

**IN THE MATTER OF PART 3 OF THE  
LEGAL PROFESSION ACT, RSA 2000, c. L-8**

**AND**

**IN THE MATTER OF A HEARING REGARDING  
THE CONDUCT OF CATHERINE STARK  
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

**Hearing Committee**

Cal Johnson, QC – Chair  
Buddy Melnyk – Bencher  
Ike Zacharopoulos – Public Adjudicator

**Appearances**

Karl Seidenz – Counsel for the Law Society of Alberta (LSA)  
Catherine Stark – not in attendance

**Hearing Date**

April 9, 2018

**Hearing Location**

LSA office, at 500, 919 - 11 Avenue SW, Calgary, Alberta

**HEARING COMMITTEE REPORT – GUILT PHASE**

**Overview**

1. Catherine Stark was admitted as a member of the LSA on May 13, 2004. On May 14, 2015, Ms. Stark became an inactive member of the LSA, and on March 15, 2016, Ms. Stark was suspended from the practice of law for non-payment of fees. During the relevant periods of time, Ms. Stark was practicing under the firm name of “Concept Law.”
2. On April 9, 2018, a Hearing Committee (Committee) convened at the LSA office to conduct a hearing with respect to 19 citations against Ms. Stark. There was no objection to the composition of the Committee and as a result, the hearing proceeded.
3. Mr. Karl Seidenz appeared as counsel for the LSA. Ms. Catherine Stark did not appear or give evidence, though she was duly served with a Notice of Hearing and Notice to Attend.
4. After reviewing all of the evidence and exhibits, hearing the testimony and arguments of the LSA, and for the reasons set out below, the Committee finds Catherine Stark guilty

of conduct deserving sanction on Citations 1–10 and 12–19, and not guilty on Citation 11, pursuant to section 71 of the *Legal Profession Act* (the Act).

### **Preliminary Matters**

5. The jurisdiction of the Committee was established by Exhibits 1 through 6, consisting of the letter of appointment of the Committee, the Notice to Solicitor pursuant to section 59 of the Act, the Notice to Attend to the Member, the Certificate of Status of Member with the LSA, the Certificate of Exercise of Discretion and the Affidavit of Service.
6. The LSA did not receive any request for a private hearing. Accordingly, the Committee directed that the hearing be held in public.
7. Ms. Stark was properly served with a Notice to Admit Facts. No reply was received by Ms. Stark in regard to this Notice to Admit Facts.
8. The Committee was provided with the Facts and Exhibits, and an unsigned Notice to Admit Facts and Exhibits, in advance of the hearing. At the outset of the hearing, Exhibits 1 through 124 were entered into evidence.
9. The Committee at the Hearing also heard evidence from the following witnesses:
  - (1) Dan Dorsey, Manager of Investigations, LSA; and
  - (2) John Dooks, Investigator, LSA.

### **Citations**

10. Ms. Stark faced the following Citations arising from three complaints:

#### Complaint 1:

- (1) It is alleged that Catherine Stark represented to lawyer T that she had \$1,000,000.00 in trust when she knew or ought to have known that the representation was not true and that such conduct is deserving of sanction.
- (2) It is alleged that Catherine Stark executed an Acknowledgement of an Assignment that she knew or ought to have known contained false representations and that such conduct is deserving of sanction.
- (3) It is alleged that Catherine Stark breached undertakings given to lawyer T in releasing funds to her client and that such conduct is deserving of sanction.
- (4) It is alleged that Catherine Stark represented to a Complaints Resolution Officer employed by the Law Society that she had \$400,000.00 in trust when she knew or

ought to have known that the representation was not true and that such conduct is deserving of sanction.

- (5) It is alleged that Catherine Stark represented to lawyer M that she had \$400,000.00 in trust when she knew or ought to have known that the representation was not true and that such conduct is deserving of sanction.
- (6) It is alleged that Catherine Stark represented to lawyer M that she was holding \$400,000.00 in cash on behalf of her client when she did not know whether the representation was true and that such conduct is deserving of sanction.
- (7) It is alleged that Catherine Stark represented to the Law Society investigators that she had \$400,000.00 in cash in a safe located in her office when she knew or ought to have known that the representation was not true and that such conduct is deserving of sanction.
- (8) It is alleged that Catherine Stark deposited funds to her trust account from her client's company for no legal purpose and immediately disbursed those funds to her client and that such conduct is deserving of sanction.

Complaint 2:

- (9) It is alleged that Catherine Stark acted while in a conflict or potential conflict of interest without obtaining her clients' consent or in circumstances where it was not in the best interests of her clients that she do so, and that such conduct is deserving of sanction.
- (10) It is alleged that Catherine Stark failed to conscientiously serve her lender clients and that such conduct is deserving of sanction.
- (11) It is alleged that Catherine Stark failed to be candid with her client and that such conduct is deserving of sanction.
- (12) It is alleged that Catherine Stark breached the Law Society accounting rules and that such conduct is deserving of sanction.
- (13) It is alleged that Catherine Stark failed to be candid with the Law Society and that such conduct is deserving of sanction.
- (14) It is alleged that Catherine Stark failed to properly supervise her support staff and that such conduct is deserving of sanction.
- (15) It is alleged that Catherine Stark failed to respond promptly and completely to communication from the Law Society and that such conduct is deserving of sanction.

Complaint 3:

- (16) It is alleged that Catherine Stark acted while in a conflict or potential conflict of interest without obtaining her clients' consent or in circumstances where it was not in the best interests of her clients that she do so, and that such conduct is deserving of sanction.
- (17) It is alleged that Catherine Stark failed to conscientiously serve her lender clients and that such conduct is deserving of sanction.
- (18) It is alleged that Catherine Stark falsely signed a personal guarantee as a witness to a client's signature, and falsely signed a certificate of notary public, and that such conduct is deserving of sanction.
- (19) It is alleged that Catherine Stark failed to respond promptly and completely to communication from the Law Society and that such conduct is deserving of sanction.

