THE LAW SOCIETY OF ALBERTA

IN THE MATTER OF THE *LEGAL PROFESSION ACT;*

AND

IN THE MATTER OF A HEARING REGARDING

THE CONDUCT GUY LACOURCIERE,

A MEMBER OF THE LAW SOCIETY OF ALBERTA

Hearing Committee:

Anthony G. Young, Q.C., Chair (Bencher)
Dennis Edney, Q.C., Committee Member (Bencher)
Dr. Miriam Carey, Committee Member (Lay Bencher)

Appearances:

Counsel for the Law Society – Tim S. Meagher
Counsel for the Guy Lacourciere – self-represented

Hearing Dates:

April 21 and July 7, 2015

Hearing Location:

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

HEARING COMMITTEE REPORT

Jurisdiction, Preliminary Matters and Exhibits

[1] The Member was in attendance throughout the Hearing and was largely self-represented but was supported by members from his office, including Ms. Andrea Teran Baptista and Mr. Ugochukwu C. Ukpabi

[2] The Member and counsel for the LSA were asked whether there were any objection to the constitution of the Committee. There being no objection, the hearing proceeded.

[3] Exhibits 1 through 4, consisting of the letter of appointment of the Committee, the Notice to Solicitor pursuant to section 56 of the *Legal Profession Act*, the Notice to Attend to the Member and the Certificate of Status of the Member with the LSA established the jurisdiction of the Committee.

[4] The Certificate of Exercise of Decision pursuant to Rule 96(2)(b) of the *Rules of the Law Society of Alberta* ("Rules") pursuant to which the Deputy Executive Director and Director, Regulation of the LSA, determined that there were no persons to be served with a private hearing application, was entered as Exhibit 5. Counsel for the LSA advised that the LSA did not receive a request for a private hearing. Accordingly, the Chair directed that the hearing be held in public.

[5] At the outset of the hearing an Exhibit Book which had been provided to the Committee in advance containing Exhibits 1 through 77 were entered into evidence in the hearing with the consent of the Parties. Further exhibits were added to the Exhibit Book as the hearing proceeded.

Citations

[6] The Member faced the following citations:

1. It is alleged that you misled or failed to be candid with your clients and such conduct is deserving of sanction
2. It is alleged that you acted without instructions or failed to follow your clients' instructions and such conduct is deserving of sanction.
3. It is alleged that you failed to serve your clients and such conduct is deserving of sanction.
4. It is alleged that you delayed or failed to prosecute your clients' matters and such conduct is deserving of sanction.
5. It is alleged that you failed to keep your clients informed as to the progress of their matters and such conduct is deserving of sanction.

Summary of Results

[7] During the conduct of the hearing, one Hearing Committee member recused herself on the basis that there was a reasonable apprehension of bias. The Hearing continued thereafter with the two remaining panel members in accordance with section 66(3) of the *Legal Profession Act*.

[8] The Member was found guilty of citations 1 and 5. The remaining citations were dismissed.

[9] The Member was reprimanded, received a fine of $5,000 on each Citation, totalling $10,000 and was ordered to pay the actual costs of the hearing.

Agreed Statement of Facts

[10] A Statement of Admitted Facts is attached hereto as **Schedule "A".**

Apprehension of Bias

[11] An issue was raised with the Committee by correspondence from LSA counsel and Mr. Lacourciere in May 2015, and both parties asked that Dr. Carey step down from the hearing on the basis of a reasonable apprehension of bias. The Committee reconvened on July 7, 2015, to hear oral argument from both parties on the issue of whether there was a reasonable apprehension of bias. LSA counsel and Mr. Lacourciere both requested Dr. Carey's recusal.

[12] The LSA and Mr. Lacourciere must have confidence that the Committee is not influenced by irrelevant considerations to favour one side or the other. The adjudication must not only be fair but it must also have the appearance of being a fair process. As such, out of an abundance of caution and to ensure the integrity of the process, Dr. Carey recused herself from the hearing.

[13] Reasonable apprehension of bias is a legal standard for disqualifying judges and administrative decision-makers for bias. The test is set out in paragraph 20 of *Yukon Francophone School Board Education Area No 23 v Yukon Territory*, 2015 SCC 25, [2015] 2 SCR 282 (*Yukon Francophone School Board*):

> … what would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly.

[14] Bias of the decision-maker can be real or merely perceived. As stated in paragraph 22 of *Yukon Francophone School Board*:

> The objective of the test is to ensure not only the reality, **but the *appearance* of a fair adjudicative process.** The issue of bias is thus inextricably linked to the need for impartiality. In *Valente*, Le Dain J. connected the dots from an absence of bias to impartiality, concluding "[i]mpartiality refers to a state of mind or attitude of the tribunal in relation to the issues and the parties in a particular case" and "connotes absence of bias, actual or perceived": p. 685. Impartiality and the absence of the bias have developed as both legal and ethical requirements. Judges are required — and expected — to approach every case with impartiality and an open mind: see S. (R.D.), at para. 49, per L'Heureux-Dubé and McLachlin JJ. [*emphasis added*]

[15] The Supreme Court further stated at paragraphs 23 and 24:

