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 NAVDEEP VIRK A MEMBER OF THE LAW SOCIETY OF ALBERTA

Hearing Committee

Doug McGillivray, QC – Chair
Buddy Melnyk – Bencher
Barbara McKinley – Lay Bencher

Appearances

Shanna Hunka and Karen Hansen – Counsel for the Law Society of Alberta (LSA)
Mona Duckett, QC – Counsel for Navdeep Virk

Hearing Dates

June 17, 18, and 19, 2019; and
June 25, 26, 27, 28, 2019

Hearing Location

LSA office, at 800,10104 - 103 Avenue, Edmonton, Alberta

HEARING COMMITTEE REPORT

Overview

1. Navdeep Virk was admitted as a member of the Law Society of Alberta (LSA) in 2007. He practices in Edmonton, Alberta, in several areas, including family law and civil litigation. This hearing arises as a result of seven complaints against Mr. Virk, from clients, other lawyers and the LSA.

2. On June 17, 2019, the Hearing Committee (Committee) convened a hearing into the conduct of Navdeep Virk, based the following 20 citations issued in respect of the complaints:

CO20152037

1) It is alleged that Navdeep Virk acted in a conflict of interest and that such conduct is deserving of sanction;

2) It is alleged that Navdeep Virk failed to be candid with his client, J.K., and that such conduct is deserving of sanction;

3) It is alleged that Navdeep Virk misled another lawyer, N.W., and that such conduct is deserving of sanction;

4) It is alleged that Navdeep Virk failed to be candid with the Court and that such conduct is deserving of sanction;

5) It is alleged that Navdeep Virk failed to be candid with the Law Society and that such conduct is deserving of sanction;

6) It is alleged that Navdeep Virk failed to cooperate with the Law Society Investigation and that such conduct is deserving of sanction;

7) It is alleged that Navdeep Virk failed to serve his client, J.K., and that such conduct is deserving of sanction;

CO20152645

8) It is alleged that Navdeep Virk acted in a conflict of interest and that such conduct is deserving of sanction;

9) It is alleged that Navdeep Virk misled another lawyer, C.P., and that such conduct is deserving of sanction;

10) It is alleged that Navdeep Virk failed to be candid with the Law Society and that such conduct is deserving of sanction;

CO20162461

11) It is alleged that Navdeep Virk failed to serve his client, G.C., and that such conduct is deserving of sanction;

12) It is alleged that Navdeep Virk failed to attend to the finalization of a Court Order in a timely manner and that such conduct is deserving of sanction;

13) It is alleged that Navdeep Virk failed to properly account to his client, G.C., and that such conduct is deserving of sanction;

CO20170377

14) It is alleged that Navdeep Virk failed to fulfil an undertaking and that such conduct is deserving of sanction;

15) It is alleged that Navdeep Virk failed to be candid with the Court and that such conduct is deserving of sanction;

16) It is alleged that Navdeep Virk failed to attend to the finalization of a Court Order in a timely manner and that such conduct is deserving of sanction;

CO20162785 and CO20163049

17) It is alleged that Navdeep Virk failed to serve his client, H.S., and that such conduct is deserving of sanction;

18) It is alleged that Navdeep Virk failed to attend to the finalization of Court Orders in a timely manner and that such conduct is deserving of sanction;

CO20171398

19) It is alleged that Navdeep Virk failed to comply with an undertaking to, or a condition imposed on him by the Law Society and that such conduct is deserving of sanction; and

20) It is alleged that Navdeep Virk failed to be candid with the Law Society and that such conduct is deserving of sanction.

3. At the start of the hearing, the parties sought approval to consolidate Citations 11 and 13 into a revised Citation 11, which reads as follows:

> It is alleged that Navdeep Virk failed to serve his client G.C., and failed to properly account to his client, G.C., and that such conduct is deserving of sanction.

4. The Committee approved this consolidation, which result in 19 Citations remaining.

5. In addition, counsel for Mr. Virk submitted to the Committee several Statements of Admitted Facts and Admissions of Guilt (Statements), in which Mr. Virk set out facts and admitted guilt to Citation 6 (Exhibit E), Citations 11 (consolidated) and 12 (Exhibit F), and Citation 18 (Exhibit G).

6. Later in the hearing, an additional Statement of Admitted Facts and Admission of Guilt was submitted to the Committee, with respect to Citation 17 (Exhibit 550).

7. The Committee found that all of these Statements were in forms acceptable to it. Pursuant to Subsection 60(4) of the *Legal Profession Act* (the *Act*), each admission of guilt in the Statements is deemed to be a finding of the Committee that the conduct is deserving of sanction. Redacted versions of the Statements are appended to this Report.

8. As a result of the consolidation and the various Statements submitted to and accepted by the Committee, the oral hearing focused on the remaining 14 citations: Citations 1-5, 7-10, 14-16, and 19-20.

9. After reviewing all of the admissions, evidence and exhibits, hearing the testimony of witnesses for the LSA and Mr. Virk, and considering the arguments of the parties, for the reasons set out below, Mr. Virk

(a) Admitted guilt to 5 citations, which admissions are deemed to be findings of the Committee that the conduct to which the admissions relate is deserving of sanction,

(b) Has been found by the Committee to be guilty of conduct deserving of sanction on 10 citations, and

(c) Has been found not guilty on 4 of 19 citations, which citations have been dismissed.

10. The appropriate sanction for this behaviour, as well as orders for costs and any other matters, will be determined at the sanctioning phase of the hearing, which has been scheduled for December 16 and 17, 2019.

Preliminary Matters

11. Jurisdiction was established through Exhibits A-D. The parties had no objection to the constitution of the Committee or its jurisdiction.

12. The hearing proceeded as a public hearing. It was agreed that any issue of privilege would be dealt with as they arose, none did.

13. The Committee directed that the names of individual complainants and witnesses, as well as the child of one of the witnesses, be anonymized in this Report, and redacted in any other materials prior to the materials being made public.

14. There was a concern about the confidentiality and sensitivity of certain medical information. In accordance with the LSA's September 2017 Publication and Redaction Guideline for Adjudicators, to the extent possible, the Committee will avoid referencing specific medical diagnoses, conditions or information in this Report. The Committee orders that any such information be redacted in this Report, transcripts or exhibits before they are made available publicly.

15. An Agreed Exhibit book was submitted by the parties at the start of the hearing, and the documents therein were entered into the record. The jurisdictional documents were marked A-D. The Statements submitted at the start of the hearing were marked E-G. The remaining exhibits were numbered by series, such that the 100 series of exhibits related to the first complaint, the 200 series related to the second complaint, and so on. Over the course of the hearing, additional exhibits were admitted and added to the appropriate complaint series.

REASONS AND ANALYSIS

Complaint 2020152037

16. The above noted complaint is the basis for Citations 1 through 7, as outlined above.

17. At the commencement of the hearing, the Hearing Committee received a written admission of guilt with respect to Citation 6, that Navdeep Virk failed to cooperate with the LSA investigation and that such conduct is deserving of sanction. This admission of guilt was in a form satisfactory to the Hearing Committee and was accepted as Mr. Virk's admission that he failed to cooperate with the LSA and that such conduct was deserving

of sanction. While reference may be made to the facts in the evidence that lead up to this Citation, no further analysis will be required because of the admission.

Background

18. Mr. Virk was retained by JK to defend him in a paternity and child support proceeding brought on by PQ. PQ was represented by another lawyer, NW. It is the events that surround this representation that sees the remaining six citations form part of our deliberations. The evidence disclosed that JK and PQ met on an online dating site set up largely for individuals to meet with each other for sexual encounters. PQ was married at the time and had an open marriage with her husband. JK and PQ met online and had a sexual encounter whereby PQ became pregnant and delivered a child in January of 2010.

19. PQ brought proceedings against JK asserting that he was the father.

20. JK engaged Mr. Virk to defend him. Collectively, they embarked upon the strategy of denial with the view to arguing that PQ was sexually promiscuous in the hope that the Court would find that someone other than JK was the father.

21. Early in the parentage proceedings, an application was brought by PQ and her lawyer NW for a leave to present DNA evidence on the issue of parentage. As well, there was a cross motion to set aside an *ex parte* child support order on the basis that parentage had not been proven. During the course of that proceeding, Mr. Virk was in Court before Mr. Justice Macklin, as was NW and PQ. Part-way through the proceeding, PQ thought that she recognized Mr. Virk and at a break in the proceedings spoke to her counsel. Her initial question was whether or not it was okay to have a lawyer who happened to know her representing the other side. Her counsel indicated that that occurs from time to time and gave an example of neighbours being known to the lawyer and the lawyer being able to act against them. PQ clarified that by "know" she meant she believed that she had a sexual relationship with Mr. Virk while she was pregnant approximately two months before the baby was born.

22. Following this information, NW took PQ and introduced her to Mr. Virk. At that time, PQ testified that she used words to the effect that it was nice to see him again, to which Mr. Virk responded to the effect that he had not met her previously.

23. After Court concluded, PQ spoke again with her lawyer and was troubled by Mr. Virk's response. She said that she had chatroom communications on the adult dating site where she had met Mr. Virk wherein he identified himself by name. There were intimate discussions leading to the first of two meetings, which in turn led to a meeting for a full sexual encounter. This information, together with information concerning the person behind the website alias “[…]” was provided to NW.