**Legislative Authority**

- 11. The Committee has considered the following provisions in the Act, the *Code of Conduct*<sup>1</sup> and the *Rules of the Law Society*:

*Legal Profession Act*

49(1) For the purposes of this Act, any conduct of a member, arising from incompetence or otherwise, that

(a) is incompatible with the best interests of the public or of the members of the Society, or

(b) tends to harm the standing of the legal profession generally, is conduct deserving of sanction, whether or not that conduct relates to the member's practice as a barrister and solicitor and whether or not that conduct occurs in Alberta.

67 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.

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<sup>1</sup> The references are to the Code of Conduct in force at the time of the complaints.

## *Code of Conduct*

1.01(1) A lawyer has a duty to carry on the practice of law and discharge all responsibilities to clients, tribunals, the public and other members of the profession honourably and with integrity.

2.02(1) A lawyer has a duty to provide courteous, thorough and prompt service to clients. The quality of service required of a lawyer is service that is competent, timely, conscientious, diligent, efficient and civil.

2.02(2) When advising a client, a lawyer must be honest and candid and must inform the client of all information known to the lawyer that may affect the interests of the client in the matter.

2.02(3) A lawyer must obtain instructions from the client on all matters not falling within the express or implied authority of the lawyer.

2.04(1) A lawyer must not act or continue to act for a client where there is a conflict of interest, except as permitted under this Code.

2.04(2) A lawyer must not act for more than one party in a conflict or potential conflict situation unless all such parties consent and it is in the best interests of the parties that the lawyer so act.

2.04(3) Before a lawyer acts in a matter for more than one client, the lawyer must:

- (a) obtain the consent of the clients following full disclosure of the advantages and disadvantages of a multiple retainer;
- (b) ensure the multiple retainer is in the best interests of each client;
- (c) advise each client that no information received in connection with the matter from one client can be treated as confidential so far as any of the others are concerned; and
- (d) advise each client that, if a conflict develops that cannot be resolved, the lawyer cannot continue to act for both or all of them and may have to withdraw completely.

5.01(1) A lawyer has complete professional responsibility for all business entrusted to him or her and must directly supervise staff and assistants to whom the lawyer delegates particular tasks and functions.

5.01(3) A lawyer must not permit a non-lawyer to:

- (a) accept cases on behalf of the lawyer, except that a non-lawyer may receive instructions from established clients if the supervising lawyer approves before any work commences;
- (b) give legal advice;
- (c) exercise judgment in giving or accepting undertakings or accept trust conditions, except at the direction of and under the supervision of a lawyer responsible for a legal matter, providing that, in any communications, the fact that the person giving or accepting the undertaking or accepting the trust condition is a non-lawyer is disclosed, the capacity of the person is indicated and the lawyer who is responsible for the legal matter is identified;
- (d) act finally without reference to the lawyer in matters involving professional judgment;
- (j) sign correspondence containing a legal opinion;
- (k) sign correspondence, unless
  - (i) it is of a routine administrative nature,
  - (ii) the non-lawyer has been specifically directed to sign the correspondence by a supervising lawyer;
  - (iii) the fact the person is a non-lawyer is disclosed; and
  - (iv) the capacity in which the person signs the correspondence is indicated.

6.01(1) A lawyer must reply promptly and completely to any communication from the society.

6.02(1) A lawyer must be courteous and civil and act in good faith with all persons with whom the lawyer has dealings in the course of his or her practice.

6.02(2) A lawyer must not lie to or mislead another lawyer.

6.02(13) A lawyer must not give an undertaking that cannot be fulfilled and must fulfil every undertaking given and honour every trust condition once accepted.

### *Rules of the Law Society*

119.21(1) All withdrawals and transfers from a trust account must be signed by a lawyer or the law firm, unless otherwise authorized in writing by the Executive Director.

119.21(2) A signature by the lawyer pursuant to subrule (1) is deemed to certify that

...  
(b) the withdrawal of money is properly required for payment for the legal matter for which the law firm was retained by the client,  
...

119.22(1) Except as provided for in rules 119.23, 119.42, and 199.46, trust money must be withdrawn by consecutively numbered cheques which, at the time the cheque is being signed by the lawyer shall

...  
(c) be made payable to the ultimate recipient,  
...  
(e) be dated, but not post-dated, and  
(f) be fully completed as to the payee and amount before being signed.

119.38(2) A lawyer shall not receive or accept from a person, cash in the aggregate amount of \$7500 or more Canadian dollars in respect of any one client matter or transaction.

## **Complaint 1**

### Factual Synopsis:<sup>2</sup>

12. The condensed pertinent facts and evidence in respect of Complaint 1 are as follows:
- (1) Ms. Stark was acting for a borrower (corporate client 146). Lawyer T was acting for the lender.
  - (2) On August 9, 2013, Lawyer T provided Ms. Stark with documents to be signed by 146 (exhibit 38). These documents included an Irrevocable Assignment of Trust and Mortgage Proceeds (exhibit 42) assigning sufficient funds from the trust account of Concept Law to cover repayment of the mortgage from Lawyer T's Client. This Irrevocable Assignment was purported to be signed by 146.
  - (3) An Acknowledgment of Irrevocable Assignment of Trust Proceeds dated August 9, 2013 and signed by Ms. Stark states that "we have on deposit in our trust account the amount of \$1,000,000.00." Such funds would be held in trust and would not be releasable other than to Lawyer T's client without the approval of Lawyer T.
  - (4) By way of letter on August 9, 2013 (exhibit 43) to Lawyer T, Ms. Stark advised that she would be paying \$600,000.00 towards trades from the \$1,000,000.00 amount,

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<sup>2</sup> The inclusion of a factual synopsis is done for ease of reference and is not intended to indicate the only facts or evidence considered by the Committee. The Committee extensively reviewed all facts and evidence in this matter.

and that she was holding the balance of \$400,000.00 in trust without any conditions. Lawyer T was in agreement with same. This \$400,000.00 was considered by Lawyer T as being security for the mortgage and loan by the lender.

