

**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 NOBLE SHANKS**  
**A MEMBER OF THE LAW SOCIETY OF ALBERTA**

**Resignation Committee:**

Kent Teskey, Q.C., Chair (Bencher)  
Joshua Hawkes, Q.C., Committee Member (Bencher)  
Glen Buick, Committee Member (Lay Bencher)

**Appearances:**

Counsel for the Law Society – Karl Seidenz  
Noble Shanks, Self-Represented

**Hearing Date:**

May 19, 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 Exhibits**

1. On May 19, 2016, a Resignation Committee (Committee) convened at the office of the Law Society of Alberta (LSA) to conduct a hearing regarding an application by Mr. Noble Shanks to resign. Mr. Shanks and counsel for the LSA were asked whether there were any objections to the constitution of the Committee. There being no objections, the hearing proceeded.

2. At the commencement of the hearing, the Committee was advised that it was Mr. Shanks' intention to resign, pursuant to section 61 of the *Legal Profession Act*.
3. Exhibits 1 through 4, consisting of the letter of appointment of the Committee, the Notice to Solicitor pursuant to section 59 of the *Legal Profession Act*, the Notice to Attend to the Member and the Certificate of Status of the Member with the LSA established the jurisdiction of the Committee.
4. The Certificate of Exercise of Discretion pursuant to Rule 96(2)(b) of the *Rules of the Law Society of Alberta* ("Rules") pursuant to which the Deputy Executive Director and Director, Regulation of the LSA, determined that there were no persons to be served with a private hearing application, was entered as Exhibit 5. Counsel for the LSA advised that the LSA did not receive a request for a private hearing. Accordingly, the Chair directed that the hearing be held in public.
5. At the outset of the hearing, Exhibits 1 through 8, contained in the Exhibit Book which had been provided to the Committee in advance, were entered into evidence in the hearing with the consent of the parties.

#### **Citations**

6. Mr. Shanks faced the following citations which are reproduced in the Agreed Statement of Facts, which was marked as Exhibit 7D at the Hearing and is attached to this report as Schedule "A".
7. The Agreed Statement of Facts covers a wide range of conduct which amounts to serious conduct deserving of sanction. While it is extensively detailed in Schedule "A", it can be summarized into a number of discrete areas, notably,
  - a) Failing to advise the Law Society as to basic contact information and addresses for his practice;
  - b) Failing to respond to the Law Society on repeated occasions, including refusing to meet with LSA investigators;
  - c) Failing to serve his client, V.A., and to take appropriate steps to transfer the file to her new lawyer;
  - d) Failing to serve his client, M.Z., failing to implement the Client's Course of Action and failing to communicate with his client and opposing counsel; and
  - e) Failing to adequately preserve the \$2500 cash retainer, provided by M.Z.
8. It was upon the basis of these admissions that Mr. Shanks sought to resign, pursuant to section 61 of the *Legal Profession Act*. By this application, he has conceded the serious nature of the conduct in which he has engaged and that a sanction akin to disbarment is

required to protect the public interest.

9. We agree that a resignation under section 61 is an appropriate disposition of this matter and note that such a resignation carries the force of a disbarment under section 1(c) of the Act.
10. We note in mitigation that his resignation eliminates the need for the Law Society to prove the conduct in a hearing on the merits. This reduces stress and inconvenience to members of the public who would have been required to testify and avoids the need to expend the significant resources that would have required to conduct the hearing.
11. We recognize the difficult personal circumstances which informed many of these citations. We also note that Mr. Shanks served a marginalized community which caused his practice to be at greater risk for financial instability. While these factors provide context, they do not cause the Committee to find that anything other than a section 61 resignation would be appropriate.
12. Finally, we note that Mr. Shanks' application to resign provides swift and final resolution to the matters before the Law Society. By the application, he has provided cooperation with the Law Society in protecting the public interest by bringing his matter to a final conclusion. We also note his willingness to cooperate with the Law Society in its outstanding investigations.

### **Decision**

13. The Committee has considered the application made by Mr. Shanks and has noted the comments of Counsel for the Law Society. The Committee accepts the application for resignation under section 61 of the Act.
14. In allowing the resignation application, we find that Mr. Shanks' conduct is incompatible with the public interest and we order the termination of his membership with the Law Society of Alberta.

### **Decision Regarding Costs**

15. The Committee heard submissions from Mr. Shanks on the costs of the hearing and the investigation. On the basis of the representations made, it was decided to reduce the costs for Law Society Counsel from 112.5 hours to 75 hours. In the result, the final costs award was \$27,106.98. It was ordered that all costs be paid within 2 years of any successful reinstatement application.

## **Concluding Matters**

16. There shall be no notice to the Attorney General.
17. A notice to the profession and the courts will be issued in the discretion of the Executive Director, pursuant to the *Legal Profession Act*.
18. Details of this decision shall be noted in the roll, including the conditions in relation to Mr. Shanks' resignation and the statement of facts put before this panel.
19. 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 necessary to protect client information and solicitor client privilege will be redacted pursuant to Rule 98(3).

Dated at the City of Calgary, in the Province of Alberta, this 9<sup>th</sup> day of May, 2017.