> In Wewaykum, this Court confirmed the requirement of impartial adjudication for maintaining public confidence in the ability of a judge to be genuinely open:
>
> > . . . public confidence in our legal system is rooted in the fundamental belief that those who adjudicate in law must always do so without bias or prejudice and must be perceived to do so.
>
> The essence of impartiality lies in the requirement of the judge to approach the case to be adjudicated with an open mind. …"
>
> Or, as Jeremy Webber observed, "impartiality is a cardinal virtue in a judge. For adjudication to be accepted, **litigants must have confidence that the judge is not influenced by irrelevant considerations to favour one side or the other**": "The Limits to Judges' Free Speech: A Comment on the Report of the Committee of Investigation into the Conduct of the Hon. Mr Justice Berger" (1984), 29 McGill L.J. 369, at p. 389." [*emphasis added*]

[16] And again at paragraph 26 through 29:

> . . . [A]llegations of perceived judicial bias will generally not succeed unless the impugned conduct, taken in context, truly demonstrates a sound basis for perceiving that a particular determination has been made on the basis of prejudice or generalizations. One overriding principle that arises from these cases is that the impugned comments or other conduct must not be looked at in isolation. Rather it must be considered in the context of the circumstances, and in light of the whole proceeding. …
>
> That said, this Court has recognized that a trial judge's conduct, and particularly his or her interventions, can rebut the presumption of

impartiality. In *Brouillard v. The Queen, 1985* CanLII 56 (SCC), [1985] 1 S.C.R. 39, for example, the trial judge had asked a defence witness almost sixty questions and interrupted her more than ten times during her testimony. He also asked the accused more questions than both counsel, interrupted him dozens of times, and subjected him and another witness to repeated sarcasm. Lamer J. noted that a judge's interventions by themselves are not necessarily reflective of bias. On the contrary,

> it is clear that judges are no longer required to be as passive as they once were; to be what I call sphinx judges. We now not only accept that a judge may intervene in the adversarial debate, but also believe that it is sometimes essential for him to do so for justice in fact to be done. Thus a judge may and sometimes must ask witnesses questions, interrupt them in their testimony and if necessary call them to order. [p. 44]

On the other hand, Lamer J. endorsed and applied the following cautionary comments of Lord Denning in *Jones* v. *National Coal Board*, [1957] 2 All E.R. 155 (C.A.):

> Nevertheless, we are quite clear that the interventions, taken together, were far more than they should have been. In the system of trial which we have evolved in this country, the judge sits to hear and determine the issues raised by the parties, not to conduct an investigation or examination on behalf of society at large . . . . [p. 159] …

Although Lamer J. was not convinced that the trial judge was actually biased, there was enough doubt in his mind to conclude that a new trial was warranted in the circumstances of the case." [*emphasis added*]

[17] The Chair canvassed counsel for the LSA and Mr. Lacourciere if there was any objection to the membership of the Committee as it was then composed (being the two remaining panel members) on the basis of apprehension of bias or any other reason.

[18] No objection to either Committee member was made.

Background Facts

[19] In the spring of 2007 Mr. and Mrs. H ("Complainants") were engaged in two disputes with Mrs. H's sister, Ms. Z.

[20] The first dispute was with respect to a joint purchase of an acreage near Indus, Alberta ("Property"). A Caveat was filed by Ms. Z and Mr. B against the Property claiming an interest as beneficial owners pursuant to an agreement for sale between them and the

Complainants. The Complainants retained the Member to act on their behalf with respect to the Property claim. He filed a notice requiring the Caveators to take proceedings on their caveat.

[21] On May 23, 2007 Mr. Lacourciere filed a Statement of Claim against Ms. Z's company, on behalf of the Complainants' company. This started as a simple debt action for the sum of $165,243.47, together with interest, punitive damages and solicitor client costs from the Defendant ("Collection Action").

[22] On or about June 7, 2007 Ms. Z filed a Statement of Claim claiming a declaration that she had an interest in the Property, damages, interest and solicitor client costs ("Caveat Action"). The Complainants retained Guy Lacourciere to act on their behalf with respect to the Caveat Action.

[23] On June 12, 2007 a Statement of Defence and Counterclaim was filed for $585,000 and other relief with respect to the Collection Action. On July 3, 2007 Mr. Lacourciere filed a Statement of Defence to Counterclaim in response. An Affidavit of Records was filed by the Complainants on September 6, 2007. No further steps were taken to prosecute the action after September 6, 2007 except for an offer before a Judicial Dispute Resolution ("JDR") in 2009 (after prompting from the Complainants) to make an all-inclusive offer to settle all issues.

[24] On March 4, 2009 the Complainants filed a Statement of Claim, claiming $750,000 from Ms. Z and Mr. B, for slander of title ("Slander of Title Action"). Mr. Lacourciere took no formal steps in this action with the exception of serving the Statement of Claim on Mr. B. The claim was never served on the co-defendant, Ms. Z. Mr. Lacourciere states that he had an agreement with opposing counsel to hold the matter in abeyance. This action was discontinued on December 19, 2011.

