as a forgery."

210. Morgan notes that the Misconduct occurred 7 years ago and that he has worked as a licensee full-time since then. He argues that the publication of the Hearing Decision will cause severe damage to his professional reputation and that, in and of itself, will result in sufficient specific and general deterrence. He argues that no fines are necessary given his agreement to the significant costs award and that, if his license is cancelled, the prohibition on re-application should be "much shorter" than the 5 years sought by the Registrar.

Decision

211. The Panel does not agree with, and frankly is troubled by, Morgan's characterization of his Misconduct. We do not view his conduct as "*de minimis* in its severity."

212. In the Part 1 Decision, the Panel found he forged 6 different documents in 2 different client transactions. Some of the forged documents contained multiple fraudulent details. For example:

a. Not only did Morgan forge [T.O] and [M.B]'s signatures on the Mortgage Disclosure and Initial Disclosure, but he also entered a fake Mortgage Broker / Associate license number; and
b. Not only did Morgan forge the signatures of the donors on the Gift Letters, but he also included other false particulars such as the relationship between the donors and the mortgagee, and the very fact that they were donors at all.

213. Likewise, the Misconduct was not "technical or administrative in nature." In the Part 1 Decision, the Panel did not accept that Morgan had the authority (implied or otherwise) to sign documents on his clients' behalf. He was not merely documenting their wishes or executing their instructions in an admittedly imperfect manner. He deliberately forged documents to dispense with the need to discover their wishes or obtain their instructions.

214. Finally, we take issue with Morgan's assertion that no one was harmed as a result of his Misconduct and that he did not directly benefit from it.

215. While it is possible that [M.B] would not have received insurance in any event, the fact is that Morgan's Misconduct deprived [M.B] of the opportunity. Moreover, it deprived [T.O] – who clearly would have wanted the insurance – of this opportunity. The fact that Morgan's Misconduct might not have directly caused [M.B] or [T.O] harm is a happy accident at best. Morgan's good fortune in that sense is does not take away from the seriousness of his Misconduct and the potential for harm that flowed from it.

216. With respect to the benefit to Morgan, while it appears, after the fact, that he may have received commissions in respect of both the [M.B DEAL] and the [S.C DEAL] regardless of his Misconduct, it is nevertheless clear that Morgan engaged in both forgeries because he believed he needed to do so in order to get his commissions.[25] In engaging in the Misconduct Morgan was intentionally acting to benefit himself.

217. We turn now to the *Jaswal* Factors. The Panel notes the following:

a. As set out above, the nature and gravity of Morgan's Misconduct is significant. He engaged in multiple, deliberate forgeries for his own benefit and to the potential detriment of his clients.
b. Morgan is 47 years old and had 6 years of experience as an associate at the time of his Misconduct. This is ample time and experience to be aware that forgeries, of any kind, are unacceptable practice.
c. Morgan has no prior discipline.

[25] See Part 1 Decision, paras 134-141 and 176-184

d. Morgan has not acknowledged his wrongdoing. In fact, even in his submissions on sanction, he seeks to minimize his Misconduct, demonstrating a remarkable lack of understanding of its seriousness and a concerning potential for recidivism.
e. There is no evidence Morgan suffered any financial penalties as a result of his Misconduct.
f. The Misconduct does not appear to have directly caused any financial loss to any of Morgan's clients. However, it did deprive [T.O] and [M.B] of the opportunity to make different choices. [T.O] was clear that, at least on a personal level, this had impacted her.

218. Turning to general deterrence and the need to maintain public confidence in the integrity of the profession, we note a contradiction in Morgan's position.

219. He argues that a license cancellation is unnecessary because the publication of the Part 1 Decision "will itself cause severe damage to [his] professional reputation." This suggests that even Morgan is aware his peers and potential clients will be deeply troubled by his Misconduct. However, he then suggests that publication of the Part 1 Decision alone will somehow achieve specific and general deterrence.

220. The Panel finds the opposite. Morgan's Misconduct is serious. He engaged in multiple, deliberate forgeries and then failed to cooperate with (and deliberately misled) RECA investigators. Notwithstanding the Panel's findings in the Part 1 Decision, Morgan continues to minimize his conduct and has failed to take any measure of responsibility for it.

221. If the Panel were to impose the type of sanction envisioned by Morgan (no fine, minimal, if any, restriction on reapplication for a license), this would send a problematic message to the public as well as the profession. It would suggest that RECA does not take its mandate to detect and supress fraud seriously. It would suggest that RECA does not take his Misconduct – which Morgan himself believes the public and the profession would be troubled by – seriously. It would not meet the objective of generally deterring other licensees who might consider engaging in similar misconduct. All of this would undermine the integrity of the profession in the eyes of the public.