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**Kent Teskey, QC - Chair**

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**Josh Hawkes, QC**

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**Glen Buick**

**SCHEDULE "A"**

IN THE MATTER OF THE *LEGAL PROFESSION ACT*

- AND -

IN THE MATTER OF A RESIGNATION APPLICATION PURSUANT TO SECTION 61 BY

**NOBLE E. SHANKS**

A MEMBER OF THE LAW SOCIETY OF ALBERTA

**AGREED STATEMENT OF FACTS AND ADMISSIONS**

**A. BACKGROUND**

1. I was admitted as a member of the Law Society of Alberta (the "LSA") on November 1, 1996.
2. On January 15, 2013, I was suspended from the practice of law for non-payment of membership fees and my law practice was placed into a custodianship in February 2013.
3. While active, I practiced as a sole practitioner, as an associate, and in partnership with others in various locations in Alberta, including Calgary and Cochrane.
4. I continue to be suspended as of the date of this application.

**B. COMPLAINTS**

5. This application for resignation arises out of three complaints against me, each of which will be discussed in turn, resulting in a total of 24 citations.

**1. CO[\*] (Complainant: LSA)**

**a. Complaint**

6. On November 20, 2012, an employee of the Membership Department of the LSA emailed [KW], Manager-Conduct, listing several instances over the previous months in which the LSA had attempted to contact me with no response. The employee asked [KW] to take steps to have an investigator contact me to obtain my current address.

**b.**      **Facts**

**i.**      **Chronology of Changes to My Business and Personal Addresses**

7.      The table attached as **Schedule “A”** provides a chronology of the changes to my business and personal addresses, particulars of which are discussed in this section.
8.      Between October 2005 and February 2012, I practiced as a sole practitioner in Calgary and rented office space at [•]in Calgary from an agency known as “[•]” (the “**CBS Address**”).
9.      On February 21, 2012, I vacated the CBS Address.
10.     On March 1, 2012, I set up an office at the [•], located at [•] (the “**NCC Address**”).
11.     I did **not** advise the LSA of the move from the CBS Address to NCC Address.
12.     On April 12, 2012, I was evicted from the NCC Address and was without any office space for the next month.
13.     On or about May 15, 2012, I set up an office with a firm named “[•]” located at [•] in Calgary (the “**YL Address**”).
14.     On May 28, 2012, I filed a Member Information Update Form (“**MIUF**”), notifying the LSA of the move to the YL Address and of my new contact information. The most recent information on file with the LSA was from 2011 and indicated that my last-known office address was the CBS Address and not the NCC Address.
15.     In or about July 15, 2012, I moved from my personal address in Cochrane (my “**Cochrane Address**”) to Morley (my “**Morley Address**”). I did not notify the LSA of this change until five months later, when I filed an MIUF on January 11, 2013.
16.     In September 2012, I moved out of the YL Address and worked out of my Morley Address. I believe that I notified the LSA of this change shortly thereafter, but I only I filed an MIUF on January 11, 2013.
17.     At all times material to these complaints, my email address was [•] (the “**Yahoo Email Address**”).

**ii.**      **Previous Discipline Hearing**

18.     On November 14, 2013, I was found guilty by a Hearing Committee of several citations, one of which provided as follows:
  8.      It is alleged that you failed to keep the Law Society informed of your current business and personal addresses, and that such conduct is conduct deserving of sanction.

19. The evidence before the Hearing Committee in support of the above-noted citation consisted of instances where I failed to keep the LSA informed of my business and personal addresses after May 28, 2012, which is the date of the first MIUF discussed previously.
20. It is my understanding that the LSA will not seek admissions during these proceedings about any findings that were made by the Hearing Committee in November 2013.

*iii. Attempts by LSA to Contact Me*

21. On March 28, 2012, N.C., an employee with the Membership Department, emailed me at my Yahoo Email Address to advise me that the 2012 annual assessment was due on March 15, 2012, and that the LSA had not received my most recent MIUF, which was also due on March 15, 2012. N.C. called me that same day and we discussed the deadline for payment of the annual assessment, which was April 2, 2012.
22. On April 18, 2012, C.M., an employee with the Membership Department, wrote to me at the CBS Address and requested that I return the MIUF form for 2012. Her letter was returned unclaimed because I was then no longer at the CBS Address and I had failed to advise the LSA of that fact.
23. On April 25, 2012, S.S., an employee with the Membership Department, emailed me at my Yahoo Email Address to advise me C.M.'s April 18 letter had been returned unclaimed and asked me to provide her with my updated contact information. I did not respond to this email.
24. On May 11, 2012, a reminder email was sent to my Yahoo Email Address, to which I did not reply.
25. On May 16, 2012, the Deputy Executive Director of the LSA wrote a letter to me at the CBS Address requesting that I provide the LSA with my Continuing Professional Development Plan Declaration for 2012 (the "**CPD Plan Declaration**"), which was due on March 15, 2012. I did not respond to this letter because I was no longer at the CBS address and had failed to advise the LSA of my new business address, which was by then the YL Address.
26. On May 17, 2012, C.M., an employee with the Membership Department, emailed me at my Yahoo Email Address to advise me that the LSA would be sending all information to my Cochrane Address. She reminded me about the unpaid membership assessments and about the missing MIUF. I did not respond to this email, although I did submit the MIUF on May 28, 2012.

*iv. LSA Investigation*

27. On November 22, 2012, [K.W.], the Manager-Conduct, sent me a letter by registered mail to my Cochrane Address, with is the address that the LSA had on file for me, requesting a response to the employee's complaint of November 20, 2012, pursuant to section 53 of the *Legal Profession Act* (the "**Act**"). The letter was returned unclaimed on December 17, 2012, and was forwarded to me that day by email to my Yahoo Email Address. I did not respond to the email.
28. On December 4, 2012, a formal investigation was ordered into my conduct. That day, [J.D.], an investigator with the LSA, emailed me at my Yahoo Email Address requesting that I contact him regarding this matter. I did not respond immediately to his email.

