**THE LAW SOCIETY OF ALBERTA**
**RESIGNATION COMMITTEE REPORT**

**IN THE MATTER OF THE *Legal Profession Act,***
**and in the matter of an Application by Joseph Sheplawy, a Member of the Law Society of Alberta to Resign while Facing Citations**

***On October 20, 2014, the Member made an application to the Benchers of the LSA to resign as a Member of the LSA pursuant to s. 32(1) of the LPA. Mr. Sheplawy, on the date of this Application, was a suspended Member of the LSA.***

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| **Chair:** | **Walter J. Pavlic, Q.C.** |
| **Member:** | **Rose Carter, Q.C.** |
| **Member:** | **Amal Umar** |

**APPEARANCES:**
**Jane Corns – LAW SOCIETY**
**Stu Baker - MEMBER**

## Introduction

1. On October 22, 2014, the Resignation Application of Joseph Sheplawy (the Member) was heard at the Law Society of Alberta (LSA) offices in Edmonton, Alberta.

## Exhibits

2. Seven documents were entered as Exhibits including:

    a. Letter of Appointment dated October 6, 2014
    b. Outstanding Formal Citations
    c. Certificate of Exercise of Discretion
    d. Certificate of Status
    e. Member's Record
    f. Member's Materials
        a. Application for Resignation
        b. Statutory Declaration
        c. Undertaking
        d. Statement of Facts
        e. Certificate of Enrolment
    g. Estimated Statement of Costs

## Citations

3. The Member faced the following 23 Citations (Exhibit 2):

    a) It is alleged that you failed to provide your client, C.M. with competent legal advice and conducted litigation without obtaining proper instructions from your client C.M., and that such conduct is deserving of sanction.

b) It is alleged that you failed to respond to the Law Society in a timely manner In the matter of a complaint by C.M., and that such conduct is conduct deserving of sanction.

c) It is alleged that you failed to serve your clients, D.D. and R.D. in a conscientious, diligent and efficient manner, and that such conduct is conduct deserving of sanction.

d) It is alleged that you failed to respond to the Law Society in a timely manner in the matter of a complaint by D.D. and R.D., and that such conduct is conduct deserving of sanction.

e) It is alleged that you failed to keep your clients, D.D. and R.D. informed of development on their file, and that such conduct is conduct deserving of sanction.

f) It is alleged that you failed to provide your clients D.D. and R.D. with competent legal advice, and that such conduct is conduct deserving of sanction.

g) It is alleged that you withdrew from representing your clients, D.D. and R.D., in an improper manner and without making appropriate efforts to mitigate any prejudice to them, and that such conduct is deserving of sanction.

h) It is alleged that you failed to respond to your client in a timely manner and such conduct is deserving of sanction.

i) It is alleged that you failed to serve your client and such conduct is deserving of sanction.

j) It is alleged that you failed to respond in a prompt and complete manner to the Law Society and such conduct is deserving of sanction.

k) It is alleged that you failed to keep your client informed as to developments on her legal matter and such conduct is deserving of sanction.

l) It is alleged that you failed to serve your client and such conduct is deserving of sanction.

m) It is alleged that you failed to respond to your client on a timely basis and such conduct is deserving of sanction.

n) It is alleged that you failed to respond promptly and completely to communications from the Law Society and such conduct is deserving of sanction.

o) It is alleged that you failed to keep your client informed as to developments on her legal matter and such conduct is deserving of sanction.

p) It is alleged that you failed to advance KL's legal matter and such conduct is deserving of sanction.

q) It is alleged that you failed to respond to KL's attempts to communicate with you and such conduct is deserving of sanction.

r) It is alleged that you failed to keep KL informed as to developments on her legal matter and such conduct is deserving of sanction.

s) It is alleged that you failed to respond in a prompt and complete manner to the Law Society and such conduct is deserving of sanction.

t) It is alleged that you failed to serve your client by not advancing the legal matter and such conduct is deserving of sanction.

u) It is alleged that you failed to keep your client informed as to developments on his legal matter and such conduct is deserving of sanction.

v) It is alleged that you failed to respond to your client on a timely basis and such conduct is deserving of sanction.

w) It is alleged that you failed to respond promptly and completely to communications from the Law Society and such conduct is deserving of sanction.

**FACTS**

The member signed the following Statement of Facts on October 21, 2014 which is listed as Exhibit 6D (hereinafter referred to as the "Facts"):

STATEMENT OF FACTS

**INTRODUCTION**

A. I was admitted to the Law Society of Alberta (the “LSA”) on November 1, 1991.

B. I have practiced law in Calgary, Alberta since June 30, 1998. I have been a sole practitioner since June 30, 1998.

C. I have applied to resign as a member of the LSA pursuant to Section 32 of the *Legal Profession Act*.

D. I admit the facts in this Statement of Facts which I tender to support my resignation application.

E. I face 23 citations directed by Conduct Committee Panels on July 12, 2012, March 29, 2012 and December 12, 2013.

F. The first 5 citations directed by the Conduct Committee Panel on July 12, 2012, are on file COXXXXXXXX as a result of a complaint against me by my clients Mrs. D. and Mr. D.. Those 5 citations are:

1. I failed to served my clients, Mr. and Mrs. D., in a conscientious, diligent and efficient manner;
2. I failed to respond to the LSA in a timely manner;
3. I failed to keep my clients, Mr. and Mrs. D., informed of developments on their file;
4. I failed to render competent service; and
5. I withdrew from representing my clients, Mr. and Mrs. D., in an improper manner and without making appropriate efforts to mitigate any prejudice to them.

Hereinafter the "Mrs. D. and Mr. D. Complaint".

G. The next 2 citations directed by the Conduct Committee Panel on March 29, 2012, are on file COXXXXXXXX. These citations were directed as a result of a complaint against me by my client C.M.. Those 2 citations are:

1. I failed to provide my client with competent legal advice and conducted litigation without obtaining proper instructions from my client; and
2. I failed to respond to the LSA.

Hereinafter the "C.M. Complaint"

H. The next 4 citations directed by the Conduct Committee Panel on December 12, 2013 are on file COXXXXXXXX. These citations were directed as a result of a complaint against me by my client M.J.. Those 4 citations are:

1. I failed to respond to my client in a timely manner;
2. I failed to serve my client;
3. I failed to respond in a prompt and complete manner to the LSA; and
4. I failed to keep my client informed as to developments on her legal matter.

Hereinafter the "M.J. Complaint"

I. The next 4 citations directed by the Conduct Committee Panel on December 12, 2013 are on file COXXXXXXXX. These citations were directed as a result of a complaint against me by my client D.L.. Those 4 citations are:

1. I failed to respond to my client in a timely manner;
2. I failed to serve my client;
3. I failed to respond in a prompt and complete manner to the LSA; and
4. I failed to keep my client informed as to developments on her legal matter.

Hereinafter the "D.L. Complaint"

J. The next 4 citations directed by the Conduct Committee Panel on December 12, 2013 are on file COXXXXXXXX. These citations were directed as a result of a complaint against me by my client K.L.. Those 4 citations are:

1. I failed to respond to my client in a timely manner;
2. I failed to serve my client;
3. I failed to respond in a prompt and complete manner to the LSA; and
4. I failed to keep my client informed as to developments on her legal matter.

Hereinafter the "K.L. Complaint"

K. The final 4 citations directed by the Conduct Committee Panel on December 12, 2013 are on file COXXXXXXXX. These citations were directed as a result of a complaint against me by my client S.L.. Those 4 citations are:

1. I failed to respond to my client in a timely manner;
2. I failed to serve my client;
3. I failed to respond in a prompt and complete manner to the LSA; and
4. I failed to keep my client informed as to developments on her legal matter.

Hereinafter the "S.L. Complaint"

## BACKGROUND

### A. File # COXXXXXXXX - Mrs. D. and Mr. D. Complaint

1. On January 31, 2006, Mrs. D. and Mr. D. retained me to commence an action against Dr. R and Calgary Health Region ("CHR") regarding a gynecological surgery.

2. On June 15, 2006, I filed a Statement of Claim against Dr. R and CHR.

3. In July of 2006, I ordered various doctors' medical charts.

4. On May 2, 2007, the Defendants were served with the Statement of Claim.

5. On May 7, 2007, I was informed that TK was acting for CHR and had assumed conduct of the file.

6. By letter of June 12, 2007, I was informed that KP had been retained to represent.

7. By letter of November 8, 2007, TK served me with Dr. G's Statement of Defence and I was requested to provide various medical charts and records, Alberta Health Care Statement of Benefits Paid and loss of income supporting documents.

8. By letter of December 14, 2007, TK served me with the CHR's Statement of Defence.

9. By letter of February 8, 2008, KP's office requested I provide my clients' filed Affidavits of Records and producible documents.

10. By letter of March 11, 2008, TK served me with the CHR's Affidavit of Records.

11. As I had not responded with my clients'' Affidavit of Records and producible document, by letter of March 12, 2008, KP informed me if she had not received such Affidavit and documents by March 31, 2008, she would seek instructions to proceed with a Court application.

12. On June 18, 2008, LL, who had taken over the file from KP, filed a Notice of Motion seeking an Order compelling the Plaintiffs to file and serve Affidavits of Records.

13. On June 23, 2008, upon speaking to me, LL wrote to me stating in part as follows:

    ". . .I am available on July 3, 2008 and would be willing to adjourn our application to this date. As you have advised us that you are making arrangements to have your clients' Affidavits of Records sworn prior to our appearance date, we are prepared to extend the time for filing and service of your clients' Affidavits of Records until Thursday, July 3, 2008, by consent, if your clients will agree to pay costs to Dr. R. in the amount of $2,000.00, representing one set of costs at double the amount provided at Item 3(1) of Column 3 of Schedule C of the Rules of Court. If you are prepared to consent to this Order, your appearance would not be required and Dr. R. will agree to waive the costs of this application.. . ."

14. By letter of June 25, 2008, I provided LL with an executed copy of the Consent Order which directed the Plaintiffs to pay Dr. R $2,000.00 in costs and to file and serve their Affidavits of Records by July 3, 2008.

15. By letter of July 3, 2008, I served LL and TK with filed copies of Mrs. D. and Mr. D.'s Affidavits of Records.

16. By letter of July 10, 2008, LL requested I provide, by July 18, 2008, copies of the producible documents, provide the documents previously requested on November 8, 2007 and provide the $2,000.00 in costs.

17. As I did not respond, by letter of July 23, 2008, LL requested I provide a response and stated if none was received she would be proceeding with an application for a further and better Affidavit of Records, as well as stated that the $2000.00 in costs remained outstanding.

18. By letter of July 30, 2008, LL served me with a Notice of Motion and Affidavit, compelling a further and better Affidavit of Records and production of documents.

19. On July 30, 2008, LL stated that I had not yet filed an Affidavit of Records on behalf of the Plaintiff, Her Majesty the Queen, but was prepared to consent to late filing by August 15, 2008, and enclosed a Consent Order for my consideration.

20. On August 1, 2008, after speaking with me, LL informed me by letter of this date, that the application scheduled for August 6, 2008, had been adjourned sine die.

21. By letter of August 5, 2008, LL provided me with two draft Consent Orders for my consideration; the first Order dealing with the Plaintiff Crown's Affidavit of Records and the second Order dealing with the production of further and better producible records by Mrs. D. and Mr. D..

22. As I did not respond, by letter of August 22, 2008, LL requested I respond by August 27, 2008, failing which she would reschedule her application.

23. By letter of August 29, 2008, LL informed me she had rescheduled the application for September 8, 2008, but would be willing to adjourn the application if I returned the previously provided Consent Orders with my execution prior to September 5, 2008.

24. On September 8, 2008, following a conversation with myself, LL wrote to me stating in part as follows:

> "Further to our conversation last Thursday, September 4, 2008, we confirm that the Chambers application which was scheduled for today's date has been adjourned to next Monday, September 15, 2008 at 10:00 a.m. in Calgary, to provide you with an opportunity to review our revised Consent Orders in this matter, which are enclosed.
>
> As per our discussion, we are willing to extend the period for filing an Affidavit of Records and producing copies of the requested documents to 45 days from the date of the granting of the Orders. We believe this is ample time for your clients to arrange their affairs and to comply with the terms of the Orders."

25. By letters of September 12, 2008: LL informed me that unless I returned the Consent Orders, duly executed, by the end of the day, she would proceed with the application on September 15, 2008; and, I provided LL with the Consent Orders, duly executed and as a result, LL adjourned the application sine die.

26. On September 25, 2008, the Consent Orders were filed, with: the first Order directed the Plaintiff Crown to file and serve its Affidavit of Records within 45 days; and, the second Order directed the following:

    a. Mr. & Mrs. D, to provide their producible documents within 45 days;

    b. Mrs. to file and serve a further and better Affidavit of Records and to provide previously requested documents such as doctors' charts, loss of income information and Alberta Health Care Statement of Benefits Paid within 45 days; and

    c. Plaintiffs to pay $600.00 in costs.

27. By letter of September 16, 2008, LL served me with the filed Consent Orders and requested that I provide payment of the costs as directed, being $2,600.00 in total.

