

THE LAW SOCIETY OF ALBERTA HEARING COMMITTEE REPORT

IN THE MATTER OF THE *Legal Profession Act*, and
in the matter of a Hearing regarding
the conduct of **NAVDEEP SINGH VIRK**
a Member of The Law Society of Alberta

SUMMARY OF RESULT

Mr. Virk was admitted to the Bar on April 27, 2007 and practices law in Edmonton, Alberta as a sole practitioner. Mr. Virk's primary area of practice is family law, but he also practices civil litigation, corporate and other miscellaneous areas of law. Mr. Virk was initially charged with 16 citations dealing with 4 individuals and one complaint by L.A. At the commencement of the hearing, some of the charges were consolidated resulting in Mr. Virk facing 9 citations. The charges related to failing to respond in a timely manner; failing to serve clients in a conscientious, diligent and efficient manner; failing to keep clients informed as to developments on their files and failing to use reasonable efforts to expedite the litigation process. Mr. Virk admitted that his conduct amounted to conduct deserving of sanction in relation to 4 citations. The Law Society called no evidence on 3 citations and the Committee dismissed those citations. The Committee heard evidence on the remaining 2 citations and determined that Mr. Virk's conduct did not amount to conduct deserving of sanction and dismissed those citations. The Committee concluded that the protection of the public and the reputation of the legal profession were satisfied with the imposition of a 10 day suspension to commence February 1, 2014 to ensure that any of Mr. Virk's existing clients are not prejudiced as a result of the suspension. The Committee also made a direction that Mr. Virk cooperate with the Practice Review Committee and to pay costs in the amount of \$5,000.00.

INTRODUCTION

1. On September 5 and 6, 2013 a Hearing Committee of the Law Society of Alberta (LSA) convened at the Law Society offices in Edmonton to inquire into the conduct of the Member, Navdeep Singh Virk. The Committee was comprised of James Glass Q.C., Chair, Robert Harvie Q.C. and Wayne Jacques, CA. The LSA was represented by Ms. T.L. Friesen. The Member was present throughout the hearing and was not represented by counsel.
2. The Member initially faced sixteen citations:
 1. It is alleged that you failed to respond to L.A. Alberta in a timely manner, and that such conduct is conduct deserving of sanction.
 2. It is alleged that you failed to serve your client T.W. in a conscientious, diligent and efficient manner, and that such conduct is conduct deserving of sanction.

3. It is alleged that you failed to respond to your client T.W. in a timely manner, and that such conduct is conduct deserving of sanction.
 4. It is alleged that you failed to keep your client T.W. informed as to developments on her file, and that such conduct is conduct deserving of sanction.
 5. It is alleged that you failed to use reasonable efforts to expedite the litigation process regarding your client T.W., and that such conduct is conduct deserving of sanction.
 6. It is alleged that you failed to respond to the Law Society on a timely basis regarding the complaint by your client T.W., and that such conduct is conduct deserving of sanction.
 7. It is alleged that you failed to serve your client C.G. in a conscientious, diligent and efficient manner, and that such conduct is conduct deserving of sanction.
 8. It is alleged that you failed to respond to your client C.G. in a timely manner, and that such conduct is conduct deserving of sanction.
 9. It is alleged that you failed to keep your client C.G. informed as to developments on her file, and that such conduct is conduct deserving of sanction.
 10. It is alleged that you failed to respond to the Law Society on a timely basis regarding the complaint by your client C.G., and that such conduct is conduct deserving of sanction.
 11. It is alleged that you failed to serve your client M.W. in a conscientious, diligent and efficient manner, and that such conduct is conduct deserving of sanction.
 12. It is alleged that you failed to respond to your client M.W. in a timely manner, and that such conduct is conduct deserving of sanction.
 13. It is alleged that you failed to keep your client M.W. informed as to developments on his file, and that such conduct is conduct deserving of sanction.
 14. It is alleged that you failed to respond to the Law Society on a timely basis regarding the complaint by your client M.W., and that such conduct is conduct deserving of sanction.
 15. It is alleged that you failed to use reasonable efforts to expedite the litigation regarding your client M.C., and that such conduct is conduct deserving of sanction.
 16. It is alleged that you failed to respond to communications from opposing counsel regarding your client M.C.'s mater, and that such conduct is conduct deserving of sanction.
3. At the commencement of the hearing, counsel for the LSA and Mr. Virk advised the Hearing Committee that they were proposing to consolidate some of the citations so that Mr. Virk would only be facing nine citations. The Hearing Committee agreed with the application to amend the citations resulting in Mr. Virk facing the following citations (Exhibit 153):
1. It is alleged that you failed to respond to L.A. in a timely manner, and that such conduct is conduct deserving of sanction.
 2. It is alleged that you failed to serve your client T.W. in a conscientious, diligent and efficient manner by: failing to respond to T.W. in a timely manner; failing to

