

LAW SOCIETY OF ALBERTA
IN THE MATTER OF THE *LEGAL PROFESSION ACT*;
AND
IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF DAVID SKRYPICHAYKO,
A MEMBER OF THE LAW SOCIETY OF ALBERTA

Hearing Committee:

Sarah King-D'Souza, Q.C., Chair (Bencher)
Julie Lloyd, Q.C. (Bencher)
Glen Buick, Committee Member (Lay Bencher)

Appearances:

Counsel for the Law Society of Alberta – Shanna Hunka
David Skrypichayko, on his own behalf

Hearing Dates:

January 11, March 15 to 18, 2016

Hearing Location:

Law Society of Alberta at 800 Bell Tower, 10104 – 103 Avenue, Edmonton, Alberta

HEARING COMMITTEE REPORT

A. Jurisdiction and Preliminary Matters

1. On January 11, 2016, a Hearing Committee (Committee) convened at the office of the Law Society of Alberta (LSA) to conduct a hearing regarding a number of citations against David Skrypichayko.
2. 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.

3. 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 several 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 at the beginning of the hearing. Mr. Skrypichayko made an unsuccessful application during the hearing, to give his evidence in private when the complainant BB was present. Details of that application are set forth later in these reasons.
4. Mr. Skrypichayko and counsel for the LSA were asked whether there were any objections to the constitution of the Committee. There were no objections.
5. Mr. Skrypichayko appeared at the hearing without counsel. The Committee confirmed that he was prepared to represent himself throughout the hearing.
6. Bencher Julie Lloyd was appointed to the Provincial Court after the hearing was finished and before this report was completed. Pursuant to section 66(3) of the *Legal Profession Act*, the remaining two members of the Committee retained jurisdiction and completed the written reasons.

B. Citations and Summary of Sanction

7. Mr. Skrypichayko faced 19 citations, as follows:

a. BB Complaint

1. It is alleged that you failed to provide conscientious service to your client and such conduct is deserving of sanction.
2. It is alleged that you failed to respond to your client’s communication and such conduct is deserving of sanction.
3. It is alleged that you improperly commissioned an affidavit and such conduct is deserving of sanction.
4. It is alleged that you failed to provide written information to your client regarding fees and disbursements and such conduct is conduct deserving of sanction.
5. It is alleged that you failed to render accounts in a timely manner and such conduct is deserving of sanction.

6. It is alleged that you failed to issue accounts to your client either before or concurrent with the transfer of funds from trust and such conduct is conduct deserving of sanction.
7. It is alleged that you failed to conduct yourself with civility and courtesy and acted in a manner that brings discredit to the profession and such conduct is deserving of sanction.
8. It is alleged that you failed to respond to and cooperate with the Law Society of Alberta and such conduct is deserving of sanction.
9. It is alleged that your account exceeded a fair and reasonable amount and such conduct is conduct deserving of sanction.

b. SC Complaint

10. It is alleged that you failed to provide conscientious service to your client and such conduct is conduct deserving of sanction.
11. It is alleged that you failed to respond to your client's communications and such conduct is conduct deserving of sanction.
12. It is alleged that you failed to provide written information to your client regarding fees and disbursements and such conduct is conduct deserving of sanction.
13. It is alleged that you failed to render accounts in a timely manner and such conduct is conduct deserving of sanction.
14. It is alleged that you failed to issue accounts to your client either before or concurrent with the transfer of funds from trust and such conduct is conduct deserving of sanction.
15. It is alleged that you failed to conduct yourself with civility and courtesy and such conduct is conduct deserving of sanction.
16. It is alleged that you failed to respond to and cooperate with the Law Society of Alberta and such conduct is conduct deserving of sanction.
17. It is alleged that you failed to be candid with or misled the Law Society of Alberta and such conduct is conduct deserving of sanction.”

c. MB and JN Complaints

18. It is alleged that you are guilty of conduct deserving of sanction by having practiced law, held yourself out to be an active member, or failed to advise of your status as a suspended member, during a time when your membership in the Law Society was suspended and that such conduct is deserving of sanction.
 19. It is alleged that you failed to be candid to the Law Society and that such conduct is deserving of sanction.
8. The Committee found that Mr. Skrypichayko was guilty of conduct deserving of sanction in respect of all 19 citations. The Committee directed that Mr. Skrypichayko be disbarred and that he pay costs to the LSA in the amount of \$63,067.97.

C. Application for Stay of Proceedings

9. Mr. Skrypichayko applied for a stay of proceedings for abuse of process, the basis of which was the LSA's alleged delay in investigating the complaints against him and processing the resulting citations. He also indicated that, if his application was denied, he wished to apply to withdraw his Statement of Admitted Facts. He was sworn in to give evidence in relation to this preliminary application.
10. Mr. Skrypichayko submitted that the delay of proceedings had prejudiced his case, as follows:

BB complaint:

- a. The file started in 2006 and the solicitor-client relationship ended in 2008.
- b. His memory has faded.
- c. His former assistant, JM, had moved to a remote town on Vancouver Island. She had run-ins with the LSA investigator and had life experiences such that she was intimidated by these proceedings. Later in the proceedings Mr. Skrypichayko said that she would not even be prepared to give her evidence over the phone.
- d. Mr. Skrypichayko's uncle by marriage was an important witness and had died in 2011. The uncle had been present when Mr. Skrypichayko and BB discussed the affidavit and how it was delivered.
- e. Two computer drives had failed after 2007 and Mr. Skrypichayko had lost his records and documents, including a work in progress report on the BB file, resulting in confused accounting.
- f. Bank and phone records were with the custodian of his practice. The custodian was not cooperative and requests for originals were ignored.

SC complaint

- g. The file started in 2009.
- h. His memory has faded.
- i. SC had threatened to set the Hell's Angels on him and he had reported the matter to the police. This event was witnessed by his assistant, JM.
- j. Two computer drives had failed after 2007 and he had lost his records and documents, including work in progress reports, resulting in confused accounting.
- k. Bank and phone records were with the custodian of his practice. The custodian was not cooperative and requests for originals were ignored.

JN complaint

- l. RM of [●] Bank was the banker for a partnership which Mr. Skrypichayko alleged to have existed between JN, PM, and Mr. Skrypichayko. RM was allegedly present when Mr. Skrypichayko paid his brother-in-law, PM, money for a truck but was not available to give evidence.
- m. His assistant of the time was not in the country.
- n. His second computer drive had failed and he had lost his records and documents, including work in progress reports. His Esilaw program crashed in October 2012.
- o. Bank and phone records were with the custodian of his practice. The custodian was not cooperative and requests for original documents relating to the partnership were ignored.

MB complaint

- p. The file began in 2012.
- q. RM of [●] Bank was the banker for a partnership which Mr. Skrypichayko alleged to have existed between MB, FST and Mr. Skrypichayko respecting a gravel crusher. RM was no longer available.
- r. Mr. Skrypichayko's expert for equipment, and financial backer, KS, owner of FST is no longer available.
- s. His assistant of the time was not in the country. She knew MB had a lawyer in St Paul with standing instructions to act for him.
- t. The last computer drive had failed, and he had lost his records and documents, including financial information he was carrying forward that he lost.
- u. He was missing phone records that were with the custodian of his practice, who was not cooperative.

LSA Evidence

11. BO, an investigator with the LSA, gave evidence in relation to the stay application. He had prepared three extensive Investigation Reports that were entered as Exhibits 7, 8 and 9 in these proceedings. For the hearing, BO had prepared three timelines for the prosecution of the three complaints. Investigation Orders had been issued to him in May 2012 for the BB and SC matters. In 2014, he received an Investigation Order in respect of the allegations that Mr. Skrypichayko had been practicing while suspended.

BB Complaint

12. BB filed his complaint with the LSA in November of 2009. The Complaints Department dealt with it for approximately one year.
13. The first investigation order was issued on October 4, 2010 to LT, then an investigator for the LSA. He had the file until May 2012. The file was reassigned to BO and his investigation concluded in November 2013 with a report.
14. In relation to LT's work on the BB matter, BO deposed that:
 - a. On October 7, 2010, LT requested extensive accounting records for the period of December 2006 to August 2010. The letter included a request for BB's client file and statements of account. He requested that Mr. Skrypichayko produce these records by October 22, 2010;
 - b. Mr. Skrypichayko provided some of the accounting information on October 12, 2010;
 - c. On January 5, 2011, Mr. Skrypichayko provided the BB trust ledger card, his December 2006 general account statement, his January 2007 general account statement, and his October 2006 to February 2007 trust statement and reconciliation.
 - d. On September 30, 2011, LT asked Mr. Skrypichayko for more information, including reconciliations for the trust bank accounts for September 2010 to August 2011, copies of general bank statements for September 2010 to August 2011, and posed three questions to Mr. Skrypichayko.
 - e. On October 26, 2011, Mr. Skrypichayko provided his trust account statements for the period requested and indicated his general accounts records would be delivered by Friday.
 - f. On October 27, 2011, LT repeated his request for the general bank statements for the months of September 2010 to August 2011 and copies of all statements of account issued to clients during that time period.

- g. On October 28 and 31, 2011, Mr. Skrypichayko provided his accounting statements for September 2010 to August 2011. He provided copies, not originals, of the BB file and did not respond to the questions posed by LT.
15. BO received the Investigation Order on May 7, 2012. On September 7, 2012, he asked Mr. Skrypichayko for the whole BB file and some accounting information, in a letter containing 18 requests and questions.
16. On October 17, 2012, BO again requested that Mr. Skrypichayko provide his entire file and provide his written response to BO's September 7, 2012, letter on the BB matter. This email also referenced the SC investigation, in which BO had also requested the entire file and a written response to BO's September 7, 2012, letter in the SC matter. Mr. Skrypichayko met with BO on October 23, 2012, and did not bring either the complete BB file or his written response to the September 7, 2012, letter as requested. Although Mr. Skrypichayko indicated that he wanted to do an interview with BO on a date between October 3 and November 11, he failed to respond to BO's offer of dates during the week of November 5, 2012.
17. In addition to his evidence related to unsatisfactory communications with Mr. Skrypichayko, BO deposed that:
- a. some of the reasons for delay were attributed to Mr. Skrypichayko's failure to provide his original file or submit to an interview when asked. It took approximately seven months for BO to get the original BB file he had requested from Mr. Skrypichayko. The originals were important because there was a complaint from BB in relation to execution of an affidavit.
 - b. BO had to involve the Manager of Complaints to write to Mr. Skrypichayko to ask him to cooperate. BO also had two LSA counsel involved to communicate and write letters to Mr. Skrypichayko, asking him to cooperate during the investigation.
 - c. The LSA sought to suspend Mr. Skrypichayko pursuant to section 63 of the *Legal Profession Act*. Two hearings were held, in April and June of 2013, respectively.
 - d. On April 15, 2013, the Benchers imposed conditions upon Mr. Skrypichayko to cooperate and provide information to BO. Mr. Skrypichayko did provide some information, but not all of it. Two days before the date of the first suspension hearing, Mr. Skrypichayko brought BO the original BB file. He brought the original SC file and submitted to an examination a few days after the interim suspension hearing.
 - e. A second hearing took place on June 18, 2013, and Mr. Skrypichayko was suspended. It was scheduled because Mr. Skrypichayko did not comply with the conditions from the first section 63 hearing and did not reply to the undertakings he made at his interview with the investigator.
 - f. In addition, BO was still attempting to interview Mr. Skrypichayko's former support staff, JM. Although she had agreed she would submit to an interview, BO

was unable to get her to attend an interview despite several attempts over several months.

SC Complaint

18. The BB and SC investigations were done concurrently. Key issues in both investigations involved accounting records, for trust transactions and accounts receivable.
19. On October 27, 2011, LT wrote to Mr. Skrypichayko enclosing a copy of the Investigation Order and requesting eight pieces of information, including the SC client file. On October 28 and 31, 2011, Mr. Skrypichayko provided his accounting statements for September 2010 to August 2011.
20. On November 16, 2011, Mr. Skrypichayko advised the LSA by email that he had broken his ankle but had documents he wished to provide. On November 23, 2011, Mr. Skrypichayko emailed the LSA again to advise that someone would bring in the file and asked the LSA to make copies of it.
21. Parts, but not all, of the SC file were brought to the LSA by a friend of Mr. Skrypichayko's, and were photocopied and returned to Mr. Skrypichayko on November 29, 2011. In December 2011, Mr. Skrypichayko contacted the LSA three times to advise that he would soon be providing answers to the questions asked by LT on the SC matter, but had two family funerals to deal with.
22. On December 21, 2011, Mr. Skrypichayko wrote to LT advising that he had already, in his opinion, answered two questions satisfactorily, that there was no reply necessary in relation to one question and that he would respond to an additional two questions after a family funeral. On January 9, 2012, Mr. Skrypichayko contacted LT to advise that he was in the Federal Court of Appeal that week and would provide his remaining disclosure on SC on January 17. On January 17, Mr. Skrypichayko emailed LT to say he would not be in on the 17th, but would attend the following day. He did not, and there were no further communications from Mr. Skrypichayko to LT on the SC matter.
23. BO was appointed as the investigator in May 7, 2012. On September 7, 2012, he asked Mr. Skrypichayko for the entire original SC file and had inquiries about some of the invoices on that file. He had 16 requests or questions of Mr. Skrypichayko. On October 5, 2012, Mr. Skrypichayko emailed BO to say he was away, spending time with an abused relative. Mr. Skrypichayko's fax was apparently not working and BO received no response to his communications. On October 5, 2012, BO attended personally at Mr. Skrypichayko's home office to deliver his September 7, 2012, letter.
24. BO asked MD, a lawyer with the LSA complaints department, to write to Mr. Skrypichayko and ask him for his cooperation. Mr. Skrypichayko offered to meet with BO during the week of October 22, 2012. On October 17, 2012, BO emailed Mr.

Skrypichayko asking him to bring the entire file. Mr. Skrypichayko met with BO on October 23, 2012. He did not bring the SC file.