28. As I did not respond, by letter of October 31, 2008, LL's office requested I provide a response.

29. By letter of November 17, 2008, LL reminded me that she had yet to receive any documents or costs from me and stated if she had not received those materials by November 24, 2008, she would bring an application to hold the Plaintiffs in contempt of Court.

30. By letter of November 21, 2008, I provided LL with my cheque for $2,600.00 for costs and stated I would be meeting with my clients in the next week to finalize their Affidavits.

31. By letter of December 8, 2008, LL informed me that if she had not received my clients' production by December 15, 2008, she would seek instructions to bring a further application.

32. By letter of December 19, 2008, LL served me with a Notice of Motion returnable January 19, 2009 and then stated in part as follows:

> ". . .Please be advised that we are not prepared to adjourn this application to a later date, and as such, we are giving your clients' (sic) ample notice of this application. This matter has been delayed too long and must be resolved without further delay. Obviously, should your clients comply with the Orders referred to in the enclosed Notice of Motion prior to January 19, 2009, our application will not be required."

33. By letter of January 14, 2009, LL wrote to me as follows:

> "… I am advised by my client to proceed with our scheduled application next Monday, January 19, 2009, in Justice Chambers in Calgary. You have informed me that I may advise the Court on Monday that you are in the process of closing your practice and that although you have received notice of Dr. R.'s application that you will not be appearing on behalf of your clients, D.D. and R.D. (the 'D.s'). You also indicated that I may advise the Court that you have not alerted the D.s to the present application.
>
> You remain counsel of record for the D.s at this time, having not filed a Notice of Intention to Cease to Act or a Notice of Change of Solicitors. .... Because you remain counsel of record, we will continue to communicate with you and to serve you with any documents as be (sic) required to be served on the D.s in this matter until such time as you have filed and served us with the proper notices.
>
> Since our telephone conversation, I have contacted … Alberta Justice and asked her whether her Majesty the Queen in Right of Alberta ('HMQ') was aware of the present claim. She has advised me that the HMQ was unaware that a claim had been filed on its behalf by your office. [Ms. N] is presently filing a Notice of Change of Solicitors for the HMQ. As a result, we will not be pursuing the part of our application which pertains to the Consent Order you executed on behalf of the HMQ dealing with the filing of her Affidavit of Records."

34. By letter of January 19, 2009, I wrote to LL stating in part as follows:

> ". . .I trust you will also inform the Court of my advice to you that January 19, 2009 was not a date available to me to attend in any event had I intended to do so, as I have a conflicting commitment on this date. I am, of course aware you stated you were not willing to change the date, but that did not change the importance of my attendance at that appointment.

I expect the individual Plaintiffs in these actions to be aware of my intentions in the next couple of days after which I will immediately file Notices of Ceasing to Act. I would have preferred to have waited to allow them to obtain new counsel and have them file a Notice of Change, but under the circumstances I will proceed in this manner instead."

35. On January 19, 2009, Justice W. granted an Order, which directed in part: my client being in contempt; my client to comply with the production order with 30 days (of service of the Order); in the event of a failure to comply, that my clients' claim would be struck as against Dr. G; and an award to Dr. G of solicitor client cots on a full indemnity basis from me (forthwith and in any event of the cause).

36. By letter of January 20, 2009, LL served Mrs. D. and Mr. D. with Justice W's Order of January 19, 2009, stating I had already satisfied the costs portion of the Order.

37. On February 20, 2009, I sent letters to various doctors and clinics requesting the medical charts and documents pertaining to Mrs. D. on an expedited basis.

38. By letter of February 20, 2009, I provided LL with a sworn copy of Mrs. D.'s Further and Better Affidavit of Records which had been submitted for filing. In addition, I provided LL with a status update respecting the various doctors' charts and other supporting documentation.

39. By letter of February 23, 2009, I served LL with a filed copy of Mrs. D.'s Further and Better Affidavit of Records and provided certain producible documents.

40. On February 26, 2009, I continued to pursue and provide LL with further producible documents.

41. On January 21, 2010, Justice H. granted an Order setting the pace of the Action.

42. On June 8, 2010, LL filed a Notice of Motion, returnable June 18, 2010, seeking an Order declaring Mrs. D. and Mr. D. to be in contempt of Court for failing to comply with Justice H's January 21, 2010 Order.

43. On June 16, 2010, TK filed a Notice of Motion, returnable June 21, 2010, seeking an Order dismissing the Action against CHR.

44. On June 21, 2010, Justice H. granted an Order, directing Mrs. D. and Mr. D.'s; Action against all Defendants be dismissed and further directing Dr. G and CHR each be awarded costs.

45. I never filed a Notice of Ceasing to Act.

46. On January 18, 2011, Mr. D. lodged a complaint against me with the LSA, which stated:

"Mr. Sheplawy has been virtually impossible to contact. I have left numerous messages and voice mails but he never returns my call. The last time I heard from him was in the summer of 2009 .... Finally we had to contact the council (sic) for the defendant and ask that the returns be forwarded to us.

I am concerned that our action may have been dismissed by the Courts due to Mr. Sheplawy's action(s) or lack of action(s). …."

47. By letter of February 14, 2001, I wrote to Mr. D. as follows:

"I am writing to bring you up to date on where the matter of your action now stands.

You will recall that the lawyers for the doctors had made applications and demands for documents which we provided to them, some of which were your tax records which we had couriered to them. They had also wanted to have certain further steps taken in the litigation, and a Court Order for document production also contemplated that these things would be done in a certain period of time. These involved questioning of the parties. I advised them I was in the process of arranging to move to a position as counsel for a provincial organization, but that I would assist to make arrangements to have clients file (sic) moved to new counsel for that reason. They made further application in respect of the action not conforming to the Order. I advised the Court that we had provided the documentation, and met date deadlines, and I could have given them the dates for the future as required by the Order, just to satisfy the Order, but that they knew that those dates would be outside the date by which I wanted to leave private practice and arrange for a transfer of the file. Therefore, I thought that if I were to tell the Court I was going to do something pursuant to a Court Order while knowing full well at the time I made those assurances to the Court that I would be in a different employment position at the time, and would likely not be able to fulfill those assurances that I would be found to be deliberately misleading the Court, which is definitely something I did not want to do.

I therefore spoke to the Court and advised them of this, and their position was simply that it didn't appear to make a difference to them and that as a result of not providing that last requirement of dates they were of the opinion your claim should be dismissed.

This does not mean that your claim is therefore now something you cannot pursue. You had asked if your claim had now expired. If what I did constitutes an error or omission of (sic) the part of a lawyer on behalf of a client, the Alberta Lawyers Insurance Association can become involved. I am therefore providing them with a detailed description of what occurred and if I have made an error or omission in this case, then your claim will be handled by them and you will make your claim to that insurer as opposed to the insurers of the Doctors.

There are two pre-conditions to this. First, before the Alberta Lawyers Insurance Association can become involved, they have to conduct an investigation into the circumstances of what occurred in order to determine whether anything was done wrong by me.

Secondly, if the insurer were to become involved, you should also appreciate that your claim would still have to be proved on a balance of probabilities just as if the Doctors were still the Defendants. That is to say, in order to have your claim paid, whatever it may be, you would still have to prove the same things to the same standard of proof as if the Doctors were still the Defendants. You would still have to show that the Doctor(s) were negligent, and that if they were negligent, that the

negligence proven caused or contributed to your damages, which you also have to prove. All of the original requirements of proof are still present.

I am now submitting a written report and forms to the Alberta Lawyers Insurance Association and will keep you informed of what to expect.

I am also having all of the documentation copied and couriered to you as well, so you have a record of the proceedings over time.

You have a direct line to me, so please feel free to phone if you have any questions, and I will get back to you immediately."

48. By registered letter of March 15, 2001, a s. 53 demand was made on me by the LSA.

49. As I did not respond, by e-mail of September 14, 2011, the LSA requested I provide a response and by return e-mail, I stated I would respond by September 23, 2011.

50. As I did not respond by September 23, 2011, by letter of September 27, 2011, the LSA requested I provide my immediate response.

51. By letter of October 6, 2011, to the LSA, I responded to the complaint stating in part as follows:

". . .That is to say, her claim was proceeding, but I advised I would be leaving my practice, and that defence was making application with respect to having certain steps taken. The only step we had not completed was to provide certain dates to have a questioning. I advised the Court and Defence Counsel that I would be having Ms. D. get new counsel, and it would be misleading of me to tell Defence and the Court that I had dates available when I knew I would not. I did not want to mislead the Court just to satisfy the Order. The Court chose to strike the claim on that basis alone.

Her claim now is therefore against me, and I have reported to ALIA.

I would be happy to communicate with her about the status of what to expect. If that would be acceptable under the circumstances. . . . I thought I forwarded her the file in its entirety at first, but I am not certain at this time and will do so immediately if I have not already done so, and she wants to have a copy."

52. By letter of October 13, 2011, the LSA requested I provide my file for review and, in response, on December 22, 2011, I provided my file for review.

## B. File # COXXXXXXXX – C.M. Complaint

53. In mid-December, 2004, C.M., who was approximately 12 weeks pregnant, began to have intermittent vaginal bleeding. Between December, 2004 and March, 2005, she was examined by several doctors.

54. On March 10, 2005, C.M. was admitted to Rockyview General Hospital and examination showed loss of amniotic fluid (Oligohydramnios) and fluid around the

baby's heart (Pericardia Effusion). C.M. was at that time, 23 weeks pregnant. She was ordered to have complete bed rest.

55. On March 19, 2005, C.M. was transferred to Foothills Medical Centre for delivery as a result of increased vaginal bleeding.

56. On March 20, 2005, C.M. underwent an emergency caesarean section. The baby had no heartbeat and resuscitation was not successful.

57. In July of 2005, C.M. and her husband, T.M., retained me to pursue a civil claim seeking damages against various doctors and CHR.

58. By letters of July 6, 2005, I requested medical charts from Rockyview General Hospital and from Foothills Medical Centre.

59. By letter of August 4, 2005, Foothills Medical Centre provided me with its medical chart. And, by letter of September 14, 2005, Rockyview Hospital provided me with its medical chart.

60. By letter of October 13, 2005, I requested medical charts from Dr. S and Dr. C; and by letter of October 19, 2005, I requested Dr. B provide his medical chart.

61. In November of 2005, I received the medical charts from the various doctors.

62. In 2005, I reviewed all of the medical charts pertaining to C.M.'s pregnancy and delivery, which I summarized as follows:

> ". . . Briefly, the Plaintiff was experiencing bleeding and it was determined that there were complications, including a loss of amniotic fluid (oligohydramnios), fluid around the heart of the fetus (pericardial effusion), and ultimately fetal crush which was suspected and confirmed after birth. In essence there were many complications with the fetus and the pregnancy. . . . The . . . documentation stated that the Plaintiff was repeatedly told in the hospital that the prognosis for her son was very poor; that she should expect possible mortality, or at best disability and possible deformity. This is not something about which I was aware until I saw the documentation . . . Further, the records show that the Plaintiff was repeatedly advised in the hospital that because of the lack of amniotic fluid, she must have complete bed rest. She was to be moving as little as possible to avoid bleeding and movement of the fetus with no cushioning amniotic fluid present. Nonetheless, the records show that medical staff were having difficulty with the Plaintiff leaving the unit against their advice, usually for the purposes of smoking or to alleviate boredom it was stated. …"

63. I did not discuss my review of the chart with C.M. and how the same affect her the likelihood of her claim being successful.

64. A Memo to File of August 23, 2006 from my assistant, L, stated that she was informed by me to do nothing further on the file until a Statement of Claim was filed.

65. On March 14, 2007, I filed a Statement of Claim against the various doctors involved, as well as the CHR.

66. By letter of March 22, 2007, I provided C.M. with a copy of the filed Statement of Claim.

67. By Memo of April 24, 2007, I advised my assistant L not to serve the Statement of Claim until I had spoken with C.M..

68. By handwritten notes of April 24, 2007, L wrote the following (typed as handwritten):

"I pulled file today 2 see if Joe wanted me to serve the claim - he said 'no' because he still needs to t/t the clt b/c apparently she left the hosp. a few times when she was not supposed too - he needs to discuss that with her B4 we serve the S/C I told Joe that I was not going to do anything until he tells me I can"

69. By letter of November 26, 2007, I provided the Statement of Claim to a process server for service on the Defendants.

70. By letter of December 5, 2007, MM informed me that she had been retained to represent Dr. S and Dr. N and asked that I not take any further steps without reasonable notice.

71. By letter of December 6, 2007, in-house counsel for the CHR informed me he had received the Statement of Claim and requested I not take any further steps until he had instructed counsel.

72. By letter of December 13, 2007, BC informed me he had been retained to act for CHR and asked me not to take any further steps without reasonable notice, and inquired whether I would be willing to relocate the action to Calgary.

73. By letter of December 14, 2007, MM informed me that she had been retained to represent Dr. B and Dr. C and asked that I not take any further steps without reasonable notice.

74. By letter of December 17, 2007, I informed BC that I was willing to change the Judicial District of the Action to Calgary.

75. By letter of December 17, 2007, I informed BC that I was in the process of obtaining my client's Affidavit of Records and would provide BC with an unsworn draft copy by the end of the week, which I did not do.