Citation No. 1

It is alleged that you misled or failed to be candid with your clients and such conduct is deserving of sanction;

[25] On December 9, 2008, Mr. Lacourciere sent an email to the Complainant Mrs. H. The email states:

> We are going to cancel discos for tomorrow, *I'm going to send over the Certificate of Readiness so we can get a trial date*, and Klassen is going to get a date for a JDR. I would be surprised if we couldn't get the matter resolved with a JDR now that we have the affidavit of Ms. Z and the examinations of all parties.

[26] On April 20, 2009 Mr. Lacourciere filed a Notice of Intention to Cease to Act in the Caveat Action.

[27] On June 3, 2009 Mrs. H sent an email to Mr. Lacourciere:

Hello Guy, I know that you cannot really answer this question, but I'm going to ask you anyway. When we go on the 9th and we demand a court date, do you know how long we will have to wait for the date? Two months? Two weeks?

[28] On the same day Mr. Lacourciere's response was:

I have no idea. It all depends on the court's schedule and how many days we anticipate that the trial will take.

[29] On June 23, 2009 Mrs. H followed up in an email and asks, among other things: "Hello, Guy, Just wondering where we are at for the court date???" There was no response from Mr. Lacourciere.

[30] Mrs. H followed up again by her email of July 24, 2009: "Guy, have you heard from the courts as to a date?" Mr. Lacourciere's reply is unresponsive. He stated later on July 24, 2009:

"I need you to come in tomorrow to sign an Affidavit. All you have to do is come in and, if I'm not free Christina can do it."

[31] There is no further discussion on the issue of the Court date until the morning of July 27, 2009 when Mrs. H asked again by email: "Have you heard from the courts as to a date?"

[32] Mr. Lacourciere responded as follows:

"It's up to Monica's lawyer to complete the forms. If he doesn't, then I have to make a court application. I am concerned about pushing for a court date because, once I do that, it is difficult to get out of it. I can't afford to do a trial without getting paid."

[33] Mrs. H responded: "Guy, Fair enough. What is the minimum amount do you need to proceed?" Mr. Lacourciere stated in his return email: "I'm in discoveries. I will get back to you later today." The following day, July 28, 2015, Mrs. H followed up again, inquiring: "Have you figured out anything yet?" Mr. Lacourciere provided no response. As such, on August 4, 2009 Mrs. H followed up again:

Guy, we are working on selling some of our stuff. I just need to know what the minimum amount you need so we can get this to trial.

[34] On August 6, 2009 Mr. Lacourciere stated:

This is not a quote but an estimate for what I believe will be a four- to five-day trial. I'm reducing my daily court rate from $3,000 to $2,000 and have built in one day of prep time for me and one day for an assistant to prepare all of the materials. The cost should be between $13,000 and $15,000, plus GST.

[35] Mrs. Harper responded later on August 6, 2009 and asked: "I just need to clarify. You need $13,000 to $15,000 now for us to get the court date?"

[36] Mr. Lacourciere responded:

> No. I need you to do two things: I will need that amount in trust before the trial, so you need to have an idea of where you're going to get it; second, I need you to start making some regular payments on your account.

[37] The evidence with respect to how the issue of payment before trial was resolved is unclear. Mrs. H's evidence was that $10,000 was provided to Mr. Lacourciere on September 1, 2009 for the purpose of proceeding to trial. She also stated that she knew that she and her husband owed other fees but that she did not know "how much". She believed that she was "good to go for trial".

[38] Mr. Lacourciere treated the $10,000 as a payment on account. In fact, he created new accounts and took the fees from trust to pay those new accounts. Mr. Lacouciere's records show the payment of the following accounts all on September 9, 2009 for a total of $10,000:

File No.	**Amount**
10622	1040.45
10423	126.00
10302	956.54
40083	357.00
10386	630.00
10420	6,890.01

[39] All amounts were either transferred from file 10420, the Caveat Action, or paid to the credit of that file.

[40] The evidence from the Complainants is that they did not receive all of the accounts until January 2010. There was some confusion as to where the accounts may have been originally delivered but the Committee finds that the accounts were not received by the Complainants until January 2010.

[41] On September 8, 2009 Mrs. H recommenced her inquiries by email about a trial date. She questioned: "Just wondering if you've heard anything new?" There was no answer from Mr. Lacourciere.

[42] The same message was repeated by Mrs. H on September 14th: "Again just wondering if you've heard anything new?" Again, there was no answer from Mr. Lacourciere.

[43] On September 15th, Mrs. H emailed again: "Guy, I know you are quite busy, but I just need to know if you have heard anything new."

[44] This time Mr. Lacourciere responded, saying:

> Didn't Christina send you an email as to the date of the pre-trial conference? I believe it's November 5th, 2009, which will give me more than sufficient time to prepare a proposed agreement as to facts, which I can pass by the judge at the pretrial conference.

[45] It is apparent that Mr. Lacourciere was signalling to the Complainants that he was preparing for trial when he spoke of an Agreement of Facts.

[46] On October 30, 2009 Mrs. H inquired about the upcoming pre-trial conference: "Hello, Guy, Is everything going ahead on the 5th of November?" Mr. Lacourciere provided the following response within the hour on the same day: "It is all set, and I'm looking forward to getting this thing on to trial."