25. On October 26, 2012, BO wrote to Mr. Skrypichayko offering an interview during the week of November 5, 2012. The same sequence of events transpired as with the BB matter above, including LSA counsel becoming involved.
26. On November 12, 2012, Mr. Skrypichayko sent a letter to MD at the LSA, claiming that he was being harassed and intimidated by the LSA processes. He claimed he was being asked the same questions several times, which was abusive, and was concerned about the custody and integrity of what he had submitted to the LSA. He made various other allegations about LSA staff and processes, and requested a comprehensive list of the documents in the possession of the LSA on both the BB and SC matters. He offered 20 minutes to meet with MD to discuss a settlement proposal.
27. As a result of this communication to the LSA, LSA counsel wrote to Mr. Skrypichayko on November 15, 2012, warning him that he was putting himself in professional jeopardy. LSA counsel urged him to retain his own counsel and to comply with the requests of the LSA staff and investigator, and asked that he fulfil his professional obligations so that the complaints could be properly investigated. Ultimately, Mr. Skrypichayko's lack of responsiveness to the LSA resulted in the section 63 suspension applications earlier described.
28. On December 12, 2012, MD emailed Mr. Skrypichayko, asking him to attend a meeting with MD, BO and LSA counsel. The purpose of the meeting would be to clarify which file materials were in the possession of the LSA, and which file materials they still required. The meeting was not intended to be a demand for an interview.
29. From December 2012 to February 19, 2013, Mr. Skrypichayko either made excuses or was not in contact. On April 12, 2013, just prior to the first suspension hearing, Mr. Skrypichayko brought BO the original SC file and submitted to an examination that day.
30. The first suspension hearing took place on April 15, 2013, and the Benchers imposed conditions upon Mr. Skrypichayko to cooperate and provide information to BO. Mr. Skrypichayko did provide some information, but not all of it.
31. On June 27, 2013, BO wrote to Mr. Skrypichayko to advise that two responses were still outstanding from his September 7, 2012, letter, as well as two undertakings from his interview respecting the SC matter. Mr. Skrypichayko responded to that letter on August 25, 2013.
32. A second section 63 suspension hearing took place on June 18, 2013, as earlier described, at which time Mr. Skrypichayko was suspended.

MB and JN complaints

33. BO deposed that he encountered some lack of cooperation in relation to these two matters, but not to the same extent as the two initial complaints. He did ask Mr. Skrypichayko to sign an authorization letter for the LSA to access his personal bank account at [●] Bank. It took some effort and time for this to be done. Under cross-examination, BO deposed that he obtained the JN file from Mr. Skrypichayko's home office when the custodian attended his home to seize his files.
34. BO had not known there was a file regarding MB's matter until a few weeks before this hearing. During an earlier interview, Mr. Skrypichayko had said he did not think he had a file for that matter.
35. BO issued a report on the MB And JN matters six months following the issuance of the investigation order.

Case Law

36. Three cases were provided to the Committee in relation to the issue of inordinate delay:
 - *Blencoe v. British Columbia (Human Rights Commission)*, [2000] 2 SCR 307, 2000 SCC 44 (CanLII) Bastarache J;
 - *Stinchcombe v. Law Society of Alberta*, 2002 ABCA 106 (CanLII);
 - *Law Society of Alberta v. Odishaw*, 2011 ABL 28.

37. The *Odishaw* case was very helpful to the Committee in analyzing the facts in this matter. Paragraphs 67 - 73 and paragraph 76 of that case are set out below as the reasoning was accepted and adopted by this Committee:

67. The leading authority on abuse of process arising from inordinate delay in the context of administrative proceedings is *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44, [2000] 2 S.C.R. 307. The key principles articulated in that decision are as follows:

- a) The administrative process must be conducted in a manner that is entirely consistent with the principles of natural justice and procedural fairness [para. 105];
- b) Unreasonable delay is a possible basis upon which to raise issues of natural justice, procedural fairness, abuse of process and abuse of discretion [para 106];
- c) Delay, without more, will not warrant a stay of proceedings as an abuse of process [para. 101, 121];

d) Where administrative delay impairs a party's ability to answer the complaint – as examples, where memories have faded, essential witnesses have died or are unavailable, or evidence has been lost – the delay may be invoked to impugn the validity of the administrative proceedings and provide a remedy [para. 102];

e) Unacceptable delay may amount to an abuse of process in certain circumstances even where the fairness of the hearing has not been compromised. Those circumstances may include where inordinate delay has directly caused significant psychological harm or attached a stigma to a person's reputation, such that the administrative process would be brought into disrepute. However, "few lengthy delays will meet this threshold". Further, the "respondent must demonstrate that the delay was unacceptable to the point of being so oppressive as to taint the proceedings". The process must be "tainted to such a degree that it amounts to one of the clearest cases". The proceedings must be "unfair to the point that they are contrary to the interests of justice". "Cases of this nature will be extremely rare." [Para. 115, 120 and 121];

f) The determination of whether a delay has become inordinate depends on the nature of the case and its complexity, the facts and issues, the purpose and nature of the proceedings, whether the respondent contributed to the delay or waived the delay, and other circumstances of the case. The determination of whether a delay is inordinate is not based on the length of the delay alone, but on contextual factors, including the nature of the various rights at stake in the proceedings, in the attempt to determine whether the community's sense of fairness would be offended by the delay [para. 122];

g) The determination of whether the delay is unreasonable is, in part, a relative exercise, comparing the length of time for the impugned proceeding against the length of time normally taken for processing analogous cases in the same jurisdiction and other Canadian jurisdictions [para. 129 and 130];

h) There must be proof of "significant prejudice" which results from the unacceptable delay. [para. 101]

68. Fundamentally, the applicant must satisfy the decision maker that "the damage to the public interest in the fairness of the administrative process should the proceeding go ahead would exceed the harm to the public interest in the enforcement of the legislation if the proceedings were halted": Brown and Evans, *Judicial Review of Administrative Action in Canada* (Canvasback, looseleaf, July 2010) at 9:8210.

69. In determining how the balance should be struck, consideration is given to whether the delay would offend the "community sense of fair play and decency": *Nisbett v. Manitoba (Human Rights Commission)* (1993), 101 D.L.R. (4th) 744, at 757 (Man. C.A.), leave to appeal to SCC refused (1993), 14 Admin. L.R. (2d) 231(n).

70. In *Blencoe*, the majority of the court stated that a stay is not the only remedy for an inordinate delay that compromises procedural fairness or exposes the respondent to personal prejudice. Referring to the underlying human rights proceeding in that case, Bastarache J. noted for the majority:

"There is, however, no support for the notion that a stay is the only remedy available in administrative law proceedings. A stay accords very little importance to the interest of implementing the Human Rights Code and giving effect to the complainants' rights to have their cases heard. Other remedies are available for abuse of process. Where a respondent asks for a stay, he or she will have a heavy burden." [para. 117]

71. Lebel J., in dissent, echoed the remarks of Bastarache J.:

"Several kinds of remedies are available either to prevent or remedy abusive delay within the administrative process. The main form of redress that we need to address here are a stay of proceedings, orders for an expedited hearing and costs.

Whoever asks for a stay of proceedings carries a heavy burden. In a human rights proceeding, such an order not only stops the proceedings and negates the public interest in the enforcement of human rights legislation, but it also affects, in a radical way, the interest of the complainants who lose the opportunity to have their complaints heard and dealt with. The stay of proceedings should not generally appear as the sole or even the preferred form of redress: see *R. v. O'Connor*, [1995] 4 S.C.R. 411, at paragraph 68. A more prudent approach would limit it to those situations that compromise the very fairness of the hearing and to those cases where the delay in the conduct of the process leading to it would amount to a gross or shocking abuse of the process." [para. 179 and 180]

72. In *Wachtler v. College of Physicians and Surgeons of Alberta*, 2009 ABCA 130, the Court of Appeal noted at paragraph 37 that "delay falling short of requiring a stay may call for other remedies". In that case, a stay was rejected, but the Court of Appeal held that the Council of the College of Physicians and Surgeons erred by failing to consider delay in imposing a penalty. The Court varied the penalty imposed by the College, providing a remedy for delay in the

form of relief from a costs award and setting aside an additional two months suspension.

73. The Court of Appeal added, at paragraph 49:

“It is important to impress upon disciplinary bodies that there will be consequences for undue delay. Delay becomes the norm when it has no consequence. One alleged benefit of administrative processes is that they avoid formalities of court process in the interests of speedy justice. A 7 year delay is hardly speedy. Simply telling those responsible for professional discipline that they must do better, or worse, turning a blind eye to delay, leads to more delay.”

....

76. The LSA referred to *R. v. La* [1997] 2 S.C.R. 680 for the general proposition that decisions about a stay of proceedings are best made upon hearing all of the evidence:

“The appropriateness of a stay of proceedings depends upon the effect of the conduct amounting to an abuse of process or other prejudice on the fairness of the trial. This is often best assessed in the context of the trial as it unfolds. Accordingly, the trial judge has a discretion as to whether to rule on the application for a stay immediately or after hearing some or all of the evidence. Unless it is clear that no other course of action will cure the prejudice that is occasioned by the conduct giving rise to the abuse, it will usually be preferable to reserve on the application. This will enable the judge to assess the degree of prejudice and as well to determine whether measures to minimize the prejudice have borne fruit.”

Interim Decision on the Stay Application

38. On the basis of the evidence, case law and submissions of the parties, the Committee made an interim decision to proceed with the hearing. The LSA regulates in the public interest, and it is important that complainants are treated fairly and that allegations are not summarily dismissed without hearing all the evidence to determine the factual context and determine the impact of any alleged prejudice on the member. Granting a stay of proceedings based on representations and partial evidence only, when other remedies are available, may be excessive and unfair.
39. Additionally, it was difficult to determine whether the delay was inordinate and, if so, who was primarily responsible, on the basis of the limited evidence available. It was not a clear case, and there was some evidence that the member had contributed to delay. More evidence was required to determine whether the alleged prejudice was speculative or actual.

40. In making this this decision the Committee relied on the following comments in the *Odishaw* case:

a) Prematurity

75. The LSA contended that the stay application is premature, as the Hearing Committee has not yet heard the evidence about the merits. In the absence of that evidence, the Hearing Committee does not have the benefit of the factual context to determine the impact of any alleged prejudice.

76. The LSA referred to *R. v. La* [1997] 2 S.C.R. 680 for the general proposition that decisions about a stay of proceedings are best made upon hearing all of the evidence:

“The appropriateness of a stay of proceedings depends upon the effect of the conduct amounting to an abuse of process or other prejudice on the fairness of the trial. This is often best assessed in the context of the trial as it unfolds. Accordingly, the trial judge has a discretion as to whether to rule on the application for a stay immediately or after hearing some or all of the evidence. Unless it is clear that no other course of action will cure the prejudice that is occasioned by the conduct giving rise to the abuse, it will usually be preferable to reserve on the application. This will enable the judge to assess the degree of prejudice and as well to determine whether measures to minimize the prejudice have borne fruit.”

77. While *La* arose in the context of disclosure in a criminal proceeding, the same concern has been raised in relation to administrative proceedings: *British Columbia (Securities Commission) v. Cicci* (1993), 18 Admin. L.R. (2d) 274 (B.C.C.A.); *Tran v. Saskatchewan (Human Rights Commission)* (1997), 47 Admin. L.R. (2d) 106 (Sask. Q.B.).

78. An assessment of the risk of prejudice to the hearing process, such as the unavailability of evidence or faded memories, is a difficult undertaking on a preliminary application. The Hearing Committee does not have the benefit of the full factual context, including how lost evidence or faded memories might affect the Member's defence.

79. The impact of faded memories might be ameliorated where evidence has been preserved through contemporaneous documents, personal notes, witness statements, and discovery transcripts arising from a related action.

80. The risk of prejudice might also be alleviated by the reality that the LSA carries the evidentiary burden in proving the merits of the Citations. Undue delay might so weaken the probative value of the evidence given by the LSA's witnesses that the LSA is unable to satisfy the burden of proof.
81. In certain circumstances, the existence of "significant prejudice" will be sufficiently apparent that a stay, even at the commencement of the proceeding, will be warranted. However, a summary disposition of the issue requires a "gross or shocking abuse of process", the "clearest of the cases", or circumstances where "it is clear that no other course of action will cure the prejudice": *Blencoe*, supra, at para. 120, 180; *R.(J.) v. College of Psychologists (British Columbia)*, (1995) 33 Admin. L.R. (2d) 174, at 178 (B.C.S.C.); *La*, supra.
82. As a consequence, while a stay might be available on a preliminary application, the applicant will bear a "heavy burden" in establishing the necessary prejudice: *Blencoe*.
83. The Hearing Committee was prepared to consider the stay application, notwithstanding that it was brought at the commencement of the Hearing, and without the benefit of much evidence on the merits. However, the absence of the complete factual matrix was relevant during the Committee's assessment of prejudice, and whether the Member was able to meet his "heavy burden".

Final Decision on Stay Application

41. After considering all of the evidence at the conclusion of the hearing, the Committee had the ability to fully consider the application for a stay of proceedings and make a final decision. The stay application was denied.
42. With regard to citations 18 and 19, there was simply no evidence of inordinate delay.
43. On June 18, 2013, Mr. Skrypichayko was suspended by the LSA at a section 63 hearing. In March 2014, JN complained to the LSA that Mr. Skrypichayko had provided him with legal services for a fee while suspended. The investigation order issued on March 12, 2014. The investigation concluded September 30th, 2014, with an extensive report by the investigator, BO, that included transcripts of questioning of various persons. The citations were issued in 2015 and the matter was heard in March of 2016.
44. The investigation in relation to JN's matter revealed that Mr. Skrypichayko had also provided legal services to a company owned by MB, while Mr. Skrypichayko was suspended. The complaints came to the attention of BO around August 2014, based on information provided by the custodian of Mr. Skrypichayko's practice. The investigation began right away and concluded on September 30th, 2014, when BO issued his report.

