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 CHRISTOPHER TAHN
A MEMBER OF THE LAW SOCIETY OF ALBERTA

Hearing Committee

Margaret Unsworth, KC – Chair and Bencher
Louise Wasylenko – Lay Bencher
Martha Miller – Public Adjudicator

Appearances

Shanna Hunka – Counsel for the Law Society of Alberta (LSA)
Dennis McDermott, KC – Counsel for Christopher Tahn

Hearing Dates

November 19-20, 2020
January 11-13, 2021
March 29-April 1, 2021
April 26-30, 2021
May 25-28, 2021
June 21-24, 2021
July 9, 2021
September 27-29, 2021
October 25-29, 2021
November 15-19, 2021
December 13-17, 2021
February 7-11, 2022
March 30-April 1, 2022
April 25-29, 2022
May 16-17, 2022

Hearing Location

Virtual Hearing

HEARING COMMITTEE REPORT

Background and Overview

1. Christopher T. Tahn was admitted to the LSA in 2003, and practiced in Calgary in a number of areas, essentially, but not limited to real estate, family law, and civil litigation.

2. Mr. Tahn's first year of practice was in a firm where he was involved in residential schools litigation. In 2004 he moved firms and practiced primarily personal injury law. Between 2005 and 2010, Mr. Tahn ran a solo practice, then each year starting in 2010

and continuing in 2011, 2012, 2013 and 2015, he moved between legal firms (five in total). In July 2015, Mr. Tahn again set up a solo practice with a two-year lease on the premises. In fall 2017, his practice was moved to his townhouse and approximately six months later (February or March 2018) he sold his townhouse for a smaller townhouse and again moved his practice to that premises.

3. This hearing arises out of 14 complaints filed between 2016 and 2018.

4. On November 19, 2020, the Hearing Committee (Committee) convened a hearing into the conduct of Mr. Tahn, to examine the 14 complaints and the 69 citations arising from these complaints. Mr. Tahn was present for the entirety of the hearing and was represented by counsel, Dennis McDermott. Shanna Hunka represented the LSA. The hearing continued for 56.5 hearing days. The Committee heard evidence plus argument on ten of the fourteen complaints and 57 of the 69 citations. In addition, the Committee received written argument from the LSA on all ten complaints. Mr. Tahn provided written argument on all but complaints 4, 6 and 7.

5. After reviewing all of the evidence and exhibits, hearing the testimony plus reviewing both the oral and written arguments, for the reasons set out below, the Committee finds Mr. Tahn guilty of conduct deserving sanction on 49 citations pursuant to section 71 of the *Legal Profession Act* (*Act*).

6. The Committee will convene a hearing to hear submissions on and determine the appropriate sanction.

7. Any determination of costs will be made as part of the sanction hearing.

Jurisdiction and Preliminary Matters

8. Exhibits 1, 2, 3, and 4 consisting of the Letter of Appointment of the Hearing Committee (June 10, 2020), the Notice to Attend (October 30, 2020), the Revised Notice to Attend (December 16, 2020), the Certificate of Status (November 13, 2020) and the Letter of Exercise of Discretion (November 13, 2020), established the jurisdiction of the Committee.

9. At the outset of the hearing, on prior notice, Mr. Tahn brought two preliminary applications seeking a stay of this matter: (1) challenging the composition of the panel and (2) arguing breach of procedural fairness, namely undue delay plus lack of disclosure.

10. The first application challenging the panel composition was dismissed in oral reasons on November 19, 2020. Written reasons released February 1, 2021 summarized that decision[1].

11. The argument for a stay of the citations based on arguments of delay and lack of disclosure was also dismissed for the reasons in the February 1, 2021 written decision[2].

[1] *Law Society of Alberta v. Tahn*, 2021 ABLS 4.
[2] *Tahn*, supra.

Standard of Proof

13. Mr. Tahn submits that the standard of proof for this Committee is "less than the reasonable doubt test of criminal law but higher than the balance of probabilities of civil cases", relying on *Hanson v. College of Teachers,* 1993 CanLII 1035 (BC CA). The LSA argues the appropriate standard is a balance of probabilities, relying on the *McDougall* and *Moll* decisions.

14. The *Hanson* decision does not accurately state the standard of proof in disciplinary matters in Alberta. Unless otherwise specified by statute, the standard of proof in a civil case, which includes disciplinary proceedings, is a "balance of probabilities" as set out by the Supreme Court of Canada in *F.H. v. McDougal,* 2008 SCC 53 (CanLII) (paragraph 42).

15. The standard of proof on the balance of probabilities has been recently confirmed by the Alberta Court of Appeal in *Moll v. College of Alberta of Psychologists*, 2011 ABCA 110 (paragraph 22) and *Fitzpatrick v. Alberta College of Physical Therapists,* 2012 ABCA 207 (paragraphs 12-14). In addition, as noted in *Fitzpatrick*, the balance of probabilities standard has been adopted in disciplinary matters by the courts of appeal in other jurisdictions, aside from BC.

16. The law is now clear there is one civil standard of proof, unless otherwise specified by statute, and that is proof on a balance of probabilities. In considering its findings in this matter, the Committee has applied that test.

Decision Framework

17. There was no agreed Statement of Facts for any of the complaints or citations.

18. The complaints will be addressed in this decision in the order they were presented by LSA Counsel. These reasons begin with a Decision Summary of the overall result followed by details of each complaint and its relevant citations.

19. The facts and arguments put forward by both the LSA and Mr. Tahn for each complaint are presented with an attempt to identify where the facts are not actually in dispute. Although not every piece of evidence or every exhibit is referenced, the Committee heard all the oral evidence plus argument and carefully reviewed all exhibits in addition to written submissions in preparing this decision.

20. Following the findings of fact and discussion of argument on each complaint, the finding of the Committee as to whether Mr. Tahn is guilty of conduct deserving of sanction in relation to each citation, with relevant reasons, is also presented.

21. References to the Rules of the LSA (Rules) and LSA Code of Conduct (Code) in the decision refer to those in effect at the time of the events in question occurring.

Decision Summary

22. Having heard the entirety of the evidence and argument, the Committee finds Mr. Tahn guilty of conduct deserving sanction in relation to 49 citations which generally fall into the following categories: citations relating to clients; citations relating to other lawyers;

citations relating to Mr. Tahn's practice; and citations relating to the LSA. This summary is not a complete listing of all citations. Details start at paragraph 28 of this decision.

23. *Citations relating to clients* – many of the client citations which are found proven are for failing to provide competent, timely, conscientious or diligent service by failing to keep a client informed and failing to move the matter forward (e.g., citations 7, 11, 38 and 39). In addition, there are several proved citations of failing to give clients Statements of Account (e.g., citations 8 and 42) and acting in a conflict of interest or failing to disclose a conflict of interest (e.g., citation 11).

24. *Citations relating to other lawyers* – generally these citations are in two categories, failing to comply with undertakings (e.g., citations 37, 52 and 64) and misleading other lawyers (e.g., citations 54 and 65).

25. *Citations relating to Mr. Tahn's practice* – the vast majority of the proven citations fall in this category and range from failing to reconcile the firm's books monthly (e.g., citation 28), failing to deposit trust monies on the next banking day (citation 30), and breach of several trust safety Rules (complaint 5).

26. *Citations relating to the LSA* – notably these citations include failing to cooperate with and failing to respond to the LSA (e.g., citations 20, 35, 36, 45, 46, 51, 66, 68 and 69).

Details of Each Complaint – Evidence, Arguments and Findings

Complaint 14 (KW) – Citations 67, 68 & 69

27. Citation 67 alleges that Mr. Tahn "acted in an inappropriate and unprofessional manner with his client KW". Investigation on the facts of this citation by the LSA led to citation 68 (failing to cooperate with the LSA in the course of an investigation) and citation 69 (failing to reply to communications from the LSA).

28. There are a few undisputed facts:
    - Mr. Tahn was Legal Aid counsel for KW and represented her in her matrimonial dispute from October 2016 until June 2018. This matrimonial dispute centered on custody and access of the child of the marriage;
    - On May 31, 2018, KW went to Mr. Tahn's office at approximately 7:00 pm. His office at that time was in his residence, a self-described two-bedroom townhouse in which one bedroom was set up as an office;
    - Mr. Tahn and KW were the only two people in the office/residence; and
    - During the time they were together, Mr. Tahn made two alcoholic drinks for himself and offered KW a drink both times. She refused.

Evidence and Argument of the LSA

29. KW and her mother SS gave evidence in support of citation 67.

30. KW stated that she knew that at the end of June 2018 Mr. Tahn would no longer be her lawyer so she went to a May 31, 2018 meeting with two goals in mind. First, she wanted to get documents from Mr. Tahn to advance her court case. Second, she wanted him to tell her where the case was at and what would be happening next.

31. According to her evidence, KW could not get Mr. Tahn to respond to any of her legal questions. He kept using vulgar language and, more disturbing, during the meeting he twice offered her a drink, offered her a line of cocaine, and asked her questions of a sexual nature. KW refused these advances and, in her words, reminded him that she had been clean (no drink and no drugs) for over five years. She admitted on cross-examination that she never saw Mr. Tahn do a line of cocaine but maintained it happened behind her and she knew the sound.

32. KW concluded her evidence by saying she left without any documents and returned two days later with her then boyfriend to get them. She said she was very upset on the evening of May 31, 2018 and immediately upon leaving the meeting she called her mother, SS. She phoned the LSA on June 5, 2018 to complain but never did file a written complaint. She never called the police.

33. SS briefly confirmed that she had received a call from KW as described. She testified also that she often went with KW to meetings with Mr. Tahn and to court. Her evidence was that it was not uncommon for him to swear and use the 'F word'. She found it 'shocking'. She also noted that on one meeting at Mr. Tahn's home office she witnessed him comment on and touch KW's hair, whereupon KW stepped away from him but did not say anything.

34. The LSA investigator assigned the complaint received from KW; a series of texts between her and Mr. Tahn confirming that KW had sought the meeting. In addition, one of the texts dated May 28, 2018 from KW to Mr. Tahn said she would bring drinks to the meeting [Exhibit 64].

35. On June 5, 2018, the investigator and his colleague attended at the office/residence of Mr. Tahn. They were there as a result of two Investigation Orders – one relating to the current complaint and one relating to complaint 13. The notes from that meeting [Exhibit 51], as it relates to this complaint, state that Mr. Tahn presented as sober and alert, denied any substance abuse or use of drugs except for the consumption of alcohol, and did not consent to random drug testing without consulting legal counsel. Once the investigators left, the evidence of Mr. Tahn was that he called several of his clients, including KW, to determine who had lodged the LSA complaint. He did not determine at that time who complained.

36. On June 26, 2018, the investigator sent an email asking for the KW file and any other information Mr. Tahn had in response to the complaint. Although he received a 'read' receipt, the investigator did not hear from Mr. Tahn and did not get the file. On July 11, 2018, the investigator saw an online posting of Mr. Tahn indicating he was in Calgary and on July 12, 2018 [Exhibit 58], the investigator sent a second email requesting the file and information. He did not get a reply.

37. The investigator ultimately did get the KW file but not from Mr. Tahn. On July 1, 2018, Mr. Tahn started a 15-month suspension from the LSA and in August, a Custodianship Order was obtained by the LSA regarding Mr. Tahn's practice. On August 16, 2018 the investigator, acting for the custodian, went to Mr. Tahn's office/residence and took all Mr. Tahn's files and computers to the custodian. The investigator then got a copy of the KW file from the custodian.

38. On November 9, 2018, the investigator emailed Mr. Tahn asking to meet to discuss the complaint and, specifically, allegations of sexual harassment, professional misconduct including the use of an alleged illicit substance, and failure to serve. Mr. Tahn responded by email that he needed to speak with his lawyer [Exhibit 62]. No further response was received and no meeting was held.

39. The Investigation Report was concluded December 18, 2018 [Exhibit 71].

40. On January 17, 2019, conduct counsel for the LSA sent Mr. Tahn an email attaching the Investigation Report and asking for a response. Receiving no response, a second email was sent February 8, 2019 and finally, a letter dated February 27, 2019 was sent [Exhibit 74]. No response was received from Mr. Tahn.

41. The LSA notes that Mr. Tahn never responded substantively to the complaint until the current discipline hearing. They suggest that this, on balance, should lead the Committee to accept the evidence of KW and SS over that of Mr. Tahn about the events of May 31, 2018.

42. The LSA notes that Mr. Tahn acknowledged using profanity in front of KW. He also admitted consuming alcohol on May 31, 2018 in front of KW and offering her a drink on two occasions.

43. Regarding the allegation of drug use, the LSA suggests that on balance the evidence of KW should be accepted. It would be "unusual" (in the words of LSA counsel) for Mr. Tahn to call KW to ask if she had complained to the LSA if he were not concerned about the drug use allegation. In addition, the LSA says it would be unusual for the story of his uncle (see below evidence of Mr. Tahn) to be raised unless there was cocaine use at the same time.

44. KW's evidence on the events of May 31, 2018 recalled questions from Mr. Tahn about a "threesome", whether she was "there to party", and so on. The LSA does note that Mr. Tahn denied making sexual comments, however, suggests KW's version, on balance, should be accepted. The LSA says that KW has nothing to gain by making these allegations and had difficulty testifying and reliving events that were not good memories for her.

45. The LSA argues that the evidence establishes Mr. Tahn never provided the KW file to the investigator nor did he ever attend for an interview.

46. If providing the file pursuant to the Custodianship Order is considered cooperation with the investigation, the LSA says this was wholly inadequate in the circumstances.

47. The LSA says the evidence establishes Mr. Tahn never replied to requests from the LSA.

Evidence and Argument of Mr. Tahn

48. Mr. Tahn had a significantly different recollection of the May 31, 2018 meeting with KW.

49. When he received emails from KW in late May, 2018 asking to meet and stating that KW would bring drinks, Mr. Tahn took this as a very good sign. In general, his evidence was

that for over two years KW had been an extremely difficult client who lied to him, omitted relevant information, refused or neglected to help her case and would not follow court orders. Specific reference was made to the order and transcript of the hearing before Judge [T] in July 2016 [Exhibits 88 & 89] plus appearances before Justice [A] [Exhibits 93-95] and Justice [M] [Exhibit 87].

50. Mr. Tahn's evidence was he and KW had a running joke that when their solicitor-client relationship ended, they would celebrate with a drink. When KW offered to bring drinks, Mr. Tahn took this as a sign that KW was ending their relationship and he was happy to think she would no longer contact him.

51. In general, Mr. Tahn described KW as someone who texted and contacted him at all hours of the day and into the evening. He invariably replied. She was never happy with the work he was doing (and was unhappy with her prior lawyers), and he constantly had to re-explain what was happening as well as the best strategy for her to get access and custody of her son. The first difficulty was that before he was retained, an Alberta Provincial Court Judge issued an order giving full custody of the son to his father with only limited, supervised access to KW. The next two orders, after significant work on the part of Mr. Tahn, granted unsupervised access to KW. Mr. Tahn saw this as a huge victory which KW refused to acknowledge. She continued, in his words, to be obsessed with things which did not advance the long-term strategy of getting custody of her son.

52. Mr. Tahn agreed to the evening meeting on May 31, 2018 because he thought KW was finally going to end their solicitor-client relationship. In addition, he was going to tell her that on July 1, 2018 he was starting a 15-month suspension from the LSA and would no longer be her lawyer.

53. He was alone when she arrived and he had her sit in his living room on one of his two sofas. He sat on the other. During the course of the next hour, he prepared and had two drinks in her presence. He offered KW a drink both times but when she refused, he did not press the point. Prior to addressing KW's legal issues, he said their conversation focused on KW's former drug habit, the daily cost of such a habit, her new boyfriend, drug dealers and whether she had been turning tricks. He shared a personal story of his uncle's addiction. He specifically denied having a line of cocaine (then or ever). He also specifically denied touching her, making sexual advances or acting in any way inappropriately or unprofessionally.

54. On this final point, Mr. Tahn gave evidence that it was KW who showed him inappropriate photos after telling him she had a new boyfriend. KW did not recall doing this.

55. The evidence of Mr. Tahn was that he clearly told KW she could not have her file as he would give this to her new lawyer but that he would make copies of documents she could take away. At some point, the two of them left the living room and went to his office, the second bedroom in the townhouse. While there, he made copies of several things for her to take away. As he could not access his assistant's computer, Mr. Tahn also told KW there were relevant materials which he would have his assistant print off for her when he saw her next.

56. Mr. Tahn testified that KW did not bring drinks and that he had vodka on the kitchen table.

57. On June 1, 2018, Mr. Tahn emailed counsel for the father of the child, attached an executed consent order and noted that "I met with [KW] again *last night* and reviewed the changes sent a few weeks ago by your office. We have executed the consent Order…" [Exhibit 129, emphasis added].

58. KW came back to his office a couple of days after May 31, 2018 with her boyfriend and was given further documents.

59. KC, Mr. Tahn's assistant, testified but her evidence was limited to how difficult KW was as a client. She was not at the May 31, 2018 meeting and she was never involved in collecting the KW file for the LSA. KC did acknowledge that it was not uncommon for Mr. Tahn to swear but she could not recall if he ever did so in front of KW.

60. On June 21, 2021, KC did email a draft Affidavit to KW for her use [Exhibit 130]. The evidence of Mr. Tahn was that KC did this under his specific direction and as a direct follow-up to his agreement on May 31, 2018 to locate and forward a precedent KW could use.

61. Mr. Tahn acknowledged that he did not reply to the investigator's request for the KW file but said he was in the process of collecting the file when the custodianship of his practice occurred. When the investigator came to his office to effect the Custodianship Order, he fully cooperated by giving them all files and computers.

62. Mr. Tahn acknowledged never meeting with the investigator. Mr. Tahn noted that he needed to speak with his lawyer first and said the investigator never contacted his lawyer to set up such a meeting.

63. Mr. Tahn did not recall getting emails from LSA conduct counsel. He did receive the letter stating a final review was underway, but by then he said the LSA knew he would only respond through his lawyer given the seriousness of the allegations and the LSA never contacted his lawyer.

64. Mr. Tahn argues that the LSA has failed to satisfy its burden of proof on citation 67, as follows:
    - He acknowledged using coarse language (the "F bomb") at least twice when with KW but perhaps not on May 31, 2018. KW was an extremely difficult client, as noted above, and at times, he simply became frustrated;
    - He acknowledged he consumed two alcoholic drinks and offered KW alcohol twice on the evening of May 31, 2018. His expectation that she would have a drink with him was founded on her text of May 28, 2018 that she would bring a drink to the meeting. He understood this text, and based on other conversations with her, to indicate she was ending their solicitor-client relationship and would drink to celebrate;
    - He denied using cocaine on the night of May 31, 2018 or ever. He offered the story of his uncle who died of drug use as the reason why he would not and never had used drugs. He suggested that the noise heard by KW, which she described as that of cutting a line of cocaine, was actually him cutting limes for his drinks; and

- He denied making sexual advances to KW the night of May 31, 2018 or ever. To support this position he pointed to the following:
    - KW was an extremely difficult client who lied constantly if she thought it would advance her custody dispute;
    - The intake officer's notes of her complaint did not mention sexual advances of any sort. The notes did say she was 'terrified' to continue to see him;
    - She never did file a formal complaint and there is nothing from her in writing that would have given Mr. Tahn any indication that she was alleging improper sexual advances;
    - Following May 31, 2018 she continued to communicate with him as before. Not once did she indicate any fear either generally or as a result of sexual advances. The quantity and tone of her texts continued unabated;
    - The investigator who called him on June 5, 2018 never mentioned sexual advances and never asked him anything along those lines. The focus was clearly the use of drugs and alcohol;
    - An email of June 26, 2018 from the investigator, attaching the Investigation Order does not mention sexual impropriety [Exhibit 56] and neither does the follow-up email of July 12, 2018 [Exhibit 58]. Both emails speak of "substance abuse and/or other conduct"; and
    - On July 9, 2018 an email from the investigator, for the first time, mentions sexual impropriety and Mr. Tahn immediately acknowledged that email saying he would be seeking legal counsel [Exhibit 62].

65. Mr. Tahn argues that the citation of failing to cooperate with the investigator is not made out. He argues the LSA was unreasonable in its time frame for response and that the investigator should simply have walked down the street to discuss with him. The LSA office and Mr. Tahn's office/residence were only a few blocks apart.

66. On the citation of failing to respond to the LSA, Mr. Tahn agrees he did not do so but says it was based on his emails to the investigator that he would only meet with counsel present.

Analysis and Conclusion

67. While true that Mr. Tahn did not reply substantively to this complaint until this disciplinary hearing, the Committee does not accept the LSA suggestion this can be taken as acceptance of citation 67. In other words, his alleged failure to respond to the investigator and conduct counsel does not prove citation 67.

68. Mr. Tahn gave evidence that between 2015 and March 2018 his business was affected by three moves, particularly the move in fall 2017 from his business premises to his home (a townhouse) and then, six months later, to a second, smaller townhouse. These moves gave rise to some disorder, including computer issues, that resulted in an inconsistent capacity to receive and respond to communication from clients and the LSA.

69. The loss of his legal assistant (by January 2018) resulted in further disorder and poor practices in preparing and responding to legal matters. The casual employment of the former legal assistant to help periodically in legal practice matters did little to mitigate the

disorder and confusion. Mr. Tahn apparently had neither the system skills or capacity (with these moves within a short period of time) to be both lawyer and legal assistant to his practice.

70. The last move to the townhouse office/residence resulted in little separation between living space and workspace. Workspace was limited and unsuitable for a professional practice.