[47] After the pre-trial conference on November 5, 2009 Mrs. H followed up with Mr. Lacourciere:

> "Hello. How did it go? When is the trial date? Let me know."

[48] In December 2009, there were discussions between Mrs. H and Mr. Lacourciere with respect to a settlement offer. Mrs. H was clear in her message of December 16, 2009:

> "We have thought about it and decided since we have come this far we may as well go the distance. … If they do not agree, then we demand an immediate filing of the Certificate of Readiness from Klassen (Ms. Z's lawyer) and a court date be set."

[49] Again on December 17, 2009 she stated: "Guy, we want you to set a trial date. Whatever the judge decides, we will accept…" On December 18th, 2009 the message is repeated: "Guy, make no offers and demand a Certificate of Readiness so we can set a trial date. Thanks."

[50] On January 4, 2010 Mrs. H wrote an email to Mr. Lacourciere and asked: "Could you please let me know what the status of the [Z] certificate of readiness?" There was no response from the Member.

[51] On January 13, 2010 the question was asked by Mrs. H in slightly more directive way: "Guy, did you receive the Certificate of Readiness on Friday? Please let me know the status." Mr. Lacourciere replied: "I have it, and I need to make a few minor changes."

[52] On January 18, 2010 Ms. H again followed up: "Guy, Has the changes been made? Has the Certificate been filed?" There was no response from Mr. Lacourciere.

[53] On January 26, 2010 Mr. Lacourciere received another message from Mrs. H: "Guy, Has the Certificate of Readiness been filed? Any word on a court date?" There was no response from Mr. Lacourciere about the Certificate of Readiness or trial date.

[54] On February 4, 2010 Mrs. H summarized her previous requests for information and stated:

> Guy, We sent you emails on January 18, January 26, and February 1 in regards to the status of our trial date. Please reply.

Mr. Lacourciere replied that same day stating:

> I have not heard back from the court. We should get together sometime next week to start getting you ready for trial.

[55] The Committee finds that Mr. Lacourciere, through this email, was attempting to lead the Complainants to believe that he was pushing on to trial and that trial date was imminent, when in fact, he had no intention of obtaining a trial date before first being paid further.

[56] Mrs. H responded, saying:

> We are available Tuesday to Thursday next week. Let us know what day so we can make arrangements.

[57] On March 2nd, Mrs. H inquired of Mr. Lacourciere:

> Have you talked to Mark in regards to the court date? If not, is there a way we can request the date ourselves?

Mr. Lacourciere replied:

> I did talk to him last week, and he was going to be providing some court dates early this week.

[58] On March 23rd, 2010, Mrs. H asked Mr. Lacourciere again: "Do we have a court date yet?"

[59] Subsequently, the Complainants sent a message Mr. Lacourciere telling him that they had contacted the courts themselves. During this inquiry they were informed that no trial date had been set because no Certificate of Readiness had been filed. There were inquiries about whether Mr. Lacourciere had made requested changes to the Certificate in January. Mr. Lacourciere was then confronted with a question from Mrs. H: "How can a trial date be set if no Certificate has been filed?" She stated further: "We are totally being misled and stalled."

[60] Thereafter, on March 26, 2010, Mr. Lacourciere made an inquiry of opposing counsel, Mr. Klassen: "Did you file the Certificate of Readiness?" Mr. Klassen replied:

> No, I don't think so. My assistant called down to get some available dates for a four-day trial and was told it was pretty open from October on.

[61] On April 12th, 2010, Mr. Lacourciere emailed Mr. Klassen and copied Mrs. H on the correspondence:

> I would like to attend with the trial coordinator this week to set up a trial date. How is your schedule tomorrow and Wednesday?

Analysis

[62] This is a case where a lawyer has not been fully transparent with his clients. The cost of litigation is expensive. If the cost is prohibitive, the client should be advised of that fact. Mr. Lacourciere was clear that the cost of the trial was between $13,000 and $15,000. When his clients asked whether he needed that amount to proceed to trial he was less clear and less transparent. He stated:

> "I need you to do two things:" …
>
> (a) "that amount in trust before the trial;" … and
>
> (b) "you to start making payments on your account."

[63] The missing piece of the communication during this conversation was that Mr. Lacourciere did not communicate clearly and transparently to the Complainants that they had to pay for all of the previous work that he had done to that date (approximately $10,000) and they had to pay a further retainer of $13,000 to $15,000. One can only speculate whether the Complainants would have or could have chosen to proceed to trial if they were advised that the cost for Mr. Lacourciere to proceed was between $23,000 and $25,000. The fact is that they were able to scrounge up $10,000. Their understanding was that this amount was for trial and Mr. Lacourciere did not disabuse his clients of this misunderstanding. He accepted the money and did not arrange the trial despite numerous requests and inquiries from the Complainants.