45. The activities of Mr. Skrypichayko that resulted in Citation 19, falling to be candid to the LSA, were factually connected to the evidence which supported Citation 18 and arose after Mr. Skrypichayko had been suspended in June 2013.
46. With regard to BB's complaint and Citations 1 through 9, the matter was handled by BO for only one year and six months. The evidence as to what had transpired when LT had the file was limited to what BO could discern from the file and conversations he had with LT.
47. Four years and two months elapsed between the issuance of the investigation order in October 2010 and the issuance of citations in December of 2014. More specifically, BB complained to the LSA on November 2nd, 2009. The matter remained in the hands of the Complaints Resolution Department until October 4th of 2010. Mr. Skrypichayko's accounts were taxed and a final taxation order was made on May 18, 2010, by Justice Crighton. Mr. Skrypichayko was ordered to refund \$2,500 plus costs of \$4,643.60 to BB. Following the taxation process and waiting for the final outcome was not unreasonable.
48. On October 4, 2010, an investigation order issued to LT as the investigator. The matter was with LT for one year and eight months. The majority of communication between LT and the member took place between October 2010 and August 2011. BO indicated that LT's investigation was not extensive and he never obtained an original affidavit that had been in issue in the investigation. The majority of the work was done by BO.
49. BO received the Investigation Order on May 7, 2012, and on September 7, 2012, asked Mr. Skrypichayko for the entire BB file and some accounting information. In BO's opinion he did not receive a timely response from Mr. Skrypichayko and he took extra steps to engage Mr. Skrypichayko. The investigative report issued on November 18th, 2013, and the citations issued in December 2014.
50. The SC complaint, which gave rise to citations 10 through 17, was made on February 23, 2011. It remained in the hands of the Complaints Resolution Department until the Investigation Order issued to LT on October 20th, 2011. The new Investigation Order was issued to BO on May 7, 2012. The investigation report issued November 18, 2013, and the citations were issued in December of 2014.
51. The SC matter was with LT for seven months, following the issuance of an Investigation Order in October 2011. The matter was with BO for one year and eight months. Three years and two months elapsed between the first Investigation Order in October 2011 and the issuance of citations in December 2014.
52. Counsel for the LSA in argument conceded that there was some delay in the investigation of the BB and SC complaints while the matters were with LT. There was also a 13 month delay between the issuance of the investigation reports and the

issuance of citations. There were various reasons for the delay on both sides. Additionally, as is not unusual in these matters, multiple requests of Mr. Skrypichayko for information from various LSA departments, lack of information sharing at times, lack of understanding of process by Mr. Skrypichayko, resistance and/or poor response choices on Mr. Skrypichayko's part exacerbated the problem.

53. LT was not available to testify and BO could provide only limited explanations for what had transpired when the file was with LT. There was a resulting evidentiary gap, such that the Committee could not find that delay was entirely attributable to Mr. Skrypichayko while LT had conduct of the investigation. There was evidence that Mr. Skrypichayko provided information to the LSA at various times. That being said, Mr. Skrypichayko also contributed to the delay with his behaviour.
54. The BB and SC matters were not unusual or complicated fact situations as they involved only two clients, two files and two sets of accounting records. Witnesses were limited in number. The delay awaiting the decision on taxation was unavoidable and beyond the control of any party. Mr. Skrypichayko was suspended in June 2013. This may have taken pressure off the LSA to pursue the matter as a top priority after the investigation reports issued.
55. However, there were 17 citations to be investigated. Additional complexity was created by Mr. Skrypichayko in the BB matter as he made various allegations about BB that confused matters and needed to be investigated. Similarly in the SC matter, Mr. Skrypichayko attacked SC's character and purported to involve the police as a result. He also falsified two letters to SC, as discussed in the reasons below.
56. Although the LSA characterized the delay as the fault of Mr. Skrypichayko, there were delays when LT had conduct of the investigations, and after the investigation reports issued in November 2013.
57. As stated in the *Odishaw* case, at para 67: Delay, without more, will not warrant a stay of proceedings as an abuse of process.
58. In determining whether delay is inordinate, various other factors must be considered. These have been enumerated in the earlier references to the *Odishaw* case in these reasons. The delay must impair a party's right to a fair hearing by creating prejudice.
59. In the BB matter, Mr. Skrypichayko asserted that he was prejudiced not only by the time delay, the complaint having been made in 2009, but for several other reasons. Mr. Skrypichayko claimed his memory had faded. This was a general allegation, but Mr. Skrypichayko did not appear to have substantially failing memory. He represented himself at the hearing, and did not lack ability to give his own evidence or cross-examine others due to any failing memory.

60. Of note, there was a prodigious amount of documentary evidence available at the hearing with which Mr. Skrypichayko could refresh his memory, if he forgot anything.
61. Mr. Skrypichayko's former legal assistant had moved to Vancouver Island and was unable to give evidence. Some reasons were provided for this. There was no evidence of any efforts to serve a Notice to Attend or conduct monies on this witness. This Committee would have been open to having her giving her evidence by telephone. There was no evidence of her being intimidated by the LSA investigators to the point that even telephone evidence was impossible. There was evidence that BO found her hard to reach. Mr. Skrypichayko finally claimed that she had been intimidated and would not even give evidence by telephone, but there was no evidence he even asked her to do so.
62. Mr. Skrypichayko advised that an uncle by marriage, who was a police detective, had died. He appears to have been a confidant and it was claimed he had been in attendance at a meal when delivery of the affidavit was discussed with BB. Since the issue was improper execution of the affidavit, evidence from this witness seemed irrelevant.
63. Two computer drives had failed after 2007 and Mr. Skrypichayko had lost his records and documents, including a work-in-progress report on the BB file. Certainly loss of computer drives would have an impact on any lawyer. It may well have created issues for Mr. Skrypichayko. However, the records were reconstituted sufficiently for the accounts to proceed through the taxation process and a decision rendered. In addition, as indicated above, the hearing exhibits included a large binder of materials gathered by the LSA investigator relating to the BB matter.
64. Mr. Skrypichayko was missing bank and phone records that were with the custodian of his practice, and he alleged the custodian was not cooperative. Request for originals were ignored. Mr. Skrypichayko alleged that he was treated disrespectfully by the custodian and boxes of his files were on one occasion dumped behind his truck. There was no evidence of any efforts to serve a Notice to Attend or conduct monies on the custodian, or that the need for disclosure from the custodian was addressed before the hearing by Mr. Skrypichayko in the pre-hearing process. It was not clear how the records related to a defence to the allegations, or how having them at the hearing would have helped.
65. In the SC matter, Mr. Skrypichayko asserted that he has been prejudiced by delay in many of the same ways, as set forth above for the BB matter. In the SC matter, Mr. Skrypichayko alleged that SC had threatened to have the Hell's Angels visit him and he had reported the matter to the police. This event was allegedly witnessed by JM, his assistant. This allegation was raised with SC, who had a different version of events and denied that he had made a threat. Even if it were true, it is unclear how it is relevant or causes prejudice to Mr. Skrypichayko related to inordinate delay. The evidence showed

that Mr. Skrypichayko did not report the incident to the police, despite advising the LSA that he had and copying them in a letter to SC. More on this alleged incident is discussed later in these reasons.

66. *Odishaw* stands for the principle that the prejudice must be significant (para 67(h)) and that the public interest must be considered and balanced in any consideration of a stay of proceedings. (See paragraphs 68 and 69 from *Odishaw*, set forth previously.)
67. The Committee found in this case that damage to the public interest in the fairness of the administrative process did not exceed the harm to the public interest if the proceedings were halted. In fact, it is very important that these matters are addressed by Mr. Skrypichayko's regulator in the public interest. Not to do so would bring the reputation of the profession into disrepute. Community sense of fair play and decency would be offended if the proceedings against Mr. Skrypichayko did not go ahead, because he has engaged in various dishonest activities and has harmed the interests of the complainants.

D. Admitted Facts

68. After the Committee determined that it would not be ruling on the stay application until all the evidence was heard, Mr. Skrypichayko indicated that he might be prepared to agree to proceed on the basis of the Statement of Admitted Facts. Citations 18 and 19 remained contested but Mr. Skrypichayko had admitted the underlying facts of the first 17 citations, and that his conduct in relation to those citations was deserving of sanction.
69. Mr. Skrypichayko proceeded to give evidence in relation to Citations 1 through 17. It immediately became apparent that, although he had admitted his failure to provide conscientious service to BB, his evidence was not consistent with the allegations that provided the foundation for the citation. The Committee advised the LSA and Mr. Skrypichayko that it appeared that he was not in agreement with the contents of the Statement of Admitted Facts, nor was he prepared to admit guilt. In the face of Mr. Skrypichayko's apparent uncertainty, the Committee was not convinced that his admissions were genuine and it appeared the Committee needed to fully hear the matter. The proceedings were adjourned to the next morning for the parties to consider their options.
70. On the last day of the hearing, Mr. Skrypichayko tendered a revised Statement of Admitted Facts, in which he admitted guilt to Citations 1 through 17. The revised Statement of Admitted Facts was entered as Exhibit 20 in the hearing and it was agreed by the parties that it replaced the earlier Statement of Agreed Facts in its entirety. The Committee heard brief submissions and found that the revised Statement of Admitted Facts was in acceptable form and supported the admission of guilt to the first 17 citations.

71. The Committee specifically confirmed with Mr. Skrypichayko that:
- a) He was making the admissions voluntarily and free of coercion;
 - b) He unequivocally admitted guilt to the essential elements of the citations describing the conduct deserving of sanction;
 - c) He understood the nature and consequences of the admission; and
 - d) He understood that the Hearing Committee is not bound by any submission advanced jointly by the member and LSA Counsel.
72. Accordingly, the Committee accepted the revised Statement of Admitted Facts entered as Exhibit 20 and Mr. Skrypichayko's admissions of guilt to Citations 1 through 17. The Statement of Admitted Facts is attached to this report as Appendix "A". Citations 18 and 19 remained disputed.
73. The reasons which follow outline the evidence presented at the hearing on all the citations.

E. BB Complaint – Citations 1 to 9

74. BB gave evidence on March 17, 2016. He had hired Mr. Skrypichayko to help him with tax matters when he was going through a tax audit. BB met with Mr. Skrypichayko in the fall of 2006 and paid him a retainer. No retainer agreement was signed. BB and his accountant both sent information to Mr. Skrypichayko. Subsequently, BB's telephone calls were not returned. Mr. Skrypichayko had not confirmed whether a Notice of Objection had been filed with Revenue Canada, nor was he providing further advice.
75. BB received his first bill on May 15, 2007, and Mr. Skrypichayko requested a further \$7,500 retainer to prepare for court. BB did not realize that there was another interim invoice on which he ostensibly owed money. Two years later, Mr. Skrypichayko indicated that the account had been rendered in error. BB indicated that, because Mr. Skrypichayko backdated his accounts, it was difficult for him to know their status at any point. As a result, he did not understand that part of the second retainer payment was to be applied to another account.
76. Not long after BB gave Mr. Skrypichayko the \$7,500.00 retainer, another account was rendered on July 12, 2007, in the sum of \$7,568.00. BB asked for time records to show what had been done and Mr. Skrypichayko was unable to provide any details.
77. In total, BB paid Mr. Skrypichayko \$12,500. Mr. Skrypichayko rendered six accounts to BB. Ultimately one was withdrawn and Mr. Skrypichayko identified another as a duplicate. The last invoice rendered on June 15, 2009, was rendered following taxation and many months after BB had terminated Mr. Skrypichayko's services.

78. On or around October 19, 2007, Mr. Skrypichayko sent BB an affidavit via fax that he needed to send that day to the Canada Revenue Agency (CRA). Mr. Skrypichayko instructed BB to read and sign the affidavit and return it by fax. BB was not with Mr. Skrypichayko when he signed the affidavit. Mr. Skrypichayko then commissioned it.
79. By 2008, BB heard from the CRA that very little or nothing had been filed on his behalf; he was in breach of their expectations and they would be pursuing enforcement. At that point BB hired another lawyer to help him in what had become an emergency situation. BB had thought that his tax matters were being handled, but in reality it appeared that the CRA was not receiving information about his circumstances from Mr. Skrypichayko. Mr. Skrypichayko provided only vague responses to his inquiries but BB never had any proof that Mr. Skrypichayko had initiated any conversation with the CRA about his matter. Mr. Skrypichayko failed to comply with the deadline to file Notices of Objection in relation to BB's personal taxes. As a result of the failure to file the notices, BB was only able to deal with the CRA about his personal taxes and those of his corporate entity dating back to 2003 and not for preceding years.
80. Ultimately, BB taxed Mr. Skrypichayko's accounts. Mr. Skrypichayko was ordered to pay BB \$2,500.00 plus costs. The refund of fees, plus costs, totalled approximately \$7,100.00. BB's lawyer had to put a lien on Mr. Skrypichayko's house and vehicle to obtain payment from him. Mr. Skrypichayko had sent a cheque to BB's lawyer in trust, restricting her ability to distribute the money. BB's lawyer had to call the LSA in relation to that trust condition. Mr. Skrypichayko had also refused to agree to an adjournment requested by BB's lawyer and BB had to retain someone else to appear. The adjournment application was successful and \$500.00 in costs were awarded against Mr. Skrypichayko.
81. In November 2009, BB reported Mr. Skrypichayko to the LSA. Following his complaint, BB was informed by the LSA that Mr. Skrypichayko had alleged that BB and his accountant had been engaged in illegal activities. BB indicated that he never heard such a thing from Mr. Skrypichayko. Both he and his accountant were upset. The lawyer who had taken over the matter from Mr. Skrypichayko had never indicated that BB or his accountant had engaged in anything illegal. Mr. Skrypichayko had also alleged to the LSA during the course of the investigation that BB and his lawyer had threatened Mr. Skrypichayko following a judicial settlement meeting at the Court of Queen's Bench and that he wanted protection from BB. BB denied that the alleged event ever occurred.
82. Additionally, Mr. Skrypichayko alleged in his response to the LSA that BB was trying to lower his stated income to reduce his child support obligations. BB indicated that, although he had separated from his common-law partner, she had a son from a prior relationship and he was never obliged to pay for child support, nor was any requested. He had no reason to understate his income to indicate that he was making more or less money for child support purposes. Furthermore, he had never discussed this with Mr.

Skrypichayko, although Mr. Skrypichayko may have known that he was going through a separation.

83. Mr. Skrypichayko also gave evidence in relation to the BB complaint. He took the position that he was conscientious in providing some of his legal services, but that the matter was complicated by the fact that BB's materials were voluminous and disorganized. He also stated that the scope of legal work and legal issues expanded over time. He was initially retained to deal with personal income tax matters, but corporate tax issues arose later. Mr. Skrypichayko felt that there was some meddling by BB's accountant, to which he had objected. Mr. Skrypichayko also stated that he had suffered a computer crash and lost his work-in-progress report relating to BB.
84. He indicated that he advised BB, when he asked for the additional \$7,500.00 retainer, that he would be applying it to work previously done. While acknowledging that the email he had sent to BB did not specifically indicate this intent, Mr. Skrypichayko advised that notes of a meeting he had with BB confirmed that BB had reviewed an invoice, had reviewed the work in progress report, had reviewed the Notices of Objection for corporate and GST matters, and had agreed to provide the additional retainer.

Application for Private Hearing

85. After he cross-examined BB, and when it came time for him to give evidence, Mr. Skrypichayko asked for the hearing to be held in private as BB was in attendance. Mr. Skrypichayko said he was intimidated by BB and was feeling anxious. The Committee denied the application. No other private hearing application had been made. Mr. Skrypichayko had cross-examined BB and other witnesses during the proceedings with no difficulty or indicia of more than the usual stress or anxiety that these kinds of proceedings create.
86. The Committee denied the application and was guided in its decision by *LSA v. McCullough* 2013 ABL 3, and specifically paragraph 15, which states: "The Member failed to establish that the information sought to be protected rises to a sufficient level to trump the public's right to know. Inconvenience or potential embarrassment, without more, does not rise to a compelling privacy risk. Any potential risk of harm can be addressed by the reasonable alternative measure of redacting third party names."

