

**LAW SOCIETY OF ALBERTA**  
**IN THE MATTER OF THE *LEGAL PROFESSION ACT*;**  
**AND**  
**IN THE MATTER OF A RESIGNATION APPLICATION PURSUANT TO SECTION 61**  
**BY PETER MCELHANEY**  
**A MEMBER OF THE LAW SOCIETY OF ALBERTA**

**Resignation Committee:**

Cal Johnson, Q.C., Chair (Bencher)  
Brett Code, Q.C. (Bencher)  
Louise Wasylenko (Lay Bencher)

**Appearances:**

Counsel for the Law Society – Karl Seidenz  
Peter McElhaney – Self-Represented

**Hearing Date:**

June 27, 2016

**Hearing Location:**

Law Society of Alberta at 500, 919 – 11<sup>th</sup> Avenue S.W., Calgary, Alberta

**RESIGNATION COMMITTEE REPORT**

**Jurisdiction, Preliminary Matters and Certain Exhibits**

1. On June 27, 2016, a Resignation Committee (Committee) convened at the office of the Law Society of Alberta (LSA) to hear the resignation application of Peter McElhaney.
2. Exhibits 1 through 4 consisting of the Letter of Appointment of the Committee, the Notice to Attend to Mr. McElhaney, the Private Hearing Application, the Notice and the Certificate of Status with the LSA established the jurisdiction of the Committee. Exhibit 6, being the Member's materials contained in the exhibit book, which had been provided in advance to the Committee, was entered into evidence with the consent of the parties. Exhibit 5, being the Member's Record and Exhibit 7, an estimated Statement of Costs, were added to the exhibit book as the hearing proceeded.

3. Pursuant to Exhibit 3, the Deputy Executive Director and Director, Regulation of the LSA, indicated that 9 individuals and 1 corporation had been served with the Private Hearing Application Notice but none of them applied to have the hearing held in private.

### **Section 32 vs. Section 61 Resignation Application**

4. The resignation application was originally commenced pursuant to section 32 of the *Legal Profession Act* (the "Act"). The Committee heard arguments from Mr. Seidenz. He made reference to several recent decisions where the issue of the appropriate application of the section arose. In those cases, the members in question were allowed to resign under section 32, notwithstanding outstanding conduct issues, where there were complications relating to the health of the members. Mr. Seidenz acknowledged the health issues disclosed in the Agreed Statement of Facts, being section D of Exhibit 6. He suggested these be considered as mitigating circumstances in allowing the application to go forward under section 32, rather than proceeding under section 61. Resignation applications under section 61 result in a deemed disbarment.
5. After considering the matter, the Committee acknowledged the mental health challenges encountered by Mr. McElhaney over a number of years. While this may be a mitigating factor, each case must be assessed on its merits. In this case, the Committee took into consideration the frankly egregious conduct and the considerable impact which Mr. McElhaney's conduct had on multiple parties and which had led as well to ALIA claims. The Committee was concerned that proper respect be accorded to the public interest issues arising in differentiating between section 32 and section 61. The Committee noted that it was not bound by previous resignation application decisions and in any event considered the circumstances of this case to be materially different than the precedents cited by counsel for the LSA. The Committee rejected the application for resignation under section 32.
6. After rendering the ruling, both Mr. McElhaney and counsel for the LSA requested that the matter proceed immediately as an application under section 61. The Committee determined that it had the necessary jurisdiction. The Committee was prepared to terminate the application if Mr. McElhaney wished more time to consider the section 61 application. The Chair confirmed with Mr. McElhaney that he wished to proceed and was doing so voluntarily and without coercion or duress.

### **Private Hearing Application**

7. Having determined to proceed pursuant to section 61, the Committee addressed the application of Mr. McElhaney under section 78(2) of the Act requesting that section C of the Agreed Statement of Facts be considered in private.

8. The Committee acknowledged the public interest in transparency, particularly after citations have been issued. The Committee noted that, in this case, no citations had been issued.
9. The Committee determined to accept Mr. McElhaney's application and directed that the portion of the proceedings relating to section C of the Agreed Statement of Facts be considered in private.

### **Agreed Statement of Facts**

10. Section D of Exhibit 6 consisted of an Agreed Statement of Facts signed by Mr. McElhaney and dated April 6, 2016. A Certificate of Independent Legal Advice, also dated April 6, 2016, was annexed to that Agreed Statement of Facts. The Agreed Statement of Facts and Certificate of Independent Legal Advice are attached as Schedules "A" and "B".
11. Mr. McElhaney's conduct was the subject of eight outstanding complaints, one of which was the subject of an investigation by the LSA. Two others are the subject of Assurance Fund claims pursuant to Rule 141 of the *Rules of the Law Society of Alberta* in the total amount of \$136,631.96. Mr. McElhaney's conduct is set out more particularly in Schedule "A".
12. The general nature of the complaints included the following allegations:
  - a) Engaging in a scheme to shield assets from Canada Revenue Agency by preparing, executing, and filing false and misleading court documents sworn by him and by others;
  - b) Misappropriating trust monies and failing to report trust shortages;
  - c) Failing to report writs that had been filed against him;
  - d) Failing to respond to the Law Society of Alberta when required to so; and
  - g) Failing to serve his clients, including failing to execute their instructions and failing to communicate with them.
13. Counsel for the LSA advised the Committee that Mr. McElhaney wished to speak to the admissions of guilt contained in paragraph 25 of that Agreed Statement of Facts, and specifically the admission contained in subparagraph a. that the Member had engaged in a scheme to shield assets from the Canada Revenue Agency and repair shortfalls in his trust accounting.
14. Mr. McElhaney addressed the Committee with respect to the background to his admission and to the struggle that he was having in his own mind in reconciling his admission with his intention at the time. After hearing submissions from Mr. McElhaney, the Chair asked whether he wished to withdraw or amend the Agreed Statement of Facts and the Member acknowledged to the Committee that in fact he did not wish to make any amendments.

15. Counsel for the LSA requested the Committee's approval of the Agreed Statement of Facts and the admissions of guilt set forth in that document.