76. By letter of January 17, 2008, MM informed me that she had been retained to represent Dr. P and asked that I not take any further steps without reasonable notice.

77. On March 11, 2008, BC filed a Statement of Defence on behalf of the CHR; and by letter of April 2, 2008, served me with such Statement of Defence.

78. By letter of June 23, 2008, BC served me with a filed copy of the Affidavit of Records of the CHR.

79. By letter of June 23, 2008, MM provided me and BC with a proposed Consent Order transferring the Action from Edmonton to Calgary.

80. MM, BC and I executed the Consent Order and it was filed by MM on July 16, 2008.

81. By letter of July 21, 2008, BC provided me with available dates for Examinations for Discovery noting that the dates could not be held indefinitely.

82. As I did not respond, by letter of August 11, 2008, BC requested I provide a response.

83. By letter of August 28, 2008, BC wrote to me as follows:

> "I received your voicemail message on August 27 late in the afternoon, too late to contact your office.
>
> I am out of the office until Tuesday, September 2. We can speak then, or you are certainly welcome to send me a fax or an email with some suggestions about discovery."

84. On September 5, 2008, C.M. swore, as Next Friend, an Affidavit of Records on behalf of her (living) son, S.M..

85. On September 11, 2008, the judicial district of the Action was changed from Edmonton to Calgary.

86. On September 15, 2008, MM filed Statements of Defence on behalf of the Defendant Doctors; and by letter of September 16, 2008, MM served me with such Statements of Defence.

87. By letter of October 3, 2008, BC wrote to me as follows:

> "I am coming under pressure to allow [SM], corporate representative of Calgary Health Region, to free up the dates she has held pending a possible discovery this fall.
>
> If you intend to conduct a discovery of [SM], please select one of the dates in my July 21, 2008 letter.
>
> If I have not heard from you about a date by the close of business on Friday, October 10, 2008, I will proceed on the basis that you do not intend to conduct such a discovery and I will advise [SM] that she can release these dates for other purposes."

88. By letter of October 8, 2008, BC again requested I advise whether SM could free up the dates she was holding for a possible discovery.

89. As I did not respond, by letter of October 21, 2008, BC wrote to myself as follows:

> "[SM] … has freed up all of the dates. She is no longer available for a possible discovery. It appears to me that … C.M. has little if any interest in pursuing this case against Calgary Health Region. You and I should probably discuss a means to have her abandon either that part of the case or the entirety of the case. …"

90. Around December 16, 2008, MM served me and BC with filed copies of Affidavits of Records of the Defendant Doctors.

91. By letter of December 22, 2008, BC served me with a Rule 243.2(1) Proposal as to Timing, which had been signed by BC and MM, and requested I provide either my comments and suggestions or my approval of the Proposal.

92. On February 19 2009, BC filed a Notice of Motion, returnable March 2, 2009, on the grounds of my clients not taking any material action, seeking an Order for: pace and timing; setting a deadline for my client to file an Affidavit of Records, failing which the claim would be struck; and, awarding CHR costs (forthwith).

93. By letter of February 27, 2009, I informed BC that I was not available on March 2, 2009 and inquired whether the application could be re-scheduled, and further stated I would be willing to agree to a timing schedule

94. By letter of March 4, 2009, BC informed me the application had been adjourned to March 12, 2009, and enclosed a Consent Order which set out a timing schedule.

95. On March 12, 2009, the parties appeared before Master L. who granted the Consent Order directing certain timelines including: my clients to file and serve their Affidavits of Records by March 15, 2009; and Examinations for Discovery being held before May 31, 2009.

96. On March 15, 2009, I had failed to file my clients' Affidavits of Records.

97. On March 26, 2009, BC filed a further Notice of Motion, returnable April 6, 2009, seeking an Order: striking the Plaintiffs' Statement of Claim; or, alternatively, compelling the Plaintiffs to comply with the deadlines imposed by the Consent Order granted by Master L. on March 12, 2009. By letter of March 27, 2009, BC served me and MM with such Notice of Motion and supporting Affidavit.

98. On April 1, 2009, MM filed a Notice of Motion, returnable April 6, 2010, seeking an Order dismissing the Plaintiffs' claims or alternatively, striking the Plaintiffs' Statement of Claim for failing to comply with Master L.'s March 12, 2009 Order. By letter of April 1, 2009, MM served me and BC with such Notice of Motion and supporting Affidavit.

99. By letters of April 1 and 3, 2009, all parities confirmed they/we had adjourned, by consent, their application to April 20, 2009.

100. By letter of April 16, 2009, MM inquired of me whether, to avoid costs of the application, the Plaintiffs would consider a Consent Dismissal Order.

101. By letter of April 17, 2009, I provided MM with unfiled copies of Affidavits of Records for C.M. and S.M., which had been submitted for fax filing, and further provided MM with my available dates for Examinations for Discovery.

102. The terms of the Consent Order (as to timing) were negotiated between myself, MM and BC and MM provided me with a revised Consent Order, which would be addressed at the April 20, 2009 application.

103. By letter of April 17, 2009, I provided BC and MM with the filed backers for the Affidavits of Records of C.M. and S.M..

104. On April 20, 2009, Master L. granted the Consent Order directing certain timelines including: Plaintiff T.M. to file and serve his Affidavit of Records on or before May 1, 2009, failing which his claim would be struck; recovery by the Defendants of costs (2 times item 3(1) of Column Two), payable forthwith; for me to identify any employees that I wished to examine by May 1, 2009; and, for me to provide, by May 1, 2009, a list of no fewer than 15 days between April 30, 2009 and August 31, 2009 for Examinations for Discoveries.

105. Master L.'s Order also stipulated that if the Plaintiffs failed to complete any of the terms, the Plaintiffs were directed to, upon three weeks notice by counsel for the Defendants, attend to show cause why the Plaintiffs' Statement of Claim should not be struck.

106. By letter of April 22, 2009, BC served me with a filed copy of the above Consent Order.

107. By letter of April 27, 2009, MM provided me with available dates for Examinations for Discovery of the Defendant Doctors, and requested me to advise if the dates provided were agreeable.

108. By letter of April 30, 2009, BC provided me with a Bill of Costs pursuant to the April 20, 2009 Consent Order, which he requested I endorse and return, to which I did not respond.

109. By letter of May 1, 2009, I provided MM with an Affidavit of Records of T.M which had been submitted for fax filing and then went on to state as follows:

> ". . . I already provided you with a series of dates of availability for discovery in my correspondence of April 17, 2009.
>
> I also advise that at this time neither I nor the Plaintiffs can identify anyone from the hospital as those we wish to examine. The hospital records are largely hand written, and we cannot identify the parties specifically in those areas. Rather, we would like to examine an officer of this Defendant and move forward from that point based on the information they provide either at discovery or through undertaking."

110. By letter of May 4, 2009, I provided BC and MM with the filed backer for the Affidavit of Records of T.M..

111. By letter of May 8, 2009, BC confirmed with me that the Examination for Discovery of S.M. from the CHR was scheduled for June 2, 2009.

112. By letter of May 11, 2009, MM confirmed with me and BC that Examinations for Discovery of the Defendant Doctors had been scheduled between June 10, 2009 and August 14, 2009.

113. By letter of May 25, 2009, BC demanded a response for my approval of the Bill of Cost and placed me on notice that any further delay would result in him taking steps to enforce the award of Costs.

114. By letter of May 25, 2009, MM wrote to me also demanding payment of the Costs, and placed me on notice that failure to do, by June 3, 2009, would result in her attending in Chambers, on either June 5 or June 8, 2009, to seek that the matter be dismissed for failing to comply with the Order and that she would be seeking costs of having to defend the action to date.

115. By letter of May 27, 2009, MM requested that I, prior to my examination of Dr. N, request a copy of the respective Medical Chart and also requested I request and provide a copy of C.M.'s Alberta Health Care Statement of Benefits Paid.

116. By letter of June 1, 2009, BC wrote to me as follows:

"Ms. [MM] and I acknowledge that any uncertainty in the interpretation of the Consent Order with respect to the award of costs would be interpreted in favour of your clients, limiting our clients jointly to recover one sum of $1,500. I enclose:

a. Revised Bill of Costs of the Defendants (jointly) for $1,500;

b. Appointment for Taxation of Party-and-Party Bill of Costs; and

c. Affidavit in support of Taxation.

Please note the Taxation is returnable at 9:00 a.m. on June 11, 2009. In the event, we receive the approved Bill of Costs in advance of that, then obviously the Appointment will be cancelled."

117. By letter of June 1, 2009, BC confirmed with me that the Examination for Discovery of the CHR representative, SS, was now scheduled for June 10, 2009.

118. On June 24, 2009, I consented to the joint Bill of Costs of the Defendants in the amount of $1,500.00 and it was filed on June 26, 2009, for which I did not inform my clients about.

119. In August of 2009, Examinations for Discovery of the Defendants took place; I did not order transcripts.

120. C.M. alleges that she was not aware of these examinations and was not in attendance.

121. With respect to the discoveries, they affirmed my earlier concerns about the unlikelihood of attaching any negligence to the Defendants, and raised the concern that the Defendents they would be relentless in attacking the Plaintiff herself for not taking their repeated advice and warnings, especially for the purposes of smoking and alleviation of boredom, concerns of which I did not covey to my clients.

122. By letter of October 26, 2009, MM requested I provide the Plaintiffs' available dates for Examinations for Discovery in February, March and May, 2010.

123. As I did not respond, on November 26, 2009, an assistant from MM's office left a message for me requesting I provide my clients' available dates for Examinations for Discovery.

124. As I did not respond, on April 22, 2010, MM filed a Notice of Motion, returnable May 18, 2010, seeking an Order to strike the Plaintiffs' Statement of Claim for failing to comply with Master L.'s April 20, 2009 Order and dismissing the claims against the Defendants for want of prosecution.

125. By letter of April 22, 2010, MM served me with the Notice of Motion and supporting Affidavit.

126. On April 29, 2010 and May 6, 2010, C.M. and T.M. made assignments into bankruptcy.

127. By letter of May 17, 2010, MM wrote to me as follows:

> "Further to our telephone call of May 17, 2010, I confirm your advice that your clients are in bankruptcy and you have advised them that it is your view that this matter should not proceed. You hope to receive instructions on whether they are going to proceed and as a result I have agreed to put over the application to Friday, May 28, 2010. I can confirm that this matter has been adjourned to Friday, May 28 at 10:00 a.m.
>
> Also as discussed, I confirm that we will further discuss this matter on Wednesday, May 26, 2010. Please advise that if your clients intend to withdraw their claim, we will require a Consent Dismissal Order and a Release. Feel free to contact me if you have any difficulties with the within."

128. By letter of May 25, 2010, I wrote to MM as follows:

> "I have spoken with Ms. C.M. today regarding her decision regarding her litigation as noted above.
>
> She has indicated that she wanted to speak further with her husband on the matter, as it is an emotional issue for them. She advised that her husband was considering retaining new counsel, while she was not of the same opinion.
>
> …
>
> Concurrently I wanted to inform Defence Counsel I have accepted a position as Defence Counsel with a large institution and will be wrapping up my practice by the end of June, 2010.
>
> In the interim, I will press the Plaintiffs for a decision as soon as possible.
>
> Given I will not be continuing with the litigation, no matter what the decision of the Plaintiffs, and the likelihood the Plaintiffs will not be continuing in any event, I wonder if I could impose further upon Defence Counsel in relation to the applications this coming Friday and ask if you would agree to allow some further time to the Plaintiffs to either come to the decision to abandon their claim, or seek new counsel.

Given the situation, I also don't think it is appropriate for me to continue to act on their behalf in any event.

I look forward to hearing from you, and if I hear from the Plaintiffs in the interim, I will notify you immediately."

129. By letter of May 27, 2010, MM wrote to me as follows:

"Further to our telephone discussion, I confirm that my motion of May 28 has been adjourned by consent to June 11. I look forward to either confirmation of Consent Dismissal Order and Release for a waiver of costs (with all bankruptcy trustee approval) or a Notice of Ceasing to Act, otherwise I will proceed with my motion and will be seeking costs of the motion and the action."

130. By letter of June 9, 2010, I wrote to C.M. as follows:

"This will be further to our previous telephone discussions regarding the above noted claim.

As I had advised, I am closing my practice as of June 30, 2010.

In addition, I have had the opportunity of examining the Defendants and reviewing the documents. Based upon this, I do not think the claim should proceed, and in any event, I am not prepared to continue to act under the circumstances we discussed.

As I stated further, the Defendants are prepared to allow you out of the action at this time without demand for costs. If the matter proceeds further, they may not be willing to do so.

You had stated in our last conversation May 25, 2010 that you would advise me of your decision, but I have not heard further from you.

I am therefore filing a Notice of Ceasing of (sic) Act which will be served upon you after it has been filed."

131. By letter of June 9, 2010, I wrote to MM as follows:

"I have still not been able to obtain agreement from the [C.M.] regarding this litigation in accordance with my previous letters to Defence Counsel.

I am therefore filing a notice of Ceasing to Act today by fax filing to the Calgary Court of Queen's Bench. I attach for your records the Notice and the filing request.

As soon as I have received confirmation of filing it will be served and I will notify you.