24. NW in turn raised the issue of the propriety of Mr. Virk acting and provided to Mr. Virk some 32 pages of chatroom transcript and other information. The transcripts included an exchange of how the two persons would identify each other. “[…]” indicated that he was brown-skinned, thus readily identified, whereas PQ stated that she was pregnant and equally thus able to be identified.

25. Mr. Virk wrote to NW denying that he had previously met PQ.

26. NW testified that while Mr. Virk told him that he was not involved with his client, he did not accept Mr. Virk's version. He considered the issue of conflict of interest and did not see that one existed between PQ and Mr. Virk. He did not form an opinion whether the circumstances could create a conflict as between Mr. Virk and JK.

27. As a consequence of NW's legal assessment, a decision was taken between him and PQ to allow the matter to proceed without seeking to disqualify Mr. Virk.

28. NW left the firm at which he was practicing, and the file was transferred to another lawyer. Throughout the course of the time that the case proceeded, JK, the putative father, refused to take a DNA test. He was going to make PQ prove that he was the father and in the course of doing so was going to argue that PQ was promiscuous, and that this should impact the Court's view of PQ's case, on the issues of both parentage and credibility. In any event, the evidence disclosed that there were only three people with whom PQ had a relationship during the period of possible conception. The first was her husband who had a vasectomy and was incapable of conceiving. The second was an unidentified individual who used protection and, in any event, took a DNA test that ruled him out as the father. And the third was JK, who did not use protection and would not take a DNA test.

29. From the time PQ's allegations vis-à-vis Mr. Virk were first made until Mr. Virk withdrew as counsel some 5 years later, Mr. Virk told his client that PQ had made these assertions and was seeking to have him get off the file. However, it appears that the nature of the communications were such that JK perceived that PQ was making these allegations as a tactic, and there was no factual merit behind it. Mr. Virk did not tell JK that PQ's assertion was true. JK allowed Mr. Virk to proceed as counsel. PQ, JK and Mr. Virk all state that in Mr. Virk's various questionings and cross-examinations of PQ, Mr. Virk aggressively questioned her and did not appear to go lightly on her.

30. The overall defence involved what is, in essence, an uncooperative and scorched earth policy. It appears that the hope was that ultimately PQ would either give up completely or else become so tired of the proceedings that she would accept a lower settlement than what might otherwise be the case. This strategy backfired and after a number of years of procedural battling, with little being accomplished towards the resolution of the issues, PQ's new counsel brought an application seeking a number of types of relief, including the disqualification of Mr. Virk by virtue of his sexual relationship with PQ.

31. The application was brought before Justice Belzil. The issue of whether Mr. Virk had a sexual relationship with PQ was discussed with the Court. Justice Belzil asked Mr. Virk whether he was denying the allegation. Mr. Virk said that he was and indicated that he would be commencing legal proceedings as a result of that allegation.

32. The Court provided advice to Mr. Virk to the effect that whether true or not, the allegations were a sideshow that did not serve the client's interests. He suggested Mr. Virk withdraw. Mr. Virk took this advice. Mr. Virk told JK that he was going to cease to act thereafter.

33. After Mr. Virk told JK that he was no longer going to act, he was requested by JK to take on a limited scope retainer to obtain a Non-contact Order against PQ. JK stated that he had information that PQ had approached, threatened and otherwise harassed JK's ex-wife and, based on this, he feared for her, himself and his family. Mr. Virk took on the retainer and an Affidavit was prepared, which included as an exhibit a statement purportedly given by JK's ex-wife. The Application was adjourned from its original return date to a date for a Special Application in order that PQ could present her own evidence and examinations on Affidavits could be heard.

34. PQ prepared an Affidavit, which describes significantly different circumstances than those described in the JK Affidavit and in the exhibit to the JK Affidavit.

35. There were problems with JK's evidence in relation to the Non-contact Order Application, including a purported statement from his ex-wife that Mr. Virk felt was suspect and ran entirely contrary with the sworn evidence given by PQ on that very point. Mr. Virk recommended that the Application be abandoned. JK agreed. Mr. Virk attempted to do so by suggesting that the Application not proceed and be adjourned *sine die*. PQ's counsel baulked in that she wanted costs. Mr. Virk proposed a set off of previous costs to current costs, but PQ's counsel did not agree. The matter proceeded to Court without Mr. Virk attending, but with Mr. Virk having provided to opposing counsel his position on costs and the request that his position be provided to the judge. The outcome was not favourable to Mr. Virk's client, who was found liable for costs in favour of PQ in the sum of approximately $1,100.00.

36. Following this, JK made a complaint to the LSA, which commenced an LSA investigation of the matters surrounding the dealings with JK and PQ. In the course of that investigation and at an interview, Mr. Virk told the LSA investigators that he had never met PQ prior to the first day in Court while representing JK.

37. During that investigation, the LSA investigators received information from PQ that helped identify the precise date of the alleged meeting, which was backed up by her day calendar entry of the doctor's appointment the morning of the day of the alleged sexual encounter with Mr. Virk. She was able to identify the hotel at which they met as being between Calgary Trail and Gateway Boulevard in Edmonton and just north of the Whitemud Freeway as being one of two. With this information, the LSA was able to make Court applications and obtained orders for the provision of information for the date of November 9, 2009 for each of two motels.

38. As a result of that Court order, the LSA received a hotel reservation and check-in card in Mr. Virk's name and paid for by a Bank of Montreal credit card.

39. Mr. Virk was then asked whether he had attended at that hotel or whether he had a Bank of Montreal credit card at the time in question. Mr. Virk denied having a Bank of Montreal card.

40. As result of that denial, the LSA investigators obtained a second Court order directing the Bank of Montreal to provide the credit card application for the card that was used. That application information showed the applicant for the card and the name in which the card had been issued was Mr. Virk.

41. Mr. Virk then was asked to re-attend to be interviewed. He refused, asserting that he had been interviewed previously. He asserted that he should not be interviewed more than once.

42. In order to assist him in understanding the need for the interview, he was provided with some of the documentation in the LSA's possession concerning his previous answers. This included the hotel reservation check-in card and Mr. Virk's credit card application.

43. Mr. Virk refused to re-attend. This refusal is the basis for Mr. Virk's admission of guilt to Citation 6.

44. In his testimony and up to hearing PQ's testimony at this hearing, Mr. Virk continued to deny a relationship with PQ. It was only after hearing PQ's testimony that Mr. Virk acknowledged that she must have been truthful about meeting and having sex with Mr. Virk. He stated in his testimony:

> Do I believe I had a sexual encounter with her? I don't for a moment have any objection to what she said, but I have zero memory of any of what she's talking about.

45. At the hearing, Mr. Virk submitted a new argument, that he has no recollection of the occurrence, and has never recalled it, due to a medical condition.

Analysis and Decision

46. Many of issues in this hearing resulted in the Committee having to consider credibility of the witnesses. As noted in *R v. Gagnon*, 2006 SCC 17, assessing credibility is not a science. The principles and factors we considered included the well-accepted factors set out in *Faryna v. Chorny*, 1951 CanLII 252 (BC CA). In order to come to our conclusions where evidence conflicted, we assessed the evidence against those principles and those factors we found particularly relevant.

47. The evidence in this case with respect to whether a sexual encounter occurred between PQ and Mr. Virk is very strong and surpasses the required burden of proof. There were transcripts of a text discussion between the two - a fair reading of these materials *alone* strongly suggests that Mr. Virk and PQ had indeed met each other and had indeed been involved in a sexual encounter. The LSA investigators unearthed documentary evidence demonstrating that a hotel room was booked and paid for with a credit card owned by Mr. Virk, which is also not now disputed by Mr. Virk, although he had previously denied having this credit card. At the hearing, Mr. Virk did not dispute PQ's testimony, which was clear and unequivocal about the encounter. The Committee is satisfied that the encounter occurred, at the time and place PQ testified to, as supported by the abundant documentary evidence provided.

48. However, Mr. Virk is now arguing that he has no recollection of the encounter, and has never recalled it, even after discussions with the LSA and others and having been provided with strong documentary evidence.

49. Mr. Virk asserts in argument that he was not in a conflict of interest in acting for JK against PQ even if a sexual relationship occurred. He further argues that, given that he did not recall the encounter with PQ, there is no conflict of interest with respect to his representation of JK. In addition, as a result of his lack of recollection, he argues that he should not be found guilty of failing to be candid, as he was not knowingly providing false information.

50. We agree that there is no conflict of interest with respect to PQ. In the circumstances, Mr. Virk had no prior professional relationship with PQ, and he had received no confidential information that might be used in favour of JK that would be against PQ's direct economic interest. In short, the peculiar circumstances of this case do not fit within the definitions of the two leading Supreme Court of Canada decisions, *R. v. Neil,* [2002] 3 SCR 631, and *MacDonald Estate v. Martin*, [1990] 3 SCR 1235 for conflicts of interest.

51. However, the question is whether the secret and the failure to disclose the sexual relationship amounts to a conflict of interest between Mr. Virk and JK. While circumstances are markedly different than in the usual course where there has been a previous representation of the adverse party, we do view that the truth, or more importantly the failure to tell the truth to his own client, creates a conflict. This failure removed from JK his ability to make an informed decision as to whether his lawyer is loyal to him. While it seems on the evidence that Mr. Virk did not show any favouritism in his dealings with PQ on behalf of his client JK, JK wouldn't know that Mr. Virk had not disclosed the truth.