29. On December 6, 2012, [J.D.] followed up by emailing me at my Yahoo Email Address, with another meeting request, noting that this request was being made pursuant to section 55(2) of the *Act*. I did not respond immediately to his email because I did not have a working practice or computer.
30. [J.D.] repeated his requests to meet on December 12, 2012; December 27, 2012; and January 3, 2013, with emails to my Yahoo Email Address.
31. I responded to [J.D.] from my Yahoo Email Address on January 3, 2013, and was interviewed by him on January 11, 2013.
32. During the interview, I responded to several questions and advised [J.D.] that I was unaware of any clients who had been disadvantaged by my failure to keep them apprised of my current address. During this interview, I provided [J.D.] with a current MIUF.
33. On January 15, 2013, I was suspended by the LSA for non-payment of fees.
34. On February 4, 2013, [J.D.] became aware of a complaint by a former client of mine, V.A., who had been trying to get in touch with me for some time (to be discussed *infra*).
35. On February 5, 2013, I informed [J.D.] that I planned on turning over my remaining files to L.H., a lawyer, and that I would meet with [J.D.] after doing so.
36. Following our interview on January 11, 2013, and following his interviews with M.L. and V.A., [J.D.] had additional questions for me and emailed a request to meet to my Yahoo Email Address on February 7, 2012. I did not respond immediately this email. [J.D.] repeated his request by email to my Yahoo Email Address on February 12, 2013. The next day, I contacted [J.D.] by telephone, advising him that I would call him shortly to set up a meeting with him, which I failed to do.
37. [J.D.] followed up with his requests by email to my Yahoo Email Address on February 14, 2013, and again on February 21, 2013. I never responded to his emails, nor did I respond to any further communications from the LSA about this complaint.
38. The investigation was completed on February 25, 2013, and an Investigation Report was generated.
39. On March 19, 2013, [J.D.] hand-delivered the binder containing the Investigation Report to the office of L.H. I picked up the binder several weeks later on April 10, 2013. I did not provide the LSA with any comments about the Investigation Report.

c.      **Citations**

40. On December 17, 2014, a Conduct Committee Panel (“CCP”) issued the following citations:
  1. It is alleged that Mr. Shanks failed to furnish to the Executive Director in writing the current address of his place of practice contrary to Rule 42(1) and such conduct is deserving of sanction;
  2. It is alleged that Mr. Shanks failed to furnish to the Executive Director in writing his current residential address and current residential phone



number contrary to Rule 42(5) and such conduct is deserving of sanction;

3. It is alleged that Mr. Shanks failed to reply promptly and completely to communications from the Law Society and such conduct is deserving of sanction;
4. It is alleged that Mr. Shanks failed to be candid in his response to the Law Society and such conduct is deserving of sanction;
5. It is alleged that Mr. Shanks failed to comply with a direction to meet with the investigator and such conduct is deserving of sanction.

**d. Admissions**

41. I admit to the following conduct, which I also admit is conduct deserving of sanction as defined in section 49 of the *Act*.

Citation 1: Failure to Furnish Current Business Address

42. Between February 21, 2012 and May 15, 2012, I failed to advise the LSA of my office move from the CBS Address to the NCC Address, including the period of approximately one month where I without an office address, contrary to *Rule 42* of the *Rules* of the LSA.

Citation 2: Failure to Furnish Current Residential Address

43. I understand that the LSA will not be calling evidence in support of this citation, which was dealt with during the hearing on November 14, 2013.

Citation 3: Failure to Reply to LSA Communications

44. I failed to respond promptly or completely to communications from the LSA, contrary to *Rule 6.01(1)* of the *Code of Conduct* of the LSA (the “*Code*”), particulars of which are as follows:
- a. Between February 21, 2012, and May 28, 2012, I failed to respond to seven communications from LSA staff (letters and emails);
  - b. I failed to respond to an email dated December 17, 2012, from [K.W.], in which she requested a response to this complaint pursuant to section 53 of the *Act*;
  - c. Between December 4, 2012, and January 3, 2013, I failed to respond promptly to five requests for an interview made pursuant to section 55 of the *Act* by [J.D.]; and
  - d. Between February 13, 2013, and February 21, 2013, I failed to respond to two requests for an interview made pursuant to section 55 of the *Act* by [J.D.].

Citation 4: Failure to Be Candid to LSA

45. I do not admit that I failed to be candid with [J.D.] during my interview on January 11, 2013, when I stated that no clients had been disadvantaged by my conduct when I knew that I had not kept V.A. informed of my current contact information. I acknowledge, however, that there is a risk that a Hearing Committee may come to that conclusion if the facts and evidence referred to in this Agreed Statement of Facts were to be considered at a hearing of this complaint.

Citation 5: Failure to Comply with a Direction to Meet

46. I failed to comply with directions made pursuant to section 55(2) of the *Act* to meet with [J.D.] despite a promise to do so on February 13, 2013.

**2. CO.2013.0243 (Complainant: V.A.) (Former Client)**

**a. Complaint**

47. On January 29, 2013, the LSA received a complaint from V.A., a former client of mine, details of which included that I had failed take steps to move her action forward in a diligent manner, that I had failed to keep her informed of my whereabouts, and that I had failed to transfer her file materials to another lawyer who had agreed to review the matter.