Citation 67

71. This citation alleges that Mr. Tahn acted "in an inappropriate and unprofessional manner with his client KW" which, if established, would violate section 49 of the *Act*. Section 49 provides, in relevant part, that any conduct (a) incompatible with the best interests of the public or (b) that tends to harm the standing of the legal profession is conduct deserving of sanction. The section links also to the preface and section 2.1 of the Code which emphasizes that a lawyer's irresponsible conduct, whether or not it is specifically addressed in rules and regulations, may erode public confidence in and reflect on the integrity of the administration of justice and the profession.

72. The LSA identifies four specific actions which are said to be inappropriate and unprofessional, specifically: (1) coarse language with a client; (2) drinking and providing alcohol to a client at a meeting; (3) drug use while in the presence of a client; and (4) communications with a client of a highly personal nature regarding matters unrelated to their legal issues. They do not limit their argument to those four points but identify these as specifics in a larger picture.

73. The LSA takes the position that the cases of *Sinclair, Hammoud* and *Dupres* stand for the proposition that inappropriate or coarse language is simply not acceptable conduct[3]. They point to two particular instances – outside the courtroom before KW and SS in March 2018 and then in Mr. Tahn's townhouse/office on May 31, 2018.

74. Mr. Tahn argues the facts in his case are distinguishable from the facts in those cases First he refers to his language as "slang" then says that unlike in the noted cases, his comments were not aimed at KW or at anyone in particular.

75. It is the decision of the Committee that coarse language alone, by a lawyer to and in the presence of a client, is unprofessional and is conduct deserving of sanction[4]. Mr. Tahn admits to using such language, if not at the May 31, 2018 meeting (his evidence was unclear on this point) then certainly on other occasions. KW, SS and KC all testified that his coarse language was not uncommon.

76. In this case, there was more than coarse language. Mr. Tahn and KW agree he prepared and consumed alcohol at the meeting of May 31, 2018. Further, there is agreement that KW was offered alcohol twice by Mr. Tahn at the May 31, 2018 meeting.

[3] *Law Society of Alberta v. Sinclair*, 2008 LSA 5 (paragraph 15); *Law Society of Alberta v. Dupres*, 2017 ABLS 20 (paragraphs 5 & 15); L*aw Society of Alberta v Hammoud*, 2012 ABLS 19.
[4] *Sinclair*, supra; *Dupres*, supra; *Hammoud*, supra.

77. Mr. Tahn has demonstrated and testified to behaviour that, on the face of it, demonstrates inappropriate actions by offering KW, a recovering addict, alcohol at a solicitor-client meeting. Further, his office practice of scheduling a one-on-one meeting with a challenging client, after business hours, in a space that is lacking any physical boundaries between personal and office space does not meet any threshold for a safe meeting environment for either party. The actions of KW subsequent to the meeting of reaching out to others (her mother and boyfriend) and then complaining to the LSA support a negative reaction to the disorder, boundary issues and admitted behaviour at the meeting.

78. The Committee finds that the LSA has not met its onus to establish on a balance of probabilities that drugs were used by Mr. Tahn at the May 31, 2018 meeting nor that drugs were even present in the room. KW acknowledged she never saw drugs and the sounds she heard were countered in evidence by Mr. Tahn as being him cutting limes for his drink. KW said he “offered her a line” but Mr. Tahn absolutely denies this and says not only did he not have cocaine on May 31, 2018, he has never used cocaine.

79. Nothing uncovered by the subsequent investigation presents a clearer picture. The fact that Mr. Tahn phoned KW to ask if she complained to the LSA is not telling, given his evidence that he called several clients, including KW, to ask the same thing. On balance, the Committee finds nothing about this action which supports drug use.

80. On the allegation of sexual misconduct, the Committee finds that the LSA has not met its onus to establish on a balance of probabilities that such misconduct occurred.

81. In her direct examination, KW noted inappropriate questions and comments by Mr. Tahn of a sexual nature at the May 31, 2018 meeting. There was no cross-examination on this although Mr. Tahn confirmed topics of conversation which would be considered inappropriate in a solicitor-client relationship: the past drug habit of KW, costs associated with that habit and how she financed it, whether KW turned tricks, cosplay, and the story of his uncle’s death due to drug overdose. Mr. Tahn specifically denied making any comments of a sexual nature at the May 31, 2018 meeting or at any time. SS, KW’s mother, gave evidence that on one occasion other than May 31, 2018, Mr. Tahn touched and then commented on KWs hairstyle. Mr. Tahn directly countered this in his evidence stating that he never touched her hair and only commented on it months earlier (spring 2017) when urged by SS to notice a new hair cut KW had received.

82. The Committee finds citation 67 to be proven as it relates to coarse language, drinking, the nature of other discussions and the venue of the meeting with KW. Actions in the context of the particular circumstances of this case are inappropriate and unprofessional, and such conduct is deserving of sanction.

Citation 68

83. The evidence is clear that Mr. Tahn never provided the KW file to the investigator nor did he meet with the investigator, in contravention of Rule 48.1(3). Contrary to the suggestion of Mr. Tahn, there was no onus on the investigator to contact Mr. Tahn’s lawyer. Rule 48.1(3) is clear the onus lies on the member to answer LSA communications and if he wished his lawyer present, the onus lay on him to set up the meeting.

84. The Committee finds this citation to be proven. Mr. Tahn is in violation of Rule 48.1(3) by failing to give the file to or meet with the investigator, and such conduct is deserving of sanction.

Citation 69

85. Mr. Tahn never explained why conduct counsel would know he would only reply through his lawyer as he never communicated with conduct counsel. The Code places an obligation on the member to respond to correspondence from the LSA. There is no reason to assume conduct counsel would be aware that he had told the investigator he wanted a lawyer.

86. Mr. Tahn agreed that he did not reply to the LSA which is contrary to section 7.1-1 of the Code. The Committee finds this citation to be proven, and such conduct is deserving of sanction.

Complaint 8 (LSA) – Citations 50 & 51

87. There are no undisputed facts in relation to complaint 8 which arose when the LSA realized Mr. Tahn or his firm had not provided trust safety uploads for 2016.

Evidence and Argument of the LSA

88. The evidence of the LSA trust safety officer was that trust safety accounts for 2016 were not uploaded by Mr. Tahn's firm, contrary to Rule 119.30.

89. In August 2017, the trust safety officer sent an email to Mr. Tahn asking that he do the 2016 upload. In reply, Mr. Tahn's assistant, KC, called the trust safety officer to say uploads would be done the next day. They were not. The trust safety officer spoke with KC two more times, but the upload was never done. The trust safety officer never did speak with Mr. Tahn.

90. Conduct counsel for the LSA emailed Mr. Tahn and his assistant three times seeking the upload (December 5, 2017; January 15, 2018; February 1, 2018). A reply was not received.

91. The LSA submits that citations 50 and 51 are proven on the facts.

Evidence and Argument of Mr. Tahn

92. Mr. Tahn gave evidence that he asked his staff and was assured the 2016 upload of trust safety accounts had been done. The evidence of KC was that she had the reports done but thought Mr. Tahn had uploaded them. She did not upload the reports.

93. KC also gave evidence of the office moves in fall 2017 and 2018, with the consequent upheaval ensuing in addition to ongoing computer problems. She spoke with the trust safety officer by phone assuring her the uploads would be done.

94. Mr. Tahn admitted never responding to LSA conduct counsel but said he has no recollection of ever getting these emails.

95. Mr. Tahn argues that citation 50 is not made out because there was every intention to file the 2016 trust safety report and all that occurred was an “oversight”.

96. On citation 51, Mr. Tahn says that his assistant did communicate with the trust safety officer and that this citation is therefore not made out.

Analysis and Conclusion

Citation 50

97. It is not disputed that the trust safety upload for 2016 was not done by Mr. Tahn nor his firm. The Committee finds this citation to be proven. Mr. Tahn is in violation of Rule 119.30(1) by failing to upload trust safety accounts, and such conduct is deserving of sanction. There is no room in the mandatory filing requirement in Rule 119.30(1) for an “oversight”.

Citation 51

98. As noted earlier, between 2015 and March 2018 Mr. Tahn’s business was affected by three moves, particularly the move in fall 2017 from his business premises to his home (a townhouse) and then, six months later, to a second, smaller townhouse. At the same time, by January 2018, his legal assistant had left and was assisting only periodically after hours. All of this gave rise to some disorder, including computer issues, that resulted in an inconsistent capacity to receive and respond to communication from clients and the LSA. Mr. Tahn had neither the system skills or capacity (with these moves within a short period of time) to be both lawyer and legal assistant to his practice.

99. Lawyers have an obligation to ensure the LSA can contact them at all times and Rule 42(4.1) specifically requires that a lawyer provide the LSA appropriate contact information. The onus was clearly on Mr. Tahn to do so and to ensure that the LSA could contact him at all times. The LSA’s reliance on email to contact one of its members is not unreasonable given this obligation of members.

100. Mr. Tahn agreed that he did not reply to conduct counsel, which is contrary to section 7.1-1 of the Code. The Committee finds this citation to be proven, and such conduct is deserving of sanction.

Complaint 10 (LSA) – Citation 56

Evidence and Argument of the LSA

101. The LSA was investigating a complaint made by LT when they sent Mr. Tahn an email on January 15, 2018 with a copy of the complaint and asked for a response. Mr. Tahn was immediately in contact with the LSA as he could not open the linked complaint. The same day Mr. Tahn again contacted the LSA to say he now had opened the link. The LSA did not receive a response to the email nor to two subsequent emails (February 12, 2018 and March 1, 2018).

102. A response was received on March 14, 2018 [Exhibit 81].

103. On cross-examination conduct counsel acknowledged that she received the response and used it to reach her ultimate decision to dismiss the complaint.

104. The LSA argues this complaint is made out because the response was months after the request and file was never produced. In the opinion of conduct counsel, the response was neither prompt nor complete.

Evidence and Argument of Mr. Tahn

105. In February 2018 Mr. Tahn was busy moving his office to a smaller space and he had some computer problems. Both Mr. Tahn and his assistant recalled drafting a response to the LSA before his move at the end of February. Not until early March 2018 did Mr. Tahn realize the response had not actually been sent and he did so on March 14, 2018.

106. In response to the citation, Mr. Tahn makes two submissions:
- First, this complaint should have been dismissed immediately and never investigated. LT was a self-represented party in active litigation with Mr. Tahn's client. The file was governed by solicitor-client privilege; and
- Second, clearly the response was complete and prompt albeit a week later than the deadline imposed by the LSA. The dismissal of the complaint referred to his response.

Analysis and Conclusion

Citation 56

107. This citation is an allegation that Mr. Tahn failed to reply promptly and completely to the LSA contrary to section 7.1-1 of the Code. It is the view of the Committee that this citation is not proven.

108. The argument that this complaint should have been dismissed out of hand as the matter was in active litigation in no way responds to the citation of failing to reply promptly and completely.

109. The response did not meet the deadlines set by the LSA, however the fact that the LSA referred to the response and dismissed the complaint against Mr. Tahn based on his response to the complaint shows not only that the response was timely but that it was acceptable.

Complaint 9 (LSA) – Citations 52, 53, 54 & 55

110. Citations 52-54 relate to conduct alleged in a complaint from another lawyer: failing to fulfill an undertaking (citation 52), failing to reply to communications (citation 53) and misleading another lawyer (citation 54). An investigation of this complaint led to a citation of failing to reply to communications from the LSA (citation 55).

111. There are certain undisputed facts:

- JM is a retired lawyer who, in 2014, had a residential real estate legal practice;
- In 2014, he represented the purchaser of residential property and Mr. Tahn represented the seller;
- As part of the sale, a Real Property Report (RPR) was required with a stamp of compliance by the City of Calgary, Planning, Development & Assessment Department (City);
- In a letter dated December 11, 2014 [Exhibit 98 – Trust Letter], Mr. Tahn gave the following undertaking "to provide your office with a Real Property Report and compliance. Please be advised that the City has given the Real Property Report Compliance and we are awaiting it to be returned to our office via courer [sic]";
- The trust letter was not signed by Mr. Tahn but by his then legal partner; and
- JM has never received the RPR with compliance.

Evidence and Argument of the LSA

112. JM gave evidence on citations 52-54. On February 19, 2015 he sent his first fax to Mr. Tahn at the law firm of TS Law. This fax asked for the RPR with compliance and title evidence discharging prior encumbrances which had also not been received by that date.

113. That same letter (simply handwriting a new date) was faxed again March 24, 2015 and then to Mr. Tahn's new firm at B Law on June 4, July 14 and July 22, 2015. There is a handwritten note on the last July letter that KC, Mr. Tahn's assistant, would be responding.

114. A letter dated July 23, 2015 acknowledging receipt of clear title was faxed to Mr. Tahn at B Law and sought the still missing RPR with compliance. That same letter (with handwritten date changes) was faxed again July 31, August 5 and August 11, 2015.

115. JM received a return fax from B Law that Mr. Tahn had left that firm and could be reached at a different fax number. JM then faxed several more times asking for the status of the RPR with compliance (August 11, September 11, October 29, November 10, 18 and 23, 2015).

116. In December 2015 JM made two phone calls to Tahn Law but did not receive a call back.

117. On February 8, 2016, JM faxed a letter to Mr. Tahn that he would be reporting the lack of response to the LSA. KC phoned him on February 11, 2016 saying they had resubmitted the RPR for compliance. On December 5, 2017, JM filed a complaint with the LSA having still not received the RPR with compliance.

118. On cross-examination JM said he did not recall ever speaking on the phone with Mr. Tahn but admitted he may have.

119. Following the complaint of JM to the LSA, conduct counsel wrote to Mr. Tahn asking for a response to the complaint. Two letters were sent, on December 20, 2017 and January 15, 2018 but no response was received. On February 1, 2018, an email was sent to KC and copied to Mr. Tahn noting that there had still been no response to this complaint.

120. Either Mr. Tahn or KC contacted the LSA (the evidence is not clear who) and conduct counsel granted a one-week extension for reply. On March 8, 2018, having received nothing, conduct counsel wrote to JM and Mr. Tahn to advise the matter had now been sent to a Conduct Committee Panel for consideration of next steps.

121. On March 9, 2018, Mr. Tahn wrote to conduct counsel stating he was getting the file from storage and would provide same to the LSA. Nothing further was heard and the LSA never saw the file or the RPR with compliance.

122. The LSA argues that JM was entitled to rely on the trust letter telling him the City had given compliance. Despite 15 faxes and several phone calls, he did not, even at the date of his evidence before this Committee, ever get an RPR with compliance. LSA iterated that undertakings are exceptionally important to lawyers and the fact that the RPR with compliance has never been provided is a breach of section 7.2-14 of the Code.

123. The LSA says that Mr. Tahn knew his representation was untrue (that the City issued an RPR with compliance) or became aware that it was untrue but never wrote to JM to explain what happened. In fact, he never responded to any of the faxes and calls sent and made by JM nor from the LSA.

124. The LSA notes that Mr. Tahn acknowledges the undertaking to provide an RPR with compliance was not fulfilled and therefore citation 52 is made out.

125. The LSA argues citation 53 is established, as there is nothing in writing responding to JM. In fact, JM testified that he communicated mostly with KC. He may have spoken with Mr. Tahn on one occasion but was referred again to KC.

126. With respect to citation 54, the LSA notes that JM directly testified he believed he had been misled. He was told the City had given compliance and was not informed the City had voided that compliance. This is contrary to section 7.2-5 of the Code which requires lawyers to “immediately correct” a misapprehension. The LSA argues Mr. Tahn either misled JM initially or failed to correct his misapprehension – either action proving the citation.

127. The LSA notes on the evidence that Mr. Tahn never produced the file. He did tell conduct counsel he would pull the file from storage and send it, but never did and never contacted conduct counsel to explain why.

Evidence and Argument of Mr. Tahn

128. Mr. Tahn notes that he did not sign the trust letter but that it was signed by his then legal partner. He says he would not have made the undertaking and is not certain when he became aware of the undertaking. He did however agree, on cross-examination, that he was bound by the undertaking and did not fulfill it.

129. His client had ordered and paid for the RPR directly with a survey company. The client then delivered the RPR to the City for compliance. Initially the City gave compliance but on December 10, 2014, the City voided the compliance [Exhibit 121].

130. Mr. Tahn’s evidence is that he felt the issue lay with the survey company and they had the obligation to fix the RPR and resubmit for compliance. He asked KC, who assured

him it was done, but he has never been able to reach the survey company by telephone to confirm.

131. KC confirmed that she spoke with the survey company, who assured her they would get the proper RPR with compliance. She then phoned JM to tell him. Her evidence was that she spoke to the survey company a few times to follow up.

132. Mr. Tahn says he telephoned and spoke to JM in August 2015 to explain that a new RPR was being prepared and explained also that the survey company was handling the problem.

133. When he left B Law and set up his own practice, Mr. Tahn's evidence was that he had ongoing problems with his fax machine, which was an online system and did not always work. He recalls getting some but not all of the faxes from JM and does not recall seeing the February 2016 fax which said a complaint would be made to the LSA.

134. There has been no litigation ensuing from the failure to provide the RPR with compliance.

135. Mr. Tahn did tell the LSA he would locate and send the file, but he never did locate the file. He never communicated that to the LSA.

136. Mr. Tahn says that when the trust letter was signed, it was accurate. The City had given compliance to the RPR. The day before the trust letter was sent, the City voided the compliance and neither he nor his partner was aware of this at the time.

137. He argues that neither the trust letter nor his subsequent actions were misleading. The letter was accurate at the time it was signed, and he spoke by telephone with JM to discuss and explain what was happening. He admits never writing to JM.

138. Finally, Mr. Tahn argues that his letter of March 9, 2018 establishes that he did communicate with the LSA.

139. In his written argument on Complaint 9, Mr. Tahn says he finally was able to contact the survey company in 2021 and determined they had received the RPR with compliance by going directly to Land Titles in 2014. He said that if the panel wanted that document, he would ensure the panel got it.

Analysis and Conclusion

140. In argument, counsel for Mr. Tahn stated that this was a matter which should never have been reported to the LSA and should have been handled between counsel. The issue here, in his words, lay either with the survey company for failing to do a proper RPR or with JM for failing to go to the City to try to work out a solution. The Committee disagrees with these suggestions.

141. An undertaking from a lawyer is a *personal* promise and a lawyer cannot rely on others to fulfil the undertaking.

142. Additionally, how this issue “ought” to have been dealt with does not lie with the Committee. The facts are clear that JM filed a complaint with the LSA and the LSA then had a statutory obligation under section 53 of the *Act* to review the complaint. It comes as no surprise then that having failed to receive a response from Mr. Tahn to the complaint by JM, the LSA directed this complaint to conduct.

Citation 52

143. Mr. Tahn admitted both in evidence and through counsel that he was bound by the undertaking in the trust letter and that he had not met that undertaking. While true that no litigation has ensued and that the sale proceeded absent the RPR with compliance, that does not absolve Mr. Tahn from the fact that he failed to fulfill his undertaking.

144. His attempt to pass the blame for failing to have an RPR with compliance on either the survey company (the problem was theirs to fix) or JM (he could have got the compliance from the City by just going there and asking) is not appropriate. The undertaking he gave is his personally and his to meet.

145. The final RPR with compliance ultimately received by the survey company is not properly in evidence. Even if it were, the fact that there is in existence a valid RPR with compliance is no answer to the citation of failing to meet the undertaking. Mr. Tahn did not fulfill his undertaking to JM, who never saw the document.

146. Giving the Committee the document would be no answer to the citation either. It is not the Committee to whom the undertaking is owed and even giving the document to JM these years later is not an answer. The undertaking was given in December 2014 and whatever the time period might be to meet an undertaking, in a real estate deal seven years late cannot even in the wildest stretch of imagination be said to meet the undertaking.

147. At no time did Mr. Tahn satisfy the undertaking nor did he attempt to change the undertaking in writing, all contrary to section 7.2-14 of the Code. The commentary to 7.2-14 is clear that any variation of a trust condition must be in writing. It is not sufficient that Mr. Tahn spoke to JM by phone. The Committee finds this citation to be proven, and such conduct is deserving of sanction.

Citation 53

148. Failing to reply to communications from another lawyer is contrary to section 7.2-7 of the Code which requires lawyers to reply to communications with reasonable promptness. In this case, JM sent approximately 15 faxes and left several telephone messages for Mr. Tahn. He has never received a written response to any of the faxes, is unclear whether he ever spoke to Mr. Tahn by telephone and has never received the RPR with compliance.

149. The Committee finds that there may have been a telephone call between counsel in summer 2015 and that KC may have called JM at some point, but that can hardly be described as a prompt response to the faxes sent from JM in February, March and June 2015. Also, there was no communication back to JM in response to his faxes and phone calls through August, September, October and November of that same year.

150. The Committee finds this citation to be proven, and such conduct is deserving of sanction.

Citation 54

151. The Code in section 7.2-2 prohibits lying to or misleading another lawyer and requires steps to be taken to correct misleading information in section 7.2-5. The LSA argues the conduct here was misleading and the Committee agrees.

152. Mr. Tahn knew the City had voided the compliance certificate, but it was not until sometime later that JM became aware of this. JM thought for many months, relying on the trust letter, that there was a valid RPR with compliance and the difficulty was simply getting a copy of it. Even when he became aware the compliance had been voided by the City, JM gave evidence that he never understood what was taking so long. He never got an answer from Mr. Tahn, and he thought the explanations of KC were "nonsensical".

153. Contrary to section 7.2-2, the actions of Mr. Tahn were misleading, and contrary to section 7.2-5 of the Code, the misapprehension of JM was never corrected. The Committee finds this citation to be proven, and such conduct is deserving of sanction.

Citation 55

154. In response to correspondence from the LSA, Mr. Tahn wrote one letter saying he was searching for the file and would send it. Following that, the LSA heard nothing and has seen no file.