52. Overall, Mr. Virk states that he was suffering from a mental condition that led him to impulsive acts. Two doctors' reports were provided in this regard. Mr. Virk also states that he had over the course of a number of years many, many sexual partners, other than his wife. Sometimes he had multiple partners on a single weekend, and as such had no memory of having met with PQ.

53. One medical report was from a psychiatrist. The other was from a psychologist. Both reports diagnose the same psychological disorder. Both reports deal with attendances a few months prior to the commencement of this hearing. Neither report draws a connection between the 2019 medical findings and the events giving rise to the various LSA complaints, which occurred some years previously. Neither medical practitioner was called to give evidence. We do not know whether the mental disorder that the practitioners are referring to is a recent affliction, or whether it may have been ongoing for many years. Neither report makes reference to the allegations that give rise to the citations that Mr. Virk faces. The conduct in question in this hearing is not specifically referenced in either report. The psychological report makes reference to "all or nothing" thinking, which was described as being a tendency for black and white thinking, resulting in the individual being unable to see a variety of behavioural options between the absolute extremes of the spectrum.

54. Upon review of the reports we note that the histories presented by Mr. Virk are somewhat different. We do not know whether these differences are as a result of the depth of questioning, a difference of opinions or actual inconsistencies in Mr. Virk's presentations. We do note that neither report speaks to impulsive behaviour such as that

described by Mr. Virk. Finally, we note that neither report sets out that absence of memory is a typical criterion to the mental health conditions diagnosed for Mr. Virk. As a consequence, we do not find either report helpful in explaining or mitigating the behaviour of Mr. Virk in relation to the citations and complaints which Mr. Virk faces.

55. Mr. Virk asserts in his testimony and in the argument made on his behalf, that at the time that he made the statements that he had not met PQ prior to the litigation or otherwise failed to disclose differently to his client, he simply had no memory of ever having met PQ. In short, the argument at the hearing seems to be that as he didn't remember her, therefore any false statements he made about not having met her were not knowingly made.

56. The evidence following the first meeting at the courthouse belie this assertion. In the confines of the courthouse, Mr. Virk might not have recognized PQ as someone he had met before. However, the letter from PQ's lawyer, NW, attaching documented information concerning their relationship, disclosure of their meetings, the fact that she was noticeably pregnant at the time of the encounter, identifying himself by name in "chat" conversation, and identifying himself as associated with "[…]", and describing himself as "brown" makes Mr. Virk's denial to NW not believable. Similarly, having been armed with that information from NW, the non-disclosure of the fact of the relationship to JK is not believable.

57. We are also mindful that Mr. Virk's past denials were outright denials. It is not that he said he did not remember, he said the relationship did not happen. These denials continued with the LSA. Even after being pressed in his questioning by the LSA investigators with information to the contrary, the outright denial was maintained. He denied having the credit card that was ultimately found to have been in his name and applied for by him. In short, we do not accept that Mr. Virk's statements were made as a result of his lacking memory of having met with PQ. We believe they were intentional lies.

58. Our reasons for disbelieving Mr. Virk on this point are further bolstered by the evidence of his refusal to be further interviewed after having been provided with documentary evidence indicating that his previous answers were indeed false. As a consequence, we are satisfied that Citation 2, that Mr. Virk had failed to be candid with his client JK, is made out and is deserving of sanction.

59. Mr. Virk's failure to be candid with JK put him in a conflict with JK. As such, we find that Citation 1 has been made out and is deserving of sanction.

60. With respect to Citation 3, that Mr. Virk misled NW, we find that this citation is made out. After Mr. Virk received extensive detailed information from NW, we do not believe that his further outright denial of knowledge of PQ was designed and made to do anything other than to mislead NW. To this end, we have reviewed the following cases:

    (a) *Doolan v. Law Society of Manitoba*, 2016 MBCA 57 (CanLII),

    (b) *Law Society of Alberta v. Groves*, [2005] LSDD No 96,

(c) *Law Society of Saskatchewan v. Braun*, [2009] LSDD No 24,

(d) *Law Society of Alberta v. Ingimundson*, 2014 ABLS 52 (CanLII),

(e) *Law Society of Alberta v. Llewellyn*, 2018 ABLS 11 (CanLII),

(f) *Law Society of Alberta v. Boulton*, 2013 ABLS 6 (CanLII), and

(g) *Law Society of Alberta v. W. Murray Smith*, 2009 LSA 19 (CanLII).

61. The Code of Professional Conduct prohibits lawyers from misleading others, either intentionally or accidentally. Where information has been provided that the lawyer comes to believe is misleading, he is under an obligation to correct it once he finds out.

62. The consequences of whether or not the misleading information actually misled is not relevant. After Mr. Virk received extensive and detailed information from NW that would clearly indicate that he met PQ and had a sexual relationship with her while she was pregnant, and the Committee having found that the evidence demonstrates on a balance of probabilities that the encounter occurred, Mr. Virk's statement, that he had never met PQ, cannot have been anything but made with the intent to mislead. We believe that the statement was made with the intent to mislead NW, whether NW was misled or not.

63. The cases we have considered made clear that it is the time of the representation and the statements made that are relevant. How they are received by the person to whom the statements are made does not impact the determination of whether the conduct occurred, although it may impact the sanction. Therefore, we find Citation 3 has been made out and is deserving of sanction.

64. Citation 4 concerns the Court appearance before Mr. Justice Belzil**.** When asked by the Court whether, in effect, the allegations that Mr. Virk had the sexual relationship with PQ were true, we find that Mr. Virk’s answer was not candid.

65. As noted above, in light of the evidence, Mr. Virk's suggestion in argument that he simply did not ever remember meeting PQ does not ring true. The Committee finds that Mr. Virk falsely told the Court that PQ's allegations of a sexual encounter were untrue. While nothing of consequence has occurred in the Court proceeding as a result of this misstatement and falsehood to Justice Belzil, Mr. Virk's counsel perhaps put it best in her argument that the Court is entitled to believe that a lawyer's word is gold. As a consequence, we find that Citation 4 is proven and that the conduct is deserving of sanction.

66. As found previously, Mr. Virk lied to the LSA about his involvement with PQ and about his ownership of the Bank of Montreal credit card.

67. When confronted with the actual evidence, Mr. Virk chose to not be candid but to stand mute and hide behind his previous lies. We find that Citation 5 is proven and that the conduct is deserving of sanction.

68. Citation 7 involves Mr. Virk's failure to attend Court for the adjournment or abandonment application of the special motion, thus subjecting his client, JK, to a cost sanction of $1,100.00. The LSA asserts that by doing so, Mr. Virk failed to serve his client.

69. Any time one is representing a client and is the lawyer on the record, it is ill-advised to not attend a Court proceeding unless there is clear agreement between the parties as to how the proceeding is to go.

70. Bad tactics do not however necessarily amount to a failure to serve.

71. We accept Mr. Virk's assertion that he discussed with JK whether the Application for the Non-contact Order should proceed or be withdrawn. It was agreed that it would not because of problems with respect to JK's evidence and, in particular, the concern that the statement purporting to be from JK's ex-wife might not be legitimate. Mr. Virk did not physically attend the Court hearing because he was concerned that inquiries would be made about the legitimacy of JK's ex-wife's purported statement. The evidence supports that there was a tactical decision made between JK and Mr. Virk for Mr. Virk not to attend in order to not be subjected to any questions in that regard. This tactical decision was questionable, as it is dangerous to not attend Court when required to do so unless counsel is certain of the result. However, where the non-attendance is part of a tactical scheme agreed to with the client, we are not satisfied that the adverse consequences that flowed from it support the charge that Mr. Virk failed to serve JK. Accordingly, we find that the Citation 7 has not been made out.

Complaint CO20152645

Background

72. This complaint resulted in Citations 8 to 10.

73. In 2015, BM hired his lawyer, CP, to commence an action against a Progressive Conservative Party constituency association and a number of individuals including a sitting MLA and cabinet minister. The details of the lawsuit were not clear, but the evidence suggested that it had said something to do with alleged improprieties during the candidate nomination process. BM was seeking the nomination and asserted that he had been forced to withdraw for improper reasons.

74. Mr. Virk was retained to represent the MLA. Mr. Virk believed that BM's action was flawed and brought a motion to have it struck or summarily dismissed for either being in the wrong forum or not disclosing a cause of action.

75. Prior to this motion being heard, CP asserted that Mr. Virk was in a conflict of interest because BM said that he had met with Mr. Virk at the offices of GG in August of 2009. At the time, BM asserts that the meeting with Mr. Virk was arranged through GG with whom Mr. Virk was planning to enter into a practicing arrangement. The meeting occurred at the offices GG was setting up at 204, 9254 – 34th Avenue SW in Edmonton. BM states that he was present, Mr. Virk was present, and GG was present periodically. GG had to pop in and out of the meeting to attend to other matters. Both BM and GG testified that all notes were taken by Mr. Virk.

76. BM asserts that he told Mr. Virk about his family relations, his problems, his assets both in Canada and India, and his desire to take some steps to have his brother in India appointed a power of attorney for dealing with the land assets in India.