### **The Undertakings**

16. In addition to the Agreed Statement of Facts, Mr. McElhaney had provided a written undertaking (Exhibit 6, Tab C) in which he set forth an undertaking to (i) cooperate with the LSA with respect to any future claims made against the Member, (ii) not appear on behalf of any person before any Court, tribunal, or administrative body performing any judicial or quasi-judicial function, (iii) not perform any service or activity of a paralegal nature, and (iv) (in paragraph 2) to pay any deductible with respect to any claim paid by the LSA Insurer and to pay the LSA any claim paid from the indemnity program fund. Counsel for the LSA indicated that Mr. McElhaney wished to speak to one of the paragraphs of his undertakings.
17. In respect of the undertaking in (iv) above, Mr. McElhaney candidly admitted he had very limited means and did not have any prospects for employment providing significant economic returns. He questioned whether he would be able to fulfill this undertaking if called upon.
18. After considering the matter and hearing submissions from counsel for the LSA, the Committee determined to allow paragraph 2 of the Undertaking to be removed and Mr. McElhaney was absolved from its performance.

### **Analysis**

19. In determining Mr. McElhaney's application to resign under section 61(1) of the Act, the Committee considered if it was in the best interests of the public to permit him to resign prior to resolution of the outstanding complaints.
20. If the complaint process led to the issuance of citations and ultimately to a hearing resulting in a finding of guilt in respect of those complaints, the most severe form of sanction would be disbarment. By Mr. McElhaney requesting resignation pursuant to section 61, the effect is essentially the same.

### **Decision**

21. Based on the evidence established by the Agreed Statement of Facts, the Committee determined that it was in the best interests of the public to accept the application of Mr. McElhaney to resign pursuant to section 61, effective June 27, 2016. The Committee accepted the undertakings made by Mr. McElhaney, which were integral in granting this application for resignation under section 61. The Committee further provided the approvals required by the LPA and Rules of the LSA, as requested by counsel for the LSA pursuant to paragraph 15 above.

## **Costs**

22. Counsel for the LSA advised that the estimated Statement of Costs (included as a part of Exhibit 6 of the exhibit book) contained an error. With the consent of Mr. McElhaney, Mr. Seidenz provided an amended Estimated Statement of Costs in the amount of \$156,496.99, which was entered as an exhibit by consent. The Committee directed that Mr. McElhaney pay all those costs prior to making an application for reinstatement as a member of the LSA.

## **Concluding Matters**

23. There shall be no Notice to the Attorney General.
24. A notice to the profession and the courts shall be given in accordance with the discretion of the Executive Director of the LSA.
25. The exhibits and this Report will be available for public inspection, including the provision of copies of exhibits for a reasonable copy fee, except that identifying information in relation to persons other than Mr. McElhaney will be redacted, section C of the Admitted Statement of Facts will be treated as private and further redactions will be made to preserve client confidentiality and solicitor-client privilege (rule 98(3)).

Dated at the City of Calgary, in the Province of Alberta, this 6<sup>th</sup> day of January, 2017.

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Cal Johnson, Q.C. (Bencher)

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Brett Code, Q.C. (Bencher)

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Louise Wasylenko (Lay Bencher)

## **Schedule “A”**

IN THE MATTER OF THE *LEGAL PROFESSION ACT*

- AND -

IN THE MATTER OF A RESIGNATION APPLICATION BY  
**PETER CHARLES McELHANEY**  
A MEMBER OF THE LAW SOCIETY OF ALBERTA

### **AGREED STATEMENT OF FACTS**

#### **A. BACKGROUND**

1. Peter Charles McElhaney (“**McElhaney**”) was admitted as a member of the Law Society of Alberta (the “**LSA**”) on June 27, 1986.
2. For the past 20 years, McElhaney operated a general practice in Red Deer, Alberta, as a sole practitioner.
3. On May 23, 2014, McElhaney’s membership status was changed from active to inactive. Three days later, on May 26, 2014, Brenda Edwards of the Edwards Law Office was appointed as the custodian of his practice.
4. On March 31, 2015, McElhaney was suspended for non-payment of membership fees. He continues to be suspended from the practice of law as of the date of this application.

#### **B. COMPLAINTS**

5. This application for resignation arises out of eight complaints (the “**Complaints**”) against McElhaney. No citations have been issued yet.

##### **1. CO[•] (Complainant: L.S.) (Former Client)**

###### **a. Facts**

6. On March 1, 2013, the LSA received a complaint from L.S., a former client, particulars of which are as follows:
  - a. On January 11, 2013, L.S. met and retained McElhaney to draft a demand letter in a small claims matter involving a loan to a co-worker. She left the original documents with McElhaney so he could draft the letter.
  - b. After two months had elapsed,
    - (1) McElhaney had not yet drafted the demand letter;
    - (2) The original documents provided to McElhaney had been lost; and

- (3) L.S. had telephoned and dropped by his office several times and was told that she would be contacted if and when the materials were located and the letter drafted.

7. Upon receipt of the complaint from L.S., the LSA took the following actions:

- a. On March 5, 2013, a Complaints Resolution Officer (a “**CRO**”) wrote to McElhaney requesting that he provide a response to the complaint;
- b. Between March 5, 2013 and June 7, 2013, the CRO attempted on at least 20 occasions to obtain a response from McElhaney by leaving voice messages, telephone messages, and discussing the matter with McElhaney himself. At various times, the CRO was told that:
  - (1) McElhaney was away from the office with the flu;
  - (2) McElhaney was at the hospital taking care of his elderly mother who had sustained a fall;
  - (3) McElhaney had misplaced the documents, but that efforts were underway to locate them;
  - (4) McElhaney was unable to contact L.S. because he did not have her address; and
  - (5) McElhaney would provide a response in the coming days.
- c. The CRO did not receive any written response to any of his inquiries.
- d. On July 19, 2013, the Manager-Conduct wrote to McElhaney requesting a formal response to the complaint pursuant to section 53 of the *Legal Profession Act* (the “**Act**”), including why he failed to respond to the CRO. The letter was delivered by registered mail on August 8, 2013. Having received no response, the Manager-Conduct sent a follow up letter on August 29, 2013.
- e. On September 29, 2013, McElhaney provided a written response to the complaint, particulars of which are as follows:
  - (1) He was retained to collect a \$1,830.00 that L.S. loaned to a co-worker at the Heritage Ranch in Red Deer. L.S. did not know the co-worker’s address;
  - (2) After meeting with L.S., he provided the materials and his notes to his assistant, who failed to open a new file;
  - (3) He was unable to locate his notes or the materials and had conducted a thorough search of his office, to no avail; and
  - (4) He offered to pay for half of the debt owing, namely \$930.00, to resolve the complaint;