155. While true that there was a letter sent to the LSA, it was wholly inadequate to be considered in any way a response to the complaint. In addition, Mr. Tahn failed to respond to the correspondence from the LSA by either sending the file or at a minimum advising the LSA he could not find the file. He simply did not reply, contrary to section 7.1-1 of the Code. The Committee finds this citation to be proven, and such conduct is deserving of sanction.

Complaint 7 (LSA) – Citations 47, 48 & 49

156. This complaint was sent to the LSA by a representative of T Bank alleging a failure by Mr. Tahn to register the appropriate postponement on title and a failure to provide a Solicitor's Final Report. The citations reflect those two alleged failings and also allege that Mr. Tahn did not have the relevant knowledge and skills required to handle this real estate matter, all contrary to section 3.1-2 of the Code.

157. Certain facts are not in dispute:
- Mr. Tahn acted for the purchasers of property and the T Bank in a real estate transaction where two mortgages were to be registered on title. Instructions to that effect were received by Mr. Tahn in April 2015 [Exhibits 114 & 115];
- The two mortgages were registered on title in July 2015 but in the wrong order of priority and T Bank asked Mr. Tahn to change the order of the two mortgages (a postponement); and
- The postponement was registered on title on December 15, 2017 [Exhibit 109].

Evidence and Argument of the LSA

158. The evidence of the representative from T Bank, NB, was that as of June 28, 2017 T Bank had not received the required postponement registered on title to change the mortgage priority nor had T Bank received a Solicitor's Final Report. On June 28, 2017, NB filed a complaint with the LSA.

159. By letter of July 12, 2017 Mr. Tahn wrote to the LSA acknowledging that the postponement was pending because he was waiting to hear from T Bank on "either [T] Banks form of Postponement to be provide to us or the information regarding signatures so that we may be able to produce same. In our experience with other lending institutions is that that institution provide their form to us for registration" [Exhibit 107]. No mention was made in that letter to the LSA about a Solicitor's Final report.

160. Following a series of emails between the LSA, T Bank and KC the postponement was filed and registered on title by December 2017.

161. As at the date of this hearing, the evidence of NB and of LSA conduct counsel was that no Solicitor's Final Report had been received.

162. The LSA argues that the citations are made out. In July 2015 Mr. Tahn was told by T Bank that the two mortgages were registered on title in the wrong priority and asked him to change the priority. In Alberta, a change of priority is arranged by registering a 'postponement'.

163. The LSA states that the postponement is not a T Bank form and the only unique thing is a signature, however, Mr. Tahn and his office kept asking for "direction" and a "[T Bank] form" [Exhibits 118 & 120]. Mr. Tahn further challenged, in his evidence, that the postponement was needed at all.

164. The closing on this transaction was June 2015, the postponement was finalized in July 2017 and was not registered until December 2017. No final report was ever provided notwithstanding both Mr. Tahn and KC stating in emails that they would do so. At no time did either of them say they had already sent the final report.

Evidence and Argument of Mr. Tahn

165. The evidence of KC about the postponement was that all documents would be provided by T Bank to effect the postponement. She kept checking but T Bank did not provide the correct form for registration until after the LSA complaint was filed.

166. Exhibits 123 and 124 are examples of postponement forms from two other banks. T Bank finally did provide their postponement form [Exhibit 109] which was filed at Land Titles. Although the form is in regulation, a signature from T Bank was required to finalize the postponement for filing.

167. A Solicitor's Final Report was filed, according to KC, in July 2015 [Exhibit 113]. The evidence of KC was that neither she nor Mr. Tahn considered a further final report to be necessary in 2017 after filing the postponement.

168. The evidence of Mr. Tahn confirmed that of his assistant KC.

169. He knew that a postponement was required under the *Land Titles Act*, but as to who would sign it at the T Bank and where the final report would be sent were always the issue for him, and it took T Bank a long time to give them that information.

Analysis and Conclusion

Citation 47

170. T Bank sought a postponement, a rearrangement of priority, of two mortgages on title as well as a Solicitor's Final Report. The first written request on these two matters was sent December 3, 2015 [Exhibit 116] which apparently followed two voice messages left in November of the same year.

171. T Bank provided a signed postponement to Mr. Tahn's office in July 2017 and the postponement was ultimately filed in December 2017.

172. The excuse given by Mr. Tahn for the two-year delay in filing the postponement is that he was waiting for a T Bank form that could be filed. His first letter back to T Bank in February 2016 sought "direction" on how to proceed and said "we understand each bank has their own form that is used in such a circumstance" [Exhibit 118]. KC similarly said in her email to T Bank in June 2016 that they were waiting for "the forms required for the postponed from [T Bank]" [Exhibit 120]. Again, in his July 2017 response to the LSA on the complaint, Mr. Tahn explains "our experience with other lending institutions is that that institution provide their form to us for registration" [Exhibit 107].

173. A careful review of the postponement filed in December 2017 [Exhibit 109] shows that it is identical to the form requirement under section 107 of the *Land Titles Act*, RSA 2000, c. L-4 and form 17 in the Forms Regulation (AR 480/1981). That is no surprise as the *Land Titles Act* requires a postponement be filed in the form prescribed.

174. The excuse from Mr. Tahn that he was waiting for T Bank to provide the proper form to be filed cannot be an answer to the citation of failing to provide timely and diligent service. There simply was no form for T Bank to provide as the form was prescribed by statute. The only thing T Bank had to provide was a signature by the proper party.

175. Mr. Tahn explained for the first time in his evidence before the Committee that he always knew of the form and was indicating to T Bank that really what he needed was a contact person who would sign the form.

176. Unfortunately, he did not state that in any of his correspondence to T Bank and the evidence of NB never indicated their understanding that an appropriate person to sign the prescribed form was what was required. Mr. Tahn continued to ask for the form but it was never provided. As a client from out of province, it is not surprising that T Bank was depending on their lawyer to tell them precisely what might be needed and in what format. Mr. Tahn never sent a completed form for signature to T Bank but apparently was waiting for them to prepare and send him the appropriate form signed.

177. At a minimum, it is clear that failure to file the postponement for two years after instructed to do so resulted from a lack of communication from Mr. Tahn to T Bank about precisely what he was seeking. He testified that he tried phoning T Bank but could never reach anyone or at least anyone who could provide the proper information. Yet, Mr. Tahn never once wrote to T Bank simply providing the prescribed form with all the information filled in and asking directly for the appropriate person to sign.

178. Two years to file a form prescribed by statute and only following a complaint to the LSA cannot be considered either timely or diligent service, contrary to the Code, notably section 3.2-1. The Committee finds this citation to be proven, and such conduct is deserving of sanction.

Citation 48

179. At the same time it sought the postponement, T Bank also sought a Solicitor's Final Report. They continued to make that request for the next two years [Exhibits 108, 116 and 117].

180. The evidence of KC on this point was contradictory. In oral evidence she said that the final report was actually provided to T Bank in July 2015 when the mortgages had first been filed [Exhibit 113]. In her words, the final report was "long done" and they did not consider a further final report necessary. This oral evidence is to be contrasted to her ongoing email exchange with T Bank, where on several occasions she said she would send a final report [Exhibit 108]. She described one of those instances as a typo.

181. T Bank emailed both KC and Mr. Tahn seeking the Solicitor's Final Report, and Mr. Tahn never responded. Neither he nor KC ever said to T Bank that in their view a final report had been provided in 2015, and clearly T Bank was of the view no final report had ever been provided.

182. Whatever the reason, again lack of communication between Mr. Tahn and his office with T Bank led to this citation. His failure to clearly and in writing respond to the request for a final report resulted in less than timely and diligent service, contrary to the Code, notably section 3.2-1. The Committee finds this citation to be proven, and such conduct is deserving of sanction.

Citation 49

183. The Committee is of the view that the evidence is insufficient to establish Mr. Tahn did not possess the relevant knowledge and skills required to handle his client's real estate matter and that this citation should be dismissed. It is our opinion that the problem that gave rise to citations 47 and 48 resulted from a lack of clear communication by Mr. Tahn to his client and not necessarily from a lack of skill and knowledge. Citation 49 is dismissed.

Complaint 13 (HA) – Citations 64, 65, & 66

184. This complaint was sent to the LSA by HA (a lawyer with the law firm M Law in Calgary) alleging Mr. Tahn failed to fulfill an undertaking respecting trust money and that Mr. Tahn

misled them about that trust money. This complaint resulted in three citations – failing to fulfill an undertaking (citation 64), misleading another lawyer (citation 65) and failing to reply to communications from the LSA (citation 66).

185. Some facts are not in dispute:

- On October 23, 2017, Mr. Tahn received a bank draft from a representative of his client, M Homes, in the amount of $85,000 which had a sticky note on the envelope instructing him not to deposit the money;
- He never did attempt to deposit the draft into his trust account;
- On October 23, 2017, Mr. Tahn sent an email to the opposing law firm M Law accepting trust conditions [Exhibit 133] which confirmed:
    - He was in possession of a $85,000 bank draft;
    - He was a member of the LSA in good standing;
    - He undertook to hold in trust the sum of $80,203.91 (the amount owing) pending either an agreement to release funds or a final court order determining the issues between the parties;
    - The funds would stand as security for the work performed by the finishing company and the finishing company would be relieved of the requirement to register a lien to enforce amounts owing; and
    - He was instructed to accept service of a Statement of Claim or other legal proceedings that might be filed by the finishing company against M Homes.
- By about December 21, 2017, M Law became aware that Mr. Tahn may no longer be counsel for M Homes. M Law made numerous requests of both Mr. Tahn and the new firm asking about the status of the money held in trust. By email of February 2, 2018 Mr. Tahn replied that “funds are in trust and all is the same”;
- Mr. Tahn never told M Law that the money was not in his trust account;
- The new firm representing M Homes took the position that the undertaking of October 23, 2017 as confirmed February 2, 2018 was sufficient;
- M Law did not agree and brought an application to have the funds paid into court. The new firm represented Mr. Tahn and on March 9, 2018, an order to pay into court was granted;
- On March 29, 2018, having confirmed with QB Accounting that no money had been paid into court, M Law brought an application for contempt against Mr. Tahn. Both the firm and Mr. Tahn were served with the application;
- On April 13, 2018, the date of the contempt application, no one appeared for Mr. Tahn. He was held in contempt and ordered to appear April 20, 2018 to show cause why he should no longer be held in contempt, failing which a warrant would issue for his arrest;
- On April 20, 2018, the Justice ordered that Mr. Tahn attend at A Bank to determine the authenticity of the bank draft, file an affidavit and present for questioning on the Affidavit. Mr. Tahn was present and represented by counsel;
- On or after April 20, 2018 Mr. Tahn attended at A Bank to determine the authenticity of the bank draft. A Bank advised and then confirmed by email of April 27, 2018 that the bank draft was fraudulent. There was no money to back up the draft;
- Mr. Tahn swore an Affidavit on April 30, 2018 and it was filed May 1, 2018. He also appeared for questioning on the Affidavit. By order dated June 13, 2018 the

contempt was ordered purged and costs of $10,000 were awarded against Mr. Tahn; and

- The costs were never paid and Mr. Tahn never did deposit money as the bank draft was fraudulent.

Evidence and Argument of the LSA

186. The evidence of HA was that a client of M Law was owed money by M Homes and M Homes agreed not to file a lien on the property so long as money in the amount of the lien was held in trust by M Homes' lawyer, Mr. Tahn.

187. From this agreement followed the sequence of events described above in paragraph 185 and detailed with more particularity in the complaint filed by HA with the LSA against Mr. Tahn on April 20, 2018 [Exhibit 131].

188. LSA conduct counsel, having received the complaint, sent letters to Mr. Tahn on April 26, 2018 and May 23, 2018 asking for a response. Receiving no reply, she then requested an Investigation Order on June 5, 2018.

189. After obtaining an Investigation Order, on June 5, 2018 the LSA investigator attended at the office/residence of Mr. Tahn. The investigator heard from Mr. Tahn that he was scared of the representative of his client and the investigator's notes reflect that fear expressed [Exhibit 51].

190. On June 7, 2018 the investigator sent a letter to Mr. Tahn directing that he produce, among other things, electronic copies of emails and PCLaw records related to monies allegedly held in trust or related to an $85,000 bank draft [Exhibit 177]. At Mr. Tahn's request his legal counsel was sent a copy of this direction from the investigator. Some hard copies of materials were received, but despite numerous emails between the investigator, Mr. Tahn and his assistant KC, no electronic emails were received and the electronic PCLaw records were never produced.

191. In an email dated November 13, 2018 the investigator reminded Mr. Tahn of the need to meet to discuss this complaint. No reply was received.

192. The investigator completed his Investigation Report and provided it to conduct counsel [Exhibit 186 – excerpt of Investigation Report].

193. Once in receipt of the Investigation Report, conduct counsel sent letters to Mr. Tahn dated January 16, 2019 and February 7, 2019 advising of the Investigation Report, providing a link to the report and asking for a response. There was no reply.

194. The LSA argues that by virtue of section 126 of the *Act* and Rule 119.19, Mr. Tahn had an obligation to put the trust money (the bank draft) that he had into his trust account. When he confirmed trust conditions in his email of October 23, 2017, that he held money in trust, he failed to meet the trust condition to "hold in trust the sum of $80,203.91". The LSA further argues the confirmation in February 2018 that the money was in trust, in combination with the fact that Mr. Tahn never told M Law the money was <u>not</u> in his trust account, was misleading.

195. In relation to the ultimate determination by A Bank that the bank draft was fraudulent, the LSA argues that is irrelevant to the trust conditions undertaken by Mr. Tahn. If it is relevant, the LSA argues that if Mr. Tahn knew the bank draft was fraudulent then his undertaking to hold money in trust "pending either the agreement to release … or … a final court Order determining the issues" could never be met and thus he breached or would breach that undertaking.

196. The position of the LSA is that the trust condition was to hold *funds* in trust, not a bank draft. There were never any funds in trust.

197. The LSA argues the evidence of conduct counsel and the investigator establishes citation 66. Mr. Tahn never responded to conduct counsel at all and his response to the investigation fell short of what was required.

Evidence and Argument of Mr. Tahn

198. In response to citations 64 and 65, Mr. Tahn gave evidence that he never deposited or attempted to deposit the bank draft but said that he did hold it in trust. His evidence was clear also that he never told M Law he was physically holding the bank draft and had not deposited it.

199. The vast majority of the evidence from Mr. Tahn (not contradicted by the LSA) focused on *why* he did not deposit or attempt to deposit the bank draft.

200. The evidence of Mr. Tahn was that when he received the bank draft on October 23, 2017 and a note accompanied it from his client not to deposit it. He looked carefully at the bank draft and, based on his prior experience with similar bank documents, he satisfied himself the draft was a valid bank document and "as good as cash". He held the document but did not attempt to deposit it on instructions from his client and based on his belief he was holding cash in hand.

201. By December 2017, new counsel represented his client. His client met any suggestion by Mr. Tahn that he needed to cash the bank draft to get the money to new counsel with resistance. In fact, according to the evidence of Mr. Tahn, the client physically threatened him and he was afraid for his life and the life of his family. These threats continued and escalated over the next several months.

202. Mr. Tahn did not report these threats to police nor did he mention the threats to M Law or anyone else until replying to the contempt finding in April 2018.

203. The evidence of Mr. Tahn is that he continues to be afraid for his life.

204. Mr. Tahn argues in response to citations 64 and 65 that although he never had $85,000 in his trust account, he was not in breach of his trust condition as he always had what he thought (at least initially) was a bank draft and he held the bank draft in trust. He physically held that bank draft which was "as good as money".

205. He says he never misled M Law because M Law never asked if money was in his trust account. He always held the bank draft and therefore held it in trust.

206. When asked about Rule 119.19 on cross examination, Mr. Tahn said he did not agree this Rule required him to put money in a trust account. His counsel in summation argued the sole effect of Rule 119.19 is a requirement to have a pooled trust account – not a requirement that all client money go into that account.

207. Mr. Tahn argues that citations 64 and 65 have an element of intent. He had no intent to breach an undertaking or mislead and thus these citations are not proven.

208. Alternatively, Mr. Tahn argues that the threats from his client were extenuating or mitigating circumstances that provide a defence to his failure to meet the trust conditions he accepted.

209. Regarding citation 66, Mr. Tahn argues that he always tried to respond to the investigator, but the investigator was never happy with what was provided. Mr. Tahn argues he was always doing the best he could and understood KC was also providing information to the investigator. In addition, his evidence was he was helping the custodian of his practice (after August 2018) with responses to the LSA and therefore he did not fail to respond as alleged.

210. After August 2018, Mr. Tahn said he told the LSA his lawyer would respond, including to the Investigation Report, and he left everything to his lawyer to do that.

211. Essentially, the argument of Mr. Tahn to citation 66 was that the demands of the LSA were unrealistic both in terms of the time given to respond and because he was, at the same time as this complaint, responding to other recent, active complaints and preparing for a LSA hearing on 15 other complaints.

212. He argues that the issue here should never have gone to the LSA. The LSA, he argues, "goes after" members and the panel does not understand how difficult the LSA is. He questioned why he was the focus of the LSA and why they could not simply come to his office to talk with him. He describes the LSA as a monolith which targets members with "laser precision".

Analysis and Conclusion

Citation 64

213. The Committee heard from both counsel in oral argument on the impact of section 126 of the *Act* and Rule 119.19. Section 126 of the *Act* provides in relevant part that every active member of the LSA "shall maintain an interest-bearing trust account … into which the member shall deposit money entrusted to or received or held by the member for or on account of the member's clients…" [emphasis added]. The requirement to hold a trust account and to deposit any money held for or on account of a client is mandated by this section. In addition, the Committee notes section 7.2-14 of the Code which states, in part, that a lawyer "must not give an undertaking that cannot be fulfilled".

214. Mr. Tahn suggests in his written argument that the purpose of section 126 of the *Act* is to accrue interest for the "Law Society Foundation". The purpose of the section is irrelevant. The statutory wording is very clear – a member of the LSA shall deposit a client's money held into an interest-bearing trust account. Mr. Tahn held a bank draft

which he described as good as cash yet there can be no doubt that Mr. Tahn did not deposit the bank draft (the cash) into his trust account as statutorily required.

215. Rule 119.19 requires that "[e]very law firm that receives trust money shall deposit the money into a pooled trust account of the law firm on or before the next banking day"[5]. The provision is mandatory. Trust money shall be deposited into a pooled trust account; it shall be done on or before the next banking day.

216. Again, there can be no doubt that Mr. Tahn did not deposit funds into a pooled trust account on or before the next business day following receipt.

217. Mr. Tahn said in direct examination that he never had $85,000 in his trust account but argued that he was not in breach of his trust condition as he always had what he thought (at least initially) was a bank draft which he did hold in trust.

218. The Committee cannot accept the position of Mr. Tahn. The requirement to deposit trust money in a trust account within a business day is clear in the wording of section 126 of the *Act* and Rule 119.19. He never deposited the money and the fact that he held the draft clearly violates the statutory requirement, even leaving aside the Rule that deposit must be within one business day. No case law or decisions were offered which cause the Committee to interpret these provisions in some way other than as written.

219. At no time did Mr. Tahn satisfy the undertaking nor did he attempt to change the undertaking in writing, all contrary to section 7.2-14 of the Code. The commentary to section 7.2-14 is clear that any variation of a trust condition must be in writing.

220. Mr. Tahn argues that he acted on instructions of his client but that is no excuse for a breach of both the *Act* and the Rules. As noted by his counsel in oral argument, the appropriate course of conduct was for Mr. Tahn to tell his client he could not breach his statutory and professional obligations and return the bank draft.

221. Alternatively, Mr. Tahn acknowledged that the undertaking was not met but argued extenuating or mitigating circumstances. Those circumstances were his interpretation of the validity of the bank draft and primarily, fear for his personal safety.

222. The Committee cannot accept either of those circumstances as an excuse for his breach of his undertaking or indeed even making the undertaking in October 2017. He knew when he gave the undertaking that he had no intention of depositing or attempting to deposit the bank draft and thus clearly breached section 7.2-14 of the Code. He gave an undertaking that he could not fulfill and had no intention of fulfilling.

223. There were several points between October 2017 and April 2018 when Mr. Tahn might have either attempted to meet his undertaking, sought a variation of it or explained to his client why he could not follow instructions. However, he repeatedly failed to follow any of those options and repeatedly reached out to his client expecting his client to resolve not only his legal problems but also the issue with his undertaking.

224. The importance of trust conditions or solicitor's undertakings cannot be understated and are foundational to the trust the public has in the profession. Lawyers must be relied

[5] The Rule is currently 119.22 but the wording is identical.

upon to honour their trust obligations. In this case the breach was not trivial or technical in nature but has resulted in ongoing litigation which is still before the court some three years later.

225. That obligation lies on no one but the lawyer who gave the undertaking. The commentary to section 7.2-14 is clear that the obligation is a personal one and M Law was entitled to expect Mr. Tahn would personally carry it out. It is no answer for Mr. Tahn to say that he thought his client was going to work out the issues that were arising.

226. The Committee accepts the evidence of Mr. Tahn that sometime after October 23, 2017 he became afraid of his client and actually feared for his life. This is not an answer to this citation and breach of the Code although it may be raised at the sanction phase as constituting mitigating or extenuating circumstances.

227. Mr. Tahn gave his undertaking in October 2017 knowing that he was not going to fulfill it as he never intended and never did deposit the funds into his trust account. The Committee finds this citation to be proven, and such conduct is deserving of sanction.

228. Mr. Tahn suggests in several paragraphs of his written argument that he is in breach of a second undertaking, failing to file a Statement of Defence. The LSA has not advanced this as a conduct issue and the Committee declines to address this further.

Citation 65

229. Mr. Tahn argued orally that the citation of "misleading" a lawyer (and indeed the previous citation of failing to honour trust conditions) connotes a reflection of intent. He argues that as he had no intent, the citation is not made out. Written submissions include an argument there were no "secret motives" or that Mr. Tahn was "insincere". It is argued that Mr. Tahn met his obligation under section 67 of the *Act* to establish money has been properly dealt with.