I trust that under the circumstances it will not be necessary to proceed with your application at this time.

Given I am leaving private practice at the end of this month, it seems I am literally being inundated with various demands and applications and June 11, 2010 has as many as five or six such matters in Edmonton at this time in any event.

I have notified the Plaintiffs of my Ceasing to Act in advance, so they will know even before they have been served that they are effectively without counsel."

132. By letter of June 10, 2010, MM wrote to me as follows:

"I have received your unfiled Notice of Ceasing to Act on June 9, 2010 by fax. I have already provided two adjournments for this Motion, all we are attempting to do is to move this matter along. Your unfiled Notice of Ceasing to Act does not move this forward either to a conclusion or to progress litigation. It is my intention to proceed with my application on Friday June 11, 2010, but I am happy to advise the Court that you do not plan to be in attendance. I trust that your clients have been advised of the Motion and your plan not (sic) attend given your statement in that regard in the last paragraph of your letter to me of June 9, 2010."

133. On June 10, 2010, I served MM with a filed copy of my Notice of Ceasing to Act and then stated as follows:

". . .I have your fax today, and I will try and phone the Plaintiff as I had not notified her before of the application in my last letter to her as I wasn't sure it would proceed tomorrow."

134. On June 11, 2010, MM and BC appeared before Master P. on this date and informed him that I had recently filed a Notice of Ceasing to Act. Master P. directed that the matter be adjourned to June 25, 2010.

135. On June 14, 2010, MR of BC's office informed C.M. that the Defendants were seeking to strike the Plaintiffs' claim for failure to comply with Master L.'s April 20, 2009 Order. MR further informed C.M. that the application was scheduled for June 25, 2010 and served C.M. with Notices of Motion of the Defendants.

136. MR then went on to state:

"We also note that the costs awarded to the Defendants at the previous April 2009 application have yet to be paid. I enclose a copy of the Bill of Costs of the Defendants consented to by Mr. Sheplawy. We look forward to receipt of payment of the same as soon as possible."

137. C.M. alleges, but I do not recall, that on June 25, 2010, she left a message for me requesting I send her the file so that she could obtain further counsel.

138. The application scheduled for this date was adjourned to July 19, 2010.

139. On July 2, 2010, C.M. lodged a complaint against me with the LSA alleging the following:

". . . I found out a few things about my case that Joe never informed me about, such as . . . The case was before a judge last April, discoveries has occurred, he agreed that I would pay for costs that I knew nothing about because he never informed me of any of this information. The other parties are now trying to have my case thrown out because Joe did not comply with the orders given from the court date last April. For the past 5 years it has almost been impossible to get in contact with him and

there were periods of time where I was leaving weekly messages for him to call me and I would never get a call back, sometimes for months. . . . I think that he should have to pay the (sic) $7500 in court costs that he said I would pay (although he says he did not agree to this). His incompetence in my case should be punished because now I have failure to comply orders against me. . . ."

140. On July 19, 2010, Justice H. granted an Order directing in part as follows:

" 1. The Plaintiffs are held in civil contempt for failure to comply with the Order of Master [L.] granted April 20, 2009.

2. Pursuant to the Order of Master [L.] granted April 20, 2009, the Plaintiffs' action against the Defendants is hereby dismissed.

3. The Defendants [doctors] are awarded costs of all steps taken in the action, to be taxed pursuant to the Alberta Rules of Court.

4. The Defendant [CHR is] awarded costs of all steps taken in the action, to be taxed pursuant to the Alberta Rules of Court."

141. By registered letter of September 1, 2010, a s. 53 demand was made on me by the LSA.

142. By letter of September 13, 2010 to the LSA, I responded to the complaint stating in part as follows:

"… Reference is made to the matter being before a Judge in April. I am not sure if reference is being made to this year or last, but applications were made by defence in relation to obtaining Affidavits of Records and documentation, as well as conducting examinations for discovery in 2009. Consents were done and there were costs payable which I have undertaken to pay. I have not asked Ms. C.M. to pay any costs for which I may be responsible, and would obviously not expect her to pay any such costs unless they were attributable to someone other than me.

An Application was being set for April of 2010 for which I arranged a postponement. One of the purposes of the Application was to nominally strike the action for want of prosecution, but that was not what was expected as we had concluded examinations for discovery of the Doctors and the hospitals less than a year earlier. What they did want was to examine the Plaintiffs and to arrange for a pre-trial conference. That was not done at the time, and that was the purpose of the application. It was after the application was put over to a later date that I contacted the Plaintiff and advised her of my thoughts about the litigation and that I thought she should discontinue and that Defendants would accept such discontinuance and consent dismissal without costs at this time. She advised she would discuss this with her husband and get back to me. I did not hear further and was unable to contact her by telephone. Defence would wait no longer, and I ceased to act. This was known to the Plaintiff as I notified her prior to doing so. I did not want to take the Plaintiff further into the litigation when the information increasingly suggested strongly that there was no real prospect for success, the details of which were discussed with the Plaintiff . . .

I do not know what defence and the Plaintiff have done since I ceased to act so I cannot comment on what, if any, costs are involved since that time, or if the matter is still in litigation at all, although Ms. C.M. is saying defence is 'trying' to have the matter struck. Ms. C.M. mentions the amount of $7500.00 in costs and this is an amount about which I have no knowledge. . . .

I respectfully agree that I have been difficult to reach at times and that the Plaintiff may have not heard from me in response to messages, but I have no record of the frequency of calls and messages alleged in the complaint. …"

143. On September 29, 2010, the LSA provided C.M. with my September 13, 2010 letter and invited comment.

144. By letter of October 13, 2010, to the LSA, C.M. provided further comment stating in part as follows:

" … In response to the finding during discoveries of the doctor's (sic) would it not be the responsibility of my lawyer to inform me of these details and give me the chance to respond because I would have had one. One would think that a lawyer would have enough education to come up with the vocabulary to explain in a compassionate way to his client the (sic) he did not feel they had a case anymore. He also could have informed me of the discoveries so that I could have been there. I will be attaching the letters that I received from [CHR defendant law firm] with the failure to comply motion along with the bill of costs that they informed me my lawyer agreed I would pay. Had I not have received these letters I would have never known what was happening with my case.

. . .First of all I am a smoker and yes I did leave the hospital to smoke, because I did not have the ability to stop on my own. I went into the hospital on a Thursday night and on Saturday the hospital decide to give me Zyban a stop smoking drug that I requested after starting this medication I no longer left the hospital to smoke. . . . As to the loosing (sic) of fluid, I started telling doctors that I was loosing (sic) fluid at 16 weeks pregnant and they kept telling me that I wasn't until I was in the hospital for a few days then the (sic) said I was. So as you can see had my lawyer done his job and informed me of the details the case could have gone on. I also find it funny that Mr. Sheplawy only informed me that he did (sic - didn't) think I had a case anymore after deciding he was closing his practice which was a year after discoveries and the court date.

Him saying that there are times where he was hard to contact is the understatement of the year. There were weeks that I phoned daily and left messages with no call back for months. In the beginning Mr. Sheplawy had an assistant named [L] and I had called so often that she knew my voice and name as soon as she answered the phone and she would always (sic) apologize for Mr. Sheplawy not returning my calls. …"

145. On November 5, 2010, the LSA requested I provide my file for its review.

146. As I did not respond, on November 29, 2010, the LSA requested I provide a response.

147. On December 20, 2010, I provided the LSA with my file.

148. On June 13, 2011, the LSA provided C.M. and myself with a chronology of the matter for our review and requested we advise of any significant errors or omissions.

149. On July 8, 2011, by letter of this date to the LSA, C.M. stated the chronology was accurate.

150. On July 13, 2011, the LSA requested I provide a response.

151. As I did not respond, on August 2, 2011, the LSA requested I provide a response.

152. As I continued to not respond, on August 24, 2011, the LSA informed me that if my response was not received by September 12, 2011, it would proceed with its final review.

153. On September 25, 2011, by e-mail of this date to the LSA, I stated I had been preparing for a trial and would respond shortly.

154. As I did not respond further, by registered letter of November 8, 2011, the LSA informed me that if my response was not received within fourteen days, it would proceed with its final review.

155. I did not respond, and the LSA conducted its final review.

## C. File # COXXXXXXXX – M.J. Complaint

156. On November 9, 2012, the LSA received a completed Lawyer Complaint Form against myself by my client, M.J.. Her complaint can be summarized as follows:

    a. M.J. was involved in a motor vehicle accident on October 15, 2006 and retained me on November 10, 2006, to represent her in the resulting litigation;

    b. M.J. stated that the last letter she received from me was on May 14, 2007;

    c. M.J. stated that she tried to call me every year since 2007 to follow-up with what was happening on the lawsuit with no success. She also only found out last year (2011) that I had moved my practice to Edmonton;

    d. M.J. explained that two other people were in her vehicle when the accident occurred and their names were R.J. and K.L.; and

    e. M.J. explained that she filed the complaint because she wanted to find out if she had a lawsuit or not and, if there was a lawsuit, she wanted a referral to a new lawyer.

157. On November 15, 2012, M.J. reported me to the Complaints Review Officer of the LSA that she provided her mother's contact information to me and I could have contacted her mother if I was unable to reach her.

158. The matter was referred to the Manager, Complaints, of the LSA, and on December 4, 2012, a letter was sent to me requesting my formal response to the complaint, pursuant to Section 53 of the *Legal Profession Act*. I did not respond and the LSA sent me further letters requesting my response on January 4, January 21 and February 12, 2013.

159. On March 7, 2013, the LSA received my response to the complaint and it can be summarized as follows:

    a. I explained that I had continued to keep in contact with M.J. and the file has progressed since the last update; and

    b. I also explained that M.J. and her husband drove to Edmonton for Questioning on December 11, 2012 and that they "are now compiling Undertakings and will canvass settlement as soon they are complete with respect to [other parties]".

160. On August 21, 2013, the Formal Complaints Reviewer of the LSA requested that I respond to the allegations made in M.J.'s complaint since I did not address the allegations in my March 7, 2013 response.

161. On September 16, 2013, the Formal Complaints Reviewer of the LSA received an email from me with an attached letter responding to M.J. allegations. My response to the allegations can be summarized as follows:

    a. In response to the allegation that I failed to respond to M.J. and failed to keep her informed, I explained that when she moved she did not notify my office and, as a result, my office did not know how to contact her. I stated that "the first we heard from her was her complaint";

    b. I also stated that my office had no record of M.J.'s attempts at communicating with my office, either through telephone calls, written communications or emails;

    c. I explained that my office tried to contact M.J. at her old address and asked one of her passengers of her location but they were not able to get up to date information;

    d. I explained that the failure to advance the litigation was as a result of my inability to contact Ms. J.; and

    e. I advised that I and M.J. now communicate regularly and are proceeding with the litigation and I expected to conclude M.J.'s matter "later this year".

    I concluded my letter by explaining that I and M.J. "have been progressing smoothly with the litigation and the file in general" and we have not discussed the complaint. I continued by stating that after I and M.J. "spoke and the loss of contact was explained and resolved, she elected to have me continue as her lawyer and has not expressed any dissatisfaction with the situation". I felt that M.J. receiving the latest LSA letter "had the effect of giving her the impression that there is something else

occurring of which she is not aware" and I did not copy her with my letter for that reason.

162. On October 2, 2013, the Formal Complaints Reviewer of the LSA sent me a letter in which she requested that I provide her with a copy of M.J.'s file.

163. I dropped M.J.'s file off to the LSA office on October 11, 2013.

164. The following is a summary of the relevant information and documents that were found in the file:

a. From November 2006 when I was retained until around November 2007, I was advancing the litigation and the file in general;

b. The Statement of Claim was filed on October 14, 2008;

c. I sent a letter dated November 3, 2008 from myself to the Insurance Adjuster in which I provided her a copy of the filed Statement of Claim; there was no correspondence or notation in the file to suggest that I sent or attempted to send the Statement of Claim to M.J. at that time;

d. By letter dated March 9, 2009 from the Insurer's Claims Specialist, I was asked if my clients were in a position to explore a possible settlement and if not, could I provide copies of the medical reports so they could set accurate file reserves; there was no response to this letter from myself on the file;

e. By letter from myself to Opposing Counsel, dated August 24, 2009, I stated:

> "Please find enclosed filed Discontinuance of the above noted action. All that now remains is Action No. …. I trust this is in order, and your Application this Wednesday will not be proceeding".

f. There was no copy of the filed Discontinuance in the file or any correspondence or notations on the details of the Application; and, nothing in the file to suggest that I contacted or attempted to contact M.J. to update her on these developments;

g. There were no documents on the file from 2010 or 2011;

h. By letter from opposing counsel to me, dated May 25, 2012, he stated, because he had not heard from me "in order to secure the attendance of each Plaintiff, we hereby serve upon you an Appointment and conduct money". He further stated that the Questioning was scheduled for June 18, 2012 and enclosed the referenced Notice of Appointments;

i. I made handwritten notes, dated December 11, 2012, regarding M.J.'s Questioning but there are no documents in the file to explain why the Questioning did not proceed on June 18, 2012; and

j. In a letter from myself to opposing counsel, dated June 17, 2013, I stated that "this will be further to our exchange of emails last week in relation to your

application tomorrow", and further down in the letter, I referenced "Notice and an accompanying Affidavit" and I proposed that I "would be willing to agree to nominal costs of a Consent Order"; however, there are no copies of the "exchange of emails" in the file, or the documents related to the referenced application.