- f. In this letter, McElhaney did not explain his failure to respond to the CRO.
- g. On October 3, 2013, L.S. provided comments about McElhaney's response, particulars of which are as follows:
  - (1) She did have the address of the debtor but had never been there personally;
  - (2) The actual amount owing was \$2,425.00; and
  - (3) She asked if McElhaney would be willing to pay for half of the debt, namely, \$1,212.50.
- h. On October 11, 2013, the Manager-Conduct forwarded L.S.'s letter to McElhaney. He did not immediately respond to this letter, or to two follow up letters dated October 29, 2013, and November 21, 2013.
- i. On December 6, 2013, McElhaney wrote to the Manager-Conduct to advise that he was willing to pay \$1,212.50 to settle the complaint. His letter was forwarded to L.S., who agreed to accept the payment. On December 20, 2013, L.S.'s acceptance letter was forwarded to McElhaney.
- j. McElhaney never responded to L.S.'s acceptance letter, despite reminder letters dated January 27, 2014; March 13, 2014; and March 14, 2014 (to which was attached a letter from L.S. seeking information about the settlement).
- k. As noted, on May 26, 2014, a custodianship order was obtained and McElhaney's practice was placed into the custody of Brenda Edwards.
- l. On August 6, 2014, McElhaney emailed the Manager-Conduct to advise her that he had been dealing with a serious case of depression since July 1, 2014, and provided a copy of a medical note dated August 6, 2014, from his general practitioner ("**GP**") confirming the diagnosis. The medical note also stated that McElhaney was "currently unable to make any large decisions or do any complex thinking." The GP suggested that the new medication would take approximately three weeks to be effective. Consequently, McElhaney requested an extension of time to provide a response and he was given until September 15, 2014, to do so.
- m. On September 13, 2014, McElhaney emailed the Manager-Conduct to provide her with an updated medical note from his GP, who advised that his initial reaction to the medication was not favourable and that he was still unable to make complex decisions.
- n. No further response was received from McElhaney about this complaint.

**b. Admissions**

- 8. McElhaney admits to the following conduct, which he also admits is conduct deserving of sanction as defined in section 49 of the Act:



- a. During his representation of L.S.:
  - (1) Failing to follow his clients instructions by failing to prepare a demand letter; and
  - (2) Losing his client's file materials.
- b. During the investigation of the complaint by the LSA:
  - (3) Failing to provide a written response to the complaint,
    - (a) For a period of more than six months between the initial request on March 5, 2013, and his letter dated September 29, 2013, despite numerous requests from the LSA and promises to do so by him;
    - (b) For a period of approximately two months between October 11, 2013 and December 6, 2013, despite written reminders from the LSA that a response was due; and
    - (c) For a period of more than two years between December 6, 2013, and the date of this Agreed Statement of Facts (the "**ASF**"), despite requests to do so.
  - (4) Failing to provide any response about his initial failure to respond to the LSA, despite being specifically asked to do so by the Manager-Conduct;
  - (5) Providing factually incorrect information in his response to the LSA, which information had to be corrected by L.S.; and
  - (6) Failing to follow through on a settlement proposal that he himself suggested to resolve the complaint.

**2. CO[•] (Complainant: C.A.) (Former Client)**

**a. Facts**

- 9. On April 4, 2013, the LSA received a telephone complaint from C.A., a former client, on behalf of herself and her sisters (the "**Clients**"), particulars of which are as follows:
  - a. On June 27, 2012, C.A. met and retained McElhaney to handle the distribution of her father's estate, the main asset of which was his residence in Lacombe (the "**Residence**"). Her father had passed away in 2009 and C.A. had been living in the Residence since his death. C.A. and her sister G.A. were the executrices of the estate. The beneficiaries of the estate were C.A., G.A., and a third sister.
  - b. During the first meeting with McElhaney, C.A. noted that the office was in disarray, which McElhaney blamed on an audit by the LSA, which he said occurred every seven years.

- c. The Residence was sold in August 2012 and the sale proceeds were deposited to McElhaney's trust account. C.A. was required to move out by September 20, 2012, with plans to move to Red Deer after the estate had been settled. In the meantime, she had rented a room and was storing her personal effects for a monthly fee.
- d. In December 2012, C.A. provided material for a final accounting to McElhaney, who advised that the information would be useful to prepare a proposal to all of the beneficiaries.
- e. After December 2012, all communications with McElhaney stopped without explanation. C.A. attempted many times to meet with McElhaney, to no avail.
- f. Before complaining to the LSA, C.A. emailed a letter to McElhaney, expressing her concerns but received no response from him.
- g. In April 2013, C.A. telephoned the LSA to register a complaint, and followed up with a written complaint on May 31, 2013.
- h. On May 10, 2013, after having tried to get in touch with McElhaney, G.A. attended at McElhaney's office in the morning, without an appointment, and was told to return that afternoon. When C.A. and G.A. attended later that day, they were told that McElhaney had left the office to work at home and that they could meet with him on May 13, 2013.
- i. On May 13, 2013, while C.A. was on route from Lacombe to attend the meeting, McElhaney called to request that she bring the report that she had provided to him the previous December. G.A. managed to find a copy of the report before the meeting. During the meeting, McElhaney told them that he had lost their file and assumed that it had been in a briefcase which had been stolen from the trunk of his car while it was being serviced. McElhaney told them that he had filed a police report about the theft of the briefcase and that they should not be concerned about identity theft. C.A. and G.A. decided to report the theft to the RCMP and were told that McElhaney had not filed a police report as he had stated.
- j. Over the next few days, McElhaney contacted C.A. and G.A. and requested copies of various documents that had already been given to him. After having been provided the materials, McElhaney advised them that he would be filing the materials and would then be in a position to send the proposal to all of the beneficiaries.
- k. On May 15, 2013, C.A. faxed additional documents to McElhaney, who advised that he would be filing the materials in Court later that day.
- l. C.A. attempted to contact McElhaney every day over the next week. McElhaney, however, ceased all communications.
- m. On May 31, 2013, C.A. filed a written complaint with the LSA about McElhaney's conduct. In her complaint, she noted that that delay in moving the matter forward

has caused financial hardship on the sisters, including preventing C.A. from moving to Red Deer and having to turn down full time employment there.