- keep her informed as to developments on her file; and failing to use diligent efforts to expedite the litigation process, and that such conduct is conduct deserving of sanction.
3. It is alleged that you failed to respond to the Law Society on a timely basis regarding the complaint by your client T.W., and that such conduct is conduct deserving of sanction.
 4. It is alleged that you failed to serve your client C.G. in a conscientious, diligent and efficient manner by failing to respond C.G. in a timely manner; and failing to keep her informed as to developments on her file and that such conduct is conduct deserving of sanction.
 5. It is alleged that you failed to respond to the Law Society on a timely basis regarding the complaint by your client C.G., and that such conduct is conduct deserving of sanction.
 6. It is alleged that you failed to serve your client M.W. in a conscientious, diligent and efficient manner by failing to respond to M.W. in a timely manner; and failing to keep him informed as to developments on his file, and that such conduct is conduct deserving of sanction.
 7. It is alleged that you failed to respond to the Law Society on a timely basis regarding the complaint by your client M.W., and that such conduct is conduct deserving of sanction.
 8. It is alleged that you failed to use reasonable efforts to expedite the litigation regarding your client M.C., and that such conduct is conduct deserving of sanction.
 9. It is alleged that you failed to respond to communications from opposing counsel regarding your client M.C.'s matter, and that such conduct is conduct deserving of sanction.
4. The Hearing Committee was also provided with an Agreed Statement of Facts in relation to all of the citations. Mr. Virk confirmed that he admitted that his conduct was deserving of sanction in relation to four of the citations - #1, 2, 4 and 6. The Hearing Committee found that the Agreed Statement of Facts and admission of guilt in relation to these four citations was in a form acceptable to it pursuant to s. 60 of the *Legal Profession Act*. The Law Society did not call evidence in relation to citations #3, 5 and 7 and the Hearing Committee dismissed those citations. Finally, counsel for the LSA and Mr. Virk confirmed that the Agreed Statement of Facts was **not** an Admission of Guilt in relation to citations 8 and 9 and therefore the Hearing Committee did not have to make a ruling pursuant to s. 60 of the *Legal Profession Act*.

JURISDICTION AND PRELIMINARY MATTERS

5. Exhibits 1-4, consisting of the Letter of Appointment of the Hearing Committee, the Notice to Solicitor, the Notice to Attend and the Certificate of Status of Mr. Virk, established the jurisdiction of the Hearing Committee. The Certificate of Exercise of Discretion was entered as Exhibit 5. These Exhibits were entered into evidence by consent.

6. There was no objection by Mr. Virk or counsel for the LSA regarding the constitution of the Hearing Committee.
7. The entire hearing was conducted in public.

EVIDENCE

8. As noted above, Exhibits 1-5 (the jurisdictional exhibits) were entered into evidence by consent. Exhibits 6-153 were entered into evidence by consent.
9. The Agreed Statement of Facts was marked as Exhibit 6 and was signed by Mr. Virk on August 27, 2013 and he acknowledged same.

FACTS

10. The Agreed Statement of Facts (Exhibit 6) is attached to this decision as Appendix A and is reproduced in its entirety.

Citation 1

11. In 2010, Mr. Virk represented three different individuals through L.A. All three individuals complained to L.A. that Mr. Virk failed to keep them informed, failed to respond and failed to perform the work he indicated that would be performed.
12. As part of its investigation into these complaints, L.A. forwarded copies of these complaints to Mr. Virk and requested his response. L.A. sent letter to Mr. Virk on October 20, 2010; November 2, 2010; November 4, 2010; January 27, 2011; March 30, 2011 and May 6, 2011. Mr. Virk did not substantively reply to these letters until June 23, 2011. L.A. removed Mr. Virk from the L.A. roster on July 6, 2011. L.A. complained to the LSA.
13. The essence of the complaint was that Mr. Virk did not respond to L.A. for a period of eight months following its initial letter to him. Mr. Virk admitted that he should have responded to L.A. sooner by making them a higher priority than other client and court commitments. He acknowledged the negative impact his failure to serve on a timely basis had on L.A.'s ability to serve its clients.