230. The Committee does not agree.

231. The statutory obligation in section 126 of the *Act* as well as Rule 119.19 are clear regarding trust funds. There is no reflection of intent in those provisions. They are straightforward and explicit. As noted in paragraphs 213-215 above, <u>all</u> clients' money <u>shall</u> go into a member's trust account. Mr. Tahn gave an undertaking he did not fulfill and in addition mislead M Law when he said he had the funds "in trust". He did not. He was simply holding a bank draft (as good as cash in Mr. Tahn's words) which he never deposited or even attempted to deposit. In February 2018, Mr. Tahn again misled M Law when he said by email "that funds are in trust" [Exhibit 138].

232. The Committee finds the actions of Mr. Tahn to be misleading and contrary to section 7.2-2 of the Code. The Committee finds the citation to be proven, and that such conduct is deserving of sanction.

233. In his written argument Mr. Tahn says the LSA should have investigated others but that is irrelevant to the undisputed fact that Mr. Tahn held, for months, a bank draft (cash) which he never deposited in his trust account as required.

234. Mr. Tahn also says in his written argument that the LSA had no authority to demand he close his trust account three weeks before his suspension on May 15, 2018. Again, the Committee finds this irrelevant to the citation. Mr. Tahn received the bank draft (the cash) on or about October 23, 2017 and never deposited it, or attempted to deposit it, in his trust account. That is the citation and when his trust account closed some 6 months later is irrelevant to that citation.

Citation 66

235. The Committee's ruling under complaint 9 applies equally here. Discussion of why this issue ever went to the LSA is not relevant to this Committee's deliberation. How this issue "ought" to have been dealt with does not lie with the Committee. The facts are clear that HA on behalf of her law firm M Law filed a complaint with the LSA and the LSA then had a statutory obligation under section 53 of the *Act* to review the complaint.

236. Mr. Tahn does not dispute that he never replied to correspondence from conduct counsel contrary to section 7.1-1 of the Code although there is some dispute as to whether and how sufficiently he responded to the investigator.

237. The written argument from Mr. Tahn suggests that any evidence or material the LSA needed was a matter of public record as there was a concurrent court action. This suggestion that the LSA could have proactively sought the information it wanted is repeated when Mr. Tahn says the investigator could have at any time just "dropped in on Tahn when the spirit moved" him. These suggestions fly in the face of the express language in the Code, section 7.1.-1 "A lawyer must reply promptly and completely to any communication from the Society." A lawyer must reply.

238. The Committee finds that the citation is proven, and such conduct is deserving of sanction.

Complaint 4 (SH) – Citations 7, 8 & 9

239. Complaint 4 was a complaint by a former client of Mr. Tahn's (SH). An investigation of that complaint gave rise to three citations:

- Failing to provide competent, timely, conscientious and diligent service to his client by not updating her on the status of her matter and failing to move her matter forward (citation 7);
- Failing to provide the client with Statements of Account (citation 8); and
- Breaching Rule 119.21(4) when he paid an invoice for legal fees without providing a billing to his client (citation 9).

240. There are a few undisputed facts:
- SH was a client of Mr. Tahn's who signed a Professional Fee Agreement on November 28, 2013 [Exhibit 208];
- SH sought a Will (with personal directive and enduring power of attorney) which was completed and is not the subject of this complaint;
- SH also sought a divorce and property title transfer;

- SH signed a Divorce and Property Agreement [Exhibit 209] then a Certificate of Independent legal advice on June 19, 2014. Her husband signed a Certificate of Independent legal advice before his lawyer on August 21, 2014;
- The title transfer was effected June 16, 2016 when SH and her husband went to the Calgary Land Titles Office and two Certificates of Title were issued [Exhibit 212]; and
- The divorce was finalized some time in late 2017.

Evidence and Argument of the LSA

241. The evidence of SH was that she first attended at the office of Mr. Tahn on November 28, 2013 when she signed a Professional Fee Agreement. She and her husband had been separated for more than a year by then and she gave Mr. Tahn the separation agreement they had.

242. SH and her husband owned two cars and they wished to have one each. They also owned two pieces of property, a house in town which would go to SH and an acreage which was to go to her husband. SH was quite clear that neither she nor her husband owned any assets in Taipei or anywhere else that needed to be considered. Neither of them was seeking support from the other.

243. SH recalled being told the divorce petition might not be accepted because no spousal support was sought and because the incomes of herself and her husband were identical. She denied she was ever told that it was rejected, and she denied telling Mr. Tahn to hold the divorce and focus on the property transfer.

244. In March, April and May of 2015 and then on November 23, 2015, SH sent a series of emails to Mr. Tahn and his assistant KC asking about the status of her divorce and for the land transfers. These emails were entered as evidence [Exhibit 210]. A few email replies from KC were received noting that she would either get the material to SH or that she was looking into the matter.

245. SH did recall that Mr. Tahn had sent some documents to Land Titles but they were never completed. She was told they “were stuck in the process” but was never told they were rejected. She also recalled being told that the property was considered “foreign owned” because it was not in Calgary and therefore would be more difficult to deal with.

246. On June 16, 2016 at the request of her husband, SH went with her husband to the Calgary Land Titles Office. SH was adamant that Mr. Tahn did not suggest this, nor did he provide her with any documentation to take to Land Titles. She says she went because she was getting nothing from her lawyer and her husband suggested it. That same day, two Certificates of Title were issued effecting the land transfer sought by SH and her husband [Exhibits 211 & 212].

247. By email of July 11, 2016, SH again asked for the status of her divorce and also asked to make an appointment [Exhibit 213]. She received a reply email saying they would get back to her, but she heard nothing further.

248. At the suggestion of a friend, SH reached out to the E Society to try to get an appointment with Mr. Tahn. With their help, she sent an email to KC on November 22, 2016 seeking an appointment to the following email addresses: [...]@[B]law.com and [...]@christahn.ca [Exhibit 214]. No reply was received. On February 2, 2017, she sent a fax again seeking to meet with Mr. Tahn to which there was no reply. SH followed up with an email dated February 24, 2017 attaching the fax.

249. Nothing happened and on April 24, 2017 SH made a complaint to the LSA which is the subject of this hearing.

250. The meeting requested by SH eventually took place on July 18, 2017 when SH went to the office of Mr. Tahn with a representative from the E Society:
    - At this meeting SH asked for her accounts and also asked whether she owed them anything. SH was adamant that she had never received statements of account from her lawyer before this date. She said also that although she saw her accounts at that meeting, she did not get copies until sent by email some time later because of computer problems;
    - At the meeting (or soon thereafter) SH signed a Joint Statement of Claim for divorce. SH thought she had signed this or something similar when she first retained Mr. Tahn in 2013; and
    - SH says she was told by Mr. Tahn and KC at the meeting they were having computer problems so could not give her copies of her accounts. In addition, she was told that she owed nothing but they would send her final updated accounts once the computer problems were fixed.

251. SH emailed Tahn Law on July 21, 2017 asking for updated Statements of Account [Exhibit 220]. She was looking for written confirmation she owed no money, which is what she was told at the meeting three days before. A similarly worded email was sent September 15, 2017 [Exhibit 221].

252. SH received an email from KC on November 2, 2017 which said the accounts were attached [Exhibit 222]. SH cannot remember if the accounts were actually attached but conceded they may have been.

253. On December 8, 2017, SH received an email from KC saying $1,159.40 was owed [Exhibit 223]. SH is certain this is the first she heard of this money owing as in July 2017 she was told she owed nothing. On December 11, 2017 SH emailed KC and Mr. Tahn asking how the money owed was calculated [Exhibit 224] but she never received a reply and never paid the money.

254. The central evidence of SH was:
    - She first saw Mr. Tahn in November 2013 with what she felt was a simple division of property and divorce request;
    - The division of property happened when she and her husband went to Calgary Land Titles in June 2016 and handled transfers themselves;

- The divorce was finally completed in late 2017;
- At no time did she tell Mr. Tahn to slow down or stop steps needed to get the divorce;
- She was not aware of anything she or her husband did which may have contributed to the delay; and
- She never saw any of her accounts until the July 2017 meeting and did not get actual copies of them until some months later.

255. The LSA began its argument by invoking section 67 of the *Act*: "When it is established or admitted in any proceedings under this Division that a member has received any money or other property in trust, *the burden of proof that the money or other property has been properly dealt with lies on the member*." [emphasis added]

256. The LSA argues that citation 7 (failing to update client on the status of the matter and failing to move the matter along) is made out by the basic timeline and lack of any specific explanation for the delay. SH first went to see Mr. Tahn in November 2013 for what appeared to be a very straightforward divorce and division of property. The husband and wife were in agreement on all matters including property division, child custody and support.

257. More than two years later, on June 16, 2016, SH and her husband went to Land Titles and got the property transferred. SH is clear she was never told by Mr. Tahn that the property transfer documents sent to Land Titles by him were refused. SH is also clear that she and her husband did not go to Land Titles at the suggestion of Mr. Tahn nor with any documents prepared by him.

258. A Joint Statement of Claim for Divorce and Supporting Affidavit was signed by both parties in 2014 and was rejected by the court yet SH says she did not know of the rejection. A second set of materials was filed September 11, 2017. The LSA argues that the February 2014 documents [Exhibit 232] do not vary from those re-signed and filed with the court in 2017 [Exhibit 218].

259. Many emails were exhibited dating from between 2014 and 2017 in which SH sought information from her lawyer about the Land Titles transfer and the status of her divorce. There was generally no response to any of those inquiries and no documentation explaining the length of time.

260. The LSA argues that on citations 8 and 9, the onus lies with Mr. Tahn to explain why accounts did not go out and why Mr. Tahn was paid without providing those accounts. The LSA further argues the onus is not met.

261. SH was clear that she saw no accounts until the July 2017 meeting and did not actually get copies, due to computer issues at Tahn Law, until fall of the same year.

262. Mr. Tahn responded to the question about the accounts by giving evidence that she *must* have gotten the accounts because PCLaw (the accounting program used in his

office) automatically sent them by email every time they were generated. His assistant KC clarified that in PCLaw she would have clicked on a button “send by email” but there would be no record of that account having been sent in the “sent” folder of Outlook so there is no way to confirm.

263. The LSA called evidence in response to explain exactly how PCLaw generated and sent accounts. The investigator had access to Mr. Tahn’s computer records so checked those as well as the User Guide for PCLaw for the relevant time period. The User Guide indicates an account was sent via email to the client if the appropriate “send by email” box was checked. If that box was checked, the account was sent and a record of it stored in the “sent” folder of the lawyer’s Outlook. Mr. Tahn’s email files from June 2012 to December 31, 2014 as recovered from T (the law firm where Mr. Tahn was working) were then examined. There were no accounts in the “sent” folder.

264. The LSA refers to the following Accounts [Exhibit 219]: November 2013; December 2013; and May, June, July, September and December of 2014. The LSA notes various payments to Christopher T. Tahn Professional Corporation yet no proof the client received the invoices or Statements of Account.

Evidence and Argument of Mr. Tahn

265. Mr. Tahn asserted that he always moved this matter forward but sometimes found that difficult for several reasons. First SH was, in his view, slow to respond or meet and made at least three trips to Taipei during which time nothing happened. In addition, her husband was very slow to take action and review or sign off on documents.

266. The evidence of Mr. Tahn was that he explained to SH the divorce application may be refused because no support was being sought and because the income of SH and her husband was identical. He never did see the husband’s proof of income because SH refused to allow him to seek this. When the divorce was rejected by the courthouse for the anticipated reasons, his evidence was that he explained this to SH. At some point, she asked him to slow down or stop pursuing the divorce and to instead focus on the title transfers. Once those transfers occurred in 2016, he again pursued the divorce and it was obtained in 2017.

267. Mr. Tahn says he explained to SH that under the *Land Titles Act*, land outside Edmonton and Calgary is considered “foreign” and the Land Titles office is much stricter on details. The initial application was refused by Land Titles because of an error with the jurat. His evidence was that he let SH know the Land Titles material was rejected by phone November 3, 2014 and then again February 3, 2015 and then by email. Some time in the spring of 2015 he resubmitted the Land Titles material after getting the Dower Affidavit signed by the husband.

268. In the summer of 2015, the second set of Land Titles documents were again rejected. Mr. Tahn’s evidence was that he told SH of this. He also told her that instead of going through lawyers for the title transfer, it might be quicker for her and her husband to go to

Land Titles personally which they did in June 2016. He gave her the relevant documents to take with her.

269. Mr. Tahn argues that part of the delay for the title transfer arose from the difficulty of having the husband get independent legal advice and sign the Dower consent for disposition. In response the LSA referred the Committee to section 25(2) of the *Dower Act,* RSA 2000, c.D-15 as well as the decision of *Phan v. Lee,* 2005 ABCA 142 (paragraph 10) and argued no dower release was required. Mr. Tahn did not agree and remained adamant that a dower release had to be signed by both parties.

270. Mr. Tahn denied receiving or seeing the letter sent by email on November 22, 2016 by the E Society and says it was directed to an email he was no longer using [...@christahn.ca]. He did receive the February 2, 2017 letter and says he immediately phoned to set up a meeting which occurred in July 2017.

271. At the July 2017 meeting, Mr. Tahn says copies of all accounts were given to SH and points to an email from SH to the LSA confirming this [Exhibit 231]. On the accounts, Mr. Tahn gave evidence that they *must* have gone to SH because that was an automatic program in PCLaw. He also said that at the meeting he told SH no more charges would be directed to the account but due to current computer issues he could not verify if anything was owing.

272. Mr. Tahn acknowledged the accounts were not clear in terms of what was owing. The October 17, 2015 account has the wrong amount owing (it says $1,128.75 but should say $899.40) and the client ledger [Exhibit 235] is unclear whether any money is owed as of February 2017.

Analysis and Conclusion

Citation 7

273. The citation of failing to provide competent, timely, conscientious and diligent service (which is contrary to the Code, section3.2-1) is limited to two allegations: (1) not updating SH on the status of her matter and (2) failing to move her matter forward.

274. Mr. Tahn urges the Committee to carefully review the accounts in support of his argument that service was timely, conscientious and diligent [Exhibit 219]. The accounts reveal an initial meeting on November 28, 2013 and four subsequent meetings between then and June 18, 2014 when a meeting was held to finally review divorce documents plus complete a certificate of independent legal advice. No further meetings were recorded before the filing of SH's complaint with the LSA in April 2017. There are brief telephone discussions recorded in the November 2014 and October 2015 accounts.

275. Mr. Tahn argues part of the delay was because of the requirement to get a dower consent on both pieces of property plus his inability to get the client and her husband to complete the requisite forms. He refers us to the Divorce and Property Agreement

between the parties as requiring the dower release (clauses 8.6 and 9.6) arguing that this agreement applies notwithstanding section 25(2) of the *Dower Act*.

276. Mr. Tahn uses the phrase dower consent and dower release as synonymous at various times in his argument. He simply argues that he was required to fulfill this step notwithstanding section25(2) of the *Dower Act* because of the clauses in the agreement.

277. The LSA argues dower consent was never required. They distinguish between “dower consent” and “a release of dower” arguing that no consent was necessary for the transfers but a release may have been beneficial.

278. There is some question for the Committee whether a release can be required by agreement given the wording in section 25(2) of the *Dower Act*. However, even if there was such a requirement the fact is that it was two and a half years after first meeting with Mr. Tahn, that SH finally got the land title transfer.

279. Mr. Tahn argues that SH instructed him not to pursue the divorce in favour of getting the titles transferred, yet SH denies this and there is no documentation that SH requested the divorce be held. In addition, there is no documentation by letter or email from Mr. Tahn to SH confirming such instructions. To the contrary, there is correspondence from SH over the course of two years asking the status of her divorce[6]. Only after the complaint by SH to the LSA in April 2017 was the divorce finalized.

280. Mr. Tahn argues that he told SH the Land Titles documents had been rejected, but SH denies this and there is no documentation on that point. Two and a half years after first meeting with Mr. Tahn, SH and her husband personally went to the Land Titles Office to effect title transfer. There is a dispute as to whether Mr. Tahn suggested this or whether SH went at the behest of her husband.

281. Two and a half years to effect title transfer and four years to finalize a divorce, the latter only after a complaint to the LSA, cannot be considered either timely or diligent (contrary to section 3.2-1 of the Code) even if a dower release or consent was needed. This is particularly so where the parties had been in agreement on all aspects of both transactions from the time SH initially retained counsel. The Committee finds this citation to be proven, and such conduct is deserving of sanction.

Citations 8 & 9

282. A review of the accounts [Exhibit 219] reveals that Mr. Tahn did pay invoices from trust funds between November 2013 and October 2015. The evidence from SH was that she never saw any statement of account until a July 2017 meeting, almost four years after first retaining Mr. Tahn.

[6] Emails April 23 and November 23, 2015; email July 11, 2016; Letters from E Society November 22, 2016 and February 2, 2017.

283. The LSA introduced evidence detailing the process on how those accounts would be mailed automatically to clients. The investigator also personally looked at the emails in the 'sent' folder of Mr. Tahn's emails from the relevant times and found no accounts in that folder thus supporting the evidence of SH that no accounts were sent.

284. The Committee finds, based on a combination of the evidence and the reverse onus in section 67 of the *Act* that billings were not sent to SH in advance and yet invoices were paid contrary to Rule 119.21(4). Citations 8 and 9 are proven and such conduct is deserving of sanction.

Complaint 5 (LSA) – Citations 10 - 36

285. Complaint 5 arises from what started as an LSA audit of Christopher T. Tahn Professional Corporation. The complainant in this instance was the LSA. There were no individual complainants although the audit and subsequent investigation did lead to citations respecting certain individual or corporate files of Mr. Tahn.

286. The LSA conducted an audit of financial and other records under Rule 119.33 for the period of October 1, 2014 – May 30, 2016:
- The audit work began in July 2016 and was signed as final on March 1, 2017;
- It was done by auditors with D Firm who were on contract with the LSA. They worked only on LSA matters out of the LSA office on LSA computers using the LSA network;
- Once a draft report was completed there was a quality assurance review within D Firm for any obvious errors or omissions, then it was given to the LSA; and
- The final Audit Report was signed off by the Trust Safety Manager of the LSA on March 1, 2017 [Exhibit 266]. The frontpage letter is a template with file-specific matters added in. The audit findings with the highest risk noted are specifically tied to many of the citations – finding 1 (citations 18 & 19); finding 2 (citations 24, 25 & 26); finding 3 (citation 27); finding 4 (citations 28 & 29); finding 5 (citation 30); and finding 7 (citation 31).

287. The Trust Safety Manager shared preliminary concerns arising from the audit with other departments of the LSA, notably Conduct and Investigations in a memo dated August 31, 2016 [Exhibit 252].

288. The manager of Conduct signed an Investigation Order on September 14, 2016 authorizing an investigation [Exhibit 255].

289. On October 31, 2016 a copy of the Investigation Order and a Part 3 request (a request for information under Part 3 of the *Act*) were sent to Mr. Tahn via email, which was acknowledged [Exhibits 256 & 257]. The Part 3 letter directed Mr. Tahn to produce specified client files (and all related materials including emails) and to provide a copy of his PCLaw data back-up. PCLaw was the accounting program used by Mr. Tahn in his law business.

290. PCLaw is practice management software commonly used by law firms to track matters, time, billing and expenses. PCLaw's accounting system is designed to meet trust accounting requirements. All receipts, withdrawals and billings are tracked in client trust ledgers. Client ledgers, trust accounts and general accounts can be reconciled, and

reports printed at any time. PCLaw includes an audit-trail feature which creates a log of all system entries by transaction number, on the date the transaction was entered into the system, regardless of the date entered by the user. Numbers can be out of sequence if someone with administrative rights makes entries because the date of the entry can be changed, but the PCLaw sequential numbering would reflect that.

291. In addition to material eventually received from Mr. Tahn, the investigator also received:
- Copies of cancelled cheques from the S Bank for the period July and August 2015, pursuant to a court order dated June 30, 2017 [Exhibit 260]; and
- A Review of Accounting Data report for July and August 2015 dated October 24, 2017 prepared by KV at the request of the investigator [Exhibit 267].

292. A final Investigation Report and a supplemental report, both signed December 21, 2017, were sent to conduct counsel [Exhibits 253 & 254].

293. Conduct counsel sent both Investigation Reports to Mr. Tahn by email on January 17, 2018 (then again February 1 and February 12, 2018), telling him how to access all the supporting material and asking for a response [Exhibit 240]. On April 25, 2018, a final email was sent saying the review was complete [Exhibit 244]. There was no response.

294. For purposes of the various citations in this complaint, “West Decade” refers to West Decade Investment Corporation which was registered as an Alberta corporation on June 28, 2012 and struck January 2, 2017. The Director of the corporation was Mr. Tahn and during the course of hearing evidence it was referred to as his company. Also in these complaints, “962” refers to 962[…] Alberta Ltd. In the Investigation Report SC is described as an “Associate” of 962; her mother, CD is the Sole Director and Shareholder of 962.

Evidence and Argument of the LSA

295. The LSA invokes section 67 of the *Act* for citations 13, 16, 17, 18, 22, 23, 24 and 25. Section 67 is a reverse onus provision providing that where a member has received money in trust, “the burden of proof that the money or other property has been properly dealt with lies on the member.” The LSA argues Mr. Tahn has failed to meet his burden and each of the noted citations is established.

JT/RA

296. Mr. Tahn represented both JT (the borrower) and AF (the lender) in this transaction in December 2014 - January 2015.