10. Upon receipt of the complaint, the LSA took the following actions:
  - a. Between April 8, 2013, and July 3, 2013, a CRO was in contact with McElhaney on at least 15 occasions in an attempt to resolve the complaint. At various times, the CRO was told that,
    - (1) He was taking steps to draft a letter of proposal for his clients, which letter was never prepared nor sent;
    - (2) He was at the hospital taking care of his elderly mother who had sustained a fall;
    - (3) He was taking care of the complaint and would provide a response to the LSA shortly; and
    - (4) He was planning on meeting with his clients and would deal with the matter shortly.
  - b. During this series of interactions, the CRO was never told that:
    - (1) McElhaney's briefcase had been stolen, along with his clients' file materials; or
    - (2) McElhaney was away from the office with the flu.
  - c. On July 3, 2013, the Manager-Conduct wrote to McElhaney requesting a formal response to the complaint pursuant to section 53 of the *Act*. The letter was delivered by registered mail on July 10, 2013.
  - d. On July 15, 2013, McElhaney provided a copy of a cover letter dated June 26, 2013, with attachments, addressed to his clients. He did not, however, provide a response to the complaint itself, promising by fax to "file a complete report by the end of the week."
  - e. On July 24, 2013, the Manager-Conduct sent a reminder letter to McElhaney requesting his response to the complaint.
  - f. On July 31, 2013, McElhaney called the Manager-Conduct to advise that could no longer comply with his clients' instructions and intended to withdraw from the matter. That same day, the Manager-Conduct received a letter from new counsel for McElhaney's clients advising that he had been retained to complete the reporting on the sale of the Residence.
  - g. On August 14, 2013, the Manager-Conduct sent another reminder letter to McElhaney requesting his response to the complaint.

- h. On August 22, 2013, McElhaney provided a response, particulars of which are as follows:
    - (1) Disagreements arose between himself and his clients about the correct dates of the accounting;
    - (2) He had transferred the file to new counsel; and
    - (3) The delay in preparing the accounting was because of his mother's illness.
  - i. On September 6, 2013, the Manager-Conduct sent a letter to McElhaney seeking his response to the substance of the allegations that had been made about him, including why he had not responded to the LSA in a timely manner.
  - j. On September 26, 2013, McElhaney spoke with the Manager-Conduct over the telephone. She explained that his duty to respond was not extinguished by having sent the file to new counsel. No response was received from McElhaney.
  - k. On February 27, 2014, C.A. wrote to the Manager-Conduct to advise that they had had attended a taxation hearing regarding McElhaney's accounts on February 25, 2014, but that McElhaney had not appeared. The hearing was rescheduled to May 27, 2014. This letter, along with the Manager-Conduct's response, was forwarded to McElhaney and a response to this allegation was requested. McElhaney never responded to this letter.
  - l. As noted, on May 26, 2014, a custodianship order was obtained and McElhaney's practice was placed into the custody of Brenda Edwards.
  - m. On May 30, 2014, C.A. wrote to the Manager-Conduct to advise that McElhaney again had not appeared at the taxation hearing. The hearing was rescheduled to June 19, 2014, which McElhaney did not attend. His fees were taxed in his absence.
  - n. As noted, in August and September of 2014, the LSA received letters from McElhaney's GP stating that McElhaney was suffering from a serious case of depression since July 1, 2014, and that McElhaney was unable to make any large decisions or do any complex thinking.
  - o. No further response was received from McElhaney about this complaint.
11. McElhaney asserts that,
- a. The Clients had retained him because they were unhappy with previous counsel;
  - b. Although the material submitted by the Clients for the accounting was vcomplete, it was not presented in any organized fashion by them. McElhaney had to prepare the estate accounting for the Clients;

- c. A dispute arose between McElhaney and the Clients about the propriety of certain expense claims made by them. Eventually, the relationship broke down to the point where it was no longer salvageable. McElhaney referred the Clients to new counsel for completion of the matter.

**b. Admissions**

- 12. McElhaney admits to the following conduct, which he also admits is conduct deserving of sanction as defined in section 49 of the *Act*:
  - a. During his representation of C.A. and G.A.:
    - (1) Failing to respond to multiple communications from clients;
    - (2) Failing to attend scheduled appointments with clients;
    - (3) Mishandling his client's file materials by keeping them in a briefcase in an unsecure location, namely, the trunk of his vehicle;
    - (4) Lying to his clients about,
      - (a) The disarray in his office, stating that it was because of a regularly-scheduled audit that occurred every seven years, when no such audit schedule exists; and
      - (b) Having filed a police report about the loss of the briefcase, when no such report had been filed.
    - (5) Failing to attend taxation proceedings without advising his clients that he would not be in attendance.
  - b. During the investigation of the complaint by the LSA:
    - (6) Failing to communicate and to follow through with promises made to the CRO to deal with the complaint during a period of almost three months between April 8, 2013 and July 3, 2013;
    - (7) Failing to provide a written response to the complaint,
      - (a) For a period of seven weeks between the initial request on July 3, 2013, and August 22, 2013, despite requests from the LSA and promises to do so by him; and
      - (b) For a period of more than two years between August 22, 2013, and the date of this Agreed Statement of Facts ("ASF"), despite requests from the LSA to do so.
    - (8) Failing to provide a response to the substance of the complaints, ever, despite being specifically asked to do so by the Manager-Conduct.

**3. CO[•] (Complainant: M.H.) (Former Client)**

**c. Facts**

13. On May 10, 2013, the LSA received a telephone complaint from M.H., a former client, which was then followed up with a written complaint, particulars of which are as follows:
  - a. M.H.'s husband died in August 2011. Shortly thereafter, she retained McElhaney to deal with finalizing the estate. McElhaney had also been retained to represent her following a Motor Vehicle Accident ("MVA") that M.H. had been involved with in March 2012; and
  - b. M.H. stated that after initially taking steps regarding the estate matter, McElhaney stopped returning her calls starting in early 2013 and failed to deal with the auto insurance company regarding the MVA. M.H. also complained that she had paid legal fees to McElhaney without having been provided accounts for services.
14. Upon receipt of the complaint, the LSA took the following actions:
  - a. On May 30, 2013, a CRO wrote to McElhaney requesting that he provide a response to the complaint. The CRO did not receive any response to this letter;
  - b. On July 30, 2013, the Manager-Conduct wrote to McElhaney requesting a formal response to the complaint pursuant to section 53 of the *Act*, including why he failed to respond to the CRO. The letter was delivered by registered mail on August 28, 2013. The Manager-Conduct sent a follow up letter to on September 17, 2013. McElhaney did not respond to any of these letters; and
  - c. As noted, in August and September of 2014, the LSA received letters from McElhaney's GP stating that McElhaney was suffering from a serious case of depression since July 1, 2014, and that McElhaney was unable to make any large decisions or do any complex thinking.
  - d. No response to the above-noted inquiries was received from McElhaney.
15. McElhaney asserts that,
  - a. He filed the documents to settle the estate of M.H.'s late husband, who had two prior marriages, but died intestate;
  - b. He filed a Statement of Claim seeking damages for the MVA but did not effect service on the Defendants. The Defendants' insurer advised him that it would not settle the motor vehicle accident claim until the estate administration issues had been settled. Both matters were later settled when the Custodian took over the practice; and
  - c. He charged M.H. \$700.00 but did not render a Statement of Account to M.H.