77. Aside from the matter of the power of attorney, nothing further came of the August meeting, and no formal retainer was entered into.

78. It is on the basis of the information disclosed in this meeting that six years later, BM asserted that Mr. Virk was in a conflict of interest and could not represent the MLA in the proceedings that BM was bringing.

79. After CP wrote to Mr. Virk, Mr. Virk responded unequivocally that he had not met BM previously. It is this statement to CP that becomes the basis for the assertion of misleading CP alleged in Citation 9, and it is a continuation of Mr. Virk's denial that is the basis of Citation 10, a failure to be candid with the LSA.

80. The key question is of course, did Mr. Virk make false statements when he asserted that he had not met BM prior to the 2015 litigation. CP, BM's lawyer, who made the assertions in his correspondence, was not called as a witness in this hearing. BM did testify and described in some detail the actual meeting at GG's office. In addition, BM described two other occasions meeting with Mr. Virk at the office premises of a notary public service with which Mr. Virk had been associated, indicating that BM picked up the power of attorney and then a second power of attorney as the first required some additional information.

81. There was no corroborating evidence to these later meetings, and Mr. Virk denies that they occurred. BM testified that he paid a fee for these services, yet he could produce no receipts and did not have a copy of either of the powers of attorney. He stated that the first one was taken to India by a friend whom who he was reluctant to name. BM stated that he could not get a copy from his brother, as its use had come to an end, and it had been discarded. Similarly, the revised power of attorney was not produced.

82. From Mr. Virk's perspective, he stated that he had no computer records or word processing records showing the preparation of the powers of attorney. He indicated that he spoke with his in-house IT people, who had confirmed this. The IT people did not testify. He testified that there were handwritten records outside of computerized records kept in storage, which might have receipts for payments from BM, but he had not looked for them and did not produce any verification that such records did not exist.

83. The information contained in CP's letter to Mr. Virk, written on behalf of BM, contains inconsistencies between it and BM's evidence, particularly with respect to how much Mr. Virk was paid to prepare the powers of attorney. We were asked to consider CP's letter as an accurate reflection of what BM had told his counsel and what was the truth. CP, however, was not called, and we do not know the depth of the inquiries that led to the letter being written. We are asked to infer that the letter is more likely to be accurate with respect to what BM told his counsel at the time than BM's testimony in the hearing.

84. GG is a lawyer, and testified that in 2009, he had met Mr. Virk at the courthouse after GG had completed his articles but was awaiting his bar call. They had agreed to enter

into a form of practice together as GG was not going to stay to practice with his principal. An arrangement was made to take space in south Edmonton. GG arranged for the space, and the evidence supports that Mr. Virk made some payments towards renovation of the premises and an additional payment for salary of a sort to GG. It is clear at least for a short period of time, they were embarking upon a practice relationship.

85. GG testified that he was approached by BM, who had a matrimonial problem and was seeking some general advice. GG said that he arranged for BM to come to the office that they were setting up in south Edmonton and that this occurred late in the day towards the last third of the month of August. He stated that Mr. Virk and BM met. He was present throughout portions of the meeting. From time to time, he had to leave the meeting room to attend to other matters in the small office. GG stated that while he was there, Mr. Virk asked the questions, Mr. Virk took notes. Generally, the matters concerned domestic issues between BM and his wife, matrimonial property and BM's assets both in Canada and India. He did not believe that BM paid Mr. Virk for this interview, and he could offer no evidence with respect to the matters of the powers of attorney that BM testified to, and Mr. Virk has denied preparing.

86. Six years later when the litigation occurred and BM complained to GG about Mr. Virk's representation of some of the defendants, GG supported BM and advised CP that he would swear an affidavit to support BM's story that BM had indeed met Mr. Virk at GG's office some years previously. GG voluntarily approached the LSA in support of BM's complaint.

87. Mr. Virk's counsel argued that GG was so aligned with BM's interests, that his evidence should be taken as suspect and not accepted.

Analysis and Decision

88. Citation 8 alleges that Mr. Virk was in a conflict of interest in acting against BM by virtue of the information that he had received some six years earlier. The LSA bears the onus of proof of establishing the conflicts of interest alleged and the facts required to prove it.

89. With respect to BM meeting with Mr. Virk, the details of the time, the place, the location, the partial presence, and occasional absence of GG is corroborated by the evidence of GG. Mr. Virk's evidence that he had no business relationship or ever provided any directions or instructions to GG in the time frame is inconsistent with documents authored by him, which show him giving instructions on files GG was to handle.

90. This leads us to accept BM's and GG's evidence that a meeting with Mr. Virk, where information about a family relations matter and assets were disclosed, did occur. However on the basis of the evidence provided to us, we do not believe that a retainer for matrimonial issues was entered into between Mr. Virk and BM nor that a duty of loyalty was triggered.

91. The question then becomes whether this limited exchange of information involved a disclosure that would prohibit Mr. Virk from acting on a wholly unrelated matter six years later. The Committee is of the view that the information provided by BM to Mr. Virk at the

first meeting, in August of 2009, would have no bearing on the matters in issue in the 2015 lawsuit, where Mr. Virk was representing the MLA. Accordingly, that information could not have been used to BM's detriment.

92. The evidence about subsequent meetings relating to a power of attorney is conflicting, and uncorroborated. For the reasons of the matters described in paragraphs 77 and 78 we are not convinced that either BM's or Mr. Virk's story is compelling regarding the preparation of the power of attorney or the payments for doings so. Since the burden of proof is on the LSA, we are not satisfied that the evidence is sufficient to prove, on a balance of probabilities, that these subsequent meetings occurred or that any actual legal work was being done by Mr. Virk for BM.

93. As we have found that no information was or could be used by Mr. Virk to BM's detriment, and in the absence of a retainer, such that BM actually became a client of Mr. Virk, we find that this conduct does not rise to the level to create a conflict of interest. We would dismiss Citation 8.

94. Having found that the August meeting between BM and Mr. Virk occurred, and notwithstanding the inconsistencies between CP's letter to Mr. Virk where in his client complained of a conflict and BM's testimony, we find that Mr. Virk's outright denial of such a meeting outside of the existing litigation was not true. Though CP was not called as witness, and we don't know if CP was actually misled, the prohibition in the Code deals with *making* misleading statements. We find that Mr. Virk's denial of meeting BM was untrue and thereby misleading. For these reasons, Citation 9 is made out.

95. Citation 10 concerns Mr. Virk's dealings with the LSA, and his alleged lack of candor with the LSA. We are satisfied that the evidence demonstrates a number of instances that he was not candid with the LSA. Mr. Virk denied any sort of business relationship with GG, which assessed in light of the evidence and on a balance of probabilities, is untrue. He denied ever having met with BM. He was oblique and evasive with respect to providing documentation that he had in storage. We are of the view that he was not candid with the LSA investigators and that that conduct is deserving of sanction. We find that Citation 10 is made out.

Complaint C020162461

96. This complaint comprised Citations 11, 12 and 13. As noted above, Citations 11 and 13 were combined. Mr. Virk provided an Agreed Statement of Facts and Admission of Guilt to the conduct set out these Citations in a form that was acceptable to the Committee. Accordingly, this is conduct deserving of sanction.

Complaint C020170377

Background

97. This complaint involves a domestic dispute and allegations of misconduct alleged by counsel to one of the parties against Mr. Virk, who was acting as counsel to the opposing party. Citations 14 through 16 arise as a result.

98. Had either lawyer used a modicum of good judgment and restraint, this matter should never have come to a hearing. Regretfully that did not occur and, as a consequence, we have to deal with the matter.

99. During the course of family litigation, a form of Court order needed to be prepared. It required that the lawyers order a transcript of proceedings before the presiding judge. The order to be prepared had to reflect the judge's actual ruling. The Complainant ordered the transcript and asked Mr. Virk to pay for half of it. Mr. Virk provided his personal undertaking to do so. At the end of the day, the amount of $126.00 was in issue. Also, during the course of the family litigation, the Complainant's client was ordered to pay for the cost of the reproduction of certain medical records, which amounted to $90.00.

100. While Mr. Virk had provided his personal undertaking to pay $126.00, he proposed to the Complainant that this payment be set off against the payment owed by the Complainant's client to Mr. Virk's client. This appears to have been a reasonable attempt at resolving the issue. Reasonableness, however, did not carry the day.

101. The Complainant testified that her client believed that she had already paid for the medical records and therefore it should not be set off against the costs of half of the transcripts of the proceeding before the judge.

102. The Complainant however never told Mr. Virk of this reason and it seemed that she also did not check with former counsel to see whether in fact it had been paid.

103. Mr. Virk continued to ask for the set off, the Complainant refused, and Mr. Virk was left with having to comply with his undertaking. Mr. Virk did not comply with that undertaking and the amount of the $126.00 remained outstanding, resulting in Citation 14. The undertaking was still unfulfilled as of the date of this hearing.

104. Citation 15 alleges that Mr. Virk failed to be candid with the Court. This involved statements made by Mr. Virk to Mr. Justice Lee at the opening of the trial of family matter.

105. The parties had previously been ordered to produce all of the documentation to be used at trial by the 31st of October, with the trial scheduled for February in the following year. Neither party was compliant, and documents were being produced late by both Mr. Virk's client and the Complainant's client.