F. SC Complaint - Citations 10-17

87. These citations were ultimately the subject of Mr. Skrypichayko's Statement of Admitted Facts, attached as Appendix "A". SC complained to the LSA in February 2011. He alleged that he had retained Mr. Skrypichayko in October 2009 in a tax matter. As was the case with BB, SC reported Mr. Skrypichayko's lack of responsiveness and various

issues respecting the issuance of accounts. Mr. Skrypichayko's failure to properly represent and communicate with SC caused him financial harm. He also mishandled trust funds by withdrawing monies from trust for his own benefit without proper accounts having been issued to SC.

88. Mr. Skrypichayko characterized the matter as a billing dispute. He also claimed that SC had lied to him and to chartered accountants about his affairs.
89. After the complaint with the LSA was initiated, Mr. Skrypichayko responded to SC's complaint by attacking his character. He accused SC of deceitful and fraudulent conduct in his dealings with the CRA, and accused him of threatening and improper behavior so egregious that Mr. Skrypichayko's legal assistant quit working with him. Specifically, Mr. Skrypichayko accused SC of threatening Mr. Skrypichayko with a visit from the Hell's Angels. SC denied the threat and provided a reasonable explanation and context for the incident. Mr. Skrypichayko advised the LSA that he had filed a complaint against SC with the RCMP and the Edmonton City Police. There was no evidence to substantiate the allegations against SC. There was evidence that Mr. Skrypichayko did not in fact contact the police.
90. Mr. Skrypichayko claimed that he had sent a "Termination of Services" letter, dated December 17, 2010, to SC. The letter referred to SC threatening him with the Hell's Angels and was purportedly copied to two police services. It also purported to serve SC with a Statement of Claim in provincial court for recovery of legal fees, but that action was not commenced until February 2011. SC denied receiving the letter.
91. Mr. Skrypichayko then claimed he sent the December 17, 2010, letter to SC in February 2011, after the claim was filed. Mr. Skrypichayko also claimed he sent another "Termination of Services" letter to SC on February 17, 2011. It purported to serve SC with a Statement of Claim in provincial court for recovery of legal fees but the Statement of Claim was not filed until the next day. SC claimed he received the second letter around the time he complained to the LSA on February 23, 2011.
92. Either Mr. Skrypichayko backdated these letters and was untruthful with the LSA about it, or he sent them out at the dates they indicate, in an effort to mislead and threaten his client with legal action and a complaint to the police, so as to have his fees paid. Either scenario amounts to unacceptable conduct.

G. Citation 18 – Prohibited activities while under suspension

93. Citations 18 and 19 were denied by Mr. Skrypichayko throughout. Citation 18 involved allegations as to Mr. Skrypichayko's post-suspension activities in relation to two clients: MB and JN.

MB Complaint

94. The LSA alleged that Mr. Skrypichayko practiced law after having been suspended and, in particular, that he provided legal services to MB. The Committee heard evidence relevant to this citation from BO, the LSA investigator; MB, the complainant; and Mr. Skrypichayko.
95. MB operates a gravel trucking company in northeast Alberta. In 2013 he had a dispute with the CRA about mandatory payroll remittances.
96. MB had hired an accounting firm and, on the recommendation of a lawyer who had provided services to him on other legal matters, he contacted Mr. Skrypichayko for assistance with the legal aspects of the CRA investigation.
97. MB testified that he met with Mr. Skrypichayko at Mr. Skrypichayko's home on October 28, 2013, and that he retained his services as a lawyer, paying a retainer of \$5,000.00 by cheque. At that meeting, MB received a business card from Mr. Skrypichayko. The business card identified Mr. Skrypichayko as a barrister and solicitor.
98. MB gave evidence that he later became increasingly concerned as he was unable to contact Mr. Skrypichayko. He received no response to his telephone, email and fax messages and he did not receive reports of any progress made on the CRA issue. Mr. Skrypichayko did not show up at the CRA audit. MB finally engaged another lawyer to represent him in the CRA matter. He met with his new lawyer on April 19, 2014, and it was at that meeting that he learned Mr. Skrypichayko was a suspended member of the LSA.
99. MB denied that he knew Mr. Skrypichayko prior to October 2013, denied that Mr. Skrypichayko had ever advised him he was a suspended member of the LSA, denied that he hired Mr. Skrypichayko to provide anything but legal services, and denied that the two of them were in any business venture together. MB did acknowledge that he knew of the Skrypichayko family, but he did not recall having met Mr. Skrypichayko until October 2013.
100. Mr. Skrypichayko tendered as evidence a faxed letter dated October 18, 2013. He alleged that he sent the letter to MB, in which he purported to advise MB that he was suspended and stated that he could act as an accountant or an agent on the matters, but not as a lawyer.
101. The letter to MB read as follows:

Dear Sir:

Trust Records Examination

**Payroll Audit
Financial Proposal to [●] Bank**

Be advised that I am currently suspended by the Law Society of Alberta (effective 18 June 2013) and as a result of that, the following conditions apply to any agency work I can do for you:

1. No trust funds nor trust conditions can be accepted nor insured;
2. I cannot practice law nor provide legal advice; and
3. None of my communications (with you) carry any liability insurance.

Accordingly, I could only act as your agent, not as your lawyer, relying on your accountant [●] for the more sophisticated interpretations and analysis.

Your problem with CRA can be resolved with my involvement as an assistance accountant/consultant with respect to the audit files for your payroll records, supervision of the trust records examination and new financing through [●] Bank. I am not your lawyer, just an accountant assisting with these files.

Your [sic] have advised me that [TL], Barrister and Solicitor in your home town of [●] does an excellent job with the legal work for financing. I will speak with him and I recommend your seek his counsel". [sic throughout]

Yours truly,

David Skrypichayko

102. Mr. Skrypichayko sent this letter to the LSA on September 22, 2014, after MB's complaint had been initiated. MB received a copy from the LSA and emailed the LSA on September 24, 2014, to say that he had never seen it, alleging the fax confirmation was false. At the hearing, MB confirmed he did not recall ever receiving the letter from Mr. Skrypichayko. He admitted, however, that it was possible his wife had picked it up off the fax machine and not given it to him.
103. Despite Mr. Skrypichayko's suggestions during cross-examination of a business partnership with MB, MB denied entering any partnership or business arrangement with Mr. Skrypichayko. He agreed that Mr. Skrypichayko had referred him to Mr. M but nothing had come of it. He had never heard of KS or FST, individuals with whom Mr. Skrypichayko suggested MB had associated.

BO's Evidence

104. BO, the LSA investigator, summarized the MB complaint, reviewed the exhibits relevant to it and gave evidence about the investigation.

105. In response to MB's complaint, Mr. Skrypichayko advised the LSA that he had been acting as an accountant, not a lawyer. A letter from Mr. Skrypichayko, addressed to the Tax Services Office at the CRA and dated January 30, 2014, was entered as an exhibit during BO's testimony. It stated as follows:

Dear Sir/Madam:

Re: [●] Alberta Ltd., [●], Alberta

We represent the above taxpayer for purposes of filing the enclosed T4 slips over approximately the last two years. Additional statements of facts and reasons will follow to support our client's objection to all Notices of Reassessment issued in this period.

Accordingly, our client will execute the appropriate consent forms which will be sent to you in January 2014 by registered mail:

1. T1013 (individual consent form); and
2. RC 59 (business consent form)

Currently [MB] is hospitalized due to an industrial accident.

We are instructed to send Notice of Objection in prescribed form and will later enclose the same. Notwithstanding, we would ask you to consider a formal trusts records examination forthwith.

Kindly advise us of your decision.

106. The letter was signed by Mr. Skrypichayko and prepared on letterhead, bearing the words "SKRYPICHAYKO LLP, TAX LAWYERS" on the top left and "DAVID SKRYPICHAYKO, PROFESSIONAL CORPORATION" on the top right.
107. Mr. Skrypichayko advised BO that he could not remember if he had opened a file for MB at his office. The custodian also did not advise BO of the existence of a file and BO believed there was no MB file. The file appeared about two weeks before this hearing. Mr. Skrypichayko was given an opportunity to review it during the course of the hearing.

Mr. Skrypichayko's evidence

108. Mr. Skrypichayko testified that he and MB were acquaintances prior to October 2013. The two had both lived in the same area and had encountered each other occasionally at a store owned by Mr. Skrypichayko's family. Mr. Skrypichayko testified that he had met with MB earlier than October 28, 2013. He said that he told MB that he was a suspended lawyer on or about October 18, 2013, and that he confirmed his advice in a letter of the same date.

109. The letter of October 18, 2013, had a fax confirmation sheet attached, which Mr. Skrypichayko asserted as confirmation of a fax transmission on October 18, 2013, at 1:41 p.m. The fax confirmation sheet was otherwise blank and did not include a copy of any part of the letter itself.
110. Mr. Skrypichayko confirmed that he did not send the LSA and BO a copy of the above letter until September 22, 2014. He said that he only discovered the letter around that date when he was reviewing other documents in his home office.
111. Mr. Skrypichayko denied that he gave his business card to MB in October 2013 and says that he gave the card to him before his suspension, perhaps when he was selling Wildrose Party memberships in the area. Alternatively, he had possibly given it to him for the purpose of providing his address.
112. Mr. Skrypichayko did agree that MB gave him a cheque for \$5,000.00 on or about October 28, 2013, but he denied that the money was paid for legal services. He explained that the money was given to him for the following reasons: (a) so that Mr. Skrypichayko would host the CRA audit in his home office and supervise an audit of MB's payroll records; (b) to compensate Mr. Skrypichayko for connecting MB with a banker who specialized in "high risk" money lending; (c) to retain Mr. Skrypichayko to perform accounting services for MB; and (d) as a contribution toward a business venture in the gravel business that the two men were planning. Mr. Skrypichayko also asserted in his Statement of Admitted Facts that he was acting as MB's accountant.
113. Mr. Skrypichayko opined that MB was in serious default with the CRA, in large part because of deceitful and fraudulent conduct, and that a significant financial assessment was anticipated. He advised that it was worth money for him to introduce MB to a "high risk banker".
114. Mr. Skrypichayko also produced an email during his evidence, which purported to be from MB to Mr. Skrypichayko, dated September 29, 2013 and which stated:

Dear David,

We talked with [●] about you being suspended and he's OK with it. This is only an audit for T4s so it really isn't anything legal to do. Just hold the meeting at your place OK? We'll take the \$5K out of your share of the crusher business. Did [●] like the set-up at [●]?

Thank you
[MB]

115. Mr. Skrypichayko testified that he only located the email the night before his testimony on the last day of the hearing. As a result, he had not put the document to MB when he cross-examined MB earlier in the hearing.

Evidentiary Findings

116. This Committee found MB to be a credible witness. His story was clear and compelling: he ran into tax trouble, he had hired an accounting firm and he needed a lawyer as well. He thought Mr. Skrypichayko was a lawyer and gave him a \$5,000.00 cheque as a retainer, dated October 28, 2013. MB did not know Mr. Skrypichayko was suspended and would not have hired him if he had known of the suspension. He learned of the suspension only when he met with his new lawyer on April 19, 2014.
117. MB's position that he retained Mr. Skrypichayko as a lawyer is supported by documentary evidence. There is a business card, there is a retainer cheque and there is a letter written by Mr. Skrypichayko to CRA on his own letterhead, bearing the words "Skrypichayko LLP: Tax Lawyers" and "David Skrypichayko, Barrister and Solicitor".
118. MB was candid. Though he had never seen the letter which Mr. Skrypichayko purported to have faxed to him, he was willing to admit the possibility that it may have been intercepted by his wife.
119. The Committee found that Mr. Skrypichayko was not a credible witness.
120. With regard to the October 18, 2013, letter, in which Mr. Skrypichayko purported to advise MB of his suspended status, the Committee notes that this letter was not provided to BO for nearly a year after it was purportedly sent and after the investigation had commenced into the complaint. It would seem that, as a suspended member of the Law Society, Mr. Skrypichayko would have kept very close at hand any letter setting out the nature of a business relationship, to rebut any suggestion of unauthorized practice. The late tender of this document supported the finding that the letter was created after the fact.
121. The letter was dated almost two weeks before the retainer cheque was received. It was accompanied by a fax confirmation sheet that was unreliable. During cross-examination, Mr. Skrypichayko suggested that at times the clock on his fax machine would reset as the result of power failures or loss of power, such that the date stamp was unreliable.
122. The September 29, 2013, email produced by Mr. Skrypichayko was not tendered until the last day of the hearing, after MB had given his evidence and was not available to comment on it. This document was central to Mr. Skrypichayko's defence that he was not practicing law while suspended and that he had informed MB of his suspension. The email appeared to have been created by Mr. Skrypichayko after the fact, possibly even after the hearing had commenced, and there was no corroboration that MB had received it.

123. The email was also dated a full month before MB provided the retainer cheque and two weeks before the alleged letter disclosing Mr. Skrypichayko's suspended status. It is implausible that such an email would be sent so long before MB tendered his \$5,000.00 cheque and before he was allegedly advised that Mr. Skrypichayko was suspended. Had this email been sent by MB on September 23, 2013, there would have been no need for Mr. Skrypichayko to even send the October 18, 2013, letter to him. It further supports the Committee's finding that the email was fabricated.
124. Finally, the content of the email itself undermines much of Mr. Skrypichayko's earlier evidence. The email suggests that a business venture was the sole purpose of the \$5,000.00 cheque. There is no mention of it being for audit hosting, banker introductions or accounting services. Of note, the only evidence of a business arrangement, as opposed to a legal retainer between Mr. Skrypichayko and MB, comes from this email and Mr. Skrypichayko.
125. The Committee finds that Citation 18 is proven in relation to MB's complaint and that Mr. Skrypichayko held himself out as an active lawyer, practiced law while suspended, and failed to advise MB of his suspended status. Such conduct is deserving of sanction.

The JN Complaint

126. The LSA alleges that Mr. Skrypichayko held himself out as a practicing lawyer after having been suspended, provided legal services to JN, and failed to advise JN that he was suspended. The Committee heard evidence relevant to this citation from BO, the LSA investigator; JN, the complainant; and Mr. Skrypichayko.