297. AF was approached by SC to loan money to JT. AF and SC were both realtors in the same office and had been for several years. AF understood that JT was co-owner of a property and needed money to renovate. AF reviewed Powers of Attorney signed by the other three co-owners in favour of JT and was assured of their authenticity by SC who said she had witnessed the other three co-owners sign the Powers of Attorney.

298. SC told AF of Mr. Tahn. AF advanced the loan through his company […]631 Alberta Ltd. by giving certified cheques to Mr. Tahn. AF never saw the consultation agreement or the Irrevocable Direction to Pay signed by the borrower, JT. AF also never saw Statements

of Account from Mr. Tahn but acknowledged that may have been because as lender, he would not pay the legal fees.

299. AF was unaware that Mr. Tahn was also representing JT.

300. The transfer of title making JT a co-owner on title occurred November 25, 2014 and was registered at Land Titles on December 3, 2014 [Exhibits 310 & 311]. RL witnessed that land transfer.

301. On December 1, 2014 the Powers of Attorney executed in favour of JT were witnessed by RL. SC also witnessed and then signed the Affidavit of Execution [Exhibit 312].

302. On December 5, 2014, SC sent to Mr. Tahn the Powers of Attorney as well as mortgage instructions which were signed by SC and RL.

303. Mr. Tahn was aware by 2014 that RL had been the subject of disciplinary proceedings before the Real Estate Counsel of Alberta (RECA) and had voluntarily withdrawn his membership. He was also aware that RL was falsely representing himself as a licensed lender [Exhibits 332 & 333].

304. The client ledger [Exhibit 334] says that on December 4, 2014 (one day before the mortgage instructions were sent by SC) Mr. Tahn received $90,000 from AF. He forwarded $64,425.50 to JT on the same day.

305. On December 5, 2014, Mr. Tahn received the mortgage instructions as well as the Direction to Pay and the Consultation agreement. The latter directed that 962 was to receive a consultation fee of $20,000 plus GST. The client ledger shows that on December 5, 2014, 962 was paid $19,000 as consultation fee.

306. In 2015 the other three co-owners of the property became aware of a mortgage on their property in favour of 631 Alberta Ltd. It came to light that JT had himself put on title without the knowledge of the three co-owners and the Powers of Attorney were fraudulent. JT was charged criminally, and the three co-owners eventually had JT removed from title and the AF mortgage removed.

307. The LSA argues that citations 10-14 are made out as Mr. Tahn:
- Facilitated an improper purpose contrary to section 3.2-13 of the Code by assisting in a fraud. It is the position of the LSA that Mr. Tahn should have looked behind the Powers of Attorney because:
    - The transactions were very rushed;
    - JT had a poor credit rating and Mr. Tahn knew this; and
    - RL, who signed the mortgage instructions and witnessed the Powers of Attorney, was subject to disciplinary proceedings with his regulatory body (RECA), had withdrawn from that body and was actively involved in trying to “scam’’ others, all of which was known by Mr. Tahn.
- Acted in a conflict of interest when he failed to advise his clients of joint representation contrary to the section 3.4-5 of the Code;
- Failed to keep his client, AF, informed;

- Failed to provide Statements of Account to his client before disbursing trust money contrary to Rule 119.21(4); and
- Failed to follow mortgage instructions when he did not verify the identity of the mortgagors.

R Engineering and C Development

308. JS is a director/shareholder of R Engineering Incorporated (R Inc.). This transaction was January 2015. R was the lender of funds to C Development Incorporated (C Inc.). Mr. Tahn represented R Inc. and C Inc. had independent legal counsel.

309. JS gave evidence in this matter and said:

- R Inc. made loans to C Inc. through a broker, SC;
- He understood Mr. Tahn was SC's lawyer and the lawyer's role was to ensure all the documentation was done correctly to secure a third mortgage in favour of R [Exhibit 279];
- He never met Mr. Tahn or talked with him and never authorized SC to speak on his behalf;
- He knew SC would get a consulting fee but would not have agreed to the loan had he known it was to be so high ($8,000), resulting in an interest rate that he termed as usurious;
- He never saw any of the correspondence between Mr. Tahn and counsel for C Inc. nor did he ever see Statements of Account; and
- Ultimately, he found his mortgage in fourth position registered against eleven condo units, contrary to his expectation and significantly diluting his security.

310. The client ledger for R Inc. and mortgage with C Inc. [Exhibit 246] shows a negative balance in trust funds resulting from the disbursement of $8,000 to 962 Alberta Ltd. on January 25, 2015 prior to receipt of the mortgage funds. Trust funds are deemed to be disbursed on the day the cheque is dated, which was January 25, 2015. Mortgage funds were not deposited to the bank until January 27, 2015 [Exhibit 261].

311. The LSA acknowledges both in oral and written submissions that the sequential numbering in PCLaw indicates the date on the cheques could well have been a typo such that the cheque was not actually written until after the funds were received.

312. The client ledger also shows the disbursement of $2,600 for legal fees via Cheque #150, dated January 30, 2015 (transaction #12036). The production of the corresponding invoice is also dated January 30, 2015 but its transaction #15498 was shown to have been done in July 2015 in KV's evidence. Therefore, the account was produced long after the fees were taken from the Trust Account. Mr. Tahn gave evidence that he always paid himself as authorized by the client agreement and then provided invoices to the client when it became appropriate to do so.

313. The LSA argues that citations 15 and 17 are made out as Mr. Tahn:
- Never spoke with or received instructions directly from his client JS; and
- Did not provide Statements of Account to his client JS and thus breached Rule 119.21(4).

314. The LSA submits that citation 16 is not made out given the potential issue identified by the PCLaw sequential numbers, that the cheque was simply misdated.

OM

315. This transaction in February 2015 involved a private loan of $143,000 from F Corp (the lender) to OM (the borrower). Mr. Tahn helped OM get this loan and refinance his condo so that he could have money to pay the legal fees related to a family law legal issue on which Mr. Tahn was acting.

316. OM signed a consultation agreement to pay a total of $25,000 to West Decade and 962. He did not know West Decade was the corporation of Mr. Tahn. OM also signed an Irrevocable Direction to Pay $12,500 each to West Decade and 962.

317. OM did get the loan but never received a Statement of Account.

318. The OM client ledger [Exhibit 248] shows that on February 26, 2015, Christopher T. Tahn Professional Corporation (not West Decade) was paid $12,500, 962 was paid $12,100 and KC was paid $400. OM was unaware of the payment to KC and did not authorize it.

319. The client ledger also shows Christopher T. Tahn Professional Corporation was paid $2,669.41 on February 26, 2015 in payment of a purported invoice. The PCLaw transaction numbers for each of these transactions were in the 12000's.

320. The ledger also shows that on February 26, 2015 an invoice for $2,669.41 was issued, however, as noted in the report by KV, the PCLaw transaction number is in the 15000's indicating that this was entered into PCLaw at some later date. This is clear because the transaction numbers in March revert to the 12000's. OM says he never received the invoice.

321. In November 2015, there was just over $17,000 in the OM trust account and OM went to Mr. Tahn's office to pick up a cheque for that money. His family law matter had concluded, the related fees were paid out of trust funds and he no longer needed legal services from Mr. Tahn.

322. At that time, they had a discussion about a pub Mr. Tahn was opening and the fact that Mr. Tahn needed money for that purpose. Mr. Tahn asked OM if he would loan him $15,000 with a return of $20,000 once the pub was operational. OM agreed and left the office with a cheque for just over $2,000, leaving $15,000 with Mr. Tahn as a loan. There was no independent legal advice offered, sought or obtained by OM. There was no paperwork to document this loan.

323. The client ledger shows a $15,000 disbursement on Nov 10, 2015 noted as "loan repayment". The evidence of SF was that during his investigation he received no information to explain this loan repayment.

324. The LSA argues that citations 18-20 are made out because Mr. Tahn:

- Did not give Statements of Account to his client OM and thus breached Rule 119.21(4);
- Borrowed funds from his client, OM, without referring him to obtain independent legal advice; and
- Failed to cooperate with the LSA when he failed to respond to requests for an explanation for the entry of the $15,000.00 “loan repayment” on his client’s trust ledger.

B and R

325. Mr. Tahn knew MB socially and helped him get a private loan from R Inc. to refinance his home. In this 2015 transaction, Mr. Tahn represented MB (and his wife, joint owners of their house) and R Inc.

326. MB and his wife signed a Consultation Agreement [Exhibit 262] to pay the sum of $20,000 to West Decade and 962. The evidence of MB was that he did not know who owned either company until told by the LSA investigator. The evidence of JS for R Inc. was that he was unaware of the consultation agreement and did not know who owned either company.

327. An Irrevocable Direction to Pay [Exhibit 263] was also signed by MB and his wife. Mr. Tahn was directed to pay West Decade $7,500 and to pay 962 $12,500. A review of the client ledger [Exhibit 247] shows that on March 2, 2015 $10,000 was disbursed to 962 and $10,000 to Christopher T. Tahn Professional Corporation (not West Decade and in a different amount) as consulting fees.

328. The Investigation Report states that RL worked for 962, that RL owed C. Tahn Professional Corporation $2,500 for legal work and SC agreed to take $12,500 minus $2,500.

329. The ledger also shows that Mr. Tahn was paid on May 10, 2015 and that an invoice was prepared on May 11, 2015. Based on the transaction number in the ledger, the invoice was actually created in July 2015. JS says he never received a Statement of Account.

330. The Initial Disclosure Statement and the Mortgage Commitment [Exhibits 286 & 287] do not reflect a consultation fee and state that the mortgage held by R would be in third position. The mortgage documents were signed by MB and his wife in March 2015 and filed at Land Titles on April 25, 2015. R was actually in fifth position on the title.

331. The LSA argues that citations 21-23 are made out as Mr. Tahn:
    - Failed to follow the Irrevocable Direction to Pay and the Mortgage Commitment;
    - Paid Christopher T. Tahn Professional Corporation instead of West Decade;
    - Disbursed amounts for consulting fees in amounts inconsistent with the Irrevocable Direction to Pay;
    - Settled a personal debt from funds held in trust; and
    - Did not provide Statements of Account to his clients before disbursing trust funds.

T Credit Master Fund Loans

332. The LSA identifies three matters which are areas of concern in relation to Mr. Tahn's work as lawyer for T Credit, an international corporation. It is a hedge fund with a registered partnership in the Cayman Islands and offices in Florida and the UK.

333. First, the LSA does not dispute that legal work was done in relation to loans made by T Credit. The concern is with the $3,000,000 which went into the Trust Account of Mr. Tahn on August 21, 2015 from T Credit for an 'unspecified new deal'. On October 2, 2015, $4,719,000 was wired back to T Credit. Those funds came from and were returned to the Cayman Islands, a country that is not part of the Financial Action Task Force noted in Rule 118.1(h)(ii). There is no documentation or record of legal services provided and no retainer agreement. The client ledger shows that invoices to Mr. Tahn were paid [Exhibit 251].

334. Secondly, no Statements of Account were provided to the client.

335. Lastly, there is no documentation on file verifying the identification of the client, T Credit. On this point, the LSA called as evidence the current lawyer for T Credit who said he got a copy of the corporate Certificate of Incorporation plus identification from the two people he was dealing with who made funding decisions (an authenticated driver's license in one case and a passport in another case). He has all this on his file. He said he used the verification of identification form and standard practice from the LSA.

336. The LSA argues that citations 24-26 are made out as Mr. Tahn:

- Processed funds through his Trust Account without providing any legal services contrary to Rules 119.17 and 119.17.1(1);
- Failed to provide Statements of Account to his client contrary to Rule 119.21(4); and
- Failed to obtain and retain copies of client identification and verification information contrary to Rules 118.3, 118.6 and 118.7.

Trust Safety Audit

337. The LSA argues that the Audit Report [Exhibit 266] supports citations 27-31. In addition, they rely upon several documents and the evidence of SJ (the author of the Audit Report) plus the evidence of KV [Exhibit 267 – Review of Accounting Data).

338. Both the Audit Report and the Review of Accounting Data note trust shortages which were not reported to the LSA. The relevant ledgers to support those findings were entered as evidence [Exhibits 268, 269 & 270]:

- There was a deposit of $15,500 wrongly deposited in S Bank, leaving an outstanding shortage in the appropriate A Bank account for 75 days until corrected [Exhibit 268];
- There was $1,100 cash received from the client and noted in PCLaw but not deposited in the bank until January 23, 2015, some 70 days later [Exhibit 269]; and
- There were three entries of $5,000 disbursed from trust funds before the funds were actually received, 6 days later [Exhibit 270].

339. The evidence of SJ was that reconciliations of the general account were not kept monthly in 2016. At the time of starting his report there were no reconciliations for January-July 2016 and no records were retained, contrary to Rules 119.36, 119.37 and 119.40. SJ did acknowledge that documentation was available by the time the report was issued.

340. SJ noted there were instances where Mr. Tahn gave a receipt to a client for trust money received but failed to deposit it into his firm's Trust Account on or before the next banking day. In one instance [Exhibit 271], a receipt was given November 6, 2014 but the bank account shows no deposit occurred until January 23, 2015 (three months later). In a second case [Exhibit 272] the bank deposit was seven days after receipt of the money from the client.

341. Mr. Tahn set up a Special Interest-Bearing Account (SIBA) for his client [Exhibit 273] but there is no documentation authorizing this, the withdrawal of funds from the account, or the payment of interest to Mr. Tahn.

Accounting Data Reports

342. The LSA argues that documentation and the evidence supports citations 32-34.

343. The evidence of KV and SJ was that Mr. Tahn (or more properly, his law firm) had a USD Trust Account with S Bank but neither the cheques nor the bank statements for that account reflected that it was a trust account, contrary to Rule 119.16(2).

344. The evidence of KV is that there were lengthy, ongoing shortages contrary to Rule 119.24(1) that should have been discovered and fixed had there been monthly reconciliations.

345. The evidence of KV was that there were two outstanding cheques payable to Mr. Tahn. Outstanding cheques are unusual in that cheques are to be deposited immediately and credited to client trust accounts. There were also 3 stale-dated cheques that should have been reversed and credited to the client ledger. Trust funds in the amount of $15,500 were wrongly deposited into S Bank instead of A Bank thus there was an automatic failure to credit trust money to his clients' accounts.

346. The LSA argues that Mr. Tahn either failed to respond to communications from the LSA or, when he did, he did not cooperate promptly and completely. The Investigation Reports were sent to Mr. Tahn with the standard 14-day reply time on three separate occasions. The LSA evidenced proof of delivery of the emails and proof the emails were read yet no reply was received.

347. The evidence of the investigator was replete with instances where he asked for material and either never received it or there was delay in getting it. In one particular case, it took Mr. Tahn so long to get materials to the LSA that the LSA went to court for an order to get materials directly from the bank.

Evidence and Argument of Mr. Tahn

348. Mr. Tahn emphasized more than once in his evidence and argument that none of his clients in this complaint actually complained to the LSA.

JT/RA

349. Mr. Tahn agreed that he represented both AF, the lender, and JT, the borrower. However, his evidence was that he did not facilitate the loan and had nothing to do with details of the loan. He merely did the documentation and necessary legal work.

350. He was approached by SC, a commissioner of oaths and registered real estate agent, to do the legal work on this loan. She brought in Powers of Attorney which he reviewed but rejected because of some unspecified problem with the jurat. He told her to either get the proper Powers of Attorney or bring the co-owners in to his office. About a month later she brought in corrected versions. She told Mr. Tahn that she personally saw the co-owners sign.

351. In addition to the assurances of SC, Mr. Tahn pulled the certificate of title on the property and ascertained that JT was a co-owner. He also met with JT, satisfied himself on identification by getting a copy of his driver's license and was told the co-owners were out of the country. Further, he discussed the Powers of Attorney with the lender and AF expressed no concerns.

352. Based on his belief the Powers of Attorney were authentic, Mr. Tahn prepared all the documentation and discussed details with both the borrower and the lender. He never met the other three co-owners and argued that based on the Powers of Attorney, he felt he had no obligation to do so.

353. Mr. Tahn's evidence was that he told AF and JT he represented them both. In addition, the computer real estate program would have automatically generated a letter of joint representation and a conflict letter which JT signed. Unfortunately, Mr. Tahn says that as his computers are with the LSA he does not have the actual files.

354. Mr. Tahn agreed that he sent Statements of Account only to JT but argued he was under no obligation to send copies to AF as the lender never pays legal fees. He did send the final report to both JT and AF.

355. Mr. Tahn's evidence was that the consultation fee identified in the Statement of Account was $19,000 rather than $20,000 because SC, the directing mind of 962, told him to pay $1,000 to RL, but that was incorrectly identified in the Account as "client advance".

356. Mr. Tahn argues that citations 10-14 should be dismissed:
- He took all steps required to vet the Powers of Attorney and had no knowledge they were fraudulent;
- He did tell both clients of the joint representation and JT would have signed a conflict letter;
- He did keep AF informed and there is no evidence of a delay in getting documents done in a timely fashion;
- He had no obligation to give statements of account to AF, the lender, as he did not pay legal fees; and

- He verified the identity of JT by meeting him and keeping a copy of his driver's license. Given the seemingly valid Powers of Attorney, he had no obligation to verify the identity of the other three co-owners as JT was their Attorney.

R Engineering and C Development

357. Mr. Tahn's evidence was that his client was R Inc. and he met with the Director, JS, confirming SC was his agent in the transaction. All his instructions came through SC as agent for R Inc. and he acted according to the mortgage instructions. He did confirm through a phone call with JS that there was to be a consultant's fee of $8,000 paid to 962.

358. He gave many documents to SC, as agent for JS and R Inc., throughout the course of the transaction then sent the final Reporting letter directly to JS.

359. No Statements of Account were sent to JS or R Inc. as they were the lender and would not pay his legal fees.

360. Mr. Tahn argues citations 15-17 should be dismissed because:
- He always acted according to instructions received from SC, agent for his client;
- The date on the disbursement of $8,000 is a typo and the cheque was signed by someone other than himself; and
- He had no obligation to give Statements of Account to JS, the lender, as he did not pay legal fees.

OM

361. Mr. Tahn agreed that OM was his client. The lender of the funds had their own counsel.

362. Mr. Tahn explained that Statements of Account were generated each month and that he was paid based on the initial fee agreement, however, he also explained that the Statements of Account would not be sent to the client until final disbursements could be included. He said that he "may" have sent the accounts to OM, particularly if asked.

363. Mr. Tahn agreed that he borrowed money from OM but argued that at the time, OM was no longer his client. He was a sophisticated client with a lot of business experience and no independent legal advice was needed. He says he explained this more than once to the LSA investigator.

364. Mr. Tahn also agreed that the loan was not documented but argued he and OM always understood the terms of the loan.

365. The loan was misnamed in the ledger as "loan repayment" to facilitate transfer of the money, but at all times both he and OM understood it was transfer of money for a loan. It was a pure business arrangement and had nothing to do with legal work so the LSA, Mr. Tahn argued, had no right to ask or get more details.

366. In written argument, Mr. Tahn acknowledges citation 19 - borrowing funds from his client and failing to advise of the right to independent legal counsel.

367. Mr. Tahn argues citations 18 and 20 should be dismissed because:
- He always generated Statements of Account before getting paid, although the Statements of Account may not have gone to the client immediately; and
- He thoroughly explained the notation “loan repayment” on the client ledger to the LSA investigator more than once. They may not have liked the explanation, but it was explained.

B and R

368. Mr. Tahn spent a significant amount of time and evidence explaining that his relationship with MB was more than casual and involved years of work on various projects as well as personal time spent together. None of this was relevant to the citations.

369. The evidence of Mr. Tahn was that MB and his wife agreed to pay $20,000 in consulting fees, which is what they ended up paying. The reason the split ended up being $10,000 to each of 962 and Christopher T. Tahn Professional Corporation was because of an agreement between he and SC that did not involve MB. RL owed Christopher T. Tahn Professional Corporation $2,500 for legal work done in the past and RL worked for 962. SC agreed to take $2,500 less in consulting fees to allow Mr. Tahn to get the money owed him by RL.

370. Mr. Tahn agreed that no Statements of Account were sent to JS and argued he had no obligation to do so. As lender, JS would not pay the accounts in any event.

371. Mr. Tahn argues citations 21-23 should be dismissed because:
- The commitment was: (1) to register the mortgage in third place, and (2) to pay $20,000 in consulting fees and both of those commitments were met;
- There was no personal debt as the fees owed by RL were for legal services, a business deal; and
- MB got Statements of Account and there was no obligation to give them to JS as he would not be paying the accounts.

T Credit Master Fund

372. Mr. Tahn’s evidence was extensive about the legal work he did for T Credit.

373. In relation to the $3,000,000 deposit, Mr. Tahn’s evidence was that he spoke by phone with his contact for T Credit and was told he would be receiving $3,000,000 for anticipated legal work. As it turns out, the work never materialized so, based on a further telephone discussion, he wired the $3,000,000 back plus other money in his Trust Account totaling $4,719,000.

374. Mr. Tahn expressed the view that he had not breached Rules 119.17 and 119.17.1(1) because those Rules only apply where a client might be considered “shady”. Where the client is not so categorized his view is that taking money into his trust account and disbursing it back without providing legal service is not a breach of the Rules.

375. Mr. Tahn said the LSA never told him how to verify identification of his client. He verified by phoning and speaking with T Credit's former lawyer in Calgary and T Credit's lawyer in Florida or maybe Mississippi (he could not remember). He also had an engagement letter from the company and identification from two people. He cannot, however, locate that identification.

376. Mr. Tahn argues citations 24-26 should be dismissed because:
- The $3,000,000 was for anticipated legal work which simply never materialized;
- He had no obligation to give Statements of Account to T Credit, the lender, as the lender did not pay legal fees; and
- He did verify his client's identity.