[64] The Committee finds that the Complainants paid the $10,000 to have Mr. Lacourciere proceed to trial. The emails exchanged between the Complainants and Mr. Lacourciere between June 3, 2009 and the date of payment indicates an expressed intent on the part of the Complainants that they wanted the matter to proceed to trial. They had the understanding that payment of $10,000 was for the purpose of facilitating the trial of the Caveat Action. Instead the money was used by Mr. Lacourciere to pay for work that had already been completed. In short, the Complainants thought they were paying $10,000 for future work and Mr. Lacourciere applied the $10,000 for past work.

[65] Mr. Lacourciere failed to secure a trial date. He failed to proceed with the simple task of completing and filing a Certificate of Readiness.

[66] Mr. Lacourciere knew that the Complainants wanted to move this matter to trial. There were numerous indications of this desire. At no point between the Complainants' September 1, 2009 payment of $10,000 and March 26, 2010 did Mr. Lacourciere advise

his clients that he was not going to move the matter to trial without further payment. It is the Committee's view that he needed to tell them. He should have provided to the Complainants, in writing, as much information regarding fees and disbursements as was reasonable and practical in the circumstances. This information should have been provided within a reasonable time after Mr. Lacourciere had formed his intentions regarding how he was going to proceed and certainly should have been provided immediately when he knew that the Complainants had a different understanding and expectation than he did regarding proceeding to trial. To not provide the information was misleading to the clients. They thought they were proceeding to trial (and that they had already paid the appropriate fee) while their counsel had the intention of only providing superficial services to facilitate the illusion that the matter was going ahead.

[67] Mr. Lacourciere met with the Complainants on February 11, 2010 and again on February 25th, 2010. The Committee finds that Mr. Lacourciere was meeting with the Complainants simply to give the appearance that he was willing to go to trial for them. The Committee is of the view that Mr. Lacourciere had little intention of proceeding expeditiously to trial. Rather, he wanted to leave the Complainants with the impression that he was moving the matter along but he was reluctant to take any concrete steps without first receiving further fees. In doing so, Mr. Lacourciere lacked candour and misled his clients. As such, the Committee finds Mr. Lacourciere guilty of Citation No. 1.

Citation No.2

It is alleged that you acted without instructions or failed to follow your clients' instructions and such conduct is deserving of sanction.

[68] LSA counsel argued that Mr. Lacourciere cancelled a JDR without instructions and that he agreed to stay the Caveat Action without instructions.

The JDR

[69] Mrs. H stated during her testimony that she "did not suggest that the JDR be cancelled. She stated that she "wanted it settled".

[70] Mr. Lacourciere stated that his instructions were to cancel the JDR. Mr. Lacourciere submits that the Complainants stated that they were not prepared to have a face-to-face meeting with Ms. Z. The Complainants deny this.

[71] What is clear is that Mr. Lacourciere prepared a JDR brief ("Brief") which sets out the relief that the Complainants were looking for:

> "The relief that we suggest would be that 100% of the money held in Court be paid to the [Complainants], however, in order to resolve this matter, I would suggest that 1/3 be paid to [Z] ($51,039.28) and 2/3 be paid to [the Complainants] ($102,079.56)."

[72] He sent the Brief to the Complainants. After considering the Brief, they responded to him by email:

> "If you have sent in the proposal sent to us on Friday, please rescind, we have thought about it all weekend and this makes the most sense to solve both issues. We have gone too far to give in … just remind [Z] that this proposal should be seriously considered, due to length and cost. …"
>
> Since [Z] is claiming to be running low on funds we have a proposal … we want to solve all issues … [Z] is to pay us $167,000 for the Trucking, we will pay them $135,000 for the house and they sign off on the house. After all is said and done we are willing to accept $32,000 plus all proceeds from the house and they pay their own legal costs."

[73] Mr. Lacourciere communicated the offer to Mr. Klassen on January 20, 2009.

[74] Mr. Klassen responded on January 21, 2009 saying that his clients were not prepared to accept that offer.

[75] Mr. Lacourciere responded, later on January 21, 2009 that:

> I can advise you that my clients are not prepared to move anywhere close to your client's proposal, As such, I suggest that we immediately advise the justice that there is no point in proceeding with the JDR.

[76] Mr. Klassen responded, (again on January 21, 2009), and he advised that his clients were not prepared to cancel the JDR.

[77] Mr. Lacourciere responded, stating that Justice Strekaf had said to ensure that the parties and their counsel have had at least one face-to-face settlement conference in which real efforts to resolve the outstanding issues have occurred, and further that:

> Given that your client is not prepared to try a face-to-face meeting to try to resolve the issues, I see no point in proceeding with the JDR on February 5th, and as such, I will be advising Justice Strekaf by letter of that fact.

[78] The JDR was cancelled.

[79] It is important to note that the Complainants were copied on all of the emails. It is Mr. Lacourciere's position that they knew what was going on and consented. In contrast, the Complainants say that they relied on Mr. Lacourciere for advice in that regard, and they took what he said as the appropriate course. The Complainants state that they did not instruct Mr. Lacourciere to cancel the JDR and would have preferred to go to the JDR.