165. On October 21, 2013, the Formal Complaints Reviewer of the LSA sent me a follow-up letter in which she asked me if I sent "this file to alternative counsel with the view that they would review and assume conduct of the file? If so, to whom did you send the file?"

166. On October 31, 2013, the LSA received a letter from me in which I advised of the law firm that reviewed my files when I was attempting to move my practice and my files to allow me to take an in-house position.

## D. File # COXXXXXXXX – D.L. Complaint

167. On January 15, 2011, the LSA received a complaint from D.L. about me, alleging that I failed to advance her matter and failed to respond to her communications.

168. The background of the complaint is:

a. D.L. was the driver of a vehicle that was rear-ended on December 15, 2006. She suffered injuries as a result of being rear-ended and retained me. She spoke with me and I took on her case and initiated an Action;

b. She had made many attempts to contact me and she had left numerous messages with my office staff but I never returned her calls;

c. I had not sent her any further paperwork since December 2008; and

d. She provided a copy of my letter to her, dated December 12, 2008, which attached a copy of the Statement of Claim that I filed on her behalf on December 12, 2008. D.L. advised that this was the only paperwork that she received from my office;

169. On December 15, 2011, D.L. sent a letter via facsimile transmission to the LSA wherein D.L. advised that she attempted to contact me many times and left numerous messages for me and that:

a. When she had spoken with me, I would make excuses as to why I was unable to work on her case, such as I was sick for six weeks or my family was sick or that I was too busy with meetings; and

b. At the time of her fax, it had been six years since the collision and nothing had been resolved and thus she felt that she was of no importance to me, and she felt as if she had been lied to.

170. The matter was referred to the Manager, Complaints at the LSA and on January 12, 2012, a letter was sent to me requesting my formal response to the complaint, pursuant to Section 53 of the *Legal Profession Act*. The letter requested my response within 14 days.

171. As I did not respond, the LSA sent a letter to me dated January 30, 2012 advising me that I had not responded within the time period allotted.

172. As I did not respond again, on February 13, 2012, the LSA sent a letter to me advising that it had not received my response to its letters of January 12 and January 30, 2012.

173. I provided a response to the LSA on March 6, 2012, which may be summarized as follows:

    a. At the end of 2010, D.L.'s file was transferred to another law firm, (the "Reviewing Firm"), in order for them to determine whether or not D.L. wanted them to represent her;

    b. The Reviewing Firm advised me that they had been unable to contact D.L. by phone, and asked me whether I had any other contact information for her, which I did not. I advised the Reviewing Firm that if D.L. contacted me, I would refer her to them;

    c. The Reviewing Firm then returned D.L.'s file advising me that they would not continue with the file. I did speak with D.L. and the decision was made that I would continue with the file. I was unsure whether D.L. ever spoke with the Reviewing Firm; and

    d. I was in regular contact with D.L. in 2012 and I have also been in contact with the Defendant's Insurance Representative. I advised that I believed that I was very near to resolving D.L.'s claim and advised that I would continue to be in regular contact with D.L. and keep her informed through to the end of the file.

174. The LSA wrote to me on March 13, 2012, requesting that I keep it informed of the steps that I was taking on D.L.'s file. The LSA advised me that D.L. was very frustrated with how long her matter was taking.

175. On May 1, 2012, the LSA wrote to me advising that it understood that I was pursuing settlement, and requesting an update.

176. As I did not respond, the LSA wrote to me on May 22, 2012, June 11, 2012 and June 27, 2012, all to which I responded on August 20, 2012, which may be summarized as follows:

    a. After the Reviewing Law Firm returned D.L.'s file to me and I resumed conduct of the file, I made contact with D.L. and the Insurance Adjuster to see if the matter could be settled;

b. I did not feel as if I was making any progress with that Adjuster and was not prepared to discuss it with the Adjuster. The matter was referred by the insurance company to a law firm to defend D.L.'s action. As at the date of my letter, I advised that the Defendant's law firm had provided its Affidavit of Records on July 11, 2012; and

c. I advised that I had made arrangements for D.L. to do the same, at which point I would attempt to settle the matter. If that was not successful, I advised that I would proceed with questioning in the litigation.

177. After receiving my letter of August 20, 2012, the LSA wrote to me on October 16, 2012, November 6, 2012, and November 28, 2012, requesting an update as to the status of D.L.'s file.

178. As I did not respond, on December 21, 2012, the LSA sent correspondence to me requesting my file.

179. As I also did not respond to this correspondence, the LSA sent another letter to me dated January 7, 2013 again requesting my file.

180. I responded on January 18, 2013, providing my file and advised that I obtained D.L.'s Affidavit of Records on August 28, 2012. I also indicated that I had been in regular contact with D.L. and had discussed her condition and her claim on a number of occasions.

181. In the course of the LSA reviewing the file, it was agreed that the key steps in this matter are be summarized as follows:

a. On February 13, 2007, I informed the Defendant's Insurer, that I had been retained by D.L.

b. On April 13, 2007, I requested that the Defendant's Insurer confirm that they were insurers for the Defendant;

c. On April 18, 2007, the Defendant's Insurer confirmed that they were insurers for the Defendant;

d. On May 11, 2007, I requested D.L. provide an update regarding her injuries and a list of her health care providers;

e. On May 21, 2007, D.L. provided me with an update on her injuries and provided the names of her health care providers;

f. On September 6, 2007, a letter from the Defendant's Insurer informed me that it was not yet prepared to admit liability but stated it was prepared to reimburse me for relevant medical reports;

g. On November 9, 2007, I ordered medical charts and documents from D.L.'s various health care providers, dentist, and Section B file;

h. Sometime after November 9, 2007, I informed D.L. that I had ordered medical charts and requested that she provide a status update on her injuries;

i. On November 19, 2007, I received medical charts and SGI's Section B file;

j. On December 12, 2008, I filed a Statement of Claim on behalf of D.L. against the defendant seeking general damages in the amount of $75,000.00;

k. I provided D.L. and the Defendant's Insurer with filed copies of the Statement of Claim;

l. On December 16, 2008, the Defendant's Insurer enquired whether a Statement of Defence was required to be filed;

m. On December 22, 2008, I informed the Defendant's Insurer that a Statement of Defence was not yet required;

n. On December 7, 2009, I sent a request to Accu Search for the Defendant's current address for service of Statement of Claim;

o. I requested Process Servers to serve the Statement of Claim on the Defendant on or before December 12, 2009;

p. On December 11, 2009, I filed an Application and Affidavit seeking an Order to renew the Statement of Claim for a further three months;

q. Master W. ordered that the Statement of Claim be renewed for a further three months to March 12, 2010;

r. On December 20, 2009, Process Servers served the Defendant with the renewed Statement of Claim;

s. On April 12, 2012, AM informed me that she had assumed conduct of the file defending against D.L.'s action;

t. On April 25, 2012, AM filed a Statement of Defence on behalf of the Defendant;

u. On July 11, 2012, AM served me with the defendant's Affidavit of Records; and

v. On August 28, 2012, D.L. attended my office and swore an Affidavit of Records.

182. I sent an email to the LSA on January 24, 2013 attaching an email from Defence Counsel and concerning my interest to examine the Defendant and requesting that I forward my producible records with the Affidavit of Record.

183. The LSA sent correspondence to me on August 21, 2013 asking me to specifically address a number of allegations that D.L. raised in her complaint in January 2011, which I had not addressed in my response of March 6, 2012.

184. I responded on September 16, 2013, which is summarized as follows:

a. D.L.'s complaint was probably precipitated by my moving to an in-house counsel position and transferring my files to alternative counsel. This occurred in late 2009 and I assumed the in-house counsel position in July 2010;

b. Regarding the allegations that I failed to respond to D.L.'s attempts to communicate with me and failed to keep her informed of developments in her matter:

i. I assumed that D.L. may have been calling me during the time that files were being reviewed and the Reviewing Law Firm was attempting to contact her. I did not have a record of her calling although she may have. I further advised that if I did not have specific contact from her then I assumed that Reviewing Law Firm was in contact with her;

ii. I have no record that she communicated with me in writing, as I had never received any letters from her since the file was opened;

iii. When the file was being transferred, D.L. obtained a new job, address and phone number and this is probably why Reviewing Law Firm was unable to contact her. I advised that D.L. did not inform me of her move. The file was returned to me after the Reviewing Law Firm advised that it was unable to locate and contact D.L.;

iv. I had no information regarding D.L.'s contact information but D.L. called me to provide the new address;

v. The Reviewing Law Firm did not want the file back because it appeared that the claim may be capped. Although I made telephone enquiries with other firms to see if they wanted the file, I was not successful. I elected to try and settle the matter myself, which took some time;

vi. While D.L.'s file was with Reviewing Law Firm and I was in my new position as in-house counsel, D.L. may have been calling but I would not have responded under the circumstances; and

vii. Since I took over the file again, I have always responded to D.L.'s phone calls and have kept her updated. She has communicated with me only in-person or by phone.

185. With respect to the allegation that I failed to advance D.L.'s legal matter, I advised:

a. In fact, her matter had advanced. The only gap occurred when I attempted to transfer D.L.'s file. At that time, a Statement of Claim had been filed and served and I had gathered information about D.L.'s injury. I was having some discussions with the insurance adjuster;

b. The matter of a cap was an active issue and not fully resolved in favour of the insurance companies until December 2009. Prior to this, Insurers would not consider settlement of the cap had been appealed;

c. In D.L.'s matter, the insurance company considered her claim capped and would not pay more than the capped amount. I and D.L. did not want to settle for that amount and waited for the outcome of the litigation. However, the cap was upheld. I advised D.L. that a case involving TMJ injuries was pending in late 2012 or early 2013. A particular case, Sparrowhawk, found that TMJ injuries were not capped. I advised that I had to wait for this case or my client would have had to accept a small, capped amount;

d. After I reviewed the Sparrowhawk case for relevance, I proceeded with obtaining an Affidavit of Records, having the matter go to Defence and proceeding with the litigation;

e. The litigation would not have moved any faster unless I and my client were prepared to accept the insurer's position that the claim was capped;

f. Currently, I advised that I obtained a sworn Affidavit of Records from D.L. and proceeded to questioning on May 14, 2013. I am now finalizing Undertakings and believe that D.L.'s file will be settled by the end of the year; and

g. D.L.'s litigation and file have been progressing smoothly and we do not discuss her complaint. She has not expressed any dissatisfaction.

186. In a letter to me dated October 21, 2013, the LSA noted that I had advised that I had sent D.L.'s file to Reviewing Law Firm.

187. I responded on October 31, 2013. I advised that I was attempting to move my practice and files in order to take an in-house counsel position. The only firm involved in reviewing my files was the Reviewing Law Firm. The Reviewing Law Firm took D.L.'s file after they reviewed it in my office but then returned it after they were unable to contact her.

## E. File # COXXXXXXXX – K.L. Complaint

188. On November 14, 2010, the LSA received a complaint against me from my client, K.L.. Her complaint can be summarized as follows:

a. K.L. was involved in a motor vehicle accident in Calgary on October 15, 2006 and retained me to represent her in the resulting litigation;

b. K.L. stated that since 2007, she had tried to contact me numerous times but made minimal contact with me. She stated that she called me monthly and sometimes weekly with no success;

c. K.L. stated that the few times I did return her calls, I would leave a message saying that I would call her back but would not follow through;

d. K.L. stated that the last time she spoke with me I told her that I would be mailing her a questionnaire to fill out and told her she may have to travel to Calgary "for a meeting or cross examination" but as of the filing of the complaint, she had "no idea what is going on"; and

e. K.L. stated that the phone number she had for me "is now out of service" and she was still having trouble reaching me with my new phone number.

189. The matter was referred to the Manager, Complaints, of the LSA and on January 4, 2011, a letter was sent to me requesting my formal response to the complaint, pursuant to Section 53 of the *Legal Profession Act*. I did not respond and a further letter requesting my response was sent to me on February 8, 2011.

190. On March 21, 2011, the LSA received my response to the complaint, which was dated March 18, 2011, and it can be summarized as follows:

a. The Statement of Claim was filed on K.L.'s behalf and the matter was ready to proceed to negotiations and/or litigation;

b. I admitted that I was late in contacting K.L. when she would call me. I explained that because of my moving to an in-house position, I had difficulty in keeping up with "the demands of the practice and the requirements of contacting some of the clients", which included K.L.. I stated that this difficulty in contacting my clients lasted from late 2009 to the present (March 2011); and

c. I then explained that "to remedy this situation", I had sent K.L.'s file to the Reviewing Law Firm to be reviewed "with a view to assuming the conduct of the file(s)". I stated that I would contact K.L. to explain what was happening on her file and to "seek any other instructions she may have". I stated that I would now keep her informed regularly "until her file has been transferred or otherwise dealt with to her satisfaction".

191. On April 1, 2011, the LSA received a letter from K.L. stating that she reviewed my response and would be contacting me to provide me with her updated contact information.