**b. Facts**

48. In or about the start of October 2009, V.A. approached me to assist her in an action against a studio that had performed a metal piercing on her daughter's upper lip, leaving a scar. Her daughter was aged 15 at the time and V.A. was seeking damages from the defendant for having performed the piercing without the consent of an adult, alleging that the scar had impaired her daughter's modelling career.
49. On October 29, 2009, I filed a Statement of Claim on behalf of V.A., who was named as the sole Plaintiff (the "**Action**"). The Statement of Claim had been drafted in conjunction with V.A. and was served shortly thereafter. V.A.'s daughter was omitted as a Plaintiff at the insistence of V.A. and contrary to my advice to her. The address for service on the Statement of Claim was my CBS Address.
50. A Statement of Defence was filed and served on November 9, 2009.
51. On December 9, 2009, V.A. swore an Affidavit of Records, which was not served on counsel for the Defendant until February 4, 2010, almost two months later. The Defendant's Affidavit of Records was filed and served the next day, on February 5, 2010.
52. After service of the Defendant's Affidavit of Records, no steps were taken to advance the Action until the Questioning of the parties, almost two years later, although there were communications between counsel during that period.

53. During this period, V.A. provided secretarial/paralegal services to me in an unrelated legal matter by assisting me in compiling a trial book. At the time, V.A. was in training to be a paralegal. She rendered an account for services on May 12, 2011, which I did not pay, instead stating that I would consider her work as a contribution to the legal fees incurred in the Action. Another account was rendered in a separate matter on July 12, 2012, with a similar outcome.
54. On January 26, 2012, I questioned the representative of the Defendant. Opposing counsel then questioned V.A. and requested ten undertakings from her, one of which was for her daughter's medical records.
55. On March 16, 2012, I wrote to V.A.'s family physician requesting that all medical records arising out of the treatment of V.A.'s daughter be provided to me. The return address was the NCC Address.
56. As noted, in May 2012, I moved my office from the NCC Address to the YL Address. I did not advise V.A. of this change of address or contact information.
57. On June 15, 2012, I followed up with the physician to obtain the medical records, which had been delivered to the NCC Address and which needed to be delivered to the YL Address.
58. On September 13, 2012, V.A. emailed me at my Yahoo Email Address asking me if I had obtained the medical records from the family physician. She also noted that she had left voice messages for me to call her. I did not respond to her email or to her voice messages.
59. Shortly thereafter, V.A. consulted with another lawyer (the "**New Lawyer**") about transferring her file.
60. On October 16, 2012, the New Lawyer faxed a file transfer request to me at the NCC Address (which I had vacated in April 2012). Soon thereafter, the New Lawyer received a fax from the NCC advising her that I was no longer there and had not left a forwarding address.
61. On October 17, 2012, the New Lawyer attempted to call me at the YL telephone number (which was listed on the LSA website) and was advised that I no longer worked there (having vacated in September 2012). She was provided with my Yahoo Email Address, to which the transfer request was sent. I did not respond to her email.
62. On November 20, 2012, the New Lawyer's assistant followed up with another email to my Yahoo Email Address, to which I did not respond.
63. On December 11, 2012, V.A. attempted to contact me by telephone at the YL Address telephone number. She was told that I had not worked there for several months and was given my Yahoo Email Address.
64. On December 12, 2012, V.A. emailed me at my Yahoo Email Address, to which I did not respond. She followed up on December 28, 2012, and again on January 23, 2013, and again I did not respond.
65. As noted, V.A. submitted a Lawyer Complaint Form on January 29, 2013.

66. On January 30, 2013, the Manager-Complaints wrote to me at my Cochrane Address requesting a response to V.A.'s complaint pursuant to section 53 of the *Act*. I did not respond because I had by then moved to Morley and the letter was returned unclaimed on February 19, 2013.
67. On February 20, 2013, and again on February 28, 2013, the Manager-Complaint's letter was emailed to me at my Yahoo Email Address. I did not respond to either email.
68. On February 4, 2013, V.A. spoke with [J.D.], an investigator with the LSA, about obtaining the file from me. [J.D.] contacted me and requested that I provide the file to him. I advised [J.D.] that I had instructions to provide the file directly to the New Lawyer and, on February 6, 2013, I sent the file materials to the New Lawyer, without a cover letter or trust conditions, although I believe that I provided a hand-written note with the file.
69. On April 10, 2013, after having reviewed file materials, the New Lawyer advised V.A. that she was unwilling to assume conduct of the litigation, noting in part that the Statement of Claim should have been brought in her daughter's name although there was still time to add her daughter as a party to the Action.
70. On April 10, 2013, V.A. emailed me at my Yahoo Email Address asking if I or the custodian of my practice could negotiate a settlement on her behalf. I responded from the Yahoo Email Address, offering to assist her, despite being suspended at the time.
71. On April 22, 2013, V.A. asked the New Lawyer to prepare the file for pickup. The New Lawyer advised V.A. that she had accepted the file materials on her undertaking to me that she would return the file materials directly to me. The New Lawyer emailed me at my Yahoo Email Address and requested that I vary the undertaking and allow her to provide the file directly to V.A. I did not respond to this request, nor did I respond to a follow up email request made on May 1, 2013.
72. On May 8, 2013, the New Lawyer contacted [J.D.] and sought his assistance in contacting me about varying the undertaking. On May 29, 2013, I released the New Lawyer from her undertaking by email from my Yahoo Email Address.
73. V.A. picked up the materials from the New Lawyer on or about May 29, 2013. She then finalized the undertakings given during Questioning in January 2012, and negotiated a settlement with the Defendant studio.