Citation 2

14. Ms. T.W. retained Mr. Virk on April 9, 2010 to represent her in relation to an application brought by D.G. to reduce the amount of child support he was paying and to reduce the arrears of child support. The application was dealt with on September 1, 2010 and Mr. Virk had successfully defended the application. Mr. Virk did not prepare an Order despite numerous requests from opposing counsel. Opposing counsel clearly indicated

that as the successful party, it was Mr. Virk's obligation to prepare the Order. An Order was eventually prepared by opposing counsel and forwarded to Mr. Virk on March 11, 2011. Following some prompting from the LSA, Mr. Virk signed the Order and returned it to opposing counsel on March 22, 2011 – over 6 months after the Order was granted by the Court.

15. Ms. T.W. retained Mr. Virk again on January 26, 2012 to deal with a variation of the September 1, 2010 Order noted above. Ms. T.W. advised Mr. Virk that the matter needed to be dealt with quickly as Maintenance Enforcement had indicated that they were unable to enforce certain provisions of the September 1, 2010 Order given its wording. An application was brought and the Court made an Order regarding the variation of the September 1, 2010 Order on March 16, 2012 and the Court granted a variation Order. On March 22, 2012, Mr. Virk provided a draft form of the Order to opposing counsel. Discussions ensued between opposing counsel and Mr. Virk regarding the wording. Ms. T. W was also involved in these discussions as she knew how the Order needed to be worded so that MEP would enforce it. As counsel could not agree on the wording of the Order, Mr. Virk ordered a copy of the transcript of the hearing. On August 25, 2012, Mr. Virk sent a draft Order and the transcript to the presiding Justice. The Order was finally granted and filed on October 5, 2012 – over 6 months after the Order was granted by the Court.
16. The essence of the complaint is that Mr. Virk, on both occasions, took over 6 months to file an Order of the Court. During the course of the delays, he also failed to respond to T.W. in a timely manner and keep her informed as to developments on her file.

Citation 3

17. This citation alleged that Mr. Virk failed to respond to the LSA on a timely basis in relation to the complaint of Ms. T.W. The LSA did not call evidence in relation to this citation.

Citation 4

18. In January 2010, L.A. appointed Mr. Virk to act as counsel for Ms. C.G. in assisting her with completing her divorce, and dealing with her outstanding custody and maintenance issues.
19. Mr. Virk secured Ms. C.G.'s file from her previous counsel on February 10, 2010.
20. Very little occurred on the file in 2010 apart from some correspondence between Mr. Virk and Ms. C.G. In the spring of 2011, Mr. Virk prepared the necessary documents to obtain a Divorce Judgment and had them signed by Ms. C.G. Mr. Virk indicated in March 2011 that he was now in a position to proceed with the divorce.

21. Ms. C.G. continued to follow up with Mr. Virk throughout the spring of 2011 and in to the summer of 2011. Mr. Virk was unable to explain why the divorce had not been granted. After the LSA contacted Mr. Virk, he learned from the Court that the Divorce Judgment had been rejected for numerous deficiencies. There is no rejection notice on Mr. Virk's file or on the Court file. Mr. Virk had Ms. C.G. sign new documents for the Divorce in March 2012 and he was able to have the divorce granted on March 16, 2012.
22. The essence of the complaint was that Mr. Virk was not attending to this matter in a timely fashion. From the date of his retainer to the date the divorce was completed, just over two years had gone by. During this period Ms. C.G. contacted Mr. Virk (by email or phone) on at least 29 occasions. During the same period Mr. Virk contacted or replied to Ms. C.G. (by email or phone) on 8 occasions. There had been a few in person meetings. Mr. Virk made repeated promises to conclude the matter within certain time periods and these promises were not kept. The Divorce and other matters were finally concluded after the LSA became involved, but even then, it took close to eight months for Mr. Virk to obtain the Divorce Judgment.

Citation 5

23. This citation alleged that Mr. Virk failed to respond to the LSA on a timely basis in relation to the complaint of Ms. C.G. The LSA did not call evidence in relation to this citation.