192. On October 14, 2011, the LSA sent me a letter stating that it was aware that K.L. was still having trouble contacting me and I had not sent her documents I had promised to send her. I was asked to provide a detailed report on what steps had been taken on the file since I received the s. 53 demand letter. The LSA requested the report be provided within fourteen days.

193. On November 3, 2011, the LSA received my response in which I denied that K.L. had contacted me, either by email or by phone. I explained that I spoke with the lawyer for the Defendants on September 9, 2011 to confirm that I continued to act and agreed to some tentative plans for litigation that I was waiting to confirm. I stated that I would contact K.L. "again this week" to provide her my contact information and ask about her availability for Questioning.

194. On December 20, 2011, the LSA sent a letter to me requesting an update on what steps I had taken. As I did not respond, reminder letters were sent on January 9 and January 24, 2012.

195. On February 6, 2012, the LSA received a response from me in which I advised that I and K.L. have been communicating “on a regular basis for the last couple of months” by phone and emai. I also advised that I had concurrently been in contact with new Defence Counsel and they “are assembling a series of potential dates for questioning”.

196. On March 6, 2012, the LSA received a further response from me in which I advised that I had been in contact with K.L. by phone and email and confirmed April 17, 2012 as a tentative date for her Questioning.

197. On April 25, 2012, the LSA sent another letter to me requesting an update on what steps I had taken. As no response was received, reminder letters were sent on May 15, May 28, June 11 and June 27, 2012. In both the June 11 and June 27, 2012 letters, the LSA warned me that failing to respond to the LSA was sanctionable conduct under the Code of Professional Conduct;

198. On July 13, 2012, the LSA received a response from me in which I advised that, since my last letter to the LSA, I spoke with K.L. “on a number of occasions about her case”. I provided an update on the Questioning scheduling and the steps I had taken to arrange for a date and location that could accommodate K.L.’s medical needs. I also advised that I would be forwarding K.L. additional written documentation the following week for her case.

199. On July 18, 2012, the LSA received an email from me with an attached letter, dated July 13, 2012, that was sent to K.L.. I began the letter by apologizing “for the past delays in the advancement of your claim and can assure you that there will be no further delays in this matter”. Also included in the letter were the following comments by me:

    a. I was preparing an Affidavit of Records that I would send to her so she could sign it and sent it back to me;

    b. I also would be sending her more blank authorizations for her to sign for her medical information;

    c. I provided her a summary of the next steps I would take to re-schedule her Questioning; and

    d. I confirmed that I would send or email her all copies of requests for medical records and correspondence with opposing counsel, and would report to her when any developments arose.

200. On August 2, 2012, the LSA sent K.L. a letter in which it proposed returning her complaint to the informal process since it appeared the matter was moving ahead, and asked for confirmation from her if she agreed with his proposal. K.L. eventually telephoned the LSA on October 4, 2012 and confirmed her agreement.

201. On October 9, 2012, the LSA sent another letter to me requesting an update on what steps I had taken on K.L.'s file. As no respond was received, reminder letters were sent on October 29 and November 12, 2012 seeking a response from me.

202. On January 30, 2013, the LSA received an email from me in which I stated that I was "in a multi-party questioning this week, and will have written responses to you on several of these files", which included K.L.'s file.

203. On February 12, 2013, the LSA sent me a letter in which it confirmed receipt of my email and asked that I provide the status update no later than February 25, 2013.

204. On March 7, 2013, the LSA received a brief letter from me in which I stated that K.L.'s Questioning had occurred on December 10, 2012 and we were now compiling Undertakings and would be canvassing settlement as soon as they were complete. I also stated that I had continued to keep in contact with K.L. and had spoken with her by phone on March 6, 2013 "about providing some photographs and invoices and receipts".

205. On August 21, 2013, the LSA requested that I respond to the allegation made in K.L.'s complaint that I failed to advance her matter since I did not address the allegations in my March 18, 2011 response. The LSA also asked me to confirm if my response to the other two allegations in my March 18, 2011 letter was a complete response.

206. On September 16, 2013, the LSA received an email from me with an attached letter responding to K.L.'s allegations, which can be summarized as follows:

    a. I disagreed with the allegation that I failed to advance the legal matter since, according to me, it had been advanced in terms of litigation. I outlined the fact that Questioning was completed, they were gathering Undertakings, I was maintaining contact with K.L. and we would be arranging for independent medicals soon;

    b. I also explained that I had attempted to have the file transferred to new counsel but the Reviewing Law Firm did not want to take it on so I remained counsel of record;

    c. In response to the allegation that I failed to respond to K.L. and failed to keep her informed, I explained that when she moved to Ontario, she did not notify my office and, as a result, we did not know how to contact her. I stated that we attempted to contact her on three occasions in Calgary and tried to contact her through other contacts. We eventually discovered through those contacts that she moved to Ottawa; and

    d. I concluded my letter by explaining that K.L. was quite upset when she received the LSA's recent letter and I specifically did not copy her with my letter for that reason.

207. On October 2, 2013, the LSA sent me a letter in which it requested that I provide a copy of K.L.'s file.

208. I delivered K.L.'s file to the LSA on October 11, 2013.

209. The following is a summary of the relevant information and documents that were found in the file:

a. Documentation that showed that from November 2006 when I was retained until around November 2007, I appeared to be advancing K.L.'s litigation and her file in general;

b. A document entitled Memo from "L", dated February 12, 2007 (month was crossed out by hand and "August" written in), that stated "Voicemail message from client---she has moved to Ottawa to be with her family" and then "Her new numbers" were included. The last line stated "T/C to client's cell phone number—client did not answer—left message to call back";

c. A handwritten note in which it was dated "t/t client Aug. 27/07" and included a "new address" in Ottawa, K.L.'s physicians' name, and further information on her injuries;

d. A second document, Memo from L, being my assistant, dated October 9, 2007 that stated "Voicemail message from client—her doctor in Ontario is" and the address of K.L.'s physician is provided again;

e. An email from a Client Service Representative, dated May 2, 2008, with the following message:

"Hi Joe, a woman called for you and wanted me to take a message, she said she's been trying to get in contact with you since January and has had no call backs. She left her home number and said she can be reached on it anytime. Her contact information is as follows: "Name: [K.L. - Number: (613)-[XXX-XXXX] home (**last 2 crossed out for 1)."

f. A letter dated November 3, 2008 on the file from myself to the Insurance Company's Counsel providing a copy of the Statements of Claim, but no correspondence or notation in the file that suggested that I sent or attempted to send the Statements of Claim to K.L. at that time;

g. A letter dated April 9, 2009 to me from LGE who was K.L.'s case coordinator with Social Services for the City of Ottawa. In the letter LGE explained that to be eligible for social assistance, K.L. must pursue all forms of income to which she was entitled. She explained that "[K.L.] states that she has repeatedly contacted your office with requests as to the status of her claim and she has not had a response from you". LGE concluded her letter by asking me to provide K.L. with a written update on her accident claim and provided K.L.'s contact information;

h. A handwritten note from LGE, dated April 22, 2009, in which she stated that K.L. provided her with my Calgary contact address but LGE had also discovered my Edmonton address and she sent a copy to that address as well;

i. A letter from me to Opposing Counsel, dated August 24, 2009, which stated the following:

"Please find enclosed filed Discontinuance of the above noted action. All that now remains is Action No. [X]. I trust this is in order, and your Application this Wednesday will not be proceeding."

j. There is no copy of the filed Discontinuance on the file or any correspondence or notations on the details of the referenced scheduled Application, and nothing on the file to suggest that I contacted or attempted to contact K.L. to update her on these developments;

k. There were no documents on the file from 2010 or 2011;

l. In a letter from Opposing Counsel to me, dated May 25, 2012 (Exhibit 30—Tab 11), he stated that because he had not heard from me and "in order to secure the attendance of each Plaintiff, we hereby serve upon you an Appointment and conduct money" for each of his clients. He stated that the Questioning was scheduled for June 18, 2012 and enclosed the referenced Notice of Appointments;

m. A letter from me to K.L.'s Doctor, dated September 18, 2012, requesting K.L.'s medical chart;

n. A letter from a colleague of Opposing Counsel to me, dated December 5, 2012, in which she referenced a letter she received from me on December 4 and offered for her client to pay additional monies for K.L.'s flight from Ontario for the Questioning. The referenced December 4 letter was not in the file;

o. Handwritten notes, dated December 10, 2012, that appear to be from K.L.'s Questioning. There were no documents in the file to explain why the Questioning did not proceed on June 18, 2012;

p. A copy of K.L.'s Affidavit of Records that was sworn by her on December 10, 2012;

q. A letter from me to Opposing Counsel, dated June 17, 2013. In the letter, I stated "this will be further to our exchange of emails last week in relation to your application tomorrow". Further down in the letter, I referenced "Notice and an accompanying Affidavit" and that I "would be willing to agree to nominal costs of a Consent Order"; however, there are no copies of the "exchange of emails" in the file, or the documents related to the referenced application.

r. A letter from me to Opposing Counsel, dated August 16, 2013, in which I informed her that I would be on vacation until August 23, 2013;

s. A letter from me to Opposing Counsel, dated August 30, 2013, in which I stated "please find enclosed executed Consent" but there was no copy of the executed Consent in the file; and

t. A letter from me to Opposing Counsel, dated September 30, 2013. In the letter, I stated that I had been awaiting a number of the Undertakings to comply with the need to provide them to Opposing Counsel and to comply with the Consent Order. I also stated:

I know you wanted to have these done by the end of the month, and if you are going to make an application in relation to the consent I would appreciate very much if you would advise me in advance so we can agree on a date. I have a number of personal medical matters I have to deal with and would like to coordinate the dates.

210. On October 21, 2013, the LSA sent me a follow up letter in which she asked me to provide the name of the alternative counsel that reviewed K.L.'s file who I referenced in my March 18, 2011 letter.

211. On October 31, 2013, the LSA received a letter from me in which I advised that the Reviewing Law Firm was the firm that reviewed my files when I "was attempting to move my practice and my files to allow me to take an in house position". On the topic of the review of K.L.'s file, I advised that I believed her file "was eliminated [by the Reviewing Law Firm] in the first review", which occurred at my office.

## F. File # COXXXXXXXX– S.L. Complaint

212. The LSA received three complaints from S.L. about me alleging that I failed to advance his matter, failed to keep him informed as to developments in his legal matter and failed to respond to his communications.

213. The background of the first complaint made in August 2005 is be summarized as follows:

a. S.L. advised that he retained me on a contingency basis in the spring of 1998 to represent him in a medical malpractice case against a Doctor and who performed surgery on his knee in 1997. He met with me in the spring of 1998 to discuss the facts and to prepare a Statement of Claim, which was filed in June 1998;

b. I sent him a letter dated October 6, 1998 enclosing a contingency agreement for signature as well as a copy of the Statement of Claim that I advised would be delivered to the Defendant Doctor;

c. Throughout 1999, I advised him that the Defendant Doctor had retired or was out of the country and that the Statement of Claim had not been served. The day before the Statement of Claim was to expire, S.L. had to sign an Affidavit in support of an Application to renew the Statement of Claim so that it could be served;

d. In the winter of 2000, I advised him that the Statement of Claim had been substitutionally served. S.L. called me every three months for updates;

e. Discovery took place in September 2001 with the Defendant Doctor's lawyers present. In November 2001, S.L. called me for an update and I told him to "be patient";

f. He had not heard or received anything from me. In April 2002, after returning one of his calls, I explained that I was obtaining an out-of-province medical opinion on surgical negligence. S.L. called me in July 2002 and was advised that the medical opinion was still pending. He then wrote to me in October 2002 requesting a written update, but did not receive a response;

g. Throughout 2003, S.L. made 3 or 4 phone calls to me and I advised that I was still waiting for the medical opinion;

h. In January 2004, S.L. wrote to me requesting a written update and documentation, but he did not receive a response. He then called again in February and I assured him that I would send information.

i. On June 10, 2004, I wrote a letter to M.L. requesting a medical Opinion by July 5, 2005;

j. In July-August 2004, S.L. called me again and I advised that I was very busy and that some clients decide not to pursue litigation after such a lengthy period of time. S.L. clearly indicated to me that he fully trusted me to actively pursue the matter and that he had never indicated otherwise. At S.L.'s request, I met with S.L. and he expressed his frustration with the delays and lack of contact. My reason for the delay in the file was the medical opinion that had not yet been received;

k. On October 29, 2004, I again wrote to M.L. providing the "most pertinent documents" and requesting "even a single page response";

l. I scheduled a meeting with S.L. and his wife in November 2004. I did not bring S.L.'s file with me. I advised that there was "favourable progress", that "negligence has been established" and that "unless something comes out of left field" the case should be successful. I also advised them that I was awaiting the release of a "study" in two weeks that would help support their case and that I would call them in two weeks;

m. S.L. did not receive a call from me, and wrote to me on January 20th expressing his ongoing frustration and concern. In his letter, S.L. wrote that I had said that I would call within two weeks, but that it had now been over two months and I still had not called. He also wrote that other than the Statement of Claim and the Contingency Agreement sent in 1998, he had not received any written correspondence or advice from me concerning his case;

n. S.L. also obtained the Procedure Record for his Claim and noted that the Defendant Doctor's lawyers had brought a motion to dismiss his Action. I had not advised him of this motion or that he had failed to comply with Undertakings given at discovery, or what the Undertakings even were. The Procedure Card indicated that no further steps had been taken in the action since that time;

o. S.L. requested me to provide him with a detailed report of the progress on and the status of his claim, supported by written documentation;

p. On January 28th he received a one-page letter from me enclosing the Notice of Motion and the report request. I advised him that there was no Application to dismiss S.L.'s claim but that it was an application to compel Undertakings, as Defence Counsel was concerned with the Undertakings. I further advised that I was awaiting the concluding report and based on that, could possibly schedule a pre-trial conference to set the matter down for trial;

q. On March 7, 2005, S.L. received a letter from me enclosing a copy of a medical opinion and stating that further information would be forthcoming and that I would be in contact with him; and

r. As of the date of his August 2005 complaint, he had not received anything further from me, either in writing or by phone.