**d. Admissions**

16. McElhaney admits to the following conduct, which he also admits is conduct deserving of sanction as defined in section 49 of the Act:
- a. During his representation of M.H.:
    - (1) Failing to render any account for services.
  - b. During the investigation of the complaint by the LSA:
    - (2) Failing to provide any response whatsoever during the investigation of the complaint, despite repeated requests to do so.

**4. CO[•] (Complainant: S.S.) (Former Corporate Client)**

**e. Facts**

17. On July 24, 2013, the LSA received a complaint from a representative of a former corporate client (the “**Company**”), particulars of which are as follows:
- a. McElhaney was retained to represent the Company in an action against another company to recover approximately \$50,000.00 for the non-completion of work.
  - b. McElhaney was first contacted by the Company’s representative in February 2013, and was paid a retainer of \$1,000.00. On April 22, 2013, McElhaney provided the representative an opinion letter which stated that the next step would be to file an action. The Company’s representative gave McElhaney instructions to proceed with filing the action.
  - c. After having prepared the opinion letter, nothing further was done and no calls were returned to the Company’s representative for one month.
  - d. Upon receipt of the complaint, the LSA took the following actions:
    - (1) On August 9, 2013, a CRO wrote to McElhaney requesting that he provide a response to the complaint.
    - (2) On September 9, 2013, McElhaney provided his response, particulars of which are as follows:
      - (a) He met with the Company’s representative in January 2013 and advised that he would prepare an opinion letter after he had received advance payment of a retainer of \$1,000.00;
      - (b) On April 22, 2013, he received the retainer and, having already begun his legal research, he prepared and sent the opinion letter;
      - (c) In June 2013, he was instructed to proceed with the claim;

- (d) His mother became critically ill in July;
  - (e) He had injured his back with a dislocated vertebra; and
  - (f) He was not ready to move ahead with the litigation.
- (3) On October 2, 2013, the Company's representative provided his comments to McElhaney's response, particulars of which are as follows:
- (a) He had initially mailed a retainer cheque to McElhaney's office in March 2013, but the cheque was lost by McElhaney;
  - (b) He met with McElhaney on April 22, 2013, and provided him with a replacement cheque. McElhaney then provided him with the opinion letter and the representative instructed McElhaney to proceed with the litigation;
  - (c) McElhaney then failed to return telephone calls and voice messages. The representative managed to speak with McElhaney by dropping by his office unannounced. McElhaney informed him that the initial documents would be ready for filing in two days. No further steps were taken and as a result, the representative lodged the complaint with the LSA;
  - (d) On September 5, 2013, the representative dropped by McElhaney's office, at which time McElhaney stated he would be ready to file the action by September 10, 2013. The action was not filed by this deadline;
  - (e) On September 11, 2013, the representative left a message with McElhaney demanding that the retainer be returned. McElhaney returned this call stating the materials would be ready September 13, 2013. The action was not filed by this deadline; and
  - (f) The representative then never heard back from McElhaney.
- (4) On October 28, 2013, the Manager-Conduct wrote to McElhaney requesting a response pursuant to section 53 of the *Act*, including a response to the additional comments provided by the representative. This letter was sent by registered mail, but was returned unclaimed to the LSA.
- (5) On January 6, 2014, the letter was sent again by regular mail. A follow up letter was sent on February 5, 2014 and again on February 25, 2014. No response was received from McElhaney to this letter.
- (6) As noted, in August and September of 2014, the LSA received letters from McElhaney's GP stating that McElhaney was suffering from a serious case of depression since July 1, 2014, and that McElhaney was unable to make any large decisions or do any complex thinking.



(7) No further response was received from McElhaney about this complaint.

18. McElhaney asserts that:

- a. He had requested a \$25,000.00 retainer from the Company in order to proceed with the litigation, which retainer was never provided; and
- b. He has no knowledge as to whether the cheque provided by the company was a replacement for an earlier cheque. Nor does he have any knowledge or information about the loss of a cheque or its replacement.

**f.**      **Admissions**

19. McElhaney admits to the following conduct, which he also admits is conduct deserving of sanction as defined in section 49 of the Act:

- a. During his representation of the Company:
  - (1) Failing to respond to communications from the client after the meeting on April 22, 2013 and September 5, 2013; and
  - (2) Failing to render accounts for services to the client.
- b. During the investigation of the complaint by the LSA:
  - (3) Providing factually incorrect information in his initial response to the LSA, which information had to be corrected by the representative of the Company. In particular, that the retainer cheque received in April 2013 was a replacement cheque from one that had been sent in March 2013; and
  - (4) Failing to provide any response to the LSA inquiries since October 2013, including failing to retrieve correspondence sent to him by the LSA.

**5.**      **CO[•] (Complainant: L.S.) (Former Client)**

**g.**      **Facts**

20. On November 1, 2013, the LSA received a written complaint from L.S., a former client, particulars of which are as follows:

- a. On May 10, 2013, L.S. and a co-worker met with and retained McElhaney (the “**Clients**”) with respect to their claims of wrongful dismissal from a local business (the “**Employer**”).
- b. On May 25, 2013, the Clients telephoned McElhaney, who informed them that he would provide opposing counsel with a proposed settlement and stated that theirs was “an open and shut case”.