JN's evidence

127. JN is the owner of GLS. GLS builds water tanks, feed storage systems and methane digesters. GLS had been engaged as a subcontractor on a project near [●], Alberta. In the fall of 2013, problems arose with the project and JN found it necessary to file a builder's lien to secure monies owed to GLS. JN said that KT, a business associate, had referred him to Mr. Skrypichayko. He said that he had met Mr. Skrypichayko briefly but denied that they had any previous business relationship.
128. JN recalled that the two spoke on the phone, that Mr. Skrypichayko agreed to assist with the builder's lien and that he would require a \$25,000.00 retainer. JN said that he was surprised by the amount of the retainer and was assured by Mr. Skrypichayko that the full amount would be required only if the matter became protracted and required court attendances; otherwise, the excess monies would be returned. JN agreed to retain Mr. Skrypichayko's services.

129. JN said that he was instructed by Mr. Skrypichayko to deposit the retainer of \$25,000.00 into the bank account of PM, Mr. Skrypichayko's brother-in-law, and he did so by bank draft dated November 12, 2013.

130. On December 10, 2013, JN received an email from Mr. Skrypichayko. The email was addressed to JN and stated:

Gentlemen, we remain at a standstill. I've received a text that [PM] will repay the \$4,000.00 when his truck sells. That will not do. I am not going to be his creditor. I cannot afford it. [KT], [JN], you are advised to make up the shortfall with me directly. Deposit the \$4,000.00 into my account at [●] Bank. [PM] can pay you back. I never authorized it. I was not part of it. I will do nothing until the \$4,000.00 is in my account.

131. JN responded by email dated December 11, 2013:

David. It was brought to my attention late last night that you will not proceed with the builder's lien until you get full payment, which I do understand, but at this point I would like to point out some major facts.

1. You were the one that asked me to deposit 25,000.00 into [PM]'s account;
2. [GLS] did deposit 25,000.00 into [PM]'s account on November 12, 2013;
3. When I talked to you I stated as soon as 25,000.00 was sent, I needed a receipt (this still has not happened)
4. When you asked for a copy of the building permit I said we did not have a copy and I would call UEM and [MW] to see if they would send a copy (but I doubted they would) but I would try. After 2 days of trying I called you to tell you I was unsuccessful but as usual no answer;
5. You have had one month (30 days) to get this done and now have \$18,500.00 to do this task and the deadline is here

Options at this time

1. You send the \$18,500.00 back to us and we at [GLS] hire a lawyer that will do what he promises
2. We send you \$4,000.00 today and by this weekend you get the building lien in place but to do this I need a receipt of the total of \$25,000.00, I will deal with [PM] from this end.

Please contact me today at [●] so we can decide which way to go.

132. JN subsequently deposited an additional \$4,000.00 into Mr. Skrypichayko's personal bank account.

133. On December 12, 2013, the day before the deadline for doing so, the builder's lien was filed on behalf of GLS. It claimed an interest of \$250,000.00 and named Mr. Skrypichayko as the agent.
134. On February 12, 2014, JN sent an email to Mr. Skrypichayko, advising that there was a settlement and asking that Mr. Skrypichayko contact him immediately. On February 18, 2014, JN sent another email to Mr. Skrypichayko:

David:

I would like you to drop the Builder's Lien on the [MW] Project as we have come up with a settlement. The settlement is for all the funds they owe with no interest of lawyer's fees but at this time we a (sic) [GLS] must settle. As soon as proof of the Builders Lien being dropped, [L] at [MW] will transfer the money to [GLS] account. [L] at [MW] has always honest (sic) with us and I trust he will transfer the funds. So David if you can drop the Builders Lien and e-mail the proof I will send the proof to [L] so we can settle this right away so please do this today.

135. On March 6, 2013, JN sent another email to Mr. Skrypichayko:

David:

Since you do not respond to e-mails and do not answer your phone calls we at [GLS] have no other option but to deal with this matter but in the legal way. The next course of action that we at [GLS] is going to do is to contact someone in the complaints department of the Law Society of Alberta and file a complaint. If this does not get a result we are looking for we have found a law firm in Edmonton that will represent us and will collect the funds owing to us. It was this law firm that suggested to us to go first to the Law Society to see what results we would get. I am a business man and one thing I will not tolerate is people taking advantage of me or my business and cost is minor and more on principal of this matter and willing to spend whatever it takes to get the result we need. [sic throughout]

Thanks,

[JN]

President
[GLS]

136. A fax sent from Mr. Skrypichayko to JN on March 6, 2013 stated:

[T]he discharge is submitted. Should be fully registered tomorrow morning. Will scan and email you copy then.

137. JN asked Mr. Skrypichayko for a receipt for his retainer. He received a document titled “Invoice” from Mr. Skrypichayko dated December 20, 2013. The document set out fees of \$22,500.00 and described that the fees were incurred in relation to the following:
- to agency appearance at Northern Alberta Land Titles Office;
 - to agency appearance and meetings with [●];
 - to all related calls, email, accounting and reporting associated therewith.
138. The invoice also identified a disbursement of \$2,500.00 in relation to “advisory services by [PM].” The total of Fees, Disbursements and GST and the balance due was set at \$25,000.00. At the bottom of the document is written: “submitted by David Skrypichayko, Barrister and Solicitor (As agent for [CTB])”.
139. JN requested but never received a final accounting from Mr. Skrypichayko aside from the faxed “Invoice” received December 20, 2013, which JN described as the receipt he had demanded. JN expected some money back from Mr. Skrypichayko as “it does not cost \$25,000.00 to file and discharge a builder’s lien.”
140. JN filed a complaint against Mr. Skrypichayko with the LSA on March 10, 2013, and learned on or around that date that Mr. Skrypichayko was a suspended member of the LSA.
141. JN denied ever seeing or receiving a January 3, 2014, letter from Mr. Skrypichayko, that stated as follows:

Dear Sir:

[MW/•]’ Lien

You were advised in my previous letter on the 8th of November 2013 that my agency work is not legal services because I am a suspended member of the Law Society of Alberta.

And you accepted that.

Accordingly, I am only your agent, not your lawyer.

Nevertheless as business partners over the last 2 years, I remain cooperative and provide you with a draft invoice which is common in the legal industry. There are spelling mistakes and none of the numbers are correct, and I have not signed it as a barrister and solicitor. You are being provided with this for information purposes only.

Yours truly,

Signed

David Skrypichayko

142. Mr. Skrypichayko's cross-examination of JN focused on a project in Cameroon, the relevance of which was not apparent. In any event, JN denied any involvement in a project in Cameroon and had no ownership interest in an entity called CTB.

Mr. Skrypichayko's Evidence

143. Mr. Skrypichayko testified that he did not provide legal services to JN. He said that he filed a builder's lien and later discharged that lien, not as a lawyer but as any tradesperson might do. The work he did for JN was not legal work and Mr. Skrypichayko was not practicing law.
144. Mr. Skrypichayko described that he, PM, JN and KT had been involved together in an African business venture called CTB prior to the matters which were the subject of this complaint.
145. One set of email exchanges about the venture is alleged to have occurred in May of 2012. There is an email from KT to Mr. Skrypichayko and PM. KT writes:
- David, Read the email below it was forwarded to me by the owner of [GLS], JN a very good friend of mine that is in the same business.
- KT went on to encourage Mr. Skrypichayko to check out the business opportunity described in the email to JN.
146. Mr. Skrypichayko testified that he travelled to Cameroon in 2012, to investigate the business opportunity. The venture involved an African tribal chief and related to provision of large storage tanks in Africa.
147. Mr. Skrypichayko tendered four exhibits on the last day of trial. JN had already given his evidence, had been cross-examined by Mr. Skrypichayko, and had left the hearing.
148. The apparent purpose of the May 2013 emails which were entered into evidence was to establish that Mr. Skrypichayko, KT, PM and JN were in a business relationship, related to a tank and silo venture. Mr. Skrypichayko also alleged that JN and KT were trying to bribe government officials in Cameroon.
149. Mr. Skrypichayko put into evidence an email string dated July 15, 2013. The first email is to Mr. Skrypichayko from KT and purports to forward an earlier email from JN. The "forwarded" email reads:

[KT], get a message to David and tell him not to worry about being suspended. [PM] told me about it when he called. David did his best for us in Yaounde and he'll get a small share of the [MW] job in Whitecourt.

150. The second message on the string purports to be from KT, forwarding the first and saying:

David, Read the email below from our partner [JN]. We both know about your suspension as a lawyer, but don't sweat. We're both grateful for the work you did for us in Cameroon with Muna and we'll give you a share of the Whitecourt project as promised.

It ends: Best Regards, [KT], [GLS]/[CTB].

151. Mr. Skrypichayko gave evidence that the \$25,000.00 sent by JN to PM's account was actually for the sole benefit of PM. He denied receiving any of this money. Mr. Skrypichayko stated that the additional \$4,000.00 from JN was placed in his bank account, but that it was again for the benefit of PM. Mr. Skrypichayko explained that PM had a serious alcohol addiction and that he was entrusted with \$4,000.00 of PM's money so that the money could be disbursed in small amounts lest PM drink it all away.
152. At another point in his evidence, however, Mr. Skrypichayko said that the monies were paid in respect of a truck that PM had sold to JN.
153. Mr. Skrypichayko testified that he provided JN with the document titled "Invoice" in December of 2013 because JN had asked him to provide an example of what a statement of account or an invoice might look like. Mr. Skrypichayko noted that he did not sign the document and that his copy was marked "DRAFT." The document was not a receipt for monies received, or a statement of account for fees and disbursements.
154. Mr. Skrypichayko also said that he had erred in issuing the invoice at JN's request to offset shareholder loans with PM.

BO's Evidence

155. BO summarized JN's complaint and advised that LSA officials and a sheriff attended at Mr. Skrypichayko's home office in March 2014 to seize his files and related documents.
156. Mr. Skrypichayko had advised BO that the \$25,000 paid by JN was not a retainer but related to a business deal between JN and Mr. Skrypichayko's brother-in-law, PM.
157. BO produced a document retrieved from Mr. Skrypichayko's file. The document is a copy of a handwritten note that reads as follows:

[JN] at [GLS] (builder's lien).

Full retainer of 25K. File not to be opened until full retainer received.

Mr. Skrypichayko advised BO that calling the payment a retainer was an error on his part.

158. BO commented on the invoice provided by Mr. Skrypichayko to JN. It was on Mr. Skrypichayko's letterhead and had Mr. Skrypichayko's name on it. The invoice appeared to contradict Mr. Skrypichayko's evidence that the transaction was a business deal between JN and PM.
159. BO said that he first received the invoice dated December 20, 2013, from JN and that he had seen a second copy of this same document on the file seized from Mr. Skrypichayko's office. He said that Mr. Skrypichayko provided him with what appeared to be a copy of this same document sometime after the seizure of the file from his office. The difference between the copies he had received earlier and that which was later received from Mr. Skrypichayko is that the copy from Mr. Skrypichayko had the word "DRAFT" marked prominently on the document. Mr. Skrypichayko advised BO that the invoice was prepared at JN's request and not because he provided legal services or charged fees.
160. BO was unable to trace the \$25,000.00 deposit from JN into PM's account. He interviewed PM briefly but he was a reluctant witness. PM denied giving Mr. Skrypichayko any of the \$25,000.00 and confirmed he had charged a \$2,500.00 finder's fee for connecting JN to Mr. Skrypichayko.
161. BO also gave evidence regarding a letter dated November 8, 2013, which purported to be from Mr. Skrypichayko to JN. The letter, stated as follows:

Dear Sir:

[MW]/UAM Lien

Be advised that I am currently suspended by the Law Society of Alberta (effective June 8, 2013) and as a result of that, the following conditions apply to any agency work I can do for you:

1. No trust funds nor trust conditions can be accepted nor insured;
2. I cannot practice law nor provide legal advice; and
3. None of my communications (with you) carry any liability insurance.

Accordingly, I could only act as your agent, not as your lawyer, relying on [PM] for the more sophisticated interpretations and analysis. You must settle your debts with him prior to inquiry further on this matter. I have been advised that he is willing to

accept \$25,000 from you as a final settlement for his work in Cameroon in 2012/2013.

I am not his lawyer, nor your lawyer. You and he must settle your dispute on your own.

Govern yourself accordingly.

Yours truly,

Signed

David Skrypichayko

162. A fax confirmation sheet accompanied the letter as well as another copy of the letter with a handwritten notation on it: "printed 230 pm 8 Nov 2013". BO testified that the LSA received that letter from Mr. Skrypichayko on June 24, 2014, shortly after Mr. Skrypichayko was interviewed in respect of this complaint.
163. On August 24, 2015, Mr. Skrypichayko provided BO with another letter he purportedly sent to JN. It was dated January 3, 2014 and referred to the Nov 8, 2013, letter as well as a "draft" invoice.
164. JN was advised during the investigation that Mr. Skrypichayko was alleging that he had advised JN of his suspension. JN emailed BO to advise that he had never seen Mr. Skrypichayko's letters of November 8, 2013, or January 3, 2014.
165. During the investigation, BO asked Mr. Skrypichayko whether he had received an additional \$4,000.00 from JN in or around December 11, 2013. Mr. Skrypichayko denied receiving the funds. On a second occasion, BO showed Mr. Skrypichayko a copy of the bank draft from GLS identifying him as the payee of \$4,000.00. Mr. Skrypichayko again denied receiving the funds, saying that the draft appeared to have been "doctored."
166. BO then obtained copies of Mr. Skrypichayko's bank statements from [●] Bank. The bank statement identified that there was a \$4,000.00 deposit made into Mr. Skrypichayko's bank account on December 11, 2013. Mr. Skrypichayko again denied he received money from JN. BO then attended at [●] Bank and obtained further details of the deposit. He was able to confirm that the registration number disclosed in the bank records matched the bank draft from GLS.
167. Mr. Skrypichayko then admitted to BO that he did deposit \$4,000.00 from GLS into his bank account as part of a business deal between JN and PM. He explained that he had been entrusted with PM's money because PM was unable to responsibly handle the money on his own due to alcoholism. Mr. Skrypichayko was unable, however, to

demonstrate that he had paid the funds to PM as he purported to have paid the funds out to PM in several small cash amounts over time.