[80] This Committee concludes that while the Complainants relied upon Mr. Lacourciere's advice regarding the appropriate course, they were copied with email correspondence. There was no indication from the Complainants, at that time, that Mr. Lacourciere was

doing something that they did not agree to. There is no indication that Mr. Lacourciere was not transparent at the time the decisions regarding the JDR were being made. The Complainants have the benefit of hindsight in stating that they would have preferred to go to the JDR. There is no evidence, however, of their continued instructions or insistence, at the material time, that the JDR should proceed.

[81] It would be best if there was confirmation, in writing, of what the Complainants' specific instructions were. However, it is not always possible to document instructions regarding every step taken in a proceeding. This is especially true when matters are unfolding above pace. In this case, Mr. Lacourciere copied the clients, in real time, with how he was proceeding. There was no objection taken or question asked by the Complainants.

[82] The LSA has the onus of proving, on the balance of probabilities, that Mr. Lacourciere failed to follow his client's instructions regarding the JDR. The Committee is not convinced that it has done so.

The Slander of Title Action

[83] The LSA states that Mr. Lacourciere did not take any steps in the Slander of Title Action because he entered into an agreement with opposing counsel to put the matter on hold. There is no written evidence that he had instructions to do so. This action was commenced by him in March of 2009. Mr. Lacourciere served the Statement of Claim on Mr. B but failed to serve the Ms. Z.

[84] Mr. Lacourciere says his clients agreed that the matter be held in abeyance.

[85] On February 5th, 2010, Mr. Lacourciere wrote to Mrs. H with respect to the Slander of Title Action and stated:

> "…, we do not have a Statement of Defence because the action was commenced to preserve your case against [Mr. B]. We have agreed with counsel not to take further action on this claim until the first claim (the Caveat Action) is completed. If you win the [Z] case, neither [B] or [Z] have a right to place a caveat against the Property, and then the only issue is one of damages.

[86] This is not a case of failing to follow instructions. There was no positive evidence presented that the Complainants had instructed that the Slander of Title Action be pursued separately from the Caveat Action. Nor is there any evidence that there were instructions from the Complainants to actively pursue the Slander of Title action. In our view, there must be some persistence in the request from the client or some resistance from the lawyer to a reasonable instruction in order for the "failure to follow instructions" citation to be made out. The difficulty here is that there was simply no activity on this specific matter after service of the claim on Mr. B.

[87] It is true that Mr. Lacourciere had a duty to communicate effectively with his client. It is likely that he failed in keeping his clients fully informed so that they could make decisions

and provide instructions. In this matter it is also likely that he failed to take reasonable efforts to ensure that the client comprehended his advice and recommendations. Simply put, it is apparent that this matter went to the back of the credenza and neither party addressed their minds to it until the issue arose near the end of the parties' relationship. Although the matter was dealt with in a far less than satisfactory way by Mr. Lacourciere, the Committee is unable to find on the balance of probabilities that Mr. Lacourciere failed to follow instructions or that he acted without instructions.

[88] Citation No. 2 is dismissed.

Citation No. 3

It is alleged that you failed to serve your clients and such conduct is deserving of sanction.

[89] Counsel for the LSA stated that this citation arose from Mr. Lacourciere's failure to serve the Statement of Claim in the Slander of Title action on Ms. Z. Mr. Lacourciere's position was that he filed the Statement of Claim to preserve his client's rights to claim damages against Mr. B and Ms. Z.

[90] The Statement of Claim was served on Mr. B and was not served on Ms. Z.

[91] Mr. Lacourciere did not consolidate the Slander of Title Action with the Caveat Action even though he stated he would. The result was that the Statement of Claim did not fully preserve the Complainants' claim of damages. This may have been negligent. There is no question that it was certainly poor practice. Mr. Lacourciere has, in some ways, failed to serve his clients. The question is whether this behaviour amounts to conduct that is deserving of sanction.

[92] In this case, Mr. Lacourciere believed that he had filed a Statement of Claim to preserve his client's rights to damages. It is not unusual for a Statement of Claim to be filed and served under such circumstances and then diarized for next steps. Mr. Lacourciere should have ensured that appropriate dates for next steps were placed in a diary system. He failed to do so. He failed to ensure that the claim was properly served on all parties. In the result Mr. Lacourciere failed to fully preserve his client's rights to damages.

[93] Although Mr. Lacourciere was negligent, without more the Committee is not able to find on the balance of probabilities that his failure to serve the claim on Ms. Z or his failure to attempt to consolidate the Slander of Title Action with the Caveat Action rises to the level of conduct deserving of sanction.

Citation No. 4

It is alleged that you delayed or failed to prosecute your clients' matters and such conduct is deserving of sanction.

[94] Counsel for the LSA argued that the essence of this Citation is that Mr. Lacourciere failed to take any steps in the Collection Action after September 6th, 2007.

[95] Mr. Lacourciere stated that he was asked only to concentrate on the Caveat Action. Although this statement stretches credulity, the simple fact that a matter was neglected is not necessarily conduct deserving of sanction.