- (5) The trust ledger shows that at no time did Ms. Stark hold \$1,000,000.00 in her trust account (exhibit 36).
- (6) Lawyer T advanced mortgage and loan proceeds to Ms. Stark on August 9, 2013 of \$968,000.00, which amount was disbursed to client SL, the principal of 146.
- (7) At no time did Ms. Stark in fact hold \$400,000.00 in her trust account (exhibit 36).
- (8) Ms. Stark represented to Lawyer M (a lawyer acting later for the lender), and to the LSA investigator, that the \$400,000.00 was being held in cash in a safe located at her office.
- (9) In a matter unrelated to the above transaction, the trust ledger (exhibit 36) of Ms. Stark shows a deposit of \$100,000.00 on August 20, 2013 from 146. On that same day, a payment of \$100,000.00 is made to client SL (principal for 146) personally.

#### Analysis and Decision on Complaint 1 Citations

*Citation 1: It is alleged that Catherine Stark represented to lawyer T that she had \$1,000,000 in trust when she knew or ought to have known that the representation was not true and that such conduct is deserving of sanction.*

13. It is clear from the evidence that at no time did Ms. Stark hold \$1,000,000.00 in her trust account as evidenced by the trust account ledger (exhibit 36). The Committee recognizes that Ms. Stark appears to be confusing the \$1,000,000.00 amount with the mortgage proceeds from the Lender, but this confusion does not mitigate the unequivocal evidence that the Acknowledgment of Irrevocable Assignment of Trust Proceeds stated that “we have on deposit in our trust account the amount of \$1,000,000.00” (exhibit 42).
14. Furthermore, on August 9, 2013, Ms. Stark wrote to Lawyer T and she stated: “... we confirm that we are holding funds on behalf of our client in trust for our clients [*sic*] S Project, in the amount of \$1,000,000.00” (exhibit 43).
15. Pursuant to section 6.02(13) of the *Code of Conduct*, Ms. Stark has given an undertaking which she did not fulfill and she has failed to honour the trust conditions imposed and accepted by her. As such the Committee is of the unanimous view that Ms. Stark is guilty of Citation 1.



*Citation 2: It is alleged that Catherine Stark executed an Acknowledgement of an Assignment that she knew or ought to have known contained false representations and that such conduct is deserving of sanction.*

16. The Acknowledgment of Irrevocable Assignment of Trust Proceeds (exhibit 42) contained a statement that Ms. Stark was holding \$1,000,000.00 in trust, which was not in fact true. Ms. Stark presumably read this Acknowledgment as evidenced by her signature. Ms. Stark commented that: “It comes out of the pool – the trust pool.” This comment would suggest that Ms. Stark has a fundamental misunderstanding of her trust obligations.
17. In contravention of section 6.02(2) of the *Code of Conduct*, Ms. Stark misled Lawyer T by providing this lawyer with the signed Acknowledgment. As such the Committee is of the unanimous view that Ms. Stark is guilty of Citation 2.

*Citation 3: It is alleged that Catherine Stark breached undertakings given to lawyer T in releasing funds to her client and that such conduct is deserving of sanction.*

18. The trust letter of August 9, 2013 (exhibit 38) from Lawyer T to Ms. Stark states that Ms. Stark can release funds to her “client,” which client was 146. However, Ms. Stark released the funds to client SL, the principal of 146. This release of funds to SL personally was in contravention of Ms. Stark’s undertaking to release the funds to 146.
19. In accordance with section 6.02(13) of the *Code of Conduct*, Ms. Stark was under an express trust condition and she failed to honour that trust condition. As such the Committee is of the unanimous view that Ms. Stark is guilty of Citation 3.

*Citation 4: It is alleged that Catherine Stark represented to a Complaints Resolution Officer employed by the Law Society that she had \$400,000.00 in trust when she knew or ought to have known that the representation was not true and that such conduct is deserving of sanction.*

20. Ms. Stark advised the LSA by way of letter dated July 7, 2014 (exhibit 56) that she was continuing “to hold \$400,000.00 in trust as I had agreed to pursuant to the said trust conditions that were imposed on me at the commencement of the parties’ loan transactions.” However as evidenced by the Stark Trust Client Ledger (exhibit 36), at no time did Ms. Stark hold \$400,000.00 in trust. Furthermore, Ms. Stark in her interview on June 1, 2015 (exhibit 23) confirmed that she did not have \$400,000.00 in her trust account.
21. The *Code of Conduct*, section 6.02(1), requires a lawyer to “be courteous and civil and act in good faith with all persons with whom the lawyer has dealings in the course of his or her practice.” The communication by Ms. Stark to the LSA was not done in good faith

and the representation regarding the \$400,000.00 being in trust was not true. As such the Committee is of the unanimous view that Ms. Stark is guilty of Citation 4.