Evidentiary Findings

168. The Committee preferred the evidence of JN. JN's story is simple and clear. He was a businessman from Ontario doing work in Alberta. He needed a builder's lien filed. He was referred to Mr. Skrypichayko by a business colleague. He believed Mr. Skrypichayko was a lawyer. He retained Mr. Skrypichayko urgently and sent a retainer of \$25,000.00 to the account requested and then, reluctantly, a further retainer of \$4,000.00 for the work to be completed. A lien was filed by Mr. Skrypichayko and later discharged. JN was dissatisfied with the service as he was unable to reach Mr. Skrypichayko easily and he did not obtain a refund of the unused portion of the retainer. He filed a complaint.
169. JN's version of events is supported by the evidence. The handwritten note on Mr. Skrypichayko's file confirms that the \$25,000.00 was a retainer. The further email exchange confirms that Mr. Skrypichayko demanded further funds before the work would be undertaken. The extra funds were received, and the lien was filed. Mr. Skrypichayko may have directed the larger retainer to be paid into his brother-in-law's bank account so that it did not appear in his own bank statements while he was suspended from practicing law. Alternatively the moneys were deposited to PM's account, as part of a scheme by him and Mr. Skrypichayko to recover money they believed was owing from JN to PM.
170. Mr. Skrypichayko sent a document titled "Invoice" to JN on December 20, 2013, for the full \$25,000.00. The Committee notes that Mr. Skrypichayko said this document was not an invoice but rather was prepared as a precedent at JN's request. However, of the three versions of this document received by BO, the only version marked "Draft" was the one tendered by Mr. Skrypichayko during the investigation. These circumstances suggest strongly that the "Draft" marking was added by Mr. Skrypichayko after the fact and that the original document titled "Invoice" was exactly what it appeared to be: an account rendered for legal services.
171. Mr. Skrypichayko attempted, with the emails tendered on the last day of the hearing, to establish that he was not practicing law while a suspended member. Mr. Skrypichayko submitted that the content of these late entry emails is exculpatory. The Committee notes that the emails, if the only or best evidence that Mr. Skrypichayko was not practicing law while suspended, were never disclosed to the LSA and were purportedly located only on the last day of the hearing. As a result, they were never put to JN in cross-examination.
172. The late tender, coupled with the absence of the emails from the file, caused the Committee to believe that the emails were created by Mr. Skrypichayko after the fact.

These considerations wholly undermine the value of these documents and the Committee gives no weight to these emails.

173. During the hearing and indeed in cross-examining JN, Mr. Skrypichayko spoke often of the existence of a significant business opportunity in Cameroon that various persons were engaged in, including himself as an important player. JN denied the existence of this business venture.
174. Mr. Skrypichayko was asked by the chair whether he had considered that the Cameroon business opportunity was likely a scam. It was at that point that Mr. Skrypichayko gave evidence that indeed, in May 2013, PM had advised Mr. Skrypichayko that he was convinced the investment opportunity was not legitimate.
175. Until that point, Mr. Skrypichayko had been arguing his case and cross-examining JN as if the Cameroon business opportunity was genuine, and the involvement of an African chief was proof of it being legitimate and impressive. Mr. Skrypichayko then presented himself in a heroic way in relation to the discovery of the scam, and as being outraged and shocked to learn about it. While the relevance of the African venture is questionable, the inconsistent positions Mr. Skrypichayko took in relation to it further undermined his credibility.
176. The Committee found that Citation 18 was also proven in relation to JN's complaint, and that Mr. Skrypichayko was guilty of conduct deserving of sanction.

H. Citation 19: Failing to be candid with the LSA

177. The Law Society alleged that Mr. Skrypichayko failed to be candid with LSA investigators. This citation was factually connected to the evidence which supported Citation 18.
178. During the investigation of the complaints of MB and JN, Mr. Skrypichayko provided the investigator, BO, with fax communications which purported to advise each respective complainant of his suspension. The Committee determined that these communications were created by Mr. Skrypichayko after the complaints were made and had not actually been provided to the complainants. Mr. Skrypichayko provided those communications with the intent to mislead the LSA.
179. In addition, Mr. Skrypichayko failed to be candid with BO when he was asked to explain an invoice and to confirm banking details related to the deposit of funds received from JN for legal work.
180. MB confirmed that he sought to retain Mr. Skrypichayko as a lawyer to assist him with CRA issues. He first met with Mr. Skrypichayko on October 28, 2013, at which time Mr.

Skrypichayko agreed to assist him. MB received Mr. Skrypichayko's business card at that meeting, which described him as a tax lawyer, practicing through a professional corporation. MB provided a \$5,000 retainer at that time but became frustrated after Mr. Skrypichayko failed to provide any legal services. He eventually retained another lawyer, AD, and met with AD on April 19, 2014. AD then advised him of Mr. Skrypichayko's suspended status and he became aware for the first time that Mr. Skrypichayko was not authorized to practice law.

181. BO received three communications from Mr. Skrypichayko, attaching letters to MB that BO had not seen on any files he had been given. Mr. Skrypichayko asserted that he had faxed MB a letter on October 18, 2013, prior to their first meeting, to advise that he was suspended and could only act as his agent. A copy of the October 18, 2013, fax was provided to BO on September 22, 2014, during BO's investigation of MB's complaint. Mr. Skrypichayko indicated that the fax had been on a file he maintained regarding the sale of Wildrose party memberships and it had not been on MB's client file. MB's actual client file only became available shortly before the hearing and was not available to BO during the investigation. Mr. Skrypichayko also relied on the October 18, 2013, facsimile in his cross-examination of MB at the hearing and appeared to maintain that he had sent it to MB prior to their first meeting. MB denied receiving the correspondence or knowing that Mr. Skrypichayko was suspended when he first retained him.
182. During the LSA investigation by BO, Mr. Skrypichayko told BO that he had been retained by MB as an accountant. This is also inconsistent with the assertion that he intended to act as an agent.
183. JN required legal assistance in a builders' lien matter and retained Mr. Skrypichayko to act as his lawyer in November of 2013. He paid the \$25,000 retainer demanded by Mr. Skrypichayko and made a direct deposit into the account of PM, at the request of Mr. Skrypichayko. When some of the funds were "lost", Mr. Skrypichayko demanded that JN pay him another \$4000 and these funds were paid directly into Mr. Skrypichayko's bank account by way of bank draft. JN later requested and received an invoice for \$25,000 from Mr. Skrypichayko.
184. Mr. Skrypichayko was unresponsive during JN's dealings with him. As a result, he reported Mr. Skrypichayko to the LSA and then discovered that Mr. Skrypichayko was suspended from practice. Mr. Skrypichayko had never informed JN that he was suspended. Mr. Skrypichayko advised the LSA during the investigation that he sent fax correspondence to JN on November 8, 2013, advising JN that he was suspended and able to act only as an agent. JN denied receiving this correspondence and only became aware of Mr. Skrypichayko's assertion when he subsequently received a copy of the correspondence from the LSA during the investigation of the complaint. Mr. Skrypichayko provided it to the LSA on June 24, 2014, as part of his reply to JN's complaint. As part of a later response to the LSA, Mr. Skrypichayko provided another letter he alleged he had sent to JN, dated January 3, 2014, in which he again purported

to advise JN that he was a suspended lawyer. JN also denied receiving or seeing this letter at the relevant time. Interestingly, Mr. Skrypichayko did not rely on these letters during his cross-examination of JN during the hearing.

185. The LSA investigator, BO, testified that Mr. Skrypichayko advised him there was no retainer for legal work and that the funds JN had paid related to a business deal between JN and PM. BO's review of Mr. Skrypichayko's files, however, revealed documentation confirming the \$25,000 was payment on a retainer. When BO confronted him with his own notation, Mr. Skrypichayko explained that he had made an error in referring to the payment as a retainer.
186. There were also discrepancies with regard to JN's payments to Mr. Skrypichayko, and an invoice JN received from him. During the investigation, Mr. Skrypichayko advised BO that he had prepared the \$25,000 invoice in draft form at JN's request and that it was not related to the provision of legal advice or the payment of legal fees. When BO inquired why the invoice did not indicate that it was a draft, Mr. Skrypichayko went away and subsequently provided another form of invoice which he alleged had been sent to JN and which had been marked as a draft. JN denied ever receiving this invoice in draft form.
187. During the investigation, BO also investigated the second payment of \$4,000 which JN made directly to Mr. Skrypichayko. On two occasions, Mr. Skrypichayko denied receiving the payment and questioned the authenticity of the bank draft JN had provided to the LSA. On further investigation of Mr. Skrypichayko's accounts at the [●] Bank, BO found evidence confirming the \$4,000 deposit in his bank statements. When he confronted Mr. Skrypichayko with this information, Mr. Skrypichayko then admitted receiving the funds from JN. He advised BO, however, that he had forwarded the money to PM, as the funds were related to business dealings between PM and JN. Mr. Skrypichayko could not provide proof of any payments to PM.
188. Of interest, the "draft" invoice and the two letters of November 8, 2013, and January 3, 2014, which Mr. Skrypichayko provided to the LSA, were not on JN's client file, which was available during the investigation. Mr. Skrypichayko provided these documents after the fact, in response to JN's complaint and during the course of BO's investigation.
189. Finally, it was notable that Mr. Skrypichayko brought new documents to the hearing when he gave his direct testimony. These documents were relevant to the complaints of MB and JN, yet he had not brought them forward prior to the hearing. They were also not brought forward in his cross-examination of either complainant when they were available to give evidence. He asserted in direct testimony, at the end of the hearing, that he found the documents the night before he gave his evidence, accessing them from his email by using a friend's computer. With regard to each complaint, the documents were submitted in an attempt to establish that his financial relationships with the complainants arose from business dealings and arrangements other than retainers for legal services. These

attempts to provide misleading evidence were consistent with his conduct during the investigation.

190. In summary, the Committee found that Mr. Skrypichayko failed to be candid during the LSA's investigation of the complaints that he had held himself out as a lawyer, had failed to advise purported clients of his suspension, and had practiced law while a suspended member of the LSA. In particular, he fabricated correspondence in which he purported to advise MB and JN that he was suspended and could not provide legal services. Additionally, he appears to have created a "draft" invoice during the course of the investigation, in an attempt to support his assertion that JN asked him for a draft invoice for purposes unrelated to the provision of legal services. These documents were not contained in the original client file materials and were only provided during the course of the investigation. Finally, Mr. Skrypichayko attempted to deny that he had received a second payment of \$4,000 from JN until it was apparent that BO had obtained proof of the deposit into his personal account. Only then did Mr. Skrypichayko admit he had received the money, although the admission was followed with another unsubstantiated assertion that the money had been paid to PM, a business associate, and that he had not received it for his personal benefit.
191. On the basis of the foregoing evidence, the Committee found that Mr. Skrypichayko was guilty of the matters alleged with regard to Citation 19 and that his conduct is deserving of sanction.

I. Decision and Analysis

192. Mr. Skrypichayko is guilty of conduct deserving of sanction in respect of each of the citations brought against him. The first 17 citations were ultimately fully admitted and the last two citations were established on the evidence. All citations having been made out, the Committee finds that Mr. Skrypichayko's conduct is deserving of sanction.
193. Counsel for the LSA submitted that the citations would collectively warrant disbarment.

Burden of Proof

194. The *Legal Profession Act*, RSA 2000, c L-8, section 67 states:

When it is established or admitted in any proceedings under this Division that a member has received any money or other property in trust, the burden of proof that the money or other property has been properly dealt with lies on the member.

195. Counsel for the LSA advised the Committee at the beginning of the hearing that that section 67 of the *Legal Profession Act* created a reverse onus on the member in relation to Citations 18 and 19 because they dealt with receipt of trust money. The Committee disagrees with this. The citations relate to practicing while suspended and failing to be candid with the regulator. Facts internal to the complaint showed that Mr. Skrypichayko

was mishandling trust money. He was not, however, cited for failing to properly deal with either trust money or money that ought to have been characterized as such and placed in trust. The reverse onus provision in section 67 does not apply.

Governing Principles

196. The primary purposes of disciplinary proceedings are found in section 49(1) of the *Legal Profession Act*; namely, to ensure that the public is protected and that to ensure that the public maintains a high degree of confidence in the legal profession (Hearing Guide, February 2013, p. 10).
197. The privilege of self-governance is accompanied by certain responsibilities and obligations. Hearing Committees are to consider the impact of any misconduct on individual members of the public and are to consider the impact of the conduct on the profession generally:

This public dimension is of critical significance to the mandate of professional disciplinary bodies. The question of what effect a lawyer's misconduct will have on the reputation of the legal profession generally is at the very heart of a disciplinary hearing. . . . (*Adams v. The Law Society of Alberta* [2000] A.J. No. 1031 (Alta. C.A.)).

198. In service of these ends, the Hearing Guide sets out a number of general and specific factors that are to be taken into account when determining an appropriate sanction. Some factors have an ameliorative effect on sanction, and others have an aggravating effect on sanction. The application of the factors and the weight assigned to each will depend on the specific facts of each case. What follows is the application of those factors most relevant to the facts of these complaints, as determined by this Committee.

Consideration of Ameliorative Factors

a. Mr. Skrypichayko's record of prior disciplinary proceedings

199. Mr. Skrypichayko has no disciplinary record prior to the within proceedings. This is an ameliorative factor in the consideration of sanction.

b. Admissions of guilt and statements of admitted facts

200. Mr. Skrypichayko tendered a Statement of Admitted Facts on the first day of the hearing and a revised Statement of Admitted Facts on the last day of the hearing, with the latter Statement replacing the former in its entirety. However, getting to that point was time consuming, confusing and tortuous.

201. The Hearing Guide says that statements of admitted facts can be an ameliorating factor in considering sanction. Such statements are encouraged as they reduce the length of hearings by relieving counsel of the burden of establishing certain uncontroverted facts. This eases the administrative burden on the LSA and saves time and trouble for witnesses.
202. In this hearing, however, there was very little advantage gained. On the first day of the hearing, Mr. Skrypichayko suggested he might withdraw the statement tendered and, as a result, the Committee heard examination and cross-examination of all of the witnesses. When the second Statement of Admitted Facts was tendered, the hearing was almost over. Some of the statements, such as the assertion that Mr. Skrypichayko was acting as MB's accountant, were inconsistent with the evidence he introduced at the hearing. Efficiencies were lost and this Committee finds that the tendering of the Statements of Admitted Facts have no ameliorative impact on the considerations of sanction.

c. Delay in prosecution

203. The Hearing Guide identifies that delay in the conduct of a disciplinary matter can act as an ameliorating factor even where such delay is not found to be a basis for dismissing a complaint.
204. The Committee finds that there is some ameliorative consequence of delay in the consideration of sanction, but notes that some delay was caused in part by Mr. Skrypichayko's refusal to cooperate fully with his regulator. The ameliorative effect of delay is, in the result, modest.