[96] Clearly, Mr. Lacourciere either delayed or failed to prosecute the Collection Action. The question, as in Citation 3, is whether the delay or failure rises to the level of conduct deserving of sanction. The Committee is of the view that neglect, without more, does not rise to such a level. There is an obligation on a lawyer to obtain instructions regarding the prosecution of lawsuits. There is also an obligation upon the lawyer to keep his clients informed as to the progress of their matters. In this case, there was practically no communication from Mr. Lacourciere regarding the Collection Action. This inaction does rise to the level of conduct deserving of sanction but is more properly dealt with under Citation No. 5.

[97] Citation No. 4 is dismissed.

Citation No. 5

It is alleged that you failed to keep your clients informed as to the progress of their matters and such conduct is deserving of sanction.

[98] The Complainants made numerous requests before receiving a response from Mr. Lacourciere about the status of the Caveat Action. As noted above, there was a lack of communication from Mr. Lacourciere to the Complainants with respect to the Collection Action. The Committee has also found that Mr. Lacourciere failed in his duty to communicate effectively with his client in the Slander Action. In addition, the Complainants were not properly informed about the financial requirements for proceeding with litigation. Accounts were not provided in a timely manner.

[99] There are numerous instances where Mr. Lacourciere failed to keep his clients fully informed so that they could make decisions and provide instructions. He also failed to take reasonable efforts to ensure that the client comprehended his advice and recommendations.

[100] Citation No. 5 is proven and the Committee finds Mr. Lacourciere guilty of conduct deserving of sanction.

Summary

[101] The Committee has found, regarding Citations 2, 3, and 4, on the balance of probabilities, that the threshold is not met; and, therefore, those citations were dismissed. Citation 1 and Citation 5 have been proven on the balance of probabilities,

and the Committee has also determined, on the same basis, that they are conduct deserving of sanction.

Decision on Sanction

[102] Counsel for the LSA, with the consent of the Member, tendered the following Exhibits in support of his submissions on sanction:

(a) Exhibit 107, the record of the Member; and

(b) Exhibit 108, an estimated statement of costs (estimated at $29,150.10).

[103] The Member has the following discipline record with the LSA:

(a) June 14, 1988 Guilty, one count of conduct deserving of sanction for failing to follow accounting rules;

June 14, 1988 Guilty, one count of conduct deserving of sanction for breaching a trust condition

Sanction: Reprimand.

(b) October 9. 1990 Guilty, one count of conduct deserving of sanction for failing to adequately maintain books and records;

October 9. 1990 Guilty, one count of conduct deserving of sanction for failing to follow accounting rules

October 9. 1990 Guilty, one count of conduct deserving of sanction for failing to report to a client

October 9. 1990 Guilty, one count of conduct deserving of sanction for delaying the distribution of estate funds

October 9. 1990 Guilty, one count of conduct deserving of sanction for failing to account for $1,000.00 of the estate funds

Sanction: Reprimand, $1,900 fine and costs.

(c) December 9, 1994 Guilty, four counts of conduct deserving of sanction by reason of incompetence for failing to promptly reply to the Law Society of Alberta;

December 9, 1994 Guilty, one count of conduct deserving of sanction by reason of incompetence for failing to meet financial obligations arising from his law practice.

Sanction: Reprimand with costs.

[104] The LSA sought a three-month suspension and the payment of costs of these proceedings.

[105] The primary purpose of disciplinary proceedings is derived from section 49(1) of the *Legal Profession Act*. At its root is the protection of the best interests of the public and the protection of the standing of the legal profession. The fundamental purpose of the sanctioning process is to ensure that the public is protected and that the public maintains a high degree of confidence in the legal profession.

[106] The conduct of Mr. Lacourciere raises concerns about the protection of the public. His failure to keep his clients informed, his failure to be candid, and his actions in misleading his clients go to the very heart of the lawyer-client relationship. The public needs to know that the lawyers will not mislead them, fail to be candid with them and will communicate with them properly and keep them informed as to the progress of their matters.

[107] There is no question that Mr. Lacourciere acted intentionally. He purposefully failed to respond to his clients' requests for information about the progress of the case. He did not effectively communicate his requirements for payment of all past accounts and a retainer for proceeding to trial. It is our view that he was not transparent in his dealings with his clients. He lead his clients to believe that he was proceeding to trial when he no intention of doing so.

[108] The Committee was referred to the following decisions regarding sanction:

(a) In the matter of *Law Society of Alberta v Crisfield,* 2010 ABLS 14, it was alleged that the lawyer failed to serve, failed to implement the clients' instructions, failed to keep a client informed, and failed to be punctual. In that case the citations that alleged the lawyer failed to be candid and misled the client were dismissed. The member had no discipline record through 27 years of practice, was co-operative, and admitted guilt. In that case, the sanction was a reprimand and a referral to practice review.

(b) The decision of *Law Society of Alberta v Hope* [1995] LSDD No 297 was with respect to a failure to serve by failing to take steps to advance litigation files and report in a timely fashion on those files. The member also lied repeatedly to the client about the status and the progress of litigation. The member had no disciplinary record. The member was under considerable stress and had issues with alcohol. The sanction imposed by the Hearing Committee was a reprimand, a $4,000 fine, and costs.

(c) In the *Law Society of Alberta v Lauzon* [1999] LSDD No 71, the citations were a failure to provide competent legal services to the client and failure to advise the client that the lawyer could not provide competent representation. There was an

admission of guilt, a self-report, and the lawyer was very remorseful. There was no disciplinary record. The sanction was a reprimand and costs.