106. At the opening of the trial, Mr. Virk produced a binder of documents that he wished to refer his client to in the client's testimony. A dialogue occurred between counsel and the Court in the course of which Mr. Virk stated to the effect that all of the documents in the binder had been previously produced and provided to the Complainant or the Complainant's client. The scope of the representation was "all documents had been produced."

107. The Complainant says that Mr. Virk's statement was untrue. She testified that 32 pages of some many hundreds of pages had not been previously produced. Mr. Virk's statement to the judge therefore was not candid in that it was an overstatement.

108. Citation 16 alleges that Mr. Virk had failed to attend to a finalization of the Court order.

109. This Court order was granted by Madam Justice Sulyma, and it was this order being drafted that required the transcripts of proceedings, and which gave rise to the breach of undertaking alleged in Citation 14. In the ordinary course, Mr. Virk would prepare the order. Mr. Virk was having discussions with former counsel as to the form of the order when former counsel was replaced by the Complainant.

110. The transcript was ordered and while Mr. Virk was slow, Mr. Virk did prepare a form of order and forwarded it to the former counsel for approval, with a copy to the Complainant. The Complainant stated that the order was not satisfactory and requested that former counsel not sign it.

111. The Complainant then prepared her own form of order and provided it with Mr. Virk's draft order to Justice Sulyma, requesting that Justice Sulyma settle the matter.

112. Prior to providing her form of order to the judge, the Complainant did not provide it to Mr. Virk. This seems unusual in that, typically, the drafter of the order would provide it to opposing counsel for approval prior to seeking to have a judge settle it. Again, good practice and good judgment was not to carry the day with respect to this complaint.

113. Justice Sulyma needed to review the transcript before signing the order. This amounted to further delay. But in the fullness of time, Justice Sulyma signed a form of order that she was satisfied with and provided it to the Complainant.

114. Thereafter, there was a reasonably significant amount of time before that order in fact got entered and a fiat had to be obtained from the Court due to the delay in entry.

Analysis and Decision

115. As to Citation 14, the evidence is clear that Mr. Virk had provided an unequivocal undertaking to pay half of the transcript costs. He was provided with notice of what that amount was. He sought relief from a portion of that undertaking by way of set off. He was not relieved from the undertaking and as at the date of the hearing had not fulfilled it.

116. As the matter of undertakings and trust conditions are a matter of utmost importance in the practice of law, their meticulous compliance by a lawyer is essential. Undertakings go to the heart of many dealings between lawyers and on behalf of their clients and allows the system to move efficiently. The failure to comply is a serious matter and in our view is deserving of sanction. We find that Citation 14 is made out.

117. Citation 15 alleges that Mr. Virk was not candid with Mr. Justice Lee when he stated that all documents had been produced. It is clear that the statement was made in the course of many other statements. However, the issue of whether the documents were previously produced was a central issue at that point in time in the trial. It is also clear from the evidence that Mr. Virk's blanket statement that all documents had been produced was false. As noted previously, Mr. Virk's counsel expressed it best in her submissions on this matter, indicating that judges have a right to presume that a lawyer's

word is gold. Mr. Virk was cavalier with respect to the scope of his representation, which undermined this presumption. Lawyers are officers of the Court, they owe an utmost and highest duty to the Court. This requires meticulous honesty and candour. We find that Mr. Virk failed to meet this standard. Because of its importance in the system, we find the breach in these circumstances amounts to conduct deserving of sanction. Accordingly, Citation 15 is proven.

118. Citation 16 alleges that Mr. Virk failed to attend to the finalization of the Court order. It is clear that the time that it took to have this Court order entered was excessive. Not all of that time rested with Mr. Virk. As between the three counsel involved, the delays are inexplicable, but the evidence does suggest that former counsel and the Complainant were as much to blame for the delay as was Mr. Virk. As a result, we find that the evidence does not support the allegation that Mr. Virk failed to attend to the finalization of the Court order. While not in any manner endorsing the delay that did occur, we find that Citation 16 has not been proven.

Complaints C020162785/C020163049

119. These two complaints generated Citations 17 and 18.

120. Mr. Virk entered into an Admission of Facts and Admission of Guilt with respect to these two citations. Mr. Virk acknowledged that his delinquencies with respect to Citations 17 and 18 were conduct deserving of sanction.

Complaint C020171398

Background

121. This complaint originates with the LSA. Citations 19 and 20 involve allegations relating to an undertaking given by Mr. Virk to the LSA to only have one articling student in 2017 and failing to be candid with the LSA with respect to the true nature of affairs related to the articling student.

122. Before the articling year 2016 through 2017, Mr. Virk had committed to take on an articling student, SL, who was graduating from the University of Alberta. The evidence is that many graduates of the University of Alberta were having trouble finding articles. 2016 had not been good to the Alberta economy, and this affected the ability of the lawyers to hire students. SL had not actually started, it was her plan to do so during the summer of 2017. She had not yet made application to become a Student-at-Law.

123. Mr. Virk had another student, NS, who sought to join him in the same general time frame. This student had submitted papers to the LSA seeking approval to become an articling student and seeking approval for Mr. Virk to be the principal. This submission “raised a flag” at the LSA because Mr. Virk had, by that time, been the subject of previous disciplinary proceedings, was the subject of several client service type complaints, and had been dealing with the Practice Review Committee. The LSA had some concern the employees working at Mr. Virk's firm were all fairly young and required supervision themselves. To take on one student more might see Mr. Virk spreading

himself thin, such that the student would not get the needed supervision in order to have successful articles.

124. The LSA wrote to Mr. Virk on May 6, 2018 and decided that he could take an articling student, but only one, and then under certain conditions.

125. The conditions were:

(a) Complete 4 reports over a 12-month articling term, particularly in the areas of:

A. Importance of self-governance and reporting to the LSA, and

B. Practice Management and Client Relationship Management.

C. There shall also be discussions about the exposure of work completed by NS working with other lawyers in Mr. Virk's firm.

(b) That NS and Mr. Virk both complete Lesson 3 of the CPLED module for Dealing with clients;

(c) That Mr. Virk advise the Manager of Membership Services of any formal proceedings commenced against him, and

(d) Mr. Virk undertake to not apply to have two concurrent articling students, with exceptions for:

A. The period of June 1 - July 30 to accommodate the completion of articles of RS;

B. At any time that NS is completing a rotation/composite with another solicitor. Mr. Virk will advise the Manager of the Membership Department at least 30 days in advance of this being completed, or

C. First seeking and receiving leave of this undertaking.

126. By email of May 12, 2016, Mr. Virk provided the following undertaking in relation to the conditions imposed on him. "I undertake to not apply to have two concurrent articling students with exception for … C. before first seeking and receiving leave from this undertaking."

127. Thereafter, SL contacted Mr. Virk to inquire about and make arrangements for the start date of her articles. At that time, Mr. Virk told her that he could no longer take her on because he was restricted to taking only one articling student but stated that he would try to find someone else to fulfill that role.

128. SL had previously worked with DB, a lawyer at another firm who also acted as a mentor at an Edmonton legal clinic. Mr. Virk contacted DB and he agreed to take on the role as SL's principal. He did so on the understanding that Mr. Virk would pay SL's salary, her Law Society fees and her CPLED course registration charges. At the time of this

agreement, DB did not have additional space in his office for SL but was expecting space to open shortly. In the interim, it was agreed SL would have a home base in Mr. Virk's office, but would attend at DB's office when space was available.

129. Mr. Virk had space and provided a desk for SL. The bulk of the work SL did came from Mr. Virk or others at Mr. Virk's firm, little came from the principal DB. DB met with SL frequently, discussed issues of import for the practice of law, discussed the matters that SL was working on, discussed the questions and practical concerns that she might have and generally provided the mentorship and guidance that one would expect of a principal. During this time, it was thought that the firm at which DB was practicing would have new space open up and SL would then be able to move physically into DB's offices.

130. This did not occur as expansion space did not become available as had been anticipated and SL's articles under DB saw her based in Mr. Virk's office. Approximately three months into the relationship, a senior lawyer, JM, joined Mr. Virk's office and a suggestion was made that he take over DB's role as principal. In that manner, SL would at least be in the same home office as her principal. The articles were transferred to JM. JM's main base of practice was in Fort McMurray. He came to work out of Mr. Virk's office because of the Fort McMurray fire. JM and Mr. Virk had entered into a loose arrangement whereby it was planned that he and Mr. Virk would practice together in the future.

131. JM took over from DB. He testified that he viewed himself as the principal and that while the bulk of SL's work came from others in Mr. Virk's firm, predominantly Mr. Virk himself as he was the owner of the practice, JM did discuss these matters and provide a level of mentorship to SL. Based on what we heard, it would seem that the quality of the principalship provided by the new principal was short of that provided by DB but nonetheless adequate.

132. Throughout the whole of this time, Mr. Virk maintained all of the financial responsibility for SL. Mr. Virk provided the bulk of SL's work. And while SL took advice from others in the firm, Mr. Virk provided the final say and input for any documents that were to go out on his files. His files made up the vast majority of SL's work during her articles.

133. These facts were not disclosed to the LSA.

134. As indicated previously, Mr. Virk was to provide quarterly statements as to the progress of his officially authorized articling student, NS. He did so and the reports that were entered into evidence appeared to be comprehensive and in keeping with what had been requested of him.