Consideration of Aggravating Factors

a. The BB Complaint

205. Mr. Skrypichayko failed to represent BB conscientiously and failed to communicate with him. Mr. Skrypichayko's failures in his representation of BB put him and his company in serious jeopardy. The impact on the client is an aggravating factor in the consideration of sanction and the impact here was undeniably serious.
206. It is also an aggravating factor that Mr. Skrypichayko transferred retainer monies for his personal benefit without any or proper accounts having been rendered and that accounts were rendered, withdrawn, and rendered again in a most reckless and confusing manner, often without any reporting to the client. Trust monies are to be handled with the greatest care. They were not.
207. It is also of great concern to this Committee, and an aggravating factor in the consideration of sanction, that Mr. Skrypichayko was found by a justice of the Alberta

Court of Queen's Bench to have overcharged his client for services rendered to such an extent that his account was cut in half – from about \$20,000.00 to just over \$10,000.00.

208. It is also an aggravating factor in the consideration of sanction that Mr. Skrypichayko improperly attended to the commissioning of an affidavit. The legal system relies on lawyers to ensure that affidavits are executed properly and in a manner consistent with the Rules of Court and with the laws of this Province. In ignoring these clear, simple and essential rules, Mr. Skrypichayko demonstrated little understanding of very basic professional requirements.
209. It is also an aggravating factor that Mr. Skrypichayko responded to a complaint filed against him by making unfounded and scurrilous accusations against his client, his client's bookkeeper and his client's lawyer. Mr. Skrypichayko accused BB of having committed "numerous acts of fraud" against the CRA. Mr. Skrypichayko alleged that BB was at risk of being charged for tax evasion and, further, that BB's bookkeeper, a certified general accountant by designation, had condoned and assisted BB in this fraudulent conduct. Mr. Skrypichayko also alleged that BB's fraudulent and deceitful conduct was done in part to avoid child support allegations.
210. Mr. Skrypichayko further alleged that the lawyer representing BB in the taxation of accounts had abided and condoned harassment, intimidation and verbal threats made against him by BB after a court attendance.
211. BB described how distressing it was to him to be called a tax fraud and a deadbeat dad. BB's bookkeeper sent a written response to the allegations, describing the personal and professional distress caused by these unfounded accusations.
212. No evidence was led to sustain Mr. Skrypichayko's many accusations and this Committee finds them to be wholly and utterly unfounded. Mr. Skrypichayko used these false accusations in an attempt to intimidate the complainant or, alternatively, in an attempt to gain some advantage in the investigation of the complaints filed against him. This conduct would certainly cause significant harm to his client and others and these are serious aggravating factors in the determination of sanction.
213. It is also of great concern to the Committee, and an aggravating factor in the consideration of sanction, that Mr. Skrypichayko refused to fully cooperate with the investigation of the complaints against him. He was non-responsive, evasive and uncooperative. He also directed groundless accusations against the regulator, its agents and employees.

b. The JN and MB Complaints

214. This Committee has concluded that Mr. Skrypichayko practiced law while a suspended member of the LSA; he held himself out to JN and MB as an active practicing lawyer in the province of Alberta and failed to advise them of his suspended practice status. This is a serious matter and an aggravating factor in the consideration of sanction. He took significant sums of money from each of them in the form of retainers, and then failed to perform the services he had promised. In JN's case, he grossly overcharged for legal services associated with the filing and discharge of a builder's lien.
215. Mr. Skrypichayko claimed that JN and KT were trying to bribe government officials in Cameroon. He also responded to MB's complaint with attacks on his honesty and integrity. There was no evidence to substantiate these claims.
216. Mr. Skrypichayko practiced law while suspended and denied it to the regulator. He created false documents after the fact and tried to pass them off as legitimate letters to his purported clients, in an attempt to mislead the investigators into believing he had warned the clients that he had been suspended from practice. This is an aggravating factor, as is Mr. Skrypichayko's failure to be candid with BO during the investigation about the funds he received from JN as part of his retainer.

Conclusion Regarding Sanction

217. Mr. Skrypichayko's conduct demonstrates a complete absence of two qualities essential to the conduct and character of members of the LSA: integrity and governability.
218. The Preface to the *Code of Conduct* underscores the centrality of integrity to the conduct of a lawyers:

Two fundamental principles underlie this Code and are implicit throughout its provisions. First, a lawyer is expected to establish and maintain a reputation for integrity, the most important attribute of a member of the legal profession. Second, a lawyer's conduct should be above reproach.

219. Mr. Skrypichayko's conduct demonstrated a wholesale lack of integrity. He failed to represent his client's interests, failed to communicate, failed to account, failed to handle trust money properly, failed to follow clear and simple rules and laws, hurled accusations at clients rather than responding meaningfully to complaints, flouted and attempted to subvert the investigation processes of his regulator, created false evidence both before and at the hearing, and practiced law while suspended.
220. Mr. Skrypichayko's conduct demonstrates that he is not governable.
221. Mr. Skrypichayko, in his final argument in relation to sanction, stated in part:

I accept that I have not dealt with my clients appropriately. I accept that I have not dealt with them formally in the way that the legal profession and the Law Society is accustomed to seeing.

The mistake that I have made -- and I hope I never make again -- is that I have tried to use informality to make the client feel comfortable to get him to open up; put aside his defences -- whatever psychological barriers he might have or whatever anger he might have -- so that we can progress on the merits of the case for a bona fide tax appeal.

I don't feel that overall, by way of conclusion, what you have seen here and what you have heard as evidence is indicative at all of what my character and my integrity is.

I have run a free legal clinic for the seven years prior to being suspended wherein I helped international refugees settle into Canada, and I did it right on 97th Street. I had to shut down that clinic because I was suspended and could no longer notarize documents for these people that were hoping to move to Canada.

I've had to give up a position on the board of Grant MacEwan because my fellow board members were concerned of the suspension. And largely as a result of that happening, an entire centre has shut down at Grant MacEwan devoted to the Ukrainian resource development and cultural preservation divisions.

A further consequence of that has been that a two million dollar endowment to fund an accounting chair in the Faculty of Business at MacEwan University was never consummated or fully funded; and those students, as a result, suffered from that.

Just to get back briefly to some of the evidence that you've heard, I would submit that there's good reliable evidence. There are bank statements; there are fax confirmation sheets; there are letters that I have signed, and I think that those should be given the appropriate weight in your deliberations. That's a humble submission of mine.

I have clearly, over the course of my legal career -- or at least since 2006 -- been running a last chance saloon.

Certainly [SC]'s evidence is that -- the evidence on that file is that he'd been to two other chartered accountants or three other chartered accountants. And then when I figure out what's wrong on the file, well, that's not good enough for him.

I believe that I've been manipulated a few times.

With respect to my business dealings with [MB] and my business dealings with [JN] -- well, I have learned a lot and I have learned a tremendous amount just in the last little while about dealing with individuals like that; and the Law Society has my apologies for being involved in that.

222. The above quotation from the hearing transcript is illustrative of Mr. Skrypichayko's continued inability to take full responsibility for his actions and his lack of connection to reality.

223. The Preface to the *Code of Conduct* states:

The legal profession is largely self-governing and is therefore impressed with special responsibilities. For example, its rules and regulations must be cast in the public interest, and its members have an obligation to seek observance of those rules on an individual and collective basis.

224. Members of the LSA have an obligation to uphold the *Code of Conduct* in their professional lives and have an obligation to cooperate utterly with the LSA's discharge of its obligation to regulate and govern its members. Conduct that undermines and subverts the LSA's work cannot be accepted and must be met with the most serious sanction if the LSA is to meet its mandate of effective self-governance in the public interest.

225. Various types of conduct undermine the LSA's ability to govern the profession. These include:

- failing to respond to those involved in the Law Society process;
- failing to be candid with those involved in the Law Society process;
- failing to cooperate with those involved in the Law Society process;
- breaching an undertaking given to those involved in the Law Society process

[Hearing Guide, p. 19]

226. The evidence demonstrates that Mr. Skrypichayko has engaged in each of these enumerated forms of misconduct again and again. This conduct cannot and will not be tolerated.

227. Having carefully considered the governing principles, the applicable factors and the facts of the within case, the Committee determined that the appropriate sanction in this case is disbarment.

Costs

228. The Committee considered the matter of costs after the conclusion of the hearing. A telephone conference was scheduled for May 3, 2016. Mr. Skrypichayko was advised of the date of the conference and did not participate. Mr. Skrypichayko did not give any reason for his non-participation.

229. The Committee had directed counsel for the LSA to prepare two Statements of Estimated Costs: one with the investigation costs incurred by both LT and BO and a

second containing the investigation costs incurred by BO alone. The former calculation totalled \$129,061.00 and the latter calculation totalled \$63,067.97.

230. There was a lack of detailed records for LT and his time records could not be reconstructed. At the time LT worked at the LSA, investigators did not keep time records. Investigators' time is charged out at \$100.00 an hour.
231. Counsel advised that the hours that had been put into the Investigation Reports are not unusual. BO had done his best to ensure there was no duplication. For example, if he spent one hour investigating something that had the elements of both the BB and SC files, he would charge ½ hour to each file, which is the most conservative approach.
232. In the *Odishaw* case, the hearing committee dismissed the application for a stay of proceedings but reserved jurisdiction to hear additional submissions on prejudice and remedies. The committee stated as follows, at para 179:

In the event that significant prejudice is demonstrated, the Member is at liberty to seek any of a range of remedies, including potentially the exclusion of evidence, the dismissal of any or all of the Citations, a reduction in sanction, and relief from costs.
233. After careful deliberation, the Committee decided to engage its discretion and address the issue of inordinate delay and any ameliorative consequences in consideration of sanction by eliminating from the costs order those investigative costs incurred prior to the appointment of BO as investigator in May of 2012.
234. In reaching this decision, the Committee considered that there was a lack of time records to support LT's work and that, upon BO's engagement, there was likely some duplication of time attributable to BO's efforts to acquaint himself with the files.
235. Accordingly, Mr. Skrypichayko will pay costs in the total amount of \$63,067.97, as calculated in the Estimated Bill of Costs tendered by counsel for the LSA.

J. Concluding Matters

236. There shall be no Notice to the Attorney General.
237. A Notice to the Profession shall be issued.
238. 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. Skrypichayko will be redacted and further redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 98(3)).

Dated at the City of Edmonton, in the Province of Alberta, this 11th day of May, 2017.

Sarah King-D'Souza, Q.C.

Glen Buick

APPENDIX “A”

IN THE MATTER OF THE LEGAL PROFESSION ACT
AND
IN THE MATTER OF A HEARING INTO THE CONDUCT
OF DAVID SKRYPICHAYKO,
A MEMBER OF THE LAW SOCIETY OF ALBERTA

STATEMENT OF ADMITTED FACTS

INTRODUCTION

1. I am a member of the Law Society of Alberta (the “LSA”) admitted on July 24, 2000.
2. I have been a member at all times relevant to these proceedings, but suspended on June 18, 2013.
3. The following citations were directed to a hearing by a Conduct Committee Panel:
 - a. Complaint File C020093245 ([BB])
 1. It is alleged that you failed to provide conscientious service to your client and such conduct is deserving of sanction.
 2. It is alleged that you failed to respond to your client’s communication and such conduct is deserving of sanction.
 3. It is alleged that you improperly commissioned an affidavit and such conduct is deserving of sanction.
 4. It is alleged that you failed to provide written information to your client regarding fees and disbursements and such conduct is conduct deserving of sanction.
 5. It is alleged that you failed to render accounts in a timely manner and such conduct is deserving of sanction.
 6. It is alleged that you failed to issue accounts to your client either before or concurrent with the transfer of funds from trust and such conduct is conduct deserving of sanction.
 7. It is alleged that you failed to conduct yourself with civility and courtesy and acted in a manner that brings discredit to the profession and such conduct is deserving of sanction.

8. It is alleged that you failed to respond to and cooperate with the Law Society of Alberta and such conduct is deserving of sanction.

9. It is alleged that your account exceeded a fair and reasonable amount and such conduct is conduct deserving of sanction.

b. Complaint File 20110349 ([SC])

10. It is alleged that you failed to provide conscientious service to your client and such conduct is conduct deserving of sanction.

11. It is alleged that you failed to respond to your client's communications and such conduct is conduct deserving of sanction.

12. It is alleged that you failed to provide written information to your client regarding fees and disbursements and such conduct is conduct deserving of sanction.

13. It is alleged that you failed to render accounts in a timely manner and such conduct is conduct deserving of sanction.

14. It is alleged that you failed to issue accounts to your client either before or concurrent with the transfer of funds from trust and such conduct is conduct deserving of sanction.

15. It is alleged that you failed to conduct yourself with civility and courtesy and such conduct is conduct deserving of sanction.

16. It is alleged that you failed to respond to and cooperate with the Law Society of Alberta and such conduct is conduct deserving of sanction.

17. It is alleged that you failed to be candid with or misled the Law Society of Alberta and such conduct is conduct deserving of sanction.

b. Complaint File 20140643 ([JN])

18. It is alleged that you are guilty of conduct deserving of sanction by having practiced law, held yourself out to be an active member, or failed to advise of your status as a suspended member, during a time when your membership in the Law Society was suspended and that such conduct is deserving of sanction.

19. It is alleged that you failed to be candid to the Law Society and that such conduct is deserving of sanction.

COMPLAINT C020093245

4. This set of citations arose out of a complaint by [BB], who retained me to represent him in a tax dispute with the Canada Revenue Agency (the "CRA").
5. [BB] retained me in the fall of 2006 to represent him and his business [●] Ltd. in a dispute with CRA. I acted as his lawyer for two years. After receiving an initial retainer of \$5,000, I advised him in July of 2007 that I required a further \$7,500 retainer for legal services to move the matter forward to trial and pleadings, corporate work and affidavit preparation and examinations for discovery (Exhibit 10, page 8).
6. I have failed to provide details as to when and what services I have provided to [BB], apart from some information contained in statements of accounts, and failed to provide documentation to substantiate the services. Although [BB] pressed me for information, I did not show him at the time requested, any papers filed with the CRA.
7. When [BB] met with me together with his accountant in late August 2008, I did not advise what work had been done nor justify my accounts.
8. CRA informed [BB] in October 2008 that there was no record that an appeal had been filed for his company's taxes and they were imminently going to seize bank accounts for GST.
9. [BB] hired the law firm [●] to handle his tax matters. [●] advised that my correspondence to them contemplated an application to extend time to file a notice of objection for the 2001 - 2004 taxation years for the company [●] and for 2002 to 2005 taxation years for [BB] personally, but that CRA advised no such notices of objection or applications to extend had been filed. For GST issues only, an extension was filed by me and granted on September 13, 2007 and then dealt thereafter by the accountant.
10. My accounts were found by Justice Crighton (on an appeal of the taxation of accounts), to have caused considerable angst about what they were actually based upon and that a further lawyer had to accomplish many of the tasks I had been retained to do (Exhibit 15, page 2).
11. Based on the admitted facts and information contained in the forgoing paragraphs, I admit that I failed to provide conscientious service to [BB] and that such conduct is deserving of sanction.