Citation 6

24. Mr. M.W. retained Mr. Virk on April 13, 2010 to assist him in responding to a child support variation application and to bring an application imputing income to his former spouse.
25. Following cross examinations on Affidavits, the matter proceeded before the Court by way of a special chambers application on January 12, 2011. The Court directed that M.W. was to pay ongoing and retroactive child support with the exact amount of support to be paid, based upon the Court's directions, to be determined by both counsel.
26. Counsel could not agree as to the calculations. Opposing counsel sent Mr. Virk a draft Order on March 2, 2011 and advised him, in accordance with the Rules of Court that if he did not respond in 10 days that she would submit the Order to the Court. Mr. Virk did not respond and the Order was filed on April 20, 2011. The Order provided that Mr. M.W. was to pay \$59,597.00 in child support arrears, payable at \$1,300.00 per month commencing March 1, 2011 and also directed Mr. M.W. to pay costs of \$2,000.00. If the monthly payments were not made, the entire sum became immediately due.
27. Mr. Virk did not immediately advise Mr. M.W. of the Order or provide him with a copy. Mr. M.W. found out about the Order on May 5, 2011. Mr. M.W. was already in breach of the Order. Opposing counsel were taking collection steps in accordance with the

Order even though Mr. M.W. was prepared to comply with the Order once he found out about it.

28. On May 17, 2011, Mr. Virk recommended that Mr. M.W. pay the full amount or alternatively, Mr. Virk could contact opposing counsel to see if they would accept something less. Mr. M.W. was in agreement with Mr. Virk contacting opposing counsel to try and obtain an amount for less than the ordered amount. Mr. M.W. did not hear from Mr. Virk and lodged a complaint on December 15, 2011.
29. The essence of the complaint is that Mr. Virk did not respond to Mr. M.W. in a timely fashion and it resulted in Mr. M.W. being in breach of the Order. Mr. Virk also failed to attend to matters in a timely fashion.

Citation 7

30. This citation alleged that Mr. Virk failed to respond to the LSA on a timely basis in relation to the complaint of Ms. M.W. The LSA did not call evidence in relation to this citation.

Citations 8 and 9

31. On June 21, 2011, Ms. M.D. retained Mr. Virk to assist her with an application brought by her former spouse, Mr. M.C., to reduce child and spousal support and to vacate arrears of child and spousal support.
32. The application was set to be heard by way of a special chambers application on June 24, 2011. Mr. Virk was able to obtain an adjournment of the application to July 27, 2011. A stay of enforcement regarding ongoing spousal and arrears of spousal and child support was put into place by the court until July 27, 2011.
33. The application proceeded on July 27, 2011 and Mr. Virk's client was successful in defending the application.
34. Opposing counsel followed up with Mr. Virk on two occasions regarding the provision of the Order resulting from the hearing. Mr. Virk did not respond on either occasion. On August 14, 2011, Mr. M.C.'s licence was suspended by Maintenance Enforcement.
35. Opposing counsel contacted Mr. Virk again on August 24, 2011 following the suspension of Mr. M.C.'s licence and Mr. Virk replied that he expected to have the Order completed by the end of the week.
36. Opposing counsel withdrew as counsel for Mr. M.C. on September 7, 2011. Mr. Virk asserts that he provided a draft Order to opposing counsel on September 19, 2011. Opposing counsel disagrees.

37. On October 27, 2011, opposing counsel received two Orders at her office – one from Mr. Virk and one from his client Ms. M.C. The Orders were not the same and opposing counsel requested clarification from Mr. Virk. Mr. Virk replied on November 17, 2011 that the form of Order sent by his office was the one that he wished her to approve.
38. Opposing counsel responded on December 6, 2011 requesting changes to the form of Order.
39. Mr. M.C. lodged a complaint with the LSA about Mr. Virk on January 11, 2012 regarding the delay in getting the Order filed.
40. Counsel continued to discuss the terms of the Order and a revised Order that was finally agreeable to both was produced by Mr. Virk to opposing counsel on February 26, 2012. The Order was filed and served on March 8, 2012. As a result of the Order being filed, Maintenance Enforcement lifted the suspension of Mr. M.C.'s licence.
41. The essence of the complaint by Mr. M.C. is that Mr. Virk did not prepare and file the Order in a timely fashion as is his obligation. The delay prejudiced Mr. M.C. in that his licence was suspended during this period of 8 months. In addition, it was suggested that Mr. Virk was not responsive to opposing counsel.