*Citation 5: It is alleged that Catherine Stark represented to lawyer M that she had \$400,000.00 in trust when she knew or ought to have known that the representation was not true and that such conduct is deserving of sanction.*

22. In the reply email of Ms. Stark to Lawyer M on April 8, 2015 (exhibit 57), Ms. Stark stated: "I can confirm the amount I am holding in trust is \$400,000.00 as per the parties [sic] original agreement." As already noted, the trust ledger (exhibit 36) shows that at no time did Ms. Stark have \$400,000.00 in her trust account, and Ms. Stark in her interview on June 1, 2015 (exhibit 23) confirmed that she did not have \$400,000.00 in her trust account.
23. Section 6.02(2) of the *Code of Conduct* obligates Ms. Stark not to "lie to or mislead another lawyer." In this instance, Ms. Stark has not met that obligation and accordingly the Committee is of the unanimous view that Ms. Stark is guilty of Citation 5.

*Citation 6: It is alleged that Catherine Stark represented to lawyer M that she was holding \$400,000.00 in cash on behalf of her client when she did not know whether the representation was true and that such conduct is deserving of sanction.*

24. In the interview with Ms. Stark on June 1, 2015 (exhibit 23), she admitted advising Lawyer M that she had \$400,000 in "cash" in a safe at her office. In a later interview, Ms. Stark admitted that she never actually saw the \$400,000.00 in the safe (exhibit 62). While Ms. Stark provided inconsistent statements about reportedly seeing \$400,000.00 in \$20.00 bills in a safe at her office, or later claiming to have seen a photograph of the funds, subsequent photographs of the safe interior confirmed that the safe contained no cash (exhibit 40).
25. In the June 1, 2015 interview, Ms. Stark said: "I had every reason to believe there was \$400,000.00 in that safe." During this same interview, the investigator reminded Ms. Stark that she had earlier claimed to have counted the money in the safe. While Ms. Stark may have believed the safe contained \$400,000.00, there is no evidence that Ms. Stark took steps to confirm the presence of the money. Ms. Stark made no insurance claim or report to the police regarding the alleged missing monies. Given the inconsistent and at times contradictory statements by Ms. Stark regarding the existence of the \$400,000.00 cash, it has been established, on a balance of probabilities, that at no time was there ever any cash in the safe, a fact of which Ms. Stark should have reasonably been aware.

26. Section 6.02(2) of the *Code of Conduct* obligates Ms. Stark not to “lie to or mislead another lawyer.” In this instance, Ms. Stark has not met that obligation and accordingly the Committee is of the unanimous view that Ms. Stark is guilty of Citation 6.

*Citation 7: It is alleged that Catherine Stark represented to the Law Society investigators that she had \$400,000.00 in cash in a safe located in her office when she knew or ought to have known that the representation was not true and that such conduct is deserving of sanction.*

27. During the May 13, 2015 interview (exhibit 21), Ms. Stark advised the LSA investigator that she had \$400,000.00 in cash, and then again during the June 1, 2015 interview (exhibit 23), Ms. Stark said she saw the contents of the safe containing the cash. During the interview with Mr. Dorsey on May 14, 2015 (exhibit 62) Ms. Stark admitted that she only saw a photograph of the money. The empty safe shows no cash being present.
28. The *Code of Conduct*, section 6.02(1), requires a lawyer to “be courteous and civil and act in good faith with all persons with whom the lawyer has dealings in the course of his or her practice.” During the interviews with the LSA, Ms. Stark did not act in good faith and the representations by her were not true. As such the Committee is of the unanimous view that Ms. Stark is guilty of Citation 7.

*Citation 8: It is alleged that Catherine Stark deposited funds to her trust account from her client’s company for no legal purpose and immediately disbursed those funds to her client and that such conduct is deserving of sanction.*

29. The trust ledger (exhibit 36) shows a deposit of \$100,000.00 on August 20, 2013 from 146. On that same day, a payment of \$100,000.00 is made personally to SL. The trust balances both prior to the deposit, and after the payment, shows a zero balance. Ms. Stark stated in the interview on June 1, 2015 (exhibit 23) that she cannot recall what the transaction related to.
30. Section 119.21(2)(b) of the *Rules of the Law Society* states that the lawyer’s signature on a trust cheque is deemed to certify that the withdrawal of money is properly required for payment for the legal matter for which the law firm was retained. In this case, there is no evidence that any legal services were rendered by Ms. Stark to SL in respect of this trust transaction. As such the Committee is of the unanimous view that Ms. Stark is guilty of Citation 8.

## **Complaint 2**

### Factual Synopsis:

31. The condensed pertinent facts and evidence in respect of Complaint 2 are as follows:

- (1) Ms. Stark acted for 888 (whose principal was BL) and also for company 146 (whose principals were CB and SL) in respect of two loan transactions. In both transactions, 146 borrowed money from 888 and was to provide loan security in the form of caveats to be registered over certain lands.
- (2) None of the loan documents for either loan was ever executed or the caveats registered.
- (3) On November 15, 2012, loan funds of \$70,000.00, advanced by 888 to Ms. Stark, were paid out by Ms. Stark to 146. Initially, Ms. Stark advised the LSA that BL had authorized the release of the funds, but in a later interview Ms. Stark stated that it was her assistant who told her that BL had authorized the release of the funds.
- (4) In a second transaction, 825 (principal officer being NN) agreed to loan \$150,000.00 personally to CB (partner of SL). The monies were advanced by 825 to Ms. Stark on February 14, 2012. On that same day, Ms. Stark's assistant, KS, emailed NN confirming that these funds were to be held in trust (exhibit 79). On February 15, 2012, Ms. Stark paid these funds out to three different parties without the knowledge or consent of 825 or NN.
- (5) On July 14, 2014, Lawyer CL, acting for 825, requested from Ms. Stark that the \$150,000.00 held in trust be forwarded to Lawyer CL. Ms. Stark, by way of emails on July 15, 2015 and July 28, 2015, advised Lawyer CL that she knew nothing of the \$150,000.00 amount.
- (6) Two Withdrawals and Discharges of Caveats were signed by KS as agent for NN in the first instance, and for 825 in the second instance. NN denies that he ever asked KS to act as his agent or that he requested the discharge of these caveats.