12. During the time I was counsel for [BB], I failed to provide anything in writing to him by way of a status report. I did not return a variety of [BB]'s emails and phone calls, and failed to show up at a meeting scheduled in February 2008.
13. After the CRA threat to seize bank accounts, [BB] called me numerous times and I failed to respond. I also did not respond to emails in October and November, 2008.
14. I admit that I am guilty of failing to respond to client communications and that such conduct is deserving of sanction.
15. I forwarded an email to [BB] on October 19, 2007 attaching an affidavit for him to sign and return by fax (Exhibit 10, page 28).
16. [BB] was not present before me when he signed his affidavit, but he nonetheless signed it and faxed it back to me the same day.
17. I admit that [BB] did not sign the affidavit in my presence, but rather signed it and faxed it back to me and later mailed an original copy.
18. As such, I admit that I improperly commissioned [BB]'s affidavit and that such conduct is conduct deserving of sanction.
19. When [BB] first retained me, I did not provide a retainer letter and as such, I admit that such conduct is conduct deserving of sanction.
20. (rest of page left blank)

21. I also admit that I originally obtained a retainer of \$5,000 in September 2006 and then obtained a further retainer of \$7,500 on July 13, 2007. The following statements of account have been issued:

Statements of Account				
Account #	Dated	Date said Account Received	Date Mr. Skrypichayko said Account Delivered	Comments
0	Oct-9-2006	Not rendered	<ul style="list-style-type: none"> In August 25, 2013 response to Law Society: delivered during a meeting with ██████████ and faxed October 9, 2006 	<ul style="list-style-type: none"> Account not mentioned in complaint or in response ██████████ and ██████████ had not seen this account
1	Dec-19-2006	May-15-2007 (5 months later) July-30-2008 (19 months later) (duplicate)	<ul style="list-style-type: none"> At June 11, 2009 taxation, Mr. Skrypichayko admitted account not sent until May 15, 2007 In August 25, 2013 response to Law Society, Mr. Skrypichayko said he delivered it in a meeting in January 2007 and faxed to ██████████ 	
2	May-15-2007	July-30-2008 (14 months later)		<ul style="list-style-type: none"> Mr. Skrypichayko did not advise of this account at meeting on July 13, 2007 ██████████ believes this account was created later and backdated At June 11, 2009 taxation, two years later, Mr. Skrypichayko withdrew account citing it was an error
3	July-12-2007	June-11-2009 (taxation) (2 years later)	<ul style="list-style-type: none"> In June 21, 2010 response, delivered at meeting on October 19, 2007 In August 25, 2013 response to Law Society, Mr. ██████████ 	<ul style="list-style-type: none"> At June 11, 2009 taxation, Mr. Skrypichayko presented this "new" account Same amount as account #4
			Skrypichayko said he delivered it in a meeting on July 13, 2007 and faxed to ██████████ previously	
4	Oct-19-2007	July-30-2008 (9 months later)	<ul style="list-style-type: none"> Delivered at meeting on October 19, 2007 	<ul style="list-style-type: none"> At June 11, 2009 taxation, Mr. Skrypichayko claimed account #4 was a "reminder" for account #3 same amount as account #3 i.e., of accounts #3 and #4, one was an original and one was a duplicate
5	June-15-2009	Aug-2009 (2 months later)	<ul style="list-style-type: none"> In August 25, 2013 response to Law Society, Mr. Skrypichayko indicated account sent to ██████████ in June 2009 	<ul style="list-style-type: none"> issued 4 days after June 11, 2009 taxation 8 months after ██████████ terminated Mr. Skrypichayko's services

22. In her Reasons for Judgment, Justice Crighton stated that "virtually every account rendered was dated several months earlier than the date it was actually issued".

23. I admit that I did not provide statements of account for services rendered in a timely manner and such conduct is deserving of sanction.

24. The LSA reconstructed my accounting as follows:

David Skrypichayko Professional Corporation Client Trust Ledger Card Reconstructed by The Law Society of Alberta									
File No:									
File Name:									
Re: Tax Appeal									
				Trust			Billings		
Date	Ref	Source/Payee	Description	Receipt	Payment	Balance	Invoice	Payment	Balance
21-Sep-06	3646		Retainer	5,000.00		5,000.00			0.00
2-Oct-06	211	David Skrypichayko P.C.	Paym't on acct.		(3,000.00)	2,000.00		(3,000.00)	(3,000.00)
9-Oct-06		David Skrypichayko P.C.	Invoice #0			2,000.00	5,225.80		2,225.80
1-Nov-06	212	David Skrypichayko P.C.	Paym't on acct.		(2,000.00)	0.00		(2,000.00)	225.80
19-Dec-06		David Skrypichayko P.C.	Invoice #1 (Duplicate of Invoice #0)			0.00	5,225.80		5,451.80
19-Dec-06		David Skrypichayko P.C.	Reversal of duplicate invoice			0.00	(5,225.80)		225.80
15-May-07		David Skrypichayko P.C.	Invoice #2 (Rendered in Error)			0.00	4,099.50		4,325.30
15-May-07		David Skrypichayko P.C.	Withdrawal of Invoice #2 at taxation			0.00	(4,099.50)		225.80
12-Jul-07		David Skrypichayko P.C.	Invoice #3			0.00	7,568.40		7,794.20
13-Jul-07			Retainer	7,500.00		7,500.00			7,794.20
20-Jul-07	239	David Skrypichayko P.C.	Paym't on acct.		(4,500.00)	3,000.00		(4,500.00)	3,294.20
12-Oct-07	248	David Skrypichayko P.C.	Paym't on acct.		(1,500.00)	1,500.00		(1,500.00)	1,794.20
19-Oct-07	249	David Skrypichayko P.C.	Paym't on acct.		(1,500.00)	0.00		(1,500.00)	294.20
19-Oct-07		David Skrypichayko P.C.	Invoice #4 (Duplicate of Invoice #3)			0.00	7,568.40		7,862.60
19-Oct-07		David Skrypichayko P.C.	Reversal of duplicate invoice			0.00	(7,568.40)		294.20
15-Jun-09		David Skrypichayko P.C.	Invoice #5			0.00	7,407.75		7,701.65
18-May-10		Accounts taxed down by Court (Justice Crighton)				0.00	(10,201.95)		(2,500.00)
				12,500.00	(12,500.00)		10,000.00	(12,500.00)	

25. On several occasions, I transferred money from trust to general, but did not create an account until later. I admit that I failed to issue accounts to [BB] either before or concurrent with the transfer of funds from trust and that such conduct is deserving of sanction.

26. In response to the complaint, I made comments about [BB] being at risk for being charged with tax evasion and that his accountant, [●], was aware of this and was actively involved in a scheme (Exhibit 11).

27. As such, I admit that I failed to conduct myself with civility and courtesy and such conduct is deserving of sanction.

28. When [BB]'s complaint was received by the LSA in October 2010, I was requested to provide his file to the Investigator and asked specific questions in a letter of September 2012.

29. I do not dispute the evidence of [BO] on the matter of whether I failed to correspond and cooperate with him and with the investigation and the Law Society and I acknowledge that such conduct is deserving of sanction.

30. At the appeal of the taxation, Justice Crighton found that the accounts rendered by me were inordinately high and reduced the accounts totaling \$20,201.95 to \$10,000. As

such, I admit that my accounts exceeded a fair and reasonable amount and that such conduct is deserving of sanction.

COMPLAINT FILE 20110349

31. This set of citations arises out of a complaint by [SC], a former client of mine who complained that I failed to serve him, misled him regarding the work I was doing, failed to respond to his efforts to communicate with me and failed to render statements of account in a timely manner and overcharged.
32. [SC] retained me as he wanted to collect a personal tax refund he believed he was entitled to obtain from the Canada Revenue Agency (the "CRA"). He retained me on or about October 30, 2009, after meeting with me at his accountant's office.
33. On October 30, 2009, I advised that I need to obtain disclosure from CRA. I prepared a draft statement of Claim based on allegations [SC] told me at the time. My account dated November 6, 2009 states "to draft Statement of Claim, 2.2 hours".
34. In my response to the Investigator, I indicated I told [SC] that I would review the file, draft a Statement of Claim, and obtain [SC]'s tax history and review all of when it arrived, which was in the summer of 2010.
35. [SC] signed CRA forms T-1013 authorizing a representative, and the form was sent to the Access to Information office in Vancouver with payment. There were no further steps taken to advance the client's matter regarding a personal tax refund. The reason for this is that there was no evidence for such work from either the accounting firm or from [SC].
- 34.1 I admit that I failed to provide conscientious service to [SC] and such conduct is conduct deserving of sanction.
36. [SC] attempted to contact me several times from April 2010 onwards over a period of 5 months, but I did not return the phone calls.
37. [SC] sent me a registered letter on January 17, 2011 requesting a response clarifying the status of the lawyer-client relationship and I did not respond.
38. [SC] sent another registered letter to me on February 8, 2011 requesting the return of the \$5,000 retainer. I did not respond.
39. I admit that I had failed to respond to these [SC]'s communications and that such conduct is deserving of sanction.
40. [SC] provided me with a retainer of \$2,000 on October 30, 2009 and a further \$3,000 by mail which cleared my bank account on November 12, 2009.

41. I did not provide [SC] with a retainer letter and admit that I am guilty of failing to provide my client with written information regarding fees and disbursements, and that such conduct is deserving of sanction.
42. I provided copies of four accounts dated November 2, 2009, November 6, 2009, December 9, 2009, and September 22, 2010. [SC] states that he received all of these on September 22, 2010.
43. I admit that I did not provide his statements of account for services in a timely manner and that I am guilty of conduct deserving of sanction.
44. The following chart shows the reconstruction of my accounting:

David Skrypichayko Professional Corporation Client Trust Ledger Card Reconstructed by The Law Society of Alberta									
File #:									
File Name: [REDACTED]									
Re: Tax Refund									
Date	Réf	Source/Payee	Description	Receipt	Payment	Balance	Invoice	Payment	Balance
30-Oct-09		[REDACTED]	Retainer	2,000.00		2,000.00			0.00
2-Nov-09		David Skrypichayko Professional Corporation	Invoice #1			2,000.00	3,079.13		3,079.13
2-Nov-09	353	Trust to General Transfer	Pay'n't on Acct		(1,500.00)	500.00		(1,500.00)	1,579.13
6-Nov-09		David Skrypichayko Professional Corporation	Invoice #2			500.00	3,302.25		4,881.38
6-Nov-09	354	Trust to General Transfer	Pay'n't on Acct		(500.00)	0.00		(500.00)	4,381.38
12-Nov-09		[REDACTED]	Retainer	3,000.00		3,000.00			4,381.38
12-Nov-09	356	Trust to General Transfer	Pay'n't on Acct		(1,000.00)	2,000.00		(1,000.00)	3,381.38
20-Nov-09	359	Trust to General Transfer	Pay'n't on Acct		(2,000.00)	0.00		(2,000.00)	1,381.38
9-Dec-09		David Skrypichayko Professional Corporation	Invoice #3			0.00	192.61		1,573.99
22-Sep-10		David Skrypichayko Professional Corporation	Invoice #4			0.00	1,796.52		3,370.51
				5,000.00	(5,000.00)		8,370.51	(5,000.00)	

45. The third account of December 9, 2009 shows that \$3,000 has been transferred from trust and applied to the account, however, the accounting above shows that I transferred \$1,000 from trust on November 12, 2009, almost one month prior to issuing the account, and then transferred a further \$2,000 from trust 19 days before issuing the account.
46. I failed to issue accounts to [SC] either before or concurrent with the transfer of funds trust and such conduct is conduct deserving of sanction.
47. In my response to the LSA I alleged that [SC] has lied to me and at least two other chartered accountants above the true state of his affairs. I have failed to act with civility and courtesy when dealing with [SC] and as such, am guilty of conduct deserving of sanction.

48. The LSA has requested information in my file on [SC], but I did not provide the entire client file nor did I provide a response to a specific request by the Investigator in September 2012.
49. I do not dispute the evidence of [BO] on the matter of whether I failed to correspond and cooperate with him and with the investigation and the Law Society and I acknowledge that such conduct is deserving of sanction. I am guilty of failing to respond and cooperate with the LSA and such conduct is deserving of sanction.
50. I have indicated that [SC] has threatened me and my support staff and that I was providing information to the Edmonton Police Service and to the RCMP, however, upon investigation, the LSA Investigator found no record of the same.
51. Further, I advised that I forwarded letters to [SC] being notices of termination of services in September 2010 and December 17, 2010.
52. [SC] wrote to me on January 17, 2011 asking about the status of files and it may have been that I did not send the termination notices as I had first indicated.
53. In discussing the Edmonton Police Services/RCMP and on the termination notices I admit that I have failed to be candid with, or I misled, the LSA and as such the conduct is deserving of sanction.

COMPLAINT FILE 20140643

54. The last set of citations arises from a complaint by [JN], following which an investigation order was issued.
55. [JN] complained to the LSA that he retained me in November 2013 to file a builder's lien on behalf of his company and he paid me a \$25,000 retainer to do so, all while I was suspended from the practice of law and without advising him that I was restricted in the services I could provide.
56. I responded to [JN]'s complaint with a letter to the LSA indicating this was a business deal between [JN] and [JM], my business partner, and nothing to do with legal work.
57. Further, a lawyer named [AD], counsel for [MB] provided information to the LSA that I have received a retainer from his client for tax work in the sum of \$5,000 and in turn, [MB] received a business card printed "Skrypichayko LLP, Tax Lawyers".
58. I acted only as [MB]'s accountant, not his lawyer, and was assisting with tax work, despite the fact I had been suspended in June 2013.

CONCLUSION

59. I admit as fact the statements contained within this Statement of Admitted Facts for the purposes of these proceedings.
60. I acknowledge that all parties retain the right to adduce additional evidence and to make submissions as the effect of and weight to be given to these admitted facts in the context of all the evidence.

ALL OF THESE FACTS ARE ADMITTED THIS 18th DAY OF MARCH, 2015.

“David Skrypichayko”

DAVID SKRYPICHAYKO