Trust Safety Audit

377. Mr. Tahn's evidence was that he had trouble with S Bank, where he had his trust account. S Bank identified a fraudulent cheque which resulted in him closing that trust account and opening another. For about two years, he had small and ongoing bank errors which resulted in a situation where his monthly PCLaw accounts did not reconcile with the bank accounts. He talked to S Bank but they did not seem to be able to fix the problems.

378. Sometime in 2015, he realized that whatever the issues were with reconciliations, neither he nor his assistant could rectify the problems. He hired CG, a PCLaw specialist and former employee of the LSA, to assist him with reconciliations. That project took about a year and not until fall 2016 did she manage to get all the 2015-2016 reconciliations completed.

379. While fixing the issues he was having, CG would not infrequently have to backdate entries into PCLaw which resulted in the unique PCLaw transaction numbers being out of sequence. Mr. Tahn admits there are entries in his PCLaw system which were not entered on the dates indicated (obvious from the unique PCLaw transaction numbers) but credits all such non-sequential numbers to efforts to reconcile his PCLaw account with bank statements.

380. Through 2016 and 2017 his evidence was that he was running a full law practice while having to deal almost daily with various arms of the LSA. There was a person from Practice Review often at the office, the audit was ongoing, and the investigation overlapped both of those. All those people were asking for the same material and often at the same time. Mr. Tahn says he was as helpful to each of them as quickly as he could be.

381. Mr. Tahn argues that citations 27-31 should be dismissed.

382. He says he was fully aware of the shortage reporting Rules but took the position those Rules do not apply to the reporting of all shortages. His understanding was that if shortages could not be rectified, they must be reported. His position was that as he was rectifying the shortages through work with CG, he had no duty to report.

383. In addition, Mr. Tahn said there was no issue with reporting shortages because no public trust money was in danger. One of the shortages was $15,500 which was deposited in

error at S Bank instead of A Bank and was simply in the wrong account but was still in trust. Other amounts were so minor that he had cash on hand to cover them.

384. Mr. Tahn agreed the PCLaw accounts and the bank accounts were not reconciling in 2016 and that is why he hired CG to fix the problems. He said that there was never a problem with his general account journal, it just did not reconcile with the bank. The journals were printed and signed monthly and he had PCLaw data plus back up.

385. Mr. Tahn agreed that he did not always deposit trust money into the firm's trust account on or before the next business day. He said this only occurred, however, when he was dealing with small amounts of money. In such a case, he would lock the money into a desk drawer and they would deposit on the next deposit day and no longer than a week later. One example is identified in Exhibit 271 which is a cash receipt for $1,100. KC would have written a receipt for the client and given Mr. Tahn the cash. He would have then kept the money in his locked cash drawer in his desk until the next deposit day, likely a week later, as there was no other money to deposit.

386. In relation to the SIBA, Mr. Tahn's evidence was that his client did not sign any documents but definitely did give him instructions to hold the trust money in a one-year term deposit. The bank mislabeled it as a "non-registered savings account" and then could not fix that labeling error.

387. Mr. Tahn was asked why the client did not receive the interest on the SIBA. He said that he took it in fees and his client "…was okay with that. She didn't want the LSA to have any part of her money; she preferred to pay it to me…"

Accounting Data Reports

388. Mr. Tahn explained that the reason the S Bank account, which was the USD trust account, did not say "trust" on the bank statement and the trust cheques was because this was a new account. When he opened it, he was given ten blank cheques which he could use until he ordered cheques. He never did order cheques because only seven of the blank cheques were ever used. He had to handwrite 'Trust' on the cheques.

389. Mr. Tahn said that he definitely put the word 'trust' on a couple of cheques [Exhibit 327 is cheque 002 on this account and has the handwritten word 'trust'] but acknowledged he did not necessarily do this on all the cheques. He further said he is certain he wrote the word 'trust' on all the cheque stubs. None of the stubs are in evidence.

390. Mr. Tahn took the position that any shortages in Trust were very small amounts and he always had cash on hand to cover any issues, therefore, he was not in breach of the Rules.

391. Mr. Tahn argues that he may have failed to credit trust money to the right client account but no public money was ever at risk. The situation in question is the $15,500 which was deposited in S Bank rather than A Bank in error. He acknowledged also other smaller amounts not credited to clients' accounts because the cheques written by the clients became stale dated after six months and he had not yet deposited them.

392. Mr. Tahn denies that he failed to respond or cooperate with the LSA. He agrees that he never responded to the Investigation Report but criticizes the 14-day reply time. In addition, he says he sent it to his then lawyer and expected him to reply but agreed he never followed up. In terms of the investigator, his view is that he replied often and as quickly as he could.

Analysis and Conclusion

393. Mr. Tahn suggested the LSA has no authority to launch an investigation and issue citations where there is no complainant. In this complaint, as none of his clients actually complained, he argues all the citations should be dismissed. The Committee dismisses this argument based on Rule 85(2) which states: "Any conduct of a member that comes to the attention of the Society, whether by way of a complaint or otherwise, shall be reviewed" (see also section 53 of the *Act*) [emphasis added].

394. In his written argument Mr. Tahn raised for the first time an argument that the LSA breached solicitor-client privilege contrary to section 112 of the *Act* when it called his clients as witnesses. Mr. Tahn did not suggest a remedy although section 112 seems clear that the remedy would be a private hearing which neither Mr. Tahn nor any of his clients requested or even suggested.

JT/RA

Citation 10

395. Whether Mr. Tahn "facilitated an improper purpose" (fraud) depends entirely on an assessment of whether or not he knew the Powers of Attorney were fraudulent.

396. Mr. Tahn understood the three co-owners on the property were out of the country and took several steps to verify that the Powers of Attorney were valid including:
    - Examining the Powers of Attorney documents to ensure legal requirements (such as witnesses) were met;
    - Speaking with SC (a commissioner of oaths and a registered real estate agent);
    - Speaking with and verifying the identity of JT (the Attorney); and
    - Discussing with AF who expressed no concerns given AF's personal relationship as a long time fellow real estate agent with SC and his trust in her.

397. The LSA argues Mr. Tahn should have done more given the poor credit rating of JT and the ongoing involvement of RL.

398. The Committee is of the view that the evidence is insufficient to establish Mr. Tahn facilitated a fraud. The LSA suggests the involvement of RL should have caused him to reflect on the validity of the Powers of Attorney. Mr. Tahn says he was relying on SC, a commissioner and licensed real estate agent for validity of the documents. It is the position of the Committee that other than meeting the three co-owners, whom he understood were not in the country, there were no further reasonable steps he should have taken. This citation is dismissed.

Citation 11

399. With regard to whether Mr. Tahn was acting in a conflict of interest, the evidence of Mr. Tahn is based entirely on oral conversations he said occurred and which AF denied. In addition, Mr. Tahn says a conflict letter "must" have been generated and signed by JT but there is no documentation establishing this. The Committee finds this citation to be proven as it is a breach of section 3.4-5 of the Code, and that such conduct is deserving of sanction.

Citation 12

400. Citation 12 is that Mr. Tahn did not act to the standard of a conscientious and diligent lawyer when he failed to keep his client, AF, informed on his legal matter.

401. The evidence is clear that Mr. Tahn took mortgage instructions from SC without confirming with AF his approval to do so. AF noted in his evidence that he did not give SC authority to give directions or sign on his behalf.

402. AF also noted in his evidence that he was unaware of the consulting fee that was paid out of mortgage proceeds and that he had to ask for reporting documents.

403. The Committee is of the view that these facts denote a violation of the Code,(sections 3.2-4 and 3.2-6. The citation is proven and such conduct is deserving of sanction.

Citation 13

404. Mr. Tahn acknowledges that he generated Statements of Account but may not actually give them to the clients until the final reporting letter was sent. He did, however, withdraw money from the trust account to pay his fees, as agreed to initially, and then reflected this on the accounts once sent. He also acknowledges that AF would not have received Statements of Account as he was the lender and did not pay the fees.

405. Mr. Tahn and LSA agree there is no authority for the practise of not sending a client/ lender Statements of Account. Mr. Tahn's position is that he should not have to send a Statement of Account to a lender as they never pay anyway.

406. This argument is not supported by Rule 119.21(4) [emphasis added]:

> **Money may be withdrawn from a trust account of a law firm** pursuant to subrule (3)(b), if not held for a designated purpose, **only in accordance with the following conditions**:
>
> (a) **money may be paid from the trust account to the law firm** to reimburse the firm for a disbursement made by **it if the law firm has prepared a billing respecting the disbursement and either delivers the billing to the client before the withdrawal or forwards the billing to the client concurrently** with the withdrawal;
>
> (b) **money may be paid from the trust account to the law firm** to pay for the law firm's fees for services **if the law firm has prepared a billing for the services, the billing relates to services actually provided and is not based on an estimate of the services, and the firm either**

delivers the billing to the client before the withdrawal or forwards the billing to the client concurrently with the withdrawal.

407. The Rule is simple and clear leaving no room for exceptions. A law firm may not pay itself (for either disbursements or fees) unless and until:
    1. a billing (Statement of Account) is prepared for a service or disbursement;
    2. the billing is based on a service or disbursement actually provided; and
    3. and is delivered to the client before withdrawal or is forwarded to the client at the time of withdrawal.

408. The Committee finds a breach of Rule 119.21(4) to be proven, and that such conduct is deserving of sanction.

Citation 14

409. Given the reasons set out under citation 10, the Committee is of the view that the evidence is insufficient to establish Mr. Tahn had an obligation to do more than he did to verify the identity of the mortgagors. He met with and verified the identity of JT and satisfied himself as to the validity of the Powers of Attorney. This citation is therefore dismissed.

R Engineering and C Development

Citation 15

410. The citation is failing to get instructions, not failing to meet instructions. Although not noted in the citation, failing to get instructions is contrary to section 3.2-4 of the Code. Throughout this transaction, Mr. Tahn took and acted on instructions from SC as agent for JS. There is no evidence JS objected to this course of action and indeed, he noted that he never spoke with Mr. Tahn but that the loan transaction was proceeding, therefore it was reasonable for Mr. Tahn to assume that JS was comfortable with the actions of his agent. The Committee is of the view that the evidence shows Mr. Tahn did get instructions and this citation is dismissed.

Citation 16

411. The LSA concedes that this citation is not proven and the Committee agrees. The Committee is of the view this citation is dismissed.

Citation 17

412. Mr. Tahn acknowledges that JS did not get Statements of Account as he was the lender and did not pay the fees. The Committee finds this to be directly contrary to the wording in Rule 119.21(4) for the reasons in citation 13, a breach is proven, and that such conduct is deserving of sanction.

OM

413. The Committee acknowledges that OM was a relatively sophisticated client. He had been a banker, a small business owner, was used to lawyers and had earned an applied

degree in small business entrepreneurship. OM acknowledged that he read and understood the documentation he signed however, this is irrelevant to the citations.

Citation 18

414. OM stated clearly that he never received Statements of Account and Mr. Tahn acknowledged he may not have sent them, although he would have if asked. He further suggested that as long as he generated the accounts regularly (which he said he did), he was able to disburse funds – notably to pay his fees. The Committee cannot accept that suggestion in light of the express wording in Rule 119.21(4) that billings must be delivered to the client before withdrawal of funds or, at least, sent simultaneously. Mr. Tahn did neither.

415. It is clear to the Committee that Statements of Account were not sent to the client before disbursing funds, contrary to Rule 119.21(4), and that such conduct is deserving of sanction.

Citation 19

416. Section 3.4-13 of the Code says “A lawyer must not enter into a transaction with a client who does not have independent legal representation unless the transaction is fair and reasonable to the client and the client consents to the transaction.” Commentary 13 clarifies that even with independent legal advice, “a lawyer **must not** borrow money from a client” except in limited circumstances that have no application in this case [emphasis added].

417. Mr. Tahn acknowledges in his written argument that citation 19 is made out.

418. It is the view of the Committee that there is a breach of section 3.4-13 of the Code and that citation 19 is proven, and that such conduct is deserving of sanction.

Citation 20

419. Both OM and Mr. Tahn gave similar evidence as to the nature of the loan, and the Investigation Report [Exhibit 253 at page 72] confirms this evidence as relayed to the investigator by OM.

420. Mr. Tahn told the investigator he would look into why the ledger reads “loan repayment” but never did explain that notation in writing. He says he orally explained to the investigator more than once that it was a business loan from OM to him and was just mislabeled in the ledger. He further took the position in evidence that as this was a business loan, the LSA has no jurisdiction to investigate.

421. The LSA had jurisdiction to investigate this “loan repayment” as it was noted on a lawyer’s trust ledger. Other than some brief oral comments to the investigator, Mr. Tahn was unable to produce any documentation to substantiate the loan and candidly said in evidence there was none. Unfortunately, Mr. Tahn never said that to the LSA investigator, leaving him with the impression there would be follow up to explain the loan repayment and there never was.

422. It is the view of the Committee that Mr. Tahn failed to cooperate with the LSA contrary to Rule 48.1(3) and that such conduct is deserving of sanction.

B and R

Citation 21

423. The Irrevocable Direction to Pay stated that $12,500 would be paid to 962 and $7,500 would be paid to West Decade. These instructions were definitely not followed. First, the split was two payments of $10,000 and secondly, West Decade was never paid, rather, the ledger notation is to “Christopher T. Tahn Professional Corporation consult fee sign over from West Decade”. If, as alleged by Mr. Tahn, there was a side deal between him and SC to offset some legal fees owed by RL, the ledger should have simply indicated the appropriate amounts under the Irrevocable Direction to Pay. Subsequently the transfer of money could have taken place, but it should not have been noted in the client ledger.

424. The Mortgage Commitment (Exhibit 288) provided that the mortgage be a third charge on title behind mortgages by R Bank (balance not to exceed $345,000) and KS (balance not to exceed $159,000). The mortgage was eventually registered fifth on title as there was an intervening writ filed February 23, 2015 as well as a tax notice.

425. It is the view of the Committee that neither the Irrevocable Direction to Pay nor the Mortgage Commitment were followed, citation 21 is therefore proven and that such conduct is deserving of sanction.

Citation 22

426. Rule 119.21(3) prohibits the withdrawal of money from a trust account except under certain conditions which do not apply here. Mr. Tahn argues this citation should be dismissed because it was not a personal debt but a business debt that was involved. Neither are covered by the limited exceptions in the Rule. It is the view of the Committee that there is a breach of Rule 119.21(3), that none of the exceptions allowing for withdrawal of money from a trust account apply, citation 22 is therefore proven and that such conduct is deserving of sanction.

Citation 23

427. Mr. Tahn acknowledges that JS did not get Statements of Account as he was the lender and did not pay the fees. For the reasons expressed in citation 13, the Committee finds this to be directly contrary to the wording in Rule 119.21(4), a breach is proven, and that such conduct is deserving of sanction.

T Credit Master Fund

Citation 24

428. It is clear that $3,000,000 went into the trust account and over $4,000,000 was paid out to the client without any legal work having been done. Mr. Tahn explains the money was for anticipated legal work yet that evidence is based on his recollection of telephone calls

with nothing documented. Further, Mr. Tahn suggests that Rules 119.17 and 119.17.1(1) simply do not apply as there was nothing "shady" about T Credit.

429. The Committee finds Rule 119.17 to be very clear and there is no room for interpretation of its application. "A lawyer must pay into and withdraw from, or permit the payment into or withdrawal from, a trust account only trust money that is directly related to legal services that the lawyer or the lawyer's law firm is providing." A breach of the Rule is proven and that such conduct is deserving of sanction.

Citation 25

430. Mr. Tahn acknowledges that his client did not get Statements of Account but argues it was not entitled to accounts as it was the lender and did not pay the fees. For the reasons given in citation 13, the Committee finds this to be directly contrary to the wording in Rule 119.21(4), a breach is proven, and that such conduct is deserving of sanction.

Citation 26

431. Compared to the LSA Identity and Verification Information on its website[7] the actions of Mr. Tahn in verifying the identification of his client fall short of what the Rules require. Even if the website was not operational in 2015 (there is no evidence on this point), the Rules and the evidence of the current lawyer for this corporation provide the appropriate standard, and phone calls to other lawyers are not sufficient.

432. Mr. Tahn argued, as he did several times throughout this hearing, that there may be things on his file that address this matter but the LSA has his files, he has no access and thus cannot further address the matter. As this Committee has said more than once based on the evidence and submissions of the LSA, Mr. Tahn or his counsel have been and are free at any time to go to the LSA offices and spend as much time with the files as they wish. However, neither Mr. Tahn nor his counsel have ever availed themselves of that opportunity.

433. There is no record of the corporate information required under Rule 118.3(b). There is no record of the client verification required under Rules 118.4 and 118.6 "where a lawyer, who has been retained by a client to provide legal services, engages in or gives instructions in respect of the receiving, paying or transferring of funds". There are no records at all of client verification, contrary to Rule 118.7.

434. The Committee finds breaches of Rules 118.3, 118.6 and 118.7 are proven, and that such conduct is deserving of sanction.

Trust Safety Audit

Citation 27

[7] https://www.lawsociety.ab.ca/lawyers-and-students/trust-accounting-and-safety/anti-money-laundering-model-rules/client-identification-and-verification/

435. The documentation is clear that there were shortages which were not reported to the LSA. Mr. Tahn says there was no danger to the public because one shortage was just in the wrong bank (S Bank not A Bank) while the other shortages were very small and he had cash to cover those amounts.

436. The evidence of KV is that there were lengthy, ongoing shortages. Her Review of Accounting Data report [Exhibit 267] specifically notes the following:

- There were numerous bank errors not reconciled for over six months: for Trust Bank #1, S Bank [#3, page 3 of 29 of her report]; for Trust Bank #2, A Bank [#1, page 4 of 29 of the report]; and for Trust Bank #5 (S Bank USD) [#1, page 4 of 29 of the report];
- There were two outstanding cheques payable to Mr. Tahn that should have been deposited and credited to client trust accounts. One was for $349 and the second was for $18,712.50 [#4, page 3 of 29 of her report]; and
- There were stale dated cheques that should have been reversed and credited to the client ledger: for Trust Bank #1, S Bank [#5, page 3 of 29 of her report]; and for Trust Bank #2, A Bank [#2, page 4 of 29 of the report].

437. The Audit Report [Exhibit 266] identifies one large shortage. Funds in the amount of $15,500 were wrongly deposited into S Bank instead of A Bank thus showing a shortage in the A Bank trust account [page 2 of the Audit Report].

438. Mr. Tahn took the position that any shortages in Trust were very small amounts and he always had cash on hand to cover any issues, therefore, he was not in breach of the Rules.

439. Mr. Tahn argues that he may have failed to credit trust money to the correct client account but no public money was ever at risk. The situation in question is the $15,500 which was deposited in S Bank rather than A Bank in error. He acknowledged also other smaller amounts not credited to clients' accounts because the cheques written by the client became stale-dated after six months and he had not yet deposited them.

440. Rule 119.24 is very clear that deficiencies must be reported immediately if: (1) the law firm does not correct the deficiency within seven days of the time the shortage arose, or (2) if the deficiency is an amount greater than $2,500, regardless of when the deficiency is corrected.

441. Whether a lawyer decides in a particular case that there is, in his opinion, no "danger to the public" is irrelevant.

442. The Committee finds a breach of Rule 119.24(1) (failing to report deficiencies) is proven, and that such conduct is deserving of sanction.

Citation 28

443. Mr. Tahn admits that his accounts did not reconcile with bank statements but blames this on bank errors which accumulated over time.

444. There is no evidence of when Mr. Tahn realized his accounts did not reconcile nor when he hired CG to assist with his accounts. He did say that it took her over a year to fix all the problems.

445. Rule 119.40 is, simply stated, “A law firm shall reconcile its general accounts no later than the end of the following month.” The evidence of SJ was that there were no reconciliations of the general account for January to July 2016 when he first got involved in the audit. There was no reconciliation for much longer than a month. Mr. Tahn acknowledges this breach.

446. The Committee finds a breach of Rule 119.40 (failing to reconcile accounts monthly) is proven and that such conduct is deserving of sanction.

Citation 29

447. It is clear from the evidence that for a period of time the General Account was not kept up to date and there is no evidence of a document retention policy, contrary to Rule 119.36(4)(e) and Rule 119.37.

448. The Committee finds a breach of the Rule is proven and such conduct is deserving of sanction.

Citation 30

449. Mr. Tahn admits that there were occasions when he failed to deposit Trust money into his firm’s Trust Account on or before the next banking day, contrary to Rule 119.19(1). The Committee finds a breach of the Rule is proven and that such conduct is deserving of sanction.

Citation 31

450. Rules 119.18 requires written confirmation that money is to be held in trust yet there is no documentation confirming the client’s authorization in this matter. In conjunction with that Rule, Rule 119.20(1) requires that a SIBA be identified as being held in a client’s name yet the bank account [Exhibit 273] does not do this.

451. Rule 119.20(2) requires that interest from a SIBA be credited to the client’s trust ledger. The ledger for this client [Exhibit 273] notes that the interest was transferred to Mr. Tahn’s corporation yet there is no client authorization for this or a Direction to Pay.

452. The Committee finds this citation is proven and that such conduct is deserving of sanction.

Accounting Data Reports

Citation 32

453. It is clear by his own admission that Mr. Tahn did not write “trust” on all the blank cheques and that the USD account itself was not designated as a trust account, contrary to Rule 119.16(2). There is no evidence about the steps Mr. Tahn took to rename the

account except perhaps to speak with the bank to fix the name. It is noted that the account was open for over six months which is enough time to recognize the misnaming of the account and either get it fixed to meet the requirements of the Rule or to close the account and reopen it at the same or another bank.

454. The Committee finds a breach of Rule 119.16(2) is proven and that such conduct is deserving of sanction.

Citation 33

455. It is alleged that Mr. Tahn failed to maintain funds in his trust account to meet all his financial obligations contrary to Rule 119.24(1). This citation is associated with citation 27 which, on the same facts, alleges that Mr. Tahn failed to report the deficiencies to the LSA.