c.      Citations

74. On December 17, 2014, a CCP issued the following citations against me:
  6. It is alleged that Mr. Shanks failed to serve his client and that such conduct is deserving of sanction;
  7. It is alleged that Mr. Shanks failed to transfer his client's file to another lawyer in a reasonable and timely manner and that such conduct is deserving of sanction;
  8. It is alleged that Mr. Shanks failed to respond to the Law Society and that such conduct is deserving of sanction.

d.      Admissions

75.      I admit to the following conduct, which I also admit is conduct deserving of sanction as defined in section 49 of the *Act*.

Citation 6: Failure to Serve Client

76.      I failed to serve V.A. in a competent, thorough, or prompt manner, contrary to *Rule 2.01(1)* of the *Code*, particulars of which are that:
- a.      Delays occurred in moving the Action forward,
    - (1)      For a period of almost two years, between February 4, 2010, and January 26, 2012 (the date of Questioning of the Parties), although there were communications between counsel during this period of time; and
    - (2)      At all after the Questioning of the Parties on January 26, 2012, although there were communications between counsel during this period of time.
  - b.      I failed to keep V.A. apprised of the changes to my office address
    - (1)      When I moved from the NCC Address to the YL Address; and
    - (2)      When I moved from the YL address to the Cochrane Address.
  - c.      I failed to respond to V.A.'s telephone and email communications for a period of seven months, between September 13, 2012 and April 18, 2013.

Citation 7: Failure to Transfer File

77.      I failed to transfer V.A.'s file to the New Lawyer in a reasonable and timely manner, contrary to *Rule 2.07(6)* of the *Code*, particulars of which are that I delayed in transferring the file for a period of four months, between October 17, 2012, and February 6, 2013, and then only after the intervention of the LSA.

Citation 8: Failure to Respond to the LSA

78.      I failed to respond to the LSA, contrary to *Rule 6.01(1)* of the *Code*, particulars of which are that,
- a.      I failed to respond to the Manager-Conduct's emails of February 20, 2013, and February 28, 2013, to which was attached her letter requesting a response to V.A.'s complaint pursuant to section 53 of the *Act*; and
  - b.      I failed to provide a response to V.A.'s complaint, although I cannot recall why I would not have done so.

**3. CO.2013.0011 (Complainant: M.Z.) (Former Client)**

**a. Complaint**

79. On July 16, 2013, the LSA received a complaint from M.Z., a former client of mine, details of which included that despite having been paid a retainer of \$2,500.00 in cash, I had done nothing to move her divorce action forward and I had been difficult to contact.

**b. Facts**

80. On January 20, 2012, I met with M.Z. at my CBS Address for a consultation regarding her intention to file for divorce from her husband. After the meeting, I asked M.Z. to take the weekend to consider matters and to advise me on Monday if she wished to retain me.

81. On January 23, 2012, M.Z. called me and confirmed that she wished to retain me. I told her that I would require a \$3,000.00 retainer to get started.

82. On February 1, 2012, M.Z. attended at the CBS Address and provided me with a money order in the amount of \$3,000.00. I called her later that day and advised her that I was having a problem with my bank and asked if she could pay the retainer in cash. M.Z. retrieved the money order from my office and exchanged it at her bank. The bank, however, would only provide her with a total of \$2,500.00 in cash. She returned to the office and dropped off the \$2,500.00 to my receptionist, who gave her a receipt (the “**Cash Retainer**”).

83. Between February 12, 2012, and March 5, 2012, M.Z. left five voice messages with me. I did not respond to any of them.

84. During the course of the investigation into M.Z.’s complaint, the LSA learned the following:

- a. I maintained two bank accounts at the Bank of Montreal, namely, a Business Account and a Trust Account;
- b. I did not deposit the Cash Retainer to the Business Account or to the Trust Account;
- c. Pursuant to a Writ of Enforcement dated December 11, 2011, a Garnishee Summons in the amount of \$16,288.31 had been filed on behalf of the Bank of Montreal over all deposit accounts, including the Business Account and the Trust Account;
- d. On February 15, 2012, the balance of the Business Account was removed by the Bank of Montreal pursuant to the Garnishee Summons;
- e. I failed to make the lease payments on the CBS Address during the months of January and February 2012, although I advised the owner of CBS that I had to vacate because I had no money to pay the rent;
- f. On February 21, 2012, I vacated the CBS Address, leaving \$3,969.51 in outstanding rent;
- g. On February 22, 2012, I registered a new business name, “Shanks Law Office”, with the Alberta Corporate Registry;