#### Analysis and Decision on Complaint 2 Citations

*Citation 9: It is alleged that Catherine Stark acted while in a conflict or potential conflict of interest without obtaining her clients' consent or in circumstances where it was not in the best interests of her clients that she do so, and that such conduct is deserving of sanction.*

32. Ms. Stark states in her letter of February 17, 2015 to the LSA (exhibit 71) that 888/BL (as lender) had requested that she act for both parties in respect of the two loans. It appears clear from the two letters of Commitment/Statement of Disclosure (exhibits 73 and 74) that Ms. Stark's law firm is listed as acting for both borrower (146) and lender (888).
33. During the interview on March 1, 2016 (exhibit 27), Ms. Stark admitted that she got the information about BL wanting Ms. Stark to act for both parties from KS. However, BL

states that he never spoke with Ms. Stark (exhibit 67). There is no evidence that Ms. Stark obtained the consent of 888 or BL to act on behalf of the lender and the borrower. During the March 1, 2016 LSA interview, Ms. Stark also admitted she never met or spoke with BL, which is consistent with the statements from BL where he confirms that he never met Ms. Stark.

34. The *Code of Conduct*, section 2.04(3), requires a lawyer, where acting for more than one client in the same matter, to obtain the consent of the clients following full disclosure of the advantages and disadvantages of a joint retainer. This is intended to ensure the joint retainer is in the best interests of each client, to advise each client that no information received in connection with the matter from one client can be treated as confidential so far as any of the others are concerned and to advise each client that, if a conflict develops that cannot be resolved, the lawyer cannot continue to act for both or all of them and may have to withdraw completely. The Committee is of the view that the evidence establishes that Ms. Stark was acting in a conflict of interest, or potential conflict of interest, by representing both sides on the loan transactions. Accordingly, the Committee unanimously finds Ms. Stark guilty of Citation 9.

*Citation 10: It is alleged that Catherine Stark failed to conscientiously serve her lender clients and that such conduct is deserving of sanction.*

35. 888 advanced loan proceeds of \$70,000.00 to Ms. Stark on November 15, 2012 (exhibits 71 and 75). Ms. Stark then paid the \$70,000.00 loan to 146 even though she had not registered (and subsequently did not register) a caveat against certain of the lands forming the security for that loan. Ms. Stark admits this at paragraph 13 of her letter of February 17, 2015 (exhibit 71).
36. Ms. Stark thereafter transferred the lands, which were to be secured under the first loan, from 146 to SL personally without 888's knowledge. The Transfer of Land (exhibit 16) shows a transfer signed on January 10, 2013 from 146 to SL. There is no evidence that either 888 or BL consented to such transfer or that 888 or BL were even aware of such transfer.
37. The Letter of Commitment, dated November 2012, for the second loan from 888 refers to security required against unit 301 of a particular Calgary address (exhibit 74). However, unit 301 was not owned by 146, but rather was owned by a third party who purchased the lands on July 13, 2012 (exhibit 18). Ms. Stark's explanation is that the caveat was supposed to register against unit 304 (paragraphs 14 and 15 of exhibit 71). However, the title to unit 304 was also not owned by 146 (exhibit 19).
38. The *Code of Conduct*, section 2.02(3), requires that a lawyer obtain instructions from the client on all matters not falling within the express or implied authority of the lawyer. It is

clear from the evidence that Ms. Stark did not carry out the instructions of her lender client by advancing loan proceeds without properly registering the caveats. In view of this evidence, the Committee has unanimously concluded that Ms. Stark is guilty of Citation 10.

*Citation 11: It is alleged that Catherine Stark failed to be candid with her client and that such conduct is deserving of sanction.*

39. Citation 11 is vague in referencing "her client" without necessarily identifying that client. Ms. Stark says she never met either BL or NN in respect of this transaction, and both of them say they never met or talked with Ms. Stark. It appears that the parties only met with KS and that the law firm was merely a conduit for moving funds between the parties.
40. There is also no evidence regarding the loan details, other than the email from KS on February 14, 2012 (exhibit 79). It is clear on the evidence that \$150,000.00 was paid to Ms. Stark's law firm (Concept Law) on February 15, 2012, and those monies were then paid out by cheques signed by Ms. Stark on February 15, 2015. However, there is no evidence that Ms. Stark acted for 825 or NN. In that sense, it cannot be said that Ms. Stark was not "candid with her client".
41. Ms. Stark had so little involvement with these parties and it is therefore hard to see where Ms. Stark failed to be candid. In view of this uncertainty, the Committee unanimously finds that Ms. Stark is not guilty of Citation 11.

*Citation 12: It is alleged that Catherine Stark breached the Law Society accounting rules and that such conduct is deserving of sanction.*

42. In Ms. Stark's letter of October 16, 2015 (exhibit 87), and in her interview on March 1, 2016 (exhibit 27), she admitted to utilizing pre-signed cheques while on holidays. The KS memo to Ms. Stark is a clear circumvention of the accounting rules. This was admitted by Ms. Stark (exhibit 27).
43. Rule 119.22(1) of the *Rules of the Law Society* expressly requires that trust cheques, at the time of signing, must be fully completed as to the payee and amount. The pre-signing of incomplete cheques violates this Rule and as such the Committee unanimously finds Ms. Stark guilty of Citation 12.