SUBMISSIONS OF COUNSEL ON CITATIONS

42. The LSA has the onus to prove that the conduct of the Member is such that it is worthy of sanction and must prove this on the balance of probabilities.
43. Counsel for the LSA and Mr. Virk jointly submitted that Citations 3, 5 and 7 were not made out as no evidence was called by the LSA.
44. In regards to Citations 1, 2, 4 and 6, Mr. Virk confirmed that his conduct was deserving of sanction. Counsel for the LSA submitted that the conduct was all similar and brought the profession into disrepute. The LSA submitted that these citations raised issues regarding the competence of Mr. Virk and referred the Hearing Committee to Rules 2.02 and 6.02 of the Code of Conduct.
45. In regards to Citations 8 and 9, Counsel for the LSA submitted that it was Mr. Virk's obligation to draft the Order resulting from the hearing as he represented the successful party. He didn't complete this matter for a period of 8 months. The delay in having the Order prepared and filed was in the main attributable to Mr. Virk. The Order was very important to Mr. M.C. as the delay in getting it filed resulted in the loss of his licence. Accordingly, she submitted that Mr. Virk's conduct is deserving of sanction.
46. Mr. Virk submitted that there was a stay of enforcement in place and that between August and November 2011 there was no evidence that Mr. M.C. was in jeopardy of losing his licence. The Order was sent to opposing counsel on the last day of the third month from

the date that the Order was granted. Opposing counsel was responsible for some of the delay given that there was disagreement over the wording of the Order. In addition, he notes that opposing counsel did not complain about any delay in responding to her and that he believed that he did respond to her in a timely fashion. Mr. M.C. was more concerned with the arrears as opposed to his licence being suspended. Mr. Virk does not agree that his conduct is deserving of sanction and submits that the citations should be dismissed.

DECISION OF HEARING COMMITTEE ON CITATIONS

46. Section 49 of the *Legal Profession Act* defines conduct deserving of sanction:

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

- (a) is incompatible with the best interests of the public or of the members of the Society, or
- (b) tends to harm the standing of the legal profession generally,

is conduct deserving of sanction, whether or not that conduct relates to the member's practice as a barrister and solicitor and whether or not that conduct occurs in Alberta.

47. Conduct deserving of sanction need not be disgraceful, dishonourable or reprehensible. *Brendzan v LSA* (1997), 52 Alta. L.R. (3d) 64 (Q.B.), at paras 30 - 32. Error of judgment may or may not amount to conduct deserving of sanction. *Law Society of Alberta v. Oshry*, [2008] L.S.D.D. No. 164; *Law Society of Alberta v. Ter Hart*, [2004] L.S.D.D. No. 25; *Law Society of Alberta v. Smeltz*, [1997] L.S.D.D. No. 144.

48. The issue is whether the conduct rises to the level of conduct deserving of sanction. In assessing sanctionable conduct, hearing panels often refer to *Re Stevens and Law Society of Upper Canada* (1979), 55 O.R. (2d) 405 (Div. Ct.), at p. 410:

What constitutes professional misconduct by a lawyer can and should be determined by the discipline committee. Its function in determining what may in each particular circumstance constitute professional conduct ought not to be unduly restricted. No one but a fellow member of the profession can be more keenly aware of the problems and frustrations that confront a practitioner. The discipline committee is certainly in the best position to determine when a solicitor's conduct has crossed the permissible bounds and deteriorated to professional misconduct. Probably no one could approach a complaint against a lawyer with more understanding than a group composed primarily of members of his profession.

49. A variety of factors may be considered. These include: whether a specific rule or duty was breached; whether the Member was acting dishonestly or in bad faith; whether the act was isolated or planned; whether personal gain was involved; the opportunity to reflect before the conduct was undertaken; the results or impact of the conduct on the parties, litigants,

profession, administration of justice, or public; any steps to cover up the conduct; and, what steps could have been and were taken to correct any errors.

50. Counsel for the LSA did not call any evidence in relation to Citations 3, 5 and 7. She invited the Hearing Committee to dismiss same. We agree – on the basis of the evidence provided, Citations 3, 5 and 7 are dismissed.
51. In relation to Citations 1, 2, 4 and 6, Counsel for the LSA and Mr. Virk submitted that upon the evidence that was before the Hearing Committee, that the citations were made out. In fact, Mr. Virk admitted that his conduct in relation to these citations was conduct deserving of sanction. The Hearing Committee agrees and accepts Mr. Virk's admission of guilt in relation to these citations.
52. In relation to Citations 8 and 9, the Hearing Committee does not find that Mr. Virk's conduct amounted to conduct deserving of sanction and accordingly dismisses those citations. A very real and substantive dispute arose between counsels regarding the terms of the Order. It is unfortunate that it took so long to resolve that disagreement, however, that cannot be solely laid at the feet of Mr. Virk. Similarly, the evidence shows that Mr. Virk and opposing counsel were in fairly regular contact every month between the date the Order was granted by the Court until the date that the Order was finally filed and served. It cannot be said that Mr. Virk failed to respond to communications from opposing counsel.