- h. On February 24, 2012, I opened a bank account with Canadian Western Bank (the “**CWB Account**”), into which I deposited a cheque for \$1,500.00 from a client dated February 3, 2012; and
  - i. The Cash Retainer was not deposited to the CWB Account, which was closed on March 23, 2012.
85. On March 5, 2012, M.Z. contacted the receptionist at the CBS Address and was told that I had moved without leaving a forwarding address or telephone number. By then, I had moved to the NCC Address but had failed to advise M.Z. of this fact.
86. On March 8, 2012, M.Z. sent a message to me via Facebook and asked me to contact her, which I did the next day. During that conversation, I told M.Z. that I had moved to the NCC Address and gave her my telephone number and personal cell number.
87. After waiting for two months, M.Z. attempted to contact me eight times between May 7, 2012, and June 13, 2012. I did not return any of her messages.
88. As noted, in or about May 15, 2012, I had moved my office from the NCC Address to the YL Address. I did not advise M.Z. about this change of address, nor did I provide her with my new fax number or telephone number.
89. On June 13, 2012, M.Z. contacted the LSA and was provided with my contact information at the YL Address, along with my new telephone and fax numbers. M.Z. then got in touch with me and asked me to proceed with her divorce litigation. I confirmed her instructions the next day.
90. Between June 14, 2012, and August 2, 2012, M.Z. tried to contact me seven times, by voicemail, by fax, by facebook messaging, and by leaving a message with the receptionist at the YL Address. M.Z. requested that I refund the Cash Retainer by transferring the funds to her new divorce lawyer. I did not respond to these messages.
91. As noted, on July 16, 2013, the LSA received a complaint from M.Z.
92. On August 2, 2012, M.Z.’s new lawyer wrote to me and requested that all funds held in trust be transferred to her.
93. On August 13, 2012, I acknowledged receipt of the new lawyer’s letter, promising to reply shortly, but never did.
94. Neither M.Z. nor her new lawyer ever received a return of the Cash Retainer and M.Z. has filed an Assurance Fund claim against me which has yet to be resolved. I have not provided M.Z. with an accounting of legal fees incurred on her behalf.

**c. LSA Investigation**

95. On July 24, 2013, the Manager-Complaints wrote to me requesting a response to M.Z.’s complaint pursuant to section 53 of the *Act*.
96. On August 21, 2013, I provided a written response, noting that I only had a dim recollection of M.Z. and that I was in the middle of moving and packing boxes when the Cash Retainer was

received, and suggested that it had been lost during the move. I also noted that my computer and financial information had been destroyed in the flood that occurred in June 2013.

97. On October 12, 2013, following an email to the Yahoo Email Address from [J.D.], I reported that I was unable to locate M.Z.'s file.
98. On October 17, 2014, [J.D.] emailed me at the Yahoo Email Address requesting that I meet with him concerning M.Z.'s complaint. He repeated the request a few days later.
99. On October 21, 2014, the Executive Director of the LSA issued a direction to investigate my conduct pursuant to section 53(3)(b) of the *Act*, a copy of which was emailed to me at the Yahoo Email Address.
100. On October 22, 2014, I replied by email, as follows:

I do not care to meet with you because I have nothing further to add to the reply that I gave to the Law Society regarding this matter. My memory is no better now than it was well over a year ago when it was made and certainly not better now that it has been almost three years since my brief involvement with [M.Z.].

Not only do I have nothing further to add, I do not care to subject myself to a further interrogation with you whose obvious intent is to gather statements to be used in a bias attempt to cause harm to my standing before the Law Society.

I believe the best way to resolve this matter is to give [M.Z.]'s allegation that money has been paid the benefit of the doubt and ascribing this loss to a mishap of office procedure pay [sic] her claim she made to ALIA.

101. Following two more emails from [J.D.], I replied on October 26, 2014, as follows:

You e-mailed me last at 3:43 pm Oct 22 and complained of no response by email at 7:44 am Oct 24. I again remind you of how long it took the Law Society to respond to my July 2013 reply. In any event, I am leaving out of town on a trip. I will return early next week. In the interim I will consider your demand and my response. I expect I will agree to a phone call upon my return, although I do not see how it will do any good. By the way what you have is a direction to look into the matter not an Order.

102. Between November 5 and January 6, 2015, [J.D.] emailed me at my Yahoo Email Address six times, asking each time that I cooperate with the investigation. These emails included,
  - a. A warning that I could be sanctioned for failing to cooperate with an investigation by the LSA (November 10, 2014) and that I may be found to be ungovernable for failing to reply (December 10, 2014, and January 6, 2015);
  - b. A formal request under Part 3 of the *Act* to produce records (November 10, 2014); and
  - c. A list of the citations being considered by the LSA (November 14, 2014).
103. On January 20, 2015, [J.D.] sent me another formal request pursuant to Part 3 of the *Act* by via Canada Post.
104. On January 22, 2015, [J.D.] obtained an alternate e-mail address for me, namely, [•] the "**Gmail Email Account**", to which he re-sent the six previously unanswered e-mails.



105. On January 26, 2015, I responded to Mr. Dooks, as follows:
- I just received your letter (via Canada Post) dated January 20, 2015 late last Friday. I will be communicating directly with office of the Executive Director. I want nothing further to do with you. Do not contact me again.
106. On January 26, 2015, [J.D.] again emailed me at the Gmail Email Account and requested that we meet for an interview.
107. On February 4, 2015, [J.D.] sent me another formal request pursuant to Part 3 of the *Act* by Canada Post. That day, I emailed him and agreed to meet the next day at a Humpty's restaurant at the intersection of Highways #1 and #22. [J.D.] attended, but I did not. I apologized by email the next day, advising that my assistant had confused the dates. We rebooked the meeting for February 10, 2015, which I cancelled. I then failed to respond to three additional meeting requests from [J.D.].
108. The investigation report into my conduct was completed on March 18, 2015, and as per standard procedure, the LSA sought to obtain any comments that I might have about the report before the matter was referred to a CCP. On April 21, 2015, [J.D.] travelled to Morley to deliver an encrypted DVD containing the report to me. I was not home at the time so [J.D.] left the DVD with my spouse's aunt, who lives next door to me. [J.D.] then called me to let me know that he had dropped off the DVD to my spouse's aunt, and I told him: "Don't you guys ever give up? Why don't you just fuck off" and ended the call. I responded in this fashion because I was angry with [J.D.] for having dropped off the DVD with my spouse's aunt, which I thought also included confidential documents that could have been reviewed by her.
109. During the course of the investigation, [J.D.] discovered that the following Writs of Enforcement filed against me had not been reported to the LSA:
- a. Q9701-11745, for \$7,028.00 (Garnishee Summons for \$7,787.00);
  - b. Q0101-19520, for \$291.00;
  - c. Q0501-15377, for \$3,100.00; and
  - d. Q1101-16845, for \$12,638.00 (Garnishee Summons for \$16,288.00).