*Citation 13: It is alleged that Catherine Stark failed to be candid with the Law Society and that such conduct is deserving of sanction.*

44. The following is a summary of communications on this complaint between Ms. Stark and the LSA:

- (1) Stark advised the LSA at paragraph 9 of her letter of February 17, 2015, in dealing with the 146 claim (exhibit 71), that Lawyer CL had asked that she act for both parties. During the interview on March 1, 2016 (exhibit 27, page 22) Ms. Stark admitted that she got the information about acting for both parties from KS, and not from CL.
  - (2) Ms. Stark advised the LSA at paragraph 7 of her letter of February 17, 2015, in dealing with the 146 claim (exhibit 71), that Lawyer CL had authorized the release of the \$70,000.00. During the interview on March 1, 2016 (exhibit 27, page 31) Ms. Stark said that KS had advised her of a verbal agreement, or direction, and as such Lawyer CL never directly advised Ms. Stark to release the \$70,000.00.
  - (3) In Ms. Stark's letter of February 17, 2015 to the LSA, at paragraph 19 dealing with the loan to Brown, she stated that she has always denied holding the \$150,000.00 in her trust account. However, in Ms. Stark's interview on March 1, 2016, at pages 44-45, she stated that KS never made her aware of this loan.
45. The *Code of Conduct*, section 6.02(1), requires a lawyer to "be courteous and civil and act in good faith with all persons with whom the lawyer has dealings in the course of his or her practice." Ms. Stark was not candid with the LSA about her status in acting for multiple parties, about the communications and statements of another lawyer and about the source of her authorization to release trust funds. The Committee unanimously finds Ms. Stark guilty in respect of Citation 13.

*Citation 14: It is alleged that Catherine Stark failed to properly supervise her support staff and that such conduct is deserving of sanction.*

46. The evidence discloses several instances where Ms. Stark failed to properly supervise her support staff, in particular:
- (1) During Ms. Stark's interview on March 1, 2016 (exhibit 27, p. 22) Ms. Stark admitted that she got the information about BL wanting Ms. Stark to act for both parties from KS. Ms. Stark failed to follow up with the client to confirm this instruction, either in writing or verbally.
  - (2) The email from KS dated February 14, 2012 (exhibit 79) agreeing to hold monies in "trust for the duration of the loan" was done without Ms. Stark's knowledge or consent. Ms. Stark did not become aware of this email until much later.
  - (3) The Withdrawal and Discharge of Caveats were signed by KS and the Affidavit of Execution was commissioned by Ms. Stark. NN stated that he never asked or directed KS to act as his agent or that he requested that the caveats be discharged.

- (4) In letters to the LSA dated October 14, 2015 (Exhibit 64) and October 16, 2015 (exhibit 87), Ms. Stark admitted that she was not involved or only minimally involved with these files.
47. In all of the above situations it would appear that Ms. Stark was merely signing documents presented to her by KS or accepting instructions from KS without question. There is no evidence that Ms. Stark took any steps to ensure that KS had obtained proper written instructions from any of the clients.
48. The *Code of Conduct*, section 5.01(3), provides that a lawyer must not permit a non-lawyer to accept cases on behalf of the lawyer, give legal advice, exercise judgment in giving or accepting undertakings or accept trust conditions, act finally without reference to the lawyer in matters involving professional judgment or sign correspondence containing a legal opinion. It is abundantly clear that KS acted without proper supervision by Ms. Stark and in fact Ms. Stark has reported numerous instances of the unauthorized practice of law by KS. It is not within the ambit of this Committee to determine whether such allegations are true. What is clear is that Ms. Stark is ultimately responsible for supervising her staff. The Committee therefore unanimously finds Ms. Stark guilty on Citation 14.

*Citation 15: It is alleged that Catherine Stark failed to respond promptly and completely to communication from the Law Society and that such conduct is deserving of sanction.*

49. The communications between Ms. Stark and the LSA, in respect of complaint 2, can be summarized as follows:
- (1) The Investigation Report dated May 17, 2016 was sent to Ms. Stark electronically on June 9, 2016. On June 2, 2016, Ms. Stark replied by email that she would “send you what I have on August 5, 2016.”
- (2) The LSA sent a letter to Ms. Stark dated June 6, 2016 (exhibit 89) referencing the Investigation Report and giving her 14 days to respond. Ms. Stark wrote back on June 13, 2016 noting that the Investigation Report is almost 1000 pages, and requested a four-month extension to October 9, 2016 (exhibit 90). When she did not hear back from the LSA by their original deadline of June 21, 2016, Ms. Stark wrote back to the LSA denying each and every allegation, and again requested more time.
- (3) The LSA replied by letter to Ms. Stark on June 14, 2016 and granted an extension to August 5, 2016 (exhibit 92). Ms. Stark emailed back on June 28, 2016 (exhibit 93) indicating the extension is not long enough, that she is effectively disbarred, and so what is the hurry. Ms. Stark again claimed medical exigencies. This is followed by an LSA email to Ms. Stark on June 29, 2016 indicating that the LSA had an



obligation to deal with complaints in a timely manner; if citations were issued on a complaint, then Ms. Stark could speak to whether a hearing should be booked at the pre-hearing conference; and that based on the medical evidence provided by Ms. Stark, she was then medically able to address Law Society matters.

- (4) After the June 29, 2016 email, there appears to be no further communication until early October, 2016, when Ms. Stark is advised that the Complaints Reviewer has referred the matter to the Conduct Committee. Ms. Stark had earlier indicated she would make some sort of reply by August 5, 2016, but apparently never did. There is no follow-up correspondence from the LSA after the June 29, 2016 email.
- (5) Ms. Stark did not reply to the Investigation Report in respect of complaint 2, nor did she respond by August 5, 2016 by sending “what she had” as she indicated she would do in her email of June 2, 2016.