- c. From June to July 2013, the Clients attempted several times to contact McElhaney to ask about the progress of the case or to provide him with documents, without any response, including having appointments booked on days when his office was actually closed. When they did meet with him, McElhaney provided excuses as to why he had not worked on the file, including that his car had died, he had suffered an injury, and he was sick. They left several messages that were not returned.
- d. In August 2013, McElhaney advised the Clients that he needed all available documents before he could file a claim. Following this meeting, McElhaney's receptionist confided in L.S. about certain problems with her job as well as about McElhaney's personal issues. She also informed L.S. that McElhaney had not taken any steps on her file.
- e. On September 3, 2013, McElhaney scheduled an appointment with L.S., but when she arrived, the doors were locked. The appointment was rescheduled to September 5, 2013, at which time McElhaney stated he would prepare a demand letter within the next two weeks. When L.S. contacted his office on September 19, 2013, she was informed by the receptionist that McElhaney had not been in the office at all during the previous two weeks. During this conversation, the receptionist told L.S. she and L.S. had a friend in common at the Employer's office and that the receptionist had discussed L.S.'s file, including confidential information and details, with that friend.
- f. On September 25, 2013, L.S. went to McElhaney's office to attend a scheduled appointment, but the office doors were locked. The appointment was rescheduled for the following day and the same thing occurred.
- g. On September 30, 2013, L.S. received a call from her co-worker advising that McElhaney had withdrawn from their file because of the breach of confidentiality by his receptionist. McElhaney had not informed L.S. of his intention to withdraw as her lawyer until she called him to discuss the matter.
- h. On October 19, 2013, the co-worker had received her file materials from McElhaney. As of December 30, 2013, L.S. had not yet received her materials from him.
- i. Upon receipt of the complaint, the LSA took the following actions:
  - (1) On November 6, 2013, a CRO wrote to McElhaney requesting that he provide a response to the complaint. Having received no response, the CRO sent a follow up letter on November 28, 2013;
  - (2) On January 6, 2013, the Manager-Conduct wrote to McElhaney requesting a response pursuant to section 53 of the *Act*. This letter was sent by registered mail, but was never claimed and was returned to the LSA; and

- (3) On February 11, 2014, the letter was sent again by regular mail. A follow up letter was sent on March 18, 2014. McElhaney never responded to any of these letters.
  - j. As noted, in August and September of 2014, the LSA received letters from McElhaney's GP stating that McElhaney was suffering from a serious case of depression since July 1, 2014, and that McElhaney was unable to make any large decisions or do any complex thinking.
  - k. No further response was received from McElhaney about this complaint.
- 21. McElhaney denies most of the allegations and asserts that L.S. did not provide him with a retainer as requested. He further asserts that cheques were provided by the Clients, who then stopped payment on them, and that the Clients never provided him with original documents.

**h. Admissions**

- 22. McElhaney admits to the following conduct, which he also admits is conduct deserving of sanction as defined in section 49 of the Act:
  - a. During his representation of L.S. and her co-worker:
    - (1) Failing to attend scheduled appointments with clients; and
    - (2) Failing to return the file to L.S. after having informed her that he was withdrawing as her solicitor.
  - b. During the investigation of the complaint by the LSA:
    - (3) Failing to provide any response whatsoever, despite repeated requests to do so.

**6. CO[•] (Complainant: LSA)**

**i. Facts**

- 23. On April 17, 2014, the LSA opened an investigation into McElhaney's conduct based on information received from a bookkeeper who was assisting McElhaney regarding trust shortages in his trust account. During the course of the investigation, it became clear that McElhaney was also engaged in fraudulent conduct regarding his deceased mother's estate. The results of the investigation were set out in a report (the "**Investigation Report**") and were as follows:
  - a. McElhaney attempted to shield assets from the Canada Revenue Agency (the "**CRA**") to avoid paying a Writ of Enforcement that had been registered against him and to generate cash to make up for shortages in his trust account. Specifically:

- (1) November 28, 2013, McElhaney's mother passed away. He was the sole beneficiary and executor of her estate, part of which included a parcel of real property located in Fort Macleod (the "**Lands**"). He had also been appointed as her Attorney several years earlier pursuant to an Enduring Power of Attorney;
- (2) McElhaney was unable to liquidate the Lands from his late mother's estate without the risk of losing the funds to the CRA because of a Writ of Enforcement that had been registered against him some years earlier (the "**Writ**"). Specifically, on May 18, 2011, the CRA had registered the Writ in the amount of \$93,272.00 plus costs against him. McElhaney did not report the issuance of the Writ to the LSA as required pursuant to the Rules of the LSA;
- (3) In order to effect this transfer,
  - (a) On March 15, 2014, McElhaney prepared a Transfer of Land which purported to transfer the Lands from his mother to his spouse, with the intent of defeating the Writ by keeping the Property out of his possession. Specifically,
    - i. He stated on the Transfer of Land that he was acting as the agent for his mother pursuant to his Power of Attorney and signed the Transfer in this capacity;
    - ii. He mischaracterized his mother's status as "retired", when she was in fact deceased;
    - iii. He mischaracterized the transaction as being one for consideration; and
    - iv. He insisted that his legal assistant witness his signature to the Transfer of Land.
  - (b) On March 17, 2014, McElhaney prepared an Affidavit of Transferee in which his spouse swore falsely that the Transferor (his mother) was the person from whom the Property was acquired, when she and McElhaney knew that his mother had died months earlier. He pressured his spouse into signing this document despite its inaccuracies;
  - (c) On March 17, 2014, McElhaney prepared a *Dower Act* Affidavit, the purpose of which was to give the impression that his mother was still alive. In particular, he stated that he was acting on behalf of his mother as her agent and he characterized the status of his mother as being "not married", when he knew that she was deceased;
  - (d) On March 26, 2014, McElhaney prepared an Affidavit of Execution for his legal assistant in which she swore that she had personally

witnessed McElhaney's spouse sign the Affidavit of Transferee. McElhaney's legal assistant had not witnessed the signing of this document, but McElhaney insisted that she sign the document anyway; and

- (e) On April 2, 2014, McElhaney filed these documents at the land titles office. His plan was for his spouse to obtain a mortgage on the Property, which funds could be used to solve McElhaney's financial problems.
- (4) On May 6, 2014, after the investigation was started, the transaction was reversed and the Lands were returned to his mother's estate.
- b. During the course of the investigation, trust shortages were discovered. The Custodian appointed to manage McElhaney's practice engaged the services of an auditor to review and analyze the state of his trust accounts (the "**Audit Report**"), the results of which were as follows:
  - (1) The auditor discovered that a total of \$2,254.55 in general expenses (such as rent) had been paid from trust and had not been reimbursed by McElhaney. The auditor characterized these expenses as misappropriations of trust funds.
  - (2) The auditor also discovered a total of \$74,373.65 in trust shortages, which she characterized as instances of misappropriation:
    - (a) Transfers of trust funds (purportedly to pay for legal fees) in excess of the amount actually owing by a client, in the total amount of \$68,044.85; and
    - (b) Transfers of trust funds where there were insufficient funds in the trust account to cover the amount of the transfer (which effectively means that the funds were withdrawn from the pool trust monies created by other clients), in the total amount of \$4,074.25.
  - (3) In addition, the auditor discovered instances where clients owed money to McElhaney's firm, in the total amount of \$41,406.34, because
    - (a) Clients had not provided sufficient funds to cover all of the required trust withdrawals in their matter; or
    - (b) McElhaney had refunded to clients amounts in excess of what they were entitled to.
- c. During the course of the investigation, the LSA also learned that a former legal assistant had obtained an order from the Employment Standards Program in the amount of \$40,684.91. The Program had obtained a Writ of Enforcement against McElhaney and referred the file to collection agency. McElhaney did not report the issuance of this Writ against him as per the Rules of the LSA.