**d.**      **Citations**

110. On July 8, 2015, a CCP issued the following 16 citations against me:
9. It is alleged that Mr. Shanks failed to provide competent, timely, conscientious, diligent or efficient service to a client and that such conduct is deserving of sanction.
  10. It is alleged that Mr. Shanks failed to implement his client's chosen course of action and that such conduct is deserving of sanction.
  11. It is alleged that Mr. Shanks failed to communicate with his client in a timely and effective manner and that such conduct is deserving of sanction.

12. It is alleged that Mr. Shanks failed to perform his functions conscientiously, diligently or in a timely and cost-effective manner and that such conduct is deserving of sanction.
13. It is alleged that Mr. Shanks failed to observe all relevant rules and law, including the duties of a professional fiduciary, about the preservation of a client's property, and that such conduct is deserving of sanction. and in particular:
- Mr. Shanks misappropriated funds belonging to a client, or alternatively Mr. Shanks failed to care for his client's property as a careful and prudent owner would when dealing with like property.
14. It is alleged that Mr. Shanks failed to clearly label and identify his client's property and place it in safekeeping distinguishable from the lawyer's own property and that such conduct is deserving of sanction.
15. It is alleged that Mr. Shanks failed to maintain such records as necessary to identify his client's property that is in the lawyer's custody and that such conduct is deserving of sanction.
16. It is alleged that Mr. Shanks failed to account promptly for his client's property that is in the lawyer's custody and deliver it to the order of the client on her request or at the conclusion of the matter and that such conduct is deserving of sanction.
17. It is alleged that Mr. Shanks failed to comply with the Rules of the Law Society in respect of trust accounts including but not limited to failing to deposit trust funds into a pooled trust account of the law firm before the next banking day and that such conduct is deserving of sanction.
18. It is alleged that Mr. Shanks failed to answer with reasonable promptness letters and communications from the lawyer taking over the file and that such conduct is deserving of sanction.
19. It is alleged that Mr. Shanks failed to minimize expense and prejudice to his client upon having been discharged by failing to facilitate an orderly transfer of the matter to the successor lawyer, including:
- Failing to deliver to his client or his client's successor lawyer all papers and property to which his client is entitled;
  - Failing to account for all funds of the client then held or previously dealt with, including the refunding of any remuneration not earned during the representation;
  - Failing to render an account for outstanding fees and disbursements; and
  - Failing to cooperate with successor counsel in the transfer of the file so as to minimize expense and avoid prejudice to the client;
- and that such conduct is deserving of sanction.
20. It is alleged that Mr. Shanks failed to reply promptly and completely to communications from the Law Society, including:
- Refusing to meet with the Law Society's investigator; and
  - Failing to be candid with the Law Society by suggesting that his client was being deceitful;
- and that such conduct is deserving of sanction.

21. It is alleged that Mr. Shanks were discourteous and uncivil to the investigator for the Law Society and that such conduct is deserving of sanction.
22. It is alleged that Mr. Shanks failed to promptly meet financial obligations in relation to his practice when called upon to do so and that such conduct is deserving of sanction.
23. It is alleged that Mr. Shanks failed to notify the Manager, Trust Safety of the issuance of several writs of enforcement against Mr. Shanks as required by the Rules of the Law Society and that such conduct is deserving of sanction.
24. It is alleged that his conduct warrants that Mr. Shanks be cited for ungovernability and that such conduct is deserving of sanction.

e.      **Admissions**

111. I admit to the following conduct, which I also admit is conduct deserving of sanction as defined in section 49 of the *Act*.

Citation 9: Failure to Serve Client

112. I failed to provide competent, timely, conscientious, diligent, or efficient service to M.Z., contrary to *Rule 2.01(1)* of the *Code*, particulars of which are that following my retainer on January 23, 2012, I did nothing to advance M.Z.'s divorce action despite promising to do so and despite having a discussion with her on June 13, 2012.

Citation 10: Failure to Implement Client's Course of Action

113. I failed to implement M.Z.'s chosen course of action, contrary to *Rule 2.01(1)(c)* of the *Code*, as per my admission under Citation 9.

Citation 11: Failing to Communicate with Client

114. During the course of my retainer, I failed to communicate with M.Z. in a timely and effective manner, particulars of which are that:
- a. M.Z. attempted contact me on at least 21 occasions by voicemail, fax, facebook, and email, to which communications I did not respond;
  - b. I failed to advise M.Z. of my change in business address from my CBS Address to my NCC Address; and
  - c. I failed to advise M.Z. of my change in business address and contact information upon my move from my NCC Address to my YL Address.