222. Likewise, a minimal sanction is unlikely to meet the requirements of specific deterrence. As noted above, Morgan's failure to acknowledge the seriousness of his Misconduct suggests that a further, significant, sanction is necessary to ensure that he does not engage in this kind of Misconduct again.

223. Having found that a more significant sanction than the one suggested by Morgan is necessary, we return to the cases identified by the Registrar (Morgan provided no cases).

224. We find that Morgan's Misconduct, while serious, was not of the same magnitude as *Wolf, Singh*, or *Adel*. Morgan did not breach his fiduciary duties, act in a conflict of interest, or have prior discipline. His hearing was considerably shorter than each of *Wolf, Singh*, and *Adel's*.

225. On the other hand, we are also satisfied that Morgan's circumstances merit a more significant sanction than *Dhaliwal*, *Merchant*, or *Aulakh*. In each of those cases, the licensee took responsibility for their actions. *Dhaliwal* and *Aulakh* expressed remorse. As a result, RECA could be better assured that the goal of specific deterrence had been met and a lengthy prohibition on reapplying for a license was not necessary. This is not the case here.

226. Morgan argues that a fine is not necessary in addition to a costs award. However, the low costs awards in these cases were appropriate given that the licensees admitted their wrongdoing, saving the expense of a hearing. Morgan did not. Thus, a significant costs award does not, as Morgan argues, mean a fine is not also required to achieve a just sanction.

227. Additionally, the Panel notes that, notwithstanding *Merchant's* cooperation in his hearing, he was still ordered to pay $21,000 in fines. Fines were also directed, in addition to a license cancellation, in *Voth*, again, notwithstanding *Voth's* ultimate cooperation in the hearing. In other words, costs are proportional to the extent of the hearing required to resolve the matter. They are not a substitute for the appropriate sanction in respect of a licensee's misconduct.

228. Leaving aside *Voth's* cooperation in the hearing, there is a significant similarity between the facts in this matter and those set out in *Voth*. As noted above, *Voth* forged a client's signature on an EBRA and then forged a subsequent document in an effort to deceive RECA investigators and avoid responsibility for the initial forgery.

229. While *Voth* had prior discipline and Morgan did not (a factor that would suggest a lesser penalty for Morgan), we note that *Voth* was only found to have committed 3 infractions. Here, Morgan engaged in multiple forgeries on 6 documents on at least 2 separate occasions. This would suggest a more substantial penalty for Morgan. On balance, a substantially similar penalty is appropriate. Morgan's conduct was not so much more serious than *Voth's* that a more significant penalty would be appropriate, especially in light of the fact that Morgan did not have prior discipline.

230. *Voth's* license was cancelled with no ability to reapply for 3 years. He was directed to pay $15,000 in fines, which was calculated based on $5,000 per infraction. Given that he ultimately signed an agreed statement of facts thereby avoiding the cost of a hearing, the hearing panel accepted the parties' joint agreement to limit the costs award to $1,500.

231. Taking the above into account, the Hearing Panel is satisfied that a sanction similar to that imposed in *Voth* is appropriate. That said, given that Morgan did not sign an agreed statement of facts and, accordingly, a hearing was necessary, it is appropriate that a more substantial costs award be imposed. The Panel accepts the parties' agreement to calculate the costs at $15,620.

232. Following *Voth*, the Panel is satisfied that Morgan's license should be cancelled with no ability to reapply for a period of 3 years. Additionally, Morgan should pay a find based on $5,000 per infraction. Considering the 6 fraudulent documents (4 in the [M.B DEAL] and 2 in the [S.C DEAL]), the fines are: $20,000 in respect of the [M.B DEAL] and $10,000 in respect of the [S.C DEAL].

Conclusion and Order

233. For the reasons set out above, the following sanctions and costs are imposed:

    a. Morgan's license is cancelled pursuant to section 43(1)(a) of the *Real Estate Act* (the *Act*);
    b. Morgan shall be ineligible to apply to the Real Estate Council of Alberta (RECA) for a license for a period of 3 years;
    c. Morgan must pay the fines and costs awards set out below and must successfully complete all educational requirements in place at the time before being able to apply for a new license from RECA;
    d. Morgan shall pay a fine in the amount of $20,000 in relation to the [M.B DEAL] and $10,000 in relation to the [S.C DEAL]; and
    e. Morgan shall pay the costs of the Hearing in the amount of $15,620.

234. The Panel thanks the parties for their submissions.

This Decision is dated this 20th day of November 2023

"Signature"

[K.S], Hearing Panel Chair