135. The LSA asserts that these reports did not make any reference to the supervision that he was providing to SL, nor to the fact that SL was in his office at all.

136. Mr. Virk's evidence was that he viewed that the reports were not about SL, they were about his articling student and there was no need to discuss SL in these reports.

137. As far as SL's articles were concerned, the principal, DB, provided the required certifications for her when the articles were transferred to the new principal, JM. JM provided his certification that SL had completed the requirements of her articles. He further viewed that because of documents that he had signed, that he had undertaken the principal role. Indeed, both of the lawyers who had taken on SL's principal role viewed that they had responsibilities to the LSA and to SL in that regard.

138. SL also confirmed that she received mentorship from both her principals. As well, she received supervision and mentorship from others within the Virk firm, including Mr. Virk himself.

Analysis and Decision

139. It's the Committee's understanding that the LSA's position is that Mr. Virk had provided an undertaking in compliance with the condition that he have only one articling student in his office during the 2017-2018 articling period. The LSA asserts that SL being present was in breach of that undertaking. The LSA argues that while the paperwork showed different principals, those principals were put in place as a means to circumvent Mr. Virk's interpretation of his undertaking, which undermined the rationale for the undertaking, that is, that Mr. Virk would be spread too thin to provide appropriate and adequate supervision, guidance and mentorship should another articling student be present in his office.

140. The undertaking itself is not directed to Mr. Virk as principal, but is directed to a student being present in his office. The Committee finds that the evidence establishes that Mr. Virk is in breach of his undertaking. While we have little doubt that Mr. Virk's role in this matter was altruistic in an effort to support SL, given that intervening events prevented him from hiring her directly as an articling student, the orchestration of the principals while SL remained in Mr. Virk's office getting the bulk of the work from Mr. Virk and requiring Mr. Virk to provide supervision to one extra person, undermines the whole reason for the limitation on Mr. Virk in the first place. As noted above, lawyers' undertakings are sacrosanct. It is our view that the evidence demonstrates that the conduct that occurred ran contrary to the substance of the conditions and undertaking by which Mr. Virk was bound. Citation 19 has been proven. We find that this conduct is deserving of sanction.

141. The allegation that Mr. Virk failed to be candid with the LSA relates to the quarterly reports that he was providing on behalf of another student and in accordance with the undertaking that he had given. We do not see how these reports would have created a requirement to talk about SL. The failure to do so therefore does not give rise to an absence of candour in the circumstances.

142. The LSA did not point to any other statements made by Mr. Virk that were false or misleading regarding SL's circumstances.

143. As a consequence, we find that Citation 20 of the original citation is not made out.

Concluding Matters

144. In conclusion, guilt on Citations 1, 2, 3, 4, 5, 6, 9, 10, 11 (as amended to incorporate 13), 12, 14,15,17,18, and 19 has either been admitted or proven on a balance of probabilities and is conduct deserving of sanction.

145. Citations 7, 8, 16 and 20 have not been proven, and are dismissed.

146. The parties did not speak to sanction. Accordingly, another hearing has been set to deal with remaining matters, including sanction, costs, notices and any other outstanding issues. The sanction hearing is currently scheduled for December 16 and 17, 2019.

147. 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. However, redactions will be made to preserve personal information, client confidentiality and solicitor-client privilege, and to reflect the orders of the Committee set out in this Report at paragraphs 13 and14 (Rule 98(3)).

Dated at Edmonton, Alberta, September 9, 2019.

Doug McGillivray, QC – Chair

Buddy Melnyk

Barbara McKinley

Appendix 1

IN THE MATTER OF THE *LEGAL PROFESSION ACT*
AND
IN THE MATTER OF A HEARING INTO THE CONDUCT
OF NAVDEEP VIRK,
A MEMBER OF THE LAW SOCIETY OF ALBERTA

STATEMENT OF ADMITTED FACTS AND ADMISSION OF GUILT
AS TO CO20152037, CITATION 1.6

INTRODUCTION

1. I was admitted as a member of the Law Society of Alberta (the "LSA") on April 27, 2007 and have remained a member since that time.

CITATIONS

2. I face seven citations arising out of complaint CO20152037, one of which is set out as follows:

   Citation 1.6: It is alleged that Navdeep Virk failed to cooperate with a Law Society investigation and that such conduct is deserving of sanction;

FACTS

Regarding Citation 1.6: failed to cooperate with a Law Society investigation

3. In response to the LSA investigator's request for my November 2009 credit card statements I stated: "I did not obtain a credit card or line of credit until 2010. There is no record for November 2009 personally or for business." I had looked at my firm records from November 2009 which showed no credit card and recent correspondence from my accountant (in 2016) that I had received in relation to financing I had applied for unrelated to my practice. When pushed on the issue I responded: "I think my responses from December [2016] and today leave no ambiguity regarding credit cards." Subsequently, the Law Society obtained information which shows I had a credit card in November 2009. **[Exhibit 1]**

4. Upon review of the records provided in the course of the proceedings I admit that I had the credit card 51**********38 [redacted for privacy] in November 2009.

5. I also refused to attend a second interview with LSA investigators despite their direction and repeated requests. The LSA made the following requests for a second interview while I was represented by counsel:

   (a) March 1, 2017 by letter;
   (b) March 27, 2017 emails between [JD] and Mr. Virk (including 5 requests at 10:45, 11:29, 12:40, 2:26, and 3:22);
   (c) April 7, 2017 by letter (to [D] LLP);
   (d) May 8, 2017 at 9:10 a.m. by email (to [SB] of [D] LLP and Mr. Virk);
   (e) May 12, 2017 at 11:30 a.m. by email (to Mr. [SB] and Mr. Virk);
   (f) May 19, 2017 at 9:34 a.m. by email (to Mr. [SB]); and
   (g) May 26, 2017 at 9:48 a.m. by email (to Mr. [SB] and Mr. Virk).

   [Exhibits 2 A-G]

ADMISSION OF FACTS AND GUILT

6. I admit as facts the statements in this Statement of Admitted Facts and Admission of Guilt for the purposes of these proceedings.

7. For the purposes of section 60 of the *Legal Profession Act*, I admit guilt to citation 1.6 and admit that such conduct is conduct deserving of sanction.

8. I acknowledge that I have had the opportunity to consult legal counsel and provide this Statement of Admitted Facts and Admission of Guilt on a voluntary basis.

9. I acknowledge that all parties retain the right to adduce additional evidence and to make submissions on the effect of and weight to be given to these agreed facts.

ALL OF THESE FACTS ARE ADMITTED THIS 12 DAY OF June, 2019.

"Navdeep Virk"
NAVDEEP VIRK

Appendix 2

IN THE MATTER OF THE *LEGAL PROFESSION ACT*

AND

IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF

NAVDEEP VIRK

A MEMBER OF THE LAW SOCIETY OF ALBERTA

HEARING FILE NUMBER HE20170299

STATEMENT OF ADMITTED FACTS AND ADMISSION OF GUILT AS TO CO20162461, CITATIONS 3.11, 3.12, 3.13

INTRODUCTION

1. I was admitted as a member of the Law Society of Alberta on April 27, 2007 and have remained a member since that time.

CITATIONS

2. I face the following citations arising out of complaint CO20162461:

    3.11 It is alleged that Navdeep Virk failed to serve his client, G.C., and that such conduct is deserving of sanction;

    3.12 It is alleged that Navdeep Virk failed to attend to the finalization of a Court Order in a timely manner and that such conduct is deserving of sanction;

    3.13 It is alleged that Navdeep Virk failed to properly account to his client G.C., and that such conduct is deserving of sanction.

3. The Law Society and my counsel will seek the approval of the Hearing Committee to consolidate citations 3.11, and 3.13 in one citation that reads as follows:

    3.11 It is alleged that Navdeep Virk failed to serve his client G.C., and failed to properly account to his client, G.C., and that such conduct is deserving of sanction.

FACTS

4. On June 21, 2013 G.C. retained me to pursue an application for retroactive child support. G.C. had previously been represented by O.K.

5. I provided G.C. with a letter setting out the terms of the retainer. The retainer letter stated that G.C. would receive a Statement of Account every month.

6. I prepared, filed, and served the materials for the retroactive child support application. The application was originally scheduled for July […], 2013 and then adjourned to a Special Chambers date on November […], 2013. Counsel for the Respondent was C.C.

7. One of the central issues in G.C.'s application was why there had been a delay for several years in bringing the application for child support. On behalf of G.C. I stated in a letter to the Court dated November 20, 2013 that the reason for the delay in seeking the retroactive support was that prior counsel allowed the matter to lapse without G.C.'s knowledge or consent.

8. On November […], 2013, C.C. and I, along with a student-at-law M.T. appeared at the Special Chambers application. C.C. argued that viva voce evidence would be necessary to determine whether the delay in seeking retroactive child support was due to O.K.'s failure to follow G.C.'s instructions. The Court ordered that the application would be adjourned to a one-day hearing with *viva voce* evidence, that any questioning would be completed by the end of January 2014, and that counsel would exchange all correspondence between C.C. and prior counsel for G.C. for the period between December 2010 and June 2013.

9. I advised the Court that my office would prepare the form of Order.

10. On November 28, 2013, the student-at-law M.T. sent a letter to G.C. reporting on the November […], 2013 Chambers application and advising that the matter was adjourned to June […], 2014 for a one-day viva voce hearing and that any questioning would be completed by the end of January 2014.