Citation 12: Failure to Perform Functions

115. I failed to perform my functions conscientiously, diligently, or in a timely and cost-effective manner, contrary to *Rule 2.01(1)(e)* of the *Code*, as per my admissions in Citations 9 and 10.

Citation 13: Failing to Preserve Client's Property

116. I failed to observe all relevant Rules and Law, including the duties of a professional fiduciary, contrary to *Rule 2.05(b)(i)* of the *Code*, regarding the preservation of M.Z.'s property, namely the Cash Retainer, by failing to adequately secure the Cash Retainer which had been placed in my office on February 1, 2012.
117. I do not admit that I misappropriated the Cash Retainer. I acknowledge, however, that there is a risk that a Hearing Committee may come to that conclusion if the facts and evidence referred to in this Agreed Statement of Facts were to be considered at a hearing of this complaint.

Citation 14: Failure to Place Property in Safekeeping

118. I do not admit that I failed to place M.Z.'s property in safekeeping because I deny having seen the Cash Retainer in the first place.

Citation 15: Failure to Maintain Records Necessary to Identify Client's Property

119. I maintained these types of records but do not admit that I had the opportunity to use them because I deny having seen the Cash Retainer in the first place.

Citation 16: Failure to Account for Client's Property

120. I do not admit that I failed to account for M.Z.'s property because I deny having seen the Cash Retainer in the first place.

Citation 17: Failure to Comply with Accounting Rules

121. I do not admit that I failed to comply with the accounting rules because I deny having seen the Cash Retainer in the first place.

Citation 18: Failure to Reply to Another Lawyer

122. I failed to reply to the letter dated August 2, 2012, from M.Z.'s new lawyer which requested the transfer of the file materials and a return of the Cash Retainer, contrary to *Rule 6.02(7)* of the *Code*, despite advising the new lawyer on August 13, 2012 that I would respond shortly.

Citation 19: Failure to Facilitate Orderly Transfer of the File

123. I failed to facilitate an orderly transfer of the divorce action to M.Z.'s new lawyer upon being discharged by M.Z., contrary to *Rules 2.07(6)* of the *Code*, particulars of which are as follows:
- a. I did not deliver to M.Z. or to M.Z.'s new lawyer the file materials that had been provided to me, contrary to *Rule 2.07(7)(b)* of the *Code*;
  - b. I failed to render an account to M.Z. for outstanding fees and disbursements, contrary to *Rule 2.07(7)(e)* of the *Code*; and
  - c. I failed to cooperate with M.Z.'s new lawyer by failing to transfer the materials to her so as to minimize expense and avoid prejudice to M.Z., contrary to *Rule 2.07(7)(f)* of the *Code*.

Citation 20: Failure to Reply to the LSA

124. I failed to reply promptly and completely to communications from the LSA, contrary to *Rule 6.01(1)* of the *Code*, particulars of which are:
- a. I failed to respond to [J.D.]'s requests to meet with me on October 17, 2014, which was repeated a few days later;
  - b. Between October 17, 2014, and April 21, 2015, I failed to respond to [J.D.]'s numerous requests to meet with me; and
  - c. I refused to meet with [J.D.] after I had been provided the direction to investigate, as set out in my emails of October 22, 2014, October 26, 2014, and January 25, 2015, and despite a promise to meet with him in February 2015.

Citation 21: Discourteous and Uncivil Behaviour

125. I was discourteous and uncivil to [J.D.] on April 21, 2015, when I told him to "fuck off" during my telephone conversation with him after he delivered the DVD to my spouse's aunt's house, contrary to *Rule 6.02(1)* of the *Code*.

Citation 22: Failure to Meet Financial Obligations in relation to Practice

126. I failed to promptly meet my financial obligations in relation to my practice, contrary to *Rule 6.01(2)* of the *Code*, particulars of which are that I failed to pay rent for the months of January and February 2012 to the landlord of the CBS Address and left my office on February 21, 2012.

Citation 23: Failure to Notify LSA of Writs of Enforcement

127. I failed to notify the Manager of Trust Safety about four Writs of Enforcement that had been filed against me against me, contrary to *Rule 119.34(e)* of the *Rules* of the LSA.

Citation 24: Ungovernability

128. I do not admit that I am ungovernable. I acknowledge, however, that there is a risk that a Hearing Committee may come to that conclusion if the facts and evidence referred to in this Agreed Statement of Facts were to be considered at a hearing of this complaint.

**C. COMPLAINT HISTORY**

129. The LSA has recorded a total of 12 complaints against me, six of which were classified as formal complaints. Of these six formal complaints,

- a. Three are the subject matter of this resignation;
- b. Two were the subject matter of the hearing in November 2013; and
- c. One was dismissed by the Executive Director.

**D. SUMMARY**

130. I am 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.

**E. INDEPENDENT LEGAL ADVICE**

131. I have had the opportunity to seek out independent legal advice regarding the implications of this application.

**F. NO DURESS**

132. I have signed this Agreed Statement of Facts and Admissions voluntarily and without any compulsion or duress.

**ALL OF THESE FACTS AND ADMISSIONS ARE ADMITTED TO THIS 13 DAY OF MAY 2016.**

**“Witness”**

\_\_\_\_\_  
Witness to the Signature of  
Noble E. Shanks

**“Noble E. Shanks”**

\_\_\_\_\_  
Noble E. Shanks