214. In his second complaint in March 2009, S.L. provided additional information, namely:

a. On August 31, 2005, S.L. wrote to me requesting the further information that I had promised in my March 7, 2005 correspondence;

b. On September 23, 2005, S.L. received correspondence from me, which enclosed a resume of an expert Doctor a Conditional Certificate of Readiness. I advised that I had attended at Court for a pre-trial conference, which generated the Conditional Certificate of Readiness. The Certificate was at the Defendant Doctor's lawyers for signature and once signed would be sent to the trial coordinator to obtain trial dates;

c. On January 10, 2006, I wrote to S.L. advising that I was still awaiting the medical opinion (from the expert Doctor) and that I was awaiting a response;

d. On September 11, 2006, S.L. wrote to me indicating that one year earlier, in September 2005, I had advised that I had drafted a Certificate of Readiness and that trial dates would be obtained from the trial coordinator. S.L. enquired as to the status of the Certificate;

e. On January 10, 2007, I wrote to S.L. requesting that he sign medical authorizations but not date them (Exhibit 2, Tab 14). On January 18, 2007, S.L. wrote me for an update that I had promised over one month earlier and to provide the authorization forms (Exhibit 2, Tab 15);

f. S.L. did not receive anything from me until March 13, 2009 when he met with me and I advised that I still had not received the medical report (more than 3 years later) and that I had been unable to contact the expert Doctor as he was in Iraq or Iran; and

g. In March 2009, I told S.L. that he needed to decide whether he wanted to set a trial date or to not proceed any further. S.L. requested I continue proceeding.

215. By letter dated March 26, 2009, a Complaints Resolution Officer of the LSA requested I provide a written response to address the complaint material. The LSA received my response dated May 25, 2009, which may be summarized as follows:

a. Regarding S.L.'s concerns about a lack of response to his enquiries and about a lack of progress on his file, I stated that I did not disagree with him entirely. I concurred that I did not communicate with S.L. in a timely and regular manner and believed that he should have been updated more regularly and frequently. I also concurred that S.L.'s file should have been advanced more quickly;

b. S.L.'s case was a medical malpractice matter where the Statement of Claim was served within 15 months of being filed. A three-month extension was obtained and service was effected substitutionally;

c. Examinations for discovery of the Defendant Doctor and of S.L. occurred in June 2000 and October 2001, respectively. The file then began to "bog down". In 2005, I located an excellent expert witness in Ontario and made arrangements to have a report prepared. However, the expert did not respond and I learned that he had left the country and did not know when he was expected to return;

d. Throughout this time, S.L. understandably became impatient and I met with him on March 13, 2009. I agreed that S.L. had not been adequately informed over time and that he was justified in being dissatisfied;

e. I enquired what S.L. wanted to do as Defence counsel was seeking a trial or dismissal, and S.L. advised me to proceed. I was able to locate a new expert witness in Calgary and was making arrangements to retain him when I received the complaint;

f. I stated that there were two reasons as to why S.L. was not informed regularly and why the file was not pursued more vigorously;

i. First, some files involve circumstances that create delays. In this case, the Defendant Doctor was retired and out of the country and the first expert witness delayed responding to him;

ii. Secondly, these circumstances may be prolonged by a solicitor not responding to the need to push the matter as a result of a number of factors. In this case, as a sole practitioner, given the burden of work load and office management and a lack of time and resources, I was not able to adequately address all of the matters; and

iii. Under the burden of being a sole practitioner and dealing with a difficult file, sometimes the file becomes a file that one avoided or put off until later. This had the effect of being prolonged over time and eventually developed into a situation that developed here;

g. S.L.'s claim had not been jeopardized. Once I received the expert report, I could proceed to have the matter set down for trial. Defence counsel

unsuccessfully applied to strike S.L.'s action on April 15, 2009. However, I had to produce the expert's report by July 31, 2009, which the expert advised would not be an issue.

216. I provided further correspondence to the LSA dated May 26, 2009 where I advised that: since I found practicing as a sole practitioner increasingly demanding and very difficult to manage at times, I was closing my practice; due to these circumstances, and because S.L. was dissatisfied with me, I intended to transfer S.L.'s file to new counsel, namely the Reviewing Law Firm,; and in the interim, I would make arrangements to have the expert report prepared.

217. In a letter to S.L. dated June 8, 2009 and copied to the LSA, I advised that an orthopedics expert in Calgary would be preparing a written report and once this had been done, the next step would be to arrange for a trial date. I enquired as to whether S.L. wanted me to continue to represent him or whether he wanted to retain new counsel.

218. On August 11, 2009, S.L. sent a fax to the LSA where he advised that I had left a voicemail message for him on July 21, 2009 indicating that I had forwarded the expert report, a Certificate of Readiness for trial and information relating to the Defendant Doctor's expert opinion. Given the July 31, 2009 deadline imposed by the Defendant's Lawyers, S.L. had expected to receive the expert report prior to the deadline. Not having received it, S.L.'s wife left a voicemail message for me asking when they might receive the information. I did not return their call nor did they receive any documents from me.

219. In his third complaint in July 2010, S.L. advised that I recently advised him that his case was finally awaiting a trial date and that I had obtained an expert report that confirmed that the standard of care had not been met during the surgical procedure, more specifically:

    a. After more than 13 years, I informed him that I was "moving" my practice and would refer his case to another firm, giving him the name of the lawyer that I would be transferring the file to. I indicated that I would send him a letter with the name of the lawyer and the firm but S.L. did not receive such a letter. S.L. phoned me and was told that the firm had not accepted the case and I then asked him if he knew of any lawyers that would take his case;

    b. In his complaints to the LSA, S.L. advised that since 1998, I failed to respond to repeated requests for written updates, misrepresented the facts of his case, had not actively pursued consultants, never initiated contact and never copied him on correspondence relating to his case. In 2005, I told S.L. that trial dates were being sought and that a Certificate of Readiness was being sent to the lawyers for the Defendant Doctor; and

    c. S.L. was concerned that he had not received adequate or responsible representation from me, and that unfathomable delay had occurred over the years, which prejudiced his claim.

220. By letter dated July 9, 2010, a Complaints Resolution Officer of the LSA requested I provide a written response to address the complaint material. The LSA received my response dated July 23, 2010, which may be summarized as follows:

a. The knee surgery occurred in mid-1997. I filed and then served the Statement of Claim in August 1999. Examinations for discovery took place in early 2002. Answers to Undertakings were provided and at the end of 2004–beginning of 2005, I explored obtaining an expert medical report. I requested a report from an expert Doctor in Ontario, providing him with all of the information and awaited his report. After following up on more than one occasion, I learned that the expert Doctor was out of the country and that the report was not available. In the latter part of 2005 and into 2006, the parties were in case management and pre-trial meetings. At that time, I prepared a Conditional Certificate of Readiness for filing, after which trial dates would be obtained;

b. I advised Defence Counsel that I wanted to have the expert report before proceeding to trial, and in response to their requests I provided Defence Counsel with S.L.'s updated medical information. The intention was to provide updated information, obtain the expert report and proceed to set the matter down for trial if the report was satisfactory;

c. Since the report could not be obtained from the expect Doctor, I located another expert Doctor who provided his opinion in July 2009. I then filed a new Certificate of Readiness and Record and a trial date was to be obtained shortly thereafter;

d. Although the matter progressed, it moved slowly. As a sole practitioner, I found it increasingly difficult to have the time and staff to meet client needs at all times, particularly as of late 2007. This resulted in delays while I did as much as I could with the resources I had remaining;

e. I advised S.L. that I would close my practice and took an in-house counsel position. I had to ensure that I either had the resources to satisfy client demands or had new counsel take over the files;

f. I advised S.L. that I had conferred with a the Reviewing Law Firm as to whether they would assume his file and S.L. was agreeable to the Reviewing Law Firm doing so. In the interim, the Reviewing Law Firm decided that they were not interested in taking the file. Before having the opportunity to enquire with another firm, I received the complaint and I was uncertain if S.L. wanted me to make any further enquiries; and

g. I fully acknowledged and regretted the delays but I disagreed with S.L.'s allegations of incompetent blundering and blatant incompetence on my part.

221. S.L. provided his comments on my response to the complaint in a letter dated August 12, 2010, which may be summarized as follows:

a. He only became aware of the case management meeting after receiving a copy of my letter. Since receiving a copy of a letter to the Defendant Doctor's

lawyers dated April 2009, S.L. did not receive copies of any further correspondence between myself and the Doctor's lawyers;

b. In August 2009, S.L. received my letter advising that his case was now on a trial waitlist. My letter in January 2010 advised that I verbally responded to Court Services requesting a trial date and would advise S.L. further. S.L. still did not know if a trial date had been set;

c. He requested I obtain copies of the Defendant Doctor's two expert reports but I advised in my letter that I made no attempt to obtain them;

d. After I suddenly announced that I would close my practice, I informed S.L. that I would seek new counsel to take his file and would advise him about this. I did not contact him and S.L. only learned that the firm that I had in mind refused to take his file when he read my response to the complaint; and

e. There were chronic delays and I failed to diligently advance his claim in a timely manner such as taking over one year to serve the defendant and waiting more than three years for an expert report. I also failed to keep him reasonably informed of any progress or lack thereof and failed to respond to his communications and requests for information.

222. The matter was referred to the Manager, Complaints at the LSA.

223. On October 21, 2010, the LSA sent a letter to me requesting his formal written response to the complaint, pursuant to section 53 of the *Legal Profession Act* within 14 days of receiving the letter. I received the letter on October 22, 2010 but did not respond to it.

224. The LSA wrote to me on November 8, 2010, November 22, 2010, and December 14, 2010, advising that it had not received my response to the section 53 demand letter. I replied on December 17, 2010 advising that time constraints made it difficult but that I would respond in writing by the first week of January 2011.

225. The LSA wrote to me on January 11, 2011 advising that he had not yet received my response, which I had advised would be provided by the first week of January (2011), and wrote again on February 8th requesting a response;

226. I replied on October 21, 2010 in a letter dated March 18, 2011, which is summarized as follows:

a. I adopted my previous response, with a supplement;

b. Nothing changed from my standpoint in that I had been slowed in finalizing S.L.'s claim due to circumstances involving the changes in my practice;

c. Despite mine and S.L.'s attempts to retain new counsel to assume conduct of the file, they had not been successful. I intended to make further attempts to locate firms that would take the case on; and

d. If I was unable to find new counsel, I undertook to conclude the litigation. It was almost at an end and pursuant to the new Rules of Court, Defence counsel would have to attend dispute resolution in good faith. As I had fewer files than I did before, and would have even fewer as time goes by, I was confident that I could still be of assistance to S.L..

227. In correspondence to the LSA dated April 25, 2011, S.L. advised that he had been unable to retain new counsel and welcomed my efforts to further his claim.

228. The LSA wrote to me on May 3, 2011 requesting an update of developments to locate new counsel for S.L.. Receiving no response, further correspondence was sent to me on May 24, 2011, June 14, 2011, and on October 14, 2011 after a meeting with me.

229. I responded on November 3, 2011 wherein advised that I had spoken with S.L. subsequent to March 18, 2011 and that I was unable to locate new counsel; I spoke with S.L. who advised that he wanted me to continue, which I agreed to do; Having secured a report from an the orthopedic surgeon, I needed to obtain a report regarding injuries and damages; and, possibly a report of a labour economist regarding loss of income and loss of opportunity.

230. By the end of November 2011, I proposed to meet with S.L. to discuss economic loss, to arrange with Defence counsel to book a JDR in Edmonton and to arrange for a medical/legal report by an orthopedic surgeon for the purposes of quantifying damages.

231. In correspondence to the LSA dated November 12, 2011, S.L. advised that although I indicated in my letter of November 3, 2011 that I had spoken with him on two different occasions since March 18th, he had had no conversations with me. He had not spoken with me since I indicated that I would again work on his case.

232. The LSA wrote to me on November 25, 2011 requesting updates of developments in S.L.'s case on a regular basis. Receiving no reply, the LSA sent further correspondence on December 19, 2011, January 9, 2012, and January 24, 2012.

233. I responded on February 6, 2012 where I advised that I was enquiring whether Defence Counsel would agree to a JDR, failing which I was researching whether they could be compelled to participate; and, I was also enquiring of other medical experts regarding damages.