EVIDENCE ON SANCTION

53. Counsel for the LSA tendered the record of Mr. Virk, which was entered as Exhibit 154 by consent. The Record indicates that Mr. Virk has no discipline record. Counsel for the LSA also entered by consent an estimated statement of costs as Exhibit 155.
54. Counsel for the LSA then applied to submit for consideration by the Hearing Committee the following documents:
 - Letter from LSA to Mr. Virk dated April 23, 2013 regarding his referral to the Practice Review Committee;
 - Mr. Virk's practice snapshot; and
 - The s. 58 Report.

Counsel submitted that the documents were relevant, reliable and probative.
55. Mr. Virk objected to the s. 58 Report being considered by the Hearing Committee on the basis that they were created during the informal complaints process and he understood that they were created on a without prejudice basis. In addition, he suggested that there was nothing probative in the documents and that they were prejudicial in that there was hearsay statements contained within the reports. Finally, there was an Agreed Statement of Facts that contained all of the admitted facts regarding this matter and the s. 58 Report contained other information regarding the citations that were not in the Agreed Statement of Facts and thus was prejudicial.

56. Counsel for the LSA suggested that all of the information that was produced regarding the complaints could be redacted from the document.
57. The Hearing Committee, after caucusing, determined that it would permit the redacted version of the s. 58 Report to be entered. Mr. Virk would have the opportunity to comment on any aspect of the report, including hearsay statements, when he provides evidence under oath. Accordingly, the Hearing Committee will be able to weigh the evidence that is proffered between a document that is not buttressed by sworn evidence versus the sworn evidence of Mr. Virk. The three documents above were entered as Exhibits 156, 157 and 158 respectively.
58. Mr. Virk wanted to provide oral evidence regarding the citations; he was sworn and provided the following evidence relevant to sanction:
- He recalls a senior member of the bar advise him that if he had known what he knew now, he would have done things differently. Mr. Virk did not realize how badly his conduct had degenerated because if he had he would surely have changed it;
 - He has wanted to be a lawyer since he was 12 years old;
 - He wanted to be a lawyer because his parents were both laborers, were first generation immigrants and could take advantage of his debating skills;
 - He is 31 years of age – law is the only thing on his mind for the past 10 years;
 - He wanted to assist underprivileged individuals and be a litigator;
 - He did not commence working as a lawyer right away as he started a business known as lawdepot.com that was an online website the provided contracts and agreements for people to use. He also ran a tutoring company known as Navilearning Inc which tutored children for school;
 - In 2008 he joined the L.A. roster and provided legal opinions. This was his first exposure to family law and he began conducting some L.A. files;
 - He commenced his full time practice as a lawyer in August 2009. The learning curve was huge for him and he did the best he could;
 - In relation to Citation 1, he knew that he was getting busy. He tried to hire an articling student to provide some assistance but he was not permitted to by the LSA. He then began looking for an associate;
 - In relation to Citation 2, he realized that he committed a significant error. He recognizes that he should have prepared and filed the Order on a timely basis;

- In relation to Citation 4, he noted that when C.G.'s file was transferred to him, it was under trust conditions that he could do nothing with it until the previous lawyer's bill was paid. This added to the delay.
- In relation to Citation 6, he acknowledges that he should have sent a reporting letter.
- In September 2011, he stopped taking criminal retainers, stopped his solicitors work and scaled his work back;
- In September 2012, he joined up with another sole practitioner as an independent association. They do assist one another from time to time and he finds that beneficial;
- Throughout this period of time, he and his wife were trying to start a family. In March 2013, she was hospitalized and since being discharged has not been able to work;
- He enjoys his work now and has reapplied to L.A. to deal with mediation matters only.