50. It appears from the tenor of Ms. Stark’s emails that she was frustrated by not being granted a longer extension of time and that she had simply given up. While the Committee recognizes this exasperation on the part of Ms. Stark, it is still incumbent on Ms. Stark to reply to the Investigation Report. Section 6.01(1) of the *Code of Conduct* is clear that a lawyer must reply “promptly and completely” to any communication from the LSA. While there were replies by Ms. Stark, these were not always either prompt or complete. Given these failures the Committee unanimously finds Ms. Stark guilty of Citation 15.

### **Complaint 3**

#### Factual Synopsis:

51. The condensed pertinent facts and evidence in respect of Complaint 3 are as follows:
- (1) This complaint involved a commercial loan whereby 205 was a corporate borrower and the lender was an individual, RM. SF was the principal for 205, which company was borrowing \$850,000.00 from RM. For this loan, Lawyer DC acted for the lender, RM, and Ms. Stark acted for 205.
  - (2) A second part of the financing was for CECL, another company of which SF was the principal, to loan \$450,000.00 to 146 (with the principal being SL). For this second loan, Ms. Stark was acting for CECL and also for 146.
  - (3) On August 22, 2013, SF signed a letter on Concept Law letterhead which purports to be a conflict letter and indicates that Ms. Stark is acting on behalf of the lender,

RM. This was not correct since Lawyer DC was acting for RM. This letter was signed by the Ms. Stark's legal assistant, KS.

- (4) As part of the loans, SF signed a Personal Guarantee, which Ms. Stark witnessed and notarized. SF says he did not sign the Personal Guarantee in the presence of Ms. Stark and that SF only met with KS.
- (5) As part of the loans, Ms. Stark was to register a mortgage on behalf of CECL as against property of 146, and as against a second property. Loan monies were advanced and paid out by Ms. Stark on August 23, 2013, but neither of these two mortgages was registered at that time.
- (6) The loan to CECL went into default on November 23, 2013. On June 3, 2014, Ms. Stark did finally register a different version of the mortgage as against the second property, but because of the delay this mortgage was in fourth position on title. The Commitment Letter of August 23, 2013 (Exhibit 99) provided that this mortgage was to be registered in third position. The mortgage to be provided by 146 could not be registered because the lands were owned by SL personally, and not by 146.
- (7) After foreclosure proceedings were concluded on the second property, no proceeds were left for CECL.

#### Analysis and Decision on Complaint 3 Citations

*Citation 16: It is alleged that Catherine Stark acted while in a conflict or potential conflict of interest without obtaining her clients' consent or in circumstances where it was not in the best interests of her clients that she do so, and that such conduct is deserving of sanction*

52. During Ms. Stark's interview on March 1, 2016 (exhibit 27), she initially admitted acting for both lender, CECL, and borrower, 146. However, Ms. Stark in her letter of November 21, 2016 (exhibit 111), denied acting for either 146 or CECL. In that same letter, Ms. Stark stated: "I met with SF once to execute/notarize a corporate guarantee on his loan deal with RM. During our meeting, SF did not speak to me about the loan to 146 or ask me to represent him."
53. Ms. Stark in her August 31, 2015 letter to the LSA does acknowledge that acting for both lender and borrower is a "recipe for disaster" (exhibit 63).
54. The letter (exhibit 98) dated August 26, 2013 purports to be a Conflict Letter addressed to 146 and CECL. This letter is misleading in that it states that Concept Law has a "continuing relationship with the Lender for whom we act regularly." The facts are that Concept Law had never acted before for CECL. This letter was signed by SL on behalf of 146, but was not signed by SF, who denies ever seeing the document. In this same

letter, the name of KS as a signatory on behalf of Concept Law is crossed out, and Ms. Stark has signed and affixed her Barrister and Solicitor stamp.

55. In the interview on October 13, 2015, Ms. Stark stated in relation to the CECL loan: “I was there to sign the papers and do what I was told and I had no idea about – how do I explain it?” Despite this statement, it is clear that Ms. Stark’s office prepared a number of documents for CECL.
56. Ms. Stark had acted for 146 in the past, but she had never acted for CECL. Given the nature of the transactions between these two parties, it was not in the best interests of CECL to have Ms. Stark act on its behalf. While Ms. Stark appears to have attempted to obtain the consent of CECL to act on its behalf, as well as on behalf of 146, the circumstances of this transaction should warrant that Ms. Stark not act for both parties.
57. The *Code of Conduct*, section 2.04(3), sets out a number of obligations that a lawyer must satisfy before he or she acts for more than one client, and in particular:
  - (1) the lawyer must obtain the consent of the clients following full disclosure of the advantages and disadvantages of a multiple retainer;
  - (2) the lawyer must ensure the multiple retainer is in the best interests of each client;
  - (3) the lawyer must advise each client that no information received in connection with the matter from one client can be treated as confidential so far as any of the others are concerned; and
  - (d) the lawyer must advise each client that, if a conflict develops that cannot be resolved, the lawyer cannot continue to act for both or all of them and may have to withdraw completely.
58. The Committee is satisfied, on a balance of probabilities, that Ms. Stark has failed to satisfy the requirements of section 2.04(3) and, accordingly, the Committee is unanimously of the view that Ms. Stark is guilty of Citation 16.