(d) In the decision of *The Law Society v Michaels* [1996] LSDD No 284 there was a failure by the lawyer to serve the client, misleading the client, and entering into a business relationship with the client without advising them to obtain independent legal advice. The lawyer had no disciplinary record in 35 years of practice. The sanction was a reprimand, a $1,500 fine, and costs.

(e) In the *Law Society of Alberta v Makuch* 2013 ABLS 10 (CanLii) decision there were two failure to serve citations and one citation that the lawyer deceived his client by failing to inform them of a material error or omission. The member was co-operative and admitted guilt. There was a joint submission of a reprimand, a $7,500 fine, and a referral to practice review.

[109] It is the view of the Hearing Committee that, because of Mr. Lacourciere's intent in this matter and our concern about the protection of the public, the sanction should fall at the upper end of the spectrum. There are no cases cited, in circumstances similar to those outlined here, where a suspension was found to be appropriate. The Committee also notes that Mr. Lacourciere has a clear conviction record for the past 20 years. As such, the Committee finds that a 3 month suspension is outside the range of sanctions available to it.

[110] That being said, we are of the view that a reprimand and a substantial fine will bring the point home that Mr. Lacourciere's behaviour cannot be countenanced. As such there shall be a fine of $5,000 on each Citation for a total of $10,000 and a reprimand.

[111] The Reprimand was as follows (paraphrased):

Lawyers are an independently-regulated profession. With the privilege of independent regulation, lawyers have an obligation to serve the public interest. The public must be served competently.

Unfortunately, the failure to serve clients in this instance and to fulfill commitments on a punctual basis has reflected poorly on the legal profession, not to mention the inconvenience, the mental energy, the disappointment that the clients, have suffered in this case. When a lawyer agrees to represent a client, they have an obligation to communicate fully with the client. The lawyer in this case failed in this obligation.

Communicating to clients requires that the communication be timely and that it be effective. If a lawyer has not communicated in a timely and effective manner, steps must be taken to remedy the communication problem.

There are many things that could have done in this matter to correct the misunderstandings that obviously existed between the parties. The lawyer in this case failed to take those steps.

After taking a client's instructions, the lawyer must remain diligent in advancing the client's cause.

[112] The $10,000 fine shall be paid by November 7, 2015.

[113] The Member shall pay the actual costs of the hearing to be paid by July 7, 2016.

[114] There will be no Notice to the Profession.

[115] There will be the redaction of names, as necessary, to protect privilege and confidentiality, as required in the usual course by the Law Society.

Dated at the City of Calgary, in the Province of Alberta this 29th day of February, 2016.

_____

Anthony G. Young, Q.C. (Chair)

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Dennis Edney, Q.C.

SCHEDULE "A"

THE LAW SOCIETY OF ALBERTA

IN THE MATTER OF:

THE LEGALPROFESSION ACT

-and-

IN THE MATTER OF:

A HEARING INTO THE CONDUCT OF
GUY LACOURCIERE, a member of THE LAW SOCIETY OF ALBERTA

STATEMENT OF ADMITTED FACTS

1. I am an active and practicing member of the Law Society of Alberta (the "LSA") having been admitted to the LSA on July 15, 1983.

2. I have a general practice of law, located in Calgary, AB.

3. I have been validly served with notice of hearing for the following three citations in which it is alleged that I:

    1) Misled or failed to be candid with my clients;
    2) Acted without instructions or failed to follow my clients' instructions;
    3) Failed to serve my clients;
    4) Delayed or failed to prosecute my clients' matters; and
    5) Failed to keep my clients informed as to the progress of their matters.

4. The citations arise from my retainer by the complainants, [CH], [WH] and their company ● Ltd. to represent them in a dispute. On or about November 8, 2011, the [complainants] submitted a complaint about my conduct to the Law Society of Alberta (the "LSA"), a copy of which is at exhibit 7.

5. I responded to the [complainants'] complaint by letter dated January 9, 2011 [sic] a copy of which is at exhibit 8.

6. The [complainants] responded by letter dated January 16, 2012, a copy of which is at exhibit 9.

7. By letter dated May 22, 2012, a copy of which is exhibit 10, the LSA asked me to respond to specific questions, which I did by letter dated May 28, 2012 a copy of which is exhibit 11.

8. The [complainants] replied by letter dated June 18, 2012, a copy of which is exhibit 12.

9. I admit that the documents referred to in the Exhibit Book as exhibits 7 to 76, copies of which were provided to me in electronic format on October 15, 2014, were printed, written, signed, or executed as they purport to have been and that copies of any documents are true copies of the original. If a document purports or appears to have been transmitted, the original was sent by the sender and was received by the addressee.

10. I retain the right, and I understand the LSA also has the right, to adduce additional evidence and to make submissions as to the effect of and weight to be given to these agreed facts and exhibits in the context of all the evidence.

DATED THIS 24th DAY OF October, 2014.

"Witness"	"Guy Lacourciere"
Witness	Guy Lacourciere