11. On December 16, 2013 I received a letter from C.C. which noted that he was awaiting the form of Order and attaching the Clerk's notes for my assistance. C.C. also advised me in that letter that the Trial Coordinators office had indicated that to book the one-day hearing for June […], 2014, it would be necessary to book the date by close of business on December 20, 2013 or the date would be lost. C.C. stated he would leave it to me to book the date. I did not respond to this letter.

12. On January 9, 2014, I received another letter from C.C. noting that he had not yet received my draft form of order, and noting that, since the Order was not filed, the Special Chambers date of June […], 2014 had been lost.

13. On January 17, 2014, the student-at-law M.T. sent a draft form of order to C.C.

14. On January 29, 2014 I sent a follow up letter to C.C. asking him to confirm his agreement with the form of order.

15. On January 30, 2014 C.C. replied by letter and indicated that the form of order did not reflect the Clerk's notes and requesting changes. He also inquired as to whether my office had a complete copy of O.K.'s file, noted that the file would be necessary before questioning, and indicated that an extension of time for questioning would be necessary.

16. On February 11, 2014, M.T. sent C.C. a letter attaching a revised form of Order, advising that my firm had not received a copy of O.K.'s file, and indicating that we were willing to grant a brief extension of the time necessary for questioning but that it should be completed forthwith.

17. On March 6, 2014, C.C. replied to M.T. by letter, apologizing for his delay in responding which was due to illness, and attaching a form of order that he had drafted.

18. On March 12, 2014 I replied to C.C. by correspondence which indicated I would canvass the form of order with my notes and "we will respond to you very eminently if it is an acceptable form of Order."

19. On May 15, 2014 I wrote to G.C. confirming that she wished to continue with the viva voce hearing, confirming that she would be paying installments of $500.00 per month, and stating that I was now making a claim against O.K. with the Alberta Lawyers Insurance Association.

20. I did not make a claim on G.C.'s behalf against O.K. with the Alberta Lawyers Insurance Association at that time or at any time thereafter

21. I took no action on this matter between May 15, 2014 and November 17, 2014 except talking briefly with O.K.

22. On November 17, 2014, G.C. emailed me asking for an update on the case and noting that she had not spoke to me since April of 2014. I responded that nothing significant had happened on her matter yet and that we were looking at how to include O.K. in the claim.

23. On November 27, 2014 I wrote to C.C. indicating that G.C. wanted to move forward with the viva voce hearing and asking C.C. to confirm what steps and positions he would like to adopt in moving the matter forward.

24. On December 24, 2014 C.C. replied asking where the Order was from the hearing of November […], 2013. I did not respond to that letter.

25. On March 13, 2015, G.C. emailed me and noted that she had not heard anything from my office since receiving a copy of my November 27, 2014 correspondence to C.C. I replied on March 17, 2015 that I had her file diarized for review the following week and that we were struggling to get C.C. to provide dates for questioning.

26. I took no further action on this matter until November 16, 2015 when I wrote to C.C. that the terms of the November […], 2013 order needed to be settled and asking C.C. to advise of his availability to question G.C. "so there is no further delay."

27. On November 30, 2015 C.C. replied reviewing the history of the application and indicating that the order needed to be finalized. I did not respond to that letter.

28. I took no action on this matter between November 30, 2015 and April 14, 2016.

29. On April 15, 2016 G.C. emailed me and asked for an update noting that the last thing she had received from my office was a copy of my letter to C.C. on November 16, 2015. I replied that I would follow up with her the next week.

30. On June 14, 2016, in response to a request from G.C., my assistant sent her the Statements of Account issued up to that date. While my office had issued 11 Statements of Account on G.C.'s matter between June 21, 2013 and June 14, 2016, none of these accounts were forwarded to G.C. at the time they were issued.

31. On June 15, 2016 G.C. emailed me raising several questions about the statements of account. I replied on June 17, 2016 indicating that I was unaware that she was not receiving the accounts. G.C. replied noting that my office had always had her home address and email address. She then asked me to email to her all documents not previously sent to her that supported my statements of account. I replied on June 20, 2016 that I would have my assistant scan and forward the documents and then we could discuss.

32. G.C. and I had a telephone conversation about her file on July 14, 2016. G.C.'s spouse was also on the line for a portion of the conversation. During the conversation I apologized for the missed communication and suggested moving forward with the application. I stated that I would get the November […], 2013 Order finalized and get the matter scheduled as soon as possible.

33. On July 28, 2016 G.C. emailed me about her review of her records as to emails and letters from O.K. and asked for an update as to what had been going on since July 14, 2016. I responded that day asking her to forward the materials she had from O.K.

34. On July 29, 2016 I advised G.C. by email that I was waiting for the Court to confirm Special Chambers availability.

35. On August 17, 2016 G.C. emailed me attaching copies of O.K.'s letters and emails and asked whether I had received a court date yet. I responded that I had not received a court date because the court required C.C.'s consent. G.C. responded by email asking me to let her know by August 24, 2016 where the matter stood.

36. On August 24, 2016 G.C. emailed me noting that she had not received an update from me.

37. On August 30, 2016 G.C. emailed me to note that it would soon be seven weeks since we had spoken on the phone on July 14, 2016, and she had not since that time received updates voluntarily from my office and had not received any correspondence.

38. On September 2, 2016 G.C. emailed me noting that despite her August 30, 2016 email and her call to me on September 1, 2016, she had heard nothing from me.

39. On September 13, 2016 G.C. advised me that she was firing me effective immediately.

ADMISSION OF FACTS AND GUILT

40. I admit as facts the statements in this Statement of Admitted Facts and Admission of Guilt for the purposes of these proceedings.

41. I admit that I failed to serve my client G.C. and failed to properly account to my client G.C., and that such conduct is deserving of sanction.

42. I admit that I failed to attend to the finalization of a Court Order in a timely manner and that such conduct is deserving of sanction.

43. For the purposes of section 60 of the *Legal Profession Act*, I admit my guilt to the above conduct.

44. I acknowledge that I have had the opportunity to consult legal counsel and provide this Statement of Admitted Facts and Admission of Guilt on a voluntary basis.

THIS STATEMENT OF ADMITTED FACTS AND ADMISSION OF GUILT IS MADE THIS 12 DAY OF JUNE, 2019.

"Navdeep Virk"
NAVDEEP VIRK

Appendix 3

IN THE MATTER OF THE *LEGAL PROFESSION ACT*

AND

IN THE MATTER OF A HEARING INTO THE CONDUCT OF

NAVDEEP VIRK,

A MEMBER OF THE LAW SOCIETY OF ALBERTA

STATEMENT OF ADMITTED FACTS AND ADMISSION OF GUILT AS TO CO20163049, CITATION 5.17

INTRODUCTION

1. I was admitted as a member of the Law Society of Alberta (the "LSA") on April 27, 2007 and have remained a member since that time.

CITATIONS

2. I face the following citation arising out of complaint CO20163049:

   Citation 5.17: It is alleged that Navdeep Virk failed to serve his client, H.S., and that such conduct is deserving of sanction.

FACTS

Failing to disclose information regarding his client's retirement:

3. Mr. [HS] retained Mr. Virk on matrimonial proceedings. His complaint regarding Mr. Virk's conduct was that Mr. Virk failed to disclose financial information, including a pending retirement and updated pension information, during those proceedings and prior to trial.

4. In July 2015, Mr. [HS] gave notice to his employer of his intention to retire at the end of October 2015, just before trial in November. He did not advise Ms. [S] of his retirement until days before it took effect. Mr. Virk acknowledged that the decision not to disclose his retirement was made with his advice. He stated in his interview that "…that was a very conscientious and cognizant discussion between the two of us…"

5. The pension administrator had provided Mr. [HS] with paperwork in August 2015. He took it to Mr. Virk a few weeks later, but Mr. Virk stated he did not want a copy of it. At trial, when the issue arose, the Trial Justice was required to send Mr. [HS] home during the trial to retrieve it. Mr. Virk acknowledges in his response that "…I should have turned my mind to its application to Trial." The documentation previously provided by the pension administrator was the same paperwork Mr. [HS] was sent home to retrieve during the trial.

6. Mr. Virk stated in his interview that:

> "Let's say that [HS] in August 2015 puts together a binder and says, here is all my pension statements, here is my retirement papers, here is my – every shred of financial information you could ever have, how likely is it, when he has faced by that time about nine court applications, that an application would be taken out to adjourn trial? I put the probability at probably 85 to 90 percent.
>
> Let's say that that is successful, which it likely would be, that he's retired and we need to evaluate it and on, my goodness, this is so – so disconcerting we can't figure this out.
>
> We now go into the fall of 2016 paying spousal support of $8,000 a month that [N] doesn't adjust, even though he says it should be six. You're at 108 grand, and you've – you're no longer able to make the money you were making because you're retired. Is that better or is that worse than 20 or 30 grand in court costs? It's a calculated decision…"

7. Mr. Virk took the position that new information from [C], his expert, showing a substantially higher value of pension than what was on the 2012 pension report did not need to be disclosed as it was his client's prerogative to disclose or not.

