



Appraisal Institute  
of Canada

Institut canadien  
des évaluateurs

## AIC Case Study Westra Law Office (Re)

### Summary of Issues

This court case re-enforces the role that an independent valuer plays in the mortgage underwriting process. In this instance had the lender engaged the services of an Institute designated member for an unbiased appraisal, the alleged fraud might have been uncovered sooner.

For appraisers, the Alberta court case highlights why the analysis of the Agreement for Purchase and Sale and an analysis of prior sales in any valuation are important mandatory requirements under CUSPAP and to a lender.

### Summary of Outcome

In the case of Westra Law Office (Re)<sup>1</sup> the evidence led the police to suspect that a real estate agent had conspired to defraud a lender in a real estate transaction. In setting out the facts<sup>2</sup> the court found:

- i. The real estate agent had purchased the property September 2006, and was also listing agent, and agent for buyer (paragraph 10 g)
- ii. The real estate agent, was the vendor and listing agent, and selling agent, and hid these from the purchasers and the lender in June 2007. (paragraph 10 b)
- iii. The real estate agent also provided the property appraisal to the lender. (paragraph 15)

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<sup>1</sup> <http://www.canlii.org/en/ab/abqb/doc/2009/2009abqb391/2009abqb391.html>

<sup>2</sup> The allegations of fraud are not yet proven in court.

## **Recommendations for Improving Appraisal Practice**

The important step of obtaining an appraisal from an independent appraiser might have prevented the alleged fraud from being perpetrated. In this instance, it appears the lender relied on the appraisal, provided by the real estate agent, without obtaining an appraisal directly from an independent appraiser. The AIC encourages clients to directly engage the services of an independent appraiser to avoid these specific types of conflict of interest situations. The AIC also emphasizes to clients the unbiased nature of the appraisal process when using a designated member of the Institute.

In this instance there are several CUSPAP rules that would have prevented this from occurring:

- i. Ethics Rules 4.2.11 and 4.2.12. An appraiser is obligated to disclose any conflict of interest with the client before accepting an assignment, and must not accept an assignment that would produce a result that favours a party to the transaction.
- ii. Appraisal Standard Rules 6.2.23 and 6.2.24. An appraiser must obtain a copy of the Offer for Purchase and Sale for analysis and must analyze prior sales for the previous three year period.

Where an appraiser is not provided with the Offer for Purchase and Sale from the real estate agent, or the lender, there must be a limiting condition included in the report to highlight the risk to the lender that this poses.

A designated member of the AIC would have noted both the prior sale and would have likely commented on the prior sale price in relation to the current sale price to offer an explanation of why such a dramatic increase in value is warranted or, that the sale price cannot be substantiated in the current market conditions. Part of this analysis would have considered the financial incentives offered by the vender and adjusted for this accordingly in the report. It should be noted that in this instance the police obtained as part of their investigation an independent appraisal (paragraph 10 m).