- d. After receipt of the Investigation Report, the LSA took the following actions:
    - (1) On July 10, 2014, the Manager-Conduct wrote to McElhaney requesting a formal response to the Investigation Report;
    - (2) As noted, in August and September of 2014, the LSA received letters from McElhaney's GP stating that McElhaney was suffering from a serious case of depression since July 1, 2014, and that McElhaney was unable to make any large decisions or do any complex thinking; and
    - (3) On July 20, 2015, the Audit Report was sent to McElhaney for review and comment, but no further response was received from him.
24. McElhaney asserts that although there was no formal response to the Investigation Report or the Audit Report, he was in regular contact with the LSA in respect of the trust audit throughout the process.

**i. Admissions**

25. McElhaney admits to the following conduct, which he also admits is conduct deserving of sanction as defined in section 49 of the *Act*:
- a. Engaging in a scheme to shield assets from CRA and repair shortfalls in his trust accounting, particulars of which are:
    - (1) Preparing and executing a false Transfer of Land dated March 15, 2014;
    - (2) Preparing and executing, a false *Dower Act* Affidavit dated March 17, 2014;
    - (3) Preparing a false Affidavit of Transferee dated March 17, 2014, and pressuring his spouse to sign it;
    - (4) Preparing a false Affidavit of Execution and directing his legal assistant to commission it despite not having witnessed the affiant sign it; and
    - (5) Filing the above-noted documents with the Land Titles Office with the intention that the Lands be transferred to his spouse so that a mortgage could then be obtained to pay back numerous trust shortages.
  - b. Regarding his handling of trust monies:
    - (6) Misappropriating a total of \$74,373.65 in client trust funds; and
    - (7) Incurring trust shortages and failing to report those trust shortages.
  - c. During the course of his practice:
    - (8) Failing to report two Writs of Execution filed against him in accordance with the Rules of the LSA;

- d. During the investigation of the complaint by the LSA,
  - (9) Failing to provide any response whatsoever to the letter from the Manage-Conduct dated July 10, 2014;
  - (10) Failing to provide any response to the trust audit documents.

**7. CO[•] (Complainant: LSA) (Assurance Fund Claim #1)**

**k. Facts**

26. On February 17, 2015, the directors of a numbered company (the “**Numbered Company**”) filed an Application for Compensation pursuant to Rule 141 of the Rules of the LSA, seeking compensation in the amount of \$125,606.85. Particulars of the application are as follows:
- a. In July 2012, McElhaney was retained by the Numbered Company to represent it in the sale a parcel of lands owned by it to an individual seller (the “**Transaction**”). The closing date was July 13, 2012;
  - b. The parcel of land was subject to a Restrictive Covenant that provided that only own dwelling house could be built on any individual parcel of land within the subdivision;
  - c. On July 5, 2012, McElhaney provided the required sale documents to counsel for the purchaser;
  - d. On July 9, 2012, the directors of the Numbered Company signed an Order for Payment directing that McElhaney was to distribute the sale proceeds by (1) paying his legal fees and disbursements, and (2) paying the balance of the proceeds to the Numbered Company;
  - e. On July 12, 2012, the day before the closing, counsel for the purchaser wrote to McElhaney to advise him that a representative of the Numbered Company had agreed to an amendment to the Restrictive Covenant that would allow for one owner of two adjacent lots to build a house on both of those lots. Counsel for the purchaser requested that McElhaney prepare and file an Amended Restrictive Covenant (“**ARC**”) containing these changes;
  - f. On July 13, 2012, McElhaney wrote to counsel for the purchaser to advise that he would draft the ARC, but that it would have to be circulated and signed by all other owners within the subdivision, and that would not occur before the closing date. Later that day, counsel for the purchaser wrote to advise that the cash to close had been deposited to McElhaney’s trust account (\$118,821.10), but that the funds were not to be disbursed to his client until ARC had been registered. When accounting for the previous deposit of \$10,000.00, a total of \$128,821.00 had been deposited to McElhaney’s trust account;
  - g. On July 17, 2012, McElhaney wrote to opposing counsel seeking his approval of the draft wording of the ARC;

- h. On July 19, 2012, the Land was transferred from the Numbered Company to the purchaser;
- i. On July 23, 2012, counsel for the purchaser wrote to McElhaney requesting an update about the ARC. He again reiterated that the sale proceeds were not releasable until McElhaney had provided him with confirmation that the ARC had been registered at the Land Titles Office;
- j. Shortly thereafter, McElhaney sent the documents to his client and requested his client's assistance in gathering the necessary signatures for the ARC;
- k. On October 22, 2012, McElhaney received the ARC from his client, to which was affixed all but one of the necessary signatures, that of the purchaser;
- l. On January 11, 2013, McElhaney sent a copy of the ARC to opposing counsel, indicating that all parties had signed it except for the purchaser;
- m. Shortly thereafter, the executed ARC was sent for filing at the Land Titles Office, where it was rejected and returned to McElhaney on January 28, 2013, because not all owners had executed it;
- n. On March 11, 2013, McElhaney sent documents regarding the ARC to an individual who had been missed during the first round of signatures and requested that he sign them and return them to McElhaney;
- o. On May 1, 2013, the ARC was again submitted to the Land Titles Office. This time it was rejected because a *Dower Act* Affidavit had been forgotten;
- p. On August 30, 2013, McElhaney again wrote to the individual who had been missed during the first round of signatures, requesting that he provide the *Dower Act* affidavit;
- q. McElhaney took no further action in this matter and the sale proceeds were never forwarded to the Numbered Company;
- r. In its Application for Compensation, the Numbered Company claimed compensation of \$125,606.85, which amounted to the sale proceeds minus McElhaney's legal fees and disbursements, as per the Order to Pay;
- s. In August 2014, after the appointment of Brenda Edwards as custodian of McElhaney's practice, the directors of the Numbered Company learned from her that there were insufficient funds in McElhaney's trust account to cover the amounts owing to them;
- t. On February 17, 2015, the Application for Compensation was filed. On May 20, 2015, the file handler with the Alberta Lawyers' Insurance Association forwarded the matter to the Manager-Conduct;
- u. On May 25, 2015, the Manager-Conduct opened a formal complaint with respect to McElhaney's conduct and took the following action:



- (1) On May 26, 2015, the Manager-Conduct wrote to McElhaney requesting a response pursuant to section 53 of the Act. This letter was sent by registered mail and delivered on June 3, 2015. McElhaney did not provide a response and a follow up letter was sent on June 18, 2015;
- (2) On July 22, 2015, a copy of the file, along with the auditor's analysis, was sent to McElhaney was provided to allow him to make full answer and defence; and
- (3) McElhaney never responded to these letters.