8. Mr. Virk failed to adequately advise Mr. [HS] on the consequences of failure to disclose the retirement/pension information and how the trial judge might view the non-disclosure.

9. In his trial decision, Justice [N] wrote:

> "…He failed to respond in a timely manner to requests for additional information regarding pension matters that were at the heart of this litigation, necessitating an adjournment during the trial, and unnecessary confusion. Whether this course of conduct was deliberate or merely careless, the result was the expenditure of unnecessary resources for everyone involved. Therefore, although the results of this trial are mixed, Ms. [S] will be awarded costs of this trial…"

10. In a subsequent addendum to his decision on March 11, 2016, Justice [N] noted that Mr. [HS]'s habitual non-disclosure of financial information should be penalized. He wrote:

> "…Mr. [HS]'s failure to disclose financial information prior to trial and his related failure to adduce reliable evidence regarding the value of his supplemental pension during the trial served only to damage his case before this Court."

11. In their November 30, 2016 Judgement rendered in the Appeal of Justice [N]'s Judgement, the respective Justices noted the Appeal was "largely precipitated by the failure on the part of the appellant (husband) to provide financial disclosure before or during the trial as required"; and "the trial judge's observation that Mr. [HS] "habitually" failed to disclose is amply supported by the record".

12. The Court of Appeal also wrote:

> "The purpose of matrimonial property legislation across the country is to fairly and equitably distribute the assets of the parties on dissolution of a marriage. Full and frank financial disclosure is fundamental to the court's exercise of the jurisdiction granted in those statutes. Ignoring that requirement corrodes the process, the judicial decisions, and ultimately confidence in the rule of law. It ought not to be countenanced. The court has powers and sanctions to rectify the situation and should resort to them when necessary. Parties who fail to disclose, thereby misleading their spouses and the court, do so at their peril. Most assuredly they should not be rewarded for having done so."

Failing to ensure his client's timely disclosure of financial information:

13. In the litigation process leading to trial, Virk provided a detailed response (May 30, 2014) to [H]'s specific requests for financial disclosure in accordance with the court directed litigation timelines.

14. Virk's detailed response of May 30, 2014, while including an offer to provide authorizations that would allow [Z] to obtain further disclosure information directly from third parties as required, did not offer any further disclosure than had been offered in his March 12, 2014 letter to [Z].

15. During the proceedings Ms. [Z] applied for an Order citing Mr. [HS] in contempt for his failure to disclose. [Z]'s application for Contempt was adjourned sine die, and [Z] was granted liberty to make all financial inquiries associated with Mr. [HS]'s finances directly from the source; the contempt application was not pursued.

16. [Z] had little success obtaining the required disclosure from third parties.

17. In response to the application for contempt, [HS] filed an affidavit enclosing updated pension information (2013) not previously provided.

18. Updated pension information and employment information was not forthcoming prior to (in 2014) or during the trial in the matter. As outlined above, Justice [N] was required to send Mr. [HS] home during trial to retrieve current pension and employment information (2015) in [HS]'s possession.

Failing to advise his client's pension administrator of the terms of the November 20, 2015, Court Order:

19. The Trial Justice made an Order on November 20, 2015 in relation to Mr. [HS]'s pension. One of the terms of the Order was that there were to be no distributions from his pension. By December 21, 2015, Virk had drafted, filed and served [Z] a copy of the Order granted by Justice [N] on November 20, 2015.

20. Virk did not substantially respond to two requests by [Z] to confirm that notice had been given to the pension administrator regarding the terms of the November 20, 2015 Order, in particular, that there were to be no distributions from [HS]'s pension.

21. Contrary to the Order, substantial pension monies, including the $432,000 supplemental pension, were distributed to Mr. [HS] in January 2016.

22. Mr. Virk acknowledged that he did not send a copy of the Order to Mr. [HS]'s pension administrator as he understood that Mr. [HS] would notify them. This resulted in tax implications for his client.

23. In correspondence to [Z] dated February 8, 2016, Mr. [HS]'s pension administrator confirmed that they had not previously been provided or advised of the November 20, 2015 Order.

Failing to advise his client of a settlement offer by the opposing party:

24. Ms. [Z] sent an offer to Mr. Virk on November 30, 2016. It was open for acceptance until 4:00 pm on December 9, 2016. Mr. Virk did not respond to the offer or send it to his client. In his response Mr. Virk acknowledged that it was "overlooked" and admitted his mistake.

25. Mr. [HS] did not receive the offer of settlement as contained in [Z]'s Settlement Letter of November 30, 2016. Virk acknowledged having received the Settlement Letter and acknowledged having overlooked its receipt, and that [HS] should have been made aware of it.

ADMISSION OF FACTS AND GUILT

26. I admit that I failed to serve my client. I admit as facts the statements in this Statement of Admitted Facts and Admission of Guilt for the purpose of these proceedings.

27. For the purposes of section 60 of the *Legal Profession Act*, I admit guilt to citation 5.17 and admit that such conduct is deserving of sanction.

28. I acknowledge that I have had the opportunity to consult legal counsel and provide this Statement of Admitted Facts and Admission of Guilt on a voluntary basis.

29. I acknowledge that all parties retain the right to adduce additional evidence and to make submissions on the effect of and weight to be given to these agreed facts.

ALL OF THESE FACTS ARE ADMITTED THIS 21 DAY OF June, 2019.

__**"Navdeep Virk"**_____
NAVDEEP VIRK

Appendix 4

IN THE MATTER OF THE *LEGAL PROFESSION ACT*
AND
IN THE MATTER OF A HEARING INTO THE CONDUCT OF NAVDEEP VIRK,
A MEMBER OF THE LAW SOCIETY OF ALBERTA

STATEMENT OF ADMITTED FACTS AND ADMISSION OF GUILT AS TO CO20163049, CITATION 5.18

INTRODUCTION

1. I was admitted as a member of the Law Society of Alberta (the "LSA") on April 27, 2007 and have remained a member since that time.

CITATIONS

2. I face the following citation arising out of complaint CO20163049:

   Citation 5.18: It is alleged that Navdeep Virk failed to attend to the finalization of Court Orders in a timely manner and that such conduct is deserving of sanction.

FACTS

3. Mr. [Y] retained me in 2013 with respect to a family matter. Opposing counsel was Ms. [Z]. After the matter ended in 2016 both filed complaints about my conduct of the matter.

4. There were three times where I failed to prepare a Court Order or respond to Ms. [Z]'s draft of a Court Order, leading to Ms. [Z] forwarding her version to the Justice for signature. I did not meet my duty to the Court to finalize Court Orders.

5. The first Order was granted on June […], 2014 by Justice [Y].

6. On July 3, 2014, Ms. [Z] sent me her proposed form of Order for the June […], 2014 appearance.

7. On July 8, 2014, Ms. [Z] sent a follow-up letter to me advising that she was awaiting my response to the form of Order.

8. On July 15, 2014, Ms. [Z] sent a letter to Justice [Y] with her form of Order pursuant to Rule 9.2(1) and indicated she had not heard from me. On July 21, 2014, Ms. [Z] served

me with a filed copy of Justice [Y]'s June […], 2014 Order.

9. The second Order was granted on December […], 2014 by Justice [Y].

10. On December 5, 2014, Ms. [Z] sent me her proposed form of Order for the December […], 2014 appearance.

11. On December 15, 2014, Ms. [Z] sent a letter to Justice [Y] with her form of Order pursuant to Rule 9.2(1) and indicated she had not heard from me. On December 18, 2014, Ms. [Z] served me with a filed copy of Justice [Y]'s December […], 2014 Order.

12. The third Order was granted on July […], 2015 by Justice [L].

13. On August 5, 2015, Ms. [Z] sent me a letter stating that she was awaiting my proposed form of Order from the July […], 2015 appearance.

14. On September 11, 2015, Ms. [Z] sent a further letter to me stating that she had not received my form of Order. She enclosed her own proposed form of Order.

15. On September 22, 2015, Ms. [Z] sent a letter to Justice [L] with her form of Order pursuant to Rule 9.2(1) and indicated that she had not heard from me.

16. On October 8, 2015, Ms. [Z] wrote to Justice [L] after having been advised by his office that numerous unsuccessful attempts were made to reach me with respect to my comments on the form of Order. Ms. [Z] responded that she had not seen any of my comments relating to the form of Order. She requested a date with Justice [L] to settle the Order. Ms. [Z] forwarded this correspondence to me.

17. On October […], 2015, Justice [L] granted the Order and on the same day, Ms. [Z] served me with a filed copy of the July […], 2015 Order.

ADMISSION OF FACTS AND GUILT

18. I admit that I failed three times to attend to the finalization of Court Orders in a timely manner. I admit as facts the statements in this Statement of Admitted Facts and Admission of Guilt for the purposes of these proceedings.

19. For the purposes of section 60 of the *Legal Profession Act*, I admit guilt to citation 5.18 and admit that such conduct is conduct deserving of sanction.

20. I acknowledge that I have had the opportunity to consult legal counsel and provide this Statement of Admitted Facts and Admission of Guilt on a voluntary basis.

21. I acknowledge that all parties retain the right to adduce additional evidence and to make submissions on the effect of and weight to be given to these agreed facts.

ALL OF THESE FACTS ARE ADMITTED THIS 12 DAY OF June, 2019.

___"Navdeep Virk"_____
NAVDEEP VIRK