59. Counsel for the LSA cross examined Mr. Virk and he provided the following evidence relevant to the citations:

- Ms. T.W. was an anxious client and that made her matter more difficult;
- Ms. C.G. was not a difficult client;
- Mr. M.W. was a difficult client;
- He acknowledges that the issues you deal with are important to family law clients;
- He acknowledged that mentorship and continuing legal education was important;
- In 2010, he was inexperienced. He is not that way now. He takes many matters to trial;
- He finds the practice sharing very beneficial;
- He acknowledges that at the time of these citations, he was too busy, was disorganized and lacked experience;
- He acknowledged that he did not know how to deal with displeased clients. Now he tries to deal with matters right away.

LSA'S SUBMISSION ON SANCTION

60. Counsel for the LSA reminded the Hearing Committee that s. 49 of the LPA required the Committee to consider the protection of the public and to protect the reputation of the legal profession.

61. Mr. Virk was a young lawyer when these matters occurred. He began his private practice in the summer of 2009 and by the spring of 2010 he began encountering difficulties in serving clients. While it is true that he entered guilty pleas to some of the citations, he did not do so until late in the process.
62. The LSA is seeking a suspension because of Mr. Virk's general attitude towards the practice of law. He avoided dealing with difficult clients. These patterns of behavior predate 2010 and lasted into 2012. The LSA has a genuine concern over reoccurrence. If the Hearing Committee does not agree with a suspension, then it should ensure that there are strict controls over Mr. Virk's practice to guard against reoccurrence.
63. Citation 1 is troubling because it goes to governability. The other citations have resulted in a lessening of confidence in the legal profession by the public and certainly by these clients. Individuals in family law matters are frequently vulnerable. There is evidence of financial harm caused to the complainant as a result of Mr. Virk's conduct. It is the regulators' job to protect the public.
64. It is not just specific deterrence that is required. There is no doubt that this process has been hard on Mr. Virk. General deterrence is also considered. It is important to ensure that the reputation of the professions is maintained. A licence to practice law is earned. One keeps that licence by abiding by the rules. If one does not abide by the rules, one runs the risk of losing your licence, either temporarily or permanently.
65. Mr. Virk chose to deal with these individual complaints at one time. This was with the consent of the Law Society of Alberta and it saved time and expense. It also avoided a potential escalating sentencing regime. The Complainants deserve to have each of their matters treated seriously and with each one given the weight it deserves.
66. The Hearing Committee may want to adjourn sanctioning until Practice Review completes a review of Mr. Virk's practice.
67. In all of the circumstances however, the LSA is seeking a 30 day suspension of Mr. Virk.

MR. VIRK'S SUBMISSION ON SANCTION

68. Mr. Virk noted that there were no misleading or dishonest factors at play in relation to these citations. He submitted that his integrity was not at issue.
69. Mr. Virk believes that a reprimand is appropriate. A reprimand has serious consequences for a lawyer. It is a public expression of the profession's denunciation of the lawyer's conduct. For a professional person, whose day-to-day sense of accomplishment, self-worth and belonging is inextricably linked to the profession, it serves as a lasting reminder of failure. Additionally, it remains a permanent admonition to avoid repetition of that failure. Deterrence, public confidence, and rehabilitation are therefore served.

70. He provided the Hearing Committee with a document entitled “Relevant Factors to Consider in Sanctioning”. It was entered as Exhibit 159 by consent. It provided Mr. Virk’s position on mitigating factors in relation to the citations he admitted guilt on. It also provided a summary of a number of LSA disciplinary decisions that he submitted support his position that a reprimand was appropriate. Some of the mitigating factors that he referred to were:
- Change to his practice from sole practitioner to an office sharing arrangement;
 - Although there is admitted failure, all of the clients eventually received all that they were entitled to;
 - The case summaries provided do not justify a suspension;
 - He was involved in a major trial that kept him occupied;
 - He has no prior discipline record;
 - He co-operated as fully as he could;
 - He has apologized to complainants;
 - He did not take advantage of a vulnerable party;
 - He had some trying times in his personal life;
 - There was no breach of trust; and
 - There is little risk of recurrence.
71. Mr. Virk submitted that a suspension would have a significant consequence upon him. It would significantly impact his existing clients. It would have a large detrimental impact upon him financially. He submits that a suspension would be a death knell upon his practice. He also indicated that a reprimand would be consistent with the step principle as it relates to sentencing.
72. He does not agree in delaying the sanction for Practice Review to complete its involvement.