234. The LSA wrote to me on March 12, 2012 requesting an update on the status of S.L.'s case. Receiving no reply, the LSA sent further correspondence on April 2, 2012, April 16, 2012, and May 1, 2012, advising me that I had not yet replied.

235. On May 28, 2012, I sent correspondence to the LSA providing an update as to S.L.'s file. I advised that I had met with S.L. "a couple of weeks ago" who was assembling his financial records, and that I was reviewing the medical information for updating.

236. The LSA wrote to me on July 4, 2012 requesting an update on the status of S.L.'s case. Receiving no reply, he sent further correspondence on July 26, 2012, and August 13, 2012.

237. On August 27, 2012, the LSA advised me that its correspondence dated August 13th was returned marked “moved/unknown”. Further correspondence was sent to me dated September 10, 2012 indicating that I had not yet responded to the LSA’s previous correspondence. On October 9, 2012, the LSA sent correspondence to me advising me that my last communication with the LSA was on May 28, 2012.

238. On October 29, 2012, the LSA sent correspondence to me. I did not reply to this correspondence, and further correspondence requesting my reply was sent on November 12, 2012, November 28, 2012, and December 21, 2012.

239. On January 30, 2013, I wrote an email to the LSA advising that I would send a response regarding S.L.’s file. The LSA wrote to me on February 12, 2013 requesting a status update on the file.

240. On March 7, 2013, I wrote to the LSA advising that my last activity on the file was at the beginning of 2013 when I discussed trial dates with the Trial Coordinator. I stated that I was awaiting available trial dates at which point I would advise S.L. and begin preparation for trial. I also indicated that I was canvassing the possibility of using the same expert Doctor for an opinion regarding S.L.’s current status. I advised that I would be in contact with S.L. next week and that I would provide the LSA with a written update at the end of the next week.

241. On August 21, 2013, the LSA sent correspondence to me requesting that I specifically address the following allegations set out in S.L.’s complaint of July complaint:

    a. That I failed to respond to S.L.’s attempts to communicate with me; and

    b. That I failed to keep S.L. informed as to developments on his legal matter.

    The letter also requested I advise whether my letters of July 23, 2010 and March 18, 2011 were a complete response to S.L.’s allegation that I failed to advance S.L.’s legal matter.

242. The LSA received my response on September 16, 2013, which may be summarized as follows:

    a. I was in the process of obtaining a trial date;

    b. Although the matter may have to go to trial, I was exploring whether the Defence will consider settling the matter based on my expert’s information;

    c. Given the quantum of damages being sought, no other firm wants to take S.L.’s file and, consequently, I will continue on the file to conclusion. I had previously transferred my medical malpractice files to new Counsel when I commenced my In-house Counsel position in July 2010, but S.L.’s file was not of interest to other Counsel; and

    d. Regarding the allegations of failure to respond, failure to inform as to developments and failure to advance the matter, I attached copies of correspondence, which I believed answered the questions.

243. In response to correspondence from the LSA dated October 2, 2013, I provided my file to the LSA on October 15, 2013. The relevant file materials may be summarized as follows:

a. In the Spring of 1998, I was retained on the file;

b. In May of 1998, I sent letters to Defendant Doctor;

c. On June 1, 1998, the Statement of Claim was filed by me;

d. In October of 1998, I sent a letter to S.L. regarding Contingency Agreement;

e. In May of 1999, I sent a letter to Process Servers to serve Defendant hospital and Unknown date Statement of Claim renewed [no documentation on file];

f. On August 27, 1999, I sent a letter to Process Servers to serve the Defendant Doctor substitutionally;

g. In August of 1999, the Statement of Claim was served substitutionally on the Defendant Doctor;

h. On December 29, 1999, the Statement of Defence of the Defendant Doctor was served;

i. In February of 2000, the Defendant Doctor's Affidavit of Records was served;

j. On June 9, 2000, S.L.'s sworn Affidavit of Records (unfiled) was provided to Defence;

k. On June 14, 2000, the Examination for discovery of Defendant Doctor took place;

l. In November of 2000, I sent letters to various medical clinics for S.L.'s medical charts, and to Canada Revenue Agency and Alberta Health;

m. On January 6, 2001, Letter to Defence Counsel enclosing documentation and requesting adjournment of Defence Counsel's application;

n. On June 9, 2001, S.L.'s further and better Affidavit of Records filed;

o. In October of 2000, Examination for discovery of S.L.;

p. On June 5, 2001, Application filed by Defence to dismiss S.L.'s action for failure to comply with Undertakings or to compel compliance;

q. On June 17, 2001, S.L.'s partial answers to Undertakings provided;

r. On June 4, 2003, a letter was sent from Defence Counsel advising no contact from me since June 17, 2002;

s. In April 2004, a letter was sent from Defence Counsel enclosing Offer of Judgment and Consent Dismissal Order and Release, for which I endorsed service;

t. On June 10, 2004, I contacted M.L. requesting a medical opinion;

u. On October 29, 2004, a letter was sent to M.L. requesting initial impression;

v. On January 25, 2005, a letter was sent to M.L. Consultants requesting medical opinion;

w. On February 8, 2005, M.L. provides a clinical review abstract;

x. M.L. advises it will provide a written report;

y. On May 6, 2005, a letter was sent from Counsel for Defendant hospital advising nothing has occurred since 1999 and requesting case management;

z. On June 27, 2005, a letter was sent to an expert Doctor requesting expert medical opinion on standard of care;

aa. On July 13, 2005, I consented to case management;

bb. On August 30, 2005, a letter was sent to M.L. regarding timeline for opinion;

cc. On September 13, 2005, Case Management meeting;

dd. On September 14, 2005, Defence Counsel for Defendant hospital provides Partial Discontinuance of Action;

ee. On September 20, 2005, I prepared a draft Conditional Certificate of Readiness;

ff. On January 3, 2006, a letter was sent from Defence counsel for the Defendant hospital requesting a reply to September 14, 2005 correspondence;

gg. On January 10, 2006, a letter was sent to M.L. requesting opinion;

hh. On January 24, 2006, a letter was sent to Defence Counsel for the Defendant hospital enclosing signed Partial Discontinuance of Action;

ii. On January 24, 2006, a follow-up email was sent to M.L.;

jj. On March 9, 2006, a follow-up email was sent to M.L.;

kk. On July 18, 2006, Defence Counsel letter enclosing draft Certificate of Readiness with revisions;

ll. On October 18, 2006, Case Management meeting;

mm. On November 8, 2006, a letter was sent from Defence Counsel advising I had not yet served them with Certificate of Readiness, which was to be filed by October 26, 2006;

nn. On November 22, 2006, a letter was sent from Defence Counsel regarding Certificate of Readiness not yet served and requesting records;

oo. On December 8, 2006, a letter was sent from Defence Counsel requesting a reply;

pp. On January 3, 2007, a letter was sent from Defence Counsel requesting records in letter of November 22, 2006;

qq. On January 10, 2007, letters were sent to an insurance company, S.L.'s union, Canada Revenue Agency and treating physician requesting records;

rr. Letter to S.L. enclosing authorization for signature;

ss. On January 19, 2007, a letter was sent from Defence Counsel advising me to file and serve a Certificate of Readiness or agree to terminate the action or a case management meeting will be requested and costs will be sought against S.L..;

tt. On February 27, 2007, a letter was sent to Defence Counsel enclosing updated records;

uu. On April 25, 2007, a letter was sent from Defence Counsel requesting a reply to correspondence of November 8, 2006, and that forwarding medical records does not excuse me from failing to comply with the Court's direction;

vv. On April 26, 2007, a memo was done from my assistant asking if she should file the Certificate of Readiness, which was supposed to have been filed in October 2006: I told her not yet as I needed to do a few things;

ww. On August 27, 2007, a letter was sent from Defence Counsel regarding the Certificate of Readiness, and that if not received by end of September a Case Management meeting will be requested and costs sought;

xx. On October 10, 2007, a memo was done from my assistant that I need to file Certificate of Readiness or Defence Counsel will seek costs;

yy. On February 11, 2008, an email was sent to expert Doctor regarding Case Management meeting the next day and advising he needs some news for the Court regarding the status of his case, which hinges upon the expert evidence;

zz. On February 12, 2008, Case management meeting [no documentation];

aaa. On March 31, 2009, a Notice of Motion was filed by Defence Counsel seeking an Order for dismissal of S.L.'s action for delay or, alternatively, requiring the

Certificate of Readiness and the expert opinion to be filed and served within 20 days of service of the Order granted;

bbb. On April 8, 2009, a letter was sent to Defence Counsel that I wasprepared to file the CCR immediately;

ccc. On April 9, 2009, a letter was sent from Defence Counsel that they intend to proceed with the application to dismiss S.L.'s action for delay or to set deadlines;

ddd. On April 15, 2009, an Order was granted requiring S.L. to file and serve the Certificate of Readiness and the expert opinion and pay costs in the amount of $750.00 by July 31, 2009 failing which S.L.'s action will be struck without further Order;

eee. On April 22, 2009, a letter was sent from Defence Counsel enclosing the form of Order;

fff. On May 15, 2009, a letter was sent from Defence Counsel requesting endorsement of the Order;

ggg. On June 1, 2009, a letter was sent to the expert Doctor requesting an expert medical opinion and advising that there is a Court Order that the opinion be provided no later than July 31, 2009;

hhh. On June 10, 2009, a letter was sent from Defence Counsel requesting endorsement of the Order by June 12, 2009, failing which a Case Management would be scheduled and costs obtained;

iii. On June 12, 2009, a letter was sent to Defence Counsel enclosing an Order with signature endorsed thereon;

jjj. On July 28, 2009, the expert Doctor's report was provided to Defence Counsel along with draft Certificate of Readiness and costs;

kkk. On July 30, 2008, a Filed Certificate of Readiness was provided to Defence counsel;

lll. On July 31, 2009, a letter was sent from Alberta Court Services that the matter is on the wait list and trial dates are available in 2009 and 2010;

mmm. On August 18, 2009, a letter was sent to S.L. that matter is on the wait list and will advise when trial dates have been assigned;

nnn. On January 4, 2010, a letter was sent from Alberta Court Services that the matter is on the wait list and trial dates are available in 2010 and 2011; and

ooo. On January 7, 2010, a letter was sent to S.L. advising verbal response provided to Court Services that he does want to arrange a trial date.

244. The LSA sent correspondence to me dated October 21, 2013 requesting my advice as to which law firm I had conferred with to assume conduct of S.L.'s file, and the law firm and specific counsel to whom I had transferred the file.

245. I responded on October 31, 2013 wherein I advised that when I was attempting to transfer my files in order to take an in-house counsel position, the Reviewing Law Firm was the only law firm involved in the review of my files. I believed that the Reviewing Law Firm eliminated S.L.'s file in the first review although it may have gone to Reviewing Law Firm and then returned; I was uncertain.

**CONCLUSION**

246. I believe I was dealing with health issues of family members and experiencing fatigue, stress and anxiety, and that this affected my ability to represent my clients.

247. I admit the statements in the Statement of Facts for the purpose of providing a record of the events which preceded and precipitated my application to resign.

248. In order to:

a. avoid a lengthy hearing into the merits of this matter;

b. avoid inconveniencing witnesses; and

c. bring these outstanding matters to conclusion

I am applying to resign as a member of the LSA pursuant to s. 32 of the *Legal Profession Act*.

**ISSUE**

Given the provisions of S. 32 of the *Legal Professions Act* and the evidence as set out in the facts above, is the Member application to resign acceptable?

**DECISION:**

The Resignation Committee heard evidence from Mr. Sheplawy's counsel who highlighted that the 23 citations against Mr. Sheplawy all relate to poor practice management. It is also known that during the time that these complaints arose, Mr. Sheplawy was suffering from a number of personal difficulties arising from his family circumstances. It is further noted that Mr. Sheplawy did undergo a Practice Review in June of 2014 and that the recommendations of that Practice Review were endorsed by the Practice Review Panel on July 15, 2014.

Counsel for the Law Society of Alberta made no objections to the application for resignation and the Resignation Committee noted that Mr. Sheplawy, in his application for resignation, provided a Statutory Declaration outlining the history of his practice, the fact that all trust funds of clients property had been accounted for, paid over, or delivered to the persons entitled and provided an undertaking that he will cooperate with the Law Society of Alberta and the Alberta Lawyer's Insurance Association with respect to any claims made against him and to pay any deductibles arising from any such claims. Mr. Sheplawy further undertook to ensure that his trust account is closed, his trust accounting records complete and all matters completed or disposed of on or before December 31, 2014.

Following the hearing of the submissions, the Resignation Committee concluded that it is in the best interests of the public, the Law Society of Alberta and Mr. Sheplawy to accept his resignation.

**Costs**

The estimated Statement of Costs was reviewed and there being no objection to amount, it was ordered and directed that Joseph Sheplawy shall pay costs in the amount of $3,500 payable on or before December 31, 2014. Given the circumstances, it was determined that a Notice to the Profession would not be issued.

Dated:

The 16th day of May, 2015 at Edmonton, Alberta

**Walter J. Pavlic, Q.C.**
**Chair**

**Rose Carter, Q.C.**

**Amal Umar**