456. The deficiencies are detailed above in paragraph 436.

457. The Committee finds the Audit Report [Exhibit 266] and the Review of Accounting Data report of KV [Exhibit 267] establish that Mr. Tahn's records show deficiencies in various of his accounts. A breach of Rule 119.24(1) (deficiencies in trust accounts) is proven, and such conduct is deserving of sanction.

Citation 34

458. Trust funds in the amount of $15,500 were wrongly deposited into S Bank instead of A Bank and not rectified for 75 days. This was not a simple error, immediately corrected but lasted more than two months. The Committee finds there was a failure to credit trust money to the client's account, that this violates Rule 119.19, and that such conduct is deserving of sanction.

Citation 35

459. The investigator gave evidence more than once about the delay in getting material from Mr. Tahn, if material was received at all. Two specific cases identified were the need to get a court order for bank records because Mr. Tahn either would not or could not provide them. Secondly, Mr. Tahn alleged he had already provided the material to other arms of the LSA, so the investigator spent some time checking other LSA departments only to find the material sought had not been sent elsewhere.

460. Mr. Tahn's response to this citation was to constantly place the blame elsewhere, either on the bank for not cooperating or, more often, on the LSA. He said the demands were unreasonable because he was having to deal with various arms of the LSA simultaneously, they were asking for the same things, and limited time was provided to respond.

461. Notably there was no clear explanation of why more timely, thorough responses could not be provided when sought. In part, this relates to Mr. Tahn's not uncommon practice of doing his business verbally. Conversations and phone calls are not easily reproduced to allow documentation of instructions (T Credit; OM, etc.).

462. The Committee finds there was a failure to cooperate promptly and completely during the LSA investigation contrary to Rule 119.33 and that such conduct is deserving of sanction.

Citation 36

463. The LSA sent Mr. Tahn a copy of the Investigation Report and the supplemental report for his review and response by three separate emails. Except for asking that it be sent to his lawyer, Mr. Tahn did not respond to the LSA, nor did his lawyer, nor did Mr. Tahn follow up with his lawyer to discuss a response. He did criticize the 14-day expected response time, failed to acknowledge his ability to seek and get extensions, and suggested there was an onus on the LSA to contact members to see if they could assist in responding.

464. The Committee disagrees with the suggestion that there is some onus on the LSA to contact members to assist in responding to investigations and complaints. Lawyers are members of a self-governing profession and all members have a responsibility to do everything they can to maintain the privilege of self-governance. An important part of this is to ensure they are fully and completely responsive to communications and requests from their governing body.

465. Mr. Tahn agreed that he did not reply to the LSA which is contrary to section 7.1-1 of the Code. The Committee finds this citation to be proven, and that such conduct is deserving of sanction.

Complaint 1 (RL) – Citations 1 & 2

466. This complaint relates to two citations. Citation 1 is an allegation that Mr. Tahn failed to act to the standard of a careful and prudent lawyer. Citation 2 is that Mr. Tahn acted in a conflict of interest.

Evidence of the LSA

467. The LSA called no evidence specifically on these citations but argued instead that these two citations cover general matters arising from the evidence in complaint 5 which did not result in an actual citation under complaint 5.

468. In support of citation 1, the LSA points to the following evidence:
- Mr. Tahn rarely met with lenders (e.g., JS) but dealt through instructions from intermediaries, typically SC;
- Mr. Tahn often had no written documentation to support his actions (e.g., real estate advice given to MB, loan from client OM); and
- Nothing to document changes in payments differing from Directions to pay (e.g., in OM there was a $400 payment to KC which was undocumented).

469. In support of citation 2, the LSA points to the following:
- There are instances of conflicts which were not subject to citations under complaint 5 in which the parties did not know of the connection between West Decade and Mr. Tahn:
    - Matter involving R or JS as lender;

- Matter involving MB as lender; and
- Matter involving loan to OM.

Evidence and Argument of Mr. Tahn

470. Mr. Tahn argued orally that until hearing oral argument from the LSA he was always of the understanding that this complaint related only to matters involving RL. Taking the significantly different approach at this stage of the proceeding which does not include matters involving RL is, he argues, fundamentally unfair.

471. In response to a question from the Committee, Mr. Tahn reiterates in writing it is unfair for the LSA to state at the end of proceedings that, contrary to his understanding, complaints 1 and 2 do not relate to RL.

Analysis and Conclusion

472. Exhibit 5 identifies the complaint from "[L]" received by the LSA October 26, 2017. Exhibit 6 is similar.

473. Exhibit 7 notes that on October 26, 2016, CPS (presumably the Calgary Police Service) sent an email to the LSA about L at the courthouse soliciting potential legal clients. On May 29, 2017 an Investigation Report was concluded by the LSA and on December 13, 2017, the Conduct Committee issued two citations.

474. The LSA points out that Exhibit 7 was created by Mr. Tahn or his counsel and the Committee notes that is true for Exhibits 5 and 6 also. However, Exhibit 43, the index of disclosure packages prepared by the LSA also says on the title page that the package is for CO20162668 (LSA – L).

475. Exhibit 43 is the set of indexes of the disclosure packages for all the complaints. Under Complaint 1, we see mention of 81 tabs of material. The Committee is not aware that any of that material has been identified and entered into evidence by the LSA. The description in the index gives insufficient information for us to say that with any degree of certainty but we can state that the Investigation Report (Tab 19), the materials sent to the CPS (Tab 39) and information about S Industries (Tab 75) were definitely not discussed before us.

476. The LSA noted at the start of the evidence in relation to complaint 5 that the evidence would touch on complaint 1. However, not until the start of oral summation at the end of the evidence for complaint 5 did the Committee become aware that neither L nor the CPS were relevant to the position of the LSA on this complaint.

477. The Committee is of the view that Mr. Tahn correctly notes he did not have reasonable notice of the position of the LSA until after the close of evidence. Given the notations in Exhibits 5, 6, 7 and 43, it could not be reasonably assumed Mr. Tahn would anticipate the position taken by the LSA.

478. There is a breach of procedural fairness where a member cannot know the case to be met. The law is succinctly stated in *Hesje v. Law Society of Saskatchewan*, 2015 SKCA 2:

> [50] Focusing on whether the member charged is aware of the case he has to meet - rather than exclusively focusing on the charge itself - is consistent with how courts approach charges laid by an administrative body…
>
> [51] In short, procedural fairness will only be violated by inadequate particulars if the member is deprived of knowledge of the facts alleged to constitute misconduct, and is therefore deprived of knowledge of his case to meet…

479. At no time did the LSA disabuse the Committee of its understanding that complaint 5 in some way related to L or involvement by the CPS (as noted in the Exhibits 5, 6, 7 and 43).

480. Mr. Tahn would not have heard anything in the evidence in complaint 5 that would have given him cause to anticipate the position taken by the LSA. His focus would have been on the actual citations and having heard little about the involvement of L and nothing about the CPS, one can only assume the LSA was not pressing those.

481. The Committee therefore dismisses citations 1 and 2 under complaint 1.

Complaint 6 (PM) – Citations 37 – 46

482. At the outset of the hearing of this complaint, the LSA told the Committee no evidence would be called on citation 44 and invited us to dismiss that complaint. Absent any objection from Mr. Tahn we do so.

483. Certain facts were not in dispute in relation to complaint 6.

484. In May 2014, Mr. Tahn became counsel for PM and on May 21, 2014, he entered into a contingency fee agreement with PM [Exhibit 346].

485. PM retained Mr. Tahn to assist in the resolution of a dispute with her long-time partner (MR) which began as an acrimonious dispute between them over who owed whom money and how much. At issue were a jointly owned home, vehicles, time share properties, a line of credit and general expenses.

486. The contingency fee agreement of May 21, 2014 details the percentage of claim proceeds payable to “Christopher T. Tahn Professional Corporation” on a sliding scale dependent on the status of the action at the time of settlement. At the time Mr. Tahn was retained, it is agreed that a Statement of Claim had been filed by MR against PM. A Statement of Defence had also been filed, as had an Affidavit of Records by MR. No questioning had occurred.

487. A second contingency fee agreement was signed on July 23, 2014 [Exhibit 347] setting payment at 35% of recovery from settlement after deduction of reasonable disbursements.

488. During the time that Mr. Tahn was retained by PM, the undisputed evidence is that:

- MC came on the file, representing MR, in September 2014. There was joint ownership (PM and MR) of a house, time shares, a [R Bank] line of credit and a few other items of worth such as MR's pension;
- On September 24, 2014, MC's assistant wrote to KC that MC was now retained and asked for a copy of a settlement offer sent to previous counsel;
- By letter of October 5, 2014 [O] acknowledged no interest in the [O] Mortgage on title as of 2002. MC sent that letter to Mr. Tahn;
- In May 2015, the parties reached a settlement without going to questioning;
- The terms of the settlement are in an email dated May 20, 2015 by MC. Mr. Tahn agreed to draft the settlement agreement (Agreement) for review [Exhibit 351]. The central points are:
    - On the sale of the home, net proceeds to go to PM;
    - MR to pay PM a lump sum payment of $60,000: $50,000 upon signing the Agreement (with certain conditions) and the remaining $10,000 to be held to make interest payments on the line of credit until the house is sold;
    - Once the house sells, what remains of that $10,000 would go to PM;
    - For two timeshares, MR agreed to sign over total ownership to PM;
- On June 22, 2015, the house was for sale and was expected to sell quickly. MC wrote to Mr. Tahn [Exhibit 353] seeking the name of the real estate lawyer and written confirmation that all funds of the sale would be held in trust pending receipt of:
    - Two fully executed copies of the Agreement;
    - Documentation that the line of credit is paid out; and
    - Confirmation [R Bank] has instructions to close the line of credit;
- By email of June 25, 2015 [Exhibit 355] Mr. Tahn agreed to those trust conditions and noted "typically we do the real estate transaction";
- The purchase contract for the house was signed giving a closing date, in clause 4.1, of July 10, 2015 [Exhibit 356];
- By letter dated July 6, 2015 Mr. Tahn sent MC [Exhibit 358] four copies of the Agreement, a Direction to Pay and two other documents. They were returned the next day by MC identifying various deficiencies in the signature lines. Also included in the July 7, 2015 letter from MC was a firm trust cheque for $40,000 stating "[t]he enclosed trust cheque is not to be released to your client until my office has received two (2) copies Fully Executed copies of the Property Agreement and photocopies of the witnessed real estate documents" [Exhibit 359];
- On September 23, 2015 Mr. Tahn got a court order directing Land Titles to discharge the [VC] writ on title [Exhibit 369];
- MC received two fully executed copies of the Agreement in late January 2016/early February 2016. She then sent another trust cheque to Mr. Tahn in the amount of $19,139.18 (the remaining $10,000 owed under the Agreement and the last $10,000 held back minus payment made as agreed on insurance, interest etc.); and
- The terms of the Agreement received in January/February 2016 were unchanged from the first version several months before.

489. A Certificate of Title for the property dated Feb 22, 2017 [Exhibit 360] notes land transfer of July 28, 2015 to new owners. On title is a mortgage from [O] dated May 30, 1996; a writ by creditor [VC] dated April 30, 2015 and a mortgage to [S Bank] dated November 23, 2015 (the new owner's mortgage). Two further certificates of title are also in

evidence from later dates, showing the same encumbrances: March 22, 2017 [Exhibit 365] and January 5, 2018 [Exhibit 425].

Evidence and Argument of the LSA

Citation 37

490. Citation 37 alleges a failure to fulfill undertakings which is contrary to section 7.2-14 of the Code. The LSA argues this citation is met as neither proceeds from the sale of the house nor the $60,000 were held in trust pending completion of the trust conditions set out in the June 22, 2015 letter (house proceeds) and the July 7, 2015 letter (the lump sum).

491. By May 2015, the correspondence between Mr. Tahn and MC show that both parties understood they had reached an Agreement [Exhibit 351]. It is not contested that the Agreement ultimately sent to MC in 2016 had the terms agreed to by May 2015. The central items to be dealt with in the Agreement were the sale of the house with net proceeds to PM and a lump sum payment to PM of $60,000, as noted above in paragraph 488.

492. By email of June 25, 2015 [Exhibit 355] Mr. Tahn agreed to those trust conditions and noted “typically we do the real estate transaction”.

493. On July 6, 2015, MC received a letter from Mr. Tahn [Exhibit 358] enclosing four copies of the Agreement, a Direction to Pay and two other documents. All four copies of the Agreement were returned the next day by MC specifically identifying various deficiencies.

494. Also included in the July 7, 2015 letter from MC (returning the Agreements the next day) was her firm trust cheque for $40,000 stating “[t]he enclosed trust cheque is not to be released to your client until my office has received two (2) copies Fully Executed copies of the Property Agreement and photocopies of the witnessed real estate documents” [Exhibit 359]. There was no reply to this letter and there was specifically no objection to the trust condition for release of the funds.

495. In August 2015, MC’s office sent two emails asking for the fully executed copies of the Agreement. The LSA argues there was an email response from Mr. Tahn saying he was moving, the file was in his garage and he would find it [Exhibit 341 at pages 52 and 57].

496. Two fully executed copies of the Agreement were received by MC in February or March 2016 (via an undated letter), at which time MC sent the remainder of the lump sum to Mr. Tahn.

497. Between July 2015 and February 2016, ledgers and invoices are clear that money received in trust by Mr. Tahn was disbursed to PM, to other parties at PM’s direction, and to Mr. Tahn for legal fees as well as a few smaller amounts. By November 2015 there was $24,632 remaining in trust [Exhibit 364 & Exhibit 419].

498. At no time was there an agreement to amend the trust conditions and MC was adamant on cross-examination that she did not authorize release of funds before she received the fully executed Agreement.

Citation 38

499. The LSA argues this citation is made out by the fact that as late as 2018, the writ of [VC] and the [O] Mortgage remained on title.

500. Mr. Tahn did some preliminary work on the conveyancing and then hired PL to finalize the property transaction. Mr. Tahn says he did so because PL had the experience he needed. PL says he did the real estate transaction as a favour for a friend as he knew Mr. Tahn was moving offices at the time the real estate transaction was happening. PL said he took conduct of the real estate file already started by Mr. Tahn and bridged the gap while Mr. Tahn was moving.

501. The ledger of PL [Exhibit 367] establishes that he paid out various amounts owing, made two interim payments to PM and ultimately paid Mr. Tahn (Tahn Law) $160,000 on July 16, 2015 and $44,920.25 on November 10, 2015.

502. PL issued a cheque on September 17, 2015 to pay off the [VC] writ. [VC], however, never filed a discharge on title and Mr. Tahn went to court for an order of discharge. PL said in his evidence that his role was to pay out the money but he understood Mr. Tahn would do the actual discharge of any encumbrances on title. He says he never saw the order.

503. PL was aware of, but never saw, the letter from [O] stating they had no interest in the property [Exhibit 368] but, again, understood Mr. Tahn would do the actual discharge. He said in cross-examination that KC told him Mr. Tahn would handle the discharge of both encumbrances.

504. PL did acknowledge that the undertaking to discharge was his but he always understood Mr. Tahn would be following up to complete it.

505. MC sent Mr. Tahn a letter from [O] dated October 5, 2014 certifying that [O] had no interest in the mortgage loan [Exhibit 368]. MC said she was not aware of the [VC] order.

506. Three certificates of title were entered in evidence before this Committee: a title dated February 22, 2017 [Exhibit 360], a title dated March 22, 2017 [Exhibit 365] and a title dated January 5, 2018 [Exhibit 425]. Each notes that as of the date of the title the following two encumbrances were still on title:
    - [O] Mortgage – from 1996; and
    - [VC] writ from 2015.

Citations 39 & 40

507. The LSA argues that these citations are established because the evidence of PM is she never received documents and was not informed as her matter proceeded.

508. PM said both in direct and in cross-examination, several times, that she never knew what was happening as her matter proceeded and she never received documents at all even though she asked many times via email, phone and in person.

509. She was directly asked whether Mr. Tahn kept her informed and her answer was no. On cross-examination she was directed to several exhibits where Mr. Tahn was in contact

with MR's lawyer, however, PM not only denied ever seeing these documents, she denied even knowing those steps were being taken on her file. As far as she was aware, nothing happened until a meeting was held with counsel and clients in July 2014 followed by the sale of her house.

510. PM denies knowing that Mr. Tahn had to go to court for an order discharging the [VC] writ.

511. She also denies getting a reporting letter of any sort nor was she aware one was available for pickup. There is nothing on the client file that indicates PM was notified of the Final Report (February 2016). PM specifically says that she did not get the Property Agreement from Mr. Tahn, but got it from her subsequent lawyer. Mr. Tahn was only able to say "he believed" PM picked up the package. KC said she contacted PM but, again, there is no documentation anywhere that says when or by what means except recollection by KC, six years after the fact, that she spoke with PM.

Citation 41

512. The LSA argues Mr. Tahn attempted to mislead the LSA and relies on two different ledgers in the PM matter which were introduced into evidence. These two ledgers were the subject of detailed analysis by KV and are pages 9-13 of her forensic audit [Exhibit 267].

513. Both ledgers were backups of Mr. Tahn's PCLaw records. The first ledger was obtained by the LSA in January 2017 [Exhibit 364]. The second ledger was obtained in March 2017 and includes entries from February 2016 through to June 2016 [Exhibit 374].

514. The LSA relies on section 67 of the *Act*, where trust monies are involved "the burden of proof that the money or other property has been properly dealt with lies on the member."

515. These ledgers, it is argued by the LSA, identify many items of concern including:
    - Invoice 895 dated July 2, 2015:
        - All PCLaw transaction numbers indicate this invoice was created in November 2015 and not in July 2015. It was back-dated;
        - This invoice includes legal fees of $159,250 purported to be issued July 2, 2015 yet there were no settlement funds in the account yet;
    - Invoice 1033 dated February 6, 2016:
        - All PCLaw transaction numbers indicate this invoice was created in September/October 2016 and not February 2016. It was back-dated;
    - Legal fees issued:
        - The first ledger [Exhibit 364] reports an invoice 895 dated July 2, 2015 and legal fees of $159,250, which amount is recorded on the second page of the ledger as the total legal fees;
        - The second ledger [Exhibit 374] adds invoice 1033 and a total of legal fees as $201,250.

Citation 42

516. The LSA argues that Mr. Tahn breached Rule 119.21(4) as he failed to provide Statements of Account to his client prior to dispersing trust funds. The LSA further says Mr. Tahn has failed to meet his burden in section 67 of the *Act* to establish trust money has been properly dealt with.

517. PM testified that she received no invoices or accounting documents.

518. The Review of Accounting Data of KV notes the PCLaw transaction numbers are clear that money was taken from trust before invoices 895 and 1033 were created [Exhibit 267 at pages 10-12].

519. Mr. Tahn admitted in direct examination that he was waiting to meet with his client to go through the accounts but said he discussed the money going out with her on the phone. Further, in cross-examination he said he could not wait until the matter concluded to pay his legal fees.

Citation 43

520. The LSA argues that Mr. Tahn failed to act with integrity regarding the contingency fee arrangement for two reasons: first, PM felt pressured to sign the second agreement and secondly, no matter what accounting parameters are applied, the amount taken in legal fees far exceeds the 35% agreed to in the second agreement.

521. PM says that she never understood why she was signing the second contingency agreement but that she felt pressured by both Mr. Tahn and her associate, who was present at the time. PM says Mr. Tahn told her to sign or he would be entitled to take all her money. She thought he would put a lien on the house.

522. The LSA points to all ledgers, invoices and cheques written to argue that by any calculation, the amount taken by Mr. Tahn far exceeds 35%.

523. The LSA relies on section 67 of the *Act*, where trust monies are involved “the burden of proof that the money or other property has been properly dealt with lies on the member.” The LSA argues that Mr. Tahn has failed to explain on what basis trust monies were distributed for legal fees. It is agreed he was entitled to 35% but Mr. Tahn has failed to establish 35% of what amount.

Citations 45 & 46

524. The LSA argues that Mr. Tahn failed to respond promptly and completely to the LSA and, in some cases, failed to respond at all, contrary to section 7.1-1 of the Code.

525. The LSA relies on the evidence of conduct counsel and the investigator in support of these citations.

526. The investigator gave evidence, summarized in his Investigation Report [Exhibit 341], of his involvement in this matter starting with the issuance of the Investigation Order on July 6, 2017. He sent a copy of that Investigation Order along with an itemized list of seven requests to Mr. Tahn on August 2, 2017 [Exhibit 393].

527. The investigator stated that from then until he issued the Investigation Report on January 3, 2018, he was in contact either with Mr. Tahn or with KC many times seeking a full response to the requests. The Investigation Report details the contact and results. In the end there were several unanswered or incomplete responses to the original request.

528. Once the Investigation Report was finalized, conduct counsel sent it to Mr. Tahn and asked for a response. Despite several further requests and reminders, no response was ever received.

Evidence and Argument of Mr. Tahn

Citation 37

529. Mr. Tahn relies on two Alberta Court of Appeal decisions to argue that the Agreement was effective in May 2015 as none of the substantive terms changed between then and February 2016[8].

530. He then argues that as the Agreement was valid in May 2015, he did not breach his undertaking when he distributed funds prior to January/February 2016. The Agreement was a completed agreement as early as May 2015.

531. Mr. Tahn takes no exception to any of the facts noted by the LSA.

532. His counsel, in oral argument, posited that the Committee should note there was no practical effect of any breach. The house transaction was concluded and no one was hurt.

Citation 38

533. Mr. Tahn argues that he had no obligation to finalize issues or to pay off the writs on title as this obligation lay with PL.