**l. Admissions**

27. McElhaney admits to the following conduct, which he also admits is conduct deserving of sanction as defined in section 49 of the Act:
- a. In his representation of the Numbered Company:
    - (1) Between October 22, 2013 and January 11, 2013, delaying the matter for 2½ months before sending the ARC to opposing counsel for his client's signature;
    - (2) Failing to verify that all signatures had been obtained before sending the ARC for filing at the Land Titles, including:
      - (a) in January 2013, by which time six months had elapsed since the closing date; and
      - (b) in May 2013, by which time ten months had elapsed since the closing date,resulting in an unreasonable delay in concluding this matter.
    - (3) Being responsible for a lengthy delay and not completing the necessary legal work to allow the sale proceeds to be released to them; and
    - (4) Misappropriating some or all of the sale proceeds.
  - b. During the investigation of the complaint by the LSA:
    - (5) Failing to provide any response whatsoever about the complaint when required to do so.

**8. CO[•] (Complainant: LSA) (Assurance Fund Claim #2)**

**m. Facts**

28. On May 13, 2015, C.G., the personal representative and sole beneficiary for the estate of K.L. (the "Estate") filed an Application for Compensation pursuant to Rule 141 of the

Rules of the LSA, seeking compensation in the amount of \$8,287.54. Particulars of the application are as follows:

- a. On June 19, 2012, K.J. died, leaving a holograph will naming C.G. as the personal representative and sole beneficiary of the Estate;
- b. On July 12, 2012, C.G. retained McElhaney to assist in winding up the Estate;
- c. On July 25, 2012, McElhaney wrote several letters to insurers and pension authorities making inquiries about the existence of insurance policies or survivors' benefits. McElhaney took no further action after this date;
- d. On May 6, 2014, McElhaney received a cheque in the amount of \$7,810.86 from one of the insurers, which sum represented the survivor's benefit owing to the Estate. This cheque was deposited to McElhaney's trust account on May 12, 2014. The trust account was with the Bank of Nova Scotia and was registered in the name of "Peter McElhaney Professional Corporation";
- e. The next day, McElhaney forwarded a cheque to C.G. in the amount of \$7,810.86 from the trust account of the Peter McElhaney Professional Corporation. Shortly thereafter, the cheque was returned NSF because there were insufficient funds in this account because of the shortages discussed previously;
- f. On May 13, 2015, the Application for Compensation was filed. On May 21, 2015, the file handler with the Alberta Lawyers' Insurance Association forwarded the matter to the Manager-Conduct;
- g. On May 25, 2015, the Manager-Conduct opened a formal complaint with respect to McElhaney's conduct and took the following action:
  - (1) On May 26, 2015, the Manager-Conduct wrote to McElhaney requesting a response pursuant to section 53 of the *Act*. This letter was sent by registered mail and delivered on June 3, 2015. McElhaney did not provide a response and a follow up letter was sent on June 18, 2015;
  - (2) On July 22, 2015, a copy of the file, along with the Audit Report discussed previously, was sent to McElhaney was provided to allow him to make full answer and defence; and
  - (3) McElhaney never responded to these letters.

**n. Admissions**

29. McElhaney admits to the following conduct, which he also admits is conduct deserving of sanction as defined in section 49 of the *Act*:
  - a. In his representation of the Estate:

- (1) Failing to take any action whatsoever to complete this estate after July 25, 2012; and
  - (2) Misappropriating some or all of the cheque proceeds, directly or indirectly, resulting in the insurance benefits not being paid to his client.
- b. During the investigation of the complaint by the LSA:
- (1) Failing to provide any response whatsoever about the complaint when required to do so.

**C.** [this portion redacted as directed by resignation committee on June 27, 2016]

**D.** COMPLAINT HISTORY

30. The LSA has recorded a total of 68 complaints against Mr. McElhaney, 17 of which are or were classified as formal complaints. Of these 17 complaints:
- a. Eight (8) are the subject matter of this resignation;
  - b. Seven (7) were dismissed by the Executive Director;
  - c. One (1) was dismissed by the Appeal Committee Panel; and
  - d. One (1) was withdrawn from by the complainant.

**E.** PRACTICE REVIEW HISTORY

31. Between October 29, 2003 and March 30, 2006, McElhaney participated in Practice Review pursuant to an informal referral by the Manager of Practice Review. The Practice Review file was closed with a comment that McElhaney had followed the recommendations of the panel.

**F.** SUMMARY

32. McElhaney is bringing this application to resign as a member of the LSA in order to,
- a. Avoid a lengthy hearing into the merits of these Complaints;
  - b. Avoid inconveniencing a number of witnesses and adjudicators by having to attend a lengthy hearing into the merits of these Complaints; and
  - c. Bring these long-standing matters to a conclusion.

**G.** INDEPENDENT LEGAL ADVICE

33. McElhaney agrees that,
- a. He has received independent legal advice regarding the implications of this application; and

- b. He has signed this Agreed Statement of Facts voluntarily and without any compulsion or duress.

**ALL OF THESE FACTS ARE ADMITTED TO THIS 6<sup>TH</sup> DAY OF APRIL, 2016.**

**“Peter Charles McElhanev”**

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**Peter Charles McElhanev**

**Schedule "B"**

**CERTIFICATE OF INDEPENDENT ADVICE**

I, [B.B.], of the City of Red Deer, in the Province of Alberta, DO HEREBY CERTIFY:

1. That I am a member of the Law Society of Alberta, and duly qualified to practice law in the Province of Alberta.
2. That I was on the 6<sup>th</sup> day of April, 2016, consulted in my professional capacity by PETER CHARLES McELHANEY, and I acted solely for him, and fully explained to him the provisions, nature and effect of the within Agreed Statement of Facts, his rights and liabilities under the terms and conditions of the same, and he appeared to understand the same.
3. That the said PETER CHARLES McELHANEY acknowledged to me that he understood the Agreed Statement of Facts and that he was signing such document voluntarily.

DATED at the City of Red Deer, in the Province of Alberta, this 6<sup>th</sup> day of April, A.D., 2016.

"[B.B.]"

[B.B.]
Barrister and Solicitor