DECISION AS TO SANCTION

73. In determining an appropriate sanction, the Hearing Committee is guided by the public interest, which seeks to protect the public from acts of professional misconduct. The primary purpose of disciplinary proceedings is the protection of the best interests of the public and protecting the standing of the legal profession generally. 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.
74. In *McKee v. College of Psychologists (British Columbia)*, [1994] 9 W.W.R. 374 at page 376, the British Columbia Court of Appeal articulated the following principles, which are equally applicable to the disciplinary process for the legal profession:

“In cases of professional discipline there is an aspect of punishment to any penalty which may be imposed and in some ways the proceedings resemble sentencing in a criminal case. However, where the legislature

has entrusted the disciplinary process to a self-governing professional body, the legislative purpose is regulation of the profession in the public interest. The emphasis must clearly be upon the protection of the public interest, and to that end, an assessment of the degree or risk, if any, in permitting a practitioner to hold himself out as legally authorized to practice his profession. The steps necessary to protect the public, and the risk that an individual may represent if permitted to practice, are matters that the professional's peers are better able to assess than a person untrained in the particular professional art or science."

75. The Hearing Guide for the LSA, at paragraphs 60 and 61, articulate the relevant factors to be considered in determining the appropriate sanction:

60. A number of general factors are to be taken into account. The weight given to each factor will depend on the nature of the case, always keeping in mind the purpose of the process as outlined above.

- a) The need to maintain the public's confidence in the integrity of the profession, and the ability of the profession to effectively govern its own members.
- b) Specific deterrence of the member in further misconduct.
- c) Incapacitation of the member (through disbarment or suspension).
- d) General deterrence of other members.
- e) Denunciation of the conduct.
- f) Rehabilitation of the member.
- g) Avoiding undue disparity with the sanctions imposed in other cases.

In one way or another each of these factors is connected to the two primary purposes of the sanctioning process: (1) protection of the public and (2) maintaining confidence in the legal profession.

61. More specific factors may include the following:

- a) The nature of the conduct:
 - (i) Does the conduct raise concerns about the protection of the public?
 - (ii) Does the conduct raise concerns about maintaining public confidence in the legal profession?

- (iii) Does the conduct raise concerns about the ability of the legal system to function properly? (e.g., breach of duties to the court, other lawyers or the Law Society)
- (iv) Does the conduct raise concerns about the ability of the Law Society to effectively govern its members?

76. The evidence on all of the complaints that Mr. Virk admitted guilt to are similar. It showed a lack of diligence, a lack of appreciation for the client's needs, admitted failures to serve the client, particularly clients in a vulnerable position. There is some evidence in the materials that some of these clients suffered financial loss as a result of the delays in prosecuting their matter to conclusion. There is evidence in the materials that there continued to be ongoing delay in dealing with matters even after the LSA became involved. In relation to Citation 2, Mr. Virk suggested in correspondence with the LSA, in his submissions to the Hearing Committee and upon questioning by the Hearing Committee that because the Court did not direct him to prepare the Order, that it was open to him to take the position that opposing counsel should have. This is disingenuous. The Rule clearly provides that the successful party prepares the Order unless the Court otherwise directs. Even though Mr. Virk admitted guilt in relation to this citation, he continued to deflect ultimate responsibility. All of these matters caused the Hearing Committee concern relative to governability. These are all aggravating factors.
77. In mitigation, Mr. Virk does not have a disciplinary record. He has sought out the assistance of and is participating in Practice Review. He entered into an Agreed Statement of Facts, saving time and saving witnesses from having to attend to testify.
78. Taking into account all of the foregoing factors, the Hearing Committee concluded that the public interest would be protected and confidence in the profession maintained through a suspension of 10 days. In consideration of Mr. Virk's existing clients and court commitments, the suspension shall not commence until February 1, 2014.
79. Mr. Virk is directed to cooperate with the Practice Review Committee and to satisfy any conditions which may be imposed upon him.
80. In addition, Mr. Virk is directed to pay costs in the amount of \$5,000.00. He is given time to pay the costs to February 1, 2014.

CONCLUDING MATTERS

81. The Hearing Committee Report, the evidence and the Exhibits in this hearing are to be made available to the public, subject to redaction to protect privileged communications, the names of any of Mr. Virk's clients and such other confidential personal information.
82. A Notice to the Profession shall be published by the Executive Director in accordance with Rule 107 of the Rules of the Law Society.

83. No referral to the Attorney General is required.

Dated this 6th day of September, 2013.

James A. Glass, Q.C., Bencher
Chair

Robert Harvie, Q.C., Bencher

Wayne Jacques, CA,
Lay Bencher