*Citation 17: It is alleged that Catherine Stark failed to conscientiously serve her lender clients and that such conduct is deserving of sanction.*

59. The lender client of Ms. Stark was CECL and there were several errors in respect of the transaction:
  - (a) Ms. Stark failed to register the mortgage on the second property in a timely manner which resulted in CECL losing priority position;
  - (b) CECL did not have a valid and enforceable mortgage in respect of the mortgage required of 146. The Commitment Letter from CECL indicates that the loan is to be secured against a property that was in fact owned by SL and not by 146. Ms. Stark did not register this mortgage (which would not be possible in any event given that

title was in SL's name), nor did she communicate the circumstances to the lender client;

- (c) Despite the failure to register mortgages, or advise the lender client, Ms. Stark advanced the mortgage proceeds without client consent or knowledge;
- (d) The mortgage against the second property was registered several months late, which affected the priority position of CECL. The Commitment Letter of August 23, 2013 (Exhibit 99) provided that this mortgage was to be registered in the third position. However, Ms. Stark did not register the Mortgage until June 3, 2014 and as such the Mortgage was in fourth position; and
- (e) The subsequent default on the loan, and resulting foreclosure proceedings, resulted in CECL not recovering upon any of its security.

60. Section 2.02(1) of the *Code of Conduct* requires a lawyer to provide service to client of a quality that is competent, timely, conscientious, diligent, efficient and civil. In view of the foregoing, the Committee unanimously finds Ms. Stark guilty of Citation 17.

*Citation 18: It is alleged that Catherine Stark falsely signed a personal guarantee as a witness to a client's signature, and falsely signed a certificate of notary public, and that such conduct is deserving of sanction.*

61. Ms. Stark appears to have witnessed SF sign the Personal Guarantee (exhibit 100). In her letter to the LSA dated November 21, 2016, Ms. Stark stated: "I met with SF once to execute/notarize a corporate guarantee on his loan deal with RM. During our meeting, SF did not speak to me about the loan to 146 or ask me to represent him." However, SF denies that he met with Ms. Stark or that she was present when he signed the Guarantee (exhibit 32 and exhibit 32). Both Ms. Stark and client SF have admitted to signing the personal guarantee.

62. Ms. Stark did state that she vividly recalls meeting with SF and in particular she recalls that the meeting was arranged by KS for Friday afternoon when Ms. Stark wanted to leave early because it was a hot day.

63. There is a conflict in the evidence between Ms. Stark and SF. The evidence from Ms. Stark is conflicting in that she sometimes admitted to meeting and attending on SF, and sometimes denied that she every met with SF. The evidence from SF is consistent. Accordingly, on a balance of probabilities, the Committee finds that Ms. Stark falsely signed a personal guarantee as a witness to SF's signature. Accordingly, the Committee is unanimously of the view that Ms. Stark is guilty of Citation 18.

*Citation 19: It is alleged that Catherine Stark failed to respond promptly and completely to communication from the Law Society and that such conduct is deserving of sanction.*

64. The emails and correspondence between Ms. Stark and the LSA can be summarized as follows:
- (1) October 4, 2014, the LSA sent Ms. Stark an email and made it clear that Ms. Stark must apply for an abeyance in the proceedings. Ms. Stark replied the same day and apologized for her tardiness;
  - (2) On November 2, 2016, Ms. Stark emailed the LSA and requested an abeyance on all matters in light of medical evidence from her doctor. On November 3, 2016, the LSA replied saying that the LSA will oppose any abeyance application. Attached to the email is an application for abeyance;
  - (3) On March 1, 2017, the LSA sent Ms. Stark a copy of the Investigation Report (exhibit 116). Ms. Stark sent a reply letter to the LSA dated March 7, 2017 (exhibit 118) indicating that she “will not be providing a written response to the Investigation Report;”
  - (4) Emails were exchanged between Ms. Stark and the LSA on March 15, 2017 and March 16, 2017 (exhibits 119 and 121). These emails dealt with a possible abeyance application by Ms. Stark and the LSA set out its position in respect of same;
  - (5) On March 27, 2017, the LSA sent an email to Ms. Stark (exhibit 122), which was followed up by letters from the LSA on April 10, 2017 and May 16, 2017 (exhibits 123 and 124). The email of March 27, 2017, and the letters of April 10, 2017 and May 16, 2017, were follow-up requests regarding the application for abeyance. Ms. Stark did not reply to these emails and letters. However, in the email of March 15, 2017 from Ms. Stark, she stated: “I give up. I have no idea what else to do, so...yah, I give up. Do whatever you want – I have tried my best.” It would appear from this email that Ms. Stark was no longer going to respond to any emails or letters.
65. Ms. Stark appeared to be frustrated by not being granted an extension of time in view of her medical condition. While the Committee recognizes that the application for an extension can be onerous, it is still incumbent on Ms. Stark to take steps to complete that application. The *Code of Conduct*, section 6.01(1), is clear that a lawyer must reply “promptly and completely” to any communication from the LSA. While there were replies by Ms. Stark, these were not always either prompt or complete, and certainly in her email of March 15, 2017, Ms. Stark made it clear she would no longer be responding. Given these actions, the Committee unanimously finds Ms. Stark guilty of Citation 19.

### **Concluding Matters**

66. The Committee finds that the Citations 1-10, and 12-19 have been proven on a balance of probabilities, but that Citation 11 has not been proven. Ms. Stark appears to suffer from a lack of experience and knowledge, and to have been ineffective in her supervision of staff, who appear to have taken advantage of her lack of knowledge and experience, all of which may have contributed to some of her actions. However, these

deficiencies are no excuse - her conduct is incompatible with the best interest of the public and the members of the Society and harms the standing of the legal profession. Accordingly, Ms. Stark's conduct is deserving of sanction.

67. A further hearing will be required to address the appropriate sanction.
68. The exhibits and other hearing materials, transcripts, and this Report will be available for public inspection, including providing copies of exhibits for a reasonable copy fee, although redactions will be made to preserve personal information, client confidentiality and solicitor-client privilege (Rule 98(3)).

Dated at Calgary, Alberta, June 26, 2018.

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Cal Johnson, QC - Bencher

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Buddy Melnyk - Bencher

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Ike Zacharopoulos – Public Adjudicator