534. The evidence of Mr. Tahn was that he hired PL to do the real estate transaction and clear the title.

535. He maintains that PL had the obligation to clear the title and that it was PL who gave undertakings to counsel on the other side of the transaction that he would do so.

536. KC said she did not tell PL that Mr. Tahn would remove the encumbrances.

537. Mr. Tahn did get the [VC] discharge order and says that he personally delivered a copy of that order to PL. At the time he delivered the order, PL gave him the [VC] cheque.

538. In February 2016, Mr. Tahn was preparing the final reporting letter and realized the old [O] mortgage was still on title. He asked KC to contact PL to ask about this but does not recall the result.

Citations 39 & 40

539. Mr. Tahn asks the Committee to dismiss these citations as he says he kept PM advised every step of the way and constantly provided her with documents. In his evidence, Mr. Tahn called both of these citations “rubbish”.

[8] *Ron Ghitter Property Consultants Ltd. v. Beaver Lumber Company Limited*, 2003 ABCA 221 and *Diegel v. Diegel*, 2008 ABCA 389.

540. In direct examination, Mr. Tahn says that he met constantly with PM, gave her copies of things at every meeting, and explained everything thoroughly at every meeting as he went through the documents.

541. KC gave a similar account regarding Statements of Account. She said PM would come to the office to pick up statements and she (KC) would go through them with PM in detail.

Citation 41

542. Mr. Tahn asks the Committee to dismiss this citation. Although he appears to agree there are issues with the ledgers and invoices, he essentially states that he does not understand why and that he had retained an expert (CG) to go through his books in detail and correct items as needed.

543. Mr. Tahn further argues that there was no intent to mislead the LSA. He says he was doing everything he could to get and keep his trust account in order by having CG on site.

Citation 42

544. Mr. Tahn argues that it was his long-time practice to prepare Statements of Account then disburse money even if the client did not see the Account for some time.

545. Mr. Tahn further argues that there is no breach of Rule 119.21(4) as no money is missing.

Citation 43

546. Mr. Tahn argues there was no lack of integrity on his part. He did not threaten PM but carefully took her through every clause of the second contingency agreement to explain it. In addition, he says he is legitimately entitled to the fees he took given the amount of work involved on this file. Mr. Tahn stated he did a great service for this client, and “in my mind I earned those fees”.

547. Mr. Tahn argues that he applied no undue pressure on PM to sign the second contingency agreement and, in fact, gave her a financial discount.

548. Under the first contingency agreement, he would have been at 40%, he says, because by July 2014 they were setting up a settlement meeting. Mr. Tahn argues that the clause entitling him to 40% in the first contingency agreement (“if the case proceeds to JDR, pre-trial, arbitration, mediation etc.”) would thus govern.

549. The second contingency agreement, though, capped his fees at 35%, so was in effect a discount.

550. Mr. Tahn said two relevant things in his explanation of how he was entitled to the fees he ultimately received. Mr. Tahn stated he was advised the file would generate a contingency fee of between $400K-$600K. This evidence is in both the interview he gave in the investigation process in 2017 and his direct evidence. First, he argued that

his 35% was based on what the house *should have* sold for and what the value of the timeshares *should have* been, not what they were sold for. Secondly, he spent a significant amount of time explaining the actual time spent on this file and stated that if he had charged an hourly rate he would have received much more than he got. However, in his evidence he stated he did not keep hours on the file nor did KC.

551. On the later point he was adamant that he had a right to bill $500 per hour. Mr. Tahn argued he gave his client access to justice.

552. Mr. Tahn also argues this Committee has no jurisdiction to assess whether the amounts taken in legal fees exceed 35% - that review lies exclusively with a Review Officer.

Citations 45 & 46

553. Mr. Tahn argues that he was constantly responding to the LSA, either to the investigator or conduct counsel, that he was doing the best he could and that these citations should be dismissed.

554. He started giving the LSA material in February 2017 when he provided a partial response [Exhibit 372] which included a commitment to send additional file material later. The evidence of Mr. Tahn was that for almost a year, the investigator or conduct counsel for the LSA were always asking for further or more material on this complaint and that he made every effort to comply. He emailed, answered phone calls, attended an interview and in no way refused to cooperate.

555. In cross-examination, when asked about his failure to respond at all to the Investigation Report, Mr. Tahn said “I can’t recall”.

Analysis and Conclusion

Citation 37

556. The cases referred to the Committee (*Ron Ghitter Property Consultants Ltd.* and *Diegel*) stand for the legal proposition that a contract may be enforceable if it can be established there was a meeting of the minds even if the form of contract is not complete.

557. No one in this instance disputes that the parties reached an agreement in May 2015 and the parties in fact acted upon the terms of that agreement even though the Agreement had not been fully executed. However, that entirely misses the point of the citation.

558. The citation is for breach of undertakings, not breach of the Agreement.

559. The undertakings respecting the house sale proceeds are in the letter from MC dated June 22, 2015 [Exhibit 353] and were accepted in a June 25, 2015 email [Exhibit 355]:

- Receipt of two fully executed copies of the Agreement;
- Documentation showing evidence of the line of credit being paid in full; and
- Confirmation that [B Bank] received instructions to close the above-noted line of credit.

560. The undertakings respecting the lump sum payment are in the letter from MC dated July 7, 2015 [Exhibit 359]:

- Receipt of two (2) fully executed copies of the Agreement; and
- Photocopies of the witnessed real estate documents.

561. Mr. Tahn did not acknowledge the July 7, 2015 trust conditions but he also did not dispute them nor did he attempt to change the trust conditions, in writing.

562. In summary, these are the undertakings accepted by Mr. Tahn before there was to be distribution of trust funds from either the sale of the house or the lump sum payment, and specifically, before release of a $40,000 trust cheque representing part of the lump sum payment:
- Two fully executed copies of the Agreement;
- Documentation showing evidence of the line of credit being paid in full;
- Confirmation that [B Bank] received instructions to close the above noted line of credit; and
- Photocopies of the witness' real estate documents.

563. None of these conditions were met before distribution of trust funds:
- The fully executed copies of the Agreement were received by MC in January/February 2016;
- Mr. Tahn never told MC the status of the [B Bank] line of credit. MC determined for herself the line of credit was paid off by pulling title to the property on March 22, 2017; and
- MC never received photocopies of the witnessed real estate documents from Mr. Tahn.

564. Notwithstanding the trust conditions, a review of any of the ledgers/invoices show that trust money was being distributed as soon as money came in and by November 2015 there was only about $25,000 remaining in the trust account, yet none of the trust conditions had been met.

565. At no time did Mr. Tahn satisfy the undertakings nor did he attempt to change the undertaking in writing, all contrary to the Code, section 7.2-14. The commentary to 7.2-14 is clear that any variation of a trust condition must be in writing.

566. Mr. Tahn argues that we should keep in mind no one was harmed and the house deal went through. With respect, that is totally irrelevant. To accept such an argument would mean that lawyers who give and accept trust conditions need not follow them as long as no one gets hurt. This undercuts the entire premise of trust conditions, that lawyers can trust one another's word, and brings the reputation of the profession into disrepute. To allow lawyers to accept trust conditions yet follow trust conditions or not based on a personal assessment of risk cannot be accepted. To accept such a proposition is to accept that a lawyer's promises mean nothing, which damages the reputation of the entire profession.

567. It is the decision of the Committee that this citation is established and the conduct is deserving of sanction. Mr. Tahn did not satisfy the undertakings nor did he attempt to change the undertakings in writing, all contrary to the Code, section 7.2-14.

Citation 38

568. There is no dispute that, when Mr. Tahn was preparing the final reporting for his client in February 2016, there remained two encumbrances on title. There was first an old [O] mortgage and secondly a writ by [VC]. In fact, Mr. Tahn's letter of February 13, 2016 [Exhibit 370] to PM notes that the [O] mortgage was still on title and that a court order might be necessary to get a discharge.

569. The LSA argues Mr. Tahn failed to remove the encumbrances or have the encumbrances removed whereas Mr. Tahn argues that responsibility always lay with PL, the lawyer retained to handle the real estate transaction. PL gave consistent evidence that he was the place holder, the conduit during Mr. Tahn's move, providing temporary assistance to a friend.

570. It is correct that the undertaking to clear title was given by PL to the lawyer for the purchaser of the house. This citation, however, is not for a breach of undertaking where fault might lie with PL. The citation is 'failing to finalize' and that obligation lies with Mr. Tahn.

571. The evidence of PL was that he knew of the encumbrances on title but was told by KC that Mr. Tahn would have them discharged. He never saw the letter from [O] saying they released interest. He also never saw the court order discharging the writ although he did pay the creditor the amount owed.

572. Both Mr. Tahn and KC said that PL was retained to get the encumbrances off title. However, there is absolutely no documentation to this effect. Mr. Tahn's evidence is his files are thin. Nor did he retain notes. In fact, the actions of PL were straightforward and bely an understanding by him that he was to discharge encumbrances. He only charged $500 for the entirety of the work he did. Certainly, when the final report was completed in February 2016 the two encumbrances were on title yet Mr. Tahn did nothing to ensure they were removed.

573. PL gave Mr. Tahn a cheque for [VC] and subsequently Mr. Tahn went to court for the court order discharging the [VC] writ. Despite Mr. Tahn's suggestion that he got the order then gave it to PL and received a cheque for [VC], that is not what the documentation shows. The ledger shows the cheque was issued days before the court appearance and the court order itself says Mr. Tahn had the cheque in hand when he appeared in court.

574. PL charged $500 legal fees on the file which he described as "a favour for a friend" which reminded PL that he simply was a conduit for the money on the house deal and nothing more.

575. In this instance, Mr. Tahn was the lawyer for PM and as far as PM was aware, he was going to finalize the house sale and clear title. She says she had no knowledge PL was involved but even if she did, the obligation belonged to Mr. Tahn, as her lawyer, to ensure or follow up with PL to ensure that all issues relating to the sale of the property were finalized. One of those issues was to clear title and he failed to do that. Mr. Tahn was quarterbacking the real estate transaction.

576. When he issued the final reporting letter in February 2016, the title, by Mr. Tahn's own admission, clearly showed the old [O] mortgage still on title. The [VC] writ was also on title. Mr. Tahn says he asked KC to contact PL to find out why, but he does not know if that connection was made.

577. It is clear the encumbrances were still on title in 2017. As PM's lawyer, Mr. Tahn was responsible to ensure the encumbrances were removed whether he had PL do this (as part of the undertakings given by PL) or whether he did this himself. He did neither.

578. This citation is failing to "act to the standard of a conscientious and diligent lawyer when he failed to finalize issues related to the sale of his client's property" which is contrary to the Code, section 3.2-1. It is the decision of the Committee that this citation is established and that the conduct is deserving of sanction. Mr. Tahn did not finalize issues related to the sale of his client's property and as long as two years after the sale, two encumbrances remained on title.

Citations 39 & 40

579. As noted candidly by the LSA, the evidence of the parties on these citations could not be more diverse. PM says that despite asking many times, she was never copied on any material relating to her matter and not until the hearing did she see correspondence between Mr. Tahn and MC, which she described as exactly what she wanted as her matter progressed. Until she saw the Agreement she did not know how her matter was proceeding. What is in evidence is Mr. Tahn made two moves in one year, at one point the file was in his garage, his files were thin and no notes were kept of meetings and phone calls.

580. Exhibit 371 contains various emails from PM (and her associate) asking for copies of letters and other documents. The emails range in date from November 2014 through to October 2015. One email from September 9, 2015 gives an indication of PM's wishes and frustration: "I wanted all the copies of paper and emails…I hate being in the dark".

581. In contrast, the evidence of Mr. Tahn and KC was that they met with PM often and spent much time going through materials, explaining where her action was at. As noted in other complaints heard simultaneously with this complaint, Mr. Tahn takes the position he had many oral conversations with his client but there is no documentation establishing the same, including Statements of Accounts, which could have noted the dates of meetings. There is no summary of any such meetings that the Committee has seen.

582. In brief, PM is not the first of Mr. Tahn's clients we have heard evidence from in this hearing indicating they received no written material, whereas Mr. Tahn in each case says he spent time orally reviewing everything with them. Unfortunately for Mr. Tahn there is absolutely no documentation to support that here or in other instances (see for example complaint 4, for similar facts).

583. The LSA argues that a determination of credibility by this Committee leads to a conclusion that the evidence of PM ought to be accepted over that of Mr. Tahn.

584. Witness credibility is a challenging aspect for any trier of fact. Credibility is an assessment of the logic of witness' testimony and its harmony with common sense and reason[9]. In viewing the conflicting evidence between PM and Mr. Tahn, the Committee finds that where a conflict exists we accept the evidence of PM.

585. In making a determination on which evidence to accept, the Committee has considered the following:

i. Honesty: All witnesses (PM, KC and Mr. Tahn) appeared to be making a good faith effort to fully and accurately give evidence and there was nothing which would suggest that they were deliberately lying or failing to disclose relevant information.

ii. Memory: The evidence of PM is largely based on emails in which she asked for updates and documents over a period of at least a year. She otherwise had every piece of paper relating to her matter as noted by KC and Mr. Tahn in their evidence. The difference is stark and telling between a person who maintains a meticulous paper trail of even the smallest thing but has no documents or emails from Mr. Tahn on the status of her matter. Her memory of what happened (or did not happen) at the time is in harmony with her documentation of events. In contrast Mr. Tahn can only give an oral recollection of conversations he is certain he remembers having 7 or 8 years ago.

iii. Suggestibility: There was nothing to indicate that any of the witnesses' memories had been distorted as a result of conversations with others.

v. Consistency: The evidence from PM was internally consistent, as she maintained her position under cross-examination that she never got information in writing telling her the status of her matter.

Her evidence was also externally consistent with what we heard from several other witnesses during this hearing over the last year and a half. The central theme between them was that they had no written record of whatever was alleged to occur. This was due to Mr. Tahn's apparent practice of doing business and having discussions orally and through phone calls but not documenting those conversations. So, in each case we are faced on one side with a witness who says they asked for material and never got anything and, on the other side, with Mr. Tahn who constantly said he "discussed" or "met" or "phoned" the witness but had little, if any, documentation to back this up. Examples are:

Citation 53 - JM never got a written response from Mr. Tahn to his faxes. Mr. Tahn says he phoned but kept no documentation of the call.

Citation 7 – Mr. Tahn says SH told him (oral discussions) not to pursue divorce in favour of title transfer yet SH denies this and there is no documentation.

Citation 11 - evidence of Mr. Tahn based on oral conversations he said occurred yet AF denies this.

[9] *Faryna v. Chorny*, 1951 CanLII 252 (BC CA).

Citation 24 - $3,000,000 went in and $4,000,000 out of Mr. Tahn's trust account based solely on phone calls.

586. These citations are both allegations of failing to "act to the standard of a conscientious and diligent lawyer" (Code, section 3.2-1) by failing to provide his client with documents relating to her family law matter and failing to keep his client informed on the status of her legal matters. It is the decision of the Committee that citations 39 and 40 are established and that the conduct is deserving of sanction.

Citation 41

587. There are more than a few unexplained anomalies in the ledgers and invoices which were in evidence before us. The best evidence is that of KV that entries were backdated and that some cheques were written (albeit not cashed) before trust money was even available.

588. Mr. Tahn cannot explain this and simply says it must have been the work of [CG], who he retained to go through his books and assist with discrepancies which had arisen.

589. The LSA relies on section 67 of the *Act* and it is the decision of the Committee that Mr. Tahn has failed to meet his burden of proof that trust monies were properly dealt with. It is the decision of the Committee that this citation is established and that the conduct is deserving of sanction.

Citation 42

590. LSA relies on section 67 of the *Act* and it is the decision of the Committee that Mr. Tahn has failed to meet his burden of proof.

591. The requirements in Rule 119.21(4) are clear. The documentation before us is also clear: Mr. Tahn disbursed trust monies to pay for disbursements and for legal fees without delivering the billing to the client or, at a minimum, forwarding the billing concurrently with the withdrawal.

592. Mr. Tahn admitted to doing this. He said he ran the Account at the same time he disbursed trust funds, but his intention was to give PM the accounts and review when next he saw her.

593. There is some dispute whether Mr. Tahn and PM met to review accounts and which ones, however, there is no dispute that even if they did meet, monies had already been disbursed, contrary to the Rule.

594. It is the decision of the Committee that this citation is established and that the conduct is deserving of sanction. Trust funds were distributed before Mr. Tahn provided Statements of Account to his client PM contrary to Rule 119.21(4).

Citation 43

595. There is no issue between the LSA and Mr. Tahn that the contingency fee agreements met the requirements in the Rules of Court and were therefore valid. Nor is there any

issue that PM knew what the contingency agreements entailed and what percentage she would be required to pay.

596. The Committee has limited documentation and inconsistent evidence to conclude that threats induced PM to sign the second contingency and we are loath to conclude this was the case.

597. PM and Mr. Tahn have different recollections of the meeting at which the second agreement was signed. Any pressure, if there was some, could also be attributed to the presence of PM's associate.

598. The amount actually taken by Mr. Tahn is more problematic and brings into question his integrity.

599. The contingency agreements both say that he would be entitled to a percentage, no matter what stage of the litigation, "of the claim proceeds" and "recovery from settlement" after deduction of all reasonable disbursements [emphasis added].

600. The ledger of PL (the real estate lawyer) details precisely what funds came in from the sale of the major asset, the house [Exhibit 367]. He received $350,052.30 as proceeds from the sale of the house. After paying back a small amount for closing issues and his fees, then paying off the [VC] writ, a [R Bank] mortgage and a [B Bank] writ, he provided two payments for a total of $7,000 to PM and then the remainder was sent to Mr. Tahn in two installments, of $160,000 and $44,920.25.

601. From the house sale Mr. Tahn came into possession of $204,920.25. Assuming the money to PM was an advance, the amount of $211,920.25 might have come into Mr. Tahn's trust account had all payments been simultaneous. These are the *claim proceeds* from the house sale or the "recovery from settlement" after deduction of reasonable disbursements as defined in the second contingency agreement.

602. In addition to the net house sale proceeds, the Agreement signed between the parties provided PM would get a $50,000 lump sum, plus $10,000, minus housing costs for insurance, etc., until final closing. In total $59,139.18 was sent to Mr. Tahn by MC.

603. The total claim proceeds then held by Mr. Tahn in trust at the end of the transaction (the total claim proceeds or the recovery from settlement minus reasonable disbursements) was $271,059.43 (the maximum house proceeds plus the lump sum amount).

604. 35% of this amount is $94,870.80.

605. Whichever calculation we use and giving the maximum possible as the amount of the settlement, the amount taken by Mr. Tahn far exceeds 35%. The amounts taken by Mr. Tahn as legal fees detailed in the Statements of Account [Exhibit 377] or the Ledger [Exhibit 417] are slightly in excess of $200,000.

606. No calculation lends itself to a conclusion that the fees paid are 35% of settlement proceeds.

607. Mr. Tahn suggests that:

- the amount of time put into this file at a regular rate of $500 per hour means he actually took a loss. However, the Committee is of the view that he agreed to the contingency fee agreement and took the risk that his effort would exceed his income. The actual time he spent on the file is irrelevant and is a risk he took when he signed the contingency agreement;
- he was entitled to this percentage based on what he thought the house *should have* sold at, but the Committee finds there is no authority for that proposition; and
- his percentage included an amount based on the top value of the time shares, notwithstanding that they were worth far less at market value. Again, the Committee finds there is no authority for this proposition.

608. Under the Rules of Court, retainer agreements and lawyer's accounts are subject to review by a Review Officer:

> 10.9 The reasonableness of a retainer agreement and **the reasonableness of a lawyer's charges** are subject to review by a review officer in accordance with these rules, despite any agreement to the contrary. [emphasis added]

609. Does this potential Review under the Rules of Court exclude this Committee from deciding on the integrity of a member based on amounts taken under a contingency fee agreement? We conclude it does not.

610. Unlike the cases referred to us, this Committee is not examining the reasonableness of the 35% in the second contingency fee agreement. In fact, no one challenges that. What is challenged is the integrity of Mr. Tahn in not only taking far more than 35% but also in failing to document how he came to the amount he took.

611. It is the decision of the Committee that this citation is established and that the conduct is deserving of sanction. The evidence is clear that no matter what calculation is used, the amount taken in legal fees exceeds 35% of proceeds, which was the agreed contingency fee structure. Pursuant to section 67 of the *Act* the "burden of proof that the money has been properly dealt with lies with the member" and it is the decision of the Committee that Mr. Tahn has failed to meet his burden.

Citations 45 & 46

612. Despite repeated requests by the LSA for information, those requests were often met with requests for more time or with promises for delivery without follow through. Specifics are found in the Investigation Report [Exhibit 341], pages 19 - 29.

613. It is also undisputed that Mr. Tahn did not respond to the Investigation Report at all.

614. It is the decision of the Committee that these citations are established and the conduct is deserving of sanction.

Complaint 2 (Citations 3 & 4); Complaint 3 (Citations 5 & 6); Complaint 11 (Citations 57, 58 & 59); Complaint 12 (Citations 60, 61, 62 & 63)

615. The LSA advised the Committee no evidence would be called on complaints 2, 3, 11 or 12 and invited us to dismiss those complaints. Absent any objection from Mr. Tahn, we do so.

Conclusion and Final Matters

616. The Committee will convene a hearing to hear submissions on and determine the appropriate sanction as well as costs.

617. The exhibits, other hearing materials, and this report will be available for public inspection, including the provision of copies of exhibits for a reasonable copy fee, except that identifying information in relation to persons other than Mr. Tahn will be redacted and further redactions will be made to preserve client confidentiality and solicitor-client privilege (Rule 98(3)).

Dated November 23, 2022

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Margaret Unsworth, KC – Chair and Bencher

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Louise Wasylenko – Lay Bencher

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Martha Miller – Public Adjudicator